

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 600**

[Docket No. 970213030-7030-01; I.D. 020597B]

RIN: 0648-AJ77

Central Title and Lien Registry for Limited Access Permits

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS requests comments about a central registry (Registry) for limited access permits (LAPs). The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires us to establish the Registry. The Registry will be the exclusive means of perfecting title to LAPs. It will also be the exclusive means of perfecting security interests in, assignments of, and liens and other encumbrances (collectively Liens) against LAPs.

We want the public's guidance before proposing regulations.

DATES: Comments must be submitted by April 7, 1997.

ADDRESSES: Send comments to: Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East West Highway, Silver Spring, MD 20910.

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

SUPPLEMENTARY INFORMATION: Conservation and management sometimes requires limiting access to Federally-managed fisheries. Only parties with LAPs can fish in these fisheries. Some LAPs are transferable independently of fishing vessels (Transferable). Others are not.

The Sustainable Fisheries Act of 1996 (SFA) is Public Law 104-297. The SFA amended the Magnuson-Stevens Act. One SFA provision requires NMFS to establish the Registry:

* * * the Secretary [of Commerce] shall establish an exclusive central registry system (which may be administered on a regional basis) for limited access system permits established under section 303(b)(6) or other Federal law, including individual fishing quotas, which shall provide for the registration of title to, and interests in, such permits * * *.

Section 110(d) of the SFA makes the Registry the legally exclusive means of perfecting LAP titles and Liens (except Federal tax Liens).

Before establishing the Registry, NMFS wants the public's guidance. We welcome comments from anyone, but particularly want guidance from:

1. Fisheries parties who will buy and sell LAPs,
2. Creditors and other parties who will file Liens for registration against LAPs, and
3. The Regional Fishery Management Councils.

We welcome comments about any Registry aspect, but particularly want guidance about the following:

1. Who should administer the Registry?

The SFA allows us either to administer the Registry or contract for its administration. We are considering the former alternative because:

- a. The Registry's perpetual nature requires continuity,
- b. Similar functions often appear to be governmentally administered, and
- c. Many Registry title aspects involve LAP administration functions we already perform.

Should we administer the Registry, or should we contract for its administration? Which is the better alternative, and why?

2. Where should we locate the Registry?

Almost 90 per cent of all Transferable LAPs involve Alaska's fisheries. NMFS' Regional Office in Juneau, AK, administers these through its Restricted Access Management (RAM) Division.

If we administer the Registry, Juneau, AK, could be the most efficient and effective Registry location and the RAM Division the Registry's most suitable manager. A comparable example of a centralized national registry is the U.S. Coast Guard's National Vessel Documentation Center (NVDC) in Falling Waters, WV.

A centralized Registry could consider ways to facilitate filings from all parts of the country. One alternative could be similar to a NVDC approach that allows facsimile filings contingent upon receiving original documentation within 10 calendar days. If we adopted this approach, a facsimile's date and time could be the date and time of perfection if the original documentation were timely received. Otherwise, the date and time the Registry received the original documentation would be the date and time of perfection.

The centralization alternative includes only the Registry portion of LAP functions. Regular LAP administrative functions (issuance, renewal, transfer approval, etc.) would remain in their present regional locations.

3. Should the Registry register LAPs that are not Transferable?

About 60 per cent of all LAPs are Transferable. They can be bought and sold. They have market value. They can be pledged as collateral.

The other 40 per cent are not Transferable. They cannot be independently bought and sold. They have no independent market value. They are not useful as collateral. Most of them generally follow the titles of the fishing vessels to which they relate. They have no commercial significance apart from those vessels.

Although the SFA does not limit registration to Transferable LAPs, we question whether there is a practical reason to register LAPs that are not Transferable. The Registry's purpose is perfecting title to, and Liens against, LAPs. This benefits LAP buyers, sellers, lenders, and other lienholders. LAPs that are not Transferable do not separately involve any of these parties.

4. Should initial title registration be voluntary or mandatory for all Transferable LAPs?

In the first alternative, registration would be voluntary for all Transferable LAPs, except those to which title transfers, or against which Liens, were filed for registration. Registration would be mandatory for the excepted LAPs. The Registry would, without LAP holder requests, register these LAPs and bill LAP holders for the registration fees.

