

“Information on Employees (Veterans and non-veterans).”

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 950616159-1292-06; I.D. 022601D]

RIN 0648-ZA16

#### Northeast Multispecies Fishery; Fishing Capacity Reduction Program

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

**ACTION:** Interim final rule; announcement of a fishing capacity reduction program and solicitation for bids from participants.

**SUMMARY:** NMFS issues this interim final rule to establish a voluntary fishing capacity reduction program (FCRP) for the Northeast multispecies fishery that permanently removes multispecies limited access fishing permits. Permit holders who would like to participate may submit bids, which will be ranked based on the amount of the bid and an estimate of the fishing capacity represented by the permit. The intent of this program is to obtain the maximum sustained reduction in fishing capacity at the least cost. As this is a limited access fishery, the capacity removed by the program cannot be replaced. It is being implemented by an interim final rule to allow public comments, in particular on its related Environmental Assessment and on the determination under the Regulatory Flexibility Act that this action will not have a significant economic impact on a substantial number of small entities.

**DATES:** Effective January 18, 2002. NMFS will accept bids through February 19, 2002. Comments must be received on or before January 18, 2002.

**ADDRESSES:** Written comments should be sent to National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, Attn: Jack Terrill. Comments involving the reporting burden estimates or any other aspects of the collection-of-information requirements contained in this interim final rule should be sent to both Jack Terrill and to the Office of Information and Regulatory Affairs, Office of

Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer). Copies of the Environmental Assessment may be obtained from Jack Terrill, Fishery Administrator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Jack Terrill, Fishery Administrator, (Jack.Terrill@noaa.gov) 978-281-9136 or Daniel Morris, Special Projects Officer, (Daniel.Morris@noaa.gov) 978-281-9237. This **Federal Register** document is also accessible via the Internet at the Office of the Federal Register website at <http://www.access.gpo.gov/su-docs/aces/aces140.tml>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On July 13, 2000, the President signed the Military Construction Appropriations Act for FY 2001 (Act) (Pub.L. 106-246), which authorized a \$10 million emergency supplemental appropriation for disaster assistance for the Northeast multispecies fishery. The funds are intended to compensate industry permittees who choose to participate in a program aimed at reducing the permitted fishing capacity in the multispecies fishery. NMFS published a notice of the proposed program, solicited comments on the proposal, and announced nine public meetings throughout New England at 66 FR 17668, April 3, 2001. NMFS received 21 written comments, one of which was signed by 88 people. The nine public meetings were attended by approximately 130 people; NMFS responds to the comments below. Further background for this program is provided in the April 3, 2001, **Federal Register** notice and is not repeated here.

##### II. Summary of Comments and Responses

In general, commenters expressed support for the proposed program, which would compensate holders of limited access multispecies permits for the voluntary surrender of their permits. Separate from this FCRP, capacity reduction in the multispecies fishery is under consideration by the New England Fishery Management Council (Council) and is closely related to many other initiatives, including gear and time/area restrictions, aimed at promoting the recovery of depressed groundfish stocks. During the public meetings related to the FCRP, NMFS received many comments regarding measures under consideration by the Council. These comments have been

shared with Council staff. Except where the comments are relevant to this FCRP, issues related to the Council's activities are not addressed in the following paragraphs.

*Relation of the FCRP to Amendment 13.* Among its many goals, Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP), which has been under development by the Council for about 2 years, aims to address issues related to over-capacity in the fishery. The Council developed an ad hoc Capacity Committee to develop management alternatives to reduce the number of excess days-at-sea (DAS) allocated in the fishery. Many commenters expressed concern about the timing of the FCRP with respect to Amendment 13. Some suggested that the FCRP should come after the Council's actions. They argued that Amendment 13 could devalue and/or invalidate latent permits, and if so, then the FCRP could remove even more of the permits or, as others suggested, the FCRP would be irrelevant. Some commenters insisted that the FCRP should come before the implementation of Amendment 13, suggesting that the Council's capacity reduction proposals could be inappropriate or even rendered moot, if the FCRP is very successful. In either case, the uncertainty of the ultimate proposed measures of Amendment 13 and the timing of those measures are confounding factors for fishers who must decide whether or not to participate in the FCRP.

