

Authority, pack and ship live specimens according to the IATA Live Animals Regulations, and follow all applicable regulations pertaining to the export of wildlife, including declaration of the shipment to a Service wildlife inspector upon export.

Dated: September 26, 2011.

**Rowan W. Gould,**

*Acting Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[Docket No. 100825389-1597-02]

RIN 0648-BA13

#### Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery

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

**ACTION:** Final rule.

**SUMMARY:** NMFS establishes regulations to implement a fishing capacity reduction (buyback) program and an industry fee system to repay a \$23,476,500 loan for the Southeast Alaska Purse Seine Salmon Fishery (Reduction Fishery). The fee system involves future landings of the Reduction Fishery. This action's intent is to permanently reduce the most fishing capacity at the least cost and establish the fee system.

**DATES:** Effective November 7, 2011.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from Paul Marx, Chief, Financial Services Division, NMFS, Attn.: SE Alaska Purse Seine Salmon Rulemaking, 1315 East-West Highway, Silver Spring, MD 20910 or by calling Michael A. Sturtevant (see **FOR FURTHER INFORMATION CONTACT**).

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule to Michael A. Sturtevant at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503

(Attention: NOAA Desk Officer) or e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7825.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Sturtevant at (301) 427-8799, fax (301) 713-1306, or [michael.a.sturtevant@noaa.gov](mailto:michael.a.sturtevant@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Southeast Alaska purse seine salmon fishery is a commercial fishery in Alaska state waters and adjacent Federal waters. It encompasses the commercial taking of salmon with purse seine gear, and participation is limited to fishermen designated by the Alaska Commercial Fisheries Entry Commission (CFEC). In 2008, a pilot capacity reduction program, conducted by the Southeast Revitalization Association (SRA), using a reverse auction, purchased 35 limited entry permits in the Southeast Alaska Salmon fishery, reducing the number of Alaska permits in this fishery to 380. Approximately 200 permits are currently being fished.

This rule implements a voluntary buyback program loosely modeled on the aforementioned Alaska pilot program.

This rule establishes the administrative process for the Program, including the role of the SRA, application procedures, evaluation of the Reduction Plan by NMFS, process for conducting a referendum, and fee payment and collection provisions.

This Program is different from the other industry financed fishing capacity reduction programs undertaken by NMFS in several aspects: (1) It is the first permit-only buyback, *i.e.*, fishing history is not being retired and there are no restrictions on how the vessel to which the relinquished permit applies can be used; (2) there are no Federal permits involved, whereas all other NMFS supported reduction programs have included the buying and relinquishing of Federal permits; and (3) it is anticipated to attract mainly latent permits.

##### II. Statutory and Regulatory Basis for the Program

The Southeast Alaska purse seine salmon fishery is managed under Alaska law and regulatory requirements defined under Title 5 Alaska Administrative Code Section 33.100. The Alaska Department of Fish & Game (ADF&G) develops and implements conservation measures for this fishery and a state limited entry permit issued by the CFEC is required for participation

in the fishery. The authority for the SRA to conduct this Program is Alaska Statute 16.40.250.

The measures contained in this rule to establish the Program are based on the Consolidated Appropriations Act of 2005 (Section 209 of Title II of Division B of Pub. L. 108-447). Subsequently, that Federal law was amended by Section 121 of Public Law 109-479 (the Magnuson-Stevens Reauthorization Act of 2006), reducing the loan amount to no more than a \$25 million 40-year loan (with repayment fees capped at three percent) and clarifying the respective roles of NMFS and the SRA relative to development and implementation of the Program. On December 26, 2007, Public Law 110-161 appropriated \$235,000 for the cost of guaranteeing the loan amount (*i.e.*, loan subsidy cost). Due to a 6.1 percent rescission to meet Congressional budgetary limits, the original appropriation of \$250,000 was reduced to \$234,765, thus lowering the maximum loan ceiling to \$23,476,500. NMFS' authority to make this loan resides in sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279(f) and 1279(g) (MMA) (title XI)).

