



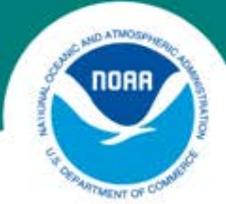
Agenda Item G.6.b Supplemental NMFS Report 1 & 2
Trawl Rationalization Trailing Actions

Proposed Cost Recovery Program Structure



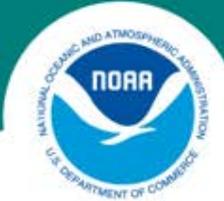
**NOAA
FISHERIES
SERVICE**

September 2011



Outline of Presentation

- 1. Council Guidance on Cost Recovery Program Structure including:
 - a. Dale Myer Motion,**
 - b. Request for further analysis of linkage to permitting requirements and,**
 - c. Cost Recovery in coordination with the States****
- 2. Analysis of linkage to permitting requirements**
- 3. Outline of the draft proposed Cost recovery Program structure, which incorporates the Dale Myer motion and relevant Buyback regulations**
- 4. Conclusion and Questions**



Dale Myer Motion at June PFMC

Provided guidance regarding the questions asked in Agenda Item E.7.b, Supplemental NMFS Report 2 :

1. Should the cost recovery program be developed for the trawl fishery as a whole, or further subdivided?

3 separate cost recovery programs developed for each of the 3 sectors.

2. What entity should pay the fee?

Catcher processors: Charge each vessel based on value of whiting harvested by that vessel.

Motherships: Charge each catcher vessel based on value of whiting delivered by that vessel.

Shoreside: Charge each catcher vessel based on value of IFQ species delivered by that vessel.

3. How should fee collection be structured?

Catcher processors: Bill entity chosen under Question 2 in last quarter of the calendar year.

Motherships: Catcher vessel billed at time of delivery by mothership and collected in coordination with buyback fee.

Shoreside: Fishermen billed at time of landing by first receiver, and collected monthly in coordination with buyback fee.

4. Linkage to permitting requirements?

Clarify that any linkage to permitting requirements would be to the entity responsible for remitting payment to the Agency .

Analyze options A, B, and C, and request NMFS indicate a preferred option and rationale at September meeting.

5. How are agency costs identified? (depends on choice made in #1)

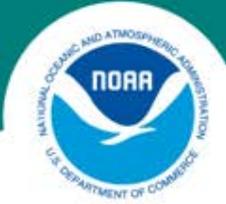
Costs would be calculated for each sector and each sector would be assessed a fee based on the sector-specific cost calculation.

6. How is the ex-vessel value of the fish harvested under the LAPP calculated to ensure fee does not exceed 3%?

Catcher processors: Use mothership pricing and at-sea tonnage caught to calculate value.

Motherships: Use mothership pricing and at-sea tonnage delivered to calculate value.

Shoreside: Calculated from information on buyback form.



Overview of NMFS Reports

Agenda Item G.6b Supplemental NMFS Report 1

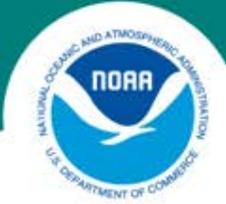
- **This draft, proposed regulatory structure was based largely on Council Guidance from the Dale Myer Motion and the buyback regulations which address fee payment and collection at 50 CFR § 600.1013.**

Agenda Item G.6b Supplemental NMFS Report 2

- **NMFS has analyzed options for ensuring cost recovery fee payment, and selected a preferred option.**

Cost Recovery in Coordination with the States

- **At this time, GC continues to research this topic and has not yet issued a statement regarding the eligibility of states to recover costs in coordination with NMFS.**



Linkage to Permitting Requirements

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.

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.



Linkage to Permitting Requirements

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: The penalty would be paid into an enforcement fund that can only be used for limited purposes, may not benefit LAPP, and there is relatively little compliance incentive provided by the enforcement approach except for any amount of penalty beyond the amount owed.



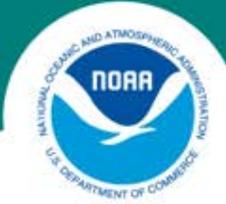
Linkage to Permitting Requirements

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.

