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Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 100330171-0232-01]

RIN 0648-AY79

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Framework

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes amendments to the framework regulations specifying procedures for implementing fishing capacity reduction programs (reduction programs) in accordance with the Magnuson-Stevens Fishery Conservation and Management (Magnuson-Stevens) Reauthorization Act of 2007. A reduction program pays harvesters in a fishery that has more vessels than capacity either to surrender their fishing permits including relevant fishing histories for that fishery, or surrender all their fishing permits and cancelling their fishing vessels= fishing endorsements by permanently withdrawing the vessel from all fisheries. The cost of the program can be paid by post-reduction harvesters, taxpayers, or others. The intent of a program is to decrease the number of harvesters in the fishery, increase the economic efficiency of harvesting, and facilitate the conservation and management of fishery resources in each fishery in which NMFS conducts a reduction program.

DATES: Comments must be received by July 29, 2010.

ADDRESSES: You may submit comments, identified by 0648-AY79, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>; or

Mail: Michael A. Sturtevant, Financial Services Division, NMFS-MB5, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments will be posted for public viewing after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed 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. Copies of the Initial Regulatory Flexibility Analysis (IRFA) and Regulatory Impact Review prepared for this action may be obtained from Michael A. Sturtevant at the above address.

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

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at www.gpoaccess.gov/fr.

I. Statutory and Regulatory Background

Many U.S. fisheries have excess fishing capacity. Excess fishing capacity decreases earnings, complicates management, and imperils conservation. To provide for fishing capacity reduction programs, in 1996 Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by adding section 312(b)-(e) (16 U.S.C. 1861a(b)-(e)). The framework regulations to conduct these reduction programs were published as an interim final rule on May 18, 2000 (65 FR 31430) and codified as subpart L to 50 CFR part 600. To finance reduction costs, Congress amended Title XI of the Merchant Marine Act, 1936 (Title XI), by adding new sections 1111 and 1112. The Title XI provisions involving

fishing capacity reduction loans have been codified at 46 U.S.C. 53735.

This action proposes to amend subpart L to 50 CFR part 600 to implement the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Public Law 109-479) amendments for requesting and conducting fishing capacity reduction programs.

II. Magnuson-Stevens Reauthorization Act Changes

The Magnuson-Stevens Reauthorization Act requires several modifications to the framework regulations.

First, the Magnuson-Stevens Reauthorization Act contained a provision that states that, in addition to the appropriate fishery management Council or Governor of a State, a majority of permit holders in the fishery may request a buyback program. Such a program may be conducted if the Secretary determines that the program is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery. As a result of this change, NMFS is amending the definition of "Requester" and the regulations outlining the process for submission requests to allow permit holders, if they constitute a majority, to request a buyback program.

Second, the Magnuson-Stevens Reauthorization Act clarified that a permit holder relinquishes any future limited access system claims associated with the permit or vessel participating in a reduction program and that (if not scrapped) the vessel will be effectively prevented from fishing in Federal or state waters, or fishing on the high seas or in the waters of a foreign nation. The Magnuson-Stevens Reauthorization Act revised section 312(b)(2)(A) to recognize that the owner of a fishing vessel may be different from the permit holder. As a result of this change, NMFS is amending the regulations to require that, along with surrendering the permit authorizing the participation of the vessel in the fishery, for permanent revocation, both the vessel owner and the permit holder, if different from the vessel owner, relinquish any claim associated with the vessel or permit that could qualify such owner or permit holder for any present or future limited access system permit in the fishery for which the program is established or in any other fishery.

Third, the Magnuson-Stevens Reauthorization Act added Section 312(b)(5) regarding payment conditions stating that if a vessel is not scrapped,

the Secretary of Commerce (Secretary) must certify that the vessel will not be used for fishing in the waters of a foreign nation or fishing on the high seas. As a result of this change, NMFS is amending the regulations so that the Secretary must make such certification before making payment. Because each program is so different, and would need to include fishery-specific information and requirements, NMFS is not proposing at this time specific details that must be included in the certification plans, but will provide the requirements for the certification process on a case-by-case basis for each reduction fishery program when the regulations for that program is published in the **Federal Register**.

