

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 991210331-9331-01; I.D. 102899B]

RIN 0648-AN34

**Fisheries of the Exclusive Economic Zone off Alaska; Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component under Section 206(b)(1) of the American Fisheries Act (AFA)**

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes regulations to implement an inshore fee system for all pollock harvested under the inshore component (IC) of the Bering Sea/Aleutian Islands (BS/AI) directed fishing allowance under the AFA. The AFA authorized a \$75 million loan to reduce fishing capacity for offshore component (OC) pollock and the inshore fee system as the means of repaying the loan. The proceeds of the loan partly paid the cost of removing nine OC catcher-processors (which the AFA specified) from all commercial fishing in the U.S. exclusive economic zone (EEZ). The intent of this rule is to implement the inshore fee system that the AFA requires.

**DATES:** Comments must be received at the appropriate address or facsimile number (see **ADDRESSES**) no later than January 5, 2000.

**ADDRESSES:** Copies of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) may be obtained from Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282. Written comments should be sent to Michael L. Grable at the above address. Comments also may be sent, via facsimile, to 301-713-1306. NMFS will not accept comments sent by e-mail or the Internet. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this proposed rule should be sent to both Michael L. Grable and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),

Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Michael L. Grable, 301-713-2390, fax 301-713-1306, e-mail *Michael.Grable@noaa.gov*.

**SUPPLEMENTARY INFORMATION:****Background**

The President signed the AFA into law on October 20, 1998, as part of the Omnibus Appropriations Bill for fiscal year 1999 (Pub. L. 105-277). The AFA required the Federal Government to pay, not later than December 31, 1998, \$90 million to the owners of nine large catcher processors harvesting OC pollock. In return, eight of these vessels had to stop all commercial fishing in the EEZ immediately and be scrapped by December 31, 2000. Although the ninth vessel did not have to be scrapped, it also had to stop all commercial fishing in the EEZ immediately and the owner had to certify that neither the owner nor anyone who purchased the vessel from the owner intended to use the vessel outside the EEZ to harvest any fish that also occur within the EEZ.

Before December 31, 1998, NMFS paid the required amount to the owners of these vessels. In accordance with the AFA, NMFS paid \$15 million of this amount from an AFA appropriation and the remaining \$75 million from the proceeds of a fishing capacity reduction loan under sections 1111 and 1112 of Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and g) (Title XI). The AFA requires the loan to be repaid by fees under section 312(d)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(d)(2)(C)) (Magnuson-Stevens Act).

Upon payment of the \$90 million, NMFS revoked all nine vessels' domestic fishing permits, one owner provided the certificate required for the ninth vessel, and the other owners began preparing for scrapping the remaining eight vessels. All eight vessels are presently undergoing scrapping at a scrapping facility in San Francisco, CA. Scrapping is scheduled to be completed before December 31, 2000.

Under the AFA and section 312(d)(2)(C) of the Magnuson-Stevens Act, all vessel owners harvesting IC pollock (fish sellers) are required to pay the fee and all fish processors making the first ex-vessel purchase of IC pollock (fish buyers) are required to collect the fee and account for and forward the fee revenue to NMFS for the purpose of repaying the loan. The fish sellers pay, and the fish buyers collect, the fee when

the fish buyers deduct the fee from the ex-vessel value of all IC pollock before paying the net ex-vessel value of the fish to the fish sellers.

The fee is six-tenths (0.6) of one cent for each pound, round-weight, of all IC pollock that fish sellers land. The AFA provides that fee payment and collection "shall \* \* \* continue without interruption until such loan is fully repaid \* \* \*" (section 207(b)(2)). Whether the loan is repaid before, at, or after its scheduled maturity depends on when fee payment begins, the rate at which loan principal bears interest, annually determined total allowable pollock catches after December 31, 1999, and IC pollock allocations after December 31, 2004. NMFS has not finally determined the rate at which the loan's principal bears interest. The other variables controlling the time required to fully repay the loan are not presently determinable.

Several assumptions are, consequently, necessary to project the time required to fully repay the loan. The first assumption involves the time at which fee payment begins. For projection purposes, NMFS assumes that fee payment begins on January 1, 2000. The second assumption involves the rate at which the principal of the loan bears interest. NMFS believes this rate will be either 7.09 percent or 7.81 percent per annum. For projection purposes, NMFS assumes the higher of these two rates. The third assumption involves the annual total allowable catch of pollock after December 31, 1999, which may vary from year to year. For projection purposes, NMFS assumes that the average annual total allowable catch of pollock after December 31, 1999, will be the same as the average annual total allowable catch of pollock over the 14-year period from the beginning of 1985 through end of 1998 (2.769 billion pounds or 1.256 million metric tons). The fourth assumption involves IC pollock allocations after December 31, 2004. This depends on whether the North Pacific Fishery Management Council maintains IC pollock allocations after December 31, 2004, at the same level as IC pollock allocations, under the AFA, from January 1, 1999, to December 31, 2004 (i.e., 42 percent of total allowable catch). For the purposes of this projection, NMFS assumes that IC pollock allocations after December 31, 2004, will be the same as IC pollock allocations from January 1, 1999, to December 31, 2004. Under these four

assumptions, the loan will be repaid in 21 years (i.e., 9 years less than the scheduled maturity). Actual conditions different than those NMFS assumes for the purpose of this projection may, however, cause loan repayment to occur sooner or later than here projected. Future total allowable catches may be the biggest determinate of the time actually required to repay this loan.

