

GROUND FISH ADVISORY SUBPANEL REPORT ON NATIONAL MARINE FISHERIES SERVICE REPORT

The Groundfish Advisory Subpanel (GAP) received an overview from Ms. Keeley Kent, Acting Groundfish and Coastal Pelagic Species (CPS) Branch Chief, National Marine Fisheries Service (NMFS) West Coast Region (WCR), and Ms. Kelly Ames, Operations and Policy Branch Chief, NMFS WCR, and offers the following comments.

Groundfish Surveys

The GAP noted in our September statement ([Agenda Item C.1.a, Supplemental GAP Report 1, September 2020](#)) that completion of all planned 2021 groundfish surveys is critical, particularly given cancelled 2020 surveys and incomplete 2019 groundfish surveys. 2021 is also very critical for the Pacific whiting acoustic survey since it is scheduled only in odd years and has the additional complexity of being coordinated between two government agencies. The September GAP statement recommended the Council request a detailed plan from NMFS to be presented at the November Council meeting, and also listed eight specific related questions of NMFS related to the surveys.

The GAP is disappointed there was not a written report from NMFS with some responses to our questions in the supplemental briefing book. The GAP again notes it cannot be overstated how crucial it is for all surveys to start on time and be completed in full in 2021. The GAP recommends the Council request a detailed plan and status update made public by NMFS in January and then a written update in report form in the supplemental briefing book for the March Council meeting.

Cost Recovery

The GAP supports the NMFS recommendation ([Agenda Item G.2.a, NMFS Report 1, November 2020](#)) to use the value of Pacific whiting (rather than “all groundfish”) in the annual cost recovery fee calculations for the at-sea whiting sectors (that is, the mothership and catcher-processor sectors). This was the approach recommended by the GAP during development of the cost recovery program ([Agenda Item H.2.b, Supplemental GAP Report, September 2012](#) - page 32). Moreover, as stated by NMFS, this approach was initially recommended by the Council: *“For the MS and C/P sectors, the Council recommended the fee be calculated and paid on the value of Pacific whiting delivered for the MS sector and processed for the C/P sector”* (from Cost Recovery: Issues Needing Clarification from the Council, [Agenda Item H.2.b, Supplemental NMFS Report, September 2012](#) – page 37). In contrast, during this same development phase, NMFS recommended the Council use the value of all groundfish species instead of the value of whiting ([Agenda Item H.2.b, Supplemental NMFS Report, September 2012](#) – page 36), and the Council followed suit. Given that the regulatory change now recommended by NMFS seeks to return to the approach initially recommended by the Council, the GAP requests that agency time spent on this regulatory fix should not be billed to cost recovery.

The GAP appreciates NMFS’ response to our September statement on cost recovery (GAP Report: [Agenda Item C.1.a, Supplemental GAP Report 1, September 2020](#), NMFS Response: [Agenda Item](#)

[G.2.a, NMFS Report 2, November 2020](#)). We agree that having NMFS provide “preliminary incremental task determinations during scoping of a Council action” and holding meetings between NMFS and industry members “focused on individual issues with clear objectives for the meeting outcome” will be helpful to improve communication and trust.

However, the GAP was disappointed to hear from NMFS staff that they will not have time to participate in such meetings until the fall of 2021 at the earliest, and that the affected industry will therefore undergo at least another year where their concerns about the calculation of incremental costs go unresolved. We were also disappointed to hear that NMFS has determined that non-leadership staff time spent preparing for meetings with industry to discuss cost recovery will be recoverable.

Since 2010, the GAP has requested that NMFS follow Council, Cost Recovery Committee, and GAP guidance on calculating incremental costs, using a “with and without” comparison of managing the fishery prior to catch shares relative to the cost of running the fishery with catch shares, where the difference equals the incremental costs.

In regulation at 50 CFR §660.115(b)(1)(i), NMFS defines direct program costs as follows:

“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 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 additional costs for new requirements of the program and reduced trawl sector related costs resulting from efficiencies as a result of the program.

(emphasis added)

Based on the information in the annual reports, it continues to be difficult for GAP members to determine whether and how some of the defined elements of incremental costs are incorporated in NMFS’ fee calculations. The GAP would still like to see the pre-rationalization costs and cost savings from program efficiencies estimated and subtracted by sector.

Through 2019, catch share program participants have paid nearly \$10 million in cost recovery fees (**Table 1**), with concerns over whether the incremental costs owed were calculated correctly, and unease about how high some of the costs continue to be. Some costs that the GAP would expect to decrease over time have increased. As an example, the Scientific and Data Management Team’s costs for work on the individual fishing quota system were \$300,000 in 2014, but approximately \$496,000 in 2019.

Table 1. Cost Recovery Fees Paid by Sector

Sector	Total	2019	2018	2017	2016	2015	2014
IFQ	\$ 8,740,085.40	\$ 1,640,129.28	\$ 1,223,033.92	\$ 1,714,857.13	\$ 1,470,306.06	\$ 1,260,450.63	\$ 1,431,308.38
MS	\$ 660,447.80	\$ -	\$ -	\$ -	\$ 298,210.31	\$ 77,582.30	\$ 284,655.19
CP	\$ 350,402.31	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 350,402.31
Total	\$ 9,750,935.51	\$ 1,640,129.28	\$ 1,223,033.92	\$ 1,714,857.13	\$ 1,768,516.37	\$ 1,338,032.93	\$ 2,066,365.88

During cost recovery program development, and since implementation, the GAP has sought transparency on:

- What costs are recoverable?
- How are incremental costs calculated (and does NMFS subtract pre-catch shares costs and cost savings from program efficiencies)?
- Why do some program costs continue to be so high?

