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## Title 50 –Wildlife and Fisheries

### Chapter VI –Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce

#### Part 600 –Magnuson-Stevens Act Provisions

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

**Source:** 61 FR 32540, June 24, 1996, unless otherwise noted.

#### Subpart M Specific Fishery or Program Fishing Capacity Reduction Regulations

§ 600.1100 [Reserved]

§ 600.1101 Inshore fee system for repayment of the loan to harvesters of Pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

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§ 600.1103 Bering Sea and Aleutian Islands (BSAI) Crab species program.

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§ 600.1106 Longline catcher processor subsector Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish species fee payment and collection system.

§ 600.1107 Southeast Alaska Purse Seine Salmon Fishery capacity reduction program, including fee payment and collection system.

§ 600.1108 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.

#### Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations

**Authority:** 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 53735, section 144(d) of Division B of Pub. L. 106-554, section 2201 of Pub. L. 107-20, and section 205 of Pub. L. 107-117, Pub. L. 107-206, Pub. L. 108-7, Pub. L. 108-199, and Pub. L. 108-447.

**Source:** 69 FR 53361, Sept. 1, 2004, unless otherwise noted.

§ 600.1100 [Reserved]

**§ 600.1101 Inshore fee system for repayment of the loan to harvesters of Pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.**

- (a) **Definition.** In addition to the definitions in the Magnuson-Stevens Act and in § 679.2 of this title, the terms used in this subpart have the following meanings:

**American Fisheries Act (AFA)** means Title II of Pub.L. 105-277.

**Borrower** means (individually and collectively) all persons who, after January 1, 2000, harvest fee fish from the IC directed fishing allowance.

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

**Delivery value** means the gross ex-vessel value of all fee fish at fish delivery.

**Deposit principal** means all collected fee revenue that a fish buyer deposits in a segregated deposit account maintained in a federally chartered national bank for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying the loan.

**Fee** means the six-tenths (0.6) of one cent that fish buyers deduct at fish delivery from the delivery value of each pound of round weight fee fish.

**Fee fish** means all pollock harvested from the IC directed fishing allowance beginning on February 10, 2000 and ending at such time as the loan's principal and interest are fully repaid.

**Fish buyer** means the first ex-vessel fish buyer who purchases fee fish from a fish seller.

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

**Fish seller** means the harvester who catches and first sells fee fish to a fish buyer.

**IC directed fishing allowance** means the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

**Loan** means the loan authorized by section 207(a) of the AFA.

**Net delivery value** means the delivery value minus the fee.

**Subaccount** means the Inshore Component Pollock Subaccount of the Fishing Capacity Reduction Fund in the U.S. Treasury for the deposit of all funds involving the loan.

- (b) **Loan** —

(1) **Principal amount.** The loan's principal amount is \$75,000,000 (seventy five million dollars).

(2) **Interest.** Interest shall, from December 30, 1998, when NMFS disbursed the loan, until the date the borrower fully repays the loan, accrue at a fixed rate of 7.09 percent. Interest shall be simple interest and shall accrue on the basis of a 365-day year.

(3) **Repayment.** The fee shall be the exclusive source of loan repayment. The fee shall be paid on all fee fish.

(4) **Application of fee receipts.** NMFS shall apply all fee receipts it receives, first, to payment of the loan's accrued interest and, second, to reduction of the loan's principal balance.

(5) **Obligation.** The borrower shall repay the loan in accordance with the AFA and this subpart.

(c) **Fee payment and collection –**

(1) **Payment and collection.**

(i) The 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 later 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 later to pay the net delivery value rather than the 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;

(ii)

(A) Each fish seller shall be deemed, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, to be both the fish seller and the fish buyer—and all requirements and penalties under this subpart applicable to both a fish seller and a fish buyer shall equally apply to the fish seller—each time that the fish seller sells fee fish to:

(1) Any fish buyer 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,

(2) Any fish buyer who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other fish buyer not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, or

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

(B) 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, recordkeeping, 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;

(2) **Notification.**

(i) NMFS will send an appropriate fee payment and collection commencement notification to each affected fish seller and fish buyer of whom NMFS has knowledge.

(ii) When NMFS determines that the loan is fully repaid, NMFS will publish a FEDERAL REGISTER notification that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send an appropriate fee termination notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(3) **Failure to pay or collect.**

- (i) 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:
  - (A) The fish buyer's and fish seller's name, address, and telephone number,
  - (B) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,
  - (C) The quantity and delivery value of fee fish that the fish seller delivered, and
  - (D) The fish buyer's reason (if known) for refusing to collect the fee in accordance with this subpart;
- (ii) 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:
  - (A) The fish buyer's and fish seller's name, address, and telephone number,
  - (B) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,
  - (C) The quantity and delivery value of fee fish the fish seller delivered or attempted to deliver,
  - (D) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and
  - (E) The fish seller's reason (if known) for refusing to pay the fee in accordance with this subpart.

(d) ***Fee collection deposits, disbursements, records, and reports*** –

- (1) ***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.
- (2) ***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 has collected through a date not more than 2 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 subaccount 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.

- (3) **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 "NOAA Inshore Component Pollock Loan Subaccount." The fish buyer shall mail each such check to the subaccount lockbox account that NMFS establishes for the receipt of the disbursements of deposit principal. 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 subaccount's lockbox and the manner and form of settlement sheet by means of the notification in § 600.1101(c).
- (4) **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:
  - (i) For all deliveries of fee fish that the fish buyer buys from each fish seller:
    - (A) The date of delivery,
    - (B) The fish seller's identity,
    - (C) The round weight of fee fish delivered,
    - (D) The identity of the fishing vessel that delivered the fee fish,
    - (E) The delivery value,
    - (F) The net delivery value,
    - (G) The identity of the party to whom the net delivery value is paid, if other than the fish seller,
    - (H) The date the net delivery value was paid, and
    - (I) The total fee amount collected;
  - (ii) For all fee collection deposits to and disbursements from the deposit account:
    - (A) The dates and amounts of deposits,
    - (B) The dates and amounts of disbursements to the subaccount's lockbox account, and
    - (C) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.
- (5) **Annual report.** By January 15, 2001, and by each January 15 thereafter until the loan is fully repaid, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year for all fee fish each fish buyer purchases from fish sellers:
  - (i) Total round weight bought;
  - (ii) Total delivery value paid;
  - (iii) Total fee amount collected;
  - (iv) Total fee collection amounts deposited by month;
  - (v) Dates and amounts of monthly disbursements to the subaccount lockbox;
  - (vi) Total amount of interest earned on deposits; and

(vii) Depository account balance at year-end.

(6) **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.

(7) **Audits.** NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of the loan, the financial records of the fish buyers and the fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers shall make all records of all transactions involving fee fish catches, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, recordkeeping, and reporting available to NMFS or its 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 round weight pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so) are essential audit documentation.

(8) **Confidentiality of records.** NMFS and its 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, unless otherwise required by law; 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.

(9) **Refunds.** When NMFS determines that the 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.

(e) **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 within 5 days of the date due. 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.

(f) **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.

(g) **Prohibitions and penalties.**

(1) The following activities are prohibited, and it is unlawful for anyone to:

(i) Avoid, decrease, interfere with, hinder, or delay payment or collection of, or otherwise fail to fully and properly pay or collect, any fee due and payable under this subpart or convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

- (ii) 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 subaccount's lockbox account—all as this subpart requires;
  - (iii) 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;
  - (iv) 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;
  - (v) 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;
  - (vi) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;
  - (vii) 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
  - (viii) Otherwise materially interfere with the efficient and effective repayment of the loan.
- (2) Anyone 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.

### § 600.1102 Pacific Coast groundfish fee.

(a) **Purpose.** This section implements the fee for repaying the reduction loan financing the Pacific Coast Groundfish Program authorized by section 212 of Division B, Title II, of Public Law 108-7 and implemented by a final notification in the FEDERAL REGISTER (July 18, 2003; 68 FR 42613).

(b) **Definitions.** Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L expressly apply to this section. The following terms have the following meanings for the purpose of this section:

**Borrower** means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery, in any or all of the fee-share fisheries, or in both the reduction fishery and any or all of the fee-share fisheries.

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

**Fee fish** means all fish harvested from the reduction fishery during the period in which any portion of the reduction fishery's subamount is outstanding and all fish harvested from each of the fee-share fisheries during the period in which any portion of each fee-share fishery's subamount is outstanding.

**Fee-share fishery** means each of the fisheries for coastal Dungeness crab and pink shrimp in each of the States of California and Oregon and the fishery for coastal Dungeness crab and ocean pink shrimp in the State of Washington.

**Fee-share fishery subaccount** means each of the six subaccounts established in the groundfish program's fund subaccount in which each of the six fee-share fishery subamounts are deposited.

**Reduction fishery** means all species in, and that portion of, the limited entry trawl fishery under the Federal Pacific Coast Groundfish Fishery Management Plan that is conducted under permits, excluding those registered to whiting catcher-processors, which are endorsed for trawl gear operation.

**Reduction fishery subaccount** means the subaccount established in the groundfish program's fund subaccount in which the reduction fishery subamount is deposited.

**Subamount** means each portion of the reduction loan's original principal amount which is allocated either to the reduction fishery or to any one of the fee-share fisheries.

(c) **Reduction loan amount.** The reduction loan's original principal amount is \$35,662,471.

(d) **Subamounts.** The subamounts of the reduction loan amount are:

(1) Reduction fishery, \$28,428,719; and

(2) Fee-share fisheries:

(i) California coastal Dungeness crab fee-share fishery, \$2,334,334,

(ii) California pink shrimp fee-share fishery, \$674,202,

(iii) Oregon coastal Dungeness crab fee-share fishery, \$1,367,545,

(iv) Oregon pink shrimp fee-share fishery, \$2,228,845,

(v) Washington coastal Dungeness crab fee-share fishery, \$369,426, and

(vi) Washington ocean pink shrimp fee-share fishery, \$259,400.

(e) **Interest accrual inception.** Interest began accruing on each portion of the reduction loan amount on and from the date each such portion was disbursed.

(f) **Interest rate.** The reduction loan's interest rate is 6.97 percent. This is a fixed rate of interest for the full term of the reduction loan's life.

(g) **Repayment term.** For the purpose of determining fee rates, the reduction loan's repayment term shall be 30 years from March 1, 2004, but each fee shall continue for as long as necessary to fully repay each subamount.

(h) **Reduction loan.** The reduction loan shall be subject to the provisions of § 600.1012 of subpart L, except that:

(1) The borrower's obligation to repay the reduction loan shall be discharged by fish sellers in the reduction fishery and in each of the fee-share fisheries paying the fee applicable to each such fishery's subamount in accordance with § 600.1013 of subpart L, and

(2) Fish buyers in the reduction fishery and in each of the fee-share fisheries shall be obligated to collect the fee applicable to each such fishery's subamount in accordance with § 600.1013 of this subpart.



- (i) **Fee collection, deposits, disbursements, records, and reports.** Fish buyers in the reduction fishery and in each of the fee share fisheries shall deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery in accordance with § 600.1014 of this subpart, except that:
- (1) **Deposit accounts.** Each fish buyer that this section requires to collect a fee shall maintain an account at a federally insured financial institution for the purpose of depositing collected fee revenue and disbursing the deposit principal directly to NMFS in accordance with paragraph (i)(3) of this section. The fish buyer may use this account for other operational purposes as well, but the fish buyer shall ensure that the account separately accounts for all deposit principal collected from the reduction fishery and from each of the six fee-share fisheries. The fish buyer shall separately account for all fee collections as follows:
    - (i) All fee collections from the reduction fishery shall be accounted for in a reduction fishery subaccount,
    - (ii) All fee collections from the California pink shrimp fee-share fishery shall be accounted for in a California shrimp fee-share fishery subaccount,
    - (iii) All fee collections from the California coastal Dungeness crab fishery shall be accounted for in a California crab fee-share fishery subaccount,
    - (iv) All fee collections from the Oregon pink shrimp fee-share fishery shall be accounted for in an Oregon shrimp fee-share fishery subaccount,
    - (v) All fee collections from the Oregon coastal Dungeness crab fee-share fishery shall be accounted for in an Oregon crab fee-share fishery subaccount,
    - (vi) All fee collections from the Washington ocean pink shrimp fee-share fishery shall be accounted for in a Washington ocean shrimp fee-share fishery subaccount, and
    - (vii) All fee collections from the Washington coastal Dungeness crab fishery shall be accounted for in a Washington crab fee-share fishery subaccount;
  - (2) **Fee collection deposits.** Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (i)(1) of this section, all collected fee revenue not previously deposited that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit principal may not be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the fund in accordance with paragraph (i)(3) of this section. The fish buyer is entitled, at any time, to withdraw interest (if any) on the deposit principal, but never the deposit fee principal itself, for the fish buyer's own use and purposes;
  - (3) **Deposit principal disbursement.** Not later than the 14th calendar day after the last calendar 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 deposit principal then in the deposit account, provided that the deposit principal then totals \$100 or more. If the deposit principal then totals less than \$100, the fish buyer need not disburse the deposit principal until either the next month during which the deposit principal then totals \$100 or more, or not later than the 14th calendar day after the last calendar day of any year in which the deposit principal has not since the last required disbursement totaled \$100 or more, whichever comes first. The fish buyer shall disburse deposit principal by check made payable to the groundfish program's fund subaccount. The fish buyer shall mail each such check to the groundfish program's fund subaccount lockbox that NMFS establishes

for the receipt of groundfish program disbursements. Each disbursement shall be accompanied by the fish buyer's fee collection report completed in the manner and form which NMFS specifies. NMFS will, before fee payment and collection begins, specify the groundfish program's fund subaccount lockbox and the manner and form of fee collection report. NMFS will do this by means of the notification in § 600.1013(d) of subpart L. NMFS' fee collection report instructions will include provisions for the fish buyer to specify the amount of each disbursement which was disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts;

- (4) **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:
- (i) For all deliveries of fee fish that the fish buyer buys from each fish seller:
    - (A) The date of delivery,
    - (B) The fish seller's identity,
    - (C) The weight, number, or volume of each species of fee fish delivered,
    - (D) Information sufficient to specifically identify the fishing vessel which delivered the fee fish,
    - (E) The delivery value of each species of fee fish,
    - (F) The net delivery value of each species of fee fish,
    - (G) The identity of the payor to whom the net delivery value is paid, if different than the fish seller,
    - (H) The date the net delivery value was paid,
    - (I) The total fee amount collected as a result of all fee fish, and
    - (J) The total fee amount collected as a result of all fee fish from the reduction fishery and/or all fee fish from each of the six fee-share fisheries; and
  - (ii) For all collected fee deposits to, and disbursements of deposit principal from, the deposit account include:
    - (A) The date of each deposit,
    - (B) The total amount deposited,
    - (C) The total amount deposited in the reduction fishery subaccount and/or in each of the six fee-share fishery subaccounts,
    - (D) The date of each disbursement to the Fund's lockbox,
    - (E) The total amount disbursed,
    - (F) The total amount disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts, and
    - (G) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits; and
- (5) **Annual report.** No fish buyer needs to submit an annual report about fee fish collection activities unless, during the course of an audit under § 600.1014(g), NMFS requires a fish buyer to submit such a report or reports.

- (j) Other provisions. The reduction loan is, in all other respects, subject to the provisions of § 600.1012 through applicable portions of § 600.1017, except § 600.1014(e).

[70 FR 40229, July 13, 2005, as amended at 71 FR 28, Jan. 3, 2006]

### § 600.1103 Bering Sea and Aleutian Islands (BSAI) Crab species program.

- (a) **Purpose.** This section's purpose is to implement the program that Section 144(d) of Division B of Pub. L. 106-554, as amended by section 2201 of Pub. L. 107-20 and section 205 of Pub. L. 107-117, enacted for BSAI crab species.
- (b) **Terms.** Unless otherwise defined in this section, the terms defined in § 600.1000 expressly apply to the program for BSAI crab. Likewise, the terms defined in § 679.2 of this chapter also apply to terms not otherwise defined in either § 600.1000 or this section. The following terms used in this section have the following meanings for the purpose of this section:

**Acceptance** means NMFS' acceptance, on behalf of the United States, of a bid.

**Bid** means a bidder's irrevocable offer, in response to an invitation to bid under this section, to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner this section requires, the bidder's reduction fishing interest.

**Bid amount** means the dollar amount of each bid.

**Bidder** means either a qualifying bidder bidding alone or a qualifying bidder and a co-bidder bidding together who at the time of bidding holds the reduction fishing interests specified at § 600.1018(e).

**Bid crab** means the crab that NMFS determines each bidder's reduction/history vessel (see definition) harvested, according to the State of Alaska's records of the documented harvest of crab, from each reduction endorsement fishery and from the Norton Sound fishery during the most recent 5 calendar years in which each reduction endorsement fishery was for any length of time open for directed crab fishing during a 10-calendar-year period beginning on January 1, 1990, and ending on December 31, 1999.

**Bid score** means the criterion by which NMFS decides in what order to accept bids in the reverse auction this section specifies.

**Co-bidder** means a person who is not a qualifying bidder, but who at the time of bidding owns the reduction/privilege vessel this section requires to be included in a bid and is bidding together with a qualifying bidder.

**Crab** means the crab species covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs pursuant to § 679.2 of this chapter.

**Crab license** means a License Limitation Program license for crab issued pursuant to § 679.4(k)(5) of this chapter.

**Crab reduction permit** means a non-interim crab license endorsed for one or more reduction endorsement fisheries, regardless of whether it is also endorsed for the Norton Sound fishery.

**FSD** means NMFS' Financial Services Division, located in NMFS' Silver Spring, MD, headquarters office.

**Non-crab reduction permit** means a fishing license, including all of its predecessor history, for which a bidder is the holder of record on December 12, 2003 and which was issued based on the fishing history of the bidder's -reduction/history vessel.

**Norton Sound fishery** means the non-reduction fishery defined in § 679.2 of this chapter as the area/species endorsement for Norton Sound red king and Norton Sound blue king crab.

**NVDC** means the U.S. Coast Guard's National Vessel Documentation Center located in Falling Waters, WV.

**Qualifying bidder** means a person who at the time of bidding is the license holder of record of a crab reduction permit.

**Qualifying voter** means a person who at the time of voting in a referendum is the license holder of record either of an interim or a non-interim crab license, except a crab license whose sole area/species endorsement is for the Norton Sound fishery.

**RAM Program** means NMFS' Restricted Access Management Program located in NMFS' Juneau, AK, regional office.

**Reduction endorsement fishery** means any of the seven fisheries that § 679.2 of this chapter defines as area/species endorsements except the area/species endorsement for the Norton Sound fishery.

**Reduction fishery** means the fishery for all crab covered by the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan under all area/species endorsements that section 679.2 of the chapter defines, except the area/species endorsement for the Norton Sound fishery.

**Reduction fishing history** means, for each bid, the complete documented harvest of the bidder's reduction/history vessel, upon any part of which such harvest NMFS based issuance of the crab license included in the bid as a crab reduction permit, plus such fishing history, after the issuance of such crab license, of any other vessel upon which the bidder used such crab license.

**Reduction fishing interest** means, for each bid, the bidder's:

- (1) Reduction fishing privilege (see definition);
- (2) Crab reduction permit;
- (3) Non-crab reduction permit;
- (4) Reduction fishing history (see definition); and
- (5) Any other claim that could in any way qualify the owner, holder, or retainer of any of the reduction components, or any person claiming under such owner, holder, or retainer, for any present or future limited access system fishing license or permit in any United States fishery (including, but not limited to, any harvesting privilege or quota allocation under any present or future individual fishing quota system).

**Reduction fishing privilege** means the worldwide fishing privileges of a bid's reduction/privilege vessel (see definition).

**Reduction/history vessel** means the vessel or vessels which generated the reduction fishing history.

**Reduction loan sub-amount** means the portion of the original principal amount of reduction loan this section specifies each reduction endorsement fishery must repay with interest.

**Reduction/privilege vessel** means the vessel designated on a crab license on December 12, 2003.

**Referendum** means a referendum under this section to determine whether voters approve the fee required to repay this program's reduction loan.

**Replacement vessel** means a reduction/history vessel which replaced the lost or destroyed one whose reduction fishing history qualified during the general qualification period and the endorsement qualification period and, which under the exceptions in Amendment 10, qualified during the recent participation period.

