Environmental Assessment, Regulatory Impact Review and Final Regulatory Flexibility Analysis of Amendments to the Capital Construction Fund Program Regulations

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Abstract: This is an analysis of the environmental, economic and social effects of revising the Fishing Vessel Capital Construction Fund Program ("CCF") regulations. The CCF program was authorized by Section 607 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 53503) and administered pursuant to 50 CFR Part 259, and is consistent with the Shipping Act (46 U.S.C. § 40101 *et seq*.) and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act ("MSA") (16 U.S.C. 1801 *et seq*.).

The CCF regulations, at 50 CFR Part 259, were written in the early 1970s. These regulations have remained intact with only two minor changes occurring in 1981 and 1997 to add energy saving and safety reconstruction projects, respectively. The CCF regulatory changes eliminate provisions that no longer meet the needs of CCF participants, and simplify and clarify the regulations while meeting the purpose of the underlying statute. These amendments eliminate the minimum cost and maximum allowable completion time for reconstruction projects, the requirements for minimum annual deposits, and the requirement to reconstruct a vessel acquired with CCF funds.

The purpose of the CCF program was to modernize an aging merchant marine fleet and provide an economic boost to the U.S. ship operating and building industries. The CCF program aids U.S. ship operators in keeping our fleet modern and remaining competitive with foreign fleets. However, the extensive vessel reconstruction requirements in the current regulations no longer make sense given the improved status of the merchant marine fleet.

When these new regulations are promulgated, vessel owners and operators will be able to use CCF funds to modernize the fleet in an economically viable manner. Additionally, we expect a decrease in balances of CCF funds on deposit, enabling the Government to more quickly recoup the deferred taxes.

We have also considered the no change alternative to the CCF regulations. An alternative to eliminate sections no longer applicable but leaving the current restrictions intact was not considered as it would not meet the purpose and need described in Section 1.2 of this Environmental Assessment.

Table ES-1. Summary of Environmental Consequences.

Impact Type	No Action/Status Quo	Amend the CCF regulations (Final Action)
Direct		
Physical	No impact	No impact
Biological	No impact	No impact
Socio-Economic	Minor, long-term, beneficial	Moderate, long-term, beneficial
Indirect		
Physical	No impact	No impact
Biological	Minor, long-term, beneficial	No impact
Socio-Economic	Minor, long-term, beneficial	Moderate, long-term, beneficial
Cumulative		
Physical	No impact	No impact
Biological	No impact	Minor, long-term, beneficial
Socio-Economic	No impact	No impact

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1 INTRODUCTION AND PURPOSE AND NEED

1.1 Introduction

The CCF program was authorized by Section 607 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 53503) and administered pursuant to 50 CFR Part 259, and is consistent with the Shipping Act (46 U.S.C. § 40101 *et seq*.) and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act ("MSA") (16 U.S.C. 1801 *et seq*.).

The CCF regulations, at 50 CFR Part 259, were written in the early 1970s. These regulations have remained intact with only two minor changes, occurring in 1981 and 1997, to add energy saving and safety reconstruction projects, respectively. The CCF regulatory changes eliminate provisions that no longer meet the needs of CCF participants, and simplify and clarify the regulations while meeting the purpose of the underlying statute. These amendments eliminate the minimum cost and maximum allowable completion time for reconstruction projects, the requirements for minimum annual deposits, and the requirement to reconstruct a vessel acquired with CCF funds.

The purpose of the CCF program was to modernize an aging merchant marine fleet and provide an economic boost to the U.S. ship operating and building industries. The CCF program aids U.S. ship operators in keeping our fleet modern and remaining competitive with foreign fleets.

1.2 Purpose and Need

The National Marine Fisheries Service ("NMFS") is updating and revising the current regulations for this on-going Federally authorized tax program, which provides deferred tax benefits to qualified applicants for the construction, reconstruction, and, in some cases, the purchase of used fishing vessels. Under this program, legal agreements may be established between NMFS and fishers, fish processors, tender operators and charter fishing operators. The authority to make regulatory changes to the CCF program is granted under the Merchant Marine Act (46 U.S.C. 53502(a)), which permits the Secretary of Commerce to prescribe regulations (except for the determination of tax liability) to carry out this chapter.

Purpose: The purpose of the final action is to update and revise the current regulations in a manner consistent with the Agency's mission to promote the long-term sustainability of fisheries resources, while generating social and economic opportunities and benefits from their use.

