PART 156—PROCEDURAL AND SUBSTANTIVE REQUIREMENTS FOR MISCELLANEOUS COVERAGES WISHING TO BE DESIGNATED AS MINIMUM ESSENTIAL COVERAGE

■ 5. The authority citation for subpart G is revised to read as follows:

Authority: Title I of the Affordable Care Act, Sections 1301–1304, 1311–1312, 1321, 1322, 1324, 1334, 1341–1343, and 1401–1402, 1501, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18042).

■ 6. Add subpart G to read as follows:

Subpart G—Minimum Essential Coverage

Sec.

Subpart G—Minimum Essential Coverage

§ 156.600 The definition of minimum essential coverage.

The term *minimum essential coverage* has the same meaning as provided in 26 CFR 1.5000A–2 for purposes of this subpart.

§ 156.602 Other coverage that qualifies as minimum essential coverage.

The following types of coverage are designated by the Secretary as minimum essential coverage for purposes of section 5000A(f)(1)(E) of the Code:

(a) *Self-funded student health coverage.* Coverage offered to students, by an institution of higher education (as defined in the Higher Education Act of 1965), where the institution assumes the risk for payment of claims.

(b) *Foreign health coverage.* Coverage for non-citizens residing in the United States, provided by their home country.

(c) *Refugee medical assistance supported by the Administration for Children and Families (45 CFR Subpart G).* A federally-funded program that provides up to 8 months of coverage to certain noncitizens who are considered refugees under the Immigration and Naturalization Act.

(d) *Medicare advantage plans.* Medicare program under Part C of title XVIII of the Social Security Act, which provides Medicare Parts A and B benefits through a private insurer.

(e) *State high risk pool coverage.* State high risk pools are designated as minimum essential coverage subject to further review by the Secretary.

(f) *Coverage for AmeriCorp volunteers.* Health coverage provided to volunteers of AmeriCorp.

(g) *Other coverage.* Other coverage that qualifies pursuant to § 156.604 of this subpart.

§ 156.604 Requirements for recognition as minimum essential coverage for types of coverage not otherwise designated minimum essential coverage in the statute or this subpart.

The Secretary may recognize ''other coverage'' as minimum essential coverage provided HHS determines that the coverage meets the following substantive and procedural requirements:

(a) *Coverage requirements.* A plan must meet substantially all the requirements pertaining to non-grandfathered, individual health insurance coverage, of title I of the Affordable Care Act.

(b) *Sponsoring organization requirements.* In order for ''other coverage'' to be considered by the Secretary for recognition as minimum essential coverage, the sponsor, or in the case of a government-sponsored program, the government agency responsible for administering the program, must meet criteria at the discretion the Secretary.

(c) *Procedural requirements.* Procedural requirements for recognition as miscellaneous minimum essential coverage. To be considered for recognition as minimum essential coverage, a sponsor must submit the following information to HHS:

(1) Identity of the plan sponsor and appropriate contact persons;

(2) Basic information about the plan, including:

(i) Name of the organization sponsoring the plan;

(ii) Name and title of the individual who is authorized to make, and makes, this certification on behalf of the organization;

(iii) Address of the individual named above;

(iv) Phone number of the individual named above;

(v) Number of enrollees;

(vi) Eligibility criteria;

(vii) Cost sharing requirements, including deductible and out-of-pocket maximum limit;

(viii) Essential health benefits covered; and

(ix) A certification by the appropriate individual, named pursuant to paragraph (c)(2)(ii) of this section, that the health coverage sponsored by the organization substantially complies with the requirements of title I of the Affordable Care Act and sponsor standards required by this rule.

(d) CMS will maintain a public list of types of coverage that the Secretary has recognized as minimum essential coverage.

(e) If at any time the Secretary determines that a type of coverage previously recognized as minimum essential coverage no longer meets the coverage requirements of paragraph (a) of this section or the sponsoring organization requirements of paragraph (b) of this section, the Secretary may revoke the recognition of such coverage.

(f) *Notice.* Once recognized as minimum essential coverage, a plan must provide notice to all enrollees of its minimum essential coverage status.

§ 156.606 HHS audit authority.

The Secretary may audit a plan or program recognized as minimum essential coverage under § 156.604 of this subpart at any time to ensure compliance with the requirements of § 156.604(a) of this subpart.

