

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



ESTIMATED TIME
6 HOURS

DATE: May 31, 2000

SUBJECT: Crab Management

ACTION REQUIRED

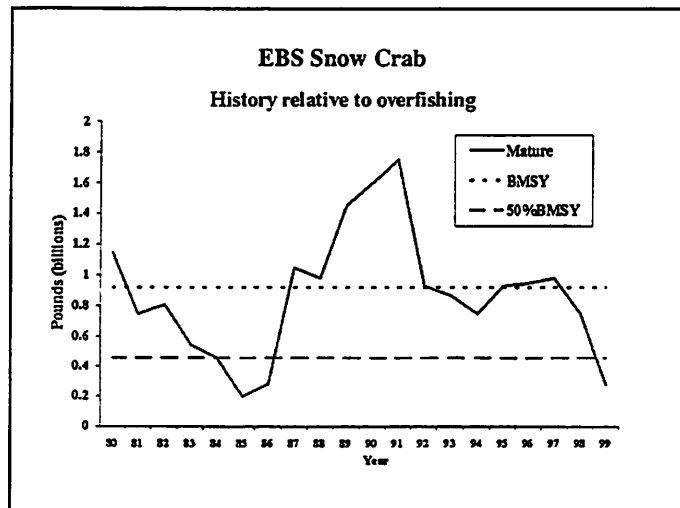
- (a) Final review of rebuilding plans for opilio and St. Matthew blue king crab.
- (b) Receive status report on crab co-ops and permit buyback program.

BACKGROUND

(a) Crab Rebuilding Plans

Opilio Rebuilding Plan - Proposed Amendment 14

Amendment 7 to the BSAI King and Tanner Crab FMP redefined overfishing, OY, and MSY, and updated the FMP with new information. The amendment established MSY point estimates, along with minimum stock size thresholds (MSST) for individual crab stocks based on prevailing environmental conditions (1983-1997 period). Overfishing is now defined as a fishing mortality rate in excess of natural mortality ($M=0.2$ for king crabs, $M=0.3$ for Tanner and snow crabs) and overfished is defined as a biomass that falls below MSST.

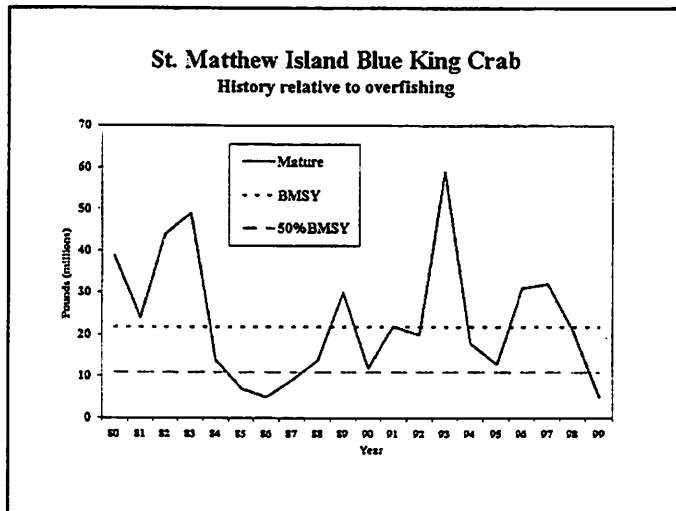


The 1999 NMFS Bering Sea survey indicated that the snow crab stock was below the minimum stock size threshold (MSST) established for this stock. Abundance of snow crab (*C. opilio*) declined sharply this year, resulting in a spawning biomass value (283.3 million pounds) below the MSST (460.8 million pounds), which precipitated a severe curtailment of the fishery in the 2000 season. On September 24, 1999, NMFS informed the Council that this stock was declared "overfished" pursuant to the Magnuson Act guidelines, which require a rebuilding plan to be developed within one year.

A draft rebuilding plan for this stock was mailed to the public on May 5, 2000. An executive summary of the plan is attached as Agenda Item D-2(a)(1). Staff will provide additional details of their analysis. The BSAI Crab Plan Team recommendations are contained in their minutes, attached as Agenda Item D-2(a)(2). At this meeting, the Council is scheduled to take final action on the rebuilding plan.

St. Matthew Blue King Crab - Proposed Amendment 15

The 1999 NMFS Bering Sea survey indicated that the St. Matthew blue king crab stock was below the minimum stock size threshold (MSST) established for this stock. Abundance declined sharply this year, resulting in a spawning biomass value (4.8 million pounds) below the MSST (11.0 million pounds). On September 24, 1999, NMFS informed the Council that this stock was declared "overfished" pursuant to the Magnuson Act guidelines, which require a rebuilding plan to be developed within one year.



A draft rebuilding plan for this stock was mailed out to the public on May 5, 2000. The revised analysis addressed as many of the issues identified by the Advisory Panel in April as possible. An executive summary of the plan is attached as Agenda Item D-2(a)(3). Staff will provide additional details of their analysis. At this meeting, the Council is scheduled to take final action on the rebuilding plan.

Comments received on the rebuilding analyses are under Item D-2(a)(4).

(b) Crab Co-ops and Permit Buyback Program

The industry buyback/co-op committees met on April 26, May 18 (co-op subcommittee only), and again earlier this week in Portland. The minutes from the April and May meetings are included in your notebook under Item D-2(b)(1), and a report from this week's meeting will be distributed. Regarding the buyback initiative, it appears there is support for some type of congressional assistance, though a big issue remains: the amount of an appropriation vs the amount that would be funded through a loan to industry. On May 18, NMFS published an interim final rule with guidelines for development and submission of buyback plans (Item D-2(b)(2)). A congressional fix may result in a different, more expedited process for the BSAI crab fisheries specifically. Regardless of how a crab license buyback is implemented, it will be sometime next year before the final LLP actions of the Council are implemented, including the application and appeals process to reflect the recency requirements approved by the Council in the fall of 1998 (assuming Secretarial approval of that amendment). That process must be completed before any buyback plan could be effected. More information on the buyback process may be available at meeting time. In a related action, on May 16 the Secretary of Commerce approved a declaration of commercial fisheries failure relative to the opilio fisheries, which will open the door for congressional appropriations to assist in (unspecified) relief.

Regarding the development of crab co-ops, progress has been made by the co-op subcommittee, most notably in the establishment of catch history alternatives to determine individual percentages relative to co-op (or IFQ) allocations. The subcommittee came to initial agreement for harvest sector alternatives for BBRKC and

opilio, as shown in the May 18 minutes, and will be addressing alternatives for other crab fisheries at this meeting. They also continued to review and discuss options for processor inclusion (including two-pie co-op or IFQ options), community consideration, and treatment of hired skippers, though no resolution of those issues was attained. Some proposals would require legislative change, possibly through the Magnuson-Stevens reauthorization process. Note that written proposals submitted to the committee are attached to the meeting minutes, along with the full set of initial alternatives and options from March.

The committee also discussed the need for at least some initial analysis of catch history options, to allow industry members to better assess the relative impacts of the various options. While such analysis could be provided by staff, it should be recognized that individual data could not be released, and any numbers (even aggregations) would be very preliminary pending resolution of the aforementioned LLP qualification. The committee may have additional reports or recommendations from the meeting earlier this week. At some point, barring Congressional action, the Council will have to formally approve alternatives, options, and other aspects of an amendment analysis for the crab co-op initiative to proceed. This needs to be weighed against other Council priorities, considering the Congressional moratorium, the overall timing relative to LLP resolution, and further committee work to resolve the major outstanding issues.

Additional comments received on this issue are under Item D-2(b)(3).

Executive Summary

The 1999 NMFS Bering Sea survey indicated that the snow crab stock was below the minimum stock size threshold (MSST) established for this stock. Abundance of snow crab (*C. opilio*) had declined sharply, resulting in a spawning biomass value (283.3 million pounds) that fell below the MSST (460.8 million pounds) and hence precipitated a severe curtailment of the fishery in the 2000 season. On September 24, 1999, NMFS informed the Council that this stocks was declared "overfished" pursuant to the Magnuson-Stevens Act guidelines, which require a rebuilding plan to be developed within one year. This Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) addresses alternatives for rebuilding the overfished stock of snow crab in the Eastern Bering Sea. Alternatives and options were developed by the Council at their October, 1999 meeting and revised at the April 2000 meeting. The alternatives examined were the following:

Alternative 1: No Action. No rebuilding plan would be adopted for Bering Sea snow crab. Note that adoption of this alternative would be violation of the Magnuson -Stevens Act.

Alternative 2: Establish a comprehensive rebuilding plan for Bering Sea snow crab. The rebuilding plan may have three components: a harvest strategy, bycatch control measures, and habitat protection. Note that more than one option can be adopted for each component.

A. Harvest Strategy: In previous years when there was a directed fishery, harvest rates for Bering Sea snow crab were established at 58% of the mature male abundance. This harvest strategy could be modified to reduce mortality on legal males, females, and juvenile crabs.

Option 1: Status quo - no action. Continue to establish harvest rates for Bering Sea snow crab at 58% of the mature male abundance.

Option 2: Adopt a new harvest strategy for Bering Sea snow crab. The strategy, as detailed in Section 1.6.1 includes lower harvest rates at low biomass levels, and incorporates a threshold biomass.

B. Bycatch Controls: Bycatch control measures have previously been implemented in the crab, scallop, and groundfish fisheries. These measures could be adjusted to reduce mortality on unharvested crabs.

Option 1: Status quo - no action. Maintain existing snow crab bycatch control measures. The snow crab PSC limit would be set at 0.1133% of total survey abundance (minus 150,000 crabs) with a maximum of 12.85 million crabs, and a minimum of 4,350,000 crabs.

Option 2: Reduce the snow crab PSC limit so there is no minimum level. The snow crab PSC limit would be set at 0.1133% of total survey abundance (minus 150,000 crabs) with a maximum of 12.85 million crabs.

Option 3: Request the Board of Fisheries and the Alaska Department of Fish and Game to consider additional measures (such as gear modifications and area closures) to reduce bycatch of snow crab in crab fisheries.

C. Habitat protection: Adequate habitat is essential for maintaining the productivity of fishery resources. Measures previously implemented that protect snow crab habitat from fishing impacts include several areas where trawling and dredging is prohibited. Essential fish habitat (EFH) has been defined and potential threats have been identified. Additional measures could be implemented to further protect habitat.

Option 1: Status quo - no action. Maintain existing habitat protection measures, which include trawl area closures where some snow crabs occur.

Option 2: Expand the EFH definition for snow crabs to include all habitats used by opilio crab, based on both historic and current data. The importance of snow crab EFH in maintaining stock productivity would be noted in consultations. To the extent feasible and practicable, this area should be protected from adverse impacts due to non-fishing activities.

Alternative 3: Prohibit a fishery for Bering Sea snow crab until the stock is rebuilt.

The proposed actions contained in this amendment are intended to rebuild the Bering Sea snow crab stock. Adoption of Alternative 2 (particularly Part A, Option 2) is expected to allow the Bering Sea snow crab stock to rebuild, with a 50% probability, to the Bmsy level in 7 to 10 years, depending upon recruitment scenario used in the model. Adoption of the revised harvest strategy should result in more spawning biomass as more larger male crab would be conserved and fewer juveniles and females would die due to discarding. This higher spawning biomass would be expected to produce an above average year-classes when environmental conditions are favorable. Protection of habitat and/or reduction of bycatch may reduce mortality on juvenile crabs, thus allowing a higher percentage of each year-class to contribute to spawning (and future landings). Any or all of these actions proposed under Alternative 2 would be expected to improve the status of this stock. No rebuilding benefits are provided by Alternative 1, Alternative 2A option 1, Alternative 2B option 1, or Alternative 2C option 1.

Alternative 2B, Option 2, could impact the groundfish trawl fisheries (the flatfish trawl fisheries in particular). The crab bycatch limits are apportioned among fisheries pre-season, and reaching one of these limits shuts down a fishery for the remainder of the season. Additional costs to the groundfish trawl fisheries would be incurred if additional areas were closed to trawling to protect crab habitat.

None of the alternatives is expected to result in a "significant regulatory action" as defined in E.O. 12866. None of the alternatives are likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations. fisheries, regulations, gear used, revenues generated, etc.

**DRAFT Minutes of the Bering Sea/Aleutian Islands Crab Plan Team
Meeting, May 22, 2000**

Members Present:

Doug Pengilly (ADF&G, chair)
Wayne Donaldson (ADF&G)
Rance Morrison (ADF&G)
Josh Greenberg (UAF)
Shareef Siddeek (ADF&G)

Bob Otto (NMFS)
Jack Turnock (NMFS)
Tom Shirley (UAF)
Dave Witherell (NPFMC)

The Bering Sea/Aleutian Islands (BSAI) Crab Plan Team met by teleconference on May 22 in Anchorage. The Team meeting was held to review the St. Matthew blue king crab and the Bering Sea snow crab rebuilding plans and make recommendations to the Council. All but one member of the Team were present.

1. Review of Saint Matthew Crab Rebuilding Plan

The Team **unanimously** recommended that the Council endorse a rebuilding plan for Saint Matthew blue king crab as provided under **Alternative 2**. The Team also **unanimously** recommended specific options under this alternative, and they are as follows:

Harvest Strategy: **Option 2:** Adopt the Board of Fisheries revised harvest strategy for Saint Matthew blue king crab. The strategy includes lower harvest rates at low biomass levels, and incorporates a threshold biomass.

Bycatch Controls: **Option 2:** Adopt the Board of Fisheries recent regulations for gear modifications and area closures to reduce bycatch of blue king crabs in crab fisheries.

Habitat protection: **Option 2:** Expand the EFH definition for Saint Matthew blue king crabs to include all habitats used, based on both historic and current data. For agency consultation purposes, highlight the importance of blue king crab EFH in maintaining stock productivity. To the extent feasible and practicable, this area should be protected from adverse impacts due to non-fishing activities.

Option 3: Adopt the Alaska Board of Fisheries State waters habitat protection areas for egg bearing female blue king crab around St. Matthew Island, Hall Island, and Pinnacles Island.

2. Review of Snow Crab Rebuilding Plan

The Team reviewed additions to the analysis since the last draft, and provided some recommendations to the Council. The Team **unanimously** recommended that the Council endorse a snow crab rebuilding plan as provided under **Alternative 2**. The Team also **unanimously** recommended specific options under this alternative, and they are as follows:

Harvest Strategy: **Option 2:** Adopt the Board of Fisheries revised harvest strategy for Bering Sea snow crab. The strategy includes lower harvest rates at low biomass levels, and incorporates a threshold biomass.

Bycatch Controls: **Option 1:** Status quo - no action. Maintain existing snow crab bycatch control measures in the BSAI groundfish fisheries. The snow crab PSC limit would be set at 0.1133% of total survey abundance (minus 150,000 crabs) with a maximum of 12.85 million crabs, and a minimum of 4,350,000 crabs.

Option 3: Adopt the Board of Fisheries recent regulations for gear modifications to reduce bycatch of snow crab in crab fisheries.

Habitat protection: **Option 2:** Expand the EFH definition for snow crabs to include all habitats used by opilio crab, based on both historic and current data. The importance of snow crab EFH in maintaining stock productivity would be noted in consultations. To the extent feasible and practicable, this area should be protected from adverse impacts due to non-fishing activities.

Discussion: Public testimony by John Gauvin and Plan team discussion focused on bycatch controls for snow crab in the bottom trawl fisheries. The team did not feel that any change should be made to the current bycatch control measures at this time for the following reasons:

1. PSC limits appear to be sufficiently conservative at this time. The team feels that the current level of crab bycatch in trawl fisheries is acceptable (< 0.1133% of abundance), and does provide some protection to habitat as vessels try to avoid areas of high crab concentration. The team is concerned about unintended consequences (unobserved mortality, economic effects) of lowering the PSC limit. However, the team urges continued monitoring of trawl bycatch, and would have concerns necessitating a revisiting of the PSC limit if the bycatch levels increase.

2. Because PSC limits are allocated to specific fisheries preseason, without in-season flexibility, some excess is needed to prevent potentially costly mistakes due to mis-specification.

3. The 4.35 million floor may prevent unnecessary costs to the trawl fisheries associated with survey variability, changes in year class strength, and crab distribution. The team will continue to closely monitor bycatch and would raise concerns should bycatch increase at low population sizes.

4. Modeling suggests virtually no reduction in rebuilding time or increase in probability of low mature biomass levels if all bycatch in groundfish trawl fisheries was eliminated.

Regarding the harvest strategy, the team also noted that revisions may be made by the Board of Fisheries in the future to reflect new scientific information. ADF&G and NMFS plan to continue their joint analysis of the snow crab harvest strategy over the next two years. The Board of Fisheries intends to review the harvest strategy at its next meeting scheduled to discuss king and Tanner crabs (March 2002) and would consider modifications to the harvest strategy at that meeting.

Others in attendance were: John Gauvin, Jon Hendershedt, Larry Byrne, Leslie Watson, Donn Tracy, John Lapore, Gordon Kruse, Jie Zheng, Herman Savikko, Kristen Mabry.

Executive Summary

The 1999 NMFS Bering Sea survey indicated that the St. Matthew blue king crab (*Paralithodes platypus*) stock was below the minimum stock size threshold (MSST) established for this stock. The stock declined sharply from 1998 to 1999 and the current estimate of spawning biomass (4.8 million pounds) is considerably below the MSST (11.0 million pounds). Consequently no fishery was allowed in 1999, although the causes of the decline are environmental and not attributed to fishing. On September 24, 1999, NMFS informed the Council that this stocks was declared "overfished" pursuant to the Magnuson Act guidelines, which require a rebuilding plan to be developed within one year. This Environmental Assessment (EA) addresses alternatives for rebuilding the overfished St. Matthew blue king crab stock. The alternatives examined were the following:

Alternative 1: Status Quo. No rebuilding plan would be adopted for St. Matthew blue king crab.

Alternative 2: Establish a rebuilding plan for St. Matthew blue king crab. The rebuilding plan may have three components: a harvest strategy, bycatch control measures, and habitat protection. Note that more than one option can be adopted for each component.

A. Harvest Strategy: In previous years when there was a directed fishery, harvest rates for St. Matthew blue king crab were established at 20% of the mature male abundance. This harvest strategy could be modified to reduce mortality on legal males.

Option 1: Status quo. Continue to establish harvest rates for St. Matthew blue king crab at 20% of the mature male abundance.

Option 2: Adopt the Alaska Board of Fisheries new harvest strategy for St. Matthew blue king crab. The strategy, as detailed in Section 5.1 includes lower harvest rates at low biomass levels, and incorporates a threshold biomass.

B. Bycatch Controls: The main source of bycatch is the bycatch of females and sublegal males in the directed blue king crab fishery.

Option 1: Status quo. Maintain existing management regime.

