

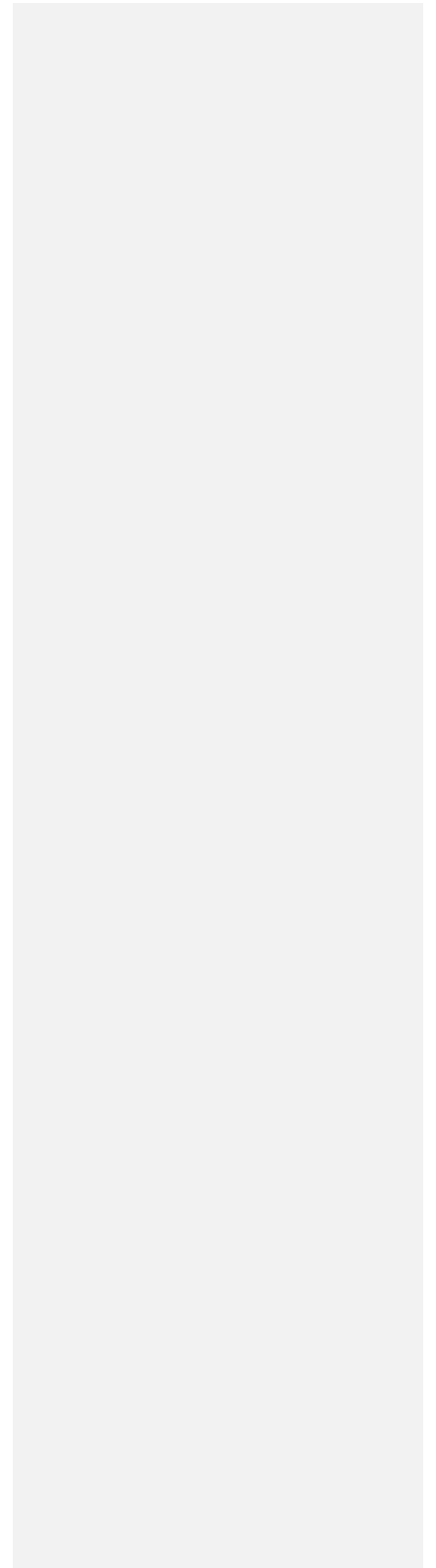


**WASHINGTON
COASTAL DUNGENESS
CRAB FISHERY LICENSE
BUY-BACK PROGRAM**

**Report to the
Washington State Legislature**
pursuant to provisions of
Substitute Senate Bill 5447
Chapter 479, Laws of 2007

October 1, 2008

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WASHINGTON COASTAL DUNGENESS CRAB FISHERY LICENSE BUYBACK PROGRAM

EXECUTIVE SUMMARY

DRAFT
October 1, 2008

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WASHINGTON
DEPARTMENT OF FISH
AND WILDLIFE

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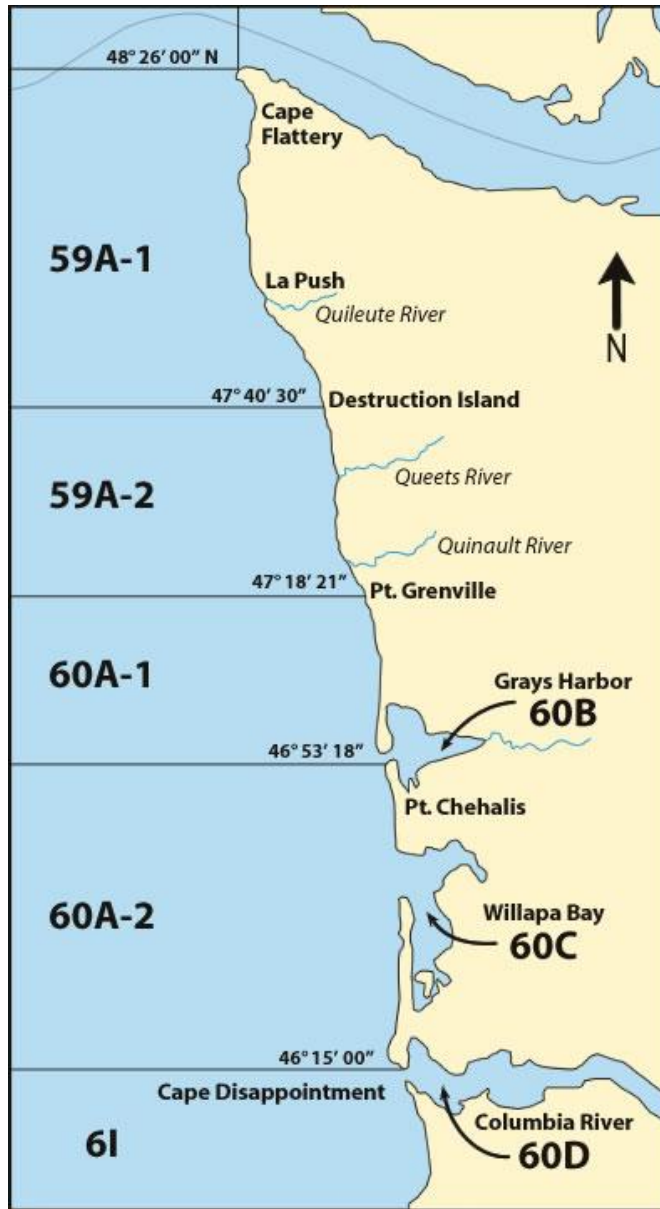
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The Washington coastal Dungeness crab fishery is severely overcapitalized as a result of the loss of fishing opportunity due to the implementation of the federal court decision that reserved 50% of the harvest to treaty Indian fishers over more than 70% of the Washington coast. In 2007, the Washington state legislature directed the Washington Department of Fish and Wildlife (WDFW) to develop a buyback program for the coastal Dungeness crab fishery that is designed to achieve an economically viable and sustainable fishery while meeting resource and conservation objectives and treaty Indian harvest sharing obligations.

Key components of the Program include:

- Purchase, and permanently retire 80 Washington coastal Dungeness crab licenses; reducing the Washington coastal Dungeness crab fleet by 35% from 228 to 148.
- Total cost for purchasing 80 licenses is estimated at \$50 million.
- The preferred program would be funded by congress and administered by the State of Washington.
- Low bid would be the criterion used to purchase licenses.
- Program mechanics would resemble other recent state-administered buyback programs; alternative program elements are provided by WDFW for use if a federally funded program through Magnuson-Stevens Reauthorization Act is pursued.
- The report also includes an analysis of buyback alternatives, a summary of federal fishery buyback program criteria, and an analysis of effort transfers to Oregon and California.

WASHINGTON COASTAL DUNGENESS CRAB FISHERY LICENSE BUY-BACK PROGRAM



WASHINGTON COASTAL DUNGENESS CRAB FISHING AREAS

WASHINGTON COASTAL DUNGENESS CRAB FISHERY LICENSE BUY-BACK PROGRAM

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WASHINGTON COASTAL DUNGENESS CRAB FISHERY LICENSE BUY-BACK PROGRAM

SECTION I BACKGROUND

In January 2007, the Washington Department of Fish and Wildlife (WDFW) provided the Legislature with a report titled, “*Development of a Buy-Back Program for the Washington Coastal Commercial Crab Fishery*”. That report was developed at the direction of the legislature as defined in the 2006 Supplemental Budget, Engrossed Substitute Senate Bill 6386. In the 2007 legislative session, the Washington Legislature directed WDFW to develop a program to purchase Washington coastal Dungeness crab fishery commercial licenses. Key language of Substitute Senate bill 5447 is as follows:

NEW SECTION. Sec. 2.

(1) The department shall develop a detailed proposed Dungeness crab-coastal fishery buyback program. The proposed program must provide for the purchase and permanent retirement of Dungeness crab-coastal fishery licenses. The department shall design this element of the proposed program with the goal of purchasing between eighty and one hundred Dungeness crab-coastal fishery licenses.

(2) In addition to license purchase and retirement, the proposed program may provide for the purchase or retirement of vessels designated on Dungeness crab-coastal fishery licenses.

(3) The proposed program must explore funding alternatives that involve federal funding, state funding, funding provided by Dungeness crab-coastal license holders, low-interest loans to license holders, and combinations thereof.

(4)(a) The department must include in the proposed program those elements necessary for the administration of the buyback, including the mechanisms by which Dungeness crab-coastal license holders may apply to participate in the program if it is authorized and by which the department will select licenses or vessels for purchase from among the applicants.

(b) The proposed program must include and clearly set forth any conditions that will be placed on Dungeness crab-coastal license holders participating in the program.

(5) The proposed program must be designed to have a neutral impact on Dungeness crab harvests in the state and federal waters off the coasts of Oregon and California.

(6) The proposed program must assume that participation by Dungeness crab-coastal license holders in the program would be entirely voluntary.

(7) The department shall consult with Dungeness crab-coastal license holders when designing the proposal.

(8) To assist the department in the development of the proposal, the department may contract with persons not employed by the state.

(9) By December 1, 2007, the department shall provide a report detailing the program proposal to the appropriate policy and fiscal committees of the senate and house of representatives.

SSB 5447 specifies the following items that the draft buyback program should address:

- Develop a program that purchases and retires coastal Dungeness crab licenses
- The program may purchase vessels
- The proposed program needs to explore funding alternatives that involve federal and state appropriations, industry funds, and low-interest loans
- The proposed program must include elements necessary for the administration of the Program, including mechanisms for application to participate and selection criteria
- The program must be designed to have a neutral impact on Dungeness crab fisheries in Oregon and California
- The program must be developed in consultation with coastal crab license owners.

Pursuits of capacity reduction such as this Washington coastal Dungeness crab license buyback program also fulfills the vision of the 1994 legislature when they sought to minimize overcapitalization and thereby restore economic stability to the Washington coastal Dungeness crab fishery.¹

Developing the Program

The Department has twice surveyed license holders to determine what aspects of a fleet reduction program the majority would support. In addition, the Department assembled an ad hoc group of individuals interested in advising the agency on aspects of the fleet reduction program. WDFW also hired an expert to research federal funding programs, their requirements and limits, and develop alternatives for funding the program. A number of options emerged for many of the program elements based on information developed by WDFW staff and contractor combined with significant contributions from stakeholder discussions.

Recent federal buyback programs, related to disaster relief or capacity reduction, have been implemented through provisions of the Magnuson-Stevens Reauthorization Act (MSRA)² using the extensive protocols and administrative processes developed for that purpose. Because state management of the Washington coastal Dungeness crab

¹ Finding -- 1994 c 260: "*The legislature finds that the commercial crab fishery in coastal and offshore waters is overcapitalized. The legislature further finds that this overcapitalization has led to the economic destabilization of the coastal crab industry, and can cause excessive harvesting pressures on the coastal crab resources of Washington State. In order to provide for the economic well-being of the Washington crab industry and to protect the livelihood of Washington crab fishers who have historically and continuously participated in the coastal crab fishery, the legislature finds that it is in the best interests of the economic well-being of the coastal crab industry to reduce the number of fishers taking crab in coastal waters, to reduce the number of vessels landing crab taken in offshore waters, to limit the number of future licenses, and to limit fleet capacity by limiting vessel size.*" [1994 c 260 § 1.]

² Formally called the *Magnuson-Stevens Fishery Conservation and Management Act*; as amended through January 12, 2007. Also referred to as the "*Sustainable Fisheries Act*" following its October 1996 re-authorization (with substantial amendments), and originally known as the *Magnuson Fishery Conservation and Management Act*, first enacted in 1976.

fishery in the Exclusive Economic Zone is authorized through the MSRA (§ 306 Note)³, emphasis was placed on developing a program consistent with MSRA-based implementation.

However, as conditions attached to MSRA-based funding (either through direct grant or a combination of grant and low-interest loan) emerged, it became apparent that fewer requirements would apply if the program were wholly state-operated, or if federal funds could be provided through avenues other than MSRA. Therefore, two of the four funding alternatives discussed are associated with the MSRA, and two are independent from MSRA-based implementation.

Fishery Management Goals

Goals for management of the coastal crab fishery are to maintain an economically viable and stable fishery that is in balance with resource needs and treaty obligations, supports individual fishers as well as coastal communities, is conducted in a safe and orderly manner, and provides a steady and reliable flow of product throughout the season.

Federal Court Decision Triggers Fishery Restrictions

Meeting the management goals of the fishery has become challenging for WDFW since the 1994 federal court ruling (known as the Rafeedie Decision). That Decision expanded the state-tribal sharing established through the 1974 Boldt Decision to include shellfish, thereby establishing an expectation that the state will provide the opportunity for the tribes to harvest up to 50% of the resource in tribal usual and accustomed fishing areas north of Point Chehalis (46°53.30 N. Latitude) which is situated just south of Grays Harbor. Several fishery modifications have been adopted that limit expansion of State fishing capacity. In 1994, the Washington State legislature adopted capacity control/reduction measures, including a license limitation program for the coastal Dungeness crab fishery, statutes limiting participating vessels to under 99 feet in length, and prohibiting vessel designation changes if the new hull length is more than ten feet longer than the current hull length associated with that permit. The legislature in 1994 also indicated a need to reduce the overall number of fishers taking crab in coastal/offshore waters. In 2000, vessels were assigned to one of two pot limit tiers as another measure to inhibit overcapitalization.

In spite of these measures, increasingly complex restrictions have been needed to accommodate treaty Indian fishing opportunity in the Washington coastal Dungeness crab fishery. Measures such as delayed starts and large area closures for State fishers, implemented in response to the state's treaty Indian harvest-sharing obligation, have made it nearly impossible to achieve the fishery goals such as maintaining economically viable and stable fishery, safe and orderly fisheries, and an even-flow of product.

³ P.L. 109-479, sec. 302(e), MSA § 306 note 16 U.S.C. 1856 note; AUTHORITY OF STATES OF WASHINGTON, OREGON, AND CALIFORNIA TO MANAGE DUNGENESS CRAB FISHERY. Page 114 in http://www.nmfs.noaa.gov/sfa/magact/MSA_Amended_2007%20.pdf

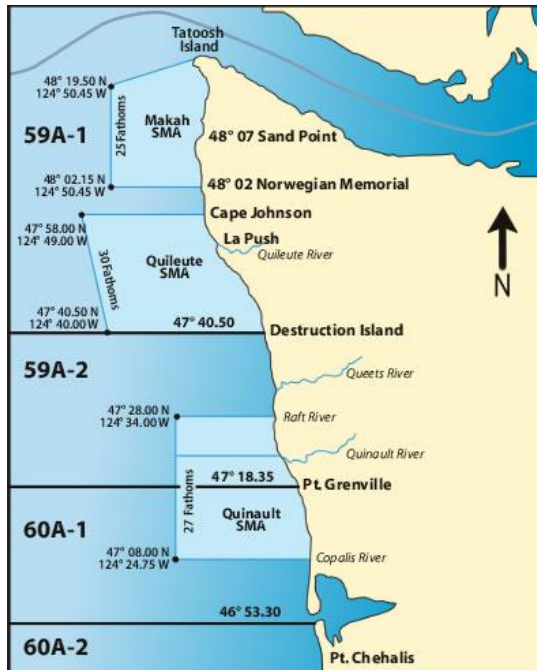
WDFW is trying to implement the needed restrictions in a manner that fairly and equitably distributes the impact of this reduction among the various segments of the fleet. A remaining management concern, therefore, is the need to further reduce fishing effort and/or catch in areas north of Point Chehalis, including Grays Harbor that coincide with tribal fishing areas⁴.

⁴ The fishery catch reporting areas termed “North” have changed since implementation of the Rafeedie decision began in 1997: Prior to 1997, the “North” non-tribal fishing areas extended north from Point Grenville; in 1997 and since, “north” refers to waters north of Point Chehalis.

Delayed Starts and Area Restrictions

Figure 1 shows the 2007-08 “Special Management Area” (SMA) closures.

Figure 1
2007-2008 Coastal Dungeness Crab Season SMA Restrictions



The three SMAs comprise approximately 559 square miles of fishing area not accessible to State fishers during all or part of the fishing season. The closures are necessary to ensure tribal fishers have precedence in their own usual and accustomed fishing areas and are not impeded from fishing to their full potential. In addition to the closures, the start of the State fleet’s coastal Dungeness crab fishing season has been delayed in order to provide tribal fishers a head start in the entire area north of Point Chehalis. Differences in the start date between tribal and State fleets ranged from 16 to 67 days in the period from 1998 through 2007 (Table 1). Further, State fishers that fish in the southernmost area when it opens on (or about) December 1 are restricted from moving north for up to 35 days after the northern areas open (Table 1) (Figure 2). These represent significant lag times during which State fishers miss the highly productive early season period.

Table 1
Washington Coastal Dungeness Crab Progressive Start Dates
1997 through 2007 seasons

Season	Tribal Start	State Start		
		South of Klipsan Beach	Klipsan Beach to Destruction Island	North of Destruction Island of DI
97-98	22-Oct	1-Dec	1-Dec	1-Dec
98-99	2-Nov	1-Dec	1-Dec	1-Dec
99-00	26-Oct	1-Dec	1-Dec	1-Dec
00-01	4-Nov	15-Dec	15-Dec	15-Dec
01-02	5-Oct	1-Dec	1-Dec	1-Dec
02-03	25-Oct	6-Dec	6-Dec	6-Dec
03-04	30-Oct	1-Dec	1-Dec	1-Dec
04-05	9-Nov	15-Jan	15-Jan	15-Jan
05-06	15-Nov	31-Dec	31-Dec	31-Dec
06-07	15-Nov	1-Dec	8-Jan	16-Jan
07-08	2-Nov	1-Dec	2-Jan	26-Jan

Fishers have had to modify their fishing behavior in order to adapt to delayed start dates and SMAs. State fishers in the northern areas are moving to deeper water (offshore from tribal SMAs), and moving effort south of Point Chehalis in an attempt to maintain their historical harvest level.

Figure 2
Progression of Coastal Dungeness Crab Fishery
Starting Dates from South to North

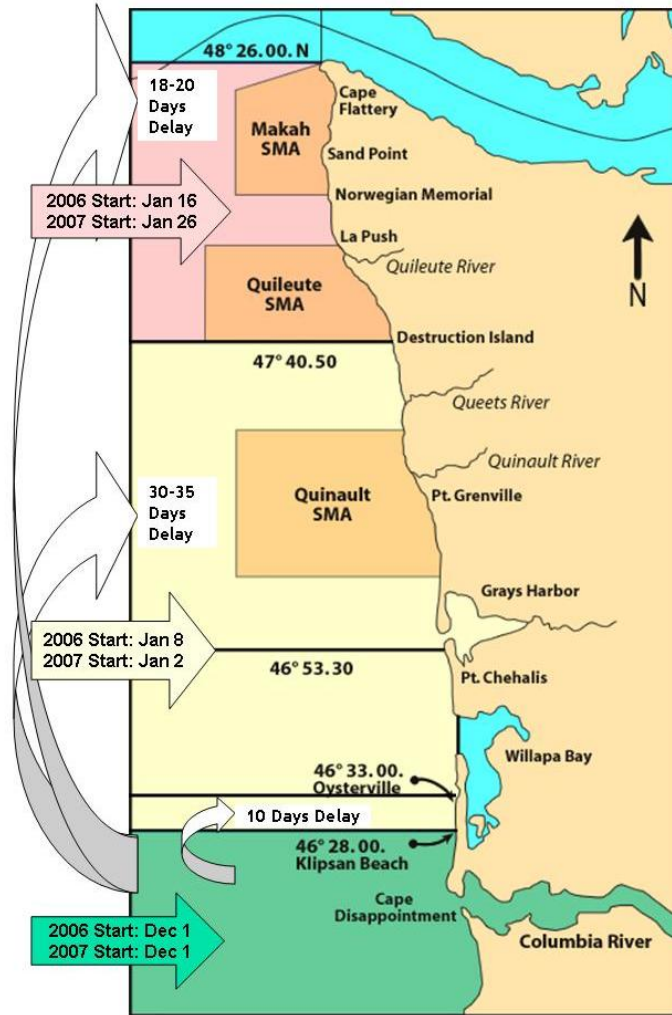


Figure 3 shows Washington coastal Dungeness crab harvest in pounds north of Point Chehalis from the 1998-99 through 2006-07 seasons. Average State fleet catch during this period was about 7 million pounds, and the average tribal fleet catch was about 2 million pounds. The State fleet (228 vessels) typically averages fewer pounds per landing than the tribal fleet (approximately 35 vessels). Tribal fishers average more pounds per landing due to the combination of their small fleet that is provided the opportunity to fish first absent competition from the state fleet and their exclusive fishing areas (SMA, Figure 1).

