

NMFS Report on GAP Report Questions

The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) submitted the cost recovery (CR) 2019-2020 annual report for the Pacific Coast Groundfish Trawl Rationalization Program (Trawl Program) to the Pacific Fishery Management Council (Council) for the June 2020 Council meeting. In response to this report, the Groundfish Advisory Panel (GAP) provided a report (June 2020 GAP report on cost recovery) that laid out several questions and concerns that they would like NMFS to address. These issues are detailed below along with NMFS' responses.

Meetings

- The GAP report discussed informal meetings between NMFS and industry. Their concern was that while there have been some meetings with industry members on cost recovery topics, these meetings have not continued on a regular basis.
 - NMFS meets with industry members and the GAP annually at Council meetings. NMFS also held a conference call with industry on July 9, 2020, to discuss issues raised in the June GAP report and how best to engage going forward. We encourage industry to contact either NMFS staff in general or the Cost Recovery Coordinator specifically to schedule additional discussions on specific topics.

Scoping

- The GAP report requested the possibility of integrating which costs are deemed to be recoverable into Council discussions on program activities and rulemakings. They still have questions around “transparency” and agency determination of recoverable costs.
 - In response to industry feedback, NMFS augmented the annual cost recovery report to provide significantly greater detail and improve the transparency of the decision making and cost recovery policy. NMFS will, to the extent possible, identify whether specific proposed alternatives may be cost recoverable at the scoping stage of the action development process. In addition, any action should include a discussion on its cost to NMFS and industry, with the understanding that the costs could change over time. An example of this would be the Sablefish Management and Trawl Allocation Attainment Committee (SaMTAAC) action where NMFS made it clear early in the process that the alternatives would be considered recoverable. The discussion surrounding costs is anticipated when the Council adopts a range of alternatives for analysis.
- The GAP report also discussed activities that are taken on regardless of stakeholder support such as various agency projects, data requests for various agencies, and program development.

- NMFS ensures that the data is collected according to current scientific standards and is used appropriately. NMFS collects data that has not been specifically requested by industry groups, however the data collected is based on programs that have been requested and approved through the Council process.

Costs

- The GAP report asked why some expenses appear to increase or plateau, when one could expect them to decrease in the nine years after implementation.
 - NMFS does not expect the direct program costs (DPC) of the Trawl Program to necessarily decrease over time because at a minimum, the on-going management of the fishery is subject to inflation and increased costs; for example, contracts and grants tend to increase by 3-4 percent each year. Additionally, the Council frequently undertakes new actions to support the Trawl Program, which may increase recoverable costs on a year to year basis. As the table below demonstrates, there is fluctuation in the DPC year to year due to these factors.

Below is a table of the DPCs that were used in the fee calculations for the past three years. These years were chosen because they best reflect the current policies for determining recoverable costs. The table shows that there are year to year changes in the costs associated with the Trawl Program which reflect the current needs of management. An example of this was the five year review which required additional analysis and corresponding staff time on top of the regular management of the program. In addition to staff time, there can be contracting costs that differ from year to year and impact the DPC.

Overview of 2017-2019 DPCs

Sector	2017	2018	2019 ¹
IFQ	\$2,179,402	\$1,753,654	\$1,576,294
MS	\$128,453	\$71,400	\$107,154
CP	\$76,817	\$47,178	\$85,4222
Total	\$2,384,672	\$1,872,232	\$1,768,891

- Contractor costs have not been accounted for in the same way that Fulltime Employee (FTE) costs are being recorded.

¹ The 2020 column includes the DPC used in the [2020 cost recovery fee percentage update](#).