Need: The original CCF regulations were enacted in 1970. Minor amendments to the regulations were made in 1981 and 1997 to add new types of reconstruction projects for energy savings and safety items, respectively. In order to achieve the above stated purpose, regulatory changes are necessary to ease restrictions on reconstruction projects that have made many scheduled projects nonviable. CCF participants are faced either with having funds languish on deposit for nonviable scheduled projects or making a non-qualified withdrawal of these funds and paying deferred taxes at the highest marginal tax rate. For example, reconstruction is currently required when using CCF funds to acquire a used vessel, regardless of the condition of the vessel. Consequently, the CCF participant is often forced to invest money in unnecessary capital improvements, in order to reach the threshold level of eligibility for expenditures. When the reconstruction requirement is eliminated and the definition of a "qualified reconstruction" is changed, a large portion of the funds that remain on deposit could be used for projects that are actually needed, even though they may be of lower cost. Additionally, deferred taxes will be recaptured more quickly.

1.3 Scope and Organization of this EA

In considering the final action, the Secretary, through NOAA and NMFS, is responsible for complying with a number of Federal regulations, including the National Environmental Policy Act ("NEPA"). The purpose of the Environmental Assessment ("EA"), as required by NEPA, is to provide an environmental analysis to assess the physical, biological, and socio-economic impacts of the NMFS action to update and revise the current CCF regulations.

Under NEPA, as implemented by the regulations published by the Council on Environmental Quality ("CEQ"), an EA is prepared to determine if any significant direct, indirect, or cumulative environmental impacts are likely to be caused by an action. If the EA does not identify significant impacts, a Finding of No Significant Impacts ("FONSI") is prepared to document the decision maker's determination and to approve the action. If at any time during preparation of the EA it appears that significant impacts would result from the action, the agency could halt development of the EA and begin preparation of an Environmental Impact Statement ("EIS") to more thoroughly evaluate the potential impacts and potential ways to reduce or mitigate those impacts.

This EA assesses the potential direct, indirect, and cumulative impacts—near-term and long-term—of the alternatives presented to the physical, biological, and socioeconomic resources potentially affected by the CCF program. The sections that follow describe the CCF activities and potential alternatives considered (Section 2), the affected environment as it currently exists (Section 3), the probable consequences on the human environment that may result from the continuation of the financial activities and their alternatives (Section 4), and the potential cumulative impacts from the activities and their alternatives (Section 4.4).

In developing this EA, NMFS adhered to the procedural requirements of NEPA; the CEQ regulations for implementing NEPA (40 CFR 1500-1508), and NOAA's procedures for implementing NEPA[1].

The following definitions will be used to characterize the nature of the various impacts evaluated with this EA:

- *Short-term or long-term impacts.* These characteristics are determined on a case-by-case basis and do not refer to any rigid time period. In general, short-term impacts are those that would occur only with respect to a particular activity or for a finite period. Long-term impacts are those that are more likely to be persistent and chronic.

[1] NOAA Administrative Order 216-6A, Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management; and 11990, Protection of Wetlands.

- *Direct or indirect impacts.* A direct impact is caused by an action and occurs contemporaneously at or near the location of the action. An indirect impact is caused by an action and might occur later in time or be farther removed in distance but still be a reasonably foreseeable outcome of the action. For example, a direct impact of erosion on a stream might include sediment-laden waters in the vicinity of the action, whereas an indirect impact of the same erosion might lead to lack of spawning and result in lowered reproduction rates of indigenous fish downstream.

- *Minor, moderate, or major impacts.* These relative terms are used to characterize the magnitude of an impact. Minor impacts are generally those that might be perceptible but, in their context, are not amenable to measurement because of their relatively minor character. Moderate impacts are those that are more perceptible and, typically, more amenable to quantification or measurement. Major impacts are those that, in their context and due to their intensity (severity), have the potential to meet the thresholds for significance set forth in CEQ regulations (40 CFR 1508.27) and, thus, warrant heightened attention and examination for potential means for mitigation to fulfill the requirements of NEPA.

- *Adverse or beneficial impacts.* An adverse impact is one having adverse, unfavorable, or undesirable outcomes on the man-made or natural environment. A beneficial impact is one having positive outcomes on the man-made or natural environment. A single act might result in adverse impacts on one resource and beneficial impacts on another resource.

- *Cumulative impacts.* CEQ regulations implementing NEPA define cumulative impacts as the "impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions" (40 CFR 1508.7). Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time within a geographic area.

1.4 Regulatory Compliance

This EA is prepared to satisfy the requirements of the NEPA (42 U.S.C. 4321 et seq.); implementing regulations adopted by the CEQ (40 CFR 1500-1508); and NOAA Administrative Order 216-6A (NAO 216-6A). The intent of NEPA is to protect, restore, and enhance the human environment through well-informed Federal decisions. A variety of laws, regulations, and Executive Orders apply to actions undertaken by Federal agencies and form the basis of the analysis prepared in this EA.

