

8.0 FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA)

The Final Regulatory Flexibility Analysis (FRFA) is conducted to comply with the Regulatory Flexibility Act and provides analyses of the economic benefits and costs of the preferred alternatives on small entities. Certain elements required in an FRFA are also required as part of an environmental impact statement (EIS). Thus, this section should be considered only part of the FRFA; the rest of the FRFA can be found throughout this document.

8.1 STATEMENT OF THE NEED FOR AND OBJECTIVES OF THIS FINAL RULE

Please see Chapter 1 for a description of the need for and objectives of the final rule.

8.2 A SUMMARY OF THE SIGNIFICANT ISSUES RAISED BY THE PUBLIC COMMENTS IN RESPONSE TO THE INITIAL REGULATORY FLEXIBILITY ANALYSIS, A SUMMARY OF THE ASSESSMENT OF THE AGENCY OF SUCH ISSUES, AND A STATEMENT OF ANY CHANGES MADE IN THE RULE AS A RESULT OF SUCH COMMENTS

NOAA Fisheries received many comments on the proposed rule and draft Amendment 1 during the comment period. These and NOAA Fisheries' responses are summarized in Appendix 5 of this document and will be included in the final rule. NOAA Fisheries did not receive any comments specific to the Initial Regulatory Flexibility Analysis (IRFA), but did receive a limited number of comments related to economic issues and concerns. Most of the economic comments pertained to proposed commercial quota reductions, implementation of trimester seasons and regional quotas, gillnet restrictions, VMS requirements, and the time/area closure. These comments are responded to with the other comments in Appendix 5 and the economic concerns are summarized here.

Of the economic comments received by NOAA Fisheries, most noted anticipation of substantial economic impacts associated with implementation of commercial quota reductions, VMS requirements, and the time/area closure. Specifically, comments noted that commercial quota reductions, VMS requirements, and the time/area closure offshore North Carolina would put fishermen out of business and create less economic stability amongst industry participants. Economic comments pertaining to implementation of trimester seasons and regional quotas identified similar concerns, noted disruptions in existing markets, and stated that the combination of regional quotas and trimester seasons would lead to insufficient income. Additionally, NOAA Fisheries received comments noting that gillnet restrictions, which would allow strikenet method only, would not allow the commercial shark gillnet fishery to continue while minimizing interactions, as it was originally intended. Specifically, comments suggest that Atlantic sharpnose, the species comprising the vast majority of SCS landings, can only be caught using gillnet gear and that SCS do not aggregate like other shark species.

NOAA Fisheries is aware, and stated in the economic analyses and Initial Regulatory Flexibility Analyses (IRFA) for the proposed rule, that reductions in commercial quotas, implementation of

trimesters, regional quotas, VMS requirements, and the time/area closure would likely result in economic impacts to the fishery as a whole, some of which may be significant for small entities/vessel owners. However, all of these alternatives, when compared to the other alternatives considered, mitigate undesirable or greater economic impacts associated with continued overfishing, shortened seasons, bycatch of vulnerable species, and economic instability of fishery participants and associated fishing communities in the long-term. The combination of these preferred alternatives is necessary for LCS to rebuild and SCS to achieve optimum yield, consistent with the objectives of this rule, the Magnuson-Stevens Act, and other domestic laws.

In order to mitigate some of the costs associated with implementation of reduced commercial quotas, trimesters, regional quotas, VMS requirements, and the time/area closure, NOAA Fisheries will delay effectiveness of trimester seasons, VMS requirements, and the time/area closure in order to give fishermen time to (1) purchase VMS units, (2) work with dealers to enhance market prices and plan out advertising strategies with grocers, and (3) prepare and plan for the closure. Furthermore, NOAA Fisheries was able to reduce the size of the time/area closure, as originally proposed in the DEIS. The revised time/area closure, which is anticipated to affect only eight vessels as opposed to 13, mitigates the economic impacts to small entities directly affected by the revised closure by \$17,956 in total gross revenues as compared with the original preferred alternative. Specifics on changes to the alternatives and the expected economic impacts can be found in Chapters 2, 4, 6, and 7.

Finally, NOAA Fisheries proposed allowances for strikenet method only in the shark gillnet fishery in order to allow the commercial shark gillnet fishery to continue while minimizing interactions with protected resources as well as reducing bycatch of non-target species. Through public comment it has been brought to the attention of NOAA Fisheries that allowing the use of strikenets only would not accomplish this objective. Therefore, the final regulations will permit the use of drift gillnets with possible gear modifications or other measures being implemented in a future rulemaking, based upon further study. Specifics on changes to the alternatives and the expected economic impacts can be found in Chapters 2, 4, 6, and 7.

