



Federal Register

**Friday,
September 29, 2006**

Part IV

Department of Commerce

**National Oceanic and Atmospheric
Administration**

50 CFR Part 600

**Fishing Capacity Reduction Program for
the Longline Catcher Processor Subsector
of the Bering Sea and Aleutian Islands
Non-pollock Groundfish Fishery; Final
Rule**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 060731207-6242-02; I.D. 051706F]

RIN 0648-AU42

Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non-pollock Groundfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule implementing the Bering Sea and Aleutian Islands (BSAI) Catcher Processor Capacity Reduction Program (Reduction Program) for the longline catcher processor subsector of the BSAI non-pollock groundfish fishery (Reduction Fishery), in compliance with the FY 2005 Appropriations Act. This program is voluntary and permit holders of the Reduction Fishery (Subsector Members) are eligible to participate. Subsector Members must sign and abide by the Capacity Reduction Agreement (Reduction Agreement) and, if their offers are selected, a Fishing Capacity Reduction Contract (Reduction Contract) with the U.S. Government. These key components of the Capacity Reduction Plan (Reduction Plan) were prepared by the Freezer Longline Conservation Cooperative (FLCC) and are implemented by the final regulations. The aggregate of all Reduction Agreements and those Reduction Contracts signed by Subsector Members whose offers were accepted by $\frac{2}{3}$ votes of the Subsector Members, will together with the FLCC's supporting documents and rationale that these offers represent the expenditure of the least money for the greatest capacity reduction, constitute the Reduction Plan to be submitted to the Secretary of Commerce for approval. Subsector Members participating in the Reduction Program will receive up to \$36 million in exchange for relinquishing valid non-interim Federal License Limitation Program BSAI groundfish licenses endorsed for catcher processor fishing activity, Catcher/Processor (C/P), Pacific cod, and hook and line gear, as well as any present or future claims of eligibility for any fishing privilege based on such permit

(the Groundfish Reduction Permit) and additionally, any future fishing privilege of the vessel named on the permit. Individual fishing quota (IFQ) quota shares would be excluded from relinquishment. Following submission of the Reduction Plan and approval by the Secretary, NMFS will conduct an industry referendum to determine the industry's willingness to repay a fishing capacity reduction loan to effect the Reduction Plan. A $\frac{2}{3}$ majority vote in favor would bind all parties and complete the reduction process. NMFS will issue a 30-year loan to be repaid by those harvesters remaining in the Reduction Fishery. The intent of this final rule is to permanently reduce harvesting capacity in the Reduction Fishery. This should result in increased harvesting productivity for post-reduction Subsector Members and help with conservation and management of the Reduction Fishery.

DATES: This rule is effective October 30, 2006.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the mailing address listed here or by calling Michael A. Sturtevant (see **FOR FURTHER INFORMATION CONTACT**).

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule to Michael A. Sturtevant at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to David_Rosker@ob.eop.gov, or fax to (202) 395-7825.

FOR FURTHER INFORMATION CONTACT: Michael A. Sturtevant at 301-713-2390, fax 301-713-1306, or michael.a.sturtevant@noaa.gov.

SUPPLEMENTARY INFORMATION: *Electronic Access.* This **Federal Register** document is also accessible via the Internet at <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

Statutory and Regulatory Background

NMFS published the proposed rule for this action in the **Federal Register** on August 11, 2006 (71 FR 46364) with a public comment period through September 11, 2006. NMFS received comments from three commenters and the comments and responses are discussed under the succeeding Comments and Responses section of this preamble.

The portions of the preamble to the proposed rule explaining the Reduction Program, Approval of the Reduction Plan, the Referenda, and the Contract are crucial to understanding this final regulatory action and are repeated here. For additional information on underlying authority in the Magnuson-Stevens Fishery Conservation and Management Act, management of BSAI fisheries, and NMFS' framework and specific fishing capacity reduction regulations, persons can consult the preamble to the proposed rule.

