

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Clarence G. Pautzke
Executive Director
DATE: June 1, 1998
SUBJECT: License Limitation Program (LLP)

ESTIMATED TIME
6 HOURS

ACTION REQUIRED

- (a) Review draft analysis of proposed amendments to the LLP.
- (b) Receive status report on general guidelines for vessel buyback programs.

BACKGROUND

(a) Proposed LLP Amendments

In February of this year the Council initiated several potential amendments to the LLP scheduled for year 2000 implementation. These proposed amendments are primarily geared towards further capacity reductions in the groundfish and crab fisheries, and include the following:

1. Prevent transfer of permits from vessels that never held a federal fishery permit during the LLP qualifying period and prohibit transfers of fishing histories and subsequent licenses as of February 7, 1998, (applies to all vessels, regardless of size).
2. Prohibit licenses and fishing histories earned by vessels employing non-trawl gear to be used on vessels employing trawl gear and licenses and fishing histories earned by vessels employing trawl gear to be used on non-trawl gear vessels (i.e., if a vessel never used trawl gear during the original qualification periods, that license could not be converted for using trawl gear, and vice-versa).
 - a. Grandfather rights only to persons who can demonstrate significant financial commitment to apply a non-trawl license or fishing history to a trawl operation (and the reverse) as of February 7, 1998, with the following suboptions:
 - (i) has made a landing with trawl gear (or the reverse, non-trawl) by February 7, 1998;
 - (ii) has made a significant investment in conversion of a vessel to deploy trawl (or the reverse, non-trawl) gear by February 7, 1998.
3. Rescind the CDQ vessel exemption portion of the LLP, with grandfather rights to any vessels currently built or operating in an existing CDP under this provision.

4. Clarify that catch history transfers would be recognized, except those occurring after June 17, 1995, and where the owner of the vessel at that time was unable to document a vessel under Chapter 121, Title 46, U.S. Code.
5. Initiate an amendment (possibly a trailing amendment) to the Crab LLP to include a recent participation clause, with the following options:
 - a. Crab landings in:
 - i. 1995
 - ii. 1996
 - iii. 1997
 - iv. through February 7, 1998
 - v. any combination of the above (any combination of those single or multiple years)
 - b. Analysis will consider:
 - i. all vessels
 - ii. vessels under 60 ft.
 - iii. vessels 60-125 ft.
 - iv. vessels over 125 ft.
- The recent participation requirement would apply to the general umbrella license only (i.e., if a vessel satisfies the recent participation criteria chosen, it would receive its original umbrella license and species/area endorsements under that umbrella — new species/area endorsements could not be ‘earned’ during the new qualification period).
- This amendment is not to impede or delay implementation of the LLP program.
- The amendment/regulations should be structured such that interim permits could be issued for the Crab LLP if these changes cannot be fully implemented when the LLP program takes effect, and structured such that permanent permits could then be issued without additional amendments to the plan.
- Council serves notice that the above dates for meeting performance standards are very firm. The Council may examine more recent participation than February 7, 1998, in making its final decision (such as date of final Council action), but cannot now foresee any extraordinary circumstances that would allow the cut-off dates to be advanced past those shown above.
6. Proposed amendment would allow limited processing for catcher vessels in the BSAI and GOA under the following options:

Option A: Allow processing of bycatch amounts of any groundfish, up to directed fishing standards.

Option B: Allow processing of any species, excluding pollock as a target species, of (a) up to 5 mt round weight per day for vessels <60'; and (b) up to 18 mt round weight per day for vessels >60'.

A draft analysis, completed primarily under contract to Northern Economics, Inc., was mailed to you on May 29. Marcus Hartley will present the findings of that analysis. A copy of the Executive Summary is under Item C-4(a)(1), and correspondence received is under Item C-4(a)(2). This issue is currently scheduled for a final decision at the October meeting in Seattle.

(b) Buyback Program Guidelines

Last October, after reviewing an initial business plan from the Crab Reduction and Buyback (CRAB) Group, the Council sent a letter to NMFS supporting a proposed vessel buyback program for the BSAI crab fisheries. Since that time several events have transpired which will impact development of the crab buyback program. The original business plan has now been revised to include an A and B license concept, under which non-transferable B licenses would be allocated to those vessels which have not made landings in recent crab fisheries (since 1995 for example). Vessels satisfying the recent landings period would be allocated A licenses. This aspect of the current crab buyback program is inconsistent with the Council's FMP (LLP program) for the crab fisheries. Under the Magnuson-Stevens Act, one of the primary requirements for a buyback program is consistency with the subject FMP.

A further consideration is that the Council has initiated an amendment to the LLP which would incorporate additional participation requirements for LLP eligibility in the BSAI crab fisheries (though nothing initiated by the Council incorporates an A/B license concept). Because this will not be decided until October 1998, it is unlikely that the specifics of the crab buyback business plan can be finalized until that time (until we know what the FMP is going to be, and how many vessels will in fact qualify, the buyback specifics and details of an industry referendum cannot be finalized). So, at some point after the October decision, the Council's LLP and the CRAB buyback plan specifics will have to be reconciled. Item C-4(b)(1) contains a letter sent from the Council to Gordon Blue of the CRAB Group this past month summarizing these issues, as well as other related correspondence. We have suggested that the October meeting in Seattle is the appropriate time and place for the Council to engage in more detailed discussions of the crab buyback program.

In the meantime, a set of generic guidelines for buyback program development has been in the works at NMFS and will be relevant to further development of any and all buyback programs around the country. An initial draft of the proposed rule is under Item C-4(b)(2). While the specifics of the crab vessel buyback plan may have to await the Council's October decision, it is likely that additional progress on their plan can be made once these guidelines are published. Though the proposed rule has not been published yet, the Council could submit preliminary comments.

Executive Summary

Summary of the Status Quo for Groundfish

Under the current groundfish license limitation program (LLP), a single type of groundfish license will be issued. The Groundfish LLP restricts access to groundfish fisheries in the Exclusive Economic Zone (EEZ) off the coast of Alaska; the LLP does not restrict access to waters of the State of Alaska. Area endorsements will be issued for the following management areas: Aleutian Islands (AI), Bering Sea (BS), Western Gulf (WG), Central Gulf and West Yakutat (CG+WY), and Southeast outside (SEO). The endorsements will be contained under one of the following General License areas: Gulf of Alaska (GOA), Bering Sea and Aleutian Islands (BSA), or both areas (GOA/BSA) and would not be severable.

Licenses will be issued to the owners of record of the qualified vessels as of June 17, 1995. The owners on June 17, 1995, must have been persons eligible to document a fishing vessel under Chapter 121, Title 46, of the United States Code (U.S.C.). In cases in which the vessel was sold on or before June 17, 1995, and the disposition of the fishing rights was not mentioned in the contract, the catch history would go with the vessel to the new owner. If the transfer occurred after June 17, 1995, the fishing rights would stay with the seller of the vessel unless the contract specified otherwise.

Licenses and endorsements will be designated as Catcher Vessel (CV) or Catcher Processor (CP), and with one of three vessel length designations. In the SEO, an additional designation allowing the use of legal fixed gear only will be assigned, regardless of the gear used to qualify for the endorsement. CP or CV designations will be determined based on the activities of the vessel during January 1, 1994, through June 17, 1995, or the most recent year of participation during the Endorsement Qualifying Period (EQP). Vessel length classes will be based on the LOA of the vessel as of June 17, 1995, as long as the vessel conforms with the provisions of the "20% upgrade" and "Maximum LOA" (MLOA) rules defined in the Groundfish and Crab Moratorium (GCM).

A total of 2,435 vessels are projected to qualify for licenses under the Groundfish LLP. Of these, 1793 listed Alaska as their state of residence and 642 listed other states in the most recent vessel documentation data from the Commercial Fishery Entry Commission (CFEC).

Three full years have passed since the Council approved the proposed rule for the Groundfish LLP. Since that time the number of vessels participating in the fisheries has remained relatively stable. There were 1,701 vessels with documented landings in 1995. The total number of vessels remains relatively constant over the next 3 years, dropping by 100 to 1,599 in 1996 and increasing to 1,689 in 1997. There were 486 vessels that participated in 1998 (through February 7). Although the number of participants in almost all vessel classes appears relatively stable over the years, for some classes it is apparent that there is considerable movement in and out the fishery. For many of the vessel classes there is a downward trend in the number of participating qualifiers. This downward trend is not wholly unexpected. The same general phenomenon was documented in the analyses examining the Sablefish and Halibut Individual Fishing Quota (IFQ) program [North Pacific Fishery Management Council (NPFMC), 1991] and the Groundfish and Crab Moratorium [NPFMC, 1992].

Summary of the Status Quo for Crab

Provisions of the Crab LLP are generally similar to the provisions of the Groundfish LLP. The major difference between the two is the type of endorsements that will be issued. In the Crab LLP endorsements will be issued for crab fisheries on a species and area basis.

The Crab License Program restricts access to the Bering Sea and Aleutian Islands King and Tanner Crab Fisheries in the EEZ. The program does not restrict access within waters of the State of Alaska, nor does

it affect crab fisheries that are not managed by the BSAI King and Tanner Crab Fisheries Management Plan (FMP).

For General Licenses, the base qualifying period (BQP) is January 1, 1988 through June 27, 1992, with the additional provision that any vessel that crossed over to crab from groundfish (by December 31, 1994) under the moratorium would also qualify for a General License. Vessels meeting these requirements would receive endorsements based on landings in the January 1, 1992, through December 31, 1994, EQP except Bristol Bay red king crab which will use January 1, 1991, through December 31, 1994, as the EQP. Vessels in the Norton Sound king crab fisheries, and Pribilof king crab fisheries will be exempt from the requirements of the BQP, but must have made landings between January 1, 1993, and December 31, 1994, to qualify for a general license and endorsement.

The crab BQP selected by the Council is the same as the BQP chosen for groundfish. This qualification period was selected for both fisheries because it reflects the moratorium years and the Council's long-published control date. A 4-month extension of the moratorium was included in the Council's BQP to match the cutoff date announced early in its Comprehensive Rationalization deliberations. The three most recent years a fishery was open were used for the EQP. Use of the most recent years for endorsement qualification was selected because those years reflect a fishery's current fleet and participants.

Under the original qualifying criteria, 365 vessels are projected to qualify for crab licenses in areas excluding Norton Sound. Of the total projected qualifiers, 125 vessels are currently owned by Alaskans and 240 are currently owned by residents of other states.

Participation declined from 349 vessels in 1995 to 299 in 1996 and 282 in 1997. Through February 7, 1998, 219 vessels had participated. The lower number in 1998 probably reflects the fact that only a few weeks of the fishing year have passed. Throughout the recent period a total of 410 unique vessels have participated: 19 vessels as catcher processors and 391 as catcher vessels.

The biggest decline in any given class appears in the Seine Combination CV class. The number of participants reported in the data dropped from 70 in 1995 to 7 in 1997. The other vessel classes varied within a much narrower range. The number of Alaskan residents participating in the crab fisheries has declined throughout the period, while the number of participating residents of other states fell in 1996 and then rose in 1997.