As an attachment to this statement, the GAP compiled relevant sections of our previous statements on cost recovery (**Attachment 1**), which highlight these longstanding concerns.

Upon review of our past statements, it was worthwhile to revisit the US Court of Appeals Ninth Circuit's language from the *Glacier Fish v. Pritzker* decision, which eloquently summarizes the GAP's continued concerns:

“NMFS was obliged to develop a reasonable method for determining the actual additional costs of the trawl rationalization program (over and above existing costs related to groundfish fishery management) as well as a reasonable method for determining which of these additional costs was directly attributable to each of the three sectors.”

“ ...Moreover, the regulations required NMFS to develop a method to evaluate whether it has gained any “efficiencies” and reduced costs as a result of implementing the coop permit program. A review of the record discloses that NMFS did not develop or apply such reasonable methods. ...

“First, NMFS did not have a systematic method for determining the number of employee hours that were spent on the trawl rationalization program over and above the amount that had previously been spent on the groundfish fishery ...

“Nor did NMFS develop a reasonable system for separating time spent on the trawl rationalization program from time spent on other projects.”

“ ...Again, such a haphazard approach to estimating the number of employee hours actually spent on the trawl rationalization program is inconsistent with NMFS's regulatory obligation to calculate the actual incremental costs directly related to the program. ...

“Finally, NMFS apparently made no attempt to calculate the “reduced trawl sector related costs resulting from efficiencies” in the program as it was required to do under 50 C.F.R. § 660.115(b)(1)(i). ...

“Based on our review of the record, NMFS did not properly determine the ‘actual incremental costs’ that were ‘directly related to the management, data collection, and enforcement of each sector.’ ”

The GAP worked together to develop a collaborative approach at the September meeting to try to break through the cycle we have been in. We recommended convening the Council's existing Cost Recovery Committee or new workgroup, or Council workshops, to develop a cost recovery matrix

and work through detailed examples of incremental costs ([Agenda Item C.1.a, Supplemental GAP Report 1, September 2020](#)). But since NMFS staff cannot work on this for at least another year, we are troubled by the fact that industry members will continue to pay cost recovery in the interim without clearly defined incremental costs.

Therefore, the GAP proposes a temporary waiver for payment of cost recovery fees until such time that incremental costs can be appropriately calculated using the Council's methodology. The West Coast Region appears to have some discretion in implementing cost recovery programs. In 2015, NMFS concluded that a cost recovery program was not appropriate for the sablefish tier permit stacking program after several years of stating they would implement such a program, and each year NMFS determines the catch share program cost recovery fee percentages. Until such time that NMFS can appropriately calculate incremental costs using Council methodology, could NMFS set the fee percentages to zero?

The GAP again recommends that an outside review or third-party audit of the cost recovery program would be appropriate to improve transparency and trust in the significant cost recovery fees industry pays.

Attachment 1

Previous GAP Statements on Cost Recovery, Compiled

November 2010

[Agenda Item H.5.c, Supplemental GAP Report, November 2010](#) – page 384:

The GAP recognizes the complexity surrounding development of the cost recovery program. In part due to that complexity, and in part in order to maintain as open a process as possible, we firmly believe that the Council should play a strong and active role in the development of the cost recovery program.

The GAP notes that cost recovery should be limited to the incremental costs of administering the trawl rationalization program. The appropriate formula to determine incremental costs should be new costs that wouldn't occur but for the transition to individual quota (IQ)/coop management reduced by any cost savings due to the transition to IQ/coop management. This should include savings, if any, in reduced modeling for the trawl fleet, reduced enforcement needs over time etc. One existing cost which the GAP feels needs to be taken into account when calculating incremental costs of the program is the amount required to provide for the current observer coverage rate in the fleet. The GAP is adamant that that cost be reduced from each sector's incremental cost accordingly.

Furthermore, we request that NMFS provide the public a sector-by-sector breakdown of the costs of current management as well as the costs of the trawl rationalization program. This will make cost recovery calculations and program development more transparent.

March 2011

[Agenda Item H.5.b, Supplemental GAP Report, March 2011](#) – page 478:

Cost recovery: Again, the GAP understands the necessity for this but reiterates that transparency is necessary.

We recapitulate from our November 2010 statement:

“The GAP recognizes the complexity surrounding development of the cost recovery program. In part due to that complexity, and in part in order to maintain as open a process as possible, we firmly believe that the Council should play a strong and active role in the development of the cost recovery program.

“The GAP notes that cost recovery should be limited to the incremental costs of administering the trawl rationalization program. The appropriate formula to determine incremental costs should be new costs that wouldn't occur but for the transition to individual quota (IQ)/coop management reduced by any cost savings due to the transition to IQ/coop management. This should include savings, if any, in reduced modeling for the trawl fleet, reduced enforcement needs over time etc.

“One existing cost which the GAP feels needs to be taken into account when calculating incremental costs of the program is the amount required to provide for the current observer coverage rate in the fleet. The GAP is adamant that that cost be reduced from each sector’s incremental cost accordingly.”

April 2011

[Agenda Item I.6.b, Supplemental GAP Report, April 2011](#) – page 340:

The Council has recognized the need for a cost recovery analysis of incremental increases in cost on a sector-by-sector basis and announced after its November 2010 meeting: “One of the Council’s primary concerns is that the cost accounting method be fully transparent to industry members that will be asked to pay the fees. The Council intends to move towards a fee for each trawl sector based on the catch share management costs of that sector.”