Dated: January 25, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: January 28, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–02139 Filed 1–30–13; 11:15 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110708376–3052–01]

RIN 0648–BB17

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; Cost Recovery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This action would implement a cost recovery program for the Pacific coast groundfish trawl rationalization program, which is a catch share program and type of limited access privilege program (LAPP), as required by the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action includes regulations

that affect all trawl rationalization program sectors (Shorebased Individual Fishing Quota (IFQ) Program, Mothership Coop Program, and Catcher/Processor Coop Program) managed under the Pacific Coast Groundfish Fishery Management Plan (FMP).

DATES: Comments on this proposed rule must be received no later than 11:59 p.m., eastern time on March 18, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0218, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0218,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Ariel Jacobs.
- *Fax:* 206–526–6736; Attn: Ariel Jacobs.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this proposed rule may be submitted to William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, and to OMB by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Ariel Jacobs, 206–526–4491; (fax) 206–526–6736; *Ariel.Jacobs@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NMFS implemented a trawl rationalization program, a type of catch share program, for the Pacific coast groundfish fishery's trawl fleet. The program was adopted through Amendment 20 to the FMP and consists of three sectors: an IFQ program for the shorebased trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership (MS) and catcher/processor (C/P) trawl fleets (whiting only). Allocations to the limited entry trawl fleet for certain species were developed through a parallel process with Amendment 21 to the FMP.

Since implementation, the Pacific Fishery Management Council (Council) and NMFS have been working to address additional regulatory requirements associated with the trawl rationalization program. One such requirement is cost recovery, where NFMS collects fees from the fishing industry to cover part of the costs of management, data collection, and enforcement of the trawl rationalization program. This rule would create a cost recovery program for the trawl rationalization program in compliance with the requirements of the MSA, and based upon a recommended methodology developed in coordination with the Council.

In accordance with the MSA, 16 U.S.C. 1853(c), 1853a(e), 1854(b), 1854(d)(2), 1855(d), the cost recovery program would collect mandatory fees of up to three percent of the ex-vessel value of groundfish by sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). The Council discussed the structure and methodology of the cost recovery program over its April, June, and September 2011 meetings, with final Council recommendations to NMFS during the September 2011 Council meeting. In addition, NMFS received further guidance on these issues from the Council at its September 2012 meeting.

Cost Recovery for Trawl Rationalization Versus Fixed Gear Sablefish Permit Stacking

During the April 2011 Council meeting, NMFS presented some general questions that initiated discussion regarding how to structure the cost recovery program. One issue addressed was whether one cost recovery program could be applied to both the trawl rationalization program and the sablefish permit stacking program. The Council recommended and NMFS is proposing to first pursue creation of the cost recovery program for the trawl rationalization program, with the understanding that this cost recovery program could then be used to inform a cost recovery program for the sablefish permit stacking program via a future rulemaking.

Cost Recovery for Trawl Rationalization by Sector

A second issue raised during the April 2011 Council meeting was whether the cost recovery fee should be assessed for the trawl rationalization program as a whole, or on a sector-by-sector basis. The Council recommended and NMFS is proposing that the cost recovery program should outline the fee methodology on a sector-by-sector basis. The use of a sector-by-sector approach in determining and assessing the fee was chosen due to the unique characteristics and costs associated with each of the three program sectors.

Coordinating Cost Recovery With Buyback

The Council recommended that NMFS structure the cost recovery program to coordinate with the buyback program (also called the federal fishing capacity reduction program) to reduce the burden on the affected public.

In 2003, NMFS ''bought back,'' for approximately $46 million, 91 vessels and 239 fishing permits from the groundfish trawl fishery and associated corollary fisheries of Dungeness crab and pink shrimp off the California, Oregon, and Washington coast. This $46 million buyback program included a $36 million loan to the industry that was to be paid by assessing buyback fees on landings (70 FR 40225, July 13, 2005). For the groundfish fishery, fees for repayment of the loan are to be paid on groundfish harvested using Federal trawl permits. Fish sellers are required to pay the fee and all parties making the first ex-vessel purchase of groundfish (''fish buyers'') are required to collect the fee, account for, and forward the fee revenue for the purpose of repaying the loan. Participants in the Shorebased IFQ Program and the MS Coop Program are subject to the repayment of the buyback loan, while the C/P Coop Program is not. Due to similarities in the need to collect and document payment of a fee for both the buyback program and the proposed cost recovery program, the cost recovery program would utilize elements of the buyback program as much as possible.