The statutory language establishing the FCRP requires that NMFS implement the program in a timely manner, and NMFS has attempted to do that. NMFS acknowledges that the uncertainty regarding the capacity reduction measures in Amendment 13 and the timing thereof may make it difficult for some permittees to determine whether or not to participate in the FCRP and at what level to set their bids.

*Tax implications.* Several commenters asked about the tax implications of participating in the program, suggested that the funds should be tax exempt, or recommended that the payout be spread across several years to reduce the tax burden in any 1 year. Others claimed that taxes could be deferred if the funds are put in the Fishing Vessel Capital Construction Fund (CCF)(46 U.S.C. 1177).

Funds received through participation in the FCRP may be considered taxable income. The type of income and the tax rate would be determined by the participant's tax situation, and it would be the responsibility of the program participant to seek appropriate tax

advice and to comply with local, state, and Federal tax regulations. NMFS cannot accommodate requests to disburse funds under the FCRP over 2 tax years. To expedite the payments and provide consistent service to all applicants whose bids are accepted, many of whom may not desire staged disbursal, NMFS will only distribute funds to FCRP participants through a single payment. The CCF is available for the deferral of taxes on capital gains realized only through the sale of fishing vessels, and not permits. The funds received through the FCRP would not qualify and could not be placed in the CCF.

*Re-entry of participants.* Many commenters addressed the issue of FCRP participants possibly re-entering the multispecies fishery. Some noted that vessel buyout programs have been criticized for allowing program participants to use the proceeds of the boat/permit sale to buy new boats, gain new permits and re-enter the fishery. Some claim that this practice is unscrupulous and that it undercuts the perceived benefits of the FCRP. Commenters recommended prohibitions on re-entry from several years, to 10 years, to a term based on the rebuilding of fish stocks. Others recommended disincentives to dissuade FCRP participants from re-entering the fishery, such as reducing their DAS by 50 percent on subsequent permits or otherwise severely limiting the fishing effort that could be exerted under the new permit.

The purpose of the program is not to remove individuals or corporations from the fishery; it is to remove excess capacity as it is represented by limited-access multispecies permits. Unlike vessel buyout programs in the past, the FCRP established by this rule will compensate fishers for surrendering only their limited access Northeast multispecies permits. NMFS does not intend to restrict FCRP participants from working in the multispecies fishery or any other fishery in the future. Besides, restrictions on future fishing by FCRP participants would be extremely difficult to detect and enforce. The variations are many and would be very difficult to track. It is clear, however, that the multispecies fishing histories associated with the permits surrendered under this FCRP are prohibited from being used or referenced for qualification in any future multispecies permitting program. Though at this time no such programs are foreseen, NMFS will maintain records of FCRP participants to enforce this stipulation of the program. Whether or not the FCRP participant resumes

working in the fishery, a permit and the capacity it represents will have been removed from the finite pool of capacity forever; thus meeting the goal of the FCRP.

Some commenters stated that Charter/Party vessels should be excluded from the program. Because there is an open access category for Charter/Party vessels, these vessels could surrender a limited access permit, and then acquire an open access permit and remain in the fishery. Thus, the surrender of the permit, they claimed, would have no net effect on capacity.

The FCRP aims to reduce commercial fishing capacity in the multispecies fishery. A vessel owner may currently hold both a multispecies limited access permit and an open access Charter/Party permit, and surrender of the former would be consistent with the goals of this program. Open access Charter/Party vessels are restricted by gear (two hooks per angler) and passenger capacity and are prohibited from selling any catch. While new fishing effort under the Charter/Party permit category may slightly confound the benefits of the FCRP, the restrictions on the Charter/Party category should minimize the net effect of effort re-entry. NMFS does not intend to restrict vessels with Charter/Party permits from participation in the FCRP, nor does NMFS intend to change the access status of the Charter/Party permit category.

*Restrictions on the use of the awarded funds.* Several commenters were concerned that the funds awarded under the FCRP might be used to upgrade fishing vessels and would lead to the more effective prosecution of the multispecies fishery or other fisheries. Some suggested that the funds be required to go into an Individual Retirement Account or into some other similarly restricted fund. Other commenters stated that the funds should come with no restrictions on future use. FCRP participants, they said, may want to buy a safer boat, pay crew, or otherwise enhance their businesses.