Accordingly, to assist the Council in development of its cost recovery program, the GAP recommends the Council request NMFS identify specific activities and the actual costs directly related to (a) management, (b) data collection and analysis, and (c) enforcement. This should be done on a “with and without” basis in order to allow identification of the incremental change in such costs under the pre-existing management regime compared to the new regime post-implementation. Anticipated changes in such activities should be quantitatively described where possible. Examples of specific activities might include observer coverage, administrative systems to manage quota catch accounting, permit issuance, transfers of quota (both permanent and annual), and new data collection and analysis requirements. Finally, the analysis should be done for each sector separately, i.e. mothership (MS), catcher-processor (CP) and shoreside.

June 2011

[Agenda Item E.7.b, Supplemental GAP Report, June 2011](#) - page 1339:

The GAP believes program costs have the potential to make or break the trawl rationalization program overall. This issue is much larger than the issue of cost recovery alone. Before delving into specific recommendations, the GAP offers the following guiding principles:

- 1) The Magnuson-Stevens Act, NOAA Catch Share Policy, other applicable law, and council motions to date should form the basis for determining program costs and cost recovery parameters.*
- 2) It is critical that program costs are streamlined to the extent possible.*
- 3) Possible future cost efficiencies should be anticipated and steps should be taken to facilitate cost reduction (e.g. If it is anticipated that a given position may no longer be necessary if the expected fleet consolidation occurs, then perhaps a contract rather than full term hire position should be considered).*
- 4) A clear nexus to the trawl rationalization program needs to be demonstrated for all costs attributed to this program.*
- 5) Costs should be fully transparent.*
- 6) Cost savings from previous management should be accurately accounted for and credited to the fishery.*

Based on those guiding principles, the GAP recommends that a program cost review committee be created. The GAP believes there are three strong justifications for the creation of this committee. First, the committee could be tasked with identifying total program costs. In preliminary discussions with certain agencies, it is unclear to the GAP whether certain cost requests should be attributable to the trawl rationalization program, or whether they are better formulated as general groundfish management costs. Second, there is clearly a great deal of disagreement and confusion about what constitutes incremental costs. The committee could be tasked with reviewing the applicable law and policy and recommending appropriate incremental costs to the council. Finally, the committee could be tasked with identifying long term cost efficiencies which could run the gamut from changes in fleet behavior to bring costs down to how to structure program management so it is flexible to anticipated changes rather than locking in significant cost increases.

September 2011

[Agenda Item G.6.b, Supplemental GAP Report, September 2011](#) – page 3071:

The GAP endorses the consensus recommendations of the Cost Recovery Committee (CRC).

...

First, at present, all we have are projected costs, and the GAP believes cost recovery should be based on actual costs. Since the GAP believes costs should not be imposed retroactively (in line with CRC recommendations) waiting until 2013 by which time actual costs will have been calculated makes sense.

September 2012

[Agenda Item H.2.b, Supplemental GAP Report, September 2012](#) - page 32:

Specific to the NMFS recommendations for the at-sea whiting sectors under Item 2, the GAP strongly recommends NMFS meet with the MS and CP sectors during development of the proposed rule. Many of the issues relative to the at-sea sectors, for example, applying cost recovery to only whiting (the Council action) versus applying cost recovery to whiting and nonwhiting species (the NMFS recommendation), are likely more complicated than NMFS may realize. Therefore, the GAP recommends it would be most prudent and more efficient for NMFS to work with the MS and CP sectors to discuss these issues prior to publication of the proposed rule. At this time, the GAP does not support the NMFS recommendation to have the ex-vessel values for the MS and CP sectors based on the value of all groundfish species.

April 2014

[Agenda Item C.3.d, Supplemental GAP Report, April 2014](#) – page 212:

The GAP would like to see increased transparency with regard to the cost recovery program. The information should be broken down not just by sector but by employee and/or contractors along with associated tasks. What were these 50,000 hours actually spent doing? Are these incremental costs? The Magnuson Act allows for collection of fees based on incremental costs that would not exist were it not for the catch share program. We are unable to make this determination because there is not enough information provided in the report. The report does indicate that employees tracked their time in 2013 by sector and task so this information should be easily available.

Further, the GAP notes that the information provided in cost recovery program reports in the North Pacific Fishery Management Council provide information at a much finer scale so providing this information is not unprecedented.

The GAP further requests that the Council ask NMFS to clarify the review process for this item. How will NMFS allow the Council and affected industry to provide input into the decisions on how much money it takes to manage the fishery? It appears that the decision for 2014 has been made – the program is already operational. How will this process occur in 2015? Will the Council’s cost recovery committee be involved? Why weren’t they involved in reviewing the plan for 2014 PRIOR to implementation?

As the Council is well aware, the industry is facing huge costs to participate in the trawl individual quota program, including: the 5 percent buyback loan payments (5 percent of exvessel value), the increasing costs of observers, and the 3 percent cost recovery fee. These are all in addition to the state landings taxes and other fixed costs associated with fishing. Overall these costs are approaching 18 percent of a business’ gross income. As such, the GAP believes that the affected industry should be afforded a more transparent look into what the actual incremental costs for management, data collection and enforcement truly are. Currently there is little confidence in the numbers and the industry feels more like a blank check is being written potentially for costs not associated with the program.

