

Relations with Native American Tribal Governments” (59 FR 22951). However, based on the DEA data, we revise our required determination concerning the Regulatory Flexibility Act.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions), as described below. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include: Oil and gas extraction and drilling, natural gas distribution, and mining concerns with fewer than 500 employees; oil and gas or mining support activities, water supply and irrigation systems, land subdivision, air traffic control and airport operations, and transportation support activities with annual average revenues of less than \$6.5 million; construction-related businesses with less than \$31 million in average annual revenues; and pipeline transportation of crude oil businesses with less than 1,500 employees. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation, as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s operations.

To determine if the proposed designation of critical habitat for the

polar bear would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, *i.e.*, oil and gas exploration and development, and marine and coastal development activities. Specifically, we identified 131 entities that may be impacted by the designation of critical habitat, and of these, 112 entities meet the small business threshold. These entities include local governments (*e.g.*, the North Slope Borough and the Northwest Arctic Borough), construction companies, specialty trade contractors, airport operations and support contractors, and other support contracting companies. In estimating the numbers of small entities potentially affected, we considered whether the activities of these entities may include any Federal involvement, in particular, activities that may trigger a consultation under section 7 of the Act. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, or authorized by Federal agencies.

If we finalize the proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

As described in Appendix A of the DEA, the potential impacts to small businesses are those associated with administrative costs resulting from the need to conduct consultations under section 7 of the Act. These costs associated with small businesses fall under two primary component activities: (1) Oil and Gas Exploration, Development, and Production, and (2) Construction and Development Activities. As discussed in Appendix A of the DEA, we anticipate both of these primary activities to be minimally impacted by a designation of critical habitat because they are generally covered by existing regional regulations (*e.g.*, the MMPA’s incidental take regulations at (73 FR 33212, 71 FR 43925)), or associated with section 7 consultation processes. As a consequence, we anticipate only minimal additional regulatory involvement under the Act resulting from the designation of critical habitat.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and

based on currently available information, we certify that, if promulgated, the designation of critical habitat for the polar bear would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

**Authors**

The primary authors of this notice are the staff members of the Marine Mammals Management Office, Alaska Region, U.S. Fish and Wildlife Service.

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 19, 2010.

**Thomas L. Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 253**

[Docket No. 0908061221-91225-01]

RIN 0648-AY16

**Merchant Marine Act and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fishing Vessel, Fishing Facility and Individual Fishing Quota Lending Program Regulations**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Fisheries Finance Program (FFP or the Program) provides long-term financing to the commercial fishing and aquaculture industries for fishing vessels, fisheries facilities, aquaculture facilities, and individual fishing quotas (IFQs). The Program became a direct loan program, as a result of legislation in 1996, replacing a guaranteed loan program. The FFP collects loan principal and interest from loan recipients and fees from applicants in order to repay monies borrowed from the U.S. Treasury. It maintains fixed interest rates that are comparable to those of private sector lenders, however the FFP allows borrowers to prepay without penalty, and may carry longer

repayment periods that are more advantageous to borrowers. The FFP does not make loans for new vessel construction or for vessel refurbishments that would increase harvesting capacity. Since the publication of its current regulations on May 1, 1996, the Program's authorizing statutes have been amended several times. However, the current regulations implementing the FFP have not been amended since 1996. Prior to the 2006 amendments to the FFP's statutory authorization, the 1996 rules for the Program were sufficient to implement the statute. The 2006 statutory changes have necessitated the current rules. In this action, NMFS amends our regulations to reflect the statutory changes to the Program, and to provide regulations for two additional lending products.

**DATES:** NMFS invites the public to comment on this proposed rule. Comments must be submitted in writing on or before June 4, 2010. Comments will be accepted only on Subpart B. Subpart C is unchanged except for numbering, therefore, comments will not be accepted.

**ADDRESSES:** You may submit comments, identified by 0648-AW05, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- *Fax:* 301-713-2390 x 187, Attn: Earl Bennett.
- *Mail:* Earl Bennett, Acting Chief, Financial Services Division, NMFS, Attn: F/MB5, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to [earl.bennett@noaa.gov](mailto:earl.bennett@noaa.gov) and by e-mail to

[david.rostker@omb.eop.gov](mailto:david.rostker@omb.eop.gov) or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Earl Bennett, at 301-713-2390 or via e-mail at [earl.bennett@noaa.gov](mailto:earl.bennett@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The FFP is the lending unit of NMFS' Financial Services Division. With its main office in Silver Spring, MD, the FFP currently has two distinct lending programs. One extends long-term direct loans to owners of vessels, fishery facilities and aquaculture projects, and the other extends long-term direct loans to fishermen for the acquisition or refinancing of quota shares in the Alaska halibut and sablefish IFQ fishery.

#### Statutory and Regulatory Background

The FFP's primary statutory authority is found in Title XI of the Merchant Marine Act of 1936, as amended (codified at 46 U.S.C. 53701, *et seq.*). This law authorizes the Secretary of Commerce to guarantee the principal and interest of loans made to citizens of the United States for the construction, reconstruction or reconditioning of fishing vessels. Additional statutory provisions authorize specific loan programs, including the Bering Sea/Aleutian Island Crab (BSAI Crab) IFQ lending program, 16 U.S.C. 1862(j), and the Western Alaska Community Development Quota (CDQ) lending program, 16 U.S.C. 1855(i)(1). The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, (MSRA), 46 U.S.C. 53706(a)(7), also authorizes the FFP to provide direct loans to entities involved in the commercial fishing and aquaculture industries for activities that assist in the transition to reduced fishing capacity; for technologies or upgrades designed to improve collection and reporting of fishery-dependent data; to reduce bycatch; to improve selectivity or reduce adverse impacts of fishing gear; or to improve safety. The FFP does not lend for projects that increase harvesting capacity.

Initially known as the "Fisheries Obligation Guarantee Program" (FOG), the Program originally provided repayment guarantees for fishery loans made to commercial fishermen. Borrowers executed promissory notes, backed by a U.S. Government guarantee; the Program then sold these guaranteed notes at auction to third party noteholders. Once a note was sold, the borrower was obligated to make payments directly to that third-party noteholder, rather than the government. In the event that a borrower defaulted on a guaranteed note, the noteholder

was required to make a payment demand to the Program, which was required to pay the noteholder the outstanding principal and interest balance. The Program could then proceed to foreclose on the collateral pledged for the loan, or collect the loan directly from the defaulting borrower.

On October 11, 1996, the Congress amended the Merchant Marine Act. In section 303 of the Sustainable Fishing Act (SFA), 46 U.S.C. 53701 *et seq.*, the Congress transformed the Program from a loan guaranty program into a direct lending program. In response, FOG changed its name to FFP. These amendments allowed the re-designated FFP to function much like a private sector lender. Under the changes, the FFP borrows funds from the United States Treasury, and then lends these funds to members of the fishing industry. Although the Program maintained (and still maintains) a legacy portfolio of guaranteed loans, the amendments to the SFA allowed the FFP to make new loans directly to qualified borrowers without using private sector intermediaries. This structure for the Program is still in place today. Indeed, the Program's loan portfolio performs well, with very few delinquent loans, and the FFP has been successful in maintaining a negative subsidy under Federal Credit Reform Act. The FFP is also authorized to refinance guaranteed FOG loans and transition them into direct loans, subject to the availability of lending authority. Refinanced FOG loans are subject to current FFP requirements.

However, the FFP has not promulgated new regulations since May 1, 1996, when the current regulations were published. (61 FR 19171). The regulations were not modified after the October 11, 1996, statutory amendments because the Program's regulations worked with the new legislation. This action would modify the existing Program regulations to reflect these statutory changes, and, more importantly, includes proposed regulations for two new lending products, BSAI Crab IFQ and Western Alaska Community Development Quota (CDQ). Subpart C, relating to Interjurisdictional Fisheries, is unchanged by this proposed rule except for its redesignation.

#### Description of Current Lending Policy

Under present policy, the FFP accepts applications from a wide range of potential borrowers, including individuals, partnerships, corporations and other business entities. Acceptance of loan applications is dependent on the Program having loan authority. The FFP

makes its lending decisions on a case-by-case basis. Like private sector lenders, the FFP considers typical credit factors such as the borrower's demonstrated business ability and fishing industry experience, credit-worthiness, compliance with specific loan program requirements, and available collateral, among others. The FFP declines to make loans to applicants who fail to prove that they are acceptable credit risks, as well as to any applicants that the Program deems ineligible or unqualified. In addition, the Program does not make loans for new vessel construction, or for vessel refurbishments that would materially increase harvesting capacity.

Although 46 U.S.C. 53701 does not bar the FFP from financing new vessel construction or modifications that increase harvesting capacity, the FFP does not lend for these purposes in order to be consistent with the agency's larger responsibilities to maintain sustainable fisheries. Additionally, in the past, the FFP's annual lending authority has contained restrictions that prevented the FFP from making loans that increase harvesting capacity.

Although some loan terms are set by statute (e.g., 46 U.S.C. 53702(b)(2) sets interest rate; section 53709(a)(4) restricts loan principal amounts to not more than 80 percent of the aggregate project cost; and section 53710(a)(3) caps most loan terms at 25 years), the FFP does not maintain fixed, program-wide minimum collateral standards; instead, the FFP adjusts each loan's collateral requirements as necessary. In addition to financing the purchase and acquisition of property in market transactions, the FFP may also liquidate assets (such as permits, quotas, licenses, transferable harvesting or operating rights, vessels, real estate, facilities, etc.) that the Program acquires through foreclosure, arrest, judicial sale, settlement of debts or obligations, debt acceleration, or other collection activities. Similar to other lending institutions, the FFP can provide financing to purchase assets the program liquidates.

All loan applicants must either own or hold a long-term lease on the property that is the subject of the financing. The FFP requires first lien priority on all primary collateral (or adequate substitute collateral), and requires that borrowers obtain written approval for subordinate liens to third parties. By statute, FFP loans are authorized to carry maturities of up to 25 years. However, generally the FFP restricts loan terms to the useful life of the assets being financed. If the property is leased, the lease term must exceed the

duration of the loan, allow the FFP to place a lien or mortgage upon the leasehold, and authorize the FFP to transfer the lease to another party in the event of foreclosure.

The FFP reserves the right to require additional lending and security terms and conditions to address specific borrowers and circumstances. The FFP will frequently require loan guarantees or security interests in other collateral to bring credit risk to acceptable levels. Such guarantees or collateral may be required from affiliated businesses, the borrower's principals or majority shareholders, or any other persons or entities with a financial interest in the borrower, or any individuals holding community property rights with the borrower. The FFP requires that borrowers maintain insurance appropriate to the collateral, which may include casualty, personal injury, risk, breach of warranty, business interruption, key man life insurance, title policies, maritime coverage or other forms as the FFP determines necessary. Where appropriate, the FFP must be named as an "additional assured," added to such coverage as a "loss payee," or receive assignment of the policy and insurance proceeds.

Applicants for FFP loans must be U.S. citizens or entities eligible to document a vessel for coastwise trade<sup>1</sup> under 46 U.S.C. 50501. Essentially, this requires business entities to be 75 percent owned by U.S. citizens, with key positions and a majority of the board of directors (in the case of a corporation) being U.S. citizens. Individual applicants must be U.S. citizens, from any of the fifty states, the Commonwealth of Puerto Rico, American Samoa, the Territory of the U.S. Virgin Islands, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, or any other possession, commonwealth or territory of the U.S. All loan applicants are subject to background and credit investigations, which may include reviews for unresolved fishing violations, criminal background checks, delinquent debt investigations, and credit reports.