The measures contained in this final rule to establish the Reduction Program are authorized by Title II, Section 219 of the FY 2005 Appropriations Act (Act) (Public Law 108-447; 2004 enacted H.R. 4818, December 8, 2004), and in particular by Section 219(e) of the Act. Also, Public Law 108-199 provided the initial \$500,000 subsidy cost to fund a \$50 million loan and Public Law 108-447 provided an additional \$250,000 subsidy cost to fund \$25 million more (in addition to providing for the buyback program itself). While the Act authorizes the establishment of fishing capacity reduction programs for catcher processor subsectors within the Alaska groundfish fisheries (*i.e.*, the longline catcher processor subsector, the American Fisheries Act (AFA) trawl catcher processor subsector, the non-AFA trawl catcher processor subsector, and the pot catcher processor subsector) based on capacity reduction plans and contracts developed by industry and approved by NMFS, this final rule only addresses the longline catcher processor subsector of the Reduction Fishery. The remaining subsectors may later develop capacity reduction plans and contracts for the other three catcher processor subsectors.

The FLCC on behalf of the Reduction Fishery drafted the Reduction Agreement which NMFS seeks to incorporate into its existing fishing capacity reduction regulations by this final rule. The Reduction Agreement, the Reduction Contract, and application of certain other existing Federal law and regulations referred to above are the basis for the Reduction Plan. The aggregate of all Reduction Agreements and Reduction Contracts signed by Subsector Members whose offers to participate in this buyback are ranked highest by the FLCC will constitute the Reduction Plan and will be submitted to NMFS for approval.

The Reduction Agreement and the Reduction Contract are the two key components of the Reduction Plan and this final rule. Substantive provisions of the Reduction Agreement would be codified at 50 CFR 600.1105 along with

a requirement for all members of the Reduction Fishery submitting offers to participate in the Reduction Program to execute the Reduction Contract (i.e., the requirement for an Offeror to execute a Reduction Contract will be codified and the Reduction Contract appended). Wherever the term Offeror is used in this preamble and regulation, it also includes any co-Offeror.

The Act authorized not more than \$36 million in loans (reduction loan) to fund the Reduction Program. NMFS' authority to make this loan resides in sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) (MMA) (title XI).

Reduction Program—Overview

Participation in the Reduction Program would be open to any member of the Longline Subsector. Each Subsector Member will receive a notice of the FLCC Reduction Agreement and Reduction Contract and enrollment documents by certified mail. The FLCC Reduction Program is essentially divided into four phases: (1) Enrollment; (2) offer selection; (3) plan submission; and (4) implementation, after approval by referendum. Only LLP licenses and other assets (including fishing history) voluntarily submitted for removal from the Reduction Fishery shall be subject to reduction. Because there exist what are commonly referred to as "latent licenses" within the Reduction Fishery which the FLCC membership desires to remove, latent LLP licenses need not be associated with a vessel for inclusion as assets to be reduced under the Reduction Program. Fees for repayment of the loan which funds the Reduction Program will be collected from the Subsector Members who continue operations in the Reduction Fishery after implementation of the Reduction Program set forth in § 600.1105.

Reduction Program—The Capacity Reduction Agreement

Basic Agreement

On April 12, 2006, the FLCC submitted a Reduction Agreement, Reduction Contract, and Executive Summary for a Reduction Plan for the Reduction Fishery to NMFS. The Reduction Plan's express objective is to permanently reduce harvesting capacity in the Reduction Fishery by removal of Groundfish Reduction Permits, Reduction Fishing Privileges, and the Reduction Fishing Interests that are specified in the Reduction Contract (which is appended to § 600.1105). The FLCC will implement the process of qualifying and enrolling Subsector

Members and selecting offers from Subsector Members to remove fishing capacity by means of this buyback. Once the FLCC has completed the selection process, the highest ranking offers, the rationale for acceptance, the Reduction Agreements, the Reduction Contracts (from Subsector Members whose offers were selected), and any other supporting documents will be submitted as the Reduction Plan, by the FLCC to NMFS for approval, on behalf of the Secretary of Commerce, in compliance with Section 219(e) of the Act.

