

confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material. Comments will also be available on line at www.dms.dot.gov.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, the agency proposes to amend § 567.7, *Requirements for persons who alter certified vehicles*, in Title 49 of the Code of Federal Regulations at Part 567 as follows:

PART 567—[AMENDED]

1. The authority citation for part 567 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, and 30115, 30117, 30166, 32502, 32504, 33101-33104, and 33109; delegation of authority at 49 CFR 1.50.

2. Section 567.7 would be amended by revising paragraph (a) to read as follows:

§ 567.7 Requirements for persons who alter certified vehicles.

* * * * *

(a) The statement: "This vehicle was altered by (individual or corporate name) in (month and year in which alterations were completed) and as altered it conforms to all applicable Federal Motor Vehicle Safety Standards affected by the alteration and in effect in (month, year)." The second date shall be no earlier than the manufacturing date of the original vehicle, and no later than the date alterations were completed.

(1) In the case of passenger cars manufactured on or after September 1, 1999, the expression "safety, bumper, and theft prevention" shall be substituted in the statement for the word "safety".

(2) In the case of multipurpose passenger vehicles (MPVs) and trucks with a GVWR of 6,000 pounds or less manufactured on or after September 1, 1999, the expression "and theft prevention" shall be included in the statement following the word "safety".

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Issued on: January 29, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99-3292 Filed 2-10-99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket No. 980812215-8215-01, I.D. 072898D]

RIN 0648-AK76

Fishing Capacity Reduction Program

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

ACTION: Proposed rule.

SUMMARY: NMFS (hereinafter we or us) proposes framework regulations specifying procedures for requesting us to conduct a fishing capacity reduction program in a specific fishery and governing the conduct of programs initiated in response to a request or on our own initiative. Fishing capacity reduction programs pay harvesters in fisheries with too much harvesting capacity to surrender their fishing permits and/or withdraw their vessels from fishing. Reduction costs can be paid by post-reduction harvesters, taxpayers, or others. The intent of reducing excess harvesting capacity in a

fishery is to increase harvesting productivity and help conserve and manage the fishery's resources.

DATES: Comments must be received by April 12, 1999.

ADDRESSES: Comments should be sent to Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

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

SUPPLEMENTARY INFORMATION: Most U.S. fisheries have excess fishing capacity. Excess capacity decreases earnings, complicates management, and imperils conservation. To provide for fishing capacity reduction (reduction), Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861 *et seq.*) (Magnuson Act) by adding a new 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 (46 App. U.S.C. 1271 *et seq.*) by adding new sections 1111 and 1112 (the portions applicable to capacity reduction loans have been codified at 46 App. U.S.C. 1279f & 1279g). This action would add a subpart D to 50 CFR part 253 setting forth framework regulations for requesting us to conduct a reduction program in a specific fishery (reduction program) and governing the conduct of reduction programs initiated in response to a request or on our own initiative.

Under section 312(b)(2) of the Magnuson Act, a reduction program's objective is "to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time." The reduction program pays harvesters in a program fishery (reduction fishery) either to surrender their fishing permits or both surrender their fishing permits and withdraw their vessels from all domestic fishing. Harvesters can withdraw vessels either by scrapping them or (for federally-documented vessels) by subjecting them to title restrictions that prevent the vessels' use for fishing.

Reduction cost can be funded in several ways: a loan from us (loan), Federal appropriations, and/or contributions from states or other public or private sources. If a loan finances any part of the reduction cost, we refer to the reduction program as a financed program. If the reduction cost is not in any part financed by a loan, we refer to the reduction program as a subsidized program.

A loan from us is a practical way to finance reduction cost. Under sections 1111 and 1112 of Title XI of the

Merchant Marine Act, a loan for a program cannot exceed \$100 million, the repayment maturity may be no longer than 20 years, and the annual repayment interest rate is set at two percent of the principal amount outstanding plus the interest rate we are obligated to pay the U.S. Treasury for borrowing the money we in turn loan.

The loans are not conventional because they involve no promissory notes, mortgages, or other contractual loan documentation or security. Section 312(d) of the Magnuson Act requires the harvesters remaining in the fishery after a reduction program reduces capacity to repay the loan through a loan-repayment fee (fee) deducted by the first ex-vessel purchaser from the proceeds otherwise payable to the harvester for fish landed from the reduction fishery (fee fish). Under section 312(d) of the Magnuson Act, such fees cannot exceed five percent of the ex-vessel value of all fee fish that the harvesters deliver. Collectively, the post-reduction harvesters are the borrower, and they all make repayments on the loan each time they deliver fee fish to a fish buyer.

Besides being required to collect the fee by deducting it from the trip proceeds otherwise payable to the harvesters, the first ex-vessel buyers (buyers) of fee fish must account for fee revenues and forward them to us. We then apply the fee revenues to reduce the loan balance.

Under sections 312(d)&(e) of the Magnuson Act, we may not impose an industry fee system (fee system) unless two thirds of the votes cast in a referendum of the fishing permit or fishing vessel owners in the reduction fishery first approve the fee system.

Section 312(b) requires that a reduction program:

- (1) Be cost-effective and capable of repaying any debt obligations incurred;
- (2) Be 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; and
- (3) Be consistent with the Federal or state fishery management plan (FMP) or management program in effect for the reduction fishery.

Section 312(b) also requires that the FMP or management program in effect for the reduction program fishery:

- (1) Prevent the replacement of capacity that the reduction program removes through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures (taking into account the reduction fishery's full potential fishing capacity); and

- (2) Establish a specified or target total allowable catch or other measures that trigger closure of the reduction fishery or adjustments to reduce catch when fisheries conservation and management so require.

These requirements (and other reduction program aspects, such as post-reduction allocation) generally require an amendment to the controlling FMP or management program (reduction amendment).

For a fishery managed by a Federal fishery management council (council), the council must request a reduction program before we can start the reduction program process. For a state-managed fishery, the Governor of the state must request a reduction program before we can start. If a fishery is managed by more than one council, all the managing councils must join in the request. If a fishery is managed by more than one state, the Governors of all managing states must join in the request. Each requester must hold a public hearing on each request before sending it to us. For fisheries that are neither managed by a council nor managed by a state (such as fisheries for highly migratory species), we may initiate the reduction program process on our own initiative.

For a council-managed fishery, the proposed framework regulations would require the council to prepare and adopt any needed reduction amendment to the FMP and to draft regulations implementing it before requesting a program. We would review and, if appropriate, approve the reduction amendment, and issue regulations implementing it (after notice and opportunity for public comment), before we propose a program implementation plan (program plan) or propose regulations to implement that program plan (program regulations).

Provisions of the reduction amendment could be made effective independent of implementation of the reduction program or effective dependent on the initiation of the reduction program or on the completion of the capacity reduction stage of the reduction program. All provisions of a reduction amendment would be considered by us to be dependent, unless the reduction amendment expressly designates a provision as independent. Dependent provisions made initially effective to enable completion of pre-capacity reduction stage program steps would have no further effect if the reduction is not completed.

Under section 312(e) of the Magnuson Act, we must, for each reduction program, prepare a program plan for

adoption and propose program regulations, and after 60-days opportunity for public comment, issue final program regulations and adopt (subject, for a financed program, to the condition precedent that the industry fee system needed to repay the loan be approved by a referendum), a final program plan. In a subsidized program, all provisions of the program regulations would go into effect at the same time. In a financed program, however, the industry fee system and related provisions of the program regulations would not be made effective until a subsequent referendum approves the fee system. These provisions would include those governing the performance of the obligations of all parties under the reduction contracts and of the post-reduction permit holders to repay the loan through the fee system. The obligations under the reduction contracts would include us disbursing the funds specified in each reduction contract and the vessel owners whose bids were accepted surrendering their fishing permits or both surrendering their permits and withdrawing their vessels from all domestic fishing. The provisions effective initially would be those necessary to conduct pre-referendum and referendum activities. Pre-referendum activities include: (1) inviting bids, (2) bidding, (3) receiving the bids, and (4) accepting, subject to a subsequent referendum approving the fee system, those bids meeting the criteria for bid acceptance.

For a financed program, the proposed framework regulations would require the council or Governor to submit a final business plan with the request for a reduction program. A business plan is a detailed reduction proposal from proponents within the proposed reduction fishery whose post-reduction fishing permit holders would repay the loan. The proponents would submit the business plan to the appropriate potential requester. The proposed framework regulations would require the requester to base its request on the business plan.

A business plan must specify: (1) how the potential borrower (collectively, all post-reduction harvesters in the reduction fishery) proposes that we accomplish reduction, (2) the minimum amount of capacity that we must reduce, and (3) the maximum reduction cost the potential borrower is willing, in the form of a loan, to repay. The business plan must also justify the proposed reduction program by demonstrating: (1) the program's cost effectiveness, (2) how it will enable post-reduction earnings sufficient to repay the loan, and (3) the likelihood both that the required

amount of capacity can be reduced at the reduction cost proposed and that a subsequent referendum will approve the industry fee system required to repay the loan. A business plan must also propose specific provisions for all other technical aspects of the reduction program. These include reduction amendments (involving matters such as post-reduction upgrading restrictions and fish allocations) and other matters such as the provisions of invitations to bid. If we decide to conduct the financed program requested, we would base our program plan and program regulations on the business plan.

