

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
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# Depth in feet above ground.  
^ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Unincorporated Areas of Edgefield County**

Maps are available for inspection at the Edgefield County Courthouse, 124 Courthouse Square, Edgefield, SC 29824.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 7, 2010.

**Sandra K. Knight,**

*Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2010-31547 Filed 12-15-10; 8:45 am]

**BILLING CODE 9110-12-P**

collection of relevant data on award and incentive fees paid to contractors and to evaluate such data on a regular basis, in accordance with section 814 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Additionally, this technical amendment revises subpart 237.1 to add language at 237.102-74 that provides the location of a taxonomy for acquisition of services to facilitate strategic sourcing within DoD.

**List of Subjects in 48 CFR Parts 216 and 237**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 216 and 237 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 237 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

**PART 216—TYPES OF CONTRACTS**

■ 2. Add sections 216.401 and 216.401-70 to subpart 216.4 to read as follows:

**216.401 General.**

(c) See PGI 216.401(c) for information on the Defense Acquisition University Award and Incentive Fees Community of Practice.

(e) Follow the procedures at PGI 216.401(e) when planning to award an award-fee contract.

**216.401-70 Data collection.**

Section 814 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) requires DoD to collect relevant data on award and incentive fees paid to contractors and have mechanisms in place to evaluate such data on a regular basis. In order to comply with this statutory requirement, follow the procedures at PGI 216.401-70.

**PART 237—SERVICE CONTRACTING**

■ 3. Add section 237.102-74 to read as follows:

**237.102-74 Taxonomy for the acquisition of services.**

See PGI 237.102-74 for OUSD(AT&L) DPAP memorandum, "Taxonomy for the Acquisition of Services," dated November 23, 2010.

[FR Doc. 2010-31620 Filed 12-15-10; 8:45 am]

**BILLING CODE 5001-08-P**

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 216 and 237**

**Defense Federal Acquisition Regulation Supplement; Technical Amendments**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to set forth references to supplementary information and procedures pertaining to specific categories of DoD acquisitions.

**DATES:** *Effective Date:* December 16, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ynette R. Shelkin, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 703-602-8384; facsimile 703-602-0350.

**SUPPLEMENTARY INFORMATION:** This final rule revises subpart 216.4 to add references at 216.401 to additional information and mandatory procedures to follow when planning to award an award fee contract. It also provides the location of procedures to follow for

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 253**

[Docket No. 0908061221-0533-02]

**RIN 0648-AY16**

**Shipping Act, Merchant Marine, and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fishing Vessel, Fishing Facility and Individual Fishing Quota Lending Program**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues these regulations pursuant to its authority under Chapter 537 of the Shipping Act, (formerly known as Title XI of the Merchant Marine Act of 1936, as amended and codified), as well as the Magnuson-Stevens Act. These regulations revise the operating rules of the Fisheries Finance Program (FFP or Program) and set forth procedures, eligibility criteria, loan terms, and other requirements related to FFP lending to the commercial fishing and aquaculture industries. FFP assistance includes

loans for fishing vessels, fish processing facilities, aquaculture facilities, individual fishing quota (IFQ) permits, and participants in community development quota (CDQ) programs.

**DATES:** This final rule is effective January 18, 2011.

**ADDRESSES:** Copies of supporting documents that were prepared for this final rule, as well as the proposed rule, are available via the Federal e-Rulemaking portal, at <http://www.regulations.gov>. Those documents are also available from the NMFS, MB5, 1315 East-West Highway, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Earl Bennett, NMFS, Fisheries Finance Program, 301-713-2390.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This final rule is also accessible at <http://www.gpoaccess.gov/fr>.

**Background**

On May 5, 2010, NMFS published a proposed rule to revise the FFP's lending regulations, as found in subpart B of 50 CFR Part 253, and requested public comment (75 FR 24549). This final rule strikes and replaces the current Subpart B with new regulations reflecting the 2006 revision of Chapter 537 of the Shipping Act (referenced as "Title XI"), the amended Magnuson-Stevens Act, Section 211(e) of the American Fisheries Act (AFA), Public Law 105-277, Div. C, Title II, Subtitle II, and the Coast Guard and Maritime Transportation Act of 2006, Public Law 109-241. In addition to revising definitions and updating general lending requirements, this final rule provides detail and clarity to the term "Actual Cost," establishes procedures for refusing to approve, close or disburse a loan to borrowers with unresolved fisheries enforcement violations; and sets forth specialized terms and requirements for halibut and sablefish quota share (HSQS) loans, Bering Sea and Aleutian Island (BSAI) crab IFQ loans, and loans to North Pacific CDQ program participants.

**Comment and Responses**

Between May 5, 2010, and June 4, 2010, NMFS solicited comments on the proposed rule. On August 25, 2010, NMFS reopened the comment period for an additional two weeks when it discovered that a misprint in the preamble to the proposed rule could have hindered submission of comments on <http://www.regulations.gov> (75 FR [page 52300]).

Public comments on the proposed rule are summarized below, with responses from NMFS. NMFS received comments from four separate commenters. Overall, the comments about the Program and the proposed rule were favorable. Only one commenter had negative comments. The negative comments did not pertain to the specifics of the proposed rule, but addressed general NMFS policy.

*Comment 1:* The FFP has proved enormously beneficial to its participants. The proposed rule conforms to the intent of Congress, the North Pacific Fishery Management Council, and the Secretary of Commerce. The Crab IFQ loan program is the only step of crab rationalization that has yet to be implemented, so the proposed rule should be made final promptly.

*Response:* NMFS notes the comment.

*Comment 2:* The FFP is based on 1936 law and is outdated. The FFP should be a private sector lending operation, and there is no reason for American taxpayers to lend money to build boats or help commercial fishermen become profitable. There is much graft and corruption in the FFP; it should be defunded, and NMFS should be shut down.

*Response:* NMFS notes that the most recent version of the FFP's primary statutory authorization was enacted in 2006, so the FFP is in fact not outdated. Additionally, NMFS disagrees with the sentiments the commenter expressed about the fishing industry and the purpose of the FFP. Commercial fishing is an important industry and many Americans make their livelihood fishing. Maintaining a vibrant fishing sector is important to the National economy, as well as to coastal communities. NMFS notes that the FFP does not lend money to finance the construction of new vessels or improvements that increase harvest capacity. Moreover, NMFS disagrees with the commenter's characterization of the FFP. The FFP is audited annually by KPMG, an independent auditing company, and from time to time has been reviewed by NOAA auditors and the Department of Commerce's Office of the Inspector General. No allegations of graft or corruption have resulted from any of these reviews.

*Comment 3:* When NMFS funds a boat, it is likely to grant that boat too much quota to catch.

*Response:* FFP lending decisions and fishery management decisions are unrelated. Whether a vessel has an FFP loan has no bearing on whether it receives any authorization to harvest, process, or sell fish or fishery resources.

Moreover, the FFP will not lend money for a fishing vessel unless the owner can demonstrate that it and the vessel possess all necessary harvest authorizations and permits and fully complies with all applicable law.

*Comment 4:* Americans do not want to fund aquaculture. Aquaculture pollutes horribly and spending on it is stupid and graft personified.

*Response:* NMFS disagrees. NMFS believes that sustainable aquaculture will create employment and business opportunities in coastal communities; provide safe, sustainable seafood; and complement NOAA's comprehensive strategy for maintaining healthy and productive marine populations, species, and ecosystems. All Program lending for aquaculture facilities require that such facilities are in compliance with all Federal, state and local environmental statutes and regulations. Additionally, they must possess all required licenses and permits.

*Comment 5:* A requirement for a preferred ship mortgage when financing a fishing vessel is not set forth in the proposed rule.