Those Subsector Members submitting approved offers would give up 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. The Subsector Members would also have to relinquish Reduction Fishing History consisting of: (1) The Reduction Privilege Vessel's full and complete documented harvest of groundfish; (2) for any documented harvest of the Reduction Privilege Vessel, any right or privilege to make any claim related to any fishery privilege that might qualify for any future fishing license (see Section 8.b. of the Contract for additional details); (3) any documented harvest on any other vessel (Reduction Fishing Vessel) that gave rise to the Groundfish Reduction Permit; and (4) 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**).

Regarding the vessel named on the Groundfish Reduction Permit (the Reduction Privilege Vessel), the Offeror will accept 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).

The Reduction Fishing Interest that would be removed would not include any: 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.

Reduction Agreement Terms and Definitions

Capitalized terms used in the Reduction Agreement are defined in Schedule A to the Reduction Agreement; other terms are defined within the text of the Reduction Agreement. Those Reduction Agreement terms that are essential to understanding the regulatory provisions are set forth in § 600.1105(b) and include "Application Form", "Capacity Reduction Agreement or Reduction Agreement", "Closing Vote", "Current Offeror", "Fishing Capacity Reduction Contract or Reduction Contract", "FLCC Counsel", "LLP License", "Offer(s)", "Rejected Offer", and "Website". Other terms important to understanding these regulations and the Reduction Contract, including "Reduction Privilege Vessel", are also set forth in § 600.1105(b).

Reduction Agreement: Major Sections

There are three major sections of the Reduction Agreement: Qualification and Enrollment of Subsector Members; Selection of Offers to Remove Fishing Capacity by the Reduction Plan; and Submission of Reduction Plan. NMFS codifies these provisions as Federal regulations in 50 CFR 600.1105.

Qualification and Enrollment. Subsector Members may enroll in the Reduction Program at any time prior to closing the selection of offers to reduce capacity. Enrollment is accomplished by executing a Reduction Agreement and submitting specified supporting documents evidencing an applicant's status as a Subsector Member. Each of the supporting documents will be reviewed by Tagart Consulting who will serve as the Auditor for the Reduction Program. The Auditor will review all documents for strict compliance with the regulatory provisions of § 600.1105. Each Reduction Agreement becomes effective 10 days after written notice is sent by the Auditor to each holder of a LLP license endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear, informing that more than 70 percent of Subsector Members have submitted complete applications certified by the Auditor as complying with § 600.1105. For more specific information on qualification and enrollment of Subsector Members, see § 600.1105(c) of this final rule.

Selection of Offers to Remove Fishing Capacity by the Reduction Plan. Once more than 70 percent of the Subsector Members have effective Reduction Agreements, the offer selection process begins. An offer is a binding offer to relinquish to the United States Government the assets identified in the offer in consideration of a dollar amount certain set by the Offeror, and may not be withdrawn once entered, unless it is rejected during the selection process.

Essentially, during the offer process, Subsector Members will alternate on a weekly basis between Submission Periods (see § 600.1105(d)(3)(ii)) and Ranking Periods (see § 600.1105(d)(5)(ii)). During any Submission Period, a Subsector Member may offer, for inclusion in the Reduction Program, its LLP license(s) and withdrawal of the vessel(s) designated on the LLP license(s) from all fisheries. During the Ranking Period, nonoffering Subsector Members may rank the offers submitted during the prior Submission Period. At the end of each Ranking Period, the Auditor will tabulate and post on a website the results of ranking the offers up to a total offer price of \$36 million. Those offers ranked within the \$36 million are Selected Offers and those that are not ranked within the \$36 million are Rejected Offers with the Rejected Offers being voided and no longer binding on the offering member(s).

Once the offer rankings are posted, a new Submission Period begins with the process repeated until at least $\frac{2}{3}$ of the Nonoffering Subsector Members call for a closing vote. If $\frac{2}{3}$ of the Nonoffering Members accept the Selected Offers proposed in the closing vote, the selection process to remove capacity by the Reduction Plan terminates. If not, the selection process resumes with a new Submission Period. For more specific information on ranking and selection of offers to remove capacity, see § 600.1105(d).