Option 2: Adopt the Board of Fisheries gear modifications measures and area closure to reduce bycatch of blue king crabs in crab fisheries.

C. Habitat protection: Adequate habitat is essential for maintaining the productivity of fishery resources. Essential fish habitat (EFH) has been defined and potential threats have been identified. Additional measures could be implemented to further protect habitat.

Option 1: Status quo. No species habitat protection measures would be established for this stock.

Option 2: For agency consultation purposes, highlight the importance of blue king crab EFH in maintaining stock productivity. To the extent feasible and practicable, this area should be protected from adverse impacts due to non-fishing activities.

Option 3: Adopt the Alaska Board of Fisheries State waters habitat protection areas for egg bearing female blue king crab around St. Matthew Island, Hall Island, and Pinnacles Island.

Alternative 3: No Fishing. No fishing would be allowed in the directed St. Matthew blue king crab fishery until the stock is rebuilt.

The proposed actions contained in this amendment are intended to rebuild the St. Matthew blue king crab stock. The near-term outlook is not very promising based on recent poor recruitment, extremely low survey abundance in 1999, and poor in-season fishery performance in 1998.

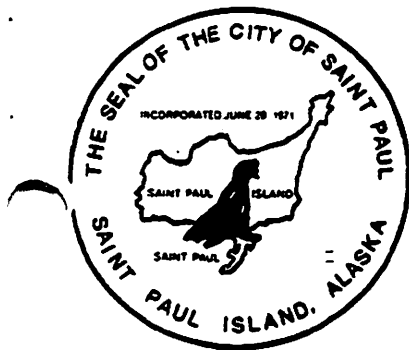
Adoption of Alternative 2 (particularly Part A, Option 2) is expected to allow the St. Matthew blue king crab stock to rebuild, with a 50% probability, to the Bmsy level in less than 10 years. The projected rebuilding time period, with a 50% probability, is 6 years. Adoption of the revised harvest strategy should result in more spawning biomass as more larger male crab would be conserved and fewer juveniles and females would die due to discarding. This higher spawning biomass would be expected to produce good year-classes when environmental conditions are favorable. Protection of habitat and reduction of bycatch will reduce mortality on juvenile crabs, thus allowing a higher percentage of each year-class to contribute to spawning (and future landings). Any or all of these actions proposed under Alternative 2 would be expected to improve the status of this stock, while allowing some fishing under the conditions outline in the harvest strategy. No rebuilding benefits are provided by Alternative 1. The projected rebuilding time period, with a 50% probability, under status quo is 12 years. Under Alternative 3, no fishing, the projected rebuilding time period, with a 50% probability, is 5 years. Detailed analysis of the specification of the rebuilding time period is in section 6.0.

Reducing blue king crab bycatch in the groundfish fisheries was analyzed by not considered as an alternative. According to observer data, blue king crab is not a measurable component of bycatch in the trawl fisheries. Further, bottom trawling does not occur in areas identified as blue king crab habitat. This is due to the fact that blue king crab are found in rocky habitat, which is destructive to non-pelagic trawl gear.

None of the alternatives are likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations, fisheries, regulations, gear used, revenues generated, etc. The rebuilding plan does not contain implementing regulations so a regulatory impact review under E.O. 12866 and initial regulatory flexibility analysis under the Regulatory Flexibility Act are not required.

CITY OF SAINT PAUL

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May 22, 2000

RECEIVED
MAY 30 2000
N.P.F.M.C

Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
605 West 4th Ave., #306
Anchorage, AK 99501-2252

Re: Agenda Item D-2, Opilio crab rebuilding plan.

Dear Clarence;

As a community that is almost entirely dependent on the Bering Sea fisheries and in particular the crab stocks, we support the North Pacific Fishery Management Council's (Council) effort to expand the scope of the Bering Sea Opilio Crab Rebuilding Plan, on which final action will be taken at the June meetings in Portland.

At the April meetings, the City of Saint Paul proposed during public testimony that ecosystem-based management be included for analysis in the rebuilding plan. This proposal is premised on the view long supported by St. Paul and the scientific community that fisheries management policies and/or stock rebuilding plans should not be implemented in a vacuum ignoring the complex interspecies relationships and foodwebs present in the Bering Sea ecosystem. The Council then requested that the City of Saint Paul submit comments regarding its proposal.

The language proposed is as follows:

"Ecosystem-Based Management: Understanding the interactions between crab and other species in the Bering Sea and Gulf of Alaska ecosystems is important to rebuilding the opilio stocks. In addition, management practices may need to reflect these interactions in order to ensure a sustainable crab fishery.

Option 1: Status Quo. Maintain Existing management practices.

Option 2: Recommend that an opilio crab rebuilding plan include a study of the interspecies relationships including the foodweb and predator/prey interactions necessary to maintain sustainable opilio stocks."

Our specific comments follow:

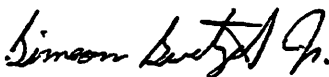
1. *Predator/prey relationships are not clearly understood.* We have heard anecdotal evidence from our own fishermen as well as others about the predator/prey relationship between crab and cod, for instance. With cod stocks at relatively high levels, there is some belief – warranted or not – that predation by cod has contributed to the decline in opilio stocks. It seems to us that the Council should direct staff to study some of the key inter-relationships between species in their analysis. At best, this information will help the Council make more informed decisions about the kind of fisheries management policies that need to be implemented to rectify imbalances in the commercial fish stocks. At worst, it may help eliminate conjecture and guess-work from the process.

It seems to us that the current observer program is one tool that is already available to study this issue.

2. *By-catch information is inconsistent.* Several groups and individuals have testified before the AP and the Council about by-catch within the crab fishery and crab by-catch within other fisheries. There seems to be a lot of inconsistent information, and to the extent by-catch information will impact harvesting strategies and the health of several species it is important that more effort be made to understand this issue.
3. *Temperature cycles must be considered.* There is plenty of indirect evidence – including a recent study commissioned by the City of Saint Paul¹ - that there are significant water temperature “cycles” that move from low to high to low again approximately every twenty years. These cycles seem to have some direct bearing on the health of specific species. We encourage the Council to direct staff to study this phenomenon and, if there is a causal effect, to recommend ways that this information can be incorporated into stock management plans.

In closing, we would also like to make the observation that better science should result in better management decisions, and that the Bering Sea Opilio Crab Rebuilding Plan should be considered as the industry rationalization effort proceeds.

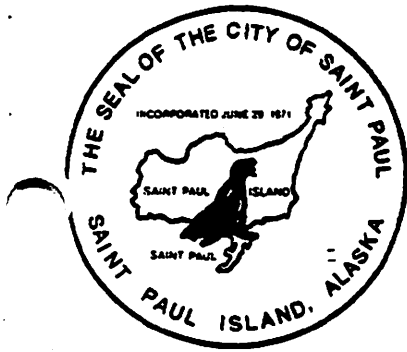
Sincerely,



Simeon Swetsof, Mayor

Cc: City Councilmembers
City files

¹ Natural Resource Consultants, November 1999. Available upon request.



CITY OF SAINT PAUL

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May 26, 2000

RECEIVED
MAY 30 2000
N.P.F.M.C

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, AK 99501-2252

Re: Agenda Item D-2, Crab Management

Dear Chairman Lauber:

I am attaching, for inclusion in the written comments, the National Marine Fisheries Service's finding dated May 11, 2000, that a commercial fishery failure, as provided under the Magnuson-Stevens Act, has taken place in the Bering Sea snow crab fishery.

This finding is critical in obtaining the financial and regulatory relief that St. Paul and other communities affected by the collapse of the snow or opilio crab fishery will require in the coming years to allow for economic diversification. As noted by the Assistant Administrator for Fisheries, Penelope Dalton, the impacts of the fisheries failure are particularly dramatic for St. Paul, with projected tax revenue losses of up to 90%, and St. George.

This finding also opens the door for the funding being sought from Congress by the harvester and processor sectors of the crab industry to implement a vessel buyback program and other relief programs. We look forward to continue working with you, the crab industry, and NMFS to successfully achieve all of these objectives.

Thank you.

Sincerely,

Simeon Swetzof, Jr., Mayor

Cc: City Councilmembers
City files

Attachment (7 pages)



CF 8

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
 1315 East-West Highway
 Silver Spring, MD 20910
 THE DIRECTOR

MAY 11 2000

MEMORANDUM FOR: D. James Baker
 Under Secretary for Oceans and Atmosphere

FROM: Penelope D. Dalton *Penelope D Dalton*

SUBJECT: Determination of a Commercial Fishery Failure
 Due to a Fishery Resource Disaster in the Snow
 Crab Fishery in the Eastern Bering Sea off
 Alaska--INFORMATION MEMORANDUM

The Governor of the State of Alaska formally requested on March 10, 2000, that the Secretary of Commerce (Secretary) determine a commercial fishery failure resource disaster in the snow crab fishery under section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Representatives from Pribilof Islands communities and other groups also have petitioned the Secretary to make a section 312 determination for the snow crab fishery and other Bering Sea crab species (red and blue king crab, Tanner crab, and hair crab).

Such a determination would authorize the Secretary to provide funds appropriated for the purpose to the State of Alaska to assess the economic and social effects of the commercial fishery failure, to support any activity that would restore the fishery or prevent a similar failure, and assist the fishing communities affected by the failure.

The National Marine Fisheries Service (NMFS) conducted a summer trawl survey of the Bering Sea, which indicated the biomass of snow crabs declined significantly from the levels in the 1998 survey. On September 24, 1999, NMFS declared the Bering Sea snow crab resource was overfished. The North Pacific Fishery Management Council is preparing a rebuilding plan for this resource. The 2000 fishery was conducted with a harvest level of 28.5 million pounds, an 85 percent decrease from the 1999 harvest level of 196 million pounds. The evidence available to NMFS suggests that natural conditions are the causes of this dramatic reduction in this crab population.

THE ASSISTANT ADMINISTRATOR
 FOR FISHERIES



I find that the apparent collapse of the Bering Sea snow crab resource in 2000 and, in all likelihood 2001 and beyond, has resulted in a commercial fishery failure due to a fishery resource disaster as provided under the Magnuson-Stevens Act.

Attachment

- DETERMINATION OF A COMMERCIAL FISHERY FAILURE
AFFECTING THE 2000 BERING SEA SNOW CRAB
(CHIONOECETES OPILIO) FISHERY

A precipitous decline in the Bering Sea snow crab abundance has occurred in the eastern Bering Sea. The Governor of the State of Alaska, as well as the Pribilof Island communities of St. George and St. Paul, have petitioned the Secretary of Commerce (Secretary) to make the determination, pursuant to section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), that a commercial fishery failure has occurred in the Bering Sea snow crab fishery due to a fishery resource disaster. In addition, representatives from Pribilof communities also expressed concern that other Bering Sea crab stocks, such as red and blue king crab, Tanner crab, and hair crab are suffering a resource disaster.

Section 312(a) of the Magnuson-Stevens Act, 16 U.S.C. 1861a, authorizes the Secretary to exercise discretion in determining whether there is a commercial fishery failure due to a fishery resource disaster as a result of:

- a. natural causes;
- b. man-made causes beyond the control of fishery managers to mitigate through conservation and management measures; or
- c. undetermined causes.

Determination of a fishery resource disaster

The National Marine Fisheries Service (NMFS) 1999 summer trawl survey of the Bering Sea indicated the biomass of both male and female snow crabs declined significantly from levels observed during the 1998 survey. The 1999 estimate of male crabs 4 inches (industry-standard minimum size) and larger dropped 63% from the prior year and all other components of the stock also declined significantly. Currently, the stock is 60% of the minimum stock size threshold, which represents one half the long-term average mature biomass as defined in the Federal Fishery Management Plan for the Bering Sea and Aleutian Inlands King and Tanner Crab (FMP).

Collapse of the Bering Sea snow crab stocks, as evidenced by severe lack of recruitment into the population, precipitated a guideline harvest level reduction of over 85% in the snow crab fishery in the year 2000. The 2000 guideline harvest level for

snow crab was established at 28.5 million pounds compared to the 1999 harvest level of 196 million pounds. Owing to the low biomass of mature crabs, NMFS classified the snow crab stock as "overfished" in 1999 and a rebuilding plan is being prepared by the North Pacific Fishery Management Council. The prospects for a 2001 fishery are uncertain.

Bristol Bay red king crab (Paralithodes camtschaticus) is not suffering a fishery resource disaster. The abundance index of legal male red king crabs was 11.0 million crabs, representing a 49% increase from last year and is near the 20-year average. During 1996-1999, the Bristol Bay red king crab fishery yielded 8.4, 8.9, 14.3, 11.2 million pounds worth \$33.5, \$28.9, \$37.3, and \$70 million in ex-vessel values, respectively. Thus, this stock is supporting a productive fishery.

King crab fisheries off St. Matthew and Pribilof Islands were closed in 1999 owing to low stock size and associated high degree of uncertainty. In 1999, the abundance of Pribilof Islands blue king crabs (P. Platypus) continued an ongoing decline and fell below the threshold established for this fishery. On the other hand, estimates of red king crabs in the Pribilof Islands area increased significantly from 1998; however, most red king crabs were captured in a single tow, making the reliability of that estimate extremely low. Historically, red king crab have not been abundant in the Pribilof Islands and landings taken incidentally during the blue king crab fishery. Survey estimates for St. Matthew Island blue king crabs indicated dramatic declines of both male and female crabs in all size categories in 1999. Owing to the low biomass of mature crabs, the St. Matthew blue king crab stock was classified as "overfished" in 1999 and a rebuilding plan is being prepared. The decline in abundance for these red and blue king crab stocks constitutes a fishery resource disaster.

The Tanner crab (Chionoecetes bairdi) fishery has been closed since 1997 due to depressed stock conditions. The estimated spawning biomass of this stock is low and the stock is considered "overfished" under the Magnuson-Stevens Act. A rebuilding plan is under public review. Over the past few decades, this stock appears to have experienced a 13-14 year recruitment cycle. The NMFS survey revealed high abundance of juvenile Tanner crabs in 1999, suggesting that an apparent strong recruitment event may soon promote stock rebuilding. Once the stock exceeds the fishery threshold for two consecutive years, fishing will be resumed, perhaps as soon as January 2002.

Hair crab¹ (Erimacrus isenbeckii) abundance index for large males declined from 1981-1992, increased from 1992 to 1995, and is now declining again. The abundance index of 2.3 million large males is 22% lower than last year. Hair crabs constitute a small fishery in the Bering Sea. In 1998, 0.3 million pounds were taken. As with many crab stocks, recruitment is periodic. Lack of recent recruitment has led to chronic stock declines in recent years, and harvests have been cut accordingly. During 1995-1999, commercial catches were 1.9, 0.8, 0.8, 0.3, 0.2 million pounds worth \$5.2, \$1.6, \$1.6, \$1.0, and \$0.9 million, respectively. This decline is a serious concern when added to other problems with Bering Sea crab stocks.

Therefore, I find that a fishery resource disaster occurred in the Bering Sea in 2000 that significantly reduced the abundance of snow crab; St. Matthew blue king crab; and Pribilof Islands blue king crab; resulting in a considerable reduction in the harvests. Low abundances of Tanner and hair crab have contributed to the overall reduction in available resources for the fishery.

Determination of the cause of the fishery resource disaster

Insufficient evidence exists to determine the cause of the snow crab, St. Matthew blue king crab, and Pribilof Islands blue king crab declines. However, the evidence highly suggests the causes are natural. The crab fisheries only harvest the large male crabs, however, the 1999 NMFS trawl survey showed dramatic declines in all segments of population of these crabs. Recruitment for crab species appears to be linked to environmental factors rather than biomass, so trends in recruitment are difficult to predict.

A period of low recruitment is thought to be the reason for the decline in snow crab. These events are quite possibly triggered by corresponding events in the physical environment, such as the regime shift and warm Bering Sea conditions in 1997 and 1998. Furthermore, it was suggested that the reproductive capacity of these populations is related to the abundance or biomass of mature females, which are not affected to any great extent by the crab and groundfish fisheries. Temperature is likely to be important to snow crab population dynamics. Warmer temperatures hasten growth, but they likely have a negative effect on reproduction as faster growing males have fewer mating

¹Hair crab is not a Federally managed species under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. The State of Alaska has management authority for hair crab.

opportunities prior to attaining harvestable size. On the other hand, crab larvae feed primarily on copepod nauplii, which we think are favored by warmer water in the Bering Sea. Crab megalopa settle out of the water column at very specific temperatures and depths. Therefore, survival may be favored by cooler, warmer or intermediate temperatures depending on what life stage one considers. In 1997 and 1998, water temperatures were at record high levels, triggering unusual plankton blooms and contributing to salmon run failures. Beyond temperature, we suspect advection of larvae by ocean currents to the nursery areas and cannibalism within the limited nursery areas from older crab cohorts are contributors to recruitment success or failures.

Recruitment to the St. Matthew and Pribilof Islands blue king crab stocks has been declining for several years, but the sharp decline in all sizes of crabs suggest large survey measurement errors, a large increase in natural mortality, or some combination of both. The causes of the decline in recruitment into these blue king crab stocks is unknown, however, its presumed to be environmental.

NMFS conducts annual assessments with a multi-species trawl survey, and the State of Alaska Department of Fish and Game administers onboard observer and dockside sampling programs. Little additional biological information is available to predict the population abundance. The full geographic distribution of these species is uncertain. Most basic biological productivity parameters have never been studied.

Gear selectivity, crab handling mortality, and other potential effects are virtually unknown. These uncertainties are urgently needed to be addressed so that crab stock productivity can be better understood. Better understanding will allow harvest strategies to be adjusted accordingly to promote stock rehabilitation and to diminish risks of future fishery collapses.

Therefore, I find that the cause of the fishery resource disasters are undetermined, but probably due to natural conditions.

Determination of a commercial fishery failure

The impacts of the snow crab decline and the early sea ice advance on communities are dramatic. St. Paul processes over 40 percent of the snow crab harvest, generating \$8 million in municipal taxes in 1999. This year, crab tax revenues are projected to be 66 to 90 percent below recent averages. St. George projects a revenue shortfall of \$900 thousand and the

inability to make bond payments for harbor completion.

Reduced revenues for both communities have already resulted in reduced plane service, reduced municipal and health care services, increased food costs, and the inability to continue capital projects. Fisheries closures for St. Matthew and Pribilof Islands blue king crab as well as Tanner crab may compound the fisheries failure experienced by these communities with the decline of the snow crab stock.

Therefore, I find that the apparent collapse of the Bering Sea snow crab in 2000 has resulted in a commercial fishery failure due to a fishery resource disaster as provided under section 312(a) of the Magnuson-Stevens Act. This determination is supported by the Governor of Alaska's declaration of a commercial fishery failure for the snow crab fishery.