In the second alternative, registration of all Transferable LAPs would be mandatory. This might produce a more stable and dependable Registry that affords all LAP holders, buyers, lenders, and other lienholders greater security and assurance. Potential objections to mandatory registration, however, include:

- a. Those planning neither to sell nor pledge their LAPs might object to mandatory registration's time and cost,
- b. Mandatory registration could be burdensome for seasonal LAPs, and
- c. Registering all LAPs might cause unnecessary Government work.

Regular LAP administration records disclose the authorized holders of all LAPs. We could automatically register title in the names of the authorized holders and charge a moderate fee for it (the SFA requires a fee). This would minimize the time and cost of mandatory registration. The alternative in question No. 5 might minimize the seasonal LAP problem.

5. How should the Registry treat seasonal LAPs that merely allocate periodic catch quantities for continuous LAPs?

The Pacific halibut and sablefish fishery, for example, has two types of LAPs. The first type is Quota Share (Access) permits. These are continuous

LAPs allowing access to the fishery. The second type is Individual Fishing Quota (Allocation) permits. These are seasonal LAPs that annually allocate the amount of fish each Access permit holder may catch that season. Allocation permit holders may transfer only 10 per cent of allocated catch quantity.

Separately including this fishery's Allocation permits in the Registry would be burdensome and complicated for everyone. Excluding Allocation permits could compromise minor commercial interests in the Allocation permit's limited transferability, but the time and expense of doing otherwise might not be worth the limited benefit.

One alternative we are considering would be for initial title registration of this fishery's Access permits (and payment of the registration fee) to include automatic registration of all subsequent Allocation permits (in the name of the LAP title holders of record and without payment of additional registration fees). This would prevent Access permit holders from having each year to register their seasonal Allocation permits and pay annual registration fees. Under this alternative, Liens against the Access permits would also encumber the corresponding Allocation permits.

6. How should we determine LAP "value"?

The SFA limits Registry fees to amounts not exceeding 0.5 per cent of LAP "value." Fees may be less, but not more, than this. We must determine the "value" of all LAPs included in the Registry.

Some LAPs have commonly known market values. We have market-value ranges for other LAPs because buyers and sellers have disclosed purchase prices to us. There may, however, be little or no market-value data for some LAPs.

Valuation problems should mostly be limited to initial title registration. The registration of subsequent title transfers should involve purchase prices or other consideration that we can objectively value. Where known, we could apply market values to LAPs transferred by gift, trade, or inheritance.

If initial registration fees are a modest flat fee for all, the valuation problem might be mostly limited to determining that the fee does not exceed 0.5 per cent of the "value" of LAPs for which little or no market data exists. We are unsure how to establish the "value" of these LAPs.

7. What fees should the Registry charge?

The SFA requires fees for initial title registration (Initial Fee) and subsequent title-transfer registration (Transfer Fee).

It does not authorize fees for registering Liens (or their renewal, release, assumption, assignment, etc.) or for any other Registry service.

Presumably, Registry fees should offset Registry expenses.

Unless fees other than the specifically authorized ones are possible, title and title-transfer registrants will have to bear the cost of all Registry services. Although it might be more equitable if the Registry could also charge the cost of Lien or other services to those seeking them, the SFA does not authorize this.

How should we determine the Initial Fee? Should it be a modest flat fee or 0.5 per cent of market value, whichever is less? If so, what should control the flat fee's amount? Should it, instead, be a specified percentage (not exceeding 0.5%) of market value? If so, what should control the percentage's amount? Should we publish a schedule of average market values representative of various LAPs and base the percentage on those values?

Under the mandatory title-registration alternative, the Initial Fee could be moderate. There are about 23,000 Transferable LAPs, if Pacific halibut and sablefish Allocation permits are included. If not, there are about 14,500. Under the voluntary title-registration alternative, however, the Initial Fee may have to be substantially higher.

How should we determine the Transfer fee, and what should control its amount? Should it be a specified percentage (within the statutory maximum) of LAP purchase price? If so, what should control the percentage's amount? This alternative could include provisions to determine market value for LAP gifts, inheritances, trades, and other title transfers involving considerations other than market value.

Recent title-transfer activity for Transferable LAPs indicates about 2,300 title transfers annually.

8. How should we respond when LAP holders required to register LAP titles and pay registration fees do not do so?

This would apply to all LAP holders included in a mandatory Registry. In a voluntary Registry, it would apply only to those who sell or pledge their LAPs or whose LAPs are otherwise subjected to Liens. The Registry must be able to compel appropriate performance. How should it do this? What should the penalties be?

