

Therefore, setting the quota at 4 million lb (1,814 mt) would enable additional incidental catch to be landed. The Northeast Fisheries Science Center's review of the proposed measure concluded that the higher quota would not significantly alter the rebuilding period (no more than 1 or 2 years), though continued low recruitment could change this conclusion.

The NMFS proposal is identical to the NEFMC proposal, except for the duration of the specifications, with the NMFS proposal setting the specifications for three years, instead of one. There would be an administrative benefit to setting the specifications for a period of 3 years. Although in the intervening years, the Council and NMFS would be monitoring the status of the dogfish stock to determine if any changes to the specifications are warranted, the annual review under this proposal will be less administratively burdensome to the Councils and NMFS than the specifications process. If changes in stock status require a modification to the specifications, the Councils could initiate that process. Setting the specifications for 3 years also would give fishermen the opportunity to have a longer time horizon for business planning.

This rulemaking would change the language in the regulations that sets the possession limit for dogfish at 300 lb (136 kg) for period 2 of the fishery, to 600 lb (272 kg). This change is necessary in order to modify the possession limits through this action.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act, which describes the economic impacts this proposed rule, if adopted, would have on small entities. A copy of the IRFA can be obtained from the Council or NMFS (see ADDRESSES) or via the Internet at <http://www.nero.noaa.gov>. A summary of the analysis follows:

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this proposed rule and is not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

All of the potentially affected businesses are considered small entities

under the standards described in NMFS guidelines because they have gross receipts that do not exceed \$3.5 million annually. Information from the 2004 fishing year was used to evaluate impacts of this action, as that is the most recent year for which data are complete. According to NMFS permit file data, 2,911 vessels possessed Federal spiny dogfish permits in 2004, while 180 of these vessels contributed to overall landings.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

The IRFA considered three alternatives. The action recommended in this proposed rule includes a commercial quota of 4 million lb (1,814 mt), and the possession limit at 600 lb (272 kg), for both quota periods, for a period of three years. Alternative 2 is the MAFMC proposal, which includes a 2 million lb (907 mt) quota with possession limits of 600 lb (272 kg) in both quota periods, for a period of three years. Alternative 3 is the NEFMC proposal, which includes a commercial quota of 4 million lb (1,814 mt), with possession limits of 600 lb (272 kg) in both quota periods, for a period of one year.

Based on NMFS dealer reports, spiny dogfish landings in fishing year 2004 were roughly 1.5 million lb (680 mt). These landings occurred at a time when the Federal and state management measures for spiny dogfish were identical, with a quota of 4 million lb (1,814 mt), and the possession limits for periods 1 and 2 set at 600 lb (272 kg) and 300 lb (136 kg), respectively. This shows that the U.S. commercial spiny dogfish landings are controlled more by the possession limits than the overall quota, unless the quota is set so low as to be constraining.

All three of the alternatives to the no-action alternative considered could lead to a slight increase in revenues to individual fishermen from the sale of dogfish. This is because all three of the alternatives would increase the possession limit in quota period 2 to 600 lb (272 kg). Setting the possession limit at 600 lb (272 kg) throughout the year, as opposed to 600 (272 kg) and 300 lb (136 kg) in periods 1 and 2 respectively, would allow fishermen to land higher amounts of dogfish in the

second period as compared to what was landed in fishing year 2004. If the 1,124 fishing trips that landed spiny dogfish in period 2 of FY2004 had all landed 600 lb (272 kg), periodic landings would have increased from 320,000 lb (145 mt) to 560,000 lb (254 mt), for a net increase of 240,000 lb (109 mt), which, at the average price of 0.17 cents per pound of dogfish, equals roughly an addition \$41,000 in net revenue.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 2, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out above, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.235, paragraph (b) is revised as follows:

§ 648.235 Possession and landing restrictions.

* * * * *

(b) *Quota Period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

- (1) Possess up to 600 lb (272 kg) of spiny dogfish per trip; and
- (2) Land only one trip of spiny dogfish per calendar day.