For example, for the Shorebased IFQ Program and MS Coop Programs only, the cost recovery program would require the payment of fees to NMFS at the same time that buyback fees are paid

(i.e., no later than the 14th of each month). Because the C/P Coop Program is not subject to the buyback program, the Council recommended and NMFS is proposing that participants in the C/P Coop Program pay their fees for the cost recovery program in the last quarter of the calendar year and no later than December 31 each year.

Another example of structuring the cost recovery program to coordinate with the buyback program is that the fish buyer would be responsible for payment of the fees to NMFS. For the Shorebased IFQ Program, the first receiver site license holder would be the party responsible for collecting and remitting cost recovery fees to NMFS. For the MS Coop Program, the parties jointly and severally responsible for collecting and remitting the cost recovery fee would be the owner of a vessel registered to an MS permit, the operator of a vessel registered to an MS permit, and the owner of the MS permit registered to that vessel.

While the C/P Coop Program is not subject to buyback, NMFS is proposing to structure the cost recovery program for all sectors similar to buyback. This means there may be cases where regulations are applied to the C/P Coop Program that would not necessarily be applied if the cost recovery program was not coordinating with the buyback program. Using the term ''fish buyer'' to apply to the C/P Coop Program is one such example. Catcher/processors are not in practice referred to as ''fish buyers'' because they are vessels that catch and process their own fish (*i.e.,* they do not buy it from themselves). However, to reduce complexity and keep the regulations as similar as possible for all three sectors, NMFS is proposing to define C/Ps as ''fish buyers,'' but only for purposes of the cost recovery program. Thus, for the C/P Coop Program, the fish buyer would be the responsible party and would include: the owner of a vessel registered to a C/P-endorsed limited entry trawl permit, the operator of a vessel registered to a C/P-endorsed limited entry trawl permit, and the owner of the C/P-endorsed limited entry trawl permit registered to that vessel. This situation is similar to that for the responsible party in the MS Coop Program. For the MS and C/P Coop Programs, all three parties are jointly and severally responsible for the obligations of a fish buyer.

In an effort to further coordinate the cost recovery program with the buyback program, NMFS intends to use the same online portal for payment as the buyback program, Pay.gov. By using the same portal, users are able to go to one place to make payments, maintain one profile, click on a link to pay buyback fees or click on a link to pay cost recovery fees. The forms submitted with payment for each fee would be contained in each link. If the user has an account with Pay.gov, information from the user's profile (*e.g.,* name, address, etc.) would auto-populate on both forms, streamlining the reporting and payment process. An example of a similar system is a bank account where you have both a credit card and a mortgage payment. You can go to the bank's one Web site and use your one user profile to make arrangements to pay both your credit card account and your mortgage, but they are separate links on the bank's Web site.

NMFS is exploring using one form to submit two payments, one payment to each program (cost recovery and buyback). While NMFS is exploring using one form for both programs, this rule proposes a separate cost recovery form for two reasons. First, it would delay the cost recovery rule to propose one form. Second, in exploring the use of one combined form for both programs, NMFS has found several drawbacks in addition to the benefits.

Using one combined form for both programs would likely make it easier for the IFQ and MS fish buyers to enter the required information (although they would still be required submit multiple payments directed to different accounts within NMFS). However, the drawbacks to one combined form for both programs include the potential for increased misreporting/mispayment, different consequences for misreporting/mispayment (late fee versus nonrenewal of permit/license), and increased time to correct errors, potentially harming business operations.

The cost recovery program and the buyback program are different programs with different purposes within NMFS. One is temporary and used to pay back a fixed term loan (buyback) while the other is used to recover part of NMFS' ongoing costs to manage the fishery (cost recovery). The cost recovery form would cover three sectors of one fishery (groundfish). The buyback form has fields for six loan payments in six separate fisheries, including state-run crab and shrimp fisheries. The cost recovery and buyback programs also have different consequences for misreporting or mispayment. For buyback, the consequences may result in late fees. For cost recovery, the consequences may result in a limited entry permit or first receiver site license not being renewed or reissued, which may result in lost fishing time or lost ability for first receivers to purchase groundfish. Using the bank account example, mispayment of your credit card online results in late charges (similar to buyback), while mispayment of your mortgage has different potential consequences. It is in the user's interest to keep these payments separate as they have very different consequences for nonpayment, and the user would likely not want to risk delay of their permit renewal because of an entry on the wrong line of the form.