*Response:* NMFS notes the comment. Taken together, 46 U.S.C. 53709(b)(1) and (b)(4) limit FFP loans to 80 percent of the actual cost or depreciated actual cost of collateral pledged as security. NMFS acknowledges that the statutory provisions require the FFP to take a security interest in project property; otherwise the statutory terms would be rendered meaningless. Although the FFP's past practice has always been to take a security interest in project property, NMFS has clarified that it will take security interest in project property in this final rule in response to this comment. Such security interest may consist of, for example, a preferred ship mortgage for vessel financings, a real property deed of trust, mortgage, assignment of lease or other adequate collateral interest for aquaculture and shoreside facilities, etc. The final rule retains the Program's discretion to require additional collateral, as the FFP deems necessary, to protect the Program's credit interest.

*Comment 6:* Subject to a few exceptions, the proposed rule expresses a clear policy against financing the construction of new vessels or vessel improvements that increase harvest capacity. This policy, which has the effect of precluding the use of FFP loans to construct new vessels, should not apply in rationalized quota fisheries where total allowable catch is allocated to quota holders. In such fisheries, increasing a vessel's harvest capacity is irrelevant because each quota holder is limited to harvesting only a specific

amount of fish. In addition, replacing existing vessels would reduce fuel consumption and vessel traffic as older platforms are replaced with larger, more efficient ones. Section 253.26(d)(1) should be amended to allow the FFP to lend for, "Activities that assist in the transition to reduced fishing capacity or where such activities will not adversely increase fishing effort in targeted fisheries."

*Response:* Although NMFS acknowledges that regulatory fishing effort controls (especially in fisheries that may allocate specific amounts of catch with catch shares) can effectively manage harvest capacity, NMFS declines to change its capacity neutral lending policy, as requested by the commenter. However, NMFS notes that vessel improvements that assist in the transition to reduced fishing capacity, as well as those adding technologies or upgrades that improve data collection, reduce bycatch, improve harvest selectivity, reduce adverse environmental impacts of fishing gear, or improve safety, will continue to be eligible for financing even if such projects make ancillary increases to a vessel's harvest capacity.

Even in so called "rationalized fisheries," adding new vessels and introducing vessels with augmented harvest capacity can push effort into other fisheries. Although overall harvest levels may remain unchanged, as a new vessel replaces an existing vessel, the owner or operator may have an incentive to sell the old vessel or employ it in a different fishery. Similarly, efficiencies brought on by increasing a vessel's harvest capacity may displace one or more additional vessels, and the displaced vessel(s) may exacerbate problems in other locations by moving into them. In addition to fishing effort displacement, the FFP lacks the staff resources to undertake detailed reporting and heightened due diligence required to support loan commitments for new vessel construction. Currently, the FFP's credit risk model doesn't account for the added risks associated with taking security interests in construction materials or addressing shipyard liens. Accordingly, NMFS will retain its policy against financing the construction of new vessels or vessel improvements primarily designed to increase harvest capacity.

*Comment 7:* Only the six CDQ group entities specified in section 305(i)(1)(D) of the Magnuson-Stevens Act should be eligible to participate in the CDQ loan program. Listing all of the villages and not the representative groups is misleading, since the villages can only

participate through their groups. The CDQ program is a closed class and no new villages or entities can be added without a statutory amendment.

*Response:* While it is true that section 305(i) of the Magnuson-Stevens Act, as amended, focuses on the six CDQ groups, the CDQ lending program in this final rule is authorized by section 211(e) of the AFA. Section 211(e) of the AFA extends loan eligibility to the "communities eligible to participate" consistent with the section 305(i) provisions in effect in 1998, the time of the AFA's passage. However, NMFS recognizes that meaningful participation in the loan program would be enhanced by the involvement of the six CDQ groups. Accordingly, NMFS listed CDQ groups in the proposed rule and lists them again in this final rule. Although NMFS acknowledges that only the six groups and various villages listed in the final rule are eligible, NMFS will retain the section 253.29(c)(7) provision to allow statutory expansion of the CDQ program without the need to wait for a corresponding change in the regulations.

*Comment 8:* The 2006 Science-State-Commerce Appropriations Act, Public Law 109-108, as amended by section 416(c)(2) of the Coast Guard and Maritime Transportation Act of 2006, Public Law 109-241, and section 211(e) of the AFA, mandate that eligible CDQ borrowers be allowed to use loan funds for the purchase of all or part of ownership interests in fishing or processing vessels.

*Response:* NMFS agrees that borrowers in the CDQ loan program may use FFP financing to purchase full or partial interests in BSAI fishing vessels, shoreside facilities, and fishing licenses; and NMFS is willing to lend for these purposes, so long as the borrower is able to provide a valid security interest in collateral financed by the loan.

However, NMFS has determined that the statutory provisions that the commenter cites do not create any "mandate" to lend that would supersede the requirements of other statutes. Notably, section 211(e) of the AFA expands the legal authority found in the FFP's primary statutory authority (the provisions referenced as "Title XI") to allow the FFP to make loans to CDQ eligible entities, for the purposes specified in the statute. Also, the 2006 appropriation act, as amended, provides the actual funds to cover the budgetary cost under the Federal Credit Reform Act of 1990, 2 U.S.C. 661 *et seq.*, so that the FFP can "afford" to make the loans. The authority to make CDQ loans still stems from Title XI, which requires that the FFP obtain adequate security

interests in its collateral, and the FFP knows of no other provisions that supersede this requirement. Thus, while NMFS agrees that certain loan funds may be used to purchase all or part of an interest in a fishing or processing vessel, other requirements still attach to those loans, even if there is a "mandate" for such loans. NMFS cannot make any loans, even to CDQ borrowers for eligible purposes, without adequate security interest(s) in the collateral.

*Comment 9:* In order to allow CDQ program entities to purchase a partial interest in a vessel without a first lien position security interest, NMFS should change section 253.29(d)(2) of the rule by adding the following sentence: "Notwithstanding any other provision in this section, the Program shall not require a first lien position on the whole of the primary collateral when only a partial interest of such primary collateral is purchased with such loan funds." NMFS' requirement for a lien upon the whole of a vessel has precluded one or more CDQ entities from using FFP loan funds to make a purchase of a partial ownership interest because the other owner did not want its interest encumbered by a NMFS preferred ship mortgage.

*Response:* NMFS is unable to make the requested change because it contravenes existing law. Under the Ship Mortgage Act, 46 U.S.C. sections 31301-30, a mortgage lien must apply to the whole vessel pledged as collateral in order to attain the status of a "first preferred ship mortgage," regardless of whether the financing is used to purchase or acquire a whole vessel or only a partial ownership interest in the vessel. Pursuant to the requirements of 46 U.S.C. 53711, NMFS determines that a recorded preferred ship mortgage is the only instrument that will create, attach and perfect the requisite security interest in a federally documented vessel or its appurtenances, which in turn is necessary to protect the interest of the United States Government. NMFS has more flexibility to adjust the priority of its mortgage liens to allow for unique circumstances or complex transactions, but NMFS is unable to alter the requirements of the Ship Mortgage Act.

*Comment 10:* The relevant statutes and the proposed rule mandate flexibility in regards to the collateral requirements for FFP loans to the CDQ program entities.

*Response:* Although Title XI grants NMFS some discretion to adjust collateral requirements, the Program's authorizing statute still requires that the FFP, at a minimum, take a security interest in the property that the loan finances or refinances. NMFS does not

construe the proposed regulations or the statutory provisions applicable to CDQ lending as superseding the required security determinations, loan limits and collateral requirements set forth in statute, in particular 46 U.S.C. 53709 and 53711. Moreover, NMFS is not under any requirement to approve every loan application. Nevertheless, NMFS remains committed to make reasonable loans to CDQ groups with as much flexibility in the collateral requirements, as is appropriate, within the bounds of its lending authorities.

