

FDC date	State	City	Airport	FDC number	SIAP
05/04/00 .....	TX	Houston .....	George Bush Intercontinental Airport/Houston.	FDC 0/4632	ILS RWY 8, AMDT 18G. This Replaces FDC 0/4292.
05/05/00 .....	ID	Driggs .....	Driggs-Reed Memorial .....	FDC 0/4702	GPS-A, ORIG-A.
05/05/00 .....	IN	Evansville .....	Evansville Regional .....	FDC 0/4678	NDB OR GPS RWY 22, AMDT 12. GPS RWY 32, ORIG.
05/05/00 .....	MO	Fort Leonard Wood .....	Waynesville Regional Arpt at Forney Field.	FDC 0/4721	
05/05/00 .....	OH	Middletown .....	Hook Field Muni .....	FDC 0/4746	LOC RWY 23, AMDT 7D.
05/08/00 .....	IN	Evansville .....	Evansville Regional .....	FDC 0/4786	VOR OR GPS RWY 4, AMDT 5.
05/09/00 .....	GUA	Agana .....	Guam Intl .....	FDC 0/4825	GPS RWY 24R ORIG.
05/09/00 .....	IL	Freeport .....	Albertus .....	FDC 0/4819	NDB RWY 6, ORIG-A.
05/09/00 .....	IL	Freeport .....	Albertus .....	FDC 0/4820	LOC RWY 24, ORIG-A.
05/09/00 .....	IL	Freeport .....	Albertus .....	FDC 0/4821	VOR OR GPS RWY 24, AMDT 6A.
05/09/00 .....	MO	Fredericktown .....	Fredericktown Regional .....	FDC 0/4809	RNAV RWY 19, ORIG. This replaces FDC 0/4021.
05/09/00 .....	MO	Fredericktown .....	Fredericktown Regional .....	FDC 0/4810	RNAV RWY 1, ORIG. This replaces FDC 0/4054.
05/09/00 .....	MO	Marshall .....	Marshall Memorial Muni .....	FDC 0/4833	RNAV RWY 36, ORIG-A.
05/09/00 .....	MO	Marshall .....	Marshall Memorial Muni .....	FDC 0/4834	RNAV RWY 18, ORIG-A.
05/09/00 .....	WI	Madison .....	Dane County Regional-Truax Field.	FDC 0/4827	ILS RWY 18, AMDT 7B
05/10/00 .....	CA	Burbank .....	Burbank-Glendale-Pasadena	FDC 0/4849	NDB RWY 8 AMDT 2A. This replaces FDC 0/4211 IN TL00-11

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Part 600

[Docket No. 980812215-0109-02; I.D. 072898D] 648-AK76

### Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program

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

**ACTION:** Interim final rule; request for public comments.

**SUMMARY:** NMFS issues interim final framework regulations specifying procedures for requesting and conducting fishing capacity reduction programs (reduction programs). A reduction program pays harvesters in a fishery with too much fishing capacity either to surrender their fishing permits for that fishery or both to surrender all their fishing permits and withdraw their fishing vessels from all fishing. Reduction costs can be paid by post-reduction harvesters, taxpayers, or others. The intent is to decrease excess harvesting capacity, 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:** This interim final rule is effective June 19, 2000. Comments must be received on or before June 19, 2000.

**ADDRESSES:** Copies of the Regulatory Impact Review may be obtained from Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. Written comments should be sent to Michael L. Grable at the above address. Comments also may be sent, via facsimile, to (301) 713-1306. NMFS will not accept comments sent by e-mail or the Internet. 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 Michael L. Grable and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Michael L. Grable, (301) 713-2390.

#### SUPPLEMENTARY INFORMATION:

##### 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, 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)). 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. App. 1279f and g.

This action adds a subpart L to 50 CFR part 600 establishing framework regulations for requesting and conducting fishing capacity reduction programs. These framework regulations were published as a proposed rule on February 11, 1999 (64 FR 6854-6869), with a public comment period that ended on April 12, 1999.

While NMFS received numerous comments on the proposed rule (addressed in more detail below), it believes further comment on the revised capacity reduction referenda provisions would be useful.

#### Comments on Proposed Rule and Responses

NMFS received comments from 24 entities. Most of the comments are from organizations that represent the views of many parties. All but one of the comments supported fishing capacity reduction, although many comments disagreed with some aspects of the proposed rule. The following summarizes the comments and gives NMFS' responses.

*Comment Issue 1:* Five comments addressed interest rates for loans financing capacity reduction costs.

Three comments said that a reduction loan interest rate 2 percent higher than the interest cost for borrowing loan capital from the U.S. Treasury is unnecessary, burdensome, and counterproductive.

One comment said that the interim final rule should state whether the reduction loan interest rate is fixed or adjustable and that the interest rate projected for reduction planning purposes can change before reduction implementation.

One comment said that there should be no interest prepayment penalties.

*Response:* A reduction loan interest rate 2 percent higher than NMFS' interest cost is required by the statute (46 U.S.C. App. 1279g).

Reduction loan interest rates depend on prevailing yields on comparable maturity Treasury obligations at the time the U.S. Treasury Department establishes the interest rate NMFS must pay on loan capital borrowed from the U.S. Treasury. The actual interest rate NMFS charges for a specific reduction loan could be higher or lower than the interest rates projected for reduction planning purposes. The projection of an interest rate could occur many months before the disbursement of reduction loan funds. The interim final rule revises the proposed rule to more fully address this issue (see § 600.1012(b) and (c) and the definition of "Treasury percentage" in § 600.1000).

All reduction loan interest rates are fixed rather than adjustable. There is no prepayment penalty.

*Comment Issue 2:* Ten comments involved the reduction program process.

Six comments said that referenda about industry fee systems should occur earlier in the reduction process. Most believed that, until referenda first demonstrate the fishing industry's willingness to pay for financed reduction programs, fishery management councils (FMCs) will be reluctant to process fishery management plan (FMP) amendments complementing reduction programs and industry will be reluctant to submit reduction bids. Some also believed that industry will be reluctant to prepare business plans until after successful referenda.

Three comments said that the reduction process would be shorter if all its components were concurrent.

One comment said that the process for reduction loans should be kept as simple as possible, or the fishing industry will seek subsidized reduction programs rather than financed ones.

Two comments said that pre-bidding referenda should involve ranges of projected reduction results, with a minimum acceptable level.

*Response:* NMFS based the proposed rule's process for financed reduction programs on two concepts. First, industry reduction proponents and an FMC should demonstrate their commitment to a reduction program by establishing, at the time of making a reduction program request, everything necessary for prompt and reliable reduction program completion. Second, reduction bidding results need to be known before a referendum asks post-reduction harvesters to commit themselves to repaying a reduction loan.

NMFS acknowledges that FMCs may be reluctant to invest the time and resources necessary to prepare and process FMP reduction amendments, and industry may be reluctant to submit reduction bids, unless referenda have first demonstrated the industry's willingness to pay for financed reduction programs. The interim final rule revises the proposed rule in many places to better address these concerns (see, particularly, § 600.1010).

The interim final rule provides for pre-bidding referenda and, if necessary, a post-bidding referendum as well. The necessary pre-bidding referendum can occur at any time after an FMC requests a reduction program and before NMFS proposes a plan and regulations to implement the program. Each pre-bidding referendum is based on a reduction loan amount not greater than the maximum specified in the business plan being sufficient to reduce at least the minimum amount of fishing capacity specified in the business plan. A post-bidding referendum occurs only if the maximum reduction loan amount is insufficient to reduce at least the minimum amount of fishing capacity.

If an initial pre-bidding referendum occurs before the FMC adopts any FMP reduction amendment necessary, the referendum is based on the FMP reduction amendment that the business plan specifies. If afterwards, the referendum is based on the FMP reduction amendment that the FMC adopts.

If the initial pre-bidding referendum is successful, the reduction process proceeds. If the referendum precedes any FMP reduction amendment necessary, a second pre-bidding referendum is required if, in NMFS' judgment, the adopted FMP reduction amendment differs materially from the FMP reduction amendment that the business plan specifies. A material difference would, for example, be a post-reduction harvesting allocation for

the harvesters who must repay a reduction loan that is less than the allocation specified in the business plan. The second pre-bidding referendum is to determine whether the referendum voters approve an industry fee system despite any such material difference.

If the initial pre-bidding referendum is unsuccessful, the reduction process then either ceases or is suspended pending an appropriate amendment of the business plan.

The interim final rule requires the business plan to specify the maximum amount of a reduction loan and the minimum amount of fishing capacity this must be sufficient to reduce. The interim final rule also requires the business plan to provide guidance about when pre-bidding referenda should occur.

Under the interim final rule, a reduction request from an FMC based on a business plan serves as the FMC's endorsement, in principle, of all aspects of the business plan that depend on the FMC's action (see § 600.1003(g)). Endorsement in principle does not, however, mean that the FMC will eventually vote to recommend implementing the business plan's concept of an FMP reduction amendment. Implementing any FMP reduction amendment necessary remains subject to all the requirements applicable to all other FMP amendments. Endorsement in principle merely means that the FMC has taken whatever action the FMC deems necessary to endorse the business plan (including the business plan's proposed FMP reduction amendment) by requesting NMFS to initiate a reduction program based on the business plan. Subsequent consideration, in accordance with the ordinary Magnuson-Stevens Act process, of the FMP reduction amendment may result either in no FMP amendment or one that differs from the business plan specifications.

Nevertheless, an FMC may not make a reduction request based on a business plan that the FMC does not endorse in principle. If an FMC cannot endorse the business plan in principle, the FMC should not make a reduction request.

If reduction bidding achieves, with a reduction loan not greater than the maximum amount that the business plan specifies, at least the minimum amount of fishing capacity reduction that the business plan specifies, then a post-bidding referendum does not occur. A post-bidding referendum occurs only if bidding does not achieve at least the minimum reduction for not more than the maximum reduction loan.

Any necessary post-bidding referendum is to determine whether the referendum voters approve an industry fee system for a reduction less than the minimum.

This pre- and post-bidding approach should solve several problems. First, the approach should solve the problem of an FMC not wanting to make a large time and resource investment in an FMP reduction amendment without assurance that the industry is willing to repay a reduction loan. The business plan's survey (§ 600.1003(n)(12) in the interim final rule) of potential referendum voters should provide an FMC with enough assurance for the FMC to make a reduction request based upon that business plan. A successful pre-bidding referendum reinforces this assurance before an FMC invests time and resources in an FMP reduction amendment.

Second, allowing a second pre-bidding referendum should solve the problem of an actual FMP reduction amendment that differs materially from the FMP reduction amendment specified in the business plan.

Third, allowing a post-bidding referendum should solve the problem of reduction bidding results that do not achieve at least the minimum amount of fishing capacity reduction that the business plan specifies for a reduction loan whose principal amount is not greater than the maximum that the business plan specifies.

Finally, the approach eliminates the need for a linear processing sequence that precludes concurrent work on different parts of the reduction process. The revision allows the FMP reduction amendment process to proceed concurrently with the rest of the reduction process that occurs before NMFS proposes a plan and regulations to implement a reduction program. All other components of the reduction process, up to NMFS' publication of a plan and regulations implementing each reduction program, may now occur before an FMC prepares and processes, and NMFS approves, an FMP reduction amendment. The FMP reduction amendment must still, however, be in place before NMFS proposes the reduction plan and implementing regulations.

A completed business plan, however, remains essential both to an FMC's reduction request and the pre-bidding referendum that follows. Without a completed business plan, the FMC cannot fully know what it is endorsing in principle, NMFS does not fully know what the FMC and the industry is requesting, and referendum voters do not fully know for what they are voting.

The interim final rule requires that the business plan specify the maximum reduction cost and the minimum reduction that must be achieved for that cost. This achieves the same result as specifying ranges of projected reduction results, with a minimum acceptable level.

*Comment Issue 3:* Five comments involved payment and collection of the reduction loan repayment fee.

All 5 comments, to one degree or another, said that the proposed rule's fee payment and collection provisions are too costly, burdensome, or complicated.

One comment said that fish buyers in California, Washington, and Oregon collect other fees for state and industry groups, and that the interim final rule should allow the payment and collection of the reduction loan repayment fee to conform to established regional practices.

One comment said that the fee payment and collection provisions provide an incentive for "kickbacks" based on misreported fish deliveries, and that this could change the assumptions upon which accurate catch reporting depends.

One comment said that these provisions do not accommodate fish buyers paying for fish on a periodic, rather than a trip, basis.

One comment said that collecting the fee that repays reduction loans is not the fish buyers' business, and that the fish buyers' cost of collecting the fee could itself be considered an illegal fee under the Magnuson-Stevens Act.

One comment said that, because bank rules about interest bearing accounts vary widely from state to state, some fish buyers might be able to offset some fee collection costs by interest earnings while others might not. The comment said that this violates section 301(a)(4) of the Magnuson-Stevens Act.

One comment said that fee collection audits are unrestricted.

One comment said that fish buyers are the enforcers of fee collection, without protection against fish sellers who might sue them. If a fish buyer deducts the fee over a fish seller's protest, the fish buyer risks the fish seller's legal action. Fish buyers refusing to buy fish from fish sellers who refuse to pay the fee (the alternative to deducting the fee over the fish seller's protest) is inconsistent with the business of buying fish.

One comment said that the proposed rule's provision about state confidentiality requirements not preventing NMFS' access to fish tickets places fish buyers in an impossible position.

One comment said that many fish buyers will be unaware of their fee collection responsibilities.

*Response:* The proposed rule is a framework rule involving matters common to all reduction programs. Some aspects of a framework rule will apply, without exception, to all reduction programs. Other aspects of the framework rule may be inappropriate for application to some reduction programs in some reduction fisheries. Nevertheless, these aspects provide a framework against which everyone can measure the circumstances of different reduction programs in different reduction fisheries. The rule's fee collection, deposit, disbursement, accounting, record keeping, and reporting procedures are of the latter type. § 253.27(q)(10), § 253.36(f), and § 253.37(h) of the proposed rule provide sufficient opportunity for approaches in each reduction program different from the framework approach. Nevertheless, the interim final rule revises the proposed rule to require business planners to consult with fish buyers before including in their business plan any special circumstances in their reduction fishery that might require some fee provisions different from the framework provisions (see § (n)(9)). Thus, the interim final rule provides opportunity for reduction program to accommodate the circumstances of, and practices, in different fisheries as long as accommodation does not jeopardize the intent and purpose of the framework rule provisions.

There are substantial penalties for misreporting catches and otherwise failing to pay and collect the fees due. The rule's fee accounting and reporting provisions require documentation that provides ample audit opportunity, and NMFS intends to audit sufficiently to ensure compliance.

NMFS believes the time at which fish sellers deliver fee fish to fish buyers is the most appropriate time for the fish sellers to pay and the fish buyers to collect the fee. The interim final rule, however, revises the proposed rule to provide for paying and collecting fees on bonuses at the time the bonuses first become known rather than at the time the fish sellers deliver the fee fish involving the bonuses to fish buyers (see § 600.1013(c)(2)).