Accordingly, this rule proposes that fee payment and collection begin on the seventh calendar day after the date that a final fee rule is published in the FEDERAL REGISTER and continue without interruption until the loan is fully repaid (without regard to whether this is a period longer or shorter than the loan's scheduled maturity of 30 years).

The fixed interest rate at which the loan accrues interest is two percent of the principal amount of the loan outstanding plus such additional percent as the Secretary of Commerce is obligated to pay as the interest cost of borrowing from the United States Treasury the funds from which NMFS made the loan. On December 30, 1998, NMFS disbursed all \$75 million of the loan's original principal amount. Interest has been accruing since that date. NMFS is still determining the interest rate that the statutory formula requires (which, as noted, will probably be either 7.09 percent or 7.81 percent per annum). NMFS will apply all fee receipts, first, to the payment of accrued interest and, second, to the reduction of loan principal.

Section 312(b)-(e) of the Magnuson-Stevens Act provides for fishing capacity reduction programs (which may be funded by loans under sections 1111 and 1112 of Title XI). Although the IC pollock loan is authorized by the AFA rather than by section 312(b)-(e) of the Magnuson-Stevens Act, the AFA specifies that the IC pollock loan is repayable under section 312(d)(2)(C) of the Magnuson-Stevens Act. NMFS has already proposed a framework rule for implementing section 312(b)-(e) of the Magnuson-Stevens Act (64 FR 6854, February 11, 1999). The proposed framework rule would establish detailed provisions for paying, collecting, disbursing, accounting for, and reporting about fees repaying fishing capacity reduction loans.

NMFS had hoped to implement the fishing capacity reduction framework rule before NMFS had to provide for payment and collection of the IC pollock fee. NMFS intended to provide for payment and collection of the IC pollock fee by making the loan subject to the framework rule provisions about fee payment and collection. Because

NMFS has not yet adopted and promulgated the framework rule, however, NMFS must now separately provide for payment and collection of the IC pollock fee by proposing to add a temporary subpart G to 50 CFR part 679 (subpart G). NMFS has drawn most of the procedural provisions of the proposed subpart G from the proposed framework rule. After a framework rule is adopted and promulgated, NMFS will revoke subpart G and concurrently provide, by a program implementation rule under the framework rule, for the continuing payment and collection of the IC pollock fee.

#### Classification

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

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the action in the proposed rule on small entities. In summary, the IRFA states that this proposed rule would apply to about 100 fish sellers (all of whom are small entities) and about eight fish buyers (none of whom are small entities). The IRFA indicates that the average annual fee expense for each fish seller will likely be about \$60,000. Recordkeeping and reporting requirements would fall primarily on the fish buyers, who collect the fee. The estimated annual compliance cost to fish buyers is about \$5,568 per fish buyer. Several minimal recordkeeping and reporting requirements also apply to fish sellers. A fish seller must report to NMFS if a fish buyer refuses to collect the fee. The estimated compliance cost, should a fish buyer's refusal to collect the fee require a fish seller to report, is about \$25 per report. In specific and limited circumstances when a fish seller becomes a *de facto* fish buyer for recordkeeping and reporting requirements, the estimated compliance cost is the same as a fish buyer's compliance cost. The Paperwork Reduction Act (PRA) discussion further details these costs. This proposed rule does not duplicate or conflict with any other Federal rules of which NMFS is aware. NMFS considered two alternatives that might have lessened the economic impact on small entities. These alternatives were not collecting the fee and delaying fee collection. Not collecting the fee would both cost the Nation \$75 million and violate the AFA. Delaying fee collection would increase the ultimate cost to fish sellers (because

interest would continue to accrue on an unreduced \$75 million principal balance) and prolong the time required for fish sellers to repay the loan. The AFA requires that the fee system remain in effect until the loan is fully repaid. The EA/RIR/IRFA further discusses these alternatives and their economic impact on IC pollock fish sellers and fish buyers.

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

This proposed rule contains collection of information requirements subject to the PRA that have been approved by OMB under OMB Control No. 0648-0376. This PRA approval occurred in connection with proposal of the framework rule for implementing section 312(b)-(e) of the Magnuson-Stevens Act, including a collection of information burden for fee payment, collection, disbursement, accounting, and reporting under section 312(d)(2)(C) of the Magnuson-Stevens Act. The AFA provides that payment and collection of the IC pollock fee shall be in accordance with 312(d)(2)(C) of the Magnuson-Stevens Act.

The estimated response times for this collection of information are: 10 minutes per fishing trip to maintain records on transactions, 2 hours per fish buyer's monthly report, 4 hours per fish buyer's annual report, and 2 hours per fish buyer's or fish seller's report about fish sellers who refuse to pay, or fish buyers who refuse to collect, the fee.