(c) **Relationship to this subpart** –

- (1) **Provisions that apply.** The provisions of § 600.1000 through § 600.1017 of this subpart apply to this program except as paragraph (c)(2) of this section provides; and
- (2) **Provisions that do not apply.** The following sections, or portions of them, of this subpart do not apply to this program:
  - (i) All of:
    - (A) Section 600.1001,
    - (B) Section 600.1002,
    - (C) Section 600.1003,
    - (D) Section 600.1004,
    - (E) Section 600.1005,
    - (F) Section 600.1006, and
    - (G) Section 600.1007,
  - (ii) The portions of § 600.1008:
    - (A) Pertaining to an implementation plan,
    - (B) Pertaining to a 60-day comment period for a proposed implementation regulation,
    - (C) Pertaining to public hearings in each State that the this program affects,
    - (D) Pertaining to basing the implementation regulation on a business plan,
    - (E) Within paragraphs (d)(1)(ii) through (viii),
    - (F) Within paragraph (d)(2)(ii),
    - (G) Within paragraph (e), and
    - (H) Within paragraph (f) and pertaining to fishing capacity reduction specifications and a subsidized program,
  - (iii) The portions of § 600.1009:
    - (A) Pertaining to fishing capacity reduction specifications,
    - (B) Within paragraph (a)(4),
    - (C) Pertaining to a reduction amendment,

- (D) Within paragraph (a)(5)(ii), to the extent that the paragraph is inconsistent with the requirements of this section,
  - (E) Within paragraph (b)(i), and
  - (F) Pertaining to an implementation plan,
- (iv) The portions of § 600.1010:
- (A) Within paragraph (b),
  - (B) Pertaining to fishing capacity reduction specifications,
  - (C) Within paragraph (d)(1), and
  - (D) Within paragraphs (d)(4)(iv) through (vii),
- (v) The portions of § 600.1011:
- (A) That comprise the last sentence of paragraph (a),
  - (B) Within paragraph (d), and
  - (C) Within paragraph (e)(2),
- (vi) The portions of § 600.1012:
- (A) Within paragraph (b)(3) following the word “subpart”, and
  - (B) Within paragraph (b)(3), and
- (vii) The last sentence of § 600.1014(f).
- (d) **Reduction cost financing.** NMFS will use the proceeds of a reduction loan, authorized for this purpose, to finance 100 percent of the reduction cost. The original principal amount of the reduction loan will be the total of all reduction payments that NMFS makes under reduction contracts. This amount shall not exceed \$100 million.
- (e) **Who constitutes a bidder.** A bidder is a person or persons who is the:
- (1) Holder of record and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's crab reduction permit and the bid's non-crab reduction permit;
  - (2) Reduction/privilege vessel owner, title holder of record, and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing privilege; and
  - (3) Retainer and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing history.
- (f) **How crab licenses determine qualifying bidders and qualifying voters –**
- (1) **Non-interim crab licenses.** Each person who is the record holder of a non-interim crab license endorsed for one or more reduction endorsement fisheries is both a qualifying bidder and a qualifying voter and can both bid and vote;
  - (2) **Interim crab licenses.** Each person who is the record holder of an interim crab license endorsed for one or more reduction endorsement fisheries is a qualifying voter but not a qualifying bidder and can vote but not bid;

- (3) **Crab licenses endorsed solely for the Norton Sound Fishery.** Each person who is the record holder of any crab license endorsed solely for the Norton Sound fishery is neither a qualifying bidder nor a qualifying voter and can neither bid nor vote; and
- (4) **Time at which qualifying bidders and voters must hold required crab licenses.** A qualifying bidder must be the record holder of the required crab license at the time the qualifying bidder submits its bid. A qualifying voter must be the record holder of the required crab license at the time the qualifying voter submits its referendum ballot.

(g) **Qualifying bidders and co-bidders** —

- (1) **Qualifying bidders bidding alone.** There is no co-bidder when a qualifying bidder owns, holds, or retains all the required components of the reduction fishing interest;
- (2) **Qualifying bidders bidding together with co-bidders.** When a qualifying bidder does not own the reduction/privilege vessel, the person who does may be the qualifying bidder's co-bidder; and
- (3) **Minimum reduction components that qualifying bidders must hold or retain when bidding with co-bidders.** At a minimum, a qualifying bidder must hold the crab reduction permit and the non-crab reduction permit and retain the reduction fishing history. The reduction/privilege vessel may, however, be owned by another person who is a co-bidder.

(h) **Reduction fishing interest** —(1) **General requirements.** Each bidder must:

- (i) In its bid, offer to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner that this section requires, the reduction fishing interest,
  - (ii) At the time of bidding, hold, own, or retain the reduction fishing interest and be fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest, and
  - (iii) Continuously thereafter hold, own, or retain the reduction fishing interest and remain fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest until:
    - (A) The bid expires without NMFS first having accepted the bid,
    - (B) NMFS notifies the bidder that NMFS rejects the bid,
    - (C) NMFS notifies the bidder that a reduction contract between the bidder and the United States no longer exists, or
    - (D) NMFS tenders reduction payment to the bidder;
- (2) **Reduction/privilege vessel requirements.** The reduction/privilege vessel in each bid must be:
  - (i) The vessel designated, at the time this final rule is published in the FEDERAL REGISTER, on a crab license which becomes a bid's crab reduction permit, and
  - (ii) Be neither lost nor destroyed at the time of bidding;
- (3) **Reduction fishing privilege requirements.** The reduction fishing privilege in each bid must be the reduction/privilege vessel's:
  - (i) Fisheries trade endorsement under the Merchant Marine Act, 1936 (46 U.S.C.A. 12108),
  - (ii) Qualification for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement under foreign registry or operation under the authority of a foreign country, and

(iii) Any other privilege to ever fish anywhere in the world;

(4) **Crab reduction permit requirements.**

(i) Except as otherwise provided in paragraph (i) of this section, the crab reduction permit must in each bid:

(A) Be the crab license that NMFS issued on the basis of the bidder's reduction fishing history,

(B) Be non-interim at the time each bidder submits its bid, and

(C) Include an area/species endorsement for any one or more reduction endorsement fisheries,

(ii) Although the Norton Sound fishery is not a reduction endorsement fishery, an area/species endorsement for the Norton Sound fishery occurring on a crab reduction permit must be surrendered and revoked (and all fishing history involving it relinquished) in the same manner as all other reduction endorsement fisheries occurring on the crab reduction permit;

(5) **Non-crab reduction permit requirements.** The non-crab reduction permit must in each bid be every license, permit, or other harvesting privilege that:

(i) NMFS issued on the basis of the fishing history of the bidder's reduction/history vessel, and

(ii) For which the bidder was the license holder of record on the effective date of this section; and

(6) **Reduction fishing history requirements.** Except as otherwise provided in paragraph (i) of this section, the reduction fishing history in each bid must that of a single reduction/history vessel.

(i) **Exceptions to the reduction fishing interest requirements** —(1) *Lost or destroyed vessel salvaged.* When a bidder has salvaged a lost or destroyed vessel and has made from the salvaged vessel the documented harvest of crab § 679.4(k)(5)(iii)(B)(3) of this chapter requires, the crab portion of the reduction fishing history is the salvaged vessel's documented harvest of crab; and

(2) *Lost or destroyed vessel not salvaged.* When a bidder has not salvaged the lost or destroyed vessel but has made from a replacement vessel the documented harvest of crab § 679.4(k)(5)(iii)(B)(3) of this chapter requires:

(i) The crab portion of the reduction fishing history is the total of the lost or destroyed vessel's documented harvest of crab through the date of such vessel's loss or destruction plus the replacement vessel's documented harvest of crab after such date, and

(ii) For the purposes of this program, the lost or destroyed vessel's documented harvest of crab merges with, and becomes a part of, the replacement vessel's documented harvest of crab; and

(3) **Acquired crab fishing history.** When a bidder, in the manner § 679.4(k)(5)(iv) of this chapter requires, has made a documented harvest of crab from one vessel and has acquired a replacement vessel's documented harvest of crab:

(i) The crab portion of the reduction fishing history is the total of the acquired documented harvest of crab through December 31, 1994, plus the documented harvest of crab after December 31, 1994, of the vessel from which the bidder made the documented crab harvest § 679.4(k)(5)(iv) of this chapter requires, and

(ii) [Reserved]



- (iii) For the purposes of this program, the acquired documented harvest of crab merges with, and becomes a part of, the non-acquired documented harvest of crab.

(j) **Determining value of reduction/history vessels' bid crab –**

- (1) **In each fishery.** NMFS will determine the dollar value of each reduction/history vessel's bid crab in each reduction endorsement fishery and in the Norton Sound Fishery by multiplying each reduction/history vessel's number of pounds of each species of bid crab by the average ex-vessel price per pound that the State of Alaska annually publishes for each crab species in the bid crab; and
- (2) **In all fisheries.** NMFS will determine the dollar value of each reduction/history vessel's bid crab in all reduction endorsement fisheries and in the Norton Sound fishery by adding each of the products of the multiplications in paragraph (j)(1) of this section; and
- (3) **Crab excluded from bid crab.** A reduction/history vessel's bid crab may not include, to the extent that NMFS has knowledge:
  - (i) Triangle tanner crab, grooved tanner crab, and any other crab not involved in the various area/species endorsements,
  - (ii) Discarded crab,
  - (iii) Crab caught for personal use,
  - (iv) Unspecified crab, and
  - (v) Any other crab for which the dollar value, crab fishery, landing date, or harvesting vessel NMFS cannot, for whatever reason, determine.

- (k) **Determining bid score.** NMFS will determine each bid score by dividing each bid amount by the sum in paragraph (j)(2) of this section.

(l) **Determining reduction loan sub-amount –**

- (1) **Value of all bid crab in each fishery.** NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in each reduction endorsement fishery;
- (2) **Value of all bid crab in all fisheries.** NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in all reduction endorsement fisheries plus the Norton Sound fishery;
- (3) **Each fishery as a percentage of all fisheries.** NMFS will divide each of the sums in paragraph (l)(1) of this section by the sum in paragraph (l)(2) of this section. The result of this calculation will be the dollar value of all bid crab in each reduction endorsement fishery as a percentage of the dollar value of all bid crab in all reduction endorsement fisheries plus the Norton Sound fishery;
- (4) **Applying percentages to loan amount.** NMFS will multiply the reduction loan's full original principal amount by each of the yields in paragraph (l)(3) of this section; and
- (5) **Loan sub-amount.** Each of the amounts resulting from the calculation in paragraph (l)(4) of this section will be the reduction loan subamount that a reduction endorsement fishery must repay.

(m) **Prospectively qualifying bidder and voter notification –**

- (1) **General.** At the appropriate point before issuing an invitation to bid, NMFS will publish a notification in the FEDERAL REGISTER listing all persons who at the time of publishing the notification prospectively are qualifying bidders and qualifying voters;

- (2) **Qualifying bidder list.** The prospectively qualifying bidder list will include the names and addresses of record of each license holder of record for all non-interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;
  - (3) **Qualifying voter list.** The prospectively qualifying voter list will include the names and addresses of record of each license holder of record for all non-interim and interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;
  - (4) **Basis of lists.** NMFS will base both the lists on the RAM Program's license holder records for crab licenses meeting the requirements of § 679.4(k)(5) of this chapter as well as the requirements of this section;
  - (5) **Purpose.** The purpose of the notification is to provide the public notice of:
    - (i) The prospectively qualifying bidders, and
    - (ii) The prospectively qualifying voters; and
  - (6) **Public comment.** Any person who wants to comment about the notification has 30 days from the notification's publication date to do so. Persons should send their comments to both FSD and the RAM Program (at addresses that the notification will specify). Comments may address:
    - (i) Persons who appear on one or more lists but should not,
    - (ii) Persons who do not appear on one or more lists but should, and
    - (iii) Persons who believe their names and/or business mailing addresses appearing on one or more lists are incorrect.
- (n) **Invitation to bid** –
- (1) **Notification.** At the appropriate point after issuing the notification in paragraph (m) of this section, NMFS will publish the invitation to bid in the FEDERAL REGISTER notification further specified in § 600.1009(c) of this subpart, along with a bidding form and terms of capacity reduction agreement. No person may, however, bid at this stage;
  - (2) **Notification contents.** The invitation to bid notification will state all applicable bid submission requirements and procedures (including, but not limited to, those included in this section). In particular, the invitation to bid notification will:
    - (i) State the date on which NMFS will invite bids by mailing an invitation to bid to each person on the prospectively qualifying bidder list,
    - (ii) State a bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,
    - (iii) State a bid expiration date after which each bid expires unless, prior to that date, NMFS accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,
    - (iv) State the manner of bid submission and the information each bidder must submit for NMFS to deem a bid responsive,
    - (v) State any other information required for bid submission, and

(vi) Include a facsimile of the invitation to bid, along with a bidding form and terms of capacity reduction agreement comprising the entire terms and conditions of the reduction contract under which each bidder must bid and under which NMFS must accept a bid; and

(3) **Mailing.** On the date specified in this notification, NMFS will invite bids by mailing the invitation to bid and a bidding package, including a bidding form terms of capacity reduction agreement, to each person then on the prospectively qualifying bidder list. NMFS will not mail the invitation to bid to any potential co-bidder because NMFS will not then know which bids may include a co-bidder. Each qualifying bidder is solely responsible to have any required co-bidder properly complete the bid. No person may bid before receiving the invitation to bid and the bidding package that NMFS mailed to that person.

(o) **Bids** –

(1) **Content.** Each invitation to bid that NMFS mails to a qualifying bidder will have a bid form requiring each bid to:

- (i) Identify, by name, regular mail address, telephone number, and (if available) electronic mail address, the qualifying bidder and each co-bidder,
- (ii) State the bid amount in U.S. dollars,
- (iii) Identify, by crab license number, the qualifying bidder's crab reduction permit and include an exact copy of this crab license (which the RAM Program issued),
- (iv) Identify, by vessel name and official number, the bidder's reduction/privilege vessel, and include an exact copy of this vessel's official document (which NVDC issued),
- (v) Identify, by license or permit number, each of the bidder's non-crab reduction permits; and include an exact copy of each of these licenses or permits (which the RAM Program issued for licenses or permits involving species under the jurisdiction of NMFS' Alaska Region and which other NMFS offices issued for licenses or permits involving species under those offices' jurisdiction),
- (vi) Identify, separately for crab and for each other species:
  - (A) The qualifying bidder's reduction fishing history, and
  - (B) The dates that each portion of the reduction fishing history encompasses; the name and official number of the reduction/history vessel or vessels which gave rise to it; and the dates during which the qualifying bidder owned such vessels or, if the qualifying bidder acquired any reduction fishing history from another person, the name of the person from which the qualifying bidder acquired such reduction fishing history and the manner in which and the date on which the qualifying bidder did so,
- (vii) State, declare, and affirm that the qualifying bidder holds the crab reduction permit and retains the complete reduction fishing history, and is fully and legally entitled to offer both in the manner this section requires,
- (viii) State, declare, and affirm that either the qualifying bidder or the co-bidder owns the reduction/privilege vessel and holds the non-crab reduction permit and is fully and legally entitled to offer both in the manner that this section requires, and

(ix) Provide any other information or materials that NMFS believes is necessary and appropriate; and

(2) **Rejection.** NMFS, regardless of bid scores, will reject any bid that NMFS believes is unresponsive to the invitation to bid. All bid rejections will constitute final agency action as of the date of rejection. Before rejection, NMFS may, however, contact any bidder to attempt to correct a bid deficiency if NMFS, in its discretion, believes the attempt warranted.

(p) **Acceptance** –

(1) **Reverse auction.** NMFS will determine which responsive bids NMFS accepts by using a reverse auction in which NMFS first accepts the responsive bid with the lowest bid score and successively accepts each additional responsive bid with the next lowest bid score until either there are no more responsive bids to accept or acceptance of the last responsive bid with the next lowest bid score would cause the reduction cost to exceed \$100 million. If two or more responsive bid scores are exactly the same, NMFS will first accept the bid that NMFS first received;

(2) **Notification.** NMFS will, after the conclusion of a successful referendum, notify accepted bidders that NMFS had, before the referendum, accepted their bids; and

(3) **Post-acceptance reduction permit transfer.** After NMFS has accepted bids, neither the RAM Program (nor any other NMFS office) will transfer to other persons any reduction permits that accepted bidders included in the bids unless and until FSD advises the RAM Program (or some other NMFS office) that the resulting reduction contracts are no longer in effect because a referendum failed to approve the fee that this section requires to repay this program's reduction loan.

(q) **Reduction contracts subject to successful post-bidding referendum condition.** Although this program involves no fishing capacity reduction specifications under this subpart, each bid, each acceptance, and each reduction contract is nevertheless subject to the successful post-bidding referendum condition that § 600.1009(a)(3) of this subpart specifies for bidding results that do not conform to the fishing capacity reduction specifications.

(r) **Post-bidding referendum** –

(1) **Purpose.** NMFS will conduct a post-bidding referendum whose sole purpose is to determine whether, based on the bidding results, qualifying voters who cast referendum ballots in the manner that this section requires authorize the fee required to repay this program's reduction loan;

(2) **Manner of conducting.** NMFS will mail a referendum ballot to each person then on the prospectively qualifying voter list for each crab license that the person holds and otherwise conduct the referendum as specified in § 600.1010 of this subpart;

(3) **One vote per crab license.** Each qualifying voter may cast only one vote for each crab license that each qualifying voter holds;

(4) **Crab license numbers on ballots.** Each referendum ballot that NMFS mails will contain the license number of the prospectively qualifying voter's crab license to which the ballot relates;

(5) **Potential reduction results stated.** Each referendum ballot that NMFS mails will state the aggregate potential reduction results of all the bids that NMFS accepted, including:

(i) The amount of reduction that all accepted bids potentially effect, including:

- (A) The number of crab reduction permits, together with each area/species endorsement for which each of these licenses is endorsed,
  - (B) The number of reduction/privilege vessels and reduction/history vessels, and
  - (C) The aggregate and average dollar value of bid crab (together with the number of pounds of bid crab upon which NMFS based the dollar value), in each reduction endorsement fishery and in the reduction fishery, for all reduction/history vessels during the period for which NMFS calculates the dollar value of bid crab,
- (ii) The reduction loan sub-amount that each reduction endorsement fishery must repay if a referendum approves the fee, and
  - (iii) Any other useful information NMFS may then have about the potential sub-fee rate initially necessary in each reduction endorsement fishery to repay each reduction loan sub-amount; and
- (6) **Notice that condition fulfilled.** If the referendum is successful, NMFS will notify accepted bidders, in the manner that § 600.1010(d)(6)(iii) of this subpart specifies, that a successful referendum has fulfilled the reduction contracts' successful post-bidding referendum condition specified in paragraph (q) of this section.
- (s) **Reduction method.** In return for each reduction payment, NMFS will permanently:
- (1) Revoke each crab reduction permit;
  - (2) Revoke each non-crab reduction permit;
  - (3) Revoke each reduction fishing privilege (which revocation will run with the reduction/privilege vessel's title in the manner § 600.1009(a)(5)(ii)(A) of this subpart requires and in accordance with 46 U.S.C. 12108(d));
  - (4) Effect relinquishment of each reduction fishing history for the purposes specified in this section by noting in the RAM Program records (or such other records as may be appropriate for reduction permits issued elsewhere) that the reduction fishing history has been relinquished under this section and will never again be available to anyone for any fisheries purpose; and
  - (5) Otherwise restrict in accordance with this subpart each reduction/privilege vessel and fully effect the surrender, revocation, restriction, relinquishment, withdrawal, or extinguishment by other means of all components of each reduction fishing interest.
- (t) **Reduction payment tender and disbursement –**
- (1) **Fishing continues until tender.** Each accepted bidder may continue fishing as it otherwise would have absent the program until NMFS, after a successful referendum, tenders reduction payment to the accepted bidder;
  - (2) **Notification to the public.** After a successful referendum but before tendering reduction payment, NMFS will publish a notification in the FEDERAL REGISTER listing all proposed reduction payments and putting the public on notice:
    - (i) Of the crab reduction permits, the reduction/privilege vessels, the reduction fishing histories, and the non-crab reduction permits upon whose holding, owning, retaining, or other legal authority representations accepted bidders based their bids and NMFS based its acceptances, and

(ii) That NMFS intends, in accordance with the reduction contracts, to tender reduction payments in return for the actions specified in paragraph (s) of this section;

(3) **Public response.** The public has 30 days after the date on which NMFS publishes the reduction payment tender notification to advise NMFS in writing of any holding, owning, or retaining claims that conflict with the representations upon which the accepted bidders based their bids and on which NMFS based its acceptances;

(4) **Tender and disbursement parties.** NMFS will tender reduction payments only to accepted bidders, unless otherwise provided contrary written instructions by accepted bidders. Creditors or other parties with secured or other interests in reduction/privilege vessels or reduction permits are responsible to make their own arrangements with accepted bidders;

(5) **Time of tender.** At the end of the reduction payment tender notification period, NMFS will tender reduction payments to accepted bidders, unless NMFS then knows of a material dispute about an accepted bidder's authority to enter into the reduction contract with respect to any one or more components of the reduction fishing interest that warrants, in NMFS' discretion, an alternative course of action;

(6) **Method of tender and disbursement.** NMFS will tender reduction payment by requesting from each accepted bidder specific, written instructions for paying the reduction payments. Upon receipt of these payment instructions, NMFS will immediately disburse reduction payments in accordance with the payment instructions; and

(7) **Effect of tender.** Concurrently with NMFS' tender of reduction payment to each accepted bidder:

(i) All fishing activity for any species anywhere in the world in any way associated with each accepted bidder's reduction fishing interest must cease,

(ii) Each accepted bidder must retrieve all fixed fishing gear for whose deployment the accepted bidder's reduction/privilege vessel was responsible, and

(iii) NMFS will fully exercise its reduction contract rights with respect to the reduction fishing interest by taking the actions specified in paragraph (s) of this section.