Applicants, who are advised to apply for a loan through regional offices located in Gloucester, MA, St. Petersburg, FL, and Seattle, WA, must pay the appropriate application fee set out in 46 U.S.C. 53713(b). The application fee is one half of one percent of the loan amount requested. Half of this fee, known as the "filing

fee," is nonrefundable when the Program officially accepts the application. The second half of the fee, known as the "commitment fee," is earned and becomes nonrefundable when the Program issues an Approval-in-Principle (AIP) letter. The Program may refund the commitment fee if the FFP declines the application or the applicant withdraws the request prior to the Program issuing an AIP letter.

The AIP letter sets out loan terms and conditions. These terms and conditions are issued at the Program's discretion; an applicant's failure to accept them may result in the termination of the processing of the loan. Moreover, the AIP's terms and conditions are reflected in the Program's closing documents.

#### *Traditional Lending: Vessels, Shoreside Facilities and Aquaculture Projects*

Borrowers of FFP loans can use FFP financing to purchase or refurbish an existing fishing vessel, as well as finance the purchase, renovation or construction of a fishing facility (such as a processing plant) or an aquaculture facility. Although the FFP will not finance the construction of new vessels, borrowers may use Program funds to refinance the construction costs of a completed vessel. However, the loan applicants must have already paid or financed such construction costs prior to the submission of their loan application. FFP lending, as required by the MSA, as amended, Public Law 109-470, can also be used "to finance sustainable fisheries efforts, including activities that assist in the transition to reduced fishing capacity, technologies or upgrades to improve collection and reporting of fisheries data, to improve or reduce adverse affects of fishing gear, or to improve safety.

In addition to meeting the FFP's general lending requirements, borrowers must show that their vessels or facilities have all the applicable permits, licenses, quotas, entry rights, or other authorizations necessary to harvest or operate their vessels or facilities in accordance with the appropriate fisheries management plan (FMP), implementing regulations and all other applicable Federal, state and local laws.

#### *Current IFQ Lending: Halibut and Sablefish*

The 1996 SFA amendments also authorized the creation of IFQ lending programs, identifying two categories of eligible borrowers. Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), section 303(d)(4), now codified as 16 U.S.C. 1853a(g), the FFP provided IFQ financing for (1) the acquisition of

<sup>1</sup> Ownership requirements for documenting a vessel for use in the coastwise trade and receiving a fisheries endorsement are identical.

IFQ by fishermen who fish from “small vessels,” and (2) the first time purchase of IFQ by “entry level fishermen.” IFQ financing is fishery specific, and individual Fishery Management Councils (FMCs) must request such financing, and may specify borrower eligibility criteria (such as definitions for “small vessels” and “entry level fishermen”). Under the legislation, the FFP cannot initiate or implement an IFQ lending program until the appropriate FMC submits a request and provides guidance for the requisite criteria. Although the Program suggests that these criteria be included as a part of a fishery management plan (FMP), the FFP will accept formal FMC action and transmittal of the criteria to develop and create a lending program.

The two categories of potential borrowers for the quota share loan program are fishermen who fish from small vessels, and entry level fishermen in the North Pacific Halibut and Sablefish fisheries. Under the MSA, as amended, “Fishermen who fish from small vessels” are defined as those fishermen wishing to purchase IFQ for use on category B, C or D vessels (as defined by 50 CFR 679.40), “whose aggregate ownership of individual fishing quotas will not exceed the equivalent of a total of 50,000 pounds of halibut and sablefish harvested in the fishing year in which a [loan] application is made if the [loan] is approved, who will participate aboard the fishing vessel in the harvest of fish caught under such quotas, who have at least 150 days of experience working as part of the harvest crew in any United States commercial fishery, and who do not own in whole or in part any Category A or Category B vessel.” “Entry level fishermen” are similarly defined, but under the statute this group need not have demonstrated fishery experience, and do not need to own halibut and sablefish quota shares before receiving a Program loan. Entry level fishermen may finance an initial quota share purchase that is equivalent to not more than 8,000 pounds of IFQ, as calculated in the year they apply.

Under the present regulations, FFP loans for the HSQS program are awarded on the basis of the FFP’s general lending requirements. In addition, the FFP requires that preferred ship mortgages be placed on all Federally documented vessels owned by IFQ borrowers. For borrowers refinancing existing debt, the FFP will not close loans that exceed the outstanding amount of debt being refinanced, in order to prevent Program funds from being used for ineligible purposes. Refinancing is also subject to

a cap of 80 percent of the principal of the loan; however, if the current market value of the quota shares exceeds the loan amount by 20 percent or more, a borrower can refinance without providing additional down payment. If the applicant has insufficient equity in the collateral, the applicant is required to pay the debt down to the acceptable 80 percent level.

The Program requires that each applicant for sablefish or halibut IFQ demonstrate how it meets or will meet the relevant statutory conditions at the time of application. To calculate pound limits, the FFP applies the IFQ limits for the year in which the borrower submits the application. This allows the FFP to use the most recent IFQ pound limit when determining loan eligibility. HSQS loans contain covenants requiring that the Program’s borrowers be aboard their vessels as the IFQ from their NMFS financed quota shares are fished. However, the Program does not read the statutory text as creating a permanent onboard participation requirement. Instead, the condition is included among a series of eligibility conditions for originating a loan, and the FFP has interpreted it to require that a borrower (1) express the intent to participate aboard when he or she applies for a HSQS loan and; (2) actually be aboard the vessel while the IFQ from each NMFS financed quota share is harvested over the course of a fishing season.

Accordingly, a borrower under the HSQS could meet the statutory onboard participation requirement during the first season of fishing after purchasing quota share with loan proceeds. However, in keeping with the North Pacific Fishery Management Council’s (NP Council) expressed policy to maintain the small boat halibut and sablefish fisheries as “owner operated” fisheries, HSQS loan documents contain additional covenants requiring that the Program’s borrowers declare annually, under penalty of perjury, that they were aboard the vessel as fish were harvested under the IFQ derived from their NMFS financed quota shares. The FFP may waive the onboard participation loan covenants at the request of the borrower, (e.g. to accommodate medical IFQ transfers), provided that the borrower can obtain permission from the Restricted Access Management (RAM) Division of NMFS Alaska Regional office or appropriate office. The Program defers to RAM, or to the office that undertakes the duties of this division to issue or manage quota shares and the NMFS Alaska Regional office, in determining who is eligible to fish under the HSQS. The FFP will not make an HSQS loan to anyone who lacks

RAM certification of eligibility for the halibut or sablefish fisheries.

Between FY98 and FY08, the FFP approved 240 applications for halibut and sablefish IFQ loans. The average amount of these loans amounted to \$154,209.

#### *Proposed Provisions: CDQ Lending Program*

In 1992, the NP Council established a Community Development Quota (CDQ) Program. The intent of this program is to promote fisheries-related economic development in disadvantaged Western Alaska communities. See Guard and Maritime Transportation Act of 2006, Public Law 109–241, section 416(a). The remote and isolated nature of Western Alaska limits employment opportunities of most residents to jobs within their communities, and these areas suffer from high unemployment and poverty levels. The CDQ Program was created to provide long-term loans to assist these communities in developing the harvesting and processing capability in local Bering Sea and Aleutian Island fisheries. Although statutory authority for the CDQ Program dates back to 1998, funding for the program was not made available until 2006, Public Law 109–241, section 416(a). Through these regulations, the FFP intends to implement this program.

Unlike the FFP’s other lending programs, the CDQ Program would allow the FFP to award loans with maturities of up to thirty (30) years, although the Program has the discretion to use shorter periods. Aside from extended maturities, CDQ loans are subject to the Program’s general lending standards and practices; collateral, guarantee and other loan requirements may be adjusted to account for individual credit risks. Entities eligible to participate are set forth in 16 U.S.C. 1855(i), and include:

(1) The villages of Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George through the Aleutian Pribilof Island Community Development Association.

(2) The villages of Aleknagik, Clark’s Point, Dillingham, Egegik, Ekuk, Ekwok, King Salmon/Savonoski, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik through the Bristol Bay Economic Development Corporation.

(3) The village of Saint Paul through the Central Bering Sea Fishermen’s Association.

(4) The villages of Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak,

Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, and Tununak through the Coastal Villages Region Fund.

(5) The villages of Brevig Mission, Diomedede, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, and White Mountain through the Norton Sound Economic Development Corporation.

(6) The villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua through the Yukon Delta Fisheries Development Association.

(7) Any new groups established by applicable law.

#### *Proposed Crab IFQ Lending Program*

In addition to proposing regulatory language for the CDQ Program, this rule would implement the Bering Sea/Aleutian Island (BSAI) crab IFQ quota lending program. FFP lending for Bering Sea/Aleutian Island (BSAI) crab IFQ quota shares, which is an integral part of the crab rationalization program developed by NP Council, will be limited to specific crab fisheries and those persons identified as “captain” or “crew” on a BSAI crab fishing vessel. Additionally, like other FFP loans, crab quota share loan amounts will be limited to 80 percent of the actual purchase price, and carry a 25-year maturity. Captains and crew must be deemed eligible by a RAM or appropriate authority to own Crab QS, and meet all other applicable provisions of the Bering Sea and Aleutian Islands King and Tanner Crab Fishery Management Plan (Crab FMP) and its implementing regulations in effect at the time of their loan closing. The Program will rely on RAM to determine that the applicant meets the requirements to own crab quota shares.

All requirements and standards for halibut and sablefish IFQ and general FFP lending guidelines will apply to crab IFQ lending, except that the ownership limits after closing an FFP financing are based on a percentage of the total allowable catch not on pounds caught. Like halibut sablefish quota share, borrowers refinancing existing debt cannot borrow more than the outstanding debt and must meet the 80 percent maximum loan amount.

#### **Summary and Explanation of Proposed Regulatory Changes**

In addition to redesigning the current regulations, this proposed action makes the following changes, as explained here.

#### *General Definitions (§ 253.10)*

This action changes the general definitions section of part 253 to reflect changes in statutory codification and other minor details. Specifically, this action eliminates the word “guarantor” from the definitions of “Guaranteed Note” and “U.S. Note” to clarify that the United States is no longer providing loan guarantees through the FFP. In all other respects the substantive definitions of those two terms remain the same. Similarly, the terms “Applicant,” “Application,” “Application fee,” “Demand,” “Fish,” “Guarantee,” “Security documents,” are changed to reflect the Program’s current status as a direct lender possessing a legacy portfolio of loan guarantees. The definitions of the terms, “Facility,” “Guarantee fee,” “Noteholder,” “Refinancing,” “Refinancing/assumption fee,” “U.S.,” “Useful life,” and “Vessel” remain unchanged from the current regulation.

Additionally, the definitions for the following terms were changed to reflect the recent recodification of the Shipping Statutes. The definition of “Act” was changed from Title XI of the Merchant Marine Act, 1936, as amended to Chapter 537 of title 46 of the U.S. Code, (46 U.S.C. 53701–35), as may be amended from time to time. The definition of “Actual cost” was changed from a calculation to a broader definition that refers to § 253.16 of the rule for specific calculations. The definition of “Aquaculture facility” was changed to delete from its definition the need for its operation to involve commercial purposes. The definition of “CCF” was expanded to include a citation and the purpose of a CCF account. The definition of “Citizen” was changed to update the citation for citizenship qualification. The term “Contributory project” has been deleted, and its provisions are contained in the revised definition of “Project.” The terms “Property” and “Project Property” have been deleted as superfluous. The definition of “Program” reflects the change in the name of the Program, from “Fisheries Obligation Guarantee Program” to “Fisheries Finance Program” and provides additional detail on where the Program is located. A definition for the term “RAM” is added to identify the NMFS Alaska Region’s Restricted Access Management division or other appropriate authority.