The Federal statute authorizing this Program waives all of the fishing capacity reduction program requirements of the Magnuson-Stevens Act (Sections 312(b)-(e)) codified at 16 U.S.C. 1801 *et seq.* except for Sections (b)(1)(C) and (d) which state: (1) It must be cost-effective; and (2) it is subject to a referendum approved by a majority of permit holders.

##### Program Overview

Unlike buybacks conducted under Federal statutes where permits are permanently revoked, under the Alaska Constitution the state may reissue permits in the future if the fishery becomes too exclusive. An "optimum number" study by the CFEC would be required before any decision could be made on whether the fishery has become too exclusive. There is no direct management of this fishery by NMFS or any other Federal agency.

Participation in the Program is voluntary and is open to any holder of a valid entry permit issued by the CFEC to operate in the Southeast Alaska purse seine salmon fishery. The Program is essentially divided into six phases: (1) Enrollment; (2) bid selection; (3) plan submission and approval; (4) referendum; (5) implementation; and (6) the loan repayment fee collection. Each of these six phases will be discussed later in this preamble. Only Southeast Salmon Purse Seine Entry Permits voluntarily submitted for removal from

the Reduction Fishery are subject to the reduction effort. Fishing history, the fishing vessel itself, and other assets associated with the permits are not required to be relinquished as part of this reduction effort. Fees for repayment of the loan will be calculated upon the annual ex-vessel value of all salmon harvested in the Southeast Alaska purse seine fishery and will be collected from those who continue fishing in the Reduction Fishery after implementation of the Program set forth in § 600.1107 of subpart M of part 600 of Title 50 of the Code of Federal Regulations.

On May 23, 2011, NMFS published proposed regulations in the **Federal Register** (76 FR 29707) to implement the program. This final rule implements the program with changes as described below and will be effective on November 7, 2011.

### III. Summary of Comments and Responses

NMFS received five comments in response to the proposed rule. Three were from individuals, one from the Alaska Commercial Fisheries Entry Commission, and one from the SRA. The three individuals each expressed opposition to the Program for a variety of reasons.

*Comment 1:* Each of the three individuals expressed concerns that the Program would make it more difficult for new participants to enter the fishery by increasing the cost of permits.

*Response:* Although permit values have been increasing over the last few years, many factors are influencing the rising prices including higher catch levels of pink salmon and higher salmon prices. If permit holders believe the Program would further exacerbate the permit values, they will have the opportunity to vote against the Program in a referendum.

*Comment 2:* Two of the individuals expressed concern that the Program will be comprised of inactive fishing permits.

*Response:* NMFS acknowledges that inactive permits will likely be removed from the fishery. However, the permits could be fished in the future if no action is taken. The permit holders must decide if the cost of removing these latent permits is worth an additional 3% fee on future catch and will make that decision in the referendum.

*Comment 3:* Two of the individuals expressed concern about inactive permit holders who may hold permits for speculative purposes, dominating the referendum and buying back inactive permits.

*Response:* NMFS acknowledges that inactive permit holders constitute a

significant portion of the fishery. The authorizing legislation requires approval from a majority of permit holders. NMFS believes that limiting the ability of certain permit holders to vote in the referendum could be perceived as arbitrary and is contrary to the statute.

*Comment 4:* Two commenters requested that the enrollment process be clarified to note that the initial determination that an application conforms to the prescribed requirements is made by an independent accounting firm and not the SRA.

*Response:* NMFS agrees the enrollment process needs to be clarified to note that the initial determination that an application conforms to the prescribed requirements is made by an independent accounting firm and not the SRA, and has accordingly revised § 600.1107(c)(2)(v)(A).

*Comment 5:* Two commenters noted an inconsistency in the enrollment process and requested that NMFS allow the SRA a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process.

*Response:* NMFS acknowledges the inconsistency and has changed both § 600.1107(c)(3) and § 600.1107(d)(1) to reflect that the SRA a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process.

*Comment 6:* Two commenters requested that NMFS clarify the bid selection process in the event that two identical bids are received on the same day and suggested that a random method be used such as drawing lots.

