

September 19, 2005

Dear Fish Sellers and Fish Buyers:

Our records indicate you are obligated to either pay or collect the fee repaying the BSAI crab buyback program's \$97,399,357.11 loan.

Fee payment and collection will begin in less than one month.

We hope this letter will help you understand your fee obligation. The letter is, however, a convenience rather than a substitute for the program's final fee rule.

(1) WHEN DOES THE FEE BEGIN?

The fee begins on:

October 17, 2005

(2) WHAT HAPPENS THEN?

All fish sellers must pay the fee and all fish buyers must collect the fee for all fee fish landed on October 17, 2005, and on each day thereafter until the loan is repaid.

(3) WHAT ARE FEE FISH?

Fee fish are the BSAI crab in these six reduction endorsement fisheries whose landings are subject to payment and collection of the fee:

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**REDUCTION
ENDORSEMENT FISHERIES**

- (1) Bristol Bay red king
- (2) BSAI C. opilio and C. bairdi
- (3) Aleutian Islands brown king
- (4) Aleutian Islands red king
- (5) Pribilof red king and
Pribilof blue king
- (6) St. Matthew blue king

(4) HOW DO THE SIX REDUCTION ENDORSEMENT FISHERIES RELATE TO THE EIGHT CURRENT CRAB RATIONALIZATION PROGRAM FISHERIES?

The following table cross references the six reduction endorsement fisheries to the eight current crab rationalization program fisheries:

THESE SIX REDUCTION ENDORSEMENT FISHERIES	ARE NOW THESE EIGHT CRAB RATIONALIZATION PROGRAM FISHERIES
(1) Bristol Bay red king	(1) Bristol Bay red king (BBR)
(2) BSAI <u>C. opilio</u> and <u>C. bairdi</u>	(2) Bering Sea snow (BSS) and (3) Bering Sea tanner (BST)
(3) Aleutian Islands brown king	(4) Eastern Aleutian Islands golden king (EAG) (5) Western Aleutian Islands golden king (WAG)
(4) Aleutian Islands red king	(6) Western Aleutian Islands red king (WAI)
(5) Pribilof red king and Pribilof blue king	(7) Pribilof red king and blue king (PIK)
(6) St. Matthew blue king	(8) St. Matthew blue king (SMB)

(5) ARE ANY OF THE FEE FISH IN THE SIX REDUCTION ENDORSEMENT FISHERIES EXEMPT FROM THE FEE?

No.

The fee must be paid and collected on all fee fish landed from each of the six reduction endorsement fisheries.

(6) WHAT IS A "FISH SELLER"?

A fish seller is any party who actually harvests fee fish and subsequently sells it to a fish buyer.

Everyone who does this is a fish seller and is obligated to pay the fee.

(7) WHAT IS A "FISH BUYER"?

A fish buyer is any party who first buy fee fish from the fish seller who harvested that fee fish.

The first point-of-sale buyer of fee fish is always the fish buyer for that fee fish.

Everyone who does this is a fish buyer and is obligated to collect the fee.

(8) DO FISH BUYERS ALSO INCLUDE THOSE TO WHOM FISH SELLERS DELIVER FISH ON CONSIGNMENT?

Yes.

If fish sellers first deliver fee fish to parties on consignment, then the consignees are the fish buyers even though they do not actually buy the fish.

The consignment of fee fish, in lieu of a first point-of-sale to a fish buyer, obligates the consignee to collect the fee.

(9) CAN MOTHERSHIPS, CATCHER/PROCESSORS, OR BUYERS OTHER THAN SHORESIDE PROCESSORS BE FISH BUYERS?

Yes, the first point of fee fish sale controls.

The party who first buys fee fish from the party who harvested it is a fish buyer and is obligated to collect the fee.

It makes no difference whether the first point-of-sale buyer is a

shoreside processor, a mothership, a catcher-processor, or some other form of operation.

(10) WHAT ABOUT FISH SELLERS WHO SELL FEE FISH DIRECTLY TO GENERAL FOOD SERVICE WHOLESALERS OR SUPPLIERS, RESTAURANTS, RETAILERS, CONSUMERS, OR OTHER TYPES OF END USERS?

These parties, if they are the first point of fee fish sale, could not reasonably be expected to be aware that they have an obligation to collect the fee.

Consequently, any fish seller who sells fee fish directly to any of these parties is itself legally deemed to be both the fish seller and the fish buyer. This means that the fish seller under these conditions has all the legal fee obligations of a fish seller as well as all the legal obligations of a fish buyer.

If you are a fish seller and you sell your fee fish to any of these parties, you must both pay and collect the fee.