Summary of Proposed Action 1: Restrict Transfers of State Water Vessels

This action would disallow transfers from vessels that qualified for the groundfish LLP, but had not obtained a federal fishing permit (FFP) at any point during either the general or endorsement qualifying period. Under the proposed action, persons who had purchased fishing histories prior to February 7, 1998, would be allowed to receive any licenses for which that fishing history qualified, but any such licenses would not be transferable to other vessels.

The following impacts would be expected if the proposed action is approved:

- (1) The 507 qualifying vessels in question will not be able to sell their licenses and gain money if they choose to forego fishing in federal waters. Most of this financial impact will be felt in Alaska.
- (2) The number of potential buyers for licenses in the affected vessels classes is unknown. However the potential number of licenses available for sale in the five vessel classes primarily involved would decrease by 502 to 1,372. As a result, owners of qualifying vessels, that had obtained federal permits, could receive higher prices for their licenses. Most of these potential sellers (1,166) are also from Alaska.
- (3) Since any potential buyer could fish in state waters without a license, the only impact on total catch would occur when a potential buyer could not find a license to purchase among those qualifiers that

had obtained FFPs. Given that at most, 880 of the 1,874 qualifying vessels in the affected classes had landings in any given year, it does not appear very likely that persons wishing to buy licenses will be unable to find a seller. Therefore, it does not appear likely that many will have to forego fishing in federal waters; nor does it appear very likely that overall catch rates would be greatly impacted.

Relative to the status quo, Proposed Action 1 will probably have some minimally negative impacts and some minimally positive impacts. The only impacts that appear relatively certain to occur are the negative financial consequences for those qualifiers who will not be able to transfer their licenses, and the complications the action may bring to the implementation and administrative process. Impacts on catch and catch capacity, have the potential to be minimally positive if higher license prices result because of the constrained supply. Given that 1995 mean catch levels of vessels that had obtained FFPs were higher than those that had not, there is some chance that overall catch capacity could be impacted positively (i.e. capacity would decrease). However, if prices for licenses increase, some vessels, that might have chosen to fish in federal waters, might instead choose to fish only in state waters. Such decisions would have the potential to increase the groundfish effort in state waters, at least minimally.

Summary of Proposed Action 2: Add Trawl and Non-Trawl Gear Designations to the groundfish LLP

Proposed Action 2 would add trawl gear, non-trawl gear, or all gear designations to the groundfish LLP. The designations would be based on all gears used by the qualifying vessel during the original qualification periods, regardless of area. Additionally, Proposed Action 2 would allow qualifying vessels to augment their gear designations by showing that they have made a significant financial commitment to use any additional gear types in the groundfish fisheries either by:

- (a) Having made a legal landing by February 7, 1997 with the additional gear type, or
- (b) Documenting a significant investment toward the conversion of a vessel or the deployment of the additional gear type by February 7, 1997.

Overall, Proposed Action 2 appears to create positive impacts for the groundfish fisheries. Gear designations will reduce the potential that additional trawl effort will be brought into the fisheries. The positive benefits to the whole fishery will probably be offset to some degree by lower prices for individual licenses that do not allow use of trawl gear.

Summary of Proposed Action 3: Rescind the CDQ Vessel Exemption

The Council exempted four categories of vessels from the requirements of the LLP including an exemption for CDQ groups. The specific language in the proposed rule exempting CDQ vessels is shown below:

A catcher vessel or catcher/processor vessel that does not exceed 125 ft (38.1 m) LOA, and that was, after November 18, 1992, specifically constructed for and used exclusively in accordance with a CDQ approved by the Secretary of Commerce under subpart C of this part, and is designed and equipped to meet specific needs that are described in the CDQ.

This proposed action would rescind the exemption for CDQ vessels (exemption iv), but would allow any vessels that CDQ groups have previously built within an existing Community Development Plan (CDP) to continue to be used.

The CDQ vessel exemption was initially established as a part of the Crab and Groundfish Moratorium, which was developed in 1992 prior to the implementation of the first pollock CDQ programs. At the time there was a great deal of uncertainty about how the CDQ program would operate. With the CDQ program established as a permanent fixture in the fisheries of the North Pacific, and the demonstrated ability of

CDQ Groups to form mutually beneficial partnerships with industry, there does not appear to be a need to maintain the CDQ exemption in the crab and groundfish LLPs.

Summary of Proposed Action 4: Clarify The Council's Intent on The Transfer of Catch History

Proposed Action 4 would clarify the Council's intent that catch history transfers be recognized, except those occurring after June 17, 1995, and where the owner of the vessel at that time was unable to document a vessel under Chapter 121, Title 46, U.S.C.

The proposed action would rewrite the language in the plan amendment and modify the regulations to indicate that the license qualifying fishing history of vessels whose owners were unable to document their vessels on June 17, 1995, would be extinguished. The change in the language would clarify the Council's intent and ensure that the fishing history of any vessel whose owner was, in fact, ineligible to document a vessels on June 17, 1995, would not be used to qualify for a license.

The analysis also notes that some persons who are eligible to document a vessel in the U.S. may and do concurrently own and operate fishing vessels in other countries. Many vessels that have been fishing under the flags of other countries may in fact be U.S. owned, and may have been U.S. owned as of June 17, 1995, and therefore would not be affected by the proposed action.

Summary of Proposed Action 5: Require Recent Participation in Crab

Proposed Action 5 would require recent participation in the BSA king and Tanner crab fisheries in order to qualify for a license under the crab LLP. The recent participation period would involve a one or more years (from 1995 to February 7, 1998). The recent participation requirement would apply to the general license only; if a vessel satisfies the recent participation criteria chosen, it would receive its original license and all of the species/area endorsements for which it qualified under the original criteria. No new species/area endorsements could be earned during the recent qualification.

The specific alternatives addressed are shown below:

Alternative 1: Status Quo.

Alternative 2: Require participation in both 1995 and 1996.

Alternative 3: Require participation in both 1996 and 1997.

Alternative 4: Require participation in the two calendar years 1997 – February 7, 1998.

Alternative 5: Require participation in all three calendar years from 1995 – 1997.

Alternative 6: Require participation in all three calendar years from 1996 – February 7, 1998.

Alternative 7: Require participation in all four calendar years from 1995 – February 7, 1998.

Alternative 8: Require participation at least once between 1996 and February 7, 1998.

Alternative 9: Require participation in any 2 of the 4 calendar years from 1995 – February 7, 1998.

Overall it appears that the proposed action has the potential to reduce the number of LLP qualifiers in the BSA king and Tanner crab fisheries. While requiring participation in 1998 will reduce the fleet by the largest amounts, because of the very small window of opportunity that results, this choice is less likely to be viewed as equitable. Of the remaining alternatives those that require participation in both 1996 and 1997 (Alternative 3 and Alternative 5) provide significant fleet reductions and show the least proportional differences between Alaskans and non-Alaskans.

Summary of Proposed Action 6: Allow Limited Processing for Catcher Vessels

Proposed Action 6 will change the groundfish LLP to allow limited processing for vessels with CV designations. In addition to the status quo, which prohibits processing, two alternatives that include processing limits are included. The three alternatives considered under Proposed Action 6 are:

Alternative 1: Maintain the Status Quo

Alternative 2: Allow limited processing of bycatch amount of any groundfish up to directed fishing standards, by vessels with CV designations.

Alternative 3: Allow limited processing up to 5 metric tons (mt.) round weight (rwt.) per day for vessels with CV designations less than 60' LOA; and up to 18 mt. rwt. per day for vessels with CV designations greater than 60' LOA.

It appears that this proposed action has the potential to create moderately negative to moderately positive impacts on the groundfish fishery. The impacts would vary by sector with the existing CP fleet likely to be adversely affected by competition from additional vessels with processing capacity. Little justification can be found for active trawl catcher vessels to undertake a conversion that would permit limited processing. In fact, such a conversion may impede the catch capability of a trawl catcher vessel and result in lower net income. Underutilized trawl vessels may be able to take advantages of some niche opportunities. Fixed gear vessels, particularly pot boats, may be able to accommodate the required processing equipment without adversely affecting their catch rates. However, for most of these vessels, constraints on the number of crew that can be accommodated, and their modest catch rates minimize the potential benefits of limited processing.

Overall, relatively few vessels are expected to make the investment necessary to engage in limited processing as proposed in Action 6. The small number of vessels and the modest catch rates for the vessel types to which they will likely belong suggest that there will be minimal impact on fishery resources if Proposed Action 6 is implemented.

Environmental Assessment

An environmental assessment (EA) is required by the National Environmental Policy Act (NEPA) to determine whether the action considered will significantly impact the human environment. An Environmental Impact Statement (EIS) must be prepared if the proposed action may reasonably be expected to:

- (1) Jeopardize the productive capability of the target resource species or any related stocks that may be affected by the action;
- (2) Allow substantial damage to the ocean and coastal habitats;
- (3) Have a substantial adverse impact on public health or safety;
- (4) Affect adversely an endangered or threatened species or a marine mammal population; or
- (5) Result in cumulative effects that could have a substantial adverse effect on the target resource species or any related stocks that may be affected by the action.

An EA is sufficient as the environmental assessment document if the action is found to have no significant impact (FONSI) on the human environment.

Finding of No Significant Impact (FONSI)

Neither retaining the status quo nor implementation of any of the proposed license limitation alternatives would significantly affect the quality of the human environment, and preparation of an EIS on the final action is not required by Section 102(2)(c) of NEPA or its implementing regulations. A final EA, and FONSI, will depend on the Council's selection of a Preferred Alternative. This EA will be completed following a Council decision and prior to review by the Secretary of Commerce.

MUNDT MACGREGOR LLP.
ATTORNEYS AT LAW

AGENDA C-4(a)(2)
JUNE 1998

Jay H. Zulauf
Henry Howard Happel, III
Wm. Paul MacGregor
Michael J. Hyde
J. David Stahl
Matthew L. Fick
Joseph M. Sullivan
Lisa Riveland Pagán

999 Third Avenue · Suite 4200
Seattle, Washington · 98104-4082

Telephone (206) 624-5950
Facsimile (206) 624-5469

John H. Chun
Colleen M. Martin
Christopher S. McNulty
Joe B. Stansell
Christopher R. M. Stanton
Libby A. Williams

May 7, 1998

Janet H. Cheatham
OF COUNSEL

Mr. Clarence G. Pautzke
Executive Director
North Pacific Fishery Management Council
605 West Fourth Avenue
Anchorage, Alaska 99510

SENT VIA FAX

Re: License Limitation Analysis

Dear Mr. Pautzke:

I understand that in preparation for the June Council meeting, the Council staff is preparing an analysis of the impacts of adding additional landing requirements to the crab license limitation program. In order for the Council to adequately review this issue, I believe that it is important that the analysis address the following questions:

- a. If a vessel that currently qualifies for a license with both crab and groundfish endorsements fails to meet the new crab landing requirement, does it lose its entire license or just the crab portion?
- b. If such a vessel retains its groundfish license rights, how many vessels that had both crab and groundfish options will only receive a groundfish license?
- c. How many vessels that would lose licenses as a result of additional landing requirements will have lost them already because of the tightened-up prohibition on awarding licenses to non-citizen vessel owners?
- d. How many potentially affected vessels are already prohibited from re-entering the U.S. fisheries because of Congressional restrictions on new vessels greater than 165 feet, 750 horsepower or 3000 gross tons?

