

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 02/06/2009

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 08/18/2008

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200808-0648-002
AGENCY ICR TRACKING NUMBER:
TITLE: Fishing Capacity Reduction Program Buyback Requests
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0376

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: 02/29/2012

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	16,495	38,563	2,000
New	10,637	27,928	1,680
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	-5,858	-10,635	-320
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
Fishing Capacity Reduction Program Implementation Plans			50 CFR 600 Subpart M
State approvals of implementation plans and amendments to state FMP			50 CFR 600 subpart M
Advance and post-bid referenda and bids			50 CFR 600 subpart M
Buyer recordkeeping (fish tickets)			50 CFR 600 subpart M
Buyer (or seller) monthly reports	NA, NA, NA, NA	Pacific Coast Groundfish Buyback Loan Fee Collection Report, BSAI Crab Buyback Loan Fee Collection Report, BSAI Non-Pollock Buyback Loan Fee Collection Report, AFA Pollock Buyback Loan Fee Collection Settlement Sheet	50 CFR 600 subpart M
Buyer (or seller) annual reports			50 CFR 600 subpart M
Buyer/seller reports			50 CFR 600 subpart M
Advisements of conflicts in ownership claims			50 CFR 600 subpart M

PAPERWORK REDUCTION ACT SUBMISSION

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

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

19. Certification for Paperwork Reduction Act Submissions

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

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

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

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

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

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, 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
FISHING CAPACITY REDUCTION PROGRAM BUYBACK REQUESTS
OMB CONTROL NO. 0648-0376**

A. JUSTIFICATION

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

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

The statutory objective of a program is “to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time.” Buybacks pay fishermen either to (1) surrender their fishing permits or (2) both surrender their permits and either scrap their fishing vessels or restrict vessel title to prevent fishing. Buybacks can involve either a Federal or State fishery. Buybacks can be funded via a long-term loan from the Federal government to the fishery (called industry-funded buybacks), to be repaid by the industry by post-buyback landing fees, or funded from appropriations (non-industry funded) or other non-loan sources of funds. Programs involving industry financed loans are authorized by section 1111 of subchapter XI of the **Merchant Marine Act, 1936**.

An interim final rule to establish framework guidelines for future implementation of programs for specific fisheries was published at **50 CFR part 600 (subpart L)** on May 18, 2000. These guidelines were intended to provide direction and elaboration for future, fishery-specific rules. The SFA amendments to the MSA require a separate rule for each specific program. There are currently four (4) fishing capacity reduction programs that have been published at **50 CFR part 600 (Subpart M)**, and which are in repayment under the existing Paperwork Reduction Act (PRA) Office of Management and Budget (OMB) control number listed above.

The Magnuson-Stevens Reauthorization Act (**Pub. L. 109-479**) changed several of the requirements for Federal loans to be initiated and issued to program participants. These changes will be implemented by National Marine Fisheries Service (NMFS) by fishing year (FY) 2009, but are accounted for in the planning and developing of this PRA renewal.

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

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

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

FISHERIES SUBJECT TO FEDERAL AUTHORITY

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

- (1) Harvester proponents (Private Sector):
 - (a) Develop buyback implementation plan and loan proposal (implementation plan), and
 - (b) Submit implementation plan to:
Fishery Management Council (FMC), or
Majority of permit holders in the fishery;
- (2) FMC:
 - (a) Approves implementation plan;
 - (b) Approves Fishery Management Plan (FMP) amendment required to complement implementation plan; and
 - (c) Submits program request to NMFS;
- (3) NMFS:
 - (a) Determines whether request is sufficient, cost-effective, and in a program involving an industry fee system, is prospectively capable of being repaid;
 - (b) Conducts advanced referendum (if requested);
 - (c) Prepares implementation plan and regulations;
 - (d) Approves buyback loan (assumes availability of sufficient appropriation and apportionment authority);
 - (e) Adopts buyback amendment to FMP;
 - (f) Proposes implementation plan and regulations;
 - (g) Adopts implementation plan and regulations;
 - (h) Invites program bids;
 - (i) Receives and tallies bids;
 - (j) Accepts bids;
 - (k) Conducts post-bid referendum;
 - (l) Certifies referendum results approving the industry fee system;
 - (m) Advises accepted bidders of removal of express condition subsequent to bidding (i.e., referendum approval);
 - (n) Conducts buyback;

(o) Upon completing the program, the FMP buyback amendment becomes effective, and implementation regulations become fully effective, upon program completion; and

(p) Collection-of-fees process begins (buyer reporting and recordkeeping and possible seller reports).

The steps in a non-industry financed program involve much less collection of information from the public, since the industry neither develops the plan nor is subject to fees. The steps are:

(1) FMC:

- (a) Develops preliminary program proposal; and
- (b) Submits program request to NMFS;

(2) NMFS:

- (a) Preliminarily determines whether request is sufficient;
- (b) Develops buyback plan;
- (c) Submits buyback development plan to FMC for confirmation;

(3) FMC:

- (a) Approves FMP amendment required to complement buyback development plan; and
- (b) Submits program confirmation to NMFS;

(4) NMFS:

- (a) Determines request is sufficient;
- (b) Adopts buyback FMP amendment;
- (c) Prepares implementation plan and regulations;
- (d) Determines sufficiency of appropriation and apportionment authority;
- (e) Proposes implementation plan and regulations;
- (f) Adopts implementation plan and regulations;
- (g) Invites bids;
- (h) Receives and tallies bids;
- (i) Accepts bids; and
- (j) Conducts buyback.

National Oceanic and Atmospheric Administration (NOAA) anticipates that most programs will be industry-funded.

FISHERIES SUBJECT TO STATE AUTHORITY

If the fishery involved is subject to State authority, the request must be made by the Governor(s) of the State(s) exercising management authority over the fishery, or by a majority of permit holders in the fishery who wish to conduct a voluntary fishing capacity reduction program. The term “fishery authority” can mean the FMC, the Governor, or the majority of permit holders in the fishery, as appropriate to the fishery.

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

- (1) Harvester proponents (Private Sector):
 - (a) Develop buyback implementation plan and loan proposal (implementation plan); and
 - (b) Submit implementation plan to Governor; or
 - (c) Submit implementation plan for approval by the majority of permit holders in the fishery.

- (2) Governor or majority of permit holders:
 - (a) Approves implementation plan;
 - (b) Approves state FMP amendment required to complement implementation plan; and
 - (c) Submits request to NMFS;

- (3) NMFS:
 - (a) Determines whether request is sufficient;
 - (b) Conducts advanced referendum (if requested);
 - (c) Prepares implementation plan and regulations;
 - (d) Approves buyback loan (assumes availability of sufficient appropriation and apportionment authority);
 - (e) Proposes implementation plan and regulations;
 - (f) Adopts implementation plan and regulations;
 - (g) Invites bids;
 - (h) Receives and tallies bids;
 - (i) Accepts bids;
 - (j) Conducts post-bid referendum;
 - (k) Certifies referendum results approving the industry fee system;
 - (l) Advises accepted bidders of removal of express condition (i.e., referendum approval);
 - (m) Conducts buyback;
 - (n) Upon completing the program, the state implementation regulations become fully effective; and
 - (o) Collection-of-fees process begins (buyer reporting and recordkeeping and possible seller reports).

The steps in a non-industry financed program involve much less collection of information from the public, since the industry neither develops the plan nor is subject to fees. The steps are:

- (1) Governor (or majority of permit holders):
 - (a) Develops preliminary buyback proposal; and
 - (b) Submits request to NMFS;

- (2) NMFS:
 - (a) Preliminarily determines whether request is sufficient;
 - (b) Develops buyback plan; and
 - (c) Submits buyback development plan to Governor for confirmation;

- (3) Governor:
 - (a) Approves state FMP amendment required to complement buyback development plan; and
 - (b) Submits program confirmation to NMFS; and

- (4) NMFS:
 - (a) Determines request is sufficient;
 - (b) Approves state implementation plan and regulations;
 - (c) Determines sufficiency of appropriation and apportionment authority;
 - (d) Adopts implementation plan and regulations;
 - (e) Invites bids;
 - (f) Receives and tallies bids;
 - (g) Accepts bids; and
 - (h) Conducts buyback.

The specific types of information requirements are addressed below.

Buyback Requests

The relevant Council for fisheries, Governor of a State or majority of permit holders are the parties authorized to initiate program requests and buyback plans, however the relevant fishery management authorities must support these requests. NMFS implements these for non-industry-funded programs for Federally-managed fisheries, while the State develops them for State-managed fisheries. For industry-funded programs, the relevant fishery management authority (usually an FMC) makes the request, but obtains the implementation plan from the buyback proponents in the fishery industry.

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

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

the buyback fishery's harvesters have little chance of referenda approval and may waste considerable time and effort.

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

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

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

An implementation plan must:

- (1) Specify detailed buyback methodology and procedures, including the appropriate point to conduct a pre-bidding referendum;
- (2) Propose the types and numbers of vessels or permits that are eligible to participate in the program;
- (3) Project the buyback fishery's annual gross ex-vessel income during the buyback loan's term;
- (4) Specify the buyback loan's principal and repayment term;
- (5) Specify the minimum amount of reduced capacity for the program to be cost-effective;
- (6) Analyze program cost-effectiveness at the minimum level and at additional incremental levels;
- (7) Demonstrate the ability to prospectively repay debt obligations imposed by the program;
- (8) Specify measures to prevent replacement of removed fishing capacity by vessel upgrades or other means;
- (9) Propose a specified or target total allowable catch that will trigger post-buyback closures or other measures to reduce catch;
- (10) Specify the names and addresses of all likely post-buyback fish buyers;

- (11) Specify fee collection and reporting procedures (in the case of fisheries in which some sellers sell unprocessed fish to buyers and others sell processed fish to buyers, a means of establishing the delivery value of processed fish needs to be specified; also the procedures may need to specify what actions may be needed, and who must take them, if state confidentiality laws or other impediments will negatively affect the collection and reporting procedures);
- (12) Demonstrate measures used to ensure wide industry support for the implementation plan;
- (13) Include certification that the implementation plan will accomplish the program purpose; and
- (14) Assess the potential impact of the program on other fisheries, including the general economic impact and possible steps to mitigate undesirable impacts.

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

Buyback Bids

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

Bids would contain the following types of information:

- (1) Self-identification information,
- (2) The bid price,
- (3) Information on the permits and vessels affected,
- (4) Information on the vessel fishing history (if appropriate),
- (5) Statements and affirmations that the person owns the vessels, holds the permits, and retains the fishing history, and
- (6) Similar information pertaining to the specific program being conducted.

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

Buyback Referendum

Buybacks are a voluntary process and each individual program must be approved through a referendum of the fishery's participants. When a referendum is conducted, each participant in

the fishery will receive a ballot with accompanying information and enclosures. Persons may notify NMFS (Leo C. Erwin, Financial Services Division: 301-713-2390) if they believe that they should be on a referendum list, or if they believe someone else should not be on the list.

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

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

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

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

Buyer Reporting and Recordkeeping

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

Each fish buyer – or seller if the Secretary has determined that fees must be collected from the seller – who is required to collect fees must maintain a segregated account at a Federally-chartered national bank for the sole purpose of depositing fee collections and disbursing them from there to the Secretary. At the end of each business day the buyer or seller must deposit all collected fees into the account. On the last business day of each calendar month, the fish buyer or seller will send the full deposit principle to NMFS. To support this system, the buyer or the seller must maintain certain records and submit an annual report.

Records maintenance: Each fish buyer, or seller if the Secretary has determined such fees should be collected from the seller, must, on forms the Secretary specifies, maintain accurate records of all transactions involving fees. Each fish buyer or seller must maintain such records in a secure and orderly manner for a period of at least 3 years from the date of the transactions involved. The following information shall be maintained by each fish buyer, or seller as appropriate, for all deliveries of post-buyback fish such fish buyer buys, or fish seller sells:

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

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

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

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

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

Annual report: Buyers or sellers directed to pay the fees by the authority of the Secretary must also submit a report not later than the date specified in each fishery specific program rule. The report must contain the following program information for the preceding calendar year:

- (1) Total pounds of fish purchased, or sold, from each fish seller;
- (2) Total net ex-vessel value of payments to each fish seller;
- (3) Total fee amounts collected from, or by, each fish seller;
- (4) Total fee collection amounts deposited by month;
- (5) Dates and amounts of monthly disbursements to the Fund lockbox account;
- (6) Total amount of deposit interest withdrawn by fish buyer or seller; and
- (7) Balance of depository account at year-end.

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

Seller/Buyer Reports

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

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

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

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

State Actions for Fisheries Subject to State Authority

The information requirements on the State depend upon the type of program involved. For industry-funded programs, the Governor or majority of permit holders in the fishery must: approve the implementation plan submitted by the industry, approve any state FMP amendment required to complement the implementation plan, and submit the request to NMFS.

When the program is not to be funded by industry, the State develops and submits the implementation plan and program proposal. It also must approve any state FMP amendment required to complement the buyback development plan and submit program confirmation to NMFS.

Advisement of Conflicts in Ownership Claims

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

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

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

No automated techniques are required as part of this process. Paper submissions are possible, and in some cases may actually be less burdensome on the public because many of these fish buyers and sellers are small firms and individuals who may not have Internet access. Electronic means of submitting information may be allowed between industry and the fishery management authority. Exact procedures will depend upon the specific fisheries and parties involved but may include electronic means in certain situations. NMFS has developed an electronic submission system for each of the programs currently in repayment. This electronic system is through the Pay.gov website, which is operated under government contract with the Cleveland Federal Reserve Bank.

4. Describe efforts to identify duplication.

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

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

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

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

If the collections were not conducted, statutorily-mandated financial assistance could not be delivered. The only requirement with a set frequency of submission is the fee-related submission of an annual report. This frequency is deemed minimal for protecting the process from abuse.

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

The requirements are consistent with OMB guidelines except for the following: Reporting will take place more often than quarterly in the case of submission of the fee collections, which will take place on a monthly basis, or more frequently for some participants. Increased frequency is deemed necessary for safer management and more efficient repayment. While there are

currently no pending programs under consideration in NMFS, it is uncertain whether less than 30 days might be allowed for submissions of bids or responses to referenda for a new program. This would be determined by the specific program and it is possible that some cases might call for quicker response.

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 soliciting public comments was published February 25, 2008 (73 FR 10003). One comment was received but it was not responsive to the four areas listed in the request for comments.

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

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

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

No confidentiality is promised or given.

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

No sensitive questions are asked.

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

This submission supports a framework regulation. Specific programs have been implemented through rulemaking, and it is anticipated that future programs will generate additional rulemaking. While NOAA can identify the elements of information collection requirements, the specific burden imposed by the requirements can vary greatly because of the different sizes and natures of the fisheries that may be involved. The estimates that follow are based upon the assumption that there will be two programs per year, one for fisheries under Federal authority and one for fisheries under State authority.

While the estimates in the previous PRA request were tentative, we now have actual experience based on the four programs NMFS has implemented. These include the American Fisheries Act (AFA) Pollock, the Pacific Coast Groundfish, the Bering Sea and Aleutian Island (BSAI) King and Tanner Crab, and the Longline Catcher Processor Subsector BSAI Non-Pollock Groundfish

programs. The estimates discussed below are based on averaged data from the 4 programs listed above. Therefore, our figures from the previous PRA request have been adjusted accordingly.

For calculating total burden, we have assumed: that 1 new program plan for fisheries under Federal management authority will be submitted per year; that referenda and bids in an average fishery will affect approximately 400 vessels; that there will be an average of 300 vessels in the fishery after the buyout; that there will be 100 buyers in a fishery; that buyers will report on a total of 2,700 trips per fishery (9 landings per 300 vessels); that seasons are 6 months, resulting in 6 monthly deposit reports; and that buyers or sellers will submit 100 reports per year. We estimate receiving 5 responses, which will each total 1 hour, advising us of any conflicts in ownership claims. Although not all 400 vessels would decide to make a bid, all would probably read the material sent to them and calculate whether a bid would be to their advantage, so we have included the entire fishery as bid respondents. We have also assumed 1 industry-funded program per year for fisheries under State management authority, with the same fishery-size and reporting assumptions as for a Federal fishery. The burden of plans is expected to drop as industry becomes familiar with the framework rule and other examples are available.

BURDEN IN YEAR 1:

Industry-Funded Buybacks in Federally-Managed Fisheries

1 Implementation Plan/yr. x 6,634 hours/plan = 1 response/6,634 hours
1 Advance referendum/yr. x 4 hrs./voter x 400 voters = 400 responses/1,600 hours
1 Post-bid referendum/yr. x 4 hrs./voter x 400 voters = 400 responses/1,600 hours
1 Invitation to bid/yr. x 4 hrs./bid x 400 bids = 400 responses/1,600 hours
2,700 Trips x 10 min./fish ticket x 1 buyback = 2,700 responses/450 hours
100 Buyers (or sellers) x 6 monthly reports/yr. x 2 hrs./report x 1 buyback = 600 responses/1,200 hours
100 Buyers (or sellers) x 1 annual report x 4 hrs./report x 1 buyback = 100 responses/400 hours
50 Buyer/seller reports/year x 2 hrs./report x 1 buyback = 50 responses/100 hours
5 Advisements of conflicts in ownership claims x 1 hr./advisement x 1 buyback = 5 responses/5 hours

Non-Industry-Funded Buybacks in Federally-Managed Fisheries

No such programs are anticipated.

Industry-Funded Buybacks in State-Managed Fisheries

1 Implementation Plan/yr. x 6,634 hours/plan = 1 response/6,634 hours
1 State approval of plan and amendment to state FMP x 270 hrs = 1 response/270 hours
1 Advance referendum/yr. x 4 hrs./voters x 400 voters = 400 responses/1,600 hours
1 Post-bid referendum/yr. x 4 hrs./voter x 400 voters = 400 responses/1,600 hours
1 Invitation to bid/yr. x 4 hrs./bid x 400 bids = 400 responses/1,600 hours
600 Trips x 10 min./fish ticket = 600 responses/100 hours
8 Buyers (or sellers) x 6 monthly reports/yr. x 2 hrs./report = 48 responses/96 hours
8 Buyers (or sellers) x 1 annual report x 4 hrs./report = 8 responses/32 hours

6 Buyer/seller reports/year x 2 hrs./report = 6 responses/12 hours
 5 Advisements of conflicts in ownership claims = 5 responses/5 hours

Non-Industry-Funded Buybacks in State-Managed Fisheries

No such programs are anticipated.

Burden in Years 2 and 3:

Assuming the same number of programs take place each year, the burden for referenda and invitations will be the same as for Year 1. The annual burden for plans will drop after the initial program is completed. Since buyer or seller reporting and seller/buyer reports would continue for the first year participants until the loan is repaid, the burden for those requirements would increase year to year by increments of the first year burden (that is, in Year 2 you'd have reports from second year of first group, and first year of second group, etc.). No hours for a second advanced referendum are estimated as such a referendum is not expected.

The total 3-year responses and burden hours for new programs is anticipated to be 31,911 and 83,784, for an average annual 10,637 responses and burden of 27,928 hours.

BURDEN ESTIMATE TOTALS			
	Year 1 Responses/ Burden	Year 2 Responses/ Burden	Year 3 Responses/ Burden
Implementations plans	2/13,268	2/13,268	2/13,268
State approvals	1/270	1/270	1/270
Advance Referenda	800/3,200	800/3,200	800/3,200
Post-bid Referenda	800/3,200	800/3,200	800/3,200
Invitations to bid and bids	800/3,200	800/3,200	800/3,200
Buyer recordkeeping (fish tickets)	3,300/550	6,600/1,100	9,900/1,650
Buyer monthly reports	648/1,296	1,296/2,592	1,944/3,888
Buyer annual reports	108/432	216/864	324/1,296
Seller/Buyer reports	56/112	112/224	168/336
Advisements of conflicts in ownership claims	10/10	10/10	10/10
TOTALS	6,525/25,538	10,637/27,928	14,749/30,318

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

The costs to respondents would be those for copying and mailing submissions. Those are estimated to average \$1,680 over the 3-year approval period.

COST ESTIMATE TOTALS (in \$)			
	Year 1 Costs	Year 2 Costs	Year 3 Costs
Implementation plans	200	200	200
State approvals	180	180	180
Advance Referenda	374	374	374
Post-bid Referenda	190	190	190
Invitations to bid and bids	120	120	120
Buyer recordkeeping (fish tickets)	240	480	720
Buyer monthly reports	50	100	150
Buyer annual reports	10	20	30
Seller/Buyer reports	8	16	24
TOTALS	1,372	1,680	1,988

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

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

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

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

The estimates from the previous PRA approval have been adjusted downward to reflect actual experience based on averaged data from the four programs lined in Question 12. The main difference is an estimated one, rather than two, annual implementation plans for buybacks in Federally-managed fisheries, removing 6,634 hours. Estimating one less plan also reduces the expected numbers of bids, monthly and annual reports, and conflicts in ownership claims, saving an additional 4,001 hours. There is a related cost savings of \$516.

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

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

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

N/A.

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

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

AFA POLLOCK BUYBACK LOAN FEE COLLECTION SETTLEMENT SHEET

Fee Collector's Name			
Mailing Address			
City			
State			
Zip			
Phone Number			
Fee Collector's Permit or Buyer Code			
Settlement Sheet Date			
Month of Landings			

FOR ALL INSHORE COMPONENT POLLOCK LANDED ¹

<i>Vessel Permit Number</i>	<i>Delivery Date</i>	<i>Fish Ticket Number</i>	<i>Pounds Landed</i>	<i>Fee Collected (\$)</i>
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
Totals			0	\$ -

¹ Fee collector must separately record each vessel landing. The totals must equal the amount that the fee collector disburses to NMFS.

Instructions:

1. Complete the fee collector's name, address, telephone number, fee collector's permit number, date of this fee collection settlement sheet, and month of landings.
2. Record the vessel permit number, delivery date, fish ticket number, pounds landed and fee collected for each vessel. The fee collected equals the the pounds of pollock landed for each vessel trip multiplied by \$0.006.
3. Note that deliveries must occur within the same month. Use a separate report for a different month.
4. Use Pay.gov to remit fee due or mail a check payable to: "NOAA Inshore Component Pollock Loan Subaccount" in the amount of the total fee collected to: P O Box 979002, St. Louis, MO 63197-9000.

Paperwork Reduction Act Statement:

Public reporting burden for this collection of information is estimated to average one hour per response, including the 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 Leo Erwin, Chief, Financial Services Division, NMFS, MB5, 1315 East West Highway, Silver Spring, MD 20910.

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.

Pacific Coast Groundfish Buyback Loan Fee Collection Report

Fee Collector's Name			
Mailing Address			
City			
State			
Zip			
Phone Number			
State Buyer Code			
Month and Year of Landings			

FOR LANDINGS OF	<i>Sub-account</i>	<i>Fee Rate (%)</i>	<i>Gross Value (\$)</i>	<i>Fee Collected (\$)</i>
Pacific Coast Groundfish	BBGS-001GF	5.00		
California coastal Dungeness crab	BBGS-001CC	1.24		
California pink shrimp	BBGS-001CS	5.00		
Oregon coastal Dungeness crab	BBGS-001OC	0.55		
Oregon pink shrimp	BBGS-001OS	4.70		
Washington coastal Dungeness crab	BBGS-001WC	0.16		
Washington pink shrimp	BBGS-001WS	1.50		
			Total Fees (\$)	

Fee Adjustment By checking this box I certify that this payment is an adjustment for fees previously owed but not paid.

Instructions:

1. Complete the fee collector's name, address, telephone number, state buyer code (fish buyer/processor license number), and month and year of landings (MM/200X).
2. Record the gross value and fee collected for each fishery. The fee collected equals the applicable fee rate multiplied by the gross value of fish landed for each vessel trip.
3. Note that deliveries must occur within the same month. Use a separate report for a different month.
4. Check the fee adjustment box if this payment is for previously owed fees.
5. Use Pay.gov to remit fee collected or mail a check payable to: "NMFS Pacific Coast Groundfish Buyback Loan" in the amount of the total fees collected to: P O Box 979059, St. Louis, MO 63197-9000.

Paperwork Reduction Act Statement:

Public reporting burden for this collection of information is estimated to average one hour per response, including the 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 Leo Erwin, Chief, Financial Services Division, NMFS, MB5, 1315 East West Highway, Silver Spring, MD 20910.

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.

BSAI Crab Buyback Loan Fee Collection Report

Fee Collector's Name			
Mailing Address			
City			
State			
Zip			
Phone Number			
Crab Receiver Permit			
Month of Landings			
Check this box if payment is a Price Adjustment			

<i>FOR LANDINGS OF</i>	<i>Sub-account</i>	<i>Fee Rate (%)</i>	<i>Catch (lbs.)</i>	<i>Gross Value (\$)</i>	<i>Fee Collected (\$)</i>
Aleutian Islands brown king	BBCA-002BK	5.0			
BSAI C. opilio and C. bairdi	BBCA-002OB	5.0			
Aleutian Islands red king	BBCA-002AI	5.0			
Bristol Bay red king	BBCA-002BB	2.5			
Pribilof red king and blue king	BBCA-002PB	5.0			
St. Matthew blue king	BBCA-002SM	5.0			
Total Fees (\$)					

Price Adjustment Verification: By checking this box I certify that the payment I am making is for the purposes of BSAI crab price adjustment, and I confirm I am not avoiding late payment fees on any previous month's unreported landings.

Instructions:

1. Complete the fee collector's name, address, phone number, crab receiver permit, and month of landings. Check both the price adjustment box and verification box, if applicable.
2. Record the catch in pounds, gross value, and fee collected for each fishery. The fee collected equals the applicable fee rate multiplied by the gross value of crab landed for each vessel trip.
3. Note that deliveries must occur within the same month. Use a separate report for a different month.
4. Use Pay.gov to remit fee collected or mail a check payable to: "NMFS BSAI Crab Buyback Loan" in the amount of the total fees collected to: P O Box 979060, St. Louis, MO 63197-9000.

Paperwork Reduction Act Statement:

Public reporting burden for this collection of information is estimated to average one hour per response, including the 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 Leo Erwin, Chief, Financial Services Division, NMFS, MB5, 1315 East West Highway, Silver Spring, MD 20910. 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.

BSAI Non-Pollock Buyback Loan Fee Collection Report

Company Name			
Mailing Address			
City			
State			
Zip			
Phone Number			
LLP License Number			
Vessel Name			
ADFG Vessel Number			
Month of Landings			
Check this box if payment is for an adjustment to previous fees paid			

<i>FOR LANDINGS OF</i>	<i>Sub-account</i>	<i>Fee Rate per Pound</i>	<i>Gross Catch (lbs.)</i>	<i>Fee Due (\$)</i>
BSAI Pacific Cod	BBNA-001A	\$0.02		
			Total Fees (\$)	

Instructions:

1. Complete the company name, address, phone number, LLP license number, vessel name, ADFG vessel number, month of catch, and check adjustment box if applicable.
2. Record the gross catch in round weight pounds and fee collected for the fishery. The fee due equals the fee rate multiplied by the gross catch of Pcod landed for each vessel trip.
3. Use a separate report for catch in a different month.
4. Use Pay.gov to remit fee due or mail a check payable to "NMFS BSAI Non-Pollock Buyback Loan" in the amount of the total fee due to: P.O. Box 979060, St. Louis, MO 63197-9000.

Paperwork Reduction Act Statement:

Public reporting burden for this collection of information is estimated to average one hour per response, including the 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 Leo Erwin, Chief, Financial Services Division, NMFS, MB5, 1315 East West Highway, Silver Spring, MD 20910.

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.

104-297

SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES

16 U.S.C. 1861a

(a) FISHERIES DISASTER RELIEF.—

109-479

(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

(A) natural causes;

(B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment; or

(C) undetermined causes.

(2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.

(3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

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(4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 2007 through 2013.

(b) FISHING CAPACITY REDUCTION PROGRAM.—

109-479

(1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, the Governor of a State for fisheries under State authority, or a majority of permit holders in the fishery, may conduct a voluntary fishing capacity reduction program (referred to in this section as the 'program') in a fishery if the Secretary determines that the program—

16 U.S.C. 1861a
MSA § 312

(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan—

(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, practicable restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and

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

(C) is cost-effective and, in the instance of a program involving an industry fee system, prospectively capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936.

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(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay—

(A) the owner of a fishing vessel, if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the vessel owner and permit holder relinquish any claim associated with the vessel or permit that could qualify such owner or holder for any present or future limited access system permit in the fishery for which the program is established or in any other fishery and such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions (including loss of the vessel's fisheries endorsement) that permanently prohibit and effectively prevent its use in fishing in federal or state waters, or fishing on the high seas or in the waters of a foreign nation; or

(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.

(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

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(4) The harvester proponents of each program and the Secretary shall consult, as appropriate and practicable, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.

109-479

(5) PAYMENT CONDITION.—The Secretary may not make a payment under paragraph (2) with respect to a vessel that will not be scrapped unless the Secretary certifies that the vessel will not be used for fishing in the waters of a foreign nation or fishing on the high seas.

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(6) REPORT.—

(A) IN GENERAL.—Subject to the availability of funds, the Secretary shall, within 12 months after the date of the enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 submit to the Congress a report—

- (i) identifying and describing the 20 fisheries in United States waters with the most severe examples of excess harvesting capacity in the fisheries, based on value of each fishery and the amount of excess harvesting capacity as determined by the Secretary;
- (ii) recommending measures for reducing such excess harvesting capacity, including the retirement of any latent fishing permits that could contribute to further excess harvesting capacity in those fisheries; and
- (iii) potential sources of funding for such measures.

(B) BASIS FOR RECOMMENDATIONS.—The Secretary shall base the recommendations made with respect to a fishery on—

- (i) the most cost effective means of achieving voluntary reduction in capacity for the fishery using the potential for industry financing; and
- (ii) including measures to prevent the capacity that is being removed from the fishery from moving to other fisheries in the United States, in the waters of a foreign nation, or on the high seas.

(c) PROGRAM FUNDING.—

(1) The program may be funded by any combination of amounts—

- (A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A); the Saltonstall-Kennedy Act);
- (B) appropriated for the purposes of this section;
- (C) provided by an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or
- (D) provided from any State or other public sources or private or non-profit organizations.

(2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction fund established under section 1111 of title XI of the Merchant Marine Act, 1936.

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(d) INDUSTRY FEE SYSTEM.—

(1) (A) If an industry fee system is necessary to fund the program, the Secretary may conduct a referendum on such system. Prior to the referendum, the Secretary shall—

(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and

(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.

(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute at least a majority of the permit holders in the fishery, or 50 percent of the permitted allocation of the fishery, who participated in the fishery.

(2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1111 of title XI of the Merchant Marine Act, 1936. The fees for a program established under this section shall—

(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

(B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

(C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish, unless the Secretary determines that such fees should be collected from the seller; and

(D) be in effect only until such time as the debt obligation has been fully paid.

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(e) IMPLEMENTATION PLAN.—

(1) FRAMEWORK REGULATIONS.—The Secretary shall propose and adopt framework regulations applicable to the implementation of all programs under this section.

(2) PROGRAM REGULATIONS.—The Secretary shall implement each program under this section by promulgating regulations that, together with the framework regulations, establish each program and control its implementation.

(3) HARVESTER PROPONENTS' IMPLEMENTATION PLAN.—The Secretary may not propose implementation regulations for a program to be paid for by an industry fee system until the harvester proponents of the program provide to the Secretary a proposed implementation plan that, among other matters—

(A) proposes the types and numbers of vessels or permits that are eligible to participate in the program and the manner in which the program shall proceed, taking into account—

- (i) the requirements of this section;
- (ii) the requirements of the framework regulations;
- (iii) the characteristics of the fishery and affected fishing communities;
- (iv) the requirements of the applicable fishery management plan and any amendment that such plan may require to support the proposed program;
- (v) the general needs and desires of harvesters in the fishery;
- (vi) the need to minimize program costs; and
- (vii) other matters, including the manner in which such proponents propose to fund the program to ensure its cost effectiveness, as well as any relevant factors demonstrating the potential for, or necessary to obtain, the support and general cooperation of a substantial number of affected harvesters in the fishery (or portion of the fishery) for which the program is intended; and

(B) proposes procedures for program participation (such as submission of owner bids under an auction system or fair market-value assessment), including any terms and conditions for participation, that the harvester proponents deem to be reasonably necessary to meet the program's proposed objectives.

(4) PARTICIPATION CONTRACTS.—The Secretary shall contract with each person participating in a program, and each such contract shall, in addition to including such other matters as the Secretary deems necessary and appropriate to effectively implement each program (including penalties for contract nonperformance) be consistent with the framework and implementing regulations and all other applicable law.

(5) REDUCTION AUCTIONS.—Each program not involving fair market assessment shall involve a reduction auction that scores the reduction price of each bid offer by the data relevant to each bidder under an appropriate fisheries productivity factor. If the Secretary accepts bids, the Secretary shall accept responsive bids in the rank order of their bid scores, starting with the bid whose reduction price is the lowest percentage of the productivity factor, and successively accepting each additional responsive bid in rank order until either there are no more responsive bids or acceptance of the next bid would cause the total value of bids accepted to exceed the amount of funds available for the program.

(6) BID INVITATIONS.—Each program shall proceed by the Secretary issuing invitations to bid setting out the terms and conditions for participation consistent with the framework and implementing regulations. Each bid that the Secretary receives in response to the invitation to bid shall constitute an irrevocable offer from the bidder.

109-479

SEC. 315. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM. 16 U.S.C. 1864

(a) IN GENERAL.—When there is a catastrophic regional fishery disaster the Secretary may, upon the request of, and in consultation with, the Governors of affected States, establish a regional economic transition program to provide immediate disaster relief assistance to the fishermen, charter fishing operators, United States fish processors, and owners of related fishery infrastructure affected by the disaster.

(b) PROGRAM COMPONENTS.—

(1) IN GENERAL.—Subject to the availability of appropriations, the program shall provide funds or other economic assistance to affected entities, or to governmental entities for disbursement to affected entities, for—

(A) meeting immediate regional shoreside fishery infrastructure needs, including processing facilities, cold storage facilities, ice houses, docks, including temporary docks and storage facilities, and other related shoreside fishery support facilities and infrastructure while ensuring that those projects will not result in an increase or replacement of fishing capacity;

(B) financial assistance and job training assistance for fishermen who wish to remain in a fishery in the region that may be temporarily closed as a result of environmental or other effects associated with the disaster;

(C) funding, pursuant to the requirements of section 312(b), to fishermen who are willing to scrap a fishing vessel and permanently surrender permits for fisheries named on that vessel; and

(D) any other activities authorized under section 312 of this Act or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

(2) JOB TRAINING.—Any fisherman who decides to scrap a fishing vessel under the program shall be eligible for job training assistance.

(3) STATE PARTICIPATION OBLIGATION.—The participation by a State in the program shall be conditioned upon a commitment by the appropriate State entity to ensure that the relevant State fishery meets the requirements of section 312(b) of this Act to ensure excess capacity does not re-enter the fishery.

(4) NO MATCHING REQUIRED.—The Secretary may waive the matching requirements of section 312 of this Act, section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107), and any other provision of law under which the Federal share of the cost of any activity is limited to less than 100 percent if the Secretary determines that—

(A) no reasonable means are available through which applicants can meet the matching requirement; and

(B) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the matching requirement.

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(5) NET REVENUE LIMIT INAPPLICABLE.—Section 308(d)(3) of the Interjurisdictional Fisheries Act (16 U.S.C. 4107(d)(3)) shall not apply to assistance under this section.

(c) REGIONAL IMPACT EVALUATION.—Within 2 months after a catastrophic regional fishery disaster the Secretary shall provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected region's fisheries to assist the Governor in assessing the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and the direct, indirect, or environmental impact of the disaster on the fishery and coastal communities.

(d) CATASTROPHIC REGIONAL FISHERY DISASTER DEFINED.—In this section the term 'catastrophic regional fishery disaster' means a natural disaster, including a hurricane or tsunami, or a regulatory closure (including regulatory closures resulting from judicial action) to protect human health or the marine environment, that—

- (1) results in economic losses to coastal or fishing communities;
- (2) affects more than 1 State or a major fishery managed by a Council or interstate fishery commission; and
- (3) is determined by the Secretary to be a commercial fishery failure under section 312(a) of this Act or a fishery resource disaster or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

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Title 50: Wildlife and Fisheries

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

Subpart L—Fishing Capacity Reduction Framework

Authority: 16 U.S.C. 1861a(b)–(e).

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

§ 600.1000 Definitions.

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

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

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

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

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

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

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

Delivery value means:

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

Delivery value encompasses fair market value, as defined herein, and includes the value of all in-kind compensation or all other goods or services exchanged in lieu of cash. It is synonymous with the statutory term "ex-vessel value" as used in section 312 of the Magnuson Act.

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

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

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

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

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

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

Fish buyer means the first ex-vessel party who:

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

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

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

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

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

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

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

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

Net delivery value means the delivery value minus the fee.

