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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; 2017 Cost Recovery

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

ACTION: Notice; 2017 cost recovery fee percentages and mothership (MS) pricing.

SUMMARY: This action provides participants in the Pacific coast groundfish trawl rationalization program with the 2017 fee percentages and “MS pricing” needed to calculate the required payments for trawl rationalization program cost recovery fees due in 2017. It also provides a redetermination of previous years’ fees. For calendar year 2017, NMFS announces the following fee percentages by sector: 3.0 percent for the Shorebased Individual Fishing Quota (IFQ) Program, 0 percent for the MS Coop Program, 0 percent for the Catcher/Processor (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.

DATES: Effective January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Christopher Biegel, Cost Recovery Program Coordinator, (503) 231-6291, fax (503) 872-2737, email

Christopher.Biegel@NOAA.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires NMFS to collect fees to recover the costs directly

related to the management, data collection, and enforcement of a limited access privilege program (LAPP) (16 U.S.C. 1854(d)(2)), also called “cost recovery.” The Pacific coast groundfish trawl rationalization program is a LAPP, implemented in 2011, and consists of three sectors: the Shorebased IFQ Program, the MS Coop Program, and the C/P Coop Program. In accordance with the MSA, and based on a recommended structure and methodology developed in coordination with the Pacific Fishery Management Council, NMFS began collecting mandatory fees of up to three percent of the ex-vessel value of groundfish from each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program) in 2014. NMFS collects the fees to recover the incremental costs of management, data collection, and enforcement of the trawl rationalization program. Additional background can be found in the cost recovery proposed and final rules, 78 FR 7371 (February 1, 2013) and 78 FR 75268 (December 11, 2013), respectively. The details of cost recovery for the groundfish trawl rationalization program are in regulation at 50 CFR 660.115 (trawl fishery cost recovery program), § 660.140 (Shorebased IFQ Program), § 660.150 (MS Coop Program), and § 660.160 (C/P Coop Program).

By December 31 of each year, NMFS must announce the next year’s fee percentages, and the applicable MS pricing for the C/P Coop Program. NMFS calculated the 2017 fee percentages by sector using the best available information. In addition, NMFS revisited the methodology used to determine the direct program costs (DPC) attributable to each sector for fiscal years 2013, 2014, and 2015. NMFS’ redetermination of the DPCs for those fiscal years resulted in a decrease in the DPCs used to determine the fee percentages for calendar years 2014, 2015, and 2016. For 2017, the fee

percentages by sector, taking into account the redetermined DPCs and any adjustments, are:

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

To calculate the fee percentages, NMFS used the formula specified in regulation at § 660.115(b)(1), where the fee percentage by sector equals the lower of three percent or DPC for that sector divided by total ex-vessel value (V) for that sector multiplied by 100 (Fee percentage = the lower of 3 percent or $(DPC/V) \times 100$).

“DPC,” as defined in the regulations at § 660.115(b)(1)(i), are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). Actual incremental costs means those net costs that would not have been incurred but for the implementation of the trawl rationalization program, including both increased costs for new requirements of the program and reduced costs resulting from any program efficiencies. NMFS only included the cost of employees’ time (salary and benefits) spent working on the program in calculating DPC rather than all incremental costs of management, data collection, and enforcement. NMFS is still evaluating how to incorporate additional costs and may, in coordination with the Pacific Fishery Management Council, do so in the future.

“V”, as specified at § 660.115(b)(1)(ii), is the total ex-vessel value, as defined at § 660.111, for each sector from the previous calendar year. To calculate “V” for use in determining 2017 fee percentages, NMFS used the ex-vessel value for 2015 as reported

in Pacific Fisheries Information Network (PacFIN) from electronic fish tickets. The electronic fish ticket data in PacFIN is for the Shorebased IFQ Program. Therefore, the ex-vessel value for both the MS Coop Program and the C/P Coop Program is a proxy based on the Shorebased IFQ Program ex-vessel price and on the retained catch estimates (weight) from the observer data for the MS and C/P Coop Programs.

Ex-vessel values and amounts landed each year fluctuate, and the amount NMFS collects each year in cost recovery fees also fluctuate accordingly. When the cost recovery fees collected by NMFS are greater or less than the actual net incremental costs incurred for a given year, the fee percentage for the following year will be adjusted as specified at § 660.115(b)(1)(i).

Redetermination of Past DPCs

On August 10, 2016, the U.S. Court of Appeals for the Ninth Circuit issued its 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. 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 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. 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. Additional costs that NMFS determined to be more appropriately categorized as non-incremental were also removed. NMFS also made some adjustments to ensure contractor and employee time was appropriately distributed among the sectors to reflect the actual incremental costs. Finally, NMFS elected to apply a similar revised methodology for all sectors for all years, resulting in a reduction in each sector's DPCs. However, the Shorebased IFQ Program DPC remained above the 3 percent cap.

