

under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

*Processor* means any person in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale in domestic or foreign markets.

*Receiver* means any person who owns fish processing vessels and any person in the business of acquiring (taking title to) fish directly from harvesters.

*Research* means any type of research designed to advance the image, desirability, usage, marketability, production, quality and safety of fish and fish products.

*Secretary* means the Secretary of Commerce, or the Secretary's designee.

*Sector* means

- (1) The sector consisting of harvesters;
- (2) The sector consisting of importers;
- (3) The sector consisting of marketers;
- (4) The sector consisting of processors;
- (5) The sector consisting of receivers; or
- (6) The consumer sector consisting of persons professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products;

*Sector participant* means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

*Species* means a fundamental category of taxonomic classification, ranking after genus, and consisting of animals that possess common characteristic(s) distinguishing them from other similar groups.

*Value* means monetary or material worth of fishery products. Value is the difference between what a receiver is willing to pay for a product provided

by a harvester and its market price or an importer is willing to pay for a product from a foreign supplier and its market price. Value may be expressed in monetary units representing consumer surplus or producer surplus.

### § 270.3 Submission of application.

(a) Persons who meet the minimum requirements for sector participants as described in the proposed charter may file an application with NMFS for a charter for a Seafood Marketing Council for one or more species of fish and fish products of that species. One signed original and two copies of the completed application package must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Applications should not be bound.

(b) The application consists of four parts:

- (1) A document requesting NMFS to establish a Council;
- (2) A proposed charter under which the proposed Council will operate;
- (3) A list of eligible referendum participants; and
- (4) Analytical documentation addressing requirements of applicable law.

(c) *Content of application*—(1) *Application or requesting document*. The application or requesting document submitted by the applicants to NMFS requesting that the Council be established, to the extent practicable, must include the signatures or corporate certifications, of no less than three sector participants representing each sector identified in accordance with paragraph (c)(2)(v) of this section and who, according to the available data, collectively accounted for, in the 12-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products specified in the charter that were handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the application. The application must also include a statement that, if established, the Council will have sufficient resources (e.g., cash, donated office space, services, supplies,

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etc.) available for initial administrative expenditures pending collection of assessments.

(2) *Proposed charter.* A proposed charter must contain, at a minimum, the following information:

(i) The name of the Council and a provision proclaiming its establishment;

(ii) A declaration of the purposes and objectives of the Council;

(iii) A description of the species of fish and fish products, including the scientific and common name(s), for which the Council will implement marketing and promotion plans under the Act. (The American Fisheries Society's "List of Common and Scientific Names of Fishes from the United States and Canada" (latest edition) or where available, an appropriate volume of its "List of Common and Scientific Names of Aquatic Invertebrates of the United States and Canada" (latest edition) should be used as the authority for all scientific and common names.);

(iv) A description of the geographic area (state(s)) within the United States covered by the Council;

(v) The identification of each sector and the number and terms of representatives for each sector that will be voting members on the Council. (The number of Council members should be manageable, while ensuring equitable geographic representation. The term for members will be 3 years. Initially, to ensure continuity, half of the members' terms will be 2 years and half will be 3 years. Reappointments are permissible.);

(vi) The identification of those sectors (which must include a sector consisting of harvesters, a sector consisting of receivers, and, if subject to assessment, a sector consisting of importers), eligible to vote in the referendum to establish the Council;

(vii) For each sector described under paragraph (c)(2)(v) of this section, a threshold level specifying the minimum requirements, as measured by income, volume of sales, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;

(viii) A description of the rationale and procedures for determining assessment rates as provided in § 270.18, based

on a fixed amount per unit of weight or measure, or on a percentage of value of the product handled;

(ix) The proposed rate or rates that will be imposed by the Council on receivers and, if subject to assessment, importers during its first year of operation;

(x) The maximum amount by which an assessment rate for any period may be raised above the rate applicable for the immediately preceding period;

(xi) The maximum rate or rates that can be imposed by a Council on receivers or importers during the operation of the Council;