(11) WHAT ABOUT FISH SELLERS WHO SELL FEE FISH DIRECTLY TO PARTIES WHO DO NOT HAVE A PLACE OF BUSINESS IN THE UNITED STATES OR ARE OTHERWISE OPERATING FROM A FOREIGN COUNTRY?

Any fish seller who sells fee fish directly to any of these parties is also legally deemed to be both the fish seller and the fish buyer. Consequently, every fish seller who does this has the legal fee obligations of both a fish seller and a fish buyer.

If you are a fish seller and you sell your fee fish to parties like this, you must both pay and collect the fee.

(12) ARE THERE ANY OTHER INSTANCES IN WHICH A FISH SELLER CAN HAVE THE LEGAL OBLIGATIONS OF BOTH A FISH SELLER AND A FISH BUYER?

Yes.

This is true whenever a fish seller sells fee fish to any party whom the fish seller has good reason to believe is either not subject to U.S. law or against whom NOAA cannot reasonably apply the obligation to collect the fee.

(13) HOW DO FISH SELLERS PAY THE FEE?

The fish sellers pay the fee when fish buyers deduct the fee from the trip proceeds which the fish buyers then pay to the fish

sellers.

If, for example, a fish seller sells \$1,000 worth of fee fish to a fish buyer and the fee rate for that fee fish is 5%, then the fee is \$50 and the fish seller receives from the fish buyer only \$950 rather than \$1,000. The fish buyer retains the \$50 as a collected fee.

(14) DO FISH SELLERS EVER HAVE POSSESSION OF THE FEE PORTION OF TRIP PROCEEDS?

No.

Fish buyers deduct the fee from the trip proceeds before paying the net trip proceeds to the fish sellers, and the fish buyers retain the deduction as a collected fee.

(15) ON WHAT IS THE FEE BASED?

The fee is based on the full, fair-market, gross, ex-vessel value of the fee fish which fish sellers sell to fish buyers.

This includes the value of all in-kind compensation or all other goods and services which fish buyers pay fish sellers in lieu of cash.

(16) DOES THE FEE ALSO APPLY TO LATER BONUS PAYMENTS?

Yes.

If fish buyers later pay bonuses to fish sellers for previous fee fish deliveries, the fish sellers must pay, and the fish buyers must collect, the fee on the entire bonus amount

(17) HOW DO FISH BUYERS COLLECT THE FEE?

As noted, they withhold it from the trip proceeds which they pay to the fish sellers.

(18) WHAT ARE THE FEE RATES?

Each of the six reduction endorsement fisheries has a different buyback loan subamount, and each has a fee rate based on the repayment of its subamount.

Each fee rate is a percentage of the full, fair-market, gross, ex-vessel value of the fee fish landed in that fishery.

The fee rates applicable to fee fish from each of the six reduction endorsement fisheries appear in the table below:

REDUCTION ENDORSEMENT FISHERIES	CRAB RATIONALIZATION FISHERIES CROSS REFERENCE	LOAN SUB-AMOUNT	FEE RATE
Bristol Bay red king	BBR	\$17,129,957.23	1.9%
BSAI <u>C. opilio</u> and <u>C. bairdi</u>	BSS and BST	\$66,410,767.20	5.0%
Aleutian Islands brown king	EAG and WAG	\$6,380,837.19	2.6%
Aleutian Islands red king	WAI	\$237,588.04	5.0%
Pribilof red king and Pribilof blue king	PIK	\$1,571,216.35	5.0%
St. Matthew Blue	SMB	\$5,668,991.10	5.0%

(19) WHAT DO FISH BUYERS FIRST DO WITH THE FEES THEY COLLECT?

No less frequently than at the end of each business week, fish buyers must deposit all collected fees in a Federally insured depository.

(20) WHAT KIND OF DEPOSIT ACCOUNTS CAN FISH BUYERS USE FOR DEPOSITING COLLECTED FEES?

All deposit accounts must be Federally insured.

Deposit accounts are for the sole purpose of depositing collected fee revenues and must be separated from all other operating accounts.

Each deposit account must be subdivided into a sub-account for each of the six reduction endorsement fisheries from which the fish buyer buys fee fish.

So, if a fish buyer buys fee fish from each of the six reduction endorsement fisheries, its deposit account will have the

following six sub-accounts:

SIX REDUCTION ENDORSEMENT FISHERIES SUB-ACCOUNTS	WHICH CONSIST OF FEES FROM THESE EIGHT CRAB RATIONALIZATION FISHERIES
Bristol Bay red king	BBR
BSAI <u>C. opilio</u> and <u>C. bairdi</u>	BSS and BST
Aleutian Islands brown king	EAG and WAG
Aleutian Islands red king	WAI
Pribilof red king and Pribilof blue king	PIK
St. Matthew Blue	SMB

(21) WHAT MAY FISH BUYERS DO WITH COLLECTED FEE DEPOSITS?