Prior to the Rafeedie decision, tribal catch was negligible, in 2006-07, tribal fishers caught about 32.5% of the total pounds of Dungeness crab landed in fishing areas north of Point Chehalis (Figure 4). While this is not an exact allocation accounting (which is computed on a per-tribe, per-area basis) the figure also shows that, following the 1998-2006 trend, the combined tribal fleets will have caught 50% of the total coastal Dungeness crab harvest north of Point Chehalis by the 2014-2015 fishing season.

Figure 3
Washington Coastal Dungeness Crab State and Tribal Catch (pounds)
in Areas north of Point Chehalis - 1998 through 2006 Seasons

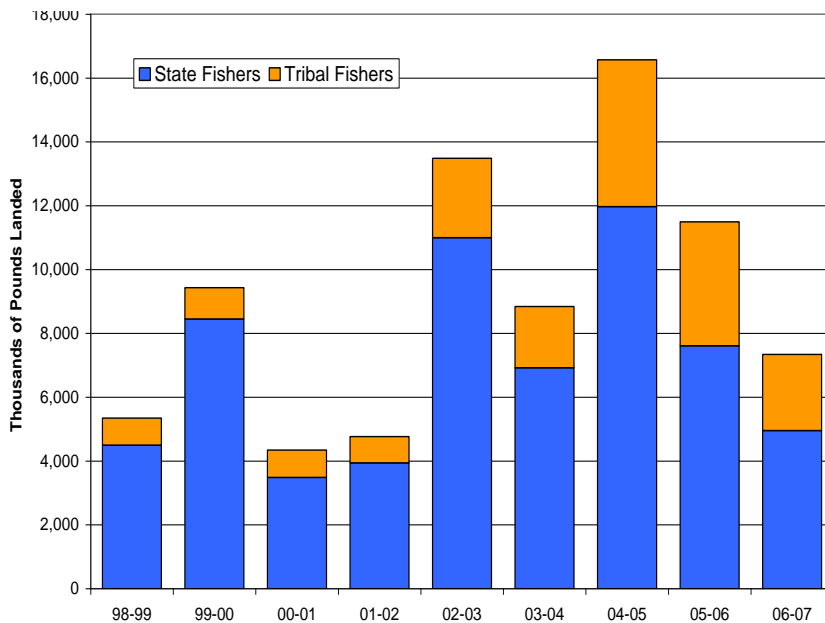
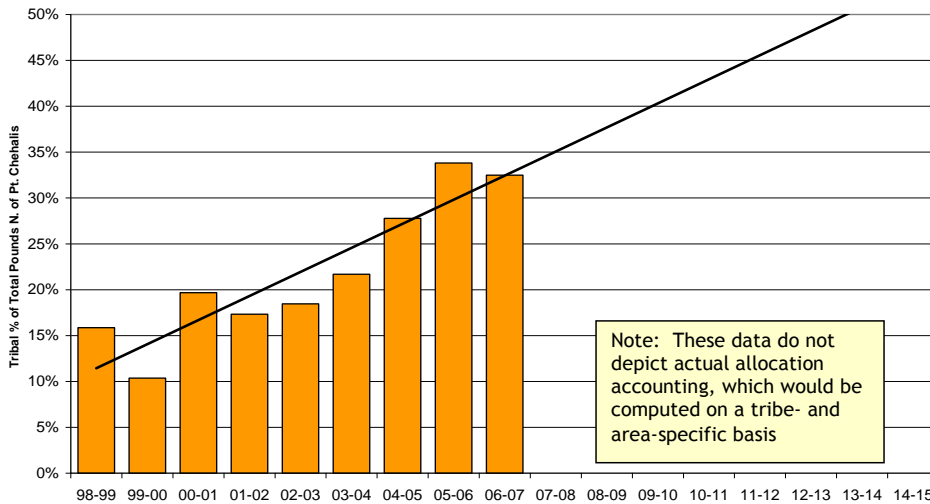


Figure 4
Tribal Percentage of Total Tribal and State Catch
North of Point Chehalis

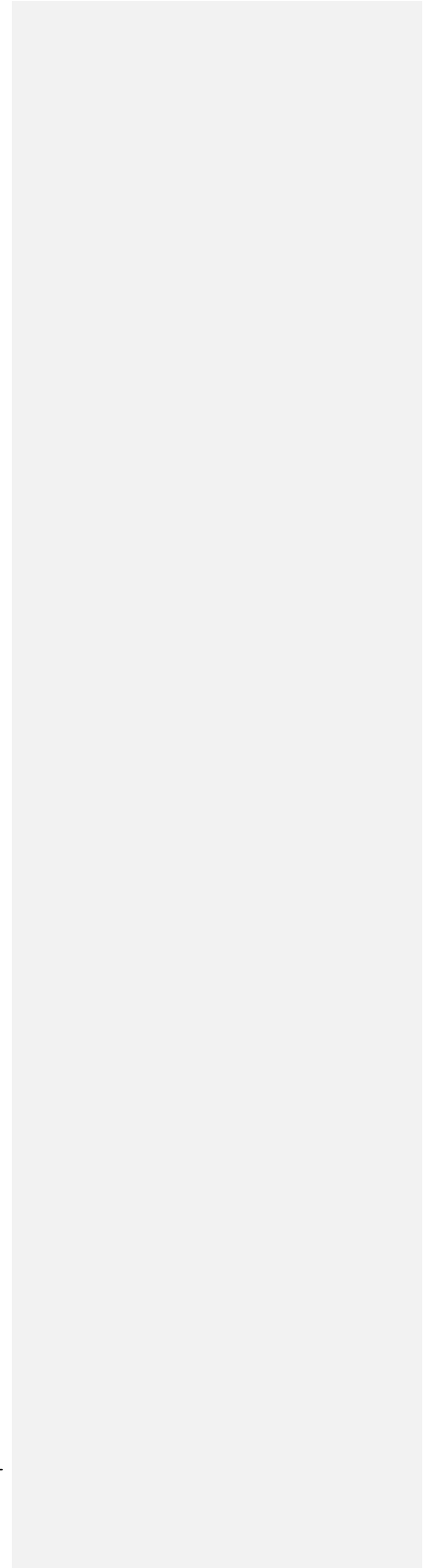


In addition to radical changes in harvest management and increased harvest by tribal fishers, Washington State fishers are also disadvantaged in the price negotiation process. Coastal State management for Washington, Oregon and California is coordinated coastwide through the Tri-State Dungeness Crab Committee under the umbrella of the Pacific States Marine Fisheries Commission. The Tri-State Committee has established protocols to set the season opening date as uniformly as possible from Pt. Arena, California to the U.S. Canadian border. A coastwide season start date is important to fishers as they negotiate prices pre-season and to avoid large shifts in effort if one area starts later than another. In the most recent seasons, the season opening date for the State fishery in Washington has been delayed to accommodate the tribal fishery head start (Table 1); so State fishers miss the most productive fishing opportunities.

Organization of this Report

Section II contains the proposed program, followed by discussions of the funding alternatives (Section III) and program elements (Section IV). Appendices include a discussion of state and federal statutory authorities and summaries of implementing rules (Appendix A); excerpts of pertinent state and federal laws and rules (Appendix B); background on buyback programs conducted in the past and an overview of funding strategies employed for those programs (Appendix C); descriptions of industry participation in development of this program (Appendix D); and a sample program application (Appendix E).

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SECTION II THE WASHINGTON COASTAL DUNGENESS CRAB FISHERY BUYBACK PROGRAM

The Program is presented assuming state-administration of the buyback using 100% federal funds, and implemented by the Washington Department of Fish and Wildlife. Alternative program components are provided in Section III should a federally administered MSRA-based program be pursued.

Program Goal

The primary goal of this fleet reduction program is to minimize differences between state and treaty tribal commercial crab fishing regulations by reducing the number of state licenses that participate in the Washington Coast commercial Dungeness crab fishery.

A reduction in the number of licenses will maintain an economically viable and sustainable fishery that is in balance with resource needs and treaty obligations and would place the state fleet in a more competitive position with its counterparts in Oregon and California.

In addition to reducing the number of licenses, the program design is intended to maintain (or not significantly disrupt) the current diversity of the fleet relative to vessel size and geographic distribution of the fleet.

At the direction of the Washington Legislature, this program must also minimize adverse impacts, such as increase in effort from displaced fishers, on the commercial crab fisheries in Oregon and California.

Eligibility Criteria

"(6) The proposed program must assume that participation by Dungeness crab-coastal license holders in the program would be entirely voluntary..." SSB 5447 (2007)

Only persons who possessed or were eligible to possess in the current license year a Washington coastal Dungeness crab license, pursuant to RCW 77.70.280, and are eligible to possess the same license in the coming license year are eligible to participate (submit bids) in this program. Participation is strictly voluntary, but submission of a bid constitutes agreement to the terms of the program.

What to Buy

"(1) ...The proposed program must provide for the purchase and permanent retirement of Dungeness crab-coastal fishery licenses." Substitute Senate Bill 5447 (2007)

Purchase, and permanently retire, Washington coastal Dungeness crab licenses. Applicants owning and wishing to sell more than one Washington coastal Dungeness crab license must submit bids separately for each license.

"(2) In addition to license purchase and retirement, the proposed program may provide for the purchase or retirement of vessels designated on Dungeness crab-coastal fishery licenses." Substitute Senate Bill 5447 (2007)

WDFW and industry agreed that purchase of vessels was unnecessary to meet the goals of the program, and would significantly reduce the number of licenses retired through this program with the estimated \$50M funding.

How Many to Buy

"(1) ...The department shall design this element of the proposed program with the goal of purchasing between eighty and one hundred Dungeness crab-coastal fishery licenses." Substitute Senate Bill 5447 (2007)

The goal is to purchase eighty Washington coastal Dungeness crab licenses. Retiring eighty licenses reduces the Washington coastal Dungeness crab fleet by 35% from 228 to 148.

Estimated Cost

Total cost for purchasing 80 Washington coastal Dungeness crab licenses has initially been estimated at \$50 million. A program administered by the State of Washington would require one additional FTE throughout the duration of program implementation and administration.

Purchase Criteria

Under state implementation, the simple "low bid" alternative is recommended by WDFW.

Applicants would submit a bid in the dollar amount for which he/she is willing to surrender their specified Washington coastal Dungeness crab fishing permit.

The department would select licenses to be purchased beginning with the lowest bid to sell, and continuing until there are insufficient funds to purchase a complete bid.

If two or more licenses are bid at the same price, and both cannot be purchased, selection will be by random draw.

Limiting Future Participation

WDFW recommends no prohibition on reentry if "low bid" is used as purchase criterion.

Application Process

77.80.050 - Rules — Administration of program.

The director shall adopt rules for the administration of the program. To assist the department in the administration of the program, the director may contract with persons not employed by the state and may enlist the aid of other state agencies.

Rules governing eligibility, bid format and content, program deadlines, funding for program administration, and purchase criteria must be adopted by the Department. What follows is a proposed process for a state-administered program.

Establish or Activate a Program Account:

The Washington Fish and Wildlife Commission shall deposit moneys granted or lent by the state or federal governments into the commercial fisheries buyback account established in RCW 77.70.450 (or other statutorily-designated account), and will likewise deposit monies collected under section RCW 77.70.460 into that same (or other specified) account.

Call for Bids:

Once funding is secured and administrative mechanics are in-place, The Director of the WDFW would send a notice of buy-back program solicitation by registered mail to all Washington coastal Dungeness crab license holders, to the address associated with the license.

An eligible person would be allowed to make only one bid per license under the program. Applications would be submitted to WDFW's licensing division on a department bid form before the stated bid deadline. Appendix E provides an example of a bid form that is being used for Washington's current Sea urchin / Sea Cucumber License Reduction Program.

Selection:

Selection of successful bids will be accomplished according to the method set forth under "purchase criteria."

Final rankings of all licenses will be available to applicants and the public upon request when all appeals have been settled.

Notification:

Persons selected based upon the purchase criteria and the available funds would be notified by the department that a license bid has been accepted via registered mail to the address provided on the bid form. An acknowledgment form sent with the acceptance letter must be signed and returned to the department within a specified number of days (suggest min. of 30) from the department's registered solicitation mailing date. Any acknowledgment received after the specified period is void and the acceptance will be withdrawn. Persons not selected will be sent a letter of notification of non-acceptance.

Appeals:

Persons who wish to appeal their ranking must appeal within a specified period of days (suggest 30) from the mailing date of the letter of acceptance/notification. Any appeal received after that period is void and the ranking will stand. Appeals may be referred to an adjudicative proceeding for resolution.

Contract:

The acceptance and acknowledgement contract indicates that the signer will exchange, for the stated dollar amount, the permit identified on the bid. The signer also agrees to all other provisions of the program.

Transaction:

The department will tender the amount of the bid upon receipt of a valid acknowledgment and upon resolution of all appeals that affect the ranking of licenses to be purchased. On the date the warrant is mailed to the mailing address of the license holder as shown in their department licensing file, the department would permanently void the license. Upon receipt of the warrant, the license holder is to return the license cards to the department.

Section III presents funding alternatives and variations to the Program that could potentially be necessary under federal-implementation. Section IV provides discussions of the many considerations involved in developing recommendations for each of the program elements.

SECTION III FUNDING ALTERNATIVES

"(3) The proposed program must explore funding alternatives that involve federal funding, state funding, funding provided by Dungeness crab-coastal license holders, low-interest loans to license holders, and combinations thereof." Substitute Senate Bill 5447 (2007)

Four alternative funding scenarios were explored in this report. Two federal programs administered under the Magnuson-Stevens Reauthorization Act (MSRA) include all federal, or combinations of federal, state, and industry funding. Also included is the preferred alternative that involves 100% federal funding through mechanisms (such as direct appropriation) other than through the MSRA; this program would be state-administered. Finally, a 100% state-funded and administered program (with or without industry contribution) is also provided as an alternative.

Funding Under MSRA

Federal capacity reduction buyback programs initiated since 2002 have all been implemented through provisions of the MSRA. As mentioned previously, the MSRA includes protocols and administrative restrictions/requirements that may or may not be acceptable to state leadership or industry participants and may not reflect the unique needs for effort reduction necessitated by treaty obligations. Nevertheless, WDFW has a responsibility to provide detail on MSRA mechanisms. Examples of potential requirements through MSRA implementation:

- MSRA would require that the program must establish a specified or target total allowable catch (TAC) which does not conform to the long term management approach for the Dungeness crab fishery
- The manner in which successful bidders are chosen appears to include a factor relating not only to the bid amount, but also to some measure of individual fishing production.

Any scenario involving federal funds would require strong and well-choreographed support from Washington Congressional representatives from the coastal districts, one (or both) Washington Senator(s), the Governor, and the commercial Washington coastal Dungeness crab industry.

The State of Washington has more administrative flexibility when a buyback program does not involve federal subsidy pursuant to the MSRA. Absent MSRA constraints, WDFW would not limit future participation in the Washington coastal Dungeness crab fishery by successful buyback participants, nor would purchase criteria for a Washington-administered program include a measure of individual fishing production.

MSRA fishery buyback provisions include:

- § 312 (a) Federal Fisheries Disaster Relief
- § 312 (b) Federal Fishing Capacity Reduction Programs
- § 312 (c) Federal Financing

- § 312 (d) Industry Financing - Federal Loan Program
- § 312 (e) Program Implementation

Excerpts from MSRA and other relevant statutes are presented in Appendices A and B, and the history of federal fishery buybacks is provided in Appendix C.

Proposed Funding Alternatives

- 1) 100% federal direct appropriation, independent of MSRA; State-administered. [preferred]
- 2) MSRA (b) & (c) [capacity reduction]: 100% federal; federally-administered.
- 3) MSRA (b), (c), (d) [federal loan program]: All federal, or partial federal/partial state, with industry contribution (e.g., 75% federal; 12.5% state; 12.5% industry); federally-administered.
- 4) State-only: State appropriation, with or without industry contribution; state-administered.

Short discussions for each scenario are presented below.

1) 100% direct federal appropriation administered by State of Washington [preferred].

Funds would be directly appropriated, and transferred to Washington to administer. The implementation plan for this alternative is provided in Section II.

2) Magnuson-Stevens Reauthorization Act Section 312 (b) and (c) [capacity-reduction] buyback; 100% Federal.

This alternative would seek federal appropriation initiated by a request from the Governor to the Secretary of Commerce. Unlike other buyback programs recently implemented in Washington State, a section 312(b) capacity-reduction buyback does not require matching funds. This approach would be federally administered through MSRA, with program components similar to those outlined later in this section.

3) MSRA Section 312 (b), (c) and (d) [federal loan program] buyback that includes industry contribution.

This alternative involves federal appropriated funds, could include a state-appropriated component, and provides an industry contribution (e.g., 75% federal; 12.5% state; 12.5% industry). The industry contribution rate must be feasible for the post-buyback fleet to pay back over a 20 to 30 year period. This alternative would be federally administered under MSRA. Alternatives for the proportion of industry contribution are presented in Table 2.

Table 2
Sample Alternative Industry Contribution Rates and Annual Payments for a
20-year Federal Buyback Program of \$50 million at 6.35% Interest

Proportion Industry Funded ⁵	Industry Loan Amount	Annual Industry Payments Required ⁶
25%	\$12,500,000	\$1,120,975
20%	\$10,000,000	\$896,780
15%	\$7,500,000	\$672,585
10%	\$5,000,000	\$448,390
5%	\$2,500,000	\$224,195
2%	\$1,000,000	\$89,678

MSRA subsection (d) requirements with respect to industry contributions (in the form of a federal loan paid back by industry) include holding a referendum of the coastal commercial crab industry, with a majority voting in favor of industry payments; annual payments over 20 (or perhaps 30) years; an interest rate of 2% above Federal Treasury cost of money; and payments not to exceed 5% of annual ex-vessel value of all catch in the fishery. Industry must develop a business plan that demonstrates the ability of the post-buyback fleet to pay back the loan while maintaining economic viability. A 100% industry-funded program for the Washington coastal Dungeness crab fleet, either federal- or state-administered, could not be financed by income from the industry and still meet the management objectives of the program (i.e. remain economically viable).

4) State or non-Magnuson-Stevens Reauthorization Act federal appropriation, administered by the State of Washington, with or without an Industry contribution.

Under this proposed scenario, funding could come from federal appropriations independent of implementation through the MSRA, or from state appropriations. Funding could possibly include industry contributions. Implementation would be state-administered, as presented in Section II.

Program Variations for Federally-Administered Programs

Implementation of the Washington coastal Dungeness crab buyback program through a federally administered process would differ significantly from the state program outlined in Section II. Although the program development process is detailed and rigorous, some flexibility exists within federal buyback program guidelines, and

⁵ Assumes a total Program cost of \$50,000,000.
⁶ \$50M loan plus interest amortized over payback period.

implementation details would be negotiated between industry and NOAA. The elements presented below are recommended by WDFW as the most likely program components under federal administration.

Purchase Criteria Under MSRA

A reverse auction buyback is the method most recently used in the federal West Coast Groundfish Fishery buyback program. A reverse auction is one in which the successful bidders rank the lowest, rather than the highest, during the ranking process. The score for each bid is computed by dividing the bid for a particular license by the average annual gross income for that license.

The following steps are involved to implement this approach:

- Applicants submit a bid in the dollar amount for which he/she is willing to surrender their specified Washington coastal Dungeness crab fishing permit.
- Washington coastal Dungeness crab catch history (average gross income) is determined by averaging annual ex-vessel value for each license over the top three of the four recent years (03-04, 04-05, 05-06, 06-07 seasons).
- The department selects licenses to be purchased beginning with the lowest score, and continuing until there are insufficient funds to purchase a complete bid. If two or more licenses that are bid receive the same score, selection will be by random draw.
- This results in the purchase of the highest producers who are asking the least amounts for the purchase of their license(s).

Limiting Future Participation

Under the federally administered scenario that utilizes funding criteria based on individual fisher's production, prohibition on future participation in the Washington coastal Dungeness crab fishery might be required for some specified period of time. Prohibition of future participation, or lack thereof, would be an element of discussion between industry and NOAA as NOAA develops the program implementation plan.

Application Process

312 (e) IMPLEMENTATION PLAN.— (2) PROGRAM REGULATIONS.— The Secretary shall implement each program under this section by promulgating regulations that, together with the framework regulations, establish each program and control its implementation.