The Magnuson-Stevens Act requires fish buyers to collect the fee. Interest earnings on collected fee revenues might allow, depending on state banking regulations, some fish buyers to offset some of the costs of discharging this statutory obligation.

A reduction loan can involve up to \$100 million repaid on an incidental

basis amortized over 20 years by many fish sellers, and collected by many fish buyers, as a small percentage of variable revenue from many fishing trips. This loan collection environment is susceptible to considerable nonperformance and fraud. Due diligence requires audit and, where necessary, enforcement.

Auditing is not, however, unrestricted. The rule restricts audits to those "reasonably necessary...to ensure proper fee payment, collection, deposit, disbursement, record keeping, and reporting." The rule also restricts audits to "reasonable times and places..." NMFS does not intend any greater auditing burden than reasonable due diligence requires for the proper repayment of reduction loans. Audits may either be random (deterrent) or triggered by circumstances that indicate fee payment and collection activities inconsistent with this rule's requirements, but will not be more frequent or burdensome than needed to fulfill due diligence.

NMFS does not anticipate that fish sellers will violate these regulations by refusing to pay the fee. If any do, this does not excuse fish buyers from failing to comply with these regulations, either by collecting the fee over the fish seller's protest or by refusing to buy fish from fish sellers from whom fish buyers are unable to collect the fee as the Magnuson-Stevens Act requires.

The interim final rule does not contain the proposed rule's provision about fish tickets and state confidentiality requirements.

The interim final rule requires fish buyers to maintain the records and to submit the reports specified in § 600.1014(d) (or whatever alternative records and reports might be specified, under § 600.1014(j), in the implementation regulations for each reduction program). If landing records that a state requires contain some or all of the data that § 600.1014(d) requires and state confidentiality provisions do not prevent NMFS' access to the records maintained for the state, then fish buyers can use those records to meet appropriate portions of the § 600.1014(d) requirements. If, however, state confidentiality provisions make those records unavailable to NMFS, then fish buyers will be required to maintain separate records that meet the requirements of § 600.1014(d).

Where it becomes necessary to audit the reports that fish buyers submit in compliance with § 600.1014(d), trip tickets (or equivalent accounting records establishing the pounds of fee fish purchased and the price paid) are essential audit documentation. If, for

any reason, any state law or regulation makes it illegal for fish buyers to keep separate records that involve some or all of the same data as the landing records that the fish buyers keep for state purposes, then a financed reduction program will not be possible unless there is a change in the state law or regulations to give NMFS access to the records necessary for administration of reduction loans. The interim final rule revises the proposed rule accordingly (see § 600.1003(n)(11)(i) and § 600.1014(f) and (g)).

Existing regulations require many fish buyers to have dealer permits, so NMFS often knows who the authorized fish buyers are. The rule also requires each business plan to include information about fish buyers who can, after reduction, reasonably be expected to have fee collection responsibilities. The rule requires NMFS to notify, both by a **Federal Register** notice and by mailed notification to fish buyers of whom NMFS is aware, all fish buyers about their fee collection responsibilities.

*Comment Issue 4:* Four comments involved exempting reduction requests preceding publication of the proposed rule from some aspects of the interim final rule.

All four comments generally said that various parties had expended much effort and expense on two reduction requests that substantially preceded NMFS's publishing the proposed rule. The proposed rule required the FMCs and the business planners for these two reduction requests to start at the beginning of a process of which they were unaware before NMFS published the proposed rule. Thus, these parties would have to expend additional time and money for the sole purpose of resubmitting their requests to conform with the interim final rule. This may be inequitable, because NMFS assured the parties involved that the lack of a proposed rule would not deter NMFS from processing their reduction requests as far as possible without an interim final rule. The interim final rule should ensure expeditious consideration of these two reduction requests.

*Response:* On November 27, 1997, the Pacific FMC submitted a request for a financed reduction program in the fishery for Pacific coast groundfish (limited entry trawl fishery). On October 10, 1997, the North Pacific FMC submitted a request for a financed reduction program in the fishery for Bering Sea and Aleutian Islands king and tanner crab. Industry proponents have since prepared business plans for each of these requests. The business planners and the FMCs have already expended considerable effort on these

business plans and reduction requests. Both requests and their acceptances preceded, by many months, the publication of the proposed rule. NMFS agrees that it is counterproductive to now require the FMCs to resubmit these two reduction requests. The FMCs do not, consequently, have to resubmit these two reduction requests in accordance with the process in the interim final rule. However, the business planners and the FMCs will have to submit some additional information required by the interim final rule. After review of both plans and the interim final rule, NMFS will specify this additional information.

*Comment Issue 5:* Six comments concerned proposed rule provisions that allow financed reduction programs to involve only fishing permits in the reduction fishery, rather than requiring reduction programs to involve all fishing permits held by reduction program participants. These comments were evenly divided between supporting and opposing these provisions.

Three comments supported the proposed rule provisions. These comments generally said that it is impractical and unreasonable to require post-reduction harvesters in reduction fisheries to pay for the cost of reducing fishing permits in non-reduction fisheries, and otherwise agreed with the proposed rule's preamble discussion of this aspect.

Three comments opposed the proposed rule provisions. These comments generally said that reducing only the fishing permits in the reduction fishery causes reduction program fishing vessels to shift their effort from the reduction fishery to any non-reduction fisheries for which the vessels also have fishing permits. The goal of each reduction program should be removing the fishing capacity involved in a reduction program from all fishing rather than just fishing in the reduction fishery. To enable this result, one of these comments said that the interim final rule must define the term "fishery" differently than the Magnuson-Stevens Act does.

One comment said that the proposed rule provisions are inconsistent with the objective in section 312(b)(2) of the Magnuson-Stevens Act because the proposed rule provisions merely shift reduction costs to other fisheries in which reduction participants' vessels might also have fishing permits rather than obtaining the maximum sustained reduction in fishing capacity at the least cost.

Another comment said that all reduction programs should involve

analysis of the reduction programs' impact on non-reduction fisheries and that it is unacceptable and contrary to the Magnuson-Stevens Act for improvements in a reduction fishery to occur at the expense of any other fishery.

*Response:* The Magnuson-Stevens Act authorizes conducting reduction programs, like fishery management plans, on a fishery-by-fishery basis. Each reduction program must occur within a fishery that meets the Magnuson-Stevens Act's definition of "fishery". This requires each reduction program to occur in "one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics..." and to involve "fishing for such stocks..." The objective in section 312(B)(2) of the Magnuson-Stevens Act relates to each reduction program in each reduction fishery.

While section 312(b)(2)(A) of the Magnuson-Stevens Act authorizes reductions that include both fishing permit revocations and fishing vessel scrappings (or title restrictions that prevent future fishing), section 312(b)(2)(B) also authorizes reductions that are restricted to fishing permit revocations alone.

In a financed program, the post-reduction harvesters in the reduction fishery are paying for fishing capacity reduction. They are retiring excess capacity in their fishery. The Government is simply lending them the money to do this. NMFS should not require a borrower composed of post-reduction harvesters to spend any of the borrower's reduction loan proceeds on reducing fishing capacity that the borrower does not want to reduce. This includes reducing capacity in non-reduction fisheries, which benefits parties other than the borrower.

In a subsidized program, however, the taxpayers are paying the cost of reducing fishing capacity. The taxpayers can choose, through their Government, the fishing capacity reduction alternative that provides the broadest fishery conservation and management benefit. This may include withdrawing fishing vessels (either by scrapping them or imposing title restrictions that prevent their fishing) and revoking all fishing permits associated with the scrapped vessels that are not individually transferable. Individually transferable fishing permits in non-reduction fisheries could not, however, be revoked as part of such a reduction program (because these permits may be used by vessels other than the vessels

whose fishing is prevented by scrapping or title restriction). Revoking individually transferable fishing permits in non-reduction fisheries would require separate reduction programs in the non-reduction fisheries involved.

A financed reduction program is, in essence, a contribution from post-reduction harvesters in a reduction fishery to fisheries conservation and management in that fishery. It is a contribution that is in the best economic interest of the post-reduction harvesters, but, nonetheless, it is their voluntary contribution. NMFS should not limit the opportunities for satisfying the statutory purposes by requiring post-reduction harvesters willing to repay the cost of buying and retiring fishing permits in their reduction fishery to also pay the cost of buying and retiring fishing permits in non-reduction fisheries. It is not in the taxpayers' interest to do so, because the net effect may be to limit most reduction programs to those whose entire cost the taxpayers bear. This is true because harvesters in reduction fisheries are generally unlikely to approve industry fee systems in reduction fisheries for repaying reduction loans that benefit harvesters in non-reduction fisheries.

In the interim final rule's revision of the proposed rule, business planners have the option of reducing only fishing permits in the reduction fishery or both doing that and withdrawing fishing vessels by scrapping or title restriction. The latter enables the revocation of all permits, except individually transferrable ones in non-reduction fisheries, associated with withdrawn vessels. Although business planners may voluntarily choose to withdraw fishing vessels, either by scrapping them or imposing title restrictions that prevent their fishing, FMCs may not require business planners to do so.

There is, however, one exception where a financed reduction program should always include the reduction of fishing permits that involve species other than those in the reduction fishery. That exception is fishing permits that merely allow the incidental catch of non-reduction species during directed fishing for reduction species. Once the directed fishing permits are bought and retired, the incidental fishing permits are of no further use. In addition to being useless, the incidental fishing permits were always a corollary of the directed fishing permits, and should be revoked along with the directed fishing permits. Accordingly, the interim final rule revises the proposed rule in this respect (see § 600.1011(d)).

The interim final rule also revises the proposed rule to require business planners and FMCs to consider the effect on non-reduction fisheries of financed reduction programs that involve only fishing permits in the reduction fishery (see § 600.1003(l) and § 600.1003(n)(9)).

NMFS notes that there may be other potential alternatives to deal with this situation. One alternative might be combining fisheries for fishery conservation and management purposes, which might then allow a financed reduction program to relate to the combined fishery rather than just to one of the fisheries. Another alternative might be conducting a separate financed (indeed, even subsidized) program in a fishery that a reduction program in another fishery affects. Both these potential alternatives would avoid one group of post-reduction harvesters paying for another group's benefit.

*Comment Issue 6:* Two comments concerned post-reduction fish allocations in financed reduction programs that do not involve all the harvesters in the reduction fishery. For example, say, a reduction fishery involves both longline and pot gear, but the financed reduction program in that reduction fishery involves only fishing permits for the longline gear.

One comment supported, and one comment opposed, allocations of this type and the proposed rule's treatment of this issue. The supporting comment said that allocation of the post-reduction resource protects the investment of the post-reduction harvesters who must repay a reduction loan as well as the interest as the Federal Government in ensuring the reduction loan's repayment. The opposing comment said that the allocation might damage the operators of non-reduction fishing gear who may have been less responsible for overfishing and, thus, creating the crisis in the fishery to which the financed reduction program relates.

*Response:* NMFS believes post-reduction allocation is essential in financed reduction programs that involve fewer than all the harvesters in a reduction fishery.

Assume that a fishery is composed of "A" gear fishermen and "B" gear fishermen, each group has a pre-reduction allocation equal to 50 percent of the fishery's total allowable catch, and the "A" gear fishermen encumber themselves with a 20-year debt to pay for buying and retiring 50 percent of the "A" gear fishing permits. Unless their post-reduction allocation stays at 50 percent of the fishery's total allowable catch, there is no economic incentive for the "A" gear fishermen to pay for

buying half of the pre-reduction "A" gear fishing permits. Similarly, neither does the government have the requisite assurance that up to 5 percent of the "A" gear fishermen's post-reduction trip proceeds will be sufficient to repay the reduction loan over a 20-year period. Without post-reduction allocations, there is little economic incentive either for the reduction borrowers to borrow or for the reduction lender to lend, and the taxpayers may, consequently, be called upon to pay for most reduction programs of this type.

Moreover, it is inequitable for "A" gear fishermen to pay for a benefit that "B" gear fishermen receive without payment. Business plans for, and FMPs complementing, financed reduction programs that involve only one of several gear types within a reduction fishery must adequately address this critical issue sufficiently to provide economic incentive both for reduction borrowers and the reduction lender.

Financed reduction programs cannot usefully address the possibility that allocations to gear operators who some perceive as less responsible harvesters may have impacted allocations to other gear operators who some perceive as more responsible harvesters.

*Comment Issue 7:* Two comments involved consultation with fishing communities and other interested parties during reduction program development. One comment pointed out, in the context of reduction programs that involve only fishing permits in a reduction fishery, that the law requires this consultation. The other comment said that, if NMFS consults with conservation organizations (and other interested parties who are, presumably, not directly involved in the reduction fishery), "those entities must have their own substantiated fishery and economic data base [sic] to be considered a valid consulting participants [sic], or we will challenge their participation. No more rhetoric of how many people they represent, they will deal in facts and not personal agenda generalities."

*Response:* The statutory reduction provisions require consultation "as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any..." reduction program.

*Comment Issue 8:* One comment addressed the potential for the eventual replacement of the fishing capacity that reduction programs remove from reduction fisheries (and other comments

also indirectly involved this issue). The comment expressed concern about the potential for post-reduction fishing capacity to gradually expand through the post-reduction adoption of new technology and the pre-reduction existence of latent fishing capacity. This comment said that analysis of the Fishing Capacity Reduction Demonstration Program and the Fishing Capacity Reduction Initiative in the Northeast multispecies fishery suggests that the existence of significant latent fishing capacity will result in little or no long-term reduction in the multispecies fishery's fishing capacity.

*Response:* The reduction programs in the Northeast multispecies fishery were authorized under the Interjurisdictional Fisheries Act rather than under the Magnuson-Stevens Act. The Interjurisdictional Fisheries Act does not address the issue involved in this comment, but the reduction provisions of the Magnuson-Stevens Act do. The reduction provisions of the Magnuson-Stevens Act require FMPs for reduction fisheries to prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet (16 U.S.C. 1861a(b)(1)(B)(i)).

The proposed rule addresses this statutory provision by requiring each reduction request (and, in the instance of financed reduction programs, each business plan) to demonstrate how the FMP complies with this statutory provision or will comply with it after an FMP reduction amendment. The interim final rule continues this requirement.

*Comment 9:* NMFS should evaluate the efficacy of each reduction program two years after the reduction program's implementation. The evaluation should help identify areas where capacity leaks back into the fishery and will help in designing future reduction programs. It will take a few more reduction programs to iron out the difficulties in designing efficient reduction programs, and post-program evaluation will be critical.

*Response:* NMFS agrees. NMFS will include post-reduction evaluations as part of the SAFE reports under 50 CFR 600.315(e).

*Comment 10:* Reduction is an extremely valuable tool to remove capital from fisheries in a rational and orderly fashion. Many of the proposed rule's elements will allow capacity reduction to move forward.

*Response:* NMFS agrees.