A business plan not broadly supported by harvesters in a proposed reduction fishery would have little chance of producing a successful referendum. Business planners must, consequently, be responsive to the practical necessity that their business plan reflect fairly the needs of most harvesters in the proposed reduction fishery. These include the needs of both those who wish to receive reduction payments to leave the fishery and those who wish to remain and repay the loan. To ensure that the business plan fairly reflects these needs, business planners should conduct surveys designed to ascertain needs and extensively coordinate business plan preparation with all affected harvesters.

A business plan is a complex undertaking. Reduction involves many variables which differ from one fishery to the next. Consequently, preparing a business plan requires local ingenuity and fisheries knowledge. We will not attempt to prescribe reduction design, methodology, or other such details. Harvesters who remain in the program fishery after reduction are the beneficiaries of a financed program. They are the borrower responsible for repaying the loan. Any business plan upon which any loan is based should be their plan.

Each business plan must be sufficient to: (1) convince a requester to request the reduction program, (2) convince us to finance the reduction program requested, (3) allow us to readily prepare a program plan and program regulations, (4) enable bidding results that convince referendum voters to approve the required industry fee system, and (5) enable us to collect fee revenues sufficient to repay the loan.

All requests will involve a large investment of effort. This will be wasted if reduction programs are not thoroughly analyzed, realistic, and well planned. Each requester should, consequently, require business planners to demonstrate a high degree of

diligence consistent with that investment.

Until we invite bids, receive them, and decide which ones to accept, no one really knows how much capacity can be reduced for what cost. Under section 312(d) of the Magnuson Act, the criteria for determining the types and numbers of vessels which are eligible to participate in the reduction program and the procedures for reduction program participation (such as the procedures for the submission of bids by vessel owners) must be part of the program plan and program regulations. However, for a financed program, section 312(e) of the Magnuson Act prohibits us from "adopt[ing] a final implementation plan involving industry fees or debt obligation unless an industry fee system has been approved by a referendum * * *." This reflects Congressional intent that, before we make a loan, fulfill our obligations under the reduction contracts (i.e., pay out the loan funds in exchange for permit surrender or permit surrender and vessel withdrawal), obligate the remaining harvesters in the fishery to repay the loan, and impose and collect the fees, we obtain, through a referendum, the collective consent of those who would be obligated to repay the loan. However, in order to make an informed decision, the referendum voters must know how much capacity will be reduced and how much that reduction will cost. We and they cannot determine this unless bids are invited, received, and accepted before the referendum is conducted, and we cannot conduct the bid process without knowing what the final program plan will be and without having the program regulations governing the bidding process in effect.

While for a financed program section 312(e) forbids us from adopting a final program plan before the fee system needed to repay the loan is approved by a referendum, we are not prohibited from proposing a program plan or from proposing regulations to implement it, or from publishing, after 60-days opportunity for public comment, what would be the program plan we would adopt if, and after, a referendum approves the fee system. Nor does section 312 prohibit us from issuing and making effective any portion of the program plan implementing regulations, such as the regulations governing the bidding process, not imposing any fee obligations or dealing with fee related matters.

Accordingly, we have proposed framework procedures that would allow us to determine the amount of reduction and the cost of such reduction and to

disseminate that information to the fee referendum voters before they vote, while complying with the statutory prohibition against adopting a final program plan (which implicitly prohibits us from making the loan and imposing repayment obligations) before the industry approves, by referendum, the fee system needed to repay the loan.

Under our proposed procedures, we would not adopt a final program plan for a financed program before a referendum approves the fee system. However the framework procedures would require us before conducting a fee referendum to publish the final program plan we will adopt if the referendum approves the fee system and issue program regulations that are effective for all reduction aspects except those related to the fee system.

Thus, under the framework rules, we would not conduct a referendum on the fee system until we first:

- (1) Approve a reduction amendment (and, in the case of a Federal fishery, issue appropriate implementing regulations);
- (2) Propose a program plan and program regulations for a 60-day public comment period;
- (3) After considering the public comments:
 - (a) Publish the final program plan that we will adopt if a referendum subsequently approves the fee system; and
 - (b) Issue the final program regulations and make effective all provisions except for those involving the fee system;
- (4) Issue invitations to bid;
- (5) Receive all bids; and
- (6) Conditionally accept the bids meeting the bid acceptance criteria in the published final program plan.

We would then conduct a fee referendum with ballots specifying, among other things, the amount of reduction, the reduction cost, the reduction loan amount (if different from the reduction cost), and the reduction loan term, the fee rate prospectively necessary to amortize the reduction loan over its term, and the actual fee rate for the year following reduction. Thus, the subsequent referendum would be on whether to approve the fee system needed to repay a known loan amount that accomplishes a known amount of reduction. If the referendum approves the fee system, we would adopt the previously published final program plan and, by a notice published in the **Federal Register**, announce the adoption of the final program plan as well as the effective date of the fee system related provisions of the final program regulations.

Under the proposed regulations, submitting a bid (i.e., making an offer to surrender a permit and/or surrender a permit and withdraw a vessel from all domestic fishing for the sum specified in the bid) would be voluntary. However, once a bid is submitted, it would be irrevocable. If we accept a bid, we would be entitled to specific performance of the resulting reduction contract. Making all bids irrevocable and enabling us to require the specific performance of the reduction contracts resulting from bid acceptance ensures that bidder non-performance cannot change the reduction cost and the amount of reduction upon which the referendum voters based their votes. Our pre-referendum acceptance of a reduction bid creates a conditional reduction contract. The condition is that the fee system necessary to repay the loan is approved by a subsequent industry referendum. If the referendum does not approve the necessary fee system, the bid acceptances and the resulting contracts are then null and void, the program plan would not be adopted, the loan would not be made, the fee provisions in the program regulations would not become effective, and any program regulations in effect would be revoked. If the referendum approves the fee system, the bid acceptances and resulting contracts are then unconditional and in full force and effect, entitling us to the contracts' specific performance. We then would adopt the program plan, publish a notice in the **Federal Register** announcing the adoption of the plan and the effective date of all program regulations not yet effective, make the loan, disburse the loan funds in exchange for the surrender of fishing permits and or the surrender of fishing permits and the withdrawal of vessels from all domestic fishing, and make the fee system provisions in the program regulations effective.

Commercial reality requires that the time between accepting bids and subsequently conducting a referendum be as short as possible. Consequently, we must accept bids and conduct referenda with all possible dispatch. All other required components of a potential reduction program must be in place before we invite bids, accept bids, and conduct referenda based on bid results. Once we invite bids, the remaining process must proceed without delay.

This proposed framework rule addresses some components of the reduction sequence directly and others only indirectly.

Under the proposed regulations, the following sequence would apply to a

financed program that is in a council-managed fishery, requires a reduction amendment, and results in a referendum approving the fee system for a loan equal to the total reduction cost:

- (1) The reduction's fishing-industry proponents:
 - (a) Prepare a business plan, and
 - (b) Submit the business plan to the appropriate council;
 - (2) The appropriate council:
 - (a) Approves the business plan;
 - (b) Prepares a reduction amendment to the applicable FMP and draft regulations to implement it;
 - (c) Holds a public hearing about the reduction program; and
 - (d) Submits a reduction program request (including the business plan, the reduction amendment to the FMP, and the draft regulations to implement the reduction amendment) to us; and
 - (3) We:
 - (a) Determine that the requested reduction program meets all statutory and regulatory requirements;
 - (b) Approve a loan (assumes availability of sufficient appropriation and/or apportionment authority);
 - (c) Announce the availability of the reduction amendment to the FMP for public comment and propose regulations to implement it;
 - (d) Approve the reduction amendment;
 - (e) Issue regulations to implement the reduction amendment (except for any independent provisions, these regulations become effective only when we actually reduce capacity);
 - (f) Propose a program plan and program regulations;
 - (g) Publish the final program plan we will adopt if the fee system is approved by a subsequent referendum and issue the program regulations (provisions not necessary for program activities that precede a referendum and for conducting the referendum itself would not be effective at this point);
 - (h) Invite bids;
 - (i) Receive and tally the bids;
 - (j) Conditionally accept the bids that meet the bid acceptance criteria (acceptance is expressly subject to the condition that a subsequent referendum approves the fee system);
 - (k) Conduct a referendum;
 - (l) Notify all who were mailed ballots that the referendum approved the fee system and notify all whose bids we accepted that our previously conditional acceptance of their bids is now unconditional, and that the reduction contracts resulting from bid acceptance are now in full force and effect;
 - (m) Adopt the previously published final program plan and by a notice published in the **Federal Register**

announce the adoption and make the program regulations fully effective including those implementing the fee system;

(n) Reduce the capacity through distributing the loan's proceeds to those whose bids we accepted (all dependent provisions of the reduction amendment are effective at this point);

(o) Begin to receive fees and continue to receive them until the loan is paid in full; and

(p) After the loan is repaid, repeal the program regulations.

