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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket No. 170404355-7355-01]

RIN 0648-BG80

Merchant Marine Act and Magnuson-Stevens Act Provisions; Fishing Vessel, Fishing Facility and Individual Fishing Quota and Harvesting Rights Lending Program Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS' Fisheries Finance Program (FFP) provides long-term financing to the commercial fishing and aquaculture industries for fishing vessels, fisheries facilities, aquaculture facilities, and certain designated individual fishing quota (IFQ). Section 302 of the Coast Guard Authorization Act of 2015 (PL 114-120) included new authority to finance the purchase of harvesting rights in a fishery that is federally managed under a limited access system. The FFP proposes to add a new section to the existing FFP regulations to implement this statutory change. The net effect of this proposed change to the regulations will be to provide additional authority for the program to lend, while leaving the original IFQ authority to Fishery Management Councils to use as needed.

DATES: Comments must be submitted in writing on or before *[insert date 30 days after date of publication in the FEDERAL REGISTER.]*

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2017-0064, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2017-0064, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Paul Marx, Chief, Financial Services Division, NMFS, Attn: F/MB5, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to paul.marx@noaa.gov and by e-mail to oira_submission@omb.eop.gov or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Paul Marx, at 301-427-8771 or via e-mail at paul.marx@noaa.gov.

SUPPLEMENTARY INFORMATION:

Under the authority of Chapter 537 of Title 46 of the United States Code, 46 U.S.C.

53701, *et seq.*, the FFP may provide long-term financing to the commercial fishing and aquaculture industries for fishing vessels, fisheries facilities, aquaculture facilities, and certain designated individual fishing quota (IFQs). Section 302 of the Coast Guard Authorization Act of 2015 (PL 114-120) amended Chapter 537, providing the FFP with the authority to finance the purchase of harvesting rights in a fishery that is federally managed under a limited access system. This amendment is codified at 46 U.S.C. 53702(b)(4)(B). This action would modify the existing Program regulations to reflect this statutory change. The net effect of this change will be to provide additional authority for the program to lend, while leaving the original IFQ authority to Fishery Management Councils (FMCs) to use as needed.

Existing IFQ Loan Authority

46 U.S.C. 53706 authorizes the FFP to finance or refinance the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), now codified at 16 U.S.C. 1853a(g). Under this provision of the MSA, an FMC may submit, and NMFS may approve and implement, a loan program to aid in (1) the acquisition of IFQ by fishermen who fish from “small vessels,” and (2) the first time purchase of IFQ by “entry level fishermen.” Therefore, under this authority, the FFP cannot initiate or implement a lending program to finance or refinance the purchase of IFQ until the appropriate FMC submits a request to NMFS and provides guidance for the requisite criteria.

NMFS currently administers two loan programs pursuant to the existing IFQ authority: the Northwest Halibut/Sablefish and Bering Sea and Aleutian Islands Crab IFQ loan programs. NMFS anticipates no effects to either of these existing loan programs as a result of this proposed

action.

New Loan Authority

The new authority provided by PL 114-120 broadens the FFP's existing authority, and authorizes the Program to finance the purchase of harvesting rights in a fishery that is federally managed under a limited access system. NMFS will interpret "limited access system" in accordance with section 3(27) of the MSA for purposes of this authority. The MSA defines "limited access system" as "a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation." 16 U.S.C. 1802(27). Such definition includes, but is not limited to, IFQ fisheries.

The new authority provided by PL 114-120 does not require FMCs to initiate a request to establish a loan program in a fishery that is federally managed under a limited access system in order for the FFP to provide financing in such a fishery. However, under the MSA, FMCs are primarily responsible for developing fishery management plans (FMPs) for fisheries within their authority that require conservation and management. It is possible that the availability of fisheries loans may have unanticipated effects on the achievement of FMP goals and objectives. Therefore, NMFS believes it appropriate to allow the FMCs to comment on the potential or actual effect of a loan program for harvesting rights in fisheries under their authority. An FMC may provide an explanation to NMFS at any time, in writing, why the potential or continuing availability of financing for harvesting rights in a fishery under its authority would harm the achievement of the goals and objectives of the FMP applicable to the fishery. If NMFS accepts the Council's reasoning, harvesting rights loans would not be provided, or would cease to be provided, in that fishery. In such a scenario, NMFS would publish a notice in the *Federal Register* notifying the

public that new loans will not be made in that fishery. If there were already loan applications under consideration, the exceptional circumstances would justify NMFS returning any loan fees submitted with loan applications. The opportunity for FMC input will help ensure that loans made by the FFP do not undermine or conflict with the goals and objectives of specific FMPs.

Extent of Financing

Section 302 of the Coast Guard Authorization Act of 2015 imposes no limitations on the extent of financing to be provided by the FFP for the purchase of harvesting rights. However, it does reserve \$59 million of direct loan authority for historical uses, defined at 46 U.S.C. 53701(8). Thus, NMFS anticipates that the balance of annual direct loan authority—currently \$41 million—may be available to finance or refinance the purchase of harvesting rights in federally managed fisheries under a limited access system. This action will allow NMFS to fully use the program’s loan authority either for historical purposes or any authorized new purposes should it be determined that demand or lack of demand in either area would result in unused loan authority.