8.3 DESCRIPTION AND ESTIMATE OF THE NUMBER OF SMALL ENTITIES TO WHICH THE PROPOSED RULE WILL APPLY

NOAA Fisheries considers all permit holders to be small entities. A description of the fisheries affected can be found in Chapter 3 of this document.

In October 2002, there were approximately 251 directed shark permit holders and 376 incidental shark permit holders for a total of 627 permit holders who were authorized to fish for sharks. As of September 2003, there were approximately 256 directed permit holders and 351 incidental permit holders for a total of 607 permit holders who are authorized to fish for sharks and could be affected by the preferred alternatives outlined in the final rule. Only about 20 percent of all permit holders are actually active in the fishery. Currently, 120 vessels (i.e., number of vessels

that reported landings of shark during 2001) would be affected by changes (i.e., increases/decreases) in shark quotas.

Original economic analyses of the proposed time/area closure in the DEIS indicated that alternative K2 could have a direct economic impact on a total of 34 vessels (out of 251 total directed permits issued in 2002 ~ 14%) with directed shark permits. Revised economic analyses, which were conducted as a result of public comment and associated revisions to the time/area closure indicate that K2 would have a direct economic impact on a total of 23 vessels (out of 256 total directed permits issued in 2003 ~ 9%) with directed shark permits. Additionally, while there are 256 directed shark permit holders as of September 2003, only eight vessels with home ports in North Carolina reported shark landings during 2001.

NOAA Fisheries knows of fewer than 11 shark fishermen who have used drift gillnet gear at some point in the past and only five in recent years. These five vessels would have been affected by the shark gillnet gear requirements of the proposed rule, however NOAA Fisheries has decided not to implement the preferred alternative J3 at this time.

The recreational requirements proposed in this rulemaking could affect all recreational HMS permit holders including HMS angling category permit holders (~18,249 as of September 2003) and HMS charter/headboat permit holders (~ 4,041 as of September 2003). While there are a number of permit holders in these categories, these permit holders can target any HMS; few actually target sharks.

Other sectors of HMS fisheries such as dealers, processors, bait houses, and gear manufacturers might be affected by the proposed regulations, particularly the shift to trimester seasons for commercial fisheries, reduction in commercial LCS quota/increase in commercial SCS quota, and time/area closure off North Carolina during the winter commercial fishery. However, the final rule does not apply directly to them. Rather it applies only to permit holders and fishermen. As such, economic impacts on these other sectors are discussed in Chapter 4, 6, and 7.

8.4 DESCRIPTION OF THE PROJECTED REPORTING, RECORD-KEEPING, AND OTHER COMPLIANCE REQUIREMENTS OF THE FINAL RULE, INCLUDING AN ESTIMATE OF THE CLASSES OF SMALL ENTITIES WHICH WILL BE SUBJECT TO THE REQUIREMENTS AND THE TYPE OF PROFESSIONAL SKILLS NECESSARY FOR PREPARATION OF THE REPORT OR RECORD

Some of the preferred alternatives in this document may result in additional reporting, record-keeping, and compliance requirements. Alternative J4 would require Atlantic shark fishermen operating near the time area closure to install and activate a VMS unit. The preferred alternative

would result in approximately five gillnet shark fishing vessels and approximately seven¹ directed category bottom longline shark fishing vessels having to install VMS units. The costs associated with implementing a VMS program in the Atlantic shark gillnet fishery include an initial average cost per vessel of approximately \$2,275 (not including postage costs for returning certification statement), an average annual maintenance cost of approximately \$500/year, and approximately \$197.28/year for communications during the right whale calving season. Costs associated with implementing a VMS program in the directed shark bottom longline fishery include an initial average cost per vessel of approximately \$2,275 (not including postage costs for returning certification statement), an average annual maintenance cost of approximately \$500/year, and approximately \$305.28/year for communications during the proposed 212 day shark bottom longline time/area closure. The position reports generated by the VMS units are automatic so no time burden is imposed on the vessel operator.

The use and submission of a checklist will be required only for the initial installation or when the hardware or communications service provider changes. NOAA Fisheries estimates a time burden of five minutes for completing the VMS installation and activation checklist.

NOAA Fisheries expects alternative J4 to increase costs but it should not increase the needed skill level required for HMS fisheries.