*Comment 11:* Including the current market value of the land used by a facility that is pledged as collateral in the revised definition of Actual Cost better reflects the true value of the collateral.

*Response:* NMFS agrees. The unique nature of land can result in absurd results when using pure cost basis to determine asset value. For instance, using the purchase price and accounting costs may fail to reflect actual value if an applicant has owned the land for an extended period; and, purchase price alone may not reflect the true liquidation value of real property in times of price volatility. Accordingly, NMFS uses current market value to determine asset value for the purposes of loans under the Program.

*Comment 12:* Valuing refinanced limited entry privileges using a current market value metric based on contemporaneous comparable sales will provide existing permit holders with flexibility for their existing permits.

*Response:* The FFP's experience over the last 12 years has shown that the value of quota can fluctuate over time, making current market value the most useful starting point to evaluate quota. In its approval process, the FFP will also examine the trend in value of individual fisheries' quota. However, NMFS emphasizes that the final rule retains the FFP's policy to deny applications that will disburse more than an applicant's outstanding indebtedness, calculated as principal and accrued interest, when refinancing an existing loan.

*Comment 13:* FFP funds should not be used to finance the purchase of new limited entry privileges at this time. This opposition is based solely on the practical fact that the FFP loan authority is not sufficiently funded at this time to enable the agency to meet all traditional loan applications, as well as financing for aquaculture, new IFQ financing, and new permit funding. Loan authority should be restored to the peak levels of prior budget cycles.

*Response:* The FFP receives two separate loan funding authorities. One is

for the traditional loan program, and a separate authorization is for IFQ lending. Approving IFQ loans does not decrease the loan authority available for traditional loans and vice versa. Although NMFS has no final control over what is ultimately established as a lending ceiling, or funds given in annual appropriations legislation, NMFS will track the demand for both traditional and IFQ lending, and may include a request in its submission for the President's budget for greater loan authority if it deems it necessary.

*Comment 14:* FFP loan authority should be used to implement an IFQ loan program consistent with the Magnuson-Stevens Act. The onset of the new NOAA policy on catch shares will make FFP lending an important tool for the commercial fishing industry.

*Response:* NMFS notes the comment; however, NMFS points out that the decision to implement an IFQ program for any particular fishery lies with the appropriate Fishery Management Council.

#### Changes From the Proposed Rule

General FFP credit standards and requirements section 253.11 (j) is changed to reflect the terms of 46 U.S.C. 53709(b)(1) and (b)(4) which, collectively, require that any loan amount be limited to 80 percent of the actual cost or depreciated actual cost of the property used as security. By implication, this will require the FFP to take a security interest in the specified project property, and that the value of the collateral pledged will limit the aggregate amount of the loan. The proposed rule allowed the Program to waive this requirement or allow substitute collateral. This rule now requires a first lien position on the project's primary collateral. The FFP may still take junior lien positions on secondary collateral. NMFS also made minor changes to correct errors or improve readability that do not affect the substantive provisions of the rule.

#### Classification

The NMFS Assistant Administrator has determined that this final rule is published under the authority of Chapter 537 of the Shipping Act, and is consistent with the Magnuson-Stevens Act, as amended, and other applicable law.

#### Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not duplicate, overlap, or conflict with any other relevant Federal rules.

#### Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are explained in the proposed rule (75 FR 24549) and are not fully repeated here. Briefly, the Department certified that this rule will not have a significant economic impact on a substantial number of small businesses because:

Both small and large entities benefit from the availability of long-term, fixed rate financing. Community Development Quota (CDQ) groups, which consist of 65 Western Alaskan villages combined into six community coalitions, benefit from the positive economic opportunities that FFP lending provides. The proposed rule has no adverse impacts on small business entities because of the nature of the rule. Applications by small business entities for program financing are voluntary. No mandatory requirements are placed on any small business. No small entities are directly regulated by this rule. Those small business entities that use the program do so for beneficial impacts.

This certification was provided to the public for comment, and NMFS received no comments or concerns related to the certification. Accordingly, no regulatory analysis is required and none has been prepared.

#### Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collections of information have been approved by the Office of Management and Budget (OMB) under OMB Control Numbers 0648-0012 (traditional loan application) and 0648-0272 (IFQ loan application). The public reporting burden for the FFP financing is estimated to average eight hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data information, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov), or fax to 202-395-7285.

#### List of Subjects in 50 CFR Part 253

Aquaculture, Community development groups, Direct lending,

Financial assistance, Fisheries, Fishing, Individual fishing quota.

Dated: December 10, 2010.

**Samuel D. Rauch III,**

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

■ For the reasons set out in the preamble, 50 CFR part 253 is revised as follows.

## **PART 253—FISHERIES ASSISTANCE PROGRAMS**

### **Subpart A—General**

Sec.

253.1 Purpose.

### **Subpart B—Fisheries Finance Program**

253.10 General definitions.

253.11 General FFP credit standards and requirements.

253.12 Credit application.

253.13 Initial investigation and approval.

253.14 Loan documents.

253.15 Recourse against other parties.

253.16 Actual cost.

253.17 Insurance.

253.18 Closing.

253.19 Dual-use CCF.

253.20 Fees.

253.21 Demand by guaranteed noteholder and payment.

253.22 Program operating guidelines.

253.23 Default and liquidation.

253.24 Enforcement violations and adverse actions.

253.25 Other administrative requirements.

253.26 Traditional loans.

253.27 IFQ financing.

253.28 Halibut sablefish IFQ loans.

253.29 CDQ loans.

253.30 Crab IFQ loans.

253.31–253.49 [Reserved]

### **Subpart C—Interjurisdictional Fisheries**

253.50 Definitions.

253.51 Apportionment.

253.52 State projects.

253.53 Other funds.

253.54 Administrative requirements.

**Authority:** 46 U.S.C. 53701 and 16 U.S.C. 4101 *et seq.*

### **Subpart A—General**

#### **§ 253.1 Purpose.**

(a) The regulations in this part pertain to fisheries assistance programs. Subpart B of this part governs the Fisheries Finance Program (FFP or the Program), which makes capacity neutral long-term direct fisheries and aquaculture loans. The FFP conducts all credit investigations, makes all credit determinations and holds and services all credit collateral.

(b) Subpart C of this part implements Public Law 99–659 (16 U.S.C. 4100 *et seq.*), which has two objectives:

(1) Promote and encourage State activities in support of the management

of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) Promote and encourage management of interjurisdictional fishery resources throughout their range.

(3) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resources in both the executive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

### **Subpart B—Fisheries Finance Program**

#### **253.10 General definitions.**

The terms used in this subpart have the following meanings:

*Act* means Chapter 537 of Title 46 of the U.S. Code, (46 U.S.C. 53701–35), as may be amended from time to time.

*Actual cost* means the sum of all amounts for a project paid by an obligor (or related person), as well as all amounts that the Program determines the obligor will become obligated to pay, as such amounts are calculated by § 253.16.

*Applicant* means the individual or entity applying for a loan (the prospective obligor).

*Application* means the documents provided to or requested by NMFS from an applicant to apply for a loan.

*Application fee* means 0.5 percent of the dollar amount of financing requested.

*Approval in principle letter (AIP)* means a written communication from NMFS to the applicant expressing the agency's commitment to provide financing for a project, subject to all applicable regulatory and Program requirements and in accordance with the terms and conditions contained in the AIP.

*Aquaculture facility* means land, structures, appurtenances, laboratories, water craft built in the U.S., and any equipment used for the hatching, caring for, or growing fish, under controlled circumstances for commercial purposes, as well as the unloading, receiving, holding, processing, or distribution of such fish.

*Capital Construction Fund (CCF)*, as described under 46 U.S.C. 53501–17, allows owners of eligible vessels to reserve capital for replacement vessels, additional vessels, reconstruction of vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States, for

operation in the fisheries of the United States.