Nothing, except disburse them to us at the required time.

Fish buyers may not pledge, assign, or use either the deposit accounts or the principal amount of collected fee deposits in the accounts for any purpose other than aggregating and, at the required time, disbursing to us all collected fee revenues.

(22) WHEN MUST FISH BUYERS DISBURSE THE COLLECTED FEE DEPOSITS TO NOAA?

Fish buyers must disburse collected fee deposits to NOAA on the last business day of each month or more frequently if the amount in the account then exceeds the account limit for deposit insurance purposes.

(23) WHAT MUST FISH BUYERS DISBURSE?

Fish buyers must, at the required intervals, disburse the full principal amount of all collected fee revenues in the deposit accounts.

(24) MUST FISH BUYERS DISBURSE ANY INTEREST ACCRUED ON COLLECTED FEE DEPOSITS?

No.

Fish buyers may keep any interest which they may have earned on

collected fee deposits during the period of their deposit.

Fish buyers may withdraw any interest earnings at any time.

(25) HOW SHOULD FISH BUYERS DISBURSE COLLECTED FEES TO NOAA?

There are two methods.

The first method is electronic. This method uses a secure Federal system accessed at a website maintained by the U.S. Department of the Treasury. This electronic payment system is named Pay.gov.

The second method is postal. This method involves mailing a check to NOAA's lockbox.

(26) WHICH DISBURSEMENT METHOD DO WE BELIEVE FISH BUYERS SHOULD USE?

We believe fish buyers should disburse collected fee deposits electronically by using the Pay.gov system.

We believe this method is easier, quicker, and generally more reliable.

(27) HOW DO FISH BUYER'S ACCESS THE PAY.GOV. WEBSITE?

Enter this URL in a web browser and hit the web browser's "go" button: <<https://www.pay.gov/paygov/>>.

(28) WHAT PAY.GOV DISBURSEMENT OPTIONS DO FISH BUYERS HAVE?

Fish buyers using Pay.gov will disburse collected fees by bank account debit.

The bank account debit option is part of the automated clearing house network¹. Using this form of direct payment does not require a debit card, and is similar to the direct payment method by which consumers electronically pay their bills. Using this option means that fish buyers are debiting the deposit accounts they specify by making a direct electronic payment through the Pay.gov system.

¹ The automated clearing house network is a reliable and efficient nationwide electronic funds transfer mechanism which provides for the interbank clearing of electronic payments for participating depository financial institutions. Go to: <http://nacha.org/About/what_is_ach.htm> to read more about the automated clearing house network.

(29) WHAT IS INVOLVED IN THE LOCKBOX DISBURSEMENT OPTION?

If a fish buyer does not have access to the internet or simply, for whatever reason, does not want to use the Pay.gov system, the fish buyer must send his paper check² for the required disbursement amount to NOAA's lockbox at the following address:

NOAA Fisheries BSAI Crab Buyback
Post Office Box 979060
St. Louis, MO 63197-90000

This is a slower disbursement method. It may also be generally less reliable.

(30) DO FISH BUYERS DISBURSING COLLECTED FEE DEPOSITS HAVE TO INCLUDE A FEE COLLECTION REPORT WITH EACH OF THEIR DISBURSEMENTS?

Yes.

This is a simple report on a simple form, which identifies each fish buyer making a disbursement and specifies the reduction endorsement fisheries from which the fees were collected and to whose reduction loan sub-amounts the fees are to be credited.

Fish buyers who use the Pay.gov system to disburse their collected fee deposits can complete this form electronically and transmit it electronically at the same time they make their electronic disbursements. They can even arrange for the electronic form to remember most of their identifying information so they will not have to retype this each time they complete a disbursement's fee collection report.

Each fish buyer who disburses its collected fee deposits to NOAA's lockbox must complete a paper copy of the fee collection report form and send the completed form to NOAA's lockbox along with a paper check for the amount being disbursed.

² **Notice to fish buyers making payment by paper check:** In compliance with recent check processing standards, NOAA will convert to an electronic funds transfer all paper checks which fish buyers submit to NOAA. This means NOAA will copy the paper check and use the account information on it to then electronically debit the check's account for the check's amount. The account debit will usually occur within 24 hours, and will be shown on the account holder's regular account statement. The account holder will not receive the original check back. NOAA will destroy the original check, but will keep the copy of it. If NOAA cannot, for technical reasons, perform an electronic funds transfer, the account holder authorizes NOAA to process the check copy in place of the original check

(31) WHAT DOES THE FEE COLLECTION FORM LOOK LIKE?