Preferred alternatives (E2-existing limit plus one bonnethead, G2-recreational authorized gear, K2-time/area closure, J5-bycatch gear requirements, and M2-separate display permits) may change the way and areas in which fishermen can fish and set their gear, may require the possession and use of specific equipment, may limit the gears authorized for use in recreational shark fisheries, and may increase the skill level needed to participate in HMS fisheries. Alternative E2 could result in positive economic benefits as increase in retention limits may increase tournament participation and business profits within the charter/headboat industry for sharks. NOAA Fisheries does not expect alternative G2 to have any substantive economic impacts because this alternative addresses gear restrictions for recreational shark fishing in federal waters, where sharks retained cannot be sold. Alternative K2 would implement a time/area closure and could have significant economic impacts, particularly for those fishermen in states bordering the closure (i.e., North Carolina). However, for vessels not directly affected by the closure there might be a few economic benefits, and NOAA Fisheries anticipates long-term benefits to the fishery as a whole when the LCS complex rebuilds. Alternative J5 would likely only have minor economic impacts (e.g., the purchase of stainless-steel hooks and release equipment, and increased fuel costs associated with the requirement to move one mile after an interaction with a marine mammal or sea turtle). Although the release equipment required under proposed alternative J5 is relatively simple to use, limited training may be required to use them effectively. No economic impacts are anticipated to result from the implementation of alternative

¹Fourteen bottom longline vessels fished (i.e., on average during 2000 and 2001) in the area near the time/area closure. Seven of these vessels should already have VMS because they are associated with swordfish permits. NOAA Fisheries estimates that the remaining seven vessels will need to purchase VMS units as selected in this Amendment. See Appendix 4 for further explanation.

M2, because this alternative does not change application processes or add new requirements to existing regulations.

The other preferred alternatives, which are outlined in Chapter 2, will change quota but would not likely change reporting or compliance in the fishery.

8.5 DESCRIPTION OF THE STEPS THE AGENCY HAS TAKEN TO MINIMIZE THE SIGNIFICANT ECONOMIC IMPACT ON SMALL ENTITIES CONSISTENT WITH THE STATED OBJECTIVES OF APPLICABLE STATUTES, INCLUDING A STATEMENT OF THE FACTUAL, POLICY, AND LEGAL REASONS FOR SELECTING THE ALTERNATIVE ADOPTED IN THE FINAL RULE AND THE REASON THAT EACH ONE OF THE OTHER SIGNIFICANT ALTERNATIVES TO THE RULE CONSIDERED BY THE AGENCY WHICH AFFECT SMALL ENTITIES WAS REJECTED

In the Initial Regulatory Flexibility Analyses for the proposed rule, NOAA Fisheries described alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Chapters 4 and 6 of this document. Additionally, the Reg Flex Act (5 U.S.C. § 603 (c) (1)-(4)) lists four types of alternatives which should be discussed. These categories of alternatives (all of which assume the proposed action could impact small entities differently than large entities) are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities
3. Use of performance rather than design standards
4. Exemptions from coverage of the rule for small entities

As noted earlier, NOAA Fisheries considers all permit holders to be small entities. In order to meet the objectives of this final rule and address the management concerns at hand, NOAA Fisheries cannot exempt small entities or change the reporting requirements for small entities. Among other things, this final rule would set quotas for the fishing season, retention limits for the recreational fishery, and gear restrictions, all of which would not be as effective with differing compliance and reporting requirements. Thus, there are no alternatives discussed which fall under the first and fourth categories described above. Alternatives under the second category are discussed below, and performance standards are addressed in the context of rebuilding targets, which were considered and subsequently approved in a previous fishery management plan.

As described below, NOAA Fisheries considered a number of alternatives that could minimize the economic impact of the preferred alternatives, particularly those pertaining to LCS commercial quota reductions, revised time/area closures, VMS requirements, and use of corrodible hooks and release equipment aboard bottom longline vessels. Analyses relating to the

economic impacts of each specific alternative considered can be found in Chapter 6, and are not repeated here. In cases where NOAA Fisheries knows that alternatives are likely to adversely affect fishermen and there are no other alternatives that would achieve the objectives of the rule, NOAA Fisheries is delaying implementation to give fishermen the opportunity to adjust and obtain any equipment they may need.

8.5.1 Commercial Management Measures

The preferred alternatives for commercial management measures (i.e., A3-LCS complex classification, B3-regional quotas, B4-trimester seasons, C2-MSY based quotas, and D2-no minimum size) were designed to minimize economic impacts incurred on fishermen, while simultaneously enhancing equity amongst users groups, allowing healthy stocks to be managed at optimum yield, and allowing overfished stocks to rebuild. Specifically, alternative A3 may, compared to the other alternatives considered, increase profits individual fishermen gain by reducing costs associated with the lengthening of trips (i.e., fuel, bait, and ice) due to sorting inefficiencies realized under the other alternatives. The consolidation of LCS into one aggregate group under alternative A3 also simplifies compliance and reporting requirements under the proposed rule for small entities.

