

## **CAPACITY REDUCTION PROGRAM FOR THE SOUTHEAST ALASKA PURSE SEINE SALMON FISHERY**

**By Southeast Revitalization Association**

**SUMMARY:** State and federal legislation authorized this fishing capacity reduction program for the Southeast Alaska purse seine salmon fishery. The program will reduce fishing capacity by permanently relinquishing permits, promote economic efficiency, improve flexibility in the conservation and management of the fishery and obtain the maximum reduction in permits at the least cost.

The program is voluntary and only permit holders of the fishery are eligible to participate. Participating permit holders must abide by the terms and conditions of the program set forth in the Bid Agreement and, if their bid is accepted, a Relinquishment Contract ("Contract") with the Southeast Revitalization Association (SRA) and the Alaska Commercial Fisheries Entry Commission (CFEC). The aggregate of all Bid Agreements and Contracts signed by permit holders whose bids are accepted, will together with supporting rationale, constitute the Reduction Plan ("Plan") to be submitted to the Secretary of Commerce ("Secretary") for approval. Permit holders participating in the program will receive up to \$23.5 million in exchange for relinquishing permits.

To obtain the maximum capacity reduction at the least cost, SRA will use reverse auction procedures to rank and determine which bids to accept. If bids are accepted, the SRA will accept the bid with the lowest dollar amount and successively accept each additional bid with the next lowest dollar amount until it either elects not to accept a bid, there are no more bids to accept, or acceptance of the last bid with the next lowest dollar amount would cause the total cost to exceed \$23.5 million. The SRA may conduct one or more separate auctions before determining whether the number of bids it elects to accept is sufficient to submit a Plan.

Following SRA submission of the Plan and approval by the Secretary, National Marine Fisheries Service ("NMFS") will conduct a referendum to determine the willingness of the permit holders to repay a fishing capacity reduction loan ("loan") to finance the Plan. A majority vote of all permit holders in favor would bind all permit holders. NMFS will issue a \$23.5 million, 40-year loan to be repaid by those permit holders who continue operations in the fishery after implementation of the Plan.

In the event the aggregate amount of all accepted bids is less than \$23.5 million, the remaining loan funds would be available for reduction payments as part of a later SRA submitted Plan, subject to approval by the Secretary, and after a successful referendum by the permit holders.

1. **Statutory Background:** The authority for the SRA to conduct the program is Alaska Statute 16.40.250. The program was established under the Consolidated Appropriations Act of 2005 (Act) authorizing the (NMFS) to establish up to a \$50 million loan to finance the program and appropriated \$500,000 for the cost of the loan. That law was subsequently amended by Section 121 of the Magnuson-Stevens (MSA) Reauthorization Act of 2006 (Public Law 109-447) reducing the loan amount to no more than \$25 million and clarifying the respective roles of NMFS and SRA relative to development and implementation of the program. The sum of \$235,000 was later appropriated for the cost of guaranteeing the loan amount. The authority for making the loan is sections 1111 and 1112 of the Merchant Marine Act, 1936. NMFS will implement the industry fee system to repay the loan under section 312(d)(2) of the MSA.

2. **Purpose.** The program will reduce fishing capacity by permanently relinquishing permits, promote economic efficiencies, improve flexibility in the conservation and management off the fishery and obtain the maximum reduction in permits at the least cost by establishing reverse auction bidding procedures under the Plan.

3. **Definitions.** Unless otherwise defined, the following terms have the following meanings for the purpose of this program.

**Acceptance** means SRA acceptance of a bid.

**Act** means section 209 of Title II of Division B of Public Law 108-447 as amended by section 121 of Public Law 109-447.

**Bid** means a bidder's irrevocable offer under the Bid Agreement to relinquish a permit.

**Bid Agreement** means the form identifying the eligible bidder, procedures for the completion and submission of a bid; requirements upon acceptance of a bid and resulting relinquishment of the permit, and any other necessary implementation.

**Bid Amount** means the dollar amount of each bid by which SRA determines in what order to rank and potentially accept bids.

