



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 679 and 680**

**[Docket No. 150904826-6336-02]**

**RIN 0648-BF35**

**Fisheries of the Exclusive Economic Zone off Alaska; Fixed-Gear Commercial Halibut and Sablefish Fisheries; Bering Sea and Aleutian Islands Crab Rationalization Program; Cost Recovery Authorized Payment Methods**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to revise the authorized methods for payment of cost recovery fees for the Halibut and Sablefish Individual Fishing Quota Program and the Bering Sea and Aleutian Islands Crab Rationalization Program. These regulations are necessary to improve data security procedures and to reduce administrative costs of processing cost recovery fee payments. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable laws.

**DATES:** Effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Electronic copies of the following documents are available from

*http://www.regulations.gov* or from the NMFS Alaska Region Web site at

*http://alaskafisheries.noaa.gov*:

- The Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA), the final Regulatory Impact Review (RIR), and the Categorical Exclusion prepared for this action.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by e-mail to *OIRA\_submission@omb.eop.gov*; or by fax to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Keeley Kent, 907-586-7228.

## **SUPPLEMENTARY INFORMATION**

NMFS published a proposed rule to revise the authorized methods for payment of cost recovery fees for the Halibut and Sablefish Individual Fishing Quota Program (IFQ Program) and the Bering Sea and Aleutian Islands Crab Rationalization Program (CR Program) on December 31, 2015 (80 FR 81798). The comment period on the proposed rule ended on February 1, 2016.

### **Background**

The following is a brief description of the IFQ Program and CR Program cost recovery and the authorized payment methods. For a more detailed description, please see Section 1.2 of

the RIR (see **ADDRESSES**) and the preamble of the proposed rule (80 FR 81798, December 31, 2015) for this action.

### **Cost Recovery—General**

Section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) specifies that the Secretary of Commerce is authorized, and shall collect a fee, to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege program (LAPP) and community development quota program (CDQ) that allocates a percentage of the total allowable catch of a fishery to such program. Section 304(d) also specifies that such fee shall not exceed three percent of the ex-vessel value of fish harvested under any such program.

The IFQ Program is a LAPP as defined in the Magnuson-Stevens Act. NMFS implemented cost recovery for the IFQ Program in 2000 (65 FR 14919, March 20, 2000). Regulations implementing IFQ Program cost recovery are located at § 679.45. The CR Program is also a LAPP as defined in section 304(d) of the Magnuson-Stevens Act. Section 313(j) of the Magnuson-Stevens Act provides supplementary authority to section 304(d) and additional detail for cost recovery provisions specific to the CR Program. NMFS implemented cost recovery with the final rule to implement the CR Program in 2005 (70 FR 10174, March 2, 2005). Regulations implementing CR Program cost recovery are located at § 680.44.

NMFS recovers the incremental costs of managing and enforcing the IFQ Program and CR Program annually through a fee paid by persons who hold a permit granting an exclusive access privilege to a portion of the total allowable catches in IFQ Program and CR Program fisheries. NMFS calculates cost recovery fees for fish (including crab) that are landed and

deducted from the total allowable catch in the fisheries subject to cost recovery. NMFS annually calculates the cost recovery fee percentage for the halibut and sablefish IFQ Program and for the CR Program by dividing the total program costs for each program by the total ex-vessel value of the catch subject to the cost recovery fee for the current year. Section 1.2 of the RIR and the preamble of the proposed rule (80 FR 81798, December 31, 2015) for this action describe these processes in greater detail.

### **Cost Recovery for the IFQ Program**

The method used by NMFS to calculate the IFQ cost recovery fee percentage is described at § 679.45(d)(2)(ii). The IFQ permit holder is responsible for submitting their cost recovery payment to NMFS on or before the due date of January 31 following the year in which the IFQ halibut and sablefish landings were made. Additional information on the administration of IFQ Program cost recovery is provided in Section 3.5.1.1 of the RIR.

### **Cost Recovery for the CR Program**

The method used by NMFS to calculate the CR Program cost recovery fee percentage is described at § 680.44(c)(2). The Registered Crab Receiver (RCR) is responsible for submitting payment to NMFS on or before the due date of July 31, following the crab fishing year in which payment for the crab is made. Additional information on the administration of CR Program cost recovery is provided in Section 3.5.2.2 of the RIR.