While alternative A1 in consideration with C2 could result in larger quotas, it was rejected because it could also increase confusion for fishery participants who are complying with the regulations and, inconsistent with the Magnuson-Stevens Act, may result in delays for LCS to rebuild. Implementation of alternative B3 is not anticipated to result in any changes to economic benefits or costs, but is anticipated to enhance equity amongst user regions. Alternative B4 seeks to spread open seasons out more evenly over the calendar year and could, in the long-term, result in greater economic stability for fishermen and associated communities because the amount of time between open and closed seasons would likely be reduced. Thus alternatives B3 and B4 could help minimize any economic impacts caused by other preferred management measures.

NOAA Fisheries considered a wide range of quotas that resulted from the combination of classification and quota basis alternatives. These alternatives resulted in the possibility of seven different commercial quotas for LCS and three different commercial quotas for SCS. Each quota alternative carefully considered the results of the 2002 stock assessments for LCS and SCS. The preferred quota alternatives (i.e., A3 and C2) will implement commercial quota levels of 1,017 mt dw for the LCS aggregate and 454 mt dw for the SCS aggregate, which will result in a 21-percent reduction in LCS quota and a 10-percent increase in SCS quota, respectively.

As mentioned in Chapter 4, while other quota alternatives, for example C2 or C3 (in combination with A1/A2/A4) propose increased quotas for LCS, they were rejected because they are likely to result in rebuilding delays for the LCS stock, which is inconsistent with the Magnuson-Stevens Act. Moreover, economic impacts could be incurred in the fishery over the long-term should LCS stocks continue to decline. The inclusion of fishing mortality and biomass targets in the

HMS FMP adequately address the need for performance standards in assessing the effectiveness of proposed quota management measures.

NOAA Fisheries is also proposing no minimum size (i.e., alternative D2), which helps to minimize economic impacts on the commercial shark fishery. Other alternatives considered, which would have imposed varying minimum sizes, were rejected because they would have had greater economic impacts on fishery participants and associated communities. Given that the commercial fishery has been operating under these conditions since 1999, NOAA Fisheries does not anticipate any significant changes in economic benefits or costs as a result of maintaining this management measure.

8.5.2 Recreational Management Measures

Similar to that of the preferred alternatives for commercial quotas, the preferred alternatives for recreational retention (i.e., E2-existing limits plus one bonnethead) and minimum size limits (i.e., F2-existing size limits plus no minimum size for bonnethead) were designed to minimize the economic impacts on recreational fishermen, while simultaneously allowing healthy stocks to be managed at optimum yield and overfished stocks to rebuild. Specifically, alternative E2 would allow additional retention of one bonnethead per person per trip. Since this retention would otherwise be prohibited, this alternative may increase revenues to charter/headboats and other small entities who rely on the recreational shark fishery for income. Even though E3 or E4 might further minimize economic impacts, these and other recreational retention limits were rejected because they do not meet fishery management plan goals and objectives. Alternative F2, combined with the other recreational preferred alternatives, takes into account the fact that bonnethead sharks do not reach the minimum size currently in place. As such, alternative F2 simplifies compliance for small entities with the proposed retention limits for bonnethead sharks. Alternative F2 is anticipated to increase the willingness to pay, angler consumer surplus, and current revenues to charter/headboat captains and other small entities who rely on the recreational shark fishery for income. Other recreational size limit alternatives were rejected because of economic and stock status concerns, which are further described in Chapters 2, 4, and 6 of this document.

Additionally under alternative G2, NOAA Fisheries is proposing that authorized gear be limited to handline, rod and reel, and bandit gear in the recreational fishery. This alternative addresses the need for NOAA Fisheries to clarify which gear types are authorized specifically for recreational fishing activities. Most recreational HMS fishermen already use handline as well as rod and reel in the fishery. As such, there are no anticipated economic costs or benefits associated with implementation of preferred alternative G2.

Thus NOAA Fisheries does not expect the preferred recreational management measures (i.e., E2, F2, or G2) to have a significant economic impact on a substantial number of small entities.

8.5.3 Deepwater, Other and Prohibited Shark

Alternative H2, which removes the deepwater and other sharks from the management unit and specifies these species for data collection purposes only, seeks to simplify compliance and reporting requirements under the proposed rule for small entities. As such, no economic costs are anticipated with implementation of preferred alternative H2.

Alternative I6, which retains 19 prohibited species and establishes a criteria for the addition/removal of other species to/from the prohibited species group, also simplifies compliance and reporting requirements under the proposed rule for small entities. Given the possibility that recreationally or commercially valuable species may either be added/removed from the prohibited species group, it is possible that economic impacts/benefits would be experienced by small entities. While removing or adding sharks to the prohibited list could have economic impacts, maintaining status quo while establishing a process to add or remove, should not have economic impacts on a substantial numbers of small entities. Other alternative considered, such as I2 and I4, which would reduce the number of species on the prohibited species list, could have more positive economic impacts. However, these alternatives were rejected because they could delay rebuilding of LCS, inconsistent with Magnuson-Stevens Act, and could result in long-term negative economic impacts if stocks decline further.