**Final Plan** means the aggregate of all Bid Agreements, Commercial Fisheries Entry Commission ("CFEC") documents, Relinquishment Contracts, and supporting documents and rationale; submitted to the Secretary for approval.

**Conditional Notice** means the CFEC form that any permit holder must sign and agree to abide upon submission of a Bid Agreement.

**Conditional Relinquishment** means the CFEC form that any permit holder agreeing to relinquish a permit must sign and agree to abide by upon SRA acceptance of the bid.

**Fishery** means the commercial taking of salmon with purse gear within the Southeast Alaska administrative area as defined under Title 5 Alaska Administrative Code Section 33.100.

**Permit** means a valid entry permit issued by CFEC to operate in the fishery.

**Permit Holder** means an individual at the time of bidding is the holder of record of a permit.

**Relinquishment Contract** means the contract that any permit holder agreeing to relinquish a permit pursuant to Alaska Statute (A.S. 16.43.150(i) must sign and agree to abide by upon acceptance of the bid, and before payment of the bid amount.

**Secretary** means the Secretary of Commerce or a designee.

**Southeast Revitalization Association (SRA)** is a qualified fishery association authorized to develop and implement this capacity reduction program under Alaska Statute 16.40.250 and federal law.

#### **4. Eligibility and Application of permit holders**

*(a) Notification.* A copy of the Bid Agreement, CFEC Conditional Notice and Conditional Relinquishment forms, and the Contract shall be mailed to each permit holder.

*(b) Application.* Any permit holder may apply to participate in the program, by submitting a fully completed and executed, Bid Agreement, including the necessary CFEC forms and the Contract.

**5. Withdrawal:** By submitting a completed and executed Bid Agreement, the person makes an irrevocable offer to relinquish a permit. No person, once having submitted the Bid Agreement, is entitled to withdraw or in any way amend the Bid Agreement.

**6. Bid—(i) Binding agreement.** A submitted Bid Agreement shall be an irrevocable offer to relinquish the permit for the bid amount, contingent on such offer being accepted by SRA. A bid that is submitted by the permit holder, but is not accepted by SRA, shall be deemed terminated and both the permit holder and SRA shall have no further obligation with respect to Bid Agreement.

**(ii) Bid Content.** The submitted Bid Agreement shall include the following information: name, address, telephone number and (if available) electronic mail address of the submitting permit holder; permit number and whether any authorized party holds a security interest in the permit.

(iii) **Bid submission.** Any permit holder may submit a Bid Agreement. If a permit holder holds a second permit, such permit holder may, but is not required to submit a Bid Agreement for such second permit. Each application must be submitted to the SRA, c/o Elgee, Rehfeld, Mertz, LLC, Professional Plaza Building B, 9309 Glacier Highway, Suite B-200, Juneau, AK 99801.

(iv) **Validity of Bid.** SRA in consultation with CFEC shall examine each Bid Agreement for consistency and the necessary elements. SRA shall notify the permit holder if the Bid Agreement is non-conforming. In such cases, the permit holder may submit a revised, conforming Bid Agreement if within the prescribed period.

**7. Warranty.** By submitting a Bid Agreement, the permit holder warrants and represents that the permit holder has read and understands the terms of the Bid Agreement, Contract, CFEC forms, and has had the opportunity to seek independent legal counsel regarding such documents and the consequences of submitting the Bid Agreement.

**8. Bids—(i) Ranking.** *The SRA shall rank bids by using a reverse auction in which the SRA ranks the bid with the lowest dollar amount and successively ranks each additional bid with the next lowest dollar amount until there are no more bids or the ranking of the next lowest bid would cause the total program cost to exceed \$23.5 million.*

(ii) **Acceptance and Post-acceptance transfers.** Upon expiration of the bid closing date the SRA will determine whether the number of ranked bids it is willing to accept is sufficient to achieve a substantive reduction in harvest capacity and increased economic efficiencies for those permit holders remaining in the fishery. If the SRA makes such a determination and thereafter accepts bids, SRA will send *CFEC* the Conditional Notice form restricting transfer of the permit to any person whose bid was accepted.