For a subsidized program, the framework regulations would require the requester to prepare and submit to us a preliminary development plan for the reduction program. A preliminary development plan is a more precursory and generalized reduction proposal than the business plan required for a financed program. Because the reduction cost of a subsidized program is not borrowed, a development plan does not include anything about a loan, fees, or a referendum.

We would use the preliminary development plan to prepare a final development plan. We would then submit the final development plan to the requester for approval and for reaffirmance of the request. The requester would prepare and adopt a reduction amendment based on our final program development plan and submit, along with its reaffirmance, the reduction amendment (and draft regulations to implement it if the reduction amendment is to a Federal FMP) to us for approval (and if for a Federal FMP, for proposal and issuance of regulations to implement the reduction amendment). We would then prepare a program plan and proposed program regulations based on the final development plan, and after 60-days notice and opportunity for comment, adopt the final program plan and issue the program regulations.

The reason we require a request for a financed program to include a final business plan (instead of a preliminary business plan, with us preparing a final business plan) is that a financed program involves a loan. We are the lender, and the harvesters remaining in the program fishery after reduction are the borrower. It would be inappropriate for a lender to develop any part of a borrowers' business plan.

Under the proposed regulations, the following sequence would apply to a subsidized program that is in a council-managed fishery, requires a reduction amendment to the applicable FMP, has Federal appropriations available to fund the reduction program's total reduction

cost, and results in our decision to conduct a reduction program:

- (1) The appropriate council:
 - (a) Prepares a preliminary development plan;
 - (b) Holds a public hearing; and
 - (c) Submits a program request (based on the preliminary development plan) to us;
- (2) We:
 - (a) Preliminarily determine that the reduction program meets all statutory and regulatory requirements;
 - (b) Prepare a final development plan; and
 - (c) Submit the final development plan to the council for approval;
- (3) The council:
 - (a) Approves the final development plan;
 - (b) Reaffirms (based on the final development plan) its request for a reduction program; and
 - (c) Prepares and submits to us a reduction amendment and draft regulations to implement the reduction amendment; and
- (4) We:
 - (a) Determine that the request meets all statutory and regulatory requirements;
 - (b) Determine the sufficiency of all required appropriation and apportionment authority;
 - (c) Announce the availability for public comment of the reduction amendment and propose regulations to implement it;
 - (d) Approve the reduction amendment;
 - (e) Issue regulations to implement the reduction amendment (except for any independent provisions, these regulations become effective only when we actually reduce capacity);
 - (f) Propose a program plan and program regulations;
 - (g) Adopt the final program plan and issue the final program regulations;
 - (h) Invite bids;
 - (i) Receive and tally the bids;
 - (j) Accept the bids which meet the bid acceptance criteria; and
 - (k) Complete the program (all dependent provisions of the reduction amendment become effective at this point).

A financed program might sometimes be limited to harvesters in a fishery who use a particular fishing-gear type. Some harvesters in a fishery may, for example, use trawl gear, while others may use pot or long-line gear. A program in that fishery could, for example, involve: (1) only trawl harvesters, (2) only pot harvesters, (3) only long-line harvesters, (4) some combination of any of them, or (5) all of them.

When a financed program does not involve all gear types in a fishery,

reduction amendments must appropriately allocate post-reduction fish resources between harvesters who are included in the program and those who are not. This ensures that the harvesters who must repay the loan that funded the reduction both receive the reduction's long-term benefit and remain capable of repaying the loan.

Paramount fishery conservation and management considerations might, however, require post-reduction reallocation between gear types different from the allocations upon which reduction decisions were based. Assume, for example, that a financed program involves trawl-gear fishing permits. Assume that the reduction amendment contained allocation provisions designed to ensure that the holders of trawl-gear permits realize the post-reduction benefit of their reduction investment and remain capable of repaying the loan. Assume that paramount post-reduction fishery conservation and management considerations later, however, require reallocating all trawl-gear allocations to pot and long-line gear allocations. How can trawl-gear operators (the borrower) and the loan be protected?

One potential way is for all reallocations to belong to the trawl-gear operators, even though they may be unable to use the reallocations with their trawl gear. Under this approach, the trawl fishing permits would simply be changed to pot or long-line fishing permits, but the permit holders would remain the same. The permit holders might, depending on the provisions of the reduction-amendment, then have several alternatives. First, they might use the reallocations by changing their gear types. Second, they might dispose, for value, of their permits involving the reallocations to other gear operators who are prepared to use the permits. At any rate, the fee obligations necessary to repay the loan follow the original permits upon which the loan was based, regardless of changes in gear type, fishing permit owners, or fishing permit users.

However it may be accomplished, reduction amendments must contain provisions adequate to protect both the reduction borrower and lender. Whenever any program is restricted to fewer than all the operators or areas of operations in a fishery, the reduction amendment must fully dispose of this allocation issue to our and the borrower's satisfaction.

Subsidized programs involve neither borrowers nor lenders. Instead, they usually would involve large expenditures of public resources. If we receive a request for a subsidized

program, we would consult with all interested parties in preparing a final development plan designed to ensure that reduction is an effective and equitable expenditure of public funds.

Reduction involves either revoking fishing permits or both revoking fishing permits and withdrawing vessels from all domestic fishing. Owners could withdraw vessels by scrapping them. The owners of federally-documented vessels also could withdraw them by subjecting their titles to permanent restrictions that prevent their vessels from being used in any domestic fishing. In financed programs involving the withdrawal of vessels from domestic fishing, for federally documented vessels we will not require the vessels to be scrapped or subject the vessels to any restriction other than a prohibition on their use for domestic fishing. This accords with the statutory objective of achieving the maximum reduction for the minimum cost and in the minimum time. Reduction is more cost-effective, and loan amounts that must be repaid are reduced, when vessel owners are free to seek the highest market return available for vessels that can no longer be used to fish domestically. The owners of federally-documented vessels, thus, would be free, in financed programs that involve the withdrawal of vessels from domestic fishing, to submit bids that reflect their vessels' residual value for any use other than for domestic fishing. The owners of non-federally documented vessels would not have that freedom since their vessels would have to be scrapped. Because subsidized programs involve the expenditure of public funds, they may require a different approach. If the public wants to pay for the extra cost of scrapping federally-documented vessels, we can require both federally-documented vessels and non-federally documented vessels in a subsidized program to be scrapped.

Some vessels have fishing permits for multiple fisheries. For a financed program for a reduction program fishery, we would not require the surrendering of fishing permits in any non-reduction fishery. Neither would we impose any restrictions on any fishing permit in a non-reduction fishery. This makes a financed program more cost-effective and reduces the amount of the loan required to fund reduction in the reduction fishery. Again, because subsidized programs involve the expenditure of public funds, they may require a different approach. If the public wants to pay the extra cost of having an owner surrender all of his or her fishing permits, we can require the surrender of both the fishing permit

in the reduction fishery and all other fishing permits associated with the reduction vessel in non-reduction fisheries.

A financed program that reduces fishing permits in the reduction fishery may result in vessel owners shifting into other fisheries for which they also have permits. This shift could, however, occur at any time without a reduction program. Moreover, we cannot expect post-reduction harvesters in a reduction fishery to borrow and repay the cost of reducing capacity in non-reduction fisheries. This would not be equitable to them or to the permit holders in the non-reduction fishery who would receive a reduction benefit that the permit holders in the reduction fishery pay for instead of them.

Requiring permit holders in a reduction fishery to borrow and repay the cost of reducing permits in any non-reduction fishery would also frustrate the statutory requirements in several ways. First, it would impede the statutory objective of achieving the maximum reduction for the minimum cost. Second, it would functionally make every reduction program virtually a permit and vessel reduction, rather than enabling the statutory option of either a permit reduction or a permit and vessel reduction. This is true because a fishing vessel that cannot fish has a greatly reduced value.

Permit holders in non-reduction fisheries are free to support reducing capacity in their own fisheries at any time. They can do so either with loans of their own or with whatever other resources may otherwise be available for funding reduction costs in their fisheries.

Federal appropriations (or appropriation authority) is a prerequisite for all programs except those that are completely funded by non-Federal sources. These are the types of reduction programs that require Federal appropriation action (and the type of appropriation action that each requires):

(1) *Subsidized programs paid for by Federal appropriations.* Actual funds equal to the entire federally-funded portion of a reduction program's reduction cost must be appropriated.

(2) *Financed programs with no Federal Credit Reform Act (FCRA) cost.* The principal amount of the loan must be authorized in an appropriations act. No actual funds are, however, appropriated. Basically, this involves an appropriation act establishing a loan ceiling. After we approve the loan, we borrow the loan's principal from the U.S. Treasury. We then re-lend to the program borrower what we borrowed

from the Treasury. As the borrower repays us, we repay the Treasury.