8.5.4 Bycatch Reduction Measures

The preferred alternatives for bycatch reduction (i.e., J4 and J5) were designed to minimize the economic impacts on fishermen, while simultaneously promoting bycatch reduction of protected species in shark fisheries.

Specifically, alternative J4 would require some vessels to install VMS units, which would result in economic impacts to small entities in the short-term. However, in the long-term, alternative J4 could result in increased revenues by preventing more burdensome regulations and allowing more fishing time. Additionally, bottom longline vessels would be able to traverse closed area, while gillnet vessels may require less observer coverage under J4. The proposed regulations to implement the VMS program in Atlantic shark fisheries would require approximately five gillnet shark fishing vessels and approximately seven directed category bottom longline shark fishing vessels to install VMS units. Requiring VMS for only a portion of the shark fishing fleet, minimizes the economic impact on the remainder of the fleet. Specifically, the costs associated with implementing a VMS program in the Atlantic shark gillnet fishery include an initial average cost per vessel of approximately \$2,275 (not including postage costs for returning certification statement), an average annual maintenance cost of approximately \$500/year, and approximately \$197.28/year for communications during the right whale calving season. Costs associated with implementing a VMS program in the directed shark bottom longline fishery include an initial average cost per vessel of approximately \$2,275 (not including postage costs for returning certification statement), an average annual maintenance cost of approximately \$500/year, and approximately \$305.28/year for communications during the proposed 212 day shark bottom longline time/area closure. Economic analyses of the impacts associated with VMS requirements on small entities indicate that the average gross revenue by permit holder, during the first year of

implementation, will be reduced by nine percent. For every year thereafter, economic analyses on small entities indicate that the average gross revenue by permit holder will be reduced by two percent. In an attempt to provide vessel owners with flexibility and help minimize costs, NOAA Fisheries has type-approved four VMS units from two manufacturers for use in the pelagic longline fisheries. No VMS units have been type-approved specifically for use in the Atlantic shark fisheries as of this date. Based on the range of VMS units commercially available, NOAA Fisheries expects any VMS unit type-approved for Atlantic shark fisheries to be similar or identical to those type-approved for the pelagic longline fisheries. Once this type-approval is completed it is likely that this alternative will result in simplification of compliance and reporting requirements under the proposed rule for such small entities. VMS would only be needed if there is a time/area closure in order to ensure adequate compliance with the closure. Because of the need to ensure adequate enforcement of the closed areas, the VMS requirement is the most effective method to accomplish this objective. Although requiring VMS will result in additional economic costs to small entities, NOAA Fisheries considered this to be the most useful tool to ensure compliance. No other alternatives are available at this time that would be as effective in terms of enhancing enforcement of the closed areas.

The preferred alternative J5 would likely result in minor economic impacts to small entities, primarily because the cost associated with purchasing release equipment is minimal and is a one time cost. Although many shark fishermen may already use non-stainless steel corrodible hooks, this may increase the financial burden on fishermen who will have to purchase new hooks. The requirement to move one nautical mile after an interaction with a marine mammal or sea turtle would likely increase fuel costs due to increased time transiting to another fishing area and increased time needed to fish if alternate fishing grounds are not as productive for target species. However, because few marine mammals or sea turtles have been observed caught, NOAA Fisheries does not believe that this requirement would affect more than a few trips for all vessels combined, each year.

8.5.5 Time/Area Closures

NOAA Fisheries is proposing a revised time and area closure for sandbar and dusky shark nursery and pupping areas offshore North Carolina during the winter fishery under preferred alternative K2. This alternative is designed to reduce bycatch of neonates and juvenile sandbar sharks and dusky sharks by 92 percent and 61 percent, respectively. This alternative is likely to have significant impacts on 23 small entities/vessel owners by closing large sections of coastal waters to shark fishing.

Original analyses pointed toward a total of only 13 vessels with home ports located in South Carolina, North Carolina, and Virginia as having reported shark landings during 2001. These vessels reported gross revenues totaling \$351,600 during that year. Revised economic analyses indicate that only 8 vessels with home ports located in North Carolina reported shark landings during 2001. This revised analysis indicates that alternative K2 will result in a 15-percent reduction in total gross revenues for the fishery as a whole and in a three-percent reduction of

revenues for the small entities directly affected by the proposed closure. As such, the revised time/area closure mitigates the economic impacts by \$17,956 in total gross revenues for the small entities directly affected by the closure as compared with the original preferred alternative.