Proposed Harvesting Rights Lending

Lending for harvesting rights would follow existing FFP lending procedures and guidelines. Borrowers must be U.S. citizens or entities eligible to document a vessel for coastwise trade under 46 U.S.C. 50501, meet all general FFP requirements, and meet all requirements to hold the harvesting rights under the applicable FMP at the time of loan closing. The FFP may require additional lending conditions and security terms such as loan guarantees or security interests in other collateral to bring credit risk to acceptable levels. Affiliated businesses, the borrower’s principals or majority shareholders, persons or entities with a financial interest in the borrower, or any individuals holding community property rights may also be required to

provide a guaranty.

In addition, all loan applicants are subject to background and credit investigations, which may include, but are not limited to, reviews for unresolved fishing violations, criminal background checks, delinquent debt investigations, and credit reports. Like other FFP loan programs, lending for harvesting rights is subject to a statutory loan limit of up to 80 percent of the actual cost of the transaction, set as the purchase price or, in the case of refinancing, the current market value. The FFP retains sole discretion to determine the transaction's actual cost or current market value.

Harvesting rights loan amounts can carry up to a 25-year term and can be used to either purchase new rights or refinance the debt associated with the prior purchase(s) of harvesting rights. In addition to maintaining a 20 percent minimum equity stake, borrowers refinancing existing debt will only receive the lesser of the outstanding amount of debt to be refinanced or 80 percent of the current market value of the harvesting right.

If a borrower seeking refinancing fails to have the requisite 20 percent equity stake (measured as the difference between the current market value of the primary collateral and the amount of the loan), that borrower will need to pay down debt to meet the required level. In addition, under FFP standards, borrowers are only eligible for refinancing if their initial purchase would have been eligible for financing. The program will refinance harvesting rights acquired prior to this regulation if the buyer's original purchase would have been eligible for FFP financing under the terms of this action.

Prospective borrowers may apply for a loan through any of the NOAA Fisheries Service regional FFP offices (St. Petersburg, FL; Gloucester, MA; Seattle, WA). They must pay the

appropriate application fee, set by 46 U.S.C. 53713(b) as one-half of one percent of the loan amount requested, which is made up of two parts. Half is the “filing fee,” and is nonrefundable when the FFP officially accepts the application. The other half, known as the “commitment fee,” becomes nonrefundable when the FFP executes and mails an Approval-in-Principle (AIP) letter to the applicant. The FFP may refund the commitment fee if the FFP declines the application or the application is withdrawn prior to the issuance of an AIP letter.

Summary and Explanation of Proposed Regulatory Changes

This proposed action would add the following section, as explained here.

Harvesting Rights Loans (253.31)

This new section provides regulatory provisions specific to the harvesting rights loans. At the time a borrower submits an application, he or she must satisfy the criteria listed in this new section in order to be eligible to receive financing under the program. The borrower must comply with any limitations on the quantity of harvesting rights that may be owned by one holder, as specified in the applicable FMP and implementing regulations. The FFP will not finance harvesting rights in excess of ownership limitations.

Classification

This proposed rule is published under the authority of, and is consistent with, Chapter 537 of Title 46 of the United States Code and the Magnuson-Stevens Act, as amended. The NMFS Assistant Administrator has determined that this proposed rule is consistent with Chapter 537 of Title 46 of the U.S. Code, the Magnuson-Stevens Act, as amended, and other applicable law, subject to further consideration after public comment.

In addition to public comment about the proposed rule’s substance, NMFS also seeks

public comment on any ambiguity or unnecessary complexity from the language used in this proposed rule.

NEPA

NMFS has preliminarily determined that this rule qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE G7 of the Companion Manual for NOAA Administrative Order 216-6A, and we have not identified any extraordinary circumstances that would preclude this categorical exclusion. NMFS is accepting comments and information during the public comment period for the proposed rule relevant to our preliminary categorical exclusion determination.

Executive Order 12866

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

This proposed rule does not duplicate, overlap, or conflict with any other relevant Federal rules.

Paperwork Reduction Act

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

This proposed rule contains collections-of-information subject to the PRA, which have been approved by OMB under control number 0648-0012. The application requirements contained in these rules have been approved under OMB control number 0648-0012. Public

reporting burden for placing an application for 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 this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA_submission@omb.eop.gov* or fax to (202) 395-7285.

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 proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, requires that, “[w]henver an agency is required by section 553 of this title [5 USCS § 553], or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities.” 5 U.S.C. 603(a). However, where an agency can certify “that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities” then an agency need not undertake a full regulatory flexibility analysis. 5 U.S.C. 605(b).