(u) **Fee payment and collection –**

(1) **Fish sellers who pay the fee.** Any person who harvests any crab, but whom ADF&G's fisheries reporting requirements do not require to record and submit an ADF&G fish ticket for that crab, is a fish seller for the purpose of paying any fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart;

(2) **Fish buyers who collect the fee.** Any person whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for any crab that another person harvested is a fish buyer for the purpose of collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart; and

(3) **Persons who are both fish sellers and fish buyers and both pay and collect the fee.** Any person who harvests any crab, and whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for that crab, is both a fish seller and a fish buyer for the purpose of paying and collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

(v) **Fishing prohibition and penalties –**

- (1) **General.** Fishing, for the purpose of this section, includes the full range of activities defined in the term "fishing" in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801),
- (2) **Prohibitions.** Concurrently with NMFS' tender of each reduction payment, and with the sole exception in paragraph (t)(7)(i) of this section, no person whatsoever may, and it is unlawful for any person to:
  - (i) Fish with or attempt to fish with, or allow others to fish with or attempt to fish with, the reduction/privilege vessel anywhere in the world for any species under any conditions and regardless of the reduction/privilege vessel's ownership or registry for so long as the reduction/privilege vessel exists. This prohibition includes, but is not limited to, fishing on the high seas or in the jurisdiction of any foreign country (to the extent prohibited by law) while operating under U.S. flag,
  - (ii) Place or attempt to place, or allow others to place or attempt to place, the reduction/privilege vessel under foreign flag or registry,
  - (iii) Operate or attempt to operate, or allow others to operate or attempt to operate, the reduction/privilege vessel under the authority of a foreign country to the extent prohibited by law,
  - (iv) Otherwise avoid or attempt to avoid, or allow others to avoid or attempt to avoid, the revocation of the reduction fishing privilege with respect to any reduction/privilege vessel, and
  - (v) Make any claim or attempt to make any claim, or allow others to claim or attempt to make any claim, for any present or future limited access fishing license or permit in any U.S. fishery (including, but not limited to, any quota allocation under any present or future individual quota allocation system) based in any way on any portion of a reduction fishing interest surrendered, revoked, restricted, relinquished, withdrawn, or extinguished by other means under this section; and
- (3) **Penalties.** The activities that this paragraph prohibits are subject to the full penalties provided in § 600.1017 of this subpart, and immediate cause for NMFS to take action to, among other things:
  - (i) At the reduction/privilege vessel owner's expense, seize and scrap the reduction/privilege vessel, and
  - (ii) Pursue such other remedies and enforce such other penalties as may be applicable.

(w) **Program administration** –

- (1) **FSD responsibilities.** FSD is responsible for implementing and administering this program. FSD will:
  - (i) Issue all notifications and mailings that this section requires,
  - (ii) Prepare and issue the invitation to bid,
  - (iii) Receive bids,
  - (iv) Reject bids,
  - (v) Score bids,
  - (vi) Make acceptances,
  - (vii) Prepare and issue referendum ballots,
  - (viii) Receive referendum ballots,

- (ix) Tally referendum ballots,
- (x) Determine referendum success or failure,
- (xi) Tender and disburse reduction payments,
- (xii) Administer reduction contracts,
- (xiii) Administer fees and reduction loan repayment, and
- (xiv) Discharge all other management and administration functions that this section requires;

(2) **RAM Program responsibilities.** Upon FSD's advice, the RAM Program (for fishing licenses under the jurisdiction of NMFS's Alaska Region) and any other appropriate NMFS authority (for fishing licenses under the jurisdiction of any other NMFS office) will revoke reduction permits and effect the surrender of fishing histories in accordance with this section; and

(3) **NVDC and MARAD responsibilities.** FSD will advise NVDC, MARAD, such other agency or agencies as may be involved, or all of them to revoke reduction/privilege vessels' fisheries trade endorsements and otherwise restrict reduction/privilege vessels in accordance with this section.

(x) **Reduction loan and reduction loan sub-amounts.** [Reserved]

[68 FR 69337, Dec. 12, 2003. Redesignated at 69 FR 53362, Sept. 1, 2004]

## § 600.1104 Bering Sea and Aleutian Islands (BSAI) crab species fee payment and collection system.

(a) **Purpose.** As authorized by Public Law 106-554, this section's purpose is to:

(1) In accordance with § 600.1012 of subpart L, establish:

- (i) The borrower's obligation to repay a reduction loan, and
- (ii) The loan's principal amount, interest rate, and repayment term; and

(2) In accordance with § 600.1013 through § 600.1016 of subpart L, implement an industry fee system for the reduction fishery.

(b) **Definitions.** Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L and § 600.1103 of this subpart expressly apply to this section. The following terms have the following meanings for the purpose of this section:

**Crab rationalization crab** means the same as in § 680.2 of this chapter.

**Crab rationalization fisheries** means the same as in § 680.2 of this chapter.

**Reduction endorsement fishery** means any of the seven fisheries that § 679.2 of this chapter formerly (before adoption of part 680 of this chapter) defined as crab area/species endorsements, except the area/species endorsement for Norton Sound red king. More specifically, the reduction endorsement fisheries, and the crab rationalization fisheries which (after adoption of part 680 of this chapter) correspond to the reduction endorsement fisheries, are:

- (1) Bristol Bay red king (the corresponding crab rationalization fishery is Bristol Bay red king crab),



- (2) Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* (the corresponding crab rationalization fisheries are two separate fisheries, one for Bering Sea snow crab and another for Bering Sea Tanner crab),
- (3) Aleutian Islands brown king (the corresponding crab rationalization fisheries are the two separate fisheries, one for Eastern Aleutian Islands golden king crab and another for Western Aleutian Islands golden king crab),
- (4) Aleutian Islands red king (the corresponding crab rationalization fishery is Western Aleutian Islands red king crab),
- (5) Pribilof red king and Pribilof blue king (the corresponding crab rationalization fishery is Pribilof red king and blue king crab), and
- (6) St. Matthew blue king (the corresponding crab rationalization fishery is also St. Matthew blue king crab).

**Reduction fishery** means the fishery for all crab rationalization crab, excluding CDQ allocations, in all crab rationalization fisheries.

**Sub-amount** means the portion of the reduction loan amount for whose repayment the borrower in each reduction endorsement fishery is obligated.

(c) **Reduction loan amount.** The reduction loan's original principal amount is \$97,399,357.11.

(d) **Sub-amounts.** The sub-amounts are:

- (1) For Bristol Bay red king, \$17,129,957.23;
- (2) For Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi*, \$66,410,767.20;
- (3) For Aleutian Islands brown king, \$6,380,837.19;
- (4) For Aleutian Islands red king, \$237,588.04;
- (5) For Pribilof red king and Pribilof blue king, \$1,571,216.35; and
- (6) For St. Matthew blue king, \$5,668,991.10.

(e) **Interest accrual from inception.** Interest began accruing on each portion of the reduction loan amount on and from the date on which NMFS disbursed each such portion.

(f) **Interest rate.** The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year 2005 plus 2 percent.

(g) **Repayment term.** For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from January 19, 2005, but each fee shall continue indefinitely for as long as necessary to fully repay each subamount.

(h) **Reduction loan repayment.**

- (1) The borrower shall, in accordance with § 600.1012, repay the reduction loan;
- (2) Fish sellers in each reduction endorsement fishery shall, in accordance with § 600.1013, pay the fee at the rate applicable to each such fishery's subamount;
- (3) Fish buyers in each reduction endorsement fishery shall, in accordance with § 600.1013, collect the fee at the rate applicable to each such fishery;

- (4) Fish buyers in each reduction endorsement fishery shall in accordance with § 600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery; except the requirements specified under paragraph (c) of this section concerning the deposit principal disbursement shall be made to NMFS not later than the 7th calendar day of each month; and the requirements specified under paragraph (e) of this section concerning annual reports which shall be submitted to NMFS by July 1 of each calendar year; and,
- (5) The reduction loan is, in all other respects, subject to the provisions of § 600.1012 through § 600.1017.

[70 FR 54656, Sept. 16, 2005, as amended at 71 FR 27210, May 10, 2006]

### **§ 600.1105 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.**

- (a) **Purpose.** This section implements the capacity reduction program that Title II, Section 219(e) of Public Law 108-447 enacted for the longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery.
- (b) **Definitions.** Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L of this part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

**Act** means Title II, Section 219 of Public Law 108-447.

**AI** means the Aleutian Islands.

**Application Form** means the form published on the FLCC's website that sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer Ranking Ballots on behalf of the Subsector Member.

**Auditor** means Jack V. Tagart, Ph.D., d.b.a. Tagart Consulting.

**Authorized Party** means the individuals authorized by Subsector Members on the application form to execute and submit Offers, Rankings, protests and other documents and/or notices on behalf of Subsector Member.

**Ballot** means the form found on the auditor's website used to cast a vote in favor of, or in opposition to, the currently Selected Offers.

**BS** means the Bering Sea.

**BSAI** means the Bering Sea and the Aleutian Islands.

**BSAI Pacific Cod ITAC** means the Total Allowable Catch for Pacific cod after the subtraction of the 7.5 percent Community Development Program reserve.

**Capacity Reduction Agreement or Reduction Agreement** means an agreement entered into by the Subsector Members and the FLCC under which the FLCC is permitted to develop and submit a Capacity Reduction Plan to the Secretary.

**Certificate of Documentation (COD)** means a document issued by the U.S. Coast Guard's National Documentation Center that registers the vessel with the United States Government.

**Closing Vote** means a vote held pursuant to paragraph (d)(7) of this section, after two-thirds ( $\frac{2}{3}$ ) or more of the Nonoffering Subsector Members submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process, and there are no unresolved Protests or Arbitrations.

**Current Offer** means an Offer submitted by a Subsector Member to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term "Current Offer" includes Selected Offers.

**Current Offeror** means an Offering Subsector Member that has submitted an Offer to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term "Current Offeror" includes Selected Offerors.

**Database** means the online LLP License database maintained by NMFS as downloaded by the Auditor pursuant to paragraph (c)(1) of this section.

**Effective Date** means the date the Capacity Reduction Agreement becomes effective pursuant to section 4.e of the Capacity Reduction Agreement.

**Fishing Capacity Reduction Contract or Reduction Contract** means the contract that any Current Offeror must sign and agree to abide by if NMFS accepts the offer by signing the Reduction Contract.

**FLCC Counsel** means Bauer Moynihan & Johnson LLP or other counsel representing the FLCC in any review or arbitration under the Capacity Reduction Agreement.

**Latent License** means an LLP License on which a vessel was not designated at the time an Offer is submitted.

**LLP License** means a Federal License Limitation Program groundfish license issued pursuant to § 679.4(k) of this chapter or successor regulation that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for BS or AI catcher processor fishing activity, C/P, Pacific cod and hook and line gear.

**Longline Subsector** means the longline catcher processor subsector of the BSAI non-pollock groundfish fishery as defined in the Act.

**Longline Subsector ITAC** means the longline catcher processor subsector remainder of the Total Allowable Catch after the subtraction of the 7.5 percent Community Development Program reserve.

**Nonoffering Subsector Member** shall have the meaning ascribed thereto in paragraph (d)(5)(i) of this section.

**Offer Content** means all information included in Offers submitted to the Auditor pursuant to paragraph (d)(2)(ii) of this section.

**Offer Form** means the form found on the Auditor's website used to make an offer.

**Offer(s)** means a binding offer(s) from a Subsector Member to sell its LLP, right to participate in the fisheries, the fishing history associated with such LLP, and any vessel set forth on the Offer Form submitted by Offeror pursuant to the terms of this Capacity Reduction Agreement.

**Opening Date** means the first Monday following the Effective Date set forth in paragraph (c)(3) of this section.

**Person** includes any natural person(s) and any corporation, partnership, limited partnership, limited liability company, association or any other entity whatsoever, organized under the laws of the United States or of a state.

**Prequalification Offer** shall have the meaning ascribed thereto in paragraph (d)(2)(iii) of this section.

**Ranking Form** means the form posted by the Auditor pursuant to paragraph (d)(5)(iii) of this section.

**Ranking Period** shall have the meaning ascribed thereto in paragraph (d)(5)(ii) of this section.

**Reduction Fishery** means the BSAI non-pollock groundfish fishery.

**Reduction Fishing Interests** shall have the meaning ascribed thereto in the Fishing Capacity Reduction Contract.

**Reduction Plan** means a business plan prepared by the Subsector Members in accordance with Section 1 of the Capacity Reduction Agreement and forwarded to the Secretary for approval.

**Reduction Privilege Vessel** means the vessel listed on the Offeror's License Limitation Program license.

**Rejected Offer** means an Offer that has been through one or more Rankings and is not a Selected Offer following the latest Ranking Period, with respect to which the Offering Subsector Member's obligations have terminated pursuant to paragraphs (d)(2)(i) and (d)(6)(v) of this section.

**Rejected Offeror** means a Subsector Member that has submitted an Offer which has been ranked and was not posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

**Restricted Access Management (RAM)** means the Restricted Access Management Program in the Alaska Region, NMFS, located in Juneau, Alaska.

**Secretary** means the Secretary of Commerce or a designee.

**Selected Offer** shall have the meaning ascribed thereto in paragraph (d)(6)(iv) of this section.

**Selected Offeror** means a Subsector Member that has submitted an Offer which has been ranked and is posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

**Selection Process** means the process set forth in paragraph (d) of this section for selecting the fishing capacity to be removed by the Reduction Plan.

**Submission Period(s) or Submitting Period(s)** shall have the meaning ascribed thereto in paragraph (d)(3)(ii) of this section.

**Subsector Member(s)** means a member(s) of the Longline Subsector.

**Web site** means the internet Web site developed and maintained on behalf of the FLCC for implementation of the Selection Process described herein with a URL address of <http://www.freezerlonglinecoop.org>.

(c) **Qualification and enrollment of subsector members** –

- (1) **Distribution.** A copy of the Reduction Agreement, Application Form, and Reduction Contract shall be mailed to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear, as the Auditor determines from the Database downloaded by the Auditor as of January 30, 2006, regardless of whether the LLP License is indicated in the Database as noninterim and transferable or otherwise.

- (2) **Application.** Any person, regardless of whether having received the mailing described in paragraph (c)(1) of this section, may as a Subsector Member apply to enroll with the FLCC to participate in the Reduction Program, by submitting all of the following documents:
  - (i) Fully executed Reduction Agreement;
  - (ii) Photocopy of the LLP License(s) evidencing Subsector Member's qualification as a member of the Longline Subsector;
  - (iii) Unless applying as the holder of a Latent License, a photocopy of Federal Fisheries Permit for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member;
  - (iv) Unless applying as the holder of a Latent License, a photocopy of the Certificate of Documentation (COD) for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member; and
  - (v) An executed Application Form which sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer Ranking Ballots on behalf of the Subsector Member.
- (3) **Examination by Auditor** –
  - (i) **In general.** Each application must be submitted to the Auditor who will examine applications for completeness and inconsistencies, whether on the face of the documents or with the Database. Any application which is incomplete or which contains inconsistencies shall be invalid. The Auditor shall notify by e-mail or mail an applicant of the basis for the Auditor's finding an application invalid. An applicant may resubmit a revised application. If the application meets all requirements, the Auditor may accept the application as valid and enroll the applicant.
  - (ii) **Interim LLP Licenses.** If an LLP License is interim and/or nontransferable, the applicant's enrollment shall be accepted as a Subsector Member and may fully participate in the Selection Process. However, any posting of an Offer submitted with respect to such LLP License shall note the status of such LLP License until that Subsector Member submits to the Auditor a letter from the RAM confirming that it is within the Subsector Member's control to cause the qualifying LLP License to be issued as noninterim and transferable upon withdrawal of all applicable appeals.
- (4) **Enrollment period.** Applications that meet all requirements will be accepted until the Selection Process is completed.
- (5) **Effective date.** The Effective Date of any Reduction Agreement shall be ten (10) calendar days after written notice is sent by the Auditor to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear (as determined by the Auditor from the Auditor's examination of the Database) advising that the number of Subsector Members that have delivered to the Auditor a complete Application, including a fully executed Reduction Agreement, exceeds seventy percent (70 percent) of the members of the Longline Subsector (as determined by the Auditor from the Auditor's examination of the Database).
- (6) **Notice.** All notices related to the effective date of the Reduction Agreement shall be sent by the Auditor via registered mail.

(7) **Withdrawal.** A Subsector Member, unless such Subsector Member is a Current Offeror or Selected Offeror, may terminate the Reduction Agreement at any time with respect to that Subsector Member by giving ten (10) calendar days written notice to the Auditor preferably via e-mail. Withdrawal of a Subsector Member shall not affect the validity of the Reduction Agreement with respect to any other Subsector Members. Once effective, the Reduction Agreement shall continue in full force and effect regardless of whether subsequent withdrawals reduce the number of Subsector Members below that level required to effectuate the Reduction Agreement. Attempted withdrawal by a Current Offeror or Selected Offeror shall be invalid, and such Offer shall remain a binding, irrevocable Offer, unaffected by the attempted withdrawal.

(d) **Selection of fishing capacity to be removed by Reduction Plan.** The fishing capacity removed by the Reduction Plan will be the Reduction Fishing Interests voluntarily offered through the Reduction Plan by offering Subsector Members and as selected by the Nonoffering Subsector Members, up to an aggregate amount of thirty six million dollars (\$36,000,000) as set forth in this paragraph (d).

(1) **Overview.** The Selection Process will begin upon the Effective Date of the Reduction Agreement. The Selection Process will alternate on a weekly basis between:

- (i) Submitting Periods, during which individual Subsector Members may submit Offers of fishing capacity they wish to include in the Reduction Plan; and
- (ii) Ranking Periods, during which Nonoffering Subsector Members will rank the submitted Offers.

(2) **Offers –**

(i) **Binding agreement.** An Offer from a Subsector Member shall be a binding, irrevocable offer from a Subsector Member to relinquish to NMFS the Reduction Fishing Interests for the price set forth on the Offer contingent on such Offer being a Selected Offer at the closing of the Selection Process. Once submitted, an Offer may not be revoked or withdrawn while that Offer is a Current Offer or Selected Offer. An Offer that is submitted by a Subsector Member, but is not a Selected Offer during the subsequent Ranking Period, shall be deemed to be terminated and the Subsector Member shall have no further obligation with respect to performance of that Offer.

(ii) **Offer content.** All Offers submitted to the Auditor shall include the following information: LLP License number; LLP License number(s) of any linked crab LLP Licenses; license MLOA (MLOA—maximum length overall of a vessel is defined at § 679.2 of this chapter); the license area, gear and species endorsements; a summary of the Pacific cod catch history for the calendar years 1995-2004; and the offered price. The Offer shall also state whether a vessel is currently designated on the LLP License and as such will be withdrawn from all fisheries if the Offer is selected for reduction in the Reduction Plan. If so, the Offer shall identify such vessel by name, official number, and current owner. In addition, the Offer shall provide a summary of the Pacific cod catch history for the calendar years 1995-2004 of the vessel to be retired from the fisheries. All summary catch histories included in Offers shall be calculated utilizing both the weekly production report and best blend methodology and shall separately state for each methodology the Pacific cod catch in metric tons and as a percentage of the overall catch for the longline catcher processor subsector on an annual basis for each of the required years. If the vessel stated to be withdrawn from the fisheries is not owned by the LLP License owner of record, the Offer shall be countersigned by the owner of record of the vessel. An Offer offering a

Latent License shall state on the Offer Form that the offered LLP License is a Latent License. The Offer Form shall also include a comment section for any additional information that Offerors wish to provide to the Subsector Members concerning the Offer.