Fishermen would be directly impacted by a reduction in catch and income from areas that they have traditionally relied upon. Fishing practices and behavior of fishermen would also be affected by requiring fishermen to travel further offshore. Due to greater distances traveled, fishermen would spend more time at sea, and associated costs of food, fuel, and labor could increase. This could cause some fishermen to go out of business, move to new areas, or alter fishing patterns in other ways. This alternative could result in a change in the distribution of benefits and costs, with the financial costs of operating in the fishery increasing and benefits decreasing. However, the preferred alternative may result, once LCS rebuild, in slight benefits for fishery participants that are not directly affected by the closure and it minimizes the economic impacts compared to the other time/area closure alternative (i.e., K3) which considers a closure for all shark nursery and pupping areas during pupping season. Simplification of the regulations, similar to that of K1, would compromise the ecological effectiveness of the proposed time/area closure in terms of bycatch reduction (See Chapter 4). Additionally, it is not likely that formulating performance standards would help reduce bycatch of sandbar or dusky sharks in this fishery.

8.5.6 Essential Fish Habitat

None of the alternatives considered would affect small entities in any way that would complicate compliance and reporting requirements for EFH or result in significant economic impacts for small entities.

8.5.7 Exempted Fishing Permits

None of the alternatives considered are expected to affect small entities in any way that would complicate compliance and reporting requirements for EFPs or result in significant economic impacts for small entities.

8.5.8 Summary of Vessel Buyback Programs

Reducing fishing capacity is one overcapitalization alternative that could provide some economic relief. Commonly known as buyback, this alternative pays harvesters in fisheries with too much fishing capacity either (a) to surrender their fishing permits for that fishery or (b) both to surrender all their fishing permits and withdrawn their fishing vessels from all fishing (by scrapping or by title restriction). A buyback's statutory authority is section 312(b)-(e) of the Magnuson-Stevens Act. The buyback's intent is to decrease excess harvesting capacity, increase the economic efficiency of the remaining harvesting capacity, and facilitate the conservation and management of fishery resources.

There have been a number of buyback programs that have been implemented or are in the initial stages of implementation (See Table 8.1). Buyback programs funded entirely or in part by the Federal government have reduced the number of permitted fishing vessels in New England, Texas, and Washington. Beginning in 1976 and continuing to the present, programs financed partly or entirely by the Federal government have awarded cash compensation to people surrendering salmon fishing licenses in the Pacific Northwest. More recently, federal funds have been used to purchase licensed vessels in the New England groundfish fishery, and contributed to the fishing license buyback program in the Texas Bay and bait shrimp fisheries. Responding to interest in expanding these programs and the arguments of those who believe that industry should both play a more central role in designing buyback programs and pay for profitable programs, the Sustainable Fisheries Act amended the Magnuson-Stevens Act to create new buyback program options. New fishing vessel reduction programs authorized by Section 312 of the Sustainable Fisheries Act can draw on both Federal and industry funding, these programs operate under federal guidelines and assistance, and they will use loans from the federal treasury.

Payments for reducing fishing capacity can be fixed, based on market values or production histories, determined by reverse auctions, or a combination of these. Buyback costs can be funded by Federal appropriations, Federal loans repayable by post-buyback harvesters, contributions from other public or private entities, or a combination of these. Title XI of the Merchant Marine Act, 1936, as amended, is the authority under which NOAA Fisheries' Fisheries Finance Program makes loans for financing buyback costs.

On May 18, 2000, NOAA Fisheries implemented an interim final rule for implementing a section 312 buyback (65 FR 31444). Although NOAA Fisheries has not yet conducted a buyback solely under the section 312 authority, NOAA Fisheries has conducted one buyback partially under the section 312 authority and several buybacks under other authorities.

NOAA Fisheries recently conducted a \$90 million buyback in the Bering Sea pollock fishery. Although separately authorized by the American Fisheries Act, the pollock buyback involved a loan under Title XI that will be repaid by fees collected under section 312. The pollock buyback's cost was financed by a \$15 million Federal appropriation and a \$75 million buyback loan from the Fisheries Finance Program. Post-buyback pollock harvesters will repay the loan over the next 30 years by a fee of 0.6 cents for each pound of inshore pollock they land. Shoreside processors will deduct the fee from ex-vessel proceeds otherwise payable to the harvesters, and forward fee revenues to NOAA Fisheries for application to the loan. This buyback involved fixed payments and vessel scrapping as well as the revocation of all fishing permits the vessels possessed.