Plan Submission, Including Repayment. After the Selection Process is complete, the FLCC will develop the Reduction Plan in compliance with the Act, the MSA, and other applicable laws and regulations for submission to NMFS for approval on behalf of the Secretary of Commerce. The Reduction Plan will include the LLP licenses and other fishing interests selected by the offer process as the assets to be purchased in the Reduction Program, and provide for repayment over a 30-year term. The Reduction Plan must also include the FLCC's supporting documents and rationale for recognizing that these offers represent the expenditure of the least money for the greatest capacity

reduction. Acceptance of the Offers are at the sole discretion of NMFS on behalf of the Secretary of Commerce. Further, the FLCC will give notice of the Reduction Plan to the North Pacific Fishery Management Council as required by the Act.

Repayment of the loan will begin by collection of annual fees collected from the Subsector Members operating in the Reduction Fishery after implementation of the Reduction Program. The amount of such fee will be calculated on an annual basis as: the principal and interest payment amount necessary to amortize the loan over a 30-year term, divided by the Reduction Fishery portion of the BSAI Pacific cod initial total allowable catch (ITAC) allocation in metric tons (converted to pounds), provided that the fees should not exceed 5 percent of the average ex-vessel production value of the Reduction Fishery. 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. For more specific information on submission of the Reduction Plan, including fees to repay the Reduction Loan, see § 600.1105(e).

The Reduction Program—Other Matters Relating to the Reduction Agreement and Reduction Plan

Review/Disputes

The Reduction Agreement (but not these final regulations) provides for an expedited process to review any decision by the Auditor and for settlement of disputes utilizing an expedited review process by pre-selected legal counsel and, if necessary, binding arbitration. Also, all Offerors must comply with FLCC bylaws. By motion unanimously accepted by the members of the FLCC on February 21, 2005, the members of the FLCC approved the FLCC's development of a capacity reduction program in compliance with the Act (the Motion).

Decisions of the Auditor and the FLCC

Under § 600.1105(f), the Offerors are subject to the terms and conditions set forth in the Reduction Agreement to settle any disputes regarding the decisions of the Auditor or the FLCC. That section also explains the scope of the Auditor's examination.

Other Provisions of the Reduction Agreement

Regulatory provisions mirroring the Reduction Agreement's provisions for Enforcement/Specific Performance, Miscellaneous, Amendment, and Warranties are specified at §§ 600.1105(g), (h), (i), and (j), respectively.

Approval of the Reduction Plan

The criteria for NMFS, on behalf of the Secretary, to approve any Reduction Plan are specified at § 600.1105(k). Among other things, the Assistant Administrator of NMFS must find that the Reduction Plan is consistent with the Act and the MSA, and that it will result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time.

The FLCC has not yet submitted the Reduction Plan to NMFS for approval and cannot do so until after this final rule is published. If the FLCC submitted the Reduction Plan before the publication of this final rule, it may be necessary for the FLCC to revise and re-submit the Reduction Plan to conform with the provisions of the final rule.

The Referenda

NMFS will conduct an industry referendum to determine the industry's willingness to repay a fishing capacity reduction loan to purchase the licenses, fishing rights, etc. identified in the Reduction Plan subsequent to the publication of this final rule. A successful referendum by $\frac{2}{3}$ of the members of the Reduction Fishery would bind all parties and complete the reduction process.

The current Fishing Capacity Reduction Framework regulatory provisions of § 600.1010 stipulate procedural and other requirements for NMFS to conduct referenda on fishing capacity reduction programs. Section 600.1105(l) makes those framework referenda requirements applicable to the Reduction Program for the Longline Subsector. After approval of the Reduction Program via a referendum, the Reduction Program will be implemented.

The Contract

An appendix to this § 600.1105 sets forth the Contract component of the Reduction Program for the Longline Subsector. The appendix, or Contract, will also be codified along with the regulatory text of § 600.1105.