Participation in the FFP is entirely voluntary. This action imposes no mandatory requirements on any business. Once final, this proposed rule will implement programs authorized by law. Specifically, these rules enact regulatory additions to create a new lending purpose authorized by Section 302 of the Coast Guard Authorization Act of 2015 (PL 114-120) and will be implemented in accordance with 50 CFR part 253, subpart B. This action will create new § 253.31.

As defined by NMFS for RFA purposes, this rule may affect small fishing entities that have annual revenues of \$11.0 million or less, including, but not limited to, vessel owners, vessel operators, individual fishermen, small corporations, and others engaged in commercial fishing activities regulated by NOAA. Borrowers under this authority may also include large businesses. Notably, because the FFP is a voluntary program that provides loans to qualified borrowers, non-borrowers—large or small—would not be regulated by this rule.

Although the FFP requires certain supporting documentation during the life of a loan, the requirements do not impose unusual burdens when compared to the burdens imposed by other lenders. Moreover, because the basic need for financing would continue to exist without the FFP, the individuals seeking financing would still need to comply with similar, if not identical, requirements imposed by another lender. Records required to participate in the FFP are usually within the normal records already maintained by fishermen. It should take fewer than eight hours per application to meet these requirements.

The information required from borrowers, such as income tax returns, insurance policies, permits, licenses, etc., is already available to them. Depending on circumstances, the FFP may

require other supporting documents, including financial statements, property descriptions, and other documents that can be acquired at reasonable cost if they are not already available.

FFP lending is a source of long-term, fixed rate capital financing and imposes no regulatory requirements on anyone other than those applying for loans. FFP borrowers make a voluntary decision to use the available lending.

These loan programs will only have positive impacts on borrowers. Because participation is voluntary and requires effort and the outlay of an application fee, borrowers for harvesting rights financing are assumed to have made a determination that using FFP financing provides a benefit, such that the FFP's long-term, fixed rate financing provides only a positive economic impact. Importantly, the FFP does not regulate or manage the affairs of its borrowers, and the regulations impose no additional compliance, operating or other fees or costs on small entities other than a financing relationship would require.

As a result of this certification, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 253

Aquaculture, Community development groups, Direct lending, Financial assistance, Fisheries, Fishing, Individual fishing quota, harvesting rights (privileges).

Dated: October 25, 2017.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set forth in the preamble, NMFS proposes to amend 50 CFR part 253, subpart B, as follows:

PART 253—FISHERIES ASSISTANCE PROGRAMS

Subpart B—Fisheries Finance Program

1. The authority citation for part 253 continues to read as follows:

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

2. Section 253.31 is added to read as follows:

§ 253.31 Harvesting rights loans.

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

(1) *Harvesting right(s)* means any privilege to harvest fish in a fishery that is federally managed under a limited access system.

(2) *Limited access system* has the same meaning given to that term in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

(3) [Reserved]

(b) *Loan Requirements and Limitations.* These loan requirements and limitations apply to individuals or entities who seek to finance or refinance the acquisition of harvesting rights.

(1) The borrower must meet all regulatory and statutory requirements to hold the harvesting rights at the time any such loan or refinancing loan would close.

(2) NMFS will accept and consider the input of a Regional Fishery Management Council at any time regarding the availability of loans in a fishery under the Council's authority.

(i) The Council may submit an explanation to NMFS, in writing, as to why the availability of financing for harvesting rights in a fishery would harm the achievement of the goals and objectives of the Fishery Management Plan applicable to the fishery. If NMFS accepts the Council's reasoning, harvesting rights loans will not be provided, or will cease to be provided, in that fishery.

(ii) If NMFS determines that harvesting rights loans will not be provided in a fishery, NMFS will publish a notice in the Federal Register notifying the public that new loans will not be made in that fishery.

(iii) In such a scenario, pending applications will be returned and loan fees returned as exceptional circumstances justify the action.

(3) The harvesting rights to be financed must be issued in a manner in which they can be individually identified such that a valid and specific security interest can be recorded. This determination shall be solely made by the Program.

(c) *Refinancing.* (1) The Program may refinance any existing debts associated with harvesting rights a borrower currently holds, provided that:

(i) The harvesting rights being refinanced would have been eligible for Program financing at the time the borrower purchased them, if Program financing had been available,

(ii) The borrower meets all other applicable lending requirements, and

(iii) The refinancing is in an amount up to 80 percent of the harvesting rights' current market value, as determined at the sole discretion of the Program, and subject to the limitation

that the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing harvesting rights' debt being refinanced or its fair market value, whichever is less.

(2) In the event that the current market value of harvesting rights and principal loan balance do not meet the 80 percent requirement in paragraph (1)(iii) of this section, borrowers 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 will be by equal quarterly installments of principal and interest.

(f) *Security.* Although harvesting right(s) will be the primary collateral for a 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 borrower that is a corporation, partnership, or other entity, including collateral to secure the guarantees. Some projects may require additional security, collateral, or credit enhancement as determined, in the sole discretion, by the Program.

(g) *Program credit standards.* Harvesting rights 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.

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