- (iii) **Prequalification of offers.** A Subsector Member may submit a Prequalification Offer to the Auditor at any time prior to the Opening Date. A Prequalification Offer shall contain all elements of an Offer, except that a price need not be provided. The Auditor shall notify the Subsector Member submitting a Prequalification Offer as to any deficiencies as soon as practicable. All details of a Prequalification Offer shall be kept confidential by the Auditor.

(3) **Submitting an offer –**

- (i) **Offer submission.** Commencing on the first Tuesday following the Opening Date and during all Submission Periods until the Selection Process is closed, any Subsector Member may submit an Offer. All Offers are to be on the applicable form provided on the FLCC website, executed by an Authorized Party and submitted to the Auditor by facsimile. Any Subsector Member may submit an Offer during any Submission Period, even if that Subsector Member has not submitted an Offer in any previous Submission Period. If a Subsector Member holds more than one LLP License, such Subsector Member may, but is not required to, submit an Offer for each LLP License held during a Submission Period.
- (ii) **Submission periods.** The initial Submission Period shall commence at 9 a.m. (Pacific time) on the Tuesday following the Opening Date and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Submission Periods shall commence at 9 a.m. (Pacific time) on the first Tuesday following the preceding Ranking Period and end at 5 p.m. (Pacific time) on the Friday of that week. All times set forth in the Reduction Agreement and used in the Offer process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology.
- (iii) **Validity of offer.** The Auditor shall examine each Offer for consistency with the Database and information contained in the enrollment documents. If there is an inconsistency in the information contained in the Offer, any of the elements required of an Offer pursuant to paragraph (d)(2)(ii) of this section are missing, or the Auditor does not receive the original Offer Form before the Offers are to be posted pursuant to paragraph (d)(4) of this section, the Auditor shall notify the offering Subsector Member by e-mail or mail that the Offer is nonconforming as soon as practicable after discovering the basis of invalidity. The Subsector Member may submit a revised, conforming Offer prior to the close of that Submission Period or, in any subsequent Submission Period. Only one Offer may be submitted with respect to an LLP License during a Submission Period. In the event a Subsector Member submits more than one Offer with respect to an LLP License during a Submission Period, the first conforming Offer received by the Auditor shall be binding and irrevocable and any subsequent Offers shall be deemed invalid.
- (iv) **Warranty.** By submitting an Offer, the Offering Subsector Member, warrants and represents that the Offering Subsector Member has read and understands the terms of the Reduction Agreement, the Offer, and the Reduction Contract and has had the opportunity to seek independent legal counsel regarding such documents and/or agreements and the consequences of submitting an Offer.

(4) **Posting offers –**

- (i) **Current offers.** For each Offer received during a Submission Period, the Auditor shall post on the Website no later than 5 p.m. (Pacific time) on the following Tuesday all of the details of such Offer as set forth on the Offer Form. In addition, the Auditor shall post, as available to Auditor, a summary by year of up to ten (10) years catch history during the period 1995-2004 in total round weight equivalents and percentage of Longline Subsector ITAC harvested for any vessel that is included in the Offer. Subsector Member (or vessel owner, if other than the Subsector Member) expressly authorizes Auditor to release the catch history summary information previously prepared for that Subsector Member or vessel owner by the Auditor as part of the analysis of FLCC's membership's catch history previously conducted by the Auditor on behalf of the FLCC.
  - (ii) **Posting order.** Offers shall be posted on the Website by the Auditor in alphabetical order of the Offering Subsector Member's name.
  - (iii) **Questions as to offer.** The Auditor shall respond to no questions from Subsector Member regarding Offers except to confirm that the posting accurately reflects the details of the Offer. If an Offering Subsector Member notices an error in an Offer posting on the Website, such Subsector Member shall notify the Auditor as soon as practicable. The Auditor shall review such notice, the posting and the original Offer. If an error was made in posting the Auditor shall correct the posting as soon as practicable and notify the Subsector Members via e-mail or mail of the correction. In the event such an error is not discovered prior to Ranking, an Offering Subsector Member shall be bound to the terms of the submitted Offer, not the terms of the posted Offer.
  - (iv) **Archive.** The Auditor shall maintain on the Website an archive of prior Offers posted, which shall be available for review by all Subsector Members.
- (5) **Ranking –**
- (i) **Eligibility.** Each Subsector Member that has not submitted an Offer during the preceding Submission Period, or whose vessel is not included as a withdrawing vessel in an Offer during the preceding Submission Period (i.e., a Nonoffering Subsector Member), may submit to the Auditor a Ranking Form during a Ranking Period. With respect to Ranking, a Subsector Member that holds more than one LLP License may participate in the Ranking process for each LLP License not included in an Offer.
  - (ii) **Ranking period.** The initial Ranking Period shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Ranking Periods shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week.
  - (iii) **Ranking form.** Prior to each Ranking Period, the Auditor will post a Ranking Form on the Website in "pdf" file format. Each eligible Subsector Member wishing to rank the current Offers shall rank the Offers on the Ranking Form numerically in the Subsector Member's preferred order of purchase. The Offer that Subsector Member would most like to have accepted should be ranked number one (1), and subsequent Offers ranked sequentially until the Offer that the Subsector Member would least like to see accepted is ranked with the highest numerical score. A Subsector Member wishing to call for a Closing Vote shall, in lieu of ranking the Current Offers, mark the Ranking Form to accept the Selected Offers selected during the prior Ranking Period and close the Selection Process. To be valid, the Ranking Form must rank each Current



Offer listed on the Ranking Form or, if applicable, be marked to call for a Closing Vote. Ranking Forms shall be submitted by sending a completed Ranking Form, signed by an Authorized Party, to the Auditor by facsimile or mail prior to the end of the Ranking Period. A Subsector Member is not required to rank the Offers during a Ranking Period or call for a Closing Vote.

- (iv) **Validity of subsector member ranking.** The Auditor shall examine each Ranking Form for completeness, whether the form either ranks the Offers or calls for a Closing Vote (but not both), and authorized signature. Any incomplete or otherwise noncompliant Ranking Form(s) shall be invalid, and shall not be included in the Rankings of the Current Offers. The Auditor shall notify the Subsector Member of the reason for declaring any Ranking Form invalid as soon as practicable. A Subsector Member may cure the submission of an invalid Ranking Form by submitting a complying Ranking Form if accomplished before the end of the applicable Ranking Period.

(6) **Ranking results** —

- (i) **Compiling the rankings.** Unless two-thirds ( $\frac{2}{3}$ ) of the Nonoffering Subsector Members have called for a Closing Vote, the Auditor shall compile the results of the Ranking Forms by assigning one point for each position on a Ranking Form. That is, the Offer ranked number one (1) on a Ranking Form shall be awarded one (1) point, the Offer ranked two (2) shall receive two (2) points, and continuing on in this manner until all Offers have been assigned points correlating to its ranking on each valid Ranking Form. The Offer with the least number of total points assigned shall be the highest ranked Offer, and the Offer with the greatest total points assigned shall be the lowest ranked Offer.
- (ii) **Posting rankings.** The Auditor shall post the results of the compilation of the Ranking Forms on the Website in alphabetical order based on the Offering Subsector Member's name no later than 5 p.m. (Pacific time) on the Monday following the Ranking Period. The Auditor shall post the highest consecutive ranking Offers that total thirty six million dollars (\$36,000,000) or less. Those Offering Subsector Members whose Offers are posted shall be deemed Selected Offerors and their Offers shall be deemed Selected Offers. Those Offering Subsector Members whose Offers are not posted shall be deemed Rejected Offerors.
- (iii) **Selected offer information or confidentiality.** The Auditor shall post the name of the Offering Subsector Member, the amount of the Offer, and a summary of the total number of Ranking Forms received and the number of such forms on which the Members called for a Closing Vote. Other than the foregoing, the Auditor shall not post any details of the compilation of the Ranking Forms.
- (iv) **Selected offerors.** Selected Offerors may not withdraw their Offers unless in subsequent rankings their Offers no longer are within the highest ranking Offers and they become Rejected Offerors. A Selected Offeror may, however, modify a Selected Offer solely to the extent such modification consists of a reduction in the Offer price. A Selected Offeror may submit a modified Offer to the Auditor during the next Offering Period as set forth in paragraph (d)(3) of this section. Unless a Selected Offeror becomes a Rejected Offeror in a subsequent Ranking, a Selected Offeror shall be bound by the terms of the lowest Selected Offer submitted as if such modified Offer had been the original Selected Offer. In the event a Selected Offeror submits a modified Offer and such Offer is not ranked because sufficient votes are received to call for a Closing Vote, the previously Selected Offer shall remain the Selected Offer.

- (v) **Rejected offerors.** The Offer of a Rejected Offeror is terminated and the Rejected Offeror is no longer bound by the terms of its Offer. A Rejected Offeror may, at its sole discretion, resubmit the same Offer, submit a revised Offer, or elect not to submit an Offer during any subsequent Submission Period until the Selection Process is closed.
  - (vi) **Ties.** In the event there is a tie with respect to Offers which results in the tied Offers exceeding thirty-six million dollars (\$36,000,000), the tied Offers and all Offers ranked lower than the tied Offers shall be deemed to be rejected and the Rejected Offerors may, at their option, submit an Offer in a subsequent Submission Period.
  - (vii) **Archive.** Auditor shall maintain on the Website an archive of prior Offer Rankings as posted over the course of the Selection Process, which shall be available for Subsector Member review.
- (7) **Closing.** The Selection Process will close when two-thirds ( $\frac{2}{3}$ ) or more of the Nonoffering Subsector Members of the Longline Subsector, as determined by the Auditor, affirmatively vote to accept the Selected Offerors selected during the prior Ranking Period as part of the Reduction Plan to be submitted to the Secretary.
- (i) **Call for vote.** A Closing Vote will be held when: at least two-thirds ( $\frac{2}{3}$ ) of the Nonoffering Subsector Members submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process in lieu of Ranking the current Offers; and there are no unresolved Protests or Arbitrations. The Auditor shall notify all Subsector Members by e-mail or mail and posting a notice on the Website as soon as practicable that a Closing Vote is to be held. Such notice shall state the starting and ending dates and times of the voting period, which shall be not less than three (3) nor more than seven (7) calendar days from the date of such notice. A voting period shall commence at 9 a.m. (Pacific time) on Monday and end at 5 p.m. on the Friday of that week.
  - (ii) **Voting.** No less than three (3) calendar days prior to the voting period, the Auditor will post a Closing Ballot on the Website in "pdf" file format. Each eligible Nonoffering Subsector Member wishing to vote shall print out the Closing Ballot, and, with respect to each of the currently Selected Offers on the Closing Ballot, vote either in favor of or opposed to accepting that Selected Offer and submit a completed and signed Closing Ballot to the Auditor preferably by facsimile prior to the end of the Voting Period.
  - (iii) **Ballot verification.** The Auditor shall examine each submitted Closing Ballot for completeness and authorized signature. Any incomplete Closing Ballot shall be void, and shall not be included in the voting results. The Auditor shall not notify the Subsector Member of an invalid Closing Ballot.
  - (iv) **Voting results.** The Auditor shall post the results of the Vote as soon as practicable after voting closes. Each Offer on the Closing Ballot that receives votes approving acceptance of such Offer from two-thirds ( $\frac{2}{3}$ ) or more of the total number of Nonoffering Subsector Members shall be a Selected Offeror and shall be the basis for the Reduction Plan submitted to NMFS. Any Offer on the Closing Ballot that does not receive such two-thirds ( $\frac{2}{3}$ ) approval shall be rejected and shall not be included among the Offers included among the Reduction Plan submitted to NMFS.
  - (v) **Notification to NMFS.** Upon closing of the Selection Process, FLCC shall notify NMFS in writing of the identities of the Selected Offerors and provide to NMFS a completed and fully executed original Reduction Agreement from each of the Selected Offerors and a certified copy of the fully executed Reduction Agreement and Reduction Contract.

- (e) **Submission of reduction plan, including repayment.** Upon completion of the offering process, the FLCC on behalf of the Subsector Members shall submit to NMFS the Reduction Plan which shall include the provisions set forth in this paragraph (e).
- (1) **Capacity reduction.** The Reduction Plan shall identify as the proposed capacity reduction, without auction process, the LLP Licenses as well as the vessels and the catch histories related to the LLP Licenses, linked crab LLP Licenses, and any other fishing rights or other interests associated with the LLP Licenses and vessels included in the Selected Offers. The aggregate of all Reduction Agreements and Reduction Contracts signed by Subsector Members whose offers to participate in this buyback were accepted by votes of the Subsector Members, will together with the FLCC's supporting documents and rationale for recognizing that these offers represent the expenditure of the least money for the greatest capacity reduction, constitute the Reduction Plan to be submitted to NMFS for approval on behalf of the Secretary of Commerce.
- (2) **Loan repayment –**
- (i) **Term.** As authorized by Section 219(B)(2) of the Act, the capacity reduction loan (the "Reduction Loan") shall be amortized over a thirty (30) year term. The Reduction Loan's original principal amount may not exceed thirty-six million dollars (\$36,000,000), but may be less if the reduction cost is less. Subsector Members acknowledge that in the event payments made under the Reduction Plan are insufficient to repay the actual loan, the term of repayment shall be extended by NMFS until the loan is paid in full.
- (ii) **Interest.** The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus 2 percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be 2 percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed, and will not vary over the remainder of the reduction loan's 30-year term. The Reduction loan will be subject to a level debt amortization. There is no prepayment penalty.
- (iii) **Fees.** The Reduction Loan shall be repaid by fees collected from the Longline Subsector. The fee amount will be based upon: The principal and interest due over the next twelve months divided by the product of the Hook & Line, Catcher Processor (Longline Subsector; sometimes referred to as the "H&LCP Subsector") portion of the BSAI Pacific cod ITAC (in metric tons) set by the North Pacific Fishery Management Council (NPFMC) in December of each year multiplied by 2,205 (i.e., the number of pounds in a metric ton). In the event that the Longline Subsector portion for the ensuing year is not available, the Longline Subsector portion forecast from the preceding year will be used to calculate the fee.
- (A) The fee will be expressed in cents per pound rounded up to the next one-tenth of a cent. For example: If the principal and interest due equal \$2,900,000 and the Longline Subsector portion equals 100,000 metric tons, then the fee per round weight pound of Pacific cod will equal 1.4 cents per pound.  $[2,900,000 / (100,000 \times 2,205) = .01315]$ . The fee will be accessed and collected on Pacific cod to the extent possible and if not, will be accessed and collected as provided for in this paragraph (e).

- (B) Fees must be assessed and collected on Pacific cod used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel production value of all post-reduction Longline Subsector landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a penny per pound round weight fee will be calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.
- (C) The additional fee will be limited to the amount necessary to amortize the remaining twelve months principal and interest in addition to the 5 percent fee assessed against Pacific cod. The additional fee will be a minimum of one cent per pound. In the event that collections exceed the total principal and interest needed to amortize the payment due, the principal balance of the loan will be reduced. To verify that the fees collected do not exceed 5 percent of the fishery revenues, the annual total of principal and interest due will be compared to the latest available annual Longline Subsector revenues to ensure it is equal to or less than 5 percent of the total ex-vessel production revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or for any other reason NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such a time that new calculations are made and communicated to the post reduction fishery participants.
- (D) It is possible that the fishery may not open during some years and no Longline Subsector portion of the ITAC is granted. Consequently, the fishery will not produce fee revenue with which to service the reduction loan during those years. However, interest will continue to accrue on the principal balance. When this happens, if the fee rate is not already at the maximum 5 percent, NMFS will increase the fisheries' fee rate to the maximum 5 percent of the revenues for Pacific cod and the species mentioned in paragraph (e)(2)(iii)(B), apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.
- (iv) **Reduction loan.** NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs (§ 600.1000 *et seq.*). The reduction loan shall be subject to the provisions of § 600.1012, except that: the borrower's obligation to repay the reduction loan shall be discharged by the owner of the Longline Subsector license regardless of which vessel catches fish under this license and regardless of who processes the fish in the reduction fishery in accordance with § 600.1013. Longline Subsector license owners in the reduction fishery shall be obligated to collect the fee in accordance with § 600.1013.
- (v) **Collection.** The LLP License holder of the vessel harvesting in the post-capacity reduction plan Longline Subsector shall be responsible for self-collecting the repayment fees owed by that LLP License holder. Fees shall be submitted to NMFS monthly and shall be due no later than fifteen (15) calendar days following the end of each calendar month.
- (vi) **Record keeping and Reporting.** The holder of the LLP License on which a vessel harvesting in the post-capacity reduction plan Longline Subsector is designated shall be responsible for compliance with the applicable record keeping and reporting requirements.

- (3) **Agreement with Secretary.** Each Selected Offeror, and vessel owner if not the Subsector Member, that has submitted a Selected Offer shall complete and deliver to the FLCC for inclusion in the Reduction Plan submitted to NMFS, designee for the Secretary, a completed and fully executed Reduction Contract. Any and all LLP License(s) and or vessels set forth on a Selected Offer shall be included as Reduction Fishing Interests in such Reduction Contract.
- (f) **Decisions of the Auditor and the FLCC.** Time is of the essence in developing and implementing a Reduction Plan and, accordingly, the Offerors shall be limited to, and bound by, the decisions of the Auditor and the FLCC.
- (1) The Auditor's examination of submitted applications, Offers, Prequalification Offers and Rankings shall be solely ministerial in nature. That is, the Auditor will verify whether the documents submitted by Subsector Members are, on their face, consistent with each other and the Database, in compliance with the requirements set forth in the Reduction Agreement, and, signed by an Authorized Party. The Auditor may presume the validity of all signatures on documents submitted. The Auditor shall not make substantive decisions as to compliance (e.g., whether an interim LLP License satisfies the requirements of the Act, or whether a discrepancy in the name appearing on LLP Licenses and other documents is material).
- (2) [Reserved]
- (g) **Enforcement/specific performance.** The parties to the Reduction Agreement have agreed that the opportunity to develop and submit a capacity reduction program for the Longline Subsector under the terms of the Act is both unique and finite and that failure of a Selected Offeror, and vessel owner, if not a Subsector Member, to perform the obligations provided by the Reduction Agreement will result in irreparable damage to the FLCC, the Subsector Members and other Selected Offerors. Accordingly, the parties to the Reduction Agreement expressly acknowledge that money damages are an inadequate means of redress and agree that upon the failure of the Selected Offeror, and vessel owner if not a Subsector Member, to fulfill its obligations under the Reduction Agreement that specific performance of those obligations may be obtained by suit in equity brought by the FLCC in any court of competent jurisdiction without obligation to arbitrate such action.
- (h) **Miscellaneous –**
- (1) **Time/Holidays.** All times related to the Selection Process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology. In the event that any date occurring within the Selection Process is a Federal holiday, the date shall roll over to the next occurring business day.
- (2) **Termination.** The Reduction Agreement shall automatically terminate if no vote of acceptance is completed by December 31, 2007. The Reduction Agreement may be terminated at any time prior to approval of the Reduction Plan by NMFS, on behalf of the Secretary, by written notice from 50 percent of Subsector Members.
- (3) **Choice of law/venue.** The Reduction Agreement shall be construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law provisions. The parties submit to the exclusive personal jurisdiction of the United States District Court located in Seattle, Washington, with respect to any litigation arising out of or relating to the Reduction Agreement or out of the performance of services hereunder.