(3) *Financed programs with FCRA cost.* Actual funds equal to a loan's FCRA cost must be appropriated. The FCRA cost is the net present value of any loan principal that we project we may be unable to collect over the loan's life. The amount of loan authority available depends on how the FCRA cost-rate determination relates to the FCRA cost appropriated. For example, a one percent FCRA cost and a \$1 million FCRA cost appropriation produce a loan authority of \$100 million. As in a financed program with no FCRA cost, we borrow the loan principal from the U.S. Treasury (less the FCRA cost appropriation). We then re-lend to the program borrower both the appropriated FCRA cost plus what we borrowed from the Treasury (which, together, equal the principal amount of the loan). As the borrower repays us, we repay the Treasury.

We believe these loans involve no FCRA cost. The interest income we earn from these loans is two percent higher than the interest expense we pay to the U.S. Treasury for the loan capital we borrow. Our loan-loss risk should not exceed this risk premium. Our risk is low for several reasons. First, up to the first five percent of an entire fishery's delivered value is available for loan repayment. This means we are paid before anyone else. Second, fish buyers deduct the loan repayment fee from the sales proceeds of each post-reduction fishing trip before they pay harvesters anything. This means the borrower's loan repayment is automatic. These are major loan-repayment advantages.

A loan's initial amortization cannot exceed 20 years. Should unforeseen circumstances prevent repayment within that maximum amortization period, however, the fee would continue for as long as full loan repayment requires.

Thus, only complete and permanent biological or market failure of an entire fishery resource could reasonably prevent a loan's eventual payment in full. Both are so unlikely as to exclude us from projecting them as a realistic basis for initially assigning positive FCRA cost to these loans. Reduction will generally occur only in fisheries whose resources have a long-established market presence. The Magnuson Act requires fisheries conservation and management that preserve the maximum sustainable yield of fishery resources. Reduction programs facilitate fisheries conservation and management.

Unless they are multi-year appropriations, FCRA appropriations and loan authorities cease to exist at the

end of the fiscal year for which they were appropriated if they are not obligated during that fiscal year. The Federal budgetary cycle occurs over several years. This cycle and reduction's uncertain appropriation needs may not be a good match. Unless the Federal budget cycle makes provision several years in advance for programs that may never be implemented (or might not even yet have then been requested), reduction appropriations may have to proceed as supplemental appropriation requests. Otherwise, we may have to postpone a program until appropriation authority is available through the regular budget cycle. This may involve significant delay in the reduction process.

We would not adopt a final program plan and program regulations unless appropriation and apportionment authority adequate to effect the program first exists. Moreover, in a financed program, we would not adopt a final program plan and program regulations unless a loan adequate to support the program has first received all required approvals. This is because we must be prepared to disburse loan funds immediately after a referendum approves the fee required to repay the loan.

Regulations for fisheries assistance programs appear at 50 CFR part 253. Part 253 now has three subparts. This proposed framework rule would add a fourth, subpart D, to govern reduction programs. Sections 253.25 through 253.38 of subpart D would be framework rules common to all potential programs. Section 253.39 would be reserved for individual program regulations (to be individually proposed and adopted as we implement each program). It should be noted that the program regulations may contain provisions governing fee payment, fee collection, fee collection deposit, and/or fee collection records in addition to, or different from, those contained in § 253.36 and/or § 253.37 of this subpart if special circumstances in the reduction fishery make those additional or different provisions necessary to ensure full, complete, accurate and timely fee payment and/or full, complete, accurate and timely fee deposit, disbursement, accounting, records keeping, and reporting. It is the responsibility of the business planners and requester of a financed program to include such conditions in the business plan. However, we will deviate from the framework regulations in this regard only to the minimum extent necessary.

Classification

This proposed rule has been determined to be significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, does not have a significant economic impact on a substantial number of small entities. The proposed rule does not implement any program. Instead, the proposed rule only establishes a framework for implementing future programs in specific fisheries. Each program requires its own program regulations to implement its own program plan. We cannot at this time determine the future effect on small entities resulting from program regulations implementing reduction in individual fisheries. We will consider this effect at the time that we individually propose program regulations for each reduction in each program fishery. Consequently, we did not prepare a regulatory flexibility analysis.

The proposed rule contains collection-of-information requirements subject to Office of Management and Budget review and approval under the Paperwork Reduction Act.

Notwithstanding any other provision of law, no person is required to respond to, nor is any person subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Control Number assigned by the Office of Management and Budget.

For a financed program, the collection of information subject to these requirements includes preparing the business plan, bidding, voting in a referendum, and all fee payment and collection (including records keeping and reporting) during the first year after a loan as well as each subsequent year of loan repayment. We estimate that the public reporting burden for this would average 10,075 hours if a council requests the program and 10,344 hours if a state requests the program. In both cases, this estimate is through the first year of loan repayment. We estimate that the public reporting burden for each subsequent year of loan repayment would average 241 hours per year.

For a subsidized program that a council requests, bidding is the only public reporting burden subject to these requirements. We estimate that this burden would average a total of 1,600 hours per program. When a state makes

the same request, however, we estimate that total reporting burden would increase to an average of 8,504 hours.

The above estimates are based on individual response times of 6,634 hours to prepare a business plan, 270 hours to prepare a state request, 4 hours for a referendum vote, 4 hours to prepare a bid, 10 minutes to submit a fish ticket for a trip, 3 hours to prepare a monthly buyer report, 4 hours to prepare an annual buyer report, and 2 hours to prepare a seller/buyer report.

We have submitted this collection of information to the Office of Management and Budget for approval and we invite the public to comment on it. Is this collection of information necessary for properly conducting reduction? Does the information we propose to collect have practical utility? Is the burden-hour estimate accurate? How could we improve the quality, utility, and clarity of the information we propose to collect? How could we minimize the collection-of-information burden? Would the use of automated-collection techniques or other forms of information technology help? Send comments regarding this burden estimate, or any other aspect of this collection of information, to us (see ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects in 50 CFR Part 253

Fishing capacity reduction, Fisheries, Fishing vessels, Intergovernmental relations, Loan programs-business, Reporting and record keeping requirements, Research.

For the reasons set out the preamble, 50 CFR part 253 is proposed to be amended by adding a subpart D to read as follows:

PART 253—FISHERIES ASSISTANCE PROGRAMS

- Subpart D—Fishing Capacity Reduction Sec.
- 253.25 Definitions.
- 253.26 Requests for a program.
- 253.27 Content of a request for a financed program.
- 253.28 Acceptance of a request for, and determinations as to whether to initiate a, financed program.
- 253.29 Content of a request for a subsidized program.
- 253.30 Acceptance of a request for, and determinations as to whether to conduct a, subsidized program.
- 253.31 Reduction amendments.
- 253.32 Program plan and program regulations.
- 253.33 Bids.
- 253.34 Referenda.

- 253.35 Reduction methods.
 - 253.36 Fee payment and collection.
 - 253.37 Fee collection deposits and records.
 - 253.38 Prohibitions and penalties.
 - 253.39 Program regulations for each reduction program. [Reserved]
- Subpart D—Fishing Capacity Reduction

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

§ 253.25 Definitions.

In addition to the definitions in the Magnuson-Stevens Fisheries Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and in § 600.10 of this chapter, the terms used in this subpart have the following meanings:

Borrower means each post-reduction permit holder or vessel owner fishing in the program fishery.

Business plan means the document containing the information specified in § 253.27(q) and required to be submitted with a request for a financed program.

Consistency requirement means the requirement of section 312(b)(1)(B) of the Magnuson Act that each reduction program be consistent with the management plan in effect for a reduction fishery.

Control requirement means the requirement of section 312(b)(1)(B)(ii) of the Magnuson Act that each management plan in effect for a reduction fishery establish a specified or target total allowable catch or other measures that trigger closure of the reduction fishery or other adjustments to reduce the reduction fishery's catch whenever fishery conservation and management require it;

Council means a Fishery Management Council established under the Magnuson Act.

Delivery value means the full, fair-market value that a fish buyer pays, in an arm's-length transaction, to a fish seller for each pound of fee fish (in the form in which the fee fish exists at the time of fish delivery) that the fish seller delivers to the fish buyer, before any deductions whatsoever.

Deposit principal means all collected fees that a fish buyer deposits in a segregated account maintained at a federally-chartered national bank for the sole purpose of aggregating collected fees before sending them to NMFS for repaying a reduction loan.

Fee means the amount deducted for reduction loan repayment (under the industry fee system provided for in section 312(d) of the Magnuson Act) from the delivery value of fee fish and calculated by multiplying the applicable fee rate by the delivery value.

Fee fish means all fish harvested from a reduction fishery involving a financed program during the period in which any

amount of the program's reduction loan remains unpaid.

Final development plan means the document NMFS prepares for a subsidized program containing the information specified in § 253.29(g) and based on the initial development plan the reduction program requester submits.

Financed means funded by a reduction loan.

Fish buyer means the first ex-vessel party who, in an arm's-length transaction, purchases fee fish from a fish seller.

Fish delivery means the point at which a fish buyer first takes title to, or possession of, fee fish from a fish seller.

Fish seller means the party who catches and, in an arm's-length transaction, first sells fee fish to a fish buyer.