2 FINAL ACTION AND ALTERNATIVES

CEQ regulations implementing NEPA provide guidance for Federal agencies regarding NEPA's requirements (40 CFR Part 1500). NOAA has also prepared environmental review procedures for implementing NEPA, NAO 216-6A.

To warrant detailed evaluation by NMFS, an alternative must be reasonable[2] and meet the purpose and need of the action being reviewed (see Section 1.1). Screening criteria are used to determine whether an alternative is reasonable. The following discussion identifies the screening criteria used in this EA to evaluate whether an alternative is reasonable; evaluates various alternatives against the screening criteria (including the chosen measures) and identifies those alternatives found to be reasonable; identifies those alternatives found not to be reasonable; and for the latter, establishes the basis for this finding. Alternatives considered but found not to be reasonable are not evaluated in this EA.

Screening Criteria: To be considered "reasonable" for purposes of this EA, an alternative must meet the following criteria:

1. The action must not violate any Federal statute or regulation.
2. The action must support the sustainable fisheries goals of the MSA.
3. The action must provide social and economic opportunities for program users.

NMFS evaluated each potential alternative against these criteria. Based on this evaluation, two alternatives have been identified as reasonable and are being carried forward for more detailed evaluation in this EA: (1) no changes to the CCF regulations and (2) amending the CCF regulations to better meet the program's statutory purpose and CCF participants' needs.

2.1 Alternative 1 – No Action/Status Quo – No Changes to the CCF Regulations

Under this alternative there will be no changes made to the CCF regulations and the program would continue to operate under the status quo.

2.2 Alternative 2 – Amend the CCF regulations (Final Action)

Under this alternative, the current CCF regulations would be amended. The changes, when implemented, will accomplish the following:

1. Eliminate the requirement that the program participant reconstruct a used vessel when acquired with CCF funds. This change eliminates the requirement to reconstruct vessels that are not in need of improvement;
2. Eliminate the requirement that the minimum cost of a reconstruction project be the lesser of $100,000 or 20% of the reconstructed vessel's acquisition cost. This change eliminates making excessive capital improvements to vessels based upon an arbitrary amount. Instead, program participants can use the CCF to spend what is needed to improve the vessel;

[2] "Section 1502.14 [of CEQ's NEPA regulations] requires the [EA/]EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are *practical or feasible from the technical and economic standpoint and using common sense*, rather than simply desirable from the standpoint of the applicant." CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (Mar. 23, 1981) (emphasis added).

3. Revises Section 259.31(b)(1) to add material increases in safety, reliability, or energy efficiency to the list of qualified reconstruction items;
4. Eliminate the requirement that the agreement holder make annual minimum deposits of 2% of the anticipated cost of the scheduled agreement objectives. This change is consistent with our attempt to reduce the amount of CCF funds on deposit by not requiring excess deposits to meet an arbitrary annual deposit requirement;
5. Remove the section of the current regulations pertaining to "Conditional Fisheries". "Conditional Fisheries" regulations were part of the Financial Aid Program Procedures contained in 50 CFR Part 251, and were eliminated on April 3, 1996 under the authority of 16 U.S.C. 742.

3 AFFECTED ENVIRONMENT

3.1 Physical Environment

The affected physical environment comprises the coastal and offshore fisheries area of the United States within the Exclusive Economic Zone ("EEZ"; ~4.4 million square miles), including Alaska, the Hawaiian Islands, the Pacific Trust Territories, and the U.S. Virgin Islands. These areas contain a wide variety of habitat areas, shallow and deep water, and sandy, rocky, and mixed surfaces.

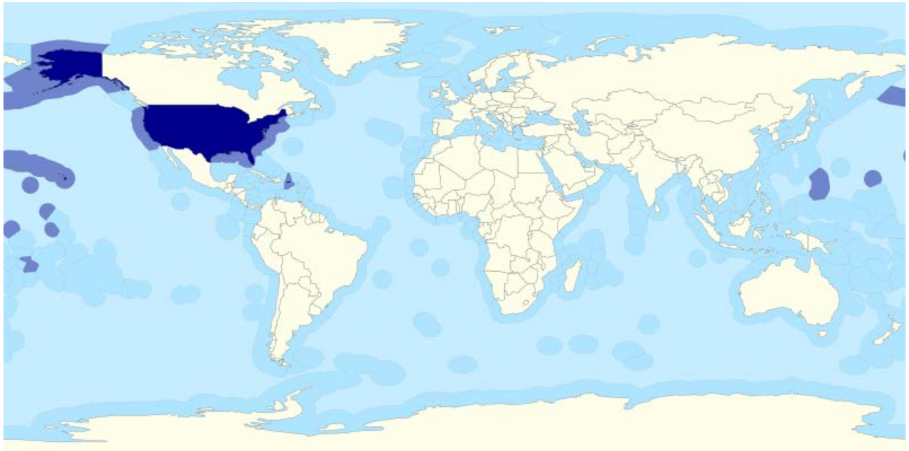

Figure 1: U.S. Exclusive Economic Zone. U.S. jurisdiction over marine waters extends to 200 miles offshore, as indicated by the purple area.