Except for several additional requirements, buyback loans entirely under the authority of section 312 work the same way as the pollock buyback loan. The additional requirements are that the repayment fees equal some portion (not to exceed five percent) of the ex-vessel value of post-buyback landings and that industry referenda authorize the fees before buyback loans occur. Under Title XI alone, however, 20 years is the maximum maturity for buyback loans. Buyback

loans are statutory loans. Buyback loans involve no promissory notes, mortgages, or other conventional loan documentation. Post-buyback landing fees are the exclusive source of repaying, and security for, buyback loans. Fee payment and collection are mandatory. Beyond these fees, however, no one has any other liability for loan repayment.

Before enactment of the section 312 and Title XI buyback authorities, NOAA Fisheries conducted a major buyback in the Northeast multispecies fishery. Under the authority of the Interjurisdictional Fisheries Act and funded entirely by Federal appropriations, this buyback involved vessel scrappings as well as permit revocations. For \$22.5 million, this buyback scrapped 68 vessels. The buyback also revoked 475 fishing permits.

The multispecies buyback involved a reverse auction. Each bidder specified the price (buyback payment) for which the bidder was willing to withdraw fishing capacity and the average value over a 3-year period of all multispecies production for the vessel and permit involved. The price, stated as a percentage of the production, was the factor by which this buyback ranked bids for acceptance. The bids accepted were those whose buyback prices were the lowest percentage of the production values.

In connection with the Northeast multispecies buyback, NOAA Fisheries also made \$20 million in general Title XI loans available for refinancing existing debts on vessels remaining in the fishery after the buyback. By providing longer repayment terms and lower interest rates, these Title XI refinancing loans decreased the debt service burdens of post-buyback vessels.

Other buybacks preceding the section 312 authority have involved inshore fishing permits in the Washington state salmon fishery and the Texas state shrimp fishery. Also conducted under the Interjurisdictional Fisheries Act, 75 percent of these buyback costs were funded by Federal appropriations. The other 25-percent was funded by non-Federal sources.

Recently, NOAA Fisheries provided funds via an Saltonstall-Kennedy Grant to the Gulf and South Atlantic Fisheries Foundation, Inc. Money from this grant will be used to study and develop a plan for a buyout program in the commercial shark fishery. NOAA Fisheries looks forward to seeing the results of this study.

8.5.9 Other Options for Economic Relief

Besides buyback programs, there may be other options for economic relief. NOAA Fisheries has worked with a number of other agencies/departments to explore programs that are available to fishermen and other businesses affected by fishery management measures. These programs are described below.

1. The Small Business Administration (SBA) is a source of guarantees for loans from local banks. The 7(a) Loan Guaranty Program is one of SBA's primary lending programs. It provides loans to small businesses unable to secure financing on reasonable terms

through normal lending channels. The program operates through private-sector lenders that provide loans which are, in turn, guaranteed by the SBA—the Agency has no funds for direct lending or grants. Most lenders are familiar with SBA loan programs so interested applicants should contact their local lender for further information and assistance in the SBA loan application process. Information on SBA loan programs, as well as the management counseling and training services offered by the Agency, is also available from the local SBA office. Interested parties can learn more about this program by visiting the SBA website: <http://www.sba.gov/financing/fr7aloan.html>.

2. The Economic Development Administration (EDA) was created to create new jobs and retain existing jobs in economically stressed communities. Through a series of grant programs, the EDA helps distressed communities develop strategies to improve their own economic situation through a multifaceted cooperative effort. Most of the EDA activity affecting the fishing industry has been funded through the EDA's Public Works Program and the EDA's Economic Adjustment Program. The Public Works Program has funded port and harbor improvements. The Economic Adjustment Program helps communities adjust to serious changes in their economic situation, and proceeds from this program are generally used for organization, business development, revolving loan funds, infrastructure, and market research. Interested parties can learn more about these programs, including eligibility requirements and contact information, by visiting the EDA website: <http://www.doc.gov/eda/html/prgtitle.htm>.
3. The Farm Credit System (FCS) is a nationwide financial cooperative that lends money and provides financial services to agriculture and rural America. Congress created the FCS in 1916 to provide American agriculture with a dependable source of credit. The FCS makes loans and leases at competitive rates with flexible terms to fit the needs of farmers, ranchers, commercial fisherman, agribusinesses and country home owners. As of January 1997, the FCS was comprised of 225 banks and associations that include the following: 6 Farm Credit Banks, which make direct, long-term loans through 60 Federal Land Bank Associations and provide loan funds to 65 Production Credit Associations; 56 Agricultural Credit Associations; and 31 Federal Land Credit Associations. Long-term loans to the fishing industry are made for a variety of purposes, including real estate for aquaculture operations, processing and marketing facilities, and capital equipment. In addition, short-term FCS loans can be used to buy production equipment such as fuel or bait while longer-term loans may be used for gear expenditures, the purchase of new vessels, and the reconditioning of older vessels. Interested parties can locate a FCS lender by visiting the following website: <http://www.fcredit.com/locate.htm>.
4. The U.S. Department of Labor's Economic Dislocation and Worker Adjustment Assistance Act provides funds to States and local substate grantees so they can help dislocated workers find and qualify for new jobs. It is part of a comprehensive approach to aiding workers who have lost their jobs that also includes provisions of the Worker Adjustment and Retraining Notification Act and the Trade Adjustment Assistance