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

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

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

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

Processed fish means fish in any form different from the form in which the fish existed at the time the fish was first harvested, unless any such difference

in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

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

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

Reduction amendment means any amendment, or, where appropriate, framework adjustment, to a CFMP that may be necessary for a program to meet the requirements of this subpart.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Vote means a vote in a referendum.

§ 600.1001 Requests.

- (a) A Council or the Governor of a State under whose authority a proposed reduction fishery is subject may request that NMFS conduct a program in that fishery. Each request shall be in writing and shall be submitted to the Director, Office of Sustainable Fisheries, NMFS. Each request shall satisfy the requirements of §600.1003 or §600.1005, as applicable, and enable NMFS to make the determinations required by §600.1004 or §600.1006, as applicable.
- (b) NMFS cannot conduct a program in any fishery subject to the jurisdiction of a Council or a state unless NMFS first receives a request from the Council or the governor to whose jurisdiction the fishery is subject.
- (c) For a fishery subject to the jurisdiction of a Council, only that Council can or must make the request. If the fishery is subject to the jurisdiction of two or more Councils, those Councils must make a joint request. No Council may make a request, or join in making a request, until after the Council conducts a public hearing about the request.
- (d) For a fishery subject to the jurisdiction of a State, only the Governor of that State can make the request. If the fishery is subject to the jurisdiction of two or more states, the Governors of those States shall make a joint request. No Governor of a State may make a request, or join in making a request, until the State conducts a public hearing about the request.
- (e) For a fishery under the direct management authority of the Secretary, NMFS may conduct a program on NMFS' own motion by fulfilling the requirements of this subpart that reasonably apply to a program not initiated by a request.
- (f) Where necessary to accommodate special circumstances in a particular fishery, NMFS may waive, as NMFS deems necessary and appropriate, compliance with any specific requirements under this subpart not required by statute.

§ 600.1002 General requirements.

- (a) Each program must be: (1) Necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the reduction fishery;
- (2) Accompanied by the appropriate environmental, economic and/or socioeconomic analyses, in accordance with applicable statutes, regulations, or other authorities; and
- (3) Consistent with the CFMP, including any reduction amendment, for the reduction fishery.
- (b) Each CFMP for a reduction fishery must: (1) Prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet;
- (2) Establish a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and
- (3) Include, for a financed program in a reduction fishery involving only a portion of a fishery, appropriate provisions for the post-reduction allocation of fish between the reduction fishery and the rest of the fishery that both protect the borrower's reduction investment in the program and support the borrower's ability to repay the reduction loan.

§ 600.1003 Content of a request for a financed program.

A request for a financed program shall:

- (a) Specify the reduction fishery.
- (b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.
- (c) Specify whether the program is to be wholly or partially financed and, if the latter, specify the amount and describe the availability of all funding from sources other than a reduction loan.
- (d) Project the availability of all Federal appropriation authority or other funding, if any, that the financed program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.
- (e) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(a).
- (f) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(b).
- (g) If a reduction amendment is necessary, include an actual reduction amendment or the requester's endorsement in principle of the reduction amendment specifications in the business plan. Endorsement in principle is non-binding.
- (h) Request that NMFS conduct, at the appropriate time, a referendum under §600.1010 of this subpart.
- (i) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester. The list shall take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves. The list may include any relevant information that NMFS may supply to the requester.
- (j) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (i) of this section.
- (k) Specify the criteria for determining the types and number of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:
 - (1) The characteristics of the fishery;
 - (2) Whether the program is limited to a particular gear type within the reduction fishery or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor;
 - (3) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels;
 - (4) The reduction amendment required;
 - (5) The needs of fishing communities;
 - (6) Minimizing the program's reduction cost; and
 - (7) All other relevant factors.
- (l) Include the requester's assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts.
- (m) Include any other information or guidance that would assist NMFS in developing an implementation plan and implementation regulations.
- (n) Include a business plan, prepared by, or on behalf of, knowledgeable and concerned harvesters in the reduction fishery, that:
 - (1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least reduction cost and in the minimum period of time and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:
 - (i) Establish the appropriate point for NMFS to conduct a pre-bidding referendum and be sufficiently detailed to enable NMFS to readily:
 - (A) Design, propose, and adopt a timely and reliable implementation plan,
 - (B) Propose and issue timely and reliable implementation regulations,
 - (C) Invite bids,
 - (D) Accept or reject bids, and
 - (E) Complete a program in accordance with this subpart, and
 - (ii) Address, consistently with this subpart:
 - (A) The contents and terms of invitations to bid,
 - (B) Bidder eligibility,
 - (C) The type of information that bidders shall supply,
 - (D) The criteria for accepting or rejecting bids,
 - (E) The terms of bid acceptances,
 - (F) Any referendum procedures in addition to, but consistent with, those in §600.1010, and
 - (G) All other technical matters necessary to conduct a program;
 - (2) Projects and supports the reduction fishery's annual delivery value during the reduction loan's repayment period based on documented analysis of actual representative experience for a reasonable number of past years in the reduction fishery;
 - (3) Includes the fishing capacity reduction specifications upon which both the pre-bidding referendum and the bidding under §600.1009 will be based. The reduction loan's maximum principal amount cannot, at the interest rate projected to prevail at the time of reduction, exceed the principal amount that can be amortized in 20 years by 5 percent of the projected delivery value;
 - (4) States the reduction loan's repayment term and the fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over its repayment term;
 - (5) Analyzes and demonstrates the ability to repay the reduction loan at the minimum reduction level and at various reduction-level increments reasonably

greater than the minimum one, based on the:

- (i) Best and most representative historical fishing revenue and expense data and any other relevant productivity measures available in the reduction fishery, and
 - (ii) Projected effect of the program on the post-reduction operating economics of typical harvesters in the reduction fishery, with particular emphasis on the extent to which the reduction increases the ratio of delivery value to fixed cost and improves harvesting's other relevant productivity measures;
- (6) Demonstrates how the business plan's proposed program meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(a);
- (7) Demonstrates how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(b);
- (8) Includes, if a reduction amendment is necessary, the reduction amendment specifications upon which the pre-bidding referendum will be based;
- (9) Includes an assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts;
- (10) Specifies the names and addresses of record of all fish buyers who can, after reduction, reasonably be expected to receive deliveries of fee fish. This shall be based on the best information available, including any information that NMFS may be able to supply to the business planners;
- (11) Specifies, after full consultation with fish buyers, any special circumstances in the reduction fishery that may require the implementing regulations to contain provisions in addition to, or different from, those contained in §600.1013 and/or §600.1014 in order to accommodate the circumstances of, and practices in, the reduction fishery while still fulfilling the intent and purpose of §600.1013 and/or §600.1014— including, but not limited to:
- (i) In the case of reduction fisheries in which state data confidentiality laws or other impediments may negatively affect the efficient and effective conduct of the same, specification of who needs to take what action to resolve any such impediments, and
 - (ii) In the case of reduction fisheries in which some fish sellers sell unprocessed, and other fish sellers sell processed fish to fish buyers, specification of an accurate and efficient method of establishing the delivery value of processed fish; and
- (12) Demonstrates by a survey of potential voters, or by any other convincing means, a substantial degree of potential voter support for the business plan and confidence in its feasibility.
- (o) Include the requester's statement of belief that the business plan, the CFMP, the reduction amendment specifications, and all other request aspects constitute a complete, realistic, and practical prospect for successfully completing a program in accordance with this subpart.

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

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

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

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

§ 600.1005 Content of a request for a subsidized program.

A request for a subsidized program shall:

- (a) Specify the reduction fishery.
- (b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.
- (c) Project the reduction cost, the amount of reduction cost to be funded by Federal appropriations, and the amount, if any, to be funded by other sources.
- (d) Project the availability of Federal appropriations or other funding, if any, that completion of the program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.
- (e) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester, including any information that NMFS may supply to the requester, and take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves.
- (f) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (e) of this section.
- (g) Include a preliminary development plan that: (1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least cost and in a minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:
 - (i) Be sufficiently detailed to enable NMFS to prepare a final development plan to serve as the basis for NMFS to readily design, propose, and adopt a timely and reliable implementation plan and propose and issue timely and reliable implementation regulations, and
 - (ii) Include:

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

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

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

- (i) The characteristics of the fishery,
- (ii) Whether the program is limited to a particular gear type within the reduction fishery, or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor,
- (iii) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels,
- (iv) The reduction amendment required,
- (v) The needs of fishing communities, and
- (vi) The need to minimize the program's reduction cost; and

(3) Demonstrates the program's cost effectiveness.

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

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

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

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

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

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

(b) *Final development plan.* After receipt of a conforming request, NMFS will prepare a final development plan if NMFS determines that the reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart. NMFS will, as far as possible, base the final development plan on the requester's preliminary development plan. Before completing the final development plan, NMFS will consult, as NMFS deems necessary, with the requester, Federal agencies, state and regional authorities, affected fishing communities, participants in the reduction fishery, conservation organizations, and other interested parties in preparing the final development plan.

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

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

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

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

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

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

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

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

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

§ 600.1007 Reduction amendments.

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

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

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

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

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

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

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

§ 600.1008 Implementation plan and implementation regulations.

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

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

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

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

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

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

(d) The implementation regulations will:

- (1) Specify, for invitations to bid, bids, and reduction contracts under §600.1009:
 - (i) Bidder eligibility,
 - (ii) Bid submission requirements and procedures,
 - (iii) A bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,
 - (iv) A bid expiration date after which the irrevocable offer contained in each bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,
 - (v) The manner of bid submission and the information each bidder shall supply for NMFS to deem a bid responsive,
 - (vi) The conditions under which NMFS will accept or reject a bid,
 - (vii) The manner in which NMFS will accept or reject a bid, and
 - (viii) The manner in which NMFS will notify each bidder of bid acceptance or rejection;
- (2) Specify any other special referendum procedures or criteria; and
- (3) Specify such other provisions, in addition to and consistent with those in this subpart, necessary to regulate the individual terms and conditions of each program and reduction loan. This includes, but is not limited to:
 - (i) Provisions for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with §600.1013 and §600.1014,
 - (ii) Prospective fee rate determinations, and
 - (iii) Any other aspect of fee payment, collection, deposit, disbursement, accounting, record keeping, and/or reporting.

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

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

- (1) For a financed program, the bidding results do not conform to the fishing capacity reduction specifications or a post-bidding referendum does not subsequently approve an industry fee system based on the bidding results;
- (2) For a subsidized program, NMFS does not accept bids; and
- (3) For either a financed program or a subsidized program, if NMFS is unable to make all reduction payments due to a material adverse change.

§ 600.1009 Bids.

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

- (1) Each invitation to bid constitutes the entire terms and conditions of a reduction contract under which:
 - (i) Each bidder makes an irrevocable offer to the United States of fishing capacity for reduction, and
 - (ii) NMFS accepts or rejects, on behalf of the United States, each bidder's offer;

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

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

(4) For a financed program in one reduction fishery that is being conducted under appropriate implementation regulations simultaneously with another financed program in another reduction fishery, where the acceptance of bids for each financed program is conditional upon successful post-bidding referenda approving industry fee systems for both financed programs, NMFS' acceptance of all bids is, in addition to any condition under paragraph (a)(3) of this section, also subject to the additional conditions that both referenda approve the industry fee systems required for both financed programs— all as otherwise provided in paragraph (a)(3) of this section;

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

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

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

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

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

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

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

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

(ii) No reduction payment in any way gives rise to any liability of the United States for the obligation underlying any lien,

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

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

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

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

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

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

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

(4) Any reduction loan involved is fully approved;

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

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

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

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

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

(1) Analyze responsive bids;

(2) Determine which bids, if any, NMFS accepts; and

(3) Notify, by U.S. mail at each bidder's address of

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

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

§ 600.1010 Referenda.

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

(b) *Pre-bidding referendum —(1) Initial referendum.* An initial pre-bidding referendum shall be conducted for each financed program. The business plan shall, subject to this subpart, determine the chronological relationship of the initial pre-bidding referendum to other pre-bidding aspects of the reduction process sequence. The initial pre-bidding referendum shall be based on the fishing capacity reduction specifications. If the initial pre-bidding referendum precedes the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the reduction amendment specifications. If the initial pre-bidding referendum follows the adoption of any necessary reduction amendment, the initial pre-bidding

referendum shall also be based on the adopted reduction amendment;

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

- (i) If the initial pre-bidding referendum follows reduction amendment adoption, no second pre-bidding referendum shall be conducted,
- (ii) If the initial pre-bidding referendum precedes reduction amendment adoption, a second pre-bidding referendum shall be conducted if, in NMFS' judgment, the reduction amendment subsequently adopted differs, in any respect materially affecting the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan, from the reduction amendment specifications upon which the initial pre-bidding referendum successfully occurred. The sole purpose of any second pre-bidding referendum shall be to determine whether the voters authorize an industry fee system despite any such difference between the reduction amendment specifications and a subsequently adopted reduction amendment.

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

(c) *Post-bidding referendum.* A post-bidding referendum shall occur only if, in NMFS' judgment, the result of bidding under §600.1009 does not conform, in any material respect, to the fishing capacity reduction specifications and such result justifies, in NMFS' judgment, conducting a post-bidding referendum. Bidding that results in reducing fishing capacity in any amount not less than the minimum fishing capacity reduction amount for any reduction loan amount not more than the maximum reduction loan amount, and otherwise achieves all material requirements of the fishing capacity reduction specifications, shall conform to the fishing capacity reduction specifications. The sole purpose of any post-bidding referendum shall be to determine whether voters authorize an industry fee system for bidding that results in reducing fishing capacity in any amount materially less than the minimum amount in the fishing capacity reduction specifications.

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

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

(3) *Voter certification.* Each ballot will contain a certification, subject to the penalties set forth in §600.1017, that the person signing the ballot is the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf;

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

- (i) Summarize the referendum's nature and purpose,
- (ii) Specify the date by which NMFS must receive a ballot in order for the ballot to be counted as a qualified vote,
- (iii) Identify the place on the ballot for the voter to vote for or against the proposed industry fee system, the place on the ballot where the voter shall sign the ballot, and the purpose of the return envelope,
- (iv) For each pre-bidding referendum, state: (A) The fishing capacity reduction specifications,
- (B) The reduction loan's repayment term, and
- (C) The fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over the loan's term,
- (v) For each initial pre-bidding referendum that precedes reduction amendment adoption, state the reduction amendment specifications,
- (vi) For each initial pre-bidding referendum that follows reduction amendment adoption, summarize the material aspects of the reduction amendment adopted,
- (vii) For each second pre-bidding referendum, summarize how the adopted reduction amendment materially differs from the reduction amendment specifications upon which a successful initial pre-bidding referendum occurred and how this material difference affects the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan,
- (viii) For each post-bidding referendum, specify the actual bidding results that do not conform to the fishing capacity reduction specifications, and
- (ix) State or include whatever else NMFS deems appropriate;

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

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

(ii) Such other materials as NMFS deems appropriate;

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

- (i) Is physically received by NMFS on or before the last day NMFS specifies for receipt of the ballot,
- (ii) Is cast for or against the proposed industry fee system,
- (iii) Is signed by the voter,
- (iv) Is the original ballot NMFS sent to the voter bearing the same 5-digit number that NMFS assigned to the voter, and
- (v) Was returned to NMFS in the specially-marked envelope that NMFS provided for the ballot's return; (6) *Vote tally and notification.* NMFS will:

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

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

- (A) The number of potential voters,
- (B) The number of actual voters who returned a ballot,
- (C) The number of returned ballots that qualified to be counted as referendum votes,
- (D) The number of votes for and the number of votes against the industry fee system, and
- (E) Whether the referendum was successful and approved the industry fee system or unsuccessful and disapproved the industry fee system, and
- (iii) If a successful referendum is a post-bidding referendum, NMFS will, at the same time and in the same manner, also notify the bidders whose bids were conditionally accepted that the condition pertaining to the reduction contracts between them and the United States is fulfilled;

(7) *Conclusiveness of referendum determinations.* NMFS' determinations about ballot qualifications and about all other referendum matters, including, but not limited to, eligible voters and their addresses of record, are conclusive and final as of the date NMFS makes such determinations. No matter respecting such determinations shall impair, invalidate, avoid, or otherwise render unenforceable any referendum, reduction contract, reduction loan, or fee payment and collection obligation under §600.1013 and §600.1014 necessary to repay any reduction loan;

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

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

§ 600.1011 Reduction methods and other conditions.

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

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

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

(1) Each reduction vessel that is subject to title restriction only and is thus not required to be scrapped, is, upon NMFS' tender of the reduction payment, forever prohibited from any future use for fishing in any area subject to the jurisdiction of the United States or any State, territory, possession, or commonwealth of the United States. NMFS will request that the U.S. Coast Guard permanently restrict each such reduction vessel's title to exclude the reduction vessel's future use for fishing in any such area;

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

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

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

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

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

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

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

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

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

§ 600.1012 Reduction loan.

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

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

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

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

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

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

(c) *Effect of prospective interest rate.* Any difference between a prospective interest rate projected, for the purpose of any aspect of reduction planning or processing under this subpart, before the U.S. Treasury determines the Treasury percentage and an interest rate first known after the U.S. Treasury determines the Treasury percentage shall not void, invalidate, or otherwise impair any reduction contract, any reduction loan repayment obligation, or any other aspect of the reduction process under this subpart. Should any such difference result in a reduction loan that cannot, at the maximum fee rate allowed by law, be repaid, as previously projected, within the maximum maturity, any amount of the reduction loan remaining unpaid at maturity shall be repaid after maturity by continuing fee payment and collection under this subpart at such maximum fee rate until the reduction loan's unpaid principal balance and accrued interest is fully repaid. The above notwithstanding, at the discretion of the Secretary, the reduction contract can be voided if a material adverse change affects the reduction contract, reduction loan obligation, or any other aspect of the reduction process under this

subpart.

§ 600.1013 Fee payment and collection.

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

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

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

(2) In the event of any post-delivery payment for fee fish—including, but not limited to bonuses—whose amount depends on conditions that cannot be known until after fish delivery, that either first determines the delivery value or later increases the previous delivery value, the fish seller shall pay, and the fish buyer shall collect, at the time the amount of such post-delivery payment first becomes known, the fee that would otherwise have been due and payable as if the amount of the post-delivery payment had been known, and as if the post-delivery payment had consequently occurred, at the time of initial fish delivery;

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

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

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

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

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

(4) Fee payment begins on the date NMFS specifies under the notification procedures of paragraph (d) of this section and continues without interruption at the fee rates NMFS specifies in accordance this subpart until NMFS determines that the reduction loan is fully repaid. If a reduction loan is, for any reason, not fully repaid at the maturity of the reduction loan's original amortization period, fee payment and collection shall continue until the reduction loan is fully repaid, notwithstanding that the time required to fully repay the reduction loan exceeds the reduction loan's initially permissible maturity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

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

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

(d) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

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

- (i) The date of delivery,
- (ii) The seller's identity,
- (iii) The weight, number, or volume of each species of fee fish delivered,
- (iv) The identity of the fishing vessel that delivered the fee fish,
- (v) The delivery value of each species of fee fish,
- (vi) The net delivery value,
- (vii) The identity of the party to whom the net delivery value is paid, if other than the fish seller,
- (viii) The date the net delivery value was paid, and
- (ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

- (i) The dates and amounts of deposits,
- (ii) The dates and amounts of disbursements to the Fund's lockbox account, and
- (iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* In each year, on the date to be specified in each implementation regulation, succeeding the year during which NMFS first implemented a fee, each fish buyer shall submit to NMFS

a report, on or in the form NMFS specifies, containing the following information for the preceding year, or whatever longer period may be involved in the first annual report, for all fee fish each fish buyer purchases from fish sellers: (1) Total weight, number, or volume bought;

- (2) Total delivery value paid;
- (3) Total fee amounts collected;
- (4) Total fee collection amounts deposited by month;
- (5) Dates and amounts of monthly disbursements to each Fund lockbox account;
- (6) Total amount of interest earned on deposits; and
- (7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section. If any state law or regulation prohibits fish buyers, or fish sellers where appropriate, from keeping, for the purpose of complying with any requirement of this section, separate records that involve some or all of the same data elements as the landing records that the fish buyers also keep, for state purposes and under state law or regulation, then a financed reduction program will not be possible.

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

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

(i) *Refunds.* When NMFS determines that a reduction loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

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

§ 600.1015 Late charges.

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

§ 600.1016 Enforcement.

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

§ 600.1017 Prohibitions and penalties.

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

- (1) Vote in any referendum under this subpart if the party is ineligible to do so;
- (2) Vote more than once in any referendum under this subpart;
- (3) Sign or otherwise cast a ballot on behalf of a voter in any referendum under this subpart unless the voter has fully authorized the party to do so and doing so otherwise comports with this subpart;
- (4) Interfere with or attempt to hinder, delay, buy, or otherwise unduly or unlawfully influence any eligible voter's vote in any referendum under this subpart;
- (5) Submit a fraudulent, unauthorized, incomplete, misleading, unenforceable by specific performance, or inaccurate bid in response to an invitation to bid under this subpart or, in any other way, interfere with or attempt to interfere with, hinder, or delay, any invitation to bid, any bid submitted under any invitation to bid, any reduction contract, or any other reduction process in connection with any invitation to bid;
- (6) Revoke or attempt to revoke any bid under this subpart;
- (7) Fail to comply with the terms and conditions of any invitation to bid, bid, or reduction contract under this subpart, including NMFS' right under such reduction contracts to specific performance;
- (8) Fail to fully and properly pay and collect any fee due payable, and collectible under this subpart or otherwise avoid, decrease, interfere with, hinder, or delay any such payment and collection,
- (9) Convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;
- (10) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the Fund's lockbox account—all as this subpart requires;
- (11) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS—all as this subpart requires;
- (12) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;
- (13) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or its agents in the course of their activities under this subpart;
- (14) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;
- (15) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or
- (16) Otherwise materially interfere with the efficient and effective conduct of reduction and the repayment of reduction loans under this subpart.

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

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

Title 50: Wildlife and Fisheries

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117, Pub. L. 107–206, Pub. L. 108–7, Pub. L. 108–199, and Pub. L. 108–447.

Source: 69 FR 53361, Sept. 1, 2004, unless otherwise noted.

§ 600.1100 [Reserved]

§ 600.1101 Inshore fee system for repayment of the loan to harvesters of Pollock from the directed fishing allowance allocated to the inshore component under section 206(b) (1) of the AFA.

(a) *Definition.* In addition to the definitions in the Magnuson-Stevens Act and in §679.2 of this title, the terms used in this subpart have the following meanings:

American Fisheries Act (AFA) means Title II of Pub.L. 105–277.

Borrower means (individually and collectively) all persons who, after January 1, 2000, harvest fee fish from the IC directed fishing allowance.

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

Delivery value means the gross ex-vessel value of all fee fish at fish delivery.

Deposit principal means all collected fee revenue that a fish buyer deposits in a segregated deposit account maintained in a federally chartered national bank for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying the loan.

Fee means the six-tenths (0.6) of one cent that fish buyers deduct at fish delivery from the delivery value of each pound of round weight fee fish.

Fee fish means all pollock harvested from the IC directed fishing allowance beginning on February 10, 2000 and ending at such time as the loan's principal and interest are fully repaid.

Fish buyer means the first ex-vessel fish buyer who purchases fee fish from a fish seller.

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

Fish seller means the harvester who catches and first sells fee fish to a fish buyer.

IC directed fishing allowance means the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

Loan means the loan authorized by section 207(a) of the AFA.

Net delivery value means the delivery value minus the fee.

Subaccount means the Inshore Component Pollock Subaccount of the Fishing Capacity Reduction Fund in the U.S. Treasury for the deposit of all funds involving the loan.

(b) *Loan —(1) Principal amount.* The loan's principal amount is \$75,000,000 (seventy five million dollars).

(2) *Interest.* Interest shall, from December 30, 1998, when NMFS disbursed the loan, until the date the borrower fully repays the loan, accrue at a fixed rate of 7.09 percent. Interest shall be simple interest and shall accrue on the basis of a 365-day year.

(3) *Repayment.* The fee shall be the exclusive source of loan repayment. The fee shall be paid on all fee fish.

(4) *Application of fee receipts.* NMFS shall apply all fee receipts it receives, first, to payment of the loan's accrued interest and, second, to reduction of the loan's principal balance.

(5) *Obligation.* The borrower shall repay the loan in accordance with the AFA and this subpart.

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

(ii)(A) Each fish seller shall be deemed, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, to be both the fish seller and the fish buyer—and all requirements and penalties under this subpart applicable to both a fish seller and a fish buyer shall equally apply to the fish seller—each time that the fish seller sells fee fish to:

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

(2) Any fish buyer who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other fish buyer not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, or

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

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

(2) *Notification.* (i) NMFS will send an appropriate fee payment and collection commencement notification to each affected fish seller and fish buyer of whom NMFS has knowledge.

(ii) When NMFS determines that the loan is fully repaid, NMFS will publish a Federal Register notification that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send an appropriate fee termination notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

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

in writing of the full particulars, including:

- (A) The fish buyer's and fish seller's name, address, and telephone number,
- (B) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,
- (C) The quantity and delivery value of fee fish that the fish seller delivered, and
- (D) The fish buyer's reason (if known) for refusing to collect the fee in accordance with this subpart;

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

- (A) The fish buyer's and fish seller's name, address, and telephone number,
- (B) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,
- (C) The quantity and delivery value of fee fish the fish seller delivered or attempted to deliver,
- (D) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and
- (E) The fish seller's reason (if known) for refusing to pay the fee in accordance with this subpart.

(d) *Fee collection deposits, disbursements, records, and reports —(1) Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(2) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer has collected through a date not more than 2 calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the subaccount in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(3) *Deposit principal disbursement.* On the last business day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to "NOAA Inshore Component Pollock Loan Subaccount." The fish buyer shall mail each such check to the subaccount lockbox account that NMFS establishes for the receipt of the disbursements of deposit principal. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the subaccount's lockbox and the manner and form of settlement sheet by means of the notification in §600.1101(c).

(4) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

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

- (A) The date of delivery,
- (B) The fish seller's identity,
- (C) The round weight of fee fish delivered,
- (D) The identity of the fishing vessel that delivered the fee fish,
- (E) The delivery value,
- (F) The net delivery value,
- (G) The identity of the party to whom the net delivery value is paid, if other than the fish seller,
- (H) The date the net delivery value was paid, and
- (I) The total fee amount collected;

(ii) For all fee collection deposits to and disbursements from the deposit account:

- (A) The dates and amounts of deposits,
- (B) The dates and amounts of disbursements to the subaccount's lockbox account, and
- (C) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(5) *Annual report.* By January 15, 2001, and by each January 15 thereafter until the loan is fully repaid, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year for all fee fish each fish buyer purchases from fish sellers:

- (i) Total round weight bought;
- (ii) Total delivery value paid;
- (iii) Total fee amount collected;
- (iv) Total fee collection amounts deposited by month;
- (v) Dates and amounts of monthly disbursements to the subaccount lockbox;
- (vi) Total amount of interest earned on deposits; and
- (vii) Depository account balance at year-end.

(6) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section.

(7) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of the loan, the financial records of the fish buyers and the fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers shall make all records of all transactions involving fee fish catches, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, recordkeeping, and reporting available to NMFS or its agents at reasonable times and

places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the round weight pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so) are essential audit documentation.

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

(9) *Refunds.* When NMFS determines that the loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(e) *Late charges.* The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed within 5 days of the date due. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undischursed.

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

(g) *Prohibitions and penalties.* (1) The following activities are prohibited, and it is unlawful for anyone to:

(i) Avoid, decrease, interfere with, hinder, or delay payment or collection of, or otherwise fail to fully and properly pay or collect, any fee due and payable under this subpart or convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

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

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

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

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

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

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

(viii) Otherwise materially interfere with the efficient and effective repayment of the loan.

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

§ 600.1102 Pacific Coast groundfish fee.

(a) *Purpose.* This section implements the fee for repaying the reduction loan financing the Pacific Coast Groundfish Program authorized by section 212 of Division B, Title II, of Public Law 108-7 and implemented by a final notification in the Federal Register (July 18, 2003; 68 FR 42613).

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

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

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

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

Fee-share fishery means each of the fisheries for coastal Dungeness crab and pink shrimp in each of the States of California and Oregon and the fishery for coastal Dungeness crab and ocean pink shrimp in the State of Washington.

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

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

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

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

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

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

(1) Reduction fishery, \$28,428,719; and

(2) Fee-share fisheries:

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

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

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

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

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

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

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

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

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

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

(1) The borrower's obligation to repay the reduction loan shall be discharged by fish sellers in the reduction fishery and in each of the fee-share fisheries paying the fee applicable to each such fishery's subamount in accordance with §600.1013 of subpart L, and

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

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

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

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

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

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

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

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

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

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

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

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

(4) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

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

(A) The date of delivery,

(B) The fish seller's identity,

(C) The weight, number, or volume of each species of fee fish delivered,

(D) Information sufficient to specifically identify the fishing vessel which delivered the fee fish,

(E) The delivery value of each species of fee fish,

(F) The net delivery value of each species of fee fish,

(G) The identity of the payor to whom the net delivery value is paid, if different than the fish seller,

(H) The date the net delivery value was paid,

(I) The total fee amount collected as a result of all fee fish, and

(J) The total fee amount collected as a result of all fee fish from the reduction fishery and/or all fee fish from each of the six fee-share fisheries; and

(ii) For all collected fee deposits to, and disbursements of deposit principal from, the deposit account include:

(A) The date of each deposit,

(B) The total amount deposited,

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

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

- (E) The total amount disbursed,
- (F) The total amount disbursed from the reduction fishery subaccount and/or from each of the six feeshare fishery subaccounts, and
- (G) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits; and
- (5) *Annual report*. No fish buyer needs to submit an annual report about fee fish collection activities unless, during the course of an audit under §600.1014(g), NMFS requires a fish buyer to submit such a report or reports.
- (j) Other provisions. The reduction loan is, in all other respects, subject to the provisions of §600.1012 through applicable portions of §600.1017, except §600.1014(e).

[70 FR 40229, July 13, 2005, as amended at 71 FR 28, Jan. 3, 2006]

§ 600.1103 Bering Sea and Aleutian Islands (BSAI) Crab species program.

(a) *Purpose*. This section's purpose is to implement the program that Section 144(d) of Division B of Pub. L. 106–554, as amended by section 2201 of Pub. L. 107–20 and section 205 of Pub. L. 107–117, enacted for BSAI crab species.

(b) *Terms*. Unless otherwise defined in this section, the terms defined in §600.1000 expressly apply to the program for BSAI crab. Likewise, the terms defined in §679.2 of this chapter also apply to terms not otherwise defined in either §600.1000 or this section. The following terms used in this section have the following meanings for the purpose of this section:

Acceptance means NMFS' acceptance, on behalf of the United States, of a bid.

Bid means a bidder's irrevocable offer, in response to an invitation to bid under this section, to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner this section requires, the bidder's reduction fishing interest.

Bid amount means the dollar amount of each bid.

Bidder means either a qualifying bidder bidding alone or a qualifying bidder and a co-bidder bidding together who at the time of bidding holds the reduction fishing interests specified at §600.1018(e).

Bid crab means the crab that NMFS determines each bidder's reduction/history vessel (see definition) harvested, according to the State of Alaska's records of the documented harvest of crab, from each reduction endorsement fishery and from the Norton Sound fishery during the most recent 5 calendar years in which each reduction endorsement fishery was for any length of time open for directed crab fishing during a 10–calendar-year period beginning on January 1, 1990, and ending on December 31, 1999.

Bid score means the criterion by which NMFS decides in what order to accept bids in the reverse auction this section specifies.

Co-bidder means a person who is not a qualifying bidder, but who at the time of bidding owns the reduction/privilege vessel this section requires to be included in a bid and is bidding together with a qualifying bidder.

Crab means the crab species covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs pursuant to §679.2 of this chapter.

Crab license means a License Limitation Program license for crab issued pursuant to §679.4(k)(5) of this chapter.

Crab reduction permit means a non-interim crab license endorsed for one or more reduction endorsement fisheries, regardless of whether it is also endorsed for the Norton Sound fishery.

FSD means NMFS' Financial Services Division, located in NMFS' Silver Spring, MD, headquarters office.

Non-crab reduction permit means a fishing license, including all of its predecessor history, for which a bidder is the holder of record on December 12, 2003 and which was issued based on the fishing history of the bidder's -reduction/history vessel.

Norton Sound fishery means the non-reduction fishery defined in §679.2 of this chapter as the area/species endorsement for Norton Sound red king and Norton Sound blue king crab.

NVDC means the U.S. Coast Guard's National Vessel Documentation Center located in Falling Waters, WV.

Qualifying bidder means a person who at the time of bidding is the license holder of record of a crab reduction permit.

Qualifying voter means a person who at the time of voting in a referendum is the license holder of record either of an interim or a non-interim crab license, except a crab license whose sole area/species endorsement is for the Norton Sound fishery.

RAM Program means NMFS' Restricted Access Management Program located in NMFS' Juneau, AK, regional office.

Reduction endorsement fishery means any of the seven fisheries that §679.2 of this chapter defines as area/species endorsements except the area/species endorsement for the Norton Sound fishery.

Reduction fishery means the fishery for all crab covered by the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan under all area/species endorsements that section 679.2 of the chapter defines, except the area/species endorsement for the Norton Sound fishery.

Reduction fishing history means, for each bid, the complete documented harvest of the bidder's reduction/history vessel, upon any part of which such harvest NMFS based issuance of the crab license included in the bid as a crab reduction permit, plus such fishing history, after the issuance of such crab license, of any other vessel upon which the bidder used such crab license.

Reduction fishing interest means, for each bid, the bidder's:

- (1) Reduction fishing privilege (see definition);
- (2) Crab reduction permit;
- (3) Non-crab reduction permit;
- (4) Reduction fishing history (see definition); and
- (5) Any other claim that could in any way qualify the owner, holder, or retainer of any of the reduction components, or any person claiming under such owner, holder, or retainer, for any present or future limited access system fishing license or permit in any United States fishery (including, but not limited to, any harvesting privilege or quota allocation under any present or future individual fishing quota system).

Reduction fishing privilege means the worldwide fishing privileges of a bid's reduction/privilege vessel (see definition).

Reduction/history vessel means the vessel or vessels which generated the reduction fishing history.

Reduction loan sub-amount means the portion of the original principal amount of reduction loan this section specifies each reduction endorsement fishery must repay with interest.

Reduction/privilege vessel means the vessel designated on a crab license on December 12, 2003.

Referendum means a referendum under this section to determine whether voters approve the fee required to repay this program's reduction loan.

Replacement vessel means a reduction/history vessel which replaced the lost or destroyed one whose reduction fishing history qualified during the general qualification period and the endorsement qualification period and, which under the exceptions in Amendment 10, qualified during the recent participation period.

(c) *Relationship to this subpart* —(1) *Provisions that apply.* The provisions of §600.1000 through §600.1017 of this subpart apply to this program except as paragraph (c)(2) of this section provides; and

(2) *Provisions that do not apply.* The following sections, or portions of them, of this subpart do not apply to this program:

(i) All of:

- (A) Section 600.1001,
- (B) Section 600.1002,
- (C) Section 600.1003,
- (D) Section 600.1004,
- (E) Section 600.1005,
- (F) Section 600.1006, and
- (G) Section 600.1007,

(ii) The portions of §600.1008:

- (A) Pertaining to an implementation plan,
- (B) Pertaining to a 60-day comment period for a proposed implementation regulation,
- (C) Pertaining to public hearings in each State that the this program affects,
- (D) Pertaining to basing the implementation regulation on a business plan,
- (E) Within paragraphs (d)(1)(ii) through (viii),
- (F) Within paragraph (d)(2)(ii),
- (G) Within paragraph (e), and
- (H) Within paragraph (f) and pertaining to fishing capacity reduction specifications and a subsidized program,

(iii) The portions of §600.1009:

- (A) Pertaining to fishing capacity reduction specifications,
- (B) Within paragraph (a)(4),
- (C) Pertaining to a reduction amendment,
- (D) Within paragraph (a)(5)(ii), to the extent that the paragraph is inconsistent with the requirements of this section,
- (E) Within paragraph (b)(i), and
- (F) Pertaining to an implementation plan,

(iv) The portions of §600.1010:

- (A) Within paragraph (b),
- (B) Pertaining to fishing capacity reduction specifications,
- (C) Within paragraph (d)(1), and
- (D) Within paragraphs (d)(4)(iv) through (vii),

(v) The portions of §600.1011:

- (A) That comprise the last sentence of paragraph (a),
- (B) Within paragraph (d), and
- (C) Within paragraph (e)(2),

(vi) The portions of §600.1012:

- (A) Within paragraph (b)(3) following the word "subpart", and
- (B) Within paragraph (b)(3), and

(vii) The last sentence of §600.1014(f).