Mr. Clarence G. Pautzke
May 7, 1998
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MUNDT MACGREGOR L.L.P.
VIRGINIA LAW

e. How many "fishing rights" histories have already been transferred from potentially affected vessels and are currently in use on substitute vessels? If this cannot be tracked, will it invalidate the analysis?

f. In what fisheries did the inactive crab vessels participate during the critical years? Are they still in those fisheries?

g. Under the various additional landing requirement alternatives, how much variation exists between the specific vessels that will not qualify? To what extent is it the same vessels and to what extent is it different vessels?

Thank you for considering these questions in the staff analysis. Please feel free to contact me if you have questions.

Very truly yours,

MUNDT MacGREGOR L.L.P.



Michael J. Hyde

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1110 Yeon Building
522 S.W. Fifth Avenue
Portland, Oregon 97204-2128

W.O. Sims, 1903-1945
E.U. Sims, 1924-1996

Phone: (503) 228-8583
Fax: (503) 362-8297

THEODORE E. SIMS
BRADLEY L. BROWN*
JOHN J. LUTGENS+

*Also admitted in California
+Of counsel, also admitted
in Washington

May 29, 1998

RECEIVED
JUN - 1 1998
N.P.F.M.C

North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Via fax (907) 271-2817

Attn: Linda

Re: License Limitation Program changes
Heuker Bros., Inc.
CFM Qualification #7330D

Dear Linda:

Enclosed are copies of the February 4th and April 13th letters my client, Chris Heuker, sent to the council outlining his concerns about the proposed changes in the License Limitation Program. Please also include these in the packet of materials the council will consider at the Dutch Harbor meeting.

As he indicated in his letter of April 13th, Heuker Bros. contracted for a new vessel in reliance on the existing rules. They will take delivery of that vessel on June 15th. We hope the council will continue to keep this situation in mind as they deliberate on these rule changes.

Thanks for your assistance in getting this material before the council.

Kind regards,

SIMS & SIMS

Theodore E. Sims

TES:vmc

Heuker
BROS.

HC66 Box 492 Cascade Locks, OR 97014

(503) 374-8255 Fax: 374-8553

February 4, 1998

Richard B. Lauber, Chairman
NPFMC
605 w. 4th Ave. Ste. 306
Anchorage, AK 99501

Via Overnight mail and
fax: (907) 271-2817

Re: North Pacific Council Meeting
Crab Fisheries Moratorium Qualification # 7330C
Federal Vessel Moratorium Permit # MP8204A
Permittee: Heuker Bros., Inc.

Dear Mr. Lauber:

I understand that the NPFMC is considering changing its regulations to revoke the permits on those boats which are over 125 feet and did not make a delivery during the years 1995 and 1996. I am writing to express my concern in this regard.

Please allow me to give you a little history on my situation. In 1994, the Vessel, "Chevak", owned by F/V North Wind, Inc. sunk. At the time it sank, the Chevak met all the requirements for the vessel moratorium. In October of this year, Heuker Bros., Inc. purchased the permit from North Wind, Inc.

Our purpose in purchasing the permit was to transfer it to a vessel that was not yet built. This new vessel will be 113 feet long which qualifies it for the two hundred pot limit, rather than the larger 250 pot limit which the Chevak qualified for. Consequently, when the permit was purchased, it was transferred to a third vessel, the Zone Five. The National Marine Fisheries Service was aware of this and indicated that they would have no objection to transferring the permit to the new vessel upon completion. Heuker Bros., Inc. is now in the process of having a vessel constructed which it intends to transfer the permit once the vessel is constructed.

Richard B. Lauber
February 4, 1998
Page Two

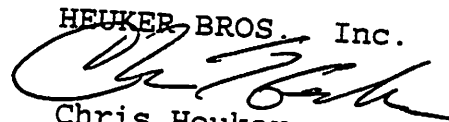
We were in contact with all relevant government agencies at the time we purchased the permit, including the National Marine Fisheries Service, N.O.A.A., and the Coast Guard. These agencies knew about our intent to construct a vessel and transfer the permit to that vessel at the time we purchased the permit. The decision to construct a vessel was made only after we received the assurances of N.O.A.A. and the National Marine Fisheries Service that 1) we would be able to transfer the permit to this new vessel from the Zone Five, and 2) the permit met all license limitation requirements, and vessel moratorium qualifications.

We are now committed to the construction of this vessel which is half complete. This construction will cost us approximately two million dollars. Needless to say, it will be a devastating loss to us if we are not able to use this vessel for its intended purpose. This loss would be doubly disappointing, as we received assurances from all relevant government agencies that we would be able to use this new vessel for crabbing.

I just learned of this issue today, consequently, it is my request that this matter be continued to your April 20th agenda so that I can prepare and testify before your committee. In the event that this is not continued, please enter this letter into the record as my objection to the regulation as proposed.

Very truly yours,

HEUKER BROS. Inc.



Chris Heuker,
President

enc: Certificate of Moratorium Qualification
Federal Vessel Moratorium Permit

Heuker
BROS

HC66 Box 492 Cascade Locks, OR 97014
(503) 374-8255 Fax: 374-8553

April 13, 1998

Via Fax 907 271-2817
and DHL Courier

North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Re: License Limitation Program changes

Dear Council Members:


In considering the changes your staff has proposed to the License Limitation Program, please keep in mind the need for a grandfather clause to protect those of us who have relied on the existing rules.

In our case, we contracted for and purchased a Federal Vessel Moratorium Permit last year from a vessel lost in 1994. It was issued to us by NMFS on November 3rd, 1997, and all necessary landings for general and species qualifications were made.

We bought the permit and qualification only after checking with NMFS, NOAA and the Coast Guard to be sure our plans were OK. We then contracted for and are over halfway through construction of a 113 ft. vessel at a cost of about \$2,000,000.00.

It would be grossly unfair to us and any others in our position to change your regulations after incurring these substantial expenses in reliance on NPFMC's regulations.

It is our request that if the proposed License Limitation Program is adopted, that grandfather rights similar to those included in the proposed amendment number two of the Council's staff report published February 13th be adopted for our fishery.


Chris Heuker
Pres. Heuker Bros. Inc.
CFM Qualification #7330D

January 14, 1998

Mr. Richard Lauber
Chairman
North Pacific Fishery Management Council
321 Highland Drive
Juneau, AK 99801

Dear Mr. Chairman:

I am writing to you in the hope that during the February 1998 North Pacific Fishery Management Council Meeting that you will read this letter into the testimony portion of the discussion and debate on the LLP plan as it relates to ownership of vessels and catch history transfers on June 17, 1995. As I will be in the Bering Sea fishing Opilio Crab at the time of the Council meeting, I felt it was imperative that the Council know my position and how any change in the Council's previous position on the LLP will impact me and my financial future.

My name is Craig Sandness and I have been a commercial fisherman since 1971. My career started as a deckhand on the F/V Katie K and progressed to skipper of that vessel in 1978. From 1978 to 1990, I worked as a hired skipper for North Command Fisheries, Arctic Alaska Fisheries, Inc. (Tyson Seafoods) and Seawind Fisheries Joint Venture. In 1991, Russ Moore and I became partners and built the 180' F/V Sjovind. We fished that vessel from 1991 to 1995 in Alaska for King, Brown, Tanner and Snow Crab. During 1995, we sold the vessel to the Russians while retaining the moratorium and fishing rights. Our intention in maintaining these rights was to build a new vessel and to put it back into the Alaskan Fishery. In 1996, after counseling with various people associated and familiar with NPFMC issues, including moratorium and LLP items, I made the decision to purchase a new vessel with Russ Moore and to use our retained rights from the sale of the Sjovind on the new vessel. When this decision was made, I invested substantially all my net worth, except for my personal residence, in this new venture. As you can see, any changes from what was decided on previously will materially impact my financial status as well as put me out of a job as I run the vessel 80% of the time.

Mr. Richard Lauber
January 14, 1998
Page Two.

I know there is serious concern relative to this LLP issue. However, Russ Moore and I are the only individuals I know who retained the rights, built a new vessel and are prepared to have those rights attach to the new vessel. It will be devastating to me to have any changes made to the LLP that does not allow me to transfer the retained rights to the new vessel we built and have fished since its completion. Your consideration to my situation is appreciated. Thank you.

Sincerely,


Craig A. Sandness

CAS :mk
jan98.04

January 14, 1998

Mr. Richard Lauber
Chairman, NPFMC
321 Highland Drive
Juneau, AK 99801

Dear Mr. Lauber:

I am writing this letter to go on record how any changes that might be made in the current LLP at the February and subsequent Council meetings would affect me and my partners in operating our vessel Seawind.

My name is Russell Moore and I have been a fisherman throughout Alaska since 1968. I started by fishing halibut on the wooden schooners and in 1974, I began fishing crab which I am still fishing in the Bering Sea and the Aleutian Islands. I have depended on fishing for my livelihood for this entire time. I lived in Unalaska for over 10 years of this time.

In 1994, I contracted to sell two vessels (C/P Seawind and C/P Sjovind) to be fished outside of U.S. waters. We specifically retained the U.S. moratorium and fishing rights so that we could replace them as soon as practical.

In 1995 the Council discussed whether it was their intention to allow the transfer of these rights under the rules of the LLP that was being written. The Council, after much deliberation, ruled that it was their intention that these rights could be transferred to another qualified vessel. In 1996, Captain Craig Sandness, Terry Cosgrove and I formed an LLC and purchased the longtime U.S. fishing vessel Arctic Rose from Tyson Seafood Group. This boat had fished crab and scallops since 1977 in Alaska and other U.S. waters. For economic reasons Tyson had tied the boat up since 1991. This vessel (renamed Seawind) had moratorium rights but consequently had no fishing rights under the LLP.

We purchased this boat and converted it at Marco Shipyards in Seattle to fish and process crab in Alaska. We did this with the intent to transfer the fishing rights and catch history from one of the boats that we sold. We made a business decision to make this very sizable investment in this vessel based on these transfer rights that the Council had written into the LLP which was subsequently signed by the Secretary of Commerce.

Mr. Richard Lauber
January 14, 1998
Page Two

If the LLP is changed so that these transfer rights are no longer valid, we will lose our right to continue fishing in U.S. waters. The consequence of this would create a major economic setback for the partners, of which one or all of us might not be able to recover.

Your consideration of this matter is greatly appreciated.
Thank you.

