



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, Washington 98115
December 23, 2016

MEMORANDUM FOR: Barry Thom
Regional Administrator

FROM: Dr. Stephen Freese Ph.D. *Step L P Freese*
Acting Assistant Regional Administrator
for Sustainable Fisheries

SUBJECT: Notice of the cost recovery fee percentages and mothership pricing
for the Pacific coast groundfish trawl rationalization program for
2017 RIN 0648-XF120 -- DECISION MEMORANDUM

I request your concurrence with my determination to publish the 2017 cost recovery fee percentages for the groundfish trawl rationalization program, including the redetermination of previous years' costs.

BACKGROUND

NMFS collects fees to recover the incremental costs of management, data collection and analysis, and enforcement of the trawl rationalization program. By December 31 of each year, NMFS must announce the following year's cost recovery fee percentages and the applicable Mothership (MS) pricing.

The West Coast Region (WCR), in conjunction with the Northwest Fisheries Science Center (NWFS), Fisheries Office of Law Enforcement (OLE), and Pacific States Marine Fisheries Commission, have calculated the 2017 cost recovery fee percentage, by sector, for the Shorebased Individual Fishing Quota (IFQ) Program, MS Coop Program, and Catcher/Processor (C/P) Coop Program. NMFS determined these fees using the formula specified in regulation at § 660.115(b)(1), where the fee percentage by sector equals the lower of three percent or direct program costs for that sector divided by total ex-vessel value (V) for that sector multiplied by 100.

For 2017, the fee percentages by sector are:

- 3.0 percent for the Shorebased IFQ Program,
- 0 percent for the MS Coop Program, and
- 0 percent for the C/P Coop Program.



For 2017, the MS pricing to be used as a proxy by the C/P Coop Program is:

- \$0.08/lb for Pacific whiting.

The 2017 cost recovery fee percentages and MS pricing would be effective January 1, 2017, through December 31, 2017.

The 2017 cost recovery fee percentages are affected by the redetermination of previous years' costs and associated inter-annual adjustments to account for past overpayments. The redetermination of previous fiscal years' costs is in response to the Ninth Circuit's opinion in *Glacier Fish Co. LLC v. Pritzker*, 832 F.3d 1113 (9th Cir. 2016), a case involving a challenge to NMFS' authority to recover cost recovery fees from members of the C/P Coop Program and the reasonableness of NMFS' calculation of the C/P Coop Program's 2014 fee percentage. In an opinion issued on August 10, 2016, the court upheld NMFS' authority to recover cost recovery fees from members of the C/P Coop Program because the C/P coop permit is a limited access privilege and Glacier Fish Co. and other C/P coop members are reasonably considered a "holder" of that privilege. The court also concluded that NMFS' cost recovery regulations were consistent with statutory requirements. However, the court held that the calculation of the 2014 CP Coop Program fee was inconsistent with NMFS' cost recovery regulations and the court remanded to NMFS to re-determine the 2014 fee.

In response, NMFS has reevaluated and modified the methodology used to determine the C/P Coop Program's Direct Program Costs (DPC) for the 2014 fee calculation. The redetermination of the C/P Coop Program's 2014 fee also took into consideration discussions with Glacier Fish Co. and other representatives of C/P Coop members with respect to what costs should be considered actual incremental costs for their sector. One key change to the C/P Coop program's 2014 fee is the elimination of all time that was originally coded as "general" time and split evenly among the three sectors. Similarly, all NWFSC annual leave that was originally included in the DPCs was removed. NMFS OLE never included annual leave in its costs. With the exception of the West Coast Region cost recovery coordinator position in fiscal year 2015, no annual leave is included in the redetermined fees.¹ Additional costs that NMFS determined, upon further detailed review, to be more appropriately categorized as non-incremental were also removed. Finally, NMFS made some adjustments to ensure contractor and employee time was appropriately distributed among the sectors to reflect the actual incremental costs. NMFS elected to apply a similar revised methodology for all sectors for all previous years, resulting in a reduction in each sector's DPCs for those years. However, the Shorebased IFQ program DPC remains above the 3 percent cap, even with the recalculation.

NMFS' internal process for categorizing and tracking employee time in the trawl rationalization program has been refined over the years. For example, the use of the "general" time coding option was phased out by the WCR and, with the exception of limited use by the NWFSC, was

¹ The cost recovery coordinator position would not exist but for Amendment 20 and therefore we concluded that the full salary and benefits cost of the position, including leave, satisfies the definition of DPC. The redetermination of previous years' costs and the calculation for fiscal year 2016 allocate the position's cost by sector to be consistent with the amount of time dedicated to each sector.

not used as of fiscal year 2015. NMFS will continue its efforts to ensure that employee time is only tracked for time spent on tasks that would not have been incurred but for the implementation of the trawl rationalization program, taking into account reduced costs resulting from any program efficiencies. With respect to reduced costs, we evaluated changes to the trawl program resulting from Amendment 20 and did not identify any reduced costs for the C/P sector, as the changes predominately added management complexity or additional requirements, and employees are only tracking time spent on tasks that would not have occurred but for Amendment 20. For the Shorebased IFQ program and MS Coop program, there is potential for some reduced costs based on the efficiencies gained from decreasing the amount of time spent on trawl-sector inseason management. However, these reduced costs are difficult to quantify because of several factors. First, NMFS did not track employee time spent on specific tasks prior to Amendment 20, meaning that we do not have any method for comparing employee time spent before and after onset of the trawl rationalization program. In addition, although staff time on inseason management has seen some reductions, these same staff have seen increases in time spent on certain aspects of the trawl rationalization program that did not exist prior to 2011. Two notable components of this include the need to analyze and quantify carryover of quota pounds, and develop/refine a new model of trawling behavior that was not required before 2011. Again, because the region did not track time according to these specific tasks, it is difficult to compare with and without to determine what amount of time was saved because of increased efficiencies. However, because the WCR believes that there are some efficiency savings for the Shorebased IFQ and MS Coop programs, we believe a reasonable way to address these concerns is to remove the P12 (IFQ) and P13 (MS) costs from the primary inseason staff people. Although this change and additional modifications made during the recalculation are almost certainly reducing costs more than what might have been determined had more detailed information been available, this course of action seems to be the fairest way to be consistent with the regulatory requirements.

A comparison of the original DPCs and the recalculated DPCs, as well as a detailed breakdown of changes made as part of the redetermination, can be found in the attachments to this memorandum.

With your concurrence, I intend to publish the attached Federal Register notice announcing the 2017 cost recovery fee percentages, including the redetermination of previous years' costs, and MS pricing, for the groundfish trawl program. Publication will allow industry members to factor the 2017 cost recovery fees into their business plans.

RECOMMENDATIONS

I recommend you concur with my determination that the 2017 Pacific coast groundfish trawl rationalization cost recovery fee percentages have been calculated and the attached notice should be published in the Federal Register.



12/23/16

- 1. I concur _____
Date
- 2. I do not concur _____
Date

Attachments:

All Sector Recalculation Spreadsheet

Memorandum to File: Calculation of the cost recovery fee percentages and mothership pricing for the Pacific coast groundfish trawl rationalization program for 2017