NMFS concurs that the funds, once awarded, should not be restricted in how they are subsequently used. Vessel upgrades are limited by existing regulations.

*Effort displacement.* Comments were received from the Mid-Atlantic Fishery Management Council, a state marine fisheries commissioner, and others expressing concern over the possibility that the FCRP will displace effort into other fisheries. The Council suggested that the FCRP give highest priority to "purchasing permits from vessels possessing groundfish permits only or those willing to give up their suite of

permits." Another commenter worried that the FCRP would result in vessel abandonment and that communities would be left with derelict vessels to dispose of.

Though participation in the FCRP is open to any limited-access multispecies permit holder, the most likely participants are those for whom the permit represents little opportunity to land regulated groundfish. The permits of fishers who are working in other fisheries or who have moved out of the industry altogether are likely to represent the least utility and are more likely to be surrendered under the FCRP. Because most FCRP participants have already moved out of the multispecies fishery and into other activities, the program is not likely to result in a measurable shift of fishing effort. In the long term, the surrender of the Federal multispecies permit limits the FCRP participant's future fishing options, should the permittee someday wish to alter or diversify his/her fishing activity. Effort that might have returned to the multispecies fishery will be applied in another activity. The likelihood and timing of such an occurrence is impossible to predict.

Finally, because the program allows participants to retain all state and Federal permits other than the one surrendered, it is likely vessels will continue to be used. It remains the responsibility of the vessel owners to dispose of unused property in accordance with local, state, and Federal regulations; if a vessel has fallen into disuse, it is conceivable that some of the proceeds from the FCRP may actually help a boat owner comply with disposal regulations.

*Concerns about the impacts on small communities.* A few commenters asked that NMFS consider the potential impacts the FCRP is likely to have on communities that support mostly small fishing boats. Many small fishing businesses rely on a diversity of fishing activities over the course of a year and/or over a career to exploit changing resource and market conditions and many other factors. The surrender of a Federal multispecies permit limits the fisher's options and may create a dependence on one fishery. Commenters suggested that the FCRP should not result in disproportionate acquisition of permits from certain geographical regions.

Participation in the FCRP is strictly voluntary. A community that wants to maintain Federal multispecies permits among its local fleet should consider coordinating its members' participation (or non-participation) in the program. At present, Federal multispecies permits in

no way restrict the port or geographic region within the United States from which a permitted vessel may work. Private sales or exchanges of permitted vessels may be made across the region and between ports. NMFS cannot control where the permits accumulate or decrease through private exchanges and will not limit participation in the FCRP to a certain percentage of permittees per community or area.

*Value with respect to recency of use.* NMFS received many comments regarding the value and removal priority that should be given to permits as a function of their recency of use. Some claimed that permits in a confirmation of permit history (CPH) status (a permit history held by a person who owned a vessel with a fishing history that qualified for a limited access permit, but whose vessel has been sunk, destroyed, or transferred (without permits) to another person, and who has applied and received a CPH) should be given the highest priority for removal, as they represented an unknown quantity; others countered that the CPH permits are the least likely to be activated and should thus be given the lowest priority. Some commenters called for mandatory revocation of permits for which no landings have been recorded; others countered that recency of use should have no bearing on the value of permits and that fishers who have moved out of the groundfish fishery at the encouragement of NMFS and the Council while the resources have been at historically low levels should not be penalized.

NMFS has considered alternatives to the final FCRP that would take into account recency of use in the multispecies fishery or other fisheries. NMFS considered bid-ranking processes and bid-capping equations that gave greater credit or value to permits that have logged landings since 1994. However, recency of use as it relates to ease or likelihood of reactivation is a variable that NMFS cannot quantify with confidence and consistency sufficiently enough to effectively inform program priorities. This FCRP takes a very long view of the fishery and assumes that over time all the permits will have a roughly equal probability of being reactivated, and the value of permits should not be weighted with respect to recency of use.