3.2 Biological Environment

The affected biological environment includes the many species of fish and shellfish, aquatic organisms, plants, marine mammals, sea turtles, invertebrates, sea birds, and shore birds found in the coastal and offshore fisheries area of the United States within the EEZ, including Alaska, the Hawaiian Islands, the Pacific Trust Territories, and the U.S. Virgin Islands.

3.3 Social and Economic Environment

The affected socioeconomic environment nominally includes every U.S. citizen who can qualify for the CCF program, as there are no significant barriers to entry in the fishing industry. Fishers and fishing vessel operators held an estimated 28,400 jobs in 2014 (latest update available). An unspecified additional number[3] were employed in related businesses and communities, such as ship chandlers, equipment suppliers, insurance providers, and many other businesses. Many fishermen are seasonal workers and positions are usually filled by people who work primarily in other occupations, such as teachers or students. In May 2015, median annual wages of wage-and-salary fishermen were $28,100.[4]

The U.S. fishing fleet includes more than 31,000 vessels (including sport fishing). In 2013 (latest estimate available), the Gross Domestic Product of U.S. fisheries exceeded $45 billion. The largest ports bringing in this revenue by value are New Bedford, MA, Dutch Harbor, AK, Kodiak, AK, Naknek, AK, Empire-Venice, LA, Aleutian Islands (Other), AK, and Honolulu, HI. Alaska led all states in volume, with landings of 5.7 billion pounds in 2014, followed by Louisiana at 870.5 million pounds, Washington at 555.3 million pounds, Virginia at 398.1 million pounds and California at 366.1 million pounds.[5]

4 ENVIRONMENTAL CONSEQUENCES

4.1 Introduction

This section provides the scientific and analytical basis for comparing CCF regulatory change alternatives described in Section 2. The potential direct, indirect, and cumulative effects on the biological, social, and economic environments for the two CCF program alternatives are described below.

It has been determined that neither alternative would have an impact on the physical environment. Therefore, the physical environment will not be discussed further.

These alternatives are not expected to have an adverse impact on essential fish habitat ("EFH") because they do not result in any change between fishing operations and impacts to the essential fish habitat for any species involved in the CCF program. Specifically, neither alternative is expected to result in a change in the amount of fish harvested, fishing methodology, gear usage, or fishing area. Consequently, neither EFH consultation nor further consideration of potential impacts on EFH is necessary for this action.

4.2 Alternative 1 impacts – No changes to the CCF Regulations

Biological Impacts: There are no direct biological impacts of this activity. If the CCF program is used to acquire or reconstruct a vessel, it is for a vessel that already exists. The environmental

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[3] Fish processors, for example, are classified by the Bureau of Labor Statistics under the occupation of "Fishers and Related Fishing Workers," of which they employed an aggregate of 28,400 workers in 2014 http://www.bls.gov/ooh/farming-fishing-and-forestry/fishers-and-related-fishing-workers.htm#tab-1.

[4] Source: Bureau of Labor Statistics, http://www.bls.gov/ooh/farming-fishing-and-forestry/fishers-and-related-fishing-workers.htm#tab-5

[5] Source: Fisheries of the United States 2014; NMFS; September 2015.

impacts of this vessel participating in the fishery have already been assessed when it obtained the requisite permits, licenses, and IFQ's. However, if the CCF program is used to construct a new vessel under the current regulations, the CCF participant is required to obtain all requisite permits required to fish in their chosen fishery. Consequently, participation in the CCF program will not change the operating environment of any project. The CCF program makes it possible for the vessel to fish more consistently over time or for the owner to upgrade the vessel to make it more efficient at finding or harvesting fish, more fuel efficient to reduce engine-based pollution, or to make it a safer vessel.

There may be indirect biological impacts that result from system efficiencies or increased economic viability of the fishery due to the presence of the CCF program. In concert with the financial stability in the fishery resulting from the availability of the deferred tax benefit provided, fishers will realize more consistent revenues and profits from year to year. This allows them to plan expansions of their operations, potentially achieving some economies of scale. This may result in increased fishing activity (depending on the health of the fishery), including more processing, sales, and distribution. In a limited access fishery, this does not result in greater amounts of fish being caught in the aggregate, but it may result in the vessel harvesting its permitted quota more consistently.