It is frustrating to continually hear about the workload issues at NMFS that are preventing the many important trawl trailing amendments from being discussed and implemented given that there is an estimate of 50,000 hours having been expended on this program in 2013.

June 2014

[Agenda Item F.3.b, Supplemental GAP Report, June 2014](#) – page 419:

The GAP would like to remind the Council that the trawl catch share program participants are now paying cost recovery fees to offset management costs and it is still unclear what tasks are actually being completed with these dollars. Continuing delays threaten the success of the quota share program.

November 2014

[Agenda Item J.1.d, Supplemental GAP Report, November 2014](#) – page 29:

The GAP primarily focused on cost recovery and what it believes is an ongoing lack of transparency. To reiterate previous GAP statements on this issue, as specifically set forth in Agenda Item C.3.d, Supplemental GAP Report, April 2014, the industry is facing huge costs to participate in the trawl individual quota program, including: the 5 percent buyback loan payments (5 percent of ex-vessel value), the increasing costs of observers, and the 3 percent cost recovery fee. These are all in addition to the state landings taxes and other fixed costs associated with fishing. Overall these costs can be upwards of 20 percent of some businesses' gross income. The GAP believes that when industry is responsible for covering some of the costs of management, there should be a corresponding responsibility for the agency to delineate costs related to management, data collection, and enforcement at a much finer scale than is currently done. Currently there is little confidence in the numbers, and the industry feels more like a blank check is being written potentially for costs not associated with the program. We understand that cost recovery reports in the North Pacific are much more detailed, so there is no insurmountable barrier to providing the information the GAP would like to see.

The GAP is also concerned by comments we heard from Mr. Frank Lockhart that there will not really be an opportunity for stakeholders to make recommendations on the upcoming cost recovery report in a meaningful way. We had understood that there would be an opportunity to make suggestions, but now understand that any recommendations are unlikely to change the upcoming report due in April. To begin to remedy this disconnect, the GAP recommends reconvening the Cost Recovery Committee (CRC) in early 2015 in order to give meaningful input to NMFS.

[Agenda Item J.5.c, Supplemental GAP Report, November 2014](#) – page 811:

We encourage the Northwest Fisheries Science Center to continue their data collection and economic model development work, including development of the FISHEyE on-line data access tool. There were concerns expressed about the cost of developing FISHEyE and whether it is being paid for through cost recovery.

April 2015

[Agenda Item E.2.b, Supplemental GAP Report, April 2015:](#)

The GAP thanks National Marine Fisheries Service (NMFS) for providing more detail in the current cost recovery report than we have seen in past reports. However, in order for the GAP to provide adequate guidance and recommendations to the Council on the cost recovery program we believe we still need additional information. The GAP has the following recommendations:

Provide more detail on the number of hours spent on each recoverable task. While the GAP appreciates the additional detail on the types of tasks that NMFS deems recoverable as incremental costs, it is still unclear to the GAP how many of the hours were spent on each task. For example, the West Coast Region (WCR) employees report that they spent 3,301 hours on the program in 2014, but it is unclear where those hours were spent among the tasks that are listed in the report. The report does state, “WCR employees track their time in timecards for work done on the trawl rationalization program with project and task codes by sector.” The report also states that Fishery Regulation Assessment Model (FRAM) employees track their time similarly so it

would seem that the information is available. To be clear, the GAP is not looking for personal information but rather would like to know what tasks are taking up the majority of employees' time so we can look for and recommend efficiencies as we move forward.

The GAP would also like input into determining what costs are recoverable. It is unclear at this point how the industry has adequate input into what costs are deemed incremental by the agency. While we understand that the Magnuson Act allows these fees to be collected, we do believe that the industry should have the ability to provide input on which costs are recoverable and whether some activities should even occur. For example, the agency may decide that port meetings on a particular individual fishing quota (IFQ)-related subject should occur and the time and travel are recoverable when the activity could be accomplished much less expensively through a phone call or webinar.

Include a section that describes the cost savings that have occurred since the implementation of the trawl IFQ program. There are two types of savings that should be described. First there are the savings that have occurred as a result of switching management regimes. A prime example would include the complex trawl model runs that were necessary for inseason action at each council meeting and these are no longer necessary. The other type of savings would be centered on efficiencies gained as both managers and industry learn how to navigate and operate within the system –fewer number of service calls, etc. as people become more familiar with the various components of the program. Costs associated with the start up of aspects of the program, i.e. making it possible to sell quota, for example, are now in place. GAP members fully expect that the costs of managing the program should be going down.

Consider hiring an outside organization to complete a cost accounting audit. NMFS is collecting millions of dollars from the fleet. There is no mechanism in place to examine whether employees are correctly and accurately recording their work. When seven Federal employees are on a conference call there is no mechanism in place to review whether there is consistency in the amount of time spent, classified or recorded. The GAP believes that NMFS should engage a 3rd party audit versus an internal audit as a matter of good practice, and transparency for those who pay the costs.

April 2016

[Agenda Item F.1.c, Supplemental GAP Report, April 2016:](#)

The GAP has the following recommendations:

Provide more detail on the number of hours spent on each recoverable task. While the GAP appreciates the additional detail on the types of tasks that NMFS deems recoverable as incremental costs, it is still unclear to the GAP how many of the hours were spent on each task. For example, WCR hours attributed to incremental costs are available in the report but it is unclear where those hours were spent among the tasks that are listed in the report. The report does state, "WCR employees track their time in timecards for work done on the trawl rationalization program with project and task codes by sector." The report also states that Fishery Regulation Assessment Model (FRAM) employees track their time similarly so it would seem that

the information is available. To be clear, the GAP is not looking for personal information but rather would like to know what tasks or grouping of tasks are taking up the majority of employees' time so we can look for and recommend efficiencies as we move forward.