The following terms are new or carry expanded definitions: “Approval in principle letter” is added to describe the document by which the Program advises an applicant that its loan application has been approved. “Captain” is added

to provide clarity to a type of borrower authorized to be a crab IFQ applicant. “Charter fishing” replaces the term “Passenger fishing” for consistency with the MSA. “Crewman” is added to describe an individual qualified to apply for IFQ financing. “Fisheries harvest authorization” is defined to provide clarity for its use with the IFQ loan programs. “Fishery facility” is changed to clarify that facilities servicing water craft used for charter fishing are included within this definition. “Fishing” is expanded to match the MSA, as amended definition, thereby providing additional clarity and specifically excluding scientific research activity. “IFQ” is added to reflect its use in the halibut/sablefish and crab IFQ loan programs. “Obligor,” which corresponds to the previous term “Notemaker” used in the existing regulations, is added to match the term used in the Act. “Origination year” is added to define how the term will be applied to qualify applicants for IFQ financing. The definition of “Project” has been expanded to improve readability and interpretation of the proposed regulation. The terms “Underutilized fishery” and “Wise use” are changed to bring them in line with current NMFS standards.

Except for renumbering and reordering, the contents of new §§ 253.11, 253.12 and 253.13 (relating to General FFP Credit Standards and Requirements, Credit Application Requirements, and the Initial Investigation and Approval) remain largely unchanged from § 253.11 and §§ 253.13–16 in the current regulations. The sections track the discussion of the Program’s lending policies described above.

#### *Loan Documents (§ 253.14)*

This action also adds a new § 253.14, the provisions of which largely reflect those of the current § 253.12. Section 253.14 eliminates the distinction in the rule between a “guaranteed note,” which was defined by the 1996 regulations as a note sold to a third party and a “U.S. Note,” defined as a document presented to the FFP in order to allow the FFP to properly file various liens and security interests. Since the statute was amended in October 1996 to create the direct loan program, these terms are no longer distinct, and this change is necessary to codify the statutory determination that the FFP is issued only a single note, while the debt is held by the United States.

For Program loans originating before October 11, 1996, the term “U.S. Note” applies to the additional note executed by the borrower. However, for loans

originating after October 11, 1996, "U.S. Note" refers to the promissory note given to the FFP that evidences the borrower's actual indebtedness to the U.S. Keeping with current practice, U.S. Notes are assignable, allowing the FFP to sell notes to a third party. This provides the Program an additional opportunity to liquidate a defaulted debt.

This rule also clarifies that, during the life of a loan, the FFP may advance sums to protect its collateral or security interests. For example, the FFP may elect to pay for insurance premiums on collateral property when the borrower has failed to do so. This section establishes that any sums advanced by the FFP will be added to the outstanding loan principal, and incur interest as described by the terms of such additional lending.

In addition to describing the U.S. Note, § 253.14 sets forth certain requirements for the Program's security documents. While the Program may entertain suggested amendments from borrowers and their legal counsel, the FFP retains final authority over the contents of the security documents. Under its lending policy, the FFP finances specific projects, taking the actual property associated with such projects as collateral for the loan. However, to meet its credit risk standards, the Program frequently seeks security interests in assets beyond the property that is the nominal subject of the financing. The FFP may require security interests in other assets owned by the applicant, affiliated businesses, and the applicant's owners. In unusual circumstances, the Program may consider other substitute collateral of equal or greater value. The Program will make this determination on a case-by-case basis.

#### *Recourse Against Other Parties* (§ 253.15)

This proposed action also creates § 253.14, which provides that any personal or business guarantees and additional security required by the Program may be secured or unsecured, and may take the form of a repayment guaranty or an irrevocable letter of credit. As a general policy, the FFP will hold those who stand to receive the primary benefit of the project financially accountable for the project's performance. For instance, the FFP may require recourse against a borrower's major shareholders, parent corporation, affiliated businesses, general partners, limited partners, the spouses of borrowers who reside in community property states, and any other person or entity with a financial interest in the

borrower. In the event that additional security is unavailable, the value of assets pledged to the U.S. must be deemed sufficient to liquidate the loan.

#### *Actual Cost* (§ 253.16)

This action adds a new section § 253.16, to provide detail and clarity for the term "Actual cost." Lending for shoreside facilities, aquaculture facilities and IFQ each require different calculations of actual cost of the project to be financed. As it applies to a vessel, this provision would allow actual cost to be calculated on a "cost basis," meaning that the original cost of a vessel and its capital improvements are depreciated over their useful life. This change is necessary to allow the FFP to account for value added of the depreciated actual cost, which is the basis of the maximum loan amount by limited access permits or other harvest privileges that are appurtenant to the vessel such as, for example, those that are assigned to a vessel, tracked by vessel, or accrue because of vessel ownership. Section 253.106 will provide that the actual cost of a vessel can reflect the value of an appurtenant harvest privilege, even though there may be no cost basis for the appurtenant privilege. The provision clarifies that such harvest privileges may only be included if they are used aboard or by the vessel that is the subject of the loan and that the privileges, themselves, also serve as additional primary collateral for the loan. All other aspects of vessel actual cost are unchanged from the existing rule.

This provision clarifies that the FFP will use two different actual cost computations to determine the cost basis for loans under the Program. For real property owned in fee simple by the borrower, the FFP will value the land according to its current market value. Valuing land on a cost basis is difficult because land does not incur ongoing acquisition costs. Moreover, the value of real property can fluctuate over time, and cost basis may not reflect the change in value, if any. For example, a land owner, who purchased land 20 years ago, may be unable to borrow against the land's current market value if actual cost was measured using cost basis. Using current market value allows older facilities to obtain a loan that is reasonably proportionate to the facility's contemporary value.

In contrast, the FFP will calculate the actual cost for improvements to real property on a cost basis. Cost basis takes the original cost of assets, and depreciates them over their estimated useful life, to determine the present value of the assets. The values of

improvements to shoreside and aquaculture facilities are best determined by their cost and their expected lifetime. Equipment and fixtures are often unique to these facilities and are not usable elsewhere, so, alternative methods of evaluation are not readily available.

The FFP will also use cost basis to determine the actual cost of a real property lease. Although a lease is a capital asset, it is of finite duration and requires that the tenant continually pay rent. A lease's actual cost is defined as the net present value of the future stream of rent payments, with the present value calculated at the time the borrower submits its loan application. The FFP will use the United States Department of Treasury Daily Treasury Yield Curve Rate to determine the discount rate. To include a lease among collateral, the project property must be located on the leased land and the duration of the lease must exceed both the nominal term of the financing and any additional period that the FFP deems appropriate.

The FFP will also finance and refinance transferable limited entry privileges. Often these privileges are bought and sold in arm's length transactions, such that an identifiable market already exists for them. The FFP will define the actual cost of transferable limited access privileges in two ways, based on their market value. When first purchased, these rules define actual cost as current market value, as set by purchase price. As with the sale of any good, the value that a buyer and seller agree to is generally the best determination of market value.

In the context of refinancing limited entry privileges, these rules define actual cost as the current market value of similar privileges. Although the value of these privileges may change over time, the existence of an identifiable market allows the FFP to use contemporaneous comparable sales to determine current market value. Additionally, new §§ 253.28(d)(2) and 253.30(c)(2) limit the aggregate value of a borrower's refinancing transactions. The value of a refinancing loan can not exceed the amount required to fully repay the QS debt being refinanced.

#### *Insurance* (§ 253.17)

Section 253.17 replaces the old § 253.15(c), and sets out new provisions for the FFP's review and approval of insurance coverage. Currently, the FFP requires each borrower to have and maintain adequate insurance coverage. Typically, the FFP requires borrowers to have general business coverage, including (but not limited to) worker's

compensation, seaman's liability, business interruption, inventory coverage, cargo coverage, breach of warranty, as well as other insurance specific to a loan's collateral package. At a minimum, the current rules provide that the United States must be named as the loss payee, where applicable, and coverage must provide protection from any partial or total loss of collateral.

Additionally, the current rules require that the Program be named an additional assured or co-policyholder, rather than just as a loss payee. The FFP also requires that vessel coverage policies attest to the vessel's seaworthiness. In order to provide coverage in the event a policy term or condition is violated, current FFP rules require that borrowers provide additional coverage to protect against breaches of warranty. Although the Program requires certain provisions and covenants within all policies, the FFP retains broad discretion to tailor its insurance requirements to fit the circumstances of each individual loan.

Under the proposed action, the FFP will be required to find both the insurer and the amount of coverage to be acceptable. The Program will use various insurance rating services to evaluate insurers, and reserves the right to refuse coverage from unapproved insurers. All required insurance coverage must be maintained continuously during the life of the loan. A break in coverage is a security default and grounds for foreclosure. While the FFP recognizes that insurers often maintain the right to cancel insurance coverage for a variety of reasons, the new Program rules require that insurance policies provide for a minimum of 20 days advance written notice to the FFP and the insured of cancellation for vessels, and 30 days of advance written notice for facilities.

#### *Closing (§ 253.18)*

The proposed rule redesignates current section § 253.15(g) as § 253.18. As in the existing section, the new section clarifies that the Program approves loans by sending an applicant an AIP, which contains the terms and conditions required to close the loan and disburse the proceeds. The AIP must be signed and returned by the borrower to show acceptance of the terms and conditions; most of these terms and conditions are also incorporated into the actual closing documents. Significant changes to the closing documents, which are standard forms developed by the Program, require the Program's written approval. The FFP may require the borrower's attorney, at the borrower's expense, to

draft closing documents for transactions involving state or local law. Likewise, other closing costs, including title search and insurance, escrow fees and document preparation shall be at the borrower's expense.

Finally, the regulations provide that neither the United States nor the FFP will be liable for any adverse consequences related to the timing of closing. The Program will only close loans when all requirements are satisfactorily completed. This section encourages the parties to a loan transaction to work closely with the Program to assure closing on a timely basis.

#### *Dual-use CCF (§ 253.19)*

The Capital Construction Program allows fishermen to deposit profits in a capital construction fund (CCF) earmarked account and defer the taxes associated with such profits. This section provides that CCF accounts can be considered as an asset, and may be pledged as collateral for Program financings. This section is unchanged, except for renumbering, from § 253.12(c) of the current regulations, to § 253.19.

#### *Fees (§ 253.20)*

This rule would redesignate § 253.16 of the current rule to § 253.20. Aside from acknowledging the application fees set out in § 253.12(b) of the proposed rule, the new § 253.20 relating to guarantee fees and refinancing or assumption fees of the rule will largely remain unchanged from the existing § 253.16.

Under the guaranteed loan program, the Program will still require that each borrower pay a fee of one percent per year on the average unpaid principal balance. This fee is not applicable to direct loans. Although the Program does not originate any new guaranteed loans, the FFP continues to maintain some legacy of FOG loans. For such guaranteed loans, this section indicates that the first year's guarantee fee was due when the loan closed. However, this new section requires that each subsequent year's fee on current guaranteed loans is due in advance of each year, and is based on the scheduled repayments for the coming year. Subsequent year annual fees will continue to be collected until the guaranteed loan is paid in full. Once paid, guarantee fees are not refundable; accordingly, paying off a guarantee loan during the fee year will not result in a credit or refund.