Social Impacts: The range of potential applicants for the CCF program is highly diverse, from small sole proprietorships (fishermen with limited assets), to private and publicly traded corporations with annual earnings in the tens of millions of dollars. Some are directly involved in the fishery and others are partners or shareholders, providing capital to the fisherman or the entity that is actually fishing or processing fish. The diverse qualities of applicants include fishery and non-fishery income sources, ages, levels of education, and geographic location. All applicants face an equal review of their qualifications to participate in the CCF program, such that the lowest-income fisherman has the same chance as a large private corporation to qualify to participate in the program.

CCF program participants take advantage of the tax deferred benefits the program offers to construct or acquire vessels or make capital improvements to their current vessels. It is assumed they believe that the tax benefits realized will exceed the alternative of depreciating the asset over its useful life. Presumably, they significantly improve their financial positions by realizing an increased cash flow from having CCF funds on deposit to use for needed projects. This makes it easier for them to operate their businesses, remain current on their operating obligations, and plan ongoing business improvements.

The CCF program helps to level the playing field by providing a benefit that helps U.S. fishermen remain financially competitive with their foreign counterparts who do not pay taxes on fishing income. Providing accelerated tax benefits reduces the stress on program participants who operate in a cyclical environment of resource and regulatory changes. Fish harvesters, in particular, with increased cash flow and CCF funds on deposit are less likely to react to economic stress by violating fishing limits and regulations. Thus, NMFS estimates that direct social impacts of the CCF program are beneficial overall for the program participants and for the fisheries community as well.

The CCF program supports other indirect beneficiaries of the fisheries industry. Indirect social impacts from the availability of the CCF program are beneficial in the long term, as households with more stable income encourage additional investment in all sectors of the community.

Economic Impacts: The current aggregate balance on deposit in the CCF program is $270 million. As noted earlier, the CCF program enables qualified fishermen to reduce their taxable income from fishing by taking a CCF deduction on their Federal tax return and making an equivalent deposit to a dedicated CCF account. These funds are then used to acquire, construct, or reconstruct an eligible vessel. Fishing vessels are generally depreciated over a seven year period. Using CCF funds to pay for these vessel costs enables the fishermen to accelerate their tax benefits by six years by allowing them to recognize the tax reduction in the first year as opposed to spreading it equally over a seven year period.

The accelerated tax benefits result in increased cash flow and significantly improves the potential for increased profit. Essentially, the CCF program allows participants to segregate funds, tax free, for the future purchase of capital assets. By saving before-tax dollars instead of after-tax dollars, participants can accumulate money for capital investments more quickly. Thus, the deferral of the tax due is essentially an interest-free loan from the government and it puts owners of U.S. vessels on a more equal footing with owners of vessels registered in countries that do not tax fishing income. In addition, this tax savings allows fishermen to accumulate funds in good fishing seasons that can later be used during poor fishing seasons for capital investments. Having these deposits available during poor seasons alleviates the need to obtain financing for these needed projects. An indirect benefit of this increased profitability is an influx of capital into the fishing communities where these CCF participants live and/or work. This is an example of the beneficial economic impact of the CCF program on the fishing industry.

4.3 Alternative 2 Impacts – Amend the CCF Regulations

Biological Impacts: There are no significant direct or indirect biological impacts from making the final regulatory changes to the CCF program. The changes are largely administrative in nature and the implementation of this final action should have nominal, if any, impacts on the affected biological environment.

The final CCF amendments should result in safer, more modern and efficient vessels, which are likely to use less fuel per hour and emit fewer pollutants, thus reducing the adverse impacts these vessels have on the environment.

Social Impacts: Fishing communities, as defined in the MSA, include not only the people who actually catch the fish, but also those who share a common dependency on directly related fisheries-dependent services and industries. Many of coastal communities participate in fisheries under the CCF program, whether it be through processing, support businesses, port facilities, or as home to fishermen and processing workers.

National Standard 8 of the MSA mandates that conservation and management shall, consistent with the conservation requirements of the Act (including the prevention of overfishing and the rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities.

Overall, the economic impact to communities where fish are landed and processed would be minor because the harvest levels and allocations would not be altered with the implementation of these program changes and total landings would remain at current levels. Although total landings would remain at current levels, some beneficial impacts may occur because easing the restrictions on the use of the funds should result in an increase in CCF projects and possibly increased shipyard work in the various communities.