Sincerely,

Russell W Moore
Russell W. Moore

RWM:mk
jan98.07

NEPTUNE, LLC

2615 Fourth Avenue, Suite 700
Seattle, WA 98121

Telephone: (206) 443-0200; Fax: (206) 448-0612

RECEIVED
MAR 16 1998

N.P.F.M.C

Date: March 17, 1998

To: North Pacific Fishery Management Council

(907) 271-2817

Attn: Mr. Richard Lauber, Chairman

Fm: Leiv Lea

Re: F/V "Fierce Contender"

Dear Mr. Lauber,

Please be advised that we are the owners and operators of the F/V "Fierce Contender", ADFG 55123 / USCG 589883. We acquired her in 1997 and invested well over \$1.2 million to get her back into proper condition to fish in the Alaska crab fisheries. We are LLP qualified. Upon your request we will be happy to send backup documentation which demonstrates our investment into this vessel.

During the 1998 Opilio season we landed two trips prior to Feb 7, 1998. The first trip landed 316,688 lbs on Jan. 24, 1998 and the second trip landed 304,476 lbs on Feb. 3, 1998. Copies of the fish tickets are also available upon request.

We want to make sure that the F/V "Fierce Contender" will be eligible to be grandfathered into the LLP recent participation clause, if adopted. Please advise any other information which you might require from us, in order to ensure that this would happen.

Best Regards,


Leiv Lea
Business Manager
F/V "Fierce Contender"



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

MAY 12 1998

Mr. Theodore G. Kronmiller, Esq.
9893 Georgetown Pike
Great Falls, Virginia 22066

Dear Mr. ~~Kronmiller~~:

Thank you for your letter regarding regulations for the fishing capacity reduction provisions of the Magnuson-Stevens Fishery Conservation and Management Act.

The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) presently has two sets of draft rulemaking proposals for these provisions, one of which you drafted. NMFS' staff independently drafted the other. Some elements of these drafts pertain to process and do not need to be codified in the Code of Federal Regulations, but will be published separately in the Federal Register. The remaining elements will be subject to informal rulemaking. NMFS is comparing and consolidating, as appropriate, the two drafts. They will then begin the process of obtaining agency legal and policy clearances.

In order to assist with this task, NMFS has contracted with the Atlantic States Marine Fisheries Commission. The rulemaking process will not postpone active consideration of any buyback proposal that any Regional Fishery Management Council or State Governor may request, including the buyback proposed for the Bering Sea and Aleutian Islands crab fishery which NMFS is already considering. As you know, NMFS' staff has reviewed the first draft of the business plan for this proposal and provided comments and questions to the business planners.

Sincerely,


Terry D. Garcia

THE DEPUTY ADMINISTRATOR



TOTAL P.01



ALASKA CRAB COALITION

3901 Leary Way (Bldg.) N.W., Suite #8 • Seattle, WA 98107 • (206) 547-7580 • FAX (206) 547-0130

May 13, 1998

Rolland Schmiten,
Assistant Administrator for Fisheries
NMFS/NOAA
1315 East-West Highway
Silver Spring, MD 20910

Dear Rollie:

I am writing today on behalf of the vessel owners of the Alaska Crab Coalition to reiterate and clarify the position of the ACC in regards to the development of the crab permit buyback program for Bering Sea/Aleutian Islands king and tanner crab fisheries.

The ACC office, and in particular, some ACC Board members, have been involved in all developmental phases of the buyback effort with the CRAB Group, including the initial industry discussions between Washington, Oregon and Alaska fishermen that took place during the December 1996 NPFMC meeting in Anchorage, Alaska.

The ACC has been and continues to be highly supportive of the development of the permit buyback program.

At this time the ACC is concerned that NMFS delay in publishing the national implementing regulations for buyback programs could impede the timing of the buyback referendum and interfere with coordinating the implementation of the buyback with the Crab License Limitation Program (LLP) on January 1, 2000.

In conclusion, the ACC is hopeful that NMFS will publish the draft regulations before the close of this month to clarify to the Senators of Oregon, Washington and Alaska that it fully intends to implement Section 312 of the Magnuson-Stevens Act, to reduce excess fishing capacity in U.S. fisheries. The ACC will also view NMFS promulgation of the implementing regulations as clarification that NMFS intends to assist the industry with the development of innovative and cost-effective industry funded buyback programs.

I will be in Washington D.C. on May 20 and 21 to meet with Congressional representatives from Washington and Alaska to discuss further buyback efforts and I am hopeful that a meeting can also be arranged with you on this important issue.

Sincerely,


Arni Thomson, Executive Director

cc: Steve Pennoyer, RD/AKR



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

June 4, 1998

RECEIVED
JUN - 4 1998
N.P.F.M.C

Clarence G. Pautzke, Executive Director
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Clarence:

This is to inform you of changes made to the final rule implementing the License Limitation Program (LLP). The following addresses all substantive changes to the final rule. Slight editorial changes that were made throughout the rule to make it more understandable are not specifically mentioned.

A definition for the term "documented harvest" is added to the final rule. The term documented harvest replaces "legal landing" throughout the final rule. The new term more accurately describes the behavior necessary for eligibility. Included in the definition of legal landing was the behavior of off-loading. Off-loading is not necessary for eligibility. Further, the area endorsement(s) a person is issued should reflect the area in which fishing occurred, not the area in which the fish was delivered.

Any references to designating a vessel on a license is eliminated in the final rule. A license can be used on any vessel that complies with the MLOA designated on the license and that meets other fishery regulations requirements. Designating a specific vessel on a license would mean that a license holder would need to request a transfer before that license could be used on a vessel different than the one designated on the license. Making a transfer necessary for such behavior would constrain the flexibility of the license holder and increase the administrative costs to NMFS. Therefore, this requirement is eliminated.

The definition of "eligible applicant" is revised to add a paragraph to accommodate individuals that can demonstrate eligibility for the LLP pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. § 794(a). This addition clarifies that otherwise qualified individuals may avail themselves of the appropriate provisions of the Rehabilitation Act of 1973 when applying for licenses under the LLP.

The definition of maximum length overall (MLOA) with respect to the LLP is changed to increase the reader's understanding of the criteria. The changes are stylistic and not substantive;



therefore, none of the criteria has changed from the proposed rule.

Also, the MLOA, and not the vessel length category, will be designated on the license. NMFS determined that the MLOA, and not the vessel length category, is the constraining factor to what size vessel can be used based on the license; therefore, designating the vessel length category is unnecessary and can be confusing because general vessel lengths under the vessel length categories can exceed a specific vessel's MLOA. Despite these changes, vessel length categories are still in the final rule because they are used to determine the minimum documented harvest requirements for area endorsements.

In § 679.4(i)(2)(iv), the term CDQ is replaced with CDP. This correction is consistent with the original intent of the proposed rule. The publication in the proposed rule of CDQ, rather than CDP, was a typographical error.

In § 679.4(i)(3)(ii), paragraph (3) is added to described the forms of evidence that can be used to verify the processing activity of a vessel for purposes of establishing eligibility for a catcher/processor designation.

In § 679.4(i)(4), text is added to describe the forms of evidence that can be used to verify a documented harvest for purposes of establishing eligibility for a groundfish license.

Section 679.4(i)(4)(iv) and (v) are changed to increase the reader's understanding of the criteria. The changes are stylistic and not substantive; therefore, none of the criteria has changed from the proposed rule.

In § 679.7(j)(3) and (4), the term valid is added in front of the terms groundfish license and crab species license, respectively.

All these changes are consistent with the FMP amendment language recommended by the Council and approved by the Secretary of Commerce. Please contact me if you have questions regarding these changes.

Sincerely,



Steven Pennoyer
Administrator, Alaska Region

Possible Alternatives Using Participation in the Years 1995, 1996, 1997 & 1998

Alt. #	Years	Alt. #	Years
1	Status Quo	20	1995 or 1996
11	1995	21	1995 or 1997
12	1996	22	1995 or 1998
13	1997	23	1996 or 1997
14	1998	24	1996 or 1998
2	1995 & 1996	25	1997 or 1998
15	1995 & 1997	26	1995 or 1996 or 1997
16	1995 & 1998	27	1995 or 1996 or 1998
3	1996 & 1997	28	1995 or 1997 or 1998
17	1996 & 1998	8	1996 or 1997 or 1998
4	1997 & 1998	10	1995 or 1996 or 1997 or 1998
5	1995 & 1996 & 1997	29	Any 2 of 1995, 1996 or 1997
18	1995 & 1996 & 1998	30	Any 2 of 1995, 1996 or 1998
19	1995 & 1997 & 1998	31	Any 2 of 1995, 1997 or 1998
6	1996 & 1997 & 1998	32	Any 2 of 1996, 1997 or 1998
7	1995 & 1996 & 1997 & 1998	9	Any 2 of 1995, 1996, 1997 or 1998
		33	Any 3 of 1995, 1996, 1997 or 1998
<p>Noted: Bolded Alternatives were included explicitly in the analysis; shaded alternative was added by Advisory Panel</p>			

Complex Alternatives Combining Required Years and Optional Years

Alt. #	Years	Alt. #	Years
34	1995 & (1996 or 1997)	50	1995 & 1996 & (1997 or 1998)
35	1995 & (1996 or 1998)	51	1995 & 1997 & (1996 or 1998)
36	1995 & (1997 or 1998)	52	1995 & 1998 & (1996 or 1997)
37	1996 & (1995 or 1997)	53	1996 & 1997 & (1995 or 1998)
38	1996 & (1995 or 1998)	54	1996 & 1998 & (1995 or 1997)
39	1996 & (1997 or 1998)	55	1997 & 1998 & (1995 or 1996)
40	1997 & (1995 or 1996)	56	(1995 or 1996) & (1997 or 1998)
41	1997 & (1995 or 1998)	57	(1995 or 1997) & (1996 or 1998)
42	1997 & (1996 or 1998)	58	(1995 or 1998) & (1996 or 1997)
43	1998 & (1995 or 1996)	59	(1996 or 1997) & (1995 or 1998)
44	1998 & (1995 or 1997)	60	(1996 or 1998) & (1995 or 1997)
45	1998 & (1996 or 1997)	61	(1997 or 1998) & (1995 or 1996)
46	1995 & (1996, 1997, or 1998)		
47	1996 & (1995, 1997, or 1998)		
48	1997 & (1995, 1996, or 1998)		
49	1998 & (1995, 1996, or 1997)		

*These sections
were inadvertently
left out of copied version
attached to action memo.*

Draft 5/4/98, as amended 5/26/98

§ 253.25 Definitions.

Terms defined in the Magnuson-Stevens Fisheries Conservation and Management Act, 16 U.S.C. § 1802, but not specifically defined below, have the same meaning when used in this subpart. The terms below have the following meaning when used in this subpart.