*Captain* means a vessel operator or a vessel master.

*Charter fishing* means fishing from a vessel carrying a “passenger for hire,” as defined in 46 U.S.C. 2101(21a), such passenger being engaged in recreational fishing, from whom consideration is provided as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

*Citizen* means a “citizen of the United States,” as described in 46 U.S.C. 104, or an entity who is a citizen for the purpose of documenting a vessel in the coastwise trade under 46 U.S.C. 50501.

*Crewman* means any individual, other than a captain, a passenger for hire, or a fisheries observer working on a vessel that is engaged in fishing.

*Demand* means a noteholder's request that a debtor or guarantor pay a note's full principal and interest balance.

*Facility* means a fishery or an aquaculture facility.

*Fish* means finfish, mollusks, crustaceans and all other forms of aquatic animal and plant life, other than marine mammals and birds.

*Fisheries harvest authorization* means any transferable permit, license or other right, approval, or privilege to engage in fishing.

*Fishery facility* means land, land structures, water craft that do not engage in fishing, and equipment used for transporting, unloading, receiving, holding, processing, preserving, or distributing fish for commercial purposes (including any water craft used for charter fishing).

*Fishing* means:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish;

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this section.

(5) Fishing does not include any scientific research activity which is conducted by a scientific research vessel.

*Fishing industry* for the purposes of this part, means the broad sector of the national economy comprised of persons or entities that are engaged in or substantially associated with fishing, including aquaculture, charter operators, guides, harvesters, outfitters, processors, suppliers, among others, without regard to the location of their

activity or whether they are engaged in fishing for wild stocks or aquaculture.

*Guarantee* means a guarantor's contractual promise to repay indebtedness if an obligor fails to repay as agreed.

*Guarantee fee* means one percent of a guaranteed note's average annual unpaid principal balance.

*Guaranteed note* means a promissory note from an obligor to a noteholder, the repayment of which the United States guarantees.

*IFQ* means Individual Fishing Quota, which is a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. IFQ does not include community development quotas.

*Noteholder* means a guaranteed note payee.

*Obligor* means a party primarily liable for payment of the principal of or interest on an obligation, used interchangeably with the terms "note payor" or "notemaker."

*Origination year* means the year in which an application for a loan is accepted for processing.

*Program* means the Fisheries Finance Program, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

*Project* means:

(1) The refinancing or construction of a new fishing vessel or the financing or refinancing of a fishery or aquaculture facility or the refurbishing or purchase of an existing vessel or facility, including, but not limited to, architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Program requires;

(2) The purchase or refinance of any limited access privilege, IFQ, fisheries access right, permit, or other fisheries harvest authorization, for which the actual cost of the purchase of such authorization would be eligible under the Act for direct loans;

(3) Activities (other than fishing capacity reduction, as set forth in part 600.1000 of this title) that assist in the transition to reduced fishing capacity;

(4) Technologies or upgrades designed to improve collection and reporting of fishery-dependent data, to reduce bycatch, to improve selectivity or reduce adverse impacts of fishing gear, or to improve safety; or

(5) Any other activity that helps develop the U.S. fishing industry, including, but not limited to, measures

designed or intended to improve a vessel's fuel efficiency, to increase fisheries exports, to develop an underutilized fishery, or to enhance financial stability, financial performance, growth, productivity, or any other business attribute related to fishing or fisheries.

*RAM* means the Restricted Access Management division in the Alaska Regional Office of NMFS or the office that undertakes the duties of this division to issue or manage quota shares.

*Refinancing* means newer debt that either replaces older debt or reimburses applicants for previous expenditures.

*Refinancing/assumption fee* means a one time fee assessed on the principal amount of an existing FFP note to be refinanced or assumed.

*Refurbishing* means any reconstruction, reconditioning, or other improvement of existing vessels or facilities, but does not include routine repairs or activities characterized as maintenance.

*Security documents* mean all documents related to the collateral securing the U.S. Note's repayment and all other assurances, undertakings, and contractual arrangements associated with financing or guarantees provided by NMFS.

*Underutilized fishery* means any stock of fish (a) harvested below its optimum yield or (b) limited to a level of harvest or cultivation below that corresponding to optimum yield by the lack of aggregate facilities.

*U.S.* means the United States of America and, for citizenship purposes, includes the fifty states, Commonwealth of Puerto Rico, American Samoa, the Territory of the U.S. Virgin Islands, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States, or any political subdivision of any of them.

*U.S. Note* means a promissory note payable by the obligor to the United States.

*Useful life* means the period during which project property will, as determined by the Program, remain economically productive.

*Vessel* means any vessel documented under U.S. law and used for fishing.

*Wise use* means the development, advancement, management, conservation, and protection of fishery resources, that is not inconsistent with the National Standards for Fishery Conservation and Management (16 U.S.C. 1851) and any other relevant criteria, as may be specified in

applicable statutes, regulations, Fishery Management Plans, or NMFS guidance.

#### **§ 253.11 General FFP credit standards and requirements.**

(a) *Principal*. Unless explicitly stated otherwise in these regulations or applicable statutes, the amount of any loan may not exceed 80 percent of actual cost, as such term is described in § 253.16; provided that the Program may approve an amount that is less, in accordance with its credit determination.

(b) *Interest rate*. Each loan's annual interest rate will be 2 percent greater than the U.S. Department of Treasury's cost of borrowing public funds of an equivalent maturity at the time the loan closes.

(c) *Ability and experience requirements*. An obligor and the majority of its principals must demonstrate the ability, experience, resources, character, reputation, and other qualifications the Program deems necessary for successfully operating the project property and protecting the Program's interest in the project.

(d) *Lending restrictions*. Unless it can document that unique or extraordinary circumstances exist, the Program will not provide financing:

(1) For venture capital purposes; or

(2) To an applicant who cannot document successful fishing industry ability and experience of a duration, degree, and nature that the Program deems necessary to successfully repay the requested loan.

(e) *Income and expense projections*. The Program, using conservative income and expense projections for the project property's operation, must determine that projected net earnings can service all debt, properly maintain the project property, and protect the Program's interest against risks of loss, including the industry's cyclical economics.

(f) *Working capital*. The Program must determine that a project has sufficient initial working capital to achieve net earnings projections, fund all foreseeable contingencies, and protect the Program's interest in the project. In making its determination, the Program will use a conservative assessment of an applicant's financial condition, and at the Program's discretion, some portion of projected working capital needs may be met by something other than current assets minus liabilities (i.e., by a line or letter of credit, non-current assets readily capable of generating working capital, a guarantor with sufficient financial resources, etc.).

(g) *Audited financial statements*. Audited financial statements will ordinarily be required for any obligor

with large or financially complex operations, as determined by the program, whose financial condition the Program believes cannot be otherwise assessed with reasonable certainty.

(h) *Consultant services.* Expert consulting services may be necessary to help the Program assess a project's economic, technical, or financial feasibility. The Program will notify the applicant if an expert is required. The Program will select and employ the necessary consultant, but require the applicant to reimburse the Program for any fees charged by the consultant. In the event that an application requires expert consulting services, the loan will not be closed until the applicant fully reimburses the Program for the consulting fees. This cost may, at the Program's discretion, be included in the amount of the note. For a declined application, the Program may reimburse itself from the application fee as described in § 253.12, including any portion known as the commitment fee that could otherwise be refunded to the applicant.

(i) *Property inspections.* The Program may require adequate condition and valuation inspection of all property used as collateral as the basis for assessing the property's worth and suitability for lending. The Program may also require these at specified periods during the life of the loan. These must be conducted by competent and impartial inspectors acceptable to the Program. Inspection cost(s) will be at an applicant's expense. Those occurring before application approval may be included in actual cost, as actual cost is described in § 253.16.