Appropriations and loans made for the purposes of a fleet reduction program under the MSRA are governed by a detailed set of implementing rules⁷. These rules, administered by NMFS, provide an extensive checklist of components (e.g., an industry-developed business plan) and analyses that are required in order to

⁷ Direct appropriations not made in association with MSRA authority may not be subject to these rules, and may even be implemented by States as was the Puget Sound Salmon Economic Assistance Program. However, no recent (2004-present) buybacks have been implemented independently from the MSRA rules.

engage NMFS in developing and implementing a buyback program.

Many steps are involved in the implementation of fleet-reduction, and many more steps are necessary when the program is wholly or partially industry-funded through federally-guaranteed loans. They are accomplished chronologically, as follows:

1. A request for a buyback program is submitted by the Governor to the Secretary of Commerce;
2. The program is approved by the Secretary of Commerce;
3. The loan-guarantee is funded by congress;
4. NMFS develops, with industry, the implementation plan for this particular buyback program, based on industry's business plan;
5. NMFS publishes in the Federal Register the final regulations expressing the implementation plan;
6. NMFS publishes in the Federal Register a notification listing all qualified bidders and all qualified voters, and an invitation to bid, along with a bidding form and terms of capacity reduction agreement;
7. NMFS conducts the bid solicitation:
 - (a) Issue detailed bidding guidance to each qualifying bidder;
 - (b) Send a specific buyback program invitation to bid and a bidding form and terms of capacity reduction agreement to each qualifying bidder;
 - (c) Receive bids during the period in which bidding remains open;
 - (d) Tally the resulting bids; Accept or reject the bids based on criteria in the implementation plan;
8. NMFS polls qualified voters regarding their support (or lack thereof) for the loan payback provisions - this is the "referendum"
 - (a) Send a referendum ballot to each qualifying voter;
 - (b) Receive referendum votes during the period in which voting remains open;
 - (c) Tally the resulting votes;
 - (d) Notify referendum voters of the referendum's results.
9. In the instance of a successful referendum, NMFS:
 - (a) Notifies accepted bidders that their bids were accepted and that the resulting reduction contracts are unconditional,
 - (b) Publishes in the Federal Register a reduction payment tender notification,
 - (c) Tenders reduction payments,
 - (d) Disburses reduction payments in accordance with accepted bidders written payment instructions.
10. NMFS accomplishes the necessary statutory buyback program revocations and restrictions, and
11. NMFS administers the payment and collection of reduction loan repayment fees.

In summary, implementation of a program that involves federal funding or loan authorization under MSRA is wholly administered by NMFS under process guidelines that may have some flexibility to deviate from the elements outlined above.

SECTION IV DISCUSSION OF PROGRAM ELEMENTS

WDFW and industry developed a wide range of alternatives for each program component before WDFW made the decision on the recommendations provided in Sections II and III. The following passages capture discussions and conclusions drawn regarding many of the program elements.

Basis for Buyback

What is the goal for the program - the impetus and/or intended outcome?

For the Washington coastal Dungeness crab buyback, the impetus for the program is the desire to minimize the differences between state and treaty tribal commercial crab fishing regulations, thereby reducing current restrictions and reposition the State fleet in the marketplace. Secondarily, managers wish to maintain the current fleet character by maintaining the current vessel length- and geographic- distributions of the fleet. The latter objective harkens back to the Even Flow Plan,⁸ in which managers articulate the intent to protect the local economies of coastal areas dependent on the Washington coastal Dungeness crab fishery.

What to Buy

Buyback programs can be designed to purchase licenses only, or to purchase licenses plus the vessels designated on those licenses. There are also considerations regarding which licenses to purchase. These alternatives affect not only the cost of the program, but also can serve to limit future fishery participation, depending upon the option chosen.

Alternatives Considered

License options include:

- purchase Washington coastal Dungeness crab licenses only,
- purchase all Washington commercial licenses (all gear, all species),
- purchase All coastal (Wa, Or, Ca) Dungeness crab licenses,
- purchase All coastal (Wa, Or, Ca) commercial fishing licenses (all gear, all species), and
- purchase vessels.

Input from industry, and the Department's cost analyses indicate that this buyback program should focus on using available funds to maximize the number of licenses that could be purchased rather than using funds to purchase vessels. Purchasing vessels greatly increases the cost of the program, or greatly reduces the number of

⁸ *Coastal Dungeness Crab Even Flow Harvest Management Plan*. WDFW, 1999, 2001. Available at: <http://wdfw.wa.gov/fish/shelfish/crabreg/comcrab/coast/evenflow2001.pdf>

licenses that can be purchased with a given amount of funds. Maintenance and disposal of the vessels purchased further increases the cost.

Analysis of License-Only Versus License-Plus-Vessel

We examined the relative cost difference of purchasing license-only versus purchasing both the license and the vessel by looking at current advertised “market price” for various categories of Washington and Oregon licenses (for which there are pot limits).

Current market prices⁹ for a Washington permit range from \$55,000 for a permit with a 300-pot limit and 42-foot (small) vessel designation to \$140,000 for 300-pot permit with a 58-foot (large) vessel designation; an Oregon 500-pot permit on a 58-foot vessel was listed at \$185,000. Prices that include both a permit and a vessel range from \$190,000 for a 34-foot vessel with a 500-pot Oregon crab permit¹⁰ to \$415,000 for a 58-foot vessel with 300-pot Oregon crab permit¹¹. Based on this limited information, a buyback program designed to purchase both the commercial crab license and the vessel could cost over four times the cost of a license-only program. In addition, caretaking and disposal of vessels purchased add costs to the program.

Multiple-Washington-Permit Holders

A few Washington coastal Dungeness crab license holders own more than one Washington coastal crab license. This raised the question whether to require applicants to surrender all their Washington coastal Dungeness crab licenses in order to participate in the program.

In order to assess the relative impact of this component, WDFW estimated the number of Washington coastal Dungeness crab license holders that own more than one license (Table 3). Although it is impossible to associate all licenses with individuals (because they are owned by corporations or partnerships, or by someone other than the primary operator), out of 228 Washington coastal Dungeness crab licenses, only 11 can be positively identified as duplicate licenses owned by a single individual or entity. Based on this information, it appears that the relative impact of multiple-license ownership on the buyback program or the post-buyback fishery is low. Therefore, WDFW does not recommend a requirement that successful program participants sell all their Washington coastal Dungeness crab licenses.

Table 3
Ownership of Multiple Washington Coastal Dungeness Crab Licenses

χ equals ...	1	2	3	4+
Number of License Holders Holding No More Than χ Washington licenses	202	8	2	1

⁹ September 15, 2008 Dock Street Brokers web-site: www.dockstreetbrokers.com

¹⁰ August 17, 2007 Dock Street Brokers web-site, also included Oregon salmon troll and gillnet permits.

¹¹ August 17, 2007 Dock Street Brokers web-site, also included Oregon salmon troll permit

How many to buy

This program is designed to purchase eighty Washington coastal Dungeness crab licenses. More or fewer licenses could be purchased depending on bid prices and whether Oregon/California permits are also purchased. These figures are based on an analysis of recent past fisheries data (see below) that estimates the state fleet size needed to harvest 50% of the total catch of coastal Dungeness crab in areas also open to treaty Indian fishers (assuming relatively similar treaty and state fishing seasons). Analysis also indicates that in order to achieve a reduction in the fleet size that participates in the area North of Point Chehalis by 50 vessels it will require a total purchase of 80 permits.

Analysis of Optimal Fleet Size

Goal: Reduce the state harvest capacity equal to the states treaty Indian harvest-sharing obligation, thereby achieving a stable and economically viable Washington coastal Dungeness crab fishery.

Table 4 examines past state and tribal harvest and effort by the state fleet in the area north of Point Chehalis.

Table 4
Coastal Dungeness Crab Catch North of Point Chehalis (not including area 60B)

Season	Vessels	State Pounds	Tribal Pounds	Total	State %	50%	Optimal Vessels	Reduction (vessels) to meet 50%
98-99	137	4,412,170	835,959	5,248,129	84%	2,624,065	81	56
99-00	122	8,358,388	964,535	9,322,923	90%	4,661,462	68	54
00-01	148	3,309,350	844,430	4,153,780	80%	2,076,890	93	55
01-02	121	3,875,978	815,895	4,691,873	83%	2,345,937	73	48
02-03	146	10,856,064	2,470,618	13,326,682	81%	6,663,341	90	56
03-04	124	6,797,836	1,915,174	8,713,010	78%	4,356,505	79	45
04-05	146	11,749,139	4,596,452	16,345,591	72%	8,172,796	102	44
05-06	126	7,544,602	3,885,359	11,429,961	66%	5,714,981	95	31
Average	134	7,112,941	2,041,053	9,153,994	79%	4,576,997	85	49

"Vessels" represents all vessels with at least one landing north of Point Chehalis

"Optimal Vessels" is based on the relationship of the current number of vessels harvesting the current percentage of catch north of Pt. Chehalis to the number of vessels necessary to catch a similar per vessel amount of 50% the harvest North of GH

Estimated Cost

WDFW in its 2007 report "*Development Of A Buyback Program For The Washington Coastal Dungeness Crab Fishery*" estimates the cost of purchasing 80 Washington

coastal Dungeness crab licenses is about \$50 million.¹² This estimate is based on a 2006 survey of Washington coastal Dungeness crab license holders that queried interest in a buyback program, including a likely bid amount each license holder would submit.

Neutral Impact to Oregon and California Fisheries

Legislative direction for development of this program included the provision that the program be designed in such a manner as to have a neutral impact on the Oregon and California coastal Dungeness crab fisheries.

"(4)(b) The proposed program must include and clearly set forth any conditions that will be placed on Dungeness crab-coastal license holders participating in the program." Substitute Senate Bill 5447 (2007)

"(5) The proposed program must be designed to have a neutral impact on Dungeness crab harvests in the state and federal waters off the coasts of Oregon and California." Substitute Senate Bill 5447 (2007)

Federal buyback program rules also require demonstration that effort displaced from this fishery through buyback will not transfer to other fisheries - especially to non-limited-entry fisheries. This is also an issue when deciding whether to purchase vessels in the buyback - federal rules require vessels being purchased in a buyback program to be scrapped or must surrender all fishing endorsements from the vessel's title.

Assessing Effort Transfer

Some Washington coastal crab license owners also own Oregon and/or California crab permits. There are a total of 1,284 coastal crab licenses (Table 5). Of those, 228 are Washington licenses, 433 are Oregon licenses, and 623 are California licenses¹³. Seventy Oregon license holders and ten California license holders live in Washington. People living out of state hold a total of 27 Washington coastal Dungeness crab licenses.

¹² *Development Of A Buyback Program For The Washington Coastal Dungeness Crab Fishery*, January 2007, Page 25. Available upon request. Figures not adjusted for inflation.

¹³ License ownership information is based on license ownership during the 2005 season.

**Table 5
Ownership of Coastal Dungeness Crab Licenses
by Residence and License State**

	Washington License Holder	Oregon License Holder	California License Holder	All Licenses
Live in Washington	201	70	10	281
Live in Oregon	17	334	60	411
Live in California	7	22	550	578
Live Elsewhere	3	7	3	13
All Licenses	228	433	623	1,284

Of 228 Washington-license holders, 65 license holders also possess Oregon and/or California licenses (Table 6).

**Table 6
Washington License Holders Who Also Own Oregon and/or California Permits - by Permit Origin**

Washington license holders also possessing ...	
... an Oregon license	56
... a California license	4
... BOTH Oregon and California licenses	5

Each of the three states has a license limited entry program prescribed in state statute. However, no current rule prohibits someone from purchasing a coastal crab license from a willing seller in any state (assuming other qualifications are met). Washington and Oregon also have programs that limit the number of pots that can be used offshore of their respective states.

Discussion

- Even in the absence of a buyback program, we know that effort transfers from Washington to Oregon and California are occurring as a result of increasing restrictions being placed on Washington license holders in order to meet state-tribal harvest management obligations in Washington. For example, season start dates in Washington lag significantly behind those in Oregon. If a buyback program is not approved and implemented, the Washington fleet will be further de-stabilized economically, resulting in an increasing effort shift from Washington to Oregon and California, where fewer restrictions are imposed on the fishery.

- If there were a significant number of Washington + Oregon/California license holders that were chosen for the buyback program, and license holders were required to sell all of their crab licenses as part of the program, the total number of Washington licenses that could be purchased would decrease. The fewer the number of Washington licenses that are purchased the greater the potential effort transfer from Washington to Oregon or California.
- If fewer Washington licenses are purchased, the state will be put in the position of imposing additional restrictions on the state fishery in order to meet the treaty Indian harvest sharing obligations. This will further exacerbate the current effort transfer from Washington to Oregon or California.
- The greater number of Washington licenses that are purchased through the implementation of the program, the healthier the Washington fishery will be resulting in fewer Washington licensed fishers transferring their fishing operations to Oregon or California.

Recommended Approach

Washington can't legislate who can purchase an Oregon/California license, and it can't prohibit individuals who own permits issued by another state from using those permits. In addition, requiring a buyback participant to sell their Oregon and California licenses will reduce the number of Washington licenses that can be purchased thereby reducing the benefits to the Washington fishery and increasing the potential effort transfer to Oregon/California fisheries. In conclusion, the analysis demonstrates that the maximum benefits in achieving the goals of the program and neutralizing impacts on Oregon and California is to use the funds to purchase the maximum number of Washington state licenses.

Purchase Criteria – Ranking Bids

(4)(a) The department must include in the proposed program those elements necessary for the administration of the buyback, including the mechanisms by which Dungeness crab-coastal license holders may apply to participate in the program if it is authorized and by which the department will select licenses or vessels for purchase from among the applicants.

Alternatives Considered

- All licenses considered equally based on their bid amount - low bids considered first.
- Bid to production ratio (reverse bid) - low scores considered first
- Maintain current vessel length distribution proportions in each of three categories: 0-39 feet, 40-59 feet, over 60 feet.
- Maintain current ratio of 300 and 500 pot licenses
- Weighted bids- balance differences in length and pot limits

Maintaining Vessel-length Distribution of Fleet:

One objective of the program is to reduce licenses while keeping the relative proportions of vessel length classes constant. The current and desired future ratio for vessel length categories is shown on Table 7.

Although maintaining fleet character by maintaining the current vessel-length ratios is one objective of the program, results from the 2006 survey showed that neither the reverse-bid nor low-bid criteria (Tables 9, 10, 11) impacted fleet size distribution to the point that further manipulation of the bid process was necessary.

**Table 7
Fleet Proportion by Vessel length Category**

Size Category	Proportion of the Fleet
0-39 feet	21%
40-59 feet	61%
60 feet and over	17%

Low bid:

Bids would be ranked lowest to highest. The lowest bids would be selected for purchase first without consideration for catch history, vessel length, or pot limit associated with the license. The low bid criteria could be modified to include a maximum amount for bids submitted for licenses with little to no recent catch history and or to maintain the current fleet diversity in terms of vessel length and or pot limit.

Selecting purchases based only on low-bid could bias purchases toward small vessels, meaning there could be a disproportionate number of small-vessel licenses purchased, changing the post-buyback fleet’s characteristics. However, analysis using 2006 survey responses indicates the differences in outcomes between vessel-size-weighted and non-weighted bids did not justify the complexity introduced by the weighting scheme. WDFW recommends the low-bid alternative for non-federal buybacks because of its simplicity and this method’s ability to maximize the number of licenses purchased.

Reverse bid:

The purpose of this methodology is to purchase licenses with recent high catch history that are offered at the best price, thus removing the highest-producing fishers. In order to assess bid amount vs. catch history, a ratio is calculated using the bid amount and the recent catch history associated with the license.

Catch history is based on the average annual ex-vessel value of landings in the top three out of four seasons, starting with the 2003-04 season through the 2006-07 season. The bid amount is divided by the catch history, yielding the bid ratio. The ratios are ranked in ascending order and the bids associated with the lowest ratio are purchased first.

For example, the ratio for a bid of \$75,000 submitted for a license with landings of 25,000 pounds would be 3.00 ($75,000/25,000$). A bid of \$75,000 for a license with landings of 50,000 pounds would be 1.50 ($75,000/50,000$). In this case, two bids of the same amount rank differently, and the bid associated with the higher catch history is ranked lower than the bid with the lower catch history and therefore selected for purchase first.

The reverse bid process places a higher value on bids for licenses with high recent catch history. The result of purchasing bids ranked in this fashion is that remaining fishery participants do not replace the catch history removed from the fleet.

Analysis of Potential Fleet Reduction by Bid Option

Coastal crab fishers were surveyed in 2006 to determine their potential interest in various buyback options. Data from the survey was used to analyze the purchase criteria options described above. The options were evaluated according to the lowest 80 bids resulting after different purchase criteria were applied. The data are summarized by cost and distribution of the resulting fleet by vessel length and pot limit categories.

Table 8
Current Fleet Distribution by Vessel Length

Length	2005-2006 Fleet		
	300 Pots	500 Pots	Total
0-39	39	13	52
40-59	32	106	138
60+	4	34	38
Total	75	153	228

Table 9
Licenses, Cost, and Distribution by Length and Pot Limit Category
of Licenses Removed by Purchase Criteria (80 licenses) (using 2006 survey results)

Length	Low Bid			Reverse Bid			Reverse Bid by length		
	300	500	Total	300	500	Total	300	500	Total
0-39	19	5	24	18	5	23	18	5	23
40-59	8	35	43	10	34	44	10	35	45
60+	2	11	13	1	12	13	1	11	12
Total	29	51	80	29	51	80	29	51	80
Cost	\$46,930,000			\$65,080,000			\$60,680,000		

Table 10
Resulting Fleet Composition After 80 Licenses Are Removed (using 2006 survey results)

Length	Low Bid			Reverse Bid			Reverse Bid by length		
	300	500	Total	300	500	Total	300	500	Total
0-39	20	8	28	21	8	29	21	8	29
40-59	24	71	95	22	72	94	22	71	93
60+	2	23	25	3	22	25	3	23	26
Total	46	102	148	46	102	148	46	102	148
Total	148			148			148		

Limiting Future Participation

(b) The proposed program must include and clearly set forth any conditions that will be placed on Dungeness crab-coastal license holders participating in the program." Substitute Senate Bill 5447 (2007)

Alternatives considered

- No restrictions to future participation in Washington coastal Dungeness crab fishery
- Long-term [indefinite] restriction to future participation Washington coastal Dungeness crab fishery
- Short-term [ten year?] restriction to future participation Washington coastal Dungeness crab fishery
- Restrict future participation through monitoring license ownership. Complete monitoring would include alternate operator/crew licenses.

Since this is a limited-entry fishery, the post-buyback fleet size remains consistent at the reduced fleet level. Staff and industry agree that license holders selling their licenses in this program are not restricted from re-entering the Washington coastal Dungeness crab fishery (through purchase of another Washington coastal Dungeness crab fishery license), nor must owners of multiple Washington coastal Dungeness crab licenses sell all those licenses if chosen for the buyback. Note that re-entry into the Washington coastal Dungeness crab fishery might be prohibited if a federally administered program alternative is chosen.

The choice for limiting future participation is mutually dependent upon the choice among alternatives for purchase criteria and the avenue chosen for administration of the program.

In general, when purchase criteria are primarily directed at removing large producers (fishers having consistently high catch), prohibiting re-entry should be considered. This is because it will take a significant investment to purchase top producers (e.g., any criteria that include individual production as a scoring factor), and that investment would be wasted if those fishers were able to instantly return to the fishery. Also, few licenses would be purchased with a fixed amount of funds under this scenario.

Conversely, if purchase criteria were primarily directed at purchasing the maximum number of licenses (e.g., low bid), then re-entry to the fishery would not be inhibited. The rationale is that a large number of licenses would be purchased with the available buyback funds under this scenario, significantly reducing the overall fleet size for this fishery. In this case, re-entry to the fishery by an individual (by purchasing a post-reduction license) is less likely to impact overall fleet production.