Appropriate authority means the management authority or authorities or officials identified in section 253.26 (b) and (c);

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce;

Borrower means all sellers of buyback fish who, after an industry funded buyback, catch and sell buyback fish to a fish buyer;

Buyback cost means the dollar value of all buyback payments to permit owners, vessel owners, or both, required to buy back permits, vessels, or both, plus interest;

Buyback fish means the fish in a fishery to which a buyback program applies;

Buyback fish delivery means the point at which a fish buyer

takes title to or possession of buyback fish from a fish seller;

Buyback payment means the payment to a permit owner, vessel owner, or both, to buy back a permit, vessel, or both;

Buyback program or fishery capacity reduction program means a program to reduce fishing capacity in a fishery pursuant to the provisions of this subpart;

Deposit principal means all fee collections a fish buyer deposits in a segregated account maintained by the fish buyer at a federally chartered national bank;

Ex-vessel value means the full, fair market value at buyback fish delivery that a fish buyer pays a fish seller for buyback fish in an arm's length transaction before any deduction (including the amount of the fee) and without any other arrangement, whether or not intentional, that reduces the full amount owed or otherwise hinders or delays fee payment or fee collection;

Fee means the fee amount payable under an industry fee system;

Fish buyer means the first party in an arms length transaction who buys buyback fish from a fish seller in the form in which the buyback fish exists when first unloaded from the vessel used to catch it;

Fish seller means the permit user who catches and first

sells to a fish buyer in an arms lenght transaction, buyback fish in the form in which the buyback fish exists when first unloaded from the vessel used to catch it;

Fishery means the relevant fishery for which a buyback program is proposed;

Fishing capacity reduction fund means the fund established in the U. S. Treasury for the deposit of funds from a lockbox account and of all other funds available for paying buyback cost and for disbursing buyback payments; and

Net ex-vessel value means the ex-vessel value after deducting the fee.

§ 253.26 Request to conduct program.

(a) A fishery capacity reduction program (a buyback program) conforming to the provisions of this subpart may be conducted by the Assistant Administrator upon written request, documented as required in sections 253.27 or 253.28, as applicable, to the Regional Administrator of the NMFS region in which the fishery is located, containing information which

permits the Assistant Administrator to make the determinations described in section 253.29.

(b) For a fishery within the authority of a Regional Fishery Management Council established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), a request shall be made by the council exercising management authority over the fishery for which a buyback program is proposed following a public hearing thereon by such council. If two councils exercise management authority over such a fishery, the request shall be made jointly by the councils following a public hearing thereon by each council.

(c) For a fishery subject to State authority, a request shall be made by the Governor in the case of a fishery within a single State or by the relevant Governors jointly in the case of a fishery within the waters of more than a single State.

§ 253.27 Information to be included in request for program funded by industry fee.

A request by the appropriate authority or authorities for a buyback program, to be funded in whole or part by an industry fee system, shall request that such a program be conducted by the Assistant Administrator, shall contain sufficient information to

satisfy the requirements of this subpart. A request under this section shall include the following information:

(a) A description of the fishery and the specific objectives of the proposed program;

(b) Whether an industry fee is necessary to fund the proposed program in whole or in part;

(c) A request that the Assistant Administrator conduct a referendum on the industry fee system described in the request among those who would be affected by the program;

(d) Based on the best information available to the appropriate authority or authorities, a list of the names and addresses of permit and vessel owners who have participated in the fishery within the last five years;

(e) If individual fishery quotas are employed under the applicable fishery management plan, the total annual allowable catch in the relevant fishery during the past five years and annual allocations thereof to holders of individual fishery quotas;

(f) Criteria for determining types and numbers of vessels eligible to participate in the buyback program taking into account characteristics of the fishery, whether the buyback is limited to a particular gear type in the fishery, the requirements of applicable fishery management plans, the needs of

fishing communities, and the need to minimize program costs;

(g) A detailed and comprehensive industry fee funding proposal, developed by industry proponents of the proposed program and based on the economics and characteristics of the fishery, that is designed to justify federal financing of buyback cost and to serve as the basis for the development, in consultation with the Assistant Administrator, of industry referendum specifications, an implementation plan for the proposed program, and implementation regulations therefor. The industry fee funding proposal shall include:

- (1) A proposed buyback method capable of buying back the most capacity at the least buyback cost in the shortest time;
- (2) A projection of the cost of buying back fishing capacity, the amount of the buyback loan likely to result from the buyback costs thus generated, and the amount of fishing capacity likely to be bought back at the projected cost;
- (3) An analysis of the cost-effectiveness of the projected buyback cost in relation to the amount of fishing capacity removal established as a goal of the proposed program;
- (4) Based on the best available multi-year historical

data relating to fishing revenue and expense in the fishery and any other relevant productivity measures, projections as to the effect of the proposed program on the economics of those who remain in the fishery following implementation of the buyback, in particular the extent to which the proposed program will increase the ratio of gross revenue to fixed cost and improve other measures of vessel operation productivity;

- (5) An estimate of the total ex-vessel value for all deliveries of buyback fish in the first year after implementation of the buyback;
- (6) An estimate of the fee rate likely to be necessary to repay the amount of the buyback loan and an identification of the projected changes in productivity of those who remain in the fishery that would allow such persons to repay the buyback loan through payment of the additional fee projected;
- (7) A range of results (such as, but not exclusive of others, a minimum percentage of the fishery's total fishing capacity bought back and the unit cost thereof expressed as a range of percentages

and costs) which, if achieved, would be deemed to constitute successful implementation of the proposed program;

- (8) Procedures for program participation (e.g., type of information to be supplied by bidders), in addition to and consistent with those set forth in this subpart, designed to ensure reliable and timely implementation of a proposed program;
- (9) Names and addresses of likely buyers in buyback fish deliveries; and
- (10) Collection of fee and reporting procedures, in addition to and consistent with those set forth in this subpart, addressing special characteristics of the fishery which may affect collection and reporting.

(h) If the full amount of the proposed program is not to be funded by an industry fee, actual or potential sources of funding of the portion not so funded;

(i) Consistency with the fishery management plan applicable to the fishery;

(j) Whether the applicable fishery management plan establishes measures that will prevent replacement of fishing capacity removed by the proposed program or will be amended to

DRAFT 5/4/98, as amd 5/26/98

Billing Code: _____

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Part 253

[Docket No. _____; I. D. _____]

*Sections
Missing -- follow
on separate
sheet*

RIN 0648 -

Fishing Capacity Reduction Program

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes rules for one method of reducing harvesting capacity in fisheries. Commonly known as a buyback, this involves paying owners to surrender fishing permits and/or to scrap fishing vessels or place restrictions on title. Most fisheries have too much harvesting capacity. By reducing excess competition, a buyback is intended to increase harvesting productivity and facilitate fisheries conservation and management. Taxpayer funding is possible, but NMFS will also provide financing for buybacks to be repaid by the collection of a fee on fish harvested in the fishery. Whether funded by appropriated funds, by a system of industry fees, or by funds provided by a State or other sources, buyback programs under this subpart are available only for fisheries to which harvesting access has been or will be limited.

DATES: Comments must be received within 60 days from the date of publication in the **FEDERAL REGISTER**.

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

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

SUPPLEMENTARY INFORMATION: Excess fishing capacity decreases fisheries earnings, complicates fisheries management, and imperils fisheries conservation. Most U.S. fisheries have excess fishing capacity. Congress acknowledged these conditions in the 1996 Sustainable Fisheries Act (SFA), amending the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to authorize assistance in reducing fishing capacity. See 16 U.S.C. § 1861a (b)-(e). This proposal adds a new subpart D to 50 CFR part 253 to establish regulations providing a framework for the development and implementation of fishery capacity reduction programs, commonly known as a "buyback."

The statutory objective of buyback programs is "to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time." A buyback pays fishermen either (1) to surrender their fishing permits or (2) to both surrender their permits and scrap their fishing vessels or restrict vessel title to prevent further fishing.

The cost of a buyback in almost any fishery is likely to be substantial. Buyback costs may be funded by Congress through appropriations, by fees paid by those who remain in the fishery (an industry funded buyback), or through funds provided by a State or other public or private entity. In recognition that an industry funded buyback would require financing, the SFA also amended Title XI of the Merchant Marine Act to permit buyback loans.

Buyback loans to finance an industry funded buyback provide a practical means of repayment. A buyback loan for a fishery may not exceed \$100 million in unpaid principal amount at any one time. The amount of unpaid principal will bear interest at a rate calculated as the percentage interest cost to NMFS at the time funds are borrowed from the U.S. Treasury to make buyback payments plus two percent. The debt obligation represented by the total amount of buyback payments will have a maturity determined by NMFS, but not to exceed twenty years. A fee to repay the debt obligation incurred in implementation of an industry funded buyback will be established by NMFS and may not exceed five percent of the ex-vessel value of fish harvested in the fishery.

A Title XI loan to finance an industry buyback program is unlike a conventional loan. There are no promissory notes, mortgages, or other contractual loan security. Borrower fees are the sole means of repayment. Such industry fees will be deducted by fish buyers from the ex-vessel value of all buyback

species landed following implementation of the buyback. Future gross revenues in the buyback fishery thus represent collateral for the buyback loan.

No fee to finance an industry buyback program will be established unless it is approved by two-thirds of the permit or vessel owners participating in a referendum. Referenda are not conducted in the case of buyback programs funded by appropriated funds or by funds available from State or other sources because such programs do not involve industry fees.

Buyback programs under the SFA are available only in limited access fisheries whose management plans will prevent replacement of fishing capacity removed by the program and will manage harvest by total allowable catch or other measures that trigger closure. In light of the critical role to be played by the relevant authority in preventing replacement of capacity once removed, no fishing capacity reduction program may be conducted or financed by NMFS unless first requested by a Regional Fishery Management Council or other appropriate authority including a Governor of a State. In the interest of administrative efficiency, amendments to a fishery management plan which are not germane to a proposed buyback should not be combined with a request to NMFS to conduct a fishing capacity reduction program.

If amendments to a fishery management plan, whether of a Regional Fishery Management Council or of a State or States, are necessary, such amendments must be approved by the Council or State before the Assistant Administrator may determine that the request for a buyback program is sufficient and before NMFS will begin preparation of an implementation plan for the buyback. And if for some reason a final implementation plan ultimately is not adopted by the Assistant Administrator, the amendments referred to need not be implemented by the Council or the State. Recognizing the benefits to be gained by the airing of diverse viewpoints at an early stage in decisionmaking, a buyback request should be the subject of public procedure by the appropriate authority before being submitted to NMFS.

A decision by a fisherman to sell fishing capacity is always a voluntary decision, however the buyback program may be funded. In addition, no industry fee may be collected unless it first receives approval in a referendum. Industry proponents must gather the information and analysis to develop a buyback proposal and be attentive to the conditions and needs of those participating in the fishery. In consequence, industry proponents approaching a Regional Council or a Governor seeking agreement to sponsor a request for a buyback program should be sensitive to the practical necessity that a buyback proposal fairly reflect the interests of a broad spectrum of the relevant industry.