Federal Fishery Management Plan or Federal FMP means any plan (including amendments thereto) approved or adopted by the Secretary of Commerce pursuant to section 303 of the Magnuson Act.

Fund means the Fishing Capacity Reduction Fund (and each subaccount for each reduction 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 reduction program.

Management plan means any Federal FMP or state fishery management plan or program pursuant to which a fishery is managed.

Necessity requirement means the requirement in section 312(b)(1)(A) of the Magnuson Act that each reduction program be 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;

Nonreplacement requirement means the requirement in section 312(b)(1)(B)(i) of the Magnuson Act that each management plan in a reduction fishery prevent the replacement of the fishing capacity that the reduction program removes through a moratorium on new entrants to the reduction fishery, restrictions on vessel upgrades, and whatever other effort control measures may be required, taking into account the reduction fishery's full potential fishing capacity.

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

Preliminary development plan means the document containing the information specified in § 253.29(g) and required to be submitted with a request for a subsidized program.

Program plan means the implementation plan that section 312(e) of the Magnuson Act requires for implementing each reduction program.

Program regulations mean the implementation regulations that section 312(e) of the Magnuson Act requires for implementing each reduction program.

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

Reduction amendment means any amendment to a management plan that this subpart requires for a reduction program.

Reduction contract means the contents of a reduction bid and NMFS' conditional or non-conditional acceptance of such a bid.

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 portion of a fishery to which a reduction program applies.

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

Reduction payment means the Federal Government's fishing capacity reduction payment to a fishing permit owner, fishing vessel owner, or both, under a program.

Reduction permit means any permit covered by a reduction contract.

Reduction program means a fishing capacity reduction program authorized under section 312(b)-(e) of the Magnuson Act and this subpart, starting with a request for a reduction program and ending (for a financed program) with full reduction loan repayment.

Reduction vessel means any vessel covered by a reduction contract.

Referendum means the referendum that section 312(d)(1) of the Magnuson Act requires to authorize an industry fee system for repaying a reduction loan for any reduction program.

Requester means a council or a Governor identified in § 253.26(b) and (c).

Scrap a vessel means to completely and permanently reduce to small fragments having value, if any, only as raw materials for reprocessing, a vessel's hull, superstructures, and other fixed structural components

Subsidized means not funded in whole or in part by a reduction loan.

§ 253.26 Requests for a program.

(a) A council managing a proposed reduction fishery or the Governor of a state managing a proposed reduction

fishery may request NMFS to conduct a reduction program in such fishery. Each request must be in writing and must be addressed to the Chief, Financial Services Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Each request must satisfy the requirements of § 253.27 or § 253.29, as applicable, of this subpart, and enable NMFS to make the determinations required by § 253.28 or § 253.30, as applicable, of this subpart.

(b) For a council-managed fishery, only the council can make the request. If two or more councils manage the fishery, they must make a joint request. No council may make a request (or join in making a request) until after it conducts a public hearing about the request.

(c) For a state-managed fishery, only the Governor of that state can make the request. If two or more states manage the fishery, the Governors of those states must 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.

(d) NMFS cannot conduct a reduction program in any council- or state-managed fishery, unless NMFS first receives a request from the council or the Governor of the state managing the reduction fishery. For a fishery subject to U.S. jurisdiction, but not council or state managed, NMFS may conduct a reduction program on its own motion by fulfilling so much of the request requirements of this subpart as NMFS, in its discretion, determines reasonably applies to a reduction program not initiated by a request.

§ 253.27 Content of a request for a financed program.

A request for a financed program must:

- (a) Specify the reduction fishery;
- (b) Project the amount of the reduction and specify what a reduction of that amount achieves;
- (c) Project the reduction cost and specify the amount of the reduction cost to be financed and, if less than 100 percent of such cost is to be financed, specify the amounts of, and document 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 reduction program requires (including timing in relation to the projected reduction program process);
- (e) Demonstrate how the reduction program meets the necessity requirement;

(f) Demonstrate how the reduction program meets the consistency requirement;

(g) Demonstrate how the business plan is consistent with the management plan including any reduction amendment;

(h) Demonstrate how the management plan including any reduction amendment meets the nonreplacement requirement;

(i) Demonstrate how the management plan including any reduction amendment meets the control requirement.

(j) If the reduction fishery involves only one of several types of harvesting gear in a fishery (or is otherwise limited by area or other circumstance), demonstrate how the management plan ensures post-reduction allocations between gear types (or between operating areas or other circumstances) in the fishery, that adequately protect both NMFS' reduction-loan interest and the borrower's interest in the pre-reduction allocations involved in the fishing capacity that the reduction program reduces;

(k) Include any required reduction amendment. The reduction amendment must be based on the business plan. If the requester is a council, the requester must, at the time of the request, have adopted the reduction amendment and drafted proposed regulations to implement it;

(l) Request that NMFS conduct, at the appropriate time, a referendum under this subpart;

(m) 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. This must be based on the best information available to the requester and take into account any limitation by type of fishing gear operated, area of operation, or other consideration that the reduction program involves;

(n) Specify the annual total allowable catch of fish during each of the past five years and the allocations of it for each of those years to those listed under paragraph (m) of this section;

(o) 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 reduction program. The criteria must take into account: the characteristics of the fishery, whether the program is limited to a particular gear type in the fishery (or otherwise limited by some other operational consideration), whether the reduction program is limited to fishing permits or involves both fishing permits and fishing vessels,

the management plan requirements, the needs of fishing communities, and minimizing the reduction cost;

(p) Include any other information or guidance that would assist NMFS in developing a program plan and program regulations;

(q) 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 most reduction at the least reduction cost and in the shortest time and otherwise achieves the reduction program result the requester specifies under paragraph (b) of this section. The methodology must be sufficiently detailed to enable NMFS to readily design, propose, and adopt a timely and reliable program plan, to propose and issue timely and reliable program regulations, to invite bids, to accept or reject bids, to conduct a referendum, and to complete a reduction program in accordance with this subpart. The methodology must include: contents and terms of invitations to bid, eligible bidders, type of information that bidders must supply, criteria for accepting or rejecting bids, terms of bid acceptances, referendum procedures, and all other technical matters required to conduct a program;

(2) Based on actual experience for a reasonable number of past years in the reduction fishery, projects and justifies (with documented analysis) the reduction fishery's annual delivery value during the reduction loan's repayment period;

(3) Specifies the principal amount and repayment term of the reduction loan (if the reduction loan's principal amount is less than the reduction cost, the business plan must adjust all affected aspects accordingly). The reduction loan's principal amount cannot (at the interest rate most likely to prevail) exceed the principal amount that can be amortized in 20 years by five percent of the projected delivery value of fee fish;

(4) Specifies the minimum amount of reduction required for the reduction loan (and the reduction cost, if greater than the reduction loan) to be cost effective;

(5) Fully analyzes and justifies the reduction loan's cost effectiveness at the minimum reduction level and at various reduction-level increments reasonably greater than the minimum one, based on the:

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

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

(6) Specifies how the management plan including any reduction amendment meets the nonreplacement requirement;

(7) Specifies how the management plan including any reduction amendment meets the control requirement;

(8) If the reduction program involves only one of several types of fishing gear operating in the reduction fishery (or is limited by operational area or other considerations), specifies management-authority provisions for the post-reduction allocation of the fish for which capacity will be reduced that both allow the borrower to repay the reduction loan and preserve for the borrower the reduction benefit contemplated by the borrower's obligation to repay the reduction loan.

(9) Specifies the names and addresses of record of all fish buyers who can, after reduction, reasonably be expected to receive deliveries of fee fish;

(10) Specifies any special circumstances in the reduction fishery that may require fee payment, fee collection, fee collection deposit, and/or fee collection record keeping program regulations in addition to, or different from, those contained in § 253.36 and/or § 253.37 of this subpart to ensure full, complete, accurate, and timely fee payment and collection and/or full, complete, accurate, and timely fee deposit, disbursement, accounting, record keeping, and reporting.

(11) Demonstrates by the results of a survey of potential referendum voters, or by other convincing means, a widespread degree of support by potential referendum voters for the business plan and confidence in its feasibility; and

(r) Includes the requester's certification that, in the requester's best judgment, the business plan, the management plan, and all other request aspects constitute a complete, realistic, and practical prospect for successfully completing a reduction program in accordance with this subpart.

§ 253.28 Acceptance of a request for, and determinations as to whether to initiate a, financed program.

(a) *Acceptance of a request.* NMFS will review any request submitted to it to determine whether the request conforms with the requirements of

§ 253.27. If the request conforms, NMFS will accept the request. If the request does not conform, NMFS will return the request to the requester with guidance on how to make the request conform.