As fishermen have noted, cost recovery calculations continue to show somewhere in the neighborhood of 20 additional full time personnel working solely on incremental categorized activities. It does not seem reasonable that it takes that many more people to run things than it did pre 2011; especially when we hear that no additional workload can be added because of non-catch shares activities like biennial specs and EFH review.

The GAP would also like input into determining what costs are recoverable. *It is unclear at this point how the industry has adequate input into what costs are deemed incremental by the agency. While we understand that the Magnuson Act allows these fees to be collected, we do believe that the industry should have the ability to provide input on which costs are recoverable and whether some activities should even occur. For example, the agency may decide that port meetings on a particular individual fishing quota (IFQ)- related subject should occur and the time and travel are recoverable when the activity could be accomplished much less expensively through a phone call or webinar.*

Include a section that describes the cost savings that have occurred since the implementation of the trawl IFQ program. *There are two types of savings that should be described. First, there are savings that have occurred as a result of switching management regimes. A prime example would include the complex trawl model runs that were necessary for inseason action at each council meeting and these are no longer necessary. Second, the other type of savings would be centered on efficiencies gained as both managers and industry learn how to navigate and operate within the system – fewer number of service calls, etc., as people become more familiar with the various components of the program. Costs associated with start-up of aspects of the program, i.e. making it possible to sell quota, for example, are now in place. GAP members fully expect the costs of managing the program should be going down.*

Consider hiring an outside organization to complete both a cost accounting and incremental cost identification audit. *NMFS is collecting more than \$1 million from the fleet and there is no mechanism in place to examine whether employees are correctly identifying incremental work and accurately recording hours related to that work. For example: When several federal employees are on a conference call, there appears to be no established protocol in place to assure consistency in time spent, classified or recorded. The GAP believes that NMFS, in order to assure use of the appropriate standard accounting practices, should schedule periodic external audits to verify the efficacy of established internal procedures quality control practices.*

Further the GAP suggests that since there are IFQ programs in other regions it would be productive to investigate aspects of the various programs. The Marine Fisheries Advisory Committee (MAFAC) is one vehicle that could be used to examine policies across nation to see differences and ensure policy is being applied equitably across the nation.

April 2017

[Agenda Item F.4.b, Supplemental GAP Report, April 2017:](#)

The GAP notes the Magnuson-Stevens Fisheries Conservation and Management Act (MSA) tasks the Councils with developing cost recovery methodology and NMFS can only accept or reject that methodology; NMFS does not have authority to develop a CR methodology. With that in mind, the GAP refers to Cost Recovery Committee Report recommendations to the Council in September 2011 for clarification on Council specific guidance and intent for cost recovery. Two particular items are of note:

- *The Council requested the draft framework in CR Committee Report Appendix D (included here on the last pages) be used and developed for reporting costs; the framework includes costs broken out in detail as well as pre-catch shares estimates to achieve incremental cost data by task.*
- *Council guidance referred to a November 2010 motion No. 32 directing a “great degree of transparency” and that NMFS include “costs of current (2010) management in as much detail as possible (i.e., sectors, observers, rulemaking, enforcement, etc.) as well as expected costs and cost savings as this program comes on line.*

It is apparent NMFS is not following Council directives on:

- *Providing cost reporting framework broken down to task detail;*
- *Providing pre-catch shares cost estimates in detail;*
- *Providing a great deal of transparency; and*
- *Providing details on cost savings as this program comes on line.*

Therefore, the GAP recommends the Council provide more detail and guidance to NMFS in order to bring the cost recovery process in line with the original 2011 directives.

The GAP notes the cost recovery report shows a total of \$2.25 million in program incremental costs. That translates to more than 20 people above 2003 staffing levels just to operate the catch shares program. The GAP finds this not credible, as there is no detailed data to review to match up to this claim. For example, how many hours were charged to cost recovery for gear regulations, widow reallocation, or economic data collection (EDC)? Where are the data on cost savings? These are details the GAP would like to see as directed and intended by the Council September 2011 Recommendations. The GAP notes it is not enough to use all the right phrases like “transparency” and “incremental costs” and “detail”; the actual meaning of the words have to be put into practice at some point.

The GAP also briefly reviewed some of the language from the court’s decision in Glacier Fish v. Pritzker. The Court’s findings about NMFS’ process in determining costs associated with the trawl program reflected what industry’s concerns have been since the inception of the program.

Specifically, the Court stated:

“NMFS was obliged to develop a reasonable method for determining the actual additional costs of the trawl rationalization program (over and above existing costs related to groundfish fishery management) as well as a reasonable method for determining which of these additional costs was directly attributable to each of the three sectors.”

“ ... Moreover, the regulations required NMFS to develop a method to evaluate whether it has gained any “efficiencies” and reduced costs as a result of implementing the coop permit program. A review of the record discloses that NMFS did not develop or apply such reasonable methods. ...

“First, NMFS did not have a systematic method for determining the number of employee hours that were spent on the trawl rationalization program over and above the amount that had previously been spent on the groundfish fishery ...

“Nor did NMFS develop a reasonable system for separating time spent on the trawl rationalization program from time spent on other projects.”

(The court then listed specific instances of improper methods of calculating costs.)