(d) *Reduction cost financing.* NMFS will use the proceeds of a reduction loan, authorized for this purpose, to finance 100 percent of the reduction cost. The original principal amount of the reduction loan will be the total of all reduction payments that NMFS makes under reduction contracts. This amount shall not exceed \$100 million.

(e) *Who constitutes a bidder.* A bidder is a person or persons who is the:

- (1) Holder of record and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's crab reduction permit and the bid's non-crab reduction permit;
- (2) Reduction/privilege vessel owner, title holder of record, and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing privilege; and
- (3) Retainer and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing history.

(f) *How crab licenses determine qualifying bidders and qualifying voters* —(1) *Non-interim crab licenses.* Each person who is the record holder of a non-interim crab license endorsed for one or more reduction endorsement fisheries is both a qualifying bidder and a qualifying voter and can both bid and vote;

- (2) *Interim crab licenses.* Each person who is the record holder of an interim crab license endorsed for one or more reduction endorsement fisheries is a qualifying voter but not a qualifying bidder and can vote but not bid;
- (3) *Crab licenses endorsed solely for the Norton Sound Fishery.* Each person who is the record holder of any crab license endorsed solely for the Norton Sound fishery is neither a qualifying bidder nor a qualifying voter and can neither bid nor vote; and
- (4) *Time at which qualifying bidders and voters must hold required crab licenses.* A qualifying bidder must be the record holder of the required crab license at the time the qualifying bidder submits its bid. A qualifying voter must be the record holder of the required crab license at the time the qualifying voter submits its referendum ballot.
- (g) *Qualifying bidders and co-bidders* —(1) *Qualifying bidders bidding alone.* There is no co-bidder when a qualifying bidder owns, holds, or retains all the required components of the reduction fishing interest;
- (2) *Qualifying bidders bidding together with co-bidders.* When a qualifying bidder does not own the reduction/privilege vessel, the person who does may be the qualifying bidder's co-bidder; and
- (3) *Minimum reduction components that qualifying bidders must hold or retain when bidding with cobidders.* At a minimum, a qualifying bidder must hold the crab reduction permit and the non-crab reduction permit and retain the reduction fishing history. The reduction/privilege vessel may, however, be owned by another person who is a co-bidder.
- (h) *Reduction fishing interest* —(1) *General requirements.* Each bidder must:
- (i) In its bid, offer to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner that this section requires, the reduction fishing interest,
- (ii) At the time of bidding, hold, own, or retain the reduction fishing interest and be fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest, and
- (iii) Continuously thereafter hold, own, or retain the reduction fishing interest and remain fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest until:
- (A) The bid expires without NMFS first having accepted the bid,
- (B) NMFS notifies the bidder that NMFS rejects the bid,
- (C) NMFS notifies the bidder that a reduction contract between the bidder and the United States no longer exists, or
- (D) NMFS tenders reduction payment to the bidder;
- (2) *Reduction/privilege vessel requirements.* The reduction/privilege vessel in each bid must be:
- (i) The vessel designated, at the time this final rule is published in the Federal Register, on a crab license which becomes a bid's crab reduction permit, and
- (ii) Be neither lost nor destroyed at the time of bidding;
- (3) *Reduction fishing privilege requirements.* The reduction fishing privilege in each bid must be the reduction/privilege vessel's:
- (i) Fisheries trade endorsement under the Merchant Marine Act, 1936 (46 U.S.C.A. 12108),
- (ii) Qualification for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement under foreign registry or operation under the authority of a foreign country, and
- (iii) Any other privilege to ever fish anywhere in the world;
- (4) *Crab reduction permit requirements.* (i) Except as otherwise provided in paragraph (i) of this section, the crab reduction permit must in each bid:
- (A) Be the crab license that NMFS issued on the basis of the bidder's reduction fishing history,
- (B) Be non-interim at the time each bidder submits its bid, and
- (C) Include an area/species endorsement for any one or more reduction endorsement fisheries,
- (ii) Although the Norton Sound fishery is not a reduction endorsement fishery, an area/species endorsement for the Norton Sound fishery occurring on a crab reduction permit must be surrendered and revoked (and all fishing history involving it relinquished) in the same manner as all other reduction endorsement fisheries occurring on the crab reduction permit;
- (5) *Non-crab reduction permit requirements.* The non-crab reduction permit must in each bid be every license, permit, or other harvesting privilege that:
- (i) NMFS issued on the basis of the fishing history of the bidder's reduction/history vessel, and
- (ii) For which the bidder was the license holder of record on the effective date of this section; and
- (6) *Reduction fishing history requirements.* Except as otherwise provided in paragraph (i) of this section, the reduction fishing history in each bid must that of a single reduction/history vessel.
- (i) *Exceptions to the reduction fishing interest requirements* —(1) *Lost or destroyed vessel salvaged.* When a bidder has salvaged a lost or destroyed vessel and has made from the salvaged vessel the documented harvest of crab §679.4(k)(5)(iii)(B)(3) of this chapter requires, the crab portion of the reduction fishing history is the salvaged vessel's documented harvest of crab; and
- (2) *Lost or destroyed vessel not salvaged.* When a bidder has not salvaged the lost or destroyed vessel but has made from a replacement vessel the documented harvest of crab §679.4(k)(5)(iii)(B)(3) of this chapter requires:
- (i) The crab portion of the reduction fishing history is the total of the lost or destroyed vessel's documented harvest of crab through the date of such vessel's loss or destruction plus the replacement vessel's documented harvest of crab after such date, and
- (ii) For the purposes of this program, the lost or destroyed vessel's documented harvest of crab merges with, and becomes a part of, the replacement vessel's documented harvest of crab; and
- (3) *Acquired crab fishing history.* When a bidder, in the manner §679.4(k)(5)(iv) of this chapter requires, has made a documented harvest of crab from one vessel and has acquired a replacement vessel's documented harvest of crab:
- (i) The crab portion of the reduction fishing history is the total of the acquired documented harvest of crab through December 31, 1994, plus the documented harvest of crab after December 31, 1994, of the vessel from which the bidder made the documented crab harvest §679.4(k)(5)(iv) of this chapter requires, and
- (ii) [Reserved]
- (iii) For the purposes of this program, the acquired documented harvest of crab merges with, and becomes a part of, the non-acquired documented harvest of crab.

- (j) *Determining value of reduction/history vessels' bid crab* —(1) *In each fishery.* NMFS will determine the dollar value of each reduction/history vessel's bid crab in each reduction endorsement fishery and in the Norton Sound Fishery by multiplying each reduction/history vessel's number of pounds of each species of bid crab by the average ex-vessel price per pound that the State of Alaska annually publishes for each crab species in the bid crab; and *In all fisheries.* NMFS will determine the dollar value of each reduction/history vessel's bid crab in all reduction endorsement fisheries and in the Norton Sound fishery by adding each of the products of the multiplications in paragraph (j)(1) of this section; and
- (2) *Crab excluded from bid crab.* A reduction/history vessel's bid crab may not include, to the extent that NMFS has knowledge:
- (i) Triangle tanner crab, grooved tanner crab, and any other crab not involved in the various area/species endorsements,
 - (ii) Discarded crab,
 - (iii) Crab caught for personal use,
 - (iv) Unspecified crab, and
 - (v) Any other crab for which the dollar value, crab fishery, landing date, or harvesting vessel NMFS cannot, for whatever reason, determine.
- (k) *Determining bid score.* NMFS will determine each bid score by dividing each bid amount by the sum in paragraph (j)(2) of this section.
- (l) *Determining reduction loan sub-amount* —(1) *Value of all bid crab in each fishery.* NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in each reduction endorsement fishery;
- (2) *Value of all bid crab in all fisheries.* NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in all reduction endorsement fisheries plus the Norton Sound fishery;
- (3) *Each fishery as a percentage of all fisheries.* NMFS will divide each of the sums in paragraph (l)(1) of this section by the sum in paragraph (l)(2) of this section. The result of this calculation will be the dollar value of all bid crab in each reduction endorsement fishery as a percentage of the dollar value of all bid crab in all reduction endorsement fisheries plus the Norton Sound fishery;
- (4) *Applying percentages to loan amount.* NMFS will multiply the reduction loan's full original principal amount by each of the yields in paragraph (l)(3) of this section; and
- (5) *Loan sub-amount.* Each of the amounts resulting from the calculation in paragraph (l)(4) of this section will be the reduction loan subamount that a reduction endorsement fishery must repay.
- (m) *Prospectively qualifying bidder and voter notification* —(1) *General.* At the appropriate point before issuing an invitation to bid, NMFS will publish a notification in the Federal Register listing all persons who at the time of publishing the notification prospectively are qualifying bidders and qualifying voters;
- (2) *Qualifying bidder list.* The prospectively qualifying bidder list will include the names and addresses of record of each license holder of record for all non-interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;
- (3) *Qualifying voter list.* The prospectively qualifying voter list will include the names and addresses of record of each license holder of record for all non-interim and interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;
- (4) *Basis of lists.* NMFS will base both the lists on the RAM Program's license holder records for crab licenses meeting the requirements of §679.4(k)(5) of this chapter as well as the requirements of this section;
- (5) *Purpose.* The purpose of the notification is to provide the public notice of:
- (i) The prospectively qualifying bidders, and
 - (ii) The prospectively qualifying voters; and
- (6) *Public comment.* Any person who wants to comment about the notification has 30 days from the notification's publication date to do so. Persons should send their comments to both FSD and the RAM Program (at addresses that the notification will specify). Comments may address:
- (i) Persons who appear on one or more lists but should not,
 - (ii) Persons who do not appear on one or more lists but should, and
 - (iii) Persons who believe their names and/or business mailing addresses appearing on one or more lists are incorrect.
- (n) *Invitation to bid* —(1) *Notification.* At the appropriate point after issuing the notification in paragraph (m) of this section, NMFS will publish the invitation to bid in the Federal Register notification further specified in §600.1009(c) of this subpart, along with a bidding form and terms of capacity reduction agreement. No person may, however, bid at this stage;
- (2) *Notification contents.* The invitation to bid notification will state all applicable bid submission requirements and procedures (including, but not limited to, those included in this section). In particular, the invitation to bid notification will:
- (i) State the date on which NMFS will invite bids by mailing an invitation to bid to each person on the prospectively qualifying bidder list,
 - (ii) State a bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,
 - (iii) State a bid expiration date after which each bid expires unless, prior to that date, NMFS accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,
 - (iv) State the manner of bid submission and the information each bidder must submit for NMFS to deem a bid responsive,
 - (v) State any other information required for bid submission, and
 - (vi) Include a facsimile of the invitation to bid, along with a bidding form and terms of capacity reduction agreement comprising the entire terms and conditions of the reduction contract under which each bidder must bid and under which NMFS must accept a bid; and
- (3) *Mailing.* On the date specified in this notification, NMFS will invite bids by mailing the invitation to bid and a bidding package, including a bidding form terms of capacity reduction agreement, to each person then on the prospectively qualifying bidder list. NMFS will not mail the invitation to bid to any potential co-bidder because NMFS will not then know which bids may include a co-bidder. Each qualifying bidder is solely responsible to have any required co-bidder properly complete the bid. No person may bid before receiving the invitation to bid and the bidding package that NMFS mailed to that person.
- (o) *Bids* —(1) *Content.* Each invitation to bid that NMFS mails to a qualifying bidder will have a bid form requiring each bid to:
- (i) Identify, by name, regular mail address, telephone number, and (if available) electronic mail address, the qualifying bidder and each co-bidder,
 - (ii) State the bid amount in U.S. dollars,
 - (iii) Identify, by crab license number, the qualifying bidder's crab reduction permit and include an exact copy of this crab license (which the RAM Program issued),

- (iv) Identify, by vessel name and official number, the bidder's reduction/privilege vessel, and include an exact copy of this vessel's official document (which NVDC issued),
- (v) Identify, by license or permit number, each of the bidder's non-crab reduction permits; and include an exact copy of each of these licenses or permits (which the RAM Program issued for licenses or permits involving species under the jurisdiction of NMFS' Alaska Region and which other NMFS offices issued for licenses or permits involving species under those offices' jurisdiction),
- (vi) Identify, separately for crab and for each other species:
- (A) The qualifying bidder's reduction fishing history, and
- (B) The dates that each portion of the reduction fishing history encompasses; the name and official number of the reduction/history vessel or vessels which gave rise to it; and the dates during which the qualifying bidder owned such vessels or, if the qualifying bidder acquired any reduction fishing history from another person, the name of the person from which the qualifying bidder acquired such reduction fishing history and the manner in which and the date on which the qualifying bidder did so,
- (vii) State, declare, and affirm that the qualifying bidder holds the crab reduction permit and retains the complete reduction fishing history, and is fully and legally entitled to offer both in the manner this section requires,
- (viii) State, declare, and affirm that either the qualifying bidder or the co-bidder owns the reduction/privilege vessel and holds the non-crab reduction permit and is fully and legally entitled to offer both in the manner that this section requires, and
- (ix) Provide any other information or materials that NMFS believes is necessary and appropriate; and
- (2) *Rejection.* NMFS, regardless of bid scores, will reject any bid that NMFS believes is unresponsive to the invitation to bid. All bid rejections will constitute final agency action as of the date of rejection. Before rejection, NMFS may, however, contact any bidder to attempt to correct a bid deficiency if NMFS, in its discretion, believes the attempt warranted.
- (p) *Acceptance —(1) Reverse auction.* NMFS will determine which responsive bids NMFS accepts by using a reverse auction in which NMFS first accepts the responsive bid with the lowest bid score and successively accepts each additional responsive bid with the next lowest bid score until either there are no more responsive bids to accept or acceptance of the last responsive bid with the next lowest bid score would cause the reduction cost to exceed \$100 million. If two or more responsive bid scores are exactly the same, NMFS will first accept the bid that NMFS first received;
- (2) *Notification.* NMFS will, after the conclusion of a successful referendum, notify accepted bidders that NMFS had, before the referendum, accepted their bids; and
- (3) *Post-acceptance reduction permit transfer.* After NMFS has accepted bids, neither the RAM Program (nor any other NMFS office) will transfer to other persons any reduction permits that accepted bidders included in the bids unless and until FSD advises the RAM Program (or some other NMFS office) that the resulting reduction contracts are no longer in effect because a referendum failed to approve the fee that this section requires to repay this program's reduction loan.
- (q) *Reduction contracts subject to successful post-bidding referendum condition.* Although this program involves no fishing capacity reduction specifications under this subpart, each bid, each acceptance, and each reduction contract is nevertheless subject to the successful post-bidding referendum condition that §600.1009(a)(3) of this subpart specifies for bidding results that do not conform to the fishing capacity reduction specifications.
- (r) *Post-bidding referendum —(1) Purpose.* NMFS will conduct a post-bidding referendum whose sole purpose is to determine whether, based on the bidding results, qualifying voters who cast referendum ballots in the manner that this section requires authorize the fee required to repay this program's reduction loan;
- (2) *Manner of conducting.* NMFS will mail a referendum ballot to each person then on the prospectively qualifying voter list for each crab license that the person holds and otherwise conduct the referendum as specified in §600.1010 of this subpart;
- (3) *One vote per crab license.* Each qualifying voter may cast only one vote for each crab license that each qualifying voter holds;
- (4) *Crab license numbers on ballots.* Each referendum ballot that NMFS mails will contain the license number of the prospectively qualifying voter's crab license to which the ballot relates;
- (5) *Potential reduction results stated.* Each referendum ballot that NMFS mails will state the aggregate potential reduction results of all the bids that NMFS accepted, including:
- (i) The amount of reduction that all accepted bids potentially effect, including:
- (A) The number of crab reduction permits, together with each area/species endorsement for which each of these licenses is endorsed,
- (B) The number of reduction/privilege vessels and reduction/history vessels, and
- (C) The aggregate and average dollar value of bid crab (together with the number of pounds of bid crab upon which NMFS based the dollar value), in each reduction endorsement fishery and in the reduction fishery, for all reduction/history vessels during the period for which NMFS calculates the dollar value of bid crab,
- (ii) The reduction loan sub-amount that each reduction endorsement fishery must repay if a referendum approves the fee, and
- (iii) Any other useful information NMFS may then have about the potential sub-fee rate initially necessary in each reduction endorsement fishery to repay each reduction loan sub-amount; and
- (6) *Notice that condition fulfilled.* If the referendum is successful, NMFS will notify accepted bidders, in the manner that §600.1010(d)(6)(iii) of this subpart specifies, that a successful referendum has fulfilled the reduction contracts' successful post-bidding referendum condition specified in paragraph (q) of this section.
- (s) *Reduction method.* In return for each reduction payment, NMFS will permanently:
- (1) Revoke each crab reduction permit;
- (2) Revoke each non-crab reduction permit;
- (3) Revoke each reduction fishing privilege (which revocation will run with the reduction/privilege vessel's title in the manner §600.1009(a)(5)(ii)(A) of this subpart requires and in accordance with 46 U.S.C. 12108(d));
- (4) Effect relinquishment of each reduction fishing history for the purposes specified in this section by noting in the RAM Program records (or such other records as may be appropriate for reduction permits issued elsewhere) that the reduction fishing history has been relinquished under this section and will never again be available to anyone for any fisheries purpose; and
- (5) Otherwise restrict in accordance with this subpart each reduction/privilege vessel and fully effect the surrender, revocation, restriction, relinquishment, withdrawal, or extinguishment by other means of all components of each reduction fishing interest.
- (t) *Reduction payment tender and disbursement —(1) Fishing continues until tender.* Each accepted bidder may continue fishing as it otherwise would have absent the program until NMFS, after a successful referendum, tenders reduction payment to the accepted bidder;

(2) *Notification to the public.* After a successful referendum but before tendering reduction payment, NMFS will publish a notification in the Federal Register listing all proposed reduction payments and putting the public on notice:

(i) Of the crab reduction permits, the reduction/privilege vessels, the reduction fishing histories, and the non-crab reduction permits upon whose holding, owning, retaining, or other legal authority representations accepted bidders based their bids and NMFS based its acceptances, and

(ii) That NMFS intends, in accordance with the reduction contracts, to tender reduction payments in return for the actions specified in paragraph (s) of this section;

(3) *Public response.* The public has 30 days after the date on which NMFS publishes the reduction payment tender notification to advise NMFS in writing of any holding, owning, or retaining claims that conflict with the representations upon which the accepted bidders based their bids and on which NMFS based its acceptances;

(4) *Tender and disbursement parties.* NMFS will tender reduction payments only to accepted bidders, unless otherwise provided contrary written instructions by accepted bidders. Creditors or other parties with secured or other interests in reduction/privilege vessels or reduction permits are responsible to make their own arrangements with accepted bidders;

(5) *Time of tender.* At the end of the reduction payment tender notification period, NMFS will tender reduction payments to accepted bidders, unless NMFS then knows of a material dispute about an accepted bidder's authority to enter into the reduction contract with respect to any one or more components of the reduction fishing interest that warrants, in NMFS' discretion, an alternative course of action;

(6) *Method of tender and disbursement.* NMFS will tender reduction payment by requesting from each accepted bidder specific, written instructions for paying the reduction payments. Upon receipt of these payment instructions, NMFS will immediately disburse reduction payments in accordance with the payment instructions; and

(7) *Effect of tender.* Concurrently with NMFS' tender of reduction payment to each accepted bidder:

(i) All fishing activity for any species anywhere in the world in any way associated with each accepted bidder's reduction fishing interest must cease,

(ii) Each accepted bidder must retrieve all fixed fishing gear for whose deployment the accepted bidder's reduction/privilege vessel was responsible, and

(iii) NMFS will fully exercise its reduction contract rights with respect to the reduction fishing interest by taking the actions specified in paragraph (s) of this section.

(u) *Fee payment and collection —(1) Fish sellers who pay the fee.* Any person who harvests any crab, but whom ADF&G's fisheries reporting requirements do not require to record and submit an ADF&G fish ticket for that crab, is a fish seller for the purpose of paying any fee on that crab and otherwise complying with the requirements of §600.1013 of this subpart;

(2) *Fish buyers who collect the fee.* Any person whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for any crab that another person harvested is a fish buyer for the purpose of collecting the fee on that crab and otherwise complying with the requirements of §600.1013 of this subpart; and

(3) *Persons who are both fish sellers and fish buyers and both pay and collect the fee.* Any person who harvests any crab, and whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for that crab, is both a fish seller and a fish buyer for the purpose of paying and collecting the fee on that crab and otherwise complying with the requirements of §600.1013 of this subpart.

(v) *Fishing prohibition and penalties —(1) General.* Fishing, for the purpose of this section, includes the full range of activities defined in the term "fishing" in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801),

(2) *Prohibitions.* Concurrently with NMFS' tender of each reduction payment, and with the sole exception in paragraph (t)(7)(i) of this section, no person whatsoever may, and it is unlawful for any person to:

(i) Fish with or attempt to fish with, or allow others to fish with or attempt to fish with, the reduction/privilege vessel anywhere in the world for any species under any conditions and regardless of the reduction/privilege vessel's ownership or registry for so long as the reduction/privilege vessel exists. This prohibition includes, but is not limited to, fishing on the high seas or in the jurisdiction of any foreign country (to the extent prohibited by law) while operating under U.S. flag,

(ii) Place or attempt to place, or allow others to place or attempt to place, the reduction/privilege vessel under foreign flag or registry,

(iii) Operate or attempt to operate, or allow others to operate or attempt to operate, the reduction/privilege vessel under the authority of a foreign country to the extent prohibited by law,

(iv) Otherwise avoid or attempt to avoid, or allow others to avoid or attempt to avoid, the revocation of the reduction fishing privilege with respect to any reduction/privilege vessel, and

(v) Make any claim or attempt to make any claim, or allow others to claim or attempt to make any claim, for any present or future limited access fishing license or permit in any U.S. fishery (including, but not limited to, any quota allocation under any present or future individual quota allocation system) based in any way on any portion of a reduction fishing interest surrendered, revoked, restricted, relinquished, withdrawn, or extinguished by other means under this section; and

(3) *Penalties.* The activities that this paragraph prohibits are subject to the full penalties provided in §600.1017 of this subpart, and immediate cause for NMFS to take action to, among other things:

(i) At the reduction/privilege vessel owner's expense, seize and scrap the reduction/privilege vessel, and

(ii) Pursue such other remedies and enforce such other penalties as may be applicable.

(w) *Program administration —(1) FSD responsibilities.* FSD is responsible for implementing and administering this program. FSD will:

(i) Issue all notifications and mailings that this section requires,

(ii) Prepare and issue the invitation to bid,

(iii) Receive bids,

(iv) Reject bids,

(v) Score bids,

(vi) Make acceptances,

(vii) Prepare and issue referendum ballots,

(viii) Receive referendum ballots,

(ix) Tally referendum ballots,

(x) Determine referendum success or failure,

- (xi) Tender and disburse reduction payments,
- (xii) Administer reduction contracts,
- (xiii) Administer fees and reduction loan repayment, and
- (xiv) Discharge all other management and administration functions that this section requires;

(2) *RAM Program responsibilities.* Upon FSD's advice, the RAM Program (for fishing licenses under the jurisdiction of NMFS's Alaska Region) and any other appropriate NMFS authority (for fishing licenses under the jurisdiction of any other NMFS office) will revoke reduction permits and effect the surrender of fishing histories in accordance with this section; and

(3) *NVDC and MARAD responsibilities.* FSD will advise NVDC, MARAD, such other agency or agencies as may be involved, or all of them to revoke reduction/privilege vessels' fisheries trade endorsements and otherwise restrict reduction/privilege vessels in accordance with this section.

(x) *Reduction loan and reduction loan sub-amounts.* [Reserved]

[68 FR 69337, Dec. 12, 2003. Redesignated at 69 FR 53362, Sept. 1, 2004]

§ 600.1104 Bering Sea and Aleutian Islands (BSAI) crab species fee payment and collection system.

(a) *Purpose.* As authorized by Public Law 106-554, this section's purpose is to:

- (1) In accordance with §600.1012 of subpart L, establish:
 - (i) The borrower's obligation to repay a reduction loan, and
 - (ii) The loan's principal amount, interest rate, and repayment term; and
- (2) In accordance with §600.1013 through §600.1016 of subpart L, implement an industry fee system for the reduction fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in §600.1000 of subpart L and §600.1103 of this subpart expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Crab rationalization crab means the same as in §680.2 of this chapter.

Crab rationalization fisheries means the same as in §680.2 of this chapter.

Reduction endorsement fishery means any of the seven fisheries that §679.2 of this chapter formerly (before adoption of part 680 of this chapter) defined as crab area/species endorsements, except the area/species endorsement for Norton Sound red king. More specifically, the reduction endorsement fisheries, and the crab rationalization fisheries which (after adoption of part 680 of this chapter) correspond to the reduction endorsement fisheries, are:

- (1) Bristol Bay red king (the corresponding crab rationalization fishery is Bristol Bay red king crab),
- (2) Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* (the corresponding crab rationalization fisheries are two separate fisheries, one for Bering Sea snow crab and another for Bering Sea Tanner crab),
- (3) Aleutian Islands brown king (the corresponding crab rationalization fisheries are the two separate fisheries, one for Eastern Aleutian Islands golden king crab and another for Western Aleutian Islands golden king crab),
- (4) Aleutian Islands red king (the corresponding crab rationalization fishery is Western Aleutian Islands red king crab),
- (5) Pribilof red king and Pribilof blue king (the corresponding crab rationalization fishery is Pribilof red king and blue king crab), and
- (6) St. Matthew blue king (the corresponding crab rationalization fishery is also St. Matthew blue king crab).

Reduction fishery means the fishery for all crab rationalization crab, excluding CDQ allocations, in all crab rationalization fisheries.

Sub-amount means the portion of the reduction loan amount for whose repayment the borrower in each reduction endorsement fishery is obligated.

(c) *Reduction loan amount.* The reduction loan's original principal amount is \$97,399,357.11.

(d) *Sub-amounts.* The sub-amounts are:

- (1) For Bristol Bay red king, \$17,129,957.23;
- (2) For Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi*, \$66,410,767.20;
- (3) For Aleutian Islands brown king, \$6,380,837.19;
- (4) For Aleutian Islands red king, \$237,588.04;
- (5) For Pribilof red king and Pribilof blue king, \$1,571,216.35; and
- (6) For St. Matthew blue king, \$5,668,991.10.

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

(f) *Interest rate.* The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year 2005 plus 2 percent.

(g) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from January 19, 2005, but each fee shall continue indefinitely for as long as necessary to fully repay each subamount.

(h) *Reduction loan repayment.* (1) The borrower shall, in accordance with §600.1012, repay the reduction loan;

(2) Fish sellers in each reduction endorsement fishery shall, in accordance with §600.1013, pay the fee at the rate applicable to each such fishery's subamount;

(3) Fish buyers in each reduction endorsement fishery shall, in accordance with §600.1013, collect the fee at the rate applicable to each such fishery;

(4) Fish buyers in each reduction endorsement fishery shall in accordance with §600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery; except the requirements specified under paragraph (c) of this section concerning the deposit principal disbursement shall be made to NMFS not later than the 7th calendar day of each month; and the requirements specified under paragraph (e) of this section concerning annual reports which shall be submitted to NMFS by July 1 of each calendar year; and,

(5) The reduction loan is, in all other respects, subject to the provisions of §600.1012 through §600.1017.

[70 FR 54656, Sept. 16, 2005, as amended at 71 FR 27210, May 10, 2006]

§ 600.1105 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.

(a) *Purpose.* This section implements the capacity reduction program that Title II, Section 219(e) of Public Law 108–447 enacted for the longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery.

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

Act means Title II, Section 219 of Public Law 108–447.

AI means the Aleutian Islands.

Application Form means the form published on the FLCC's website that sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer Ranking Ballots on behalf of the Subsector Member.

Auditor means Jack V. Tagart, Ph.D., d.b.a. Tagart Consulting.

Authorized Party means the individuals authorized by Subsector Members on the application form to execute and submit Offers, Rankings, protests and other documents and/or notices on behalf of Subsector Member.

Ballot means the form found on the auditor's website used to cast a vote in favor of, or in opposition to, the currently Selected Offers.

BS means the Bering Sea.

BSAI means the Bering Sea and the Aleutian Islands.

BSAI Pacific Cod ITAC means the Total Allowable Catch for Pacific cod after the subtraction of the 7.5 percent Community Development Program reserve.

Capacity Reduction Agreement or Reduction Agreement means an agreement entered into by the Subsector Members and the FLCC under which the FLCC is permitted to develop and submit a Capacity Reduction Plan to the Secretary.

Certificate of Documentation (COD) means a document issued by the U.S. Coast Guard's National Documentation Center that registers the vessel with the United States Government.

Closing Vote means a vote held pursuant to paragraph (d)(7) of this section, after two-thirds (2/3) or more of the Nonoffering Subsector Members submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process, and there are no unresolved Protests or Arbitrations.

Current Offer means an Offer submitted by a Subsector Member to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term "Current Offer" includes Selected Offers.

Current Offeror means an Offering Subsector Member that has submitted an Offer to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term "Current Offeror" includes Selected Offerors.

Database means the online LLP License database maintained by NMFS as downloaded by the Auditor pursuant to paragraph (c)(1) of this section.

Effective Date means the date the Capacity Reduction Agreement becomes effective pursuant to section 4.e of the Capacity Reduction Agreement.

Fishing Capacity Reduction Contract or Reduction Contract means the contract that any Current Offeror must sign and agree to abide by if NMFS accepts the offer by signing the Reduction Contract.

FLCC Counsel means Bauer Moynihan & Johnson LLP or other counsel representing the FLCC in any review or arbitration under the Capacity Reduction Agreement.

Latent License means an LLP License on which a vessel was not designated at the time an Offer is submitted.

LLP License means a Federal License Limitation Program groundfish license issued pursuant to §679.4 (k) of this chapter or successor regulation that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for BS or AI catcher processor fishing activity, C/P, Pacific cod and hook and line gear.

Longline Subsector means the longline catcher processor subsector of the BSAI non-pollock groundfish fishery as defined in the Act.

Longline Subsector ITAC means the longline catcher processor subsector remainder of the Total Allowable Catch after the subtraction of the 7.5 percent Community Development Program reserve.

Nonoffering Subsector Member shall have the meaning ascribed thereto in paragraph (d)(5)(i) of this section.

Offer Content means all information included in Offers submitted to the Auditor pursuant to paragraph (d)(2)(ii) of this section.

Offer Form means the form found on the Auditor's website used to make an offer.

Offer(s) means a binding offer(s) from a Subsector Member to sell its LLP, right to participate in the fisheries, the fishing history associated with such LLP, and any vessel set forth on the Offer Form submitted by Offeror pursuant to the terms of this Capacity Reduction Agreement.

Opening Date means the first Monday following the Effective Date set forth in paragraph (c)(3) of this section.

Person includes any natural person(s) and any corporation, partnership, limited partnership, limited liability company, association or any other entity whatsoever, organized under the laws of the United States or of a state.

Prequalification Offer shall have the meaning ascribed thereto in paragraph (d)(2)(iii) of this section.

Ranking Form means the form posted by the Auditor pursuant to paragraph (d)(5)(iii) of this section.

Ranking Period shall have the meaning ascribed thereto in paragraph (d)(5)(ii) of this section.

Reduction Fishery means the BSAI non-pollock groundfish fishery.

Reduction Fishing Interests shall have the meaning ascribed thereto in the Fishing Capacity Reduction Contract.

Reduction Plan means a business plan prepared by the Subsector Members in accordance with Section 1 of the Capacity Reduction Agreement and forwarded to the Secretary for approval.

Reduction Privilege Vessel means the vessel listed on the Offeror's License Limitation Program license.

Rejected Offer means an Offer that has been through one or more Rankings and is not a Selected Offer following the latest Ranking Period, with respect to which the Offering Subsector Member's obligations have terminated pursuant to paragraphs (d)(2)(i) and (d)(6)(v) of this section.

Rejected Offeror means a Subsector Member that has submitted an Offer which has been ranked and was not posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

Restricted Access Management (RAM) means the Restricted Access Management Program in the Alaska Region, NMFS, located in Juneau, Alaska.

Secretary means the Secretary of Commerce or a designee.

Selected Offer shall have the meaning ascribed thereto in paragraph (d)(6)(iv) of this section.

Selected Offeror means a Subsector Member that has submitted an Offer which has been ranked and is posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

Selection Process means the process set forth in paragraph (d) of this section for selecting the fishing capacity to be removed by the Reduction Plan.

Submission Period(s) or Submitting Period(s) shall have the meaning ascribed thereto in paragraph (d) (3)(ii) of this section.

Subsector Member(s) means a member(s) of the Longline Subsector.

Web site means the internet Web site developed and maintained on behalf of the FLCC for implementation of the Selection Process described herein with a URL address of <http://www.freezerlongline.coop.org>.

(c) *Qualification and enrolment of subsector members —(1) Distribution.* A copy of the Reduction Agreement, Application Form, and Reduction Contract shall be mailed to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear, as the Auditor determines from the Database downloaded by the Auditor as of January 30, 2006, regardless of whether the LLP License is indicated in the Database as noninterim and transferable or otherwise.

(2) *Application.* Any person, regardless of whether having received the mailing described in paragraph (c)(1) of this section, may as a Subsector Member apply to enroll with the FLCC to participate in the Reduction Program, by submitting all of the following documents:

- (i) Fully executed Reduction Agreement;
- (ii) Photocopy of the LLP License(s) evidencing Subsector Member's qualification as a member of the Longline Subsector;
- (iii) Unless applying as the holder of a Latent License, a photocopy of Federal Fisheries Permit for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member;
- (iv) Unless applying as the holder of a Latent License, a photocopy of the Certificate of Documentation (COD) for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member; and
- (v) An executed Application Form which sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer Ranking Ballots on behalf of the Subsector Member.

(3) *Examination by Auditor —(i) In general.* Each application must be submitted to the Auditor who will examine applications for completeness and inconsistencies, whether on the face of the documents or with the Database. Any application which is incomplete or which contains inconsistencies shall be invalid. The Auditor shall notify by e-mail or mail an applicant of the basis for the Auditor's finding an application invalid. An applicant may resubmit a revised application. If the application meets all requirements, the Auditor may accept the application as valid and enroll the applicant.

(ii) *Interim LLP Licenses.* If an LLP License is interim and/or nontransferable, the applicant's enrollment shall be accepted as a Subsector Member and may fully participate in the Selection Process. However, any posting of an Offer submitted with respect to such LLP License shall note the status of such LLP License until that Subsector Member submits to the Auditor a letter from the RAM confirming that it is within the Subsector Member's control to cause the qualifying LLP License to be issued as noninterim and transferable upon withdrawal of all applicable appeals.

(4) *Enrollment period.* Applications that meet all requirements will be accepted until the Selection Process is completed.

(5) *Effective date.* The Effective Date of any Reduction Agreement shall be ten (10) calendar days after written notice is sent by the Auditor to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear (as determined by the Auditor from the Auditor's examination of the Database) advising that the number of Subsector Members that have delivered to the Auditor a complete Application, including a fully executed Reduction Agreement, exceeds seventy percent (70 percent) of the members of the Longline Subsector (as determined by the Auditor from the Auditor's examination of the Database).

(6) *Notice.* All notices related to the effective date of the Reduction Agreement shall be sent by the Auditor via registered mail.

(7) *Withdrawal.* A Subsector Member, unless such Subsector Member is a Current Offeror or Selected Offeror, may terminate the Reduction Agreement at any time with respect to that Subsector Member by giving ten (10) calendar days written notice to the Auditor preferably via e-mail. Withdrawal of a Subsector Member shall not affect the validity of the Reduction Agreement with respect to any other Subsector Members. Once effective, the Reduction Agreement shall continue in full force and effect regardless of whether subsequent withdrawals reduce the number of Subsector Members below that level required to effectuate the Reduction Agreement. Attempted withdrawal by a Current Offeror or Selected Offeror shall be invalid, and such Offer shall remain a binding, irrevocable Offer, unaffected by the attempted withdrawal.

(d) *Selection of fishing capacity to be removed by Reduction Plan.* The fishing capacity removed by the Reduction Plan will be the Reduction Fishing Interests voluntarily offered through the Reduction Plan by offering Subsector Members and as selected by the Nonoffering Subsector Members, up to an aggregate amount of thirty six million dollars (\$36,000,000) as set forth in this paragraph (d).

(1) *Overview.* The Selection Process will begin upon the Effective Date of the Reduction Agreement. The Selection Process will alternate on a weekly basis between:

- (i) Submitting Periods, during which individual Subsector Members may submit Offers of fishing capacity they wish to include in the Reduction Plan; and
- (ii) Ranking Periods, during which Nonoffering Subsector Members will rank the submitted Offers.