Furthermore, NMFS believes that the FCRP should be implemented without any suggestion that fishers must either use their permits, surrender them, or have them withdrawn for non-use. Any reliance by NMFS on recency of use as a factor for valuing permits may be perceived as contrary to this principle

and may even prompt permit holders to reenter the fishery. Participation in the FCRP is voluntary.

*Remove DAS or otherwise reduce portions of permits.* Several comments were received calling on NMFS to use the FCRP funds to compensate fishers for surrendering a percentage of their authorized DAS, rather than forfeiting the permit entirely. A few commenters suggested that the funds be used to compensate fishers who would stay out of the fishery for some period, 10 years, for example, but would be reauthorized to work in the fishery thereafter.

The statutory language that established the FCRP requires that NMFS compensate fishers for the permanent revocation of their limited access multispecies fishing permits.

*Establishing a fixed rate, bidding, ranking bids.* NMFS proposed that the FCRP be implemented by soliciting bids from permittees for the amount of compensation they would like to receive for voluntary surrender of their limited-access multispecies permits. NMFS suggested that the bids be ranked by dividing the bid amount by a factor representing some measure of the fishing capacity authorized under the permit. Most commenters were supportive of this process in general and recognized it as a means of ensuring that the most capacity is removed from the fishery for the least amount of money. (The ranking factors are addressed under another sub-section of this notice.) Some commenters, however, recommended that NMFS set a fixed rate for permits and make an offer to all permit holders. They suggested that, should the number of flat-rate acceptances equate to an amount greater than the authorized program (\$10 million), then NMFS should use vessel capacity to rank the permits and prioritize payments.

NMFS has considered this idea, but has declined to implement it for several reasons. The baselines and DAS associated with the permits range rather widely and affect the value of the permits accordingly. A fixed rate, set by NMFS, would be an appropriate value for only a small subset of the permits, and either would be too small to interest one segment of the fishery or would overpay the other. Permit holders are more likely than NMFS to have a good idea of what their permit is worth to them, and the reverse bid process as exercised in the vessel buyout programs of the past has been considered successful.

*Monkfish permits and the FCRP.* Several commenters noted that, to qualify for two of the limited access monkfish permit categories, applicants

were required to hold a valid limited access multispecies or scallop permit and have records of monkfish landings. Commenters asked whether, if the permit holder were to surrender a multispecies permit under the FCRP, the limited access monkfish permit would be invalidated.

It is correct that to qualify for a Category C or D limited access monkfish permit vessel owners were required to have a multispecies or scallop limited access permit and certain levels of monkfish landings. If a fisher (who does not also hold a scallop permit) surrenders the qualifying multispecies permit under the FCRP, the monkfish permit would not be invalidated, but would be moved into a different limited access category (C to A, and D to B), and would be subject to the regulations of the new category. Holders of monkfish permits should be familiar with these requirements when deciding whether to participate in the FCRP.

### III. Ranking Bids

The goal of the FCRP is to remove the greatest amount of fishing capacity from the Northeast multispecies fishery in the most cost effective manner. In support of this goal, and assuming that the bids submitted to the FCRP will exceed the funds that are available, NMFS must rank the bids with respect to relative vessel capacity. In other words, NMFS must rank and accept bids based on the least cost per unit of capacity.

NMFS considered two methods for ranking bids under the proposed FCRP, using capacity estimates derived through data envelopment analysis (DEA) or a simplified relative capacity indicator based upon linear calculation of permit baseline characteristics. Each is described in detail in the April 3, 2001, **Federal Register** notice. An important element of the FCRP public meetings was to solicit public input on the two ranking methods. Specifically, NMFS sought input from the public regarding the weighting factors (relative importance) for each of the baseline characteristics for use in the simplified method.

NMFS received many comments regarding the proposed bid ranking methods. In general, the public preferred the idea of the simplified method, as it seemed more direct and easier to understand than the DEA method. However, commenters failed to give consistent guidance about weighting factors for the simplified method and the relative importance of the various baseline characteristics. Vessel designs and fishing strategies vary widely throughout the region and no simple equation could be developed

that would give consistent relative capacity rankings. For example, while horsepower may be a prime factor in the capacity of large trawlers, gillnetters may be less dependent on horsepower and limited only by the volume of their holds (as suggested by net tonnage), and some small hook fishing boats may have the least actual capacity, but may have excess horsepower to accommodate faster runs to the fishing grounds. Thus, application of the simplified method would not be simple.