“ ... Again, such a haphazard approach to estimating the number of employee hours actually spent on the trawl rationalization program is inconsistent with NMFS’s regulatory obligation to calculate the actual incremental costs directly related to the program. ...

“Finally, NMFS apparently made no attempt to calculate the “reduced trawl sector related costs resulting from efficiencies” in the program as it was required to do under 50 C.F.R. § 660.115(b)(1)(i). ...

“Based on our review of the record, NMFS did not properly determine the ‘actual incremental costs’ that were ‘directly related to the management, data collection, and enforcement of each sector.’ ”

The GAP would like to reiterate that in two prior statements to the Council and in multiple public testimonies, we have requested more transparency in the cost recovery process. We have twice requested an outside review or audit of the NMFS cost recovery calculations, all to no avail.

November 2017

[Agenda Item F.12.a, Supplemental GAP Report 1, November 2017:](#)

While the GAP appreciated the Council’s request in April, we find the resulting NMFS report disappointing for its lack of new information to address transparency. For NMFS to basically say that they provide more information more often than other regions does nothing to alleviate the true concerns that the industry has over how incremental costs are identified and tracked. For NMFS to suggest that there is nothing more that can be done does not sit well with the GAP or the industry. Further, the GAP is alarmed to learn that more of the industry’s money is being spent on studying the trawl individual fishing quota (IFQ) program than actually managing and implementing it.

The GAP has shared their multiple concerns regarding the cost recovery process several times over recent years and for the record, all the comments are referenced here:

- *GAP Statement April 2017*
- *GAP Statement April 2016*

- *GAP Statement April 2015*
- *GAP Statement April 2014*
- *GAP Statement November 2012*
- *GAP Statement September 2012*

Unfortunately, NMFS has chosen to ignore almost all of the industry's requests and does not address them in their report, including the GAP's multiple requests for a third-party audit of the cost recovery program. As troubling is the agency's apparent disregard for the court findings in the Glacier Fish vs. Pritzker case outlined in our April statement. It would appear they have not adjusted their practices to meet the deficiencies and misreporting identified by the court. Not surprisingly, NMFS is currently facing another court challenge over cost recovery in the North Pacific.

The trawl catch share program is struggling for a variety of reasons, including the inability of NMFS to complete and implement rulemakings in a timely manner. When regulatory processes drag on indefinitely and the Council's actions are not implemented, it costs the agency even more to manage the fishery. At the same time, when the improvements to the program are not implemented due to endless delays at NMFS, it results in an inefficient and less economically successful fleet. That's a bad combination, and the situation is unsustainable. The costs for participating in this fishery are high with a current 3 percent cost recovery fee in the shoreside fishery (and the indication that the percentage will never be decreased), the cost of 100 percent monitoring, and the Buyback loan payments of 5 percent of the ex-vessel value in addition to other costs. The industry wants to ensure that their hard-earned income is being spent properly and they currently have no confidence that costs are being accounted for in a way that meets the requirements of the law.

Because of the lack of transparency, the GAP is unable to determine if the costs that NMFS says are incremental truly are costs that the industry should be paying. For example, several of the actions NMFS deems recoverable are actually things that are required by statute – is it really industry's responsibility to pay for those things? The 5-year review is a good example. The review is required by the Magnuson Act, and the components of the review including the annual Economic Data Collection's and associated analysis, academic papers, and meetings – are these all things that NMFS deems recoverable? When 12 NMFS employees attend a Community Advisory Board Meeting – are they all charging their time to cost recovery? Is it really necessary for them all to be there? How about the cost recovery training that the agency has recently undergone? Who pays for that? The IFQ fishery was included in the Office of Law Enforcement presentation video – will a portion of the video production costs be charged to cost recovery? The GAP believes that not all incremental costs really are costs that are or should be recoverable. Further, why should the industry pay for programmatic elements that we have not requested or are not essential to the program?

When the GAP asks for information on cost savings we hit a brick wall. Every time. NMFS claims they are unable to calculate the savings because they have no baseline of what it cost to previously manage the program (which is incredible to comprehend). They go as far as to say "In actuality, the catch share program simplified management in terms of making it the fishermen's responsibility to manage their catch. However, the corresponding rules, regulations, and

infrastructure to implement and administer the program has resulted in an increased burden for NMFS.” The elimination of the in-season trawl management process alone has to have resulted in a huge savings to NMFS and to the process. Instead we hear the program is a burden. And while the industry struggles because rulemakings are not being completed and implemented in a timely manner, we see that most of the money collected for cost recovery is actually going towards studying the program rather than managing and improving it. Of the West Coast Region cost of \$809,045:

- *\$400,000 went to the Northwest Fishery Science Center for database management of the vessel account system*
- *\$152,214 went to Pacific States Marine Fisheries Commission to administer the CM program*
- *\$265,831 went to program implementation/management/rulemaking*

Contrast the \$265,831 that went to program implementation/management/rulemaking with the \$1,199,580 that went into studying the program, and that means only about 1/5th (22%) of the amount of money went into implementing and improving the program as did to scientific studies of the program. That is unacceptable given the backlog of regulations. If we are going to pay for the program costs, we should have more say in where that money is best used – and the writing and implementation of new regulations to help the fishery would be much more beneficial than five times that amount spent on studying the fishery.