### **This Final Rule**

This final rule revises the authorized cost recovery fee payment methods for the IFQ and CR Programs by revising regulations at § 679.45(a)(4)(ii) through (iv), § 680.5(g)(3)(iii), and § 680.44(a)(4)(iii) and (iv), and eliminates the option for IFQ permit holders and CR Program

RCRs to submit credit card payment information by mail or facsimile upon the effective date of this final rule. Prior to this final rule, cost recovery regulations for the IFQ Program and CR Program (§ 679.45(a)(4)(iv) and § 680.44(a)(4)(iv), respectively) allowed permit holders to pay their fee electronically or non-electronically in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank-certified check, or credit card. Electronic payments could be made using credit card or electronic check via the pay.gov web-based system, or by wiring payment directly from the permit holder's financial institution via the Fedwire Funds Service (Fedwire) funds transfer system. Non-electronic payments could be made by submitting a paper form to NMFS with credit card information via mail or facsimile, or by submitting a paper check or money order via mail.

Non-electronic submission of payment information to NMFS via mail or facsimile is less secure and results in higher administrative costs than electronic payments because it results in transmission of permit holders' financial information over the NMFS information network and requires NMFS to manually process payments. Before this final rule, permit holders could pay a cost recovery fee with a credit card by submitting a form via mail or facsimile with their credit card information to NMFS. Manual credit card processing results in the possession and transmission of IFQ Program and CR Program permit holders' credit card information over the NMFS information network. Manual credit card processing is a less secure method of payment than the permit holder directly entering their credit card information into pay.gov, and results in higher administrative costs for NMFS. Administrative costs to collect fees are subject to cost recovery. Therefore, the higher administrative costs to process credit cards manually results in an increased fee liability for the IFQ and CR Programs relative to electronic payments.

This final rule also eliminates paper checks, money orders, and bank-certified checks as authorized payment methods beginning with the 2020 cost recovery fee payment billing cycle. Payment with a paper check, money order, or bank-certified check can also increase administrative costs. Payment with paper check, money order, or bank certified check requires NMFS to manually update the internal cost recovery payment tracking system to reflect the payment. Discrepancies or errors between the cost recovery amount owed and the amount paid by check must be addressed by NMFS. Payment with paper check, money order, or bank-certified check results in higher administrative costs for NMFS, and those additional costs increase the fee liability for the IFQ and CR Programs relative to electronic payments.

This final rule requires all permit holders to submit payments through pay.gov or Fedwire beginning with the IFQ Program cost recovery fee payment due by January 31, 2020, and beginning with the CR Program cost recovery fee payment due by July 31, 2020. All cost recovery fee payments must be made electronically for any payment made on or after the first day of the billing cycle for IFQ Program and CR Program cost recovery fee payments that will be due in 2020. NMFS will allow non-electronic payments via paper check or money order until the 2020 cost recovery fee billing cycle to provide a transition period for permit holders to become familiar with, and begin transitioning to, electronic payment methods.

Electronic payments via the pay.gov system and the Fedwire system are the most secure methods of transmitting financial information and result in the lowest administrative costs for NMFS. IFQ Program and CR Program permit holders can access pay.gov through the NMFS Alaska Region online system called eFISH. Pay.gov is operated by the U.S. Department of the Treasury (Treasury) and offers the highest level of security for the personal and financial

information submitted to pay fees to NMFS. Pay.gov uses the latest industry-standard methods and encryption to safely collect, store, and transmit information that is submitted.

Through pay.gov, permit holders can make cost recovery payments using a credit card, debit card, or direct debit (electronic check). Due to the transaction fee incurred by the Treasury, there is a payment limit of \$24,999.99 on credit card transactions through pay.gov (see notice online at: <http://tfm.fiscal.treasury.gov/v1/announc/a-14-04.html>). There is currently no payment limit on debit card or direct debit payments. Payments made through pay.gov automatically update the NMFS internal cost recovery payment tracking system to reflect the payment.

Permit holders may also make cost recovery fee payments through Fedwire. Fedwire is a real-time transfer system that allows financial institutions to electronically transfer funds. Fedwire allows wire transfers of fee payments from any bank or wire transfer service to NMFS to fulfill cost recovery fee obligations. Payments are processed individually through Fedwire, which uses a highly secure electronic network.

Table 1 contains the implementation schedule for this final rule to revise authorized cost recovery fee payment methods.

**Table 1. Implementation Schedule for Changes to Authorized Cost Recovery Fee Payment Methods.**

<b>Payment type</b>	<b>Current authorized options</b>	<b>2016 – 2019 fee payment cycle authorized options</b>	<b>2020 and future year fee payment cycle authorized options</b>
Non-electronic	Credit card form	-	-
	Paper check	Paper check	-
	Money order	Money order	-
Electronic	Pay.gov	Pay.gov	Pay.gov
	Fedwire	Fedwire	Fedwire

**Comments and Responses**

NMFS received no public comments on the proposed rule for this action.