- (4) **Incorporation.** All executed counterparts of the Reduction Agreement, Application Forms and Offers constitute the agreement between the parties with respect to the subject matter of the Reduction Agreement and are incorporated into the Reduction Agreement as if fully written.
- (5) **Counterparts.** The Reduction Agreement may be executed in multiple counterparts and will be effective as to signatories on the Effective Date. The Reduction Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute the same agreement, whether or not all parties execute each counterpart.
  - (i) The facsimile signature of any party to the Reduction Agreement shall constitute the duly authorized, irrevocable execution and delivery of the Reduction Agreement as fully as if the Reduction Agreement contained the original ink signatures of the party or parties supplying a facsimile signature.
  - (ii) [Reserved]
- (i) **Amendment.** Subsector Member acknowledges that the Reduction Agreement, the Reduction Contract, and the Reduction Plan may be subject to amendment to conform to the requirements for approval of the Reduction Plan by NMFS on behalf of the Secretary. The Auditor shall distribute to each Subsector Member in electronic format the amended form of the Reduction Agreement, the Reduction Contract, and the Reduction Plan, which amended documents in the form distributed by the Auditor and identified by the Auditor by date and version, the version of each such document then in effect at the time of any dispute arising or action taken shall be deemed binding upon the parties with respect to such dispute and/or action.
- (j) **Warranties.** Subsector Member must expressly warrant and represent in the Reduction Agreement that:
  - (1) Subsector Member has had an opportunity to consult with Subsector Member's attorney or other advisors of Subsector Member with respect to the Reduction Agreement, the Reduction Contract, and the Act and the ramifications of the ratification of the Reduction Plan contemplated therein;
  - (2) Subsector Member has full understanding and appreciation of the ramifications of executing and delivering the Reduction Agreement and, free from coercion of any kind by the FLCC or any of its members, officers, agents and/or employees, executes and delivers the Reduction Agreement as the free and voluntary act of Subsector Member;
  - (3) The execution and delivery of the Reduction Agreement, does not and will not conflict with any provisions of the governing documents of Subsector Member;
  - (4) The person executing the Reduction Agreement has been duly authorized by Subsector Member to execute and deliver the Reduction Agreement and to undertake and perform the actions contemplated herein; and
  - (5) Subsector Member has taken all actions necessary for the Reduction Agreement to constitute the valid and binding obligation of Subsector Member, enforceable in accordance with its terms.
- (k) **Approval of the reduction plan.** Acceptance of the Offers are at the sole discretion of NMFS on behalf of the Secretary of Commerce. To be approved by NMFS, on behalf of the Secretary, any Reduction Plan developed and submitted in accordance with this section and subpart M to this part must be found by the Assistant Administrator of NMFS, to:

- (1) Be consistent with the requirements of Section 219(e) of the FY 2005 Appropriations Act (Public Law 108-447);
  - (2) Be consistent with the requirements of Section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a)) except for the requirement that a Council or Governor of a State request such a program (as set out in section 312(b)(1)) and for the requirements of section 312(b)(4);
  - (3) Contain provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by the Longline Subsector and that it provide for the assessment of such fees;
  - (4) Not require a bidding or auction process;
  - (5) Result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and
  - (6) Permit vessels in the Longline Subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.
- (l) **Referenda.** The provisions of § 600.1010 (including §§ 600.1004(a), 600.1008, 600.1009, 600.1013, 600.1014, and 600.1017(a)(5), (6) and (7)) shall apply to the Reduction Plan of this section to the extent that they do not conflict with this section or with subpart M of this part.

## Appendix to § 600.1105—Fishing Capacity Reduction Contract: Bering Sea and Aleutian Islands Longline Catcher Processor Subsector

### Fishing Capacity Reduction Contract: Bering Sea and Aleutian Islands Longline Catcher Processor Subsector

This agreement, (the “Reduction Contract”) is entered into by and between the party or parties named in section 46 of this contract entitled, “Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification,” as the qualifying Offeror and as the co-Offeror (if there is a co-Offeror) (collectively the “Offeror”) and the United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division (“NMFS”). The Reduction Contract is effective when NMFS signs the Reduction Contract and, thereby, accepts the Offeror's offer, subject to the condition subsequent of NMFS' formal notification of a successful referendum.

#### Witnesseth

Whereas, Section 219, Title II, Division B of the Consolidated Appropriations Act, 2005, as enacted on December 8, 2004, (the “Act”) authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands (“BSAI”) non-pollock groundfish fishery as set forth in the Act;

Whereas, the longline catcher processor subsector (the “Longline Subsector”) is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act;

Whereas, the Freezer Longline Conservation Cooperative (the "FLCC") has developed and is submitting to NMFS concurrently with this Reduction Contract a capacity reduction plan for the Longline Subsector (the "Reduction Plan");

Whereas, the selection process will be pursuant to the fishing capacity Reduction Contract and the Reduction Plan;

Whereas, the term "Reduction Fishery" is defined by the Reduction Plan as the longline catcher processor subsector of the BSAI non-pollock groundfish fishery;

Whereas, the Reduction Plan's express objective is to permanently reduce harvesting capacity in the Reduction Fishery; Whereas, NMFS implements the Reduction Plan pursuant to Section 219 of the Act as well as the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)-(e))(as excepted by the Act, including inter alia, any requirement that the Reduction Plan include a bidding or auction process) and other applicable law;

Whereas, NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs, portions of which are applicable to the Reduction Plan, (50 CFR 600.1000 *et seq.*);

Whereas, NMFS can implement the Reduction Plan only after giving notice to all members of the Longline Subsector of the Reduction Plan pursuant to Section 219(3)(b) of the Act and approval of the Reduction Plan by referendum of the Longline Subsector; and

Whereas, this Reduction Contract is submitted by Offeror and the FLCC as an integral element of the Reduction Plan and is expressly subject to the terms and conditions set forth herein, the framework regulations, the final rule (as used in this contract "final rule" means the final rule promulgated by NMFS which sets forth the regulations implementing the Reduction Plan for the Longline Subsector) and applicable law.

Now therefore, for good and valuable consideration and the premises and covenants hereinafter set forth the receipt and sufficiency of which the parties to the Reduction Contract hereby acknowledge, and intending to be legally bound hereby, the parties hereto agree as follows:

1. *Incorporation of Recitals.* The foregoing recitals are true and correct and are expressly incorporated herein by this reference.
2. *Further Incorporation.* The Act, framework regulations, final rule and any other rule promulgated pursuant to the Act are expressly incorporated herein by this reference. In the event of conflicting language, the framework regulations, the final rule and any other rule promulgated pursuant to the Act, take precedence over the Reduction Contract.
3. *Contract Form.* By completing and submitting the Reduction Contract to NMFS the Offeror hereby irrevocably offers to relinquish its Reduction Fishing Interests. If NMFS discovers any deficiencies in the Offeror's submission to NMFS, NMFS may, at its sole discretion, contact the Offeror in an attempt to correct such offer deficiency. "Reduction Fishing Interests" means all of Offeror(s) rights, title and interest to the Groundfish Reduction Permit, Reduction Permit(s), Reduction Fishing Privilege and Reduction Fishing History as defined in this Reduction Contract.



4. *Groundfish Reduction Permit.* Offeror expressly acknowledges that it hereby offers to permanently surrender, relinquish, and have NMFS permanently revoke the valid non-interim Federal License Limitation Program groundfish license issued pursuant to 50 CFR 679.4(k) (or successor regulation) endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pacific cod, and hook and line gear identified in section 46 of this contract as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License and any offered and accepted interim permit that Offeror causes to become a non-interim permit, (the "Groundfish Reduction Permit").

5. *Reduction Permit(s).* Offeror hereby acknowledges that it offers to permanently surrender, relinquish, and have NMFS permanently revoke any and all Federal fishery licenses, fishery permits, and area and species endorsements issued for any vessel named on the Groundfish Reduction Permit as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License, (the "Reduction Permits").

6. *Reduction Privilege Vessel.* The Reduction Privilege Vessel is the vessel listed on the Offeror's License Limitation Program license.

7. *Reduction Fishing Privilege.* If a vessel is specified in section 46 of this contract (the "Reduction Privilege Vessel"), Offeror hereby acknowledges that Offeror offers to relinquish and surrender the Reduction Privilege Vessel's fishing privilege and consents to the imposition of Federal vessel documentation restrictions that have the effect of permanently revoking the Reduction Privilege Vessel's legal ability to fish anywhere in the world as well as its legal ability to operate under foreign registry or control—including the Reduction Privilege Vessel's: fisheries trade endorsement under the Commercial Fishing Industry Vessel Anti-Reflagging Act (46 U.S.C. 12108); eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the privilege otherwise to ever fish again anywhere in the world (the "Reduction Fishing Privilege"). Offeror agrees to instruct the United States Coast Guard's Vessel Documentation Center to remove the fishery endorsement from the Reduction Privilege Vessel. If the Reduction Privilege Vessel is not a federally documented vessel, the Offeror offers to promptly scrap the vessel and allow NMFS whatever access to the scrapping NMFS deems reasonably necessary to document and confirm the scrapping.

8. *Reduction Fishing History.* Offeror surrenders, relinquishes, and consents to NMFS' permanent revocation of the following Reduction Fishing History (the "Reduction Fishing History"):

- a. The Reduction Privilege Vessel's full and complete documented harvest of groundfish;
- b. For any documented harvest of the Reduction Privilege Vessel whatsoever, including that specified in section 8 of this contract, any right or privilege to make any claim in any way related to any fishery privilege derived in whole or in part from any such other and documented harvest which could ever qualify any party for any future limited access system fishing license, permit, and other harvest authorization of any kind; including without limitation crab LLP licenses linked to License Limitation Program ("LLP") licenses, state fishing rights appurtenant to Reduction Fishing Vessels, and all fishing history associated therewith, but without prejudice to any party who before submission of this offer may have for value independently acquired the fishing history involving any such documented harvest;

c. Any documented harvest on any other vessel (Reduction Fishing Vessel) that gave rise to the Groundfish Reduction Permit; and

d. All fishing history associated with the latent LLP license identified on the Selected Offer and any fishing history associated with the fishing vessel that gave rise to the latent LLP license that remains in the Offeror's possession as of August 11, 2006 (*i.e.*, date of publication of the proposed rule in the FEDERAL REGISTER).

9. *Halibut, Sablefish and Crab IFQs Excluded.* Notwithstanding any other provision of this Reduction Contract, no right, title and/or interest to harvest, process or otherwise utilize individual fishing quota ("IFQ") quota share in the halibut, sablefish and crab fisheries pursuant to 50 CFR parts 679 and 680, nor crab LLP license history to the extent necessary for the issuance of crab IFQ pursuant to 50 CFR part 680 as in effect as of the date of this Contract, shall be included among Offeror's Reduction Fishing Interests.

10. *Representations and Warranties.* Offeror represents and warrants that, as of the date of submission of this Reduction Contract, Offeror is:

a. The holder of record, according to NMFS' official fishing license records, at the time of offer, of the Groundfish Reduction Permit and the Reduction Permit(s).

b. The Reduction Privilege Vessel's owner of record, according to the National Vessel Documentation Center's official vessel documentation records, at the time of offer, and that the Reduction Privilege Vessel is neither lost nor destroyed at the time of offer.

c. In retention of and fully and legally entitled to offer and dispose of hereunder, full and complete rights to the Reduction Privilege Vessel's full and complete Reduction Fishing History necessary to fully and completely comply with the requirements of section 8 of this contract.

11. *Offer Amount.* NMFS' payment to Offeror in the exact amount of the amount set forth by Offeror in section 46 of this contract is full and complete consideration for the Offeror's offer.

12. *Additional Offer Elements.* Offeror shall include with its offer an exact photocopy of the Reduction Privilege Vessel's official vessel documentation or registration (*i.e.*, the certificate of documentation the U.S. Coast Guard's National Vessel Documentation Center issued for federally documented vessels or the registration a State issues for State registered vessels) and an exact photocopy of the Groundfish Reduction Permit and all Reduction Permit(s). The Offeror shall also include with the offer all other information required in this Reduction Contract and otherwise comply with Reduction Contract requirements.

13. *Use of Official Fishing License or Permit Databases.* Offeror expressly acknowledges that NMFS shall use the appropriate official governmental fishing license or permit database to:

Determine the Offeror's address of record; verify the Offeror's qualification to offer; determine the holder of record of the Groundfish Reduction Permit and Reduction Permit(s); and verify the Offeror's inclusion in the offer of all permits and licenses required to be offered in the Offer.

14. *Use of National Vessel Documentation Center Database.* Offeror expressly acknowledges that NMFS shall use the records of the National Vessel Documentation Center to determine the owner of record for a federally documented Reduction Privilege Vessel and the appropriate State records to determine the owner of record of a non-federally documented Reduction Privilege Vessel.
15. *Offeror to Ensure Accurate Records.* Offeror shall, to the best of its ability, ensure that the records of the databases relevant to sections 13 and 14 of this contract are true, accurate, and complete.
16. *Submissions are Irrevocable.* The parties hereto expressly acknowledge as the essence hereof that the Offeror voluntarily submits to NMFS this firm and irrevocable offer. The Offeror expressly acknowledges that it hereby waives any privilege or right to withdraw, change, modify, alter, rescind, or cancel any portion of the Reduction Contract and that the receipt date and time which NMFS marks on the Reduction Contract constitutes the date and time of the offer's submission.
17. *Offer Rejection.* NMFS shall reject an offer that NMFS deems is in any way unresponsive or not in conformance with the Reduction Contract, and the applicable law or regulations unless the Offeror corrects the defect and NMFS, in its sole discretion, accepts the correction.
18. *Notarized Offeror Signature(s) Required.* NMFS shall deem as non-responsive and reject an offer whose Offer Submission Form does not contain the notarized signatures of all persons required to sign the form on behalf of the Offeror.
19. *Offer Rejections Constitute Final Agency Action.* NMFS's offer rejections are conclusive and constitute final agency action as of the rejection date.
20. *Effect of Offer Submission.* Submitting an irrevocable offer conforming to the requirements stated herein entitles the Offeror to have NMFS accept the offer if NMFS, in its sole discretion, deems that the offer is fully responsive and complies with the Act, the final rule and any other rule promulgated pursuant to the Act.
21. *Offeror Retains Use.* After submitting an offer, the Offeror shall continue to hold, own, or retain unimpaired every aspect of any and all LLP License(s) and or vessels set forth on an Offer included as Reduction Fishing Interests, until such time as: NMFS notifies the Offeror that the Reduction Plan is not in compliance with the Act or other applicable law and will not be approved by NMFS; notifies the Offeror that the referendum was unsuccessful; NMFS tenders the reduction payment and the Offeror complies with its obligations under the Reduction Contract; or NMFS otherwise excuses the Offeror's performance.
22. *Acceptance by Referendum.* NMFS shall formally notify the Offeror in writing whether the referendum is successful, which written notice shall inform Offeror that the condition subsequent has been satisfied. Therefore, Offeror expressly acknowledges that all parties must perform under the Reduction Contract and the Reduction Contract is enforceable against, and binding on, the Reduction Contract parties in accordance with the terms and conditions herein.
23. *Reduction Contract Subject to Federal Law.* The Reduction Contract is subject to Federal law.
24. *Notice to Creditors.* Upon NMFS' offer acceptance notice to the Offeror, Offeror agrees to notify all parties with secured interests in the Reduction Fishing Interests that the Offeror has entered into the Reduction Contract.

25. *Referendum*. Offeror acknowledges that the outcome of the referendum of the Reduction Plan is an occurrence over which NMFS has no control.

26. *Unsuccessful Referendum Excuses Performance*. An unsuccessful referendum excuses all parties hereto from every obligation to perform under the Reduction Contract. In such event, NMFS need not tender reduction payment and the Offeror need not surrender and relinquish or allow the revocation or restriction of any element of the Reduction Fishing Interest specified in the Reduction Contract. An unsuccessful referendum shall cause the Reduction Contract to have no further force or effect.

27. *Offeror Responsibilities upon Successful Referendum*. Upon NMFS' formal notification to the Offeror that the referendum was successful and that NMFS had accepted the Reduction Contract, Offeror shall immediately become ready to surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests.

28. *Written Payment Instructions*. After a successful referendum, NMFS shall tender reduction payment by requesting the Offeror to provide to NMFS, and the Offeror shall subsequently so provide, written payment instructions for NMFS' disbursement of the reduction payment to the Offeror or to the Offeror's order.

29. *Request for Written Payment Instructions Constitutes Tender*. NMFS' request to the Offeror for written payment instructions constitutes reduction payment tender, as specified in 50 CFR 600.1011.

30. *Offeror Responsibilities upon Tender*. Upon NMFS' reduction payment tender to the Offeror, the Offeror shall immediately surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests. The Offeror must then return the original of its Groundfish Reduction Permit and Reduction Permit(s) to NMFS. Concurrently with NMFS' reduction payment tender, the Offeror shall forever cease all fishing for any species with the Reduction Privilege Vessel and immediately retrieve all fishing gear, irrespective of ownership, previously deployed from the Reduction Privilege Vessel. Offeror agrees to authorize the United States Coast Guard to cancel the fishery endorsement in the Reduction Privilege Vessel.

31. *Reduction Privilege Vessel Lacking Federal Documentation*. Upon NMFS' reduction payment tender to the Offeror, the Offeror shall immediately scrap any vessel which the Offeror specified as a Reduction Privilege Vessel and which is documented solely under state law or otherwise lacks documentation under Federal law. The Offeror shall scrap such vessel at the Offeror's expense. The Offeror shall allow NMFS, its agents, or its appointees reasonable opportunity to observe and confirm such scrapping. The Offeror shall conclude such scrapping within a reasonable time.

32. *Future Harvest Privilege and Reduction Fishing History Extinguished*. Upon NMFS' reduction payment tender to the Offeror, the Offeror shall surrender and relinquish and consent to the revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate), of any claim in any way related to any fishing privilege derived, in whole or in part, from the use or holdership of the Groundfish Reduction Permits and the Reduction Permit(s), from the use or ownership of the Reduction Privilege Vessel (subject to and in accordance with the provisions of section 8 of this contract), and from any documented harvest fishing history arising under or associated with the same which could ever qualify the Offeror for any future limited access fishing license, fishing permit, and other harvest authorization of any kind.

33. *Post Tender Use of Federally Documented Reduction Privilege Vessel.* After NMFS' reduction payment tender to the Offeror, the Offeror may continue to use a federally documented Reduction Privilege Vessel for any lawful purpose except "fishing" as defined under the Magnuson-Stevens Act and may transfer—subject to all restrictions in the Reduction Contract, other applicable regulations, and the applicable law—the vessel to a new owner. The Offeror or any subsequent owner shall only operate the Reduction Privilege Vessel under the United States flag and shall not operate such vessel under the authority of a foreign country. In the event the Offeror fails to abide by such restrictions, the Offeror expressly acknowledges and hereby agrees to allow NMFS to pursue any and all remedies available to it, including, but not limited to, recovering the reduction payment and seizing the Reduction Privilege Vessel and scrapping it at the Offeror's expense.

34. *NMFS' Actions upon Tender.* Contemporaneously with NMFS' reduction payment tender to the Offeror, and without regard to the Offeror's refusal or failure to perform any of its Reduction Contract duties and obligations, NMFS shall: Permanently revoke the Offeror's Groundfish Reduction Permit and Reduction Permit(s); notify the National Vessel Documentation Center to permanently revoke the Reduction Privilege Vessel's fishery trade endorsement; notify the U.S. Maritime Administration to make the Reduction Privilege Vessel permanently ineligible for the approval of requests to place the vessel under foreign registry or operate the vessel under a foreign country's authority; record in the appropriate NMFS records that the Reduction Fishing History represented by any documented harvest fishing history accrued on, under, or as a result of the operation of the Reduction Privilege Vessel and/or Reduction Fishing Vessel (subject to and in accordance with the provisions of section 8 of this contract), the Groundfish Reduction Permit, and the Reduction Permit(s) which could ever qualify the Offeror for any future limited access fishing license, fishing permit, or other harvesting privilege of any kind shall never again be available to anyone for any fisheries purpose; and implement any other restrictions the applicable law or regulations impose.

35. *Material Disputes to be Identified.* Members of the public shall, up until NMFS receives the Offeror's written payment instructions, be able to advise NMFS in writing of any material dispute with regard to any aspect of any accepted Reduction Contract. Such a material dispute shall neither relieve the Offeror of any Reduction Contract duties or obligations nor affect NMFS' right to enforce performance of the Reduction Contract terms and conditions.

36. *Reduction Payment Disbursement.* Once NMFS receives the Offeror's written payment instructions and certification of compliance with the Reduction Contract, NMFS shall as soon as practicable disburse the reduction payment to the Offeror. Reduction payment disbursement shall be in strict accordance with the Offeror's written payment instructions. Unless the Offeror's written payment instructions direct NMFS to the contrary, NMFS shall disburse the whole of the reduction payment to the Offeror. If the qualifying Offeror offers with a co-Offeror, both the qualifying Offeror and the co-Offeror must approve and sign the written payment instructions.