In the case of a buyback to be funded by an industry fee system, the request to NMFS must be accompanied by an industry fee funding proposal. The object of this document is not only to persuade the lender, in this case the United States Government, that the beneficial effects of a buyback will permit those remaining in the fishery to be capable of repaying the loan, but also to attract the support of participants in the fishery. In the interest of flexible administration, the proposed regulations do not establish criteria by which proponents of a program may claim to represent the fishery. In effect, the statutory scheme contemplates that a proposed program, rather than a group, is representative if it gains the requisite approval in an industry referendum. Where an industry funded buyback proposal is limited to fishing by a particular gear type in a fishery, the industry fee and the referendum thereon will relate only to participants in the relevant fishery. The buyback provisions of the SFA do not deal explicitly with the possibility of additional referenda should an initial referendum fail to gain industry approval, and the proposed regulation contains no special provision for additional referenda following an unsuccessful referendum. Comment thereon is invited.

Standards established by Congress in the SFA are integrated into the proposed regulations to assure consideration of the values they represent at optimum points in the decisionmaking process. NMFS will evaluate an industry fee funding proposal in the light of the statutory standards, making the requisite determinations if an adequate basis exists in the request filed by an appropriate authority. To avoid potential conflicts, NMFS will not prepare or assist in the preparation of buyback proposals or industry fee

funding proposals prior to the filing of a request, but it will consult throughout the development and implementation of a buyback proposal with interested parties and will make available fisheries data, statistics or other public information that may assist industry proponents in developing such proposals.

Preparation of an industry fee funding proposal is a complex undertaking. Dealing as it does with many variables from one fishery to the next, the proposed regulations rely on local ingenuity to develop buyback proposals and do not attempt to prescribe the details. Preparation of buyback proposals is likely to be costly. In addition to contributions from industry proponents, the S-K Fisheries Research and Development Grant Program, disaster assistance under MSA section 312(a), and States, conservation interests and other entities may be the source of assistance for industry fee funding proposals.

For buyback programs funded by congressional appropriations or by a State or other groups, an industry fee funding proposal is not involved. Upon the filing of a request that is deemed sufficient, NMFS in such cases will prepare an implementation plan proposal designed to ensure that buyback is an effective expenditure of funds paid by taxpayers or others funding the proposal.

Because the offer to sell fishing capacity in a buyback program is voluntary, the amount of capacity that will ultimately be offered, the price at which it will be offered, and the amount of buyback cost to be repaid in an industry fee system are speculative elements until implementation is actually attempted. At the same time, the statutory requirement for referendum approval of an industry fee system prior to adoption of an implementation plan reflects the intent of Congress that consent be obtained of those affected by a buyback. If the referendum is to produce an informed consent, the actual amount of fishing capacity to be retired and the actual cost thereof as reflected by actual bids should be presented for industry approval instead of projections. While administrative convenience suggests the desirability of avoiding a regulatory sequence where agency effort in fully developing a buyback program may be wholly negated by an unsuccessful referendum, industry has an interest in having before it the most precise information available before consenting to a buyback. The proposed regulation strikes the balance in favor of an informed industry by providing for publication of a final implementation plan in an industry funded buyback, receiving bids, and then conducting a referendum with adoption of the final implementation plan and regulation and the contractual buyback agreements subject to a successful referendum. Comment is invited on the proposed sequence of implementation plan publication, invitation for bids, and referendum in the case of an industry funded buyback.

The method of accomplishing capacity reduction through a buyback generally will involve either (1) revoking a permit and relinquishing any claim thereunder to harvest fishery resources or (2) scrapping a vessel or, in the case of federally documented vessels, title restriction that permanently prohibits its use in fishing. In the interest of cost effectiveness, NMFS is not proposing further restriction on the purpose for which a buyback vessel may be used. Vessel owners should be free to seek the highest market return available for a buyback vessel with a title restriction. Vessel owners would thus be free to submit bids in permit and vessel buybacks that reflect the residual value of vessels for non-fishery uses. Similarly, where a vessel is permitted to fish in multiple fisheries and a permit buyback involves only one fishery, NMFS does not propose to require that the buyback request include permits in a non-buyback fishery or to restrict such permits. While the buyback of permits in one fishery may cause vessel owners to shift into another fishery for which they have permits, such a shift could occur regardless of the buyback. In addition, fish sellers in the buyback fishery cannot be expected to fund the costs of surrendering permits in other fisheries.

Federal appropriations are a prerequisite to all buybacks except those funded completely by non-federal sources. In the case of a buyback funded by an industry fee system, the principal amount of the buyback loan need not be appropriated, only the authority that such a buyback loan be made. Once authorized, NMFS will borrow the authorized principal amount of the buyback loan from the U.S. Treasury and make buyback payments to those selling fishing capacity, thereby creating an obligation for those remaining in the fishery. Unless the required appropriation authority for a buyback precedes

development and implementation of the buyback, NMFS will prepare and recommend a supplemental appropriation request immediately upon a successful referendum in the case of an industry funded buyback.

Regulations for fisheries assistance programs appear at 50 CFR part 253. Part 253 now has three subparts. This rule would add a fourth, subpart D. Subpart D would govern all buyback aspects except buyback financing. Sections 253.25 to 253.38 of subpart D contain provisions common to all buybacks. Section 253.39 is reserved for implementation regulations unique to each buyback, to be proposed and adopted as NMFS implements each buyback.

The existing subpart B of part 253 governs Title XI. Title XI is the authority under which NMFS will finance buybacks. NMFS will separately amend subpart B. The amendment will provide both for buyback financing and other SFA amendments to Title XI.

List of Subjects in 50 CFR Part 253:

Fisheries, fisheries conservation and management, fishing capacity reduction, fishing vessels, fishing permits, buybacks, loan programs, business.

Dated:

For the reasons set forth in the preamble, NMFS proposes to amend 50 CFR part 253 by adding subpart D, to read as follows:

PART 253 --FISHERIES ASSISTANCE PROGRAMS

Subpart D --Fishing Capacity Reduction

Sec.

253.25 Definitions.

253.26 Request to conduct program.

253.27 Information to be included in request for program funded by industry fee.

253.28 Information to be included in request for program not funded by industry fee.

253.29 Acceptance of request.

253.30 Implementation plan.

253.31 Invitations to offer to sell fishing capacity.

253.32 Referendum on industry fee system.

253.33 Buyback methods.

253.34 Appropriation requests for fishery capacity reduction programs.

253.35 Payment and collection of industry fees.

253.36 Fee collection records and deposits.

253.37 Prohibitions, penalties and permit sanctions.

253.38 Implementation rules. [Reserved]

Authority: 16 U.S.C. § 1861a (b)-(e).

§ 253.25 Definitions.

Terms defined in the Magnuson-Stevens Fisheries Conservation and Management Act, 16 U.S.C. § 1802, but not specifically defined below, have the same meaning when used in this subpart. The terms below have the following meaning when used in this subpart.

Appropriate authority means the management authority or authorities or officials identified in section 253.26 (b) and (c);

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce;

Borrower means all sellers of buyback fish who, after an industry funded buyback, catch and sell buyback fish to a fish buyer;

Buyback cost means the dollar value of all buyback payments to permit owners, vessel owners, or both, required to buy back permits, vessels, or both, plus interest;

(8) Procedures for program participation (e.g., type of information to be supplied by bidders), in addition to and consistent with those set forth in this subpart, designed to ensure reliable and timely implementation of a proposed program;

(9) Names and addresses of likely buyers in buyback fish deliveries; and

(10) Collection of fee and reporting procedures, in addition to and consistent with those set forth in this subpart, addressing special characteristics of the fishery which may affect collection and reporting.

(h) If the full amount of the proposed program is not to be funded by an industry fee, actual or potential sources of funding of the portion not so funded;

(i) Consistency with the fishery management plan applicable to the fishery;

(j) Whether the applicable fishery management plan establishes measures that will prevent replacement of fishing capacity removed by the proposed program or will be amended to do so should the proposed program advance;

(k) Whether the applicable fishery management plan establishes a specified or target allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch or will be amended to contain such measures should the proposed program advance;

(l) Any amendment to the relevant fishery management plan necessary to implement the buyback program; and

(m) Other information or guidance that would assist the Assistant Administrator in developing an implementation plan for the proposed program.

§ 253.28 Information to be included in request for program not funded by industry fee.

A request by the appropriate authority or authorities for a buyback program, to be funded from amounts paid in to the fishing capacity reduction fund which do not include fees established under an industry fee system, shall request that such a program be conducted by the Assistant Administrator, shall contain sufficient information to satisfy the requirements of this subpart, and shall not contain provisions not germane to the buyback program. A request under this section shall include the following information:

(a) A description of the fishery and the specific objectives of the proposed program;

(b) If individual fishery quotas are employed under the applicable fishery management plan, the total annual allowable catch in the fishery during the past five years and annual allocations thereof to holders of individual fishery quotas;

- (c) Design and method of the buyback proposal that best achieves the objective of buying back the most capacity at the least cost in the shortest time;
- (d) Criteria for determining types and numbers of vessels eligible to participate in the buyback program taking into account characteristics of the fishery, whether the buyback is limited to a particular gear type in the fishery, the requirements of applicable fishery management plans, the needs of fishing communities, and the need to minimize program costs;
- (e) Estimated buyback cost;
- (f) Projected buyback benefits;
- (g) Cost-effectiveness of the projected buyback in relation to the amount of fishing capacity removal established as a goal of the proposed program;
- (h) Procedures for program participation (e.g., type of information to be supplied by bidders), in addition to and consistent with those set forth in this subpart, designed to ensure reliable and timely implementation of a proposed program;
- (i) Actual or potential sources of funding including amount and timing of availability;
- (j) Consistency with the fishery management plan applicable to the fishery;
- (k) Whether the applicable fishery management plan establishes measures that will prevent replacement of fishing capacity removed by the proposed program or will be amended to do so should the proposed program advance;
- (l) Whether the applicable fishery management plan establishes a specified or target allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch or will be amended to contain such measures should the proposed program advance;
- (m) Any amendment to the relevant fishery management plan necessary to implement the buyback; and
- (n) Other information or guidance that would assist the Assistant Administrator in developing an implementation plan for the proposed program.

§ 253.29 Acceptance of request.

- (a) Conformity to requirements. The Regional Administrator shall decline to accept a request filed under § 253.26 which is not filed by the appropriate authority or authorities or does not conform substantially to the requirements of §§ 253.27 or 253.28 and will return the request with guidance on conforming the request to the requirements of this subpart.
- (b) Sufficiency of request. Upon receipt of a request under § 253.26 filed by an appropriate authority or authorities that conforms to the requirements of §§ 253.27 or 253.28, the Assistant Administrator shall determine the sufficiency of the request. A request shall be deemed sufficient if the Assistant Administrator determines that --
 - (1) The proposed buyback program is necessary to prevent or end overfishing or rebuild stocks of fish or achieve measurable and significant improvements in the conservation and management of the fishery;
 - (2) The proposed program is consistent with the fishery management plan applicable to the fishery;
 - (3) The applicable fishery management plan establishes measures that will prevent replacement of fishing capacity removed by the proposed program or contains provisions for such measures to become effective upon certification by the Regional Administrator of a successful referendum in the case of an industry funded buyback;

(4) The applicable fishery management plan establishes a specified or target allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch or contains provisions for such measures to become effective upon certification by the Regional Administrator of a successful referendum in the case of an industry funded buyback;

(5) The proposed program would be cost effective if successfully implemented;
and

(6) The industry fee funding proposal supports a determination that the proposed program is capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936.