Penelope D. Dalton
Penelope D. Dalton
Assistant Administrator
for Fisheries

5/11/00
Date

Comments Submitted With Regards to Crab Rebuilding Plans

TO: Richard B. Lauber, Chairman
North Pacific Fishery Management Council

FROM: Proposer: Jeff Steele
Address: PO Box 3476, Kodiak, AK 99615
Telephone: 907-487-2248; fax: 907-487-2515

DATE: May 23, 2000

RE: Fishery Management Plan Amendment Proposal
Bering Sea and Bristol Bay King and Tanner Crab Rebuilding Plans

RECEIVED
MAY 30 2000
N.P.F.M.C

Mr. Lauber:

Brief Statement of Proposal: All commercial fishing activities (i.e., all species, all gear types) are prohibited at all times in the Bering Sea and Bristol Bay within the area bounded by a straight line connecting the following pairs of coordinates in the order listed:

58°00.0'N, 162°00.0'W;
57°00.0'N, 162°00.0'W;
58°00.0'N, 170°40.0'W;
59°00.0'N, 171°55.0'W;
59°30.0'N, 171°55.0'W;
60°00.0'N, 168°00.0'W.

The intent of this Proposal is to establish a "No Fishing Zone" in a specified area of the Bering Sea and Bristol Bay. Further, the intent of this Proposal is that all commercial fishing activities be prohibited in the "No Fishing Zone."

Objectives of the Proposal: To protect critical crab habitat in the Bering Sea and Bristol Bay from all commercial fishing activities. To recognize the special status of the Bering Sea and Bristol Bay *c. bairdi*, *c. opilio*, red and blue king crab as being in jeopardy. To show progress in compliance with the mandates of the Magnuson-Stevens Act (MSA) that apply to the identification and preservation of Habitat Areas of Particular Concern (HAPC). To initiate the ambitious plan to rebuild the Bering Sea and Bristol Bay crab populations to record historical levels.

Need and Justification for Council Action: There has been no commercial *c. bairdi* tanner crab harvests in the Bering Sea and Bristol Bay for several years. *C. opilio* and red and blue king crab populations across gender, geographical distribution, and all size-frequencies are in a disastrous state. The status of these populations in the Bering Sea and Bristol Bay is largely a result of overfishing and destructive impacts to critical habitat by commercial fishing activities; in addition, bycatch of *c. opilio* and red and blue king crab in the Bering Sea and Bristol Bay including in the proposed "No Fishing Zone" have also been of significant negative impact to these populations.

TO: Richard B. Lauber, Chairman
North Pacific Fishery Management Council
FROM: Proposer: Jeff Steele
DATE: May 23, 2000
Page Two

A significant reduction of bycatch and a cessation to the destruction and modification of habitat that is essential and critical to all life stages of c. opilio and red and blue king crab must be a part of a Council and NMFS regulatory package that aids the rebuilding of these crab populations. Preliminary results from the crab savings areas that have been implemented in the Bering Sea and Bristol Bay in recent years demonstrate that the protection of critical crab habitat has been successful in rebuilding Bering Sea and Bristol Bay crab stocks.

Foreseeable Impacts of Proposal: Necessary progress will be made to comply with the habitat mandates of MSA. HAPC that are necessary and essential for crab populations to achieve reasonable, potential and successful spawning, breeding, feeding, and growth to maturity will be protected. Crab populations will increase. Crab populations will begin to recover from the destruction and significant modification of critical crab habitat that has resulted from commercial fishing activities in the area that is proposed for the "No Fishing Zone." Productivity of crab stocks will increase.

Are There Alternative Solutions?: Nothing that I can think of to protect critical habitat from commercial fishing activities.

Supportive Data and Other Information: Prior successes of protecting habitat.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME Division of Commercial Fisheries

P.O. BOX 25526
JUNEAU, AK 99802-5526
PHONE: (907) 465-6140
FAX: (907) 465-2332

MEMORANDUM

RECEIVED

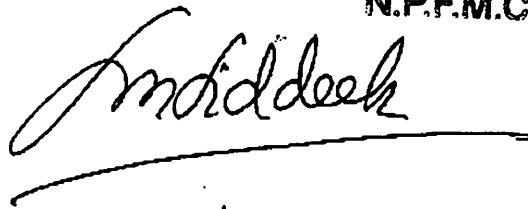
MAY 30 2000

TO: Mr. Clarence G. Pautzke
Executive Director NPFMC, Anchorage

CC: Dr. Gordon Kruse, ADF&G, Juneau

N.P.F.M.C

FROM: Dr. Shareef M. Siddcek, ADF&G, Juneau



DATE: 5/30/00

SUBJECT: Comments on the Bering Sea *C. opilio* stock rebuilding plan

As a crab plan team member, I have made the following comments on the *C. opilio* rebuilding plan report to improve the presentation:

1. Table of Contents (page 1): Inscrt "2.6 Marine Mammal Protection Act Considerations 61"
2. Page 14, Para 4: Change MMS'I to MSS'I
3. Page 15, Para 1: Somerton and Low 1977 reference is missing in the Reference section.
4. Page 19, Para 3: MacIntosh et al. 1995, year should be 1996 as in the Reference section.
5. Page 21, Para 3: Kimker, 1992, year should be 1994 as in the Reference section.
6. Page 21, Para 5: Stevens et al. 1994, year should be 1998 as in the Reference section.
7. Page 22, Para 3: Moore et al. 1999, year should be 1998 as in the Reference section.
8. Page 23, Para 4: Narita et al. 1994, reference is missing in the Reference section.
9. Page 26, Para 2: Barnhart and Sagalkin, 1998, reference is missing in the Reference section.
10. Pages 27, 48, Para; page 50, Para 6; page 54 paras 1 & 5; page 57, para 1: NPFMC 1999, reference is missing in the Reference section. Is it NMFS 1999?
11. Page 27, Para 2: This is allows.... Should read This allows....
12. Page 27, Para 3: (A)^o should read (A)ⁱ.
13. Page 34, Para 6: ...of 22.5%--75% of 30%-- should read ... of 75% of 30% (omit 22.5%).
14. Page 42, Para 6: Somerton and Otto, 1998, year should be 1999 as in the Reference section.
15. Page 42, Para 6: Otto, 1995, year should be 1998 as in the Reference section.
16. Page 49, Para 2 and 3: Livingston et al., 1993, year should be 1994 as in the Reference section.
17. Page 49, Para 3: Tyler and Kruse (1995), reference is missing in the Reference section.
18. Page 53, Para 4: (K.J. Sainsbury 1988) should read (Sainsbury 1988).
19. Page 58, Para 3: Rohlf 1989, reference is missing in the Reference section.
20. Page 60, Para 4: NMFS 1994, reference is missing in the Reference section.
21. Page 60, Para 5: Dau and Kitchinski (1977), reference is missing in the Reference section.

①



Frank Rue

May 24, 1996

22. Page 60, Para 5: (FWS 1993), reference is missing in the Reference section.
23. Page 61: The section title number should be 2.6 (not 3.8).
24. Page 66, Para 2: (c.g., Morrison 1997) should read (e.g., Morrison et al., 1997).
25. Page 80: first reference ADF&G ..1997; Carlson and Straty 1981; and FWS 1989, 1995 have not been referenced in the text.
26. Page 81: Goodyear, C.P. should include the year 1995.
27. Page 81: FWS 1997; Hcifetz, 1997; Hiatt and Terry, 1999; Kricger, 1992, 1993; Krost, 1993; Kruse 1993; and Kruse, Funk and Zheng, 1996 have not been mentioned in the text.
28. Page 82: Livingston, 1993, 1999; Morrison, 1996; NMFS, 1999; and NPFMS, 1998 have not been mentioned in the text.
29. Page 82: NMFS 1998a should read NMFS 1998.
30. Page 83: Otto, Haaga and McIntosh, 1997; Pengilly and Schmidt, 1995; Percy et al., 1989, and Rosenberg et al., 1994 have not been mentioned in the text.
31. Page 83: Rosenberg and Restrepo should include the year 1994.
32. Page 84: Somerton, 1980 should read Somerton, 1981.
33. Page 84: Thrush et al., 1998 has not been referred to in the text.
34. Page 85: Zheng and Krusc, 1998, MSb, and M.Sc. have not been referred to in the text.
35. References are not in order at some places in the Reference list:
 - Page 80: Caddy should go above Carls;
 - Page 81: Hcifetz should go above Hennick; Jennings and Kaiser should go above Jones; Kimker should go above Krost;
 - Page 83: Orensanz et al. should go above Otto; Powers should go above Prena et al.; Restrepo et al. should go above Riemann and Hoffmann; Rosenberg references should go above Rumohr and Krost; then, Rosenkranz references should follow Rosenberg references;
 - Page 84: Sainsbury should go above Sainte-Marie;
 - Page 85: Zheng references should be in ascending order of years; and same for Zhou's references.

Please note that I have pointed out discrepancies among text references and Reference list references, assuming that what have been listed in the Reference section are correct.

Best regards



Crab Industry Co-op Subcommittee Minutes
May 18, 2000

The Crab Co-op Subcommittee met on May 18 to further discuss co-op issues and alternatives, focusing on catch history options for the harvest sector. The meeting was presided over by Co-chair Arni Thomson, with Dave Fluharty and Kevin O'Leary present as facilitators. All but two committee members were present or represented by their alternate. The Committee first reviewed and approved minutes from the April 26 meetings, then received a report from John Iani on developments in Washington D.C. regarding buyback. In summary, it appears there is still support for some type of buyback assistance, if there are assurances that it will result in effective effort reduction. A big issue is still the amount of an appropriation vs the amount that would be a loan to the industry. Representatives from the NMFS Finance Division have been invited and may be on hand for the June 5 meeting of the Buyback subcommittee. Draft language for potential buyback legislation may also be available for review at the June meeting. The issue of a moratorium on IFQs is still up in the air, with some Congressmen and Senators supporting an extension of the moratorium, some supporting a regional exemption from the moratorium for the North Pacific, and some wanting a consistent national policy. The Committee then recognized the following written comments/proposals submitted:

- St Paul community proposal (Steve Minor)
- Recent Participation proposal (Leanord Herzog)
- Skippers for Equitable Access proposal (Tom Suryan)
- News Release from Governor Knowles office (approval of disaster relief)
- Letters from Japanese and Korean Embassies regarding foreign ownership investments (AFA specific)
- Letter from Ranier Investments recommending IFQs and non-foreign ownership (Kristian Sorvick)
- Processor proposal for two-pie approach to crab co-ops

Catch History Options for Harvest Sector

The Committee's first discussions centered on the alternatives and options for determining vessel/co-op shares for the harvesting sector. Using the original, extensive set of options developed by the Committee, it was decided to set alternatives on a fishery-by-fishery basis, starting with Bristol Bay red king crab (BBRKC) and opilio (using the same years for these two fisheries). The Committee narrowed the list of options down to the following, which are intended to capture a range which considers recent participation as well as historical participation (NOTE that these options are for determination of percentages, and assume that the Council's collective LLP actions will determine the field of eligible participants):

Alternative 1: 1988-1999 (all-inclusive)

Option: best 9 years

Alternative 2: 1990-1999 (all-inclusive)

Option: best 7 years

Alternative 3: 1992-1999 (all-inclusive)

Option: best 5 years

Alternative 4: 1995-1999 (all-inclusive)

Option: best 3 years

The Committee discussed the need for some initial analysis regarding these options in order to further refine them. Staff noted that, pending resolution of the LLP recency requirements, and the application and appeals process, it would be difficult to compile meaningful numbers at this time, and that individual share percentages could not be divulged in any case. However, summary analyses could be done based on the best information available regarding qualified vessels, and such information may at least provide the Committee with an aggregate number against which their individual catch histories could be compared. This will also allow industry to see some of the implications of using the 'best X years' options. These catch history options will be discussed again at the June 6 meeting, after industry has had time to consider them. There will also be discussion of catch history options for bairdi and other species at that meeting.

Other Proposals

The Committee heard proposals from the processing sector, the community of St. Paul, and Skippers for Equitable Access (SEA). While the Committee took no formal vote on these proposals, the general consensus was that these proposals represented a starting point and should be considered further. The processor proposal essentially would create both harvest and processing shares (as either QS or in a co-op format), which would have to be matched up in a given fishing year. This proposal is different than the AFA-style co-op structure, and would likely require change to the Magnuson-Stevens Act to allow (a) limited entry for processors, and (b) allocations to processors. Options for calculating processors' relative shares all were based on more recent participation in each fishery (1995-1999 was the range). The Committee again had extensive discussions regarding the issues of competition and bargaining power relative to the linkages between harvesters and processors in a co-op or IFQ type program, but has not yet developed a consensus position.

The community of St. Paul offered a proposal designed to maintain community participation in the crab fisheries. Rather than a direct allocation of share, this proposal recommends a minimum amount (percentage) to be delivered to specific geographic regions (Pribilofs, Aleutians, and Kodiak), based on historical delivery rates (both floating and shore-based in each area) for the agreed-upon qualifying years. This proposal suggests qualifying years that go back no further than five years. Some Committee members noted that this type of proposal may impose economic inefficiencies, given that the co-op program is designed to eliminate the race for fish, and some of the processing centers have developed recently because of the race for fish. There also may be legal impediments to this approach that may require legislative change. The Committee views this as a starting point for further discussion of this issue.

A proposal from SEA was offered which would essentially provide for 10% of the harvest shares to be set aside for allocation to active captains based on their contribution to each vessels' catch history. Details of this proposal need further development (how to define 'active' for example), though the Committee accepted this proposal as a starting point for further discussions.

Next meetings are: Buyback Subcommittee-7:00 pm, Monday, June 5 and Co-op Subcommittee-7:00 pm Tuesday, June 6. Both are in conjunction with the Council meeting at the Downtown DoubleTree Hotel, 310 Southwest Lincoln, Portland, Oregon.



North Pacific Fishery Management Council Information on Crab Co-Operatives

● Crab Co-op Meeting agenda 5/18/00 in Seattle
● Info on crab cooperative development: Problem Statement, Options, and Meeting Minutes from Dec. and Feb mtgs. March 3, 2000 Seattle meeting summary April 26th Meeting Agenda, Seattle
● Crab Buyback Committee Meeting Minutes from April 26th, 2000
● Bering Sea Effort Reduction
● Crab Co - op Committee and Buyback Joint Meeting Minutes from April 26th, 2000
● Crab Co - op Meeting (Co-op subcommittee) Minutes from April 26th, 2000
● Letter from NPFMC Chairman to Secretary of Commerce regarding Crab Buy Back program

[Return to NPFMC's Home Page](#)

Page last updated 05/11/00

April 26, 2000 Crab Buyback Committee Meeting

The Crab Buyback Committee met on Wednesday 26 April 2000 at the Leif Erickson Hall in Ballard from 9:30 until 3:00 pm. The committee appointed John Iani as the chair and began work on an outline to provide for a federal buyout of crab effort in all Bering Sea crab fisheries. Kevin O'Leary represented the North Pacific Fishery Management Council.

The Committee began by discussing the disaster resulting from the extremely low quotas of crab resources in the Bering Sea and the realization that the numbers of licenses and vessels in the crab fleet is too high to sustain a viable fishery for the foreseeable future.

The Committee began work on a framework of a buyback proposal to be presented to Congress. The proposal is aimed at making a significant reduction to the fleet through a federal buyout. The framework identified the entities eligible to be bought out; the funding sources for the buyout; specific criteria to be weighed in valuing the assets to be bought out; and the need for protection for other fisheries.

The Committee discussed the need for effort reduction and that a major portion of the financial resources

necessary for the buyout would come from a federal loan to the industry. That loan would be on similar terms to the loan made available to the inshore pollock industry pursuant to the American Fisheries Act. Members of the Committee expressed concern over the burden to repay the loan but concluded that the buyback would not occur without such a loan.

The Committee stated that it would make its framework available to all interested parties and pursue the program with the Congressional delegations of Alaska, Washington, and Oregon. The Committee identified that these three states are all home to the crab fleet.

The Committee will meet again on 5 June 2000 at 7pm at the Doubletree Hotel in Downtown Portland during the North Pacific Fishery Management Council Meeting.

BERING SEA EFFORT REDUCTION

A. Entities to be Bought Back

1. Crab catcher vessels and catcher/processors
2. Vessel Owners must identify the legal entity owning the vessel.
3. Vessel Owners must possess finally adjudicated permanent license and endorsement through North Pacific Council LLP.
4. Vessel and crab license and all endorsements (including Federal Fishery Endorsement) must be surrendered to participate in buyback.
5. Crab Licenses and endorsements in the case of combination vessels may be bought back.
6. Crab Processors. No specific criteria were identified because no limitation on crab processing. Dave Benson of Trident will submit specific proposal.

B. Buyout Operation

1. NMFS will conduct the operation of the Buyback through a reverse auction procedure. NMFS will contact each qualified candidate for the buyback and ask for a bid to sell out.
2. The Buyback legislation will provide criteria for valuing the buyout.

C. Valuation of Buyout Categories

1. Catch History Weighted. For each endorsement the fishery's most recent 3 years will be used.
 - a. Option: Catch History expressed as a percentage of total catch.
 - b. Option: Catch History expressed as a percentage of total gross revenue
2. License and Endorsements
3. License, endorsements and Federal Fishery Endorsement (Vessel retained).
4. License, endorsements, Federal Fishery Endorsement, and Vessel.

D. Resources for Buyout

1. Federal Appropriation
2. Federal Loan. Similar to the loan provided in the American Fisheries Act. Term of the loan 30 years. Repayments made only through post buyback harvest of crab species. In years of no fishery then no

payback.

3. Capital Construction Fund. Provide the opportunity to make non-qualified withdrawals from CCF without penalty in exchange for retiring license and/or vessel.

a. Vessel owner must utilize CCF attributed to the target vessel before utilizing other buyout resources.

b. CCF funds could be rolled into IRA, or other retirement program.

E. Other Fisheries Protections

1. The Buyback Legislation shall direct the North Pacific Fishery Management Council to enact sideboards to prevent vessels who have sold their crab licenses and endorsements from exceeding their historical shares in any non crab fishery.

2. Historical participation shall be defined to the most recent three years prior to participating in the buyback.

BERING SEA/ALEUTIAN ISLANDS CRAB CO-OP and BUYBACK COMMITTEE MEETINGS JOINT SESSION MINUTES April 26, 2000 - SEATTLE, WASHINGTON

Facilitators: Kevin O'Leary and David Fluharty

Council Staff: Chris Oliver

Prior to the committees meeting, a general discussion occurred. Dr. Fluharty introduced the letter from the North Pacific Council requesting Congressional assistance for developing a buyback program and that Congress lift the moratorium on new individual fishing quota programs and authorize the Council to develop cooperatives for the Bering Sea/Aleutian Islands crab fisheries. (Council letter is attached.)