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 West Coast Region and, with the exception of limited use by the Northwest Fisheries Science Center, was no longer 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. A comparison of the original DPCs and the recalculated DPCs is below.

	Initial DPC (excluding adjustments)	Redetermined DPC (excluding adjustments)
Shorebased IFQ Program		
2014	\$1,877,752.00	\$1,599,610.25
2015	\$2,028,859.04	\$1,936,907.83
2016	\$2,339,529.95	\$1,887,535.24
2017	\$2,021,490.55	N/A
MS Coop Program		
2014	\$274,936.05	\$77,659.47
2015	\$233,300.78	\$129,565.98
2016	\$291,144.05	\$185,814.34
2017	\$167,549.51	N/A
C/P Coop Program		
2014	\$176,460.05	\$12,931.29
2015	\$158,631.88	\$40,487.70
2016	\$184,267.26	\$45,080.17
2017	\$63,448.85	N/A

The DPC values used to determine the 2017 fee percentages reflect the redetermined DPCs and any adjustments for past over or under payment. The adjustments can be seen here:

	2014		
	DPC	Fees	Adjustment
IFQ	\$1,599,610.25	\$1,356,285.28	N/A
MS	\$77,659.47	\$347,450.65	-\$269,791.18
CP	\$12,931.29	\$350,387.25	-\$337,455.96

2015				
	DPC	DPC w/ adjustment	Fees	Adjustment
IFQ	\$1,936,907.83	N/A	\$1,260,450.63	N/A
MS	\$129,565.98	-\$140,225.20	\$94,467.65	-\$234,692.85
CP	\$40,487.70	-\$296,968.26	\$0.00	-\$296,968.26

2016				
	DPC	DPC w/ adjustment	Fees (est)	Adjustment (est)
IFQ	\$1,887,535.24	N/A	\$1,561,574.00	N/A
MS	\$185,814.34	-\$48,878.51	\$379,731.00	-\$428,609.51
CP	\$45,080.17	-\$251,888.09	\$0.00	-\$251,888.09

2017		
	DPC	DPC w/ adjustment
IFQ	\$2,021,490.55	N/A
MS	\$167,549.51	-\$261,060.01
CP	\$63,448.85	-\$188,439.24

Based on total fees paid to date and estimated fees received in 2016, the adjusted DPCs for 2017 are:

Shorebased IFQ Program: \$2,021,490.55

MS Coop Program: -\$261,060.01

C/P Coop Program: -\$188,439.24

And the fee calculations using the adjusted 2017 DPCs are:

Shorebased IFQ Program: 3.0 percent = the lower of 3 percent or

$(\$2,021,490.55 / \$41,605,012.42) \times 100$

MS Coop Program: -6.0 percent = the lower of 3 percent or -\$261,060.01

$/ \$4,373,922.34) \times 100$

C/P Coop Program: $-1.7 \text{ percent} = \frac{\text{the lower of } 3 \text{ percent or } (-\$188,439.24 / \$11,120,803.07) \times 100}{}$.

As a fee cannot be set using a negative percentage, the 2017 fee percentages for the MS Coop Program and the C/P Coop Program will be set at 0.0 percent.

MS pricing is the average price per pound that the C/ P Coop Program will use to determine their fee amount due (MS pricing multiplied by the value of the aggregate pounds of all groundfish species harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the C/P fee percentage, equals the fee amount due). In past years, MS pricing was based on the average price per pound of Pacific whiting as reported in PacFIN from the Shorebased IFQ Program. In other words, data from the IFQ fishery was used as a proxy for the MS average price per pound to determine the “MS pricing” used in the calculation for the C/P sector’s fee amount due. For 2017 MS pricing, NMFS used values derived from those reported on the MS Coop Program cost recovery form from calendar year 2015 as this was determined to be the best information available. NMFS has calculated the 2017 MS pricing to be used as a proxy by the C/P Coop Program as: \$0.08/lb for Pacific whiting.

Cost recovery fees are submitted to NMFS by Fish buyers via Pay.gov (<https://www.pay.gov/paygov/>). Fish buyers registered with Pay.gov can login in the upper left-hand corner of the screen. Fish buyers not registered with Pay.gov can go to the cost recovery forms directly from the website below. Click on the link to Pacific Coast Groundfish Cost Recovery for your sector (IFQ, MS, or C/P):
<https://www.pay.gov/public/search/global?searchString=pacific+cost+recovery&formToKen=4e5bc6b4-6ba8-4db4-9850-e73756a06775>.

As stated in the preamble to the cost recovery proposed and final rules, in the spring of each year, NMFS will release an annual report documenting the details and data used for the above calculations. The report will include information such as the fee percentage calculation, program costs, and ex-vessel value by sector. Annual reports are available at:

http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/rules_regulations/costrecovery.html.

Authority: 16 U.S.C. 1801 *et seq.*

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Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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