NMFS cannot quantify the social impacts caused by implementing this alternative, but we believe the impacts are beneficial. When this alternative is adopted we anticipate an increase in the number of qualified projects. Fishermen that delayed projects for economic reasons under the current regulations would presumably now use their CCF funds on qualified projects. Fishermen that would like to leave the program, and potentially the fishing industry, would have that opportunity without incurring the onerous penalties that result from using CCF funds on non-qualified projects. The balance that remains in their accounts could be used for projects that are consistent with the intent of the underlying statute. Smaller dollar projects that do not currently qualify could be completed, resulting in a more modern, safer and efficient merchant marine fleet.

We expect indirect moderate beneficial social impacts as a result of these regulatory changes. The increase in the number of qualified projects should result in increased investment in the communities where the program participants fish and reside.

NMFS believes that the direct and indirect social impacts of Alternative 2 will be beneficial. We cannot identify any adverse social impacts associated with this alternative.

Economic Impacts: As with the social impacts, economic impacts accrue from the use of the funds in the CCF. The anticipated increase in the number of qualified projects will directly benefit U.S. shipyards and equipment suppliers and is consistent with the intent of the underlying statute. In addition, these final changes may result in increased employment in communities where CCF participants fish and reside.

Currently, many CCF participants are reluctant to invest in reconstruction projects because of the minimum cost requirement. NMFS anticipates that eliminating the minimum cost requirement will result in a short-term increase in reconstruction projects and a long-term decrease in the number of CCF participants. NMFS views this as a beneficial impact for several reasons, including a reduction in the number of program users, a smaller aggregate balance in the CCF program, and an increase in tax revenue for the Federal government.[6]

An indirect benefit of the anticipated increase in CCF projects is increased federal tax revenues that result from the use of these CCF funds as opposed to having the funds languish, tax deferred, on deposit.

[6] The quantity of increase in Federal tax revenue cannot be estimated because it depends upon the particular tax rates of the CCF Accountholders at the time their projects are undertaken.

Based on this analysis, NMFS believes that the direct and indirect economic impacts of Alternative 2 on the fishing industry as a result of increased efficiencies within the CCF program will be moderate, long-term and beneficial.

4.4 Cumulative Impacts

Cumulative impacts must be considered when evaluating the alternatives. Cumulative impacts are those combined effects on the quality of the human environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what Federal or non-Federal agency or person undertakes such other actions.

The area that would be affected by implementing the final CCF regulatory changes are the coastal and offshore fisheries area of the United States within the EEZ, including Alaska, the Hawaiian Islands, the Pacific Trust Territories, and the U.S. Virgin Islands. The potential direct and indirect effects of both alternatives are discussed above.

The CCF program has supported fishers and fish processing operations, since 1970, by offering a tax benefit that allows them to accumulate capital more quickly than if the tax benefit were not available. The action has been to approve new applicants and projects, to administer all aspects of the program in accordance with the CCF statute and regulations and to report program activity annually to the Internal Revenue Service for tax enforcement. Alternative 1 involves a continuation of this process and should result in no additional impacts to affected physical, biological, social and economic environments.

Implementation of Alternative 2 is not expected to cause any adverse significant impacts. The CCF program is for U.S. commercial fishermen and processors who must qualify and choose to participate. These program participants are a small percentage of total U.S. commercial fishermen. There is an enormous realm of activity in the coastal and offshore fisheries area of the U.S. within the EEZ. The final changes are largely administrative in nature and the implementation of this action should have nominal, if any, impacts on the affected physical, biological, social and economic environments.

5 REGULATORY IMPACT REVIEW

Executive Order 12866, signed in October of 1993, requires Federal agencies, including NMFS, to assess all costs and benefits of available regulatory alternatives, including both quantitative and qualitative measures. Economic and social impacts should include the identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the trade-offs between qualitative and quantitative benefits and costs. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits, unless a statute requires another regulatory approach.

Executive Order 12866 requires that the Office of Management and Budget review final regulatory actions that are considered to be "significant". A "significant" regulatory action is one that is likely to:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A regulatory program is "significant" if it is likely to result in any of the effects described above. A Regulatory Impact Review ("RIR") is designed to provide information to determine whether the final action is likely to be "economically significant". The Office of Management and Budget has determined this final rule to be significant for purposes of Executive Order 12866.

It is not possible to quantify the financial impact of the final changes to the program regulations. It is expected that simplifying the regulations will encourage more qualified projects, which will result in a reduction of the total CCF program account balance. This should lead to a reduction of the number of CCF agreements once these existing program participants have met their intended obligations and closed their accounts. The discussion of the impacts in Section 4 serves as a qualitative review of the benefits and costs of the program.

6 FINAL REGULATORY FLEXIBILITY ANALYSIS

The Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 *et seq*.), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. When an agency publishes a final rule, it must either ‘certify’ that the action will not have a significant adverse impact on a substantial number of small entities, and support that certification with the “factual basis” for the decision; or, it must prepare and make available for public review a Final Regulatory Flexibility Analysis (“FRFA”) that describes the impact of the final rule on small entities. When an agency publishes a final rule, it must prepare a FRFA unless the rule was certified at the proposed stage and no other comments or other information contest the certification. Analytical requirements for the FRFA are described below in more detail.