The refinancing and assumption fees addressed in this section apply only when borrowers refinance or assume loans already in the Program's portfolio.

It does not apply when the FFP refinances loans held by other lenders. Instead, a standard application fee is due upon submission of the application for refinancing such "outside" financing. Internal refinancing or assumption fees are not refundable, though the FFP may choose to waive such fees if the primary purpose of the refinancing is to protect the interest of the United States.

All fees mentioned in this section are sent to the FFP's lock box address. The mailing address for the lock box is currently: U.S. Department of Commerce, NOAA, P.O. Box 979008, St. Louis, MO 63197-9008.

The FFP requires that the borrower include the loan number on such payments.

#### *Demand by Guaranteed Noteholder and Payment (§ 253.21)*

As mentioned above, the Program has retained, and will continue to do so, a portfolio of guaranteed loans. The holders of these debts possess a repayment guarantee. In the event of payment default, the holder of the note makes a "demand" for payment to the U.S. This new section, drawn from previous § 253.17 of the regulations, prescribes that such demand must be made in writing and include a complete payment history for the loan on which demand is made.

#### *Program Operating Guidelines (§ 253.22)*

This new section will authorize the FFP to issue non-regulatory policy and administrative guidelines, as needed. In the evolving arena of fisheries and fisheries management, the Program may have to adjust its operations to stay current and effectively administer the Program.

#### *Default and Liquidation (§ 253.23)*

Under 46 U.S.C. 53722, there are a wide variety of actions available to the Program if a loan defaults. Program officials will work with its attorneys and the U.S. Department of Justice, as appropriate, to determine a course of action. This new section reaffirms the Program's broad authority to use any means available to the Federal Government to recover debt owed to the United States.

#### *Enforcement Violations and Adverse Actions (§ 253.24)*

The FFP believes that it is inconsistent with wise and good use of the Program funds, and contrary to the public interest, to provide financing to parties with unresolved fisheries enforcement violations. Thus, under this new provision, Program borrowers

could face a security default and foreclosure if they incur a fisheries violation. This action provides that the Program may delay the approval, closing or disbursement of loans to parties who have an outstanding Notice of Violation and Assessment issued to them by NMFS enforcement or other authorities. The Program will suspend, cancel or rescind the processing of any application or disbursement if it discovers an unresolved final and unappealable sanction.

In addition, this section provides that the FFP will not approve, close or disburse a loan unless such fine or penalty has (1) been fully resolved; or (2) the parties have entered into an agreement to pay the penalty in installments, and all payments due under such installment agreement are current. Any failure to resolve such penalties could result in disqualification. This policy was originally announced in a notice published in the **Federal Register** on January 4, 1984 (49 FR 491).

#### *Other Administrative Requirements* (§ 253.25)

This action reaffirms that borrowers must comply with all applicable Federal statutory and administrative requirements. Some of these provisions include compliance with the Debt Collection Act, providing various certifications under 15 CFR part 26 (Nonprocurement Debarment and Suspension, Anti-Lobbying, Drug free work place, etc.), and the Paperwork Reduction Act (PRA). This section also clarifies that all loan applications are subject to investigation by the United States, and may involve the Department of Commerce's Inspector General, the U.S. Department of Justice, and NMFS Enforcement.

#### *Traditional Loans* (§ 253.26)

For clarity, the proposed rule compiles existing policies and requirements for vessel and facility lending into this new section. This section establishes an 80 percent actual cost financing limit, and retains the current maximum loan term of 25 years or the useful life of the assets being financed, whichever is shorter. Consistent with the existing § 253.11 provisions, § 253.26 provides that the FFP will not grant financing for new vessel construction or for projects that materially increase harvesting capacity. This action retains existing provisions found at § 253.11, which allow the FFP to finance or refinance eligible projects, including refinancing the Program's legacy Fisheries Obligation Guarantee loans as direct loans. The FFP would be

allowed to reimburse borrowers who have already paid or financed the cost of refurbishing or constructing vessels. In addition to being found credit-worthy, applicants for such reimbursements must have the required fishing permits and authorities. The FFP is required to verify that vessels have the proper permits, licenses, quotas, entry rights, etc. required to legally harvest fish under the appropriate fisheries management plan and all applicable regulations and law.

The proposed rule also adds text, in compliance with 46 U.S.C. 53706(a)(3), that authorizes the FFP to liquidate and finance the purchase of collateral that the Program acquires, including those acquired by accelerating, paying or settling debts or obligations, through foreclosure, or at judicial sale. Financing these assets requires the availability and use of loan authority. This section also includes provisions reflecting changes brought on by the recent changes to the MSA, as amended, including lending for fisheries modernization and to support sustainable fisheries efforts.

#### *IFQ Financing* (§ 253.27)

This new section contains the Program's general policy and requirements for establishing IFQ lending programs, as authorized by the MSA, as amended. The FFP must have a request from an FMC to approve and implement an IFQ loan Program. Requests from an FMC should include their suggested definitions of:

Small vessel;  
Entry-level fishermen; and  
Fishermen who fish from a small vessel.

Council requests under this provision may include any other suggested terms or conditions. However, the FFP can only incorporate those suggestions that the Program determines to be feasible, are not excessively burdensome, and are not otherwise prohibited by applicable law, including FFP rules or operating guidelines.

Although the Program regards the harvest privilege as the primary collateral in an IFQ loan, it will take additional security pledges, as necessary, to maintain the priority of the FFP's interest in the IFQ and to reduce credit risk, in order to protect the interest of the U.S. The FFP prefers quarterly payments of principal and interest to both reduce the number of transactions processed by the agency's accounting office and enhance tracking of loan performance. Pursuant to 46 U.S.C. 53710(a)(3), maximum maturity for an IFQ loan is 25 years.

#### *Halibut Sablefish IFQ Loans* (§ 253.28)

This section codifies existing FFP HSQS lending policies and guidance from the Halibut and Sablefish Fisheries Quota-Share Loan Program (63 FR 28986, May 27, 1998).

In addition to the pound limits, onboard requirements, and other eligibility limitations, all HSQS loans would be subject to the Program's general standards and requirements. Collateral, guarantee and other requirements may be adjusted to match each individual credit risk. As with IFQ financing generally, under this new provision the FFP may refinance existing debt associated with HSQS. However, the FFP has determined that providing a HSQS borrower with funds in excess of the borrower's existing and outstanding debt is inconsistent with sound fiscal management. Therefore, HSQS borrowers seeking to refinance debt are subject to the FFP's 20 percent borrower's equity minimum.

Under this rule, the FFP will defer to the RAM division to determine a borrower's eligibility to hold HSQS. To purchase and retain HSQS, the potential owner must apply to RAM, meet the applicable requirements, and receive certification from RAM that they are eligible to hold HSQS. This section requires that an applicant for financing under the HSQS loan program possess or be able to obtain such certificate. Failure to obtain such certification in a timely manner may cause the applicant to lose its application processing priority.

#### *CDQ Loans* (§ 253.29)

This proposed rule would add a section establishing the CDQ lending program. Established by statute in 1998, this lending program allows CDQ Groups to finance certain fisheries related projects in Bering Sea and Aleutian Islands. CDQ loans are subject to all general FFP standards and requirements; collateral, guarantee and other requirements may be adjusted in accordance to each project's individual credit risk. However, CDQ loans may carry maturity terms of 30 years, 5 years longer than typical Program lending. This section is necessary because, although the CDQ program was authorized in 1998, there were no appropriations until 2006 to implement the program. The FFP is poised to move forward with the program and needs the implementing regulations to proceed.

#### *Crab IFQ Loans* (§ 253.30)

This new section provides regulatory provisions specific to the crab IFQ loan program. Although crab IFQ loans will



be very similar to HSQS loans, the NP Council has limited participant eligibility to crab captains or crewmen on BSAI crab fishing vessels. This section contains additional terms that codify the NP Council's intent. It provides that captains and crew must be certified by RAM as eligible to hold crab quota share, and meet all other applicable provisions of the Crab FMP in effect at the time of their loan closing. Like other FFP loan requirements, the section limits loan amounts to 80 percent of the purchase price, as required by statute.

This section also limits refinancing to persons whose initial purchase of Crab QS would, in accordance with the program's statutory authority, have been eligible for FFP financing. Like HSQS loans, the Program will only finance up to 80 percent of the quota share's current value, and it will limit the amount refinanced to the amount required to fully repay the outstanding debt being refinanced. In addition to requiring that such persons meet all other Program lending and Crab FMP requirements in effect at the time of the refinancing, the applicant must have established equity in the collateral used to support the loan. If they fail to have the requisite equity margin (measured as the difference between the value of the primary collateral and the amount of the loan), applicants seeking refinancing will be required to pay the debt down to the acceptable 80 percent level.

In order to increase the safety and practicality of the lending program, the NP Council recommended that "small vessels" be defined as all vessels in the BSAI crab fisheries. They also expanded the qualifications for RAM determinations of eligibility to include applicants who have made at least one delivery in a fishery subject to the crab rationalization program in two of the three years prior to the application for the crab quota share loan. Unlike with HSQS, for which participation in the loan program is restricted by an IFQ pound limit, the NP Council recommended that ownership limitations in the Crab IFQ lending program be based on a percentage of the initial quota share pool for each crab fishery. This section includes each of these modifications.

#### Classification

This proposed rule is published under the authority of, and is consistent with, Chapter 537 of the Shipping Act and the MSA, as amended. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the MSA, as amended, and other applicable

law, subject to further consideration after public comment.

#### Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This rule does not duplicate, overlap, or conflict with any other relevant Federal rules.

#### Paperwork Reduction Act

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

This proposed rule contains collections-of-information subject to the PRA, which have been approved by OMB under control number. The application requirements contained in these rules have been approved under OMB control number 0648-0012. The applications for the halibut/sablefish quota share crew member eligibility certificate have been approved under OMB control number 0648-0272. Public reporting burden for placing an application for FFP financing is estimated to average eight hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see ADDRESSES*) and by e-mail to [david.rostker@omb.eop.gov](mailto:david.rostker@omb.eop.gov) or fax to (202) 395-7285.

#### Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, requires that, "[w]henver an agency is required by section 553 of this title [5 USCS § 553], or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory

flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities." 5 U.S.C. 603(a). However, where an agency can certify "that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities" then an agency need not undertake a full regulatory flexibility analysis. 5 U.S.C. 605(b).

The proposed rule replaces the current FFP rule, subpart B of 50 CFR 253, as published in the **Federal Register** on May 1, 1996 (61 FR 19172). The objective of this rule is to update the FFP rule to reflect statutory changes and codify all the existing FFP authorities into 50 CFR part 253 in the Code of Federal Regulations. As codified in this rule, the FFP will offer small businesses in Alaska and native Alaskan communities a source of long-term capital for various segments of the commercial fishing and aquaculture industries. Participation in the FFP is entirely voluntary. This rule imposes no mandatory requirements on any business. These changes are required by recent amendments to the Program's authorizing statutes. Additionally, promulgation of new regulations is necessary to implement the FFP's new lending programs. To gain key efficiencies, this proposed rule combines these Program operating requirements into a single rulemaking. Having all aspects of the FFP's rules located in one rule will assist the public in reviewing the potential application of the FFP to their need.

Specifically, these rules enact regulatory changes to create new FFP programs authorized in legislation in 2006 will be implemented under 50 CFR part 253, subpart B. Additionally, this rule will create new §§ 253.10 through 253.30.50. Part 253, subpart C (§§ 253.20 through 253.24) will be redesigned as Subpart C, sections 253.40 through 253.44, without change.