*Comment 11:* The proposed rule does not define "capacity". If this is intentional in order to provide

flexibility in constructing reduction programs this should be stated. The proposed rule's preamble uses "excess capacity", but does not define the term. "Excess capacity" could mean either that there are more vessels than necessary for maximum economic efficiency or that the capacity exceeds the resource's ability to support the capacity. The use of "full potential fishing capacity" highlights this problem. Defining these terms has enormous implications for interpreting the regulations and these definitions should undergo public comment before their adoption. Alternatively, the interim final rule should state that definitions for these terms will be included in the program implementation regulations.

*Response:* The term "excess capacity" did not appear in the proposed rule (the term appeared only once in the proposed rule's preamble).

The statutory term "full potential fishing capacity" appeared once in the proposed rule (in the definition of the term "non-replacement requirement") and once in the proposed rule's preamble.

The appropriate context in which to make distinctions between concepts like "more vessels in a fishery than are necessary for maximum economic efficiency" and "capacity in the fishery...[exceeding] what the resources can support" is implementation of the Magnuson-Stevens Act's provision that authorizes a reduction program only if the reduction 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." Each reduction program must meet one of these criteria. For the sake of flexibility, NMFS does not qualify these criteria further. Each reduction request must make its best case on the merits of the request's own particulars.

*Comment 12:* "Reduction fishery" traditionally refers to fisheries that convert fish to meal and/or oil. Substitute "buyback fishery" for "reduction fishery".

*Response:* "Fishing capacity reduction" is the operative statutory term. NMFS chose, for brevity's sake, to define a fishery in which reduction is proposed or occurs as a "reduction fishery" rather than a "fishing capacity reduction fishery". The interim final rule defines the term "reduction fishery" sufficiently to distinguish this term from a fishery involving the production of fish meal and oil.

*Comment 13:* The interim final rule should "include criteria that will be used to determine..." a reduction loan's

repayment period. A repayment period can be longer than the maximum 5 percent repayment fee might otherwise indicate.

*Response:* The amount annually required to service debt is a function of principal, interest, and the repayment term. Business planners must propose an annual reduction loan debt service burden that post-reduction harvesters are likely to be willing to undertake in return for a finite reduction in fishing capacity. Harvester referenda must subsequently approve this. Subject to the statutory constraints (maximum 5 percent fee and maximum 20-year repayment period), NMFS will accommodate each business plan's debt service proposal unless the circumstances of the reduction program involved clearly warrant doing otherwise.

*Comment 14:* Failure to address how in-kind compensation (e.g., dock space, ice) affects the delivery value used to calculate the reduction loan repayment fee could result in "creative reimbursement arrangements to avoid fees." The interim final rule should avoid this result by addressing this issue.

*Response:* The fee rate required to repay reduction loans is applied to "delivery value". The proposed rule's definition of "delivery value" excludes in-kind compensation because "delivery value", as defined in the proposed rule, is the "full, fair market value...in an arm's length transaction..." Full, fair market value in an arm's length transaction cannot, by definition, include in-kind compensation. In-kind compensation cannot, consequently, be used to avoid the fee. Nevertheless, the interim final rule revises the proposed rule's definition of "delivery value" to clarify that the term includes "the value of in kind compensation or all other goods or services exchanged in lieu of cash." (see the definition of "delivery value" in § 600.1000).

*Comment 15:* The proposed rule's definition of "fee fish" requires fishing vessels in a post-reduction fishery to pay the reduction loan repayment fee on fish harvested incidentally to the targeted reduction species. The definition of this term should allow each reduction program to define the "fee fish" that will be used to calculate the fee. Some fisheries may have an incidental catch of "fee fish", and the interim final rule should "clearly state that incidental catches in non reduction program fisheries are not subject to the fee unless those fisheries are included in the referendum for a financed reduction program."

*Response:* The term "fee fish", as defined in the interim final rule, means all fish harvested from the reduction fishery. The term fee fish excludes fish harvested incidentally while fishing for fish not included in the reduction fishery. The term "reduction fishery", as defined in the interim final rule, means the fishery or portion of a fishery to which a program applies. The reduction fishery must specify each included species, as well as any limitations by gear type, size of fishing vessel, geographic area, and any other relevant factor. Except in extraordinary instances, the interim final rule's intent is to limit fee fish to those that are directly rather than incidentally harvested.

*Comment 16:* The proposed rule requires a reduction request to list all parties who are authorized to fish in the proposed reduction fishery and to specify the catch allocated to those parties for the past five years. The proposed rule also requires a business plan to analyze the proposed reduction loan's cost effectiveness based on the best historical fishing revenue and expense data available in the reduction fishery. NMFS is a likely source for this information, but these data are considered confidential at the individual fishing vessel level required by the regulations. The regulations in 50 CFR 600 Subpart E state that this type of information can only be released to NMFS employees or contractors, state employees, and Council staff or contractors. Thus, business planners will not have access to this information. The interim final rule should address this by requiring NMFS to provide, in an aggregate form, the data business planners need.

*Response:* The proposed rule intends catch allocation data to be aggregate data for all parties authorized to fish in the reduction fishery rather than individual data for each such party. The interim final rule revises the proposed rule to make this intent clearer (see § 600.1003(j) and § 600.1005(f)).

Section 253.27(q)(5)(1) of the proposed rule merely requires that business plans include the "Best historical fishing revenue and expense data (and any other relevant productivity measures) available in the reduction fishery." This neither requires these data to be provided at the individual fishing vessel or fishing permit level nor requires those data to be identified with specific fishing vessels or fishing permits. The interim final rule revises this aspect of the proposed rule to clarify that NMFS seeks the "best and most representative

historical...data... available..." (see § 600.1003(n)(5)(l)).

NMFS does not know, in every fishery that may become the subject of a reduction request (which includes fisheries managed by states), who may have the best available data. NMFS may have these data for some fisheries, but may not have them for others. The fishing industry itself generally is the source of these data, and, if adequate data have not been elsewhere gathered, business planners must arrange to make available sufficiently representative data from the industry in order to make the business planners' case.

This aspect of the rule does not require NMFS to violate data confidentiality, and NMFS intends, upon request, to make available to business planners, in a way that does not violate data confidentiality, whatever useful data NMFS has.

*Comment 17:* The proposed rule requires the FMCs to provide the names and addresses of fishing permit holders authorized to fish in a reduction fishery, but NMFS (as the permitting authority) has the most current information and should supply the information itself.

*Response:* NMFS has these data for fishing permits in Federal fisheries. Nevertheless, the referenda aspect of the statutory reduction provisions requires NMFS, "in consultation with the FMC..." to "identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the..." (16 U.S.C. App. 1861a) reduction. The proposed rule was premised on the assumption that an FMC would ask NMFS for the data needed to complete this aspect of a reduction request, examine the data NMFS provided, and, where necessary, consult with NMFS about any aspect of the data before confirming the data by including them in a reduction request to NMFS. NMFS continues to believe this is the most appropriate approach. Moreover, reduction programs can involve state, as well as Federal, fisheries, and NMFS may not have these data for fishing permits in state fisheries.

The interim final rule revises the proposed rule to clarify that NMFS is a source of Federal fishing permit data (see § 600.1003(i) and § 600.1005(e)).

*Comment 18:* The proposed rule requires the FMCs to provide the names and addresses of likely post-reduction fish buyers, but NMFS has this information in NMFS' dealer permit database and should, consequently, remove this requirement.

*Response:* The proposed rule requires business planners, not FMCs, to provide this information (although FMCs must include business plans with reduction



requests). NMFS may not always have these data even for all Federal fisheries, let alone state fisheries. Where NMFS has these data, however, NMFS will be pleased to supply the data to business planners for their review, (where appropriate) revision, and inclusion in their business plans. Where NMFS does not have these data, business planners must produce the data for inclusion in their business plans.

*Comment 19:* Business planners must be able to gauge the amount of time NMFS will take to implement reduction. The regulations should specify a maximum time for the agency to do this.

*Response:* NMFS will process reduction requests as quickly as NMFS can, but cannot specify time limits for doing so.

*Comment 20:* Reduction amendments to FMPs may not always be necessary to accommodate reduction because "some Councils may be able to adjust management plans through a framework adjustment rather than a full plan amendment." The interim final rule should change "reduction amendment" to "reduction amendment or framework adjustment."

*Response:* The interim final rule revises the proposed rule's definition of the term "reduction amendment" to include framework adjustments (see the definition of this term in § 600.1000).

*Comment 21:* In some cases, latent fishing permits may be held by parties who do not own fishing vessels. The basis of the referendum voter lists should be explained ("in particular, whether it is based on vessels or permits"). The proposed rule "does not state if a reduction program could apportion voting rights based on landings, permit categories, days-at-sea usage, or other criteria." Referenda results "may require as much as one-third of the industry to fund a program they oppose." This could both be unfair and make designing successful reductions difficult. In a fishery where the few catch most of the fish, the many who catch few of the fish could force the former into a reduction they oppose. (The example given is a 100 permit fishery where 20 percent of the fishing permit holders catch 80 percent of the fish). "The interim final rule should clearly state how voting rights are apportioned...[and should allow apportionment] based on relative criteria determined by the designers of the program." The proposed rule does not specify what happens if an eligible voter is inadvertently omitted. The interim final rule should provide for an appeal process prior to referendum ballot distribution.

*Response:* Referenda voters under the statutory reduction provisions are "permit or vessel owners who would be affected by the program..." The rule mirrors the statutory language by including either fishing vessel owners or fishing permit owners as potential referenda voters. Nevertheless, because reduction programs can occur only in limited access fisheries, NMFS believes referenda voters will always be those who hold fishing permits at the time of the referenda.

The proposed rule requires each reduction implementation plan to include the names and addresses of all parties eligible to vote in a referendum. The interim final rule, however, revises the proposed rule to allow referenda before reduction implementation plans. This requires public comment about voter eligibility to occur earlier in the reduction process. Consequently, the interim final rule also revises the proposed rule to make the names and addresses of eligible voters subject to public comment by including them in the **Federal Register** notice that NMFS publishes when NMFS accepts a request for a financed reduction program (see § 600.1003(i) and § 600.1004(a)).

During the proposed rule's formulation, NMFS considered the possibility of apportioning referenda votes according to various criteria. NMFS believed, however, that the most equitable approach in the greatest number of cases is a one fishing permit/one vote rule. NMFS still believes this. NMFS believes that the concern in this comment might be better addressed by an FMC. This Council, by refusing to request a reduction program (based on a business plan that allows the many who catch little to force a reduction of their fishing permits on the few who catch much) unless it appears to be in the best conservation and management interest of the reduction fishery and in the best economic interest of all post-reduction harvesters in the reduction fishery. However, NMFS does not, for a variety of reasons, anticipate that this hypothetical situation will often occur. Initiating a financed reduction program requires NMFS, for example, to determine that post-reduction harvesters will be able to repay the reduction loan. If, prospectively, the cost of buying 80 percent of the fishing permits that produce 20 percent of the fish were so high that the remaining 20 percent of fishing permit holders could not, with 20 percent more fish to harvest, reasonably afford to repay that cost over 20 years at a maximum fee limited to 5 percent of ex-vessel landings, then NMFS could decide not to initiate the reduction program.

*Comment 22:* The interim final rule should address the impact of fishing vessels or fishing permits being sold, bankruptcies, and corporate dissolutions during the interim between bid acceptance and actual fishing capacity reduction.

*Response:* Bids are irrevocable offers. NMFS' acceptance of bids creates reduction contracts that entitle NMFS to specific performance of the contract obligations. This is as far as NMFS can reasonably go to ensure that reduction contracts culminate in the reduction results upon which referenda are based. NMFS will, as a matter of course, take whatever legal action may be available to NMFS to enforce specific performance of reduction contracts, but cannot predict the outcome of hypothetical future events. NMFS realizes that some circumstances (e.g., bankruptcy) could conceivably delay or prevent NMFS' enforcing specific performance, but NMFS will have to deal with these circumstances as they present themselves during the conduct of each reduction program. Nevertheless, the interim final rule revises the proposed rule to more specifically address the impact of these potential occurrences (see § 600.1011, particularly § 600.1011(f) and (g)).

*Comment 23:* "There may be a long period between bidding and actual implementation of the program. While at some point the bidders must commit to participation...they should...[be able to] withdraw up to the point...referendum ballots are prepared."

*Response:* The proposed rule requires NMFS immediately after bid closing to accept bids, notify bidders, and conduct a referendum.

The proposed rule also requires NMFS to tally all ballots and notify all referendum voters, within seven business days after the last day for receipt of ballots, of the referendum results.

Additionally, in response to other comments about the proposed rule, the interim final rule revises the proposed rule to restrict post-bidding referenda to situations in which bidding results are insufficient for the maximum reduction loan amount specified in the business plan to reduce the minimum amount of fishing capacity specified in the business plan (see § 600.1010(c)).

NMFS will do everything possible to keep the elapsed time between bid closing and actual reduction as short as possible. NMFS fully realizes the commercial necessity of doing so.



NMFS' reduction experience in the Northeast multispecies fishery demonstrates that irrevocable bids are essential to effective reduction. Irrevocability will limit bidding to fishing permit or fishing vessel owners who are serious about reduction. This will also prevent the situation in which bid results that initially conformed with a business plan's capacity reduction specifications become nonconforming because of subsequent bid withdrawals.

*Comment 24:* Invitations to bid "should include projections of the benefits of capacity reduction on the management plan for the subject species, notice of possible capital gains tax liabilities, and other limitations such as to CCF contributions. This information may not be readily apparent to permit holders."

*Response:* The reduction plan that NMFS publishes in the **Federal Register** will, for each financed reduction program, "describe in detail all relevant aspects of implementing..." each reduction program. NMFS believes the reduction plan may be the better place to discuss, if appropriate, any matters like those involved in this comment. Invitations to bid are contractual in nature, and NMFS believes they should focus only on contractual matters.

*Comment 25:* The interim final rule "should specify that NMFS will follow established standards for conducting referenda." The proposed rule does not specify that voting would be conducted by secret ballot, but the interim final rule should.

*Response:* NMFS does not know to what standards this comment refers. The interim final rule revises the proposed rule to clarify ballot confidentiality (see § 600.1010(d)(10)).

*Comment 26:* Where reduction programs involve withdrawing fishing vessels from fishing, the proposed rule requires state registered fishing vessels to always be scrapped (rather than either being scrapped or having their titles restricted). This complicates reduction programs involving both Federally registered and state registered fishing vessels, and may increase reduction cost or put owners of state-registered fishing vessels at a disadvantage. Some states may have the ability to impose title restrictions that will prevent the future use of state-registered fishing vessels in other fisheries. Fishing vessels not required to be scrapped should not be allowed to be sold to other countries if they exacerbate overcapacity in (presumably) any other fishery in the world. "Vessels should also not be allowed to be sold to foreigners and then enter a fishery in

U.S. waters that may not be subject to U.S. jurisdiction."