*Response:* NMFS agrees that the language in § 600.1107(d)(3) should be less ambiguous and has revised the language to state that in the event of a tie, the first bid received, if known, shall be selected. If the receipt time cannot be determined, neither bid will be accepted. A permit holder can ensure the receipt time is documented when using a reliable express delivery service. This solution is more equitable than some random method such as drawing lots, which could merely lead to further disputes as to the integrity of that process.

*Comment 7:* Two commenters stated that the referendum voting process does not provide sufficient time for NMFS to determine the accuracy of eligible voters, issue ballots, and for fishermen to return the ballots. They recommended providing a period of 21 days to conduct the referendum.

*Response:* NMFS agrees that the voting period should be expanded and has revised § 600.1107(e)(3) to allow a voting period of 21 to 30 days.

*Comment 8:* Two commenters requested that the list of eligible referendum voters to be published in the **Federal Register** contain a 7-day period to accept comments from the public.

*Response:* NMFS agrees that the public needs an opportunity to comment about any discrepancy before the referendum occurs but believes more time is necessary and therefore has revised § 600.1107(e)(3)(i) to allow the public 15 days to comment.

### IV. Summary of Revisions

NMFS revises the following sections of the regulations of subpart M to 50 CFR part 600:

(1) *Section 600.1107(c)(2)(v)(A).* This section is revised to note that the initial determination that an application conforms to the prescribed requirements is made by an independent accounting firm and not the SRA.

(2) *Section 600.1107(c)(3).* This section is amended to allow the SRA a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process.

(3) *Section 600.1107(d)(1).* This section is also amended to allow the SRA a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process.

(4) *Section 600.1107(d)(3).* This section is revised to state that in the event of a tie, the first bid received, if known, shall be selected. If the receipt time cannot be determined, neither bid will be accepted.

(5) *Section 600.1107(e)(3).* This section is revised to allow a voting period of not less than 21 days and not more than 30 days.

(6) *Section 600.1107(e)(3)(i).* This section is revised to provide the public with a 15 day period to accept comments on the list of eligible referendum voters to be published in the **Federal Register**.

### V. Enrollment Phase

Participants who wish to relinquish their permits are required to complete a Bid, Relinquishment Contract, Conditional Notice and Conditional Relinquishment form. A copy of these documents will be mailed by the SRA to each person who is the holder of record of a valid entry permit issued by CFEC to operate in the Reduction Fishery. A copy of those documents is appended to this final rule.

The Bid identifies the eligible bidder and specifies requirements with which the bidder must comply upon acceptance of bid.

The Relinquishment Contract is the agreement entered into by the bidder and the SRA whereby the bidder agrees to relinquish a permit upon acceptance of the bid and before payment of the bid amount.

The Conditional Notice is the CFEC form restricting renewal and transfer of each permit for which a bid was accepted.

The Conditional Relinquishment is the CFEC form signed by the bidder to voluntarily give up a permit and to agree to abide by the terms in that form upon SRA acceptance of the bid.

To participate in the Capacity Reduction Program, a Permit Holder submits a fully completed and executed Bid, Relinquishment Contract, Conditional Notice, and Conditional Relinquishment. 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 Bid and other required documents must be received by the SRA no later than the bid closing date identified in the above mentioned mailing to Permit Holders. Once submitted, a bid is irrevocable and cannot be withdrawn or amended. 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.

By submitting a Bid, the Permit Holder warrants and represents that he/she has read and understood the terms of the 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.

By submitting the Bid, the permit holder expressly acknowledges that he/she makes an irrevocable offer to relinquish a permit for a specific price to CFEC, and once having submitted the Bid, the bidder is not entitled to withdraw or in any way amend the Bid. The permit would be relinquished for the price set forth in the Bid contingent on acceptance by the SRA at the closing of the Selection Process. Any attempted withdrawal by a bidder will be invalid, and the Bid will remain a binding, irrevocable offer, unaffected by the attempted withdrawal.