(c) If an affirmative sufficiency determination is entered, the Assistant Administrator shall publish notice thereof and promptly prepare a proposed implementation plan. If unable to make the determinations necessary to an affirmative determination, the Assistant Administrator shall notify the requesting authority or authorities in writing, detailing the reasons why an affirmative sufficiency determination can not be made and offering to consult with representatives of the authority or authorities and industry proponents of the proposed program.

§ 253.30 Implementation plan.

(a) As soon as practicable following an affirmative sufficiency determination, the Assistant Administrator shall publish for sixty-day public comment a proposed implementation plan and implementing regulations for the proposed buyback program. During the sixty-day public comment period, the Assistant Administrator will conduct a public hearing in each State affected by the proposed program.

(b) A proposed implementation plan for a buyback program to be funded in whole or part by an industry fee shall include a detailed discussion of the following:

- (1) Nature, purpose and necessity of the proposed program;
- (2) Nature and purpose of a referendum on an industry fee system;
- (3) Schedule and procedure for the referendum on the industry fee system;
- (4) Criteria relating to eligibility to participate in the referendum;
- (5) Criteria relating to determination of types and numbers of vessels eligible to participate in offering to sell back capacity in the proposed program; and
- (6) Method of buyback of fishery capacity which describes
 - (i) whether it is proposed to buyback permits or permits and vessels;
 - (ii) the manner of relinquishment and surrender of permits;
 - (iii) the manner of relinquishment, title restriction or scrapping of vessels; and
 - (iv) procedure to identify the existence of unsatisfied liens on permits or vessels.

(c) A proposed implementation plan for a program not funded in whole or part by an industry fee system, shall include a detailed discussion of the elements described above in subparagraphs (1) and (5) -(6) and shall also be accompanied by proposed implementing regulations.

(d) Each implementation rule shall establish the following terms and conditions under which an offer to sell fishing capacity to the United States shall be made and may be accepted:

- (1) Identification of the invitation to bid as constituting the entire terms and conditions under which a bidder offers to sell fishing capacity to the United States;

(2) Manner of submission of bid and information to be provided for a bid to be deemed a responsive bid including existence and amount of any lien or liens on the vessel and/or permit;

(3) Provision for a bid closing date after which a bidder may no longer submit a bid and a bid expiration date after which the offer contained in a bid expires unless the Assistant Administrator has accepted the bid by written notice thereof prior to such date;

(4) Provision that the Assistant Administrator may, prior to the bid expiration date, accept on behalf of the United States some, all, or none of the responsive bids and a description of the manner in which the Assistant Administrator will notify a bidder that an offer has been accepted;

(5) Provision that the submission of a bid offering to sell fishing capacity to the United States followed by acceptance of the bid shall constitute consent of the bidder that the permit allowing the harvest of buyback fish may be revoked by the appropriate authority upon failure by the bidder to surrender the permit;

(6) Provision that a writing acknowledging the agreement to sell fishing capacity to the United States shall be executed by the bidder following acceptance of the bid;

(7) Provision, in the case of an industry funded buyback, that acceptance of a bid by the Assistant Administrator shall be subject to an express condition subsequent for the protection of the United States that the Regional Administrator certify a successful referendum on the industry fee system, an event within the control of neither party, the non-occurrence of which shall excuse both parties from performance under the agreement and discharge all duties thereunder;

(8) Provision that, money damages not being an adequate remedy for breach of such an agreement if the condition subsequent be fulfilled, the United States shall be entitled to specific performance of the promise to sell fishing capacity and a default shall be enforced by invalidation by the appropriate authority of the bidder's permit authorizing participation of the vessel in the fishery which is the subject of a buyback program;

(9) Provision that the buyback payment will be available to satisfy liens except (i) that no buyback payment to the bidder shall relieve the bidder of responsibility to discharge the obligation which gives rise to the lien or to relieve a lien holder of responsibility to protect its security, and (ii) that no buyback payment shall give rise to liability of the United States or any officer or agent in connection with the obligation underlying any lien; and

(10) Other terms and conditions for participation which the Assistant Administrator determines reasonably to be necessary to meet the goals of the program including procedure to permit validation of information supplied by the bidder and to ensure specific performance of a bidder's offer to sell fishing capacity made in response to an invitation under this subpart.

(e) A final implementation plan and regulation will be published and adopted within forty-five days of the close of the public comment period except that, in the case of an industry funded buyback, the final implementation plan and regulation shall be effective only for the purposes of providing for invitations to bid and for a referendum on the industry fee system and, subsequent to such referendum, shall be of no effect unless the Regional Administrator certifies a successful referendum on the industry fee system.

§ 253.31 Invitations to offer to sell fishing capacity.

(a) Promptly following publication of a final implementation plan and regulation, the Assistant Administrator will issue a Federal Register notice inviting bidders who are participants in the buyback fishery to offer to sell fishing capacity to the United States. The notice shall set forth information referred to in § 253.30. For good cause shown, the Assistant Administrator may extend a bid closing and a bid expiration date for a period up to thirty days from the original dates.

(b) Promptly after the bid expiration date, the Assistant Administrator shall analyze responsive bids and determine which bids, if any, shall be accepted.

§ 253.32 Referendum on industry fee system.

In the case of an industry funded buyback, promptly upon completion of acceptance and analysis of bids offering to sell fishing capacity to the United States, the Assistant Administrator shall conduct a referendum on an industry fee system. No vote in a referendum conducted under this subpart shall have greater weight than another vote except in the case of a fishery wherein the management authority employs individual fishery quotas that authorize access in a limited access system to the harvest of a quantity of fish. In such a case, each vote shall have a weight equal to the proportion which the units in each permit bear to the total number of units in all permits. A referendum shall be conducted in accordance with the procedure set forth in this section.

(a) Issuance of ballots. The Regional Administrator shall, by U.S. certified mail, return receipt requested, mail a ballot to each permit or vessel owner whose name appears on the list referred to in § 253.27(d). All names appearing on the list shall be eligible to cast a ballot. All ballots shall be mailed to addressees on the same day. Each ballot shall bear a randomly derived five digit number assigned to each name on the list, shall contain a place for the voter to express support for (Yes) or opposition to (No) the proposed industry fee system, and shall contain a place adjacent the five digit number for the original signature of the voter.

(b) Certification by voter. Each ballot shall also contain a certification, subject to the penalties provided in § 253.38, that the person signing the ballot is the person he or she purports to be and is authorized to sign the ballot on behalf of the person to whom the ballot is addressed.

(c) Information to accompany ballots. Each ballot mailing shall contain a brief statement of the following:

- (1) The nature and purpose of the referendum;
- (2) Identification of the last date for which a returned ballot must be postmarked in order to be counted as a qualified ballot, which date shall be thirty days from the date of mailing unless the thirtieth day falls on a Saturday, Sunday or national holiday in which event a ballot returned by mail must be postmarked not later than the next business day;
- (3) Instructions identifying the place on the ballot for the voter to express support for (Yes) or opposition to (No) the industry fee system, the place where the ballot should be signed, and the purpose of the envelope enclosed in returning the ballot by U.S. mail;
- (4) As reflected by the results of bidding, a summary of the projected amount of the cost of buying back fishing capacity, the amount of the buyback loan which would result from the potential buyback cost generated, and the amount of fishing capacity to be bought back at the projected cost; and
- (5) The initial rate of the industry fee on the first sale of buyback fish necessary to repay the buyback loan and the manner of collection of the industry fee.

(d) Enclosures to accompany ballot. Each ballot mailing shall include the following:

- (1) A pre-addressed envelope which may be transmitted in the U.S. mail without prepayment of postage to be used to return to the Regional Administrator a completed ballot;
- (2) A copy of the industry fee funding proposal;
- (3) A copy of the proposed implementation plan and proposed implementing regulations; and
- (4) A copy of this subpart.

(e) Qualification of votes cast. The Regional Administrator shall enter on each ballot the date and time received and whether, upon review, the ballot qualifies to be counted as a vote in the referendum. Qualification determinations by the Regional Administrator shall be conclusive. A ballot shall qualify to be counted as a vote in the referendum if it fulfills the following requirements:

- (1) It indicates whether the ballot is cast in support of or in opposition to the industry fee system;
- (2) In the case of a ballot addressed to an individual, is signed by the individual himself or herself; in the case of corporations and other limited liability organizations, is signed by the chief executive officer; and in the case of partnerships and joint venture organizations, is signed by the general partners or other authorized individual;
- (3) It is the original ballot mailed and contains the original signature of the person authorized to cast the ballot;
- (4) It bears the five digit number assigned to the addressee; and
- (5) It is received by the Regional Administrator prior to the date specified for the return of ballots.

(f) Vote tally, certification and notification. Not later than five business days after the last day for receipt of qualified ballots, the Regional Administrator shall tally all qualified ballots, certify the referendum results, and notify all permit or vessel owners to whom ballots were mailed of the number of potential ballots, the number of ballots cast in the referendum that did not qualify to be counted as votes, the number of votes in support of and the number in opposition to the industry fee system, and whether the industry fee system was approved in the referendum. If the industry fee system was approved, the Regional Administrator shall also notify such owners of the next step in the buyback process. If the industry fee system was not approved, no further action on the proposed buyback program will be taken by the Assistant Administrator.

(g) Maintenance of records and confidentiality. The Regional Administrator shall maintain the voter list, all U.S. mail return receipts, all ballots received, records relating to qualified and unqualified ballots, the vote tally and a copy of the vote certification and notification. All information relating to the identity of any person who returned a ballot or the manner in which any person voted in the referendum shall be treated by the Regional Administrator as confidential.

(h) Adaptations to a fishery. The Assistant Administrator may provide other information to accompany ballots, include other enclosures, and adopt other procedures to adapt a referendum to the characteristics of a particular fishery if such information, enclosure or other procedure is consistent with this section.

§ 253.33 Buyback methods.

Programs under this subpart may be either permit buybacks or permit and vessel buybacks.

(a) Permit buybacks. In the case of permit buybacks, the holder of a permit who chooses to participate must surrender the permit to the appropriate authority for permanent revocation and relinquish any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery which is the subject of a buyback program.

(b) Permit and vessel buybacks. In the case of permit and vessel buybacks, the owner of a fishing vessel who chooses to participate must scrap the vessel or, through the Secretary of the department in which the Coast Guard operates, consent to the vessel being subjected to title restrictions that permanently prohibit its use in fishing and surrender to the appropriate authority the permit authorizing participation of the vessel in the fishery and relinquish any claim associated with the vessel and permit that

could qualify such owner for any present or future limited access system permit in the fishery which is the subject of a buyback program.