See Enclosure No. 1 to this letter, which is a paper copy of the fee collection report form.

Fish buyers may also access a Microsoft Excel version of the fee collection report on NOAA's website at:

<http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm>.

(32) MUST FISH BUYERS MAINTAIN FEE RECORDS?

Yes.

All fish buyers must maintain all fee records for a period of at least three years from the transactions involved.

For each delivery of fee fish which a fish buyer buys from a fish seller, the required fish buyer records include at least:

- (a) The date of delivery,
- (b) The fish seller's identity,
- (c) The reduction endorsement fishery to which the delivery belongs,
- (d) The fee rate applied,
- (e) The delivery's weight,
- (f) The delivery's full value,
- (g) The delivery's net value (after deducting the fee),
- (h) The identity of the party paid (if other than the fish seller),
- (i) The payment date, and
- (j) The fee amount collected.

For each fee deposit to, and disbursement from, the collected-fee deposit account, the required fish buyer records include:

- (a) The deposit date and total amount,
- (b) The amount of each sub-account deposit,

- (c) The disbursement date and total amount,
- (d) The amount of each sub-account disbursement, and
- (e) Any interest withdrawal date and amount, plus the name of the party to whom the withdrawal was paid.

(33) MUST FISH BUYERS SUBMIT ANNUAL FEE REPORTS TO NOAA?

Yes.

In addition to the monthly collection report accompanying each disbursement from the collected-fee deposit account, each fish buyer must also submit an annual fee report to us consisting of at least the following, by reduction endorsement fishery, during the preceding year:

- (a) The full delivery value of all fee fish bought,
- (b) Fees collected during the year,
- (c) Monthly collected-fee deposits,
- (d) Monthly fee disbursements,
- (e) Interest earned on deposits, and
- (f) Year-end deposit account balances.

We will later provide an annual report example.

(34) ARE THERE PENALTIES FOR FISH SELLERS WHO FAIL TO COMPLY WITH THEIR FEE PAYMENT OBLIGATIONS AND FOR FISH BUYERS WHO FAIL TO COMPLY WITH THEIR FEE COLLECTION, DEPOSIT, DISBURSEMENT, ACCOUNTING, AND REPORTING REQUIREMENTS?

Yes.

Fee payment and fee collection are mandatory.

There are severe penalties for any fish seller or fish buyer failing to pay or collect/disburse fees in accordance with the applicable regulations.

These include the full range of penalties provided for in the Magnuson-Stevens Act, in 5 CFR part 904, and in all other applicable United States law. These penalties include, but are not limited to: civil penalties, sanctions, forfeitures, and

punishment for criminal offenses.

In addition to applying these penalties, NOAA will also enforce all fee obligations by adding late charges and bringing legal actions to enforce payment/collection against any fish seller or fish buyer who fails to pay, collect, deposit, and/or disburse the fee in accordance with the regulations.

NOAA will continuously audit official, ex-vessel, landing records against fish buyer fee collection, deposit, disbursement, report, and other records for purposes of determining and enforcing compliance with all fee payment/collection requirements.

(35) WHAT SHOULD A FISH BUYER DO IF A FISH SELLER IS UNWILLING TO PAY THE FEE?

The fish buyer should withhold the fee regardless of the fish seller's protest.

If the fish seller protests, the fish buyers should inform the fish seller that fee payment and collection is a legal obligation, and report the protesting fish seller to NOAA.

(36) WHAT SHOULD A FISH SELLER DO IF A FISH BUYER REFUSES TO COLLECT THE FEE?

The fish seller must, in this instance, become both the fish seller who pays the fee and the fish buyer who collects the fee, fulfilling the legal obligations of both. The fish seller must also report the fish buyer to NOAA.

(37) WHEN DOES FEE PAYMENT AND COLLECTION STOP?

Fee payment and collection stops for each of the six reduction endorsement fisheries when that fishery has fully repaid its loan sub-amount.

NOAA will notify all fish sellers and fish buyers in each fishery when the fishery has fully repaid its loan subamount and the sellers and buyers, consequently, need no longer pay or collect the fee.

Until that time, all fish sellers and fish buyers must, without interruption, continue paying and collecting the fee.

(38) WILL A FEE RATE EVER CHANGE?

Perhaps.

No fee-rate change will, however, ever be effective until 30 days after NOAA has first notified all affected fish sellers and fish buyers of the fee-rate change.