*Response:* Although some states may have this title-restriction ability, NMFS has no way of ensuring that these states will enforce such title restrictions for as long as the fishing vessels exist.

Moreover, little may prevent a fishing vessel owner whose fishing vessel title has been restricted in one State from re-registering the vessel in another state that cannot or will not similarly restrict the vessel's title. Federal title restrictions for Federally-documented fishing vessels are effective for reduction purposes, but state title restrictions for state-registered fishing vessels may not always be effective.

For the reasons stated in the preamble to the proposed rule, NMFS does not believe it should, for fishing vessels involved in financed reduction programs, impose any non-statutory use restrictions. No foreign country need allow these fishing vessels to be registered under the country's national flag or harvest fisheries resources under the country's national jurisdiction if the country believes that this registration is inconsistent with: the country's economic interests, the country's fisheries conservation and management responsibilities, the country's obligations under treaties or international law, or any other aspect of the country's sovereign affairs. Finally, all vessels fishing in U.S. waters are subject to U.S. jurisdiction.

*Comment 27:* The interim final rule should state that reduction loan repayment is the only basis for post-reduction fee increases. The interim final rule should "describe the criteria NMFS will use to increase the fee amount rather than extend the period of the payback... This should include a determination that the increased fee will not result in a significant impact on ...[post-reduction fishermen or communities]."

*Response:* The only statutory authority NMFS has for any reduction fee (including the subsequent increase of an initial fee) is repayment of a reduction loan. Absent specific circumstances that clearly warrant the contrary, NMFS has no particular preference, in the instance of a reduction loan whose initial maturity was shorter than the statutory maximum, for either fee increases or longer repayment periods. NMFS will certainly attempt to avoid significantly adverse effects on post-reduction harvesters and fishing communities, but, where actual gross revenue experience in a reduction fishery clearly indicates the projected need for a fee increase in order to repay a reduction

loan within the maximum maturity, NMFS is obliged to increase the fee up to and including the maximum fee.

*Comment 28:* Harvesters base their referenda votes on the fee rate projected to be necessary to repay the reduction loan. Additional fees during the time that post-reduction harvesters are paying the reduction loan repayment fee may become an economic burden. The interim final rule should prohibit the adoption of additional fees (e.g., for observer programs, for research or enforcement costs) during the period the industry is paying back reduction loan.

*Response:* Neither the reduction framework rule nor reduction regulations implementing any reduction program can control matters not pertinent to fishing capacity reduction. Fees involving matters other than the repayment of reduction loans may become necessary or advisable at some time during the 20 years during which reduction loans are repayable. While NMFS will always attempt to avoid fees that have significant adverse impacts, neither the reduction framework rule nor reduction program implementation regulation can prohibit whatever non-reduction fees may become necessary or advisable in the future. Furthermore, a reduction program should make the fishery economical and paying reduction fees should not be overly burdensome.

*Comment 29:* The proposed rule's requirement that the fishing industry submit business plans and the FMCs make certain other submissions places an enormous burden on the industry and the Councils—or, for state requests, on the states—to prepare capacity reduction programs. This shifts the burden of preparation from the Secretary to the Council and the industry. This is a shift that has not been accompanied by an increase in Council resources. Business plans should not always be required. The interim final rule should allow flexibility in determining the lead authority for the preparation of a financed reduction program or, alternatively, NMFS should immediately identify resources that will be made available to Councils to meet the requirements imposed by the regulation.

*Response:* For the reasons stated in the preamble to the proposed rule, NMFS believes that the business plan requirements appropriately place, on a reduction's industry proponents, the burden of developing proposals for financed reduction programs. NMFS realizes that business plans require industry to undertake a large effort. This is, however, no different from planning

for other business investments. NMFS views financed reduction programs as post-reduction harvesters making business investments in their economic future by retiring some of their competition, thereby increasing their harvests of finite natural resources. NMFS can lend post-reduction harvesters the money required to make this investment. As a lender, however, it is not appropriate for NMFS to do the business planning that may determine whether the investment succeeds or fails. Moreover, no one is more qualified to do this business planning than the harvesters affected by the plan and who will be required to mortgage, in effect, up to 5 percent of their future gross revenue over as much as 20 years to repaying the reduction investment's cost. Reduction planning is expensive, but so is most business planning. Reduction planning may, however, from time-to-time be eligible for grants. The Saltonstall-Kennedy Fisheries Research and Development Program's fiscal year 2000 grant cycle includes reduction planning.

Although FMCs have the lesser burden of reviewing, rather than preparing, business plans, the burden is one that cannot reasonably be avoided. It is the FMCs' responsibility to manage and conserve the national fisheries. Determining if a reduction program will assist in this is integral to an FMC's mandate. The reduction framework rule is not the proper venue for addressing FMC personnel or resource matters.

*Comment 30:* "By failing to list the four possible funding sources included in the statute, the proposed rule sends a strong message that reduction programs must be industry funded. The interim final rule should clearly identify possible funding sources and ...emphasize that industry funding is only one way to finance a reduction program."

*Response:* Financed reduction programs, in which the direct beneficiaries of a reduction program repay the programs' cost, are the preferred way of funding most reduction programs. The proposed rule, however, also equally addressed subsidized reduction programs, in which the taxpayers or other contributors fund reduction program costs. These are the only two basic methods of funding reduction program costs. Under the proposed rule, if any portion of a reduction program's cost is funded by a reduction loan, the reduction program is a financed reduction program. All other reduction programs are subsidized reduction programs, even though three different statutory funding sources are included in this category: (1)

appropriations under the reduction provisions of the Magnuson-Stevens Act, (2) appropriations under the Saltonstall-Kennedy Act, and (3) contributions from States or other public or private sources. In the first 2 funding sources for subsidized reduction programs, Federal taxpayers provide the subsidy; in the third, State taxpayers or other public or private entities provide the subsidy. There appears to be no functional reason for the reduction framework rule to separately address the 3 different sources of subsidized funding.

*Comment 31:* Different industry groups may present competing business plans to the FMCs. The proposed rule does not provide criteria for deciding what industry groups have standing. "Do the FMCs decide which proposals are forwarded to the Secretary for review? How will specific reduction proposals be compared and how will the choice be made between them?" The interim final rule should allow the FMCs to decide what reduction request to forward to NMFS, but should clearly explain the criteria the FMCs should consider in making this decision.

*Response:* NMFS believes it is best to leave this to the FMCs' discretion. NMFS cannot, in a fishery subject to an FMC's jurisdiction, undertake a reduction program unless the FMC first requests NMFS to do so. Consequently, the FMCs have discretion to entertain reduction proposals from whatever industry reduction proponents the FMCs deem appropriate. The FMCs may reject proposals, merge or consolidate proposals, or accept proposals as submitted. If the industry proponents of a financed reduction program and the appropriate FMC cannot come to agreement about a prospective reduction program, it makes little sense for the FMC to request a financed reduction program. In financed reduction programs, NMFS believes the FMCs should defer to representative business planners who make a strong case for increasing the economic efficiency of post-reduction harvesters in the reduction fishery and, most particularly, for the widespread industry support that successful referenda require. Proposals for financed reduction programs that do not potentially enjoy widespread industry support will fail and waste much time, effort, and resources.

*Comment 32:* Reduction "is important for the preservation of natural resources and the economic stability of American fisheries."

*Response:* NMFS agrees.

*Comment 33:* The requirement that a proposed reduction be lawful at the time of reduction must be made clear.

No person or government body can guarantee what will be lawful in the future. Future judicial interpretation is always an unknown. As long as a proposed reduction is not known to be unlawful at the time it is requested, all such requirements should be deemed satisfied.

*Response:* All reduction programs will be lawful at the time of their occurrence, and NMFS agrees that no one can guarantee what will be lawful in the future.

*Comment 34:* The proposed rule is sufficient for fisheries under Federal jurisdiction. For state-managed fisheries, however, it would be useful to have a sample request and business plan accessible at NMFS' web site.

*Response:* The proposed rule outlined the required contents of reduction requests and business plans for both Federal and state fisheries. NMFS does not have any samples that NMFS could post at NMFS' web site. NMFS is, however, willing to advise all parties about reduction in any appropriate way NMFS can.

*Comment 35:* The proposed rule "has been thoughtfully and thoroughly developed..." and "has great merit and practical application ..." to the salmon driftnet and purse seine fishery in Bristol Bay, Alaska.

*Response:* NMFS notes this comment.

*Comment 36:* "In some cases...industry-funded license reductions may represent the only viable alternative to achieving needed reductions of capacity. In complex fisheries, overcapacity and inadequate management in any major fishery can lead to adverse consequences for other fisheries."

*Response:* NMFS agrees.

*Comment 37:* Where fishing permit reductions involve Bristol Bay and Chignik, the number of fishing permits bought back from local residents must be proportional with the number of fishing permits bought back from parties who do not reside in Alaska. 1,325 Bristol Bay salmon fishing permits were initially issued to residents of the Bristol Bay and Chignik watershed region. Today, only about 900 of these remain owned by local residents. Each fishing permit sold to non-residents of the local area results in the loss of 2 crewmen jobs from the local economy. This devastates the local economy.

*Response:* A framework rule involving matters common to all reduction programs is not the appropriate place to address this matter.

*Comment 38:* The "technical requirements for information ...[should not be] implemented in a way that the available databases and their managers

cannot accommodate. Flexibility to meet the data variability and personnel constraints should be clearly provided.”

*Response:* It is not clear to what “technical requirements for information” this comment related. Requiring unavailable data is nonfunctional. The interim final rule is a framework rule common to all reduction programs, and NMFS will accommodate specific data or technical information circumstances that do not reasonably allow individual requests for reduction programs to comply with the framework rule. The interim final rule revises the proposed rule to provide flexibility in this and other respects (see § 600.1001(f)).

*Comment 39:* Reduction planners (either industry business planners or Government reduction planners) will be unqualified to fully understand fisheries complexity and to “comprehensively formulate a feasible...plan.” Theoretical reduction plans might not achieve the intended purpose, and might have unplanned impacts on “the permit holder, vessel owner, financiers, and buyers (fish fee collectors)...” Experience demonstrates that “decisions are reached to appease political agendas, therefore, constituents of the fisheries will not take a plan or program at face value.” Industry members will incur substantial expense in analyzing reduction plans. Reduction plans will involve a major economic impact on small fishery businesses. The “massive economic data that will be required...” may be nonexistent.

*Response:* Financed reduction programs are based on business plans that the fishing industry itself develops. When FMCs request financed reduction programs, they must base their requests on those business plans. If NMFS undertakes financed reduction programs, NMFS must, to the greatest extent possible, base these programs on those business plans. Moreover, all fishing permit holders or fishing vessel owners affected have the opportunity, through a referendum, to approve or reject the business plans upon which financed reduction programs are based. A financed reduction program is not possible unless at least two-thirds of those voting in a referendum approve the fee necessary to repay a reduction loan.

Subsidized reduction programs are based on implementation plans that NMFS develops from general FMC recommendations. The rule provides ample opportunity for the views of all affected parties to be heard and duly considered.

Whether to offer one’s fishing capacity for reduction in either a

financed or subsidized reduction program is the voluntary decision of each fishing permit holder and/or fishing vessel owner.

*Comment 40:* A business plan should be subjected to a referendum of fishing permit holders and fishing vessel owners. Additionally, the fish buyers that are responsible for collecting the fee that repays a reduction loan should vote in a referendum about (presumably) the “fee collection, disbursement, and accounting...” aspects of the reduction. Moreover, a referendum committee of fishing vessel and fishing permit owners and fish buyers should review the results of all referenda involving financed reduction programs “to alleviate [sic] any questions by the fishery as to the valid tally of support or non-support...” A subsidized reduction program should also be subjected to a referendum of fishing permit and fishing vessel owners.

*Response:* The Magnuson-Stevens Act reduction provisions authorize referenda only for fee payers (fish sellers), not fee collectors (fish buyers). Fish buyers pay no fee, and cannot vote in referenda about fee payment. The statutory reduction provisions do not authorize referenda for subsidized reduction programs, where no one either pays or collects a fee. Those provisions do, however, require NMFS to consult with fish sellers, fish buyers, and all other affected parties through the development and implementation of subsidized reduction programs.

NMFS is the referendum authority under the statutory reduction provisions, and NMFS believes it can competently exercise this authority. NMFS does not, consequently, perceive a need for fish-seller and fish-buyer committees that will review referenda results. Moreover, the fact that referenda may sometimes follow irrevocable bidding precludes any referenda review or collaboration that lengthens the time between the submission of irrevocable bids and completing the reduction programs to which the bids relate.

*Comment 41:* It is good “that industry is expected to pay for...[reduction] in the long run.”, but landing taxes are already high (“nearly 10 percent off the top for salmon in

Alaska...”) This, combined with the high cost of business and depressed markets, threatens the survival of many family fishing businesses. Further landing taxes should be minimal. As an alternative, consider putting “a large tax [25 percent or more] on the sales of permits.”

*Response:* In financed reduction programs, the industry’s business plans project the amount by which fishing

capacity is reduced and the prospective fee rate necessary to pay for that reduction. Fee rates are based on post-reduction gross revenue that can only be projected over the life of the reduction loans, but all business is planned on the basis of future income that can only be projected. For a financed reduction loan to be possible, affected fishing vessel or fishing permit owners must vote in a referendum to approve the fee necessary to repay a reduction loan of a certain maximum amount whose disbursement in the form of reduction payments will reduce fishing capacity by a certain minimum amount. Business planners are unlikely to suggest a fee higher than post-reduction producers are reasonably likely to be able to pay, and, in the event they do, referendum voters are unlikely to approve a higher fee. Post-reduction fee rates may increase if post-reduction gross revenue proves to be lower than projected at the time of reduction, but may never exceed 5 percent of gross revenue. NMFS has no authority to consider the alternative this comment suggested.

*Comment 42:* The proposed rule is a “very well done plan on how to implement. It is believable, do-able, and very much needed in the fishing industry.”

*Response:* NMFS notes this comment.

*Comment 43:* The comment applauds this avenue to reduce overcapitalization, return economic viability to fishing, and resolve many concerns (including bycatch and habitat) that the race for fish creates. Reductions reduces fishermen’s pressure by eliminating “derby fisheries.”

*Response:* NMFS agrees that fishing capacity reduction can help improve fisheries economics and fisheries conservation and management.

*Comment 44:* The fee for fish processed at sea cannot equitably be calculated in the same way as the fee for raw fish delivered ashore. Using appropriate recovery rates, NMFS should convert processed fish to the fish’s round weight equivalent and calculate the fee based on the ex-vessel price for raw fish. If there is an ex-vessel price for raw fish delivered at sea, NMFS should use this. If not, NMFS should use the ex-vessel price for raw fish delivered ashore. Where all fish in a reduction fishery are processed and delivered at sea, NMFS must devise an appropriate proxy for a raw-fish, ex-vessel price. The fee should, in all cases, be based on the ex-vessel price for raw fish, rather than on the value that at-sea processing adds.