* * * * *

[FR Doc. E6-6931 Filed 5-5-06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 060424108-6108-01; I.D. 040706A]

RIN 0648-AT43

Fisheries of the Exclusive Economic Zone Off Alaska; Cost Recovery Program for North Pacific Halibut, Sablefish, and Bering Sea and Aleutian Islands Crab Individual Fishing Quota Programs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes an amendment to the Individual Fishing Quota (IFQ) Cost Recovery Program for the Halibut and Sablefish IFQ and the Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Programs. This action modifies the procedure NMFS uses to publish notification of adjustment of the IFQ fee percentage for the IFQ Cost Recovery Program in the Halibut and Sablefish IFQ and the Crab Rationalization Programs. This action is necessary to provide timely and efficient notice of fee obligations while maintaining compliance with the Administrative Procedure Act (APA). This action is intended to improve the fee collection methods required for all Alaska IFQ programs under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is necessary to promote the objectives of the Magnuson-Stevens Act with respect to the IFQ fisheries managed by NMFS in the Alaska Region.

DATES: Written comments must be received no later than June 7, 2006.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Walsh. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: 907-586-7557.
- E-mail: 0648-AT43@noaa.gov.

Include in the subject line of the e-mail the following document identifier: IFQ Cost Recovery RIN 0648-AT43. E-mail comments, with or without attachments, are limited to five megabytes.

• Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

Copies of the Categorical Exclusion (CE), regulatory impact review (RIR), and regulatory flexibility certification prepared for this action are available from NMFS at the above address or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at 907-586-7228.

FOR FURTHER INFORMATION CONTACT: Bubba Cook, 907-586-7425 or bubba.cook@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS, Alaska Region, administers the Halibut and Sablefish IFQ and the Crab Rationalization Programs in the North Pacific. These programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Act. The Magnuson-Stevens Act defines IFQ as a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. The Halibut and Sablefish Program and the Crab Rationalization Program meet this statutory definition of IFQ and are therefore subject to cost recovery fees under section 304(d)(2) of the Magnuson-Stevens Act.

In 1996, the Magnuson-Stevens Act was amended (by Public Law 104-297) to require, among other things, that the Secretary of Commerce "collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual fishing quota program" (section 304(d)(2)(A)). The upper limits on these fees, fee collection times, and fee deposit locations are specified by section 304(d)(2) of the Magnuson-Stevens Act. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

The Magnuson-Stevens Act specifies the following with respect to the imposition of cost recovery fees:

1. Fees must recover actual costs directly related to management and enforcement of the IFQ Program;
2. Fees must not exceed 3 percent of the ex-vessel value of fish harvested under any such program;
3. Fees are in addition to any other fees charged under the Magnuson-Stevens Act;
4. With the exception of money reserved for the Halibut and Sablefish IFQ and the Crab Rationalization loan program, fees must be deposited in the Limited Access System Administrative Fund (LASAF) in the U.S. Treasury; and
5. Fees must be collected during one of the following times: when landing; when filing a landing report; when selling the fish during a fishing season; or in the last quarter of the calendar year in which the fish were harvested.

The Halibut and Sablefish IFQ Program and the Crab Rationalization Program are the only IFQ fisheries off Alaska currently subject to the cost recovery requirements of the Magnuson-

Stevens Act. Fishing under the Halibut and Sablefish IFQ Program began in March 1995 through regulations set forth at 50 CFR part 679. Fishing under the Crab Rationalization Program began in August 2005 through regulations set forth at 50 CFR part 680.