9. What Lien registrations should the Registry allow?

One alternative we are considering would limit registerable Liens to:

a. Secured interests in LAPs to which the LAPs' holders have, by their signatures, consented,

b. Liens authorized or constituted by the judgments or orders of duly constituted courts of competent jurisdiction, and

c. Other Liens authorized by State or Federal statute.

Should the Registry allow other types of Liens to be registered? Why? Could this create problems or be burdensome?

10. Should the Registry attempt to validate any title or Lien?

One alternative we are considering is to accept the validity of title or Lien filings that meet the Registry's minimal filing requirements. Under this alternative, the Registry would not attempt to determine the completeness, accuracy, or validity of any documents filed.

11. Should the Registry do anything to help prevent unauthorized signatures?

One alternative might be requiring signatures to be notarized. Would this be useful? Is there a better approach?

12. Should the Registry require using a standard form for filing Liens for registration?

One alternative we are considering is to require using a form fulfilling the Registry's minimum filing requirements. This seems to be the practice under the Uniform Commercial Code (UCC). For consensual Liens, the Registry could require both the lienholder and the LAP holder to sign this form. Nonconsensual Liens would not require the LAP holder's signature, but could require specifying the nature of, and authority for, the nonconsensual Liens. All forms could identify: the name and address of the LAP holder, the name and address of the lienholder, the LAP against which the Lien is to be registered, and the effective date of the Lien.

Would the use of a standard form expedite registration or make it more reliable? If so, what should the form require?

13. Should Lien filing forms be accompanied by the Lien documentation upon which the filings are based?

If the Registry were to register all Liens that met its minimal filing requirements, should Lien documentation accompany Lien filing forms? If so, why, and what should the Registry do with this documentation?

14. Should Lien registrations require periodic renewal?

One alternative we are considering is for Lien registrations to expire if lienholders do not renew them within a certain time. This seems to be the UCC practice. If we should adopt this alternative, what should the periodic renewal period be?

15. How should the Registry handle registering Lien releases?

The UCC practice seems to involve release forms signed by lienholders.

16. What Lien data should the Registry register, and how long should the Registry maintain them?

Should the Registry register only lienholders' names and addresses? Would registering other Lien characteristics (e.g., nature, amount, and maturity) be useful? Should the Registry perpetually maintain all Lien data or periodically purge all data about terminated Liens?

17. Should the Registry require using a specific form for filing LAP title transfers for registration and, if so, what should it include?

We are considering this alternative, because it might expedite title-transfer registration or make it more reliable.

For voluntary transfers, the form could be signed by the LAP seller and purchaser and could include: the identity of the LAP whose title seller transfers to purchaser, the date seller transfers title to purchaser, and the accompanying instrument evidencing seller's transfer of title to purchaser.

For involuntary transfers, the form could be signed by the party to whom title involuntarily transfers and include: the identity of the LAP interest whose title involuntarily transfers, the date title involuntarily transfers, and the nature of the accompanying instrument evidencing involuntary title transfer.

18. Should any evidence of title transfer the Registry might require contain original signatures or would a copy of the original evidence be sufficient?

19. Should the Registry perpetually maintain any evidence of title transfer it might require?

20. Should the Registry make available for public inspection any evidence of title transfer it might maintain and, if so, how and under what circumstances?

21. Should the Registry provide title abstracts (or any other written record of LAP title and lien registration)?

The statute does not authorize the Registry to charge fees for this purpose. If the Registry provided this, its cost might have to be recovered primarily from fees that the statute authorizes the Registry to collect for title transfers. What would the effect be if the Registry did not provide this? If it did, should it limit provision to certain users for certain purposes? What data should this include?

22. How should the Registry best provide for nonjudicial foreclosure (NJF)?

The SFA requires the Registry to provide:

* * * a mechanism for filing notice of a nonjudicial foreclosure * * * by which the holder of a senior security interest acquires or conveys ownership of a permit * * * [and] the interests of the holders of junior security interests are released when the permit is transferred * * *.

How should the Registry best comply?

One alternative we are considering is adapting the UCC's NJF procedure. Under this alternative, we would register an NJF title transfer only if one of the following two conditions apply:

a. The LAP holder and all registered lienholders junior (Junior Lienholders) to the senior security interest being foreclosed nonjudicially (NJF Security) first notify the Registry in writing that they consent to the recordation of the NJF title transfer; or

b. Absent such consent:
i. The holder of the NJF Security (NJF Lienholder) certifies to the Registry that the NJF Lienholder:

A. Is contractually entitled to NJF,
B. Has, at least 21 calendar days before such certification, notified the LAP Holder and all Junior Lienholders and given the LAP Holder and all Junior Lienholders the opportunity to object in writing to the Registry about the NJF title transfer; and

ii. The Registry has received no such objection.