*Response:* NMFS considered this issue during the proposed rule’s formulation, but elected in the proposed

rule to define "delivery value" and associated terms in a way that required payment of the reduction loan repayment fee based on fish in whatever form the fish existed at the time that the party who harvested the fish first delivered the fish for value to an unrelated fish buyer. This resulted, for fish harvested and processed at sea by the same party, in applying the fee rate to a higher delivery value than for fish delivered unprocessed and subsequently processed ashore by an unrelated fish buyer. There are good arguments for and against this approach, but, on balance, the more equitable way to resolve this issue is, as this comment suggests, to apply the fee to unprocessed fish. Doing so, however, creates considerable problems of its own.

One primary problem is a formula for accurately and efficiently converting the weight of processed fish to the weight of unprocessed fish. Another is a common value for unprocessed fish (prices may vary from time to time and from fish buyer to fish buyer). Nevertheless, the interim final rule revises the proposed rule to make the fee payable on the basis of the value of unprocessed fish. The interim final rule requires each business plan, for fisheries in which related parties both catch and process fish at sea, to formulate an accurate and efficient means of converting processed weight to unprocessed weight and of commonly valuing unprocessed fish (see, in § 600.1000, the definition of the terms "delivery value", "processed fish", and "unprocessed fish" and, in § 600.1003(n)(11), the new business plan requirement in this respect).

*Comment 45:* The framework rule represents an "excellent job of distilling common sense answers from some very difficult and complex issues."

*Response:* NMFS notes the comment.

*Comment 46:* The reduction loan repayment fee is the delivery value of fee fish times the fee rate. The definition of "delivery value", however, excludes "any deductions whatsoever" from the price that a fish buyer pays a fish seller when the fish seller first delivers fish to the fish buyer. This excludes "weighbacks" (small, unmarketable fish that the fish buyer deducts from the weight of delivered fish upon which the fish buyer calculates the delivery value). To comply with the statute's restriction of the fee to no more than 5 percent of ex-vessel value, the fee rate must be applied to the net weight of delivered fish (landed fish minus "weighbacks").

*Response:* Representative fish tickets provided with this comment deduct the weight of weighbacks from the gross weight of fee fish delivered before

applying the purchase price per pound to the resulting net weight. Under these circumstances, the fee is not, as the proposed rule defined the relevant term, applied to the weighbacks because the fish buyer did not pay any "delivery value" for the weighbacks because they were deducted from the total weight of delivered fish before calculating the "delivery value" on the net weight of delivered fish. The rule bases the fee on whatever value fish buyers pay fish sellers for fish subject to the fee (see the definition of the term "delivery value" in § 600.1000).

*Comment 47:* This comment supported fishing capacity reduction, but is frustrated that "the system" moves so slowly.

*Response:* NMFS will expedite the process as much as it possibly can, but fishing capacity reduction is a complex undertaking. The FMP amendment required to complement each reduction program may become a major source of delay in implementing each reduction program.

*Comment 48:* The reduction concept is "totally objectionable and immoral." Allowing "two thirds of the fishermen in a fishery..." to authorize the fee system required to repay a loan forces the other one third to repay a loan they do not want. The commenter objects to "forced loans." The commenter does not "believe in borrowing..." and "objects" to being forced to pay back a loan to stay fishing." Government should not be in the business of making loans. Reduction programs will not increase the price of post-reduction fish. The reduction concept "has the potential to force out small boat owners."

*Response:* NMFS notes the comment. The Magnuson-Stevens Act authorizes reduction programs and specifies the way in which they must be conducted. This rule implements the Act.

The reduction concept has the potential to reduce fishing capacity of every size, but decisions about whether to offer any fishing capacity for reduction are always the voluntary decisions of individual fishing permit and/or fishing vessel owners.

*Comment 49:* Reduction might have the collateral effect of putting some shoreline processors out of business, because fewer fishing vessels could result in the need for fewer shoreline processors.

*Response:* Absent concurrent reductions in total allowable catches, post-reduction harvests will require the same fish processing capacity as pre-reduction harvests. NMFS hopes that fewer harvesters catching the same amount of fish will not always mean a need for fewer processors, but it

sometimes unavoidably may. Nevertheless, the statutory objective of the reduction provisions of the Magnuson-Stevens Act is to reduce fishing capacity.

*Comment 50:* "Congress made it very clear in the Sustainable Fisheries Act of 1996 that all capacity reduction plans must achieve measurable and significant improvements in the conservation and management of the fishery in question..."

*Response:* The rule reflects this aspect of the statutory reduction provisions.

### Summary of Revisions

The proposed rule was Subpart D of 50 CFR Part 253. The interim final rule, however, is subpart L of 50 CFR Part 600.

The following sections of the interim final rule revise the proposed rule:

(1) § 600.1000. This section is revised to add some terms, delete some terms, rename some terms, and amend the definition of some terms. Added terms include: "address of record", "bid", "business week", "fair market value", "fishing capacity reduction specifications", "net delivery value", "post-bidding referendum", "processed fish", "reduction amendment specifications", "request", "treasury percentage", "unprocessed fish", and "vote". Deleted terms include: "consistency requirement", "control requirement", "Council", "necessity requirement", and "nonreplacement requirement". Renamed terms include: "program plan", which becomes "implementation plan"; "program regulations", which becomes "implementation regulations"; and "management plan", which becomes "controlling fishery management plan or program (CFMP)". Amended definitions include "borrower", "delivery value", "fee fish", "fish buyer", "fish delivery", "fish seller", "reduction amendment", "reduction fishery", and "reduction payment".

(2) § 600.1001(f). This section is added to provide for waivers of framework rule provisions in order to accommodate special circumstances in particular reduction fisheries.

(3) § 600.1002. This section is new. It encompasses four general requirements, three of which were, in the proposed rule, terms defined in § 253.25. This new section required conforming revisions of various other sections of the proposed rule.

(4) § 600.1003. Paragraph (g) of this section is revised to require each request for a financed reduction program to include the FMC's endorsement in principle of any reduction amendment

to the FMP that the business plan proposes. Paragraph (i) of this section is revised to clarify that NMFS is a source for the fishing permit data that this section requires in requests for financed reduction programs. Paragraph (j) of this section is revised to clarify that financed reduction program requests require aggregate, rather than individual, catch data. Paragraph (n)(11) of this section is revised to require the business plan included in each financed reduction request to evaluate the need for fee payment and collection provisions in each reduction fishery's implementation regulations different from the fee collection provisions in the framework rule.

(5) *§ 600.1005*. Paragraph (e) of this section is revised to clarify that NMFS is a source for the fishing permit data that this section requires in requests for subsidized reduction programs. Paragraph (f) of this section is revised to clarify that financed reduction program requests require aggregate, rather than individual, catch data.

(6) *§ 600.1010*. This section is revised extensively to provide for referenda preceding reduction amendments to FMPs as well as other referenda that may be required by no longer limiting referenda to those following reduction bidding. This also required appropriately revising other sections of the proposed rule that referenced referenda. Paragraph (d)(10) of this section is revised to establish the confidentiality of referenda ballots.

(7) *§ 600.1011*. This section, particularly paragraphs (f) and (g), is revised to clarify the effect of reduction payments that NMFS is unable to make because of reduction contract non-performance.

(8) *§ 600.1012*. This section is new. Paragraphs (b) and (c) of this section pertain to reduction loan interest rates, including the effect of any difference between prospective and actual reduction loan interest rates. The balance of this new section pertains to the reduction loan obligation, including principal amount, repayment term, and penalties for non-payment or non-collection.

(9) *§ 600.1013(c)(2)*. This paragraph is revised to clarify that the fee applicable to post-delivery fish bonuses is paid and collected when the bonuses first become known rather than when fish sellers first deliver fish to fish buyers.

(10) *§ 600.1015*. This section is new. This provision is necessary to ensure prompt payment.

(11) *§ 600.1016*. This section is new. This provision is necessary to ensure compliance.

The interim final rule further revises the proposed rule to make the rule briefer, clearer, and more internally consistent.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers OMB assigned to NOAA's information collection requirements pursuant to the Paperwork Reduction Act (PRA). This interim final rule codifies OMB control number 0648-0376 and OMB control number 0648-0413 for Part 600 Subpart L—Fishing Vessel Capacity Reduction.

#### Classification

The Assistant Administrator for Fisheries, NMFS, determined that this interim final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This interim final rule has been determined to be significant for purposes of E.O. 12866, and a Regulatory Impact Review has been prepared by NMFS (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that, if adopted as proposed, it would not have a significant economic impact on a substantial number of small entities. NMFS received no comments about this certification. Because this interim final rule only establishes a framework for implementing future reduction programs in specific reduction fisheries, each future reduction program will require its own implementation regulations and analysis of effects on small entities. As a result, a regulatory flexibility analysis was not prepared.

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 PRA unless that collection of information displays a currently valid OMB control number.

This interim final rule contains new collection of information requirements subject to the PRA that have been approved by OMB, under OMB Control No. 0648-0376. The estimates of the public reporting burden for these requirements are: 6,634 hours for developing a business plan, 4 hours per voter for a referendum, four hours to make a bid, 10 minutes per fishing trip to maintain records on transactions, 2 hours for a buyer's monthly report, 4 hours for a buyer's annual report, 2 hours for a buyer/seller report (where either a buyer refuses to a fee or the seller refuses to pay the fee to the

buyer), and 270 hours for state approval of a business plan and amendments to a state fishery management plan.

Emergency clearance has also been obtained under OMB Control Number 0648-0413 to conduct, in accordance with the interim final rule's revised referenda procedures, more than one referendum for each reduction program if the circumstances of a reduction program require multiple referenda. The response time per voter for these referenda is 4 hours. NMFS intends to ask OMB for a three-year extension of the clearance for these requirements, which are currently only approved on an emergency basis.

The response time estimates above include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Send comments regarding the extension of the emergency clearance or any other aspect of the collection of information requirements contained in this rule, including the burden hour estimates, and suggestions for reducing the burdens to NMFS (see **ADDRESSES**) and to OMB (see **ADDRESSES**).

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 600

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

Dated: May 8, 2000.

**Penelope D. Dalton,**

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

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, is amended and 50 CFR part 600 is amended as follows:

#### 15 CFR Chapter IX

#### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

#### § 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648-)
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50 CFR	
600.1001	- 0376
600.1003	- 0376
600.1005	- 0376
600.1006	- 0376
600.1009	- 0376
600.1010	- 0376 and-0413
600.1011	- 0376
600.1012	- 0376
600.1013	- 0376
600.1014	- 0376

3. 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.*

4. In § 600.5, a paragraph (c) is added to read as follows:

**§ 600.5 Purpose and scope.**

\* \* \* \* \*

(c) This part also governs fishing capacity reduction programs under the Magnuson-Stevens Act.

5. A subpart L is added to read as follows:

**50 CFR Chapter VI**

**PART 600 MAGNUSON-STEVENSON ACT PROVISIONS**

**Subpart L—Fishing Capacity Reduction**

Sec.

600.1000 Definitions.

600.1001 Requests.

600.1002 General requirements.

600.1003 Content of a request for a financed program.

600.1004 Accepting a request for, and determinations about initiating, a financed program.

600.1005 Content of a request for a subsidized program.

600.1006 Accepting a request for, and determinations about conducting, a subsidized program.

600.1007 Reduction amendments.

600.1008 Implementation plan and implementation regulations.

600.1009 Bids.

600.1010 Referenda.

600.1011 Reduction methods and other conditions.

600.1012 Reduction loan.

600.1013 Fee payment and collection.

600.1014 Fee collection deposits, disbursements, records, and reports.

600.1015 Late charges.

600.1016 Enforcement.

600.1017 Prohibitions and penalties.

600.1018 Implementation regulations for each program. [Reserved]

**Subpart L—Fishing Capacity Reduction**

**Authority:** 16 U.S.C. 1861a(b)–(e).

**§ 600.1000 Definitions.**

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings:

*Address of Record* means the business address of a person, partnership, or corporation. Addresses listed on permits or other NMFS records are presumed to be business addresses, unless clearly indicated otherwise.

*Bid* means the price a vessel owner or reduction fishery permit holder requests for reduction of his/her fishing capacity. It is an irrevocable offer in response to the invitation to bid in § 600.1009.

*Borrower* means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery.

*Business plan* means the document containing the information specified in § 600.1003(n) and required to be submitted with a request for a financed program.

*Business week* means a 7-day period, Saturday through Friday.

*Controlling fishery management plan or program (CFMP)* means either any fishery management plan or any state fishery management plan or program, including amendments to the plan or program, pursuant to which a fishery is managed.

*Delivery value* means:

(1) For unprocessed fish, all compensation that a fish buyer pays to a fish seller in exchange for fee fish; and

(2) For processed fish, all compensation that a fish buyer would have paid to a fish seller in exchange for fee fish if the fee fish had been unprocessed fish instead of processed fish.

Delivery value encompasses fair market value, as defined herein, and includes the value of all in-kind compensation or all other goods or services exchanged in lieu of cash. It is synonymous with the statutory term “ex-vessel value” as used in section 312 of the Magnuson Act.

*Deposit principal* means all collected fee revenue that a fish buyer deposits in a segregated account maintained at a federally insured financial institution for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying a reduction loan.

*Fair market value* means the amount that a buyer pays a seller in an arm’s length transaction or, alternatively, would pay a seller if the transaction were at arm’s length.

*Fee* means the amount that fish buyers deduct from the delivery value under a financed reduction program. The fee is the delivery value times the reduction fishery’s applicable fee rate under section 600.1013.

*Fee fish* means all fish harvested from a reduction fishery involving a financed program during the period in which any amount of the reduction loan remains unpaid. The term fee fish excludes fish harvested incidentally while fishing for fish not included in the reduction fishery.

*Final development plan* means the document NMFS prepares, under § 600.1006(b) and based on the preliminary development plan the requester submits, for a subsidized program.

*Financed* means funded, in any part, by a reduction loan.

*Fish buyer* means the first ex-vessel party who:

(1) in an arm’s—length transaction, purchases fee fish from a fish seller;

(2) takes fish on consignment from a fish seller; or

(3) otherwise receives fish from a fish seller in a non arm’s-length transaction.

*Fish delivery* means the point at which a fish buyer first purchases fee fish or takes possession of fee fish from a fish seller.

*Fishing capacity reduction specifications* means the minimum amount of fishing capacity reduction and the maximum amount of reduction loan principal specified in a business plan.

*Fish seller* means the party who harvests and first sells or otherwise delivers fee fish to a fish buyer.

*Fishery Management Plan (FMP)* means any Federal fishery management plan, including amendments to the plan, that the Secretary of Commerce approves or adopts pursuant to section 303 of the Magnuson-Stevens Act.

*Fund* means the Fishing Capacity Reduction Fund, and each subaccount for each program, established in the U.S. Treasury for the deposit into, and disbursement from, all funds, including all reduction loan capital and all fee revenue, involving each program.

*Implementation plan* means the plan in § 600.1008 for carrying out each program.