This action would only affect the methods by which NMFS calculates fee percentages and provides notice under the cost recovery provisions of the Halibut and Sablefish IFQ Program and Crab Rationalization Program. Specifically, this action proposes a structure for public notification of the fee percentage. Calculation of the fee percentage under this proposed action would become a ministerial duty conducted by NMFS. This proposed action would not affect the ex-vessel value determination under either program nor would it affect the current structure or administration of the standard prices calculated for the Halibut and Sablefish IFQ Program or the Catcher/Processor ex-vessel values calculated for the Crab Rationalization Program. However, NMFS would make minor changes to the current fee regulations to ensure full compliance with the APA (5 U.S.C. 501 *et seq.*, 701 *et seq.*) while improving administrative efficiency.

Halibut and Sablefish IFQ Cost Recovery

On March 20, 2000, NMFS published regulations (65 FR 14919) implementing the IFQ Cost Recovery Program for IFQ landings of halibut and sablefish (set forth at 50 CFR 679.45). Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed under his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder also is responsible for submitting a fee liability payment to NMFS on or before the due date of January 31, following the year in which the IFQ landings were made. For each permit, the dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing. If the permit holder has more than one permit, the total amounts of each permit are added.

Section 304(d)(2)(B) of the Magnuson-Stevens Act sets a maximum fee of 3 percent of the ex-vessel value of fish harvested under an IFQ program. Current regulations allow NMFS to reduce the fee percentage if actual management and enforcement costs are recoverable through a lesser percentage.

NMFS will not know the actual annual costs of IFQ-related management and enforcement until after the end of each Federal fiscal year (September 30). If the management and enforcement costs total less than the 3 percent fee, NMFS will reduce the fee percentage for the new Federal fiscal year. Fishermen will not know at the time they sell their IFQ fish exactly what fee percentage will be applied to their IFQ landings made from February (season opening) through September (Federal fiscal year-end). Therefore, NMFS encourages IFQ permit holders to set aside the full 3 percent throughout the fishing year so a lump sum payment may be made by January 31 of the following calendar year. Early payments are allowed but do not relieve a permit holder of associated reporting requirements.

Crab Rationalization Cost Recovery

Section 313(j) of the Magnuson-Stevens Act provides supplementary authority to section 304(d)(2)(A) and additional detail for cost recovery provisions specific to the Crab Rationalization Program. As a quota program, the Crab Rationalization Program must follow the statutory provisions set forth by section 304(d) and section 313(j) of the Magnuson-Stevens Act.

Section 313(j) requires the Secretary to approve a cost recovery program for the Crab Rationalization Program, conducted in accordance with the existing Halibut and Sablefish IFQ cost recovery program. Similar to the Halibut and Sablefish IFQ cost recovery program, the Crab Rationalization cost recovery program allows for the collection of actual management and enforcement costs up to 3 percent of ex-vessel gross revenues and a loan program using 25 percent of the fees collected.

Section 313(j) includes specific cost recovery requirements to accommodate the crab processing industry and to address problems experienced under the Halibut and Sablefish IFQ cost recovery program. This section provides NMFS the authority to collect 133 percent of the actual costs of management and enforcement. By collecting 133 percent, 25 percent of that amount can be set aside for the IFQ loan program and the remaining 75 percent more fully reimburses the management and enforcement costs of the program. Additionally, section 313(j) requires cost recovery fees to be paid in equal shares by the harvesting and processing sectors. Catcher/Processors, a combination of both sectors, pay the full fee percentage.

NMFS developed the Crab Rationalization cost recovery program to conform with statutory requirements and to partially compensate the agency for the unique added costs of management and enforcement of the Crab Rationalization Program. Key provisions of the Crab Rationalization cost recovery program include: (1) a new definition and application of "fee liability"; (2) the establishment of a Registered Crab Receiver (RCR) permit system to streamline management and reporting; (3) the establishment of a "crab fishing year" for biological and administrative purposes; and (4) a new administrative process that requires the collection and submission of fees by RCRs rather than requiring separate billings to each person that receives a crab allocation (crab allocation holder). The crab allocations include IFQ, Crew IFQ, Individual Processing Quota (IPQ), Community Development Quota (CDQ), and the Adak community allocation.