If either of these two conditions apply, the Registry would register NJF title transfer to the NJF Lienholder.

If neither of these two conditions applied, the Registry would not register NJF title transfer.

All NJF title transfers would release only such registered Liens as are junior to the NJF Security. The Registry would not release any registered Liens senior to the NJF security, and the title transferred by NJF would continue subject to the unreleased Liens.

We would not adjudicate conflicting interests. Conflicting interests would have either to be settled by the consent of all relevant parties or by adjudication in a duly constituted court of competent jurisdiction.

Are there better ways to implement the NJF provisions? What are they and why are they better than the alternative suggested here?

23. If we adopt the alternative suggested in question No. 22, what certification requirements should the Registry impose?

One alternative we are considering is a certification, pursuant to 28 U.S.C. 1746, that:

a. The NJF Lienholder gave NJF title transfer notice, at least 21 calendar days before such certification, to the LAP holder and all Junior Lienholders,

b. Such notice was in writing and delivered to the LAP holder and each

Junior Lienholder both at the address of record maintained at the Registry for the LAP Holder and each Junior Lienholder and at such other address as the NJF Lienholder may have had cause to have known was a better address,

c. Such notice contained the notice language required by the Registry's regulations,

d. The NJF Lienholder is contractually entitled to NJF, and

e. Such certification is made in good faith and without any design to hinder, delay, or defraud the LAP holder or any present or future lienholder or creditor of the LAP holder.

24. When NJF title transfer is based on consent, should the Registry require using a standard filing form?

25. When NJF title transfer is based on certification, should the Registry require using a standard form of certification?

26. Under what circumstances should the Registry register title transfer by judicial foreclosure, as a result of judgment enforcement, or otherwise by involuntary transfer?

The SFA provides that the Registry shall provide:

* * * procedures for changes in the registration of title to such permits upon the occurrence of involuntary transfers, judicial * * * foreclosure of interests, enforcement of judgments thereon, and related matters deemed appropriate * * *.

The Registry would register judgments as Liens against LAP title. One alternative we are considering, however, is that the Registry would not register LAP title transfer by judicial foreclosure (or as a result of judgment enforcement or other involuntary transfer) unless the party judicially foreclosing (or enforcing a judgment or causing an involuntary transfer) presented to the Registry a bill of sale (or other instrument causing title transfer) issued pursuant to, or confirmed by, the order of a duly constituted court of competent jurisdiction.

27. How best should the Registry provide public access to Registry data, and what Registry data should be public?

We are considering putting Registry data on the Internet. Are there additional or better ways of providing public access to Registry data?

We are considering making the following data publicly available

a. LAP fishery;
b. LAP nature;
c. LAP holder's name and address (tax identification number and other protected or confidential data would be excluded);

d. Chronological listing of all LAP Lien data (including names and

addresses of all lienholders and recordation dates for: initial recordation, renewal, expiration, release, assumptions, assignments, etc.); and

e. Complete chain of post-Registry LAP title, including the name and address of each party to whom LAP title has been registered and the date of each such title registration.

28. How should the Registry best provide for the perfection of pre-Registry Liens?

The SFA provides that:

Security interests on * * * [LAPs] that are effective and perfected by otherwise applicable law on the date of the final regulations implementing * * * [the Registry] shall remain effective and perfected if, within 120 days after such date, the secured party submits evidence satisfactory

to * * * [the Registry] and in compliance with such regulations of the perfection of the security.

The UCC is (in UCC States) the only "otherwise applicable law" known to us under which pre-Registry Liens against LAPs could have been "perfected." Should we give priority to Liens perfected under the UCC in strict chronological precedence regardless of the UCC jurisdiction involved? If so, what evidence of UCC perfection and its chronological precedence should we require?

Are there any other "otherwise applicable laws" that we should consider? If so, how would they relate to perfection under the UCC?

What should the regulations require?

Before the SFA, we had informally allowed lienholders to register with the RAM Division their Liens against Alaska LAPs. These informal filings are not "perfected by otherwise applicable law" and we cannot consider them in determining pre-Registry Lien priorities.

We welcome all comments on any other Registry aspects.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of E.O. 12866.

Dated: February 28, 1997.

Nancy Foster,

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

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