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Title 50 —Wildlife and Fisheries

Chapter VI —Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce

Part 660 —Fisheries off West Coast States

Subpart D —West Coast Groundfish—Limited Entry Trawl Fisheries

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Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

Source: 61 FR 34572, July 2, 1996, unless otherwise noted.

Editorial Note: Nomenclature changes to part 660 appear at 67 FR 65906, Oct. 29, 2002, 88 FR 81358, Nov. 22, 2023, and 89 FR 101522, Dec. 16, 2024.

§ 660.115 Trawl fishery—cost recovery program.

- (a) **General.** The cost recovery program collects mandatory fees of up to three percent of the ex-vessel value of fish harvested by sector under the trawl rationalization program in accordance with the Magnuson-Stevens Act. NMFS collects the fees to recover the actual costs directly related to the management, data collection, and enforcement of the trawl rationalization program. In addition to the requirements of this section, the following groundfish regulations also apply:
- (1) Regulations set out in the following sections of subpart C: § 660.11 Definitions and § 660.25 Permits.
 - (2) Regulations set out in the following sections of subpart D: § 660.111 Definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.140 Shorebased IFQ Program, § 660.150 MS Co-op Program, and § 660.160 C/P Co-op Program.
- (b) **Fee percentage by sector.** The annual fee percentage by sector is calculated as described in paragraph (b)(1) of this section. NMFS will establish the fee percentage each year and will announce the fee percentage by sector in accordance with paragraph (b)(2) of this section. The fee percentage must not exceed three percent of the ex-vessel value of fish harvested by sector under the trawl rationalization program pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1854(d)(2)(B).
- (1) **Calculation.** In the last quarter of each calendar year, NMFS will calculate the fee percentage by sector based on information from the previous fiscal year (defined at § 660.11). The fee percentage will be rounded to the nearest 0.1 percent and must not exceed three percent for each sector (Shorebased IFQ Program, MS Co-op Program, and C/P Co-op Program). NMFS will use the following equation to annually determine the fee percentage by sector: Fee percentage = the lower of 3% or $(DPC/V) \times 100$, where:
 - (i) “DPC,” or direct program costs, 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 Co-op Program, and C/P Co-op Program). Actual incremental costs means those net costs that would not have been incurred but for the implementation of the trawl rationalization program, including additional costs for new requirements of the program and reduced trawl sector related costs resulting from efficiencies as a result of the

program. If the amount of fees collected by NMFS is greater or less than the actual net incremental costs incurred, the DPC will be adjusted accordingly for calculation of the fee percentage in the following year.

- (ii) “V” is, for each applicable sector, the total ex-vessel value, as defined at § 660.111, from the previous calendar year attributable to that sector of the trawl rationalization program (Shorebased IFQ Program, MS Co-op Program, and C/P Co-op Program).
- (2) **Notification of the fee percentage and MS average pricing.** During the last quarter of each calendar year, NMFS will announce the following through a FEDERAL REGISTER notice:
 - (i) The fee percentage to be applied by fish buyers and fish sellers, for each sector, that will be in effect for the upcoming calendar year, and
 - (ii) The average MS price per pound from the previous fiscal year as reported for the MS Co-op Program to be used in the C/P Co-op Program to calculate the fee amount for the upcoming calendar year as specified in paragraph (c) of this section.
 - (iii) Information on how to pay in to the Fund subaccount as specified at paragraph (d) of this section.
- (c) **Fee amount.** The fee amount is the ex-vessel value, as defined at § 660.111, for each sector multiplied by the fee percentage for that sector as announced in accordance with paragraph (b)(2) of this section.
- (d) **Fee payment and collection —**
 - (1) **Fee payment and collection in the Shorebased IFQ Program and MS Co-op Program.** Payment of fees at the fee percentage rate announced in paragraph (b)(2) of this section begins January 1 and continues without interruption through December 31 each year.
 - (i) **Between the fish seller and fish buyer.** Except as described below, the full fee is due and payable at the time of fish landing/delivery. Each fish buyer must collect the fee at the time of fish landing/delivery by deducting the fee from the ex-vessel value before paying the net ex-vessel value to the fish seller. Each fish seller must pay the fee at the time of fish landing/delivery by receiving from the fish buyer the net ex-vessel value, as defined at § 660.111.
 - (A) In the event of any post-delivery payment for fish, the fish seller must pay, and the fish buyer must collect, at the time the amount of such post-landing/delivery payment, the fee that would otherwise have been due and payable at the time of initial fish landing/delivery.
 - (B) When the fish buyer and fish seller are the same entity, that entity must comply with the requirements for both the fish seller and the fish buyer as specified in this section.
 - (ii) **Between the fish buyer and NMFS —**
 - (A) **Deposit accounts.** Each fish buyer shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue from the cost recovery program specified in this section and disbursing the deposit principal directly to NMFS in accordance with paragraph (d)(1)(ii)(C) of this section.
 - (B) **Fee collection deposits.** Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (d)(1)(ii)(A) of this section, all fees collected, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit principal

may not be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (d)(1)(ii)(C) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes. If the fish buyer has used a credit card to pay the cost recovery fee, the deposit principal may be used to reimburse the credit card in the same amount as the fee payment.