### **Changes from the Proposed Rule**

This final rule includes a change to the regulatory text and amendatory instructions published in the proposed rule. This final rule modifies amendatory instructions and removes § 680.5(g)(3)(iii), which describes the requirement for RCRs to submit the fee submission form, includes a description of the authorized payment methods for RCRs, and includes a reference to payment methods that are modified by this final rule in § 680.44(a)(4)(iv). Although the proposed rule did not include the removal of § 680.5(g)(3)(iii), NMFS has determined that it would be inconsistent with the objectives of this action to include duplicative descriptions of the authorized payment methods for CR Program cost recovery within the regulations.

### **Classification**

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined this final rule is consistent with the fishery management plans, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a

rule or group of rules. NMFS has posted a small entity compliance guide on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>) as a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

*Final Regulatory Flexibility Analysis (FRFA)*

Section 604 of the Regulatory Flexibility Act requires an agency to prepare a FRFA after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action. Section 604 describes the required contents of a FRFA: 1) A statement of the need for, and objectives of, the rule; 2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable

statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

#### *Need for and Objectives of the Rule*

The purpose of this rule is to improve security procedures for protecting financial information and to reduce costs associated with administering cost recovery. The current regulations for IFQ Program and the CR Program cost recovery allow permit holders to submit credit card information for manual credit card processing by NMFS. This results in the possession and electronic transmission of financial information on the NMFS information network, which is a security vulnerability and an administrative cost to both the permit holder and to NMFS.

This rule also reduces administrative costs for the IFQ Program and CR Program by eliminating other non-electronic payment methods that require manual processing. Manual processing of cost recovery fee payments made by check and money order generates significant costs for the administration of these programs. Eliminating these non-electronic payment methods from authorized payment method options reduces the staffing burden for processing cost recovery fee payments and further reduces the costs of administering cost recovery. Reduced administrative costs will result in lower overall fee liabilities for the IFQ and CR Programs.

#### *Summary of Significant Issues Raised During Public Comment*

NMFS published a proposed rule to revise the authorized methods for payment of cost recovery fees for the IFQ Program and the CR Program on December 31, 2015 (80 FR 81798).

The comment period on the proposed rule ended on February 1, 2016. An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. NMFS received no comments on this proposed rule, the IRFA, or the economic impacts of this action generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

*Number and Description of Small Entities Directly Regulated by the Rule*

The entities directly regulated by this rule are permit holders who make halibut and sablefish landings in the IFQ Program fisheries and RCRs who receive landings of crab in the CR Program fisheries. The universe of entities was defined based on who is directly billed by NMFS for cost recovery fees, and therefore who will be directly impacted by a change in the authorized payment methods.

The Small Business Administration (SBA) defines a small commercial finfish fishing entity as one that has annual gross receipts, from all activities of all affiliates, of less than \$20.5 million (79 FR 33647, June 12, 2014). All of the IFQ permit holders are considered to be commercial finfish fishing entities. Based upon available data, and more general information concerning the probable economic activity of vessels in the IFQ Program fisheries, no entity could have landed more than \$20.5 million in combined gross receipts in 2014. Therefore, all 2,038 IFQ permit holders are classified as small entities.

For the CR Program, 18 RCRs were directly billed for cost recovery fee liabilities in the crab fishing year 2014/2015. These 18 RCRs include persons who operate as non-profit entities, seafood dealers that receive but do not process crab, shellfish harvesters, and seafood processors. Section 4.6 of the RIR/IRFA prepared for this rule describes how RCRs operating in these

different categories were assessed under the SBA business size criteria (see **ADDRESSES**). The one RCR operating as a non-profit entity and the seven RCRs operating as seafood dealers were estimated to be small entities under the applicable SBA standard. One RCR operates as a catcher/processor and was evaluated under the shellfish harvesting size criteria. This RCR exceeds the entity size criterion of \$5.5 million in combined annual gross receipts and does not qualify as a small business. Nine of the 18 RCRs are shoreside processing entities and were evaluated under the seafood processor size criteria.

At the time that NMFS conducted the analysis for the IRFA, the SBA defined a seafood processor as a small entity if that entity was independently owned and operated, not dominant in its field of operation, and had a combined annual employment of fewer than 500 employees. On January 26, 2016, the SBA issued a final rule revising the small business size standards for several industries, effective February 26, 2016 (81 FR 4469). SBA's final rule modified the size standard for "seafood product preparation and packaging" (NAICS code 311710) that applies to seafood processors. SBA's final rule modified the definition of a small entity operating as a seafood processor to include all entities that are independently owned and operated, not dominant in their field of operation, and have a combined annual employment of fewer than 750 employees. In this FRFA, NMFS has analyzed the nine RCRs operating as seafood processors using the revised definition of a small entity. The new definition of a small entity did not change the number of seafood processors classified as small. NMFS estimates that three of the nine RCRs classified as seafood processors are small entities. Cumulatively, NMFS estimates that 11 of the 18 RCRs operating across all of the business size categories are small entities.