Although NMFS is not proposing a certification process in this rulemaking, NMFS solicits comments on whether harvester proponents who do not wish to scrap buyback vessels should develop and provide as part of their plan, a clearly outlined plan to help track and monitor the vessels in order to be granted certification by the Secretary under Section 312(b)(5) of the Magnuson-Stevens Reauthorization Act.

NMFS desires to minimize the potential for post buyback misuse of vessels as contract obligations by some buyback participants have been breached in the past. In cases where vessels are sold, new owners have violated the spirit and the letter of the statute and regulations in the use of the buyback vessel. In addition, even if the vessels are not sold after reduction payment is tendered, some vessel owners do not maintain proper documentation of their vessel with the Coast Guard which makes tracking the proper use of the vessel nearly impossible. Additionally, some vessel owners have abandoned their vessels. In some cases, this has caused environmental damage, created abandonment issues, and/or forfeiture proceedings.

NMFS believes that the burden of tracking and monitoring of reduction vessels should fall on the owner of the vessel, and not NOAA, other Federal agencies, or the taxpayers. Monitoring and tracking vessels whose fisheries endorsement has been cancelled is simply not budgeted for in the NMFS, NOAA, Commerce, or Coast Guard annual budgets. Therefore, any action that is taken by NMFS or other agencies to identify, track, enforce rules, or correct any problems created by vessels that are not scrapped cannot be undertaken with ease, and without substantial cost of taxpayer dollars, either through direct tracking and enforcement, or through re-tasking

limited government resources. For these reasons, NMFS solicits comments on the submission of a clearly outlined plan to help track and monitor the vessels in order to be granted certification by the Secretary under Section 312(b)(5) of the Magnuson-Stevens Reauthorization Act.

Fourth, the Magnuson-Stevens Reauthorization Act also changed the approval threshold for the capacity reduction referendum. The reauthorized Act now states that a fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute "at least a majority of the permit holders in the fishery, or 50 percent of the permitted allocation of the fishery, who participate in the fishery". Previously, a referendum was approved with a two-thirds majority of the participating voters. As a result of this amendment, NOAA is proposing to amend its regulations that discusses the referendum procedure to implement this change.

III. Summary of Revisions

NMFS proposes to revise the following sections of the regulations of subpart L to 50 CFR part 600 with this proposed action:

(1) Sec. 600.1000. This section is revised to amend the definition of "Requester" to include the majority of permit holders in a fishery.

(2) Sec. 600.1001(a). This section is amended to provide for authority that a majority of permit holders in the fishery may initiate a voluntary fishing capacity reduction program.

(3) Sec. 600.1002(c). This new provision states the Secretary may not make a fishing capacity reduction program payment with respect to a reduction vessel that will not be scrapped unless the Secretary certifies that the vessel will not be used for fishing in the waters of the U.S., a foreign nation, or on the high seas.

(4) Sec. 600.1009(a)(5)(ii). This section is revised to clarify title restrictions on any reduction vessel that is not scrapped.

(5) Sec. 600.1010(a). This section is revised to reflect the new industry fee system approval threshold to at least a majority of the permit holders in the fishery who participated in the fishery.

IV. Classification

The Administrator for Fisheries, NMFS, determined that this proposed rule is consistent with the Magnuson-Stevens Act, the Magnuson-Stevens Reauthorization Act (Public Law 109-479), and other applicable laws.

The proposed revisions to the framework regulations do not propose any major new programs. The

framework modifications implemented by this rule impact only the process under which fishery capacity reduction programs are created and implemented, and would not directly implement changes to specific fisheries. Therefore, the rulemaking does not lend itself to quantitative or qualitative analysis. For example, the analysis of impacts on vessels, vessel revenues, port revenues, fish stock impacts, etc. are not possible in the absence of identifying specific fisheries and buyback program fishery components. Each individual program will be implemented through the rulemaking process in accordance with 5 U.S.C. 553, and thus, each program will be individually evaluated and appropriately analyzed under NEPA at the appropriate time. This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NOAA Administrative Order (NAO) 216-6.