37. *Reduction Payment Withheld for Scrapping or for Other Reasons.* In the event that a Reduction Privilege Vessel which is not under Federal documentation must be scrapped, NMFS shall withhold from reduction payment disbursement an amount sufficient to scrap such vessel. NMFS shall withhold such sum until the vessel is completely scrapped before disbursing any amount withheld. NMFS may confirm, if NMFS so chooses, that the vessel has been scrapped before disbursing any amount withheld. If NMFS has reason to believe the Offeror has failed to comply with any of the Reduction Contract terms and conditions, NMFS shall also withhold reduction payment disbursement until such time as the Offeror performs in accordance with the Reduction Contract terms and conditions.

38. *Offeror Assistance with Restriction.* The Offeror shall, upon NMFS' request, furnish such additional documents, undertakings, assurances, or take such other actions as may be reasonably required to enable NMFS' revocation, restriction, invalidation, withdrawal, or extinguishment by other means (as NMFS deems appropriate) of all components of the Reduction Contract's Reduction Fishing Interest in accordance with the requirements of the Reduction Contract terms and conditions, applicable regulations and the applicable law.

39. *Recordation of Restrictions.* Upon the Reduction Fishing Privilege's revocation, the Offeror shall do everything reasonably necessary to ensure that such revocation is recorded on the Reduction Privilege Vessel's Federal documentation (which the National Vessel Documentation Center maintains in accordance with Federal maritime law and regulations) in such manner as is acceptable to NMFS and as shall prevent the Reduction Privilege Vessel, regardless of its subsequent ownership, from ever again being eligible for a fishery trade endorsement or ever again fishing. The term "fishing" includes the full range of activities defined in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

40. *Reduction Element Omission.* In the event NMFS accepts the offer and the Offeror has failed, for any reason, to specify in the Reduction Contract any Groundfish Reduction Permit, non-Groundfish Reduction Permit(s), Reduction Privilege Vessel, Reduction Fishing Vessel, Reduction Fishing History, or any other element of the Reduction Fishing Interest which the Offeror should under Reduction Contract, applicable regulations and the applicable law have specified in Reduction Contract, such omitted element shall nevertheless be deemed to be included in the Reduction Contract and to be subject to the Reduction Contract's terms and conditions; and all Reduction Contract terms and conditions which should have applied to such omitted element had it not been omitted shall apply as if such element had not been omitted. Upon the Offeror discovering any such omission, the Offeror shall immediately and fully advise NMFS of such omission. Upon either NMFS or the Offeror discovering any such omission, the Offeror shall act in accordance with the Reduction Contract, applicable regulations and the applicable law.

41. *Remedy for Breach.* Because money damages are not a sufficient remedy for the Offeror breaching any one or more of the Reduction Contract terms and conditions, the Offeror explicitly agrees to and hereby authorizes specific performance of the Reduction Contract, in addition to any money damages, as a remedy for such breach. In the event of such breach, NMFS shall take any reasonable action, including requiring and enforcing specific performance of the Reduction Contract, NMFS deems necessary to carry out the Reduction Contract, applicable regulations and the applicable law.

42. *Waiver of Data Confidentiality.* The Offeror consents to the public release of any information provided in connection with the Reduction Contract or pursuant to Reduction Plan requirements, including any information provided in the Reduction Contract or by any other means associated with, or necessary for evaluation of, the Offeror's Reduction Contract if NMFS finds that the release of such information is necessary to achieve the Reduction Plan's authorized purpose. The Offeror hereby explicitly waives any claim of confidentiality otherwise afforded to catch, or harvest data and fishing histories otherwise protected from release under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881 a(b)) or any other law. In the event of such information release, the Offeror hereby forever fully and unconditionally releases and holds harmless the United States and its officers, agents, employees, representatives, of and from any and all claims, demands, debts, damages, duties, causes of action, actions and suits whatsoever, in law or equity, on account of any act, failure to act or event arising from, out of, or in any way related to, the release of any information associated with the Reduction Program.

43. *Oral Agreement Invalid.* The Reduction Contract, any addendums to section 46 of this contract, and enclosures of photocopies of licenses and permits required under section 46 of this contract, contain the final terms and conditions of the agreement between the Offeror and NMFS and represent the entire and exclusive agreement between them. NMFS and the Offeror forever waive all right to sue, or otherwise counterclaim against each other, based on any claim of past, present, or future oral agreement between them.

44. *Severable Provisions.* The Reduction Contract provisions are severable; and, in the event that any portion of the Reduction Contract is held to be void, invalid, non-binding, or otherwise unenforceable, the remaining portion thereof shall remain fully valid, binding, and enforceable against the Offeror and NMFS.

45. *Disputes.* Any and all disputes involving the Reduction Contract, and any other Reduction Plan aspect affecting them shall in all respects be governed by the Federal laws of the United States; and the Offeror and all other parties claiming under the Offeror irrevocably submit themselves to the jurisdiction of the Federal courts of the United States and/or to any other Federal administrative body which the applicable law authorizes to adjudicate such disputes.

46. *Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification.*

a. *Completion and Submission.* The Offeror must fully, faithfully, and accurately complete this section 46 of this contract and thereafter submit the full and complete Reduction Contract to NMFS in accordance with the Reduction Contract. If completing this section requires inserting more information than the places provided for the insertion of such information allows, the Offeror should attach an addendum to the Reduction Contract that: Includes and identifies the additional information, states that the addendum is a part of the Reduction Fishing Interests Identification portion of the Reduction Contract, states (as a means of identifying the Reduction Contract to which the addendum relates) the NMFS license number designated on the Reduction Contract's Groundfish Reduction Permit, and is signed by all persons who signed the Reduction Contract as the Offeror.

b. *Offeror Information.*

(1) *Offeror name(s).* Insert in the table provided under this section 46.b(1) of this contract the name(s) of the qualifying Offeror and of the co-Offeror (if there is a co-Offeror), and check the appropriate box for each name listed.

Each name the Offeror inserts must be the full and exact legal name of record of each person, partnership, corporation or other business entity identified on the offer. If any Reduction Fishing Interest element is co-owned by more than one person, partnership, corporation or other business entity, the Offeror must insert each co-owner's name.

In each case, the Offeror is the holder of record, at the time of Offeror's execution of this Reduction Contract, of the Groundfish Reduction Permit and the Reduction Permit(s). A co-Offeror is not allowed for either the Groundfish Reduction Permit or the Reduction Permit(s). If the Offeror is also the owner of record, at the time of offering, of the Reduction Privilege Vessel, the qualifying Offeror is the sole Offeror. If, however, the owner of

record, at the time of execution of this Reduction Contract, of the Reduction Privilege Vessel is not exactly the same as the Offeror, then the owner of record is the co-Offeror; and the Offeror and the co-Offeror jointly offer together as the Offeror.

<b>OFFEROR NAME(S)</b> If Offeror or co-Offeror consists of more than one owner, use one row of this column to name each co-Offeror. If not, use only one row for Offeror and one row for any co-Offeror	Check appropriate box for each name listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(2) *Offeror address(s) of record.* Insert in the table provided under this section 46.b(2) of this contract the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact address(s) of record, and check the appropriate box for each address listed.

<b>OFFEROR ADDRESS(S)</b> If Offeror or co-Offeror consists of more than one owner, use one row of this column for address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., address (1) is for name (1), address (2) is for name (2), address (3) is for name (3), etc.	Check appropriate box for each address listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		



<b>OFFEROR ADDRESS(S)</b> If Offeror or co-Offeror consists of more than one owner, use one row of this column for address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., address (1) is for name (1), address (2) is for name (2), address (3) is for name (3), etc.	Check appropriate box for each address listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(5)		

(3) *Offeror business telephone number(s)*. Insert in the table provided under this section 46.b(3) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact business telephone number(s), and check the appropriate box for each number listed.

<b>OFFEROR BUSINESS TELEPHONE NUMBER(S)</b> If Offeror or co-Offeror consists of more than one owner, use one row of this column for the telephone number of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., telephone number (1) is for name (1), telephone number (2) is for name (2), telephone number (3) is for name (3), etc.	Check appropriate box for each telephone number listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		

<b>OFFEROR BUSINESS TELEPHONE NUMBER(S)</b> If Offeror or co-Offeror consists of more than one owner, use one row of this column for the telephone number of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., telephone number (1) is for name (1), telephone number (2) is for name (2), telephone number (3) is for name (3), etc.	Check appropriate box for each telephone number listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(5)		

(4) *Offeror electronic mail address(s) (if available).* Insert in the table printed under this section 46.b(4) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact electronic mail (e-mail) address(s), and check the appropriate box for each address.

<b>OFFEROR E-MAIL ADDRESS(S)</b> If Offeror or co-Offeror consists of more than one owner, use one row of this column for the e-mail address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name in section 46.b(1) of this contract, i.e., e-mail (1) is for name (1), e-mail (2) is for name (2), e-mail (3) is for name (3), etc	Check appropriate box for each e-mail address listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		

<p align="center"><b>OFFEROR E-MAIL ADDRESS(S)</b></p> <p>If Offeror or co-Offeror consists of more than one owner, use one row of this column for the e-mail address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name in section 46.b(1) of this contract, i.e., e-mail (1) is for name (1), e-mail (2) is for name (2), e-mail (3) is for name (3), etc</p>	<p>Check appropriate box for each e-mail address listed in the adjacent column</p>	
	Offeror	Co-Offeror (if any)
(5)		

c. *LLP license number for Groundfish Reduction Permit.* Insert in the place this section 46.c provides the full and exact license number which NMFS designated on the LLP license which the Offeror specifies as the Groundfish Reduction Permit. Attach with the Reduction Contract an exact photocopy of such license.

LLP LICENSE NUMBER(S) AND FISHERY(S) OF OF LLP LICENSE(S) SPECIFIED AS GROUND FISH REDUCTION PERMIT(S)	
License number(s)	Fishery(s)
(1)	
(2)	
(3)	
(4)	
(5)	

d. *License number(s) for Reduction Permit(s).* Insert in the place this section 46.d provides the fishery(s) involved in, and the full and exact license number(s) with NMFS designated on the license(s) which the Offeror specifies in the Reduction Contract as the Reduction Permit(s). Enclose with the Reduction Contract an exact photocopy of each such license.

LLP LICENSE NUMBER(S) AND FISHERY OF LICENSE(S) SPECIFIED AS REDUCTION PERMITS	
License number(s)	Fishery(s)
(1)	
(2)	

LLP LICENSE NUMBER(S) AND FISHERY OF LICENSE(S) SPECIFIED AS REDUCTION PERMITS	
License number(s)	Fishery(s)
(3)	
(4)	
(5)	

e. *Reduction Fishing History.* For all Reduction Fishing History insert in the place provided in the table under this section 46.e the chronological and other information with each column heading therein requires. The information required does not include any actual landing data. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS based on the fishing history of a lost or destroyed vessel plus a replacement vessel must insert information for both vessels and meet the requirements of the framework regulations, final rule and any other regulations promulgated pursuant to the Act. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS in any part based on acquisition of fishing history from another party must insert information regarding such catch history.

NAMES(S) AND OFFICIAL NUMBER OF REDUCTION PRIVILEGE VESSEL AND NAME(S) AND OFFICIAL NUMBER(S) OF ANY VESSEL FROM WHICH FISHING HISTORY WAS ACQUIRED	FOR EACH REDUCTION PRIVILEGE VESSEL IN 1ST COLUMN PROVIDE FROM TO DATE OF EACH FISHING HISTORY OFFEROR POSSESSES	FOR EACH FISHING HISTORY IN 2ND COLUMN	
		License No. of each Groundfish Reduction Permit and Reduction Permit(s) associated with each vessel involved	If Reduction Privilege Vessel acquired fishing history from another party, provide name of party, manner in which acquired, and date acquired
(1)			
(2)			
(3)			
(4)			
(5)			

f. *Reduction Privilege Vessel.* Insert the full and exact name and official number which the National Vessel Documentation Center designated for the Reduction Privilege Vessel which the Offeror or the co-Offeror (if there is a co-Offeror) specifies in the Reduction Contract, and check the box appropriate for the vessel's ownership of record.

Enclose with the Reduction Contract an exact photocopy of such vessel's official certificate of documentation.

REDUCTION PRIVILEGE VESSEL		Check appropriate ownership box below	
Official name	Official No.	Offeror	Co-Offeror (if any)

g. *Offer Amount.* Insert in the place this section 46.g provides the Offeror's full and exact offer amount, both in words and in numbers.

OFFER AMOUNT [U.S. DOLLARS]	
In words	In numbers

h. *Reduction Contract Signature.* In compliance with the Reduction Contract, applicable regulations and the applicable law, the Offeror submits the Reduction Contract as the Offeror's irrevocable offer to NMFS for the permanent surrender and relinquishment and revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate) of the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Fishing Privilege, and the Reduction Fishing History—all as identified in the Reduction Contract or as required under applicable regulations, or the applicable law.

The Offeror expressly acknowledges that NMFS' acceptance of the Offeror's offer hereunder and NMFS' tender, following a successful referendum, of a reduction payment in the same amount specified in section 46.g of this contract (less any sum withheld for scrapping any Reduction Privilege Vessel lacking Federal documentation or for any other purpose) to the Offeror shall, among other things, render the Reduction Privilege Vessel permanently ineligible or any fishing worldwide, including, but not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under United States flag, and shall impose or create other legal and contractual restrictions, impediments, limitations, obligations, or other provisions which restrict, revoke, withdraw, invalidate, or extinguish by other means (as NMFS deems appropriate) the complete Reduction Fishing Interest and any other fishery privileges or claims associated with the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Privilege Vessel, and the Reduction Fishing History—all as more fully set forth in the Reduction Contract, applicable regulations, and the applicable law.

By completing and signing the Reduction Contract, the Offeror expressly acknowledges that the Offeror has fully and completely read the entire Reduction Contract. The Offeror expressly states, declares, affirms, attests, warrants, and represents to NMFS that the Offeror is fully able to enter into the Reduction Contract and that the Offeror legally holds, owns, or retains, and is fully able under the Reduction Contract provisions to offer and dispose of, the full Reduction Fishing Interest which the Reduction Contract specifies and the applicable regulations, and the applicable law requires that any person or entity completing the Reduction Contract and/or signing the Reduction Contract on behalf of another person or entity, expressly attests, warrants, and represents to NMFS that such completing and/or signing person or entity has the express and written permission or other grant of authority to bind such other person or entity to the Reduction Contract's terms and

conditions. The Offeror expressly attests, warrants, and represents to NMFS that every co-owner of the Offeror necessary to constitute the Offeror's full and complete execution of the Reduction Contract has signed the Reduction Contract. The Offeror expressly attests, warrants, and represents to NMFS that the Offeror: Fully understands the consequences of submitting the completed Reduction Contract of which it is a party to NMFS; pledges to abide by the terms and conditions of the Reduction Contract; and is aware of, understands, and consents to, any and all remedies available to NMFS for the Offeror's breach of the Reduction Contract or submission of an offer which fails to conform with the Reduction Contract, final rule, applicable regulations and the applicable law. The Offeror expressly attests, warrants, and represents to NMFS that all information which the Offeror inserted in the Reduction Contract is true, accurate, complete, and fully in accordance with the Reduction Contract, final rule, other applicable regulations and the applicable law.

In witness whereof, the Offeror has, in the place provided below, executed the Reduction Contract either as an Offeror offering alone or as an Offeror and co-Offeror (if there is a co-Offeror) jointly offering together, in accordance with the requirements specified above, and on the date written below. The Reduction Contract is effective as of the date NMFS accepts the Offeror's offer by signing the Reduction Contract.

The Offeror and co-Offeror (if there is a co-Offeror) must each sign the Reduction Contract exactly as instructed herein. Each co-owner (if there is a co-owner) of each Offeror and co-Offeror (if there is a co-Offeror) must also sign the Reduction Contract exactly as instructed herein. A notary public must, for each person or entity signing on behalf of the Offeror, complete and sign the acknowledgment and certification provision associated with each such person or entity's signature.

I. Offeror and co-Offeror's (if there is a co-Offeror) signature(s) and notary's acknowledgment(s) and certification(s).

<b>OFFEROR'S SIGNATURE AND NOTARY'S ACKNOWLEDGMENT AND CERTIFICATION</b>			
If Offeror or co-Offeror consists of more than one owner, use one row of column 1 for each co-owner's signature. If not, use only one row for Offeror and one row for co-Offeror (if any). Always use same Offeror row order as in Offeror Name in the table under section 46.b(1) of this contract (i.e., signature (1) is for name (1), signature (2) is for name (2) signature (3) is for name (3), etc.)			
<b>OFFEROR SIGNATURE</b> (1) Sign. (2) Print: the following: (a) signer's name, (b) signer's title (if signing for corporation or other business entity), and (c) signing date	Check appropriate column for each signature in 1st column		<b>NOTARY SIGNATURE</b>  (1) Sign. (2) Print: the following: (a) name, (b) signing date, (3) date commission expires, and (4) State and county. Each notary signature attests to the following:  "I certify that I know or have satisfactory evidence that the person who signed in the 1st column of this same row is the person who appeared before me and: (1) acknowledged his/her signature; (2) on oath, stated that he/she was authorized to sign; and (3) acknowledged that he/she did so freely and voluntarily."
	Qualifying Offeror	Co-Offeror (if any)	
(1)			
(2)			
(3)			

II. *United States of America's signature.* United States of America, Acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Leo C. Erwin, Chief,

*Financial Services Division, National Marine Fisheries Service.*

[71 FR 57701, Sept. 29, 2006]

**§ 600.1106 Longline catcher processor subsector Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish species fee payment and collection system.**

- (a) **Purpose.** As authorized by Public Law 108 447, this section's purpose is to:
- (1) In accordance with § 600.1012, establish:
    - (i) The borrower's obligation to repay a reduction loan, and
    - (ii) The loan's principal amount, interest rate, and repayment term; and
  - (2) In accordance with §§ 600.1013 through 600.1016, implement an industry fee system for the reduction fishery.
- (b) **Definitions.** Unless otherwise defined in this section, the terms defined in § 600.1000 and § 600.1105 expressly apply to this section. In addition, the following definition applies to this section:
- Reduction fishery* means the longline catcher processor subsector of the BSAI non-pollock groundfish fishery that § 679.2 of this chapter defined as groundfish area/species endorsements.
- (c) **Reduction loan amount.** The reduction loan's original principal amount is \$35,000,000.
- (d) **Interest accrual from inception.** Interest began accruing on the reduction loan from May 29, 2007, the date on which NMFS disbursed such loan.
- (e) **Interest rate.** The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year 2007 plus 2 percent.
- (f) **Repayment term.** For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from May 29, 2007, but fees shall continue indefinitely for as long as necessary to fully repay the loan.
- (g) **Reduction loan repayment.**
- (1) The borrower shall, in accordance with § 600.1012, repay the reduction loan;
  - (2) For the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, subsector members are deemed to be both the fish buyer and fish seller. In this case, all requirements and penalties of § 600.1013 that are applicable to both a fish seller and a fish buyer shall equally apply to parties performing both functions;
  - (3) Subsector members in the reduction fishery shall pay and collect the fee amount in accordance with § 600.1105;
  - (4) Subsector members in the reduction fishery shall, in accordance with § 600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to such fishery; except the requirements specified under paragraph (c) of this section concerning the deposit principal disbursement shall be made to NMFS no later than fifteen (15) calendar days following the end of each calendar month; and the requirements specified under paragraph (e) of this section concerning annual reports which shall be submitted to NMFS by February 1 of each calendar year; and
  - (5) The reduction loan is, in all other respects, subject to the provisions of §§ 600.1012 through 600.1017.

[72 FR 54222, Sept. 24, 2007]



## § 600.1107 Southeast Alaska Purse Seine Salmon Fishery capacity reduction program, including fee payment and collection system.

- (a) **Purpose.** This section implements the fishing capacity reduction program for the Southeast Alaska purse seine salmon fishery enacted by Section 209 of Public Law 108-447 and amended by Section 121 of Public Law 109-479, with appropriations authorized by Section 121 of Public Law 109-479 and Public Law 110-161. The intent of the program is to permanently reduce, through an industry-financed permit buyback, the most harvesting capacity in the Reduction Fishery at the least cost, increase harvesting productivity for post-reduction Permit Holders and improve flexibility in the conservation and management of the fishery. Fishery participants will finance this program through a federal loan that will be repaid over 40 years through a fee collection system. The intent of the fee collection system is to establish the post-reduction Permit Holders' obligation to repay the Reduction Loan's principal and accrued interest over the repayment term, and to ensure repayment of the loan.
- (b) **Definitions.** Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L of this part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

**Acceptance** means SRA acceptance of a bid.

**Act** means Section 209 of Title II of Division B of Public Law 108-447, Consolidated Appropriations Act of 2005, as amended by Section 121 of Public Law 109-447, Magnuson-Stevens Reauthorization Act of 2006.