These estimated response times include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the function of the agency, including: whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to

NMFS (see **ADDRESSES**) and to OMB (see **ADDRESSES**).

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 15, 1999.

**Andrew A. Rosenberg,**

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

**AUTHORITY:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.1, a paragraph (k) is added to read as follows:

##### **§ 679.1 Purpose and scope.**

\* \* \* \* \*

(k) This part also governs payment and collection of the loan, under the American Fisheries Act (AFA), the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

3. A subpart G is added to read as follows:

#### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

##### **Subpart G—Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component under Section 206(b)(1) of the AFA**

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##### **Subpart G—Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component under Section 206(b)(1) of the AFA**

**Authority:** Pub. L. 105-277, 16 U.S.C. 1801, *et seq.*

##### **§ 679.60 Definitions.**

In addition to the definitions in the Magnuson-Stevens Act and in § 679.1 of this title, the terms used in this subpart have the following meanings:

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

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

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

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

*Fee* means the six-tenths (0.6) of one cent that fish buyers deduct (under the inshore fee system provided for in section 207(b) of the AFA) from the gross ex-vessel value of each pound of round weight fee fish harvested from the IC directed fishing allowance.

*Fee fish* means all pollock harvested from the IC directed fishing allowance until such time as the loan's principal and interest are fully repaid.

*Fish buyer* means the first ex-vessel fish buyer who, in an arm's-length transaction, purchases fee fish from a fish seller.

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

*Fish seller* means the harvester who catches and, in an arm's-length transaction, first sells fee fish to a fish buyer.

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

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

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

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

##### **§ 679.61 Loan.**

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

(b) *Disbursement.* NMFS disbursed, in accordance with section 207(d)(1) of the AFA, the loan's full principal amount on December 30, 1998.

(c) *Interest.* Interest shall, from the date NMFS disbursed the loan until the date the borrower fully repays the loan,

accrue at a fixed rate equal to 2 percent of the principal amount of the loan outstanding plus such additional percent as the Secretary of Commerce shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make the loan. Interest shall be simple interest and shall accrue on the basis of a 365-day year.

(d) *Repayment.* The fee shall be the exclusive source of loan repayment. The fee shall be payable on all fee fish, without interruption, until such a time as all loan principal and accrued interest is fully repaid.

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

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

##### **§ 679.62 Fee payment and collection.**

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

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

(A) Any fish buyer whose place of business is not located in the United States, who does not take delivery, title, or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

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

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

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

(b) *Notification.* (1) Before the time that the fee first becomes effective, NMFS will send an appropriate fee payment and collection notification to each affected fish seller and fish buyer of whom NMFS has knowledge.

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

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

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

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

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

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

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

NMFS in writing of the full particulars, including:

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

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

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

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

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

#### **§ 679.63 Fee collection deposits, disbursements, records, and reports.**

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

(b) *Fee collection deposits.* At the end of each business week, each fish buyer shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer has collected through a date not more than 2 calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the subaccount in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest (if any), but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement.* On the last business day of each month, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to "NOAA Inshore Component Pollock Loan Subaccount." The fish buyer shall mail each such check to the subaccount lockbox account that NMFS establishes for the receipt of the disbursements of deposit principal. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the subaccount's lockbox account and the manner and form of settlement sheet by means of the notification in § 679.62(b)(1).

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

(1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(i) The date the delivery is made,

(ii) The seller's identity,

(iii) The round weight of fee fish delivered,

(iv) The identity of the fishing vessel that delivers the fee fish,

(v) The delivery value,

(vi) The net delivery value,

(vii) The identity of the payor to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value is paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the subaccount's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* On December 31, 2000, and on each December 31 thereafter until the loan is fully repaid, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year for all fee fish each fish buyer purchases from fish sellers:

(1) Total round weight bought;

(2) Total delivery value paid;

(3) Total fee amount collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to the subaccount lockbox;

(6) Total amount of interest earned on deposits and disbursed to the fish buyer or other parties; and

(7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and confidentiality does not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality provisions make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section.

(g) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of the loan, the books and records of the fish buyers and the fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers shall make all records of all transactions involving fee fish catches, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, recordkeeping, and reporting available to NMFS or its agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the round weight pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so) are essential audit documentation.

(h) *Confidentiality of records.* NMFS and its auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes.

(i) *Refunds.* When NMFS determines that the loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

#### **§ 679.64 Late charges.**

The late charge for fee payment, collection, deposit, and/or disbursement

shall be one and one-half (1.5) percent per month for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

#### **§ 679.65 Enforcement.**

NMFS shall institute an action at law against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

#### **§ 679.66 Prohibitions and penalties.**

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

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

(2) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the subaccount's lockbox account—all as this subpart requires;

(3) Fail to maintain full, timely, and proper fee payment, collection, deposit,

and/or disbursement records or make full, timely, and proper reports of such information to NMFS—all as this subpart requires;

(4) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(5) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or its agents in the course of their activities under this subpart;

(6) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(7) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(8) Otherwise materially interfere with the efficient and effective repayment of the loan.

(b) Anyone who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide (including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses) and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

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