

GROUND FISH ADVISORY SUBPANEL REPORT ON NATIONAL MARINE FISHERIES SERVICE REPORT

The Groundfish Advisory Subpanel (GAP) received a presentation from Ms. Keeley Kent, Acting Groundfish and Coastal Pelagic Species (CPS) Branch Chief, National Marine Fisheries Service (NMFS) West Coast Region (WCR), and Mr. Chris Biegel, NMFS WCR Cost Recovery Coordinator, and offers the following comments.

Groundfish Surveys

The GAP is extremely concerned about the recent lack of groundfish surveys and the health of our stock assessments and collective industries. The 2019 groundfish trawl surveys were halved due to budget constraints and 2020 surveys were cancelled completely due to COVID-19 concerns. Crucial data to inform assessments has already been missed. It cannot be overstated how crucial it is for all surveys in 2021 to start on time and be completed in full. The agency believes that fishing businesses and observer companies can operate safely during the pandemic and has continued to require 100% observer coverage across all west coast fisheries in 2020. Therefore, it is the GAP's view that NMFS should be able to find a way forward to make sure groundfish surveys occur in 2021. To that end, the GAP recommends the Council request a detailed plan from NMFS to be presented at the November Council meeting on how surveys will be completed and funded in full and on time in 2021 including how staffing, protocols, and contingencies will be handled. The GAP believes this is a reasonable request as NMFS has indicated they are already working on the plans for 2021.

The GAP has additional questions we would like NMFS to consider and respond to:

- Could NMFS provide information on whether they have developed COVID-19 plans with medical providers?
- Could NMFS provide information on ongoing discussions with survey vessels and whether NMFS and the vessels have been able to agree on COVID-19 protocols for 2021?
- Could NMFS provide an update on the Pacific whiting acoustic survey, and what protocols will be in place to ensure the survey proceeds, since this involves coordination with another agency?
- For surveys that are not likely to be conducted (such as hook and line), or for surveys that were cancelled in 2020, did NMFS consider other methods to collect fish from vessels that could be analyzed? The GAP heard that vessels are willing to provide information/collect fish on their trips that could be used to support the data for the assessments. Is this something that could be employed for 2021 if any surveys are cancelled?
- The GAP has heard feedback from NMFS that there are challenges with surveys that do not exist for vessels, and we would like more information on what those are.
- Has NMFS considered not just the cost of implementing the surveys under COVID-19 conditions, but the costs to our Federally managed fisheries in the absence of surveys if uncertainty in stock assessments reduces allowable catch? Could NMFS provide their estimates on this?

- Are there things that industry can be working on, or sharing experience on, to help ensure that the surveys will be conducted as planned?
- Can private contractors be utilized for gathering fisheries samples and data at sea?

The GAP suggests a workshop – virtual if necessary, in person if it can be done safely – to discuss common-sense approaches to filling data gaps and any alternatives for obtaining data if the surveys cannot be conducted in 2021.

Cost Recovery

The GAP, and we suspect NMFS, is fatigued by the back and forth on cost recovery. We note the following unproductive cycle:

- NMFS publishes their annual cost recovery report and *Federal Register* notice with cost recovery fees.
- The GAP (and sometimes the Council) requests greater transparency in determining what costs are recoverable, how much is recoverable, how activities that occurred prior to the catch share program are subtracted, and how cost recovery guidance and training is implemented across several offices and cost categories.
- NMFS adds information to their annual or supplemental reports that they consider meet those requests.
- The GAP appreciates the additional information but does not agree that the additional information gets at the crux of the questions or issues raised, or appropriately designates recoverable costs/fees, and requests to speak further with NMFS.
- NMFS leadership is very receptive to meeting, and GAP and other industry members who participate in the catch share program meet to discuss cost recovery further. The issues and questions are stated, ideas are discussed for the next cycle, and the time and attention is appreciated by industry, but the feeling lingers that NMFS is not taking a holistic approach to implementing the program in a way that meets the Magnuson-Stevens Act (MSA) mandates or Council guidance.
- Thus, the cycle starts over.

In the meantime, industry pays millions of their hard-earned dollars into a program that they feel is lacking transparency, accountability, and trust. Fishermen and vessel owners will pay their due, but they do not agree on the amount of the bill or how it was arrived at, and NMFS has not made enough of the internal accounting or guidance from NMFS leadership to their staff on tracking costs available for us to calculate what should be due.