The Office of Management and Budget determined that this proposal is not significant under Executive Order 12866. NMFS prepared a Regulatory Impact Review which is available upon request (see **ADDRESSES**).

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. The major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either 'certify' that the action will not have a significant adverse impact on a substantial number of small entities, and support that certification with the "factual basis" for the decision; or it must prepare and make available for public review an Initial Regulatory Flexibility Analysis that describes the impact of the proposed rule on small entities. When an agency publishes a

final rule, it must prepare a Final Regulatory Flexibility Analysis.

Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The framework modifications implemented by this rule impact only the process under which fishery capacity reduction programs are created and implemented, and would not directly implement changes to specific fisheries. Therefore, the rulemaking does not lend itself to quantitative or qualitative analysis. Each individual program will be implemented through the rulemaking process in accordance with 5 U.S.C. 553, and thus, each program will be individually evaluated and analyzed at the appropriate time including its impact on small businesses. Therefore, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule does not contain any new collection of information requirements subject to the PRA. The estimates of the public reporting burden that have been previously approved by OMB, under OMB Control No. 0648-0376 remain valid. Send comments regarding the collection of information requirements contained in this proposed rule, including the burden hour estimates, and suggestions for reducing the burdens to NMFS (see ADDRESSES) and to OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

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: June 8, 2010.

Samuel D. Rauch III,
*Deputy Assistant Administrator For
Regulatory Programs, National Marine
Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 as follows:

1. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

**PART 600—MAGNUSON-STEVENS
ACT PROVISIONS**

2. In § 600.1000, the definition of “Requester” is revised to read as follows:

§ 600.1000 Definitions.

* * * * *

Requester means a Council for a fishery identified in § 600.1001(c) or a state governor for a fishery identified in § 600.1001(d), or a majority of permit holders in the fishery.

* * * * *

3. In § 600.1001, paragraph (a) is revised to read as follows:

§ 600.1001 Requests.

(a) A Council, the Governor of a State under whose authority a proposed reduction fishery is subject, or a majority of permit holders in the fishery may request that NMFS conduct a program in that fishery. Each request shall be in writing. Each request shall satisfy the requirements of § 600.1003 or § 600.1005, as applicable, and enable NMFS to make the determinations required by § 600.1004 or § 600.1006, as applicable.

* * * * *

4. In § 600.1002, paragraph (c) is added to read as follows:

§ 600.1002 General requirements.

* * * * *

(c) The Secretary may not make a fishing capacity reduction program payment with respect to a reduction vessel that will not be scrapped unless the Secretary certifies that the vessel will not be used for fishing in the waters of the U.S., a foreign nation, or on the high seas.

5. In § 600.1009, paragraph (a)(5)(ii) is revised to read as follows:

§ 600.1009 Bids.

(a) * * *

(5) * * *

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

(A) Title restrictions imposed by the U.S. Coast Guard on any reduction vessel that is Federally documented to forever prohibit and effectively prevent any future use of the reduction vessel for fishing:

(1) In any area subject to the jurisdiction of the United States, or any state, territory, commonwealth, or possession of the United States, or

(2) On the high seas, or

(3) In the waters of a foreign nation; or

(B) Scrapping of all reduction vessels involved in a fishing capacity reduction program, unless the reduction program vessel has been certified by the Secretary, and the requirements established under § 600.1002(c) are met. Where reduction vessel scrapping is involved and the reduction vessel’s owner does not comply with the owner’s obligation under the reduction contract to scrap the reduction vessel, the Secretary may take such measures as necessary to cause the reduction vessel’s prompt scrapping. The scrapping will be at the reduction vessel owner’s risk and expense. Upon completion of scrapping, NMFS will take such action as may be necessary to recover from the reduction vessel owner any cost, damages, or other expense NMFS incurred in the scrapping of the reduction vessel.

* * * * *

6. In § 600.1010, paragraph (a) is revised to read as follows:

§ 600.1010 Referenda.

(a) *Referendum success.* A referendum is successful if at least a majority of the permit holders in the fishery who participate in the fishery cast ballots in favor of an industry fee system.

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