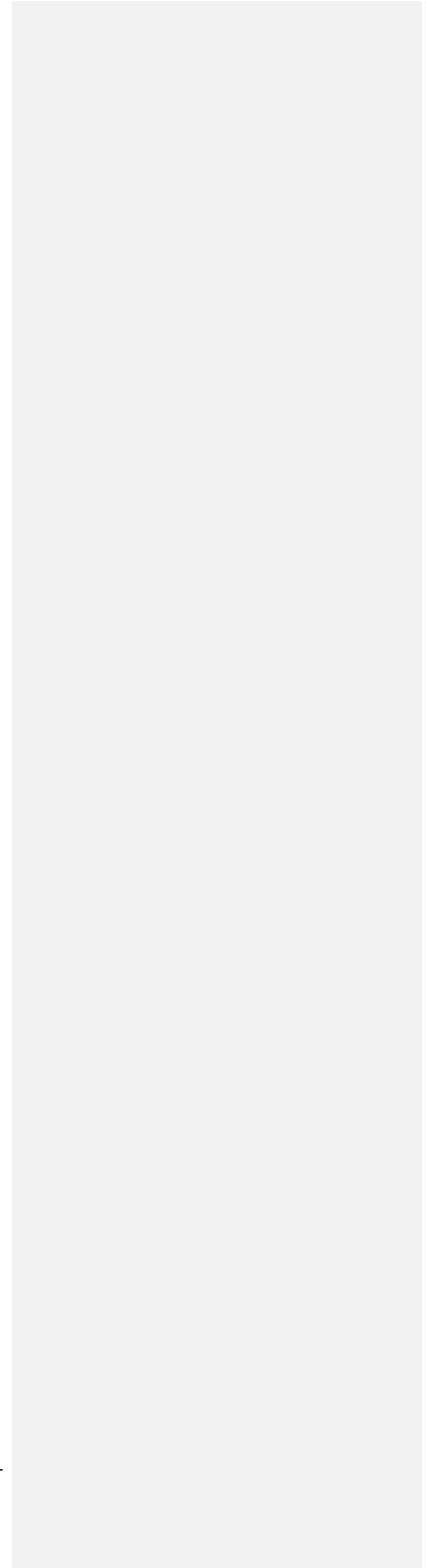
A program implemented under MSRA requires that, when purchase criteria are not based on market value, purchase criteria include a factor relating not only the bid

amount, but also to some measure of individual fishing production.¹⁴ So, if the MSRA path is chosen, funding criteria might include some measure of individual fishing production.

A state administered program does not require any limitations on future participation by individuals who sell their licenses pursuant to the program. The fishing history associated with any license sold in the buyback program will be permanently extinguished and will not be considered in any future limited entry program.

¹⁴ MSRA Section 312 (e) (5) REDUCTION AUCTIONS.—Each program not involving fair market assessment shall involve a reduction auction that scores the reduction price of each bid offer by the data relevant to each bidder under an appropriate fisheries productivity factor. If the Secretary accepts bids, the Secretary shall accept responsive bids in the rank order of their bid scores, starting with the bid whose reduction price is the lowest percentage of the productivity factor, and successively accepting each additional responsive bid in rank order until either there are no more responsive bids or acceptance of the next bid would cause the total value of bids accepted to exceed the amount of funds available for the program.

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SECTION V CONCLUSION

There are many components involved in sustainable fisheries. In 1988 the Food and Agriculture Organization (FAO) Council defined sustainable fisheries development as:

"... management and conservation of the natural resource base ... in such a manner as to ensure the attainment and continued satisfaction of human needs for present and future generations. Such development conserves land, water, plant genetic resources, is environmentally non-degrading, technologically appropriate, economically viable and socially acceptable."¹⁵

Goals for management of the Washington coastal Dungeness crab fishery are to maintain an economically viable and sustainable fishery that is consistent with resource conservation and treaty Indian harvest sharing obligations, supports individual fishers as well as coastal communities, and provides a steady and reliable flow of high-quality product.

A series of complex regulatory reforms has been implemented to further these goals, including license limitation, pot limits and vessel size restrictions, as well as fishing area restrictions designed to meet treaty Indian harvest sharing obligations.

A license buyback - capacity reduction - program is the next logical step toward sustainability in a fishery that is not only experiencing stresses common to fisheries worldwide, but is also stressed by conditions unique to the Pacific Northwest.

So many of Washington's buyback programs have been thrust upon us by circumstances beyond our control, and the Rafeedie Decision, and its effects on the Washington coastal Dungeness crab fishery, is no different. What is different is the recognition by industry that the fishery is changing and how, that the change is inevitable, and that fishing capacity reduction must occur in order to ensure the stability and sustainability of the fishery into the future.

The Washington coastal Dungeness crab fleet is showing great leadership and courage to develop a license buyback program from the ground up that is designed primarily to secure not only the livelihoods of fishers, but also the livelihoods of the many coastal communities who depend on the Washington coastal Dungeness crab fishery as their primary economic engine.

WDFW honors the passion and foresight of the industry participants, without whose leadership and advice this program would neither have been initiated nor completed.

¹⁵ FAO Council, 94th Session, 1988, cited at <http://www.fao.org/fishery/topic/13297>

Many thanks to attendees of the Washington coastal Dungeness crab fishery buyback ad hoc advisory committee meetings - Ray Toste, Dale Beasley, Dwight Eager, Larry Thevik, John Hanson, Chris Doumit, Darko Morvik, Rex Andersen, Joe Merino, Steve Gray, Bob Briscoe, Dick Miller, Ron Johnson, Don Jester, and others - all of whom have demonstrated their passion for the sustainability of the Washington coastal Dungeness crab fishery early and often throughout their participation in the development of this program.

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APPENDIX A STATUTORY AUTHORITIES AND ADMINISTRATIVE RULES

In this section, information is provided specific to the recommended buyback programs outlined in Sections II and III. Three components to authority and administration include:

- Authority to conduct buyback program: What bureaucratic entity has authority under what laws to conduct the buyback?;
- Authority to provide funding: What bureaucratic entity has authority under what laws to appropriate funds for buyback? To provide loans for buyback?
- Buyback Administration Rules: What are the steps needed to initiate and implement the process?

Statutes discussed in this section are presented in their entirety in Appendix B.

Washington State Buyback Authority

As the result of the U.S. v. Washington and Sohappy v. Smith federal district court decisions, Washington State in 1975 established a clear legislative record authorizing the purchase of State commercial fishing vessels, licenses, gear, and permits that are offered for sale due to economic hardship incurred through implementation of these court decisions.

"The legislature finds that the protection, welfare, and economic well-being of the commercial fishing industry is important to the people of the this state ... The public welfare requires that the state have the authority to purchase commercial fishing vessels, licenses, gear, and permits offered for sale, as appropriate, in a manner which will provide relief to the individual vessel owner, and which will effect a reduction in the amount of commercial fishing gear in use in the state so as to insure increased economic opportunity for those persons in the industry and to insure that sound scientific conservation and harvesting programs can be carried out. It is the intention of the legislature to provide relief to commercial fishermen adversely affected by the current economic situation in the state fishery and to preserve this valuable state industry and these natural resources."¹⁶

Chapter 77.80.020 Revised Code of Washington (RCW) authorizes WDFW to engage in the purchase of vessels, gear, and state commercial fishing licenses, delivery permits, and charter boat licenses as follows¹⁷:

77.80.020

Program authorized — Conditions.

(1)(a) The department may purchase commercial fishing vessels and appurtenant gear, and the current state commercial fishing licenses, delivery permits, and charter boat licenses if the license or permit holder was substantially restricted in fishing as a result of compliance with United States of America et al. v. State of Washington et al., Civil No. 9213, United States

¹⁶ Legislative finding and intent-1975 1st ex.s. c 183.

¹⁷ Passages underlines are new in 2008.

District Court for Western District of Washington, February 12, 1974, and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976).

(b) The department may also make such purchases if the license or permit holder was substantially restricted in fishing as a result of compliance with United States of America et al. v. State of Washington et al., 873 F. Supp. 1422 (W.D. Wash. 1994) as affirmed in part, reversed in part, and remanded 157 F.3d 630 (9th Cir., 1998), if the federal government provides funding to the state for the purpose of initiating these purchases.

(2) The department shall not purchase a vessel under this section without also purchasing all current Washington commercial fishing licenses and delivery permits and charter boat licenses issued to the vessel or its owner. The department may purchase current licenses and delivery permits without purchasing the vessel.

This authority is provided if the license or permit holder is substantially restricted in fishing as a result of federal court decisions known as the Boldt, Sohappy, and Rafeedie decisions. Further, it requires the purchase of all current Washington fishing licenses if a vessel is purchased. The department may purchase licenses and permits, however, without purchasing the vessel. From these authorities, it is clear that the state could appropriate funds intended for the use of buying commercial salmon fishing vessels, permits/licenses, etc. in cases where the fishery is affected by the above mentioned court decisions.

State Funding Authority

A fund has been created in the Washington treasury called the “vessel, gear, license, and permit reduction fund.”

Chapter 77.80 RCW - Program to purchase fishing vessels and licenses

77.80.060 - Vessel, gear, license, and permit reduction fund.

...There is created within the state treasury a fund to be known as the "vessel, gear, license, and permit reduction fund". This fund shall be used for purchases under RCW [77.80.020](#) and for the administration of this chapter. This fund shall be credited with federal or other funds received to carry out the purposes of this chapter and the proceeds from the sale or other disposition of property purchased under RCW [77.80.020](#).

The account established under Chapter 77.80.060 RCW receives all the (federal and/or state) monies appropriated for a buyback program, and is the account from which expenditures are made to purchase licenses (or vessels/gear).

Upon initiation of the federal Pacific Coast Groundfish buyback program in 2003, another fisheries buyback account was established to handle those funds. This is essentially a fund dedicated to collecting fees from buyers (paid by fishermen) and transferring them to the appropriate lending agency. In the case of the groundfish buyback program, expenditures from this account are used to repay moneys advanced by the federal government under the groundfish buyback program.

Authority exists, however, to utilize this account for other fleet reduction efforts, commercial fishing license buyback programs, or similar programs designed to reduce the harvest capacity in a commercial fishery.

77.70.450

Commercial fisheries buyback account.

The commercial fisheries buyback account is created in the custody of the state treasurer. All receipts from money collected by the commission under RCW 77.70.460, moneys appropriated for the purposes of this section, and other gifts, grants, or donations specifically made to the fund must be deposited into the account. Expenditures from the account may be used only for the purpose of repaying moneys advanced by the federal government under a groundfish fleet reduction program established by the federal government, or for other fleet reduction efforts, commercial fishing license buyback programs, or similar programs designed to reduce the harvest capacity in a commercial fishery. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Fees set by the federal government for this buyback program must also be adopted by rule through the authority of the Washington Fish and Wildlife Commission. The Commission currently deposits into the account established in 77.70.450 all fees collected relating to the groundfish buyback.

These statutes would need to be amended to include any new buyback programs implemented in this manner.

Federal Buyback Authority Under Magnuson-Stevens Fishery Conservation and Management Act^{18 19}

Commercial fishery buyback programs are currently implemented under the authority of the Magnuson-Stevens Reauthorization Act of 2007 (MSRA). Two mechanisms for federal funding are outlined in MSRA Section 312, "Transition To Sustainable Fisheries." Within this section of the MSA are programs to provide *Fisheries Disaster Relief* (Subsection a), and *Fishing Capacity Reduction Programs* (Subsection b). Other laws governing implementation of these programs are contained in Subsections (c) *Program Funding*, (d) *Industry Fee System*, and (e) *Implementation Plan*.

Both approaches require the Secretary to determine that the state program will not result in an expansion of the commercial fishery failure into other fisheries. In the case of the Washington coastal Dungeness crab buyback, this means the program must specifically address how expansion of effort in Oregon and California commercial crab fisheries would be avoided or minimized.

¹⁸ Available at: <http://www.nmfs.noaa.gov/sfa/magact/> and as a pdf file at: http://www.nmfs.noaa.gov/msa2005/docs/MSA_amended_msa%2020070112_FINAL.pdf

¹⁹ Codified as 16 U.S.C. 1801-1891(d)

§ 312 (a) Federal Fisheries Disaster Relief²⁰

The Secretary of the Department of Commerce can determine there is a commercial fishery failure due to a fishery resource disaster as a result of

- (A) natural causes;
- (B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment; or
- (C) undetermined causes.

Funds can be made available to assess the economic and social effects of the commercial fishery failure, for any activity that will restore the fishery or prevent a similar disaster in the future, or to assist a fishing community affected by the failure.

The Disaster Relief program (subsection a) does not allow the federal contribution to exceed 75% of the total cost of the program (i.e. requires a 25% state and/or industry match).

Before making funds available for an activity authorized under this section, the Secretary must ensure that the activity will not expand the size and scope of the commercial fishery failure, nor expand the failure into other fisheries or other geographic regions.

§ 312 (b) Federal Fishing Capacity Reduction Programs²¹

Fishing capacity reduction is an important tool to ensure the long-term health of fishing industries and the communities that are dependent upon them. Many U.S. fisheries, while limited in the sense that new permits for the fishery are not being issued, are nonetheless overcapitalized, meaning that there are too many vessels participating, or those vessels are getting more and more efficient at harvesting fish. Both of these problems make managing the fishery to conserve the resource difficult, and each has economic consequences to the fishing fleet. When too many are fishing, the income from harvesting the resource is spread among a large number of fishers. When some vessels are increasing harvest efficiency, the traditional distribution of harvest, and therefore income, in the fishery is changed. The MSRA provides a mechanism for relief from overcapitalization through the fishing capacity reduction program.

The capacity reduction program must be consistent with any State and Federal fishery management plans in place for that fishery. Funding for such programs is authorized under Section 312(c) of the MSRA and allows NMFS to obtain funding under authorization of the Saltonstall-Kennedy Act, through specific appropriations, from industry fee systems, and from public, private, or non-profit sources.

For a fishery subject to state jurisdiction (as is the case for the coastal Dungeness crab fishery), the governor of that state must request that NMFS consider such a

²⁰ Reference http://www.nmfs.noaa.gov/mb/financial_services/disaster.htm

²¹ Reference http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm

program. The program must be necessary to prevent or end overfishing, to rebuild fish stocks, or to achieve measurable and significant improvements in the management of the fishery. The program must articulate an objective to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. The request must be accompanied by the appropriate environmental, economic, and/or socioeconomic analyses that demonstrate the need for the program and the program's cost-effectiveness.

The program must prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants (so-called limited entry), and by restricting vessel upgrades and/or implementing other measures that would prevent increases in harvest capacity and/or efficiency. The program must also establish a specified or target total allowable catch, measures that trigger closure of the fishery, or other adjustments to reduce catch. Finally, the program must be cost-effective and, in the instance of a program involving an industry fee system, must be designed such that the industry is capable of repaying any debt obligation incurred. NMFS has enacted regulations²² governing the steps taken to consider and implement a buyback program under this section.

Restrictions are also placed on successful bidders under the buyback programs implemented through this section. If both the permit and vessel are purchased, the vessel must be either "(i) scrapped, or (ii) ... subjected to title restrictions (including loss of the vessel's fisheries endorsements) that permanently prohibit and effectively prevent its use in fishing in federal or state waters, or fishing on the high seas or in the waters of a foreign nation." Clearly, this limits the vessel from being used to participate in any other permitted fisheries. If only the permit is purchased, the (former) permit holder appears to be prohibited from re-entering the fishery for which the program was established.

§ 312 (c) Federal Financing

Programs created under section 312 (b) can be financed through any of the mechanisms outlined in 312(c):

- Through specific congressional appropriations,
- Appropriation of Saltonstall-Kennedy Act revenues,
- From public, private, or non-profit sources, and
- From industry fee systems authorized under the Merchant Marine Fisheries Act, Title XI Section 1111 (financing).

The first two alternatives are subject to fiscal priorities. The third alternative may have limited potential, and the fourth alternative is one that has facilitated successful implementation of federal capacity-reduction buyback programs initiated since 2002.

²² 50 CFR Chapter IV Part 600 MSRA Provisions, Subpart L - Fishing Capacity Reduction. Final rule published in the Federal Register May 18, 2000. (Available at: http://www.nmfs.noaa.gov/mb/financial_services/buyback_docs/framework_rule.pdf)

There have been three recent implementations of Section 312(c) authorizations: the 2003 Pacific Coast Groundfish Buyback, the 2006 Longline Coastal Pelagic Non-Pollock Groundfish Buyback, and the 2007 Bering Sea/Aleutian Islands Crab Buyback²³. All three of these programs utilized industry fee systems rather than direct federal or state appropriations to finance the buyback.

§ 312 (d) Industry Financing

When the Magnuson-Stevens Act was re-authorized in 1997, section 312(d) was added, which together with amendments to Title XI of the Merchant Marine Act (section 1111 and 1112) makes available an industry fee system for repaying buyback loans. The Bering Sea / Aleutian Island Crab and Longline Coastal Pelagic Non-Pollock Groundfish buybacks have been industry-driven programs backed by Federal Government loan guarantees (reduction loans) authorized under this sections.

The availability of the federal loan program through 312(d) represents one advantage of pursuing federal funds for buyback through the MSA. This allows the fishing industry to self-generate buyback programs under regulations developed by NMFS and seek either a direct federal appropriation and a loan authority, or just a loan authority.²⁴ In this case the borrower is, in effect, everyone who fishes in a post-buyback fishery. A buyback loan is repaid exclusively by a fee that fish buyers deduct from the gross proceeds from all post-buyback fishing trips.

§ 312 (e) Program Implementation

As noted in Section I, MSRA 312 (e) provides guidelines for development of implementation plans. The section requires NMFS to develop an implementation framework (now embodied in 50 CFR 600:1000-1012²⁵). This section requires that the buyback be preceded by the proposal and adoption of a buyback business plan that states the goals and criteria for the buyback. Once NMFS agrees to implement the buyback, an implementation plan and implementing regulations are developed and vetted. This process takes place over a 105-day period to accommodate public comment. Whether the referendum occurs before or during the 105-day review period is specified in the business plan.

Funding Provisions Under The Merchant Marine Act

The Secretary (of Commerce) or Administrator (Of NOAA) is authorized under section 1279f²⁶ of the Merchant Marine Act to guarantee the repayment of debt obligations incurred pursuant to a fishing capacity reduction program established under section

²³ More information about these three buyback programs, including timelines, are available at http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm

²⁴ Though this section allows for state- and privately-funded loans, there has never been a privately funded buyback.

²⁵ Available In Appendix C: 50 CFR Chapter IV Part 600 Magnuson-Stevens Reauthorization Act Provisions, Subpart L - Fishing Capacity Reduction Framework

²⁶ TITLE 46, APPENDIX (App.) > CHAPTER 27 > SUBCHAPTER XI - SUBCHAPTER XI—FEDERAL SHIP MORTGAGE INSURANCE - § 1279f. Fisheries financing and capacity reduction; available in Appendix C: Merchant Marine Act

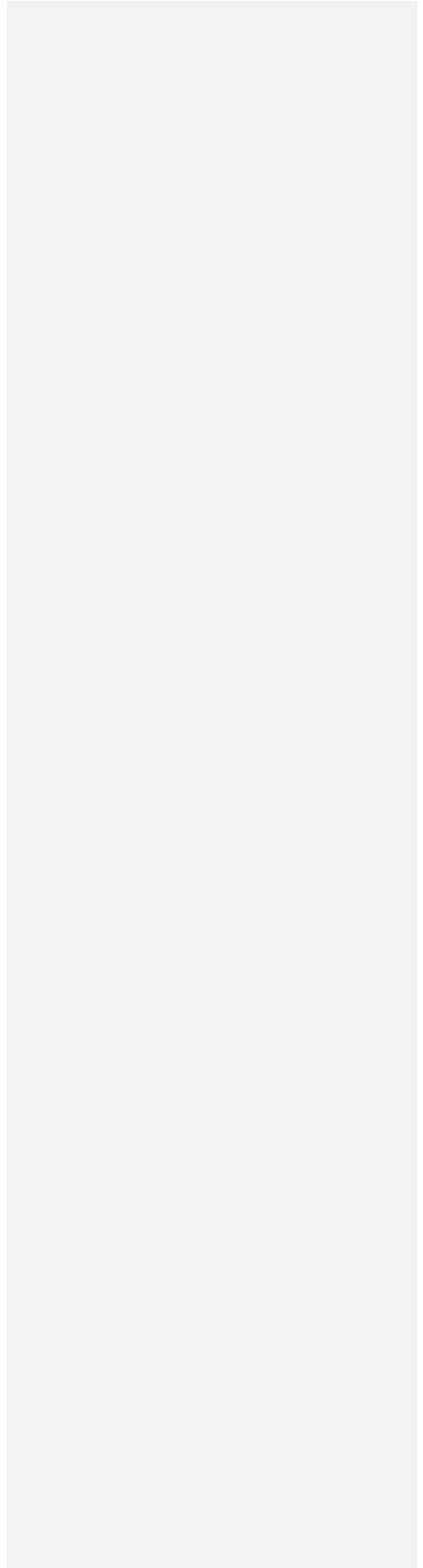
1861a of title 16 (the Magnuson-Stevens Reauthorization Act). This section also provides requirements for guaranteed obligations, establishes the fishing capacity reduction fund, provides for issuance of regulations, and defines “program” in the context of this section. Of note is the limitation of loans under fishing capacity reduction to not more than \$100 million, the limitation of the loan period to a maximum of 20 years, and establishes “fishing fees” as the exclusive payment security

The next section, § 1279g, specifies, among other things, that

“the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans.”