For the FCRP, NMFS has elected to employ the DEA model. Using DEA, NMFS will prepare an estimate of all potential bidders' vessel capacity to harvest multispecies. This estimate of daily fishing capacity (EFC) would be an inference, based on capacity estimates for similarly configured vessels that are actively working in the fishery. This is the method that is gaining national and international acceptance as the best estimate of fishing capacity and is used by NMFS in reports on fishing capacity to Congress.

Applications to participate in the FCRP will be scored by dividing the bid by the product of the vessel's daily estimated capacity and its allocated DAS [Score = bid ÷ (EFC × DAS)]. The lowest score would represent the least cost per unit capacity and would be ranked highest. Scores would then be listed and selected in ascending order.

Most of the limited access multispecies permits are under a fleet DAS management scheme and are presently authorized 88 DAS. Less than 10 percent of the permits are in an Individual DAS category and may be authorized more than 88 DAS per year. Multiplying the EFC by the allocated DAS will reflect the additional fishing opportunity represented by these permits. Permits in limited access Category C, Small Boat Exemptions, are associated with vessels 30 ft (9.1 m) or less in length overall (LOA) and have unlimited DAS. To weight these bids appropriately, NMFS will use the category's fleet average number of DAS per year. If bids are received from holders of permits in this category, NMFS will analyze vessel trip reports to determine the 3 consecutive years with the highest used DAS per year per vessel, and from these 3 years will determine the average DAS per year for Category C permits.

From the July of 1998 through June 1999, NMFS initiated the Baseline Audit Program for multispecies and scallop limited access permit categories. NMFS contacted permittees who had not undergone a vessel replacement and asked them to verify and/or correct the permit baseline information in NMFS'

records. For the purpose of the FCRP, NMFS considers information on file to be the final numbers used for vessel baseline. The audit program did not include all CPH status permits. Some CPH baselines have been verified, but some have not. If owners of CPH status permits without verified baselines want to participate in the FCRP, NMFS will work with the applicant to establish or verify the vessel baseline in a manner consistent with the baseline audit program. For all other FCRP participants, NMFS intends to use the baseline information on file on the date of publication for the FCRP.

#### IV. Setting Limits on Bids

This FCRP allows permit holders to set their bids at any dollar amount, and a competitive bid ranking process will be used to determine which bids represent the better value for the Government and thus will be accepted first. The competitive nature of the process is the first incentive for permit holders to make reasonable bids. If bids are received for permits from two similarly configured vessels with equal DAS allocation, the lower bid will be the higher ranked of the two and will have a greater chance of being accepted. Therefore, permit holders should submit bids that are reasonable.

Some participants at the public meetings asked if NMFS intends to set a maximum limit on bids and asked if NMFS will award funds to permit holders as long as funds are available, even if the bids are unreasonably high. Commenters noted that NMFS may receive bids that greatly exceed accepted values of permits and, if funds remain available, NMFS may need to justify acceptance or non-acceptance of such bids.

The setting of bids should depend on the value and risks the permit holder associates with the business opportunity represented by the permit. As one suggestion of the reasonableness of bids, NMFS has examined the classified advertisements in industry magazines and newspapers. While permits, technically, are not transferable, in the private sector Federal fishing permits are commonly exchanged for money through paper transactions for vessel transfers. Over the last year, classified listings in national and regional publications reflected values for suites of Federal permits including the limited access Northeast multispecies permits from \$10,000 to \$65,000. The amount advertised varied with respect to the vessel's baseline and the number of additional permits included in the sale. While by no means a complete survey of the value of limited access permits,

the examples from the industry publications may assist permit holders in the development of their bids and may indicate to NMFS the reasonableness of bids.