(j) *Collateral.* The Program shall have first lien(s) on all primary project property pledged as collateral. The Program, at its discretion, may request additional collateral and will consider any additional collateral in its credit determinations.

(k) *No additional liens.* All primary project property pledged as collateral, including any additional collateral, shall be free of additional liens, unless the Program, at the request of the applicant, expressly waives this requirement in writing.

(l) *General FFP credit standards apply.* Unless explicitly stated otherwise in these rules, all FFP direct lending is subject to the above general credit standards and requirements found in §§ 253.12 through 253.30. The Program may adjust collateral, guarantee and other requirements to reflect individual credit risks.

(m) *Adverse legal proceedings.* The Program, at its own discretion, may decline or hold in abeyance any loan

approval or disbursement(s) to any applicant found to have outstanding lawsuits, citations, hearings, liabilities, appeals, sanctions or other pending actions whose negative outcome could significantly impact, in the opinion of the Program, the financial circumstances of the applicant.

#### § 253.12 Credit application.

(a) *Applicant.* (1) An applicant must be a U.S. citizen and be eligible to document a vessel in the coastwise trade; and

(2) Only the legal title holder of project property, or its parent company (or the lessee of an appropriate long-term lease) may apply for a loan; and

(3) An applicant and the majority of its principals must generally have the ability, experience, resources, character, reputation, and other qualifications the Program deems necessary for successfully operating, utilizing, or carrying out the project and protecting the Program's interest; and

(4) Applicants should apply to the appropriate NMFS Regional Financial Services Branch to be considered.

(b) *Application fee.* An application fee of 0.5 percent of the dollar amount of an application is due when the application is formally accepted. Upon submission, 50 percent of the application fee, known as the "filing fee," is non-refundable; the remainder, known as the "commitment fee," may be refunded if the Program declines an application or an applicant withdraws its application before the Program issues an AIP letter, as described in § 253.13(e). The Program will not issue an AIP letter if any of the application fee remains unpaid. No portion of the application fee shall be refunded once the Program issues an AIP letter.

(c) *False statement.* A false statement on an application is grounds for denial or termination of funds, grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001 and an event of a security default.

#### § 253.13 Initial investigation and approval.

(a) The Program shall undertake a due diligence investigation of every application it receives to determine if, in the Program's sole judgment, the application is both:

(1) Eligible for a loan because it meets applicable loan requirements; and

(2) Qualified for a loan because the project is deemed an acceptable credit risk.

(b) The Program will approve eligible and qualified applicants by evaluating the information obtained during the application and investigation process.

(c) Among other investigations, applicants may be subject to a

background check, fisheries violations check and credit review. Background checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's honesty or financial integrity.

(d) The Program, at its own discretion, may decline or delay approval of any loans or disbursements to any applicant found to have outstanding citations, notices of violations, or other pending legal actions or unresolved claims.

(e) The Program may place any terms and conditions on such approvals that the Program, in its sole discretion, deems necessary and appropriate.

(f) *Credit decision.* (1) The Program shall issue to approved applicants an AIP letter, which shall describe the terms and conditions of the loan, including (but not limited to) loan amounts, maturities, additional collateral, repayment sources or guarantees. Such terms and conditions are at the Program's sole discretion and shall also be incorporated in security documents that the Program prepares. An applicant's non-acceptance of any terms and conditions may result in an applicant's disqualification.

(2) Any application the Program deems ineligible or unqualified will be declined.

#### § 253.14 Loan documents.

(a) *U.S. Note.* (1) The U.S. Note will be in the form the Program prescribes.

(2) The U.S. Note evidences the obligor's indebtedness to the United States.

(i) For financing approved after October 11, 1996, the U.S. Note evidences the obligor's actual indebtedness to the U.S.; and

(ii) For financing originating before October 11, 1996, that continues to be associated with a Guaranteed Note, the U.S. Note shall evidence the obligor's actual indebtedness to the U.S. upon the Program's payment of any or all of the sums due under the Guaranteed Note or otherwise disbursed on the obligor's behalf.

(iii) The U.S. Note will, among other things, contain provisions to add to its principal balance all amounts the Program advances or incurs, including additional interest charges and costs incurred to protect its interest or accommodate the obligor.

(3) The U.S. Note shall be assignable by the Program, at its sole discretion.

(b) *Security documents.* (1) Each security document will be in the form the Program prescribes.

(2) The Program will, at a minimum, require the pledge of adequate collateral, generally in the form of a security interest or mortgage against all property associated with a project or security as otherwise required by the Program.

(3) The Program will require such other security as it deems necessary and appropriate, given the circumstances of each obligor and the project.

(4) The security documents will, among other things, contain provisions to secure the repayment of all additional amounts the Program advances or incurs to protect its interest or accommodate the obligor, including additional interest charges and fees.

#### § 253.15 Recourse against parties.

(a) *Form.* Recourse by borrowers or guarantors may be by a repayment guarantee, irrevocable letter of credit, additional tangible or intangible collateral, or other form acceptable to the Program.

(b) *Principals accountable.* The principal parties in interest, who ultimately stand most to benefit from the project, will ordinarily be held financially accountable for the project's performance. The Program may require recourse against:

(1) All major shareholders of a closely-held corporate obligor;

(2) The parent corporation of a subsidiary corporate obligor;

(3) The related business entities of the obligor if the Program determines that the obligor lacks substantial pledged assets other than the project property or is otherwise lacking in any credit factor required to approve the application;

(4) Any or all major limited partners;

(5) Non-obligor spouses of applicants or obligors in community property states; and/or

(6) Against any others it deems necessary to protect its interest.

(c) *Recourse against parties.* Should the Program determine that a secondary means of repayment from other sources is necessary (including the net worth of parties other than the obligor), the Program may require secured or unsecured recourse against any such secondary repayment sources.

(d) *Recourse unavailable.* Where appropriate recourse is unavailable, the conservatively projected net liquidating value of the obligor's assets (as such assets are pledged to the Program) must, in the Program's credit judgment, substantially exceed all projected Program exposure or other risks of loss.

#### § 253.16 Actual cost.

Actual cost shall be determined as follows:

(a) The actual cost of a vessel shall be the sum of:

(1) The total cost of the project depreciated on a straight-line basis, over the project property's useful life, using a 10-percent salvage value; and

(2) The current market value of appurtenant limited access privileges or transferable limited access privileges vested in the name of the obligor, the subject vessel or their owners, provided that such privileges are utilized by or aboard the subject vessel and will be pledged as collateral for the subject FFP financing.

(b) The actual cost of a facility shall be the sum of:

(1) The total cost of the project, not including land, depreciated on a straightline basis over the Project Property's useful life, using a 10-percent salvage value;

(2) The current market value of the land that will be pledged as collateral for the subject FFP financing, provided that such land is utilized by the facility; and

(3) The net present value of the payments due under a long term lease of land or marine use rights, provided that they meet the following requirements:

(i) The project property must be located at such leased space or directly use such marine use rights;

(ii) Such lease or marine use right must have a duration the Program deems sufficient; and

(iii) The lease or marine use right must be assigned to the Program such that the Program may foreclose and transfer such lease to another party.

(c) The actual cost of a transferable limited access privilege shall be determined as follows:

(1) For financing the purchase of limited access privileges, the actual cost shall be the purchase cost.

(2) For refinancing limited access privileges, the actual cost shall be the current market value.

(d) The actual cost of any Project that includes any combination of items described in paragraphs (a), (b) or (c) of this section shall be the sum of such calculations.

#### § 253.17 Insurance.

(a) All insurable collateral property and other risks shall be continuously insured so long as any balance of principal or interest on a Program loan or guarantee remains outstanding.

(b) Insurers must be acceptable to the Program.