(2) *Offers —(i) Binding agreement.* An Offer from a Subsector Member shall be a binding, irrevocable offer from a Subsector Member to relinquish to NMFS the Reduction Fishing Interests for the price set forth on the Offer contingent on such Offer being a Selected Offer at the closing of the Selection Process. Once submitted, an Offer may not be revoked or withdrawn while that Offer is a Current Offer or Selected Offer. An Offer that is submitted by a Subsector Member, but is not a Selected Offer during the subsequent Ranking Period, shall be deemed to be terminated and the Subsector Member shall have no further obligation with respect to performance of that Offer.

(ii) *Offer content.* All Offers submitted to the Auditor shall include the following information: LLP License number; LLP License number(s) of any linked crab LLP Licenses; license MLOA (MLOA—maximum length overall of a vessel is defined at §679.2 of this chapter); the license area, gear and species endorsements; a summary of the Pacific cod catch history for the calendar years 1995–2004; and the offered price. The Offer shall also state whether a vessel is currently designated on the LLP License and as such will be withdrawn from all fisheries if the Offer is selected for reduction in the Reduction Plan. If so, the Offer shall identify such vessel by name, official number, and current owner. In addition, the Offer shall provide a summary of the Pacific cod catch history for the calendar years 1995–2004 of the vessel to be retired from the fisheries. All summary catch histories included in Offers shall be calculated utilizing both the weekly production report and best blend methodology and shall separately state for each methodology the Pacific cod catch in metric tons and as a percentage of the overall catch for the longline catcher processor subsector on an annual basis for each of the required years. If the vessel stated to be withdrawn from the fisheries is not owned by the LLP License owner of record, the Offer shall be countersigned by the owner of record of the vessel. An Offer offering a Latent License shall state on the Offer Form that the offered LLP License is a Latent License. The Offer Form shall also include a comment section for any additional information that Offerors wish to provide to the Subsector

Members concerning the Offer.

(iii) *Prequalification of Offers.* A Subsector Member may submit a Prequalification Offer to the Auditor at any time prior to the Opening Date. A Prequalification Offer shall contain all elements of an Offer, except that a price need not be provided. The Auditor shall notify the Subsector Member submitting a Prequalification Offer as to any deficiencies as soon as practicable. All details of a Prequalification Offer shall be kept confidential by the Auditor.

(3) *Submitting an Offer*—(i) *Offer submission.* Commencing on the first Tuesday following the Opening Date and during all Submission Periods until the Selection Process is closed, any Subsector Member may submit an Offer. All Offers are to be on the applicable form provided on the FLCC website, executed by an Authorized Party and submitted to the Auditor by facsimile. Any Subsector Member may submit an Offer during any Submission Period, even if that Subsector Member has not submitted an Offer in any previous Submission Period. If a Subsector Member holds more than one LLP License, such Subsector Member may, but is not required to, submit an Offer for each LLP License held during a Submission Period.

(ii) *Submission Periods.* The initial Submission Period shall commence at 9 a.m. (Pacific time) on the Tuesday following the Opening Date and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Submission Periods shall commence at 9 a.m. (Pacific time) on the first Tuesday following the preceding Ranking Period and end at 5 p.m. (Pacific time) on the Friday of that week. All times set forth in the Reduction Agreement and used in the Offer process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology.

(iii) *Validity of Offer.* The Auditor shall examine each Offer for consistency with the Database and information contained in the enrollment documents. If there is an inconsistency in the information contained in the Offer, any of the elements required of an Offer pursuant to paragraph (d)(2)(ii) of this section are missing, or the Auditor does not receive the original Offer Form before the Offers are to be posted pursuant to paragraph (d)(4) of this section, the Auditor shall notify the offering Subsector Member by e-mail or mail that the Offer is nonconforming as soon as practicable after discovering the basis of invalidity. The Subsector Member may submit a revised, conforming Offer prior to the close of that Submission Period or, in any subsequent Submission Period. Only one Offer may be submitted with respect to an LLP License during a Submission Period. In the event a Subsector Member submits more than one Offer with respect to an LLP License during a Submission Period, the first conforming Offer received by the Auditor shall be binding and irrevocable and any subsequent Offers shall be deemed invalid.

(iv) *Warranty.* By submitting an Offer, the Offering Subsector Member, warrants and represents that the Offering Subsector Member has read and understands the terms of the Reduction Agreement, the Offer, and the Reduction Contract and has had the opportunity to seek independent legal counsel regarding such documents and/or agreements and the consequences of submitting an Offer.

(4) *Posting Offers*—(i) *Current offers.* For each Offer received during a Submission Period, the Auditor shall post on the Website no later than 5 p.m. (Pacific time) on the following Tuesday all of the details of such Offer as set forth on the Offer Form. In addition, the Auditor shall post, as available to Auditor, a summary by year of up to ten (10) years catch history during the period 1995–2004 in total round weight equivalents and percentage of Longline Subsector ITAC harvested for any vessel that is included in the Offer. Subsector Member (or vessel owner, if other than the Subsector Member) expressly authorizes Auditor to release the catch history summary information previously prepared for that Subsector Member or vessel owner by the Auditor as part of the analysis of FLCC's membership's catch history previously conducted by the Auditor on behalf of the FLCC.

(ii) *Posting order.* Offers shall be posted on the Website by the Auditor in alphabetical order of the Offering Subsector Member's name.

(iii) *Questions as to Offer.* The Auditor shall respond to no questions from Subsector Member regarding Offers except to confirm that the posting accurately reflects the details of the Offer. If an Offering Subsector Member notices an error in an Offer posting on the Website, such Subsector Member shall notify the Auditor as soon as practicable. The Auditor shall review such notice, the posting and the original Offer. If an error was made in posting the Auditor shall correct the posting as soon as practicable and notify the Subsector Members via e-mail or mail of the correction. In the event such an error is not discovered prior to Ranking, an Offering Subsector Member shall be bound to the terms of the submitted Offer, not the terms of the posted Offer.

(iv) *Archive.* The Auditor shall maintain on the Website an archive of prior Offers posted, which shall be available for review by all Subsector Members.

(5) *Ranking*—(i) *Eligibility.* Each Subsector Member that has not submitted an Offer during the preceding Submission Period, or whose vessel is not included as a withdrawing vessel in an Offer during the preceding Submission Period (i.e., a Nonoffering Subsector Member), may submit to the Auditor a Ranking Form during a Ranking Period. With respect to Ranking, a Subsector Member that holds more than one LLP License may participate in the Ranking process for each LLP License not included in an Offer.

(ii) *Ranking Period.* The initial Ranking Period shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Ranking Periods shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week.

(iii) *Ranking Form.* Prior to each Ranking Period, the Auditor will post a Ranking Form on the Website in "pdf" file format. Each eligible Subsector Member wishing to rank the current Offers shall rank the Offers on the Ranking Form numerically in the Subsector Member's preferred order of purchase. The Offer that Subsector Member would most like to have accepted should be ranked number one (1), and subsequent Offers ranked sequentially until the Offer that the Subsector Member would least like to see accepted is ranked with the highest numerical score. A Subsector Member wishing to call for a Closing Vote shall, in lieu of ranking the Current Offers, mark the Ranking Form to accept the Selected Offers selected during the prior Ranking Period and close the Selection Process. To be valid, the Ranking Form must rank each Current Offer listed on the Ranking Form or, if applicable, be marked to call for a Closing Vote. Ranking Forms shall be submitted by sending a completed Ranking Form, signed by an Authorized Party, to the Auditor by facsimile or mail prior to the end of the Ranking Period. A Subsector Member is not required to rank the Offers during a Ranking Period or call for a Closing Vote.

(iv) *Validity of Subsector Member Ranking.* The Auditor shall examine each Ranking Form for completeness, whether the form either ranks the Offers or calls for a Closing Vote (but not both), and authorized signature. Any incomplete or otherwise noncompliant Ranking Form(s) shall be invalid, and shall not be included in the Rankings of the Current Offers. The Auditor shall notify the Subsector Member of the reason for declaring any Ranking Form invalid as soon as practicable. A Subsector Member may cure the submission of an invalid Ranking Form by submitting a complying Ranking Form if accomplished before the end of the applicable Ranking Period.

(6) *Ranking results*—(i) *Compiling the rankings.* Unless two-thirds (2/3) of the Nonoffering Subsector Members have called for a Closing Vote, the Auditor shall compile the results of the Ranking Forms by assigning one point for each position on a Ranking Form. That is, the Offer ranked number one (1) on a Ranking Form shall be awarded one (1) point, the Offer ranked two (2) shall receive two (2) points, and continuing on in this manner until all Offers have been assigned points correlating to its ranking on each valid Ranking Form. The Offer with the least number of total points assigned shall be the highest ranked Offer, and the Offer with the greatest total points assigned shall be the lowest ranked Offer.

(ii) *Posting rankings.* The Auditor shall post the results of the compilation of the Ranking Forms on the Website in alphabetical order based on the Offering Subsector Member's name no later than 5 p.m. (Pacific time) on the Monday following the Ranking Period. The Auditor shall post the highest consecutive ranking Offers that total thirty six million dollars (\$36,000,000) or less. Those Offering Subsector Members whose Offers are posted shall be deemed Selected Offerors and their Offers shall be deemed Selected Offers. Those Offering Subsector Members whose Offers are not posted shall be deemed Rejected Offerors.

(iii) *Selected Offer information or confidentiality.* The Auditor shall post the name of the Offering Subsector Member, the amount of the Offer, and a summary of the total number of Ranking Forms received and the number of such forms on which the Members called for a Closing Vote. Other than the foregoing, the Auditor shall not post any details of the compilation of the Ranking Forms.

(iv) *Selected Offerors.* Selected Offerors may not withdraw their Offers unless in subsequent rankings their Offers no longer are within the highest ranking Offers and they become Rejected Offerors. A Selected Offeror may, however, modify a Selected Offer solely to the extent such modification consists of a reduction in the Offer price. A Selected Offeror may submit a modified Offer to the Auditor during the next Offering Period as set forth in paragraph (d)(3) of this section. Unless a Selected Offeror becomes a Rejected Offeror in a subsequent Ranking, a Selected Offeror shall be bound by

the terms of the lowest Selected Offer submitted as if such modified Offer had been the original Selected Offer. In the event a Selected Offeror submits a modified Offer and such Offer is not ranked because sufficient votes are received to call for a Closing Vote, the previously Selected Offer shall remain the Selected Offer.

(v) *Rejected Offerors.* The Offer of a Rejected Offeror is terminated and the Rejected Offeror is no longer bound by the terms of its Offer. A Rejected Offeror may, at its sole discretion, resubmit the same Offer, submit a revised Offer, or elect not to submit an Offer during any subsequent Submission Period until the Selection Process is closed.

(vi) *Ties.* In the event there is a tie with respect to Offers which results in the tied Offers exceeding thirty-six million dollars (\$36,000,000), the tied Offers and all Offers ranked lower than the tied Offers shall be deemed to be rejected and the Rejected Offerors may, at their option, submit an Offer in a subsequent Submission Period.

(vii) *Archive.* Auditor shall maintain on the Website an archive of prior Offer Rankings as posted over the course of the Selection Process, which shall be available for Subsector Member review.

(7) *Closing.* The Selection Process will close when two-thirds (2/3) or more of the Nonoffering Subsector Members of the Longline Subsector, as determined by the Auditor, affirmatively vote to accept the Selected Offerors selected during the prior Ranking Period as part of the Reduction Plan to be submitted to the Secretary.

(i) *Call for Vote.* A Closing Vote will be held when: at least two-thirds (2/3) of the Nonoffering Subsector Members submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process in lieu of Ranking the current Offers; and there are no unresolved Protests or Arbitrations. The Auditor shall notify all Subsector Members by e-mail or mail and posting a notice on the Website as soon as practicable that a Closing Vote is to be held. Such notice shall state the starting and ending dates and times of the voting period, which shall be not less than three (3) nor more than seven (7) calendar days from the date of such notice. A voting period shall commence at 9 a.m. (Pacific time) on Monday and end at 5 p.m. on the Friday of that week.

(ii) *Voting.* No less than three (3) calendar days prior to the voting period, the Auditor will post a Closing Ballot on the Website in "pdf" file format. Each eligible Nonoffering Subsector Member wishing to vote shall print out the Closing Ballot, and, with respect to each of the currently Selected Offers on the Closing Ballot, vote either in favor of or opposed to accepting that Selected Offer and submit a completed and signed Closing Ballot to the Auditor preferably by facsimile prior to the end of the Voting Period.

(iii) *Ballot verification.* The Auditor shall examine each submitted Closing Ballot for completeness and authorized signature. Any incomplete Closing Ballot shall be void, and shall not be included in the voting results. The Auditor shall not notify the Subsector Member of an invalid Closing Ballot.

(iv) *Voting results.* The Auditor shall post the results of the Vote as soon as practicable after voting closes. Each Offer on the Closing Ballot that receives votes approving acceptance of such Offer from two-thirds (2/3) or more of the total number of Nonoffering Subsector Members shall be a Selected Offeror and shall be the basis for the Reduction Plan submitted to NMFS. Any Offer on the Closing Ballot that does not receive such two-thirds (2/3) approval shall be rejected and shall not be included among the Offers included among the Reduction Plan submitted to NMFS.

(v) *Notification to NMFS.* Upon closing of the Selection Process, FLCC shall notify NMFS in writing of the identities of the Selected Offerors and provide to NMFS a completed and fully executed original Reduction Agreement from each of the Selected Offerors and a certified copy of the fully executed Reduction Agreement and Reduction Contract.

(e) *Submission of Reduction Plan, including repayment.* Upon completion of the offering process, the FLCC on behalf of the Subsector Members shall submit to NMFS the Reduction Plan which shall include the provisions set forth in this paragraph (e).

(1) *Capacity reduction.* The Reduction Plan shall identify as the proposed capacity reduction, without auction process, the LLP Licenses as well as the vessels and the catch histories related to the LLP Licenses, linked crab LLP Licenses, and any other fishing rights or other interests associated with the LLP Licenses and vessels included in the Selected Offers. The aggregate of all Reduction Agreements and Reduction Contracts signed by Subsector Members whose offers to participate in this buyback were accepted by votes of the Subsector Members, will together with the FLCC's supporting documents and rationale for recognizing that these offers represent the expenditure of the least money for the greatest capacity reduction, constitute the Reduction Plan to be submitted to NMFS for approval on behalf of the Secretary of Commerce.

(2) *Loan repayment* —(i) *Term.* As authorized by Section 219(B)(2) of the Act, the capacity reduction loan (the "Reduction Loan") shall be amortized over a thirty (30) year term. The Reduction Loan's original principal amount may not exceed thirty-six million dollars (\$36,000,000), but may be less if the reduction cost is less. Subsector Members acknowledge that in the event payments made under the Reduction Plan are insufficient to repay the actual loan, the term of repayment shall be extended by NMFS until the loan is paid in full.

(ii) *Interest.* The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus 2 percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be 2 percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed, and will not vary over the remainder of the reduction loan's 30-year term. The Reduction loan will be subject to a level debt amortization. There is no prepayment penalty.

(iii) *Fees.* The Reduction Loan shall be repaid by fees collected from the Longline Subsector. The fee amount will be based upon: The principal and interest due over the next twelve months divided by the product of the Hook & Line, Catcher Processor (Longline Subsector; sometimes referred to as the "H&LCP Subsector") portion of the BSAI Pacific cod ITAC (in metric tons) set by the North Pacific Fishery Management Council (NPFMC) in December of each year multiplied by 2,205 (i.e., the number of pounds in a metric ton). In the event that the Longline Subsector portion for the ensuing year is not available, the Longline Subsector portion forecast from the preceding year will be used to calculate the fee.

(A) The fee will be expressed in cents per pound rounded up to the next one-tenth of a cent. For example: If the principal and interest due equal \$2,900,000 and the Longline Subsector portion equals 100,000 metric tons, then the fee per round weight pound of Pacific cod will equal 1.4 cents per pound. [$2,900,000 / (100,000 \times 2,205) = .01315$]. The fee will be accessed and collected on Pacific cod to the extent possible and if not, will be accessed and collected as provided for in this paragraph (e).

(B) Fees must be accessed and collected on Pacific cod used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel production value of all post-reduction Longline Subsector landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a penny per pound round weight fee will be calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.

(C) The additional fee will be limited to the amount necessary to amortize the remaining twelve months principal and interest in addition to the 5 percent fee accessed against Pacific cod. The additional fee will be a minimum of one cent per pound. In the event that collections exceed the total principal and interest needed to amortize the payment due, the principal balance of the loan will be reduced. To verify that the fees collected do not exceed 5 percent of the fishery revenues, the annual total of principal and interest due will be compared to the latest available annual Longline Subsector revenues to ensure it is equal to or less than 5 percent of the total ex-vessel production revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or for any other reason NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such a time that new calculations are made and communicated to the post reduction fishery participants.

(D) It is possible that the fishery may not open during some years and no Longline Subsector portion of the ITAC is granted. Consequently, the fishery will not produce fee revenue with which to service the reduction loan during those years. However, interest will continue to accrue on the principal balance. When this happens, if the fee rate is not already at the maximum 5 percent, NMFS will increase the fisheries' fee rate to the maximum 5 percent of the revenues for Pacific cod and the species mentioned in paragraph (e)(2)(iii)(B), apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments become current. Once all principal and

interest payments are current, NMFS will make a determination about adjusting the fee rate.

(iv) *Reduction loan.* NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs (§600.1000 *et seq.*). The reduction loan shall be subject to the provisions of §600.1012, except that: the borrower's obligation to repay the reduction loan shall be discharged by the owner of the Longline Subsector license regardless of which vessel catches fish under this license and regardless of who processes the fish in the reduction fishery in accordance with §600.1013. Longline Subsector license owners in the reduction fishery shall be obligated to collect the fee in accordance with §600.1013.

(v) *Collection.* The LLP License holder of the vessel harvesting in the post-capacity reduction plan Longline Subsector shall be responsible for self-collecting the repayment fees owed by that LLP License holder. Fees shall be submitted to NMFS monthly and shall be due no later than fifteen (15) calendar days following the end of each calendar month.

(vi) *Record keeping and Reporting.* The holder of the LLP License on which a vessel harvesting in the post-capacity reduction plan Longline Subsector is designated shall be responsible for compliance with the applicable record keeping and reporting requirements.

(3) *Agreement with Secretary.* Each Selected Offeror, and vessel owner if not the Subsector Member, that has submitted a Selected Offer shall complete and deliver to the FLCC for inclusion in the Reduction Plan submitted to NMFS, designee for the Secretary, a completed and fully executed Reduction Contract. Any and all LLP License(s) and or vessels set forth on a Selected Offer shall be included as Reduction Fishing Interests in such Reduction Contract.

(f) *Decisions of the Auditor and the FLCC.* Time is of the essence in developing and implementing a Reduction Plan and, accordingly, the Offerors shall be limited to, and bound by, the decisions of the Auditor and the FLCC.

(1) The Auditor's examination of submitted applications, Offers, Prequalification Offers and Rankings shall be solely ministerial in nature. That is, the Auditor will verify whether the documents submitted by Subsector Members are, on their face, consistent with each other and the Database, in compliance with the requirements set forth in the Reduction Agreement, and, signed by an Authorized Party. The Auditor may presume the validity of all signatures on documents submitted. The Auditor shall not make substantive decisions as to compliance (e.g., whether an interim LLP License satisfies the requirements of the Act, or whether a discrepancy in the name appearing on LLP Licenses and other documents is material).

(2) [Reserved]

(g) *Enforcement/specific performance.* The parties to the Reduction Agreement have agreed that the opportunity to develop and submit a capacity reduction program for the Longline Subsector under the terms of the Act is both unique and finite and that failure of a Selected Offeror, and vessel owner, if not a Subsector Member, to perform the obligations provided by the Reduction Agreement will result in irreparable damage to the FLCC, the Subsector Members and other Selected Offerors. Accordingly, the parties to the Reduction Agreement expressly acknowledge that money damages are an inadequate means of redress and agree that upon the failure of the Selected Offeror, and vessel owner if not a Subsector Member, to fulfill its obligations under the Reduction Agreement that specific performance of those obligations may be obtained by suit in equity brought by the FLCC in any court of competent jurisdiction without obligation to arbitrate such action.

(h) *Miscellaneous —(1) Time/Holidays.* All times related to the Selection Process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology. In the event that any date occurring within the Selection Process is a Federal holiday, the date shall roll over to the next occurring business day.

(2) *Termination.* The Reduction Agreement shall automatically terminate if no vote of acceptance is completed by December 31, 2007. The Reduction Agreement may be terminated at any time prior to approval of the Reduction Plan by NMFS, on behalf of the Secretary, by written notice from 50 percent of Subsector Members.

(3) *Choice of law/venue.* The Reduction Agreement shall be construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law provisions. The parties submit to the exclusive personal jurisdiction of the United States District Court located in Seattle, Washington, with respect to any litigation arising out of or relating to the Reduction Agreement or out of the performance of services hereunder.

(4) *Incorporation.* All executed counterparts of the Reduction Agreement, Application Forms and Offers constitute the agreement between the parties with respect to the subject matter of the Reduction Agreement and are incorporated into the Reduction Agreement as if fully written.

(5) *Counterparts.* The Reduction Agreement may be executed in multiple counterparts and will be effective as to signatories on the Effective Date. The Reduction Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute the same agreement, whether or not all parties execute each counterpart.

(i) The facsimile signature of any party to the Reduction Agreement shall constitute the duly authorized, irrevocable execution and delivery of the Reduction Agreement as fully as if the Reduction Agreement contained the original ink signatures of the party or parties supplying a facsimile signature.

(ii) [Reserved]

(i) *Amendment.* Subsector Member acknowledges that the Reduction Agreement, the Reduction Contract, and the Reduction Plan may be subject to amendment to conform to the requirements for approval of the Reduction Plan by NMFS on behalf of the Secretary. The Auditor shall distribute to each Subsector Member in electronic format the amended form of the Reduction Agreement, the Reduction Contract, and the Reduction Plan, which amended documents in the form distributed by the Auditor and identified by the Auditor by date and version, the version of each such document then in effect at the time of any dispute arising or action taken shall be deemed binding upon the parties with respect to such dispute and/or action.

(j) *Warranties.* Subsector Member must expressly warrant and represent in the Reduction Agreement that:

(1) Subsector Member has had an opportunity to consult with Subsector Member's attorney or other advisors of Subsector Member with respect to the Reduction Agreement, the Reduction Contract, and the Act and the ramifications of the ratification of the Reduction Plan contemplated therein;

(2) Subsector Member has full understanding and appreciation of the ramifications of executing and delivering the Reduction Agreement and, free from coercion of any kind by the FLCC or any of its members, officers, agents and/or employees, executes and delivers the Reduction Agreement as the free and voluntary act of Subsector Member;

(3) The execution and delivery of the Reduction Agreement, does not and will not conflict with any provisions of the governing documents of Subsector Member;

(4) The person executing the Reduction Agreement has been duly authorized by Subsector Member to execute and deliver the Reduction Agreement and to undertake and perform the actions contemplated herein; and

(5) Subsector Member has taken all actions necessary for the Reduction Agreement to constitute the valid and binding obligation of Subsector Member, enforceable in accordance with its terms.

(k) *Approval of the Reduction Plan.* Acceptance of the Offers are at the sole discretion of NMFS on behalf of the Secretary of Commerce. To be approved by NMFS, on behalf of the Secretary, any Reduction Plan developed and submitted in accordance with this section and Subpart M to this part must be found by the Assistant Administrator of NMFS, to:

(1) Be consistent with the requirements of Section 219(e) of the FY 2005 Appropriations Act (Public Law 108-447);

(2) Be consistent with the requirements of Section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a)) except for the requirement that a Council or Governor of a State request such a program (as set out in section 312(b)(1)) and for the requirements of section 312(b)(4);

- (3) Contain provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by the Longline Subsector and that it provide for the assessment of such fees;
- (4) Not require a bidding or auction process;
- (5) Result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and
- (6) Permit vessels in the Longline Subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.

(l) *Referenda*. The provisions of §600.1010 (including §§600.1004(a), 600.1008, 600.1009, 600.1013, 600.1014, and 600.1017(a)(5), (6) and (7)) shall apply to the Reduction Plan of this section to the extent that they do not conflict with this section or with subpart M of this part.

Appendix to §600.1105—Fishing Capacity Reduction Contract: Bering Sea and Aleutian Islands Longline Catcher Processor Subsector

Fishing Capacity Reduction Contract: Bering Sea and Aleutian Islands Longline Catcher Processor Subsector

This agreement, (the "Reduction Contract") is entered into by and between the party or parties named in section 46 of this contract entitled, "Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification," as the qualifying Offeror and as the co-Offeror (if there is a co-Offeror) (collectively the "Offeror") and the United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division ("NMFS"). The Reduction Contract is effective when NMFS signs the Reduction Contract and, thereby, accepts the Offeror's offer, subject to the condition subsequent of NMFS' formal notification of a successful referendum.

Witnesseth

Whereas, Section 219, Title II, Division B of the Consolidated Appropriations Act, 2005, as enacted on December 8, 2004, (the "Act") authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands ("BSAI") non-pollock groundfish fishery as set forth in the Act;

Whereas, the longline catcher processor subsector (the "Longline Subsector") is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act;

Whereas, the Freezer Longline Conservation Cooperative (the "FLCC") has developed and is submitting to NMFS concurrently with this Reduction Contract a capacity reduction plan for the Longline Subsector (the "Reduction Plan");

Whereas, the selection process will be pursuant to the fishing capacity Reduction Contract and the Reduction Plan;

Whereas, the term "Reduction Fishery" is defined by the Reduction Plan as the longline catcher processor subsector of the BSAI non-pollock groundfish fishery;

Whereas, the Reduction Plan's express objective is to permanently reduce harvesting capacity in the Reduction Fishery; Whereas, NMFS implements the Reduction Plan pursuant to Section 219 of the Act as well as the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861 a(b)-(e))(as excepted by the Act, including inter alia, any requirement that the Reduction Plan include a bidding or auction process) and other applicable law;

Whereas, NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs, portions of which are applicable to the Reduction Plan, (50 CFR 600.1000 *et seq.*);

Whereas, NMFS can implement the Reduction Plan only after giving notice to all members of the Longline Subsector of the Reduction Plan pursuant to Section 219(3)(b) of the Act and approval of the Reduction Plan by referendum of the Longline Subsector; and

Whereas, this Reduction Contract is submitted by Offeror and the FLCC as an integral element of the Reduction Plan and is expressly subject to the terms and conditions set forth herein, the framework regulations, the final rule (as used in this contract "final rule" means the final rule promulgated by NMFS which sets forth the regulations implementing the Reduction Plan for the Longline Subsector) and applicable law.

Now therefore, for good and valuable consideration and the premises and covenants hereinafter set forth the receipt and sufficiency of which the parties to the Reduction Contract hereby acknowledge, and intending to be legally bound hereby, the parties hereto agree as follows:

1. *Incorporation of Recitals*. The foregoing recitals are true and correct and are expressly incorporated herein by this reference.
2. *Further Incorporation*. The Act, framework regulations, final rule and any other rule promulgated pursuant to the Act are expressly incorporated herein by this reference. In the event of conflicting language, the framework regulations, the final rule and any other rule promulgated pursuant to the Act, take precedence over the Reduction Contract.
3. *Contract Form*. By completing and submitting the Reduction Contract to NMFS the Offeror hereby irrevocably offers to relinquish its Reduction Fishing Interests. If NMFS discovers any deficiencies in the Offeror's submission to NMFS, NMFS may, at its sole discretion, contact the Offeror in an attempt to correct such offer deficiency. "Reduction Fishing Interests" means all of Offeror(s) rights, title and interest to the Groundfish Reduction Permit, Reduction Permit (s), Reduction Fishing Privilege and Reduction Fishing History as defined in this Reduction Contract.
4. *Groundfish Reduction Permit*. Offeror expressly acknowledges that it hereby offers to permanently surrender, relinquish, and have NMFS permanently revoke the valid non-interim Federal License Limitation Program groundfish license issued pursuant to 50 CFR 679.4(k) (or successor regulation) endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pacific cod, and hook and line gear identified in section 46 of this contract as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License and any offered and accepted interim permit that Offeror causes to become a non-interim permit, (the "Groundfish Reduction Permit").
5. *Reduction Permit(s)*. Offeror hereby acknowledges that it offers to permanently surrender, relinquish, and have NMFS permanently revoke any and all Federal fishery licenses, fishery permits, and area and species endorsements issued for any vessel named on the Groundfish Reduction Permit as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License, (the "Reduction Permits").
6. *Reduction Privilege Vessel*. The Reduction Privilege Vessel is the vessel listed on the Offeror's License Limitation Program license.
7. *Reduction Fishing Privilege*. If a vessel is specified in section 46 of this contract (the "Reduction Privilege Vessel"), Offeror hereby acknowledges that Offeror offers to relinquish and surrender the Reduction Privilege Vessel's fishing privilege and consents to the imposition of Federal vessel documentation restrictions that have the effect of permanently revoking the Reduction Privilege Vessel's legal ability to fish anywhere in the world as well as its legal ability to operate under foreign registry or control—including the Reduction Privilege Vessel's: fisheries trade endorsement under the Commercial Fishing Industry Vessel Anti-Reflagging Act (46 U.S.C. 12108); eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the privilege otherwise to ever fish again anywhere in the world (the "Reduction Fishing Privilege"). Offeror agrees to instruct the United States Coast Guard's Vessel Documentation Center to remove the fishery endorsement from the Reduction Privilege Vessel. If the Reduction Privilege Vessel is not a federally documented vessel, the Offeror offers to promptly scrap the vessel and allow NMFS whatever access to the scrapping NMFS deems reasonably necessary to document and confirm the scrapping.
8. *Reduction Fishing History*. Offeror surrenders, relinquishes, and consents to NMFS' permanent revocation of the following Reduction Fishing History (the "Reduction Fishing History"):
 - a. The Reduction Privilege Vessel's full and complete documented harvest of groundfish;

- b. For any documented harvest of the Reduction Privilege Vessel whatsoever, including that specified in section 8 of this contract, any right or privilege to make any claim in any way related to any fishery privilege derived in whole or in part from any such other and documented harvest which could ever qualify any party for any future limited access system fishing license, permit, and other harvest authorization of any kind; including without limitation crab LLP licenses linked to License Limitation Program ("LLP") licenses, state fishing rights appurtenant to Reduction Fishing Vessels, and all fishing history associated therewith, but without prejudice to any party who before submission of this offer may have for value independently acquired the fishing history involving any such documented harvest;
- c. Any documented harvest on any other vessel (Reduction Fishing Vessel) that gave rise to the Groundfish Reduction Permit; and
- d. All fishing history associated with the latent LLP license identified on the Selected Offer and any fishing history associated with the fishing vessel that gave rise to the latent LLP license that remains in the Offeror's possession as of August 11, 2006 (*i.e.* , date of publication of the proposed rule in the Federal Register).

9. *Halibut, Sablefish and Crab IFQs Excluded.* Notwithstanding any other provision of this Reduction Contract, no right, title and/or interest to harvest, process or otherwise utilize individual fishing quota ("IFQ") quota share in the halibut, sablefish and crab fisheries pursuant to 50 CFR parts 679 and 680, nor crab LLP license history to the extent necessary for the issuance of crab IFQ pursuant to 50 CFR part 680 as in effect as of the date of this Contract, shall be included among Offeror's Reduction Fishing Interests.

10. *Representations and Warranties.* Offeror represents and warrants that, as of the date of submission of this Reduction Contract, Offeror is:

- a. The holder of record, according to NMFS' official fishing license records, at the time of offer, of the Groundfish Reduction Permit and the Reduction Permit(s).
- b. The Reduction Privilege Vessel's owner of record, according to the National Vessel Documentation Center's official vessel documentation records, at the time of offer, and that the Reduction Privilege Vessel is neither lost nor destroyed at the time of offer.
- c. In retention of and fully and legally entitled to offer and dispose of hereunder, full and complete rights to the Reduction Privilege Vessel's full and complete Reduction Fishing History necessary to fully and completely comply with the requirements of section 8 of this contract.

11. *Offer Amount.* NMFS' payment to Offeror in the exact amount of the amount set forth by Offeror in section 46 of this contract is full and complete consideration for the Offeror's offer.

12. *Additional Offer Elements.* Offeror shall include with its offer an exact photocopy of the Reduction Privilege Vessel's official vessel documentation or registration (*i.e.*, the certificate of documentation the U.S. Coast Guard's National Vessel Documentation Center issued for federally documented vessels or the registration a State issues for State registered vessels) and an exact photocopy of the Groundfish Reduction Permit and all Reduction Permit(s). The Offeror shall also include with the offer all other information required in this Reduction Contract and otherwise comply with Reduction Contract requirements.

13. *Use of Official Fishing License or Permit Databases.* Offeror expressly acknowledges that NMFS shall use the appropriate official governmental fishing license or permit database to:

Determine the Offeror's address of record; verify the Offeror's qualification to offer; determine the holder of record of the Groundfish Reduction Permit and Reduction Permit(s); and verify the Offeror's inclusion in the offer of all permits and licenses required to be offered in the Offer.

14. *Use of National Vessel Documentation Center Database.* Offeror expressly acknowledges that NMFS shall use the records of the National Vessel Documentation Center to determine the owner of record for a federally documented Reduction Privilege Vessel and the appropriate State records to determine the owner of record of a non-federally documented Reduction Privilege Vessel.

15. *Offeror to Ensure Accurate Records.* Offeror shall, to the best of its ability, ensure that the records of the databases relevant to sections 13 and 14 of this contract are true, accurate, and complete.

16. *Submissions are Irrevocable.* The parties hereto expressly acknowledge as the essence hereof that the Offeror voluntarily submits to NMFS this firm and irrevocable offer. The Offeror expressly acknowledges that it hereby waives any privilege or right to withdraw, change, modify, alter, rescind, or cancel any portion of the Reduction Contract and that the receipt date and time which NMFS marks on the Reduction Contract constitutes the date and time of the offer's submission.

17. *Offer Rejection.* NMFS shall reject an offer that NMFS deems is in any way unresponsive or not in conformance with the Reduction Contract, and the applicable law or regulations unless the Offeror corrects the defect and NMFS, in its sole discretion, accepts the correction.

18. *Notarized Offeror Signature(s) Required.* NMFS shall deem as non-responsive and reject an offer whose Offer Submission Form does not contain the notarized signatures of all persons required to sign the form on behalf of the Offeror.

19. *Offer Rejections Constitute Final Agency Action.* NMFS's offer rejections are conclusive and constitute final agency action as of the rejection date.

20. *Effect of Offer Submission.* Submitting an irrevocable offer conforming to the requirements stated herein entitles the Offeror to have NMFS accept the offer if NMFS, in its sole discretion, deems that the offer is fully responsive and complies with the Act, the final rule and any other rule promulgated pursuant to the Act.

21. *Offeror Retains Use.* After submitting an offer, the Offeror shall continue to hold, own, or retain unimpaired every aspect of any and all LLP License(s) and or vessels set forth on an Offer included as Reduction Fishing Interests, until such time as: NMFS notifies the Offeror that the Reduction Plan is not in compliance with the Act or other applicable law and will not be approved by NMFS; notifies the Offeror that the referendum was unsuccessful; NMFS tenders the reduction payment and the Offeror complies with its obligations under the Reduction Contract; or NMFS otherwise excuses the Offeror's performance.

22. *Acceptance by Referendum.* NMFS shall formally notify the Offeror in writing whether the referendum is successful, which written notice shall inform Offeror that the condition subsequent has been satisfied. Therefore, Offeror expressly acknowledges that all parties must perform under the Reduction Contract and the Reduction Contract is enforceable against, and binding on, the Reduction Contract parties in accordance with the terms and conditions herein.

23. *Reduction Contract Subject to Federal Law.* The Reduction Contract is subject to Federal law.

24. *Notice to Creditors.* Upon NMFS' offer acceptance notice to the Offeror, Offeror agrees to notify all parties with secured interests in the Reduction Fishing Interests that the Offeror has entered into the Reduction Contract.

25. *Referendum.* Offeror acknowledges that the outcome of the referendum of the Reduction Plan is an occurrence over which NMFS has no control.

26. *Unsuccessful Referendum Excuses Performance.* An unsuccessful referendum excuses all parties hereto from every obligation to perform under the Reduction Contract. In such event, NMFS need not tender reduction payment and the Offeror need not surrender and relinquish or allow the revocation or restriction of any element of the Reduction Fishing Interest specified in the Reduction Contract. An unsuccessful referendum shall cause the Reduction Contract to have no further force or effect.

27. *Offeror Responsibilities upon Successful Referendum.* Upon NMFS' formal notification to the Offeror that the referendum was successful and that NMFS had accepted the Reduction Contract, Offeror shall immediately become ready to surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests.

28. *Written Payment Instructions.* After a successful referendum, NMFS shall tender reduction payment by requesting the Offeror to provide to

NMFS, and the Offeror shall subsequently so provide, written payment instructions for NMFS' disbursement of the reduction payment to the Offeror or to the Offeror's order.