**Authorized party** means the individuals authorized by the Permit Holder on the application form to execute and submit Bids, protests and other documents and/or notices on behalf of the Permit Holder.

**Bid** means a bidder's irrevocable offer to relinquish a permit.

**Bid amount** means the dollar amount submitted by a bidder.

**Bidder** means a permit holder who submits a bid.

**Commercial Fisheries Entry Commission (CFEC)** means the Alaska state commission mandated to conserve and maintain the economic health of Alaska's commercial fisheries by limiting the number of participating fishers, by issuing permits and vessel licenses to qualified individuals in both limited and unlimited fisheries, and by providing due process hearings and appeals.

**CFEC documents** means any documents issued by the CFEC in connection with the Southeast Alaska purse seine salmon fishery.

**Conditional notice** means the CFEC form that any Bidder must sign and agree to abide by upon submission of a Bid Agreement (Appendix B to § 600.1107).

**Conditional relinquishment** means the CFEC form that any Permit Holder, agreeing to relinquish a permit, must sign and agree to abide by upon SRA acceptance of the bid (Appendix C to § 600.1107).

**Fishery** means the Southeast Alaska administrative area as defined under Title 5 Alaska Administrative Code Section 33.100 for salmon with purse seine gear.

**Magnuson-Stevens Act** means the Magnuson-Stevens Fishery Conservation and Management Act codified at 16 U.S.C. 1801 *et seq.*

**Permit (Southeast Salmon Purse Seine Entry Permit)** means a valid entry permit issued by CFEC to operate in the Southeast Alaska purse seine salmon fishery.

**Permit holder** means an individual who at the time of bidding is the holder of record of a permit.

**Reduction fishery** means the Southeast Alaska Purse Seine Salmon Fishery.

**Reduction loan** means the loan used to purchase the relinquished permits pursuant to the approved Reduction Plan.

**Reduction loan amount** means the Reduction Loan's original principal amount up to \$23,476,500.

**Reduction plan** means the aggregate of all Bids, Relinquishment Contracts, Conditional Notices, Conditional Relinquishments, and supporting documents and rationale, submitted to the Secretary for approval.

**Relinquishment contract** means the contract that any Permit Holder agreeing to relinquish a permit pursuant to Alaska Statute (A.S. 16.43.150(i)) must sign and agree to abide by upon acceptance of the Bid, and before payment of the bid amount (Appendix A to § 600.1107).

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

**Southeast Revitalization Association (SRA)** means the qualified fishery association authorized to develop and implement this capacity reduction program under Alaska Statute 16.40.250 and Federal law.

(c) **Enrollment in the capacity reduction program** –

- (1) **Distribution.** The SRA shall mail a copy of the following four documents via certified mail to each Permit Holder: Bid; Fleet Consolidation Relinquishment Contract (Relinquishment Contract); Conditional Notice to CFEC and Request by Permit Holder; and (Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit. Such mailing shall include a closing date after which the SRA will not accept new bids.
- (2) **Application.** Any Permit Holder, regardless of whether having received the mailing described in paragraph (c)(1) of this section, may participate in the Capacity Reduction Program by submitting all of the following documents to the SRA no later than the bid closing date:
  - (i) A fully executed Bid consistent with Appendix A to this section;
  - (ii) A photocopy of the permit evidencing the applicant's qualification as a participant in the fishery;
  - (iii) A fully executed Relinquishment Contract: Southeast Alaska Salmon Purse Seine Permit Holders consistent with the appendix B to this section;
  - (iv) A fully executed Conditional Notice to CFEC and Request by Permit Holder consistent with the appendix C to this section; and
  - (v) A fully executed Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit consistent with the appendix D to this section.
    - (A) The submitted Bid shall include the following information: Name, address, telephone number, social security number, and (if available) electronic mail address of the submitting Permit Holder, permit number, and whether any authorized party holds a security interest in the permit. Each application must be submitted to the SRA, c/o Elgee, Rehfeld, Mertz, LLC, Professional Plaza Building B, 9309 Glacier Highway, Suite B-200, Juneau, Alaska 99801. The initial determination that an application conforms to the prescribed requirements is made by this independent accounting firm and not the SRA.

- (B) The SRA or the independent accounting firm will notify the Permit Holder if the Bid is non-conforming and, in such cases, the Permit Holder may submit a revised, conforming Bid within the prescribed period (*i.e.*, until the bid closing date).
- (3) **Enrollment period.** Applications that meet all requirements will be accepted until the bid selection process is completed but no later than the bid closing date specified by the SRA. The SRA will have a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process.
- (4) **Effective date.** The effective date of any Bid shall be when the SRA has completed the selection process and signed the Bid.
- (5) **Notice.** The SRA will notify each Accepted Bidder, via certified mail, of the effective date of the Bid Agreement.
- (6) **Conflicts.** Where terms and conditions in the Bid, Relinquishment Contract, Conditional Notice, and Conditional Relinquishment conflict with this regulation, the terms and conditions in the regulation are controlling.
- (d) **Bid selection process.** The fishing capacity removed by the Reduction Plan shall be represented by the total number of valid CFEC permits, whether active or latent, that are voluntarily offered by Permit Holders and selected by the SRA up to an aggregate amount of \$23,476,500. Due to a rescission of funds, the underlying appropriations for this Reduction Program were reduced from \$250,000 to \$234,765, resulting in a loan ceiling of \$23,476,500.
  - (1) **Overview.** The Selection Process shall begin upon the receipt by the SRA of the first application and shall continue until: The bid closing date specified by the SRA (paragraph (c)(1) of this section); or the ranking of the next lowest bid would cause the total program costs to exceed \$23,476,500. The SRA will have a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process. When either one of these events is reached, the Selection Process shall be completed.
    - (i) During the selection process, the SRA in consultation with the CFEC shall examine each submitted Bid for consistency and the necessary elements, including the validity of the permit and whether any authorized party holds a security interest in the permit.
    - (ii) [Reserved]
  - (2) **Bids.** By submitting the Bid, the bidder expressly acknowledges that he makes an irrevocable offer to relinquish to CFEC a permit for a specific price, and once having submitted the Bid, the bidder is not entitled to withdraw or in any way amend the Bid. The permit will be relinquished for the price set forth in the Bid contingent on such Bid being accepted by the SRA at the closing of the Selection Process. Any attempted withdrawal by a bidder shall be invalid, and the Bid shall remain a binding, irrevocable offer, unaffected by the attempted withdrawal. Any bid that is submitted by a Permit Holder but is not accepted by the SRA shall be deemed terminated and both the Permit Holder and the SRA will have no further obligation with respect to the Bid.
    - (i) If a Permit Holder holds more than one permit, the Permit Holder must submit a separate Bid for each permit that he/she offers to relinquish.

(ii) By submitting a Bid, the Permit Holder warrants and represents that he/she has read and understands the terms of the Program Regulations, Bid, Relinquishment Contract, Conditional Notice and Conditional Relinquishment, and has had the opportunity to seek independent legal counsel regarding such documents and the consequences of submitting the Bid Agreement.

(3) **Ranking.** The SRA shall rank all conforming bids by using a reverse auction in which the SRA ranks the Bid with the lowest dollar amount and successively ranks each additional Bid with the next lowest dollar amount until there are no more Bids or the ranking of the next lowest bid would cause the total program cost to exceed \$23,476,500. In the event of a tie with bids which results in the tied bids exceeding \$23,476,500, the SRA will select the tied bid first received, if known. If the receipt time cannot be determined, neither bid will be accepted.

(4) **Acceptance and post-acceptance restriction of renewals and transfers.** Upon expiration of the bid closing date, the SRA shall determine whether the number of ranked bids it is willing to accept is sufficient to achieve a substantial reduction in harvest capacity and increased economic efficiencies for those Permit Holders remaining in the fishery. If the SRA makes such a determination and thereafter accepts bids, the SRA shall send CFEC the Conditional Notice form restricting renewal and transfer of each permit for which a bid was accepted. The Bid, Relinquishment Contract, Conditional Notice and Conditional Relinquishment are terminated for any rejected bid and the applicant is no longer bound by the terms of these documents.

(e) **Plan submission and approval –**

(1) **Submitting the reduction plan.** Within 30 days of concluding the selection process, the SRA shall submit the Reduction Plan, consisting of the aggregate of all Bid Agreements, Relinquishment Contracts, Conditional Notices and Conditional Relinquishments, together with supporting documents and rationale, to NMFS for final approval on behalf of the Secretary. The Reduction Plan shall include a listing of accepted bids arranged by bid amount from lowest to highest bid, attended by a statement from the SRA that all other bids received were higher than the largest dollar amount of the last bid accepted.

(2) **Required findings.** In order to approve a Reduction Plan, the Assistant Administrator of NMFS, on behalf of the Secretary, must find that: The Reduction Plan is consistent with the amended Consolidated Appropriations Act of 2005 and applicable sections of the Magnuson-Stevens Act, particularly that it is cost-effective; the Reduction Plan will result in the maximum sustained reduction in fishing capacity at the least cost; and the Reduction Plan will increase harvesting productivity for post-reduction Permit Holders participating in the fishery.

(3) **The referendum.** If NMFS approves the Reduction Plan and subsequent to the publication of a final rule resulting from this rule, NMFS shall conduct a referendum to determine the industry's willingness to repay a fishing capacity reduction loan to purchase the permits identified in the Reduction Plan. NMFS shall publish a notice in the FEDERAL REGISTER requesting votes by Permit Holders on whether to accept or reject the Reduction Plan for implementation. The notice shall state the starting and ending dates and times of the voting period, which shall be not less than twenty one (21) nor more than thirty (30) calendar days from the date of such notice.

(i) 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, and will provide a 15 day period to make these changes. If, in NMFS' discretion, the comments received in response to such notice warrants it,

or for other good cause, NMFS may modify such list by publishing another notice in the FEDERAL REGISTER. NMFS shall issue ballots to eligible voters, tally votes, and notify voters whether the referendum was successful or unsuccessful in approving the Reduction Plan consistent with the provisions of § 600.1010.

- (ii) A successful referendum by a majority of the Permit Holders in the Reduction Fishery shall bind all parties and complete the reduction process. NMFS shall publish a notice in the FEDERAL REGISTER advising the public that the referendum was successful. Thereafter the Reduction Program shall be implemented.
- (iii) The provisions of § 600.1010 and § 600.1017(a)(1)-(4) shall apply to any referendum on the Reduction Plan of this section to the extent that they do not conflict with this section or with subpart M of this part.

(f) **Implementation** –

- (1) **Reduction payments.** Within 60 days of a successful referendum, the CFEC will provide notice to NMFS of the permits retired from the Reduction Fishery. Upon receiving such notification, NMFS will then tender the accepted bid amounts to the Permit Holders. Reduction payments may not exceed \$23,476,500 and if the SRA accepts a total number of bids in an aggregate amount less than \$23,476,500, any remaining funds would be available for reduction payments as part of a later, separate Reduction Plan conforming to these regulations. Upon NMFS tendering the reduction program's payments to the selected Permit Holders, each such Permit Holder must permanently stop all fishing with the relinquished permit(s).
- (2) **Repayment term.** As authorized by the Act, the Reduction Loan shall be amortized over a forty (40) year term. The Reduction Loan's original principal amount may not exceed \$23,476,500, but may be less if the ultimate reduction cost is less. The final Reduction Loan periodic payment amount will be determined by NMFS' analysis of the ability of the post-reduction fishery to service debt. The provisions of §§ 600.1012-600.1017 shall apply to any reduction loan, fee payment and collection under this section to the extent they do not conflict with this section or with subpart M of this part.
- (3) **Loan repayment.** Permit Holders operating in the fishery shall be obligated to pay the fee in accordance with this section. In the event that payments made under the Reduction Plan are insufficient to pay the Reduction Loan within the 40-year term, NMFS shall extend the term of the repayment until the Reduction Loan is paid in full.
  - (i) **Interest.** The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus two percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. Interest will begin accruing on the Reduction Loan from the date on which NMFS disburses such loan. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be two percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed and will not vary over the remainder of the reduction loan's 40-year term. The Reduction Loan will be subject to a level debt amortization. There is no prepayment penalty.
  - (ii) **Fees.** Post-reduction Permit Holders operating in the fishery shall be obligated to pay the fee in accordance with paragraph (f) of this section. The amount of such fee will be calculated by NMFS on an annual basis as the principal and interest payment amount necessary to amortize the loan over a 40-year term. The fee shall be expressed as a percentage of the ex-vessel value

of all salmon harvested and landed in the fishery. In the event that payments made under the Reduction Plan are insufficient to repay the Reduction Loan within the 40-year term, NMFS shall extend the term of the repayment until the Reduction Loan is paid in full.

(A) Fees must be assessed and collected on all salmon harvested in the fishery. Although the fee could be up to three percent of the ex-vessel price of all post-reduction landings, the fee will be less than three percent if NMFS projects that a lesser rate can amortize the Reduction Loan over the 40-year term. To verify that the fees collected do not exceed three percent of the fishery revenues, NMFS will compare the annual total of principal and interest due with the latest available annual revenues in the fishery to ensure that it is equal to or less than three percent of the total ex-vessel production revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or postponed, the fee will remain at the previous year's amount until such time as new calculations are made and communicated to the post-reduction fishery participants.

(B) If the fishery does not open during a year, interest will continue to accrue on the principal balance even though no fee revenue will be generated. When this happens, if the fee is not already at the maximum three percent, NMFS shall increase the fee to the maximum three percent, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until the principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

(iii) **Collection.** The buyer who first purchases the salmon landed in the fishery shall be responsible for collecting and submitting the repayment fees to NMFS monthly. The fees shall be submitted to NMFS no later than fifteen (15) calendar days following the end of each calendar month.

(iv) **Recordkeeping and reporting.** The dealer who first purchases the salmon landed in the fishery shall be responsible for compliance with the applicable recordkeeping and reporting requirements.

(A) All requirements and penalties set forth in the provisions of §§ 600.1013 (Fee payment and collection), 600.1014 (Fee collection deposits, disbursements, records, and reports), 600.1015 (Late charges), and 600.1017 (Prohibitions and penalties) shall apply to any dealer who purchases salmon in the fishery, and to any fee collection under this section, to the extent they do not conflict with this section or with subpart M of this part.

(B) [Reserved]

(g) **Specific performance under the relinquishment contract.** The parties to the Relinquishment Contract have agreed that the opportunity to develop and submit a capacity reduction program for the fishery under the terms of the Act is both unique and finite. The failure of a Permit Holder, whose bid was accepted, to perform the obligations under the Relinquishment Contract will result in irreparable damage to the SRA and all the other Permit Holders. Accordingly, the parties to the Relinquishment Contract expressly acknowledge that money damages are an inadequate means of redress and agree, that upon failure of the Permit Holder to fulfill his/her obligations under the Relinquishment Contract, that specific performance of those obligations may be obtained by suit in equity brought by the SRA in any court of competent jurisdiction without obligation to arbitrate such action.

(h) **Enforcement for failure to pay fees.** The provisions and requirements of § 600.1016 (Enforcement) shall also apply to fish sellers and fish buyers subject to this fishery.

- (i) **Prohibitions and penalties.** Fish buyers are prohibited from purchasing fish from fish sellers who do not pay the required landing fees. Fish sellers are prohibited from selling to fish buyers who do not pay the required landing fees.

## Appendix A to § 600.1107—Bid

This Bid (Bid) is entered between the individual named in section III, 11(a) of the Agreement and the Southeast Revitalization Association (SRA).

### I. Definitions

Unless otherwise defined, the following terms have the following meanings for the purpose of this Agreement.

*Acceptance* means SRA acceptance of a Bid.

*Act* means Section 209 of Title II of Division B of Public Law 108-447, Consolidated Appropriations Act of 2005; as amended by Section 121 of Public Law 109-447, Magnuson-Stevens (MSA) Reauthorization Act of 2006.

*Bid* means a bidder's irrevocable offer to relinquish a permit.

*Bid amount* means the dollar amount submitted by a bidder.

*Bidder* means a permit holder who submits a bid.

*Conditional notice* means the Commercial Fisheries Entry Commission (CFEC) form that any Bidder must sign and agree to abide by upon submission of a Bid Agreement.

*Conditional relinquishment* means the CFEC form that any Permit Holder, agreeing to relinquish a permit, must sign and agree to abide by upon SRA acceptance of the bid.

*Fishery* means the Southeast Alaska administrative area as defined under Title 5 Alaska Administrative Code Section 33.100 for salmon with purse seine gear.

*Permit* means a valid entry permit issued by CFEC to operate in the Southeast Alaska purse seine salmon fishery.

*Permit holder* means an individual who at the time of bidding is the holder of record of a permit.

*Reduction plan* means the aggregate of all Bids, Relinquishment Contracts (Appendix B), Commercial Fisheries Entry Commission ("CFEC") Conditional Notice and Conditional Relinquishment (Appendices C & D), and supporting documents and rationale; submitted to the Secretary for approval.

*Referendum* means the voting procedure to determine the Permit Holder's willingness to repay a fishing capacity reduction loan to purchase the permits identified in the Plan.

*Relinquishment contract* means the contract that any bidder agreeing to relinquish a permit pursuant to Alaska Statute (A.S. 16.43.150(i) must sign and agree to abide by upon acceptance of the Bid, and before payment of the bid amount.

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

*Southeast Revitalization Association (SRA)* means the qualified fishery association authorized to develop and implement this capacity reduction program under Alaska Statute 16.40.250 and Federal law.

## II. Recitals

Whereas Alaska Statute 16.40.250 and the Act authorize a fishing capacity reduction program for the fishery;

Whereas, within 30 days of concluding the selection process, the SRA shall submit the Reduction Plan, together with supporting documents and rationale, to NMFS for final approval on behalf of the Secretary;

Whereas, the reduction Plan's express objective is to reduce fishing capacity by permanently revoking permits thereby promoting economic efficiency, improving flexibility in the conservation and management of the fishery and obtain the maximum reduction in permits at the least cost;

Whereas, the SRA can implement the Reduction Plan only after giving notice to all Permit Holders and subsequent approval of the reduction Plan by referendum.

Whereas, the Agreement submitted by the bidder and the SRA is an integral element of the Reduction Plan.

Now, therefore, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the SRA and bidder agree as follows:

## III. Terms and Conditions

1. *Form*. By completing and submitting this Bid to the SRA the bidder hereby offers to permanently relinquish, and have the CFEC revoke, the permit. The SRA signing the Bid and subsequent NMFS payment to bidder in the exact bid amount set forth in section III, 11(f) of the Bid is full and complete consideration.
2. *Irrevocable*. The bidder expressly acknowledges that by submitting the Bid he/she makes an irrevocable offer to relinquish the permit and once having submitted the Bid is not entitled to withdraw or in any manner amend the Bid. The receipt date that the SRA marks on the Bid constitutes the date of the bidder's submittal.
3. *Warranty*. The bidder warrants and represents that he/she is the holder of record of the permit, according to the CFEC records, and that he/she has read and understands the terms of the Program Regulations, Bid, Relinquishment Contract, Conditional Notice and the Conditional Relinquishment and has had the opportunity to seek independent legal counsel regarding such documents and the consequences of submitting the Bid.
4. *Validity*. The SRA, in consultation with the CFEC, shall examine each Bid for completeness and consistency. The SRA shall notify the bidder if the Bid is non-conforming. In such cases, the bidder may submit a revised, conforming Bid within the prescribed period (*i.e.*, until the bid closing date).



5. *Ranking.* The SRA shall rank the bid amount entered in section III, 11(f) of this Bid by using a reverse auction in which the SRA ranks the Bid with the lowest dollar amount and successively ranks each additional Bid with the next lowest dollar amount until there are no more Bids or the ranking of the next lowest Bid would exceed the total program cost. In the event of a tie with bids which results in the tied bids exceeding \$23,476,500, the SRA will select the tied bid first received.

6. *Acceptance and Rejection.* If the Bid is accepted, the SRA shall formally notify the bidder in writing. If the SRA rejects the Bid, the SRA will formally notify the bidder in writing and the Bid shall terminate without further obligation.

7. *Restriction of Transfer of permit:* Upon acceptance, the SRA will send the CFEC the Conditional Notice, restricting transfer of the permit until such time as: The SRA notifies the bidder that the Plan is not in compliance with the Act and will not be approved; or NMFS notifies the bidder the referendum was unsuccessful.