NMFS also has developed a method to set a quantitative limit on the bid:capacity ratio. While this method will not set a maximum dollar amount on bids, it should encourage FCRP participants to set reasonable bids and should help identify and disqualify those bids that do not represent a good value for the Government. As noted above, applications will be ranked by dividing the bid amount by the product of EFC and the allocated (or average, for Category C) DAS. The resulting scores will be listed in ascending order. The median value, 50th percentile of the scores, will be multiplied by a capping factor of 1.5 to establish the maximum score value that NMFS will accept. Because this quantitative limit is a relative value determined by bids received and the distribution of the bid:capacity ratios, it cannot be determined beforehand. The use of this quantitative cap should further influence FCRP participants to set bids that are not unreasonably high.

The use of this relative cap has its limits, and NMFS may use the aforementioned qualitative measures of reasonableness (private sector purchase prices) to validate the results of the capping method. As noted, for the quantitative limit calculation, NMFS intends to use the 50th percentile of the scores and a capping factor of 1.5. These values were developed through an analysis of the results of the two Northeast multispecies vessel buyout programs during the late 1990's. If the distribution of scores in this FCRP is significantly different from the distribution of the vessel buyout ranking factors, or if all the bids received are exceptionally high, the quantitative method will not be an appropriate measure of reasonableness. NMFS maintains the discretion to accept or reject bids based on the combination of these measures of reasonableness, as well as the professional judgement of NMFS' staff and advisors.

#### V. How to Apply

##### A. Notification

This interim final rule serves as notification of the program to all holders of Northeast multispecies limited access fishing permits. In addition to this official notification, NMFS will send letters to all holders of current limited access multispecies permits and CPH status announcing the program and soliciting bids. The letter will include

materials to be used for developing and submitting bids and an EFC for the permit as determined through the DEA. Permit holders who do not receive a letter may contact NMFS for their EFC and FCRP bid submission details.

#### B. Eligibility

1. NMFS intends to consider applications to the FCRP only from holders of Federal multispecies permits in a limited access category or CPH status. Valid multispecies limited access permits are those limited access permits held by vessels meeting the eligibility requirements and maintained by annual renewal per 50 CFR 648.4(a)(1)(i). To be valid for the purposes of the FCRP, a permit must be free of all permit sanctions, pending or otherwise, at the time that the bid is submitted, and at the time of closing.

2. A permit holder must be an individual who is a citizen or national of the United States; or a corporation, partnership, association (non-profit or otherwise), trust, or other nongovernmental entity; if such an entity is a citizen of the United States within the meaning of section 802 of the Shipping Act, 1916, as amended (46 U.S.C. App. 802).

a. Federal Government employees, including full-time, part-time, and intermittent personnel, and Fishery Management Council employees and members (or corporations owned by members) are not eligible to participate in the program.

b. Holders of permits that are the subject of outstanding and/or pending investigations, charges, and penalties are not eligible to participate in the program.

c. Vessel owners whose permitted vessel exceeds the permit baseline and authorized upgrades, per 50 CFR 648.4(a)(i)(F), are not eligible to participate in the program.

3. When two or more parties share interest in the permit, the bidder must affirm in writing that he/she represents the other parties.

#### C. Submission of Bids

1. Permit holders are limited to one bid per permit. Permit holders who intend to participate in the FCRP must submit their bids using the materials provided by NMFS. Bids must be postmarked before February 19, 2002. NMFS will not accept bids received late, or by fax or e-mail.

2. Bidders must ensure that all written matter is legible. Bid amounts must be written out numerically and in longhand (as one would do on a bank check).

3. Bidders must verify their Northeast multispecies permits, and the histories associated with the permits.

4. Bidders electing to offer permits in addition to the Northeast multispecies permit should identify the additional permit in the space provided on the bid submission form. Offering of additional limited access permits will not affect a bid's ranking or the amount of the compensation to be paid, but may be used by NMFS as a tiebreaker.

#### VI. Bid Review and Scoring

After the bidding period closes, NMFS will rank the bids, as follows:

##### Step A. Identify Bid

The bid is the dollar amount submitted by the applicant on the application materials.

##### Step B. Calculate the Bid Ranking Score

Each bid received will be divided by the product of its respective EFC and allocated DAS to get the bid ranking score. For Category C permits, NMFS will use an average DAS determined as detailed in section III above. The lowest score will represent the least cost to the Government per unit of fishing capacity. NMFS will accept bids by beginning with the permit represented by the lowest score and will proceed in ascending order until all the funds are committed or until the cap for FCRP efficiency or other reasonableness measures are met. See also Section IV.