#### VI. Bid Selection Phase

The SRA will begin the Selection Process upon its receipt of the first application and will continue until: (1) The bid closing date specified by SRA; or (2) the ranking of the next lowest bid would cause the total program costs to exceed \$23.5 million

During the selection process, the SRA, in consultation with CFEC, will 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. The SRA will notify the Permit Holder if the Bid is non-conforming and, in such cases, the Permit Holder may submit a revised, conforming Bid if within the prescribed period (*i.e.*, until the bid closing date). A Bid that is submitted by the Permit Holder but is not accepted by the SRA, including a nonconforming bid that is not revised by the bid closing date, will be deemed terminated and both the Permit Holder and the SRA will have no further obligation. The SRA will 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 received first. If the receipt time cannot be determined, neither bid will be accepted.

Upon termination of the selection process, 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 increases economic efficiencies (*i.e.*, increases harvesting productivity) for those Permit Holders remaining in the fishery. If the SRA makes such a determination and thereafter accepts bids, the SRA will send CFEC the Conditional Notice form restricting renewal and transfer of each permit for which a bid was accepted.

Once the SRA completes the selection process and after the bid closing date, the SRA will sign all accepted Bids and the SRA will notify each Permit Holder, via certified mail, of the effective date of the Bid. While the Bid is an irrevocable offer, it remains subject to the requirement for an industry referendum (VI. below). Bid selection occurs prior to the referendum because the Reduction Plan resulting from the Bid selection process is the course of action upon which the referendum participants are voting.

#### VII. Plan Submission and Approval Phase

Within 30 days after the conclusion of the selection process, the SRA will submit the Reduction Plan to NMFS for final approval on behalf of the Secretary of Commerce (Secretary). The aggregate

of all Bids, Relinquishment Contracts, Conditional Notices, and Conditional Relinquishments signed by permit holders whose bids are accepted by the SRA will together, with supporting rationale, constitute the Reduction Plan. The supporting rationale must demonstrate that the Reduction Plan would permanently reduce the most harvesting capacity in the Reduction Fishery at the least cost, increase harvesting productivity for post-reduction permit holders participating in the fishery, and improve flexibility in the conservation and management of the fishery. The Reduction Plan will 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, if any, were higher than the largest dollar amount of the last bid accepted.

The primary requirements for the Assistant Administrator of NMFS, on behalf of the Secretary, to approve a Reduction Plan are specified at § 600.1107(e)(2). Among other requirements, the Assistant Administrator of NMFS must find that the Reduction Plan is consistent with the amended Consolidated Appropriations Act of 2005 and the applicable sections of the Magnuson-Stevens Act.

#### VIII. The Referendum

The current Fishing Capacity Reduction Framework regulatory provisions of § 600.1010 stipulate procedural and other requirements for NMFS to conduct referenda on fishing capacity reduction programs, and § 600.1017(a)(1)-(4) stipulate prohibitions related to voting in a referendum. The proposed § 600.1107(e)(3) makes those framework referenda requirements applicable to this Program.

If NMFS approves the Reduction Plan, NMFS will conduct a referendum to determine the industry's willingness to repay a fishing capacity reduction loan for purchase of the permits identified in the Reduction Plan. NMFS will publish a notice in the **Federal Register** requesting votes by Permit Holders on whether to accept or reject the Reduction Plan for implementation. NMFS will issue ballots to eligible voters, tally votes received, and notify voters on the outcome of the referendum.

A successful referendum by a majority of the Permit Holders in the Reduction Fishery would bind all parties and complete the reduction process. An unsuccessful referendum would void accepted Bids and other supporting

documents without further obligation from the SRA or the bidders.

### IX. Implementation Phase

Within 60 days after a successful referendum, CFEC will provide notice to NMFS of the permits retired from the Reduction Fishery. NMFS, after receiving the notice of the retired permits, will then tender the accepted bid amounts to the accepted bidders. If the SRA accepts a total number of bids in an aggregate amount less than \$23,476,500, any remaining funds could be available for reduction payments as part of a later, separate Reduction Plan.

The Reduction Loan will be amortized over a forty-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 the debt. The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus two percent. The framework provisions of §§ 600.1012–600.1017 will apply to any reduction loan, fee payment and collection set forth in this rule to the extent they do not conflict with this rule.