In the crab rationalization fishery, a crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. The RCR permit holder must collect any fee liability of the crab allocation holder landing crab. Additionally, the RCR permit holder must self-collect their own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before the due date of July 31, following the crab fishing year in which payment for the crab is made. The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed 3 percent) by the ex-vessel value of crab debited from the allocation. Specific details on the Crab Rationalization cost recovery program may be found in the implementing regulations for the Crab Rationalization Program set forth at 50 CFR 680.44, and published March 2, 2005, at 70 FR 10174.

The Crab Rationalization Program established a fee percentage calculation structure similar to the Halibut and Sablefish IFQ Program. To budget their costs, fishermen need to know the fee percentage that would apply to any crab deducted from a crab allocation in a crab fishing year at the time of sale. Based on preliminary calculations, however, NMFS determined that 3 percent of ex-vessel value will not be enough to cover the management and enforcement costs of the Program. Hence, NMFS began the cost recovery program using the maximum of 3 percent. NMFS will reduce the fee in subsequent seasons if calculated to be less than 3 percent.

Overpayment of Fees

In the Halibut and Sablefish IFQ and Crab Rationalization Programs, the fee percentage calculation adjusts for overpayment of the management and enforcement costs through a variable that considers the account balance in the LASAF account. Separate accounts are designated within the LASAF to ensure that funds from one program's cost recovery only pay for the costs directly related to the management and enforcement of that program, and not other IFQ programs.

The Proposed Change

This proposed action, if approved, would accomplish three goals:

1. Inform the public of the equation and all factors used to calculate the fee percentage, thereby allowing the public to comment on the methodology used to conduct the standard calculation of the fee percentage;
2. Calculation of direct program costs (DPC) through a new, independently-developed timekeeping system that automatically calculates management costs by individual employee; and
3. Publish an annual fee percentage by

Federal Register notice, rather than by proposed and final rulemaking. This action would make the publication of the **Federal Register** notice announcing the fee percentage a ministerial duty performed by NMFS. The determination of the fee percentage would become simply an administrative calculation rather than the current and more complicated process of changing the default percentage.

Under the current cost recovery programs for the Halibut and Sablefish IFQ and the Crab Rationalization Programs, the fee percentage is calculated according to the following general equation:

$$[100 (DPC-AB) / V] / (1-NPR)$$

"DPC" represents the direct program costs for the applicable IFQ program for the previous fiscal year. "AB" is the end of the fiscal year LASAF account balance for the applicable IFQ program. "V" is the estimated ex-vessel value of the catch subject to the cost recovery fee liability for the current year. V is based on the value reported by an established port or port group as reported by the fishery participants, which is subsequently summed and applied by NMFS. "NPR" is the calculated nonpayment rate based on the previous year as determined by subtracting the percentage of IFQ holders subject to a fee liability who do not pay from the percentage of IFQ holders subject to a fee liability. NPR, AB, and V are variables taken directly from sources which NMFS has no ability to change.

This proposal would simplify the current calculation by eliminating or consolidating some variables. The NPR variable would be eliminated because it has had negligible effect on the overall calculation of the percentage since the inception of the program. The changes proposed by this action primarily affect the DPC variable. First, as part of this action, the AB variable would be automatically incorporated into the DPC variable rather than treated separately. Second, NMFS is adopting a new time and attendance management system that will more efficiently and accurately track individual management responsibilities. The new management system will remove all NMFS discretion in determining the DPC for any IFQ program. Therefore, in conjunction with the calculation of other variables used to calculate the fee percentage, the determination of DPC will be determined by formula. NMFS would then apply the automatically calculated DPC to the fee percentage formula to achieve the fee percentage for the prescribed fee period.

DPC Calculation

Prior to this proposed action, the DPC calculation became an automated process managed by the Operations, Management, and Information (OMI) Division, Alaska Region, NMFS. The new process receives time allocation information from all personnel who engage in management or enforcement associated with any IFQ program. This information also is distinguished according to the specific IFQ program (i.e., Crab Rationalization or Halibut and Sablefish).