Comments and Responses

The public comment period on the subject proposed rule (71 FR 46364)

closed at midnight on September 11, 2006. A total of three commenters submitted comments (two via e-mail and one faxed comments to NMFS). Two comments were from individuals. One was a brief comment supporting the reduction of longlines and the rule. The other was a brief comment opposing the rule because it is voluntary and instead supports a mandatory reduction in fish catch. The third commenter was the legal counsel, Bauer Moynihan & Johnson LLP, who represents the Freezer Longline Conservation Cooperative (FLCC) in any review or arbitration under the Capacity Reduction Agreement. The comments by the FLCC's counsel raised three concerns: (1) The need to make clear that Reduction Contracts were not required to enroll in the Reduction Program and were only required of Selected Offerors; (2) that only fishing history connected to the license and/or vessels identified on a Selected Offer should be relinquished; and (3) that the description of the Reduction Plan was incomplete in the preamble's discussion of the Reduction Program. All comments are elaborated on below and NMFS responses are provided.

Comment 1: The commenter expressed support for reducing longline fishing stating their belief that the fewer longlines there are, the better it would be for the ocean and all marine life living in it.

Response: The rule is designed to reduce the number of permitted longline catcher processor vessels fishing in the BSAI non-pollock groundfish fishery, and will not necessarily reduce the number of longline sets. The commenter gave no specific rationale for their suggestion that the number of longlines be reduced. The purpose and need for this action is to reduce excess capacity in one of the major non-pollock groundfish sectors and help achieve the conservation and economic objectives of the fishery management plan. There is no known scientific basis for reducing the number of longlines as suggested by the commenter.

Comment 2: The commenter is opposed to the reduction program in this fishery being voluntary and instead encourages that the program be made mandatory. The commenter supports a mandatory program to reduce the catch in the BSAI area to preserve fish for future generations.

Response: The reduction program is required to be a voluntary program by statute (Title II, Section 219 of the FY 2005 Appropriations Act; Public Law 108-447). The rule is designed to reduce the number of licensed fishing vessels not the amount of catch. Each year the

North Pacific Fishery Management Council and NMFS consider the best scientific information for the BSAI groundfish fishery, including any new stock assessment information, fishing mortality, natural mortality, and other pertinent scientific information in setting harvest quotas for the coming fishing year. Currently, no stocks of fish in the BSAI groundfish fishery are overfished or subject to overfishing. NMFS is confident that sound management currently practiced on these stocks will adequately preserve these stocks.

Comment 3: The commenter pointed out that the Summary (at 71 FR 46364) and § 600.1105(c)(2) (at 71 FR 46369) of the proposed rule incorrectly indicates that each Subsector Member wanting to enroll with the FLCC to participate in the Reduction Program must execute and deliver a Reduction Contract as part of their application. The commenter states that the Reduction Agreement (designed by industry) is the mechanism whereby persons establish their eligibility to enroll and that only those Subsector Members whose offers are selected must execute a Reduction Contract. The commenter asks that the language regarding the requirements for enrollment as a Subsector Member be revised to delete the requirement that a Reduction Contract be executed as a condition to enrollment.

Response: NMFS agrees that to participate in the process by enrolling with the FLCC in the Reduction Program, Subsector Members only need to sign a Reduction Agreement. While all members of the BSAI groundfish longline subsector are Subsector Members and all may vote on offers to relinquish permits in the buyback, only Subsector Members who have enrolled with the FLCC in the Reduction Program may submit offers. NMFS also agrees with the commenter that only those Subsector Members whose offers are selected must execute a Reduction Contract. Any Selected Offer by a participating Subsector Member must be submitted with a signed Reduction Contract. NMFS has modified the Summary and § 600.1105(c)(2) of the rule to clarify that a Reduction Contract is only required for those Subsector Members submitting Selected Offers.

Comment 4: The commenter is opposed to the Contract's Section 8.c. (actually Section 8.d.) requirement in the Appendix to § 600.1105 (at 71 FR 46375) that all fishing history associated with any latent license that remains in the Offeror's possession as of August 11, 2006, must be relinquished by any Offeror. The commenter states that this requirement is inconsistent with the

Reduction Agreement and the intent of the FLCC, and that only fishing history connected to the license and/or vessels identified on a Selected Offer should be relinquished.