John Iani presented a brief congressional update. He emphasized that industry needs to be unified in goals and that we need to articulate our needs to the Alaska, Washington and Oregon delegations. Dr. Fluharty indicated that Senator Olympia Snowe has indicated she may be introducing a bill to extend the moratorium on IFQs. It may be possible to get exemptions for West Coast groundfish and BSAI crab.

Representatives from St. Paul provided an update and status report on the disaster declaration.

Dr. Fluharty went over the spreadsheet of crab license limitation permanent and interim permits issued by National Marine Fisheries Service. This shows a total of 470 permits for crab LLP. However, NPFMC records indicate there may only be 265 permanent permits. Thus, there are 205 likely interim permits involved in the NMFS appeal process.

Dr. Fluharty then addressed the composition of the buyback and co-op committees and asked if there were additions that needed to be made. There were no comments regarding the buyback committee, but several relating to the co-op committee:

1. Gary Painter requested that Ocean Beauty be included as one of the processors on the co-op committee. This was approved and John Black was named.

2. Ron Peterson stated that he felt his interests were not represented and he was approved to be added to the committee.

3. The City of St. Paul designated Steve Minor and Tony Smith as their representatives on the committee.

4. There was some discussion regarding catcher/processors for the Bering Sea. Arni Thomson

recommended Paul Duffy be named and this was approved.

5. Jeff Stephan then requested that a review of the committee make-up be reviewed and asked that Jeff Steele be added as a committee member. Dr. Fluharty indicated that this issue would be reviewed later.

At that point, the two committees convened and addressed their particular issues.

Crab Industry Co-op Meeting (Co-op Subcommittee)

April 26, 2000

Meeting Facilitator: Dave Fluharty

The industry initiative to develop a buyback program, and crab cooperatives, continued with a meeting on April 26 at the Leif Erikson Hall in Ballard. A list of attendees is attached. A total of 73 persons from industry attended. Following a general overview of developments, the group split up into two separate committees, one to work on buyback issues and the other to work on co-op specifics. These committees were appointed at the previous meeting. In order to balance the co-op committee, 3 new seats were added - a crab processor from Kodiak (Jon Black), an Adak brown crab fisherman/processor (Ron Peterson), and a catcher processor (Paul Duffy). Fifty persons participated in that committee, with 21 being committee members. The following is a summary of the **Co-op subcommittee** meeting (buyback subcommittee report is separate).

The meeting began with the election of a committee chair. Nominated were (1) Gary Loncon and (2) Arni Thomson and Jeff Stephans as co-chairs. The Committee elected Arni Thomson and Jeff Stephans as co-chairs. The committee then identified four major issue areas for resolution: (1) catch history options, (2) processor linkages, (3) community considerations, and (4) IFQs as an alternative to co-ops. The committee decided to first tackle the issue of processor linkages.

Processor linkages

The committee members, as well as audience members, offered a variety of perspectives on this issue. In summary, the processor representatives felt that any program of co-ops (or IFQs) must recognize and protect the investments of processors, either through co-op linkages or through mirror processor quotas (under an IFQ option). Some processors felt that the AFA style co-ops were the minimum protection needed, and that a 2-pie IFQ program may be preferable (and in some ways may actually be simpler than a co-op system). The primary concerns of harvesters centered around the issues of a 'closed class' for processors, requirements to deliver to specific processors, and bargaining power which they feel would be lost, particularly considering involvement of processor-owned harvesters. They felt that reduced ex-vessel price could have impacts to communities as well as harvesters. It was noted that the Council cannot create limited entry for processors, or directly allocate to processors, without legislative change.

A motion was made that the committee re-focus their time and discussions on harvester related aspects of a co-op program, and make discussion of processor (and other potential stakeholders) a secondary consideration in the program design. It was felt by some that the process could not include every potential stakeholder (where do we stop?), or we would never get a program developed. This motion failed on a 17-2 vote. The majority of committee members felt that consideration of processors, communities, and others had to be included from the start, or the process would fall apart; i.e., that the Council and/or Congress would not give serious consideration to any program which did not take these stakeholders into account from the beginning.

Community considerations

During the discussions of processor involvement, the committee also discussed the issue of community involvement, as well as potential inclusion of skippers (or others) in the program. The Committee heard from a representative of Dutch Harbor who noted that 60% of the raw fish tax (1999) related to Dutch Harbor was from crab, while a St Paul representative noted that community was about 85% dependent on crab. Both stressed the importance of crab to those communities and the need to design a program that maintains that 'share' and promotes community stability relative to the crab fisheries. This could include, but not be limited to, processor involvement. Skippers for Equitable Access (SEA) also was represented and their perspective is that skippers are responsible to a large degree for the catch history of vessels, and therefore any program based on that catch history should include skippers. They also stressed that bargaining position for skippers would be negatively affected (and has been under AFA) if they are not included, because they then become simply 'drivers' of a vessel with a guaranteed share. Other committee members felt that, if the Council wished to consider skipper and/or crew members in the allocations, they should revisit existing programs such as halibut and sablefish IFQs, before doing so in the crab fisheries.

IFQ vs Co-ops

The committee discussed the issue of whether co-ops was the best way to proceed, as opposed to an IFQ program. Dr. Scott Matulich was on hand and offered a summary to committee members of IFQ theory, including the 2-pie model which allocates to both harvesters and processors, and the need to simultaneously decapitalize both sectors. The committee recognized that either sector could buy into the other; i.e., processors could obtain harvest IFQs, and vice-versa. In some ways an IFQ program may offer a more elegant solution that takes into account the concerns of both harvesters and processors. The committee intends to explore this option further.

Catch history

The committee discussed catch history options to a limited degree, noting that this was likely one of the most critical (and contentious) aspects of program development. They recognize that catch history years do not necessarily have to be the same for the harvest and processing sectors, depending on the model chosen (since each would be expressed as a percentage within each sector). The next meeting of the committee, scheduled for May 18 in Ballard, will focus at least the first half of the day discussing catch history options for the harvest sector.

A Straw-man for committee discussion

In order to begin serious discussion of elements and options, the committee decided to adopt as a straw-man starting point the proposed legislation submitted recently by the ACC. This proposal appears to address all of the decision points facing the committee and will serve as the reference point for debate on specific elements and options, including catch history. To begin, the committee voted to (1) adopt as a starting point that only vessels which are LLP qualified, including the Council's October 1998 recency requirements, would be eligible, (2) to temporarily delete from the strawman specific years of catch history which would be used for co-op share, and (3) that regardless of catch history options chosen, in no case would they go beyond December 31, 1999.

Much discussion centered around the minimum number of vessels per co-op, recognizing some management implications with too many co-ops being formed. Another consideration is that the number of vessels per co-op is only an issue under some co-op models - for example, under the AFA model, vessels are linked to a specific processor (and co-op) based on previous year's activity. For crab, there

are several species under consideration which will likely result in separate or overlapping co-ops. This discussion highlighted the fact that many of these design features link back to the issue of processor linkages, and that decision may dictate other aspects of the program design. The committee requested the processors to develop a more specific proposal for consideration which would specify their preferred program design as it concerns the relationship between harvesters and processors. The committee's goal is to find a solution for both sides that may be superior to the AFA model.

Next Meeting

The next meeting will be on Thursday May 18 from 9:00 am to 4:00 pm, again at the Leif Erikson Hall in Ballard. This meeting will devote at least the first half of the day to discussing catch history options for the harvest sector. Another meeting is scheduled for June 6 at 7:00 pm in Portland, Oregon, in conjunction with the North Pacific Fishery Management Council meeting at the DoubleTree Hotel downtown.

MEETING NOTICE BERING SEA & ALEUTIAN ISLANDS CRAB INDUSTRY COOPERATIVES MEETING

DATE: May 18, 2000 (THURSDAY)

PLACE: Leif Erickson Hall, Seattle

TIME: 9:00 AM – 4:00 PM

FACILITATORS: David Fluharty and Kevin O'Leary

A \$15 DONATION TO DEFRAY COPYING, MAILING AND MEETING HALL EXPENSES IS REQUESTED AND APPRECIATED

DRAFT AGENDA

9:00 AM – 9:30 AM

- I. Review co-op and buyback meeting minutes of April 26th meeting
- II. Reports, distribution of new and/or revised proposals, committee business

9:30 AM – 12:00 Noon

Co-op Committee and Industry Discussions

III. Discussion of vessel catch history options (See revised 3/2/00 Options Paper and ADF&G Reports with fishery-by-fishery fleet size and catch, enclosed.)

1:00 PM – 4:00 PM

Co-op Committee and Industry Discussions

- IV. Processor proposals, including linkage
- V. Community and skipper proposals
- VI. Other?
- VII. Wrap up and planning for the next meeting

NOTE: Please bring 100 copies (ready for distribution) of all materials you wish to have presented at the meeting. Also, please bring this information packet.

NOTICE OF NEXT MEETINGS (Coincident with NPFMC meeting)

Place: DoubleTree Hotel Portland Downtown, Portland, OR

Tele: 503 221 0450; Address: 310 S.W. Lincoln and corner of 4th.

Buyback Committee: June 5th, 7:00 PM: Room to be announced

Co-op Committee: June 6th, 7:00 PM: Room to be announced

May 17, 2000

PROCESSOR TWO PIE APPROACH TO CRAB COOPERATIVES

A. Basic Approach.

Each harvester receives harvesting shares for each species in each fishery, based on his pro rata share of that fishery in specific base years. Each processor receives processing shares for each species in each fishery, based on its pro rata share of processing of that fishery in specified base years. A unit of harvesting shares and a unit of processing shares must be combined for each pound of crab harvested and processed in the current year. In the event of a Government buyback of harvesters and/or processors, the shares of those bought out by the Government will be distributed pro rata to the remaining industry participants. The harvesting percentages and the processing percentages will each be summed to 100% for the current year to ensure a match between harvesting shares and processing shares. The harvesting percentages and processing percentages will each be converted to pounds in the current year based on the GHF in each fishery. Very small fisheries and fisheries that have been closed for several years will be put aside for future review, and action if needed, prior to completing action on a final proposal, including bairdi which was last fished in 1996 and last had a substantial quota in 1994.

B. Processing Shares.

1. Eligible processors. An eligible processor must meet a recency requirement by having processed in at least two of the most recent four years (including one of the most recent two years, i.e. 1998-99 or 1997-98 depending on the species), in which the fishery was open and viable, to be eligible in each fishery. Base years:
 - a. 1996-1999 for Bristol Bay red king crab;
 - b. 1995-1998 for Pribilof red king crab;
 - c. 1995-1998 for St. Mathew blue crab;
 - d. 1995-1998 for Pribilof blue crab;
 - e. 1996-1999 for brown king crab;
 - f. 1996-1999 for opilio crab.
2. Processing History. An eligible processor's processing history will be percentages based on its processed pounds in each directed (non-CDQ) fishery in some combination of the four base years for each fishery (whether we will use 1 of 4, 2 of 4, 3 of 4, or 4 of 4 is to be determined). The best years will be determined as the processor's highest number of pounds processed in each fishery in each year.
3. Processor Shares. An eligible processor will be allocated annually a poundage amount in each fishery based on its processing history percentage as compared to the aggregate processing history percentages of all eligible processors.

4. Transferability. An eligible processor may use its processing shares at any of its facilities. An eligible processor may lease or sell its processing shares, in whole or in part, to any person or entity.
- 5. Catcher Processors. An eligible catcher processor will be allocated processing shares and harvesting shares in each fishery based on its harvesting history.
6. Crab Caps. AFA crab caps will be eliminated upon establishment of this new system.

C. Harvesting Shares.

1. Harvesters in a cooperative will receive an aggregate share allocation for each fishery based on the sum of the catch history of the members.
2. The cooperative will negotiate with the processors that it intends to deliver to in order to match up harvesting and processing shares.

5/17/2000 4:18 PM



DRAFT

CO-OP SHARES/IFQ's FOR CAPTAINS

I Percentage to Captains and preservation of the traditional share basis:

Ten percent (10%) of the total quota share should be set aside for allocation to active captains based on their individual catch history. This portion of the quota share shall be a separate pool of quota available only to active fishers. Provisions should be made to prohibit absentee collection of rents on the quota share. With the exception of hardship cases "use it or lose it" would apply to QS. Additionally, provisions for the preservation of the traditional share basis of pay are needed.

II Gear Specific:

As with vessels.

III Eligibility:

As with vessels.

IV Qualification Period:

As with vessels.

V Distribution per Captain:

Shares based on landings (i.e. personal catch history). For example, a Captain would receive 10% of the Quota Share his catch history determines for a vessel.

VI Transferability criteria:

Leaseable (if applicable i.e. hardship cases) to anyone qualified to hold quota shares but saleable only to other qualified captains or crewmen.

VII Limits on ownership:

A cap on ownership for Captains shares shall be equal to, but not exceed, that for vessels. (For example, if vessels are limited to 1% of their available QS then captains or crew would be limited to 1% of their available QS pool.)

**Crab Industry Rationalization
A Proposal from the City of Saint Paul**

Since the development of the St. Paul Harbor in 1989 and the build-up of shore-based processing capacity beginning in 1995, St. Paul has been an active participant in the Bering Sea crab fishery, and made substantial investments in infrastructure to support the industry's growth. St. Paul is likewise an active participant in the industry's efforts to develop solutions to the current resource and financial crisis confronting the BSAI crab industry.

St. Paul's objective is to remain an active participant in the rationalized fishery.

St. Paul is a key partner in the fishery. The development of St. Paul Harbor has provided a competitive alternative for the harvesting sector, and because of our proximity to the crab grounds and the growth of our processing capacity, facilitated increased crab deliveries by the fleet. The catch histories of crab vessels and the volumes processed by both floaters and shore-based processors are, at least partially, a result of the availability and accessibility of St. Paul Harbor.

St. Paul's role in the rationalization process is the same as the harvesting and processing sectors: we want to protect our interests in a fair and equitable manner. Further, the Magnuson-Stevens Act (National Standard 8) requires that the interest of fishing communities in the sustained participation of the fishery be taken into account in fishery conservation and management measures (16 U.S.C. 1851 (a)(8)).

In the interest of advancing new ideas that attempt to treat all harvesters, processors and affected communities in a fair and equitable manner, we make the following proposal.

Basic Criteria and Process
For Rationalization of BSAI Crab Industry

Step One: Immediate Capacity Reduction

Another committee is currently dealing with this issue, and we encourage the general direction, which that working group seems to be heading.

Step Two: Establish "Qualifying Years"

We would like to support an option based on a cut-off date of December 31st, 1999. During the Co-op Committee's April 26, 2000 meeting at Leif Erikson Hall in Ballard, the Committee agreed in general that "...regardless of catch history options chosen, in no case would they go beyond December 31, 1999."

This cut-off date is also consistent with the intent of "Recency" requirements.

The beginning date for catch history should be at least two years prior to December 31, 1999 but no more than five years previously. Again, this is consistent with "Recency" goals.

Step 3 : Defining the Harvester / Processor relationship

This is an issue best left to those two sectors, as long as the interests of St. Paul Island and other affected communities are not adversely impacted. To ensure that community interests are taken into account, we are recommending a specific allocations process in Step 4, below.

Step 4: Allocations

Once the harvester / processor relationship is defined, there will inevitably be an allocations process. In general we support the loosely defines “catch history” based models that have been discussed in the past few meetings.

Our definition of “catch history” includes provisions for delivery history, which is consistent with the Processing sectors’ goal as well. To protect community and processor investments, then we propose the following:

- A. That there be three “delivery areas” created as a subset of the allocations process: the Pribilof Islands (Saint Paul and Saint George), the Aleutians (Dutch Harbor, Akutan, King Cove and any other affected communities in that area) and Kodiak.
- B. That allocations to the processing and harvesting sectors only be transferable within a designated area, as defined above. In other words, individual allocations may be transferred but the allocation must stay within the area for which it is issued.
- C. That the area-specific allocations be made based on historical delivery rates for the agreed-upon qualifying years. The historical delivery rates should include both shore-based and floating processor deliveries within the areas defined above.

An Example

Company X receives an allocation of crab which, for this example, we will say is 1,000 pounds. Within that 1,000-pound allocation it is further specified that 300 pounds are designated as Pribilof Area quota, 500 pounds are designated as Aleutians Area quota, and the remaining 200 pounds are designated as Kodiak Area quota.

If Company X decides to concentrate all of it’s activities in the Aleutian and the Pribilof Areas (and leave the Kodiak area), then it may transfer it’s Kodiak Area quota through a lease, sale or exchange with another entity, but that quota must stay in the Kodiak Area.

In essence, this approach protects historical participation rates and the investments already made by harvesters, processors and local communities alike; while the transferability of allocations within each area allows

individual entities to make long-term business decisions without feeling that their capital is trapped in a particular location.

Rationales for Recent Participation

ECONOMIC DEPENDENCE AND FAIRNESS

A voluntary coop should provide a recent snapshot of activity and investments. Entering a coop voluntarily one should expect to be able to catch the percentage caught the last couple of years. That is the best projection of what one would catch without a coop. Vessels no longer fishing are not economically dependent on the fishery and should not receive history. If a boat has caught ½ % of the opilio for each of the last 5 years, in a coop it should expect to be able to catch ½ %, not less because of what happened in 1988 or 1992 when a totally different fleet was competing.

REDUCE EFFORT AND PROVIDE REAL OPPORTUNITY FOR BUYBACK

Opilio effort has been stable recently: from 1997-1999 an average of 234 vessels fished (1997 226, 1998 229, 1999 241). The fleet was much larger from 1992-1994 when an average of 260 vessels fished. If history is awarded to the @ 30 vessels which voluntarily left (Russia, oil fields etc) those licenses will have to be bought back. If no history is awarded until 1995 and after, we do not have to buy back those thirty licenses. For Red King Crab the numbers are similar with average of 263 vessels fishing 1997-1999 and 292 boats from 1992-1994. Thus a coop based on recent participation effectively eliminates latent licenses.

GOING BACK 10 YEARS CREATES SERIOUS LOSERS WITH LITTLE BENEFITS

Any gains above a five-year average must come out of the pockets of the present participants that have fished five or less years. **RUN THE NUMBERS:** Assume 240 present participants. Assume 40 new crab vessels entered over last five years with average of 2½ years history each and that they will lose half their history, that's only a full 10 boats with 10 years of history. If that history is distributed back to the other 200 vessels it is a gain of only 5% each. Thus by going back 10 years a vessel which has fished each of the last five years would lose half its history, and the boats which fished every year for 10 years would be increased by only 5%. The farther back we go, the more real losers without significant gains for the winners. Consensus will be impossible. Gains from a coop or quota are biggest for highliners who freeze their high percentages and multiboat owners. Those gains should far outweigh not getting to fish another 5% over their recent averages. On the other hand, Owners who can show complete dependence on the crab fisheries and have participated in all the recent fisheries for multiple years or have spent large sums to sponsor their boats and have higher recent years will fight the coop and quota process tooth and nail, including lawsuits because they would be bankrupted by a coop which based history on 8 to 12 year old records.