The RFA defines a small fishing business as one that has an annual revenue of \$4.0 million or less. Additionally, "small governmental jurisdictions" are defined as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000. As defined in RFA, the small entities that this rule may affect include, but are not limited to, vessel owners, vessel operators, fish dealers, individual fishermen, small corporations, others engaged in commercial and recreational activities regulated by NOAA and native Alaskan governmental jurisdictions. In addition, the rule would affect some larger businesses. Notably, because the FFP is

a voluntary program that provides loans to qualified applicants, no entities—larger or small—would be directly regulated by this rule.

NMFS has examined the business size status of applicants approved by the FFP during the last eleven years during which the FFP has been a direct lender. During this period, the FFP approved 425 applications. Of these applications, 146, or 35 percent of the total number of businesses that could be determined to be small or large entities, were small businesses as defined by the SBA.<sup>2</sup> In addition, 221 applicants, or 53 percent of all applicants, were individual or sole proprietorships. Thus, most of the loans that have been recently issued by the FFP were to small entities.

The FFP approved loans for:

	Number	Percentage
Individuals/sole proprietorships	221	53
Small Business	146	35
Large Business	49	12

Since it codifies existing FFP statutes and policies, this action will not create new reporting requirements for small entities participating in the FFP. Although the FFP requires certain supporting documentation during the life of a loan, the FFP's requirements do not impose unusual burdens when compared to the burdens imposed by other lenders. Moreover, because the basic need for financing would continue to exist without the FFP, the small entities seeking financing would still need to comply with similar, if not identical, requirements imposed by another lender. Records required to participate in the FFP are usually within the normal business records already maintained by small business entities. The time required for small entities to meet these requirements would be less than five hours per application.

In addition, to ease burdens on loan applicants that are small entities, the proposed rules vary the scope of the requested information in accordance with the size and complexity of the applicant's operation. These rules request information from applicants that is already available to them, such as income tax returns, insurance policies, permits, licenses, etc. Depending on circumstances, the FFP may require other supporting documents, including internal financial statements, audited financial statements, property descriptions, and other documents that can be acquired at reasonable cost if they are not already available.

<sup>2</sup> There were nine records for which NMFS was unable to determine the size of the applicant.

The FFP has only positive impacts on small entities. It is a source of long-term capital and imposes no regulatory requirements on small business outside of those applying for financing. FFP applicants make a voluntary decision to use the Program. Both small and large entities benefit from the availability of long-term, fixed rate financing. CDQ groups and communities benefit from the positive economic opportunities that FFP lending provides.

Because participation is voluntary and requires considerable effort and the outlay of an application fee, all FFP applicants are assumed to have made a determination that using FFP financing incurs a benefit, such that the FFP's long-term, fixed rate financing provides a positive economic impact. Importantly, the FFP does not regulate or manage the affairs of its borrowers, and the regulations impose no additional compliance, operating or other fees or costs on small entities.

Because this regulation will impose no significant costs on any small entities, but rather will provide small and large entities with benefits, the economic impact on small entities, if any, is expected to be minimal at worst, but likely it will be positive. Accordingly, this rule will not substantially impact a significant number of small businesses.

As a result of this certification, an initial regulatory flexibility analysis is not required and none has been prepared.

#### List of Subjects in 50 CFR Part 253

Aquaculture, Community development groups, Direct lending, Financial assistance, Fisheries, Fishing, Individual fishing quota.

Dated: April 26, 2010.

#### Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Services, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 253 is proposed to be amended by revising part 253 as follows:

### PART 253B—FISHERIES ASSISTANCE PROGRAMS

#### Subpart A—General

Sec.

253.1 Purpose

#### Subpart B—Fisheries Finance Program

253.10 General definitions.

253.11 General FFP credit standards and requirements.

253.12 Credit application.

253.13 Initial investigation and approval.

253.14 Loan documents.

253.15 Recourse against other parties.

253.16 Actual cost.

253.17 Insurance.

253.18 Closing.

253.19 Dual-use CCF.

253.20 Fees.

253.21 Demand by guaranteed noteholder and payment.

253.22 Program operating guidelines.

253.23 Default and liquidation.

253.24 Enforcement violations and adverse actions.

253.25 Other administrative requirements.

253.26 Traditional loans.

253.27 IFQ financing.

253.28 Halibut sablefish IFQ loans.

253.29 CDQ loans.

253.30 Crab IFQ loans.

253.31–253.49 [Reserved]

#### Subpart C—Interjurisdictional Fisheries

253.50 Definitions.

253.51 Apportionment.

253.52 State projects.

253.53 Other funds.

253.54 Administrative requirements.

**Authority:** 46 U.S.C. 53701 and 16 U.S.C. 4101 *et seq.*

#### Subpart A—General

##### § 253.1 Purpose.

(a) The regulations in this part pertain to fisheries assistance programs. Subpart B of these rules governs the Fisheries Finance Program (FFP or the Program), which makes capacity neutral long-term direct fisheries and aquaculture loans. The FFP does all credit investigations, makes all credit determinations and holds and services all credit collateral.

(b) Subpart C implements Title III of Public Law 99–659 (16 U.S.C. 4100 *et seq.*), which has two objectives:

(1) Promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) Promote and encourage management of interjurisdictional fishery resources throughout their range.

(c) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resources in both the executive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

#### Subpart B—Fisheries Finance Program

##### § 253.10 General definitions.

The terms used in this subpart have the following meanings:

*Act* means Chapter 537 of Title 46 of the U.S. Code, (46 U.S.C. 53701–35), as may be amended from time to time.

*Actual cost* means the sum of all amounts for a project paid by an obligor (or related person), as well as all amounts that the Program determines the obligor will become obligated to pay, as such amounts are calculated by § 253.16.

*Applicant* means the individual or entity applying for a loan (the prospective obligor).

*Application* means the documents provided to or requested by NMFS from an applicant to apply for a loan.

*Application fee* means 0.5 percent of the dollar amount of financing requested.

*Approval in principle letter (AIP)* means a written communication from NMFS to the applicant expressing the agency's commitment to provide financing for a project, subject to all applicable regulatory and Program requirements and in accordance with the terms and conditions contained in the AIP.

*Aquaculture facility* means land, structures, appurtenances, laboratories, water craft built in the U.S., and any equipment used for the hatching, caring for, or growing fish under controlled circumstances for commercial purposes, as well as the unloading, receiving, holding, processing, or distribution of such fish.

*Captain* means a vessel operator or a vessel master.

*Capital Construction Fund (CCF)*, as described under 46 U.S.C. 53501-17, allows owners of eligible vessels to reserve capital for replacement vessels, additional vessels, reconstruction of vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States, for operation in the fisheries of the United States.

*Charter fishing* means fishing from a vessel carrying a "passenger for hire," as defined in 46 U.S.C. 2101(21a), such passenger being engaged in recreational fishing, from whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

*Citizen* means a "citizen of the United States," as described in 46 U.S.C. 104, or an entity who is a citizen for the purpose of documenting a vessel in the coastwise trade under 46 U.S.C. 50501.

*Crewman* means any individual, other than a captain, a passenger for hire, or a fisheries observer working on a vessel that is engaged in fishing.

*Demand* means a noteholder's request that a debtor or guarantor pay a note's full principal and interest balance.

*Facility* means a fishery or an aquaculture facility.

*Fish* means finfish, mollusks, crustaceans and all other forms of aquatic animal and plant life, other than marine mammals and birds.

*Fisheries harvest authorization* means any transferable permit, license or other right, approval, or privilege to engage in fishing.

*Fishery facility* means land, land structures, water craft that do not engage in fishing, and equipment used for transporting, unloading, receiving, holding, processing, preserving, or distributing fish for commercial purposes (including any water craft used for charter fishing).

*Fishing* means:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish;

(4) Any operations at sea in support of, or in preparation for, any activity described in (1) through (3) above.

(5) Fishing does not include any scientific research activity which is conducted by a scientific research vessel.

*Fishing industry* for the purposes of this part, means the broad sector of the national economy comprised of persons or entities that are engaged in or substantially associated with fishing, including aquaculture, charter operators, guides, harvesters, outfitters, processors, suppliers, among others, without regard to the location of their activity or whether they are engaged in fishing for wild stocks or aquaculture.

*Guarantee* means a guarantor's contractual promise to repay indebtedness if an obligor fails to repay as agreed.

*Guarantee fee* means one percent of a guaranteed note's average annual unpaid principal balance.

*Guaranteed note* means a promissory note from an obligor to a noteholder, the repayment of which the United States guarantees.

*IFQ* means Individual Fishing Quota, which is a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. IFQ does not include community development quotas.

*Noteholder* means a guaranteed note payee.

*Obligor* means a party primarily liable for payment of the principal or interest on an obligation, used interchangeably with the terms "note payor" or "notemaker."

*Origination year* means the year in which an application for a loan is accepted for processing.

*Program* means the Fisheries Finance Program, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

*Project* means:

(1) The refinancing of construction of a new fishing vessel or the financing or refinancing of a fishery or aquaculture facility or the refurbishing or purchase of an existing vessel or facility, including, but not limited to, architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Program requires;

(2) The purchase or refinance of any limited access privilege, IFQ, fisheries access right, permit, or other fisheries harvest authorization, for which the actual cost of the purchase of such authorization would be eligible under the Act for direct loans;

(3) Activities (other than fishing capacity reduction, as set forth in part 600.1000 of this title) that assist in the transition to reduced fishing capacity;

(4) Technologies or upgrades designed to improve collection and reporting of fishery-dependent data, to reduce bycatch, to improve selectivity or reduce adverse impacts of fishing gear, or to improve safety; or

(5) Any other activity that helps develop the U.S. fishing industry, including, but not limited to, measures designed or intended to improve a vessel's fuel efficiency, to increase fisheries exports, to develop an underutilized fishery, or to enhance financial stability, financial performance, growth, productivity, or any other business attribute related to fishing or fisheries.

*RAM* means the Restricted Access Management division in the Alaska Regional Office of the National Marine Fisheries Service or the office that undertakes the duties of this division to issue or manage quota shares.

*Refinancing* means newer debt that either replaces older debt or reimburses applicants for previous expenditures.

*Refinancing/assumption fee* means a one time fee assessed on the principal amount of an existing FFP note to be refinanced or assumed.

*Refurbishing* means any reconstruction, reconditioning, or other improvement of existing vessels or facilities, but does not include routine repairs or activities characterized as maintenance.

*Security documents* mean all documents related to the collateral

securing the U.S. Note's repayment and all other assurances, undertakings, and contractual arrangements associated with financing or guarantees provided by NMFS.

*Underutilized fishery* means any stock of fish (a) harvested below its optimum yield or (b) limited to a level of harvest or cultivation below that corresponding to optimum yield by the lack of aggregate facilities.

*U.S.* means the United States of America and, for citizenship purposes, includes the fifty states, Commonwealth of Puerto Rico, American Samoa, the Territory of the U.S. Virgin Islands, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States, or any political subdivision of any of them.

*U.S. Note* means a promissory note payable by the obligor to the United States.

*Useful life* means the period during which project property will, as determined by the Program, remain economically productive.

*Vessel* means any vessel documented under U.S. law and used for fishing.