Response: NMFS agrees that only fishing history associated with any latent permit that is identified on the Selected Offer (and subsequently on the Reduction Contract) should be relinquished rather than all fishing history associated with any latent license that was in the Offeror's possession on August 11, 2006. In the proposed rule, NMFS was attempting to collect all fishing history associated with latent permits held by the Offeror; however, NMFS recognizes the inconsistency with the Reduction Agreement and supports the intent of the FLCC to provide flexibility to Subsector Members, who hold more than one LLP license, in relinquishing their licenses. NMFS has modified the Section 8.d. requirement in the Contract contained in the Appendix to § 600.1105 so that it is limited to relinquishing all fishing history associated with the latent LLP license identified on the Selected Offer, including any fishing history associated with the fishing vessel that gave rise to the latent LLP license that remained in the Offeror's possession as of August 11, 2006.

Comment 5: The commenter indicated that the description of the Reduction Plan was incomplete in the preamble's discussion of the Reduction Program at 71 FR 46365. The commenter stated that the Reduction Agreements and Reduction Contracts, while elements of the Reduction Plan, do not by themselves constitute the Reduction Plan and referred to § 600.1105(e) (at 71 FR 46372) of the proposed rule which identified other elements of the Reduction Plan.

Response: NMFS has modified the description of the Reduction Plan in the preamble's discussion of the Reduction Program to include mention of the FLCC's supporting documents and rationale that these offers represent the expenditure of the least money for the greatest capacity reduction, together with the Reduction Agreements and Reduction Contracts, as constituting the Reduction Plan. This is now consistent with the Summary and § 600.1105(e).

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this final rule is consistent with Title II, Section 219 of the FY 2005 Appropriations Act, Public Law 108-447, and with the Magnuson-Stevens

Fishery Conservation and Management Act, codified at 16 U.S.C. 1801 *et seq.*

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment for this final rule. The assessment discusses the impact of this final rule on the natural and human environment and integrates a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA). NMFS will send the assessment, the review and analysis to anyone who requests a copy (see **ADDRESSES**).

NMFS prepared a FRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the economic impacts this final rule would have on small entities. NMFS intends the analysis to aid us in considering regulatory alternatives that could minimize the economic impact on affected small entities. The final rule does not duplicate or conflict with other Federal regulations.

Summary of FRFA

The Small Business Administration (SBA) has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of \$4 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned or cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. Small entities within the scope of this final rule include individual U.S. vessels and dealers. There are no disproportionate impacts between large and small entities.

Description of the Number of Small Entities

The FRFA uses the most recent year of data available to conduct the analysis (2003). The vessels that might be considered large entities were either affiliated under owners of multiple vessels or were catcher processors. However, little is known about the ownership structure of the vessels in the fleet, so it is possible that the FRFA overestimates the number of small entities. In the Reduction Fishery, 24 of the 39 vessels meet the threshold for small entities. The remaining 13 vessels are not considered small entities for purposes of the RFA. There are 5 additional fishermen with permits but no vessels in the Longline Subsector who would benefit if they later purchase vessels and participate in the post-Reduction Fishery because there will be less competition for the harvest. Also, they would benefit if they chose to be bought out; and there would be no

impact to them if they did not buy a vessel and were not selected for the buyback. Implementation of the buyback program would not change the overall reporting structure and record keeping requirements of the vessels in the BSAI Pacific cod fisheries. However, this program would impose collection of information requirements totaling 16 hours 10 minutes.

Most firms operating in the Reduction Fishery have annual gross revenues of less than \$4 million. The FRFA analysis estimates that 24 of the 39 active longline catcher processor vessels (i.e., 39 vessels constitute the Longline Subsector) that participated in 2003 are considered small entities. The ownership characteristics of vessels operating in the Reduction Fishery are not available and therefore it is not possible to determine with certainty, if they are independently owned and operated, or affiliated in one way or another with a larger parent company. Furthermore, because analysts cannot quantify the exact number of small entities that may be directly regulated by this action, a definitive finding of non-significance for this final action under the RFA is not possible. However, because the final rule will not result in changes to allocation percentages and participation is voluntary, net effects are expected to be minimal relative to the status quo.