### X. Loan Repayment Fee Collection

Post-reduction Permit Holders operating in the fishery will be obligated to pay a fee for the repayment of the loan in accordance with § 600.1107(f). The fee will be expressed as a percentage of the ex-vessel price of all salmon harvested and landed in the fishery. For example, if the fee is three percent and the ex-vessel value is \$0.50, then the fee per pound of salmon will equal \$0.015 per pound. 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 maximum fee rate is three percent of total ex-vessel production revenues. In the event that payments made under the Reduction Plan at the maximum fee level are insufficient to repay the Reduction Loan within the 40-year term, NMFS will extend the term of the repayment until the Reduction Loan is paid in full.

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.

It is possible that the fishery may not open during some years. Consequently, the fishery will not produce fee revenue with which to service the Reduction Loan during these years. However, interest will continue to accrue on the principal balance. When this happens, if the fee is not already at the maximum three percent, NMFS will increase the fee to the maximum three percent in the next season that the fishery is open, 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 annual determinations on adjusting the fee rate.

The dealer who first purchases the salmon landed in the fishery ("fish buyer") will be responsible for collecting and submitting the repayment fees to NMFS on a monthly basis. Both Alaska Department of Fish and Game daily fish tickets and the State of Alaska's Commercial Operator Annual Report (COAR) produced annually each March following the close of the previous season will be used to monitor fee collection.

The current Fishing Capacity Reduction Framework regulatory provisions of § 600.1013 (Fee payment and collection), § 600.1014 (Fee collection deposits, disbursements, records, and reports), § 600.1015 (Late charges), § 600.1016 (Enforcement), § 600.1017 (Prohibitions and penalties), and § 600.1017(a)(8)–(16) in particular, will apply to any fee collection in this fishery.

The framework rule's provisions at § 600.1014 governs how fish buyers must deposit, and later disburse to NMFS, the fees which they have collected as well as how they must keep records of, and report about, collected fees. Under the framework rule's provisions at § 600.1014, fish buyers must, at the end of each business week, deposit collected fees in federally insured accounts. Fees will be submitted to NMFS monthly and are due no later than fifteen (15) calendar days following the end of each calendar month. Fee collection reports must accompany these disbursements. Fish buyers must maintain specified fee collection records for at least three years and submit to NMFS annual reports of fee collection and disbursement activities by February 1 of each calendar year.

Under § 600.1015, the late charge to fish buyers for fee collection, deposit, and/or disbursement will be one and one-half (1.5) percent per month of the fee due. The full late charge will apply

to the fee for each month or portion of a month that the fee remains unpaid.

To provide more accessible services, streamline collections, and save taxpayer dollars, fish buyers may disburse collected fee deposits to NMFS by using a secure Federal system on the Internet known as *Pay.gov*. *Pay.gov* enables fish buyers to use their checking accounts to electronically disburse their collected fee deposits to NMFS. Fish buyers who have access to the Internet should consider using this quick and easy collected fee disbursement method. Fish buyers may access *Pay.gov* at: <https://www.pay.gov/paygov/>.

Fish buyers who do not have access to the Internet or who simply do not wish to use the *Pay.gov* electronic system must disburse collected fee deposits to NMFS by sending a check to our lockbox at: NOAA Fisheries Southeast Alaska Salmon Purse Seine Buyback, P.O. Box 979002, St. Louis, MO 63197–9000.

Fish buyers must complete a fee collection report for each disbursement. Fish buyers using *Pay.gov* will find an electronic fee collection report form to accompany electronic disbursements. Fish buyers who do not use *Pay.gov* must include a hard copy fee collection report with each of their disbursements and may access the NMFS Web site for a PDF version of the fee collection report at: [http://www.nmfs.noaa.gov/mb/financial\\_services/buyback.htm](http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm).

Before the fee's effective date, NMFS will separately mail a copy of the final rule, along with detailed fee payment, collection, deposit, disbursement, recording, and reporting information and guidance, to each fish seller and buyer of whom NMFS has notice. The fact that any fish seller or buyer might not, for whatever reason, receive a copy of the notice or of the information and guidance does not relieve the fish seller or buyer from his/her fee obligations under the applicable regulations.