For instance, a NMFS employee working on a regulation for the Halibut and Sablefish IFQ Program would record the amount of time he or she spends on that IFQ program in a special timekeeping program by 15-minute intervals over each two-week pay period. The timekeeping program would document and sum the specific time expended by that NMFS employee on work directly related to the management of the Halibut and Sablefish IFQ Program. The time expended by that NMFS employee would be automatically multiplied by his or her hourly rate-of-pay to achieve the management costs of that individual for the Halibut and Sablefish IFQ Program. The NMFS employee's management costs then would be automatically added with other employee's costs and added to any other documented costs incurred by NMFS (e.g., printing, training, and supply costs). Enforcement costs would continue to be calculated based on agents' salaries as dedicated

full time to IFQ enforcement plus any other documented costs incurred by NMFS Enforcement (e.g., training, equipment, and travel costs). OMI would then add all individual DPCs to achieve the DPC variable.

This action also proposes to revise existing regulatory text to clarify the public's obligations under the regulations and to clarify how the fee percentage will be calculated by substituting terms such as "shall" and "must" regarding NMFS duties in places where "would," "will," or "may" were previously used.

APA Compliance

The APA requires Federal agencies to advise the public through a notice in the **Federal Register** of the terms or substance of a proposed substantive rule and provide the public a period to comment. This is the "notice and comment" requirement of the APA. The requirement is designed to give interested persons, through written submissions or oral presentations, an opportunity to participate in the rulemaking process. Generally, the procedural safeguards of the APA help ensure that government agencies are accountable to the public and their decisions are reasoned. This proposed rule would provide substantive elements that are subject to the APA's notice and comment procedures and is intended to provide the public with a meaningful opportunity to comment on the proposed provisions.

If this proposal is implemented, the fee percentage calculation would become a simple administrative calculation subject to a statutory maximum fee cap (3 percent) rather than a maximum fee value subject to a reduction. As a result of this regulatory change, subsequent administrative calculations of the fee percentage would be published in the **Federal Register** as a notice because they would have no substantive effect beyond the requirements of the existing regulations and would only serve to inform the public of their preexisting duty to pay fees. This change in methodology would make the cost recovery fee calculation process more compliant with the APA.

Classification

NMFS has determined that the proposed rule is consistent with the associated FMPs and preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a Regulatory Impact Review (RIR) to assess all costs and benefits of available regulatory alternatives. The North Pacific Fishery Management Council considered all quantitative and qualitative measures and chose a preferred alternative based on those measures that maximize net benefits to the affected public.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Section 304(d)(2) of the Magnuson-Stevens Act directs the Secretary of Commerce collect a fee to recover the actual costs directly related to the management and enforcement of any individual fishing quota program and that such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under the program. The proposed rule would only explain the process for notifying the public of fee obligations and would not substantively change the amount of fees owed by any regulated entities. The proposed rule would clarify the regulations governing the methods NMFS uses to determine the appropriate level of cost recovery fees to collect. The proposed rule will not affect the definitions of the costs that NMFS is required to recover under the Magnuson-Stevens Act or the size or distribution of the cost recovery fees that fishermen are expected to pay. Additionally, the proposed rule will not directly regulate, impose, or change any obligations of entities, and will thus not directly regulate any small entities. The proposed regulatory change is not expected to change the size or distribution of the cost recovery fees imposed on fishermen and should not impose any economic impact on small entities.

The two criteria recommended to determine significant economic impact are the disproportionality and profitability of the action. The proposed action would not place a substantial number of small entities at a disadvantage relative to large entities, and it does not reduce the profit for small entities. No entities appear to be directly regulated by this action. The economic analysis in the RIR describes the proposed rule and its operation in detail. It is apparent from the description of the rule that it would not have significant economic impacts on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and has not been prepared.