The FRFA must contain:

- A description of the reasons why action by the agency is being considered;

- A succinct statement of the objectives of, and the legal basis for, the final rule;

- A description of, and where feasible, an estimate of the number of small entities to which the final rule will apply (including a profile of the industry divided into industry segments, if appropriate);

- A description of the projected reporting, recordkeeping and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the final rule;

- A description of any significant alternatives to the final rule that accomplish the stated objectives of the MSA and any other applicable statutes and that would minimize any significant economic impact of the final rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:

    1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

    2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

    3. The use of performance rather than design standards;

    4. An exemption from coverage of the rule, or any part thereof, for such small entities.

In determining the scope, or ‘universe’, of the entities to be considered in an FRFA, NMFS includes only those entities, both large and small, that are directly regulated by the final action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NOAA currently interprets the intent of the RFA to address adverse economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

6.1 Definition of a Small Entity

Section 601(3) of the RFA defines a 'small business' as having the same meaning as 'small business concern' which is defined under Section 3 of the Small Business Act ("SBA") (15 U.S.C. § 631 *et seq*.). 'Small business' or 'small business concern' includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a 'small business concern' as one "organized for profit, with a place of business located in the U.S., and which operates primarily within the U.S. or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture."

The SBA has established size criteria for all major industry sectors in the U.S. including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $5 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all of its affiliated operations worldwide. A business involved in harvesting of seafood products is a small business if it meets the criterion of annual gross revenues less than $11 million. Finally, a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all of its affiliated operations worldwide.

6.2 Description of Reasons for Action and Statement of Objective and Legal Basis

A description of why the agency is considering this action as well as a statement of objectives and legal basis is included in Section 1.1.

6.3 Number and Description of Affected Small Entities

For purposes of the FRFA, all small businesses with annual receipts of less than $11 million can be considered small businesses. The FRFA uses the most recent year of data available to conduct this analysis (2014). While we do track the ownership structure of the participants in the CCF program, little is known about the annual receipts of those businesses. The annual receipt data is not tracked and was, therefore, unavailable for use in our analysis in the FRFA. It is possible that the FRFA overestimates the number of small entities. It is assumed that most participants in the CCF program meet the threshold for small entities.

6.4 Description of Small Entities to Which the Rule Applies

The SBA has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of $5 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned and cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. According to the SBA's definition of a small entity, most of the participants in the CCF program would be considered small entities. However, there are no disproportionate impacts from the final regulatory changes between large and small entities.

6.5 Description of Recordkeeping and Compliance Costs

This action contains collection of information requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*.) and which have been approved by the Office of Management and Budget under control number 0648-0041. Implementation of the final regulatory changes to the CCF program would not change the overall reporting structure and recordkeeping requirements of the participants in the program.

6.6 Duplication or Conflict with Other Federal Rules

This rule does not duplicate or conflict with any Federal rules of which NMFS is aware.

6.7 Measures Taken to Reduce Impacts on Small Entities

Most firms operating in the fisheries regulated by the final action have expected annual gross revenues of less than $11 million; this analysis estimates that most of the 1,394 active participants are considered small entities. Moreover, participation in this program is voluntary. The ownership characteristics of the participants in the program are tracked, however it is not possible to determine with certainty if they are independently owned and operated, or are affiliated in one way or another with a larger parent company. Furthermore, because analysts cannot quantify the exact number of small entities that are directly regulated by this action, a definitive finding of non-significance for the final action under the RFA is not possible. However, because the final action would not result in any additional compliance obligations, operating costs or any other costs on small entities, the net effects would be expected to be minor relative to the status quo. As a result of these minor net effects, no measures are being taken to reduce the impacts, if any, on small entities.

7 CONSISTENCY WITH OTHER APPLICABLE LAWS

7.1 Endangered Species Act Considerations

The Endangered Species Act ("ESA"), 16 U.S.C. 1531 et seq., provides for the conservation of endangered and threatened species of fish, wildlife, and plants. Consultations under Section 7 of the ESA are administered by NMFS for most marine mammal species, marine and anadromous fish species, and marine plant species, and by the U.S. Fish & Wildlife Service ("FWS") for some marine mammals, all bird species, and terrestrial and freshwater wildlife and plant species. This action will continue existing fishery management regulation of all fisheries that are part of the CCF program. No impacts to ESA-listed endangered or threatened species are anticipated as a result of implementing the alternatives under consideration.