(b) *Determination of whether to initiate a financed program.* After receipt of a conforming request for a financed reduction program, NMFS will initiate the reduction program if it determines that:

(1) The reduction program meets the necessity requirement;

(2) The reduction program meets the consistency requirement;

(3) The management plan including any reduction amendment meets the nonreplacement requirement;

(4) The management plan including any reduction amendment meets the control requirement;

(5) The management plan including any reduction amendment contains post-reduction allocation provisions adequate to ensure reduction-loan repayment;

(6) The reduction program is cost effective;

(7) The business plan is complete, comprehensive, practical, and supports a determination that the reduction program is reasonably capable of being successfully implemented and the borrower is capable of repaying the reduction loan. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable program plan and propose and issue timely and reliable program regulations and otherwise complete the reduction program in accordance with this subpart;

(8) The reduction program is consistent with the business plan; and

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

§ 253.29 Content of a request for a subsidized program.

A request for a subsidized program must:

(a) Specify the reduction fishery;

(b) Project the amount of the reduction and specify what a reduction of that amount achieves;

(c) Project the reduction cost and specify the amount of the 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 reduction program requires (including timing in relation to the projected reduction program process);

(e) Specify the number of fishing permits authorizing the harvest of fish

from the reduction fishery or the number of fishing vessels authorized to harvest fish from the reduction fishery, or both, and the conditions under which permit or vessel owners are authorized to fish;

(f) Specify the annual total allowable catch of fish from the reduction fishery during each of the past five years and the allocations of it for each of those years to those currently authorized to harvest fish from the reduction fishery;

(g) Include a preliminary development plan that:

(1) Specifies a detailed reduction methodology that accomplishes the most reduction at the least reduction cost and in the shortest time and otherwise achieves the reduction-program result that the requester specifies under paragraph (b) of this section. The methodology must 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 program plan and propose and issue timely and reliable program regulations. The methodology must include: contents and terms of invitations to bid, eligible bidders, type of information that bidders must supply, criteria for accepting or rejecting bids, and terms of bid acceptances;

(2) Specifies criteria for determining the types and numbers of fishing permits or fishing permits and fishing vessels eligible to participate in the reduction program. The criteria must take into account: the characteristics of the fishery, whether the reduction program is limited to a particular gear type in the fishery (or is otherwise limited by some other operational consideration), whether the reduction program is limited to fishing permits or involves both fishing permits and fishing vessels, the management plan requirements, the needs of the fishing communities, and the need to minimize the reduction program's reduction cost; and

(3) Demonstrates the reduction program's cost effectiveness;

(h) Demonstrate how the reduction program meets the necessity requirement;

(i) Demonstrate how the reduction program meets the consistency requirement;

(j) Demonstrate that the preliminary development plan is consistent with the management plan or would be consistent after any needed reduction amendment;

(k) Specify the management plan measures included those in any reduction amendment to be submitted

that meet the nonreplacement requirement;

(l) Specify the management plan measures included those in any reduction amendment to be submitted that meet the control requirement;

(m) Specify any other information or guidance that assists NMFS in preparing a final development plan and a proposed program plan and proposed program regulations; and

(n) State why the requester believes that, in its best judgment, the reduction program constitutes a reasonably realistic and practical prospect for successfully completing a reduction program in accordance with this subpart.

§ 253.30 Acceptance of a request for, and determinations as to whether to conduct a, subsidized program.

(a) *Acceptance of a request.* NMFS will review any request submitted to it to determine whether it conforms with the requirements of § 253.29. If the request conforms, NMFS will accept the request. If the request does not conform, NMFS will return the request to the requester with guidance on how the request can conform.

(b) *Determination as to whether to prepare, and preparation of, a final development plan.* After receipt of a conforming request, NMFS will prepare a final development plan if it determines that the reduction program requested constitutes a realistic and practical prospect for successfully completing a reduction in accordance with this subpart and enables NMFS to readily design, propose, and adopt a timely and reliable program plan and propose and issue timely and reliable program regulations and otherwise complete the reduction program in accordance with this subpart. NMFS will base the final development plan on the requester's preliminary development plan. NMFS will consult, as NMFS deems appropriate, with the requester, Federal agencies, state and regional authorities, affected fishing communities, participants in the program fishery, conservation organizations, and other interested parties in preparing of the final development plan.

(c) *Reaffirmation of the request.* After completing the final development plan, NMFS will submit it to the requester for its reaffirmation of the request. Based on the final development plan, the reaffirmation must:

(1) Certify that the final development plan is consistent with the management plan including any reduction amendment;

(2) Demonstrate that the management plan including any reduction amendment meets the nonreplacement requirement;

(3) Demonstrate that the management plan including any reduction amendment meets the control requirement; and

(4) Include any required reduction amendment and, if the requester is a council, proposed regulations to implement it. The requester must base the reduction amendment on the final development plan;

(d) *Determinations as to whether to conduct a subsidized program.* After NMFS' receipt of the requester's reaffirmation and any needed reduction amendment and any needed proposed regulations to implement it, NMFS will conduct the reduction program if it determines that:

(1) The reduction program meets the necessity requirement;

(2) The reduction program meets the consistency requirement;

(3) The reduction program is consistent with the management plan including any reduction amendment;

(4) The management plan including any reduction amendment meets the nonreplacement requirement;

(5) The management plan including any reduction amendment meets the control requirement;

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

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

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

§ 253.31 Reduction amendments.

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

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

(c) Dependent provisions are initially effective only to enable initiation and completion of the pre-capacity reduction stage of a reduction program, i.e., to enable inviting bids, bidding, and accepting bids, and, if a financed program is involved, to enable the conduct of a referendum.

(d) All dependent provisions of each reduction amendment for a financed

program not initially effective become fully in force and effective when NMFS, under § 253.34(f) of this subpart, notifies those who were mailed referendum ballots that the industry fee system for the reduction program was approved by referendum; provided, however, that nothing subsequently prevents actual reduction payment and reduction. If a referendum, in accordance with this subpart and any special referendum provisions in the program regulations, does not approve the required industry fee system, no dependent provision of the reduction amendment then has any further force or effect.

(e) All dependent provisions of a reduction amendment for a subsidized program not initially effective become fully in force and effective when NMFS, under § 253.33(e), notifies bidders that NMFS accepts the bidders' offers; provided, however, that nothing subsequently prevents actual reduction payment and reduction. If NMFS does not, in accordance with this subpart and any special provisions in the program regulations, accept the bidders' offers, no dependent provision of the reduction amendment then has any further force or effect.

§ 253.32 Program plan and program regulations.

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

(b) To the greatest extent practicable, NMFS will base the program plan and program regulations for a financed program on the business plan. The program plan for a financed program will describe in detail all relevant aspects of implementing the reduction 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 minimally acceptable reduction level;

(7) 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 reduction program;

(9) The invitation-to-bid and bidding procedures;

(10) The criteria for determining bid acceptance;

(11) The referendum eligibility criteria, including a list of eligible voters and their addresses of record, with notice and opportunity to respond for:

(i) Parties who are not, but believe they should be, listed as eligible voters; and

(ii) Parties whose address of record is incorrect;

(12) The referendum procedures; and

(13) Any relevant post-referendum reduction procedures other than those in the program regulations or this subpart.

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

(1) The reduction program fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The reduction-cost funding (if any) other than Federal appropriations;

(5) The minimally acceptable reduction level;

(6) The fee;

(7) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the reduction program;

(8) The invitation-to-bid and bidding procedures;

(9) The criteria for determining bid acceptance; and

(10) Any relevant post-bidding program procedures other than those in the program regulations or this subpart.

(d) The program regulations will:

(1) Specify, for invitations to bid, bids, and reduction contracts under § 253.33:

(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;

(v) The manner of bid submission and the information each bidder must 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 circumstances of each reduction program and reduction loan. This includes, but is not limited to:

(i) The borrower's obligation to repay a reduction loan in a certain principal amount, at a certain interest rate, and over a certain term (and the consequences of not doing so);

(ii) Fee rates or amount determinations; and

(iii) Any other aspect of fee payment, collection, deposit, disbursement, reporting, and accounting.

(e) NMFS will issue final program regulations and, except for a financed program, adopt a final program plan within 45 days of the close of the public-comment period. For a subsidized program, all the program regulations issued will go into effect 30 days after the date of filing for public inspection with the Office of the Federal Register. For a financed program, NMFS will publish in the **Federal Register** the final program plan it will adopt after, and if, a referendum approves the industry fee system. For a financed program, all the program regulations issued will go into effect 30 days after the date of filing for public inspection with the Office of the Federal Register, except for those involving the industry fee system. Thus, the program regulations governing inviting bids, bidding, accepting bids, any other program activities required to precede and conduct a referendum, will go into effect. If a referendum does not approve an industry fee system, the program regulations involving the industry fee system will not become effective and all other program regulations will be repealed. If a referendum approves an industry fee system, NMFS will immediately publish a document in the **Federal Register** adopting the final program plan previously published in the **Federal Register** and making the program regulations fully effective. NMFS will then complete the reduction.