29. *Request for Written Payment Instructions Constitutes Tender.* NMFS' request to the Offeror for written payment instructions constitutes reduction payment tender, as specified in 50 CFR 600.1011.

30. *Offeror Responsibilities upon Tender.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall immediately surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests. The Offeror must then return the original of its Groundfish Reduction Permit and Reduction Permit(s) to NMFS. Concurrently with NMFS' reduction payment tender, the Offeror shall forever cease all fishing for any species with the Reduction Privilege Vessel and immediately retrieve all fishing gear, irrespective of ownership, previously deployed from the Reduction Privilege Vessel. Offeror agrees to authorize the United States Coast Guard to cancel the fishery endorsement in the Reduction Privilege Vessel.

31. *Reduction Privilege Vessel Lacking Federal Documentation.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall immediately scrap any vessel which the Offeror specified as a Reduction Privilege Vessel and which is documented solely under state law or otherwise lacks documentation under Federal law. The Offeror shall scrap such vessel at the Offeror's expense. The Offeror shall allow NMFS, its agents, or its appointees reasonable opportunity to observe and confirm such scrapping. The Offeror shall conclude such scrapping within a reasonable time.

32. *Future Harvest Privilege and Reduction Fishing History Extinguished.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall surrender and relinquish and consent to the revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate), of any claim in any way related to any fishing privilege derived, in whole or in part, from the use or holdship of the Groundfish Reduction Permits and the Reduction Permit(s), from the use or ownership of the Reduction Privilege Vessel (subject to and in accordance with the provisions of section 8 of this contract), and from any documented harvest fishing history arising under or associated with the same which could ever qualify the Offeror for any future limited access fishing license, fishing permit, and other harvest authorization of any kind.

33. *Post Tender Use of Federally Documented Reduction Privilege Vessel.* After NMFS' reduction payment tender to the Offeror, the Offeror may continue to use a federally documented Reduction Privilege Vessel for any lawful purpose except "fishing" as defined under the Magnuson-Stevens Act and may transfer—subject to all restrictions in the Reduction Contract, other applicable regulations, and the applicable law—the vessel to a new owner. The Offeror or any subsequent owner shall only operate the Reduction Privilege Vessel under the United States flag and shall not operate such vessel under the authority of a foreign country. In the event the Offeror fails to abide by such restrictions, the Offeror expressly acknowledges and hereby agrees to allow NMFS to pursue any and all remedies available to it, including, but not limited to, recovering the reduction payment and seizing the Reduction Privilege Vessel and scrapping it at the Offeror's expense.

34. *NMFS' Actions upon Tender.* Contemporaneously with NMFS' reduction payment tender to the Offeror, and without regard to the Offeror's refusal or failure to perform any of its Reduction Contract duties and obligations, NMFS shall: Permanently revoke the Offeror's Groundfish Reduction Permit and Reduction Permit(s); notify the National Vessel Documentation Center to permanently revoke the Reduction Privilege Vessel's fishery trade endorsement; notify the U.S. Maritime Administration to make the Reduction Privilege Vessel permanently ineligible for the approval of requests to place the vessel under foreign registry or operate the vessel under a foreign country's authority; record in the appropriate NMFS records that the Reduction Fishing History represented by any documented harvest fishing history accrued on, under, or as a result of the operation of the Reduction Privilege Vessel and/or Reduction Fishing Vessel (subject to and in accordance with the provisions of section 8 of this contract), the Groundfish Reduction Permit, and the Reduction Permit(s) which could ever qualify the Offeror for any future limited access fishing license, fishing permit, or other harvesting privilege of any kind shall never again be available to anyone for any fisheries purpose; and implement any other restrictions the applicable law or regulations impose.

35. *Material Disputes to be Identified.* Members of the public shall, up until NMFS receives the Offeror's written payment instructions, be able to advise NMFS in writing of any material dispute with regard to any aspect of any accepted Reduction Contract. Such a material dispute shall neither relieve the Offeror of any Reduction Contract duties or obligations nor affect NMFS' right to enforce performance of the Reduction Contract terms and conditions.

36. *Reduction Payment Disbursement.* Once NMFS receives the Offeror's written payment instructions and certification of compliance with the Reduction Contract, NMFS shall as soon as practicable disburse the reduction payment to the Offeror. Reduction payment disbursement shall be in strict accordance with the Offeror's written payment instructions. Unless the Offeror's written payment instructions direct NMFS to the contrary, NMFS shall disburse the whole of the reduction payment to the Offeror. If the qualifying Offeror offers with a co-Offeror, both the qualifying Offeror and the co-Offeror must approve and sign the written payment instructions.

37. *Reduction Payment Withheld for Scrapping or for Other Reasons.* In the event that a Reduction Privilege Vessel which is not under Federal documentation must be scrapped, NMFS shall withhold from reduction payment disbursement an amount sufficient to scrap such vessel. NMFS shall withhold such sum until the vessel is completely scrapped before disbursing any amount withheld. NMFS may confirm, if NMFS so chooses, that the vessel has been scrapped before disbursing any amount withheld. If NMFS has reason to believe the Offeror has failed to comply with any of the Reduction Contract terms and conditions, NMFS shall also withhold reduction payment disbursement until such time as the Offeror performs in accordance with the Reduction Contract terms and conditions.

38. *Offeror Assistance with Restriction.* The Offeror shall, upon NMFS' request, furnish such additional documents, undertakings, assurances, or take such other actions as may be reasonably required to enable NMFS' revocation, restriction, invalidation, withdrawal, or extinguishment by other means (as NMFS deems appropriate) of all components of the Reduction Contract's Reduction Fishing Interest in accordance with the requirements of the Reduction Contract terms and conditions, applicable regulations and the applicable law.

39. *Recordation of Restrictions.* Upon the Reduction Fishing Privilege's revocation, the Offeror shall do everything reasonably necessary to ensure that such revocation is recorded on the Reduction Privilege Vessel's Federal documentation (which the National Vessel Documentation Center maintains in accordance with Federal maritime law and regulations) in such manner as is acceptable to NMFS and as shall prevent the Reduction Privilege Vessel, regardless of its subsequent ownership, from ever again being eligible for a fishery trade endorsement or ever again fishing. The term "fishing" includes the full range of activities defined in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

40. *Reduction Element Omission.* In the event NMFS accepts the offer and the Offeror has failed, for any reason, to specify in the Reduction Contract any Groundfish Reduction Permit, non-Groundfish Reduction Permit(s), Reduction Privilege Vessel, Reduction Fishing Vessel, Reduction Fishing History, or any other element of the Reduction Fishing Interest which the Offeror should under Reduction Contract, applicable regulations and the applicable law have specified in Reduction Contract, such omitted element shall nevertheless be deemed to be included in the Reduction Contract and to be subject to the Reduction Contract's terms and conditions; and all Reduction Contract terms and conditions which should have applied to such omitted element had it not be omitted shall apply as if such element had not been omitted. Upon the Offeror discovering any such omission, the Offeror shall immediately and fully advise NMFS of such omission. Upon either NMFS or the Offeror discovering any such omission, the Offeror shall act in accordance with the Reduction Contract, applicable regulations and the applicable law.

41. *Remedy for Breach.* Because money damages are not a sufficient remedy for the Offeror breaching any one or more of the Reduction Contract terms and conditions, the Offeror explicitly agrees to and hereby authorizes specific performance of the Reduction Contract, in addition to any money damages, as a remedy for such breach. In the event of such breach, NMFS shall take any reasonable action, including requiring and enforcing specific performance of the Reduction Contract, NMFS deems necessary to carry out the Reduction Contract, applicable regulations and the applicable law.

42. *Waiver of Data Confidentiality.* The Offeror consents to the public release of any information provided in connection with the Reduction Contract or pursuant to Reduction Plan requirements, including any information provided in the Reduction Contract or by any other means associated with, or necessary for evaluation of, the Offeror's Reduction Contract if NMFS finds that the release of such information is necessary to achieve the Reduction Plan's authorized purpose. The Offeror hereby explicitly waives any claim of confidentiality otherwise afforded to catch, or harvest data and fishing histories otherwise protected from release under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881 a(b)) or any other law. In the event of such information release, the Offeror hereby forever fully and unconditionally releases and holds harmless the United States

and its officers, agents, employees, representatives, of and from any and all claims, demands, debts, damages, duties, causes of action, actions and suits whatsoever, in law or equity, on account of any act, failure to act or event arising from, out of, or in any way related to, the release of any information associated with the Reduction Program.

43. *Oral Agreement Invalid.* The Reduction Contract, any addendums to section 46 of this contract, and enclosures of photocopies of licenses and permits required under section 46 of this contract, contain the final terms and conditions of the agreement between the Offeror and NMFS and represent the entire and exclusive agreement between them. NMFS and the Offeror forever waive all right to sue, or otherwise counterclaim against each other, based on any claim of past, present, or future oral agreement between them.

44. *Severable Provisions.* The Reduction Contract provisions are severable; and, in the event that any portion of the Reduction Contract is held to be void, invalid, non-binding, or otherwise unenforceable, the remaining portion thereof shall remain fully valid, binding, and enforceable against the Offeror and NMFS.

45. *Disputes.* Any and all disputes involving the Reduction Contract, and any other Reduction Plan aspect affecting them shall in all respects be governed by the Federal laws of the United States; and the Offeror and all other parties claiming under the Offeror irrevocably submit themselves to the jurisdiction of the Federal courts of the United States and/or to any other Federal administrative body which the applicable law authorizes to adjudicate such disputes.

46. *Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification.*

a. *Completion and Submission.* The Offeror must fully, faithfully, and accurately complete this section 46 of this contract and thereafter submit the full and complete Reduction Contract to NMFS in accordance with the Reduction Contract. If completing this section requires inserting more information than the places provided for the insertion of such information allows, the Offeror should attach an addendum to the Reduction Contract that: Includes and identifies the additional information, states that the addendum is a part of the Reduction Fishing Interests Identification portion of the Reduction Contract, states (as a means of identifying the Reduction Contract to which the addendum relates) the NMFS license number designated on the Reduction Contract's Groundfish Reduction Permit, and is signed by all persons who signed the Reduction Contract as the Offeror.

b. *Offeror Information.*

(1) *Offeror name(s).* Insert in the table provided under this section 46.b(1) of this contract the name(s) of the qualifying Offeror and of the co-Offeror (if there is a co-Offeror), and check the appropriate box for each name listed.

Each name the Offeror inserts must be the full and exact legal name of record of each person, partnership, corporation or other business entity identified on the offer. If any Reduction Fishing Interest element is co-owned by more than one person, partnership, corporation or other business entity, the Offeror must insert each co-owner's name.

In each case, the Offeror is the holder of record, at the time of Offeror's execution of this Reduction Contract, of the Groundfish Reduction Permit and the Reduction Permit(s). A co-Offeror is not allowed for either the Groundfish Reduction Permit or the Reduction Permit(s). If the Offeror is also the owner of record, at the time of offering, of the Reduction Privilege Vessel, the qualifying Offeror is the sole Offeror. If, however, the owner of record, at the time of execution of this Reduction Contract, of the Reduction Privilege Vessel is not exactly the same as the Offeror, then the owner of record is the co-Offeror; and the Offeror and the co-Offeror jointly offer together as the Offeror.

OFFEROR NAME(S)	Check appropriate box for each name listed in the adjacent column	
If Offeror or co-Offeror consists of more than one owner, use one row of this column to name each co-Offeror. If not, use only one row for Offeror and one row for any co-Offeror	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(2) *Offeror address(s) of record.* Insert in the table provided under this section 46.b(2) of this contract the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact address(s) of record, and check the appropriate box for each address listed.

OFFEROR ADDRESS(S)	Check appropriate box for each name listed in the adjacent column	
If Offeror or co-Offeror consists of more than one owner, use one row of this column for address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., address (1) is for name (1), address (2) is for name (2), address (3) is for name (3), etc.	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(3) *Offeror business telephone number(s).* Insert in the table provided under this section 46.b (3) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact business telephone number(s), and check the appropriate box for each number listed.

OFFEROR BUSINESS TELEPHONE NUMBER(S)

If Offeror or co-Offeror consists of more than one owner, use one row of this column for the telephone number of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., telephone number (1) is for name (1), telephone number (2) is for name (2), telephone number (3) is for name (3), etc.

Check appropriate box for each name listed in the adjacent column

Offeror

Co-Offeror
(if any)

- (1)
- (2)
- (3)
- (4)
- (5)

(4) Offeror electronic mail address(s) (if available). Insert in the table printed under this section 46.b(4) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact electronic mail (e-mail) address(s), and check the appropriate box for each address.

OFFEROR E-MAIL ADDRESS(S)

If Offeror or co-Offeror consists of more than one owner, use one row of this column for the e-mail address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name in section 46.b(1) of this contract, i.e., email (1) is for name (1), e-mail (2) is for name (2), e-mail (3) is for name (3), etc

Check appropriate box for each name listed in the adjacent column

Offeror

Co-Offeror
(if any)

- (1)
- (2)
- (3)
- (4)
- (5)

c. LP license number for Groundfish Reduction Permit. Insert in the place this section 46.c provides the full and exact license number which NMFS designated on the LLP license which the Offeror specifies as the Groundfish Reduction Permit. Attach with the Reduction Contract an exact photocopy of such license.

**LLP LICENSE NUMBER(S) AND FISHERY(S) OF OF LLP LICENSE(S)
SPECIFIED AS GROUND FISH REDUCTION PERMIT(S)**

License
number(s)

Fishery(s)

- (1)
- (2)
- (3)
- (4)
- (5)

d. License number(s) for Reduction Permit(s). Insert in the place this section 46.d provides the fishery(s) involved in, and the full and exact license number(s) with NMFS designated on the license(s) which the Offeror specifies in the Reduction Contract as the Reduction Permit (s). Enclose with the Reduction Contract an exact photocopy of each such license.

**LLP LICENSE NUMBER(S) AND FISHERY OF LICENSE(S) SPECIFIED
AS REDUCTION PERMITS**

License
number(s)

Fishery(s)

- (1)
- (2)
- (3)
- (4)
- (5)

e. *Reduction Fishing History.* For all Reduction Fishing History insert in the place provided in the table under this section 46.e the chronological and other information with each column heading therein requires. The information required does not include any actual landing data. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS based on the fishing history of a lost or destroyed vessel plus a replacement vessel must insert information for both vessels and meet the requirements of the framework regulations, final rule and any other regulations promulgated pursuant to the Act. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS in any part based on acquisition of fishing history from another party must insert information regarding such catch history.

NAMES(S) AND OFFICIAL NUMBER OF REDUCTION PRIVILEGE VESSEL AND NAME(S) AND OFFICIAL NUMBER (S) OF ANY VESSEL FROM WHICH FISHING HISTORY WAS ACQUIRED	FOR EACH FISHING HISTORY IN 2ND COLUMN		
	FOR EACH REDUCTION PRIVILEGE VESSEL IN 1ST COLUMN PROVIDE FROM TO DATE OF EACH FISHING HISTORY OFFEROR POSSESSES	License No. of each Groundfish Reduction Permit and Reduction Permit(s) associated with each vessel involved	If Reduction Privilege Vessel acquired fishing history from another party, provide name of party, manner in which acquired, and date acquired
(1)			
(2)			
(3)			
(4)			
(5)			

f. *Reduction Privilege Vessel.* Insert the full and exact name and official number which the National Vessel Documentation Center designated for the Reduction Privilege Vessel which the Offeror or the co-Offeror (if there is a co-Offeror) specifies in the Reduction Contract, and check the box appropriate for the vessel's ownership of record.

Enclose with the Reduction Contract an exact photocopy of such vessel's official certificate of documentation.

REDUCTION PRIVILEGE VESSEL		Check appropriate ownership box below	
Official name	Official No.	Offeror	Co-Offeror (if any)

g. *Offer Amount.* Insert in the place this section 46.g provides the Offeror's full and exact offer amount, both in words and in numbers.

OFFER AMOUNT [U.S. DOLLARS]	
In words	In numbers

h. *Reduction Contract Signature.* In compliance with the Reduction Contract, applicable regulations and the applicable law, the Offeror submits the Reduction Contract as the Offeror's irrevocable offer to NMFS for the permanent surrender and relinquishment and revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate) of the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Fishing Privilege, and the Reduction Fishing History—all as identified in the Reduction Contract or as required under applicable regulations, or the applicable law.

The Offeror expressly acknowledges that NMFS' acceptance of the Offeror's offer hereunder and NMFS' tender, following a successful referendum, of a reduction payment in the same amount specified in section 46.g of this contract (less any sum withheld for scrapping any Reduction Privilege Vessel lacking Federal documentation or for any other purpose) to the Offeror shall, among other things, render the Reduction Privilege Vessel permanently ineligible or any fishing worldwide, including, but not limited to, fishing on the high seas or in

the jurisdiction of any foreign country while operating under United States flag, and shall impose or create other legal and contractual restrictions, impediments, limitations, obligations, or other provisions which restrict, revoke, withdraw, invalidate, or extinguish by other means (as NMFS deems appropriate) the complete Reduction Fishing Interest and any other fishery privileges or claims associated with the Groundfish Reduction Permit, any Reduction Permit (s), the Reduction Privilege Vessel, and the Reduction Fishing History—all as more fully set forth in the Reduction Contract, applicable regulations, and the applicable law.

By completing and signing the Reduction Contract, the Offeror expressly acknowledges that the Offeror has fully and completely read the entire Reduction Contract. The Offeror expressly states, declares, affirms, attests, warrants, and represents to NMFS that the Offeror is fully able to enter into the Reduction Contract and that the Offeror legally holds, owns, or retains, and is fully able under the Reduction Contract provisions to offer and dispose of, the full Reduction Fishing Interest which the Reduction Contract specifies and the applicable regulations, and the applicable law requires that any person or entity completing the Reduction Contract and/or signing the Reduction Contract on behalf of another person or entity, expressly attests, warrants, and represents to NMFS that such completing and/or signing person or entity has the express and written permission or other grant of authority to bind such other person or entity to the Reduction Contract's terms and conditions. The Offeror expressly attests, warrants, and represents to NMFS that every co-owner of the Offeror necessary to constitute the Offeror's full and complete execution of the Reduction Contract has signed the Reduction Contract. The Offeror expressly attests, warrants, and represents to NMFS that the Offeror: Fully understands the consequences of submitting the completed Reduction Contract of which it is a party to NMFS; pledges to abide by the terms and conditions of the Reduction Contract; and is aware of, understands, and consents to, any and all remedies available to NMFS for the Offeror's breach of the Reduction Contract or submission of an offer which fails to conform with the Reduction Contract, final rule, applicable regulations and the applicable law. The Offeror expressly attests, warrants, and represents to NMFS that all information which the Offeror inserted in the Reduction Contract is true, accurate, complete, and fully in accordance with the Reduction Contract, final rule, other applicable regulations and the applicable law.

In witness whereof, the Offeror has, in the place provided below, executed the Reduction Contract either as an Offeror offering alone or as an Offeror and co-Offeror (if there is a co-Offeror) jointly offering together, in accordance with the requirements specified above, and on the date written below. The Reduction Contract is effective as of the date NMFS accepts the Offeror's offer by signing the Reduction Contract.

The Offeror and co-Offeror (if there is a co-Offeror) must each sign the Reduction Contract exactly as instructed herein. Each co-owner (if there is a co-owner) of each Offeror and co-Offeror (if there is a co-Offeror) must also sign the Reduction Contract exactly as instructed herein. A notary public must, for each person or entity signing on behalf of the Offeror,

complete and sign the acknowledgment and certification provision associated with each such person or entity's signature.

I. *Offeror and co-Offeror's (if there is a co-Offeror) signature(s) and notary's acknowledgment (s) and certification(s).*

OFFEROR'S SIGNATURE AND NOTARY'S ACKNOWLEDGMENT AND CERTIFICATION

If Offeror or co-Offeror consists of more than one owner, use one row of column 1 for each co-owner's signature.

If not, use only one row for Offeror and one row for co-Offeror (if any).

Always use same Offeror row order as in Offeror Name in the table under section 46.b(1) of this contract (i.e., signature (1) is for name (1), signature (2) is for name (2) signature (3) is for name (3), etc.)

OFFEROR SIGNATURE
 (1) Sign. (2) Print: the following: (a) signer's name, (b) signer's title (if signing for corporation or other business entity), and (c) signing date

Check appropriate column for each signature in 1st column

Qualifying Offeror	Co-Offeror (if any)
--------------------	---------------------

NOTARY SIGNATURE
 (1) Sign. (2) Print: the following: (a) name, (b) signing date, (3) date commission expires, and (4) State and county.
 Each notary signature attests to the following:
 "I certify that I know or have satisfactory evidence that the person who signed in the 1st column of this same row is the person who appeared before me and: (1) acknowledged his/her signature; (2) on oath, stated that he/she was authorized to sign; and (3) acknowledged that he/she did so freely and voluntarily."

- (1)
- (2)
- (3)

II. *United States of America's signature.* United States of America, Acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division.

Dated: _____

By: _____

Leo C. Erwin, Chief,

Financial Services Division, National Marine Fisheries Service.

[71 FR 57701, Sept. 29, 2006]

§ 600.1106 Longline catcher processor subsector Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish species fee payment and collection system.

(a) *Purpose.* As authorized by Public Law 108 447, this section's purpose is to:

(1) In accordance with §600.1012, establish:

- (i) The borrower's obligation to repay a reduction loan, and
- (ii) The loan's principal amount, interest rate, and repayment term; and

(2) In accordance with §§600.1013 through 600.1016, implement an industry fee system for the reduction fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in §600.1000 and §600.1105 expressly apply to this section. In addition, the following definition applies to this section:

Reduction fishery means the longline catcher processor subsector of the BSAI non-pollock groundfish fishery that §679.2 of this chapter defined as groundfish area/species endorsements.

(c) *Reduction loan amount.* The reduction loan's original principal amount is \$35,000,000.

(d) *Interest accrual from inception.* Interest began accruing on the reduction loan from May 29, 2007, the date on which NMFS disbursed such loan.

(e) *Interest rate.* The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year 2007 plus 2 percent.

(f) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from May 29, 2007, but fees shall continue indefinitely for as long as necessary to fully repay the loan.

(g) *Reduction loan repayment.* (1) The borrower shall, in accordance with §600.1012, repay the reduction loan;

(2) For the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, subsector members are deemed to be both the fish buyer and fish seller. In this case, all requirements and penalties of §600.1013 that are applicable to both a fish seller and a fish buyer shall equally apply to parties performing both functions;

(3) Subsector members in the reduction fishery shall pay and collect the fee amount in accordance with §600.1105;

(4) Subsector members in the reduction fishery shall, in accordance with §600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to such fishery; except the requirements specified under paragraph (c) of this section concerning the deposit principal disbursement shall be made to NMFS no later than fifteen (15) calendar days following the end of each calendar month; and the requirements specified under paragraph (e) of this section concerning annual reports which shall be submitted to NMFS by February 1 of each calendar year; and

(5) The reduction loan is, in all other respects, subject to the provisions of §§600.1012 through 600.1017.

[72 FR 54222, Sept. 24, 2007]

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

SEC. 301. SHORT TITLE.

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

SEC. 302. INDIVIDUAL FISHING QUOTA LOANS.

(a) AMENDMENT OF MERCHANT MARINE ACT, 1936 — 1104A of the Merchant Marine Act, 1936 (46 ended—
(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
(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 46 USC app. be guaranteed by the Federal Government for the construction 1274 of new fishing vessels if the construction will result in an increased 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:
“SEC. 1111. (a) The Secretary is authorized to guarantee the 1279f. 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.
“SEC. 1112. (a) Notwithstanding any other provision of this 1279g. 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.

(d) AUTHORIZATION OF APPROPRIATIONS FOR CHESAPEAKE BAY

OFFICE.—Section 2(e) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended—

- (1) by striking “1992 and 1993” and inserting “1997 and 1998”;
- (2) by striking “establish” and inserting “operate”;
- (3) by striking “306” and inserting “307”;
- (4) by striking “1991” and inserting “1992”.

(e) RELATION TO OTHER LAWS.—Authorizations under this section shall be in addition to monies authorized under the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 3301 et seq.), the Anadromous Fish Conservation Act (16 U.S.C. 757 et seq.), and the Interjurisdictional Fisheries Act (16 U.S.C. 4107 et seq.).

(f) NEW ENGLAND HEALTH PLAN.—The Secretary of Commerce

is authorized to provide up to \$2,000,000 from previously appropriated funds to Caritas Christi for the implementation of a health care plan for fishermen in New England if Caritas Christi submits such plan to the Secretary no later than January 1, 1997, and the Secretary, in consultation with the Secretary of Health and Human Services, approves such plan.

SEC. 402. INTERJURISDICTIONAL FISHERIES ACT AMENDMENTS.

(a) REAUTHORIZATION.—Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) by amending subsection (a) to read as follows:

“(a) GENERAL APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title—

- “(1) \$3,400,000 for fiscal year 1996;
- “(2) \$3,900,000 for fiscal year 1997;
- “(3) \$4,400,000 for each of the fiscal years 1998, 1999, and 2000.”;

(2) by striking “\$350,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993, and \$600,000 for each of the fiscal years 1994 and 1995,” in subsection (c) and inserting “\$700,000 for fiscal year 1997, and \$750,000 for each of the fiscal years 1998, 1999, and 2000.”.

(b) NEW ENGLAND REPORT.—Section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)) is amended by adding at the end the following new paragraph:

“(7) With respect to funds available for the New England region, the Secretary shall submit to the Congress by January 1, 1997, with annual updates thereafter as appropriate, a report on the New England fishing capacity reduction initiative which provides—

“(A) the total number of Northeast multispecies permits in each permit category and calculates the maximum potential fishing capacity of vessels holding such permits based on the principal gear, gross registered tonnage, engine horsepower, length, age, and other relevant characteristics;

“(B) the total number of days at sea available to the permitted Northeast multispecies fishing fleet and the total days at sea weighted by the maximum potential fishing capacity of the fleet;

“(C) an analysis of the extent to which the weighted days at sea are used by the active participants in the fishery and of the reduction in such days as a result of the fishing capacity reduction program; and

“(D) an estimate of conservation benefits (such as reduction in fishing mortality) directly attributable to the fishing capacity reduction program.”.

SEC. 403. ANADROMOUS FISHERIES AMENDMENTS.

Section 4 of the Anadromous Fish Conservation Act (16 U.S.C. 757d) is amended to read as follows:

“SEC. 4. (a)(1) There are authorized to be appropriated to carry Appropriation out the purposes of this Act not to exceed the following sums: authorization.

“(A) \$4,000,000 for fiscal year 1997; and

“(B) \$4,250,000 for each of fiscal years 1998, 1999, and 2000.

**MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT REAUTHORIZATION ACT
(P.L. 109-479)**

TITLE V —IMPLEMENTATION OF WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION

SEC. 501. SHORT TITLE.

This title may be cited as the “Western and Central Pacific Fisheries Convention Implementation Act”.

SEC. 502. DEFINITIONS.

In this title:

(1) 1982 CONVENTION.—The term “1982 Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982.

(2) AGREEMENT.—The term “Agreement” means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

(3) COMMISSION.—The term “Commission” means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean established in accordance with this Convention.

(4) CONVENTION AREA.—The term “convention area” means all waters of the Pacific Ocean bounded to the south and to the east by the following line: From the south coast of Australia due south along the 141th meridian of east longitude to its intersection with the 55th parallel of south latitude; thence due east along the 55th parallel of south latitude to its intersection with the 150th meridian of east longitude; thence due south along the 150th meridian of east longitude to its intersection with the 60th parallel of south latitude; thence due east along the 60th parallel of south latitude to its intersection with the 130th meridian of west longitude; thence due north along the 130th meridian of west longitude to its intersection with the 4th parallel of south latitude; thence due west along the 4th parallel of south latitude to its intersection with the 150th meridian of west longitude; thence due north along the 150th meridian of west longitude.

(5) EXCLUSIVE ECONOMIC ZONE.—The term “exclusive economic zone” means the zone established by Presidential Proclamation Numbered 5030 of March 10, 1983.

(6) FISHING.—The term “fishing” means—

(A) searching for, catching, taking, or harvesting fish;

(B) attempting to search for, catch, take, or harvest fish;

(C) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish for any purpose;

(D) placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(E) any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs (A) through (D), including transshipment; and

(F) use of any other vessel, vehicle, aircraft, or hovercraft, for any activity described in subparagraphs (A) through (E) except for emergencies involving the health and safety of the crew or the safety of a vessel.

(7) FISHING VESSEL.—The term “fishing vessel” means any vessel used or intended for use for the purpose of fishing, including support ships, carrier vessels, and any other vessel directly involved in such fishing operations.

(8) HIGHLY MIGRATORY FISH STOCKS.—The term “highly migratory fish stocks” means all fish stocks of the species listed in Annex 1 of the 1982 Convention, except sauries, occurring in the Convention Area, and such other species of fish as the Commission may determine.

(9) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(10) STATE.—The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

(11) TRANSHIPMENT.—The term “transshipment” means the unloading of all or any of the fish on board a fishing vessel to another fishing vessel either at sea or in port.

(12) WCPFC CONVENTION; WESTERN AND CENTRAL PACIFIC CONVENTION.—The terms “WCPFC Convention” and “Western and Central Pacific Convention” means the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, (including any annexes, amendments, or protocols which are in force, or have come into force, for the United States) which was adopted at Honolulu, Hawaii, on September 5, 2000, by the Multilateral High Level Conference on the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

SEC. 503. APPOINTMENT OF UNITED STATES COMMISSIONERS.

(a) IN GENERAL.—The United States shall be represented on the Commission by 5 United States Commissioners. The President shall appoint individuals to serve on the Commission at the pleasure of the President. In making the appointments, the President shall select Commissioners from among individuals who are knowledgeable or experienced concerning highly migratory fish stocks in the Western and Central Pacific Ocean, one of whom shall be an officer or employee of the Department of Commerce, and one of whom shall be the chairman or a member of the Western Pacific Fishery Management Council and the Pacific Fishery Management Council. The Commissioners shall be entitled to adopt such rules of procedures as they find necessary and to select a chairman from among members who are officers or employees of the United States Government.

(b) ALTERNATE COMMISSIONERS.—The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to subsection (d), all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

(c) ADMINISTRATIVE MATTERS.—

(1) EMPLOYMENT STATUS.—Individuals serving as such Commissioners, other than officers or employees of the United States Government, shall be considered to be Federal employees while performing such service, only for purposes of—

(A) injury compensation under chapter 81 of title 5, United States Code;

(B) requirements concerning ethics, conflicts of interest, and corruption as provided under title 18, United States Code; and

(C) any other criminal or civil statute or regulation governing the conduct of Federal employees.

(2) COMPENSATION.—The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners.

(3) TRAVEL EXPENSES.—

(A) The Secretary of State shall pay the necessary travel expenses of United States Commissioners and Alternate United States Commissioners in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(B) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.

(d) **ADVISORY COMMITTEES.—**

(1) **ESTABLISHMENT OF PERMANENT ADVISORY COMMITTEE.—**

(A) **MEMBERSHIP.—**There is established an advisory committee which shall be composed of—

(i) not less than 15 nor more than 20 individuals appointed by the Secretary of Commerce in consultation with the United States Commissioners, who shall select such individuals from the various groups concerned with the fisheries covered by the WCPFC Convention, providing, to the maximum extent practicable, an equitable balance among such groups;

(ii) the chair of the Western Pacific Fishery Management Council's Advisory Committee or the chair's designee; and

(iii) officials of the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees).

(B) **TERMS AND PRIVILEGES.—**Each member of the advisory committee appointed under subparagraph (A) shall serve for a term of 2 years and shall be eligible for reappointment. The advisory committee shall be invited to attend all non-executive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

(C) **PROCEDURES.—**The advisory committee established by subparagraph (A) shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the WCPFC Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures. A majority of the members of the advisory committee shall constitute a quorum. Meetings of the advisory committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in a timely fashion, and the advisory committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(D) **PROVISION OF INFORMATION.—**The Secretary and the Secretary of State shall furnish the advisory committee with relevant information concerning fisheries and international fishery agreements.

(2) **ADMINISTRATIVE MATTERS.—**

(A) **SUPPORT SERVICES.—**The Secretary shall provide to advisory committees in a timely manner such administrative and technical support services as are necessary for their effective functioning.

(B) **COMPENSATION; STATUS; EXPENSES.—**Individuals appointed to serve as a member of an advisory committee—

(i) shall serve without pay, but while away from their homes or regular places of business in the performance of services for the advisory committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code; and

(ii) shall be considered Federal employees while performing service as members of an advisory committee only for purposes of—

(I) injury compensation under chapter 81 of title 5, United States Code;

(II) requirements concerning ethics, conflicts-of-interest, and corruption, as provided by title 18, United States Code; and

(III) any other criminal or civil statute or regulation governing the conduct of Federal employees in their capacity as Federal employees.

(f) **MEMORANDUM OF UNDERSTANDING.—**For highly migratory species in the Pacific, the Secretary, in coordination with the Secretary of State, shall develop a memorandum of understanding with the Western Pacific, Pacific, and North Pacific Fishery Management Councils, that clarifies the role of the relevant Council or Councils with respect to—

(1) participation in United States delegations to international fishery organizations in the Pacific Ocean, including government-to-government consultations;

(2) providing formal recommendations to the Secretary and the Secretary of State regarding necessary measures for both domestic and foreign vessels fishing for these species;

(3) coordinating positions with the United States delegation for presentation to the appropriate international fishery organization; and

(4) recommending those domestic fishing regulations that are consistent with the actions of the international fishery organization, for approval and implementation under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)

SEC. 504. AUTHORITY AND RESPONSIBILITY OF THE SECRETARY OF STATE. The Secretary of State may—

(1) receive and transmit, on behalf of the United States, reports, requests, recommendations, proposals, decisions, and other communications of and to the Commission;

(2) in consultation with the Secretary approve, disapprove, object to, or withdraw objections to bylaws and rules, or amendments thereof, adopted by the WCPFC Commission, and, with the concurrence of the Secretary to approve or disapprove the general annual program of the WCPFC Commission with respect to conservation and management measures and other measures proposed or adopted in accordance with the WCPFC Convention; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1).

SEC. 505. RULEMAKING AUTHORITY OF THE SECRETARY OF COMMERCE.

(a) **PROMULGATION OF REGULATIONS.—**The Secretary, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department in which the Coast Guard is operating, is authorized to promulgate such regulations as may be necessary to carry out the United States international obligations under the WCPFC Convention and this title, including recommendations and decisions adopted by the Commission. In cases where the Secretary has discretion in the implementation of one or more measures adopted by the Commission that would govern fisheries under the authority of a Regional Fishery Management Council, the Secretary may, to the extent practicable within the implementation schedule of the WCPFC Convention and any recommendations and decisions adopted by the Commission, promulgate such regulations in accordance with the procedures established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(b) **ADDITIONS TO FISHERY REGIMES AND REGULATIONS.—**The Secretary may promulgate regulations applicable to all vessels and persons subject to the jurisdiction of the United States, including United States flag vessels wherever they may be operating, on such date as the Secretary shall prescribe.

SEC. 506. ENFORCEMENT.

(a) **IN GENERAL.—**The Secretary may—

(1) administer and enforce this title and any regulations issued under this title, except to the extent otherwise provided for in this Act;

(2) request and utilize on a reimbursed or non-reimbursed basis the assistance, services, personnel, equipment, and facilities of other Federal departments and agencies in—

(A) the administration and enforcement of this title; and

(B) the conduct of scientific, research, and other programs under this title;

(3) conduct fishing operations and biological experiments for purposes of scientific investigation or other purposes necessary to implement the WCPFC Convention;

(4) collect, utilize, and disclose such information as may be necessary to implement the WCPFC Convention, subject to sections 552 and 552a of title 5, United States Code, and section 402(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a(b));

(5) if recommended by the United States Commissioners or proposed by a Council with authority over the relevant fishery, assess and collect fees, not to exceed three percent of the ex-vessel value of fish harvested by vessels of the United States in fisheries managed pursuant to this title, to recover the actual costs to the United States of management and enforcement under this title, which shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to carry out the functions of the Secretary under this title; and

(6) issue permits to owners and operators of United States vessels to fish in the convention area seaward of the United States Exclusive Economic Zone, under such terms and conditions as the Secretary may prescribe, and shall remain valid for a period to be determined by the Secretary.

(b) **CONSISTENCY WITH OTHER LAWS.**—The Secretary shall ensure the consistency, to the extent practicable, of fishery management programs administered under this Act, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the Tuna Conventions Act (16 U.S.C. 951 et seq.), the South Pacific Tuna Act (16 U.S.C. 973 et seq.), section 401 of Public Law 108–219 (16 U.S.C. 1821 note) (relating to Pacific albacore tuna), and the Atlantic Tunas Convention Act (16 U.S.C. 971).