- Contractors do not use the WebTA system however the costs associated with their work are being accounted for and being applied to the appropriate sector when calculating the yearly DPCs. Offices vary in how they handle contractor costs. The WCR is using a ratio approach with the cost of the contracts being split by the percentage of time being spent on recoverable tasks, though there are some contracting costs that are not recovered such as the NOAA Grants and Acquisition Office fees. In the future, an hour-based approach may be used by contractors and added to their contracts. As this task is not currently included in the contractor's performance work statement, it is not being used at this time, however specific costs are being tracked. When specific time is not being recorded, managers use a ratio approach when applying costs to individual sectors. For example, the Center is using various methods to account for the differences in their contracting needs. Both Economic Data Collection (EDC) Program contractors record hours and Pacific States Marine Fisheries Commission (PSMFC) Observer grantees record hours. The observer program administration contractor does not; those administration costs are instead split based on the proportion of sea days between catch share sectors and non-catch shares programs.
- The GAP report asked about recovering time spent attending meetings and providing regional cost recovery information to support national cost recovery policy, as well as tasks associated with actions that adjust the Trawl Program management measures such as replacement rulemaking or any other corrective activity.
 - Attending meetings to address cost recovery issues and improve the overall cost recovery policy is something that would not occur in the WCR “but for” the Trawl Program. As NMFS follows the “but for” policy when determining what costs are recoverable, these costs fall under that policy. In addition, while NMFS may have implemented correcting actions prior to the Trawl Program, as the Program has continued there are new updates or improvements, and attending “fixes,” that would not have been taken on “but for” the Program.
- The GAP requested (April 2019) a comprehensive discussion on reducing observer costs as these make up a large percentage of the DPC.
 - Under existing regulations, we are enacting the most efficient programs for observers and catch monitors. We suggest that industry works with the Council to discuss possible changes to the regulations to lower costs.
- Why have the technical expenses for the ITQ website continued to remain high? Shouldn't a “decrease in technology costs” lower these costs?

- The “decrease in technology costs” refers to hardware and software. While technology continues to improve, upgrading and maintaining current systems and migrating to new systems when the old version is no longer supported is a cost that will continue. The majority of the database costs are for contract labor which increases by 3-4 percent each year. In addition, the Council continues to make changes to the Trawl Program that require revisions to the databases, such as post-season trading.

Electronic Monitoring (EM)

- Why is the agency designing and implementing an audit for the EM program and charging those costs to industry as many of the participants do not support the audit approach being designed by NMFS.
 - The development and implementation of the EM program is an incremental cost of the Trawl Program because the EM program is used to satisfy the 100% observer coverage requirements implemented by the Trawl Program. As NMFS’s administrative costs from the catch share observer and catch monitoring programs are incremental costs, so are our administrative costs from the EM program. NMFS charged costs incurred from development of infrastructure to support third party review and receipt of data from third parties, but has not yet begun development of the audit, so no EM audit costs have been charged. The reference to development of the audit in the 2020 Annual Report was incorrect.
- Why is the agency charging for EM? EM is not used solely for the Trawl Program and is being tested for its viability in any fishery.
 - NMFS is not charging for time on the EM Exempted Fishing Permits, only development and implementation of the regulatory program, which is being used to meet the 100% at-sea monitoring requirements that would not exist but for the Trawl Program. We do not charge for time spent on national EM workgroups or projects.
- **COVID-19**
- How has COVID-19 impacted program management costs moving forward?
 - While the current situation could have an impact on DPCs, we will not know the impact until the 2020 DPCs are calculated for the 2021 fee. This process begins in October. We have identified one new action, which was recommended by the Council as a result of the pandemic, as recoverable, this was the emergency rule to temporarily allow at-sea Pacific whiting processing platforms to operate as both a mothership and a catcher-processor during the 2020 Pacific whiting fishery.

- The agency is not running at full capacity due to constraints from COVID-19. Is there expected to be a drop in recoverable costs?
 - NMFS is committed to providing the same level of service as we have always provided even under these difficult circumstances. Any change in costs would be reflected in the 2020 DPC. Changes in the 2020 recoverable costs would be included in the fee calculation for 2021.

- The GAP would like an official response on their request to suspend cost recovery fees based on the COVID-19.
 - In an August 11, 2020 letter to industry, Chris Oliver, Assistant Administrator for Fisheries, addressed several ideas that could reduce costs. With respect to suspending cost recovery payments for the IFQ fishery, section 305(c)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) authorizes the Secretary to implement emergency actions and interim measures, but not to override statutory requirements. The collection of fees to recover the actual costs for management, data collection, and enforcement of Limited Access Privilege Programs (LAPPs) is required by the MSA itself at section 304(d)(2)(A), and therefore cannot be modified using an emergency rule.