*Wise use* means the development, advancement, management, conservation, and protection of fishery resources, that is not inconsistent with the National Standards for Fishery Conservation and Management (16 U.S.C. 1851) and any other relevant criteria, as may be specified in applicable statutes, regulations, Fishery Management Plans, or NMFS guidance.

#### **§ 253.11 General FFP credit standards and requirements.**

(a) *Principal*. Unless explicitly stated otherwise in these regulations or applicable statutes, the amount of any loan may not exceed 80 percent of actual cost, as such term is described in § 253.16; provided that, the Program may approve an amount that is less, in accordance with its credit determination.

(b) *Interest rate*. Each loan's annual interest rate will be 2 percent greater than the U.S. Department of Treasury's cost of borrowing public funds of an equivalent maturity at the time the loan closes.

(c) *Ability and experience requirements*. An obligor and the majority of its principals must demonstrate the ability, experience, resources, character, reputation, and other qualifications the Program deems necessary for successfully operating the project property and protecting the Program's interest in the project.

(d) *Lending restrictions*. Unless it can document that unique or extraordinary circumstances exist, the Program will not provide financing:

(1) For venture capital purposes; or,

(2) To an applicant who cannot document successful fishing industry ability and experience of a duration, degree, and nature that the Program deems necessary to successfully repay the requested loan.

(e) *Income and expense projections*. The Program, using conservative income and expense projections for the project property's operation, must determine that projected net earnings can service all debt, properly maintain the project property, and protect the Program's interest against risks of loss, including the industry's cyclical economics.

(f) *Working capital*. The Program must determine that a project has sufficient initial working capital to achieve net earnings projections, fund all foreseeable contingencies, and protect the Program's interest in the project. In making its determination, the Program will use a conservative assessment of an applicant's financial condition, and at the Program's discretion, some portion of projected working capital needs may be met by something other than current assets minus liabilities (*i.e.*, by a line or letter of credit, non-current assets readily capable of generating working capital, a guarantor with sufficient financial resources, etc.).

(g) *Audited financial statements*. Audited financial statements will ordinarily be required for any obligor with large or financially complex operations whose financial condition the Program believes cannot be otherwise assessed with reasonable certainty.

(h) *Consultant services*. Expert consulting services may be necessary to help the Program assess a project's economic, technical, or financial feasibility. The Program will notify the applicant if an expert is required. The Program will select and employ the necessary consultant, but require the applicant to reimburse the Program for any fees charged by the consultant. In the event that an application requires expert consulting services, the loan will not be closed until the applicant fully reimburses the Program. This cost may, at the Program's discretion, be included in the amount of the note. For a declined application, the Program may reimburse itself from the application fee as described in § 253.12, including any portion known as the commitment fee that could otherwise be refunded to the applicant.

(i) *Property inspections*. The Program may require adequate condition and

valuation inspection of all property as the basis for assessing the property's worth and suitability for lending. The Program may also require these at specified periods during the life of the loan. These must be conducted by competent and impartial inspectors acceptable to the Program. Inspection cost will be at an applicant's expense. Those occurring before application approval may be included in actual cost, as actual cost is described in § 253.16.

(j) *First priority*. The Program shall have first position lien priority on all primary project property pledged as collateral (or adequate substitute collateral), unless the Program, at the request of the applicant, expressly waives this requirement in writing.

(k) *No additional liens*. All primary project property pledged as collateral, including any adequate substitute collateral, shall be free of additional liens, unless the Program, at the request of the applicant, expressly waives this requirement in writing.

(l) *General FFP credit standards apply*. Unless explicitly stated otherwise in these rules, all Fisheries Finance Program direct lending is subject to the above general credit standards and requirements found in §§ 253.12–253.30. The Program may adjust collateral, guarantee and other requirements to reflect individual credit risks.

(m) *Adverse legal proceedings*. The Program, at its own discretion, may decline or hold in abeyance any loan approval or disbursement(s) to any applicant found to have outstanding lawsuits, citations, hearings, liabilities, appeals, sanctions or other pending actions whose negative outcome could significantly impact, in the opinion of the Program, the financial circumstances of the applicant.

#### **§ 253.12 Credit application.**

(a) *Applicant*.

(1) An applicant must be a U.S. citizen and be eligible to document a vessel in the coastwise trade; and

(2) Only the legal title holder of project property, or its parent company (or the lessee of an appropriate long-term lease) may apply for a loan; and

(3) An applicant and the majority of its principals must generally have the ability, experience, resources, character, reputation, and other qualifications the Program deems necessary for successfully operating, utilizing, or carrying out the project and protecting the Program's interest; and

(4) Applicants should apply to the appropriate NMFS Regional Financial Services Branch to be considered.

(b) *Application fee.* An application fee of 0.5 percent of the dollar amount of an application is due when the application is formally accepted. Upon submission, 50 percent of the application fee, known as the "filing fee," is non-refundable; the remainder, known as the "commitment fee," may be refunded if the Program declines an application or an applicant withdraws its application before the Program issues an AIP letter, as described in § 253.13(e). The Program will not issue an AIP letter if any of the application fee remains unpaid. No portion of the application fee shall be refunded once the Program issues an AIP letter.

(c) *False statement.* A false statement on an application is grounds for denial or termination of funds, grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001 and an event of a security default.

#### § 253.13 Initial investigation and approval.

(a) The Program shall undertake a due diligence investigation of every application it receives to determine if, in the Program's sole judgment, the application is both:

- (1) Eligible for a loan because it meets applicable loan requirements; and
- (2) Qualified for a loan because the project is deemed an acceptable credit risk.

(b) The Program will approve eligible and qualified applicants by evaluating the information obtained during the application and investigation process.

(c) Among other investigations, applicants may be subject to a background check, fisheries violations check and credit review. Background checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's honesty or financial integrity.

(d) The Program, at its own discretion, may decline or delay approval of any loans or disbursements to any applicant found to have outstanding citations, notices of violations, or other pending legal actions or unresolved claims.

(e) The Program may place any terms and conditions on such approvals that the Program, in its sole discretion, deems necessary and appropriate.

(f) *Credit decision.*

(1) The Program shall issue an AIP letter to approved applicants, which shall describe the terms and conditions of the loan, including (but not limited to) loan amounts, maturities, additional collateral, repayment sources or guarantees. Such terms and conditions

are at the Program's sole discretion and shall also be incorporated in security documents that the Program prepares. An applicant's non-acceptance of any terms and conditions may result in an applicant's disqualification.

(2) Any application the Program deems ineligible or unqualified will be declined.

#### § 253.14 Loan documents.

(a) *U.S. Note.*

(1) The U.S. Note will be in the form the Program prescribes.

(2) The U.S. Note evidences the obligor's indebtedness to the United States.

(i) For financing approved after October 11, 1996, the U.S. Note evidences the obligor's actual indebtedness to the U.S.; and

(ii) For financing originating before October 11, 1996, that continues to be associated with a Guaranteed Note, the U.S. Note shall evidence the obligor's actual indebtedness to the U.S. upon the Program's payment of any or all of the sums due under the Guaranteed Note or otherwise disbursed on the obligor's behalf.

(iii) The U.S. Note will, among other things, contain provisions to add to its principal balance all amounts the Program advances or incurs, including additional interest charges and costs incurred to protect its interest or accommodate the obligor.

(3) The U.S. Note shall be assignable by the Program, at its sole discretion.

(b) *Security documents.*

(1) Each security document will be in the form the Program prescribes.

(2) The Program will, at a minimum, require the pledge of adequate collateral, generally in the form of a security interest or mortgage against all property associated with a project or security as otherwise required by the Program.

(3) The Program will require such other security as it deems necessary and appropriate, given the circumstances of each obligor and the project.

(4) The security documents will, among other things, contain provisions to secure the repayment of all additional amounts the Program advances or incurs to protect its interest or accommodate the obligor, including additional interest charges and fees.

#### § 253.15 Recourse against parties.

(a) *Form.* Recourse by borrowers or guarantors may be by a repayment guarantee, irrevocable letter of credit, additional tangible or intangible collateral, or other form acceptable to the Program.

(b) *Principals accountable.* The principal parties in interest, who

ultimately stand most to benefit from the project, will ordinarily be held financially accountable for the project's performance. The Program may require recourse against:

(1) All major shareholders of a closely-held corporate obligor;

(2) The parent corporation of a subsidiary corporate obligor;

(3) The related business entities of the obligor if the Program determines that the obligor lacks substantial pledged assets other than the project property or is otherwise lacking in any credit factor required to approve the application;

(4) Any or all major limited partners;

(5) Non-obligor spouses of applicants or obligors in community property states; and/or

(6) Against any others it deems necessary to protect its interest.

(c) *Recourse against parties.* Should the Program determine that a secondary means of repayment from other sources is necessary (including the net worth of parties other than the obligor), the Program may require secured or unsecured recourse against any such secondary repayment sources.

(d) *Recourse unavailable.* Where appropriate recourse is unavailable, the conservatively projected net liquidating value of the obligor's assets (as such assets are pledged to the Program) must, in the Program's credit judgment, substantially exceed all projected Program exposure or other risks of loss.

#### § 253.16 Actual cost.

Actual cost shall be determined as follows:

(a) The actual cost of a vessel shall be the sum of:

(1) The total cost of the project depreciated on a straight-line basis, over the project property's useful life, using a 10-percent salvage value; and

(2) The current market value of appurtenant limited access privileges or transferable limited access privileges vested in the name of the obligor, the subject vessel or their owners provided that such privileges are utilized by or aboard the subject vessel and will be pledged as collateral for the subject FFP financing.

(b) The actual cost of a facility shall be the sum of:

(1) The total cost of the project, not including land, depreciated on a straightline basis over the Project Property's useful life, using a 10-percent salvage value;

(2) The current market value of the land that will be pledged as collateral for the subject FFP financing, provided that such land is utilized by the facility; and

(3) The net present value of the payments due under a long term lease

of land or marine use rights, provided that they meet the following requirements:

(i) The project property must be located at such leased space or directly use such marine rights;

(ii) Such lease or marine use right must have a duration the Program deems sufficient; and

(iii) The lease or marine use right must be assigned to the Program such that the Program may foreclose and transfer such lease to another party.

(c) The actual cost of a transferable limited access privilege shall be determined as follows:

(1) For financing the purchase of limited access privileges, the actual cost shall be the purchase cost.

(2) For refinancing limited access privileges, the actual cost shall be the current market value.

(d) The actual cost of any Project that includes any combination of items described in subsections (a), (b) or (c) of this section shall be the sum of such calculations.

#### **§ 253.17 Insurance.**

(a) All insurable collateral property and other risks shall be continuously insured so long as any balance of principal or interest on a Program loan or guarantee remains outstanding.

(b) Insurers must be acceptable to the Program.

(c) Insurance must be in such forms and amounts and against such risks the Program deems necessary to protect the United States' interest.

(d) Insurance must be endorsed to include the requirements the Program deems necessary and appropriate.

(1) Normally and as appropriate, the Program will be named as an additional insured, mortgagee, or loss payee, for the amount of its interest; any waiver of this requirement must be in writing;

(2) Cancellation will require adequate advance written notice;

(3) The Program will be adequately protected against other insureds' breaches of policy warranties, negligence, omission, etc., in the case of marine insurance, vessel seaworthiness will be required;

(4) The insured must provide coverage for any other risk or casualty the Program may require.

#### **§ 253.18 Closing.**

(a) *Approval in principle letters.* Every closing will be in strict accordance with a final approval in principle letter.