In the event that the scoring results in a tie, NMFS will give preference to the permit that represents the greatest fishing capacity. If the tie is between two permits representing equal capacity, NMFS will give preference to the participant offering to surrender additional limited access permits.

##### Step C. Disbursing Funds and Revoking Permits

1. NMFS, Northeast Region, will contact permit holders as soon as possible with the results of the bid ranking and will arrange for disbursement of the funds. The method of payment used will depend on the amount of the awards.

2. Permits and associated permit history will be considered invalid upon the permit holder's receipt of notification that the bid has been accepted in the FCRP. Such history will be invalidated from use to qualify for any future permitting programs in this fishery.

3. Applicants whose bids are accepted must complete and submit the following forms, which will be provided by NMFS, prior to disbursement of funds:

a. SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form"

b. W-9, "Request for Taxpayer Identification Number and Certification"

c. CD-511, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Drug-Free Workplace Requirements and Lobbying"

#### VII. Administrative Requirements

The Department of Commerce ("Department") Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation. Some key requirements are set forth below.

A. *Federal Policies and Procedures.* Applicants whose bids are accepted are subject to all Federal laws and Federal and Department policies, regulations and procedures applicable to financial assistance awards or procurement of goods and services.

B. *False Statements.* A false statement on any application materials is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

C. *Delinquent Federal Debts.* No award of Federal funds shall be made to an applicant who has an outstanding Federal debt or fine until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to the Department are made.

D. *Pre-award Activities.* If applicants incur any costs prior to an award being made, they do so solely at their own risk. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department to cover pre-award costs.

E. *Least Cost Provision.* Through this program, NMFS has been tasked "to obtain the maximum sustained reduction in fishing capacity at the least cost." If participation in this FCRP is insufficient to use up all the allocated funds, or if NMFS determines the bids are too high to satisfy the letter and intent of this "least cost" provision, then NMFS retains the discretion to reject bids, to close the FCRP, and to restructure it using the remaining funds to meet the statutory goals.

F. *Additional Funds.* If, before the end of the bid closing date, additional funds are appropriated by Congress for NMFS to disburse under the same terms and conditions as for this FCRP, then NMFS

will expend the additional funds in accordance with this program as established.

G. Release of Public Information. Information on the removed permits, accepted bids, and associated vessel may be released publicly after awards are made.

#### Classification

The Assistant Administrator for Fisheries (AA), NMFS, has determined that this interim final rule is consistent with the Military Construction Appropriations Act for FY 2001 (Pub.L. 106-246) and the Interjurisdictional Fisheries Act of 1986.

This interim final rule has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to E.O. 12372, "Intergovernmental Review of Federal Programs".

NMFS prepared an environmental assessment (EA) for this action and the AA concluded that there will be no significant impact on the human environment as a result of this interim final rule. A copy of the EA is available from NMFS (see **ADDRESSES**).

This interim final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act

(PRA). The collection of this information has been approved by OMB under control number 0648-0376. Public reporting burden for preparation of the grant application is estimated to be one hour per response including the time for reviewing instructions, gathering and maintaining records, and completing and reviewing the collection of information. An additional two hour reporting burden is estimated for those applicants who are accepted by NMFS including time for submission of invalidated permits. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS (See **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: NOAA Desk Officer).

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

The Chief Counsel for Regulation of the Department of Commerce certified

to the Chief Counsel for Advocacy of the Small Business Administration that this interim final rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). Although the economic impacts on small entities are not immediately quantifiable, as the mix of accepted bids can only be determined after bidding is complete, NMFS does not expect that this action would have a significant economic impact on a substantial number of small entities. As participation in the FCRP is voluntary, it is unlikely that entities would participate unless they accrued some benefit. Moreover, the retirement of permits, active and latent, is expected to benefit those fishermen remaining in the fishery, though the extent of that benefit is unclear at this time. As a result, a regulatory flexibility analysis was not prepared.

**Authority:** 16 U.S.C. 4107.

Dated: December 14, 2001.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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