(c) **ACTIONS BY THE SECRETARY.**—The Secretary shall prevent any person from violating this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857) were incorporated into and made a part of this title. Any person that violates any provision of this title is subject to the penalties and entitled to the privileges and immunities provided in the Magnuson-Stevens Fishery Conservation and Management Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of that Act were incorporated into and made a part of this title.

(d) **CONFIDENTIALITY.**—

(1) **IN GENERAL.**—Any information submitted to the Secretary in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except—

(A) to Federal employees who are responsible for administering, implementing, and enforcing this Act;

(B) to the Commission, in accordance with requirements in the Convention and decisions of the Commission, and, insofar as possible, in accordance with an agreement with the Commission that prevents public disclosure of the identity or business of any person;

(C) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business or any person;

(D) when required by court order; or

(E) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.

(2) **USE OF INFORMATION.**—The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form that does not directly or indirectly disclose the identity or business of any person. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary of any information submitted in compliance with any requirement or regulation under this Act.

SEC. 507. PROHIBITED ACTS.

(a) **IN GENERAL.**—It is unlawful for any person—

(1) to violate any provision of this title or any regulation or permit issued pursuant to this title;

(2) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, on an applicable permit issued pursuant to this title;

(3) to refuse to permit any officer authorized to enforce the provisions of this title to board a fishing vessel subject to such person's control for the purposes of conducting any search, investigation, or inspection in connection with the enforcement of this title or any regulation, permit, or the Convention;

(4) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigations, or inspection in connection with the enforcement of this title or any regulation, permit, or the Convention;

(5) to resist a lawful arrest for any act prohibited by this title;

(6) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this title or any regulation, permit, or agreement referred to in paragraph (1) or (2);

(7) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any chapter prohibited by this section;

(8) to knowingly and willfully submit to the Secretary false information (including false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishery vessels of the United States), regarding any matter that the Secretary is considering in the course of carrying out this title;

(9) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this title, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this title;

(10) to engage in fishing in violation of any regulation adopted pursuant to section 506(a) of this title;

(11) to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations;

(12) to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this title to be made, kept, or furnished;

(13) to fail to stop a vessel upon being hailed and instructed to stop by a duly authorized official of the United States;

(14) to import, in violation of any regulation adopted pursuant to section 506(a) of this title, any fish in any form of those species subject to regulation pursuant to a recommendation, resolution, or decision of the Commission, or any tuna in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 506(a) of this title.

(b) **ENTRY CERTIFICATION.**—In the case of any fish described in subsection (a) offered for entry into the United States, the Secretary of Commerce shall require proof satisfactory to the Secretary that such fish is not ineligible for such entry under the terms of section 506(a) of this title.

SEC. 508. COOPERATION IN CARRYING OUT CONVENTION.

(a) **FEDERAL AND STATE AGENCIES; PRIVATE INSTITUTIONS AND ORGANIZATIONS.**—The Secretary may cooperate with agencies of the United States government, any public or private institutions or organizations within the United States or abroad, and, through the Secretary of State, the duly authorized officials of the government of any party to the WCPFC Convention, in carrying out responsibilities

under this title.

(b) **SCIENTIFIC AND OTHER PROGRAMS; FACILITIES AND PERSONNEL.**—All Federal agencies are authorized, upon the request of the Secretary, to cooperate in the conduct of scientific and other programs and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the WCPFC Convention.

(c) **SANCTIONED FISHING OPERATIONS AND BIOLOGICAL EXPERIMENTS.**— Nothing in this title, or in the laws or regulations of any State, prevents the Secretary or the Commission from—

(1) conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation; or

(2) discharging any other duties prescribed by the WCPFC Convention.

(d) **STATE JURISDICTION NOT AFFECTED.**—Except as provided in subsection (e) of this section, nothing in this title shall be construed to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.

(e) **APPLICATION OF REGULATIONS**—

(1) **IN GENERAL.**—Regulations promulgated under section 506(a) of this title shall apply within the boundaries of any State bordering on the Convention area if the Secretary has provided notice to such State, the State does not request an agency hearing, and the Secretary determines that the State—

(A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this title, enacted laws or promulgated regulations that implement the recommendations of the Commission within the boundaries of such State; or

(B) has enacted laws or promulgated regulations that implement the recommendations of the commission within the boundaries of such State that—

(i) are less restrictive than the regulations promulgated under section 506(a) of this title; or

(ii) are not effectively enforced.

(2) **DETERMINATION BY SECRETARY.**—The regulations promulgated pursuant to section 506(a) of this title shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures that are not less restrictive than the regulations promulgated under section 506(a) of this title.

(3) **HEARING.**—If a State requests a formal agency hearing, the Secretary shall not apply the regulations promulgated pursuant section 506(a) of this title within that State's

boundaries unless the hearing record supports a determination under paragraph (1)(A) or (B).

(f) **REVIEW OF STATE LAWS AND REGULATIONS.**—To ensure that the purposes of subsection (e) are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (e) applies or may apply and the extent to which such laws and regulations are enforced.

SEC. 509. TERRITORIAL PARTICIPATION.

The Secretary of State shall ensure participation in the Commission and its subsidiary bodies by American Samoa, Guam, and the Northern Mariana Islands to the same extent provided to the territories of other nations.

SEC. 510. EXCLUSIVE ECONOMIC ZONE NOTIFICATION.

Masters of commercial fishing vessels of nations fishing for species under the management authority of the Western and Central Pacific Fisheries Convention that do not carry vessel monitoring systems capable of communicating with United States enforcement authorities shall, prior to, or as soon as reasonably possible after, entering and transiting the Exclusive Economic Zone seaward of Hawaii and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area—

(1) notify the United States Coast Guard or the National Marine Fisheries Service Office of Law Enforcement in the appropriate region of the name, flag state, location, route, and destination of the vessel and of the circumstances under which it will enter United States waters;

(2) ensure that all fishing gear on board the vessel is stowed below deck or otherwise removed from the place where it is normally used for fishing and placed where it is not readily available for fishing; and

(3) where requested by an enforcement officer, proceed to a specified location so that a vessel inspection can be conducted.

SEC. 511. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Commerce such sums as may be necessary to carry out this title and to pay the United States' contribution to the Commission under section 5 of part III of the WCPFC Convention.

SEC. 213. DURATION.

(a) *GENERAL.* —Except as otherwise provided in this title, the provisions of this title shall take effect upon the date of the enactment of this Act. Sections 206, 208, and 210 shall remain in effect until December 31, 2004, and shall be repealed on such date, except that the North Pacific Council may recommend and the Secretary may approve conservation and management measures as part of a fishery management plan under the Magnuson-Stevens Act to give effect to the measures in such sections thereafter.

(b) *EXISTING AUTHORITY.* —Except for the measures required by this subtitle, nothing in this subtitle shall be construed to limit the authority of the North Pacific Council or the Secretary under the Magnuson-Stevens Act.

(c) *CHANGES TO FISHERY COOPERATIVE LIMITATIONS AND POLLOCK CDQ ALLOCATION.*—The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—

(1) that supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery;

(2) that supersede the allocation in section 206(a) for any of the years 2002, 2003, and 2004, upon the finding by such Council that the western Alaska community development quota program for pollock has been adversely affected by the amendments in this title; or

(3) *that supersede the criteria required in paragraph (1) of section 210 (b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.*

(d) *REPORT TO CONGRESS.—Not later than October 1, 2000, the North Pacific Council shall submit a report to the Secretary and to Congress on the implementation and effects of this Act, including the effects on fishery conservation and management, on bycatch levels, on fishing communities, on business and employment practices of participants in any fishery cooperatives, on the western Alaska community development quota program, on any fisheries outside of the authority of the North Pacific Council, and such other matters as the North Pacific Council deems appropriate.*

(e) *REPORT ON FILLET PRODUCTION. —Not later than June 1, 2000, the General Accounting Office shall submit a report to the North Pacific Council, the Secretary, and the Congress on the whether this Act has negatively affected the market for fillets and fillet blocks, including through the reduction in the supply of such fillets and fillet blocks. If the report determines that such market has been negatively affected, the North Pacific Council shall recommend measures for the Secretary's approval to mitigate any negative effects.*

(f) *SEVERABILITY.—If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.*

(g) *INTERNATIONAL AGREEMENTS. —In the event that any provision of section 12102 (c) or section 31322 (a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United*

States is a party with respect to the owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to such vessel to the extent of any such inconsistency. The provisions of section 12102 (c) and section 31322(a) of title 46, United States Code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to the owner on October 1, 2001 of such vessel if any ownership interest in that owner is transferred to or otherwise acquired by a foreign individual or entity after such date.

TITLE III—DENALI COMMISSION

SEC. 301. SHORT TITLE.

This title may be cited as the “Denali Commission Act of 1998”.

SEC. 302. PURPOSES.

The purposes of this title are as follows:

- (1) To deliver the services of the Federal Government in the most cost-effective manner practicable by reducing administrative and overhead costs.*
- (2) To provide job training and other economic development services in rural communities particularly distressed communities (many of which have a rate of unemployment that exceeds 50 percent).*

Pub. L. 106-65, div. C, title XXXVI, § 3601, Oct. 5, 1999, 113 Stat. 975, provided that: "This title [amending section 1294 of this Appendix and section 3302 of this title] may be cited as the 'Maritime Administration Authorization Act for Fiscal Year 2000'."

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104-297, title III, § 301, Oct. 11, 1996, 110 Stat. 3615, provided that: "This title [enacting sections 1279f and 1279g of this Appendix, amending section 1274 of this Appendix, and enacting provisions set out as a note under section 1274 of this Appendix] may be cited as the 'Fisheries Financing Act'."

Pub. L. 104-239, § 1, Oct. 8, 1996, 110 Stat. 3118, provided that: "This Act [enacting sections 1132, 1162, 1185a, and 1187 to 1187e of this Appendix, amending sections 808, 1175, 1222, 1223, 1241f, 1271, 1273 to 1274a, 1279c, and 1294 of this Appendix and section 1744 of Title 50, Appendix, War and National Defense, and enacting provisions set out as notes under sections 1132, 1187, 1222, 1273 of this Appendix and section 1744 of Title 50, Appendix] may be cited as the 'Maritime Security Act of 1996'."

SHORT TITLE OF 1980 AMENDMENT

For short title of Pub. L. 96-453, Oct. 15, 1980, 94 Stat. 1997, which enacted subchapter XIII of this chapter as the Maritime Education and Training Act of 1980, see Short Title note set out under section 1295 of this Appendix.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-372, § 1, July 31, 1976, 90 Stat. 1042, provided: "That this Act [amending section 1152 of this Appendix] may be cited as the 'Negotiated Shipbuilding Contracting Act of 1976'."

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92-507, § 8, Oct. 19, 1972, 86 Stat. 917, provided that: "This Act [amending sections 1271 to 1276, 1279a, and 1279b of this Appendix, repealing sections 1276a, 1277, and 1278 of former Title 46, Shipping, and enacting provisions set out as notes under sections 1177 and 1273 of this Appendix] may be cited as the 'Federal Ship Financing Act of 1972'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-469, § 44, Oct. 21, 1970, 84 Stat. 1018, provided that: "This Act [enacting section 1507a of Title 15, Commerce and Trade, and section 270f of Title 40, Public Buildings, Property, and Works, amending section 5315 of Title 5, Government Organization and Employees, sections 985 and 988 of Title 33, Navigation and Navigable Waters, sections 1101, 1111, 1119 to 1121, 1151 to 1155, 1159, 1160, 1171 to 1173, 1175 to 1177, 1204, 1213, 1222, 1223, 1241, 1244, 1271, 1273 to 1275, and 1294 of this Appendix, repealing section 1221 of former Title 46, Shipping, and enacting provisions set out as notes under sections 1151, 1173, and 1177 of this Appendix] may be cited as the 'Merchant Marine Act of 1970'."

§ 1247. Appointment of Secretary as trustee or receiver; operation of vessels under court orders; payment of operating costs; claims against corporation

(a) Notwithstanding any other provision of law, in any proceeding in a bankruptcy, equity, or admiralty court of the United States in which a receiver or trustee may be appointed for any corporation engaged in the operation of one or more vessels of the United States and any foreign country, upon which the United States holds mortgages, the court, upon finding that it will inure to the advantage of the estate and the parties in interest and that it will tend to further the purposes of this chapter, may constitute and appoint the Secretary of Transportation as sole trustee or receiver, subject to the directions and orders of the court, and in any such proceeding the appointment of any person other than the Secretary as trustee or receiver shall become effective upon the ratification thereof by the Secretary without a hearing, unless the Secretary shall deem a hearing necessary. In no such proceeding shall the Secretary be constituted as trustee or receiver without the Secretary's express consent.

(b) If the court, in any such proceeding, is unwilling to permit the trustee or receiver to operate such vessels in such service pending the termination of such proceeding, without financial aid from the Government, and the Secretary certifies to the court that the continued operation of such vessel is, in the opinion of the Secretary, essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes and policy of this chapter, the court may permit the Secretary to operate the vessels subject to the orders of the court and upon terms decreed by the court sufficient to protect all the parties in interest, for the account of the trustee or receiver, directly or through a managing agent or operator employed by the Secretary, if the Secretary undertakes to pay all operating losses resulting from such operation, and comply with the terms imposed by the court, and such vessel shall be considered to be a vessel of the United States within the meaning of the Suits in Admiralty Act [46 App. U.S.C. 741 et seq.]. The Secretary shall have no claim against the corporation, its estate, or its assets for the amount of such payments, but the Secretary may pay such sums for depreciation as it deems reasonable and such other sums as the court may deem just. The payment of such sums, and compliance with other terms duly imposed by the court, together with the payment of the operating losses, shall be in satisfaction of all claims against the Secretary on account of the operation of such vessels.

(June 29, 1936, ch. 858, title IX, § 908, as added Pub. L. 95-598, title III, § 334, Nov. 6, 1978, 92 Stat. 2680; amended Pub. L. 97-31, § 12(134), Aug. 6, 1981, 95 Stat. 165.)

REFERENCES IN TEXT

The Suits in Admiralty Act, referred to in subsec. (b), is act Mar. 9, 1920, ch. 95, 41 Stat. 525, as amended, which is classified generally to chapter 20 (§ 741 et seq.) of this Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 741 of this Appendix and Tables.

AMENDMENTS

1981--Subsec. (a). Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce".

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 1248. Enrollment in a sealift readiness program

No vessel may receive construction differential subsidy or operating differential subsidy if it is not offered for enrollment in a sealift readiness program approved by the Secretary of Defense.

(June 29, 1936, ch. 858, title IX, § 909, as added Pub. L. 97-35, title XVI, § 1605, Aug. 13, 1981, 95 Stat. 752.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1187b of this Appendix.

SUBCHAPTER XI--FEDERAL SHIP MORTGAGE INSURANCE

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 46.¹

¹ 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)² of this Appendix;

² 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)³ 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;

³ 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 exempted 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 1279¹ 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.

¹ 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^{1/2} per centum, whichever is applicable under section 1274¹ 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^{1/2} per centum, whichever is applicable under section 1274 of this Appendix, of the actual cost of such vessel or vessels.

¹ 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 plantship; (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; ¹ *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;

¹ 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^{1/2} per centum of the cost of such vessel, such obligations may be in an amount which does not exceed 87^{1/2} 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^{1/2} 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^{1/2} 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^{1/2} 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 1279² of this Appendix shall be deposited in the Fund.

² 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^{1/2} 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^{1/2} 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^{1/2} 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^{1/2} 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^{1/2} 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^{1/2} 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 fiduciarily 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^{1/2} 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^{1/2} 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 1279¹ of this Appendix with respect to guarantee or commitments to guarantee made under this section;

¹ 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 1279¹ 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 1279¹ 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^{1/2} 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^{1/2} 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.

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 $3\frac{1}{2}$ 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 $87\frac{1}{2}$ per centum, whichever is applicable under section 1274¹ 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.

¹ 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) ¹ 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^{1/2} per centum, whichever is applicable under section 1274 ¹ 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) ¹ of this Appendix, except that--

¹ 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 ¹ 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^{1/2} 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^{1/2} 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)¹ of this Appendix, (1) all moneys received by the Secretary pursuant to sections 1271 through 1276 and 1279¹ 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 1279¹ of this Appendix with respect to ocean thermal energy conversational 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,¹ 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.

¹ 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.

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^{1/2} 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),¹ 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.

¹ 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

FDC date	State	City	Airport	FDC number	SIAP
05/04/00	TX	Houston	George Bush Intercontinental Airport/Houston.	FDC 0/4632	ILS RWY 8, AMDT 18G. This Replaces FDC 0/4292.
05/05/00	ID	Driggs	Driggs-Reed Memorial	FDC 0/4702	GPS-A, ORIG-A.
05/05/00	IN	Evansville	Evansville Regional	FDC 0/4678	NDB OR GPS RWY 22, AMDT 12.
05/05/00	MO	Fort Leonard Wood	Waynesville Regional Arprt at Forney Field.	FDC 0/4721	GPS RWY 32, ORIG.
05/05/00	OH	Middletown	Hook Field Muni	FDC 0/4746	LOC RWY 23, AMDT 7D.
05/08/00	IN	Evansville	Evansville Regional	FDC 0/4786	VOR OR GPS RWY 4, AMDT 5.
05/09/00	GUA	Agana	Guam Intl	FDC 0/4825	GPS RWY 24R ORIG.
05/09/00	IL	Freeport	Albertus	FDC 0/4819	NDB RWY 6, ORIG-A.
05/09/00	IL	Freeport	Albertus	FDC 0/4820	LOC RWY 24, ORIG-A.
05/09/00	IL	Freeport	Albertus	FDC 0/4821	VOR OR GPS RWY 24, AMDT 6A.
05/09/00	MO	Fredericktown	Fredericktown Regional	FDC 0/4809	RNAV RWY 19, ORIG. This replaces FDC 0/4021.
05/09/00	MO	Fredericktown	Fredericktown Regional	FDC 0/4810	RNAV RWY 1, ORIG. This replaces FDC 0/4054.
05/09/00	MO	Marshall	Marshall Memorial Muni	FDC 0/4833	RNAV RWY 36, ORIG-A.
05/09/00	MO	Marshall	Marshall Memorial Muni	FDC 0/4834	RNAV RWY 18, ORIG-A.
05/09/00	WI	Madison	Dane County Regional-Truax Field.	FDC 0/4827	ILS RWY 18, AMDT 7B
05/10/00	CA	Burbank	Burbank-Glendale-Pasadena	FDC 0/4849	NDB RWY 8 AMDT 2A. This replaces FDC 0/4211 IN TL00-11

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 BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 600

[Docket No. 980812215-0109-02; I.D. 072898D] 648-AK76

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program

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

ACTION: Interim final rule; request for public comments.

SUMMARY: NMFS issues interim final framework regulations specifying procedures for requesting and conducting fishing capacity reduction programs (reduction programs). A reduction program pays harvesters in a fishery with too much fishing capacity either to surrender their fishing permits for that fishery or both to surrender all their fishing permits and withdraw their fishing vessels from all fishing. Reduction costs can be paid by post-reduction harvesters, taxpayers, or others. The intent is to decrease excess harvesting capacity, increase the economic efficiency of harvesting, and

facilitate the conservation and management of fishery resources in each fishery in which NMFS conducts a reduction program.

DATES: This interim final rule is effective June 19, 2000. Comments must be received on or before June 19, 2000.

ADDRESSES: Copies of the Regulatory Impact Review may be obtained from Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. Written comments should be sent to Michael L. Grable at the above address. Comments also may be sent, via facsimile, to (301) 713-1306. NMFS will not accept comments sent by e-mail or the Internet. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this interim final rule should be sent to both Michael L. Grable and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713-2390.

SUPPLEMENTARY INFORMATION:

Background

Many U.S. fisheries have excess fishing capacity. Excess fishing capacity decreases earnings, complicates management, and imperils conservation. To provide for fishing capacity reduction programs, Congress amended the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) by adding section 312(b)-(e) (16 U.S.C. 1861a(b)-(e)). To finance reduction costs, Congress amended Title XI of the Merchant Marine Act, 1936 (Title XI), by adding new sections 1111 and 1112. The Title XI provisions involving fishing capacity reduction loans have been codified at 46 U.S.C. App. 1279f and g.

This action adds a subpart L to 50 CFR part 600 establishing framework regulations for requesting and conducting fishing capacity reduction programs. These framework regulations were published as a proposed rule on February 11, 1999 (64 FR 6854-6869), with a public comment period that ended on April 12, 1999.

While NMFS received numerous comments on the proposed rule (addressed in more detail below), it believes further comment on the revised capacity reduction referenda provisions would be useful.

Comments on Proposed Rule and Responses

NMFS received comments from 24 entities. Most of the comments are from organizations that represent the views of many parties. All but one of the comments supported fishing capacity reduction, although many comments disagreed with some aspects of the proposed rule. The following summarizes the comments and gives NMFS' responses.

Comment Issue 1: Five comments addressed interest rates for loans financing capacity reduction costs.

Three comments said that a reduction loan interest rate 2 percent higher than the interest cost for borrowing loan capital from the U.S. Treasury is unnecessary, burdensome, and counterproductive.

One comment said that the interim final rule should state whether the reduction loan interest rate is fixed or adjustable and that the interest rate projected for reduction planning purposes can change before reduction implementation.

One comment said that there should be no interest prepayment penalties.

Response: A reduction loan interest rate 2 percent higher than NMFS' interest cost is required by the statute (46 U.S.C. App. 1279g).

Reduction loan interest rates depend on prevailing yields on comparable maturity Treasury obligations at the time the U.S. Treasury Department establishes the interest rate NMFS must pay on loan capital borrowed from the U.S. Treasury. The actual interest rate NMFS charges for a specific reduction loan could be higher or lower than the interest rates projected for reduction planning purposes. The projection of an interest rate could occur many months before the disbursement of reduction loan funds. The interim final rule revises the proposed rule to more fully address this issue (see § 600.1012(b) and (c) and the definition of "Treasury percentage" in § 600.1000).

All reduction loan interest rates are fixed rather than adjustable. There is no prepayment penalty.

Comment Issue 2: Ten comments involved the reduction program process.

Six comments said that referenda about industry fee systems should occur earlier in the reduction process. Most believed that, until referenda first demonstrate the fishing industry's willingness to pay for financed reduction programs, fishery management councils (FMCs) will be reluctant to process fishery management plan (FMP) amendments complementing reduction programs and industry will be reluctant to submit reduction bids. Some also believed that industry will be reluctant to prepare business plans until after successful referenda.

Three comments said that the reduction process would be shorter if all its components were concurrent.

One comment said that the process for reduction loans should be kept as simple as possible, or the fishing industry will seek subsidized reduction programs rather than financed ones.

Two comments said that pre-bidding referenda should involve ranges of projected reduction results, with a minimum acceptable level.

Response: NMFS based the proposed rule's process for financed reduction programs on two concepts. First, industry reduction proponents and an FMC should demonstrate their commitment to a reduction program by establishing, at the time of making a reduction program request, everything necessary for prompt and reliable reduction program completion. Second, reduction bidding results need to be known before a referendum asks post-reduction harvesters to commit themselves to repaying a reduction loan.

NMFS acknowledges that FMCs may be reluctant to invest the time and resources necessary to prepare and process FMP reduction amendments, and industry may be reluctant to submit reduction bids, unless referenda have first demonstrated the industry's willingness to pay for financed reduction programs. The interim final rule revises the proposed rule in many places to better address these concerns (see, particularly, § 600.1010).

The interim final rule provides for pre-bidding referenda and, if necessary, a post-bidding referendum as well. The necessary pre-bidding referendum can occur at any time after an FMC requests a reduction program and before NMFS proposes a plan and regulations to implement the program. Each pre-bidding referendum is based on a reduction loan amount not greater than the maximum specified in the business plan being sufficient to reduce at least the minimum amount of fishing capacity specified in the business plan. A post-bidding referendum occurs only if the maximum reduction loan amount is insufficient to reduce at least the minimum amount of fishing capacity.

If an initial pre-bidding referendum occurs before the FMC adopts any FMP reduction amendment necessary, the referendum is based on the FMP reduction amendment that the business plan specifies. If afterwards, the referendum is based on the FMP reduction amendment that the FMC adopts.

If the initial pre-bidding referendum is successful, the reduction process proceeds. If the referendum precedes any FMP reduction amendment necessary, a second pre-bidding referendum is required if, in NMFS' judgment, the adopted FMP reduction amendment differs materially from the FMP reduction amendment that the business plan specifies. A material difference would, for example, be a post-reduction harvesting allocation for

the harvesters who must repay a reduction loan that is less than the allocation specified in the business plan. The second pre-bidding referendum is to determine whether the referendum voters approve an industry fee system despite any such material difference.

If the initial pre-bidding referendum is unsuccessful, the reduction process then either ceases or is suspended pending an appropriate amendment of the business plan.

The interim final rule requires the business plan to specify the maximum amount of a reduction loan and the minimum amount of fishing capacity this must be sufficient to reduce. The interim final rule also requires the business plan to provide guidance about when pre-bidding referenda should occur.

Under the interim final rule, a reduction request from an FMC based on a business plan serves as the FMC's endorsement, in principle, of all aspects of the business plan that depend on the FMC's action (see § 600.1003(g)). Endorsement in principle does not, however, mean that the FMC will eventually vote to recommend implementing the business plan's concept of an FMP reduction amendment. Implementing any FMP reduction amendment necessary remains subject to all the requirements applicable to all other FMP amendments. Endorsement in principle merely means that the FMC has taken whatever action the FMC deems necessary to endorse the business plan (including the business plan's proposed FMP reduction amendment) by requesting NMFS to initiate a reduction program based on the business plan. Subsequent consideration, in accordance with the ordinary Magnuson-Stevens Act process, of the FMP reduction amendment may result either in no FMP amendment or one that differs from the business plan specifications.

Nevertheless, an FMC may not make a reduction request based on a business plan that the FMC does not endorse in principle. If an FMC cannot endorse the business plan in principle, the FMC should not make a reduction request.

If reduction bidding achieves, with a reduction loan not greater than the maximum amount that the business plan specifies, at least the minimum amount of fishing capacity reduction that the business plan specifies, then a post-bidding referendum does not occur. A post-bidding referendum occurs only if bidding does not achieve at least the minimum reduction for not more than the maximum reduction loan.

Any necessary post-bidding referendum is to determine whether the referendum voters approve an industry fee system for a reduction less than the minimum.

This pre- and post-bidding approach should solve several problems. First, the approach should solve the problem of an FMC not wanting to make a large time and resource investment in an FMP reduction amendment without assurance that the industry is willing to repay a reduction loan. The business plan's survey (§ 600.1003(n)(12) in the interim final rule) of potential referendum voters should provide an FMC with enough assurance for the FMC to make a reduction request based upon that business plan. A successful pre-bidding referendum reinforces this assurance before an FMC invests time and resources in an FMP reduction amendment.

Second, allowing a second pre-bidding referendum should solve the problem of an actual FMP reduction amendment that differs materially from the FMP reduction amendment specified in the business plan.

Third, allowing a post-bidding referendum should solve the problem of reduction bidding results that do not achieve at least the minimum amount of fishing capacity reduction that the business plan specifies for a reduction loan whose principal amount is not greater than the maximum that the business plan specifies.

Finally, the approach eliminates the need for a linear processing sequence that precludes concurrent work on different parts of the reduction process. The revision allows the FMP reduction amendment process to proceed concurrently with the rest of the reduction process that occurs before NMFS proposes a plan and regulations to implement a reduction program. All other components of the reduction process, up to NMFS' publication of a plan and regulations implementing each reduction program, may now occur before an FMC prepares and processes, and NMFS approves, an FMP reduction amendment. The FMP reduction amendment must still, however, be in place before NMFS proposes the reduction plan and implementing regulations.

A completed business plan, however, remains essential both to an FMC's reduction request and the pre-bidding referendum that follows. Without a completed business plan, the FMC cannot fully know what it is endorsing in principle, NMFS does not fully know what the FMC and the industry is requesting, and referendum voters do not fully know for what they are voting.

The interim final rule requires that the business plan specify the maximum reduction cost and the minimum reduction that must be achieved for that cost. This achieves the same result as specifying ranges of projected reduction results, with a minimum acceptable level.

Comment Issue 3: Five comments involved payment and collection of the reduction loan repayment fee.

All 5 comments, to one degree or another, said that the proposed rule's fee payment and collection provisions are too costly, burdensome, or complicated.

One comment said that fish buyers in California, Washington, and Oregon collect other fees for state and industry groups, and that the interim final rule should allow the payment and collection of the reduction loan repayment fee to conform to established regional practices.

One comment said that the fee payment and collection provisions provide an incentive for "kickbacks" based on misreported fish deliveries, and that this could change the assumptions upon which accurate catch reporting depends.

One comment said that these provisions do not accommodate fish buyers paying for fish on a periodic, rather than a trip, basis.

One comment said that collecting the fee that repays reduction loans is not the fish buyers' business, and that the fish buyers' cost of collecting the fee could itself be considered an illegal fee under the Magnuson-Stevens Act.

One comment said that, because bank rules about interest bearing accounts vary widely from state to state, some fish buyers might be able to offset some fee collection costs by interest earnings while others might not. The comment said that this violates section 301(a)(4) of the Magnuson-Stevens Act.

One comment said that fee collection audits are unrestricted.

One comment said that fish buyers are the enforcers of fee collection, without protection against fish sellers who might sue them. If a fish buyer deducts the fee over a fish seller's protest, the fish buyer risks the fish seller's legal action. Fish buyers refusing to buy fish from fish sellers who refuse to pay the fee (the alternative to deducting the fee over the fish seller's protest) is inconsistent with the business of buying fish.

One comment said that the proposed rule's provision about state confidentiality requirements not preventing NMFS' access to fish tickets places fish buyers in an impossible position.

One comment said that many fish buyers will be unaware of their fee collection responsibilities.

Response: The proposed rule is a framework rule involving matters common to all reduction programs. Some aspects of a framework rule will apply, without exception, to all reduction programs. Other aspects of the framework rule may be inappropriate for application to some reduction programs in some reduction fisheries. Nevertheless, these aspects provide a framework against which everyone can measure the circumstances of different reduction programs in different reduction fisheries. The rule's fee collection, deposit, disbursement, accounting, record keeping, and reporting procedures are of the latter type. § 253.27(q)(10), § 253.36(f), and § 253.37(h) of the proposed rule provide sufficient opportunity for approaches in each reduction program different from the framework approach. Nevertheless, the interim final rule revises the proposed rule to require business planners to consult with fish buyers before including in their business plan any special circumstances in their reduction fishery that might require some fee provisions different from the framework provisions (see § (n)(9)). Thus, the interim final rule provides opportunity for reduction program to accommodate the circumstances of, and practices, in different fisheries as long as accommodation does not jeopardize the intent and purpose of the framework rule provisions.

There are substantial penalties for misreporting catches and otherwise failing to pay and collect the fees due. The rule's fee accounting and reporting provisions require documentation that provides ample audit opportunity, and NMFS intends to audit sufficiently to ensure compliance.

NMFS believes the time at which fish sellers deliver fee fish to fish buyers is the most appropriate time for the fish sellers to pay and the fish buyers to collect the fee. The interim final rule, however, revises the proposed rule to provide for paying and collecting fees on bonuses at the time the bonuses first become known rather than at the time the fish sellers deliver the fee fish involving the bonuses to fish buyers (see § 600.1013(c)(2)).

The Magnuson-Stevens Act requires fish buyers to collect the fee. Interest earnings on collected fee revenues might allow, depending on state banking regulations, some fish buyers to offset some of the costs of discharging this statutory obligation.

A reduction loan can involve up to \$100 million repaid on a incidental

basis amortized over 20 years by many fish sellers, and collected by many fish buyers, as a small percentage of variable revenue from many fishing trips. This loan collection environment is susceptible to considerable nonperformance and fraud. Due diligence requires audit and, where necessary, enforcement.

Auditing is not, however, unrestricted. The rule restricts audits to those "reasonably necessary...to ensure proper fee payment, collection, deposit, disbursement, record keeping, and reporting." The rule also restricts audits to "reasonable times and places..." NMFS does not intend any greater auditing burden than reasonable due diligence requires for the proper repayment of reduction loans. Audits may either be random (deterrent) or triggered by circumstances that indicate fee payment and collection activities inconsistent with this rule's requirements, but will not be more frequent or burdensome than needed to fulfill due diligence.

NMFS does not anticipate that fish sellers will violate these regulations by refusing to pay the fee. If any do, this does not excuse fish buyers from failing to comply with these regulations, either by collecting the fee over the fish seller's protest or by refusing to buy fish from fish sellers from whom fish buyers are unable to collect the fee as the Magnuson-Stevens Act requires.

The interim final rule does not contain the proposed rule's provision about fish tickets and state confidentiality requirements.

The interim final rule requires fish buyers to maintain the records and to submit the reports specified in § 600.1014(d) (or whatever alternative records and reports might be specified, under § 600.1014(j), in the implementation regulations for each reduction program). If landing records that a state requires contain some or all of the data that § 600.1014(d) requires and state confidentiality provisions do not prevent NMFS' access to the records maintained for the state, then fish buyers can use those records to meet appropriate portions of the § 600.1014(d) requirements. If, however, state confidentiality provisions make those records unavailable to NMFS, then fish buyers will be required to maintain separate records that meet the requirements of § 600.1014(d).

Where it becomes necessary to audit the reports that fish buyers submit in compliance with § 600.1014(d), trip tickets (or equivalent accounting records establishing the pounds of fee fish purchased and the price paid) are essential audit documentation. If, for

any reason, any state law or regulation makes it illegal for fish buyers to keep separate records that involve some or all of the same data as the landing records that the fish buyers keep for state purposes, then a financed reduction program will not be possible unless there is a change in the state law or regulations to give NMFS access to the records necessary for administration of reduction loans. The interim final rule revises the proposed rule accordingly (see § 600.1003(n)(11)(i) and § 600.1014(f) and (g)).

Existing regulations require many fish buyers to have dealer permits, so NMFS often knows who the authorized fish buyers are. The rule also requires each business plan to include information about fish buyers who can, after reduction, reasonably be expected to have fee collection responsibilities. The rule requires NMFS to notify, both by a **Federal Register** notice and by mailed notification to fish buyers of whom NMFS is aware, all fish buyers about their fee collection responsibilities.

Comment Issue 4: Four comments involved exempting reduction requests preceding publication of the proposed rule from some aspects of the interim final rule.

All four comments generally said that various parties had expended much effort and expense on two reduction requests that substantially preceded NMFS's publishing the proposed rule. The proposed rule required the FMCs and the business planners for these two reduction requests to start at the beginning of a process of which they were unaware before NMFS published the proposed rule. Thus, these parties would have to expend additional time and money for the sole purpose of resubmitting their requests to conform with the interim final rule. This may be inequitable, because NMFS assured the parties involved that the lack of a proposed rule would not deter NMFS from processing their reduction requests as far as possible without an interim final rule. The interim final rule should ensure expeditious consideration of these two reduction requests.

Response: On November 27, 1997, the Pacific FMC submitted a request for a financed reduction program in the fishery for Pacific coast groundfish (limited entry trawl fishery). On October 10, 1997, the North Pacific FMC submitted a request for a financed reduction program in the fishery for Bering Sea and Aleutian Islands king and tanner crab. Industry proponents have since prepared business plans for each of these requests. The business planners and the FMCs have already expended considerable effort on these

business plans and reduction requests. Both requests and their acceptances preceded, by many months, the publication of the proposed rule. NMFS agrees that it is counterproductive to now require the FMCs to resubmit these two reduction requests. The FMCs do not, consequently, have to resubmit these two reduction requests in accordance with the process in the interim final rule. However, the business planners and the FMCs will have to submit some additional information required by the interim final rule. After review of both plans and the interim final rule, NMFS will specify this additional information.

Comment Issue 5: Six comments concerned proposed rule provisions that allow financed reduction programs to involve only fishing permits in the reduction fishery, rather than requiring reduction programs to involve all fishing permits held by reduction program participants. These comments were evenly divided between supporting and opposing these provisions.

Three comments supported the proposed rule provisions. These comments generally said that it is impractical and unreasonable to require post-reduction harvesters in reduction fisheries to pay for the cost of reducing fishing permits in non-reduction fisheries, and otherwise agreed with the proposed rule's preamble discussion of this aspect.

Three comments opposed the proposed rule provisions. These comments generally said that reducing only the fishing permits in the reduction fishery causes reduction program fishing vessels to shift their effort from the reduction fishery to any non-reduction fisheries for which the vessels also have fishing permits. The goal of each reduction program should be removing the fishing capacity involved in a reduction program from all fishing rather than just fishing in the reduction fishery. To enable this result, one of these comments said that the interim final rule must define the term "fishery" differently than the Magnuson-Stevens Act does.

One comment said that the proposed rule provisions are inconsistent with the objective in section 312(b)(2) of the Magnuson-Stevens Act because the proposed rule provisions merely shift reduction costs to other fisheries in which reduction participants' vessels might also have fishing permits rather than obtaining the maximum sustained reduction in fishing capacity at the least cost.