*Implementation regulations* mean the regulations in § 600.1008 for carrying out each program.

*Net delivery value* means the delivery value minus the fee.

*Post-bidding referendum* means a referendum that follows bidding under § 600.1009.

*Post-reduction* means after a program reduces fishing capacity in a reduction fishery.

*Pre-bidding referendum* means a referendum that occurs at any time after a request for a financed program but before a proposal under § 600.1008 of a implementation plan and implementation regulations.

*Preliminary development plan* means the document specified in § 600.1005(g) and required to be submitted with a request for a subsidized program.

*Processed fish* means fish in any form different from the form in which the fish existed at the time the fish was first harvested, unless any such difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

*Program* means each instance of reduction under this subpart, in each reduction fishery—starting with a request and ending, for a financed program, with full reduction loan repayment.

*Reduction* means the act of reducing fishing capacity under any program.

*Reduction amendment* means any amendment, or, where appropriate, framework adjustment, to a CFMP that may be necessary for a program to meet the requirements of this subpart.

*Reduction amendment specifications* mean the reduction amendment to a CFMP specified in a business plan.

*Reduction contract* means the invitation to bid under § 600.1009, together with each bidder's irrevocable offer and NMFS' conditional or non-conditional acceptance of each such bid under § 600.1009.

*Reduction cost* means the total dollar amount of all reduction payments to fishing permit owners, fishing vessel owners, or both, in a reduction fishery.

*Reduction fishery* means the fishery or portion of a fishery to which a program applies. The reduction fishery must specify each included species, as well as any limitations by gear type, fishing vessel size, geographic area, and any other relevant factor(s).

*Reduction loan* means a loan, under section 1111 and section 1112 of Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1279f and g App.), for financing any portion, or all, of a financed program's reduction cost and

repayable by a fee under, and in accordance with, § 600.1012, § 600.1013, and § 600.1014.

*Reduction payment* means the Federal Government's fishing capacity reduction payment to a fishing permit owner, fishing vessel owner, or both, under a reduction contract. Additionally, it is payment for reduction to each bidder whose bid NMFS accepts under § 600.1009. In a financed program each reduction payment constitutes a disbursement of a reduction loan's proceeds and is for either revoking a fishing permit or both revoking a fishing permit and withdrawing a vessel from fishing either by scrapping or title restriction.

*Reduction permit* means any fishing permit revoked in a program in exchange for a reduction payment under a reduction contract.

*Reduction vessel* means any fishing vessel withdrawn from fishing either by scrapping or title restriction in exchange for a reduction payment under a reduction contract.

*Referendum* means the voting process under § 600.1010 for approving the fee system for repaying a reduction loan.

*Request* means a request, under § 600.1001, for a program.

*Requester* means a Council for a fishery identified in § 600.1001(c), a state governor for a fishery identified in § 600.1001(d), or the Secretary for a fishery identified in § 600.1001(e).

*Scrap* means to completely and permanently reduce a fishing vessel's hull, superstructures, and other fixed structural components to fragments having value, if any, only as raw materials for reprocessing or for other non-fisheries use.

*Subsidized* means wholly funded by anything other than a reduction loan.

*Treasury percentage* means the annual percentage rate at which NMFS must pay interest to the U.S. Treasury on any principal amount that NMFS borrows from the U.S. Treasury in order to generate the funds with which to later disburse a reduction loan's principal amount.

*Unprocessed fish* means fish in the same form as the fish existed at the time the fish was harvested, unless any difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

*Vote* means a vote in a referendum.

#### **§ 600.1001 Requests.**

(a) A Council or the Governor of a State under whose authority a proposed reduction fishery is subject may request that NMFS conduct a program in that

fishery. Each request shall be in writing and shall be submitted to the Director, Office of Sustainable Fisheries, NMFS. 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.

(b) NMFS cannot conduct a program in any fishery subject to the jurisdiction of a Council or a state unless NMFS first receives a request from the Council or the governor to whose jurisdiction the fishery is subject.

(c) For a fishery subject to the jurisdiction of a Council, only that Council can or must make the request. If the fishery is subject to the jurisdiction of two or more Councils, those Councils must make a joint request. No Council may make a request, or join in making a request, until after the Council conducts a public hearing about the request.

(d) For a fishery subject to the jurisdiction of a State, only the Governor of that State can make the request. If the fishery is subject to the jurisdiction of two or more states, the Governors of those States shall make a joint request. No Governor of a State may make a request, or join in making a request, until the State conducts a public hearing about the request.

(e) For a fishery under the direct management authority of the Secretary, NMFS may conduct a program on NMFS' own motion by fulfilling the requirements of this subpart that reasonably apply to a program not initiated by a request.

(f) Where necessary to accommodate special circumstances in a particular fishery, NMFS may waive, as NMFS deems necessary and appropriate, compliance with any specific requirements under this subpart not required by statute.

#### **§ 600.1002 General requirements.**

(a) Each program must be: (1) Necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the reduction fishery;

(2) Accompanied by the appropriate environmental, economic and/or socioeconomic analyses, in accordance with applicable statutes, regulations, or other authorities; and

(3) Consistent with the CFMP, including any reduction amendment, for the reduction fishery.

(b) Each CFMP for a reduction fishery must: (1) Prevent the replacement of fishing capacity removed by the program through a moratorium on new



entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet;

(2) Establish a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(3) Include, for a financed program in a reduction fishery involving only a portion of a fishery, appropriate provisions for the post-reduction allocation of fish between the reduction fishery and the rest of the fishery that both protect the borrower's reduction investment in the program and support the borrower's ability to repay the reduction loan.

**§ 600.1003 Content of a request for a financed program.**

A request for a financed program shall:

(a) Specify the reduction fishery.  
(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Specify whether the program is to be wholly or partially financed and, if the latter, specify the amount and describe the availability of all funding from sources other than a reduction loan.

(d) Project the availability of all Federal appropriation authority or other funding, if any, that the financed program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(f) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b).

(g) If a reduction amendment is necessary, include an actual reduction amendment or the requester's endorsement in principle of the reduction amendment specifications in the business plan. Endorsement in principle is non-binding.

(h) Request that NMFS conduct, at the appropriate time, a referendum under § 600.1010 of this subpart.

(i) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction

fishery. The list shall be based on the best information available to the requester. The list shall take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves. The list may include any relevant information that NMFS may supply to the requester.

(j) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (i) of this section.

(k) Specify the criteria for determining the types and number of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(1) The characteristics of the fishery;  
(2) Whether the program is limited to a particular gear type within the reduction fishery or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor;

(3) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels;

(4) The reduction amendment required;

(5) The needs of fishing communities;

(6) Minimizing the program's reduction cost; and

(7) All other relevant factors.

(l) Include the requester's assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts.

(m) Include any other information or guidance that would assist NMFS in developing an implementation plan and implementation regulations.

(n) Include a business plan, prepared by, or on behalf of, knowledgeable and concerned harvesters in the reduction fishery, that:

(1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least reduction cost and in the minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Establish the appropriate point for NMFS to conduct a pre-bidding

referendum and be sufficiently detailed to enable NMFS to readily:

(A) Design, propose, and adopt a timely and reliable implementation plan,

(B) Propose and issue timely and reliable implementation regulations,

(C) Invite bids,

(D) Accept or reject bids, and

(E) Complete a program in accordance with this subpart, and

(ii) Address, consistently with this subpart:

(A) The contents and terms of invitations to bid,

(B) Bidder eligibility,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids,

(E) The terms of bid acceptances,

(F) Any referendum procedures in addition to, but consistent with, those in § 600.1010, and

(G) All other technical matters necessary to conduct a program;

(2) Projects and supports the reduction fishery's annual delivery value during the reduction loan's repayment period based on documented analysis of actual representative experience for a reasonable number of past years in the reduction fishery;

(3) Includes the fishing capacity reduction specifications upon which both the pre-bidding referendum and the bidding under § 600.1009 will be based. The reduction loan's maximum principal amount cannot, at the interest rate projected to prevail at the time of reduction, exceed the principal amount that can be amortized in 20 years by 5 percent of the projected delivery value;

(4) States the reduction loan's repayment term and the fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over its repayment term;

(5) Analyzes and demonstrates the ability to repay the reduction loan at the minimum reduction level and at various reduction-level increments reasonably greater than the minimum one, based on the:

(i) Best and most representative historical fishing revenue and expense data and any other relevant productivity measures available in the reduction fishery, and

(ii) Projected effect of the program on the post-reduction operating economics of typical harvesters in the reduction fishery, with particular emphasis on the extent to which the reduction increases the ratio of delivery value to fixed cost and improves harvesting's other relevant productivity measures;

(6) Demonstrates how the business plan's proposed program meets, or will

meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(7) Demonstrates how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);

(8) Includes, if a reduction amendment is necessary, the reduction amendment specifications upon which the pre-bidding referendum will be based;

(9) Includes an assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts;

(10) Specifies the names and addresses of record of all fish buyers who can, after reduction, reasonably be expected to receive deliveries of fee fish. This shall be based on the best information available, including any information that NMFS may be able to supply to the business planners;

(11) Specifies, after full consultation with fish buyers, any special circumstances in the reduction fishery that may require the implementing regulations to contain provisions in addition to, or different from, those contained in § 600.1013 and/or § 600.1014 in order to accommodate the circumstances of, and practices in, the reduction fishery while still fulfilling the intent and purpose of § 600.1013 and/or § 600.1014—including, but not limited to:

(i) In the case of reduction fisheries in which state data confidentiality laws or other impediments may negatively affect the efficient and effective conduct of the same, specification of who needs to take what action to resolve any such impediments, and

(ii) In the case of reduction fisheries in which some fish sellers sell unprocessed, and other fish sellers sell processed fish to fish buyers, specification of an accurate and efficient method of establishing the delivery value of processed fish; and

(12) Demonstrates by a survey of potential voters, or by any other convincing means, a substantial degree of potential voter support for the business plan and confidence in its feasibility.

(o) Include the requester's statement of belief that the business plan, the CFMP, the reduction amendment specifications, and all other request aspects constitute a complete, realistic,

and practical prospect for successfully completing a program in accordance with this subpart.

**§ 600.1004 Accepting a request for, and determinations about initiating, a financed program.**

(a) *Accepting a request.* Once it receives a request, NMFS will review any request for a financed program to determine whether the request conforms with the requirements of § 600.1003. If the request does not conform, NMFS will return the request with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the **Federal Register** requesting public comments on the request. Such notice shall state the name and address of record of each eligible voter, as well as the basis for having determined the eligibility of those voters. This shall constitute notice and opportunity to respond about adding eligible voters, deleting ineligible voters, and/or correcting any voter's name and address of record. If, in NMFS' discretion, the comments received in response to such notice warrants it, or other good cause warrants it, NMFS may modify such list by publishing another notice in the **Federal Register**.

(b) *Determination about initiating a financed program.* After receipt of a conforming request for a financed program, NMFS will, after reviewing and responding to any public comments received in response to the notice published in the **Federal Register** under paragraph (a) of this section, initiate the program if NMFS determines that: (1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);

(3) The program, if successfully implemented, is cost effective;

(4) The reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart and the borrower is capable of repaying the reduction loan. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart; and

(5) The program accords with all other applicable law;

**§ 600.1005 Content of a request for a subsidized program.**

A request for a subsidized program shall:

(a) Specify the reduction fishery.  
(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Project the reduction cost, the amount of reduction cost to be funded by Federal appropriations, and the amount, if any, to be funded by other sources.

(d) Project the availability of Federal appropriations or other funding, if any, that completion of the program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester, including any information that NMFS may supply to the requester, and take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves.

(f) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (e) of this section.

(g) Include a preliminary development plan that: (1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least cost and in a minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Be sufficiently detailed to enable NMFS to prepare a final development plan to serve as the basis for NMFS to readily design, propose, and adopt a timely and reliable implementation plan and propose and issue timely and reliable implementation regulations, and

(ii) Include:  
(A) The contents and terms of invitations to bid,  
(B) Eligible bidders,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids, and

(E) The terms of bid acceptances;

(2) Specifies the criteria for determining the types and numbers of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(i) The characteristics of the fishery,

(ii) Whether the program is limited to a particular gear type within the reduction fishery, or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor,

(iii) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels,

(iv) The reduction amendment required,

(v) The needs of fishing communities, and

(vi) The need to minimize the program's reduction cost; and

(3) Demonstrates the program's cost effectiveness.

(h) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(i) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2).

(j) Specify any other information or guidance that assists NMFS in preparing a final development plan and a proposed implementation plan and proposed implementation regulations.

(k) Include the requester's statement of belief that the program constitutes a reasonably realistic and practical prospect for successfully completing a program in accordance with this subpart.

**§ 600.1006 Accepting a request for, and determinations about conducting, a subsidized program.**

(a) *Accepting a request.* NMFS will review any request for a subsidized program submitted to NMFS to determine whether the request conforms with the requirements of § 600.1005. If the request does not conform, NMFS will return it with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the **Federal Register** requesting public comments about the request.

(b) *Final development plan.* After receipt of a conforming request, NMFS will prepare a final development plan if NMFS determines that the reduction requested constitutes a realistic and

practical prospect for successfully completing a program in accordance with this subpart. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart. NMFS will, as far as possible, base the final development plan on the requester's preliminary development plan. Before completing the final development plan, NMFS will consult, as NMFS deems necessary, with the requester, Federal agencies, state and regional authorities, affected fishing communities, participants in the reduction fishery, conservation organizations, and other interested parties in preparing the final development plan.

(c) *Reaffirmation of the request.* After completing the final development plan, NMFS will submit the plan to the requester for the requester's reaffirmation of the request. Based on the final development plan, the reaffirmation shall: (1) Certify that the final development plan meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) Certify that the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) Project the date on which the requester will forward any necessary reduction amendment and, if the requester is a Council, proposed regulations to implement the reduction amendment. The requester shall base any necessary reduction amendment on the final development plan.

(d) *Determinations about conducting a subsidized program.* After NMFS' receipt of the requester's reaffirmation, any required reduction amendment, and any proposed regulations required to implement the amendment, NMFS will initiate the program if NMFS determines that: (1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) The program is reasonably capable of being successfully implemented;

(4) The program, if successfully implemented, will be cost effective; and

(5) The program is in accord with all other applicable provisions of the Magnuson-Stevens Act and this subpart.

**§ 600.1007 Reduction amendments.**

(a) Each reduction amendment may contain provisions that are either dependent upon or independent of a program. Each provision of a reduction amendment is a dependent provision unless the amendment expressly designates the provision as independent.

(b) Independent provisions are effective without regard to any subsequent program actions.

(c) Dependent provisions are initially effective for the sole limited purpose of enabling initiation and completion of the pre-reduction processing stage of a program.