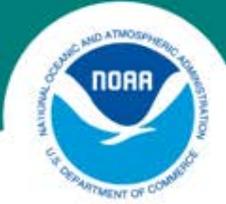
Cons: The shorebased IFQ is the only sector where suspension of vessel account activity would be an option. A different approach would be needed for the MS and C/P sectors. Administratively burdensome. Under the buyback method, it is the IFQ first receiver/buyer that is principally responsible for remitting collected fees to NMFS. Linking failure to remit fees to suspension of an individual vessel account may only be possible in limited circumstances, would be easier if fishers required to collect and remit fees.



Linkage to Permitting Requirements

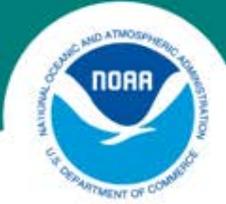
Option 4 (NMFS Preferred): Link failure to pay assessed fee to permit or IFQ first receiver site license renewal but do not require proof of fee payment as part of a complete renewal application. Possibility for enforcement action remains.

- Administrative link between failure to pay the appropriate cost recovery fee and permit/license renewal.
- If full amount has not been paid, NMFS would notify the individual, and provide an opportunity to respond and to resolve any discrepancies.
- If fee not paid after NMFS FAD, 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.



Linking Supplemental NMFS Report 2 to Report 1

- **The draft, proposed regulatory structure was based largely on Council Guidance from the Dale Myer Motion and the buyback regulations which address fee payment and collection at 50 CFR § 600.1013.**
- **Additional provisions of the buyback regulations would potentially need to be adapted and incorporated into the cost recovery regulations.**
- **NMFS preferred option for linkage to permitting requirements has been incorporated into Report 1 under the Failure to pay or collect section for each sector.**
- **The questions laid out in June 2011 Agenda Item E.7.b Supplemental NMFS Report 2 have been inserted in bold text and regulatory language that differs from the original buyback regulatory language has been italicized.**



§ 660.140 Shorebased IFQ Program.

(i) Fee payment and collection.

How is the ex-vessel value of the fish harvested under the LAPP calculated to ensure the fee does not exceed 3%?

(A) Amount. *The fee amount is the value of IFQ species delivered by that vessel times the fee rate, as calculated from information on the buyback form/ fish ticket.*

How are agency costs identified?

(B) Rate. *NMFS will establish the fee rate. The fee rate may not exceed 3 percent of the delivery value. NMFS will establish the initial fee rate at X% for this sector based on the estimated incremental costs associated with this sector. In future years the rate will be based on actual incremental costs as tracked by NMFS, OLE, NWFSC, and the states.*



§ 660.140 Shorebased IFQ Program.

What entity should pay the fee? and How should fee collection be structured?

(C) Payment and collection.

(1) Each vessel making an IFQ landing (fish seller) is billed at time of landing by the IFQ first receiver/buyer (fish buyer), and collected monthly by the Agency in coordination with the buyback fee. The full fee is due and payable at the time of fish delivery.

Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying, or promising to pay, the net delivery value.

Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value, or the fish buyer's promise to pay the net delivery value, rather than the delivery value.

Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery.



§ 660.140 Shorebased IFQ Program.

Failure to pay or collect:

Failure to pay or collect the assessed fee is a violation of the MSA.

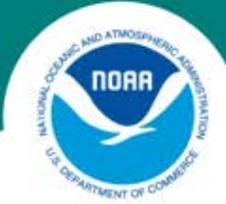
(3) The fish buyer is required to submit the fee to NMFS on a monthly basis, in coordination with the buyback fee.

If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the fish buyer has not paid the full amount due, NMFS shall notify the fish buyer by letter. NMFS shall explain the discrepancy and provide the fish buyer 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct.

If the fish buyer submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate fee, and prepare a Final Administrative Determination (FAD).

A FAD shall be the final agency action, and, if the FAD determines that the fish buyer is out of compliance, the FAD shall require payment within 30 days. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection.

If a FAD is not issued until after the start of the fishing year, the fish buyer may be authorized to receive IFQ landings temporarily by the Regional Administrator. If the fee remains unpaid at the time of IFQ first receiver site license renewal, the IFQ first receiver site license will not be renewed/issued until the terms of the FAD are met.



§ 660.150 Mothership (MS) Coop Program.

(i) Fee payment and collection.

How is the ex-vessel value of the fish harvested under the LAPP calculated to ensure the fee does not exceed 3%?

Amount. *The fee amount is the value of whiting delivered by that catcher vessel times the fee rate, using mothership pricing and at-sea tonnage delivered by each catcher vessel.*

How are agency costs identified?