program. Workers who have lost their jobs and are unlikely to return to their previous industries or occupations are eligible for the program. This includes workers who lose their jobs because of plant closures or mass layoffs; long-term unemployed persons with limited job opportunities in their fields; and farmers, ranchers and other self-employed persons who become unemployed due to general economic conditions. Services include retraining services, readjustment services, and needs-related payments. Interested parties can obtain more information about services available and contact information by visiting the following website: <http://www.doleta.gov/programs/factsht/edwaa.htm>.

5. The Fishing Vessel Obligation Guarantee Program (FOG) was established by the Federal Ship Financing Act of 1972. With the passage of the Sustainable Fisheries Act, the FOG program was renamed the Fisheries Finance Program (FFP) and was authorized to finance buyback programs and the purchase of Individual Transferable Quota shares by small-scale fishermen and crew members. The FFP is a direct federal loan program. Regulations implementing the new authority for financing industry-funded vessel buybacks have not been finalized, but the program is expected to require an interested fishery to develop and submit a business plan for the buyback to NOAA Fisheries for review and approval. The plan will have to include an economic analysis describing the benefits to remaining vessels. If the plan is approved by NOAA Fisheries, participants in the fishery must vote whether to implement the plan. If a plan is approved by the fishery's participants, the FFP will borrow money from the U.S. Treasury Department to buyback vessels of permits. The vessel owners or permit holders remaining in the fishery will repay the Treasury loan through a levy of up to five percent of the ex-vessel value of the fishery's landings.

Table 8.1 Completed NOAA Fisheries Vessel Buyback Programs. Sources: Grable, pers. comm. 2003; Gorrel, pers. comm. 2003.

BUYBACK NAME ¹	NUMBER VESSELS	NUMBER PERMITS	BUYBACK COST FUNDING (MILLIONS OF \$)			
			GRANTEE COST	PRODUCER COST (LOAN) ³	FEDERAL COST	TOTAL COST
NE Multispecies	11	67	-	-	2	2
Washington Salmon	-	296	-	-	4	4
NE Multispecies	68	475	-	-	22.5	22.5
Texas Inshore Shrimp	-	310	-	-	1.4	1.4
Washington Salmon	-	142	-	-	5.2	5.2
Washington Salmon	-	391	1.2	-	3.5	4.7
Alaska Pollock (BSAI) ²	9	17	-	75	15	90
NE Multispecies	-	245	-	-	10	10
West Coast Groundfish ⁴	92	240	-	35.8	10	45.8
Total Done ⁵	180	2,183	1.2	110.8	73.6	185.6

¹ All but two of the buybacks above were disaster assistance, in which the Agency merely included buyback because of its desire to accomplish a conservation objective as well as a disaster assistance objective. Of those above, only BSAI pollock and West Coast groundfish are pure buyback.

² The 9 vessels involved in this buyback were very large factory trawler/processors (250-300 foot range).

³ We disburse buyback loan proceeds as buyback payments, and post-buyback harvesters repay the loans by landing fees which apply to all post buyback landings.

⁴ The buyback removes Federal groundfish trawl permits (other than those from vessels harvesting whiting and processing it at sea) and Dungeness crab and pink shrimp permit issued by Washington, Oregon, or California and held by the owner of the Federal groundfish trawl permit. Bidding under this buyback is complete, but the buyback's loan repayment fee referendum is ongoing (voting closed on 10/29/03). If a simple majority of voters approve the fee, we will complete the buyback; otherwise, the bidders' reduction contract will be of no further force and effect. Nevertheless, this table counts this buyback in the "done" total in the assumption that the referendum will succeed.

⁵ Not included in this table is an upcoming \$100 million buyback in Alaska's BSAI crab fishery, 100% of which a buyback loan will finance. We should publish the final regulations for this buyback during late October or early November of this year, with buyback bidding commencing about 30 days thereafter. Once bidding is completed, this buyback's conclusion will then also be contingent upon a referendum about the landing fee required to repay the \$100 million buyback loan. Several other, minor, ongoing permit buybacks, in the form of disaster assistance, are also not included in the above table.

References for Section 8.0

No references cited.

References for Section 8.1

No references cited.

References for Section 8.2

No references cited.

References for Section 8.3

No references cited.

References for Section 8.4

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References for Section 8.5

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References for Section 8.6

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References for Section 8.7

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