ALL PRECEDENTS ARE FOR RECENT PARTICIPATION

AFA Pollack 2 or 3 years
PCOD 5 years
Crab Recent Participation 3 years
Gulf Groundfish Proposed Coop 5 years
Halibut

Fairness requires that similar year periods be used because a vessel that fished Pollock or groundfish previously will get no groundfish history if it has consistently crabbed the last five years. There is no precedent for going back 8 to 12 years.

VESSEL HISTORY SHOULD BE SIMILAR TO PROCESSOR HISTORY

ST PAUL proposal last five years

Earlier years most product was delivered to Dutch. IT will be much more difficult to create a parallel program for processors if the years are different. For example if an AFA type program was adopted the catch histories of vessels and their processors would not match. Processors which have made recent investments to increase production or have started processing recently will not want to give history to processors which no longer process.

ALASKAN DELEGATION WILL NOT BACK 10 YEAR HISTORY

After fighting to Americanize the Pollock fleet the Alaskan delegation will not back a proposal which gives history to licenses from vessels which left the country while taking history from Alaskan owned boats which have fished each and every of the last five years. The Magnuson Act standard of recent participation is intended to reduce economic losses to vessels that are presently dependent on a fishery, not to take history away from present participants and give it to people who no longer participate. Where fisheries have had a recent stable number of participants there is no rationale for going back 8 or 12 years and rewarding history to a fleet composed of different entities.

STATEMENT BY KRISTIAN S. SORVIK
RAINIER INVESTMENTS INC.
605 12th Ave North
Edmonds, WA 98020

May 10, 2000

The crab conflict is about control of an American renewable natural resource. The foreign companies have no basis for the claims that they are making over the right to and of our crab natural resources.

In the United States, foreign countries and companies are not supposed to be privileged over our own american businessmen and women. They are claiming an exempt status because of international trade agreements. The Japanese and Koreans have trade agreements dating from the 1950's. They are using those agreements in an attempt to supercede our current laws and traditions. If we have trade agreements, fine. Obviously these trade agreements need to be updated. However, that does not entitle the foriegn processors or foreign citizens a right to our natural resources.

At the meeting held April 26, 2000 at the Leif Erickson Hall, the processor representatives expressed a desire for protection of their investments. The harvesters need the protection of Individual Transferable Quotas so that the foreign owned processing companies cannot manipulate, control or monopolize the crab industry.

The foreign owned companies should not be awarded any exclusive rights of ownership of american crab resources, nor should they be allowed exclusive processing rights.

If the shoreplants/processors are granted quota shares then they would hold an unfair advantage over the American harvesters and would prevent any american investment to enter into the crab or fish processing industry. If the processing companies wish to lease or purchase ITQ's there would not be an objection, but they have no right, or reason, to even expect to be granted quota shares of an american natural resource or industry.

The American Crab fishing industry desperately needs to implement the use of Individual Transferrable Quotas. Without ITQ's the crab fleet is imminently doomed to economic failure and bankruptcy. The suggestion of co-ops are not a new creative idea in fishing. Co-ops are not an economically viable option for the crab harvesters. According to my sources the Tuna co-op, Salmon co-op, Shark liver Co-op, and Halibut/Blackcod co-ops all failed in the past and should shed light on the risk. Heralding the successes of the Hake Co-op is a misrepresentation, because it is only a gentlemen

agreement between a few companies to divide the catch. We do not need history to repeat itself in the crab fishery.

One processing company already claims that they are going to fight to keep americans from implementing an ITQ system in the crab fishing industry. How absurd and insulting.

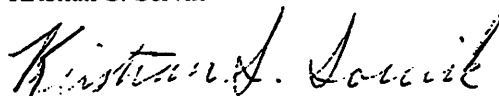
The problem statement drafted by the North Pacific Fishery Management Council for the Bering Sea crab fishery outlined six major issues in the comprehensive rationalization process that still exist. The ITQ Program effectively solves these issues.

1. Resource, Conservation and management problems would be solved because there already are successful effective ITQ programs currently operating.
2. Bycatch, handling mortality and deadloss would be severely reduced with an ITQ program because the fleet could slow down their rate of harvesting.
3. Gear loss would be effectively reduced therefore these environmental concerns would be resolved.
4. Excess harvesting capacity would be reduced, because an ITQ program would provide the harvesters a way out of the industry without severe financial hardship.
5. An ITQ program would provide protection and economic stability to an industry in crisis.
6. The safety issue would diminish because the fishermen would be able to choose when they wanted to fish and in the weather conditions they prefer.

Granting American quotas to foreign processors would guarantee the american crab fishermen being forced out of their own industry! Americans do not object to international trade. We do not object to foreign companies buying our products. What americans object to is being manipulated and controlled in their own country and industry by foreign interests. As a necessary step in the solution to the problems of the crab fishery, Individual Transferable Quotas are essential, vital and critical to the survival of this industry. Thank you for considering my input, I'm sure that your unwavering concern for small business interests in our nation will be protected for the good of all future generations of potential businessmen and women.

Respectfully,

Kristian S. Sorvik



BERING SEA CRAB COOPERATIVE OPTIONS
As Modified on 3/2/00

MANAGEMENT PRIORITIES

Issues

1. Address GHL vs. TAC management system
2. Establish conservative management/rebuilding regime
3. Address costs of management, monitoring and enforcement
4. Address full retention and enforcement
5. Other

END THE RACE FOR FISH – Crab Cooperatives

Qualification

1. Must own a crab license under the License Limitation Program
2. Other

Catch History Recipient

1. Vessel owner
2. Skipper
3. Other

Cut-off Date

1. December 31, 1998
2. December 31, 1999
3. Other

Establish a Catch History Basis for Allocation

1. 1988–
 - a) 1998
 - b) 1999
2. 1990–1999
3. 1992–1998
4. 1993–1999
5. 1995–
 - a) 1997
 - b) 1998
 - c) 1999
6. 1996–1999
7. 1998–
 - a) 1999
 - b) 2000
8. Other

Fishery-by-Fishery Options

1. Opilio
 - a) 1996-1998
 - b) 1996-1999
2. Bristol Bay red king crab
 - a) 1991-1997
 - b) 1996-1998
 - c) 1996-1999
3. Bairdi
 - a) 1990-1997
 - b) 1994-1996
4. Pribilofs - 1996-1998
5. St. Matthew - 1996-1998
6. Adak red king crab - 1992-1995
7. Adak brown king crab - 1996-1998
8. Exclude 1999 from ALL options
9. Other

Address Closed or Developing Fisheries

Catch History Options

1. All years included
2. Best six out of seven
3. Best five out of seven
4. Best two out of three
5. Best one out of five
6. Weigh recent participation higher
7. Develop format for percentage of income/dependence
8. Other

Number of Vessels Allowed to Form Cooperatives

1. 5 vessels
2. 10 vessels
3. 15 vessels
4. 20 vessels
5. Fishery-by-fishery basis
 - a) Bristol Bay red king crab _____
 - b) Opilio _____
 - c) Bairdi _____
 - d) St. Matthew _____
 - e) Pribilofs _____
 - f) Adak red king crab _____
 - g) Adak brown king crab _____
6. Minimum and maximum percentage of fishery
7. Other

Duration of Co-op Contracts per Area and/or Fishery

1. One year
2. Two years
3. Other

Transfer/Leasing

1. None
2. Allow annual leasing with limits
3. Allow sale of catch history and stacking within limits
4. Other

Excessive Share Caps

1. None
2. 1% - 5% of resource
3. Cap on number of vessels owned - 5 vessels
4. Varying caps for each fishery/area
5. Grandfather provisions
6. Other

Catcher/Processor Issues

1. Capped same as catcher vessels with no processing caps
2. Capped at historical processing history
3. Consider separate co-op structure for catcher/processors
4. Other

OTHER

Pot Limits

1. Status quo
2. Eliminate
3. Raise pot limits
4. Other

Observer/Reporting Issues

Proposed Timeline for Approval

1. October 2000
2. Other

PROCESSOR ISSUES

Processor Allocation

1. None
2. AFA style processor limited entry
3. AFA style co-op structure
4. AFA style with Dooley-Hall concept
5. Allocation to allow for growth of the share of crab processed

Limit Number of Processors

1. None
2. Limited entry for processors
3. Other

Participation Requirements

1. Based on actual history
 - a) Same history as for harvesters
 - b) Participation in 1999 would be required, or last year a fishery was conducted
2. Community/location consideration
3. Other

Excessive Share Caps

Issues Surrounding Company Owned Harvesting Vessels

Leasing, Sale and Stacking of Processor Rights

COMMUNITY ISSUES

Dependent Community Protections

1. None
2. Establish mandatory landing percentages
 - a) Based on actual history
 - b) Based on dependence
 - c) Combination of history and dependence
 - d) Other

SIDEBOARD ISSUES

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

[FR Doc. 00-12560 Filed 5-17-00; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 600

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

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program

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

ACTION: Interim final rule; request for public comments.

SUMMARY: NMFS issues interim final framework regulations specifying procedures for requesting and conducting fishing capacity reduction programs (reduction programs). A reduction program pays harvesters in a fishery with too much fishing capacity either to surrender their fishing permits for that fishery or both to surrender all their fishing permits and withdraw their fishing vessels from all fishing. Reduction costs can be paid by post-reduction harvesters, taxpayers, or others. The intent is to decrease excess harvesting capacity, increase the economic efficiency of harvesting, and

facilitate the conservation and management of fishery resources in each fishery in which NMFS conducts a reduction program.

DATES: This interim final rule is effective June 19, 2000. Comments must be received on or before June 19, 2000.

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

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

SUPPLEMENTARY INFORMATION:

Background

Many U.S. fisheries have excess fishing capacity. Excess fishing capacity decreases earnings, complicates management, and imperils conservation. To provide for fishing capacity reduction programs, Congress amended the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) by adding section 312(b)-(e) (16 U.S.C. 1861a(b)-(e)). To finance reduction costs, Congress amended Title XI of the Merchant Marine Act, 1936 (Title XI), by adding new sections 1111 and 1112. The Title XI provisions involving fishing capacity reduction loans have been codified at 46 U.S.C. App. 1279f and g.

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

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

Comments on Proposed Rule and Responses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

One comment said that fee collection audits are unrestricted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Another comment said that all reduction programs should involve

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response: NMFS agrees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response: Although some states may have this title-restriction ability, NMFS has no way of ensuring that these states will enforce such title restrictions for as long as the fishing vessels exist. Moreover, little may prevent a fishing vessel owner whose fishing vessel title has been restricted in one State from re-registering the vessel in another state that cannot or will not similarly restrict the vessel's title. Federal title restrictions for Federally-documented fishing vessels are effective for reduction purposes, but state title restrictions for state-registered fishing vessels may not always be effective.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response: NMFS agrees.

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

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

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

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

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

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

Response: NMFS notes this comment.

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

Response: NMFS agrees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response: NMFS notes this comment.

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

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

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

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

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

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

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

Response: NMFS notes the comment.

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of Revisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Classification

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

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

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

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

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

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

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

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

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

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 600

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

Dated: May 8, 2000.

Penelope D. Dalton,
Assistant Administrator for Fisheries,
National Marine Fisheries Services.

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

15 CFR Chapter IX

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

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

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

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

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

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648-)
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50 CFR

600.1001	- 0376
600.1003	- 0376
600.1005	- 0376
600.1006	- 0376
600.1009	- 0376
600.1010	- 0376 and-0413
600.1011	- 0376
600.1012	- 0376
600.1013	- 0376
600.1014	- 0376

3. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

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

§ 600.5 Purpose and scope.

* * * * *

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

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

50 CFR Chapter VI

PART 600 MAGNUSON-STEVENS ACT PROVISIONS

Subpart L—Fishing Capacity Reduction

Sec.

600.1000	Definitions.
600.1001	Requests.
600.1002	General requirements.
600.1003	Content of a request for a financed program.
600.1004	Accepting a request for, and determinations about initiating, a financed program.
600.1005	Content of a request for a subsidized program.
600.1006	Accepting a request for, and determinations about conducting, a subsidized program.
600.1007	Reduction amendments.
600.1008	Implementation plan and implementation regulations.
600.1009	Bids.
600.1010	Referenda.
600.1011	Reduction methods and other conditions.
600.1012	Reduction loan.
600.1013	Fee payment and collection.
600.1014	Fee collection deposits, disbursements, records, and reports.
600.1015	Late charges.
600.1016	Enforcement.
600.1017	Prohibitions and penalties.

600.1018 Implementation regulations for each program. [Reserved]

Subpart L—Fishing Capacity Reduction

Authority: 16 U.S.C. 1861a(b)–(e).

§ 600.1000 Definitions.

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

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

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

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

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

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

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

Delivery value means:

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

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

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

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

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

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

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

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

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

Fish buyer means the first ex-vessel party who:

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

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

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

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

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

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

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

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

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

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

Net delivery value means the delivery value minus the fee-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Vote means a vote in a referendum.

§ 600.1001 Requests.

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

fishery. Each request shall be in writing and shall be submitted to the Director, Office of Sustainable Fisheries, NMFS. Each request shall satisfy the requirements of § 600.1003 or § 600.1005, as applicable, and enable NMFS to make the determinations required by § 600.1004 or § 600.1006, as applicable.

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

(c) For a fishery subject to the jurisdiction of a Council, only that Council can or must make the request.

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

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

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

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

§ 600.1002 General requirements.

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

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

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

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

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

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

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

§ 600.1003 Content of a request for a financed program.

A request for a financed program shall:

(a) Specify the reduction fishery.

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

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

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

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

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

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

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

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

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

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

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

(1) The characteristics of the fishery;

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

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

(4) The reduction amendment required;

(5) The needs of fishing communities;

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

(7) All other relevant factors.

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

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

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

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

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

referendum and be sufficiently detailed to enable NMFS to readily:

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

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

(C) Invite bids,

(D) Accept or reject bids, and

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

(ii) Address, consistently with this subpart:

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

(B) Bidder eligibility,

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

(D) The criteria for accepting or rejecting bids,

(E) The terms of bid acceptances,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 600.1005 Content of a request for a subsidized program.

A request for a subsidized program shall:

(a) Specify the reduction fishery.

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

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

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

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

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

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

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

(ii) Include:

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

(B) Eligible bidders,

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

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

(E) The terms of bid acceptances;

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

(i) The characteristics of the fishery,

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

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

(iv) The reduction amendment required,

(v) The needs of fishing communities, and

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

(3) Demonstrates the program's cost effectiveness.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 600.1007 Reduction amendments.

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

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

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

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

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

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

§ 600.1008 Implementation plan and implementation regulations.

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

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

all relevant aspects of implementing the program, including:

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

(c) NMFS will base each implementation plan and implementation regulations for a subsidized program on the final development plan. The implementation plan will describe in detail all relevant aspects of implementing the program, including: (1) The reduction fishery;

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

(d) The implementation regulations will:

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

supply for NMFS to deem a bid responsive,

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

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

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

- (2) For a subsidized program, NMFS does not accept bids; and
- (3) For either a financed program or a subsidized program, if NMFS is unable to make all reduction payments due to a material adverse change.

§ 600.1009 Bids.

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

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

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

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

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

- (i) The revocation, by NMFS, of any reduction permit, and
- (ii) Where the program also involves the withdrawal of reduction vessels from fishing:

(A) Title restrictions imposed by the U.S. Coast Guard on any reduction vessel that is federally documented to forever prohibit and effectively prevent any future use of the reduction vessel for fishing in any area subject to the jurisdiction of the United States or any state, territory, commonwealth, or possession of the United States, or

(B) Where reduction vessel scrapping is involved and the reduction vessel's owner does not comply with the owner's obligation under the reduction contract to scrap the reduction vessel, take such measures as necessary to cause the reduction vessel's prompt scrapping. The scrapping will be at the reduction vessel owner's risk and expense. Upon completion of scrapping, NMFS will take such action as may be necessary to recover from the reduction vessel owner any cost or expense NMFS incurred in causing the reduction vessel to be scrapped and any other damages NMFS may have incurred and such

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

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

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

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

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

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

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

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

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

(b) NMFS will not invite bids for any program until NMFS determines that:

(1) Any necessary reduction amendment is fully and finally approved and all provisions except those dependent on the completion of reduction are implemented;

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

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

(4) Any reduction loan involved is fully approved;

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

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

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

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

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

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

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

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

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

§ 600.1010 Referenda.

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

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

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

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

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

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

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

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

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

(d) NMFS will conduct referenda in accordance with the following: (1)

Eligible voters. The parties eligible to vote in each referendum are the parties whose names are listed as being eligible to vote in the notice published in the Federal Register under § 600.1004(a);

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

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

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

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

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

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

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

(A) The fishing capacity reduction specifications,

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

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

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

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

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

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

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

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

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

(ii) Such other materials as NMFS deems appropriate;

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

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

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

(iii) Is signed by the voter,

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

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

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

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

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

(A) The number of potential voters,

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

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

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

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

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

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

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

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

§ 600.1011 Reduction methods and other conditions.

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

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

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

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

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

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

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

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

a program is a financed program or a subsidized program;

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

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

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

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

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

§ 600.1012 Reduction loan.

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

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

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

(2) At an annual rate, that shall be determined by subsequent events, of simple interest on the reduction loan's principal balance that shall equal 2 percent plus the Treasury percentage;

(3) Repayable over the repayment term specified in the business plan or otherwise determined by subsequent events; and

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

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

§ 600.1013 Fee payment and collection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) The net delivery value,

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

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

(ix) The total fee amount collected;

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

(i) The dates and amounts of deposits,

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

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

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

(2) Total delivery value paid;

(3) Total fee amounts collected;

(4) Total fee collection amounts deposited by month;

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

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

(7) Depository account balance at year-end.

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

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

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

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

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

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

§ 600.1015 Late charges.

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

§ 600.1016 Enforcement.

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

§ 600.1017 Prohibitions and penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 600.1018 Implementation regulations for each program. [Reserved]

[FR Doc. 00-12159 Filed 5-17-00; 8:45 am]
BILLING CODE 3510-22-F

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

[Docket No. 99N-1309]

Obstetrical and Gynecological Devices; Classification of Female Condoms

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

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

DATES: This rule is effective June 19, 2000.

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

SUPPLEMENTARY INFORMATION:**I. Background**

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

David Hillstrand
Box 1500
Homer, AK 99603

We support the Bering Sea Crab Cooperative-ITQ Options and the Buy Back program.
Here are our views on each option.