(xii) The maximum limit on the amount any one sector participant may be required to pay under an assessment for any period;

(xiii) The procedures for providing refunds to sector participants subject to assessment who request the same in accordance with the time limits specified § 270.22;

(xiv) A provision setting forth the voting procedures by which votes may be cast by proxy;

(xv) A provision that the Council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors;

(xvi) A provision setting forth the definition of a quorum for making decisions on Council business and the procedures for selecting a chairperson of the Council;

(xvii) A provision that members of the Council will serve without compensation, but will be reimbursed for reasonable expenses incurred in performing their duties as members of the Council;

(xviii) A provision containing a requirement for submission to NMFS the criteria and supporting data for evaluating the annual and/or multi-year performance of proposed marketing plans and the Council's performance;

(xix) A provision containing a requirement for submission of documentation as requested by NMFS for purposes of evaluating performance of proposed marketing plans and the Council's related performance;

(xx) Where adequate funds are not available, a provision containing the

minimum number of participants needed for sustained operations that cannot receive assessment refunds;

(xxi) A provision acknowledging that NMFS will have the right to participate in Council meetings;

(xxii) A provision that the Council will conduct its activities in accordance with applicable NMFS requirements and that NMFS has final approval authority over proposed marketing plans and Council actions;

(xxiii) A provision containing a requirement for the Council to arrange for a complete audit report to be conducted by an independent public accountant and submitted to NMFS at the end of each fiscal year;

(xxiv) A provision containing a requirement for the Council to conduct a market assessment based on economic, market, social and demographic, and biological information as deemed necessary by NMFS; and

(xxv) A provision containing a requirement for the Council to update the list of referendum participants on an annual basis.

(3) *List of referendum participants.* The list of referendum participants, to the extent practicable, must identify the business name and address of all sector participants that the applicants believe meet the requirements for eligibility to vote in the referendum on the adoption of the proposed charter.

(i) The list should include all sectors in which a sector participant meets the eligibility requirements to vote in a referendum. If a sector participant has more than one place of business located within the geographic area of the Council, all such places should be listed and the primary place of business should be designated. The agency will provide appropriate information in its possession of a non-proprietary nature to assist the applicants in developing the list of sector participants.

(ii) [Reserved]

(4) *Analytical documentation.* The applicant must address the requirements of the Act, implementing regulations, and other applicable law, i.e., E.O. 12866, Regulatory Flexibility Act, National Environmental Policy Act, and other law as NMFS determines appropriate.

#### § 270.4 Review of application.

Within 180 days of receipt of the application to establish a Council, NMFS will:

(a) Determine if the application is complete and complies with all of the requirements set out in §270.3 and complies with all provisions of the Act and other applicable laws.

(b) Identify, to the extent practicable, those sector participants who meet the requirements for eligibility to participate in the referendum to establish the Council. NMFS may require additional information from the applicants or proposed participants in order to verify eligibility. NMFS may add names to or delete names from the list of sector participants believed eligible by the applicants until the time of the referendum based on additional information received.

(c) If NMFS finds minor deficiencies in an application that can be corrected within the 180-day review period, NMFS will advise the applicants in writing of what must be submitted by a specific date to correct the minor deficiencies.

(d) If NMFS makes a final negative determination, on an application, NMFS will advise the applicant in writing of the reason for the determination. The applicant may submit another application at any time thereafter. NMFS then has 180 days from receipt of the new application to render a final determination on its acceptability.

#### § 270.5 Conduct of referendum.

(a) Upon making affirmative determinations under §270.4, NMFS, within 90 days after the date of the last affirmative determination, will conduct a referendum on the adoption of the proposed charter.

(b) NMFS will estimate the cost of conducting the referendum, notify the applicants, and request that applicants post a bond or provide other applicable security, such as a cashier's check, to cover costs of the referendum.

(c) NMFS will initially pay all costs of a referendum to establish a Council. Within two years after establishment, the Council must reimburse NMFS for the total actual costs of the referendum from assessments collected by