It is from this section of the Merchant Marine Act that the federal lending rate for fisheries capacity reduction is derived.

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APPENDIX B EXCERPTS OF PERTINENT LAWS AND RULES

Contents

- Washington Program To Purchase Fishing Vessels And Licenses
- Washington Statutes Implementing The Federal Groundfish Fleet Reduction Program:
- Magnuson-Stevens Fishery Conservation And Management Act
- [Intentionally blank]Interjurisdictional Fisheries
- Merchant Marine Act
- 50 CFR Chapter IV Part 600 Magnuson-Stevens Reauthorization Act Provisions, Subpart L - Fishing Capacity Reduction Framework

Washington Program To Purchase Fishing Vessels And Licenses

77.80.020 - Program authorized — Conditions.

(1)(a) The department may purchase commercial fishing vessels and appurtenant gear, and the current state commercial fishing licenses, delivery permits, and charter boat licenses if the license or permit holder was substantially restricted in fishing as a result of compliance with *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for Western District of Washington, February 12, 1974, and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976).

(b) The department may also make such purchases if the license or permit holder was substantially restricted in fishing as a result of compliance with *United States of America et al. v. State of Washington et al.*, 873 F. Supp. 1422 (W.D. Wash. 1994) as affirmed in part, reversed in part, and remanded 157 F.3d 630 (9th Cir., 1998), if the federal government provides funding to the state for the purpose of initiating these purchases.

(2) The department shall not purchase a vessel under this section without also purchasing all current Washington commercial fishing licenses and delivery permits and charter boat licenses issued to the vessel or its owner. The department may purchase current licenses and delivery permits without purchasing the vessel.

77.80.030 - Determination of purchase price — Maximum price.

The purchase price of a vessel and appurtenant gear shall be based on a survey conducted by a qualified marine surveyor. A license or delivery permit shall be valued separately.

The director may specify a maximum price to be paid for a vessel, gear, license, or delivery permit purchased under RCW [77.80.020](#). A license or delivery permit purchased under RCW [77.80.020](#) shall be permanently retired by the department.

77.80.040 - Disposition of vessels and gear — Prohibition against using purchased vessels for fishing purposes.

The department may arrange for the insurance, storage, and resale or other disposition of vessels and gear purchased under RCW [77.80.020](#). Vessels shall not be resold by the department to the seller or the seller's immediate family. The vessels shall not be used by any owner or operator: (1) As a commercial fishing or charter vessel in state waters; or (2) to deliver fish to a place or port in the state. The department shall require that the purchasers and other users of vessels sold by the department execute suitable instruments to insure compliance with the requirements of this section. The director may commence suit or be sued on such an instrument in a state court of record or United States district court having jurisdiction.

77.80.050 - Rules — Administration of program.

The director shall adopt rules for the administration of this chapter. To assist the department in the administration of this chapter, the director may contract with persons not employed by the state and may enlist the aid of other state agencies.

77.80.060 - Vessel, gear, license, and permit reduction fund.

The director is responsible for the administration and disbursement of all funds, goods, commodities, and services received by the state under this chapter.

There is created within the state treasury a fund to be known as the "vessel, gear, license, and permit reduction fund". This fund shall be used for purchases under RCW [77.80.020](#) and for the administration of this chapter. This fund shall be credited with federal or other funds received to carry out the purposes of this chapter and the proceeds from the sale or other disposition of property purchased under RCW [77.80.020](#).

Washington Statutes Implementing The Federal Groundfish Fleet Reduction Program:

77.70.450 - Commercial Fisheries Buyback Account.

The commercial fisheries buyback account is created in the custody of the state treasurer. All receipts from money collected by the commission under RCW [77.70.460](#), moneys appropriated for the purposes of this section, and other gifts, grants, or donations specifically made to the fund must be deposited into the account. Expenditures from the account may be used only for the purpose of repaying moneys advanced by the federal government under a groundfish fleet reduction program established by the federal government, or for other fleet reduction efforts, commercial fishing license buyback programs, or similar programs designed to reduce the harvest capacity in a commercial fishery. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

[2003 c 174 § 1.]

**77.70.460 - Collection of fee — Fee schedule — Deposit of moneys.
(Contingent expiration date.)²⁷**

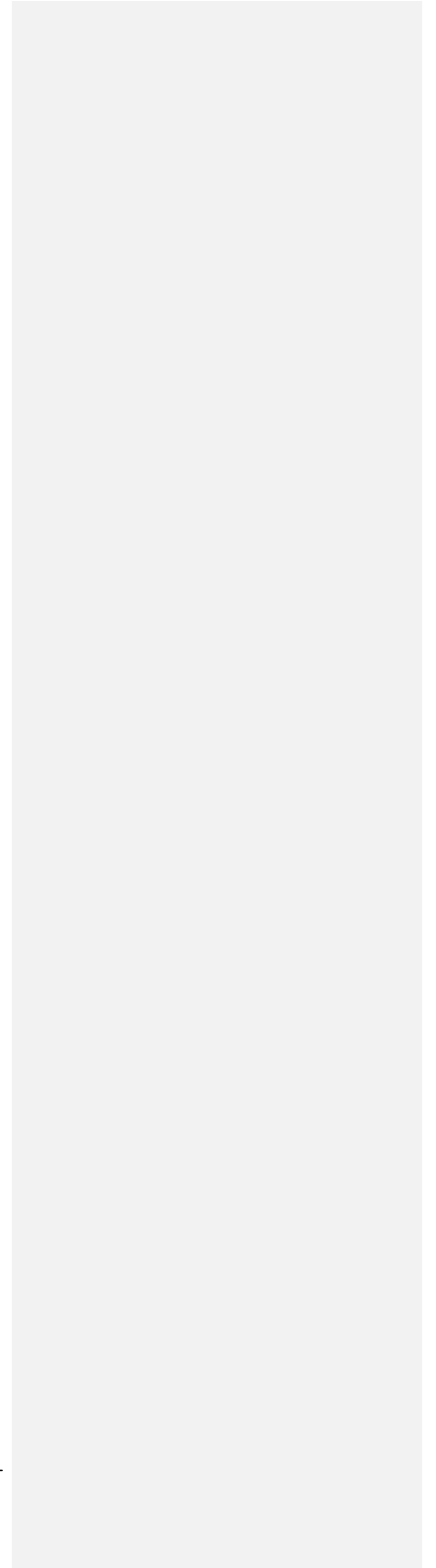
(1) The commission shall collect a fee upon all deliveries of fish or shellfish from persons holding: (a) A federal pacific groundfish limited entry permit with a trawl endorsement; (b) an ocean pink shrimp delivery license issued under RCW 77.65.390; (c) a Dungeness crab -- coastal fishery license issued under RCW [77.70.280](#); (d) a food fish delivery license issued under RCW 77.65.200; or (e) a shrimp trawl license under RCW 77.65.220, to repay the federal government for moneys advanced by the federal government under a groundfish fleet reduction program established by the federal government.

(2) The commission shall adopt a fee schedule by rule for the collection of the fee required by subsection (1) of this section. The fee schedule adopted shall limit the total amount of moneys collected through the fee to the minimum amount necessary to repay the moneys advanced by the federal government, but be sufficient to repay the debt obligation of each fishery. The fee charged to the holders of a Dungeness crab -- coastal fishery license may not exceed two percent of the total ex-vessel value of annual landings, and the fee charged to all other eligible license holders may not exceed five percent of the total ex-vessel value of annual landings. The commission may adjust the fee schedule as necessary to ensure that the funds collected are adequate to repay the debt obligation of each fishery.

(3) The commission shall deposit moneys collected under this section in the commercial fisheries buyback account created in RCW [77.70.450](#).

²⁷ Note: **Contingent expiration date -- 2003 c 174 §§ 2 and 3:** "Sections 2 and 3 of this act expire January 1, 2033, or when the federal groundfish fleet reduction program referenced in section 2 of this act is completed, whichever is sooner." [2003 c 174 § 4.]

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***Magnuson-Stevens Fishery Conservation And Management Act*²⁸**

(as amended through January 12, 2007)

[Public Law 94-265 As amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (P.L. 109-479)]

Excerpt: SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES 16 U.S.C. 1861a

(a) FISHERIES DISASTER RELIEF.—

- (1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—
 - (A) natural causes;
 - (B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment; or
 - (C) undetermined causes.
- (2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.
- (3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.
- (4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 2007 through 2013.

(b) FISHING CAPACITY REDUCTION PROGRAM.—

- (1) The Secretary, at the request of ... the Governor of a State for fisheries under State authority, or a majority of permit holders in the fishery, may conduct a voluntary fishing capacity reduction program ...if the Secretary determines that the program—
 - (A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;
 - (B) is consistent with the ... State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan—

²⁸ Available online at: <http://www.nmfs.noaa.gov/sfa/magact/mag3a.html#s312> and http://www.law.cornell.edu/uscode/html/uscode16/usc_sec_16_00001861---a000-.html and http://www.nmfs.noaa.gov/msa2005/docs/MSA_amended_msa%20_20070112_FINAL.pdf

- (i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, practicable restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and
 - (ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and
 - (C) is cost-effective and, in the instance of a program involving an industry fee system, prospectively capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936.
- (2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay—
- (A) the owner of a fishing vessel, if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the vessel owner and permit holder relinquish any claim associated with the vessel or permit that could qualify such owner or holder for any present or future limited access system permit in the fishery for which the program is established or in any other fishery and such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions (including loss of the vessel's fisheries endorsement) that permanently prohibit and effectively prevent its use in fishing in federal or state waters, or fishing on the high seas or in the waters of a foreign nation; or
 - (B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.
- (3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.
- (4) The harvester proponents of each program and the Secretary shall consult, as appropriate and practicable, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.
- (5) PAYMENT CONDITION.—The Secretary may not make a payment under paragraph (2) with respect to a vessel that will not be scrapped unless the Secretary certifies that the vessel will not be used for fishing in the waters of a foreign nation or fishing on the high seas.
- (6) Report.—
- (A) In General.—Subject to the availability of funds, the Secretary shall, within 12 months after the date of the enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 submit to the Congress a report—
 - (i) identifying and describing the 20 fisheries in United States waters with the most severe examples of excess harvesting capacity in the fisheries, based on value of each fishery and the amount of excess harvesting capacity as determined by the Secretary;

- (ii) recommending measures for reducing such excess harvesting capacity, including the retirement of any latent fishing permits that could contribute to further excess harvesting capacity in those fisheries; and
 - (iii) potential sources of funding for such measures.
- (B) BASIS FOR RECOMMENDATIONS.—The Secretary shall base the recommendations made with respect to a fishery on—
- (i) the most cost effective means of achieving voluntary reduction in capacity for the fishery using the potential for industry financing; and the waters of a foreign nation, or on the high seas.

(c) PROGRAM FUNDING.—

- (1) The program may be funded by any combination of amounts—
 - (A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A); the Saltonstall-Kennedy Act);
 - (B) appropriated for the purposes of this section;
 - (C) provided by an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or
 - (D) provided from any State or other public sources or private or non-profit organizations.
- (2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction fund established under section 1111 of title XI of the Merchant Marine Act, 1936.

(d) INDUSTRY FEE SYSTEM.—

- (1) (A) If an industry fee system is necessary to fund the program, the Secretary may conduct a referendum on such system. Prior to the referendum, the Secretary shall—
 - (i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and
 - (ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.
- (B) The industry fee system shall be considered approved if the referendum votes which [sic] are cast in favor of the proposed system constitute at least a majority of the permit holders in the fishery, or 50 percent of the permitted allocation of the fishery, who participated in the fishery.
- (2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1111 of title XI of the Merchant Marine Act, 1936. The fees for a program established under this section shall—
 - (A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;
 - (B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

- (C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish, unless the Secretary determines that such fees should be collected from the seller; and
- (D) be in effect only until such time as the debt obligation has been fully paid.

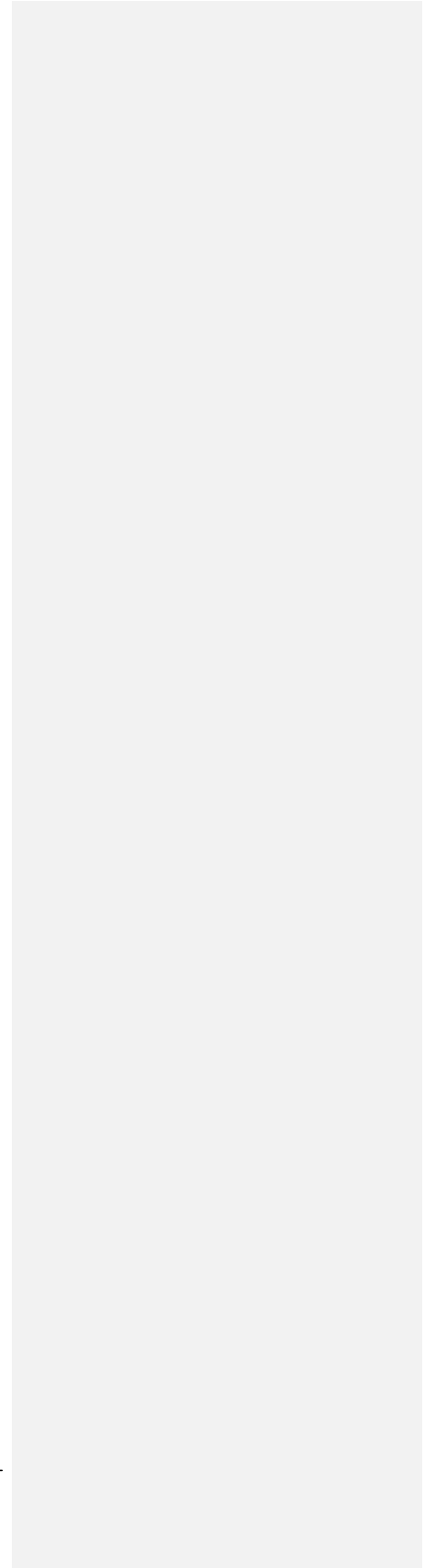
(e) IMPLEMENTATION PLAN.—

- (1) FRAMEWORK REGULATIONS.—The Secretary shall propose and adopt framework regulations applicable to the implementation of all programs under this section.
- (2) PROGRAM REGULATIONS.—The Secretary shall implement each program under this section by promulgating regulations that, together with the framework regulations, establish each program and control its implementation.
- (3) HARVESTER PROPONENTS' IMPLEMENTATION PLAN.—The Secretary may not propose implementation regulations for a program to be paid for by an industry fee system until the harvester proponents of the program provide to the Secretary a proposed implementation plan that, among other matters—
 - (A) proposes the types and numbers of vessels or permits that are eligible to participate in the program and the manner in which the program shall proceed, taking into account—
 - (i) the requirements of this section;
 - (ii) the requirements of the framework regulations;
 - (iii) the characteristics of the fishery and affected fishing communities;
 - (iv) the requirements of the applicable fishery management plan and any amendment that such plan may require to support the proposed program;
 - (v) the general needs and desires of harvesters in the fishery;
 - (vi) the need to minimize program costs; and
 - (vii) other matters, including the manner in which such proponents propose to fund the program to ensure its cost effectiveness, as well as any relevant factors demonstrating the potential for, or necessary to obtain, the support and general cooperation of a substantial number of affected harvesters in the fishery (or portion of the fishery) for which the program is intended; and
 - (B) proposes procedures for program participation (such as submission of owner bids under an auction system or fair market-value assessment), including any terms and conditions for participation, that the harvester proponents deem to be reasonably necessary to meet the program's proposed objectives.
- (4) PARTICIPATION CONTRACTS.—The Secretary shall contract with each person participating in a program, and each such contract shall, in addition to including such other matters as the Secretary deems necessary and appropriate to effectively implement each program (including penalties for contract nonperformance) be consistent with the framework and implementing regulations and all other applicable law.
- (5) REDUCTION AUCTIONS.—Each program not involving fair market assessment shall involve a reduction auction that scores the reduction price of each bid offer by the data relevant to each bidder under an appropriate fisheries productivity factor. If the Secretary accepts bids, the Secretary shall accept responsive bids in the rank order of their bid scores, starting with the bid whose reduction price is the lowest percentage

of the productivity factor, and successively accepting each additional responsive bid in rank order until either there are no more responsive bids or acceptance of the next bid would cause the total value of bids accepted to exceed the amount of funds available for the program.

- (6) BID INVITATIONS.—Each program shall proceed by the Secretary issuing invitations to bid setting out the terms and conditions for participation consistent with the framework and implementing regulations. Each bid that the Secretary receives in response to the invitation to bid shall constitute an irrevocable offer from the bidder.

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Interjurisdictional Fisheries²⁹

CHAPTER 61 U.S. Code

- § 4101. Congressional statement of purposes
- § 4102. Definitions
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§ 4101. Congressional statement of purposes

The purposes of this chapter are—

- (1) to promote and encourage State activities in support of the management of interjurisdictional fishery resources;
- (2) to promote and encourage management of interjurisdictional fishery resources throughout their range; and
- (3) to promote and encourage research in preparation for the implementation of the use of ecosystems and interspecies approaches to the conservation and management of interjurisdictional fishery resources throughout their range.

§ 4102. Definitions

For the purposes of this chapter:

- (1) The term “Federal fishery management plan” means a plan developed under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).
- (2) The term “fishery resource” means finfish, mollusks, crustaceans, and any other form of marine animal or plant life, other than marine mammals and birds.
- (3) The term “interjurisdictional fishery resource” means—
 - (A) a fishery resource for which a fishery occurs in waters under the jurisdiction of one or more States and the exclusive economic zone established by Proclamation Numbered 5030, dated March 10, 1983;
 - (B) a fishery resource for which there exists an interstate fishery management plan; or
 - (C) a fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

For purposes of applying section 4104 (a)(3) of this title during fiscal year 1987, a Federal fishery management plan or an interstate fishery management plan for the fishery resource need not be in existence, but a plan of either kind for that resource must be in the development process during that year.

- (4) The term “interstate fishery management plan” means a plan for managing fisheries developed and adopted by an interstate commission.
- (5) The term “interstate commission” means a commission or other administrative body established by an interstate compact.

²⁹ Available online at http://www.law.cornell.edu/uscode/html/uscode16/usc_sup_01_16_10_61.html

- (6) The term “interstate compact” means a compact that has been entered into by two or more States, established for the purposes of conserving and managing interjurisdictional fishery resources throughout their range, and consented to and approved by Congress.
- (7) The term “project” means a program for research in support of the management of an interjurisdictional fishery resource or an interstate cooperative fishery management agreement.
- (8) The term “Secretary” means the Secretary of Commerce.
- (9) The term “State” means any of the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Northern Mariana Islands.
- (10) The term “State agency” means any department, agency, commission, or official of a State authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

§ 4103. Apportionment

(A) TIME WHEN APPORTIONMENTS MADE

Funds appropriated under section 4107 (a) of this title shall be apportioned by the Secretary among the States on October 1 of each fiscal year, or as soon thereafter as practicable.

(B) APPORTIONMENT FORMULA

The amount of funds apportioned to each State shall be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and received within such State during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen received within all of the States during those calendar years.

(C) LIMITATIONS

- (1) No State may receive an apportionment under subsection (b) of this section for either fiscal year 1987 or fiscal year 1988 which is less than one-half of one percent of the total amount of funds available for that fiscal year.
- (2) For any fiscal year after fiscal year 1988, no State that, under the apportionment formula in subsection (b) of this section, has a ratio of one-third of one percent or higher may receive an apportionment for any fiscal year which is less than one percent of the total amount of funds available for that fiscal year.
- (3) For any fiscal year after fiscal year 1988, no State may receive an apportionment under this section for any fiscal year if that State’s ratio under the apportionment formula in subsection (b) of this section is less than one-third of one percent, unless the State—
 - (A) is signatory to an interstate fishery compact;
 - (B) has entered into an agreement with the Secretary or the Secretary of the Interior under which the personnel, services, and equipment of the State and the Federal agency concerned will be made mutually available for the enforcement of Federal

and State laws pertaining to the protection of fishery resources which are managed under an interstate fishery management plan;

(C) borders one or more of the Great Lakes; or

(D) has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management or interstate fisheries research program.