(d) All dependent provisions of a reduction amendment for a financed program are fully in force and effect for all other purposes only when NMFS either: (1) For bidding results that conform to the fishing capacity reduction specifications and are not subject to any other condition, notifies bidders, under § 600.1009(e)(3), that reduction contracts then exist between the bidders and the United States; or

(2) For bidding results that do not conform to the fishing capacity reduction specifications or are subject to any other condition, notifies bidders whose bids NMFS had conditionally accepted, under § 600.1010 (d)(8)(iii), that the condition pertaining to the reduction contracts between them and the United States is fulfilled.

(e) If NMFS does not, in accordance with this subpart and any special provisions in the implementation regulations, subsequently make all reduction payments that circumstances, in NMFS' judgment, reasonably permit NMFS to make and, thus, complete a program, no dependent provisions shall then have any further force or effect for any purpose and all final regulations involving such dependent provisions shall then be repealed.

**§ 600.1008 Implementation plan and implementation regulations.**

(a) As soon as practicable after deciding to initiate a program, NMFS will prepare and publish, for a 60-day public comment period, a proposed implementation plan and implementation regulations. During the public comment period, NMFS will conduct a public hearing of the proposed implementation plan and implementation regulations in each state that the program affects.

(b) To the greatest extent practicable, NMFS will base the implementation plan and implementation regulations for a financed program on the business plan. The implementation plan for a financed program will describe in detail

all relevant aspects of implementing the program, including:

- (1) The reduction fishery;
- (2) The reduction methodology;
- (3) The maximum reduction cost;
- (4) The maximum reduction loan amount, if different from the maximum reduction cost;
- (5) The reduction cost funding, if any, other than a reduction loan;
- (6) The minimum acceptable reduction level;
- (7) The potential amount of the fee;
- (8) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;
- (9) The invitation to bid and bidding procedures;
- (10) The criteria for determining bid acceptance;
- (11) The referendum procedures; and
- (12) Any relevant post-referendum reduction procedures other than those in the implementation regulations or this subpart.

(c) NMFS will base each implementation plan and implementation regulations for a subsidized program on the final development plan. The implementation plan will describe in detail all relevant aspects of implementing the program, including:

- (1) The reduction fishery;
- (2) The reduction methodology;
- (3) The maximum reduction cost;
- (4) The reduction-cost funding, if any, other than Federal appropriations;
- (5) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;
- (6) The invitation to bid and bidding procedures;
- (7) The criteria for determining bid acceptance; and
- (8) Any relevant post-bidding program procedures other than those in the implementation regulations or this subpart.

(d) The implementation regulations will:

- (1) Specify, for invitations to bid, bids, and reduction contracts under § 600.1009:
  - (i) Bidder eligibility,
  - (ii) Bid submission requirements and procedures,
  - (iii) A bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,
  - (iv) A bid expiration date after which the irrevocable offer contained in each bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,
  - (v) The manner of bid submission and the information each bidder shall

supply for NMFS to deem a bid responsive,

- (vi) The conditions under which NMFS will accept or reject a bid,
- (vii) The manner in which NMFS will accept or reject a bid, and
- (viii) The manner in which NMFS will notify each bidder of bid acceptance or rejection;
- (2) Specify any other special referendum procedures or criteria; and
- (3) Specify such other provisions, in addition to and consistent with those in this subpart, necessary to regulate the individual terms and conditions of each program and reduction loan. This includes, but is not limited to:
  - (i) Provisions for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with § 600.1013 and § 600.1014,
  - (ii) Prospective fee rate determinations, and
  - (iii) Any other aspect of fee payment, collection, deposit, disbursement, accounting, record keeping, and/or reporting.

(e) NMFS will issue final implementation regulations and adopt a final implementation plan within 45 days of the close of the public-comment period.

(f) NMFS may repeal the final implementation regulations for any program if: (1) For a financed program, the bidding results do not conform to the fishing capacity reduction specifications or a post-bidding referendum does not subsequently approve an industry fee system based on the bidding results;

(2) For a subsidized program, NMFS does not accept bids; and

(3) For either a financed program or a subsidized program, if NMFS is unable to make all reduction payments due to a material adverse change.

#### § 600.1009 Bids.

(a) Each invitation to bid, bid, bid acceptance, reduction contract, and bidder—or any other party in any way affected by any of the foregoing—under this subpart is subject to the terms and conditions in this section: (1) Each invitation to bid constitutes the entire terms and conditions of a reduction contract under which:

- (i) Each bidder makes an irrevocable offer to the United States of fishing capacity for reduction, and
- (ii) NMFS accepts or rejects, on behalf of the United States, each bidder's offer;
- (2) NMFS may, at any time before the bid expiration date, accept or reject any or all bids;
- (3) For a financed program in which bidding results do not conform to the

fishing capacity reduction specifications, NMFS' acceptance of any bid is subject to the condition that the industry fee system necessary to repay the reduction loan is subsequently approved by a successful post-bidding referendum conducted under § 600.1010. Approval or disapproval of the industry fee system by post-bidding referendum is an event that neither the United States nor the bidders can control. Disapproval of the industry fee system by an unsuccessful post-bidding referendum fully excuses both parties from any performance and fully discharges all duties under any reduction contract;

(4) For a financed program in one reduction fishery that is being conducted under appropriate implementation regulations simultaneously with another financed program in another reduction fishery, where the acceptance of bids for each financed program is conditional upon successful post-bidding referenda approving industry fee systems for both financed programs, NMFS' acceptance of all bids is, in addition to any condition under paragraph (a)(3) of this section, also subject to the additional conditions that both referenda approve the industry fee systems required for both financed programs—all as otherwise provided in paragraph (a)(3) of this section;

(5) Upon NMFS' acceptance of the bid and tender of a reduction payment, the bidder consents to:

- (i) The revocation, by NMFS, of any reduction permit, and
- (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 in any area subject to the jurisdiction of the United States or any state, territory, commonwealth, or possession of the United States, or

(B) 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, 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 or expense NMFS incurred in causing the reduction vessel to be scrapped and any other damages NMFS may have incurred and such

owner shall be liable to the United States for such cost, expenses, and damages;

(6) Money damages not being an adequate remedy for a bidder's breach of a reduction contract, the United States is, in all particulars, entitled to specific performance of each reduction contract. This includes, but is not limited to, the scrapping of a reduction vessel;

(7) Any reduction payment is available, upon timely and adequately documented notice to NMFS, to satisfy liens, as allowed by law, against any reduction permit/and or reduction vessel; provided, however, that:

(i) No reduction payment to any bidder either relieves the bidder of responsibility to discharge the obligation which gives rise to any lien or relieves any lien holder of responsibility to protect the lien holder's interest,

(ii) No reduction payment in any way gives rise to any

liability of the United States for the obligation underlying any lien,

(iii) No lien holder has any right or standing, not otherwise provided by law, against the United States in connection with the revocation of any reduction permit or the title restriction or scrapping of any reduction vessel under this subpart, and

(iv) This subpart does not provide any lien holder with any right or standing to seek to set aside any revocation of any reduction permit or the title restriction or scrapping of any reduction vessel for which the United States made, or has agreed to make, any reduction payment. A lien holder is limited to recovery against the holder of the reduction permit or the owner of the reduction vessel as otherwise provided by law; and

(8) Each invitation to bid may specify such other terms and conditions as NMFS believes necessary to enforce specific performance of each reduction contract or otherwise to ensure completing each program. This includes, but is not limited to, each bidder's certification, subject to the penalties in § 600.1017, of the bidder's full authority to submit each bid and to dispose of the property involved in the bid in the manner contemplated by each invitation to bid.

(b) NMFS will not invite bids for any program until NMFS determines that: (1) Any necessary reduction amendment is fully and finally approved and all provisions except those dependent on the completion of reduction are implemented;

(2) The final implementation plan is adopted and the final implementation regulations are issued;

(3) All required program funding is approved and in place, including all Federal appropriation and apportionment authority;

(4) Any reduction loan involved is fully approved;

(5) Any non-Federal funding involved is fully available at the required time for NMFS disbursement as reduction payments; and

(6) All other actions necessary to disburse reduction payments, except for matters involving bidding and post-bidding referenda, are completed.

(c) After making the affirmative determinations required under paragraph (b) of this section, NMFS will publish a **Federal Register** notice inviting eligible bidders to offer to the United States, under this subpart, fishing capacity for reduction.

(d) NMFS may extend a bid closing date and/or a bid expiration date for a reasonable period. NMFS may also issue serial invitations to bid if the result of previous bidding, in NMFS' judgment, warrant this.

(e) After the bid expiration date, NMFS will: (1) Analyze responsive bids;

(2) Determine which bids, if any, NMFS accepts; and

(3) Notify, by U.S. mail at each bidder's address of

record, those bidders whose bids NMFS accepts that a reduction contract now exists between them and the United States—subject, where appropriate, to the conditions provided for elsewhere in this subpart.

(f) NMFS will keep confidential the identity of all bidders whose bids NMFS does not accept. In financed programs where bidding results do not conform to the fishing capacity reduction specifications, NMFS also will keep confidential the identity of all bidders whose bids NMFS does accept until after completing a successful post-bidding referendum under § 600.1010.

#### **§ 600.1010 Referenda.**

(a) *Referendum success.* A referendum is successful if at least two-thirds of the ballots that qualify to be counted as referendum votes under subparagraph (d)(6) of this section are cast in favor of an industry fee system.

(b) *Pre-bidding referendum*—(1) *Initial referendum.* An initial pre-bidding referendum shall be conducted for each financed program. The business plan shall, subject to this subpart, determine the chronological relationship of the initial pre-bidding referendum to other pre-bidding aspects of the reduction process sequence. The initial pre-bidding referendum shall be based on the fishing capacity reduction specifications. If the initial pre-bidding

referendum precedes the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the reduction amendment specifications. If the initial pre-bidding referendum follows the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the adopted reduction amendment;

(2) *Successful initial pre-bidding referendum.* If the initial pre-bidding referendum is successful, the reduction process will proceed as follows:

(i) If the initial pre-bidding referendum follows reduction amendment adoption, no second pre-bidding referendum shall be conducted,

(ii) If the initial pre-bidding referendum precedes reduction amendment adoption, a second pre-bidding referendum shall be conducted if, in NMFS' judgment, the reduction amendment subsequently adopted differs, in any respect materially affecting the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan, from the reduction amendment specifications upon which the initial pre-bidding referendum successfully occurred. The sole purpose of any second pre-bidding referendum shall be to determine whether the voters authorize an industry fee system despite any such difference between the reduction amendment specifications and a subsequently adopted reduction amendment.

(3) *Unsuccessful initial pre-bidding referendum.* If the initial pre-bidding referendum is unsuccessful, the reduction process will either cease or NMFS may suspend the process pending an appropriate amendment of the business plan and the request.

(c) *Post-bidding referendum.* A post-bidding referendum shall occur only if, in NMFS' judgment, the result of bidding under § 600.1009 does not conform, in any material respect, to the fishing capacity reduction specifications and such result justifies, in NMFS' judgment, conducting a post-bidding referendum. Bidding that results in reducing fishing capacity in any amount not less than the minimum fishing capacity reduction amount for any reduction loan amount not more than the maximum reduction loan amount, and otherwise achieves all material requirements of the fishing capacity reduction specifications, shall conform to the fishing capacity reduction specifications. The sole purpose of any post-bidding referendum shall be to determine whether voters authorize an industry fee system for bidding that results in reducing fishing capacity in

any amount materially less than the minimum amount in the fishing capacity reduction specifications.

(d) NMFS will conduct referenda in accordance with the following: (1) *Eligible voters.* The parties eligible to vote in each referendum are the parties whose names are listed as being eligible to vote in the notice published in the **Federal Register** under § 600.1004(a);

(2) *Ballot issuance.* NMFS will mail, by U.S. certified mail, return receipt requested, a ballot to each eligible voter. Each ballot will bear a randomly derived, 5-digit number assigned to each eligible voter. Each ballot will contain a place for the voter to vote for or against the proposed industry fee system and a place, adjacent to the 5-digit number, for the signature of the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf. Each ballot will contain a place for the person signing the ballot to print his or her name. NMFS will enclose with each ballot a specially-marked, postage-paid, pre-addressed envelope that each voter shall use to return the ballot to NMFS;

(3) *Voter certification.* Each ballot will contain a certification, subject to the penalties set forth in § 600.1017, that the person signing the ballot is the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf;

(4) *Information included on a ballot.* Each ballot mailing will:

(i) Summarize the referendum's nature and purpose,

(ii) Specify the date by which NMFS must receive a ballot in order for the ballot to be counted as a qualified vote,

(iii) Identify the place on the ballot for the voter to vote for or against the proposed industry fee system, the place on the ballot where the voter shall sign the ballot, and the purpose of the return envelope,

(iv) For each pre-bidding referendum, state:

(A) The fishing capacity reduction specifications,

(B) The reduction loan's repayment term, and

(C) The fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over the loan's term,

(v) For each initial pre-bidding referendum that precedes reduction amendment adoption, state the reduction amendment specifications,

(vi) For each initial pre-bidding referendum that follows reduction amendment adoption, summarize the material aspects of the reduction amendment adopted,

(vii) For each second pre-bidding referendum, summarize how the adopted reduction amendment materially differs from the reduction amendment specifications upon which a successful initial pre-bidding referendum occurred and how this material difference affects the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan,

(viii) For each post-bidding referendum, specify the actual bidding results that do not conform to the fishing capacity reduction specifications, and

(ix) State or include whatever else NMFS deems appropriate;

(5) *Enclosures to accompany a ballot.* Each ballot mailing will include:

(i) A specially-marked, postage-paid, and pre-addressed envelope that a voter must use to return the original of a ballot to NMFS by whatever means of delivery the voter chooses, and

(ii) Such other materials as NMFS deems appropriate;

(6) *Vote qualification.* A completed ballot qualifies to be counted as a vote if the ballot:

(i) Is physically received by NMFS on or before the last day NMFS specifies for receipt of the ballot,

(ii) Is cast for or against the proposed industry fee system,

(iii) Is signed by the voter,

(iv) Is the original ballot NMFS sent to the voter bearing the same 5-digit number that NMFS assigned to the voter, and

(v) Was returned to NMFS in the specially-marked envelope that NMFS provided for the ballot's return;

(6) *Vote tally and notification.* NMFS will:

(i) Tally all ballots qualified to be counted as referendum votes,

(ii) Notify, by U.S. mail at the address of record, all eligible voters who received ballots of:

(A) The number of potential voters,

(B) The number of actual voters who returned a ballot,

(C) The number of returned ballots that qualified to be counted as referendum votes,

(D) The number of votes for and the number of votes against the industry fee system, and

(E) Whether the referendum was successful and approved the industry fee system or unsuccessful and disapproved the industry fee system, and

(iii) If a successful referendum is a post-bidding referendum, NMFS will, at the same time and in the same manner, also notify the bidders whose bids were conditionally accepted that the condition pertaining to the reduction contracts between them and the United States is fulfilled;

(7) *Conclusiveness of referendum determinations.* NMFS' determinations about ballot qualifications and about all other referendum matters, including, but not limited to, eligible voters and their addresses of record, are conclusive and final as of the date NMFS makes such determinations. No matter respecting such determinations shall impair, invalidate, avoid, or otherwise render unenforceable any referendum, reduction contract, reduction loan, or fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan;

(8) *Ballot confidentiality.* NMFS will not voluntarily release the name of any party who voted. NMFS will restrict the availability of all voter information to the maximum extent allowed by law; and

(9) *Conclusive authorization of industry fee system.* Each successful referendum conclusively authorizes NMFS' imposition of an industry fee system—including the fee payment, collection, and other provisions regarding fee payment and collection under § 600.1013 and § 600.1014—to repay the reduction loan for each financed program that NMFS conducts under this subpart.