(c) Insurance must be in such forms and amounts and against such risks the Program deems necessary to protect the United States' interest.

(d) Insurance must be endorsed to include the requirements the Program deems necessary and appropriate.

(1) Normally and as appropriate, the Program will be named as an additional insured, mortgagee, or loss payee, for the amount of its interest; any waiver of this requirement must be in writing;

(2) Cancellation will require adequate advance written notice;

(3) The Program will be adequately protected against other insureds' breaches of policy warranties, negligence, omission, etc., in the case of marine insurance, vessel seaworthiness will be required;

(4) The insured must provide coverage for any other risk or casualty the Program may require.

#### § 253.18 Closing.

(a) *Approval in principle letters.* Every closing will be in strict accordance with a final approval in principle letter.

(b) *Contracts.* Promissory notes, security documents, and any other documents the Program may require will be on standard Program forms that may not be altered without Program written approval. The Program will ordinarily prepare all contracts, except certain pledges involving real property or other matters involving local law, which will be prepared by each obligor's attorney at the direction and approval of the Program.

(c) *Additional requirements.* At its discretion the Program may require services from applicant's attorneys, other contractors or agents. Real property services required from an applicant's attorney or agent may include, but are not limited to: Title search, title insurance, mortgage and other document preparation, document execution and recording, escrow and disbursement, and legal opinions and other assurances. The Program will notify the applicant in advance if any such services are required of the applicant's attorneys, contractors or other agents. Applicants are responsible for all attorney's fees, as well as those of any other private contractor. Attorneys and other contractors must be satisfactory to the Program.

(d) *Closing schedules.* The Program will not be liable for adverse interest-rate fluctuations, loss of commitments, or other consequences of an inability by any of the parties to meet the closing schedule.

#### § 253.19 Dual-use CCF.

The Program may require the pledge of a CCF account or annual deposits of some portion of the project property's net income into a dual-use CCF. A dual-use CCF provides the normal CCF tax-

deferral benefits, but also gives the Program control of CCF withdrawals, recourse against CCF deposits, ensures an emergency refurbishing reserve (tax-deferred) for project property, and provides additional collateral.

**§ 253.20 Fees.**

(a) *Application fee.* See §§ 253.10 and 253.12(b).

(b) *Guarantee fee.* For existing Guaranteed Loans, an annual guarantee fee will be due in advance and will be based on the guaranteed note's repayment provisions for the prospective year. The first annual guarantee fee is due at guarantee closing. Each subsequent guarantee fee is due and payable on the guarantee closing's anniversary date. Each is fully earned when due, and shall not subsequently be refunded for any reason.

(c) *Refinancing or assumption fee.* The Program will assess a fee of one quarter of one (1) percent of the note to be refinanced or assumed. This fee is due upon application for refinancing or assumption of a guaranteed or direct loan. Upon submission, the fee shall be non-refundable. The Program may waive a refinancing or assumption fee's payment when the refinancing or assumption's primary purpose will benefit the United States.

(d) *Where payable.* Fees are payable by check to "U.S. Department of Commerce/NOAA." Other than those collected at application or closing, fees are payable by mailing checks to the "U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service," to such address as the Program may designate. To ensure proper crediting, each check should include the official case number the Program assigns.

**§ 253.21 Demand by guaranteed noteholder and payment.**

Every demand by the guaranteed noteholder must be delivered in writing to the Program and must include the noteholder's certified record of the date and amount of each payment made on the guaranteed note and the manner of its application. The only period during which a guaranteed noteholder can make demand for a payment default begins on the thirty-first day of the payment default and continues through the ninetieth day of a payment default. The noteholder must possess evidence of the demand's timely delivery.

**§ 253.22 Program operating guidelines.**

The Program may issue policy and administrative guidelines, as the need arises.

**§ 253.23 Default and liquidation.**

Upon default under the terms of any note, guarantee, security agreement, mortgage, or other security document the Program shall take remedial actions including, but not limited to, where appropriate, retaking or arrest of collateral, foreclosure, restructuring, debarment, referral for debt collection, or liquidation as it deems best able to protect the U.S. Government's interest.

**§ 253.24 Enforcement violations and adverse actions.**

(a) *Compliance with applicable law.* All applicants and Program participants shall comply with applicable law.

(b) *Applicant disqualification.* (1) Any issuance of any citation or Notice of Violation and Assessment by NMFS enforcement or other enforcement authority may constitute grounds for the Program to:

- (i) Delay application or approval processing;
- (ii) Delay loan closing;
- (iii) Delay disbursement of loan proceeds;
- (iv) Disqualify an applicant or obligor; or
- (v) Declare default.

(2) The Program will not approve loans or disburse funds to any applicant found to have an outstanding, final and unappealable fisheries fine or other unresolved penalty until either: Such fine is paid or penalty has been resolved; or the applicant enters into an agreement to pay the penalty and makes all payments or installments as they are due. Failure to pay or resolve any such fine or penalty in a reasonable period of time will result in the applicant's disqualification.

(c) *Foreclosure in addition to other penalties.* In the event that a person with an outstanding balance on a Program loan or guarantee violates any ownership, lease, use, or other provision of applicable law, such person may be subject to foreclosure of property, in addition to any fines, sanctions, or other penalties.

**§ 253.25 Other administrative requirements.**

(a) *Debt Collection Act.* In accordance with the provisions of the Debt Collection Improvement Act of 1996, a person may not obtain any Federal financial assistance in the form of a loan (other than a disaster loan) or loan guarantee if the person has an outstanding debt (other than a debt under the Internal Revenue Code of 1986) with any Federal agency which is in a delinquent status, as determined under standards prescribed by the Secretary of the Treasury.

(b) *Certifications.* Applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," or its equivalent or successor form, if any.

(c) *Taxpayer identification.* An applicant classified for tax purposes as an individual, limited liability company, partnership, proprietorship, corporation, or legal entity is required to submit along with the application a taxpayer identification number (TIN) (social security number, employer identification number as applicable, or registered foreign organization number). Recipients who either fail to provide their TIN or provide an incorrect TIN may have application processing or funding suspended until the requirement is met.

(d) *Audit inquiry.* An audit of a Program loan may be conducted at any time. Auditors, selected at the discretion of the Program or other agency of the United States, shall have access to any and all books, documents, papers and records of the obligor or any other party to a financing that the auditor(s) deem(s) pertinent, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium.

(e) *Paperwork Reduction Act.* The application requirements contained in these rules have been approved under OMB control number 0648-0012. The applications for the halibut/sablefish QS crew member eligibility certificate have been approved under OMB control number 0648-0272. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

**§ 253.26 Traditional loans.**

(a) *Eligible projects.* Financing or refinancing up to 80 percent of a project's actual cost shall be available to any citizen who is determined to be eligible and qualified under the Act and these rules, except—

(1) The Program will not finance the cost of new vessel construction.

(2) The Program will not finance a vessel refurbishing project that materially increases an existing vessel's harvesting capacity.

(b) *Financing or refinancing.* (1) Projects, other than those specified in paragraphs (a) (1) and (a)(2) of this section, may be financed, as well as refinanced.

(2) Notwithstanding paragraph (a)(1) of this section, the Program may refinance the construction cost of a vessel whose construction cost has already been financed (or otherwise paid) prior to the submission of a loan application.

(3) Notwithstanding paragraph (a)(2) of this section, the Program may refinance the refurbishing cost of a vessel whose initial refurbishing cost has already been financed (or otherwise paid) prior to the submission of a loan application.

(4) The Program may finance or refinance the purchase or refurbishment of any vessel or facility for which the Secretary has:

(i) Accelerated and/or paid outstanding debts or obligations;

(ii) Acquired; or

(iii) Sold at foreclosure.

(c) *Existing vessels and facilities.* The Program may finance the purchase of an existing vessel or existing fishery facility if such vessel or facility will be refurbished in the United States and will be used in the fishing industry.