(4) No State that, under the apportionment formula in subsection (b) of this section, has a ratio of less than one-third of one percent and meets any of the requirements set forth in paragraph (1)(A), (B), (C), or (D) may receive an apportionment for any fiscal year which is less than one-half of one percent of the total amount of funds available for apportionment for such fiscal year.

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

(D) UNUSED APPORTIONMENTS

Any part of an apportionment for any fiscal year to any State—

(1) that is not obligated during that year;

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

(3) that is returned to the Secretary by the State, may not be considered to be apportioned to that State and shall be added to such funds as are appropriated pursuant to section 4107 (a) of this title for the next fiscal year (and shall be treated as having been appropriated for such next year) for apportionment under subsection (a) of this section. Any notification or return of funds referred to in paragraph (2) or (3) by a State is irrevocable.

§ 4104. State projects

(A) IN GENERAL

(1) Any State may, through its State agency or an interstate commission, submit to the Secretary a proposal for a project which includes full plans, specifications, and cost estimates for such project. The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the State as a part of its contribution to the total cost of the works.

(2) No part of any funds appropriated under any authorization contained in section 4107 of this title may be obligated with respect to any project until the proposal for such project has been submitted under paragraph (1) and approved by the Secretary. The Secretary, before approving any proposal for a project, must evaluate the proposal as to—

(A) the soundness of design;

(B) the possibilities of securing productive results;

- (C) the minimization of duplication with other research projects in support of the management of interjurisdictional fishery resources and carried out under this chapter or under any other law or regulation;
 - (D) the organization and management of the project;
 - (E) the methods proposed for monitoring and evaluating the success or failure of the project;
 - (F) the consistency of the project with the purposes of this chapter specified in section 4101 of this title; and
 - (G) such other criteria as the Secretary may prescribe.
- (3) The Federal share of the cost of any project conducted under this chapter shall not exceed 75 percent of the total estimated cost of the project, unless—
- (A) the State has adopted an interstate fishery management plan for the resource to which the project applies; or
 - (B) the State has adopted fishery regulations which the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies; in which case the Federal share shall not exceed 90 percent of the total estimated cost of the project.
- (4) (A) If the Secretary approves or disapproves a proposal for a project, the Secretary shall promptly give written notification, including, if disapproved, a detailed explanation of the reasons for the disapproval, to the State agency submitting the proposal or, if the proposal is submitted through an interstate commission, such commission and the State.
- (B) For the purposes of this chapter, funds apportioned under this section to any State shall be treated as having been obligated with respect to a project during the fiscal year in which the written notification of approval required under subparagraph (A) for the project proposal is made.

(B) RESTRICTION

The expenditure of funds under this chapter shall be applied only to projects for which a proposal has been approved under subsection (a) of this section, except that up to \$25,000 each fiscal year may be obligated for a State to carry out an agreement with the Secretary or the Secretary of the Interior under which the personnel, services and equipment of the State and the Federal agency concerned will be made mutually available for the enforcement of Federal and State laws pertaining to the protection of fishery resources. If otherwise applied, such funds shall be replaced by the State before the State may receive any additional funds under this chapter.

(C) PAYMENT

When the Secretary determines that a project carried out under a proposal approved by the Secretary has been completed, or where the Secretary otherwise deems it appropriate, the Secretary shall cause to be paid to the proper authority of the State, or to the official or depository designated by the interstate commission if the State agency specifies that payment is to be made to the interstate commission, the Federal share of the project. Any payment made to an interstate commission shall be charged against the apportionment of the State concerned.

§ 4105. Property

(A) APPLICATION OF FEDERAL AND STATE LAWS

All work, including the furnishing of labor and materials, needed to complete any project approved by the Secretary shall be performed in accordance with applicable Federal and State laws under the direct supervision of the State agency, and in accordance with regulations as the Secretary may prescribe.

(B) TITLE

Title to all property, real and personal, acquired for the purposes of completing any project approved by the Secretary vests in the State.

(C) DISPOSAL

If a State disposes of any real or personal property acquired under this chapter, the State shall pay into the Treasury of the United States the amount of any proceeds resulting from the property disposed to the extent of and in the same ratio that funds provided under this chapter were used in the acquisition of the property. In no case shall the amount paid into the Treasury of the United States under this section exceed the amount of funds provided by this chapter for the acquisition of the property involved.

§ 4106. Reports to Congress

After consultation with the States receiving funds under this chapter and with any interstate commission involved in carrying out a project under this chapter, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 90 days after the end of the fiscal year 1988, and each second fiscal year occurring after that fiscal year, a report which contains—

- (1) a description of each project and law enforcement effort receiving funds under this chapter during the last 2 fiscal years ending before such report is submitted;
- (2) a specification of the total amount of funds from the Federal Government and the total amount of funds from each State spent on each project and a law enforcement effort receiving funds under this chapter during the last 2 fiscal years ending before such report is submitted;
- (3) an assessment of each project and law enforcement effort receiving funds under this chapter during the last 2 fiscal years ending before such report is submitted to determine whether such project is furthering the purposes of this chapter; and
- (4) a statement specifying all funds which have been apportioned pursuant to section 4104 (a) of this title and are available for obligation by a State or the Secretary but which have not been obligated.

§ 4107. Authorization of appropriations

(A) GENERAL APPROPRIATIONS

There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this chapter—

- (1) \$5,400,000 for each of fiscal years 2003 and 2004; and

- (2) \$5,900,000 for each of fiscal years 2005 and 2006.

(B) ADDITIONAL APPROPRIATIONS

In addition to the amounts authorized in subsection (a) of this section, there are authorized to be appropriated to the Department of Commerce \$65,000,000 for each of the fiscal years 1994 and 1995, which shall be available in such amounts as the Secretary may determine appropriate for the purposes of this chapter; except that—

- (1) in providing funds to States under this subsection, the Secretary shall give a preference to those States regarding which the Secretary determines there is a commercial fishery failure or serious disruption affecting future production due to a fishery resource disaster arising from natural or undetermined causes, and any sums made available under this subsection may be used either by the States or directly by the Secretary in cooperation with the States for any purpose that the Secretary determines is appropriate to restore the fishery affected by such a failure or to prevent a similar failure in the future;
- (2) the funds authorized to be appropriated under this subsection shall not be available to the Secretary for use as grants for chartering fishing vessels; and
- (3) the Federal share of the cost of any activity carried out with an amount appropriated under the authority of this subsection shall be 75 percent of the cost of that activity.

Amounts appropriated under this subsection shall remain available until expended.

(C) DEVELOPMENT OF MANAGEMENT PLANS

In addition to the amounts authorized under subsections (a) and (b) of this section, there are authorized to be appropriated to the Department of Commerce \$850,000 for each of fiscal years 2003 and 2004, and \$900,000 for each of fiscal years 2005 and 2006, to support the efforts of the following interstate commissions to develop interstate fishery management plans for interjurisdictional fishery resources:

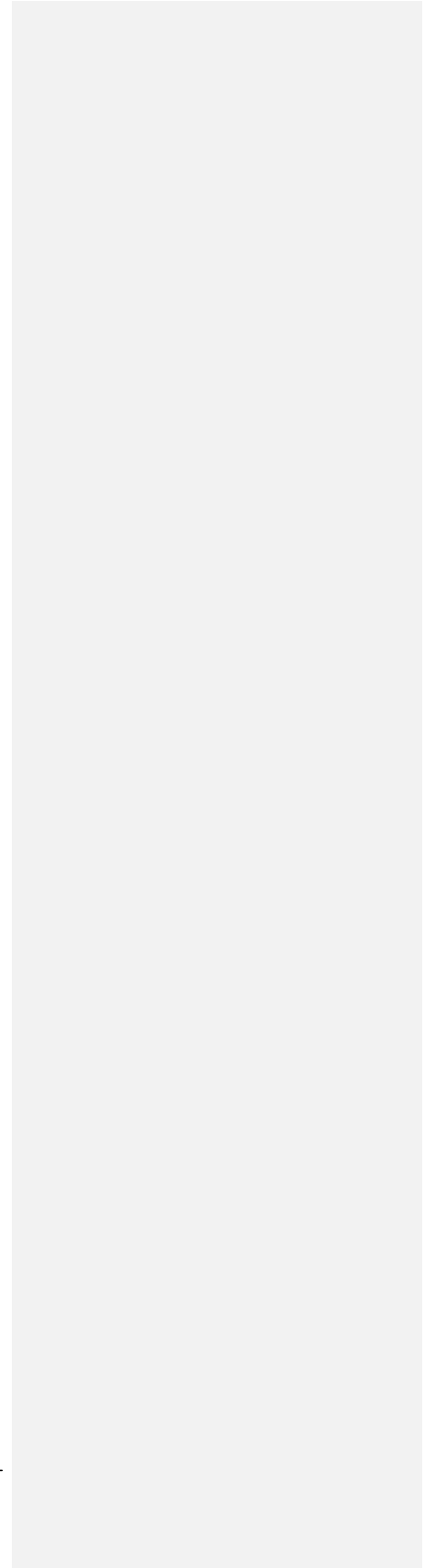
- (1) The commission established by the Atlantic States Marine Fisheries Compact, as consented to and approved by Public Law 77-539 (56 Stat. 267), approved May 4, 1942.
- (2) The commission established by the Pacific Marine Fisheries Compact, as consented to and approved by Public Law 80-232 (61 Stat. 419), approved July 24, 1947.
- (3) The commission established by the Gulf States Marine Fisheries Compact, as consented to and approved by Public Law 81-66 (63 Stat. 70), approved May 19, 1949.

(D) ASSISTANCE TO COMMERCIAL FISHERMEN

- (1) In addition to the amounts authorized under subsections (a), (b), and (c) of this section, there are authorized to be appropriated to the Department of Commerce \$65,000,000 for fiscal year 1992 to enable the Secretary to help persons engaged in commercial fisheries, either by providing assistance directly to those persons or by providing assistance indirectly through States and local government agencies and nonprofit organizations, for projects or other measures to alleviate harm determined by the Secretary to have been incurred as a direct result of a fishery resource disaster arising from Hurricane Hugo, Hurricane Andrew, Hurricane Iniki, or any other natural disaster. Amounts appropriated under this subsection shall remain available until expended.

- (2) The Secretary shall determine the extent, and the beginning and ending dates, of any fishery resource disaster under this subsection.
- (3) Eligibility for direct assistance to a person under this subsection shall be limited to any person that has less than \$2,000,000 in net revenues annually from commercial fishing, as determined by the Secretary.
- (4) (A) Assistance may not be provided under this subsection as part of a fishing capacity reduction program in a fishery unless the Secretary determines that adequate conservation and management measures are in place in that fishery.
(B) As a condition of awarding assistance with respect to a vessel under a fishing capacity reduction program, the Secretary shall—
 - (i) prohibit the vessel from being used for fishing; and
 - (ii) require that the vessel be—
 - (I) scrapped or otherwise disposed of in a manner approved by the Secretary; or
 - (II) donated to a nonprofit organization and thereafter used only for purposes of research, education, or training; or
 - (III) used for another non-fishing purpose provided the Secretary determines that adequate measures are in place to ensure that the vessel cannot reenter any fishery.
- (C) A vessel that is prohibited from fishing under subparagraph (B) shall not be eligible for a fishery endorsement under section 12108 (a) of title 46 and any such endorsement for the vessel shall not be effective.
- (5) The Secretary shall establish, after notice and opportunity for public comment, appropriate limitations, terms, and conditions for receiving assistance under this subsection.
- (6) As used in this subsection, the term “person” means any individual or any corporation, partnership, trust, association, or other nongovernmental entity.
- (7) With respect to funds available for the New England region, the Secretary shall submit to the Congress by January 1, 1997, with annual updates thereafter as appropriate, a report on the New England fishing capacity reduction initiative which provides—
 - (A) the total number of Northeast multispecies permits in each permit category and calculates the maximum potential fishing capacity of vessels holding such permits based on the principal gear, gross registered tonnage, engine horsepower, length, age, and other relevant characteristics;
 - (B) the total number of days at sea available to the permitted Northeast multispecies fishing fleet and the total days at sea weighted by the maximum potential fishing capacity of the fleet;
 - (C) an analysis of the extent to which the weighted days at sea are used by the active participants in the fishery and of the reduction in such days as a result of the fishing capacity reduction program; and
 - (D) an estimate of conservation benefits (such as reduction in fishing mortality) directly attributable to the fishing capacity reduction program.

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Merchant Marine Act³⁰

TITLE 46, APPENDIX (46A) > CHAPTER 27 > SUBCHAPTER XI - SUBCHAPTER XI—FEDERAL SHIP MORTGAGE INSURANCE

§ 1279f. Fisheries financing and capacity reduction

(a) Authorization for guarantees; issuance of obligations

The Secretary or Administrator is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary or Administrator and has agreed with the Secretary or Administrator to such conditions as the Secretary or Administrator deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

(b) Requirements for guaranteed obligations: Any debt obligation guaranteed under this section shall—

- (1) be treated in the same manner and to the same extent as other obligations guaranteed under this subchapter, except with respect to provisions of this subchapter that by their nature cannot be applied to obligations guaranteed under this section;
- (2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;
- (3) not exceed \$100,000,000 in an unpaid principal amount outstanding at any one time for a program;
- (4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary or Administrator determines necessary for the program to which they relate;
- (5) have as the exclusive source of repayment (subject to the proviso in subsection (c)(2) of this section) and as the exclusive payment security, the fishing fees established under the program; and
- (6) at the discretion of the Secretary or Administrator be issued in the public market or sold to the Federal Financing Bank.

(c) Fishing capacity reduction fund; establishment; availability of amounts; deposit or investment

- (1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the “fund”). Within the fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.
- (2) Amounts in the fund shall be available, without appropriation or fiscal year limitation, to the Secretary or Administrator to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section: Provided, That funds available for this purpose from

³⁰ Available online at http://www4.law.cornell.edu/uscode/html/uscode46a/usc_sup_05_46_10_27_20_XI.html

other amounts available for the program may also be used to pay such debt obligations.

(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

(d) Issuance of regulations: The Secretary or Administrator is authorized and directed to issue such regulations as the Secretary or Administrator deems necessary to carry out this section.

(e) "Program" defined: For the purposes of this section, the term "program" means a fishing capacity reduction program established under section 1861a of title 16.

§ 1279g. Direct loan obligations for fisheries financing and capacity reduction

(a) Notwithstanding any other provision of this subchapter, all obligations involving any fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under this subchapter after October 11, 1996, shall be direct loan obligations, for which the Secretary shall be the obligee, rather than obligations issued to obligees other than the Secretary and guaranteed by the Secretary. All direct loan obligations under this section shall be treated in the same manner and to the same extent as obligations guaranteed under this subchapter except with respect to provisions of this subchapter which by their nature can only be applied to obligations guaranteed under this subchapter.

(b) Notwithstanding any other provisions of this subchapter, the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans.

50 CFR Chapter IV Part 600 Magnuson-Stevens Reauthorization Act Provisions, Subpart L – Fishing Capacity Reduction Framework³¹

§ 600.1000 Definitions.

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

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

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

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

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

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

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

Delivery value means: (1) For unprocessed fish, all compensation that a fish buyer pays to a fish seller in exchange for fee fish; and (2) For processed fish, all compensation that a fish buyer would have paid to a fish seller in exchange for fee fish if the fee fish had been unprocessed fish instead of processed fish. Delivery value encompasses fair market value, as defined herein, and includes the value of all in-kind compensation or all other goods or services exchanged in lieu of cash. It is synonymous with the statutory term “ex-vessel value” as used in section 312 of the Magnuson Act.

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

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

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

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

³¹ Available online at http://www.access.gpo.gov/nara/cfr/waisidx_07/50cfr600_07.html

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

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

Fish buyer means the first ex-vessel party who: (1) in an arm's-length transaction, purchases fee fish from a fish seller; (2) takes fish on consignment from a fish seller; or (3) otherwise receives fish from a fish seller in a non arm's-length transaction.

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

Fishing capacity reduction specifications means the minimum amount of fishing capacity reduction and the maximum amount of reduction loan principal specified in a business plan. *Fish seller* means the party who harvests and first sells or otherwise delivers fee fish to a fish buyer.

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

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

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

Implementation regulations mean the regulations in § 600.1008 for carrying out each program.
Net delivery value means the delivery value minus the fee.

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

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

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

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

Processed fish means fish in any form different from the form in which the fish existed at the time the fish was first harvested, unless any such difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish. *Program* means each instance of reduction under this subpart, in each reduction fishery—starting with a request and ending, for a financed program, with full reduction loan repayment.

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

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

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

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

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

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

Reduction loan means a loan, under section 1111 and section 1112 of Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1279f and g App.), for financing any portion, or all, of a financed program's reduction cost and repayable by a fee under, and in accordance with, § 600.1012, § 600.1013, and § 600.1014.

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

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

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

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

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

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

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

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

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

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

Vote means a vote in a referendum.

§ 600.1001 Requests.

(a) A Council or the Governor of a State under whose authority a proposed reduction fishery is subject may request that NMFS conduct a program in that fishery. Each request shall be in writing and shall be submitted to the Director, Office of Sustainable Fisheries, NMFS. Each request shall satisfy the requirements of § 600.1003 or § 600.1005, as applicable, and

enable NMFS to make the determinations required by § 600.1004 or § 600.1006, as applicable.

- (b) NMFS cannot conduct a program in any fishery subject to the jurisdiction of a Council or a state unless NMFS first receives a request from the Council or the governor to whose jurisdiction the fishery is subject.
- (c) For a fishery subject to the jurisdiction of a Council, only that Council can or must make the request. If the fishery is subject to the jurisdiction of two or more Councils, those Councils must make a joint request. No Council may make a request, or join in making a request, until after the Council conducts a public hearing about the request.
- (d) For a fishery subject to the jurisdiction of a State, only the Governor of that State can make the request. If the fishery is subject to the jurisdiction of two or more states, the Governors of those States shall make a joint request. No Governor of a State may make a request, or join in making a request, until the State conducts a public hearing about the request.
- (e) For a fishery under the direct management authority of the Secretary, NMFS may conduct a program on NMFS' own motion by fulfilling the requirements of this subpart that reasonably apply to a program not initiated by a request.
- (f) Where necessary to accommodate special circumstances in a particular fishery, NMFS may waive, as NMFS deems necessary and appropriate, compliance with any specific requirements under this subpart not required by statute.

§ 600.1002 General requirements.

(a) Each program must be:

- (1) Necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the reduction fishery;
- (2) Accompanied by the appropriate environmental, economic and/or socioeconomic analyses, in accordance with applicable statutes, regulations, or other authorities; and
- (3) Consistent with the CFMP, including any reduction amendment, for the reduction fishery.

(b) Each CFMP for a reduction fishery must:

- (1) Prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet;
- (2) Establish a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and
- (3) Include, for a financed program in a reduction fishery involving only a portion of a fishery, appropriate provisions for the post-reduction allocation of fish between the reduction fishery and the rest of the fishery that both protect the borrower's reduction investment in the program and support the borrower's ability to repay the reduction loan.

§ 600.1003 Content of a request for a financed program.