Qualification

1. Must own a crab license under the License Limitation Program.

Establish a Catch History basis for Allocation

Fishery by Fishery Option

1. Three to Six years from the NPFMC final action, or date set, or the last opening date of the fishery.
 - a) The best two to four years.

Processors

1. We support a limit entry on large processors.
2. 0-100,000 pounds processors allowed to still enter.
3. Historical port of landing. All harvesters will deliver to historical ports of landings; with 20% being able to be delivered to another port.

Exemption: vessels that choose to fish open access.

- a) Can deliver to another port.
- b) Can deliver to any processor.

Coops.

1. No vessels have the ability to coop.
2. No processors have the ability to coop.

Transfer/Leasing

1. No transfer or Leasing, no co-ops.
2. Allow sale of catch history.
 - a) 2 - 4 Vessels.

Excessive Share Caps

1. 1% to 2%. For King crab red, blue and Baridi.
2. 3% to 5% for Brown king crab.
3. 2% to 3% for Opilio.
4. Grandfather provisions if one exceeds the excessive share cap in the original endorsement.

David Hillstrand

David Hillstrand
Box 1500
Homer, Alaska 99603

NPFMC

Crab Co-op's - ITQ's

We would like the NPFMC to study ITQ's for **vessels and processors.**

We would also like to request that the NPFMC ask the State of Alaska to include the Korean Hair crab fishery in the Co-op - ITQ proposal.

David Hillstrand

**F/V NORTH POINT FISHERIES INC.
F/V STORMBIRD INC.**

P. O. Box 714

Kodiak, AK 99615

Tel (907) 486-5450 Fax (907) 486-2272

April 10, 2000

Honorable Ted Stevens
United States Senate
522 Hart Building
Washington, D.C. 20510-0201

Dear Senator Stevens:

This letter addresses my concerns regarding the Bristol Bay and Aleutian Island Crab Cooperatives. I am opposed to the implementation of Crab Co-OP's for the following reasons:

1. Crab CO-OP's will eliminate all competition.

2. Crab CO-OP's will work towards privatizing another public resource.

3. Crab CO-OP's will not address the over capitalization of the fishing fleet. The opposite will be true. The very participants who overcapitalized the fleet with unneeded influx of new catching capacity in the past 15 years will be the beneficiaries of this program. They will be rewarded for their greed-motivated irresponsible fiscal behavior by securing a guaranteed share of the resource. A Free Market ensures that there will be successes as well as failures of businesses. Fishing is a business. Of one hundred (100) businesses established in a given year only five (5) will be still operating after 10 years. Why should fishing be any different than the general market place?

4. **Crab CO-OP's will not benefit Alaskans.** Most Alaskan Crabbers are single owner-operated boats whose owners are opposed to CO-OP's. They do not want to be part of groups that dictate to them when and where to fish or to which processor they must sell. The benefits will accrue to multiple boat owners from the lower 48 who want guaranteed income. The "Magnificent 7" in the pollock CO-OP's should be a warning to us all. Instant millionaires were created by the stroke of a pen. We don't need anymore terrible legislation like the American Fisheries Act.

5. **Crab CO-OP's are inconsistent with established proven economic principals and concepts.** In a free market economy government has the role of arbiter and guide a sort of benevolent overseer who impartially keeps the "Playing Field" even. In theory this is of course the ideal. In reality we have a much different scenario. Every sector of industry has their special interest in carving out the largest slice of the the economic pie for themselves. In order to accomplish this they send their hordes of lobbyists and lawyers to the seats of power. They are human swarms of locusts. The fishing industry is no different. With the advent of the Magnuson Act and the rapid Americanization of the fisheries in the United States came the carpetbaggers of the 80's and 90's. In order to facilitate a speedy exploitation of the fisheries resource it was imperative that money was made available for vessels to participate in the "GOLD RUSH". The Commerce Department with NOAA as its agent became the banker for the factory trawler fleet making loans at 3.5 to 4.5 % interest rates, subsidized by the taxpayer to overcapitalize the groundfish fishery. The crab fleet in the early 80's was sufficiently capitalized already but, since federal loans were easy to get, the free for all spilled over into the crab sector. "No one was watching the shop." Even though the King Crab stocks in the Gulf and the Bering Sea collapsed, the Opilio and Bairdi stocks were productive enough to sustain the crab fleet. The recent downturn in the Opilio crab stocks has motivated these same people responsible for the over capitalization to whine for a bailout. CO-OP's in effect will reward these entities for their greed. Economic principals are being trampled.

6. **Crab CO-OP's will disenfranchise crew members.** Many will lose their jobs when the fishing power concentrates in few hands. It has a downward effect on crew shares. The Halibut and Sable fish I F Q system is witness to that.

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- 7. Crab CO-OP's will set a system in place that will stratify and ossify this fishery that would function efficiently under free market economic principals.**

The real problems with crab fisheries in the Gulf of Alaska and BSAI are of an entirely different nature. The favorite term used now by our illustrious bureaucratic apparatus is "OVERFISHING". This of course implies that the fisherman is at fault. This might have been the truth when government was less involved in the distant past. Now when every aspect of fishing is being regulated we can put blame where blame belongs. That blame for the depletion of sustainable resources can be squarely placed in the laps of fisheries management.

Opilio crab comes to mind first because it is the last of the fisheries to go bust. In 1996 a group of fishermen under the auspices of the United Fisherman's Marketing Association of Kodiak (UFMA) asked the National Marine Fisheries Services Dr. Bob Otto to change the harvest strategy for Opilio Crab. Back then the survey indicated that there was a spike of low recruitment on the horizon. We begged to have the quota reduced by at least 25 %. We wanted the crab left on the grounds to propagate and keep the integrity of crab schools intact. Dr. Otto based his decisions of these extreme exploitation rates of the the stocks on a theory done in the remote past in Canada. This "TERMINAL MOLT THEORY" implies that once the crab have molted into large claws they will not molt again and have only a limited time left to live. How long they will live is speculation. This could be two maybe three years, we can only guess, like most of the scientific evidence nothing is well known. Based on this THEORY we were told take them now or you will not get them ever. We thought it very unwise to proceed with this strategy and so did scientist in the ADFG.

We went through the same exercises in futility in the next two years. We requested the NMFS to initiate a study to verify this obscure theory. We begged literally begged to no avail. Dr. Otto gets his salary every month. Our livelihood is threatened. We knew it then and tried to save some crab to tie us over the lean spots. We wanted large male crab to be left in the water to breed and keep functioning schools intact so that predation by fish would be minimized. Now that we are in crisis rebuilding plans will drastically lower the exploitation rates. What we asked for three years ago is being done now when it is actually too late.

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In the business community mismanagement of this magnitude has dire consequences. Termination or at least demotion is the usual punishment for that kind of irresponsibility. It is obvious to me that different standards apply when it involves entrenched bureaucrats and bureaucracies!

REBUILDING PLANS represents another catchy phrase bantered about in the federal fisheries management communities. We have a rebuilding plan for King and Bairdi Crab in Bristol Bay and there are some positive prospects for success. It is very unlikely though that we will ever see a full recovery of these stocks if we can not stop the the BOTTOM TRAWLERS from destroying the stocks that "supposedly" are being rebuilt.

There has not been a directed fishery for Bairdi Crab in the Bering Sea or Bristol Bay for five years. The last two years when we did have a directed fishery, it was shut down by the ADF&G because of low catch per unit effort before we reached the quota. When I questioned crab management at the time about premature closures I was told that they could manage crabbers only. The Trawl Fleet has a bookish cap for Bairdi Crab of 4,000,000 animals a year which translates into 10,000,000 million pounds of crab we don't get to fish. The Trawlers have consistently worked up to that cap. Regarding the depressed state of the Bairdi stocks this is criminal mismanagement.

We have asked the NPFMC repeatedly for drastic reductions of those obscene bycatch caps. As long as the Council and NMFS management is controlled and influenced by Trawl interests there will be no redress for the ills that have befallen the Crab industry.

In order to see change in the irresponsible fishing practices of the Trawl Fleet **DRASTIC** measures are called for.

The Trawlers should have to pay for every crab they take. The effect the destruction of female crabs on future populations should be factored into the equation.

The monies could then be distributed to the crab fleet. WE should do this retroactively for the last seven years.

The Crab fishery is a "CLEAN" fishery. We do NOT destroy the livelihoods of other Fishers like Trawlers do. We are target species specific and virtually bycatch free.

If LOGIC would rule, we would get swift redress in the halls of government and the bureaucracies.

RECEIVED

MAY 30 2000

N.P.F.M.C

To; NPFC @ 907-271-2817
From; David Harris @ 360-568-3235/e-mail, mcbodywear@msn.com
Re; Council meetings on Crab Co-ops in Portland Or.

Gentleman;

I have been skippering fishing vessels for 14 years, been in the industry 23 years as you can see in my resume, which is a recap of my LIFE! Your decisions in the future are going to control myself and my family's destiny. What provisions have or will you have for my employment when I'm out of work because of coops. I'm 45 years old, I've got a lot of good years left in me, but now do I have to start allover to support my family? If you support buybacks, will you also include funding for men in my position? These are some issues that you need to address. WE NEED HELP!!! Remember, The Captains Are The Assets That Provided The Safe and Financial Well-being For The Vessel, Vessel Owners and Crew.

Thank You;
David Harris



David Harris

2807 S. Lk. Roesiger Rd.
Snohomish, Wa. 98290

Phone 360-568-3235

Fax 360-568-8029

e-mail mcbodywear@msn.com

Objective: TO Skipper a vessel for Crab, Cod and salmon tendering.

Qualifications

I have been fishing and running vessels since 1978. During these 23 years of my experience I have owned two vessels fishing and tendering in Alaska and Washington. I designed and built the F/V Misty blue in Tacoma, WA. And converted the Magnum Force to a trawler.

- * Vessel Engineering - Design Construction & Conversions
- * Certified: Cummins Diesel Maintenance Mechanic
- * Certified: Welder-Fitter; Stick & Mig
- * Hydraulic Engineer; Design, Installation & Troubleshooting
- * Marine Engineer; Cummins-Catipiller-Detroit
- * Refrigeration; Installation, Operations & Troubleshooting
- * Marine Electrical: 12-24V.D.C. / 120-220 single & 3 phase
- * Blueprint Reading & Design
- * Heavy Equipment; Operation & Maintenance

Education

- * 1973 Graduated Mariner High Everet, Wa
- * 1975 Graduated Everet Community Collage A.T.A. Welding
- * 1976 Graduated Divers Institute of Technology Seattle, Wa

Experience

- * 1973-74 M/V Tug Oly Skipper, Puget Sound
- * 1974-76 School

*1977 Norsol Inc

Forman 11 man crew

Continued

- * 1978-79 All-Pack Undersas M/V Northern Retriever, S.E. Alaska
205' Salvage Tug, Lead Diver & Second Engineer
- * 1980-83 Relief Skipper/Engineer, Gulf of Ak. & Bearing Sea
F/V Mary J-80';
Tendering & Crab
F/V Warlock-90';
" "
F/V Man-O-War-92';
" "
F/V Pacific Clipper-160';
" "
- * 1983-85 F/V Misty Blue
92' Crabber/Tender, Skipper/Owner Ak
- * 1985-86 F/V Aleuton #1
122' Crabber, Mate, Bearing Sea
- * 1986 F/V Kaslof
75' Tender, Skipper, Puget Sound
- * 1986 F/V Wisconsin
64' Dragger, Mate, Wa. Coast
- * 1987 F/V Calib Haley
75' Tender, Skipper, Ak
- * 1987 F/V Nowina
135' Crabber, Relief Skipper / Engineer, Bearing Sea
- * 1988-92 F/V Magnum Force
66' Dragger/Crabber/Tender, Skipper/Owner, Wa & Ak
- * 1990 F/V Mavrick
90' Crabber, Skipper, Bearing Sea
- * 1991-96 F/V Botany Bay
92' Crabber/Tender, Skipper, Bearing Sea
- * 1997 F/V Mar Del Sud
110' Crabber, Skipper, Bearing Sea
F/V Artic Mariner
125, Tendering, Skipper, S.E. AK
F/V Aleuton Mariner
118' Cod, Skipper, Bearing Sea

*** 1998 F/V Arctic Mariner & Aleutian Mariner**
125' Crabber/Tender/Cod Fish, Skipper, Bearing Sea & S.E.

*** 1999 F/V Cascade**
100' Crabber, Skipper, Bearing Sea
F/V Arctic Mariner
125' Tendering, S.E.

*** 2000 F/V Deception**
127' Crabber, Skipper, Bearing Sea
F/V Arctic Mariner
125' Tendering, Skipper, S.E.

References Available Upon Request

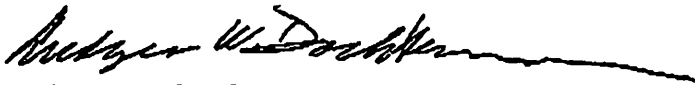
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**Until the inequities and injustices for the crab fleet are rectified,
REBUILDING PLANS for crab stocks are another smokescreen
by the powerful TRAWL LOBBY, to do business as usual:
THE WANTON WASTE AND DESTRUCTION
of HABITAT, CRAB, HALIBUT and
millions of tons of undersized, unwanted other species of marine life.**

We do not need a bailout, we need JUSTICE.

Thank you for your due consideration and response to my concerns and suggestions. I will look forward to hearing your response.

Sincerely yours,



Ludger W. Dochtermann
Owner/Operator F/V Northpoint and F/V Stormbird

cc: North Pacific Fisheries Management Council
Tony Knowles, Governor
Alan Austerman, Representative

David Hillstrand
Box 1500
Homer, Alaska 99603
(907) 235-8706

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APR 27 2000

N.P.F.M.C

Chairman Mr. Rick Lauber

We would like to recommend one change to the current co-op proposal.

Pg. 2 Allocation Criteria.

We would like to amend this to say

3. Vessels that participate in the 2000 Opilio Crab Fisheries will not be allowed to use 2000 as an allocation year. Unless the vessel made a Pacific Codfish landing in the qualifying area; from Jan 1st through Jan 6th 2000.

The intent of the vessels that made landings before the Jan 7th announcement to postpone the Opilio season, were to forgo the Opilio fisheries and fish Pacific Cod. Once the announcement was made every vessel in the Gulf geared up to go Cod fishing. Records will show that they started to make landings after the Jan 7th date, the 11th may have been the earliest.

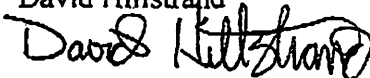
Landings by vessels that were going to fish Pacific Cod instead of Opilio's will show that we had not made landings from Jan 1st through the 15th before other Opilio seasons. With traveling, weather can stop one from going Opilio fishing on time. Converting gear back to crab alone can take up to 3-4 days. These two restrictions have always made us make a choice in where we fish; either for Pacific Cod in the Central Gulf or for Opilio's.

The postponement of the Opilio season reduced our catch of Pacific Cod for this year; by creating additional effort in the gulf. It also cost us our Herring tendering contract in Sitka, Alaska.

The additional effort this year were from vessels that may not even meet the current LLP program in place and had interim permits. ~~Of the vessels that qualify they too will be~~

We support the landing requirements of the current Co-op proposal because of having to have two landings in three years for the original LLP to qualify. We suggest that the Western Gulf have even stricter landing requirements because of the original LLP of only one landing in three years, to qualify.

David Hillstrand



Crab Industry Co-op Meeting

June 7, 2000

The industry co-op development initiative continued with a meeting on the evening of June 7 at the Doubletree Hotel in Portland. Council members David Fluharty and Kevin O'Leary (and staff member Chris Oliver) were present. The meeting was presided over by Co-Chairs Jeff Stephan and Arni Thomson. Following introductions Arni Thomson informed the group that they have a \$1,019 cash surplus to date. First the Committee got an update on activity in Washington D.C., noting a bill introduced by Senator Snowe to extend the IFQ moratorium for an additional two to three years (it appears unlikely that the Magnuson-Stevens Act will be reauthorized this year). There may be the possibility of regional or fishery exemptions from the moratorium, but that remains unclear at this time. A National Fisheries Institute (NFI) position is to not support lifting the moratorium unless processors are included, on a 50/50 basis. Regarding a potential buyback program, it is still unclear whether processors would/could be included, though such inclusion would likely require legislative authority.

The Committee then discussed where they are in the development process for BSAI Crab Rationalization, and at what point the issue should formally enter the Council process as a specific agenda item for discussion and action. After much discussion, it was decided that the Committee needed to continue its work, including the consideration and resolution of several critical issues. To assist in that process, the Committee is requesting the Council to designate staff analytical support to help flesh out several issues, particularly the catch/processing history alternatives. Specifically, the Committee would like to begin development of an aggregated database which could be used to evaluate landings data, processing data, individual percentages, etc. for harvesters and processors with respect to a given set of years, and a set of sample alternatives. Included in this database development is a request to develop a QSAM-like model that was developed by Council staff in 1992 during the early development of CRP.

Action Item 1:

The Committee unanimously adopted a motion by Gary Painter (2nd by Linda Kozak, and amended with friendly amendments) that included the following components:

1. The Committee requests the Council to address BSAI crab rationalization as a formal "topic of the Council's attention on the Council Agenda";
2. The Committee requests the Council to encourage NMFS to proceed posthaste with the implementation of Amendment 1 to the LLP program that addresses the further recency restrictions for the BSAI crab fisheries (adopted by the Council in October 1998);
3. The intent of the Committee is to attempt to develop a specific proposal for BSAI crab rationalization;
4. The Committee requests the Council to task the Council staff to develop essential information (data, analysis, etc.) that would further assist the Committee with ongoing decision-making with respect to the development of options for BSAI crab rationalization;
5. The Committee requests the Council to recognize the BSAI Crab Co-op Committee, to the extent possible, as the advisory entity to the Council with respect to the development of options for BSAI crab rationalization.

Staff advised that the requested database and associated information could be developed pending Council direction on this and other staffing assignments. While several unresolved issues will affect the accuracy of

such a database (i.e., LLP amendments, potential Buyback program, private transfers of catch history, etc.), it would provide the industry with a preliminary quantitative basis with which to gauge the options

Action Item 2:

The Committee unanimously adopted a motion by Lennie Herzog (2nd by Kevin Kaldestad, and amended with friendly amendments; and further amended with a formal amendment by Jeff Steele, 2nd by Linda Kozak) that included the following components:

1. To develop a primary data set of information for the BSAI crab fisheries, including harvesters and processors, for the period 1990 through 1999.
2. To develop 3 specific examples for the harvesting sector for:
 - (a) 1990 through 1999 (all years)
 - (b) the best nine of ten years for the period 1990 through 1999;
 - (c) 1995 through 1999 (all years).