8. *Payment.* Within 60 days from the close of the voting period of a successful referendum, the CFEC will provide notice to NMFS of the permits retired from the Reduction Fishery. Upon receiving such notice, NMFS will then tender the accepted bid amounts to the Permit Holders.

9. *Specific Performance.* The failure of a bidder whose Bid was accepted to comply with the terms of this Bid will result in irreparable damage to the SRA and its members because the Bid was part of the basis for the Plan submitted to the Secretary for approval. Accordingly, the SRA and bidder expressly acknowledge that money damages are an inadequate means of redress and agree that specific performance of those obligations may be obtained by suit in equity brought by the SRA in any court of competent jurisdiction without obligation to arbitrate such action.

10. *Submission.* This Bid must be submitted within the prescribed period to the SRA, c/o Elgee, Rehfeld, Mertz, LLC, Professional Plaza Building B, 9309 Glacier Highway, Suite B-200, Juneau, AK 99801.

11. *Complete Bid Information:* To fully and accurately complete this Bid, the bidder must fully complete the following questions and provide an exact photocopy of the permit. The Bidder must further sign this form, Appendices B, C, and D to § 600.1107, and acknowledge the signature before a notary public.

(a) **BIDDER'S NAME.** This must be the full and exact legal name of record of the person bidding. Insert the name of the bidder.

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(b) **BIDDER'S ADDRESS OF RECORD.** Insert the full and exact address of record for the bidder.

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(c) BIDDER'S TELEPHONE NUMBER. Insert the full and exact telephone number of the bidder.

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(d) BIDDER'S ELECTRONIC MAIL ADDRESS (if available). Insert the full and exact e-mail address of the bidder.

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(e) PERMIT. Insert the full and exact permit number(s) of the bidder. Enclose with this Bid an exact photocopy of the permit.

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(f) BID AMOUNT. Insert, in U.S. dollars, the bid's full and exact amount, both in words and numbers.

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In words	In numbers
	\$

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(g) SECURITY INTERESTS. Insert the name of any authorized third party that may hold a security interest in the permit.

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(h) SOCIAL SECURITY NUMBER. Insert the full and exact social security number of the bidder.

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(i) BID SIGNATURE. In compliance with applicable law and this Bid, the bidder submits the above bid amount as an offer to the SRA for the permanent relinquishment of his/her permit. By completing the sections above and signing below, the bidder acknowledges that the bidder has completely reviewed this Bid and attachments. The bidder warrants that the bidder is fully able to enter into the Relinquishment Contract. The bidder expressly warrants and attests that all information included herein is accurate.

Signature	
Printed Name	
Date of Signature	

State of: \_\_\_\_\_ County/Borough of: \_\_\_\_\_

I certify that \_\_\_\_\_ is the person who appeared before me and said person acknowledged that he/she signed this Bid and on oath stated that he/she was authorized to execute such document and acknowledged it to be the free and voluntary act of him/her for the uses and purposes mentioned in such document.

Notary Public's Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

12. SRA SIGNATURE. By signing below, the SRA acknowledges acceptance of this Bid, including the bidder's bid amount.

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Signature	
Printed Name	

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Date of Signature	
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## Appendix B to § 600.1107—Relinquishment Contract: Southeast Alaska Salmon Purse Seine Permit Holders

This Relinquishment Contract (“Contract”) and agreement is entered into between the Southeast Revitalization Association (“SRA”) and the bidder named in Section 11(a) of the Bid. The contract is effective when the bidder signs the Bid and this contract and, thereby, agrees to relinquish his/her permit, issued by the Alaska Commercial Fisheries Entry Commission (“CFEC”) for the Southeast Alaska salmon purse seine fishery (“fishery”).

Whereas Alaska Statute 16.40.250 and Federal law authorize a fishing capacity reduction program for the fishery;

Whereas, upon accepting and signing the Bid, the SRA shall submit a Reduction Plan to NMFS;

Whereas, the Reduction Plan’s express objective is to reduce fishing capacity by permanently revoking permits thereby promoting economic efficiency, improving flexibility in the conservation and management of the fishery and obtain the maximum reduction in permits at the least cost;

Whereas, this contract is subject to the terms and conditions set forth herein, including the CFEC forms marked as Appendices C and D to § 600.1107;

Now, therefore, for valuable consideration and the covenants hereinafter set forth, the parties hereto agree as follows:

1. The foregoing, including the Bid and specifically the definitions under section 1, are expressly incorporated herein by this reference.
2. Under AS 16.43.150(i), the Bidder agrees to permanently relinquish and have the CFEC revoke the permit.
3. The Bidder represents that, as of the date of submitting the contract, he or she is the holder of record of the permit according to the CFEC official permit records.
4. Upon notification by the SRA to the Bidder that the SRA accepted the bid; the SRA will submit to the CFEC the Permit Holder’s executed notice form (Appendix C to § 600.1107) and executed relinquishment form (Appendix D to § 600.1107).
5. In the event an authorized third party holds a security interest in the permit, NMFS will not make payment until receiving notice of written consent by the third party to the SRA and the CFEC on a form provided by the CFEC.

6. NMFS' payment to the accepted bidder in the exact amount of the accepted bid amount is full and complete consideration for the CFEC revoking the permit.
7. The bidder shall, upon the SRA or the CFEC request, furnish such additional documents, information, or take such other actions as may be reasonably required to enable the CFEC to implement relinquishment of the permit.
8. The bidder consents to the public release of any information provided in connection with the contract or program requirements after completion of the plan.
9. The contract contains the final terms and conditions of this agreement between the parties and represents the entire and exclusive agreement between them.
10. The contract terms are severable, and, in the event that any portion of the contract is held to be unenforceable, the remaining portion shall remain fully enforceable against the parties.
11. Any and all disputes involving the contract shall be governed by laws of the State of Alaska. The bidder expressly acknowledges that by submitting the Bid, he/she makes an irrevocable offer to relinquish the permit, and once having submitted the Bid, is not entitled to withdraw or in any way amend the Bid.
12. The failure of a bidder to perform his/her obligations under the Bid will result in irreparable damage to the SRA and its members upon submittal of the Plan to the Secretary for approval. Accordingly, the SRA and the bidder expressly acknowledge that money damages are an inadequate means of redress and agree that upon failure of the bidder to fulfill his/her obligations under the Bid that specific performance of those obligations may be obtained by suit in equity brought by the SRA in any court of competent jurisdiction without obligation to arbitrate such action.

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**BIDDER'S SIGNATURE AND NOTARY'S ACKNOWLEDGEMENT AND CERTIFICATION**

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<b>Bidder signature</b>	<b>Notary signature</b>
(1) Sign	(1) Sign
(2) Print the following:	(2) Print the following:
(a) signer's name	(a) name
(b) signing date	(b) signing date
(c) state and city/ borough	(3) date commission expires, and State and city/borough. Each notary signature attests to the following: "I certify that I know or have satisfactory evidence that the person who is signed in the 1st column of this same row is the person who appeared before me and: (1) Acknowledged his/her signature; (2) on oath, stated that he/she was authorized

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Bidder signature	Notary signature
	to sign; and (3) acknowledged that he/she did so freely and voluntarily.”
(1)	(1)
(2)(a)	(2)(a)
(2)(b)	(2)(b)
(2)(c)	(3)

## II. Southeast Revitalization Association signature Southeast Revitalization Association

Dated: \_\_\_\_\_

By: \_\_\_\_\_

### Appendix C to § 600.1107—Conditional Notice to CFEC and Request by Permit Holder

In support of my Bid to the Southeast Revitalization Association (SRA), I have executed this Conditional Notice and request and authorize the Southeast Revitalization Association (SRA) to submit this executed document to the Alaska Commercial Fisheries Entry Commission (CFEC) in the event that the SRA accepts my bid to permanently relinquish my Southeast Salmon Purse Seine Entry Permit under AS 16.43.150(i).

I hereby notify the CFEC that the SRA has accepted my Bid to permanently relinquish my Southeast Salmon Purse Seine Entry Permit #\_\_\_\_\_.

I request the CFEC: (1) not to renew my above-identified entry permit; and (2) not to authorize any transfer of my entry permit.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_

(Permit Holder/Bidder)

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

## Appendix D to § 600.1107—Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit

### [AS 16.43.150(i)]

Upon satisfaction of the conditions that the Southeast Revitalization Association (SRA) accepts my bid and that NMFS agrees to pay my full bid amount to me, the SRA may submit this executed Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit to the Commercial Fisheries Entry Commission.

I fully understand this relinquishment of my permanent entry permit # \_\_\_\_\_ under AS 16.43.150(i) is permanent, and I will not be able to reinstate the permit.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
(Permit Holder/Bidder)

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

[76 FR 61990, Oct. 6, 2011]

### § 600.1108 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.

- (a) **Purpose.** This section implements the capacity reduction program that Title II, section 219(e) of Public Law 108-447 established for the longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery.
- (b) **Definitions.** Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L and § 600.1105 of subpart M of this part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

*Reduction fishery* means the Hook & Line, Catcher Processor (Longline Subsector); sometimes referred to as the "H&LCP Subsector) portion of the BSAI Pacific cod ITAC (in metric tons) set by the North Pacific Fishery Management Council (NPFMC) in December of each year multiplied by 2,205 (i.e., the rounded number of pounds in a metric ton) or the Longline Subsector of the BSAI non-pollock groundfish fishery that § 679.2 of this chapter defined as groundfish area/species endorsement.

- (c) **Capacity Reduction Program.** As a result of the completion of the Selection Process, written notification from the FLCC to NMFS identifying the selected offeror, and submission of the reduction plan, the capacity reduction program is implemented as follows:

- (1) **Loan repayment** –

- (i) **Term.** As authorized by section 219(B)(2) of the Appropriations Act, the capacity reduction loan (the Reduction Loan) shall be amortized over a thirty (30) year term. The Reduction Loan's original principal amount may not exceed the amount approved by the subsector. The subsector has currently approved a loan of two million seven hundred thousand dollars (\$2,700,000). Subsector Members acknowledge that in the event payments made under the Reduction Plan are insufficient to repay the actual loan, the term of repayment shall be extended by NMFS until the loan is paid in full. Repayment calculations and records will be kept separately for each program.
- (ii) **Interest.** The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus 2 percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be 2 percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed, and will not vary over the remainder of the reduction loan's 30-year term. The Reduction loan will be subject to a level debt amortization. There is no prepayment penalty.
- (iii) **Fees.** The Reduction Loan shall be repaid by fees collected from the Longline Subsector. The fee amount will be based upon: The principal and interest due over the next twelve months divided by the product of the Longline Subsector. In the event that the Longline Subsector portion for the ensuing year is not available, the Longline Subsector portion forecast from the preceding year will be used to calculate the fee.
- (A) The fee will be expressed in cents per pound rounded up to the next one-tenth of a cent. For example: If the principal and interest due equal \$2,900,000 and the Longline Subsector portion equals 100,000 metric tons, then the fee per round weight pound of Pacific cod will equal 1.4 cents per pound.  $[2,900,000 / (100,000 \times 2,205) = .01315]$ . The fee will be assessed and collected on Pacific cod to the extent possible and if not, will be assessed and collected as provided for in paragraph (c)(1)(iii)(B) of this section.
- (B) Fees must be assessed and collected on Pacific cod used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel production value of all post-reduction Longline Subsector landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a standardized additional fee will be assessed. The additional fee shall be one cent per pound round weight, which is calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.
- (C) To verify that the fees collected do not exceed 5 percent of the fishery revenues, the annual total of principal and interest due will be compared to the latest available annual Longline Subsector revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or for any other reason NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such a time that new calculations are made and communicated to the post-reduction fishery participants.



- (D) It is possible that the fishery may not open during some years and no Longline Subsector portion of the ITAC is granted. Consequently, the fishery will not produce fee revenue with which to service the reduction loan during those years. However, interest will continue to accrue on the principal balance. When this happens, if the fee rate is not already at the maximum 5 percent, NMFS will increase the fishery's fee rate to the maximum 5 percent of revenue for Pacific cod, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.
- (iv) **Reduction loan.** NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs in subpart L of this part. The reduction loan shall be subject to the provisions of § 600.1012, except that: the subsector members' obligation to repay the reduction loan shall be discharged by the owner of the Longline Subsector license regardless of which vessel catches fish under this license and regardless of who processes the fish in the reduction fishery in accordance with § 600.1013. Longline Subsector license owners in the reduction fishery shall be obligated to collect the fee in accordance with § 600.1013.
- (v) **Collection.** The LLP License holders of vessels harvesting in the post-capacity reduction plan Longline Subsector shall be responsible for self-collecting the repayment fees owed by the LLP License holder. Fees shall be submitted to NMFS monthly and shall be due no later than fifteen (15) calendar days following the end of each calendar month.
- (vi) **Recordkeeping and reporting.** The holder of the LLP Licenses on which vessels harvesting in the post-capacity reduction plan Longline Subsector is designated shall be responsible for compliance with the applicable recordkeeping and reporting requirements.
- (2) **Agreement with Secretary.** The Selected Offeror shall complete and deliver to the FLCC for inclusion in the Reduction Plan submitted to NMFS, designee for the Secretary, a completed and fully executed Reduction Contract. The LLP License set forth on the Selected Offer shall be included as Reduction Fishing Interests in such Reduction Contract.
- (d) **Decisions of the Auditor and the FLCC.** Time was of the essence in developing and implementing a Reduction Plan and, accordingly, the Offeror is limited to, and bound by, the decisions of the Auditor and the FLCC.
- (1) The Auditor's examination of submitted applications, Offers, Prequalification Offers and Rankings was solely ministerial in nature. That is, the Auditor verified whether the documents submitted by Subsector Members were, on their face, consistent with each other and the Database, in compliance with the requirements set forth in the Reduction Agreement, and signed by an Authorized Party. The Auditor presumed the validity of all signatures on documents submitted. The Auditor made no substantive decisions as to compliance (e.g., whether an interim LLP License satisfies the requirements of the Act, or whether a discrepancy in the name appearing on LLP Licenses and other documents was material).
- (2) [Reserved]
- (e) **Specific performance.** The parties to the Reduction Agreement have agreed that the opportunity to develop and submit a capacity reduction program for the Longline Subsector under the terms of the Appropriations Act is both unique and finite and that failure of the Selected Offeror to perform the obligations provided by the Reduction Agreement will result in irreparable damage to the FLCC and the Subsector Members. Accordingly, the parties to the Reduction Agreement expressly acknowledge that

money damages are an inadequate means of redress and agree that upon the failure of the Selected Offeror to fulfill their obligations under the Reduction Agreement that specific performance of those obligations may be obtained by suit in equity brought by the FLCC in any court of competent jurisdiction without obligation to arbitrate such action.

(f) **Miscellaneous** –

- (1) **Termination.** The Reduction Agreement may be terminated at any time prior to approval of the Reduction Plan by NMFS, on behalf of the Secretary, by written notice from 50 percent of Subsector Members.
- (2) **Choice of law/venue.** The Reduction Agreement shall be construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law provisions. The parties submit to the exclusive personal jurisdiction of the United States District Court located in Seattle, Washington, with respect to any litigation arising out of or relating to the Reduction Agreement or out of the performance of services hereunder.
- (3) **Incorporation.** All executed counterparts of the Reduction Agreement, Application Forms and Offers constitute the agreement between the parties with respect to the subject matter of the Reduction Agreement and are incorporated into the Reduction Agreement as if fully written.
- (4) **Counterparts.** The Reduction Agreement may be executed in multiple counterparts and will be effective as to signatories on the Effective Date. The Reduction Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute the same agreement, whether or not all parties execute each counterpart.
  - (i) The facsimile signature of any party to the Reduction Agreement shall constitute the duly authorized, irrevocable execution and delivery of the Reduction Agreement as fully as if the Reduction Agreement contained the original ink signatures of the party or parties supplying a facsimile signature.
  - (ii) [Reserved]

(g) **Amendment.** All Subsector Members acknowledge that the Reduction Agreement, the Reduction Contract, and the Reduction Plan may be subject to amendment to conform to the requirements for approval of the Reduction Plan by NMFS on behalf of the Secretary. The Auditor shall distribute to each Subsector Member in electronic format the amended form of the Reduction Agreement, the Reduction Contract, and the Reduction Plan, which amended documents in the form distributed by the Auditor and identified by the Auditor by date and version, the version of each such document then in effect at the time of any dispute arising or action taken shall be deemed binding upon the parties with respect to such dispute and/or action.

(h) **Warranties.** The Offeror must expressly warrant and represent in the Reduction Agreement that:

- (1) The Offeror has had an opportunity to consult with an attorney or other advisors with respect to the Reduction Agreement, the Reduction Contract, and the Act and the ramifications of the ratification of the Reduction Plan contemplated therein;
- (2) The Offeror has full understanding and appreciation of the ramifications of executing and delivering the Reduction Agreement and, free from coercion of any kind by the FLCC or any of its members, officers, agents and/or employees, executes and delivers the Reduction Agreement as the free and voluntary act of the Offeror;

- (3) The execution and delivery of the Reduction Agreement, does not and will not conflict with any provisions of the governing documents of the Offeror;
  - (4) The person executing the Reduction Agreement has been duly authorized by the Offeror to execute and deliver the Reduction Agreement and to undertake and perform the actions contemplated herein; and
  - (5) The Offeror has taken all actions necessary for the Reduction Agreement to constitute a valid and binding obligation, enforceable in accordance with its terms.
- (i) **Approval of the Reduction Plan.** Acceptance of the Offer is at the sole discretion of NMFS on behalf of the Secretary of Commerce. To be approved by NMFS, on behalf of the Secretary, any Reduction Plan developed and submitted in accordance with this section and subpart M of this part must be found by the Assistant Administrator of NMFS, to:
- (1) Be consistent with the requirements of section 219(e) of the FY 2005 Appropriations Act (Pub. L. 108-447);
  - (2) Be consistent with the requirements of section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a)) except for the requirement that a Council or Governor of a State request such a program (as set out in section 312(b)(1)) and for the requirements of section 312(b)(4);
  - (3) Contain provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by the Longline Subsector and that it provide for the assessment of such fees;
  - (4) Not require a bidding or auction process;
  - (5) Result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and
  - (6) Permit vessels in the Longline Subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.
- (j) **Referendum.** The following provisions apply to the Reduction Plan of this section to the extent that they do not conflict with subpart L of this part including §§ 600.1009, 600.1010, 600.1013, and 600.1014 or 16 U.S.C. 1861a; except where the referendum is successful if a majority of all permit holders within the fishery vote in favor of the Reduction Program is accordance with 18 U.S.C. 1861a(d)(1)(B).
- (k)
- (1) **Fee payment and collection system.** Upon successful completion of the Referendum discussed above as authorized by Public Law 108-447 and in accordance with 16 U.S.C. 1861a and § 600.1012 this fee collection system establishes:
    - (i) The subsector members' obligation to repay the reduction loan, and
    - (ii) The loan's principal amount, interest rate, and repayment term; and
    - (iii) In accordance with §§ 600.1013 through 600.1016, implements an industry fee system for the reduction fishery.
  - (2) **Reduction loan amount.** The reduction loan's original principal amount is \$2,700,000.

- (3) **Interest accrual from inception.** Interest begins accruing on the reduction loan from the date which NMFS disburses such loan.
- (4) **Interest rate.** The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year in which loan is disbursed plus 2 percent.
- (5) **Repayment terms.** For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from the date NMFS disburses the loan. However, fee collections shall continue indefinitely until the loan is fully repaid.
- (6) **Reduction loan repayment.** The subsector members shall repay the reduction loan in accordance with § 600.1012. Both fish buyers and fish sellers are considered subsector members for purposes of fee collection, deposit, disbursement, and accounting in accordance with § 600.1013.
  - (i) Subsector members in the reduction fishery shall collect and pay the fee amount in accordance with § 600.1105;
  - (ii) Subsector members in the reduction fishery shall deposit and disburse, as well as keep records for and submit reports about, the applicable fees in accordance with § 600.1014, except the requirements under paragraphs (c) and (e) of this section. All collected fee revenue a fish buyer collects to repay the loan identified in paragraph (c) of this section shall be made to NMFS no later than fifteen (15) calendar days following the end of each calendar month. The annual reports identified in paragraph (e) of this section shall be submitted to NMFS by February 1 of each calendar year.
  - (iii) The reduction loan is, in all other respects, subject to the provisions of §§ 600.1012 through 600.1017.
- (l) **Enforcement for failure to pay fees.** The provisions and requirements of § 600.1016 (Enforcement) shall also apply to fish sellers and fish buyers subject to this fishery.

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