A request for a financed program shall:

- (a) Specify the reduction fishery.
- (b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.
- (c) Specify whether the program is to be wholly or partially financed and, if the latter, specify the amount and describe the availability of all funding from sources other than a reduction loan.
- (d) Project the availability of all Federal appropriation authority or other funding, if any, that the financed program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.
- (e) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).
- (f) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b).
- (g) If a reduction amendment is necessary, include an actual reduction amendment or the requester's endorsement in principle of the reduction amendment specifications in the business plan. Endorsement in principle is non-binding.
- (h) Request that NMFS conduct, at the appropriate time, a referendum under § 600.1010 of this subpart.
- (i) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester. The list shall take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves. The list may include any relevant information that NMFS may supply to the requester.
- (j) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (i) of this section.
- (k) Specify the criteria for determining the types and number of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:
 - (1) The characteristics of the fishery;
 - (2) Whether the program is limited to a particular gear type within the reduction fishery or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor;
 - (3) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels;
 - (4) The reduction amendment required;
 - (5) The needs of fishing communities;

- (6) Minimizing the program's reduction cost; and
 - (7) All other relevant factors.
- (l) Include the requester's assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts. (m) Include any other information or guidance that would assist NMFS in developing an implementation plan and implementation regulations. (n) Include a business plan, prepared by, or on behalf of, knowledgeable and concerned harvesters in the reduction fishery, that:
- (1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least reduction cost and in the minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:
 - (i) Establish the appropriate point for NMFS to conduct a pre-bidding referendum and be sufficiently detailed to enable NMFS to readily:
 - (A) Design, propose, and adopt a timely and reliable implementation plan,
 - (B) Propose and issue timely and reliable implementation regulations,
 - (C) Invite bids,
 - (D) Accept or reject bids, and
 - (E) Complete a program in accordance with this subpart, and
 - (ii) Address, consistently with this subpart:
 - (A) The contents and terms of invitations to bid,
 - (B) Bidder eligibility,
 - (C) The type of information that bidders shall supply,
 - (D) The criteria for accepting or rejecting bids,
 - (E) The terms of bid acceptances,
 - (F) Any referendum procedures in addition to, but consistent with, those in § 600.1010, and
 - (G) All other technical matters necessary to conduct a program;
 - (2) Projects and supports the reduction fishery's annual delivery value during the reduction loan's repayment period based on documented analysis of actual representative experience for a reasonable number of past years in the reduction fishery;
 - (3) Includes the fishing capacity reduction specifications upon which both the pre-bidding referendum and the bidding under § 600.1009 will be based. The reduction loan's maximum principal amount cannot, at the interest rate projected to prevail at the time of reduction, exceed the principal amount that can be amortized in 20 years by 5 percent of the projected delivery value;
 - (4) States the reduction loan's repayment term and the fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over its repayment term;
 - (5) Analyzes and demonstrates the ability to repay the reduction loan at the minimum reduction level and at various reduction-level increments reasonably greater than the minimum one, based on the:

- (i) Best and most representative historical fishing revenue and expense data and any other relevant productivity measures available in the reduction fishery, and
 - (ii) Projected effect of the program on the post-reduction operating economics of typical harvesters in the reduction fishery, with particular emphasis on the extent to which the reduction increases the ratio of delivery value to fixed cost and improves harvesting's other relevant productivity measures;
 - (6) Demonstrates how the business plan's proposed program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);
 - (7) Demonstrates how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);
 - (8) Includes, if a reduction amendment is necessary, the reduction amendment specifications upon which the pre-bidding referendum will be based;
 - (9) Includes an assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts;
 - (10) Specifies the names and addresses of record of all fish buyers who can, after reduction, reasonably be expected to receive deliveries of fee fish. This shall be based on the best information available, including any information that NMFS may be able to supply to the business planners;
 - (11) Specifies, after full consultation with fish buyers, any special circumstances in the reduction fishery that may require the implementing regulations to contain provisions in addition to, or different from, those contained in § 600.1013 and/or § 600.1014 in order to accommodate the circumstances of, and practices in, the reduction fishery while still fulfilling the intent and purpose of § 600.1013 and/or § 600.1014—including, but not limited to:
 - (i) In the case of reduction fisheries in which state data confidentiality laws or other impediments may negatively affect the efficient and effective conduct of the same, specification of who needs to take what action to resolve any such impediments, and
 - (ii) In the case of reduction fisheries in which some fish sellers sell unprocessed, and other fish sellers sell processed fish to fish buyers, specification of an accurate and efficient method of establishing the delivery value of processed fish; and
 - (12) Demonstrates by a survey of potential voters, or by any other convincing means, a substantial degree of potential voter support for the business plan and confidence in its feasibility.
- ...
- (o) Include the requester's statement of belief that the business plan, the CFMP, the reduction amendment specifications, and all other request aspects constitute a complete, realistic, and practical prospect for successfully completing a program in accordance with this subpart.

§ 600.1004 Content of a request for a subsidized program

[Same as paragraphs a-d, l, j, above, plus...]

(g) Include a preliminary development plan that:

- (1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least cost and in a minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:
 - (i) Be sufficiently detailed to enable NMFS to prepare a final development plan to serve as the basis for NMFS to readily design, propose, and adopt a timely and reliable implementation plan and propose and issue timely and reliable implementation regulations, and
 - (ii) Include:
 - (A) The contents and terms of invitations to bid,
 - (B) Eligible bidders,
 - (C) The type of information that bidders shall supply,
 - (D) The criteria for accepting or rejecting bids, and
 - (E) The terms of bid acceptances;
- (2) Specifies the criteria for determining the types and numbers of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:
 - (i) The characteristics of the fishery,
 - (ii) Whether the program is limited to a particular gear type within the reduction fishery, or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor,
 - (iii) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels,
 - (iv) The reduction amendment required,
 - (v) The needs of fishing communities, and
 - (vi) The need to minimize the program's reduction cost; and
- (3) Demonstrates the program's cost effectiveness.

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

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

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

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

§ 600.1011 Reduction methods and other conditions.

- (a) Reduction permits or reduction permits and reduction vessels. Each program may involve either the surrender and revocation of reduction permits or both the surrender and revocation of reduction permits and the withdrawal from fishing either by title restriction or by scrapping of reduction vessels. No financed program may, however, require such title restriction or scrapping of reduction vessels unless the business plan voluntarily includes the same.
- (b) Reduction permit revocation and surrender. Each reduction permit is, upon NMFS' tender of the reduction payment for the reduction permit, forever revoked. Each reduction permit holder shall, upon NMFS' tender of the reduction payment, surrender the original reduction permit to NMFS. The reduction permit holder, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction permit and with the fishing vessel that was used to harvest fishery resources under the reduction permit that could qualify the reduction permit holder or the fishing vessel owner for any present or future limited access system fishing permit in the reduction fishery.
- (c) Reduction vessel title restriction or scrapping. For each program that involves reduction vessel title restriction or scrapping:
 - (1) Each reduction vessel that is subject to title restriction only and is thus not required to be scrapped, is, upon NMFS' tender of the reduction payment, forever prohibited from any future use for fishing in any area subject to the jurisdiction of the United States or any State, territory, possession, or commonwealth of the United States. NMFS will request that the U.S. Coast Guard permanently restrict each such reduction vessel's title to exclude the reduction vessel's future use for fishing in any such area;
 - (2) Each reduction vessel owner whose reduction vessel is required to be scrapped shall, upon NMFS' tender of the reduction payment, immediately cease all further use of the reduction vessel and arrange, without delay and at the reduction vessel owner's expense, to scrap the reduction vessel to NMFS' satisfaction, including adequate provision for NMFS to document the physical act of scrapping; and
 - (3) Each reduction vessel owner, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction vessel and with the reduction permit that could qualify the reduction vessel owner or the reduction permit holder for any present or future limited access system fishing permit in the reduction fishery.
- (d) Fishing permits in a non-reduction fishery. A financed program that does not involve the withdrawal from fishing or scrapping of reduction vessels may not require any holder of a reduction permit in a reduction fishery to surrender any fishing permit in any non-reduction fishery or restrict or revoke any fishing permit other than a reduction permit in the reduction fishery, except those fishing permits authorizing the incidental harvesting of species in any non-reduction fishery during, and as a consequence of, directed fishing for species in the reduction fishery.
- (e) Reduction vessels disposition. Where a business plan requires the withdrawal from fishing of reduction vessels as well as the revocation of reduction permits:
 - (1) Each reduction vessel that is not documented under Federal law must in every case always be scrapped, without regard to whether a program is a financed program or a subsidized program;

- (2) No financed program may require any disposition of a reduction vessel documented under Federal law other than the title restriction in paragraph (b) of this section unless the business plan volunteers to do otherwise; and
 - (3) Any subsidized program may require the scrapping of reduction vessels documented under Federal law.
- (f) Reduction payments. NMFS will disburse all reduction payments in the amount and in the manner prescribed in reduction contracts, except reduction payments that a bidder's reduction- contract nonperformance prevents NMFS from disbursing. In financed programs, the reduction loan's principal amount is the total amount of all reduction payments that NMFS disburses from the proceeds of a reduction loan. Any reduction payment that NMFS, because of a bidder's reduction contract nonperformance, disburses but subsequently recovers, shall reduce the principal amount of the reduction loan accordingly.
- (g) Effect of reduction-contract nonperformance. No referendum, no reduction contract, no reduction loan, and no fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan, shall be impaired, invalidated, avoided, or otherwise rendered unenforceable by virtue of any reduction contract's nonperformance. This is without regard to the cause of, or reason for, nonperformance. NMFS shall endeavor to enforce the specific performance of all reduction contracts, but NMFS' inability, for any reason, to enforce specific performance for any portion of such reduction contracts shall not relieve fish sellers of their obligation to pay, and fish buyers of their obligation to collect, the fee necessary to fully repay the full reduction loan balance that results from all reduction payments that NMFS actually makes and does not recover.
- (h) Program completion. Other than the payment and collection of the fee that repays a reduction loan and any other residual matters regarding reduction payments and the disposition of reduction permits and reduction vessels, a program shall be completed when NMFS tenders or makes all reduction payments under all reduction contracts that circumstances, in NMFS' judgment, reasonably permit NMFS to make.

§ 600.1012 Reduction loan.

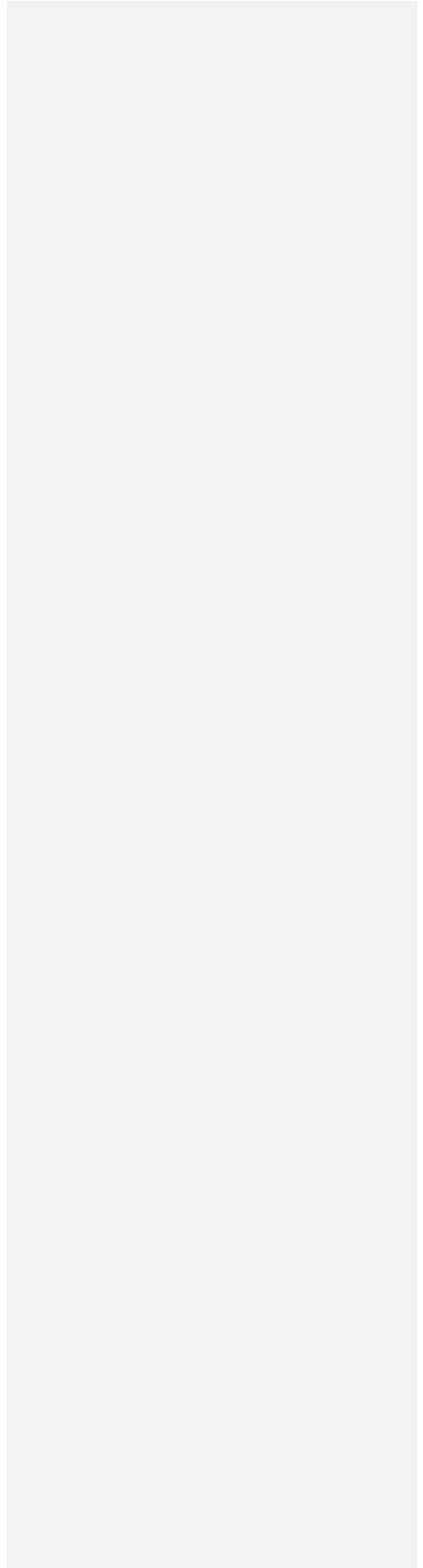
- (a) Obligation. The borrower shall be obligated to repay a reduction loan. The borrower's obligation to repay a reduction loan shall be discharged by fish sellers paying a fee in accordance with § 600.1013. Fish buyers shall be obligated to collect the fee in accordance with § 600.1013 and to deposit and disburse the fee revenue in accordance with § 600.1014.
- (b) Principal amount, interest rate, repayment term, and penalties for non-payment or non-collection. The reduction loan shall be:
- (1) In a principal amount that shall be determined by subsequent program events under this subpart, but which shall not exceed the maximum principal amount in the fishing capacity reduction specifications;
 - (2) At an annual rate, that shall be determined by subsequent events, of simple interest on the reduction loan's principal balance that shall equal 2 percent plus the Treasury percentage;
 - (3) Repayable over the repayment term specified in the business plan or otherwise determined by subsequent events; and

- (4) Subject to such provisions as implementation regulations shall specify for the payment of costs and penalties for non-payment, non-collection, nondeposit, and/or non-disbursement in accordance with § 600.1013 and § 600.1014.
- (c) Effect of prospective interest rate. Any difference between a prospective interest rate projected, for the purpose of any aspect of reduction planning or processing under this subpart, before the U.S. Treasury determines the Treasury percentage and an interest rate first known after the U.S. Treasury determines the Treasury percentage shall not void, invalidate, or otherwise impair any reduction contract, any reduction loan repayment obligation, or any other aspect of the reduction process under this subpart. Should any such difference result in a reduction loan that cannot, at the maximum fee rate allowed by law, be repaid, as previously projected, within the maximum maturity, any amount of the reduction loan remaining unpaid at maturity shall be repaid after maturity by continuing fee payment and collection under this subpart at such maximum fee rate until the reduction loan's unpaid principal balance and accrued interest is fully repaid. The above notwithstanding, at the discretion of the Secretary, the reduction contract can be voided if a material adverse change affects the reduction contract, reduction loan obligation, or any other aspect of the reduction process under this subpart.

Remainder of sections available at:

http://www.access.gpo.gov/nara/cfr/waisidx_07/50cfr600_07.html

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APPENDIX C HISTORY OF FEDERAL BUYBACK PROGRAMS

Background

Federal and state fisheries managers have long been concerned about the presence of overcapacity in America's commercial fishery. Overcapacity typically causes substantial economic waste in the form of higher-than-necessary cost of production, reduces net benefits to society, and imperils fishery conservation. These concerns led to the development of several overcapacity reduction programs with associated federal and state authorities.

Buyback Program History

The first buyback in Washington, and indeed perhaps the first nationally, occurred in 1977, pursuant to the newly enacted Chapter 77.80.020 Revised Code of Washington (RCW).³² This section authorizes WDFW to engage in the purchase of vessels, gear, and state commercial fishing licenses, delivery permits, and charter boat licenses from fishers "substantially restricted in fishing as a result of compliance" with U.S. v. Washington ("Boldt"), U.S. v. Oregon ("Sohappy"), and "Rafeedie" rulings related to sharing of harvest between non-treaty-Indian citizens of Washington and treaty Indians.

The 1977 buyback was conducted by the state using state-appropriated funds. This program suffered from lack of structure and planning; for example, vessels were purchased, but disposal of those vessels had not been planned for in advance.³³

Washington again used this authority to implement the federally-funded Northwest Salmon Fisheries I, II, III disaster relief programs (in 1994 for \$12 million, 1995 for \$13 million, and 1998 for about \$5 million, respectively). The 1995 and 1996 Programs (Northwest Salmon fisheries I and II) were implemented as the "Northwest Emergency Assistance Program," or NEAP, under the authority of the Interjurisdictional Fisheries Act. These programs applied only to coastal salmon fisheries.

The 1998 program (Northwest Salmon Fisheries III) was implemented under the MSRA Disaster Assistance provisions that were in effect at that time. This disaster assistance program included Puget Sound fisheries, and was implemented in two phases.

To initiate these disaster assistance programs, the governor requested relief from the Secretary of Commerce, who after a review, declared the disaster and Congress appropriated funds. The state was then delegated management of the programs on behalf of the Secretary.

A new program was initiated in response to aspects of the 1999 Pacific Salmon Treaty (PST) revision. Referred to as the Puget Sound Salmon Economic Assistance Program,

³² Chapter 77.80 RCW Program to purchase fishing vessels and licenses (Available at <http://apps.leg.wa.gov/RCW/default.aspx?cite=77.80&full=true>)

³³ Pers. Communication Rolland Schmittten, January 2008.

this represented the first commitment of Washington State funds for a fishing fleet buyback program. The U.S. government pledged to provide up to \$30 million, and the state up to \$5 million, to purchase the licenses of non-treaty-Indian commercial salmon fishers (purse seine, gill net, and reefnet) affected by new PST provisions. This buyback was also able to respond to a state analysis of optimal fleet size, and goals for the numbers of permits to remain for each gear type were established³⁴.

The aggregate result of buybacks from the 1980s to 2005 is presented in Table 11.

Table 11
1984 through 2005 Salmon License Buyback Activity

	Coastal Salmon Troll	Coastal Gillnet	Coastal Salmon Charter	Puget Sound Gillnet	Puget Sound Reefnet	Puget Sound Purse Seine
Starting Licenses ¹¹	3,291	816	404	1,990	85	437
Purchased 1984-85	430	-	-	-	-	-
Purchased 1995-2005 ¹²	403	227	99	643	37	209
Natural attrition	2,301	333	20	1,149	37	153
Optimal Licenses ¹³	150	250	200	550	50	150
Remaining in 2006	157	256	141	198	11	75
Percent reduction	-95%	-69%	-65%	-90%	-87%	-83%

- 1\ Starting number of licenses in 1974, except Charter is 1975, Troll is 1978.
- 2\ Includes Disaster Assistance buybacks "Northwest Salmon Fisheries I, II, and III" in 1994, 1995, and 1998, respectively, plus "Pacific Salmon Treaty Economic Assistance Program" from 1999 through 2005.
- 3\ "Optimal Number" is taken from "A Study of Washington's Commercial Salmon Fisheries" Prepared as required under SSB 5501 by WDFW and dated November 1991.

A total of 2,048 licenses were purchased between 1984 and 2005 - and natural attrition removed 3,993 licenses - for an overall average reduction in numbers of licenses of 81%.

Buyback Program Types

Buybacks have been authorized through a variety of mechanisms. Each has different purposes and requirements that must be followed.

³⁴ *A Study of Washington's Commercial Salmon Fisheries*. Prepared by the Washington Department of Fisheries as Required by Substitute Senate Bill 5501. November 1991.

Direct Federal Appropriations

A number of fisheries buyback programs have been funded through specific direct congressional appropriations. This method was used prior to the authorization of fishery buyback programs through the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and is also used in concert with MSA and other statutory provisions.

As mentioned above, the Northwest Salmon Fisheries I, II, and III programs were all funded through direct appropriation. Northwest Salmon Fisheries I and II fell under the authority of the Interjurisdictional Fisheries Act, while the latter was enacted through MSRA provisions.

Interjurisdictional Fisheries Management Act (1986)

The Department of Commerce can provide disaster assistance under either sections 308(b) or 308(d) of the Interjurisdictional Fisheries Act (IFA)(Title 16 U.S.C. Chapter 61 Section 4107)³⁵.

IFA § 4107 Section 308 (b)

This section authorizes the Secretary of Commerce to provide grants or cooperative agreements to states experiencing

"...commercial fishery failure or serious disruption affecting future production due to a fishery resource disaster arising from natural or undetermined causes."

This authorization has only been implemented three times, in response to natural disasters, none of which affected Washington fishers.

IFA § 4107 Section 308(d)

This section enables the Secretary of Commerce to

"help persons engaged in commercial fisheries, either by providing assistance directly to those persons or by providing assistance indirectly through States and local government agencies and nonprofit organizations, for projects or other measures to alleviate harm determined by the Secretary to have been incurred as a direct result of a fishery resource disaster arising from ... natural disaster "

As noted above, Washington State has participated in two IFA Section 308(d) programs - Northwest Salmon Fisheries I and II, both funded 100% by federal appropriations.

Federal Fisheries Disaster Relief under the Magnuson-Stevens Reauthorization Act

Section 312(a) of the MSRA authorizes federal fisheries disaster relief. As noted above, the Northwest Salmon Fisheries III buyback in 1998 was implemented through this mechanism. A West coast Groundfish Fishery disaster was also authorized through section 312(a) in 2000.

³⁵ Interjurisdictional Fisheries Management Act. Title 16 U.S.C. Ch. 61 § 4107. Available at: http://www.law.cornell.edu/uscode/html/uscode16/usc_sec_16_00004107----000-.html and at: http://www.access.gpo.gov/uscode/title16/chapter61_.html

Several other buyback programs have been conducted through Department of Commerce, National Marine Fisheries Service in response to fisheries disasters (Table 12). An additional program was implemented by Department of the Interior in 1999 (completed in 2003) to address the phase-out of commercial fishing in the Glacier Bay National Park & Preserve³⁶.

