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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; 2018 Cost Recovery

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

ACTION: Notice, 2018 cost recovery fee percentages and mothership cooperative (MS) sector pricing.

SUMMARY: This action provides participants in the Pacific coast groundfish trawl rationalization program with the 2018 fee percentages and “MS pricing” needed to calculate the required payments for trawl rationalization program cost recovery fees due in 2018. For calendar year 2018, NMFS announces the following fee percentages by sector: 3.0 percent for the Shorebased Individual Fishing Quota (IFQ) Sector; 0 percent for the MS sector; and 0 percent for the Catcher/Processor Cooperative (C/P) sector. For 2018, the MS pricing to be used as a proxy by the C/P sector is \$0.09/lb for Pacific whiting.

DATES: Applicable January 1, 2018.

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

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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 sector; the MS Coop sector; and the C/P Coop sector. 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 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 sector. NMFS calculated the 2018 fee percentages by sector using the best available information. For 2018, the fee percentages by sector, taking into account direct program costs (DPCs) and any adjustments, are:

- 3.0 percent for the Shorebased IFQ sector;

- 0 percent for the MS sector; and
- 0 percent for the C/P sector.

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 $(DPC/V) \times 100$).

As defined in the regulations at § 660.115(b)(1)(i), DCP are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of each sector. 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.

As specified at § 660.115(b)(1)(ii), V 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 2018 fee percentages, NMFS used the ex-vessel value for 2016 as reported in Pacific Fisheries Information Network (PacFIN) from electronic fish tickets. The electronic fish ticket data in PacFIN is for the Shorebased IFQ sector. Therefore, the ex-vessel value for both the MS sector and the C/P sector is a proxy based on the Shorebased IFQ sector ex-vessel price and on the retained catch estimates (weight) from the observer data for the MS and C/P sectors.

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).

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 was no longer used as of fiscal year 2015. NMFS has continued its efforts to ensure that employee time is only tracked for time spent on tasks that 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.

The DPC values used to determine the 2018 fee percentages reflect any adjustments for past over or under payment. The 2018 fee is consistent with the decision in *Glacier Fish Co. LLC v. Pritzker*, 832 F.3d 1113 (9th Cir. 2016). Based on estimated fees received in 2017, the adjusted DPCs for 2018 are:

Shorebased IFQ Program:	<u>\$2,179,402.10</u>
MS Coop Program:	<u>-\$132,607.08</u>
C/P Coop Program:	<u>-\$132,607.08</u>

And the fee calculations using the adjusted 2017 DPCs are:

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

$(\frac{\$2,179,402.10}{\$46,206,889.00}) \times 100$

MS sector: -1.1 percent = the lower of 3 percent or

$(-\$132,607.08/\$12,214,290.70) \times 100$

C/P sector: -0.5 percent = the lower of 3 percent or

$(-\$132,607.08/\$21,314,877.96) \times 100$.

As a fee cannot be set using a negative percentage, the 2018 fee percentages for the MS sector and the C/P sector will be set at 0.0 percent.

MS pricing is the average price per pound that the C/ P sector 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 2018 MS pricing, NMFS used values derived from those reported on the MS sector cost recovery form from calendar year 2016 as this was determined to be the best information available. NMFS has calculated the 2018 MS pricing to be used as a proxy by the C/P sector as: \$0.09/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. The links to the pay.gov forms for each sector (IFQ, MS, or C/P) are listed below:

IFQ: <https://www.pay.gov/public/form/start/58062865;>

MS: <https://www.pay.gov/public/form/start/58378422>;

CP: <https://www.pay.gov/public/form/start/58102817>.

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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