- (C) **Deposit principal disbursement.** Not later than the 14th calendar day after the last calendar day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit principal then in the deposit account. The fish buyer shall disburse deposit principal by electronic payment to the Fund subaccount to which the deposit principal relates. If the fish buyer has used a credit card to pay the cost recovery fee, the deposit principal may be used to reimburse the credit card in the same amount as the fee payment. NMFS will announce information about how to make an electronic payment to the Fund subaccount in the notification on fee percentage specified in paragraph (b)(2) of this section. Each disbursement must be accompanied by a cost recovery form provided by NMFS. Recordkeeping and reporting requirements are specified in paragraph (d)(4) of this section and at § 660.113(b)(5) for the Shorebased IFQ Program and § 660.113(c)(5) for the MS Co-op Program. The cost recovery form will be available on the *pay.gov* website.
- (2) **Fee payment and collection in the C/P Co-op Program.** Payment of fees for the calendar year at the fee percentage rate announced in paragraph (b)(2) of this section is due in the last quarter of the calendar year and no later than December 31 each year. The fish buyer is responsible for fee payment to NMFS. The fish seller and the fish buyer, as defined at § 660.111, are considered the same entity in the C/P Co-op Program. The fish buyer shall disburse to NMFS the full fee amount for the calendar year by electronic payment to the Fund subaccount. NMFS will announce information about how to make an electronic payment to the Fund subaccount in the notification on fee percentage specified in paragraph (b)(2) of this section. Each disbursement must be accompanied by a cost recovery form provided by NMFS. Recordkeeping and reporting requirements are specified in paragraph (d)(4) of this section and at § 660.113(d)(5) for the C/P Co-op Program. The cost recovery form will be available on the *pay.gov* Web site.

(3) **Failure to pay or collect –**

(i) **Responsibility to notify NMFS.**

(A) If a fish buyer fails to collect the fee in the amount and manner required by this section, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's cost recovery fee collection obligation. If the fish buyer still fails to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing at the address in paragraph (d)(3)(i)(C) of this section of the full particulars, including:

- (1) The fish buyer's and fish seller's name, address, and telephone number,
- (2) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,
- (3) The weight and ex-vessel value of each species of fish that the fish seller delivered, and

- (4) The fish buyer's reason, if known, for failing or refusing to collect the fee in accordance with this subpart;
- (B) Notifications must be mailed or faxed to: National Marine Fisheries Service, West Coast Region, Office of Management and Information, ATTN: Cost Recovery Notification, 7600 Sand Point Way NE., Seattle, WA 98115; Fax: 206-526-6426; or delivered to National Marine Fisheries Service at the same address.
- (ii) **IAD, appeals, and final decision.** If NMFS determines the fish buyer or other responsible party has not submitted a complete cost recovery form and corresponding payment by the due date specified in paragraphs (d)(1) and (2) of this section, NMFS will at any time thereafter notify the fish buyer or other responsible party in writing via an initial administrative determination (IAD) letter.
 - (A) **IAD.** In the IAD, NMFS will state the discrepancy and provide the person 30 calendar days to either pay the specified amount due or appeal the IAD in writing.
 - (B) **Appeals.** If the fish buyer appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 30 calendar days after the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day. The appeal must be in writing, must allege credible facts or circumstances, and must include any relevant information or documentation to support the appeal. Appeals must be mailed, faxed, or hand-delivered to: National Marine Fisheries Service, West Coast Region, Office of Management and Information, ATTN: Cost Recovery Appeals, 7600 Sand Point Way NE., Seattle, WA 98115; Fax: 206-526-6426; or delivered to National Marine Fisheries Service at the same address.
 - (C) **Final decision –**
 - (1) **Final decision on appeal.** For the appeal of an IAD, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on the appeal to the Regional Administrator, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator, acting on behalf of the Secretary of Commerce, will issue a written decision on the appeal which is the final decision of the Secretary of Commerce.
 - (2) **Final decision if there is no appeal.** If the fish buyer does not appeal the IAD within 30 calendar days, NMFS will notify the fish buyer or other responsible party in writing via a final decision letter. The final decision will be from the Regional Administrator acting on behalf of the Secretary of Commerce.
 - (3) **If the final decision determines that the fish buyer is out of compliance,** the final decision will require payment within 30 calendar days. If such payment is not received within 30 calendar days of issuance of the final decision, NMFS will refer the matter to the appropriate authorities for purposes of collection. As of the date of the final decision if the fish buyer is out of compliance, NMFS will not approve a permit renewal for an MS permit or a C/P-endorsed limited entry trawl permit until all cost recovery fees due have been paid as specified at § 660.25(b)(4)(i)(G); or reissue an IFQ first receiver site license until all cost recovery fees due have been paid, as specified at § 660.140(f)(4).

(4) **Recordkeeping, reporting, and audits** —

- (i) **Recordkeeping.** Each fish buyer and fish seller shall retain records in accordance with § 660.113(a). In addition, fish buyers shall retain records in accordance with the following paragraphs: § 660.113(b)(5) for the Shorebased IFQ Program, § 660.113(c)(5) for the MS Co-op Program, and § 660.113(d)(5) for the C/P Co-op Program.
- (ii) **Reporting, including annual report.** Each fish buyer shall submit reports in accordance with the following paragraphs: § 660.113(b)(5) for the Shorebased IFQ Program, § 660.113(c)(5) for the MS Co-op Program, and § 660.113(d)(5) for the C/P Co-op Program. The fish buyer must submit a cost recovery form along with fee payment to NMFS. By March 31 each year, fish buyers in the MS Co-op Program must submit an annual report to NMFS containing information from the preceding calendar year as specified at § 660.113(c)(5).
- (iii) **Audits.** NMFS or its agents may audit, in whatever manner NMFS determines reasonably necessary for the duly diligent administration of the cost recovery program, the financial records of fish buyers and fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers must respond to any inquiry by NMFS or a NMFS agent within 20 calendar days of the date of issuance of the inquiry, unless an extension is granted by NMFS. Fish buyers and fish sellers shall make all relevant records available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records. NMFS may employ a third party agent to conduct the audits. The NMFS auditor may review and request copies of additional data provided by the submitter, including but not limited to, previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data submitted.

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