The GAP reiterates its previous requests:

- 1. Provide more detail on what tasks are deemed recoverable*
- 2. Provide more detail on the number of hours spent on each recoverable task*
- 3. Provide information on cost-savings since implementation of the program*
- 4. Hire an outside organization to provide a complete cost accounting audit*

Further, we would expand our request to include:

- 1. Which costs deemed recoverable by NMFS are required by statute?*
- 2. What are the actual costs of managing the program? NMFS indicates they could be charging more but are not currently charging for travel, supplies, etc. What is NMFS’s estimation of what this program actually costs on an annual basis?*
- 3. How are funding decisions made within NMFS to allow 5 times more funding to go to studying the program than to program implementation?*

April 2018

[Agenda Item F.4.a Supplemental GAP Report 1 April 2018:](#)

The GAP understands that National Marine Fisheries Service (NMFS) requires additional time to address industry feedback and provide more detailed information than in past reports. The GAP appreciates NMFS candor and being willing to discuss industry concerns with the cost recovery process and reports to date. This is a good start. The GAP hopes this continuing conversation can lead to addressing concerns laid out in past GAP cost recovery statements such as in our statements from April 2017 and November 2017.

The GAP sees two of the foundational issues being:

- 1) determination of what is recoverable and
- 2) determination of defining true incremental costs

The April 2017 GAP cost recovery report details how in 2010 and 2011 the Council defined the framework and methodology for NMFS to adopt. The GAP is hopeful that conversations between NMFS and industry can lead to the fulfillment of this original Council direction.

November 2018

[Agenda Item G.2.a Supplemental GAP Report 1 November 2018:](#)

The GAP very much appreciates NMFS' increased communication with industry and improvement in the cost recovery report. Although this year's iteration of the report does not have the detailed breakdown by major task or detailed incremental costs (with cost savings) that is desired, it does show the major categories that gives the industry and Council something to work with to further identify and realize potential efficiencies.

Although the improved NMFS report and communication are welcomed and appreciated, the GAP still sees the cost recovery methods not complying with two very important points:

- 1) *Adopted cost recovery methodology as originally defined and intended, particularly with respect to cost savings / detailing incremental costs.*
- 2) *Addressing deficiencies described in the Glacier court case findings, particularly with respect to cost savings / detailing incremental costs.*

As noted previously by the GAP, it may be worth exploring having an independent 3rd party auditor evaluate performance of cost recovery methods and result to its regulatory requirements, comparison to similar programs, and compliance with the Ninth Circuit decision in the Glacier Fish Company case. The GAP also thinks it would be helpful to identify, and distinguish between, items that are essential and those that are elective or discretionary. For example, while collection of economic data is a mandatory requirement of the catch shares program, it appears that research using the economic data is occurring above and beyond the needs of the catch shares program. The GAP is concerned about high research costs related to discretionary items, and is further concerned that there is the possibility of adding to those costs if economic data collection is expanded with quota share owner data as proposed under Agenda Item G.3.

To use the IFQ sector as an example of areas that need further clarification, there are three major cost categories that make up about \$1.7 million out of the \$2.0 million recoverable costs:

- *Monitoring (\$866,234),*
- *Research (\$448,088), and*
- *Information Technology (\$370,481).*

Because these three items make up the majority of recoverable costs, it makes sense to focus on these as a start of an activity for possible future efficiency gains and detailing the incremental costs (including cost savings). Guidelines for this activity should come from previously adopted cost recovery methodology and "NMFS Cost Recovery Framework (June 2011, Agenda Item

E.7.b, NMFS Report).” Industry could provide input on this activity to look for efficiency gains and look at better defining incremental costs.

Specifically related to the \$866,234 monitoring cost coming from WCR-PSMFC, NWFSC Fisheries Observation Science, and NWFSC-PSMFC, the GAP has the following thoughts. The November 2010 NOAA Catch Share Policy states that, “fixing inadequacies in the quality, frequency or coverage of existing monitoring or enforcement programs should not be attributed as catch share costs when these needs pre-existed the catch share program.” There were inadequacies pre-catch shares that industry funded monitoring helps address at a significant cost to the industry, so it leads to the question should industry also fund \$866,234 of monitoring costs in light of the previous policy statement and if such functions are the subject of agency costs in other fisheries nation-wide.

The \$1.7 million in costs constitute the basic administration of the program and seems not to include rulemakings, Council support, permits issues, or enforcement. When comparing the current program administration with previous trip-limit based fishery administration, one would expect significant cost savings if not an overall cost savings in the new program. Reasons for this are the individual accountability being a self-managing feature, industry bearing the entire cost of observers and electronic monitoring, and the onerous nature of the previous trip limit management scheme.

The GAP is interested in the incremental costs of monitoring. With the significant decrease in participating vessels and sea days post program, the previous 25% amount of monitoring costs paid by NMFS could translate to 80% or more of costs under current participation that should be covered by NMFS. The GAP would like to review costs pre- and post-catch shares to determine level of costs being considered incremental.

In summary, the GAP sees some positive changes in this report that could be used as a basis for further communication and work between industry and NMFS; specifically looking for efficiencies and incremental cost details in the three large cost categories of monitoring, research, and information technology; and the GAP would still like to see the original cost recovery methodology applied, particularly with regard to cost savings / detailing incremental costs.