**9. Submission of Plan, including repayment.** The aggregate of all Bid Agreements, the CFEC forms and Contracts will, together with supporting documents and rationale, constitute the Plan to be submitted to NMFS for final approval on behalf of the Secretary. The Plan shall identify as the proposed capacity reduction, the permits identified in the Bid Agreements.

**10. Selection of fishing capacity to be removed by Plan.** The fishing capacity removed under the Plan will be the permits voluntarily offered by permit holders and accepted by SRA up to an aggregate amount of \$23.5 million.

**11. Approval of the Plan.** The criteria for NMFS, on behalf of the Secretary, to approve any Plan must include a finding by the Administrator of NMFS that the Plan is consistent with the Act and MSA, and that it will result in the maximum reduction in permits and fishing capacity at the least cost and in the minimum amount of time.

**12. Referendum.** NMFS will conduct a referendum to determine the permit holder's willingness to repay a fishing capacity reduction loan to purchase the permits identified in the Plan. A successful referendum by a majority of the permit holders will bind all parties and complete the reduction process.

**13. Reduction Payments.** Within 60 days of a successful referendum and CFEC receipt of the Contract, SRA through the Secretary will tender the accepted bid amount.

**14. Later Plan** The SRA may accept a total number of bids in an aggregate amount less than \$23.5 million. If this occurs, any remaining funds would be available for reduction payments as part of a later Plan.

**15. Reduction Loan —(i) Term.** As authorized by the Act, the capacity Reduction Loan ("Loan") shall be amortized over a forty (40) year term. The Loan's original principal amount may not exceed \$23.5 million, but may be less if the ultimate reduction cost is less. NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs and the Loan shall be subject to the provisions of these regulations.

**16. Loan Repayment** Permit holders operating in the fishery shall be obligated to pay the fee in accordance with the regulations. Permit holders acknowledge that in the event payments made under the Plan are insufficient to pay the actual Loan, the term of the repayment shall be extended by NMFS until the Loan is paid in full.

**(i) Interest.** The Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus 2 percent. NMFS will determine the Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse the reduction payments. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the money from the U.S. Treasury. The final interest rate will be 2 percent plus a weighted average, throughout the fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed, and will not vary over the remainder of the reduction loan's 40-year term. The Loan will be subject to a level debt amortization. There is no prepayment penalty.

(ii) **Fees.** The Loan shall be repaid by fees collected from the remaining permit holders operating in the fishery.

(A) The fee will be expressed as a percentage of the ex-vessel price of all salmon harvested and landed in the fishery. For example, if the fee is 3% and the ex-vessel weighted average round price is \$0.50, then the fee per pound of salmon will equal to \$0.015 per pound.

(B) Fees must be assessed and collected on all salmon harvested in the fishery. Although the fee could be up to 3 percent of the ex-vessel price of all post-reduction landings, the fee will be less than 3 percent if NMFS projects that a lesser rate can amortize the Loan over the 40-year term.

(C) It is possible that the fishery may not open during some years. Consequently, the fishery will not produce fee revenue with which to service the Loan during these years. However, interest will continue to accrue on the principal balance. When this happens, if the fee is not already at the maximum 3 percent, NMFS will increase the fee to the maximum 3 percent, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until the principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

(D) **Collection.** The permit holder or the person who purchases and processes the salmon landed in the fishery shall be responsible for collecting and submitting the fees to NMFS.

(E) **Record keeping and Reporting.** The permit holder or the person who purchases and processes the salmon landed in the fishery shall be responsible for compliance with the applicable record keeping and reporting requirements.

**17. Enforcement/Specific Performance.** The parties to the Contract have agreed that the opportunity to develop and submit a capacity reduction program for the fishery under the terms of the Act is both unique and finite. The failure of a permit holder whose bid was accepted to perform the obligations under the Contract will result in irreparable damage to the SRA and the permit holders upon submittal of the Plan to the Secretary for approval. Accordingly, the parties to the Contract expressly acknowledge that money damages are an inadequate means of redress and agree that upon failure of the permit holder to fulfill his obligations under the Contract that specific performance of those obligations may be obtained by suit in equity brought by the SRA in any court of competent jurisdiction without obligation to arbitrate such action.