(b) *Contracts.* Promissory notes, security documents, and any other documents the Program may require will be on standard Program forms that may not be altered without Program

written approval. The Program will ordinarily prepare all contracts, except certain pledges involving real property or other matters involving local law, which will be prepared by each obligor's attorney at the direction and approval of the Program.

(c) *Additional requirements.* At its discretion the Program may require services from applicant's attorneys, other contractors or agents. Real property services required from an applicant's attorney or agent may include, but are not limited to: Title search, title insurance, mortgage and other document preparation, document execution and recording, escrow and disbursement, and legal opinions and other assurances. The Program will notify the applicant in advance if any such services are required of the applicant's attorneys, contractors or other agents. Applicants are responsible for all attorney's fees, as well as those of any other private contractor. Attorneys and other contractors must be satisfactory to the Program.

(d) *Closing schedules.* The Program will not be liable for adverse interest-rate fluctuations, loss of commitments, or other consequences of an inability by any of the parties to meet the closing schedule.

#### **§ 253.19 Dual-use CCF.**

The Program may require the pledge of a CCF account or annual deposits of some portion of the project property's net income into a dual-use CCF. A dual-use CCF provides the normal CCF tax-deferral benefits, but also gives the Program control of CCF withdrawals, recourse against CCF deposits, ensures an emergency refurbishing reserve (tax-deferred) for project property, and provides additional collateral.

#### **§ 253.20 Fees.**

(a) *Application fee.* See §§ 253.10 and 253.12(b), above.

(b) *Guarantee fee.* For existing Guaranteed Loans, an annual guarantee fee will be due in advance and will be based on the guaranteed note's repayment provisions for the prospective year. The first annual guarantee fee was due at guarantee closing. Each subsequent guarantee fee is due and payable on the guarantee closing's anniversary date. Each is fully earned when due, and shall not subsequently be refunded for any reason.

(c) *Refinancing or assumption fee.* The Program will assess a fee of one quarter of one (1) percent of the note to be refinanced or assumed. This fee is due upon application for refinancing or assumption of a guaranteed or direct

loan. Upon submission, the fee shall be non-refundable. The Program may waive a refinancing or assumption fee's payment when the refinancing or assumption's primary purpose will benefit the United States.

(d) *Where payable.* Fees are payable by check to "U.S. Department of Commerce/NOAA." Other than those collected at application or closing, fees are payable by mailing checks to the "U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service," to such address as the Program may designate. To ensure proper crediting, each check should include the official case number the Program assigns.

#### **§ 253.21 Demand by Guaranteed Noteholder and payment.**

Every demand by the guaranteed noteholder must be delivered in writing to the Program and must include the noteholder's certified record of the date and amount of each payment made on the guaranteed note and the manner of its application. The only period during which a guaranteed noteholder can make demand for a payment default begins on the thirty-first day of the payment default and continues through the ninetieth day of a payment default. The noteholder must possess evidence of the demand's timely delivery.

#### **§ 253.22 Program operating guidelines.**

The Program may issue policy and administrative guidelines, as the need arises.

#### **§ 253.23 Default and liquidation.**

Upon default under the terms of any note, guarantee, security agreement, mortgage, or other security document, the Program shall take remedial actions including but not limited to, where appropriate, retaking or arrest of collateral, foreclosure, restructuring, debarment, referral for debt collection, or liquidation as it deems best able to protect the U.S. Government's interest.

#### **§ 253.24 Enforcement violations and adverse actions.**

(a) *Compliance with applicable law.* All applicants and Program participants shall comply with applicable law.

(b) *Applicant disqualification.*

(1) Any issuance of any citation or Notice of Violation and Assessment by NMFS enforcement or other enforcement authority may constitute grounds for the Program to:

- (1) Delay application or approval processing;
- (2) Delay loan closing;
- (3) Delay disbursement of loan proceeds;

(4) Disqualify an applicant or obligor; or

(5) Declare default.

(2) The Program will not approve loans or disburse funds to any applicant found to have an outstanding, final and unappealable fisheries fine or other unresolved penalty until either: (i) Such fine is paid or penalty has been resolved; or (ii) the applicant enters into an agreement to pay the penalty and makes all payments or installments as they are due. Failure to pay or resolve any such fine or penalty in a reasonable period of time will result in the applicant's disqualification.

(c) *Foreclosure in addition to other penalties.* In the event that a person with an outstanding balance on a Program loan or guarantee violates any ownership, lease, use, or other provisions of applicable law, such person may be subject to foreclosure of property, in addition to any fines, sanctions, or other penalties.

#### **§ 253.25 Other administrative requirements.**

(a) *Debt Collection Act.* In accordance with the provisions of the Debt Collection Improvement Act of 1996, a person may not obtain any Federal financial assistance in the form of a loan (other than a disaster loan) or loan guarantee if the person has an outstanding debt (other than a debt under the Internal Revenue Code of 1986) with any Federal agency which is in a delinquent status, as determined under standards prescribed by the Secretary of the Treasury.

(b) *Certifications.* Applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," or its equivalent or successor form, if any.

(c) *Taxpayer identification.* An applicant classified for tax purposes as an individual, limited liability company, partnership, proprietorship, corporation, or legal entity is required to submit along with the application a taxpayer identification number (TIN) (social security number, employer identification number as applicable, or registered foreign organization number). Recipients who either fail to provide their TIN or provide an incorrect TIN may have application processing or funding suspended until the requirement is met.

(d) *Inspector General inquiry.* An audit of a Program loan may be conducted at any time. Auditors, selected at the discretion of the Program or other agency of the United States, shall have access to any and all books,

documents, papers and records of the obligor or any other party to a financing that the auditor(s) deem(s) pertinent, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium.

(e) *Paperwork Reduction Act.* The application requirements contained in these rules have been approved under OMB control number 0648-0012. The applications for the halibut/sablefish QS crew member eligibility certificate have been approved under OMB control number 0648-0272. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

#### **§ 253.26 Traditional loans.**

(a) *Eligible projects.* Financing or refinancing up to 80 percent of a project's actual cost shall be available to any citizen who is determined to be eligible and qualified under the Act and these rules, except—

(1) The Program will not finance the cost of new vessel construction.

(2) The Program will not finance a vessel refurbishing project that materially increases an existing vessel's harvesting capacity.

(b) *Financing or refinancing.*

(1) Projects, other than those specified in paragraphs (a)(1) and (a)(2) of this section, may be financed, as well as refinanced.

(2) Notwithstanding paragraph (a)(1) of this section, the Program may refinance the construction cost of a vessel whose construction cost has already been financed (or otherwise paid) prior to the submission of a loan application.

(3) Notwithstanding paragraph (a)(2) of this section, the Program may refinance the refurbishing cost of a vessel whose initial refurbishing cost has already been financed (or otherwise paid) prior to the submission of a loan application.

(4) The Program may finance or refinance the purchase or refurbishment of any vessel or facility for which the Secretary has

(i) Accelerated and/or paid outstanding debts or obligations,

(ii) Acquired, or

(iii) Sold at foreclosure.

(c) *Existing vessels and facilities.* The Program may finance the purchase of an existing vessel or existing fishery facility if such vessel or facility will be refurbished in the United States and will be used in the fishing industry.

(d) *Fisheries modernization.*

Notwithstanding any of this part, the Program may finance or refinance any

(1) Activities that assist in the transition to reduced fishing capacity; or  
(2) Technologies or upgrades designed to

(i) Improve collection and reporting of fishery-dependent data,

(ii) Reduce bycatch,

(iii) Improve selectivity

(iv) Reduce adverse impacts of fishing gear, or

(v) To improve safety.

(e) *Guaranty transition.* Upon application by the obligor, any guaranteed loans originated prior to October 11, 1996, may be refinanced as direct loans, regardless of the original purpose of the guaranteed loan.

(f) *Maturity.* Maturity may not exceed 25 years, but shall not exceed the project's property useful life. The Program, at its sole discretion, may set a shorter maturity period.

(g) *Credit standards.* Traditional loans are subject to all Fisheries Finance Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted in accordance with the Program's assessment of individual credit risks.

#### **§ 253.27 IFQ financing.**

The Program may finance or refinance the project cost of purchasing, including the reimbursement of obligors for expenditures previously made for purchasing, individual fishing quotas in accordance with the applicable sections of the Magnuson-Stevens Fishery Conservation and Management Act or any other statute.

#### **§ 253.28 Halibut sablefish IFQ loans.**

(a) *Specific definitions.* For the purposes of this section, the following definitions apply:

(1) *Entry-level fishermen* means fishermen who do not own any IFQ in the year they apply for a loan.

(2) *Fishermen who fish from small vessels* means fishermen wishing to purchase IFQ for use on Category B, Category C, or Category D vessels, but do not own, in whole or in part, any Category A or Category B vessels, as such vessels are defined in 50 CFR 679.40(a)(5) of this title.

(3) *Halibut sablefish quota share* means a halibut or sablefish permit, the face amount of which is used as the basis for the annual calculation of a person's halibut or sablefish IFQ, also abbreviated as "HSQS" or "halibut/sablefish QS."

(4) *Halibut/Sablefish IFQ* means the annual catch limit of halibut or sablefish that may be harvested by a person who

is lawfully allocated halibut or sablefish quota share, a harvest privilege for a specific portion of the total allowable catch of halibut or sablefish.

(b) *Entry level fishermen.* The Program may finance up to 80 percent of the cost of purchasing HSQS by an entry level fisherman who:

(1) Does not own any halibut/sablefish QS during the origination year;

(2) Applies for a loan to purchase a quantity of halibut/sablefish QS that is not greater than the equivalent of 8,000 lb. (3,628.7 kg) of IFQ during the origination year;

(3) Possesses the appropriate transfer eligibility documentation duly issued by RAM for HSQS;

(4) Intends to be present aboard the vessel, as may be required by applicable regulations; and

(5) Meets all other Program eligibility, qualification, lending and credit requirements.

(c) *Fishermen fishing from small vessels.* The Program may finance up to 80 percent of the cost of purchasing HSQS by a fisherman who fishes from a small vessel provided that any such fisherman shall:

(1) Apply for a loan to purchase halibut or sablefish QS for use on vessel Categories B, C, or D, as defined under 50 CFR 679.40(a)(5) of this title;

(2) Does not own an aggregate quantity of halibut/sablefish QS (including the loan QS) is not more than the equivalent of 50,000 lb. (22,679.6 kg) of IFQ during the origination year;

(3) Does not own, in whole or in part, directly or indirectly (including through stock or other ownership interest) any vessel of the type that would have been assigned Category A or Category B HSQS under 50 CFR 679.40(a)(5);

(4) Possesses the appropriate transfer eligibility documentation duly issued by the RAM for HSQS;

(5) Intends to be present aboard the vessel, as may be required by applicable regulations, as IFQ associated with halibut/sablefish QS financed by the loan is harvested; and

(6) Shall meet all other Program eligibility, qualification, lending and credit requirements.

(d) *Refinancing.*

(1) The Program may refinance any existing debts associated with HSQS an applicant currently holds, provided that—

(i) The HSQS being refinanced would have been eligible for Program financing at the time the applicant purchased it, and

(ii) The applicant meets the Program's applicable lending requirements.

(2) The refinancing is in an amount up to 80 percent of HSQS' current

market value, and subject to the limitation that the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing HSQS debt being refinanced.

(3) In the event that the current market value of HSQS and principal loan balance do not meet the 80 percent requirement in paragraph (d)(2) of this section, applicants seeking refinancing may be required to provide additional down payment.

(e) *Maturity.* Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(f) *Repayment.* Repayment will be by equal quarterly installments of principal and interest.