April 2019

[Agenda Item G.8.a, Supplemental GAP Report 1, April 2019:](#)

The GAP notes that three major individual fishing quota (IFQ) cost categories make up about \$1.56 million out of the \$1.73 million recoverable costs:

- *Monitoring (\$799,377),*
- *Research (\$399,694), and*
- *Information Technology (\$370,535)*

The GAP wants to continue to get a better understanding of the major cost drivers of cost recovery and work together with NMFS to achieve accuracy and mutually beneficial efficiencies. The GAP has three specific suggestions:

1) The Council reiterate its June 2017 request that “NMFS explore options for reducing observer and catch monitor costs and report back to the Council.” Adding the \$799,377 monitoring related costs from cost recovery to estimated industry funded observer and catch monitor costs, industry is responsible for approximately \$3M of monitoring costs, and this does not include electronic monitoring (EM). Reducing monitoring costs while still achieving accountability goals could be a major benefit to the industry. Adding EM to the June 2017 request to explore cost reductions would also be of benefit.

2) For future actions being considered by Council, make a determination if the proposed action costs are recoverable and roughly estimate associated costs going forward, and allow industry input on that process. For example, the GAP believes that the Endangered Species Act Mitigation Measures for Salmon agenda item costs are not recoverable, but it would be good to get that determination up front and allow industry to engage on the issue if there were questions.

3) For NMFS and industry to meet on an on-going basis to analyze the processes that are the cost drivers for both cost recovery items (ex: IT, research, recoverable monitoring costs) and non-cost recovery items (ex: industry funded monitoring functions) and make recommendations where efficiencies can be improved to the benefit of both industry and NMFS. Meetings could be both informal phone meetings and formal meetings at the GAP in June and November for example, but not for report out to Council until each April under cost recovery agenda item. There is some overlap here with the first suggestion, but there is enough of a difference to warrant a separate suggestion.

The GAP still has concerns noted in past cost recovery reports about adopted methodology not being followed and crediting any cost savings to get to true incremental costs, but the GAP believes focusing on the three requests above could be a positive way forward to yield mutually beneficial results for both NMFS and industry.

June 2020

[Agenda Item C.1.a, Supplemental GAP Report 1, June 2020:](#)

The GAP appreciates the steps taken by NMFS to convene informal meetings between the industry and agency to discuss cost recovery concerns. This was a GAP request from the April 2019 GAP statement. Unfortunately, due to a variety of circumstances, the meetings have not occurred on a regular basis and the last one was over 12 months ago. In April 2019 the GAP made two additional suggestions that included a comprehensive discussion on how to reduce monitoring costs, which make up a large component of annually recovered funds, and integrating discussions around what costs are deemed recoverable into Council discussions on program activities and rulemakings. Neither of these recommendations have occurred.

As noted above, a small amount of progress has been made in terms of information sharing, but significant concerns still exist around transparency and, particularly, agency determination of recoverable costs. Additionally, the GAP has unanswered questions around expenses that appear to increase or plateau, instead of decrease as one would expect after nine years of program implementation. The GAP has additional questions regarding COVID-19 impacts on program management costs moving forward.

For example, contractor costs have not been clearly accounted for because it appears contractors aren't coding their hours the same way NMFS staff are. That is, coding for sector-specific costs, as appropriate.

The GAP is still unsatisfied with the process used by NMFS to determine recoverable costs. The statute determines recoverable costs as those costs that would not be there if it were not for the individual trawl quota (ITQ) program. Unfortunately, a grey area exists when considerations are given to agency projects, data requests from various agencies, and program development. These are activities the agency takes on regardless of stakeholder support. It is not clear that these activities are directly related to the management of the program versus ancillary projects that interest NMFS.

There is considerable confusion about why technical expenses for the ITQ website continue to remain so high when presumably expenses would decrease as the cost of technology decreases and the programs provide the same level of service year after year. A large part of the 2019 recoverable expenses is from economic data collection and processing. The agency chooses to pursue research projects and other activities with economic data that, while potentially interesting and informative, is not something the industry has requested.

There were several concerns about the agency designing and implementing an audit shop for the electronic monitoring program and charging those costs to industry moving forward, particularly since the electronic monitoring (EM) participants do not support the audit approach being designed by NMFS. Charging cost recovery dollars to "attend meetings and provide regional cost recovery information to support national cost recovery policy" raises several questions, namely: Why is the industry paying for this? Further, why is the industry responsible for covering agency time to fix mistakes? Whether through replacement rulemaking or any other corrective activity?

Furthermore, why is the agency charging cost recovery for the EM program at all? Electronic monitoring is not solely for use in the trawl ITQ program; it is being tested for its viability and use in any fishery. It just so happens that the trawl fleet was the first to adopt EM as an alternative to human observers. Additionally, cost recovery charges for the development of EM are outside the scope of the cost recovery mandate – that is, incremental costs for management, data collection, analysis, and enforcement.

In terms of current management costs, the agency is not running at full capacity due to operational and logistical constraints due to the pandemic. Is there expected to be a drop in recoverable costs moving forward as a result of COVID-19?

The GAP is aware the industry proposed several suggestions to NMFS to assist with weathering the COVID-19 storm, including suspending cost recovery for a certain amount of time. The GAP supports this request and would ask that NMFS provide a response on that request.

The GAP has remained consistent in its critique of the cost recovery program since implementation. Unfortunately, there are still many concerns about how costs are determined to be recoverable. There had been some progress made in terms of additional information sharing through informal meetings, but those meetings have not occurred for at least 12 months or more. To date, the agency has collected approximately \$20 million through cost recovery, which is a

significant sum. The GAP continues to believe the industry deserves a more interactive and transparent process for determining recoverable costs and we once again ask the Council to recommend this to NMFS.

September 2020

[Agenda Item C.1.a Supplemental GAP Report 1 September 2020:](#)

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

11/17/20