§ 253.33 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 a bid;

(3) In a financed program, NMFS' acceptance of any bid is subject to the express condition subsequent, that the industry fee system necessary to repay the reduction loan is approved by a referendum conducted under § 253.34. Approval or disapproval of the industry fee system by referendum is an event that neither the United States nor the bidders can control. Disapproval of the industry fee system by referendum fully excuses both parties from any performance, and fully discharges all duties, under any reduction contract;

(4) All bids are subject to the express condition that, upon NMFS' acceptance of the bid, (provided, however, that NMFS' later tenders a reduction payment to the bidder in an amount equal to the bid amount) the bidder gives the bidder's full, irrevocable, and incontestible consent for:

(i) NMFS to forever revoke any reduction permit; and

(ii) Where the reduction program also involves the withdrawal of reduction vessels from fishing (with or without scrapping):

(A) For the U.S. Coast Guard, upon NMFS' request, to restrict the title of any reduction vessel that is federally-documented to forever prohibit and effectively prevent any future use of that 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; and

(B) Where reduction vessel scrapping is involved and the vessel owner does not comply with the owner's obligation under the reduction contract to scrap the vessel, for NMFS to enter upon the premises where the vessel is located and (at the vessel owner's risk and expense) take such measures as necessary to cause the vessel's prompt scrapping. Afterwards, NMFS will take such action as may be necessary to recover from the vessel owner any cost or expense NMFS incurred in causing the vessel to be scrapped;

(5) 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, reduction vessel scrapping in programs involving scrapping;

(6) Any reduction payment is available, upon adequate notice to NMFS, to satisfy liens against any reduction permit 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 or of any of its officers or agents for the obligation underlying any lien;

(iii) No lien holder has any right against the United States or any of its officers or agents in connection with the revocation of any reduction permit or the title restriction or scrapping of any reduction vessel under this subpart; and

(iv) No lien holder has 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 any reduction payment, but is, in lieu of the reduction permit and/or reduction vessel, limited to recovery against the reduction payment itself or otherwise against the reduction permit or reduction vessel owner's other assets; and

(7) Each invitation to bid will specify such other terms and conditions as NMFS believes necessary to enforce specific performance of each reduction contract and otherwise to ensure completing each program (including, but not limited to, each bidder's certification, subject to the penalties in § 253.38, of its 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 reduction 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 program regulations are issued and the final program plan for a subsidized program is adopted or for a financed program is published;

(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 for NMFS disbursement as reduction payments; and

(6) All other actions prerequisite to disbursing reduction payments (except for matters involving bidding and referenda) are completed.

(c) Promptly after making the affirmative determinations required

under paragraph (b) of this section, NMFS will file with the Office of the Federal Register for publication a document inviting eligible bidders to offer, under this subpart, fishing capacity to the United States for reduction.

(d) For good cause shown, 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 program regulations so provide).

(e) After the bid expiration date, NMFS, without delay, will:

- (1) Analyze responsive bids;
- (2) Determine which bids, if any, NMFS accepts; and
- (3) Notify, by U.S. mail, those bidders whose bids NMFS accepts, that a reduction contract (subject, in the case of a financed program, to the express condition subsequent that a following referendum approve the necessary industry fee system) now exists between them and the United States.

(f) NMFS will keep strictly confidential the identity of all bidders whose bids NMFS does not accept. In financed programs, NMFS also will keep strictly confidential the identity of all bidders whose bids NMFS accepts until after completing a referendum under § 253.34 approving the industry fee system.

§ 253.34 Referenda.

For a financed program, after NMFS accepts bids and notifies accepted bidders under § 253.33(e), it will conduct, without delay, a referendum on the industry fee system needed to repay the reduction loan. NMFS will conduct the referendum in accordance with the following:

(a) *Ballot issuance.* By U.S. certified mail, return receipt requested, NMFS will mail a ballot to each fishing permit or fishing vessel owner whose name appears on the list referred to in § 253.27(m). All owners whose names appear on this list are eligible referendum voters. 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" (yes) or "against" (no) the proposed industry fee system and a place, adjacent to the 5-digit number, for the signature of the permit or vessel owner to whom the ballot is addressed or if the permit or vessel owner is an organization, the person purported to have authority to vote the ballot on the organization's behalf. Each ballot also 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 must use to return the ballot to NMFS.

(b) *Voter certification.* Each ballot also will contain a certification, subject to the penalties set forth in § 253.38, that the person signing the ballot is the permit or vessel owner to whom the ballot is addressed or if the permit or vessel owner is an organization, the person having authority to vote the ballot on the organization's behalf.

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

- (1) Summarize the referendum's nature and purpose;
- (2) Specify the date by which NMFS must receive a ballot in order for the ballot to be counted as a referendum vote. This date may be no later than the end of the twentieth day from the date on which NMFS mails the ballot unless the twentieth day is a Saturday, Sunday, or a Federal holiday, in which event the receipt date may be no later than the next business day. NMFS will not count as referendum votes any ballot received after such date;
- (3) Identify the place on the ballot for the voter to vote "for" (yes) or "against" (no) the industry fee system, the place on the ballot where the voter must sign the ballot, and the purpose of the return envelope;
- (4) Specify the amount of reduction, the reduction cost, the reduction loan amount (if different from the reduction cost), and the reduction loan term;
- (5) Specify the fee rate prospectively necessary to amortize the reduction loan over its term and the actual fee rate for the year following reduction; and
- (6) Specify whatever else NMFS deems appropriate.

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

- (1) 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;
- (2) A copy of the program plan and program regulations; and
- (3) Such other material as NMFS deems appropriate.

(e) *Vote qualification.* When NMFS receives a ballot returned by a voter, NMFS will enter the date of receipt and whether the ballot qualifies to be counted as a referendum vote. A completed ballot qualifies to be counted as a referendum vote if the ballot:

- (1) Is physically received by NMFS on or before the last day NMFS specified for receipt;
- (2) Is cast "for" (yes) or "against" (no);
- (3) If from a voter that is an individual, purports to be signed by that individual;
- (4) If from a voter that is a corporation or other limited liability organization,

purports to be signed by an official of that organization authorized to vote the ballot on the organization's behalf;

(5) If from a voter that is a partnership or other joint venture organization, purports to be signed by an official of that organization authorized to vote the ballot on the organization's behalf;

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

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

(f) *Vote tally and notification.* No later than seven business days after the last day for receipt of a ballot, NMFS will:

- (1) Tally all ballots qualified to be counted as referendum votes;
- (2) By U.S. mail, notify all parties to whom ballots were mailed of:
 - (i) The number of potential voters;
 - (ii) The number of actual voters who returned a ballot;
 - (iii) The number of returned ballots that qualified to be counted as referendum votes;
 - (iv) The number of votes for and against the industry fee system; and
 - (v) Whether the referendum approved or disapproved the industry fee system.

(3) If the referendum approved the industry fee system, NMFS, at the same time and in the same way, will notify the bidders whose bids were conditionally accepted that the express condition subsequent pertaining to the reduction contracts between them and the United States is fulfilled.

(g) *Conclusiveness of referendum determinations.* NMFS' ballot qualification and determinations about other vote matters are conclusive and final.

§ 253.35 Reduction methods.

Programs may involve either the surrender of reduction permits or both the surrender of reduction permits and the withdrawal from fishing or scrapping of reduction vessels.

(a) *Reduction permit revocation and surrender.* Each reduction permit is, upon NMFS' tender of the reduction payment for such permit, forever revoked. The holder of a reduction permit must, upon NMFS' tender of reduction payment, surrender the original of the 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 that permit that could qualify the permit holder or the fishing vessel owner for any present or future limited access system fishing permit in the reduction program fishery.

(b) *Reduction vessel title restriction or scrapping.* Each reduction vessel that is not required to be scrapped, is, upon NMFS' tender of the reduction payment, forever prohibited from any future use for any 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 the U.S. Coast Guard to permanently restrict each such reduction vessel's title to exclude the vessel's future use for fishing. The owner of each reduction vessel required to be scrapped (and any reduction vessel that is not federally-documented must always be scrapped) must, upon NMFS' tender of the reduction payment, immediately cease all further use of vessel and arrange, without delay, to scrap the vessel to NMFS' satisfaction. The owner of each such reduction vessel, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction vessel that could qualify the owner for any present or future limited access system fishing permit in the reduction program fishery.

(c) *Fishing permits in a non-reduction fishery.* No financed program may either require any holder of a reduction permit in a reduction fishery to surrender any fishing permit in any non-reduction fishery or involve any restriction or revocation of any fishing permit other than a reduction permit in the reduction fishery. Any subsidized program may, however, require surrendering and revoking all fishing permits (except those that constitute an individual fishing quota whose title the permit's title holder can transfer exclusively of the title to any fishing vessel) that the holder of a reduction permit in the reduction fishery also holds in any non-reduction fishery.

(d) *Reduction vessel dispositions.* No financed program involving reduction vessels may require, for federally-documented vessels, anything other than the prohibition from any future use for any fishing in any area subject to the jurisdiction of the United States or any state, territory, possession, or commonwealth of the United States. Any subsidized program may, however, require the scrapping of federally-documented reduction vessels. Reduction vessels that are not federally-documented must always be scrapped, regardless of whether the reduction program is financed or subsidized.