7.2 Marine Mammal Protection Act Considerations

Fisheries that interact with species listed as depleted, threatened, or endangered may be subject to management restrictions under the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. 1361 et seq., and the ESA. NMFS publishes an annual list of fisheries in the Federal Register separating commercial fisheries into one of three categories, based on the level of serious injury and mortality of marine mammals occurring incidentally in that fishery. The categorization of a fishery in the list of fisheries determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. This final action will not alter the management and regulation of the fisheries that are part of the CCF program. No impacts to marine mammals are anticipated as a result of implementing the alternatives under consideration.

7.3 Coastal Zone Management Act Considerations

Implementation of either of the alternatives would be conducted in a manner consistent with Section 307(c)(1) of the Coastal Zone Management Act (16 U.S.C. § 1451 *et seq*.) and its implementing regulations.

7.4 Executive Order 13132 Federalism

Any Federalism implications arising from this action are highly unlikely.

7.5 Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 is intended to ensure regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the U.S. government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates on Indian tribes. This final action would not have substantial direct effects on Indian tribes and is therefore not applicable.

7.6 Executive Order 12898

Executive Order 12898 focuses on environmental justice in relation to minority populations and low-income populations. The Environmental Protection Agency ("EPA") defines environmental justice as the: "fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws, regulations, and policies." This executive order was spurred by the growing need to address the impacts of environmental pollution on particular segments of our society. Executive Order 12898 requires each Federal agency to achieve environmental justice by addressing "disproportionately high and adverse human health and environmental effects on minority and low-income populations." The EPA responded by developing an Environmental Justice Strategy which focuses the agency's efforts to implement Executive Order 12898.

In order to determine whether environmental justice concerns exist, the demographics of the affected area should be examined to determine whether minority populations and low-income populations are present, and if so, a determination must be made as to whether implementation of the alternatives may cause disproportionately high and adverse human health or environmental effects on these populations. Environmental justice concerns typically embody pollution and other environmental health issues, but the EPA has stated that addressing environmental justice concerns is consistent with NEPA and thus all Federal agencies are required to identify and address these issues.

The CCF program is a national program. Participants in the CCF program harvest fish in Alaska, the Gulf of Mexico, Hawaii and on the east and west coast of the U.S. Overall, the population structures in all of these areas vary considerably, but there are areas with substantial minority populations.

The effects of this final action are discussed in Section 5 (RIR) and Section 6 (FRFA). It is assumed that current participants would continue to harvest relative historical shares of the fishery. In addition, because the action would reflect historical harvests, it is not expected that this action would significantly affect historical delivery patterns by vessels delivering to shore side processing plants.

It has been determined that the final action would have no adverse environmental impacts and would not have any adverse cumulative environmental or human health effects. Thus, no distinct human population, minority or otherwise, would be affected in this regard.

8 LIST OF AGENCIES/PERSONS CONSULTED IN FORMULATING THE ENVIRONMENTAL ASSESSMENT AND NOTICE

Other agencies consulted in formulating the rule and this EA/RIR/FRFA include:

NMFS – Office of Management and Budget, Financial Services Division
NOAA – Office of General Counsel

8.1 List of Preparers

This EA/RIR/FRFA was prepared by staff from NMFS:

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9 REFERENCES

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Shipping Act, 46 U.S.C. § 40101 *et seq*.

Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, 16 U.S.C. 1801 *et seq*.

Fish and Wildlife Act of 1956, 16 U.S.C. 742 *et seq*.

National Environmental Policy Act, 42 U.S. Code 4321 *et seq*.

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*.

Small Business Act, 15 U.S.C. § 631 *et seq*.

Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*.

Endangered Species Act, 16 U.S.C. 1531 *et seq*.

Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq*.

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Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629.

Executive Order 13132, Federalism, 64 FR 43255.

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735.

10 LIST OF ABBREVIATIONS AND ACRONYMS

CCF – Capital Construction Fund Program
CEQ – Council on Environmental Quality
EA – Environmental Assessment
EIS – Environmental Impact Statement
EPA – US Environmental Protection Agency
ESA – Endangered Species Act
FONSI – Finding of No Significant Impact
FR Federal Register
FRFA – Final Regulatory Flexibility Analysis
FWS – U.S. Fish & Wildlife Service
FRFA – Final Regulatory Flexibility Analysis
MSA – Magnuson-Stevens Fishery Conservation and Management Reauthorization Act
MMPA – Marine Mammal Protection Act
NEPA – National Environmental Policy Act
NMFS – National Marine Fisheries Service
NOAA – National Oceanic and Atmospheric Administration
RFA – Regulatory Flexibility Act
RIR – Regulatory Impact Review
SBA – Small Business Act