Fee rates could decrease if the increased value of future landings in any fishery makes a lesser fee capable of repaying the fishery's loan sub-amount by the loan's maturity date.

The reduction loan's interest rate is fixed at today's low rates. Fee rates may, consequently, also decrease at some point in the future if normal price inflation during the course of 30 years (and, thus, increasing ex-vessel value) warrants it.

No fee rate may, however, ever increase beyond 5% of the gross ex-vessel value of the fee fish from each of the six reduction endorsement fisheries.

Fee rates could also increase if future landings (and, thus, ex-vessel value) were to materially decrease in a fee-paying fishery because this could make a higher fee rate necessary to repay the fishery's loan sub-amount by the loan's maturity date.

(39) WHAT IS THE REDUCTION LOAN'S MATURITY?

This is a 30-year loan.

It matures on January 19, 2035.

(40) WHAT HAPPENS IF A REDUCTION ENDORSEMENT FISHERY PAYING THE FEE AT THE MAXIMUM RATE STILL HASN'T MANAGED TO REPAY THE FISHERY'S LOAN SUB-AMOUNT BY THE TIME THE LOAN MATURES?

The fee continues indefinitely until the fishery has fully repaid its loan sub-amount.

(41) WHAT REGULATORY PROVISIONS ARE APPLICABLE TO FEE PAYMENT AND COLLECTION?

The applicable rules are all in Part 600 of Title 50 of the Code of Federal Regulations.

The following table identifies the various 50 CFR Part 600 rules involved in or affecting the fee:

DESCRIPTION	SUBPART	SECTION
Reduction Framework Rule	L	600.1012 through 600.1017

BSAI Crab Buyback Fee Rule	M	600.1104
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(42) WHAT FEE MATTERS DOES EACH FRAMEWORK RULE SECTION INVOLVE?

The framework rule sections involve the following reduction loan and fee matters which are common to all reduction programs:

SECTION	MATTER
Section 600.1012	Loan obligation, principal amount, interest rate, payment term, and penalties for non-payment and non-collection.
Section 600.1013	Fee amount, fee rate, how fish sellers pay the fee, and how fish buyers collect the fee.
Section 600.1014	How fish buyers deposit collected fees, disburse collected fees to NOAA, keep fee records, and make fee reports.
Section 600.1015	Late charges for fee payment, collection, deposit, and/or disbursement.
Section 600.1016	NOAA enforcement of all fee provisions.
Section 600.1017	Prohibitions and penalties.

(43) WHAT FEE MATTERS DOES THE GROUND FISH PROGRAM FEE RULE INVOLVE?

The BSAI crab buyback fee rule has only one section (600.1104), but all of the section's paragraphs specifically involve or affect the crab buyback loan or the fees which will repay the loan. The crab buyback fee rule involves the following reduction loan and fee matters specific to the crab buyback fee:

SECTION PARAGRAPH	MATTER
(a)	The rule's purpose.
(b)	Definition of terms which the rule uses.
(c)	Reduction loan amount.

- (d) Reduction loan sub-amounts for each of the six reduction endorsement fisheries.
- (e) Interest accrual inception.
- (f) Interest rate.
- (g) Repayment term.
- (h) Subjection of the crab program reduction loan fee payment and collection matters to framework rule sections 600.1012-600.1017.

(44) IS MOST BSAI CRAB PROGRAM INFORMATION PUBLICLY POSTED SOMEPLACE?

Yes, the following are posted on a NOAA website:³

- (a) The fishing capacity reduction framework rule,
- (b) The crab reduction program's implementing rule (50 CFR 1103),
- (c) The crab reduction program fee rule (50 CFR 1104),
- (d) The crab reduction program's fee collection report, and
- (e) This letter.

This completes the questions and answers.

We hope this letter has been useful.

We look forward to you assistance and cooperation.

Please do not hesitate to call or write us if you have any question about fee payment, fee collection, or any other aspect of the BSAI crab buyback.

Please use the following telephone numbers or e-mail addresses to call or write us:

PERSON	NUMBERS/ADDRESS	
	TELEPHONE (301) 713- 2390	E-MAIL
Patrick Wilbert	Extension 210	patrick.wilbert@noaa.gov

³

<http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm>.

Mike Sturtevant	Extension 212	michael.a.sturtevant@noaa.gov
Mike Grable	Extension 185	michael.grable@noaa.gov

Please try Patrick Wilbert first. If Patrick is unable to answer your question, he will refer your inquiry to Mike Sturtevant or me.

We appreciate your cooperation.

Sincerely,

Michael L. Grable, Chief
Financial Services Division

ATTACHMENT:

Fee collection report form.