(d) *Fisheries modernization.*

Notwithstanding any of this part, the Program may finance or refinance any:

(1) Activities that assist in the transition to reduced fishing capacity; or

(2) Technologies or upgrades designed to:

(i) Improve collection and reporting of fishery-dependent data;

(ii) Reduce bycatch;

(iii) Improve selectivity;

(iv) Reduce adverse impacts of fishing gear; or

(v) Improve safety.

(e) *Guaranty transition.* Upon application by the obligor, any guaranteed loans originated prior to October 11, 1996, may be refinanced as direct loans, regardless of the original purpose of the guaranteed loan.

(f) *Maturity.* Maturity may not exceed 25 years, but shall not exceed the project property's useful life. The Program, at its sole discretion, may set a shorter maturity period.

(g) *Credit standards.* Traditional loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted in accordance with the Program's assessment of individual credit risks.

#### **§ 253.27 IFQ financing.**

The Program may finance or refinance the project cost of purchasing, including the reimbursement of obligors for expenditures previously made for purchasing, individual fishing quotas in accordance with the applicable sections of the Magnuson-Stevens Fishery

Conservation and Management Act or any other statute.

#### **§ 253.28 Halibut sablefish IFQ loans.**

(a) *Specific definitions.* For the purposes of this section, the following definitions apply:

(1) Entry-level fishermen means fishermen who do not own any IFQ in the year they apply for a loan.

(2) Fishermen who fish from small vessels means fishermen wishing to purchase IFQ for use on Category B, Category C, or Category D vessels, but who do not own, in whole or in part, any Category A or Category B vessels, as such vessels are defined in 50 CFR 679.40(a)(5) of this title.

(3) Halibut sablefish quota share means a halibut or sablefish permit, the face amount of which is used as the basis for the annual calculation of a person's halibut or sablefish IFQ, also abbreviated as "HSQS" or "halibut/sablefish QS."

(4) Halibut/Sablefish IFQ means the annual catch limit of halibut or sablefish that may be harvested by a person who is lawfully allocated halibut or sablefish quota share, a harvest privilege for a specific portion of the total allowable catch of halibut or sablefish.

(b) *Entry level fishermen.* The Program may finance up to 80 percent of the cost of purchasing HSQS by an entry level fisherman who:

(1) Does not own any halibut/sablefish QS during the origination year;

(2) Applies for a loan to purchase a quantity of halibut/sablefish QS that is not greater than the equivalent of 8,000 lb. (3,628.7 kg) of IFQ during the origination year;

(3) Possesses the appropriate transfer eligibility documentation duly issued by RAM for HSQS;

(4) Intends to be present aboard the vessel, as may be required by applicable regulations; and

(5) Meets all other Program eligibility, qualification, lending and credit requirements.

(c) *Fishermen fishing from small vessels.* The Program may finance up to 80 percent of the cost of purchasing HSQS by a fisherman who fishes from a small vessel, provided that any such fisherman shall:

(1) Apply for a loan to purchase halibut or sablefish QS for use on vessel Categories B, C, or D, as defined under 50 CFR 679.40(a)(5) of this title;

(2) Not own an aggregate quantity of halibut/sablefish QS (including the loan QS) of more than the equivalent of 50,000 lb. (22,679.6 kg) of IFQ during the origination year;

(3) Not own, in whole or in part, directly or indirectly (including through

stock or other ownership interest) any vessel of the type that would have been assigned Category A or Category B HSQS under 50 CFR 679.40(a)(5);

(4) Possess the appropriate transfer eligibility documentation duly issued by the RAM for HSQS;

(5) Intend to be present aboard the vessel, as may be required by applicable regulations, as IFQ associated with halibut/sablefish QS financed by the loan is harvested; and

(6) Meet all other Program eligibility, qualification, lending and credit requirements.

(d) *Refinancing.* (1) The Program may refinance any existing debts associated with HSQS an applicant currently holds, provided that—

(i) The HSQS being refinanced would have been eligible for Program financing at the time the applicant purchased it, and

(ii) The applicant meets the Program's applicable lending requirements.

(2) The refinancing is in an amount up to 80 percent of HSQS' current market value; however, the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing HSQS debt being refinanced.

(3) In the event that the current market value of HSQS and principal loan balance do not meet the 80 percent requirement in paragraph (d)(2) of this section, applicants seeking refinancing may be required to provide additional down payment.

(e) *Maturity.* Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(f) *Repayment.* Repayment will be by equal quarterly installments of principal and interest.

(g) *Security.* Although quota share(s) will be the primary collateral for a HSQS loan, the Program may require additional security pledges to maintain the priority of the Program's security interest. The Program, at its option, may also require all parties with significant ownership interests to personally guarantee loan repayment for any applicant that is a corporation, partnership, or other entity. Subject to the Program's credit risk determination, some projects may require additional security, collateral, or credit enhancement.

(h) *Crew member transfer eligibility certification.* The Program will accept RAM certification as proof that applicants are eligible to hold HSQS. The application of any person determined by RAM to be unable to receive such certification will be declined. Applicants who fail to obtain

appropriate transfer eligibility certification within 45 working days of the date of application may lose their processing priority.

(i) *Program credit standards.* HSQS loans, regardless of purpose, are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

#### § 253.29 CDQ loans.

(a) *FFP actions.* The Program may finance or refinance up to 80 percent of a project's actual cost.

(b) *Eligible projects.* Eligible projects include the purchase of all or part of ownership interests in fishing or processing vessels, shoreside fish processing facilities, permits, quota, and cooperative rights in any of the Bering Sea and Aleutian Islands fisheries.

(c) *Eligible entities.* The following communities, in accordance with applicable law and regulations are eligible to participate in the loan program:

(1) The villages of Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George through the Aleutian Pribilof Island Community Development Association.

(2) The villages of Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk, Ekwok, King Salmon/Savonoski, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik through the Bristol Bay Economic Development Corporation.

(3) The village of Saint Paul through the Central Bering Sea Fishermen's Association.

(4) The villages of Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, and Tununak through the Coastal Villages Region Fund.

(5) The villages of Brevig Mission, Diomedes, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, and White Mountain through the Norton Sound Economic Development Corporation.

(6) The villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua through the Yukon Delta Fisheries Development Association.

(7) Any new groups established by applicable law.

(d) *Loan terms.* (1) CDQ loans may have terms up to thirty years, but shall not exceed the project property's useful

life. The Program, at its sole discretion, may set a shorter maturity period.

(2) CDQ loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

#### § 253.30 Crab IFQ loans.

(a) *Specific definitions.* For the purposes of this section, the following definitions apply:

(1) Crab means those crab species managed under the Fishery Management Plan for Bering Sea/Aleutian Island (BSAI) King and Tanner Crab.

(2) Crab FMP means the Fishery Management Plan for BSAI King and Tanner Crab.

(3) Crab quota share means a BSAI King and Tanner Crab permit, the base amount of which is used as a basis for the annual calculation of a person's Crab IFQ, also abbreviated as "Crab QS."

(b) *Crab captains or crewmen.* The Program may finance up to 80 percent of the cost of purchasing Crab QS by a citizen:

(1) Who is or was:

(i) A captain of a crab fishing vessel, or

(ii) A crew member of a crab fishing vessel;

(2) Who has been issued the appropriate documentation of eligibility by RAM;

(3) Whose aggregate holdings of QS will not exceed any limit on Crab QS holdings that may be in effect in the Crab FMP implementing regulations or applicable statutes in effect at the time of loan closing; and will not hold either individually or collectively, based on the initial QS pool, as published in 50 CFR Part 680, Table 8; and

(4) Who, at the time of initial application, meets all other applicable eligibility requirements to fish for crab or hold Crab QS contained in the Crab FMP implementing regulations or applicable statutes in effect at the time of loan closing.