(e) *Reduction payments.* NMFS will make all reduction payments in the amount and in manner prescribed in its reduction contracts. For financed programs, the total amount of all reduction payments NMFS disburses (or

appropriate portion of the reduction payment's amount if a financed program is partially funded from some source other than a reduction loan) equals the reduction loan's principal amount and is exclusively repayable by fees.

§ 253.36 Fee payment and collection.

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

(b) *Rate.* NMFS will establish the fee rate. The fee rate may never exceed five percent of delivery value. NMFS will establish the initial fee rate by determining the fee revenues annually required to amortize a reduction loan over its term, projecting the annual delivery value of fee fish, and expressing the former as a percentage of the latter. Before each anniversary of the initial fee-rate determination, NMFS will redetermine 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. NMFS' fee rate determinations are conclusive and final.

(c) *Payment and collection.* (1) The full fee is due and payable at fee fish delivery. The fish buyer must collect the fee at the time of the fish seller's fee fish delivery by deducting the fee from the delivery value before paying the delivery value, minus the fee, to the fish seller. The fish seller must pay the fee at the time of the fish seller's fee fish delivery by receiving from the fish buyer the delivery value minus the fee.

(2) In the event of any bonus or other retrospective payment, whose amount depends on conditions subsequent to fee fish delivery, that increases the delivery value of fee fish, the fish seller shall pay, and the fish buyer shall collect, at the time the fish buyer pays the bonus or retrospective payment to the fish seller, the additional fee that would otherwise have been due and payable as if the amount of the retrospective payment had been known, and as if the retrospective payment had consequently occurred, at the time of initial delivery of the fee fish.

(3)(i) Each fish seller shall, for the purposes of the fee collection, deposit, disbursement, and accounting requirements of this subpart, be both the fish seller and the fish buyer (and all requirements and penalties under this subpart applicable to both a fish seller and a fish buyer shall equally apply to the fish seller) each time the 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, title, 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 restaurant, a retailer, a consumer, or some other type of end-user; or

(C) Any other party who the fish seller has good reason to believe will not comply with the fee collection, deposit, disbursement, and accounting requirements of this subpart applicable to a fish seller.

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge all the fee collection, deposit, disbursement, and accounting requirements this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for the 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 specified by NMFS in accordance with this subpart's requirements until NMFS determines that the reduction loan is fully repaid. If a reduction loan is not fully repaid at the maturity of the reduction loan's original amortization period, fee payment and collection will 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 file with the Office of the Federal Register for publication a document establishing the date from and after which the fee or fee-rate change is effective. NMFS then also will 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 file with the Office of the Federal Register for publication a document that the fee is no longer in effect and should no longer be either paid or collected. NMFS then will 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 must 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 24 hours, must forward the fee to NMFS. The fish seller at the same time must 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 fee 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 seller'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 must 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 must then either deduct the fee over the fish seller's protest or refuse to buy the fee fish. The fish buyer must also, within the next 24 hours, 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 fee 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) *Program regulations.* If any special circumstances in a reduction fishery require fee payment and/or collection regulations in addition to, or different from, those contained in this section in order to ensure full, complete, accurate and timely fee payment and/or collection, NMFS may include such regulations in the program regulations for that reduction program.

§ 253.37 Fee collection deposits and records.

(a) *Deposit accounts.* Each fish buyer this subpart requires to collect fees must

maintain a segregated account at a federally-chartered national bank for the sole purpose of depositing collected fees and disbursing them directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits.* Each fish buyer, no more infrequently than at the end of each business week, must deposit, in the deposit account established under paragraph (a) of this section, all fees, not previously deposited, that the fish buyer collects through a date not more than two 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 fees 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 calendar month, the fish buyer must disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer must do this by check made payable to "NOAA Fishing Capacity Reduction Fund." The fish buyer must mail each such check to the Fund lockbox account that NMFS establishes for the receipt of the disbursements. Each reduction program has its own lockbox. Each disbursement must be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the Fund's lockbox account and manner and form of settlement sheet by means of the notification in § 253.36(d).

(d) *Records maintenance.* Each fish buyer, on or in such forms as NMFS specifies, must maintain accurate records of all transactions involving fees. Each fish buyer must maintain the records in a secure and orderly manner for a period of at least three years from the date of each transaction involved.

(1) Each fish buyer must maintain the following information (including the fish tickets or other materials documenting such information) for all deliveries of fee fish that the fish buyer buys from each fish seller:

- (i) Delivery date;
- (ii) Fish seller's name;
- (iii) Number of pounds of each species of fee fish bought;
- (iv) Name of fishing vessel from which the fee fish off-loaded;
- (v) Delivery price per pound of each species of fee fish bought;

- (vi) Total delivery value of fee fish bought;
- (vii) Net delivery value of fee fish bought;
- (viii) Name of party to whom net delivery value paid if other than the fish seller;
- (ix) Date net delivery value paid;
- (x) Total fee amount collected; and
- (xi) Such other information as NMFS decides is reasonably necessary for each program.

(2) Each fish buyer must maintain the following information for all fee collection deposits to and disbursements from the deposit account:

- (i) Dates and amounts of deposits; and
- (ii) Dates and amounts of disbursements to the Fund's lockbox account that NMFS designates.

(e) *Annual report.* In each year (on the date to be specified in each program regulations) succeeding the year during which NMFS first implemented a fee, each fish buyer must 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 each fish seller:

- (1) Total pounds;
- (2) Total net ex-vessel 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 deposit interest fish buyer withdrew; and
- (7) Depository account balance at year-end.

(f) *Audits.* NMFS may cause agents that NMFS selects to audit, in whatever manner NMFS believes reasonably necessary, the books and records of fish buyers (including, but not limited, to fish tickets) and fish sellers in each program fishery in order to ensure proper fee payment, collection, deposit, disbursement, record keeping, and reporting. Fish buyers and fish sellers must make records (including, but not limited to, fish tickets) of all program transactions involving post-reduction fish catches and deliveries, fee payment, collection, deposit, and disbursement available to NMFS or its agents at reasonable times and places and promptly provide all requested information reasonably related to these records. No state law or regulations involving the confidentiality of fish tickets shall prevent NMFS from having full access to such fish tickets for the purposes of this subpart.

(g) *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 must return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(h) *Program regulations.* If any special circumstances in a reduction fishery require fee collection deposit and/or record keeping regulations in addition to, or different from, those contained in this section in order to ensure full, complete, accurate and timely fee deposit, disbursement, accounting, record keeping, and reporting, NMFS may include such regulations in the program regulations for that reduction program.

§ 253.38 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 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, or any other reduction program 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;

(8) Avoid, decrease, interfere with, hinder, or delay payment, collection, deposit, or disbursement of any fee due and payable under this subpart or convert any paid, collected, or deposited fee or otherwise use any fee for any purpose other than the purpose this subpart intends;

(9) Fail to fully and properly deposit on time all fees collected under this subpart into a deposit account and to disburse deposit principal to the Fund's lockbox account—all as this subpart requires;

(10) Fail to maintain full, timely, and proper fee payment, collection, deposit,

and/or disbursement records or to make full, timely, and proper reports of such information to NMFS—all as this subpart requires;

(11) 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;

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

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

(14) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any investigation

NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in 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.

§ 253.39 Implementation regulations for each reduction program. [Reserved]

Dated: February 4, 1999.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 990128037-9037-01; I.D. 010899B]

RIN 0648-AM11

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Proposed changes to catch sharing plan and sport fishing

management; availability of draft environmental assessment and regulatory impact review.

SUMMARY: NMFS proposes, under authority of the Northern Pacific Halibut Act (Halibut Act), to approve and implement changes to the Area 2A Pacific halibut Catch Sharing Plan (Plan) to adjust the management of the sport fisheries off Oregon and Washington, to clarify catch-sharing language in the commercial fisheries portion of the Plan, and to clarify halibut retention language for the portion of the Plan that addresses treaty Indian ceremonial and subsistence fisheries. NMFS also proposes sport fishery regulations to implement the Plan in 1999. A draft environmental assessment and regulatory impact review (EA/RIR) on this action is also available for public comment.

DATES: Comments must be received by February 26, 1999.

ADDRESSES: Send comments or requests for a copy of the Plan and/or the EA/RIR to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, Seattle, WA 98115. An electronic copy of the Plan, including proposed changes for 1999, is also available at the NMFS Northwest Region website: <http://www.nwr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206-526-6120.

SUPPLEMENTARY INFORMATION: The Halibut Act, at 16 U.S.C. 773c, gives the Secretary of Commerce (Secretary) general responsibility for carrying out the Halibut Convention between the United States and Canada and requires the Secretary to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) of the Halibut Act authorizes the Regional Fishery Management Councils to develop regulations that are not in conflict with regulations adopted by the International Pacific Halibut Commission (IPHC) to govern the Pacific halibut catch that occurs in their regions. Each year since 1988, the Pacific Fishery Management Council (Council) has developed a catch sharing plan in accordance with the Halibut Act, to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters and among non-Indian commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California).

In 1995, upon recommendation of the Council, NMFS implemented the Plan (60 FR 14651, March 20, 1995) as