

NMFS: OPTIONS FOR ENSURING PAYMENT OF THE COST RECOVERY FEE

Question 4 in the June 2011 Agenda Item E.7.b Supplemental NMFS Report 2 asked what type of linkage should exist between payment of the cost recovery fee and permitting requirements, and listed several possible options for ensuring payment. A motion proposed to the Council by Dale Myer asked that the options for ensuring payment be analyzed, and that NMFS indicate a preferred option and rationale. The following document analyzes four options for ensuring payment of the cost recovery fee and identifies NMFS preferred option.

Option 1: Require proof of cost recovery fee payment as part of a complete limited entry permit or IFQ first receiver site license renewal application.

Proof of full payment of cost recovery fee could be a required component of a complete renewal application for any or all limited entry permits or IFQ first receiver site licenses.

For the shoreside sector, each IFQ first receiver could have to submit proof of fee payment as part of a complete IFQ first receiver site license application. In addition, individual harvesters could be required to submit proof that the fee amount was withheld at the time of delivery. For the mothership sector, each mothership could have to submit proof of fee payment as part of a complete MS permit renewal application, and catcher vessels could also be required to submit proof of fee amount withheld. For the catcher/processor sector, each catcher/processor could have to submit proof of fee payment as part of a complete C/P endorsed limited entry permit application.

Pros: Would likely generate a high level of compliance with fee payment requirements.

Cons: Would create additional administrative burdens during permit and license application/renewal process.

Option 2: No administrative link between payment of cost recovery fee and permitting. Failure to pay the cost recovery fee would be referred to OLE for enforcement action.

The primary compliance incentive could be the potential for an enforcement action. An allegation of failure to pay would need to be investigated by OLE, with that case package potentially being forwarded to GCEL for charging and assessment of penalty. Assessed fees paid as part of the resolution of the case would be deposited into the Asset Forfeiture Fund.

Pros: The buyback program currently operates in a similar manner and a new administrative compliance mechanism would not be required. See 50 CFR § 600.1016.

Cons: Under the civil penalty only approach, the penalty would be paid into an enforcement fund that can only be used for limited purposes. There is little likelihood that the penalty, if paid, could be used to more broadly cover LAPP costs or benefit the fishery. In addition, the civil penalty process would only be looking at past violations. Without a permit link, an individual could continue failing to pay cost recovery fees during a potentially lengthy process. Any fees that were not paid during that time would be subject to another civil penalty process. Thus, there

is relatively little compliance incentive provided by the enforcement approach except for any amount of penalty beyond the amount owed.

Option 3: Failure to pay the cost recovery fee leads to quota transactions being suspended until payment received.

Upon failure to pay, and after the appropriate party has been notified that they are in arrears, quota transactions are suspended pending payment of the applicable fees.

Pros: This is very similar to the cost recovery program currently in place in the Southeast. Compliance rates would likely be very high.

Cons: The shorebased IFQ is the only sector where suspension of vessel account activity would be an option. A different approach would be needed for the MS and C/P sectors. Applying this approach to the shorebased IFQ sector would also be administratively burdensome. Under the buyback method, it is the IFQ first receiver/buyer that is principally responsible for remitting collected fees to NMFS. Linking failure to remit fees to suspension of an individual vessel account may only be possible in limited circumstances. However, linking failure to pay fees to an individual vessel account could be more easily accomplished if fishers were required to collect and remit their individual fee amounts.

Option 4 (NMFS Preferred): Link failure to pay assessed fee to permit or IFQ first receiver site license renewal but do not require proof of fee payment as part of a complete renewal application. Possibility for enforcement action remains.

The primary compliance incentive would be an administrative link between failure to pay the appropriate cost recovery fee and permit/license renewal. If upon initial review of fee payment NMFS determines that the full amount has not been paid, NMFS would notify the individual, and provide an opportunity to respond and to resolve any discrepancies. If full fee payment is not received subsequent to NMFS final administrative determination, the amount would be referred to collections, and if it has not been paid prior to permit or license renewal, NMFS would not renew the MS permit, C/P permit or IFQ first receiver site license until payment is received. The potential for enforcement action would remain in some cases.

Pros: This option would likely achieve a similar level of compliance to option 1, with less of an administrative burden since the timing of the administrative process would not have to coincide with the renewal/application period. In addition, only fee payments in which discrepancies or failure to pay are identified would require more thorough administrative process.

Cons: There is an administrative burden associated with adding any sort of permit link.

NMFS Rationale: NMFS prefers this option because it incorporates a permit link to ensure compliance while minimizing the associated administrative burden to both NMFS and industry. NMFS believes that the choices the Council has already made with regards to the structure of the cost recovery program have created incentives that will lead to a high compliance rate. However, success of the trawl rationalization program will be tied to successful cost recovery. Due to the reasons listed above, reliance on a civil penalty alone would likely not provide sufficient compliance incentive. Additionally, including a permit link is most consistent with NMFS policy on permits issuance under the Debt Collection Improvement Act.