The final rule's impact will be positive for both those whose offers NMFS accepts and for post-reduction catcher processors whose landing fees repay the reduction loan because the Offerors and catcher processors would have voluntarily assumed the impact:

1. Offerors would have volunteered to make offers at dollar amounts of their own choice. Presumably, no Offeror would volunteer to make an offer with an amount that is inconsistent with the Offeror's interest; and

2. Reduction loan repayment landing fees would be authorized, and NMFS could complete the Reduction Program, only if at least two-thirds of Subsector Members voting in a post-offer referendum voted in favor of the Reduction Plan. Presumably, Subsector Members who are not Selected Offerors would not vote in favor of the Reduction Plan unless they concluded that the Reduction Program's prospective capacity reduction was sufficient to enable them to increase their post-reduction revenues enough to justify the fee.

Those participants remaining in the fishery after the buyback will incur additional fees of up to 5 percent of the ex-vessel production value of post-reduction landings. However, the

additional costs could be mitigated by increased harvest opportunities by post-reduction fishermen.

This final rule would affect neither authorized BSAI Pacific cod ITAC and other non-pollock groundfish harvest levels nor harvesting practices.

NMFS rejected the no action alternative considered in the EA because NMFS would not be in compliance with the mandate of Section 219 of the Act to establish a buyback program. In addition, the longline catcher processor subsector of the non-pollock groundfish fishery would remain overcapitalized. Although too many vessels compete to catch the current subsector total allowable catch (TAC) allocation, fishermen remain in the fishery because they have no other means to recover their significant capital investment. Overcapitalization reduces the potential net value that could be derived from the non-pollock groundfish resource, by dissipating rents, driving variable operating costs up, and imposing economic externalities. At the same time, excess capacity and effort diminish the effectiveness of current management measures (e.g. landing limits and seasons, bycatch reduction measures). Overcapitalization has diminished the economic viability of members of the fleet and increased the economic and social burden on fishery dependent communities.

NMFS determined that this final rule is not significant for purposes of Executive Order 12866 based on the RIR/FRFA.

This final rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) previously approved this information collection under OMB Control Number 0648-0376 with requirements for 878 respondents with a total response time of 38,653 hours.

NMFS estimates that the public reporting burden for this information collection would average 4 hours for making an offer (which includes executing the Reduction Agreement and Reduction Contract) and 4 hours for voting in a referendum. Persons affected by this final rule will also be subject to other collection-of-information requirements referred to in the final rule and also approved under OMB Control Number 0648-0376. These requirements and their associated response times are: completing and filing a fish ticket (10 minutes), submitting monthly fish buyer reports (2 hours), submitting annual fish buyer reports (4 hours), and fish buyer/fish seller reports when a person fails

either to pay or to collect the loan repayment fee (2 hours).

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB control number.

This action should not result in any adverse effects on endangered species or marine mammals.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs—business, Reporting and recordkeeping requirements.

Dated: September 21, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 600, subpart M, as follows:

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations

■ 1. The authority citation for 50 CFR part 600, subpart M, is revised to read as follows:

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

■ 2. Section 600.1105 is added to subpart M to read as follows:

§ 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.freezerlonglinecoop.org>.

(c) *Qualification and enrollment 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 ($\frac{2}{3}$) 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 ($\frac{2}{3}$) 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 ($\frac{2}{3}$) 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. 1861a(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 on 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 been 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) 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	Check appropriate box for each name listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		

OFFEROR NAME(S) 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	Check appropriate box for each name listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(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) 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.	Check appropriate box for each address listed in the adjacent column	
	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 telephone number 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., e-mail (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 e-mail address listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

c. *LLP 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 REDUCTION PRIVILEGE VESSEL IN 1ST COLUMN PROVIDE FROM TO DATE OF EACH FISHING HISTORY OFFEROR POSSESSES	FOR EACH FISHING HISTORY IN 2ND COLUMN	
		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.)

<p>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</p>	<p>Check appropriate column for each signature in 1st column</p>		<p>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 sat- isfactory evidence that the per- son 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."</p>
	Qualifying Offeror	Co-Offeror (if any)	
(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.
 [FR Doc. 06-8354 Filed 9-26-06; 11:08 am]
BILLING CODE 3510-22-P