(g) *Security.* Although quota share(s) will be the primary collateral for a HSQS loan, the Program may require additional security pledges to maintain the priority of the Program's security interest. The Program, at its option, may also require all parties with significant ownership interests to personally guarantee loan repayment for any applicant that is a corporation, partnership, or other entity. Subject to the Program's credit risk determination, some projects may require additional security, collateral, or credit enhancement.

(h) *Crew member transfer eligibility certification.* The Program will accept RAM certification as proof that applicants are eligible to hold HSQS. The application of any person determined by RAM to be unable to receive such certification will be declined. Applicants who fail to obtain appropriate transfer eligibility certification within 45 working days of the date of application may lose their processing priority.

(i) *Program credit standards.* HSQS loans, regardless of purpose, are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

#### **§ 253.29 CDQ loans.**

(a) *FFP actions.* The Program may finance or refinance up to 80 percent of a project's actual cost.

(b) *Eligible projects.* Eligible projects include the purchase of all or part of ownership interests in fishing or processing vessels, shoreside fish processing facilities, permits, quota, and cooperative rights in any of the Bering Sea and Aleutian Islands fisheries.

(c) *Eligible entities.* The following communities, in accordance with applicable law and regulations are

eligible to participate in the loan program.

(1) The villages of Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George through the Aleutian Pribilof Island Community Development Association.

(2) The villages of Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk, Ekwok, King Salmon/Savonoski, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik through the Bristol Bay Economic Development Corporation.

(3) The village of Saint Paul through the Central Bering Sea Fishermen's Association.

(4) The villages of Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, and Tununak through the Coastal Villages Region Fund.

(5) The villages of Brevig Mission, Diomedes, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, and White Mountain through the Norton Sound Economic Development Corporation.

(6) The villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua through the Yukon Delta Fisheries Development Association.

(7) Any new groups established by applicable law.

(d) *Loan terms.*

(1) CDQ loans may have terms up to thirty years, but shall not exceed the project's property useful life. The Program, at its sole discretion, may set a shorter maturity period.

(2) CDQ loans are subject to all Fisheries Finance Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

#### **§ 253.30 Crab IFQ loans.**

(a) *Specific definitions.* For the purposes of this section, the following definitions apply:

(1) *Crab* means those crab species managed under the Fishery Management Plan for Bering Sea/Aleutian Island (BSAI) King and Tanner Crab.

(2) *Crab FMP* means the Fishery Management Plan for BSAI King and Tanner Crab.

(3) *Crab quota share* means a BSAI King and Tanner Crab permit, the base amount of which is used as a basis for



the annual calculation of a person's Crab IFQ, also abbreviated as "Crab QS."

(b) *Crab captains or crewmen.* The Program may finance up to 80 percent of the cost of purchasing Crab QS by a citizen:

(1) Who is or was:

(i) A captain of a crab fishing vessel, or

(ii) A crew member of a crab fishing vessel;

(2) Who has been issued the appropriate documentation of eligibility by RAM;

(3) Whose aggregate holdings of QS will not exceed the aggregate limit on Crab QS holdings that may be in effect in the Crab FMP implementing regulations or applicable statutes in effect at the time of loan closing; and will not hold either individually or collectively, based on the initial QS pool, as published in 50 CFR part 680, Table 8;

(4) Who, at the time of initial application, meets all other applicable eligibility requirements to fish for crab or hold Crab QS contained in the Crab FMP implementing regulations or applicable statutes in effect at the time of loan closing.

(c) *Refinancing.*

(1) The Program may refinance any existing debts associated with Crab QS that an applicant currently holds, provided that:

(i) The Crab QS being refinanced would have been eligible for Program financing at the time the applicant purchased it;

(ii) The applicant meets the Program's applicable lending requirements; and

(iii) The applicant would meet the requirements found in the Crab FMP implementing regulations at the time any such refinancing loan would close.

(2) The Program may refinance an amount up to 80 percent of Crab QS's current market value, subject to the limitation that the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing Crab QS debt being refinanced.

(3) In the event that the current market value of Crab QS and current principal balance do not meet the 80 percent requirement in paragraph (c)(2) of this section, applicants seeking refinancing may be required to provide additional down payment.

(d) *Maturity.* Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(e) *Repayment.* Repayment schedules will be set by the loan documents.

(f) *Security.* Although the quota share will be the primary collateral for a Crab

QS loan, the Program may require additional security pledges to maintain the priority of the Program's security interest. The Program, at its option, may also require all parties with significant ownership interests to personally guarantee loan repayment for any applicant that is a corporation, partnership, or other entity. Subject to the Program's credit risk determination, some projects may require additional security, collateral, or credit enhancement.

(g) *Crew member transfer eligibility certification.* The Program will accept RAM transfer eligibility certification as proof that applicants are eligible to hold Crab QS. The application of any person determined by RAM to be unable to receive such certification will be declined. Applicants who fail to obtain appropriate transfer eligibility certification within 45 working days of the date of application may lose their processing priority.

(h) *Crab Quota Share Ownership Limitation.* A program obligor must comply with all applicable maximum amounts, as may be established by NMFS regulations, policy or North Pacific Fishery Management Council action.

(i) *Program credit standards.* Crab QS loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

### Subpart C—Interjurisdictional Fisheries

#### § 253.50 Definitions.

The terms used in this subpart have the following meanings:

*Act* means the Interjurisdictional Fisheries Act of 1986, Public Law 99–659 (Title III).

*Adopt* means to implement an interstate fishery management plan by State action or regulation.

*Commercial fishery failure* means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

(1) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise; or

(2) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

*Enforcement agreement* means a written agreement, signed and dated, between a state agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and state laws pertaining to the

protection of interjurisdictional fishery resources.

*Federal fishery management plan* means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

*Fisheries management* means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

*Fishery resource* means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life, including habitat, other than marine mammals and birds.

*Interjurisdictional fishery resource* means:

(1) A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more states and the U.S. Exclusive Economic Zone; or

(2) A fishery resource for which an interstate or a Federal fishery management plan exists; or

(3) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

*Interstate Commission* means a commission or other administrative body established by an interstate compact.

*Interstate compact* means a compact that has been entered into by two or more states, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

*Interstate Fisheries Research Program* means research conducted by two or more state agencies under a formal interstate agreement.

*Interstate fishery management plan* means a plan for managing a fishery resource developed and adopted by the member states of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the States to conserve and manage the fishery resource.

*Landed* means the first point of offloading fishery resources.

*NMFS Regional Director* means the Director of any one of the five National Marine Fisheries Service regions.

*Project* means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

*Research* means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

*Secretary* means the Secretary of Commerce or his/her designee.

*State* means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

*State agency* means any department, agency, commission, or official of a state authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

*Value* means the monetary worth of fishery resources used in developing the

apportionment formula, which is equal to the price paid at the first point of landing.

*Volume* means the weight of the fishery resource as landed, at the first point of landing.

#### § 253.51 Apportionment.

(a) *Apportionment formula.* The amount of funds apportioned to each state is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such state during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally

weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and landed within all of the states during those calendar years.

(1) The equally weighted average value is determined by the following formula:

$$\frac{\text{Volume of X State}}{\text{Volume of all States}} = \text{A percent}$$

$$\frac{\text{Value of X State}}{\text{Value of all States}} = \text{B percent}$$

$$\frac{[A\% + B\%]}{2} = \text{State percentage used to determine state's share of the total available funds}$$

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

(i) Determine each state's share according to the apportionment formula.

(ii) Certify the funds to the respective NMFS Regional Director.

(iii) Instruct NMFS Regional Directors to promptly notify states of funds' availability.

(b) No state, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of 1 percent or higher may receive an apportionment for any fiscal year that is less than 1 percent of the total amount of funds available for that fiscal year.

(c) If a State's ratio under the apportionment formula in paragraph (b) of this section is less than one-third of 1 percent, that state may receive funding if the state:

(1) Is signatory to an interstate fishery compact;

(2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior for a fishery that is managed under an interstate fishery management plan;

(3) Borders one or more of the Great Lakes;

(4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research Program; or

(5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any state that has a ratio of less than one-third of 1 percent and meets any of the requirements set forth in paragraphs (c)(1) through (5) of this section may receive an apportionment

for any fiscal year that is not less than 0.5 percent of the total amount of funds available for apportionment for such fiscal year.

(e) No state may receive an apportionment under this section for any fiscal year that is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) *Unused apportionments.* Any part of an apportionment for any fiscal year to any state:

(1) That is not obligated during that year;

(2) With respect to which the state notifies the Secretary that it does not wish to receive that part; or

(3) That is returned to the Secretary by the state, may not be considered to be appropriated to that state and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a state referred to in this section is irrevocable.

#### § 253.52 State projects.

(a) *General—*

(1) *Designation of state agency.* The Governor of each state shall notify the Secretary of which agency of the state government is authorized under its laws to regulate commercial fisheries and is, therefore, designated receive financial assistance awards. An official of such agency shall certify which official(s) is authorized in accordance with state law to commit the state to participation under the Act, to sign project documents, and to receive payments.

(2) States that choose to submit proposals in any fiscal year must so notify the NMFS Regional Director

before the end of the third quarter of that fiscal year.

(3) Any state may, through its state agency, submit to the NMFS Regional Director a completed NOAA Grants and Cooperative Agreement Application Package with its proposal for a project, which may be multiyear. Proposals must describe the full scope of work, specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate state(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any state, as provided in paragraph (c) of this section.

(b) *Evaluation of projects.* The Secretary, before approving any proposal for a project, will evaluate the proposal as to its applicability, in accordance with 16 U.S.C. 4104(a)(2).

(c) *State matching requirements.* The Federal share of the costs of any project conducted under this subpart, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The state has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The state has adopted fishery regulations that the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies, in which case the Federal share cannot

exceed 90 percent of the total estimated cost of the project.

(d) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, he or she will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval.

(e) *Restrictions.*

(1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the state as a part of its contribution to the total cost of the project.

(2) The expenditure of funds under this subpart may be applied only to projects for which a proposal has been evaluated under paragraph (b) of this section and approved by the Secretary, except that up to \$25,000 each fiscal year may be awarded to a state out of the state's regular apportionment to carry out an "enforcement agreement." An enforcement agreement does not require state matching funds.

(f) *Prosecution of work.* All work must be performed in accordance with applicable state laws or regulations,

except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.

#### § 263.53 Other funds.

(a) *Funds for disaster assistance.*

(1) The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he or she has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the states' amount under the apportionment formula in § 253.601(a) will qualify for funding under this section. The Federal share of the cost of any activity conducted under the disaster provision of the Act shall be limited to 75 percent of the total cost.

(2) In addition, pursuant to section 308(d) of the Act, the Secretary is authorized to award grants to persons engaged in commercial fisheries, for uninsured losses determined by the

Secretary to have been suffered as a direct result of a fishery resource disaster. Funds may be distributed by the Secretary only after notice and opportunity for public comment of the appropriate limitations, terms, and conditions for awarding assistance under this section. Assistance provided under this section is limited to 75 percent of an uninsured loss to the extent that such losses have not been compensated by other Federal or State Programs.

(b) *Funds for interstate commissions.* Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions.

#### § 253.54 Administrative requirements.

Federal assistance awards made as a result of this Act are subject to all Federal laws, Executive Orders, Office of Management and Budget Circulars as incorporated by the award; Department of Commerce and NOAA regulations; policies and procedures applicable to Federal financial assistance awards; and terms and conditions of the awards.

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