Another comment said that all reduction programs should involve

analysis of the reduction programs' impact on non-reduction fisheries and that it is unacceptable and contrary to the Magnuson-Stevens Act for improvements in a reduction fishery to occur at the expense of any other fishery.

Response: The Magnuson-Stevens Act authorizes conducting reduction programs, like fishery management plans, on a fishery-by-fishery basis. Each reduction program must occur within a fishery that meets the Magnuson-Stevens Act's definition of "fishery". This requires each reduction program to occur in "one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics..." and to involve "fishing for such stocks..." The objective in section 312(B)(2) of the Magnuson-Stevens Act relates to each reduction program in each reduction fishery.

While section 312(b)(2)(A) of the Magnuson-Stevens Act authorizes reductions that include both fishing permit revocations and fishing vessel scrappings (or title restrictions that prevent future fishing), section 312(b)(2)(B) also authorizes reductions that are restricted to fishing permit revocations alone.

In a financed program, the post-reduction harvesters in the reduction fishery are paying for fishing capacity reduction. They are retiring excess capacity in their fishery. The Government is simply lending them the money to do this. NMFS should not require a borrower composed of post-reduction harvesters to spend any of the borrower's reduction loan proceeds on reducing fishing capacity that the borrower does not want to reduce. This includes reducing capacity in non-reduction fisheries, which benefits parties other than the borrower.

In a subsidized program, however, the taxpayers are paying the cost of reducing fishing capacity. The taxpayers can choose, through their Government, the fishing capacity reduction alternative that provides the broadest fishery conservation and management benefit. This may include withdrawing fishing vessels (either by scrapping them or imposing title restrictions that prevent their fishing) and revoking all fishing permits associated with the scrapped vessels that are not individually transferable. Individually transferable fishing permits in non-reduction fisheries could not, however, be revoked as part of such a reduction program (because these permits may be used by vessels other than the vessels

whose fishing is prevented by scrapping or title restriction). Revoking individually transferable fishing permits in non-reduction fisheries would require separate reduction programs in the non-reduction fisheries involved.

A financed reduction program is, in essence, a contribution from post-reduction harvesters in a reduction fishery to fisheries conservation and management in that fishery. It is a contribution that is in the best economic interest of the post-reduction harvesters, but, nonetheless, it is their voluntary contribution. NMFS should not limit the opportunities for satisfying the statutory purposes by requiring post-reduction harvesters willing to repay the cost of buying and retiring fishing permits in their reduction fishery to also pay the cost of buying and retiring fishing permits in non-reduction fisheries. It is not in the taxpayers' interest to do so, because the net effect may be to limit most reduction programs to those whose entire cost the taxpayers bear. This is true because harvesters in reduction fisheries are generally unlikely to approve industry fee systems in reduction fisheries for repaying reduction loans that benefit harvesters in non-reduction fisheries.

In the interim final rule's revision of the proposed rule, business planners have the option of reducing only fishing permits in the reduction fishery or both doing that and withdrawing fishing vessels by scrapping or title restriction. The latter enables the revocation of all permits, except individually transferable ones in non-reduction fisheries, associated with withdrawn vessels. Although business planners may voluntarily choose to withdraw fishing vessels, either by scrapping them or imposing title restrictions that prevent their fishing, FMCs may not require business planners to do so.

There is, however, one exception where a financed reduction program should always include the reduction of fishing permits that involve species other than those in the reduction fishery. That exception is fishing permits that merely allow the incidental catch of non-reduction species during directed fishing for reduction species. Once the directed fishing permits are bought and retired, the incidental fishing permits are of no further use. In addition to being useless, the incidental fishing permits were always a corollary of the directed fishing permits, and should be revoked along with the directed fishing permits. Accordingly, the interim final rule revises the proposed rule in this respect (see § 600.1011(d)).

The interim final rule also revises the proposed rule to require business planners and FMCs to consider the effect on non-reduction fisheries of financed reduction programs that involve only fishing permits in the reduction fishery (see § 600.1003(l) and § 600.1003(n)(9)).

NMFS notes that there may be other potential alternatives to deal with this situation. One alternative might be combining fisheries for fishery conservation and management purposes, which might then allow a financed reduction program to relate to the combined fishery rather than just to one of the fisheries. Another alternative might be conducting a separate financed (indeed, even subsidized) program in a fishery that a reduction program in another fishery affects. Both these potential alternatives would avoid one group of post-reduction harvesters paying for another group's benefit.

Comment Issue 6: Two comments concerned post-reduction fish allocations in financed reduction programs that do not involve all the harvesters in the reduction fishery. For example, say, a reduction fishery involves both longline and pot gear, but the financed reduction program in that reduction fishery involves only fishing permits for the longline gear.

One comment supported, and one comment opposed, allocations of this type and the proposed rule's treatment of this issue. The supporting comment said that allocation of the post-reduction resource protects the investment of the post-reduction harvesters who must repay a reduction loan as well as the interest as the Federal Government in ensuring the reduction loan's repayment. The opposing comment said that the allocation might damage the operators of non-reduction fishing gear who may have been less responsible for overfishing and, thus, creating the crisis in the fishery to which the financed reduction program relates.

Response: NMFS believes post-reduction allocation is essential in financed reduction programs that involve fewer than all the harvesters in a reduction fishery.

Assume that a fishery is composed of "A" gear fishermen and "B" gear fishermen, each group has a pre-reduction allocation equal to 50 percent of the fishery's total allowable catch, and the "A" gear fishermen encumber themselves with a 20-year debt to pay for buying and retiring 50 percent of the "A" gear fishing permits. Unless their post-reduction allocation stays at 50 percent of the fishery's total allowable catch, there is no economic incentive for the "A" gear fishermen to pay for

buying half of the pre-reduction "A" gear fishing permits. Similarly, neither does the government have the requisite assurance that up to 5 percent of the "A" gear fishermen's post-reduction trip proceeds will be sufficient to repay the reduction loan over a 20-year period. Without post-reduction allocations, there is little economic incentive either for the reduction borrowers to borrow or for the reduction lender to lend, and the taxpayers may, consequently, be called upon to pay for most reduction programs of this type.

Moreover, it is inequitable for "A" gear fishermen to pay for a benefit that "B" gear fishermen receive without payment. Business plans for, and FMPs complementing, financed reduction programs that involve only one of several gear types within a reduction fishery must adequately address this critical issue sufficiently to provide economic incentive both for reduction borrowers and the reduction lender.

Financed reduction programs cannot usefully address the possibility that allocations to gear operators who some perceive as less responsible harvesters may have impacted allocations to other gear operators who some perceive as more responsible harvesters.

Comment Issue 7: Two comments involved consultation with fishing communities and other interested parties during reduction program development. One comment pointed out, in the context of reduction programs that involve only fishing permits in a reduction fishery, that the law requires this consultation. The other comment said that, if NMFS consults with conservation organizations (and other interested parties who are, presumably, not directly involved in the reduction fishery), "those entities must have their own substantiated fishery and economic data base [sic] to be considered a valid consulting participants [sic], or we will challenge their participation. No more rhetoric of how many people they represent, they will deal in facts and not personal agenda generalities."

Response: The statutory reduction provisions require consultation "as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any..." reduction program.

Comment Issue 8: One comment addressed the potential for the eventual replacement of the fishing capacity that reduction programs remove from reduction fisheries (and other comments

also indirectly involved this issue). The comment expressed concern about the potential for post-reduction fishing capacity to gradually expand through the post-reduction adoption of new technology and the pre-reduction existence of latent fishing capacity. This comment said that analysis of the Fishing Capacity Reduction Demonstration Program and the Fishing Capacity Reduction Initiative in the Northeast multispecies fishery suggests that the existence of significant latent fishing capacity will result in little or no long-term reduction in the multispecies fishery's fishing capacity.

Response: The reduction programs in the Northeast multispecies fishery were authorized under the Interjurisdictional Fisheries Act rather than under the Magnuson-Stevens Act. The Interjurisdictional Fisheries Act does not address the issue involved in this comment, but the reduction provisions of the Magnuson-Stevens Act do. The reduction provisions of the Magnuson-Stevens Act require FMPs for reduction fisheries to prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet (16 U.S.C. 1861a(b)(1)(B)(i)).

The proposed rule addresses this statutory provision by requiring each reduction request (and, in the instance of financed reduction programs, each business plan) to demonstrate how the FMP complies with this statutory provision or will comply with it after an FMP reduction amendment. The interim final rule continues this requirement.

Comment 9: NMFS should evaluate the efficacy of each reduction program two years after the reduction program's implementation. The evaluation should help identify areas where capacity leaks back into the fishery and will help in designing future reduction programs. It will take a few more reduction programs to iron out the difficulties in designing efficient reduction programs, and post-program evaluation will be critical.

Response: NMFS agrees. NMFS will include post-reduction evaluations as part of the SAFE reports under 50 CFR 600.315(e).

Comment 10: Reduction is an extremely valuable tool to remove capital from fisheries in a rational and orderly fashion. Many of the proposed rule's elements will allow capacity reduction to move forward.

Response: NMFS agrees.

Comment 11: The proposed rule does not define "capacity". If this is intentional in order to provide

flexibility in constructing reduction programs this should be stated. The proposed rule's preamble uses "excess capacity", but does not define the term. "Excess capacity" could mean either that there are more vessels than necessary for maximum economic efficiency or that the capacity exceeds the resource's ability to support the capacity. The use of "full potential fishing capacity" highlights this problem. Defining these terms has enormous implications for interpreting the regulations and these definitions should undergo public comment before their adoption. Alternatively, the interim final rule should state that definitions for these terms will be included in the program implementation regulations.

Response: The term "excess capacity" did not appear in the proposed rule (the term appeared only once in the proposed rule's preamble).

The statutory term "full potential fishing capacity" appeared once in the proposed rule (in the definition of the term "non-replacement requirement") and once in the proposed rule's preamble.

The appropriate context in which to make distinctions between concepts like "more vessels in a fishery than are necessary for maximum economic efficiency" and "capacity in the fishery...[exceeding] what the resources can support" is implementation of the Magnuson-Stevens Act's provision that authorizes a reduction program only if the reduction program "is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery." Each reduction program must meet one of these criteria. For the sake of flexibility, NMFS does not qualify these criteria further. Each reduction request must make its best case on the merits of the request's own particulars.

Comment 12: "Reduction fishery" traditionally refers to fisheries that convert fish to meal and/or oil. Substitute "buyback fishery" for "reduction fishery".

Response: "Fishing capacity reduction" is the operative statutory term. NMFS chose, for brevity's sake, to define a fishery in which reduction is proposed or occurs as a "reduction fishery" rather than a "fishing capacity reduction fishery". The interim final rule defines the term "reduction fishery" sufficiently to distinguish this term from a fishery involving the production of fish meal and oil.

Comment 13: The interim final rule should "include criteria that will be used to determine..." a reduction loan's

repayment period. A repayment period can be longer than the maximum 5 percent repayment fee might otherwise indicate.

Response: The amount annually required to service debt is a function of principal, interest, and the repayment term. Business planners must propose an annual reduction loan debt service burden that post-reduction harvesters are likely to be willing to undertake in return for a finite reduction in fishing capacity. Harvester referenda must subsequently approve this. Subject to the statutory constraints (maximum 5 percent fee and maximum 20-year repayment period), NMFS will accommodate each business plan's debt service proposal unless the circumstances of the reduction program involved clearly warrant doing otherwise.

Comment 14: Failure to address how in-kind compensation (e.g., dock space, ice) affects the delivery value used to calculate the reduction loan repayment fee could result in "creative reimbursement arrangements to avoid fees." The interim final rule should avoid this result by addressing this issue.

Response: The fee rate required to repay reduction loans is applied to "delivery value". The proposed rule's definition of "delivery value" excludes in-kind compensation because "delivery value", as defined in the proposed rule, is the "full, fair market value...in an arm's length transaction..." Full, fair market value in an arm's length transaction cannot, by definition, include in-kind compensation. In-kind compensation cannot, consequently, be used to avoid the fee. Nevertheless, the interim final rule revises the proposed rule's definition of "delivery value" to clarify that the term includes "the value of in kind compensation or all other goods or services exchanged in lieu of cash." (see the definition of "delivery value" in § 600.1000).

Comment 15: The proposed rule's definition of "fee fish" requires fishing vessels in a post-reduction fishery to pay the reduction loan repayment fee on fish harvested incidentally to the targeted reduction species. The definition of this term should allow each reduction program to define the "fee fish" that will be used to calculate the fee. Some fisheries may have an incidental catch of "fee fish", and the interim final rule should "clearly state that incidental catches in non reduction program fisheries are not subject to the fee unless those fisheries are included in the referendum for a financed reduction program."

Response: The term "fee fish", as defined in the interim final rule, means all fish harvested from the reduction fishery. The term fee fish excludes fish harvested incidentally while fishing for fish not included in the reduction fishery. The term "reduction fishery", as defined in the interim final rule, means the fishery or portion of a fishery to which a program applies. The reduction fishery must specify each included species, as well as any limitations by gear type, size of fishing vessel, geographic area, and any other relevant factor. Except in extraordinary instances, the interim final rule's intent is to limit fee fish to those that are directly rather than incidentally harvested.

Comment 16: The proposed rule requires a reduction request to list all parties who are authorized to fish in the proposed reduction fishery and to specify the catch allocated to those parties for the past five years. The proposed rule also requires a business plan to analyze the proposed reduction loan's cost effectiveness based on the best historical fishing revenue and expense data available in the reduction fishery. NMFS is a likely source for this information, but these data are considered confidential at the individual fishing vessel level required by the regulations. The regulations in 50 CFR 600 Subpart E state that this type of information can only be released to NMFS employees or contractors, state employees, and Council staff or contractors. Thus, business planners will not have access to this information. The interim final rule should address this by requiring NMFS to provide, in an aggregate form, the data business planners need.

Response: The proposed rule intends catch allocation data to be aggregate data for all parties authorized to fish in the reduction fishery rather than individual data for each such party. The interim final rule revises the proposed rule to make this intent clearer (see § 600.1003(j) and § 600.1005(f)).

Section 253.27(q)(5)(1) of the proposed rule merely requires that business plans include the "Best historical fishing revenue and expense data (and any other relevant productivity measures) available in the reduction fishery." This neither requires these data to be provided at the individual fishing vessel or fishing permit level nor requires those data to be identified with specific fishing vessels or fishing permits. The interim final rule revises this aspect of the proposed rule to clarify that NMFS seeks the "best and most representative

historical...data... available..." (see § 600.1003(n)(5)(l)).

NMFS does not know, in every fishery that may become the subject of a reduction request (which includes fisheries managed by states), who may have the best available data. NMFS may have these data for some fisheries, but may not have them for others. The fishing industry itself generally is the source of these data, and, if adequate data have not been elsewhere gathered, business planners must arrange to make available sufficiently representative data from the industry in order to make the business planners' case.

This aspect of the rule does not require NMFS to violate data confidentiality, and NMFS intends, upon request, to make available to business planners, in a way that does not violate data confidentiality, whatever useful data NMFS has.

Comment 17: The proposed rule requires the FMCs to provide the names and addresses of fishing permit holders authorized to fish in a reduction fishery, but NMFS (as the permitting authority) has the most current information and should supply the information itself.

Response: NMFS has these data for fishing permits in Federal fisheries. Nevertheless, the referenda aspect of the statutory reduction provisions requires NMFS, "in consultation with the FMC..." to "identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the..." (16 U.S.C. App. 1861a) reduction. The proposed rule was premised on the assumption that an FMC would ask NMFS for the data needed to complete this aspect of a reduction request, examine the data NMFS provided, and, where necessary, consult with NMFS about any aspect of the data before confirming the data by including them in a reduction request to NMFS. NMFS continues to believe this is the most appropriate approach. Moreover, reduction programs can involve state, as well as Federal, fisheries, and NMFS may not have these data for fishing permits in state fisheries.

The interim final rule revises the proposed rule to clarify that NMFS is a source of Federal fishing permit data (see § 600.1003(i) and § 600.1005(e)).

Comment 18: The proposed rule requires the FMCs to provide the names and addresses of likely post-reduction fish buyers, but NMFS has this information in NMFS' dealer permit database and should, consequently, remove this requirement.

Response: The proposed rule requires business planners, not FMCs, to provide this information (although FMCs must include business plans with reduction

requests). NMFS may not always have these data even for all Federal fisheries, let alone state fisheries. Where NMFS has these data, however, NMFS will be pleased to supply the data to business planners for their review, (where appropriate) revision, and inclusion in their business plans. Where NMFS does not have these data, business planners must produce the data for inclusion in their business plans.

Comment 19: Business planners must be able to gauge the amount of time NMFS will take to implement reduction. The regulations should specify a maximum time for the agency to do this.

Response: NMFS will process reduction requests as quickly as NMFS can, but cannot specify time limits for doing so.

Comment 20: Reduction amendments to FMPs may not always be necessary to accommodate reduction because "some Councils may be able to adjust management plans through a framework adjustment rather than a full plan amendment." The interim final rule should change "reduction amendment" to "reduction amendment or framework adjustment."

Response: The interim final rule revises the proposed rule's definition of the term "reduction amendment" to include framework adjustments (see the definition of this term in § 600.1000).

Comment 21: In some cases, latent fishing permits may be held by parties who do not own fishing vessels. The basis of the referendum voter lists should be explained ("in particular, whether it is based on vessels or permits"). The proposed rule "does not state if a reduction program could apportion voting rights based on landings, permit categories, days-at-sea usage, or other criteria." Referenda results "may require as much as one-third of the industry to fund a program they oppose." This could both be unfair and make designing successful reductions difficult. In a fishery where the few catch most of the fish, the many who catch few of the fish could force the former into a reduction they oppose. (The example given is a 100 permit fishery where 20 percent of the fishing permit holders catch 80 percent of the fish). "The interim final rule should clearly state how voting rights are apportioned...[and should allow apportionment] based on relative criteria determined by the designers of the program." The proposed rule does not specify what happens if an eligible voter is inadvertently omitted. The interim final rule should provide for an appeal process prior to referendum ballot distribution.

Response: Referenda voters under the statutory reduction provisions are "permit or vessel owners who would be affected by the program..." The rule mirrors the statutory language by including either fishing vessel owners or fishing permit owners as potential referenda voters. Nevertheless, because reduction programs can occur only in limited access fisheries, NMFS believes referenda voters will always be those who hold fishing permits at the time of the referenda.

The proposed rule requires each reduction implementation plan to include the names and addresses of all parties eligible to vote in a referendum. The interim final rule, however, revises the proposed rule to allow referenda before reduction implementation plans. This requires public comment about voter eligibility to occur earlier in the reduction process. Consequently, the interim final rule also revises the proposed rule to make the names and addresses of eligible voters subject to public comment by including them in the **Federal Register** notice that NMFS publishes when NMFS accepts a request for a financed reduction program (see § 600.1003(i) and § 600.1004(a)).

During the proposed rule's formulation, NMFS considered the possibility of apportioning referenda votes according to various criteria. NMFS believed, however, that the most equitable approach in the greatest number of cases is a one fishing permit/one vote rule. NMFS still believes this. NMFS believes that the concern in this comment might be better addressed by an FMC. This Council, by refusing to request a reduction program (based on a business plan that allows the many who catch little to force a reduction of their fishing permits on the few who catch much) unless it appears to be in the best conservation and management interest of the reduction fishery and in the best economic interest of all post-reduction harvesters in the reduction fishery. However, NMFS does not, for a variety of reasons, anticipate that this hypothetical situation will often occur. Initiating a financed reduction program requires NMFS, for example, to determine that post-reduction harvesters will be able to repay the reduction loan. If, prospectively, the cost of buying 80 percent of the fishing permits that produce 20 percent of the fish were so high that the remaining 20 percent of fishing permit holders could not, with 20 percent more fish to harvest, reasonably afford to repay that cost over 20 years at a maximum fee limited to 5 percent of ex-vessel landings, then NMFS could decide not to initiate the reduction program.

Comment 22: The interim final rule should address the impact of fishing vessels or fishing permits being sold, bankruptcies, and corporate dissolutions during the interim between bid acceptance and actual fishing capacity reduction.

Response: Bids are irrevocable offers. NMFS' acceptance of bids creates reduction contracts that entitle NMFS to specific performance of the contract obligations. This is as far as NMFS can reasonably go to ensure that reduction contracts culminate in the reduction results upon which referenda are based. NMFS will, as a matter of course, take whatever legal action may be available to NMFS to enforce specific performance of reduction contracts, but cannot predict the outcome of hypothetical future events. NMFS realizes that some circumstances (e.g., bankruptcy) could conceivably delay or prevent NMFS' enforcing specific performance, but NMFS will have to deal with these circumstances as they present themselves during the conduct of each reduction program. Nevertheless, the interim final rule revises the proposed rule to more specifically address the impact of these potential occurrences (see § 600.1011, particularly § 600.1011(f) and (g)).

Comment 23: "There may be a long period between bidding and actual implementation of the program. While at some point the bidders must commit to participation...they should...[be able to] withdraw up to the point...referendum ballots are prepared."

Response: The proposed rule requires NMFS immediately after bid closing to accept bids, notify bidders, and conduct a referendum.

The proposed rule also requires NMFS to tally all ballots and notify all referendum voters, within seven business days after the last day for receipt of ballots, of the referendum results.

Additionally, in response to other comments about the proposed rule, the interim final rule revises the proposed rule to restrict post-bidding referenda to situations in which bidding results are insufficient for the maximum reduction loan amount specified in the business plan to reduce the minimum amount of fishing capacity specified in the business plan (see § 600.1010(c)).

NMFS will do everything possible to keep the elapsed time between bid closing and actual reduction as short as possible. NMFS fully realizes the commercial necessity of doing so.

NMFS' reduction experience in the Northeast multispecies fishery demonstrates that irrevocable bids are essential to effective reduction. Irrevocability will limit bidding to fishing permit or fishing vessel owners who are serious about reduction. This will also prevent the situation in which bid results that initially conformed with a business plan's capacity reduction specifications become nonconforming because of subsequent bid withdrawals.

Comment 24: Invitations to bid "should include projections of the benefits of capacity reduction on the management plan for the subject species, notice of possible capital gains tax liabilities, and other limitations such as to CCF contributions. This information may not be readily apparent to permit holders."

Response: The reduction plan that NMFS publishes in the **Federal Register** will, for each financed reduction program, "describe in detail all relevant aspects of implementing..." each reduction program. NMFS believes the reduction plan may be the better place to discuss, if appropriate, any matters like those involved in this comment. Invitations to bid are contractual in nature, and NMFS believes they should focus only on contractual matters.

Comment 25: The interim final rule "should specify that NMFS will follow established standards for conducting referenda." The proposed rule does not specify that voting would be conducted by secret ballot, but the interim final rule should.

Response: NMFS does not know to what standards this comment refers. The interim final rule revises the proposed rule to clarify ballot confidentiality (see § 600.1010(d)(10)).

Comment 26: Where reduction programs involve withdrawing fishing vessels from fishing, the proposed rule requires state registered fishing vessels to always be scrapped (rather than either being scrapped or having their titles restricted). This complicates reduction programs involving both Federally registered and state registered fishing vessels, and may increase reduction cost or put owners of state-registered fishing vessels at a disadvantage. Some states may have the ability to impose title restrictions that will prevent the future use of state-registered fishing vessels in other fisheries. Fishing vessels not required to be scrapped should not be allowed to be sold to other countries if they exacerbate overcapacity in (presumably) any other fishery in the world. "Vessels should also not be allowed to be sold to foreigners and then enter a fishery in

U.S. waters that may not be subject to U.S. jurisdiction."

Response: Although some states may have this title-restriction ability, NMFS has no way of ensuring that these states will enforce such title restrictions for as long as the fishing vessels exist. Moreover, little may prevent a fishing vessel owner whose fishing vessel title has been restricted in one State from re-registering the vessel in another state that cannot or will not similarly restrict the vessel's title. Federal title restrictions for Federally-documented fishing vessels are effective for reduction purposes, but state title restrictions for state-registered fishing vessels may not always be effective.

For the reasons stated in the preamble to the proposed rule, NMFS does not believe it should, for fishing vessels involved in financed reduction programs, impose any non-statutory use restrictions. No foreign country need allow these fishing vessels to be registered under the country's national flag or harvest fisheries resources under the country's national jurisdiction if the country believes that this registration is inconsistent with: the country's economic interests, the country's fisheries conservation and management responsibilities, the country's obligations under treaties or international law, or any other aspect of the country's sovereign affairs. Finally, all vessels fishing in U.S. waters are subject to U.S. jurisdiction.

Comment 27: The interim final rule should state that reduction loan repayment is the only basis for post-reduction fee increases. The interim final rule should "describe the criteria NMFS will use to increase the fee amount rather than extend the period of the payback... This should include a determination that the increased fee will not result in a significant impact on ...[post-reduction fishermen or communities]."

Response: The only statutory authority NMFS has for any reduction fee (including the subsequent increase of an initial fee) is repayment of a reduction loan. Absent specific circumstances that clearly warrant the contrary, NMFS has no particular preference, in the instance of a reduction loan whose initial maturity was shorter than the statutory maximum, for either fee increases or longer repayment periods. NMFS will certainly attempt to avoid significantly adverse effects on post-reduction harvesters and fishing communities, but, where actual gross revenue experience in a reduction fishery clearly indicates the projected need for a fee increase in order to repay a reduction

loan within the maximum maturity, NMFS is obliged to increase the fee up to and including the maximum fee.

Comment 28: Harvesters base their referenda votes on the fee rate projected to be necessary to repay the reduction loan. Additional fees during the time that post-reduction harvesters are paying the reduction loan repayment fee may become an economic burden. The interim final rule should prohibit the adoption of additional fees (e.g., for observer programs, for research or enforcement costs) during the period the industry is paying back reduction loan.

Response: Neither the reduction framework rule nor reduction regulations implementing any reduction program can control matters not pertinent to fishing capacity reduction. Fees involving matters other than the repayment of reduction loans may become necessary or advisable at some time during the 20 years during which reduction loans are repayable. While NMFS will always attempt to avoid fees that have significant adverse impacts, neither the reduction framework rule nor reduction program implementation regulation can prohibit whatever non-reduction fees may become necessary or advisable in the future. Furthermore, a reduction program should make the fishery economical and paying reduction fees should not be overly burdensome.

Comment 29: The proposed rule's requirement that the fishing industry submit business plans and the FMCs make certain other submissions places an enormous burden on the industry and the Councils—or, for state requests, on the states—to prepare capacity reduction programs. This shifts the burden of preparation from the Secretary to the Council and the industry. This is a shift that has not been accompanied by an increase in Council resources. Business plans should not always be required. The interim final rule should allow flexibility in determining the lead authority for the preparation of a financed reduction program or, alternatively, NMFS should immediately identify resources that will be made available to Councils to meet the requirements imposed by the regulation.

Response: For the reasons stated in the preamble to the proposed rule, NMFS believes that the business plan requirements appropriately place, on a reduction's industry proponents, the burden of developing proposals for financed reduction programs. NMFS realizes that business plans require industry to undertake a large effort. This is, however, no different from planning

for other business investments. NMFS views financed reduction programs as post-reduction harvesters making business investments in their economic future by retiring some of their competition, thereby increasing their harvests of finite natural resources. NMFS can lend post-reduction harvesters the money required to make this investment. As a lender, however, it is not appropriate for NMFS to do the business planning that may determine whether the investment succeeds or fails. Moreover, no one is more qualified to do this business planning than the harvesters affected by the plan and who will be required to mortgage, in effect, up to 5 percent of their future gross revenue over as much as 20 years to repaying the reduction investment's cost. Reduction planning is expensive, but so is most business planning. Reduction planning may, however, from time-to-time be eligible for grants. The Saltonstall-Kennedy Fisheries Research and Development Program's fiscal year 2000 grant cycle includes reduction planning.

Although FMCs have the lesser burden of reviewing, rather than preparing, business plans, the burden is one that cannot reasonably be avoided. It is the FMCs' responsibility to manage and conserve the national fisheries. Determining if a reduction program will assist in this is integral to an FMC's mandate. The reduction framework rule is not the proper venue for addressing FMC personnel or resource matters.

Comment 30: "By failing to list the four possible funding sources included in the statute, the proposed rule sends a strong message that reduction programs must be industry funded. The interim final rule should clearly identify possible funding sources and ...emphasize that industry funding is only one way to finance a reduction program."

Response: Financed reduction programs, in which the direct beneficiaries of a reduction program repay the programs' cost, are the preferred way of funding most reduction programs. The proposed rule, however, also equally addressed subsidized reduction programs, in which the taxpayers or other contributors fund reduction program costs. These are the only two basic methods of funding reduction program costs. Under the proposed rule, if any portion of a reduction program's cost is funded by a reduction loan, the reduction program is a financed reduction program. All other reduction programs are subsidized reduction programs, even though three different statutory funding sources are included in this category: (1)

appropriations under the reduction provisions of the Magnuson-Stevens Act, (2) appropriations under the Saltonstall-Kennedy Act, and (3) contributions from States or other public or private sources. In the first 2 funding sources for subsidized reduction programs, Federal taxpayers provide the subsidy; in the third, State taxpayers or other public or private entities provide the subsidy. There appears to be no functional reason for the reduction framework rule to separately address the 3 different sources of subsidized funding.

Comment 31: Different industry groups may present competing business plans to the FMCs. The proposed rule does not provide criteria for deciding what industry groups have standing. "Do the FMCs decide which proposals are forwarded to the Secretary for review? How will specific reduction proposals be compared and how will the choice be made between them?" The interim final rule should allow the FMCs to decide what reduction request to forward to NMFS, but should clearly explain the criteria the FMCs should consider in making this decision.

Response: NMFS believes it is best to leave this to the FMCs' discretion. NMFS cannot, in a fishery subject to an FMC's jurisdiction, undertake a reduction program unless the FMC first requests NMFS to do so. Consequently, the FMCs have discretion to entertain reduction proposals from whatever industry reduction proponents the FMCs deem appropriate. The FMCs may reject proposals, merge or consolidate proposals, or accept proposals as submitted. If the industry proponents of a financed reduction program and the appropriate FMC cannot come to agreement about a prospective reduction program, it makes little sense for the FMC to request a financed reduction program. In financed reduction programs, NMFS believes the FMCs should defer to representative business planners who make a strong case for increasing the economic efficiency of post-reduction harvesters in the reduction fishery and, most particularly, for the widespread industry support that successful referenda require. Proposals for financed reduction programs that do not potentially enjoy widespread industry support will fail and waste much time, effort, and resources.

Comment 32: Reduction "is important for the preservation of natural resources and the economic stability of American fisheries."

Response: NMFS agrees.

Comment 33: The requirement that a proposed reduction be lawful at the time of reduction must be made clear.

No person or government body can guarantee what will be lawful in the future. Future judicial interpretation is always an unknown. As long as a proposed reduction is not known to be unlawful at the time it is requested, all such requirements should be deemed satisfied.

Response: All reduction programs will be lawful at the time of their occurrence, and NMFS agrees that no one can guarantee what will be lawful in the future.

Comment 34: The proposed rule is sufficient for fisheries under Federal jurisdiction. For state-managed fisheries, however, it would be useful to have a sample request and business plan accessible at NMFS' web site.

Response: The proposed rule outlined the required contents of reduction requests and business plans for both Federal and state fisheries. NMFS does not have any samples that NMFS could post at NMFS' web site. NMFS is, however, willing to advise all parties about reduction in any appropriate way NMFS can.

Comment 35: The proposed rule "has been thoughtfully and thoroughly developed..." and "has great merit and practical application ..." to the salmon driftnet and purse seine fishery in Bristol Bay, Alaska.

Response: NMFS notes this comment.

Comment 36: "In some cases...industry-funded license reductions may represent the only viable alternative to achieving needed reductions of capacity. In complex fisheries, overcapacity and inadequate management in any major fishery can lead to adverse consequences for other fisheries."

Response: NMFS agrees.

Comment 37: Where fishing permit reductions involve Bristol Bay and Chignik, the number of fishing permits bought back from local residents must be proportional with the number of fishing permits bought back from parties who do not reside in Alaska. 1,325 Bristol Bay salmon fishing permits were initially issued to residents of the Bristol Bay and Chignik watershed region. Today, only about 900 of these remain owned by local residents. Each fishing permit sold to non-residents of the local area results in the loss of 2 crewmen jobs from the local economy. This devastates the local economy.

Response: A framework rule involving matters common to all reduction programs is not the appropriate place to address this matter.

Comment 38: The "technical requirements for information ...[should not be] implemented in a way that the available databases and their managers

cannot accommodate. Flexibility to meet the data variability and personnel constraints should be clearly provided.”

Response: It is not clear to what “technical requirements for information” this comment related. Requiring unavailable data is nonfunctional. The interim final rule is a framework rule common to all reduction programs, and NMFS will accommodate specific data or technical information circumstances that do not reasonably allow individual requests for reduction programs to comply with the framework rule. The interim final rule revises the proposed rule to provide flexibility in this and other respects (see § 600.1001(f)).

Comment 39: Reduction planners (either industry business planners or Government reduction planners) will be unqualified to fully understand fisheries complexity and to “comprehensively formulate a feasible...plan.” Theoretical reduction plans might not achieve the intended purpose, and might have unplanned impacts on “the permit holder, vessel owner, financiers, and buyers (fish fee collectors)...” Experience demonstrates that “decisions are reached to appease political agendas, therefore, constituents of the fisheries will not take a plan or program at face value.” Industry members will incur substantial expense in analyzing reduction plans. Reduction plans will involve a major economic impact on small fishery businesses. The “massive economic data that will be required...” may be nonexistent.

Response: Financed reduction programs are based on business plans that the fishing industry itself develops. When FMCs request financed reduction programs, they must base their requests on those business plans. If NMFS undertakes financed reduction programs, NMFS must, to the greatest extent possible, base these programs on those business plans. Moreover, all fishing permit holders or fishing vessel owners affected have the opportunity, through a referendum, to approve or reject the business plans upon which financed reduction programs are based. A financed reduction program is not possible unless at least two-thirds of those voting in a referendum approve the fee necessary to repay a reduction loan.

Subsidized reduction programs are based on implementation plans that NMFS develops from general FMC recommendations. The rule provides ample opportunity for the views of all affected parties to be heard and duly considered.

Whether to offer one’s fishing capacity for reduction in either a

financed or subsidized reduction program is the voluntary decision of each fishing permit holder and/or fishing vessel owner.

Comment 40: A business plan should be subjected to a referendum of fishing permit holders and fishing vessel owners. Additionally, the fish buyers that are responsible for collecting the fee that repays a reduction loan should vote in a referendum about (presumably) the “fee collection, disbursement, and accounting...” aspects of the reduction. Moreover, a referendum committee of fishing vessel and fishing permit owners and fish buyers should review the results of all referenda involving financed reduction programs “to alleviate [sic] any questions by the fishery as to the valid tally of support or non-support...” A subsidized reduction program should also be subjected to a referendum of fishing permit and fishing vessel owners.

Response: The Magnuson-Stevens Act reduction provisions authorize referenda only for fee payers (fish sellers), not fee collectors (fish buyers). Fish buyers pay no fee, and cannot vote in referenda about fee payment. The statutory reduction provisions do not authorize referenda for subsidized reduction programs, where no one either pays or collects a fee. Those provisions do, however, require NMFS to consult with fish sellers, fish buyers, and all other affected parties through the development and implementation of subsidized reduction programs.

NMFS is the referendum authority under the statutory reduction provisions, and NMFS believes it can competently exercise this authority. NMFS does not, consequently, perceive a need for fish-seller and fish-buyer committees that will review referenda results. Moreover, the fact that referenda may sometimes follow irrevocable bidding precludes any referenda review or collaboration that lengthens the time between the submission of irrevocable bids and completing the reduction programs to which the bids relate.

Comment 41: It is good “that industry is expected to pay for...[reduction] in the long run.”, but landing taxes are already high (“nearly 10 percent off the top for salmon in

Alaska...”) This, combined with the high cost of business and depressed markets, threatens the survival of many family fishing businesses. Further landing taxes should be minimal. As an alternative, consider putting “a large tax [25 percent or more] on the sales of permits.”

Response: In financed reduction programs, the industry’s business plans project the amount by which fishing

capacity is reduced and the prospective fee rate necessary to pay for that reduction. Fee rates are based on post-reduction gross revenue that can only be projected over the life of the reduction loans, but all business is planned on the basis of future income that can only be projected. For a financed reduction loan to be possible, affected fishing vessel or fishing permit owners must vote in a referendum to approve the fee necessary to repay a reduction loan of a certain maximum amount whose disbursement in the form of reduction payments will reduce fishing capacity by a certain minimum amount. Business planners are unlikely to suggest a fee higher than post-reduction producers are reasonably likely to be able to pay, and, in the event they do, referenda voters are unlikely to approve a higher fee. Post-reduction fee rates may increase if post-reduction gross revenue proves to be lower than projected at the time of reduction, but may never exceed 5 percent of gross revenue. NMFS has no authority to consider the alternative this comment suggested.