#### *Reporting, Recordkeeping and Other Compliance Requirements*

This rule requires modifications to the current recordkeeping and reporting requirements for IFQ Program and CR Program cost recovery in the Alaska Cost Recovery and Observer Fee collection (OMB Control Number 0648-0727). Specifically, this rule eliminates the option for payment by credit card using the paper fee submission form submitted to NMFS by mail or facsimile. Beginning with the 2020 cost recovery fee billing cycle, the paper fee submission form will be eliminated completely for the CR Program as permit holders will be required to submit all cost recovery fee payments electronically through the pay.gov or Fedwire systems. For the IFQ Program, beginning in 2020, the paper fee submission form will be revised to specify that all fee payments must be made electronically through pay.gov or the Fedwire systems.

*Description of Significant Alternatives to this Rule that Minimize Economic Impacts on Small Entities*

The Magnuson-Stevens Act requires that participants in LAPP and CDQ programs pay up to three percent of the ex-vessel value of the fish they are allocated to cover specific costs that are incurred by the management agencies as a direct result of implementing the programs. NMFS has identified this rule as necessary to improve data security procedures for permit holders' financial information and to reduce administrative costs of processing cost recovery payments. There are no alternatives that, consistent with applicable law, will accomplish the objectives of this rule and result in lower adverse economic impacts on directly regulated small entities.

NMFS considered eliminating the submission of credit card payment information by phone, in person, facsimile, and mail and retaining the use of paper checks and money orders as

authorized payment methods under Alternative 2 in the RIR. However, Alternative 2 failed to meet the objective of reducing administrative costs associated with administering cost recovery because processing these payments results in a greater staff burden than processing payments made by the pay.gov or Fedwire systems (see Section 3.7 of the RIR). NMFS also considered Alternative 3, which would have simultaneously implemented both the elimination of credit card payment by phone, in person, facsimile, and mail, and the elimination of paper check and money order payment (see Section 3.8 of the RIR). However, NMFS rejected Alternative 3 in favor of Alternative 3 Option 1, which provided accommodation for the transition costs to permit holders in complying with the rule by delaying full implementation of the changes until the applicable cost recovery fee payment due date in 2020. NMFS determined that Alternative 3 Option 1 provides an opportunity for the permit holders to become familiar with either pay.gov or Fedwire and change to a new payment method. Additionally, Alternative 3 Option 1 spreads out any transition costs for NMFS staff in providing customer service to help permit holders affected by the change (see Section 3.8.1 of the RIR).

#### *Collection-of-Information Requirements*

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under control number 0648-0727. Public reporting burden per response is estimated to average one minute for electronic fee submission and 30 minutes for non-electronic fee submission. Estimates for public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to *OIRA\_Submission@omb.eop.gov* or fax to 202– 395–5806. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at:

*[http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html)*.

**List of Subjects in 50 CFR Parts 679 and 680**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 15, 2016.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR parts 679 and 680 as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447; Pub. L. 111-281.

2. In § 679.45, revise paragraphs (a)(4)(ii) through (iv) to read as follows:

**§ 679.45 IFQ cost recovery program.**

(a) \* \* \*

(4) \* \* \*

(ii) *Payment recipient.* Make payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments may be made electronically through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the IFQ permit holder.

(iv) *Payment method*—(A) Prior to December 1, 2019, payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank-certified check, or electronically by credit card.

(B) On or after December 1, 2019, payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

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**PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

3. The authority citation for 50 CFR part 680 continues to read as follows:

**Authority:** 16 U.S.C. 1862; Pub. L. 109-241; Pub. L. 109-479.

**§ 680.5 [Amended]**

4. In § 680.5, remove paragraph (g)(3)(iii).

5. In § 680.44, revise paragraphs (a)(4)(iii) and (iv) to read as follows:

**§ 680.44 Cost recovery.**

(a) \* \* \*

(4) \* \* \*

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments may be made electronically through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the RCR permit holder.

(iv) *Payment method*—(A) Prior to June 1, 2020, payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank-certified check, or electronically by credit card.

(B) On or after June 1, 2020, payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

\* \* \* \* \*

[FR Doc. 2016-09308 Filed: 4/21/2016 8:45 am; Publication Date: 4/22/2016]