(c) **Buyback payments.** Payments to buy fishing capacity are made subject to this subpart and to section 1111 of Title XI, Merchant Marine Act, 1936. No payment shall be made in the case of an industry funded buyback unless the Assistant Administrator has approved a buyback loan for purposes of section 1111, has obtained all necessary NOAA and DOC clearances, and sufficient funds have been appropriated. No payment shall be made in the case of a federally funded buyback or a buyback funded by a State or other public or private entities until a final implementation plan has been adopted by the Assistant Administrator, sufficient funds have been appropriated, and the State or other entities have paid agreed amounts into the fishing capacity reduction fund.

§ 253.34 Appropriation requests for fishery capacity reduction programs.

(a) In an industry funded buyback, the Assistant Administrator will borrow from the fishery reduction fund subaccount to make disbursements in the form of buyback payments. Such disbursements under section 1111 of Title XI are direct loan obligations for purposes of the Federal Credit Reform Act, 2 U.S.C. § 661 et seq., and appropriations to cover the costs, if any, of an industry funded buyback, are a precondition to implementing such a buyback.

(b) In a federally funded buyback program, the actual amount of funds equal to the federally funded portion of the buyback must be appropriated in advance of disbursements from the fishery capacity reduction fund and, in buyback programs funded by a State or other non-federal public or private source, amounts agreed in the implementation plan shall be paid into a subaccount of the fishery capacity reduction account prior to implementation by the Assistant Administrator of a buyback program.

(c) Except where necessary appropriation authority is available prior to development of a buyback program, the Assistant Administrator will recommend a supplemental appropriation promptly upon certification by the Regional Administrator of a successful industry referendum and, in cases not involving a referendum, upon publication for public comment of a proposed implementation program and implementing regulations. Where appropriation authority is available for general buyback activity in advance of a successful referendum or publication for comment referred to above, the Assistant Administrator will apply available appropriation authority in chronological order of final approval of buyback implementation to the first buyback program and succeeding programs whose entire cost the available appropriation will accommodate.

§ 253.35 Payment and collection of industry fees.

No industry fee rate shall be adopted by the Assistant Administrator unless an industry fee system has been approved in a referendum conducted pursuant to this subpart.

(a) **Fee amount.** The fee amount shall be, for each pound of buyback fish any fish seller sells to any fish buyer during the fee collection period, the ex-vessel value of each pound of buyback fish sold times the fee rate. No fee shall be applicable to sales of fish which are not buyback fish.

(b) **Maximum and initial fee rate.** The fee rate shall be established by the Assistant Administrator and shall never exceed five percent of ex-vessel value. The initial fee rate shall be based, to the extent consistent with repayment of the buyback loan, on total ex-vessel value projected in the industry fee funding proposal for all buyback fish deliveries during the first year after implementation of the buyback program. Prior to each anniversary of the initial fee rate, the Assistant Administrator shall consider whether the fee rate should be changed in order to ensure repayment of the buyback loan.

(c) **Payment and collection.** During the period the fee is in effect, the fee amount shall be due and payable by the seller of buyback fish at the time of buyback fish delivery and shall be collected by the buyer of buyback fish at that time. Payment of the fee amount shall be effected when the

seller of buyback fish receives from the buyer the net ex-vessel value of the buyback fish delivery . Collection of the fee amount shall be effected when the buyer of buyback fish withholds the fee amount from the seller by paying the seller the net ex-vessel value of the buyback fish delivery. Payment of the fee by sellers and collection of the fee by buyers shall begin on the date established by the Assistant Administrator and shall continue until the date a buyback loan is fully repaid as determined by the Assistant Administrator.

(d) Notifications.

(1) At least thirty days prior to the effective date of the fee or of a change in the initial fee rate, the Assistant Administrator shall publish notice of the initial fee rate or of a change therein and the date from and after which the fee or fee rate change shall be in effect and shall send by U.S. mail a notification of such information to each permit owner and to each fish buyer likely to buy buyback fish.

(2) Upon a determination by the Assistant Administrator that the buyback loan is fully repaid, the Assistant Administrator shall promptly publish notice that the fee is no longer in effect and should not be paid or collected and shall send by U.S. mail a notification of such information to each permit owner and to each fish buyer likely to buy buyback fish.

(3) Notwithstanding that a buyback fish seller or a buyback fish buyer does not receive notice by mail that the fee is in effect or that the fee rate has been changed, all such sellers are liable to pay the fee amount in effect and all such buyers are required to collect the fee amount. A permit owner who is not the permit user shall deliver any notification under this subpart to the permit user.

(e) Failure to pay or collect.

(1) If for any reason a fish buyer fails to collect the full fee amount a fish seller is obligated to pay at buyback fish delivery, the fish seller shall at that time advise the buyer of the seller's obligation to pay and the buyer's obligation to collect at buyback fish delivery the fee amount in effect. If the fish buyer persists in the failure to collect the full fee, the buyback fish seller shall, within 24 hours of the delivery notify the Regional Administrator in writing of such failure and provide the following particulars: name, address and telephone number of the fish buyer, date of delivery and amount of buyback fish delivered, ex-vessel value of buyback fish delivered, and any reason given for the failure to collect.

(2) If for any reason a fish seller refuses to pay the full fee amount at buyback fish delivery, the fish buyer shall at that time advise the seller of the seller's obligation to pay and the buyer's obligation to collect at buyback fish delivery the fee amount in effect. If the fish seller persists in the failure to consent, the buyback fish buyer shall collect the full fee amount and, within 24 hours of the delivery notify the Regional Administrator in writing of such failure and provide the following particulars: name, address and telephone number of the fish seller and the name of the seller's vessel, date of delivery and amount of buyback fish delivered, ex-vessel value of buyback fish delivered and amount of fee withheld, and any reason given for the failure to consent.

§ 253.36 Fee collection records and deposits.

(a) Deposit accounts. During the period of time a fee is in effect, each fish buyer shall maintain a segregated account at a federally chartered national bank for the sole purpose of depositing fee collections and making disbursements described in this section. The principal amount of deposits in such a depository account shall be for the purpose of aggregating fee collections for monthly disbursement to the fishery capacity reduction fund in a lockbox account to be established by the Assistant Administrator and identified to fish buyers.

(b) Fee collection deposits. Each fish buyer shall deposit all fee collections in the deposit account at the end of each business day. Neither the deposit account nor the principal amount of deposits therein shall be pledged, assigned or used for any purpose other than aggregating fee collections for disbursement to the fishery capacity reduction fund. The fish buyer shall be entitled, at any time, to withdraw deposit interest from the deposit account for the buyer's own use and purposes.

(c) Disbursements of deposit principal. On the last day of each calendar month, the fish buyer shall, by check payable to "Assistant Administrator, NMFS, NOAA," disburse the full amount of deposit principal in the depository account to the fishery capacity reduction fund by mailing a check in that amount to the lockbox account identified by the Assistant Administrator. Each disbursement shall be accompanied by a completed settlement sheet in a form to be specified by the Assistant Administrator. All lockbox receipts shall be deposited in the subaccount of the fishery capacity reduction fund established for the buyback program to which the lockbox receipts relate.

(d) Maintenance of records. On forms available from the Assistant Administrator, each fish buyer shall maintain accurate records of transactions with each seller of buyback fish while an industry fee is in effect and of transactions relating to fee collection deposits and disbursements. Such data shall be maintained in a secure and orderly manner for a period of five years from the date of the transaction.

- (1) The following information shall be maintained by the fish buyer for each buyback fish delivery:
 - (i) Date of delivery;
 - (ii) Name of fish seller;
 - (iii) Number of pounds of buyback fish purchased;
 - (iv) Name of vessel from which unloaded;
 - (v) Ex-vessel price per pound;
 - (vi) Ex-vessel value of buyback fish purchased
 - (vii) Net ex-vessel value of buyback fish purchased;
 - (viii) Name of party to whom net ex-vessel value paid if other than fish seller;
 - (ix) Date net ex-vessel value paid; and
 - (x) Fee amount collected.

- (2) The following information shall be maintained by the fish buyer for fee collection deposits and disbursements:
 - (i) Dates and amounts of deposits to fish buyer's depository account; and
 - (ii) Dates and amounts of disbursements to the fishery capacity reduction fund lockbox.

(e) Annual report. Not later than January 31st of each year succeeding a year during which an industry fee was in effect, each fish buyer shall submit to the Assistant Administrator a report, in a form to be specified by the Assistant Administrator, containing the following buyback information for the preceding calendar year:

- (1) Total pounds of buyback fish purchased from each seller;
- (2) Total net ex-vessel value of payments to each seller;
- (3) Total fee amounts collected from each seller;
- (4) Total fee collection amounts deposited by month;

- (5) Dates and amounts of monthly disbursements to the fishery capacity reduction fund lockbox account;
- (6) Total amount of deposit interest withdrawn by fish buyer; and
- (7) Balance of depository account at end of year.

(f) **Audits.** Based on a method of selection determined reasonably to be necessary to ensure proper payment, collection, deposit and disbursement of fees, the Assistant Administrator may cause the books and records of fish buyers and fish sellers in the buyback fishery to be examined by agents selected by the Assistant Administrator. Fish buyers and fish sellers shall make records of such financial and other information available to such agents at reasonable times and places and shall provide requested information reasonably related to such records.

(g) **Refunds.** Upon a determination by the Assistant Administrator that a buyback loan has been fully repaid but that fee payments have continued to generate excess collections, the Assistant Administrator shall refund any excess lockbox receipts to the fish buyers involved on a last-in/first-out basis and fish buyers receiving such refunds shall, on a last-in/first-out basis, return such refunds to the fish sellers from whom collected and also refund on the same basis the amount of deposit principal in a depository account.

§ 253.37 Prohibitions, penalties and permit sanctions.

- (a) The following activities are prohibited. It is unlawful for any person:
 - (1) To cast a ballot in a buyback referendum if he or she is ineligible to do so;
 - (2) To cast a ballot in a particular buyback referendum more than one time;
 - (3) To mark or cast someone else's ballot if he or she is not authorized to do so;
 - (4) To interfere with or attempt to delay the casting of a ballot by a person eligible to do so;
 - (5) To submit a fraudulent or unauthorized bid in response to an invitation to bid in a buyback program;
 - (6) To fail to comply with the conditions of the invitation to bid in the buyback once a person's bid to sell fishing capacity is accepted and an express condition subsequent occurs;
 - (7) To avoid, decrease or delay payment or collection of an industry fee at buyback fish delivery;
 - (8) Who is a fish buyer to fail to disburse deposit principal to the Assistant Administrator as required by the regulations in this subpart;
 - (9) Who is a fish buyer to fail to maintain records or to report to the Assistant Administrator as required by the regulations in this subpart; and
 - (10) To obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any investigation conducted by the Assistant Administrator in connection with this subpart.

(b) Any person who commits a violation of one or more of the prohibitions of subsection (a) shall be subject to the civil and criminal penalty provisions of the Magnuson-Stevens Act Fisheries Conservation and Management Act, 16 U.S.C. § 1801 et seq., and 15 CFR Part 904, including permit sanctions and forfeiture authorized thereunder if applicable to the fishery, and to other applicable law.

§ 253.38 Implementation rules. [Reserved]