#### **§ 600.1011 Reduction methods and other conditions.**

(a) *Reduction permits or reduction permits and reduction vessels.* Each program may involve either the surrender and revocation of reduction permits or both the surrender and revocation of reduction permits and the withdrawal from fishing either by title restriction or by scrapping of reduction vessels. No financed program may, however, require such title restriction or scrapping of reduction vessels unless the business plan voluntarily includes the same.

(b) *Reduction permit revocation and surrender.* Each reduction permit is, upon NMFS' tender of the reduction payment for the reduction permit, forever revoked. Each reduction permit holder shall, upon NMFS' tender of the reduction payment, surrender the original reduction permit to NMFS. The reduction permit holder, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction permit and with the fishing vessel that was used to harvest

fishery resources under the reduction permit that could qualify the reduction permit holder or the fishing vessel owner for any present or future limited access system fishing permit in the reduction fishery.

(c) *Reduction vessel title restriction or scrapping.* For each program that involves reduction vessel title restriction or scrapping: (1) Each reduction vessel that is subject to title restriction only and is thus not required to be scrapped, is, upon NMFS' tender of the reduction payment, forever prohibited from any future use for fishing in any area subject to the jurisdiction of the United States or any State, territory, possession, or commonwealth of the United States. NMFS will request that the U.S. Coast Guard permanently restrict each such reduction vessel's title to exclude the reduction vessel's future use for fishing in any such area;

(2) Each reduction vessel owner whose reduction vessel is required to be scrapped shall, upon NMFS' tender of the reduction payment, immediately cease all further use of the reduction vessel and arrange, without delay and at the reduction vessel owner's expense, to scrap the reduction vessel to NMFS' satisfaction, including adequate provision for NMFS to document the physical act of scrapping; and

(3) Each reduction vessel owner, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction vessel and with the reduction permit that could qualify the reduction vessel owner or the reduction permit holder for any present or future limited access system fishing permit in the reduction fishery.

(d) *Fishing permits in a non-reduction fishery.* A financed program that does not involve the withdrawal from fishing or scrapping of reduction vessels may not require any holder of a reduction permit in a reduction fishery to surrender any fishing permit in any non-reduction fishery or restrict or revoke any fishing permit other than a reduction permit in the reduction fishery, except those fishing permits authorizing the incidental harvesting of species in any non-reduction fishery during, and as a consequence of, directed fishing for species in the reduction fishery.

(e) *Reduction vessels disposition.* Where a business plan requires the withdrawal from fishing of reduction vessels as well as the revocation of reduction permits: (1) Each reduction vessel that is not documented under Federal law must in every case always be scrapped, without regard to whether

a program is a financed program or a subsidized program;

(2) No financed program may require any disposition of a reduction vessel documented under Federal law other than the title restriction in paragraph (b) of this section unless the business plan volunteers to do otherwise; and

(3) Any subsidized program may require the scrapping of reduction vessels documented under Federal law.

(f) *Reduction payments.* NMFS will disburse all reduction payments in the amount and in the manner prescribed in reduction contracts, except reduction payments that a bidder's reduction-contract nonperformance prevents NMFS from disbursing. In financed programs, the reduction loan's principal amount is the total amount of all reduction payments that NMFS disburses from the proceeds of a reduction loan. Any reduction payment that NMFS, because of a bidder's reduction-contract nonperformance, disburses but subsequently recovers, shall reduce the principal amount of the reduction loan accordingly.

(g) *Effect of reduction-contract nonperformance.* No referendum, no reduction contract, no reduction loan, and no fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan, shall be impaired, invalidated, avoided, or otherwise rendered unenforceable by virtue of any reduction contract's nonperformance. This is without regard to the cause of, or reason for, nonperformance. NMFS shall endeavor to enforce the specific performance of all reduction contracts, but NMFS' inability, for any reason, to enforce specific performance for any portion of such reduction contracts shall not relieve fish sellers of their obligation to pay, and fish buyers of their obligation to collect, the fee necessary to fully repay the full reduction loan balance that results from all reduction payments that NMFS actually makes and does not recover.

(h) *Program completion.* Other than the payment and collection of the fee that repays a reduction loan and any other residual matters regarding reduction payments and the disposition of reduction permits and reduction vessels, a program shall be completed when NMFS tenders or makes all reduction payments under all reduction contracts that circumstances, in NMFS' judgment, reasonably permit NMFS to make.

#### **§ 600.1012 Reduction loan.**

(a) *Obligation.* The borrower shall be obligated to repay a reduction loan. The borrower's obligation to repay a

reduction loan shall be discharged by fish sellers paying a fee in accordance with § 600.1013. Fish buyers shall be obligated to collect the fee in accordance with § 600.1013 and to deposit and disburse the fee revenue in accordance with § 600.1014.

(b) *Principal amount, interest rate, repayment term, and penalties for non-payment or non-collection.* The reduction loan shall be: (1) In a principal amount that shall be determined by subsequent program events under this subpart, but which shall not exceed the maximum principal amount in the fishing capacity reduction specifications;

(2) At an annual rate, that shall be determined by subsequent events, of simple interest on the reduction loan's principal balance that shall equal 2 percent plus the Treasury percentage; (3) Repayable over the repayment term specified in the business plan or otherwise determined by subsequent events; and

(4) Subject to such provisions as implementation regulations shall specify for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and § 600.1014.

(c) *Effect of prospective interest rate.* Any difference between a prospective interest rate projected, for the purpose of any aspect of reduction planning or processing under this subpart, before the U.S. Treasury determines the Treasury percentage and an interest rate first known after the U.S. Treasury determines the Treasury percentage shall not void, invalidate, or otherwise impair any reduction contract, any reduction loan repayment obligation, or any other aspect of the reduction process under this subpart. Should any such difference result in a reduction loan that cannot, at the maximum fee rate allowed by law, be repaid, as previously projected, within the maximum maturity, any amount of the reduction loan remaining unpaid at maturity shall be repaid after maturity by continuing fee payment and collection under this subpart at such maximum fee rate until the reduction loan's unpaid principal balance and accrued interest is fully repaid. The above notwithstanding, at the discretion of the Secretary, the reduction contract can be voided if a material adverse change affects the reduction contract, reduction loan obligation, or any other aspect of the reduction process under this subpart.



**§ 600.1013 Fee payment and collection.**

(a) *Amount.* The fee amount is the delivery value times the fee rate.

(b) *Rate.* NMFS will establish the fee rate. The fee rate may not exceed 5 percent of the delivery value. NMFS will establish the initial fee rate by calculating the fee revenue annually required to amortize a reduction loan over the reduction loan's term, projecting the annual delivery value, and expressing such fee revenue as a percentage of such delivery value. Before each anniversary of the initial fee rate determination, NMFS will recalculate the fee rate reasonably required to ensure reduction loan repayment. This will include any changed delivery value projections and any adjustment required to correct for previous delivery values higher or lower than projected.

(c) *Payment and collection.* (1) The full fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying, or promising to pay, the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value, or the fish buyer's promise to pay the net delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(2) In the event of any post-delivery payment for fee fish—including, but not limited to bonuses—whose amount depends on conditions that cannot be known until after fish delivery, that either first determines the delivery value or later increases the previous delivery value, the fish seller shall pay, and the fish buyer shall collect, at the time the amount of such post-delivery payment first becomes known, the fee that would otherwise have been due and payable as if the amount of the post-delivery payment had been known, and as if the post-delivery payment had consequently occurred, at the time of initial fish delivery;

(3)(i) Each fish seller shall be deemed to be, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, both the fish seller and the fish buyer, and shall be responsible for all requirements and liable for any penalties under this subpart applicable to fish sellers and/or fish buyers, each time that a fish seller sells fee fish to:

(A) Any party whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is

not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) Any party who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other party not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, either with or without processing the fish, or

(C) Any other party who the fish seller has good reason to believe is a party not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, record keeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(4) Fee payment begins on the date NMFS specifies under the notification procedures of paragraph (d) of this section and continues without interruption at the fee rates NMFS specifies in accordance this subpart until NMFS determines that the reduction loan is fully repaid. If a reduction loan is, for any reason, not fully repaid at the maturity of the reduction loan's original amortization period, fee payment and collection shall continue until the reduction loan is fully repaid, notwithstanding that the time required to fully repay the reduction loan exceeds the reduction loan's initially permissible maturity.

(d) *Notification.* (1) At least 30 days before the effective date of any fee or of any fee rate change, NMFS will publish a **Federal Register** notice establishing the date from and after which the fee or fee rate change is effective. NMFS will then also send, by U.S. mail, an appropriate notification to each affected fish seller and fish buyer of whom NMFS has notice;

(2) When NMFS determines that a reduction loan is fully repaid, NMFS will publish a **Federal Register** notice that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send, by U.S. mail, notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(3) If NMFS fails to notify a fish seller or a fish buyer by U.S. mail, or if the fish seller or fish buyer otherwise does not receive the notice, of the date fee

payments start or of the fee rate in effect, each fish seller is, nevertheless, obligated to pay the fee at the fee rate in effect and each fish buyer is, nevertheless, obligated to collect the fee at the fee rate in effect.

(e) *Failure to pay or collect.* (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish that the fish seller delivered, and

(iv) The fish buyer's reason, if known, for refusing to collect the fee in accordance with this subpart;

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next 7 calendar days, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish the fish seller delivered or attempted to deliver,

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(v) The fish seller's reason, if known, for refusing to pay the fee in accordance with this subpart.

(f) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee payment and/or collection provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section,

NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

**§ 600.1014 Fee collection deposits, disbursements, records, and reports.**

(a) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement.* On the last business day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to the Fund subaccount to which the deposit principal relates. The fish buyer shall mail each such check to the Fund subaccount lockbox that NMFS establishes for the receipt of the disbursements for each program. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the Fund subaccount lockbox and the manner and form of settlement sheet by means of the notification in § 600.1013(d).

(d) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information: (1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

- (i) The date of delivery,
- (ii) The seller's identity,

(iii) The weight, number, or volume of each species of fee fish delivered,

(iv) The identity of the fishing vessel that delivered the fee fish,

(v) The delivery value of each species of fee fish,

(vi) The net delivery value,

(vii) The identity of the party to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value was paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the Fund's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* In each year, on the date to be specified in each implementation regulation, succeeding the year during which NMFS first implemented a fee, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year, or whatever longer period may be involved in the first annual report, for all fee fish each fish buyer purchases from fish sellers: (1) Total weight, number, or volume bought;

(2) Total delivery value paid;

(3) Total fee amounts collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to each Fund lockbox account;

(6) Total amount of interest earned on deposits; and

(7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section. If any state law or regulation prohibits fish buyers, or fish sellers where appropriate, from keeping, for the purpose of complying with any requirement of this section, separate records that involve some or all of the same data elements as the landing

records that the fish buyers also keep, for state purposes and under state law or regulation, then a financed reduction program will not be possible.

(g) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of reduction loans, the financial records of fish buyers and fish sellers in each reduction fishery in order to ensure proper fee payment, collection, deposit, disbursement, accounting, record keeping, and reporting. Fish buyers and fish sellers shall make all records of all program transactions involving post-reduction fish harvests, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, record keeping, and reporting available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so and each price that each fish buyer then pays to each fish seller for the fee fish) are essential audit documentation.

(h) *Confidentiality of records.* NMFS and NMFS' auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes).

(i) *Refunds.* When NMFS determines that a reduction loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(j) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee collection deposit, disbursement, or records provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section, NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

**§ 600.1015 Late charges.**

The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

**§ 600.1016 Enforcement.**

In accordance with applicable law or other authority, NMFS may take appropriate action against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

**§ 600.1017 Prohibitions and penalties.**

(a) The following activities are prohibited, and it is unlawful for any party to: (1) Vote in any referendum under this subpart if the party is ineligible to do so;

(2) Vote more than once in any referendum under this subpart;

(3) Sign or otherwise cast a ballot on behalf of a voter in any referendum under this subpart unless the voter has fully authorized the party to do so and doing so otherwise comports with this subpart;

(4) Interfere with or attempt to hinder, delay, buy, or otherwise unduly or unlawfully influence any eligible voter's vote in any referendum under this subpart;

(5) Submit a fraudulent, unauthorized, incomplete, misleading, unenforceable by specific performance, or inaccurate bid in response to an invitation to bid under this subpart or, in any other way, interfere with or attempt to interfere with, hinder, or delay, any invitation to bid, any bid submitted under any invitation to bid, any reduction contract, or any other reduction process in connection with any invitation to bid;

(6) Revoke or attempt to revoke any bid under this subpart;

(7) Fail to comply with the terms and conditions of any invitation to bid, bid, or reduction contract under this subpart, including NMFS' right under such reduction contracts to specific performance;

(8) Fail to fully and properly pay and collect any fee due payable, and collectible under this subpart or otherwise avoid, decrease, interfere with, hinder, or delay any such payment and collection,

(9) Convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

(10) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the Fund's lockbox account—all as this subpart requires;

(11) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS—all as this subpart requires;

(12) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(13) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or its agents in the course of their activities under this subpart;

(14) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(15) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(16) Otherwise materially interfere with the efficient and effective conduct of reduction and the repayment of reduction loans under this subpart.

(b) Any party who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide—including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses—and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

(c) Additionally, NMFS may take any and all appropriate actions, including the communication of action at law, against each party responsible for the non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and/or § 600.1014 to enforce the United States' receipt from such party of any fee—including penalties and all costs of collection—due and owing the United States on account of the reduction loan that such party should have, but did not, pay, collect, deposit, and/or disburse in accordance with § 600.1013 and/or § 600.1014. All such reduction loan recoveries shall be applied to reduce the unpaid balances of reduction loans.

**§ 600.1018 Implementation regulations for each program. [Reserved]**

[FR Doc. 00–12159 Filed 5–17–00; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****21 CFR Part 884**

[Docket No. 99N–1309]

**Obstetrical and Gynecological Devices; Classification of Female Condoms**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying the preamendments female condom intended for contraceptive and prophylactic purposes. Under this rule, the preamendments female condom is being classified into class III (premarket approval). This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the FDA Modernization Act of 1997.

**DATES:** This rule is effective June 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

**SUPPLEMENTARY INFORMATION:****I. Background**

In a proposal published in the **Federal Register** of June 10, 1999 (64 FR 31164)