All parties interested in this action should carefully read the following framework rule sections, whose detailed provisions apply to the fee system for repaying the reduction program's loan:

1. § 600.1012;
2. § 600.1013;
3. § 600.1014;
4. § 600.1015;
5. § 600.1016; and
6. § 600.1017.

NMFS, in accordance with the framework rule's provisions at § 600.1013(d), establishes the initial fee for the program's reduction fishery as 3 percent of the annual ex-vessel value of all salmon harvested in the fishery.

Please see the framework rule's provisions at § 600.1000 for the

definition of “delivery value” and of the other terms relevant to this rule. Each disbursement of the reduction loan’s principal amount will begin accruing interest as of the date of each such disbursement. This loan’s interest rate is the applicable rate, which the U.S. Treasury determines at the end of the fiscal year, plus two percent.

### **XI. Specific Performance**

The proposed regulatory provisions at § 600.1107(g) mirror the Bid’s provisions for Specific Performance. Development of a capacity reduction program provides a unique opportunity for permit holders to manage capacity themselves. Failure of an accepted bidder to perform the obligations under the Relinquishment Contract will result in irreparable damage to the SRA and other Permit Holders. Therefore, money damages are inadequate to redress the harm caused to the bidders by a breach of contract. Specific performance is the only adequate remedy.

### **XII. Enforcement/Prohibitions and Penalties**

The provisions and requirements of § 600.1016 and § 600.1017 shall also apply to fish sellers and fish buyers subject to this fishery. Specifically, the final rule amends § 600.1017 by adding language that prohibits buyers from buying fish from reduction fishery participants who do not pay the required landing fee and prohibits reduction fishery participants from selling fish to buyers who do not collect the fees.

#### *Classification*

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the provisions of the Magnuson-Stevens Act, and Title II, Section 209 of Public Law 108–447 as amended by Section 121 of Public Law 109–479.

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

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment (EA) for this rule. The assessment discusses the impact of this final rule on the natural and human environment and integrates a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA). NMFS will send the assessment, the review and analysis to anyone who requests a copy (see **ADDRESSES**).

NMFS prepared a FRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the

economic impacts this rule would have on small entities. NMFS intends the analysis to aid the agency in considering regulatory alternatives that could minimize the economic impact on affected small entities. The rule does not duplicate or conflict with other Federal regulations.

#### *Summary of FRFA*

The Small Business Administration (SBA) has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of \$4 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned or cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. Small entities within the scope of this rule include individual U.S. vessels, Permit Holders, and dealers. There are no disproportionate impacts between large and small entities.

#### *Description of the Number of Small Entities*

Most firms operating in the Reduction Fishery have annual gross revenues of less than \$4 million. The FRFA analysis estimates that most of the 212 active vessels that participated in 2008 are considered small entities. The ownership characteristics of vessels operating in the Reduction Fishery are not available and, therefore, it is not possible to determine with certainty if they are independently owned and operated or affiliated in one way or another with a larger parent company. However, because the action would not result in changes to allocation percentages and participation is voluntary, net effects would be expected to be minimal relative to the status quo.

The final rule’s impact would be positive for both those whose bids NMFS accepts and for post-reduction harvesters whose landing fees repay the reduction loan because the Bidders and harvesters would have voluntarily assumed the impact:

1. Bidders would have volunteered to make bids at dollar amounts of their own choice. Presumably, no Bidder would volunteer to make a bid with an amount that is inconsistent with the Bidder’s interest; and

2. Reduction loan repayment landing fees would be authorized, and NMFS could complete the Reduction Program, only if a majority of Permit Holders voted in favor of the Reduction Plan. Presumably, harvesters who are not selected would not vote in favor of the Reduction Plan unless they concluded that the Reduction Program’s

prospective capacity reduction was sufficient to enable them to increase their post-reduction revenues enough to justify the fee.