The GAP recommends we escape this frustrating cycle, by having industry members and other Council stakeholders work together with NMFS staff through the Council process to:

- Develop a matrix or framework for determining and calculating recoverable costs,
- Establish a baseline of pre-catch shares costs or “units”,
- Work the different cost categories and examples through the matrix, and
- Create a more transparent and public system for cost recovery that will improve clarity, communication, and reduce time spent talking past each other.

The GAP suggests that such a matrix could be used for both past cost categories and future projects, and be used like a workbook or checklist, with three main steps.

1. The first step would cover the big question about whether or not a project or cost is recoverable. There would be summarized/bulleted guidance clearly indicating which types of costs are and are not recoverable, and for each project, NMFS managers would designate under which criteria a cost was or was not recoverable. If the project were determined to be recoverable, managers would move on to the second step.
2. The second step would determine how much of that cost was recoverable, if any, on a percentage or unit basis, using a “with and without” comparison. For example, if prior to catch shares a sector had 25% observer coverage funded by NMFS, and after catch shares had 100% observer coverage, then 75% of the observer program costs would be recoverable for the annual fee calculation (i.e. the difference “with and without” the catch share program). Or if NMFS spent an average of 200 hours on inseason management for a specific sector prior to catch shares, and now does not spend any time on inseason management for that sector, a 200 hour credit would be applied to that sector in the annual fee calculation. Or if a cost were completely new, the total hours (or 100%) would be recoverable. Conducting this calculation on a project-by-project basis over the course of each year would help answer the GAP’s fundamental questions about how NMFS is calculating incremental costs. Doing so on a percentage or unit (i.e. hourly) basis, prior to getting to the dollars and cents of that activity, would allow NMFS to use their best supportable estimate for certain pre-catch share activities that may be difficult for them to track in dollar values. This system would also create more fairness for comparable costs that might have cost less in the past, without charging that to industry. For example, if a project took 100 hours prior to catch shares and after catch shares, the 100 hours would cancel itself out to zero in this second step, rather than assigning dollar values at this stage.
3. The third step would occur at the end of the year, where actual hours/costs on each project would be multiplied by the percentage assigned in step two to determine the dollar value (using the observer example above, 75% of the observer program costs for catch shares would be recoverable). This way incremental costs would be clearly defined for each project, program, department, office, etc.

A matrix or framework could serve several purposes. First, it would make the fundamental criteria and decisions about what is recoverable transparent to stakeholders, more implementable by managers and staff, and repeatable and easier to assess across departments and offices. Second, it would address incremental costs on a project-by-project basis so that NMFS could more accurately determine and report baseline costs and demonstrate how those pre-catch share costs have been backed out of the annual total due. The GAP suggests that a matrix or framework first be applied to past and ongoing work, and then be completed for each new project, and made available to the public through the annual cost recovery report, through the NMFS report on groundfish or other items in the Council’s briefing book, or where applicable as an attachment to new rulemakings. If stakeholders and NMFS were able to work together on this through the Council process, we could set national precedent for transparency and collaboration, rather than continuing the fractured cycle that we are in now.

Without digging too heavily into our past comments on cost recovery (for example, [Agenda Item F.4.b, Supplemental GAP Report, Aril 2017](#)), or the NMFS Report on GAP Questions pertaining to the annual cost recovery report ([Agenda Item C.1, Supplemental NMFS Report 2, September 2020](#)), the GAP would like to reiterate our fundamental desire to better understand the designation of incremental costs industry is paying for. We seem to be running out of options (and optimism) for how to accomplish this, short of a third-party audit or other external review. We present these ideas with the hope that we can avoid increased contention, and instead collaborate to come up with a transparent process that will instill trust and understanding between the industry and NMFS with respect to cost recovery, through the Council.

If the Council and NMFS support such a direction, the GAP recommends convening an ad hoc Cost Recovery Workgroup or series of Cost Recovery Workshops through the public Council process, using the policy guidelines specified in the final Council motion as a guide, for the purpose of developing such a framework/matrix in a collaborative and public way that provides opportunity for Council direction and feedback. Once the framework for calculating costs has been established, we recommend that workgroup or workshop participants work through several detailed examples to improve the framework and ensure it is working as intended. A good starting place might be the IT costs described in the 2020 cost recovery report.

PFMC
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