The Committee then received a report from SEA which outlined a new proposal for skipper inclusion (this was proposed as a compromise from their original proposal which was for a 10% allocation of any vessels' 'QS'). The new proposal is for a guaranteed minimum crew share at traditional rates, and a first right of refusal for 10% of any QS sold. Staff advised that the Council does not have authority to regulate salary or crew share, but that could perhaps be effected via co-op agreements (in the event of co-ops), and that a first right of refusal could be included in an IFQ program, but this may not be applicable in a strict co-op system. The Committee will consider this new proposal as it continues to work on this and other issues.

A meeting of the Committee was tentatively scheduled for early to mid September, possibly in conjunction with a September Council meeting. However, since adjournment of this week's meeting, a large majority of Committee members have discussed the need to have a meeting prior to the early September time frame. Late July has been agreed to for the next meeting. The focus of that meeting will be on major issues other than catch history (processor issues, community issues, IFQ options, two-pie IFQ options, skipper inclusion, etc). The database and spreadsheet will be made available upon completion by Council staff (assuming Council direction to do so).

RECEIVED
MAY 23 2000

N.P.F.M.C

May 19, 2000

Chairman Rick Lauber
North Pacific Fishery Management Council
605 West 4th Ave. suite 306
Anchorage, Alaska 99501-2252

Chairman Rick Lauber

This letter is in reference to the protections that were suppose to be provided to non AFA vessels. The owners of the fishing vessels Miss Leona, Lone Star and Windjammer have been fishing in the Bering Sea since 1986. These three vessels are not AFA qualified. These three vessels have been targeting pacific cod for well over 14 years and delivering to shore based facilities in the Dutch Harbor and Akutan areas. These three vessels typically hire a three person crew and are owner operated. The owners believe that the Council would like to know how these three vessels have been affected during the 2000 season with the current AFA side boards in place.

The Council established side boards on those AFA vessels that used to fish pacific cod and also fished pollock. Those AFA vessels that met certain landing limits for pollock and pacific cod have been permitted to now have access to pacific cod. Prior to the 2000 season there were perhaps 5 to 9 vessels that began the trawl directed pacific cod fish fishery in January. Those vessels that became AFA qualified and also fished some pacific cod were fishing for pollock in January and February. After the A season for pollock ended these vessels would begin to enter the pacific cod fish fishery in March.

In the 2000 season there were approximately 40 vessels that began fishing for pacific cod in January, not 9 or less as in previous years. The AFA qualified vessels that have an exemption to fish pacific cod typically are over 100 feet in length and have horsepower in the 1200 to 2500 range. There are a few AFA qualified vessels that had a history of fishing pacific

cod in January, these were smaller vessels like the three vessels above. The three vessels above have 400 to 600 horsepower engines. The collective fishing power and concentration of these additional vessel on the limited fishing grounds, put non AFA vessels at a distinct disadvantages.

The AFA vessels that have been given pacific cod privileges have been selling, leasing and combining their quotas to be fished by the co-ops. In order to maximize the income on these vessels, that used to fish pollock, they have now entered the direct pacific cod fish fishery in January. The side boards established by the Council have not helped those that historically have been dedicated to harvesting predominately pacific cod. The owners of the three vessels above therefore petition the Council to consider management options that would provide protection to the non AFA vessels . The following considerations are provided to the Council for consideration.

- 1. AFA vessels that are permitted to fish pacific cod will not be allowed to begin a directed fishery on pacific cod until mid March, unless the AFA qualified vessel had a history of entering the directed pacific cod fishery prior to this date.
- 2. Develop a pacific cod quota that is specific to those vessels that are not AFA qualified.

Consideration of these new side board protections would be greatly appreciated.

Sincerely

Sincerely

Sincerely,

Steve Aarvik
F/V Windjammer

Charles Burrece
F/V Lone Star

Omar Allinson
F/V Miss Leona

425 776 9618

360 6712 878

260-722-7107

DB
Mokim

15

ADDENDUM TO LETTER OF AARVIK, BURRECE, & ALLINSON

1. As an alternative to Consideration #1 of our letter:

We request action that no AFA vessel (except for catcher vessels exempted as having less than 1,700 ton annual pollock harvests) shall be allowed to begin the directed trawl fishery for Pacific cod inside of the 100 fathom line from 54°38' N to 55°00' N* until March 16 of any year.

As specific points:

2. We request that the Council take action to limit access to the directed trawl fishery for Pacific cod within that Area to vessels which have a history of a significant number of deliveries of cod harvested in that Area during the period of January 20 through March 15 of each year during the years 1995 to 1997.

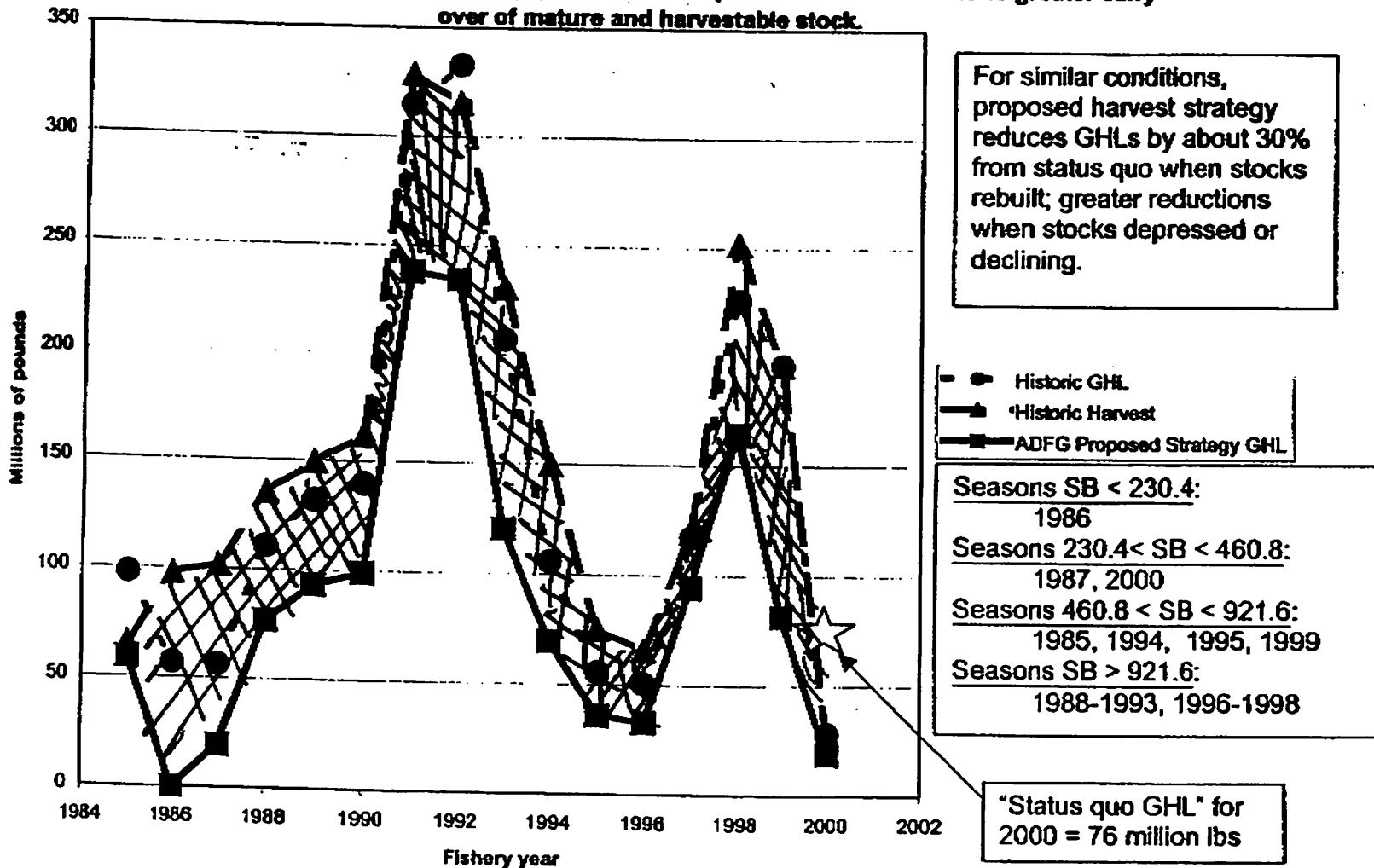
3. We request that the Council take action to allocate a minimum number of pounds (with no cap) of Pacific cod to non-AFA vessels which have a history of a significant number of trawl deliveries of Pacific cod harvested in that Area during the period of January 20 through March 15 of each year during the years 1995 to 1997. The minimum number of pounds should be consistent with past catch history of those vessels.

4. Because the Pacific cod sideboards are not protecting the catch levels of historic directed cod vessels, we request that the Council take action to adjust cod sideboards to a sufficient level to protect those historical participants in the BSAI cod fishery, taking into account newer entrants into the open access fishery.

*Note: That area inside of the 100 fathom line is called the "Area" in points 2 & 3 of this Addendum.

GHLs under ADFG proposed eastern Bering Sea snow crab harvest strategy compared with historic GHLs and harvests.

Note: GHLs under proposed strategy do not reflect potential increases due to greater carry-over of mature and harvestable stock.



COST

G. Parker

C. opilio Rebuilding Plan

Oral report to:
Alaska Board of Fisheries
17-27 March 2000 Meeting
Anchorage, AK

Douglas Pengilly, ADF&G, Kodiak

and 0.6 years in the mean rebuilding time from increasing the mortality of bycatch in the crab fishery from 25% to 100% (scenarios 4 and 5). The mean time to rebuild was about 1 year longer for the status quo scenario than for the new harvest policy under both random and autocorrelated recruitment. The probability of fishery closure was higher for the status quo scenario (.32 in first 5 years) than the new harvest scenario (0.06 in the first five years). However, the mean yields were higher for the status quo scenario than the new harvest scenario.

The larger commercial size of about 102 mm compared to the size at 50% mature of 78 mm for males results in a lower effect on the mature male biomass than if crabs of legal size were retained. Also, the low level of female bycatch results in little effect on the female spawning biomass from a directed fishery. High recruitments have been observed in the past, which have allowed the population to recover quickly from low levels of estimated spawning biomass.

pg. 17

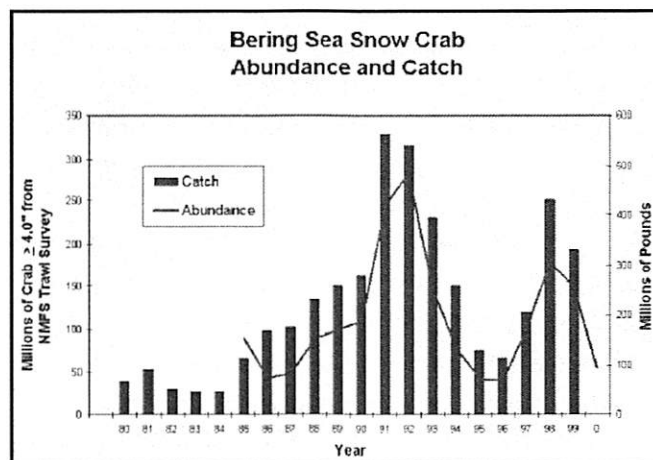
— BENEFIT —

A proposal for bycatch reduction and habitat protection for the recovery of snow crab (*Chionoecetes opilio*) in the Bering Sea

Alaska Marine Conservation Council

Background:

- Opilio crab is the third crab population in the Bering Sea to be declared 'overfished' in recent years



Opilio Crab Recovery

- A rebuilding plan must have three components:
 - ◆ Revised harvest strategy
 - ◆ Meaningful bycatch reduction
 - ◆ Habitat protection, especially during the recovery stage

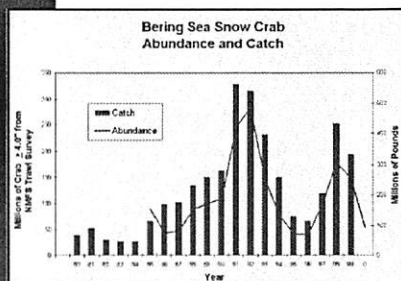
Objectives:

- Examine changes over time in the distribution and demographics of opilio crab with emphasis on females and juveniles
- Evaluate temporal and spatial distribution of bycatch in trawl fisheries
- Examine adequacy of current protected areas for the current distribution of opilio crab in the Bering Sea

Methods and Sources:

- ◆ Geographic analysis of the following data sets:
 - ◆ NMFS Summer Trawl Surveys 1978 – 1999
 - ◆ NMFS Observer Program: Trawl Fishery Bycatch of
 - Opilio (Snow) Crab
 - Bairdi (Tanner) Crab
 - Prey Species (clams, sea stars, urchins)
 - ◆ ADF&G Crab Harvest Data 1995 – 1999
 - ◆ ADF&G Directed Fishery Bycatch 1995 – 1999

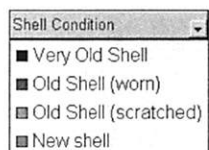
A compelling need exists for additional protective measures because current conditions do not exhibit characteristics of recovery in the recent past



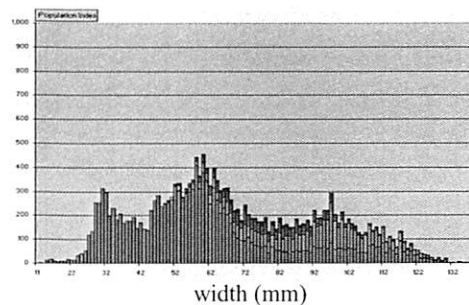
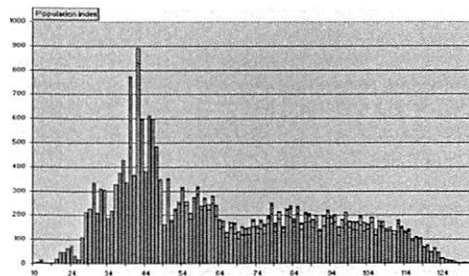
- Age structure differs:
 - ◆ Greater proportion of older females
 - ◆ Highest proportion of barren females in recent years
 - ◆ No significant recruitment in 5 years
- Intensity of trawling has increased in the southern portion of opilio range and may inhibit recovery in this area

Width frequency distribution of males with shell condition: 1985 vs. 1999

■ 1985 Males

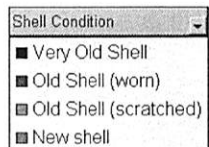


■ 1999 Males

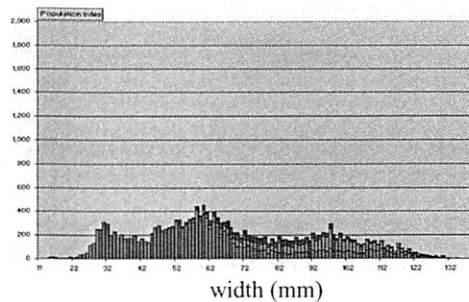
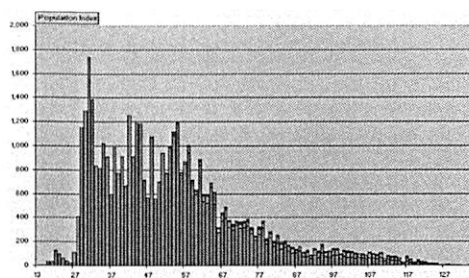


Width frequency distribution of males with shell condition: 1986 vs. 1999

■ 1986 Males

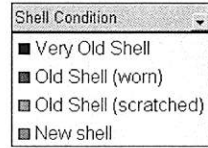


■ 1999 Males

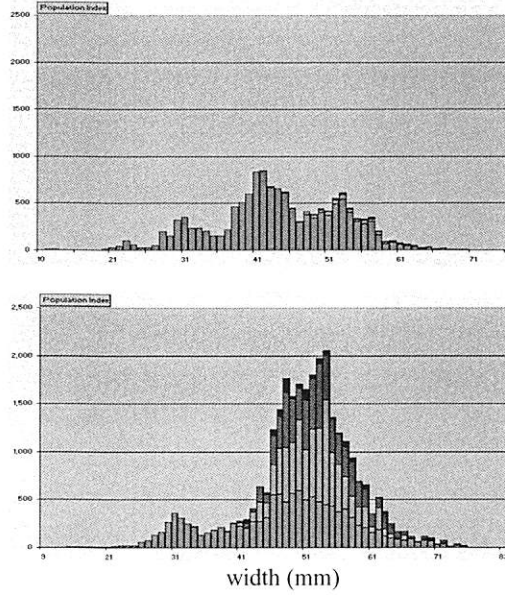


Width frequency distribution of females:
with shell condition: 1985 vs. 1999

■ 1985 Females

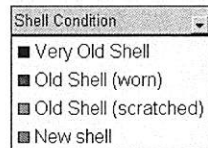


■ 1999 Females

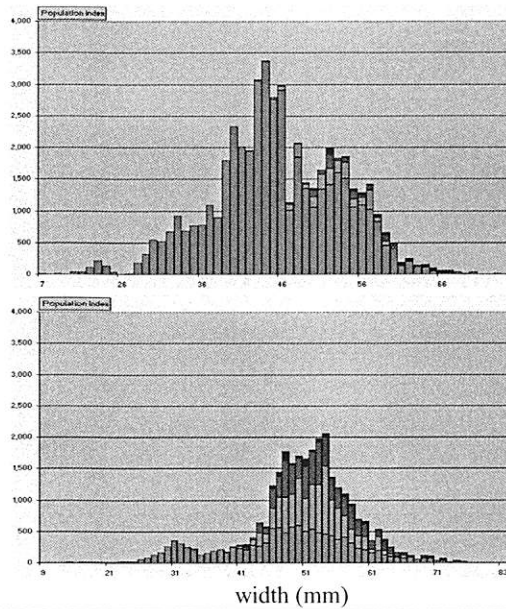


Width frequency distribution of females
with shell condition: 1986 vs. 1999

■ 1986 Females



■ 1999 Females



'CAUTION SHOULD BE THE WATCHWORD'

- Jerry Reeves, retired NMFS crab biologist

“A tendency towards senescence of the adult portion of the population **coupled with the poor representation of pre-recruit and juvenile crabs** as was seen in the 1999 survey, *raises some conservation concerns.*”

-Opilio Rebuilding Plan, p. 17

Responsible fisheries management must exercise caution.

LEVELS OF UNCERTAINTY

“The available information on the life history of *Chionoecetes* crabs is incomplete at best.”