According to NOAA Administrative Order (NAO) 216-6, including the criteria used to determine significance, this rule would not have a significant effect, individually or cumulatively, on the human environment beyond those effects identified in previous NEPA analyses. An Environmental Assessment (EA) was prepared for the final rule implementing the original Halibut and Sablefish IFQ Cost Recovery Program regulations (65 FR 14919, March 15, 2000) and an Environmental Impact Statement (EIS) was prepared for the final rule implementing the Crab Rationalization Program (70 FR 10174, March 2, 2005). These NEPA documents analyzed all potential and cumulative environmental impacts of the cost recovery systems. The scope of these analyses includes the potential environmental impacts of this proposed rule. Based on the nature of the proposed rule and the previous environmental analyses, this proposed rule is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, in accordance with Section 5.05b of NAO 216-6. Copies of the EA for the original Halibut and Sablefish IFQ Cost Recovery Program, the EIS for the original Crab Rationalization Program, and the categorical exclusion for this action are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Parts 679 and 680

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 2, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 679 and 680 are proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

2. In § 679.45 paragraph (d) is revised to read as follows:

§ 679.45 IFQ cost recovery program.

* * * * *

(d) *IFQ fee percentage*—(1) *Established percentage.* The annual IFQ fee percentage is the amount as determined by the factors and methodology described in paragraph

(d)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (d)(3) of this section. This amount must not exceed 3 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS must use the following factors to determine the fee percentage:

(A) The catch to which the IFQ fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management and enforcement of the IFQ program.

(ii) *Methodology.* NMFS must use the following equation to determine the fee percentage:

$$100 (DPC / V)$$

where:

“DPC” is the direct program costs for the IFQ fishery for the previous fiscal year, and “V” is the ex-vessel value of the catch subject to the IFQ fee for the current year.

(3) *Publication*—(i) *General.* During or before the last quarter of each year, NMFS shall publish the IFQ fee percentage in the **Federal Register**. NMFS shall base any calculations on the factors and methodology in paragraph (d)(2) of this section.

(ii) *Effective period.* The calculated IFQ fee percentage shall remain in effect through the end of the calendar year in which it was determined.

(4) *Applicable percentage.* The IFQ permit holder must use the IFQ fee percentage in effect at the time an IFQ landing is made to calculate his or her fee liability for such landed IFQ pounds. The IFQ permit holder must use the IFQ percentage in effect at the time an IFQ retro-payment is received by the IFQ permit holder to calculate his or her IFQ fee liability for the IFQ retro-payment.

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PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

3. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862.

4. In § 680.44 paragraphs (a)(2)(iii) and (c)(1) through (3) are revised; paragraph (c)(4) is removed; and paragraph (c)(5) is redesignated as paragraph (c)(4) to read as follows:

§ 680.44 Cost recovery.

(a) * * *

(2) * * *

(iii) NMFS will provide a summary to all RCR permit holders during the last quarter of the crab fishing year. The summary will explain the fee liability determination including the current fee percentage, details of raw crab pounds debited from CR allocations by permit, port or port-group, species, date, and prices.

* * * * *

(c) * * *

(1) *Established percentage.* The crab fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(i) The calculated crab fee percentage will be divided equally between the harvesting and processing sectors.

(ii) Catcher/Processors must pay the full crab fee percentage determined by the fee percentage calculation for all CR crab debited from a CR allocation.

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS must use the following factors to determine the fee percentage:

(A) The catch to which the crab cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management and enforcement of the Crab Rationalization Program.

(ii) *Methodology.* NMFS must use the following equations to determine the fee percentage:

Harvesting and Processing Sectors:

$$[100 (DPC / V)] 0.5$$

Catcher/Processors: $100 (DPC / V)$

Where:

“DPC” is the direct program costs for the Crab Rationalization Program for the previous fiscal year, and

“V” is the ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year.

(3) *Publication*—(i) *General.* During the first quarter of each crab fishing year, NMFS shall calculate the crab fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* The calculated IFQ fee percentage remains in effect through the end of the crab fishing year in which it was determined.

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