3. Those participants remaining in the fishery after the buyback will incur additional fees of up to 3 percent of the ex vessel production value of post reduction landings. However, the additional costs should be mitigated by reducing the possibility that latent permits will be activated thus reducing harvest levels and stabilizing year-to-year price fluctuations. NMFS believes that this final rule would affect neither authorized harvest levels nor harvesting practices.

Other than the preferred alternative, which is being implemented in this rule, NMFS considered the no action alternative in developing this action. NMFS rejected the no action alternative considered in the EA because if it failed to act, NMFS would not be in compliance with the mandate of Section 209 of the authorizing legislation to establish a buyback program. In addition, the Southeast Alaska purse seine salmon fishery would remain overcapitalized. Overcapitalization reduces the potential net value that could be derived from the salmon resource by dissipating rents, driving variable operating costs up, and imposing economic externalities on the fishermen. Overcapitalization has diminished the economic viability of members of the fleet and increased the economic and social burden on fishery dependent communities.

This final rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) previously approved this information collection under OMB Control Number 0648–0376.

NMFS amends the existing OMB control number as a result of the implementation of this capacity reduction program. The revision has been submitted to OMB for approval. NMFS estimates that the public reporting burden for this information collection totals 878 respondents with a total response time of 38,653 hours. NMFS estimates that each respondent will take an average of 4 hours for submitting a Bid (which includes executing the Bid Agreement and the Reduction Contract) and 4 hours for voting in a referendum. Persons affected by this rule would also be subject to other collection-of-information requirements referred to in the proposed rule and also approved under OMB Control Number 0648–0376. These requirements and their associated response times are: Completing and

filing a fish ticket (10 minutes), submitting monthly fish buyer reports (2 hours), submitting annual fish buyer reports (4 hours), and fish buyer/fish seller reports when a person fails either to pay or to collect the loan repayment fee (2 hours).

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see ADDRESSES).

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

This action would not result in any adverse effects on endangered species or marine mammals.

#### List of Subjects in 50 CFR Part 600

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

Dated: September 30, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 600, subpart M, is amended as follows:

### PART 600—MAGNUSON-STEVENS ACT PROVISIONS

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

■ 1. The authority citation for 50 CFR part 600, subpart M, is revised to read as follows:

**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. 1279f and 1279g, 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, Pub. L. 108–447, Pub. L. 109–479, Pub. L. 110–161, Section 209 of Title II of Division B of Pub. L. 108–447, Section 121 of Pub. L. 109–447, Section 121 of Pub. L. 109–479, Pub. L. 110–161, and 46 U.S.C. 53701 *et seq.*

■ 2. Section 600.1107 is added to subpart M to read as follows:

#### § 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.

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

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

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

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

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

In words	In numbers
	\$

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

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

(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.

Signature	
Printed Name	

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.

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

Bidder signature	Notary signature
<p>(1) Sign                      (2) Print the following:                          (a) signer's name                          (b) signing date                          (c) state and city/borough</p> <p>(1)                      (2)(a)                      (2)(b)                      (2)(c)</p>	<p>(1) Sign                      (2) Print the following:                          (a) name                          (b) signing date                      (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 to sign; and (3) acknowledged that he/she did so freely and voluntarily."</p> <p>(1)                      (2)(a)                      (2)(b)                      (3)</p>

**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: \_\_\_\_\_

[FR Doc. 2011-25750 Filed 10-5-11; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 100923469-1543-05]

RIN 0648-BA27

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Rule Extension, Georges Bank Yellowtail Flounder Catch Limit Revisions**

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

**ACTION:** Temporary final rule; emergency action extension and request for comments.

**SUMMARY:** This action extends the Georges Bank (GB) yellowtail flounder specifications for fishing year (FY) 2011 that were implemented on May 1, 2011, through emergency authority concurrent with the Framework Adjustment (FW) 45 Final Rule under the Northeast (NE) Multispecies Fishery Management Plan (FMP), which is scheduled to expire on October 24, 2011. Specifically, this temporary rule maintains the current Acceptable Biological Catch (ABC) and Annual Catch Limit (ACL) for GB yellowtail flounder for an additional 186 days, *i.e.*, through the end of fishing