(c) *Refinancing.* (1) The Program may refinance any existing debts associated with Crab QS that an applicant currently holds, provided that:

(i) The Crab QS being refinanced would have been eligible for Program financing at the time the applicant purchased it;

(ii) The applicant meets the Program's applicable lending requirements; and

(iii) The applicant would meet the requirements found in the Crab FMP implementing regulations at the time any such refinancing loan would close.

(2) The Program may refinance an amount up to 80 percent of Crab QS's

current market value; however, the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing Crab QS debt being refinanced.

(3) In the event that the current market value of Crab QS and current principal balance do not meet the 80 percent requirement in paragraph (c)(2) of this section, applicants seeking refinancing may be required to provide additional down payment.

(d) *Maturity.* Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(e) *Repayment.* Repayment schedules will be set by the loan documents.

(f) *Security.* Although the quota share will be the primary collateral for a Crab QS loan, the Program may require additional security pledges to maintain the priority of the Program's security interest. The Program, at its option, may also require all parties with significant ownership interests to personally guarantee loan repayment for any applicant that is a corporation, partnership, or other entity. Subject to the Program's credit risk determination, some projects may require additional security, collateral, or credit enhancement.

(g) *Crew member transfer eligibility certification.* The Program will accept RAM transfer eligibility certification as proof that applicants are eligible to hold Crab QS. The application of any person determined by RAM to be unable to receive such certification will be declined. Applicants who fail to obtain appropriate transfer eligibility certification within 45 working days of the date of application may lose their processing priority.

(h) *Crab Quota Share Ownership Limitation.* A program obligor must comply with all applicable maximum amounts, as may be established by NMFS regulations, policy or North Pacific Fishery Management Council action.

(i) *Program credit standards.* Crab QS loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

#### §§ 253.31—253.49 [Reserved]

#### Subpart C—Interjurisdictional Fisheries

#### § 253.50 Definitions.

The terms used in this subpart have the following meanings:

*Act* means the Interjurisdictional Fisheries Act of 1986, Public Law 99-659 (Title III).

*Adopt* means to implement an interstate fishery management plan by State action or regulation.

*Commercial fishery failure* means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

(1) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise; or

(2) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

*Enforcement agreement* means a written agreement, signed and dated, between a state agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and state laws pertaining to the protection of interjurisdictional fishery resources.

*Federal fishery management plan* means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

*Fisheries management* means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

*Fishery resource* means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life, including habitat, other than marine mammals and birds.

*Interjurisdictional fishery resource* means:

(1) A fishery resource for which a fishery occurs in waters under the

jurisdiction of one or more states and the U.S. Exclusive Economic Zone; or

(2) A fishery resource for which an interstate or a Federal fishery management plan exists; or

(3) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

*Interstate Commission* means a commission or other administrative body established by an interstate compact.

*Interstate compact* means a compact that has been entered into by two or more states, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

*Interstate Fisheries Research Program* means research conducted by two or more state agencies under a formal interstate agreement.

*Interstate fishery management plan* means a plan for managing a fishery resource developed and adopted by the member states of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the States to conserve and manage the fishery resource.

*Landed* means the first point of offloading fishery resources.

*NMFS Regional Director* means the Director of any one of the five National Marine Fisheries Service regions.

*Project* means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

*Research* means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

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

*State* means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

*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.

*Value* means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.

*Volume* means the weight of the fishery resource as landed, at the first point of landing.

**§ 253.51 Apportionment.**

(a) *Apportionment formula.* The amount of funds apportioned to each state is to 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 landed 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 and landed within all of the states during those calendar years.

(1) The equally weighted average value is determined by the following formula:

$$\frac{\text{Volume of X State}}{\text{Volume of all States}} = A \text{ percent}$$

$$\frac{\text{Value of X State}}{\text{Value of all States}} = B \text{ percent}$$

$$\frac{[A\% + B\%]}{2} = \text{State percentage used to determine state's share of the total available funds}$$

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

(i) Determine each state's share according to the apportionment formula.

(ii) Certify the funds to the respective NMFS Regional Director.

(iii) Instruct NMFS Regional Directors to promptly notify states of funds' availability.

(b) No state, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of 1 percent or higher may receive an apportionment for any fiscal year that is less than 1 percent of the total amount of funds available for that fiscal year.

(c) If a State's ratio under the apportionment formula in paragraph (b) of this section is less than one-third of

1 percent, that state may receive funding if the state:

(1) Is signatory to an interstate fishery compact;

(2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior for a fishery that is managed under an interstate fishery management plan;

(3) Borders one or more of the Great Lakes;

(4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research Program; or

(5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any state that has a ratio of less than one-third of 1 percent and meets any of the requirements set forth in paragraphs (c)(1) through (5) of this section may receive an apportionment for any fiscal year that is not less than 0.5 percent of the total amount of funds available for apportionment for such fiscal year.

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

(f) *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 appropriated to that state and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a state referred to in this section is irrevocable.

#### § 253.52 State projects.

(a) *General*—(1) *Designation of state agency.* The Governor of each state shall notify the Secretary of which agency of the state government is authorized under its laws to regulate commercial fisheries and is, therefore, designated receive financial assistance awards. An official of such agency shall certify which official(s) is authorized in accordance with state law to commit the state to participation under the Act, to sign project documents, and to receive payments.

(2) States that choose to submit proposals in any fiscal year must so notify the NMFS Regional Director before the end of the third quarter of that fiscal year.

(3) Any state may, through its state agency, submit to the NMFS Regional Director a completed NOAA Grants and Cooperative Agreement Application Package with its proposal for a project, which may be multiyear. Proposals must describe the full scope of work,

specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate state(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any state, as provided in paragraph (c) of this section.

(b) *Evaluation of projects.* The Secretary, before approving any proposal for a project, will evaluate the proposal as to its applicability, in accordance with 16 U.S.C. 4104(a)(2).

(c) *State matching requirements.* The Federal share of the costs of any project conducted under this subpart, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The state has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The state has adopted fishery regulations that 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 cannot exceed 90 percent of the total estimated cost of the project.

(d) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, he or she will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval.

(e) *Restrictions.* (1) 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 project.

(2) The expenditure of funds under this subpart may be applied only to projects for which a proposal has been evaluated under paragraph (b) of this section and approved by the Secretary, except that up to \$25,000 each fiscal year may be awarded to a state out of the state's regular apportionment to carry out an "enforcement agreement." An enforcement agreement does not require state matching funds.

(f) *Prosecution of work.* All work must be performed in accordance with applicable state laws or regulations, except when such laws or regulations are in conflict with Federal laws or

regulations such that the Federal law or regulation prevails.

#### § 263.53 Other funds.

(a) *Funds for disaster assistance.* (1) The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he or she has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the states' amount under the apportionment formula in § 253.601(a) will qualify for funding under this section. The Federal share of the cost of any activity conducted under the disaster provision of the Act shall be limited to 75 percent of the total cost.

(2) In addition, pursuant to section 308(d) of the Act, the Secretary is authorized to award grants to persons engaged in commercial fisheries for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster. Funds may be distributed by the Secretary only after notice and opportunity for public comment of the appropriate limitations, terms, and conditions for awarding assistance under this section. Assistance provided under this section is limited to 75 percent of an uninsured loss to the extent that such losses have not been compensated by other Federal or State Programs.

(b) *Funds for interstate commissions.* Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions.

#### § 253.54 Administrative requirements.

Federal assistance awards made as a result of this Act are subject to all Federal laws, Executive Orders, Office of Management and Budget Circulars as incorporated by the award; Department of Commerce and NOAA regulations; policies and procedures applicable to Federal financial assistance awards; and terms and conditions of the awards.

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