Comment 42: The proposed rule is a “very well done plan on how to implement. It is believable, do-able, and very much needed in the fishing industry.”

Response: NMFS notes this comment.

Comment 43: The comment applauds this avenue to reduce overcapitalization, return economic viability to fishing, and resolve many concerns (including bycatch and habitat) that the race for fish creates. Reductions reduces fishermen’s pressure by eliminating “derby fisheries.”

Response: NMFS agrees that fishing capacity reduction can help improve fisheries economics and fisheries conservation and management.

Comment 44: The fee for fish processed at sea cannot equitably be calculated in the same way as the fee for raw fish delivered ashore. Using appropriate recovery rates, NMFS should convert processed fish to the fish’s round weight equivalent and calculate the fee based on the ex-vessel price for raw fish. If there is an ex-vessel price for raw fish delivered at sea, NMFS should use this. If not, NMFS should use the ex-vessel price for raw fish delivered ashore. Where all fish in a reduction fishery are processed and delivered at sea, NMFS must devise an appropriate proxy for a raw-fish, ex-vessel price. The fee should, in all cases, be based on the ex-vessel price for raw fish, rather than on the value that at-sea processing adds.

Response: NMFS considered this issue during the proposed rule’s formulation, but elected in the proposed

rule to define "delivery value" and associated terms in a way that required payment of the reduction loan repayment fee based on fish in whatever form the fish existed at the time that the party who harvested the fish first delivered the fish for value to an unrelated fish buyer. This resulted, for fish harvested and processed at sea by the same party, in applying the fee rate to a higher delivery value than for fish delivered unprocessed and subsequently processed ashore by an unrelated fish buyer. There are good arguments for and against this approach, but, on balance, the more equitable way to resolve this issue is, as this comment suggests, to apply the fee to unprocessed fish. Doing so, however, creates considerable problems of its own.

One primary problem is a formula for accurately and efficiently converting the weight of processed fish to the weight of unprocessed fish. Another is a common value for unprocessed fish (prices may vary from time to time and from fish buyer to fish buyer). Nevertheless, the interim final rule revises the proposed rule to make the fee payable on the basis of the value of unprocessed fish. The interim final rule requires each business plan, for fisheries in which related parties both catch and process fish at sea, to formulate an accurate and efficient means of converting processed weight to unprocessed weight and of commonly valuing unprocessed fish (see, in § 600.1000, the definition of the terms "delivery value", "processed fish", and "unprocessed fish" and, in § 600.1003(n)(11), the new business plan requirement in this respect).

Comment 45: The framework rule represents an "excellent job of distilling common sense answers from some very difficult and complex issues."

Response: NMFS notes the comment.

Comment 46: The reduction loan repayment fee is the delivery value of fee fish times the fee rate. The definition of "delivery value", however, excludes "any deductions whatsoever" from the price that a fish buyer pays a fish seller when the fish seller first delivers fish to the fish buyer. This excludes "weighbacks" (small, unmarketable fish that the fish buyer deducts from the weight of delivered fish upon which the fish buyer calculates the delivery value). To comply with the statute's restriction of the fee to no more than 5 percent of ex-vessel value, the fee rate must be applied to the net weight of delivered fish (landed fish minus "weighbacks").

Response: Representative fish tickets provided with this comment deduct the weight of weighbacks from the gross weight of fee fish delivered before

applying the purchase price per pound to the resulting net weight. Under these circumstances, the fee is not, as the proposed rule defined the relevant term, applied to the weighbacks because the fish buyer did not pay any "delivery value" for the weighbacks because they were deducted from the total weight of delivered fish before calculating the "delivery value" on the net weight of delivered fish. The rule bases the fee on whatever value fish buyers pay fish sellers for fish subject to the fee (see the definition of the term "delivery value" in § 600.1000).

Comment 47: This comment supported fishing capacity reduction, but is frustrated that "the system" moves so slowly.

Response: NMFS will expedite the process as much as it possibly can, but fishing capacity reduction is a complex undertaking. The FMP amendment required to complement each reduction program may become a major source of delay in implementing each reduction program.

Comment 48: The reduction concept is "totally objectionable and immoral." Allowing "two thirds of the fishermen in a fishery..." to authorize the fee system required to repay a loan forces the other one third to repay a loan they do not want. The commenter objects to "forced loans." The commenter does not "believe in borrowing..." and "objects] to being forced to pay back a loan to stay fishing." Government should not be in the business of making loans. Reduction programs will not increase the price of post-reduction fish. The reduction concept "has the potential to force out small boat owners."

Response: NMFS notes the comment. The Magnuson-Stevens Act authorizes reduction programs and specifies the way in which they must be conducted. This rule implements the Act.

The reduction concept has the potential to reduce fishing capacity of every size, but decisions about whether to offer any fishing capacity for reduction are always the voluntary decisions of individual fishing permit and/or fishing vessel owners.

Comment 49: Reduction might have the collateral effect of putting some shoreline processors out of business, because fewer fishing vessels could result in the need for fewer shoreline processors.

Response: Absent concurrent reductions in total allowable catches, post-reduction harvests will require the same fish processing capacity as pre-reduction harvests. NMFS hopes that fewer harvesters catching the same amount of fish will not always mean a need for fewer processors, but it

sometimes unavoidably may. Nevertheless, the statutory objective of the reduction provisions of the Magnuson-Stevens Act is to reduce fishing capacity.

Comment 50: "Congress made it very clear in the Sustainable Fisheries Act of 1996 that all capacity reduction plans must achieve measurable and significant improvements in the conservation and management of the fishery in question..."

Response: The rule reflects this aspect of the statutory reduction provisions.

Summary of Revisions

The proposed rule was Subpart D of 50 CFR Part 253. The interim final rule, however, is subpart L of 50 CFR Part 600.

The following sections of the interim final rule revise the proposed rule:

(1) § 600.1000. This section is revised to add some terms, delete some terms, rename some terms, and amend the definition of some terms. Added terms include: "address of record", "bid", "business week", "fair market value", "fishing capacity reduction specifications", "net delivery value", "post-bidding referendum", "processed fish", "reduction amendment specifications", "request", "treasury percentage", "unprocessed fish", and "vote". Deleted terms include: "consistency requirement", "control requirement", "Council", "necessity requirement", and "nonreplacement requirement". Renamed terms include: "program plan", which becomes "implementation plan"; "program regulations", which becomes "implementation regulations"; and "management plan", which becomes "controlling fishery management plan or program (CFMP)". Amended definitions include "borrower", "delivery value", "fee fish", "fish buyer", "fish delivery", "fish seller", "reduction amendment", "reduction fishery", and "reduction payment".

(2) § 600.1001(f). This section is added to provide for waivers of framework rule provisions in order to accommodate special circumstances in particular reduction fisheries.

(3) § 600.1002. This section is new. It encompasses four general requirements, three of which were, in the proposed rule, terms defined in § 253.25. This new section required conforming revisions of various other sections of the proposed rule.

(4) § 600.1003. Paragraph (g) of this section is revised to require each request for a financed reduction program to include the FMC's endorsement in principle of any reduction amendment

to the FMP that the business plan proposes. Paragraph (i) of this section is revised to clarify that NMFS is a source for the fishing permit data that this section requires in requests for financed reduction programs. Paragraph (j) of this section is revised to clarify that financed reduction program requests require aggregate, rather than individual, catch data. Paragraph (n)(11) of this section is revised to require the business plan included in each financed reduction request to evaluate the need for fee payment and collection provisions in each reduction fishery's implementation regulations different from the fee collection provisions in the framework rule.

(5) § 600.1005. Paragraph (e) of this section is revised to clarify that NMFS is a source for the fishing permit data that this section requires in requests for subsidized reduction programs. Paragraph (f) of this section is revised to clarify that financed reduction program requests require aggregate, rather than individual, catch data.

(6) § 600.1010. This section is revised extensively to provide for referenda preceding reduction amendments to FMPs as well as other referenda that may be required by no longer limiting referenda to those following reduction bidding. This also required appropriately revising other sections of the proposed rule that referenced referenda. Paragraph (d)(10) of this section is revised to establish the confidentiality of referenda ballots.

(7) § 600.1011. This section, particularly paragraphs (f) and (g), is revised to clarify the effect of reduction payments that NMFS is unable to make because of reduction contract non-performance.

(8) § 600.1012. This section is new. Paragraphs (b) and (c) of this section pertain to reduction loan interest rates, including the effect of any difference between prospective and actual reduction loan interest rates. The balance of this new section pertains to the reduction loan obligation, including principal amount, repayment term, and penalties for non-payment or non-collection.

(9) § 600.1013(c)(2). This paragraph is revised to clarify that the fee applicable to post-delivery fish bonuses is paid and collected when the bonuses first become known rather than when fish sellers first deliver fish to fish buyers.

(10) § 600.1015. This section is new. This provision is necessary to ensure prompt payment.

(11) § 600.1016. This section is new. This provision is necessary to ensure compliance.

The interim final rule further revises the proposed rule to make the rule briefer, clearer, and more internally consistent.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers OMB assigned to NOAA's information collection requirements pursuant to the Paperwork Reduction Act (PRA). This interim final rule codifies OMB control number 0648-0376 and OMB control number 0648-0413 for Part 600 Subpart L—Fishing Vessel Capacity Reduction.

Classification

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

This interim final rule has been determined to be significant for purposes of E.O. 12866, and a Regulatory Impact Review has been prepared by NMFS (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that, if adopted as proposed, it would not have a significant economic impact on a substantial number of small entities. NMFS received no comments about this certification. Because this interim final rule only establishes a framework for implementing future reduction programs in specific reduction fisheries, each future reduction program will require its own implementation regulations and analysis of effects on small entities. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This interim final rule contains new collection of information requirements subject to the PRA that have been approved by OMB, under OMB Control No. 0648-0376. The estimates of the public reporting burden for these requirements are: 6,634 hours for developing a business plan, 4 hours per voter for a referendum, four hours to make a bid, 10 minutes per fishing trip to maintain records on transactions, 2 hours for a buyer's monthly report, 4 hours for a buyer's annual report, 2 hours for a buyer/seller report (where either a buyer refuses to a fee or the seller refuses to pay the fee to the

buyer), and 270 hours for state approval of a business plan and amendments to a state fishery management plan.

Emergency clearance has also been obtained under OMB Control Number 0648-0413 to conduct, in accordance with the interim final rule's revised referenda procedures, more than one referendum for each reduction program if the circumstances of a reduction program require multiple referenda. The response time per voter for these referenda is 4 hours. NMFS intends to ask OMB for a three-year extension of the clearance for these requirements, which are currently only approved on an emergency basis.

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

Send comments regarding the extension of the emergency clearance or any other aspect of the collection of information requirements contained in this rule, including the burden hour estimates, and suggestions for reducing the burdens to NMFS (see **ADDRESSES**) and to OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 600

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

Dated: May 8, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries,
National Marine Fisheries Services.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, is amended and 50 CFR part 600 is amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648-)
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50 CFR	
600.1001	- 0376
600.1003	- 0376
600.1005	- 0376
600.1006	- 0376
600.1009	- 0376
600.1010	- 0376 and-0413
600.1011	- 0376
600.1012	- 0376
600.1013	- 0376
600.1014	- 0376

3. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

4. In § 600.5, a paragraph (c) is added to read as follows:

§ 600.5 Purpose and scope.

* * * * *

(c) This part also governs fishing capacity reduction programs under the Magnuson-Stevens Act.

5. A subpart L is added to read as follows:

50 CFR Chapter VI

PART 600 MAGNUSON-STEVENS ACT PROVISIONS

Subpart L—Fishing Capacity Reduction

Sec.	
600.1000	Definitions.
600.1001	Requests.
600.1002	General requirements.
600.1003	Content of a request for a financed program.
600.1004	Accepting a request for, and determinations about initiating, a financed program.
600.1005	Content of a request for a subsidized program.
600.1006	Accepting a request for, and determinations about conducting, a subsidized program.
600.1007	Reduction amendments.
600.1008	Implementation plan and implementation regulations.
600.1009	Bids.
600.1010	Referenda.
600.1011	Reduction methods and other conditions.
600.1012	Reduction loan.
600.1013	Fee payment and collection.
600.1014	Fee collection deposits, disbursements, records, and reports.
600.1015	Late charges.
600.1016	Enforcement.
600.1017	Prohibitions and penalties.

600.1018 Implementation regulations for each program. [Reserved]

Subpart L—Fishing Capacity Reduction

Authority: 16 U.S.C. 1861a(b)–(e).

§ 600.1000 Definitions.

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

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

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

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

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

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

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

Delivery value means:

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

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

Delivery value encompasses fair market value, as defined herein, and includes the value of all in-kind compensation or all other goods or services exchanged in lieu of cash. It is synonymous with the statutory term “ex-vessel value” as used in section 312 of the Magnuson Act.

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

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

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

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

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

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

Fish buyer means the first ex-vessel party who:

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

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

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

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

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

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

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

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

Net delivery value means the delivery value minus the fee.

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

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

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

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

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

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

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

Reduction amendment means any amendment, or, where appropriate, framework adjustment, to a CFMP that may be necessary for a program to meet the requirements of this subpart.

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

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

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

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

Reduction loan means a loan, under section 1111 and section 1112 of Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1279f and g App.), for financing any portion, or all, of a financed program's reduction cost and

repayable by a fee under, and in accordance with, § 600.1012, § 600.1013, and § 600.1014.

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

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

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

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

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

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

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

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

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

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

Vote means a vote in a referendum.

fishery. Each request shall be in writing and shall be submitted to the Director, Office of Sustainable Fisheries, NMFS. Each request shall satisfy the requirements of § 600.1003 or § 600.1005, as applicable, and enable NMFS to make the determinations required by § 600.1004 or § 600.1006, as applicable.

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

(c) For a fishery subject to the jurisdiction of a Council, only that Council can or must make the request. If the fishery is subject to the jurisdiction of two or more Councils, those Councils must make a joint request. No Council may make a request, or join in making a request, until after the Council conducts a public hearing about the request.

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

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

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

§ 600.1002 General requirements.

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

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

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

(b) Each CFMP for a reduction fishery must: (1) Prevent the replacement of fishing capacity removed by the program through a moratorium on new

§ 600.1001 Requests.

(a) A Council or the Governor of a State under whose authority a proposed reduction fishery is subject may request that NMFS conduct a program in that

entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet;

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

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

§ 600.1003 Content of a request for a financed program.

A request for a financed program shall:

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

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

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

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

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

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

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

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

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

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

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

(1) The characteristics of the fishery;
 (2) Whether the program is limited to a particular gear type within the reduction fishery or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor;

(3) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels;

(4) The reduction amendment required;

(5) The needs of fishing communities;

(6) Minimizing the program's reduction cost; and

(7) All other relevant factors.

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

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

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

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

(i) Establish the appropriate point for NMFS to conduct a pre-bidding

referendum and be sufficiently detailed to enable NMFS to readily:

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

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

(C) Invite bids,

(D) Accept or reject bids, and

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

(ii) Address, consistently with this subpart:

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

(B) Bidder eligibility,

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

(D) The criteria for accepting or rejecting bids,

(E) The terms of bid acceptances,

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

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

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

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

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

(5) Analyzes and demonstrates the ability to repay the reduction loan at the minimum reduction level and at various reduction-level increments reasonably greater than the minimum one, based on the:

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

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

(6) Demonstrates how the business plan's proposed program meets, or will

meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

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

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

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

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

(11) Specifies, after full consultation with fish buyers, any special circumstances in the reduction fishery that may require the implementing regulations to contain provisions in addition to, or different from, those contained in § 600.1013 and/or § 600.1014 in order to accommodate the circumstances of, and practices in, the reduction fishery while still fulfilling the intent and purpose of § 600.1013 and/or § 600.1014—including, but not limited to:

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

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

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

(o) Include the requester's statement of belief that the business plan, the CFMP, the reduction amendment specifications, and all other request aspects constitute a complete, realistic,

and practical prospect for successfully completing a program in accordance with this subpart.

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

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

(b) *Determination about initiating a financed program.* After receipt of a conforming request for a financed program, NMFS will, after reviewing and responding to any public comments received in response to the notice published in the **Federal Register** under paragraph (a) of this section, initiate the program if NMFS determines that: (1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

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

(3) The program, if successfully implemented, is cost effective;

(4) The reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart and the borrower is capable of repaying the reduction loan. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart; and

(5) The program accords with all other applicable law;

§ 600.1005 Content of a request for a subsidized program.

A request for a subsidized program shall:

(a) Specify the reduction fishery.

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

(c) Project the reduction cost, the amount of reduction cost to be funded by Federal appropriations, and the amount, if any, to be funded by other sources.

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

(e) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester, including any information that NMFS may supply to the requester, and take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves.

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

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

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

(ii) Include:

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

(B) Eligible bidders,

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

(D) The criteria for accepting or rejecting bids, and

(E) The terms of bid acceptances;

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

(i) The characteristics of the fishery,

(ii) Whether the program is limited to a particular gear type within the reduction fishery, or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor,

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

(iv) The reduction amendment required,

(v) The needs of fishing communities, and

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

(3) Demonstrates the program's cost effectiveness.

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

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

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

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

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

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

(b) *Final development plan.* After receipt of a conforming request, NMFS will prepare a final development plan if NMFS determines that the reduction requested constitutes a realistic and

practical prospect for successfully completing a program in accordance with this subpart. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart. NMFS will, as far as possible, base the final development plan on the requester's preliminary development plan. Before completing the final development plan, NMFS will consult, as NMFS deems necessary, with the requester, Federal agencies, state and regional authorities, affected fishing communities, participants in the reduction fishery, conservation organizations, and other interested parties in preparing the final development plan.

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

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

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

(d) *Determinations about conducting a subsidized program.* After NMFS' receipt of the requester's reaffirmation, any required reduction amendment, and any proposed regulations required to implement the amendment, NMFS will initiate the program if NMFS determines that: (1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

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

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

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

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

§ 600.1007 Reduction amendments.

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

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

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

(d) All dependent provisions of a reduction amendment for a financed program are fully in force and effect for all other purposes only when NMFS either: (1) For bidding results that conform to the fishing capacity reduction specifications and are not subject to any other condition, notifies bidders, under § 600.1009(e)(3), that reduction contracts then exist between the bidders and the United States; or

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

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

§ 600.1008 Implementation plan and implementation regulations.

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

(b) To the greatest extent practicable, NMFS will base the implementation plan and implementation regulations for a financed program on the business plan. The implementation plan for a financed program will describe in detail

all relevant aspects of implementing the program, including:

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

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

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

(d) The implementation regulations will:

- (1) Specify, for invitations to bid, bids, and reduction contracts under § 600.1009:
 - (i) Bidder eligibility,
 - (ii) Bid submission requirements and procedures,
 - (iii) A bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,
 - (iv) A bid expiration date after which the irrevocable offer contained in each bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,
 - (v) The manner of bid submission and the information each bidder shall

supply for NMFS to deem a bid responsive,

- (vi) The conditions under which NMFS will accept or reject a bid,
- (vii) The manner in which NMFS will accept or reject a bid, and
- (viii) The manner in which NMFS will notify each bidder of bid acceptance or rejection;
- (2) Specify any other special referendum procedures or criteria; and
- (3) Specify such other provisions, in addition to and consistent with those in this subpart, necessary to regulate the individual terms and conditions of each program and reduction loan. This includes, but is not limited to:
 - (i) Provisions for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with § 600.1013 and § 600.1014,
 - (ii) Prospective fee rate determinations, and
 - (iii) Any other aspect of fee payment, collection, deposit, disbursement, accounting, record keeping, and/or reporting.

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

(f) NMFS may repeal the final implementation regulations for any program if: (1) For a financed program, the bidding results do not conform to the fishing capacity reduction specifications or a post-bidding referendum does not subsequently approve an industry fee system based on the bidding results;

- (2) For a subsidized program, NMFS does not accept bids; and
- (3) For either a financed program or a subsidized program, if NMFS is unable to make all reduction payments due to a material adverse change.

§ 600.1009 Bids.

(a) Each invitation to bid, bid, bid acceptance, reduction contract, and bidder—or any other party in any way affected by any of the foregoing—under this subpart is subject to the terms and conditions in this section: (1) Each invitation to bid constitutes the entire terms and conditions of a reduction contract under which:

- (i) Each bidder makes an irrevocable offer to the United States of fishing capacity for reduction, and
- (ii) NMFS accepts or rejects, on behalf of the United States, each bidder's offer;
- (2) NMFS may, at any time before the bid expiration date, accept or reject any or all bids;
- (3) For a financed program in which bidding results do not conform to the

fishing capacity reduction specifications, NMFS' acceptance of any bid is subject to the condition that the industry fee system necessary to repay the reduction loan is subsequently approved by a successful post-bidding referendum conducted under § 600.1010. Approval or disapproval of the industry fee system by post-bidding referendum is an event that neither the United States nor the bidders can control. Disapproval of the industry fee system by an unsuccessful post-bidding referendum fully excuses both parties from any performance and fully discharges all duties under any reduction contract;

(4) For a financed program in one reduction fishery that is being conducted under appropriate implementation regulations simultaneously with another financed program in another reduction fishery, where the acceptance of bids for each financed program is conditional upon successful post-bidding referenda approving industry fee systems for both financed programs, NMFS' acceptance of all bids is, in addition to any condition under paragraph (a)(3) of this section, also subject to the additional conditions that both referenda approve the industry fee systems required for both financed programs—all as otherwise provided in paragraph (a)(3) of this section;

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

- (i) The revocation, by NMFS, of any reduction permit, and
- (ii) Where the program also involves the withdrawal of reduction vessels from fishing:

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

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

owner shall be liable to the United States for such cost, expenses, and damages;

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

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

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

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

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

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

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

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

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

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

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

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

(4) Any reduction loan involved is fully approved;

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

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

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

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

(e) After the bid expiration date, NMFS will: (1) Analyze responsive bids;

(2) Determine which bids, if any, NMFS accepts; and

(3) Notify, by U.S. mail at each bidder's address of

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

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

§ 600.1010 Referenda.

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

(b) *Pre-bidding referendum*—(1) *Initial referendum.* An initial pre-bidding referendum shall be conducted for each financed program. The business plan shall, subject to this subpart, determine the chronological relationship of the initial pre-bidding referendum to other pre-bidding aspects of the reduction process sequence. The initial pre-bidding referendum shall be based on the fishing capacity reduction specifications. If the initial pre-bidding

referendum precedes the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the reduction amendment specifications. If the initial pre-bidding referendum follows the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the adopted reduction amendment;

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

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

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

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

(c) *Post-bidding referendum.* A post-bidding referendum shall occur only if, in NMFS' judgment, the result of bidding under § 600.1009 does not conform, in any material respect, to the fishing capacity reduction specifications and such result justifies, in NMFS' judgment, conducting a post-bidding referendum. Bidding that results in reducing fishing capacity in any amount not less than the minimum fishing capacity reduction amount for any reduction loan amount not more than the maximum reduction loan amount, and otherwise achieves all material requirements of the fishing capacity reduction specifications, shall conform to the fishing capacity reduction specifications. The sole purpose of any post-bidding referendum shall be to determine whether voters authorize an industry fee system for bidding that results in reducing fishing capacity in

any amount materially less than the minimum amount in the fishing capacity reduction specifications.

(d) NMFS will conduct referenda in accordance with the following: (1)

Eligible voters. The parties eligible to vote in each referendum are the parties whose names are listed as being eligible to vote in the notice published in the **Federal Register** under § 600.1004(a);

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

(3) *Voter certification.* Each ballot will contain a certification, subject to the penalties set forth in § 600.1017, that the person signing the ballot is the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf;

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

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

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

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

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

(A) The fishing capacity reduction specifications,

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

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

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

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

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

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

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

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

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

(ii) Such other materials as NMFS deems appropriate;

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

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

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

(iii) Is signed by the voter,

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

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

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

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

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

(A) The number of potential voters,

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

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

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

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

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

(7) *Conclusiveness of referendum determinations.* NMFS' determinations about ballot qualifications and about all other referendum matters, including, but not limited to, eligible voters and their addresses of record, are conclusive and final as of the date NMFS makes such determinations. No matter respecting such determinations shall impair, invalidate, avoid, or otherwise render unenforceable any referendum, reduction contract, reduction loan, or fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan;

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

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

§ 600.1011 Reduction methods and other conditions.

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

(b) *Reduction permit revocation and surrender.* Each reduction permit is, upon NMFS' tender of the reduction payment for the reduction permit, forever revoked. Each reduction permit holder shall, upon NMFS' tender of the reduction payment, surrender the original reduction permit to NMFS. The reduction permit holder, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction permit and with the fishing vessel that was used to harvest

fishery resources under the reduction permit that could qualify the reduction permit holder or the fishing vessel owner for any present or future limited access system fishing permit in the reduction fishery.

(c) *Reduction vessel title restriction or scrapping.* For each program that involves reduction vessel title restriction or scrapping: (1) Each reduction vessel that is subject to title restriction only and is thus not required to be scrapped, is, upon NMFS' tender of the reduction payment, forever prohibited from any future use for fishing in any area subject to the jurisdiction of the United States or any State, territory, possession, or commonwealth of the United States. NMFS will request that the U.S. Coast Guard permanently restrict each such reduction vessel's title to exclude the reduction vessel's future use for fishing in any such area;

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

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

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

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

a program is a financed program or a subsidized program;

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

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

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

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

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

§ 600.1012 Reduction loan.

(a) *Obligation.* The borrower shall be obligated to repay a reduction loan. The borrower's obligation to repay a

reduction loan shall be discharged by fish sellers paying a fee in accordance with § 600.1013. Fish buyers shall be obligated to collect the fee in accordance with § 600.1013 and to deposit and disburse the fee revenue in accordance with § 600.1014.

(b) *Principal amount, interest rate, repayment term, and penalties for non-payment or non-collection.* The reduction loan shall be: (1) In a principal amount that shall be determined by subsequent program events under this subpart, but which shall not exceed the maximum principal amount in the fishing capacity reduction specifications;

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

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

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

(c) *Effect of prospective interest rate.* Any difference between a prospective interest rate projected, for the purpose of any aspect of reduction planning or processing under this subpart, before the U.S. Treasury determines the Treasury percentage and an interest rate first known after the U.S. Treasury determines the Treasury percentage shall not void, invalidate, or otherwise impair any reduction contract, any reduction loan repayment obligation, or any other aspect of the reduction process under this subpart. Should any such difference result in a reduction loan that cannot, at the maximum fee rate allowed by law, be repaid, as previously projected, within the maximum maturity, any amount of the reduction loan remaining unpaid at maturity shall be repaid after maturity by continuing fee payment and collection under this subpart at such maximum fee rate until the reduction loan's unpaid principal balance and accrued interest is fully repaid. The above notwithstanding, at the discretion of the Secretary, the reduction contract can be voided if a material adverse change affects the reduction contract, reduction loan obligation, or any other aspect of the reduction process under this subpart.

§ 600.1013 Fee payment and collection.

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

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

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

(2) In the event of any post-delivery payment for fee fish—including, but not limited to bonuses—whose amount depends on conditions that cannot be known until after fish delivery, that either first determines the delivery value or later increases the previous delivery value, the fish seller shall pay, and the fish buyer shall collect, at the time the amount of such post-delivery payment first becomes known, the fee that would otherwise have been due and payable as if the amount of the post-delivery payment had been known, and as if the post-delivery payment had consequently occurred, at the time of initial fish delivery;

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

(A) Any party whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is

not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

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

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

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

(4) Fee payment begins on the date NMFS specifies under the notification procedures of paragraph (d) of this section and continues without interruption at the fee rates NMFS specifies in accordance with this subpart until NMFS determines that the reduction loan is fully repaid. If a reduction loan is, for any reason, not fully repaid at the maturity of the reduction loan's original amortization period, fee payment and collection shall continue until the reduction loan is fully repaid, notwithstanding that the time required to fully repay the reduction loan exceeds the reduction loan's initially permissible maturity.

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

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

(3) If NMFS fails to notify a fish seller or a fish buyer by U.S. mail, or if the fish seller or fish buyer otherwise does not receive the notice, of the date fee

payments start or of the fee rate in effect, each fish seller is, nevertheless, obligated to pay the fee at the fee rate in effect and each fish buyer is, nevertheless, obligated to collect the fee at the fee rate in effect.

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

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

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

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

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

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

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

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

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

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

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

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

NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

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

(a) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

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

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

(d) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information: (1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

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

(iii) The weight, number, or volume of each species of fee fish delivered,

(iv) The identity of the fishing vessel that delivered the fee fish,

(v) The delivery value of each species of fee fish,

(vi) The net delivery value,

(vii) The identity of the party to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value was paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the Fund's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* In each year, on the date to be specified in each implementation regulation, succeeding the year during which NMFS first implemented a fee, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year, or whatever longer period may be involved in the first annual report, for all fee fish each fish buyer purchases from fish sellers: (1) Total weight, number, or volume bought;

(2) Total delivery value paid;

(3) Total fee amounts collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to each Fund lockbox account;

(6) Total amount of interest earned on deposits; and

(7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section. If any state law or regulation prohibits fish buyers, or fish sellers where appropriate, from keeping, for the purpose of complying with any requirement of this section, separate records that involve some or all of the same data elements as the landing

records that the fish buyers also keep, for state purposes and under state law or regulation, then a financed reduction program will not be possible.

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

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

(i) *Refunds.* When NMFS determines that a reduction loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

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

§ 600.1015 Late charges.

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

§ 600.1016 Enforcement.

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

§ 600.1017 Prohibitions and penalties.

(a) The following activities are prohibited, and it is unlawful for any party to: (1) Vote in any referendum under this subpart if the party is ineligible to do so;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 600.1018 Implementation regulations for each program. [Reserved]

[FR Doc. 00-12159 Filed 5-17-00; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 884**

[Docket No. 99N-1309]

Obstetrical and Gynecological Devices; Classification of Female Condoms

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the preamendments female condom intended for contraceptive and prophylactic purposes. Under this rule, the preamendments female condom is being classified into class III (premarket approval). This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the FDA Modernization Act of 1997.

DATES: This rule is effective June 19, 2000.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1180.

SUPPLEMENTARY INFORMATION:**I. Background**

In a proposal published in the **Federal Register** of June 10, 1999 (64 FR 31164)

February 19, 2008.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E8-3493 Filed 2-22-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Highly Migratory Species Vessel Logbooks and Cost- Earnings Data Reports

AGENCY: National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

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 April 25, 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).

FOR FURTHER INFORMATION CONTACT:
Requests for additional information or
copies of the information collection
instrument and instructions should be
directed to Joseph Desfosse, (301) 713-
2347 or Joseph.Desfosse@noaa.gov or
Margo Schulze-Haugen, (301) 713-2347
or Margo.Schulze-Haugen@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the
Magnuson-Stevens Fishery
Conservation and Management Act (16
U.S.C. 1801 *et seq.*), the National
Oceanic and Atmospheric
Administration's National Marine
Fisheries Service (NMFS) is responsible
for management of the nation's marine
fisheries. In addition, NMFS must
comply with the United States'
obligations under the Atlantic Tunas
Convention Act of 1975 (16 U.S.C. 971
et seq.), which implements the
International Commission for the
Conservation of Atlantic Tunas (ICCAT)
recommendations. NMFS collects
information via vessel logbooks to

monitor the U.S. catch of Atlantic
swordfish, sharks, marlins, and tunas in
relation to the quotas, thereby ensuring
that the United States complies with its
domestic and international obligations.
The information supplied through
vessel logbooks also provides the catch
and effort data necessary to assess the
status of highly migratory species and to
evaluate bycatch in each fishery.
International stock assessments for
tunas, swordfish, marlins, and some
species of sharks are conducted and
presented to the ICCAT periodically and
provide, in part, the basis for ICCAT
management recommendations which
become binding on member nations.
The domestic stock assessments for
most species of sharks are used as the
basis of managing these species.
Supplementary information on fishing
costs and earnings has been collected
via this vessel logbook program. This
economic information enables NMFS to
assess the economic impacts of
regulatory programs on small businesses
and fishing communities, consistent
with the National Environmental Policy
Act (NEPA), Executive Order 12866, the
Regulatory Flexibility Act, and other
domestic laws.

II. Method of Collection

Logbooks are being completed and
submitted in paper form.

III. Data

OMB Control Number: 0648-0371.

Form Number: NOAA Form 88-191.

Type of Review: Regular submission.

Affected Public: Business or other for-
profit organizations.

Estimated Number of Respondents:
7,451.

Estimated Time per Response: 10
minutes for cost/earnings summaries
attached to logbook reports; 30 minutes
for annual expenditure forms; 12
minutes for logbook catch reports; and
2 minutes for negative logbook catch
reports.

*Estimated Total Annual Burden
Hours:* 29,461.

*Estimated Total Annual Cost to
Public:* \$0 (no capital or recordkeeping/
reporting expenditures required).

IV. Request for Comments

Comments are invited on: (a) Whether
the proposed collection of information
is necessary for the proper performance
of the functions of the agency, including
whether the information shall have
practical utility; (b) the accuracy of the
agency's estimate of the burden
(including hours and cost) of the
proposed collection of information; (c)
ways to enhance the quality, utility, and
clarity of the information to be

collected; and (d) ways to minimize the
burden of the collection of information
on respondents, including through the
use of automated collection techniques
or other forms of information
technology.

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

Dated: February 20, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief
Information Officer.

[FR Doc. E8-3507 Filed 2-22-08; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Fishery Capacity Reduction Program Buyback Requests

AGENCY: National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

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 April 25, 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).

FOR FURTHER INFORMATION CONTACT:
Requests for additional information or
copies of the information collection
instrument and instructions should be
directed to Leo Erwin, (301) 713-2390,
or via the Internet at
Leo.Erwin@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA has established a program to
reduce excess fishing capacity by paying
fishermen to (1) surrender their fishing
permits or (2) both surrender their
permits and either scrap their vessels or
restrict vessel titles to prevent fishing.

These fishing capacity reduction programs, or buybacks, can be funded by a Federal loan to the industry or by direct Federal or other funding. These buybacks are conducted pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, and the Magnuson-Stevens Reauthorization Act (Pub. L. 109–479). The regulations implementing the buybacks are at 50 CFR part 600.

Depending upon the type of buyback involved, the program can entail the submission of buyback requests by industry, the submission of bids, referenda of fishery participants, and reporting of the collection of fees to repay a Federal loan. For buybacks involving State-managed fisheries, the State may need to develop the buyback plan and comply with other information requirements. The information collected by NMFS is required to request a buyback, submit supporting data for requested buybacks, to submit bids, and to conduct referenda of fishery participants.

The recordkeeping and reporting requirements at 50 CFR parts 600.1013 through 600.1017 form the basis for this collection of information on fee payment and collection. NMFS requests information from participating buyback participants. This information, upon receipt, tracks the repayment of the Federal loans that are issued as part of the buybacks, and ensures accurate management and monitoring of the loans during the repayment term.

II. Method of Collection

Paper reports or electronic reports are required from buyback participants. Methods of submittal include mailing of paper forms, submission of forms via the Internet, and/or facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0376.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households; and State, Local, or Tribal government.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: 6,634 hours for an implementation plan; 4 hours for a referenda vote; 4 hours for an invitation to bid; 10 minutes to submit a fish ticket; 2 hours for a monthly buyer fee collection report; 4 hours for an annual buyer fee collection report; potentially 270 hours for a State approval of plans and amendments to State fishery management plans; and 1 hour for advising of any holder or owner

claims that conflict with accepted bidders' representations about reduction permit ownership or reduction vessel ownership.

Estimated Total Annual Burden Hours: 46,300.

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

IV. Request for Comments

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

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

Dated: February 20, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–3508 Filed 2–22–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Commercial Operator's Annual Report (COAR)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

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 April 25, 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).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act authorizes the North Pacific Fishery Management Council to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. Fishing for groundfish by U.S. vessels in the exclusive economic zone (EEZ) in waters off the coast of Alaska is managed by the National Marine Fisheries Service (NMFS) according to the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMPs). Regulations implementing the FMPs are found at 50 CFR part 679.

The owners of shoreside processors and stationary floating processors are required to annually submit the COAR to the State of Alaska, Department of Fish and Game (ADF&G), under Alaska Administrative Code (AAC), chapter 5 AAC 39.130. Owners of catcher/processors and motherships operating in the EEZ off Alaska are required to annually submit the COAR to ADF&G under 50 CFR part 679.5(p).

The COAR provides information on exvessel and first wholesale values for statewide fish and shellfish products. Containing information from shoreside processors, stationary floating processors, motherships, and catcher/processors, this data collection yields equivalent annual product value information for all respective processing sectors and provides a consistent time series according to which groundfish resources may be managed more efficiently.

II. Method of Collection

Paper reports are required from participants; these reports are transmitted by U.S. mail.

III. Data

OMB Control Number: 0648–0428.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.