----in “Biological Field Techniques for Chionoecetes Crabs” 1999

- **BIOLOGY:**
 - ◆ Aging (“Growth patterns of snow crab in the EBS are extremely complex and not well understood.” EA/RIR for Amendment 37 to BS/AI FMP)
 - ◆ Terminal molt for males
 - ◆ Migration
 - ◆ Subjectivity in measurements for egg clutch size
 - ◆ Stock separation
 - ◆ Locations of juvenile rearing areas
 - ◆ Locations of mating pairs/aggregations
 - ◆ Significance of the disappearance of the southern distribution
- **SHORTCOMINGS IN THE DATA**

Recommendations:

As currently proposed, the opilio rebuilding plan provides inadequate measures for habitat protection and bycatch reduction that we believe are necessary to recover stocks of opilio crab in the Bering Sea

- **Bycatch Reduction**

- Apply all trawl bycatch of opilio toward the PSC cap
- Eliminate 4.5 million crab floor in current PSC cap

- **Habitat Protection**

- Seasonal bottom-trawl closure (March – June)
in areas of highest bycatch

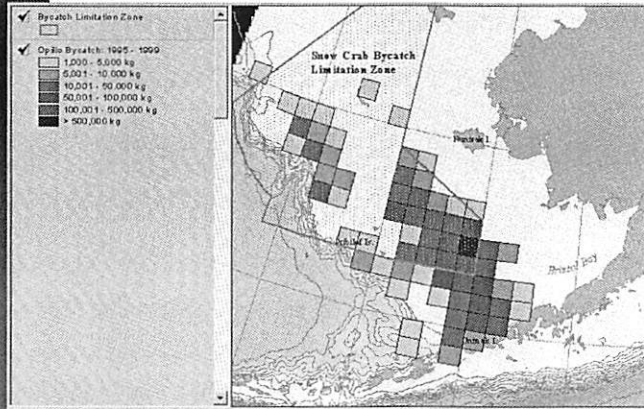
56° 30' 164° 00' 58° 00' 167° 00'
58° 00' 164° 00' 56° 30' 167° 00'

- All-year bottom-trawl closure north of 58 degrees:

58° 00' 169° 00'	61° 30' 173° 00'	61° 00' 178° 00'
60° 30' 169° 00'	62° 00' 173° 00'	59° 30' 178° 00'
60° 30' 171° 00'	62° 00' 177° 00'	59° 30' 174° 00'
61° 30' 171° 00'	61° 00' 177° 00'	58° 00' 174° 00'

Existing Bycatch Limitation

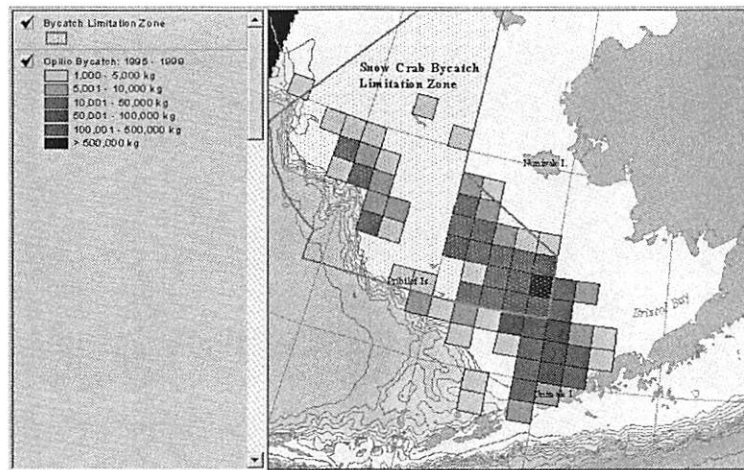
- Amendment 40 to the BSAI Groundfish FMP:
 - PSC Cap is set at 0.1133% of the Bering Sea abundance index;
 - Minimum PSC cap of 4.5 million snow crab;
 - Maximum PSC cap of 12.85 million snow crab;
 - Crab taken within the *C. opilio* bycatch limitation zone accrue towards the PSC limit



C. Opilio bycatch limitation zone with bycatch of opilio crab in trawl fisheries, 1995 - 1999

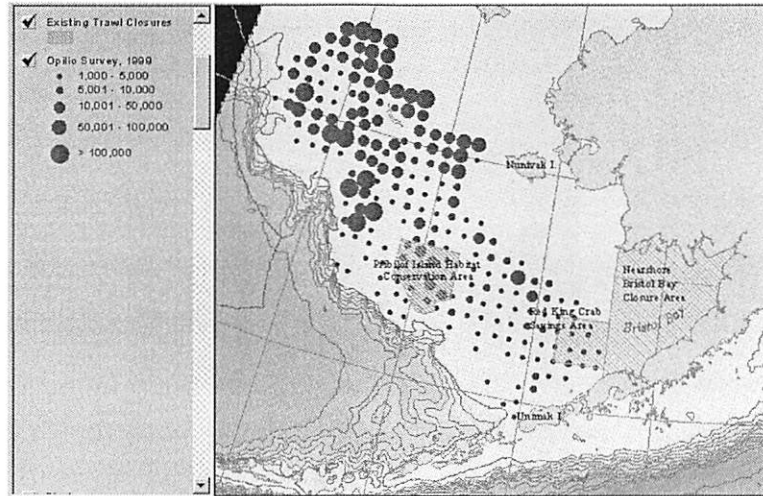
Recommendation: Bycatch Reduction

- Remove floor of 4.5 million opilio crab in the PSC cap, particularly when the population is low
- All trawl bycatch should accrue toward the PSC cap



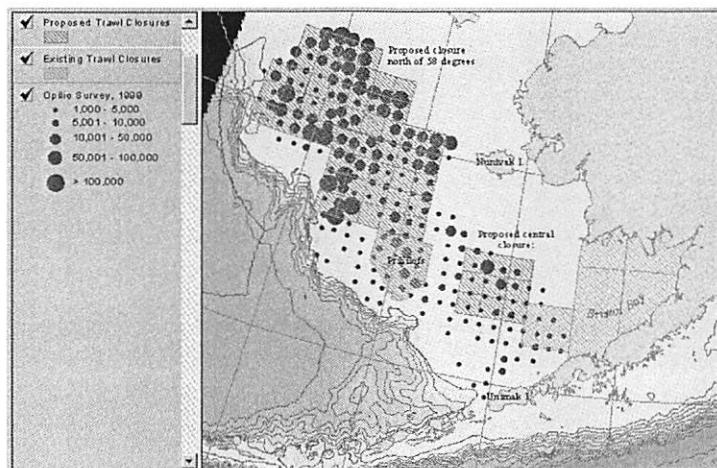
Existing Habitat Protection:

Existing trawl closures protected approximately 4% of all *Opilio* crab, and 0.5% of *Opilio* females in 1999 based on summer trawl surveys



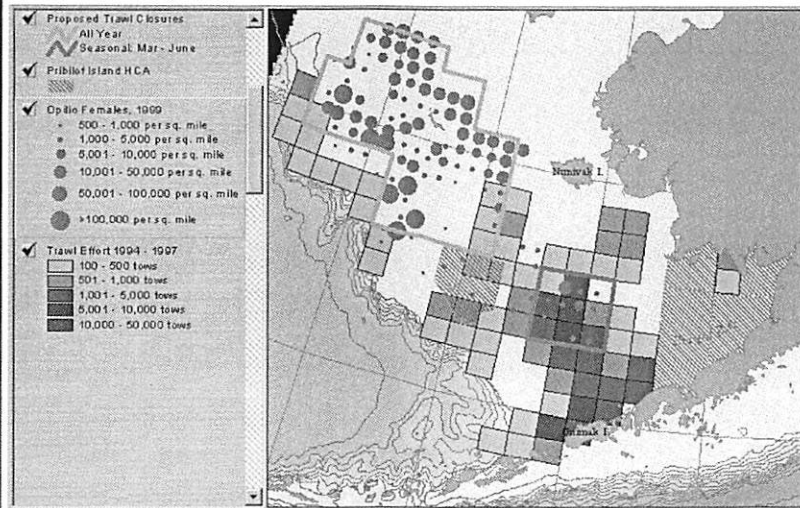
Recommendation: Habitat Protection

- Seasonal closure (March – June) to bottom-trawling of the central area to protect crab during sensitive life-stages in areas of highest bycatch
- Year-round closure to bottom-trawling north of 58 degrees



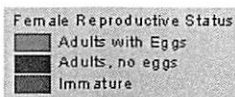
Habitat protection north of 58 degrees would:

- Protect 82% of female crab (based on 1999 NMFS survey)
- Affect 1.6% trawl effort and 3% of groundfish harvested in 1994 - 1997



Reproductive status of females in 1995 and 1999 in the central block

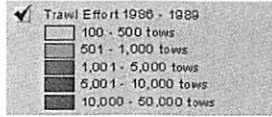
1995: High proportion of adults with eggs



1999: High proportion of immature females

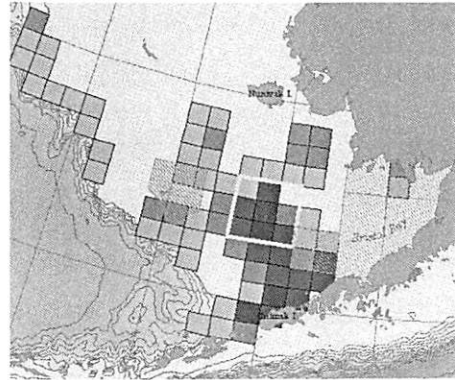
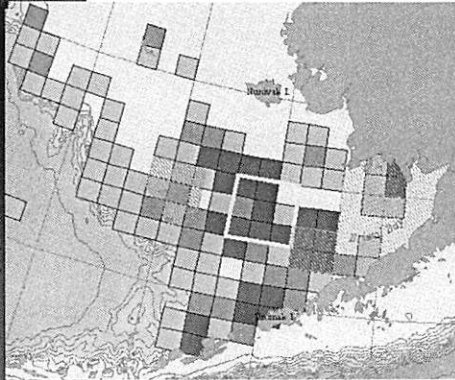


Trawling effort within the central block increased by 157% from 1986-89 to 1994-97

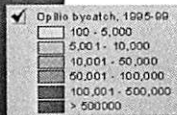


1986-89: 10,899 tows

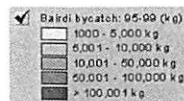
1994-97: 28,008 tows



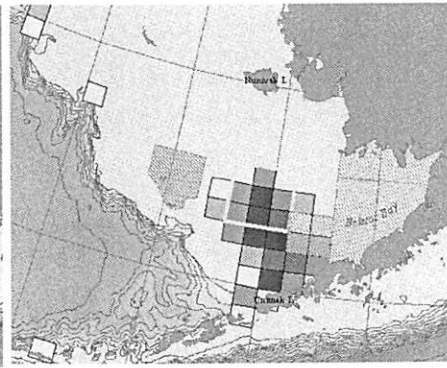
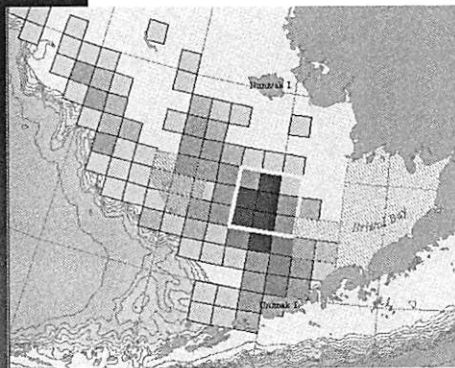
Bycatch of both opilio and bairdi crab are high in this central area



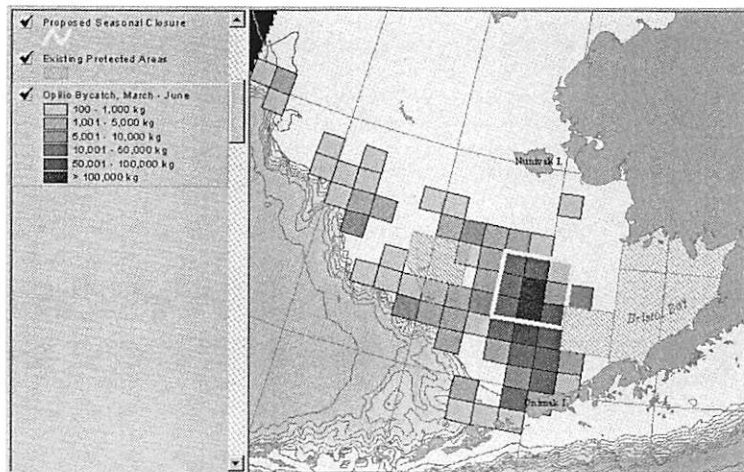
Opilio bycatch
1995 - 1999



Bairdi bycatch
1995 - 1999

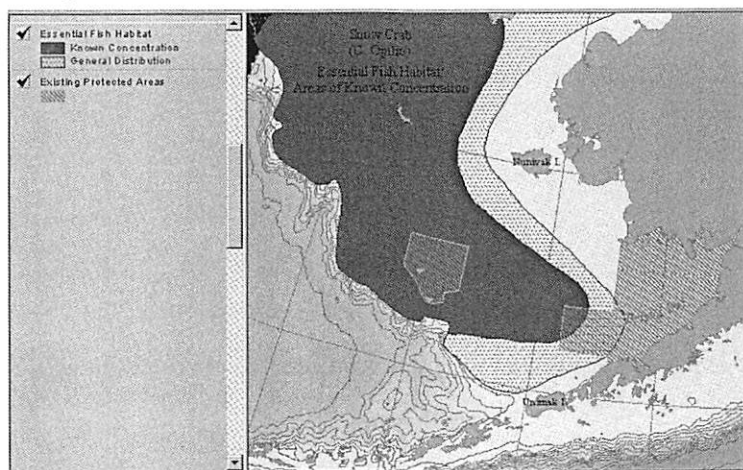


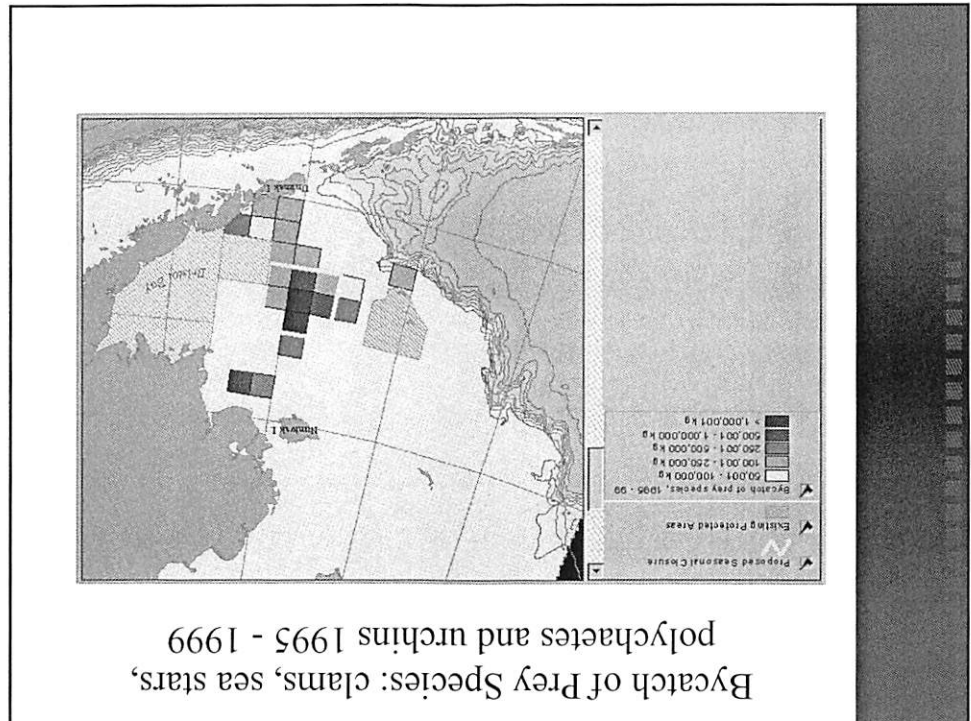
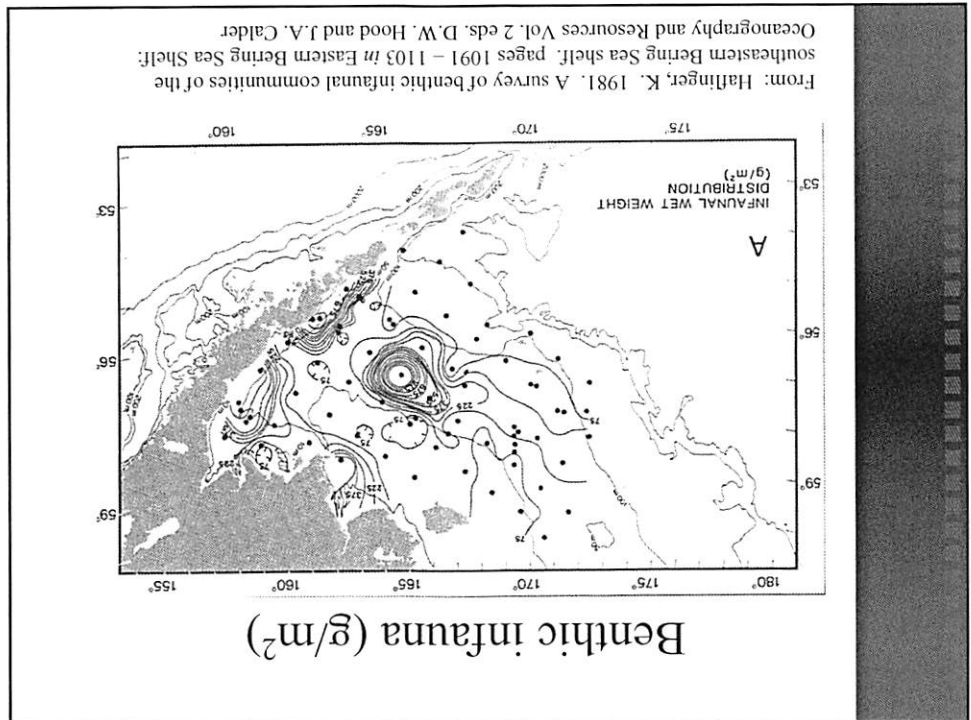
Bycatch of *Opilio* in Trawl Fisheries March – June, 1995 - 1999



Snow Crab Essential Fish Habitat

This southern distribution is also described as an area of known concentration, and included as Essential Fish Habitat under the Magnuson-Stevens Act





WORTH PROTECTING?

“If no strong recruitment occurs in the next two years...it will be difficult to use historical patterns to project future recruitment.”

Zheng, J, G. H. Kruse, and D. R. Ackley. 1999. Spatial distribution and recruitment patterns of snow crabs in the Eastern Bering Sea.

‘CAUTION SHOULD BE THE WATCHWORD’

- Jerry Reeves, retired NMFS crab biologist

Proposed Actions:

- ❖ Bycatch Reduction
 - Apply all trawl bycatch of opilio toward the PSC cap
 - Eliminate 4.5 million crab floor in current PSC cap
- ❖ Habitat Protection
 - Seasonal bottom-trawl closure (March – June) in areas of highest bycatch
 - All-year bottom-trawl closure north of 58 degrees