Rate. *NMFS will establish the fee rate. The fee rate may not exceed 3 percent of the delivery value. NMFS will establish the initial fee rate at X% for this sector based on the estimated incremental costs associated with this sector. In future years the rate will be based on actual incremental costs as tracked by NMFS, OLE, NWFSC, and the states.*



§ 660.150 Mothership (MS) Coop Program.

What entity should pay the fee? and How should fee collection be structured?

(C) Payment and collection.

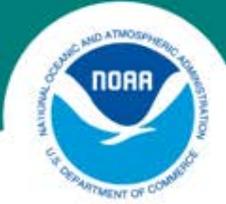
(1) The full fee is due and payable at the time of fish delivery by a catcher vessel (fish seller) to a mothership (fish buyer).

Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying, or promising to pay, the net delivery value.

Each fish buyer shall submit to NMFS the total fee amount collected no later than December 31st of each calendar year.

Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value, or the fish buyer's promise to pay the net delivery value, rather than the delivery value.

Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;



§ 660.150 Mothership (MS) Coop Program.

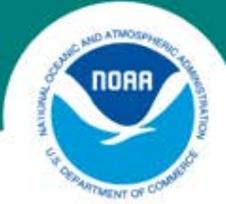
Failure to pay or collect:

Failure to pay or collect the assessed fee is a violation of the MSA.

(3) The fish buyer is required to submit the fee to NMFS no later than December 31st of each calendar year.

Language regarding notification of failure to pay, FAD, and collections is the same as for the Shoreside sector with the following exception:

If a FAD is not issued until after the start of the fishing year, the fish buyer may be authorized to fish temporarily by the Regional Administrator. If the fee remains unpaid at the time of MS permit renewal, the MS permit will not be renewed/issued until such terms are met.



§ 660.160 Catcher/ processor (C/P) Coop Program.

(i) Fee payment and collection.

How is the ex-vessel value of the fish harvested under the LAPP calculated to ensure the fee does not exceed 3%?

(A) Amount. *The fee amount is the value of whiting harvested by that catcher/processor vessel times the fee rate, based on mothership pricing and at-sea tonnage caught.*

How are agency costs identified?

(B) Rate. *NMFS will establish the fee rate. The fee rate may not exceed 3 percent of the delivery value. NMFS will establish the initial fee rate at X% for this sector based on the estimated incremental costs associated with this sector. In future years the rate will be based on actual incremental costs as tracked by NMFS, OLE, NWFSC, and the states.*



§ 660.160 Catcher/ processor (C/P) Coop Program.

What entity should pay the fee? and How should fee collection be structured?

(C) Payment and collection.

(1) The full fee is due and payable during the last quarter of the calendar year, the fees will be for fishing activity of each catcher/processor vessel for the prior period of October 1 through September 30. Each vessel shall submit full payment of the fee to NMFS by December 31.

Fee payment notification follows the same policy (based on Buyback regulatory language) used for the other 2 sectors



§ 660.160 Catcher/ processor (C/P) Coop Program.

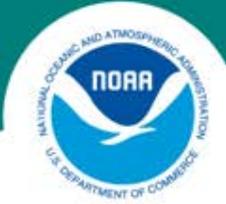
Failure to pay or collect:

Failure to pay or collect the assessed fee is a violation of the MSA.

(3) The fish buyer is required to submit the fee to NMFS no later than December 31st of each calendar year.

Language regarding notification of failure to pay, FAD, and collections is the same as for the Shoreside and Mothership sectors with the following exception:

If a FAD is not issued until after the start of the fishing year, the catcher/processor may be authorized to fish temporarily by the Regional Administrator. If the fee remains unpaid at the time of C/P endorsed limited entry permit renewal, the C/P endorsed limited entry trawl permit will not be renewed/issued until such terms are met.



Concluding Remarks

- **The CRC has been tasked by the Council to identify incremental, recoverable costs.**
 - **NMFS, NWFSC, and OLE are all currently working to implement systems to track costs.**
- **NMFS supports setting an estimated fee, by sector for 2012.**
 - **Tracked costs for 2012 could then be used to refine this estimate for 2013, and**
 - **Reconciliation (for an overage or underage) could be incorporated when setting the 2013 fee (this is similar to how the fee is set in Alaska each year).**



Questions?