**Table 12
Fisheries Disaster Relief Programs Implemented since 1994**

Disaster	Authority ³⁷	Date
New England Multispecies Groundfish Fishery I	308(b)	3/18/1994
Northwest Salmon Fisheries I	308(d)	5/26/1994
Gulf of Mexico Hurricane Disaster	308(d)	8/2/1995
New England Multispecies Groundfish Fishery II	308(d)	8/2/1995
Northwest Salmon Fisheries II	308(d)	8/2/1995
Bristol Bay and Kuskokwin River (Alaska) Salmon	312(a)	11/5/1997
Gulf of Mexico Flooding Events	312(a)	8/7/1998
Northwest Salmon Fisheries III	312(a)	8/7/1998
Bristol Bay, Kuskokwin River, and Yukon River (Alaska) Salmon	312(a)	Sep-98
Florida Trap Fisheries	312(a)	Sep-99
Long Island Sound Lobster Fisheries	312(a)	Sep-99
North Carolina Fisheries	312(a)	9/22/1999
West Coast Groundfish Fisheries	312(a)	Jan-00
Bering Sea, Alaska Snow Crab	312(a)	5/11/2000
Alaska Salmon/Norton Sound	308(b); (312(a)	8/4/2000

Table 13 (continued)

Disaster	Authority ³⁸	Date
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36 Legislation in May 1999 established a compensation program, administered by Department of the Interior for those impacted by the immediate and phased closures of commercial fisheries in Glacier Bay proper. \$23 million was appropriated to carry out the program. For more information: <http://www.nps.gov/archive/glba/indepth/learn/preserve/issues/fish/index.htm> and http://www.nps.gov/archive/glba/indepth/learn/preserve/issues/fish/Sections_123_and_501_combined.pdf

37 The Department of Commerce can provide disaster assistance under either sections 308(b) or 308(d) of the Interjurisdictional Fisheries Act (IFA) (16 U.S.C. 4107), as amended, or section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1861).

38 The Department of Commerce can provide disaster assistance under either sections 308(b) or 308(d) of the Interjurisdictional Fisheries Act (IFA) (16 U.S.C. 4107), as amended, or section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1861).

Fraser River/Lummi Indian Sockeye Salmon	312(a)	11/13/2002
Georgia Blue Crab	312(a)	5/8/2003
Harmful Algae Bloom (Massachusetts)	312(a)	6/16/2005
Harmful Algae Bloom (Maine)	312(a)	6/23/2005
Gulf of Mexico Fisheries (Katrina)	308(d); 312(a)	9/9/2005
Gulf of Mexico Fisheries (Rita)	308(d); 312(a)	10/4/2005
Klamath River Basin	308(b); 312(a)	7/6/2006

Federal Fishing Capacity Reduction under the Magnuson-Stevens Reauthorization Act

Three “modern day” buyback programs are being implemented through Fishing Capacity Reduction provisions. They are the Pacific Coast Groundfish Buyback, initiated in 2003, the Longline Coastal Pelagic Non-Pollock Groundfish Buyback initiated in 2006, and the Bering Sea/Aleutian Islands Crab Buyback initiated in 2007. All three of these programs utilize industry fee systems to finance the buyback.

Clearly, many pathways exist in the federal system to authorize and implement fishery buyback programs.

Industry funding

As mentioned in Section III, the availability of the federal loan program through 312(d) represents one of the advantages of pursuing federal funds for buyback through the MSRA.

NMFS provides the following perspective on industry fee systems³⁹:

Although some producers might prefer that taxpayers pay for all buyback costs, Fee Systems that help pay for buyback cost may benefit everyone.

Taxpayers will benefit from a Fee System, because they will not have to pay all buyback costs.

Equity suggests that those who will benefit most from buyback should pay most of its cost. Post-buyback producers will benefit most. Buyback should increase post-buyback production and/or decrease its variable cost. It should enable a more stable industrial future for post-buyback producers, free of excessive competition.

A Fee System may be the only practical budgetary way for producers to intervene directly in their own fishing capacity destiny. The taxpayers may well ask, "If those who will most directly benefit from buyback are not themselves willing to help pay for it, why should we be willing to pay for it all?" This is not an easy question to answer. If producers are unwilling to use the means at their

³⁹ Staff Draft - Advance Notice of Proposed Rulemaking regarding Implementation of Fishing Capacity Reduction Provisions of the MSRA, available at http://www.nmfs.noaa.gov/sfa/Prorules_files/buyback.htm

disposal to help finance their own fishing capacity future, some may consider them content with whatever the capacity status quo brings.

A Fee System may be the best guarantee that buyback's benefit is consistent with its cost. As long as someone else is paying for 100 percent of something that benefits you, cost may not be your primary concern. If you are paying for some or all of it, however, cost is always one of your primary concerns.

If only the taxpayers are paying for buyback, Government might fund a buyback for which producers themselves would be unwilling to go into debt. There may, however, be no better assurance of prudent buyback than producers voting to mortgage their fisheries futures to pay some or all of buyback's cost. If buyback does not represent good value, producers will not vote to pay for it. This may be the most practical buyback quality assurance possible.

A Fee System may be the best means of encouraging producers to identify more with their collective long-term interests. If all producers are collectively servicing a common buyback debt that finances their collective will to manage their fishery's capacity future, all may act more like fisheries stockholders with a common investment.

Many circumstances may, however, justify Federal taxpayers subsidizing some portion of buyback cost. Appropriating part of the cost of a buyback might, for example, provide the incentive necessary for producers to vote for a buyback loan financing the balance of the buyback's cost. Fisheries resource disasters (like those contemplated under MSA section 312(a)) may justify greater Federal subsidies. Other circumstances may justify States or other public or private parties subsidizing buyback cost."

MSRA subsection (d) requirements with respect to industry contributions (in the form of a federal loan) include holding a referendum of the coastal commercial crab industry, with a majority voting in favor of industry payments; annual payments over 20 (or 30) years; an interest rate of 2% above Federal Treasury cost of money; and payments not to exceed 5% of ex-vessel value of all fish landed by post-buyback Washington coastal Dungeness crab fishery participants. Industry must develop a business plan that demonstrates the ability of the post-buyback fleet to pay back the loan comfortably.

A Fee System implemented under this section typically works like this:

- NMFS conducts a Fee System referendum to assess the level of support across all fishery participants for the buyback plan;
- A Fee System is approved by a majority of eligible industry participants;
- NMFS borrows Section 1111 loan capital from the U.S. Treasury and deposits it in a buyback fund (Fund);
- NMFS uses the Fund to buy back permits or vessels and permits;
- Each buyback payment is part of one Section 1111 buyback loan to the fishers whose permits and/or vessels are not bought back (post-buyback fishery participants are the borrowers who will repay the loan);

- Fee System revenue is the exclusive statutory means by which post-buyback producers repay the loan;
- The principal amount of the buyback loan is the sum of all buyback payments;
- Interest accrues on the principal of the loan to the post-buyback participants at the same rate as it accrues on the U.S. Treasury loan to NMFS, plus a two percent risk premium;
- The loan's maturity may not exceed 20 years (though longer terms have subsequently been authorized);
- Fees may never exceed 5% of the ex-vessel gross value of buyback species landed (but may be less, depending on loan amortization requirements).
- Ex-vessel buyers of post-buyback fish withhold Fees from fishing trip proceeds before paying fishery participants (Fees are a percentage of the ex-vessel gross value of all buyback fish landed, and are established in rule);
- The fish buyers account for and forward the Fees to NMFS;
- NMFS deposits the Fees in the Fund and uses them to repay the buyback capital it borrowed from the U.S. Treasury.

In part because of shrinking federal budgets, there have been no directly appropriated funds for fishery buybacks since 2003. The most recent three-buyback programs have been designed with industry involvement and financed by industry through federal loan authority.

Given the sustained levels of coastal catches since 1994, the Washington Coastal Dungeness crab fishery may not qualify under the Fisheries Disaster Relief part of the MSRA.

If a program is pursued under MSRA a capacity reduction program likely represents the best fit for the Washington Coastal Dungeness Commercial Crab Fishery section 312(b).

WASHINGTON COASTAL DUNGENESS CRAB FISHERY LICENSE BUY-BACK PROGRAM

APPENDIX D INDUSTRY INVOLVEMENT

Department of Fish and Wildlife established an ad hoc Coastal Dungeness Crab Buyback Advisory Committee, comprising several industry representatives who committed to helping develop a Washington coastal Dungeness crab buyback program.

The Department held eight meetings with this group, or subsets of the group, to develop options for a buyback program and receive comments on the draft report. The meetings are summarized below.

April 26, 2007 The group developed a timeline with the goal of completing the program for December 1, 2007, submission to the Washington State legislature.

Discussed the following requirements of a buyback program as outlined in SSB5447:

- Develop a program that purchases and retires coastal Dungeness crab licenses
- The program may purchase vessels
- The proposed program needs to explore funding alternatives that involve, federal, state, industry, low-interest loans
- The proposed program must include elements necessary for the administration of the buyback including mechanisms for application to participate and selection criteria
- The program must be designed to have a neutral impact on Dungeness crab harvests in Oregon and California
- The program must be developed with consultation from coastal crab license owners.

After reviewing the directive in the legislation, the group identified the primary goals of a buyback program

- Minimize differences between state and treaty regulations
- Increase ex-vessel value derived from the fishery
- Reduce the state harvest capacity equal to the state's treaty Indian harvest-sharing obligation
- Minimize adverse impacts on the Oregon and California crab fishery

Finally, a draft framework of alternatives was developed:

DRAFT Framework of Alternatives

- I. Licenses
 - Licenses and vessels
 - Combine either with permit stacking
- II. Future Participation
 - In Washington crab fishery
 - i. No restriction

- ii. No participation for 10-years
 - In Oregon or California Fisheries
 - i. No restriction
 - ii. No participation for 10 years- statutory/constitutional authority
- III. Purchase Criteria
 - Purchase any license
 - i. Reverse bid
 - ii. Purchase starting with lowest bid without catch history consideration
- IV. Create Pot Limit Categories
 - Treat all licenses the same
 - Place bids in two categories based on pot limit (300/500)
 - Purchase proportionate number of licenses
- V. Funding
 - Federal grant -100%
 - Federal grant -75%, 25% other
 - 25% state/industry combo
 - Federal low cost loan @ 75%
 - 25% industry

May 11, 2007 Agency staff and seven stakeholders reviewed and edited the draft framework of alternatives from the previous meeting, resulting in the following:

What to buy:

- License only (WA)
- License/vessel
- WA/OR license holders must sell both licenses but qualification to sell is based on the Washington license purchase criteria

Future participation limitation:

- No restrictions
- Restrict participation
 - License ownership
 - Alternate operator/crew license
- Participation in OR/CA
 - License ownership
 - Grandfather

Purchase Criteria:

- All licenses equal
 - Low to high bid
- Bid to production ratio
- Weight bids based on length endorsement
- Weight bids based on pot limit
- Combination weighting bids based on length and pot limit

- Create 2 pot limit categories 300/500 expend funds based on production, proportion between 300/500 licenses
- Maximum bid based on minimum production (low -latent licenses)

Funding Alternatives:

- Federal - 100%
- Federal 75% - State 25%
- Federal 75% - State/Industry 25%
- Federal loan 75% - other 25%
- Is industry interested in a pot-stacking program?

Discussed federal funding relative to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). Two potential mechanisms for federal funding are outlined in Section 312, Fisheries Disaster Relief and Fishing Capacity Reduction Program. Both of these avenues for federal funding require a request be made to the Secretary of Commerce from the Governor of the state. Other provisions include:

- Both approaches require the Secretary to determine that the state program will not result in an expansion of the commercial fishery failure into other fisheries; this would include the Oregon commercial crab fishery.
- The Fishery Failure section does not allow the federal contribution to exceed 75% of the total cost of the program.

Any program implemented through a federally approved Fishing Capacity Program must meet the following provisions and requirements:

1. The Secretary has oversight and must approve the state program to ensure that it meets the following requirements:
2. The program must result in significant improvements in the conservation and management of the fishery.
3. The program must prevent replacement of fishing capacity that is removed.
4. The program must establish a total allowable catch (we do not manage crab using a total catch quota).
5. The program shall obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time.
6. All funds (state, industry, or federal) shall be deposited into the Fishing Capacity Reduction Fund established under Section 1111 of Title XI of the Merchant Marine Act, 1936.

May 23, 2007 Agency staff met with eight stakeholders to review the process to-date, timeline for completion of the report, alternatives, and optimal fleet size analysis.

Analysis Of Optimal Fleet Size

Goal: Reduce the state harvest capacity equal to the states treaty Indian harvest-sharing obligation.

The following table examines past state and tribal harvest and effort by the state fleet in the area north of Point Chehalis.

Coastal Dungeness Crab Catch North of Point Chehalis (not including area 60B)

Season	Vessels	State Pounds	Tribal Pounds	Total	State %	50%	Optimal Vessels	Difference
98-99	137	4,412,170	835,959	5,248,129	84%	2,624,065	81	56
99-00	122	8,358,388	964,535	9,322,923	90%	4,661,462	68	54
00-01	148	3,309,350	844,430	4,153,780	80%	2,076,890	93	55
01-02	121	3,875,978	815,895	4,691,873	83%	2,345,937	73	48
02-03	146	10,856,064	2,470,618	13,326,682	81%	6,663,341	90	56
03-04	124	6,797,836	1,915,174	8,713,010	78%	4,356,505	79	45
04-05	146	11,749,139	4,596,452	16,345,591	72%	8,172,796	102	44
05-06	126	7,544,602	3,885,359	11,429,961	66%	5,714,981	95	31
Average	134	7,112,941	2,041,053	9,153,994	79%	4,576,997	85	49

"Vessels" represents all vessels with at least one landing north of Point Chehalis

"Optimal Vessels" is based on the relationship of the current number of vessels harvesting the current percentage of

Recap of alternatives:

What to Buy:

- Cost Summary comparing license only to vessel and license
- Idea that license holders with licenses in other states would have to sell all licenses but the ranking would be based on the purchase criteria for WA licenses.

Participation Limitation:

- No Restrictions to future participation
- Restrict future participation through monitoring license ownership. Complete monitoring would require an alternate operator/crew license.
- Restrict future participation in OR and CA

Purchase Criteria:

- All licenses equal- low to high bid
- Bid to production ratio (reverse bid)
- Weight bids based on length endorsement
- Weight bids based on pot limit
- Weight bids based on pot limit and vessel length
- Create two pot limit categories 300/500- expend funds based on production, maintain current ratio of 300 and 500 pot licenses
- Maximum bid based on minimum production

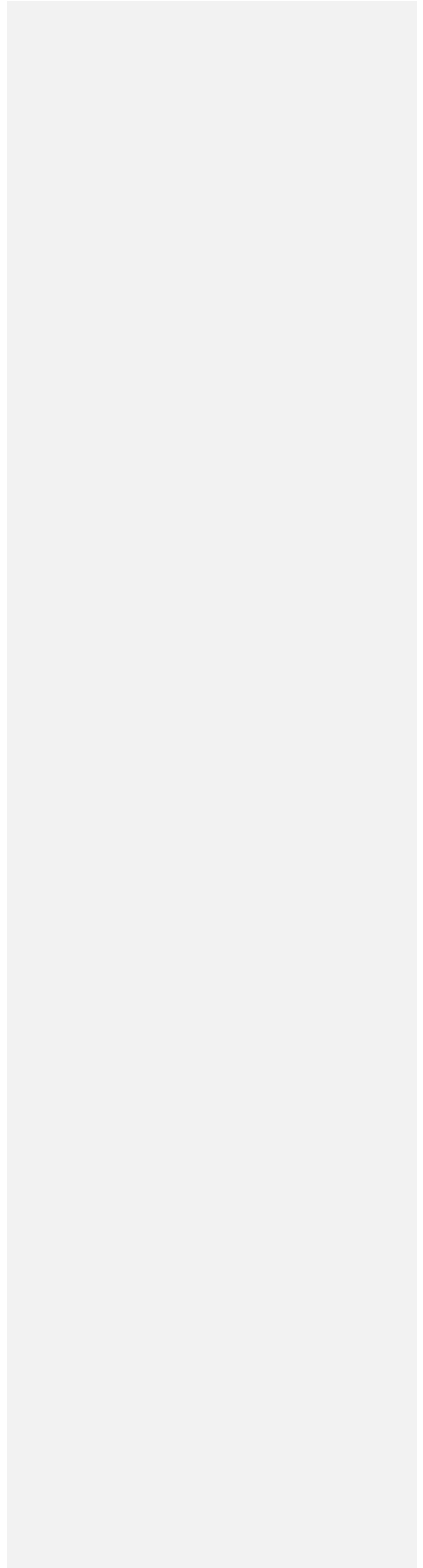
Funding Alternatives:

- MSFCMA
- Federal 100%
- Federal 75% - State 25%
- Federal 75% State/Industry 25%
- Federal loan 75% - Other 25%
- Industry funding through pot stacking program

A document-review meeting was tentatively scheduled for early-autumn.

- August 24, 2007 This meeting was held to review WDFW work on the buyback report over the summer including an updated analysis of the optimal fleet size. Nine stakeholders attended this meeting. The majority of the meeting was spent reviewing and discussing the optimal fleet size for the fishery north of Pt. Chehalis and discussing the weighted bid approach for purchasing licenses.
- February 13, 2008 The purpose of this meeting was to update advisors on the status of the report and to review the summary of options for federal funding developed by contractor Rollie Schmitt. Eight stakeholders attended this meeting. After reviewing the report progress, the majority of the time was spent discussing the summary of requirements associated with federal funding alternatives including purchase criteria, effort transfers and industry participation.
- March 21, 2008 Prior to this meeting a draft buyback report was provided to four stakeholders for review. Three of the stakeholders attended this meeting. The meeting was spent reviewing the draft report and hearing stakeholder comments. The team went through the report section by section, identifying differing perspectives and areas that needed work. It was agreed that WDFW staff would re-work the report and provide an updated draft to the industry reviewers prior to the next meeting scheduled for April 18, 2008.
- April 18, 2008 The stakeholder reviewers were provided an updated draft of the report prior to the meeting. Five stakeholders attended the meeting and reviewed the updated draft. The team discussed that the focus from this point on would be to submit the report by the end of June. The final document is to provide a proposed program that includes the full range of funding alternatives including the industry preferred option. The WDFW report should serve as a point of reference to aid industry as they move forward. After discussion on alternative ways to visually depict perspectives and concepts, the WDFW team agreed to again revise the draft according to the discussion and provide the next draft to the reviewers. This is to be the final draft before the report enters the WDFW review and approval process.
- Sept. 16, 2008 WDFW met with the Ad Hoc advisory group to discuss additional comments to the draft report and to work on unresolved issues. Comments from the group were also received by WDFW in late June, an updated copy of the draft report was provided to the group prior to this meeting. WDFW staff and advisors reviewed the document and resolved outstanding issues.

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WASHINGTON COASTAL DUNGENESS CRAB FISHERY LICENSE BUY-BACK PROGRAM

**APPENDIX E
SAMPLE PROGRAM APPLICATION**

Washington Department of Fish and Wildlife
Sea Urchin License Reduction Program
2007 Application

In order to qualify your completed application must be received by the Department of Fish and Wildlife, License Division prior to 5:00 p.m., Friday August 31, 2007.

Applicant Information				
LICENSE OWNER NAME (according to WDFW license records)			SOCIAL SECURITY NUMBER	
MAILING ADDRESS - during the offer period			SEA URCHIN LICENSE NUMBER	
CITY	STATE	ZIP CODE	TELEPHONE ()	MESSAGE PHONE ()
Pre-Acceptance Statement				
<p>I willingly offer to sell my Sea Urchin License, which I understand must be renewed for the 2007 season, to the Department of Fish and Wildlife under the guidelines established in WAC 220 95 100. I understand that the offers will be ranked from the lowest to highest (\$11,000.00 max) and will be purchased with available funds. I understand this offer cannot be retracted and, if accepted the license will be retired. I understand that the Department will notify me if my offer is accepted and issue a warrant for the amount of the offer. Once the warrant is issued the license will be retired and the license card if issued must be returned to the Department.</p>				
Declaration of Eligibility and Signature of License Owner				
<p>I declare that I have truthfully completed this form. I understand that a false statement will result in denial and termination from participation in the program.</p>				
Applicant Signature: _____			Date: _____	

Mailing Address:
Department of Fish and Wildlife
License Division/Dive Fisheries Buy-Back
600 Capitol Way N
Olympia, WA 98501-1091

Physical Address:
Department of Fish and Wildlife
Natural Resources Building
1111 Washington Street SE
Olympia, Washington