In the first year of the buyback program, there were over 200 cases of misreporting/mispayment largely due to an entry on the wrong line of the fee collection form. Combining reporting for cost recovery payments on the same form as buyback could magnify these misreporting/mispayment issues. Any misreporting/mispayment on a combined form would likely take NMFS longer to correct because two different programs would be coordinating to decipher the error, which program it applies to, and then to pursue correction/payment. Because these two programs have very different misreporting/mispayment consequences, the increased time it would take to correct any misreporting/mispayment could harm the business operations of the fish buyers due to delayed opportunities. Another drawback to a combined form is that any audits of fish buyers by either program would be more complex, would involve both programs, and would take longer. If an audit uncovers mispayment/misreporting and takes a longer time to correct, it could also harm the business operations of the fish buyers.

With this rule, NMFS is proposing to use one online portal, Pay.gov, which would include a link to make payments to both programs (cost recovery and buyback). The cost recovery form that would be on the Pay.gov link would be designed to look very similar to the buyback form, with the addition of a box to fill out the weight (in lbs) and fees paid based on the cost recovery program fee percentage (which is different than the buyback fee percentage). In addition, certain fields on the form would auto-populate for users with an account on Pay.gov. With this system, NMFS expects that the ex-vessel value reported on the cost recovery form should match that reported on the buyback form, because both forms report based on the value of all groundfish species. NMFS is seeking public comment on the benefits and drawbacks of one form versus two. NMFS may implement one form for both programs at the final rule stage

depending on the comments received or other considerations, if appropriate.

While NMFS is proposing a cost recovery program structure that is similar to the buyback program, there are some differences. For example, NMFS is not proposing the $100 threshold for payment that is in the buyback program at 50 CFR 600.1102(i)(3). In addition, NMFS is only proposing online payment of fees through Pay.gov (*i.e.,* NMFS would not accept checks for payment of the cost recovery program fees). This is consistent with Council guidance at its September 2012 meeting.

Because NMFS is proposing to only allow online payment of fees, there is no need to maintain the $100 threshold that is in the buyback program. The buyback program requires fish buyers to remit payment only when the amount due exceeds $100. If the amount due is less than $100, it is carried forward. This reduces transaction costs because the buyback program accepts checks for payment, and processing checks for amounts less than $100 is inefficient. Since NMFS intends to accept only online payment, implementing a similar $100 threshold for the cost recovery program is unnecessary.

The portion of the affected public actually responsible for remitting payment to NMFS is limited to fish buyers. By requiring online payment, the payment process is more streamlined and more secure. In addition, it reduces NMFS' administrative burdens associated with processing fee payments, thereby reducing the costs associated with implementing the cost recovery program. NMFS does not expect this provision to create additional burden for the fleet, since IFQ first receivers are already required to use computers for reporting in the trawl rationalization program and the at-sea whiting fleet is comprised of businesses that are comfortable with online business transactions.

Fee Amount

The cost recovery fee amount due would be calculated by multiplying ex-vessel value by the applicable fee percentage, as proposed at § 660.115(c). For the C/P Coop Program, an alternate approach to calculating the fee amount would be to directly bill the sector. While this approach is not included in the regulatory language in this proposed rule, NMFS is soliciting public comment on this approach which is described in more detail in the preamble under ''Fee Payment and Collection.''

Ex-Vessel Value

Ex-vessel value by sector would be used in the cost recovery program in two ways: (1) The fee amount charged in a calendar year would be based on a percentage (not to exceed three percent) of the ex-vessel value of all groundfish, and (2) the percentage used to determine the fee amount would be calculated in part from ex-vessel value over the previous fiscal year.

Because the trawl rationalization program manages all groundfish species, the cost recovery program for each sector (IFQ, MS, and C/P) would be based on the value of all groundfish species. This is consistent with the buyback program, which collects fees from fish buyers in the Shorebased IFQ Program and the MS Coop Program based on the value of all groundfish. Initially, the Council determined that cost recovery should apply to the ex-vessel value of IFQ species for the Shorebased IFQ Program and to the ex-vessel value of Pacific whiting for the at-sea sectors (MS and C/P). However, at its September 2012 meeting, the Council provided NMFS with further guidance on this issue and supported that the ex-vessel value for each sector should be based on the value of all groundfish species.

Ex-vessel value (proposed at § 660.111 for the cost recovery program) would include all compensation (based on an arm's length transaction between a buyer and seller) that a fish buyer pays to a fish seller in exchange for groundfish species, including the value of all in-kind compensation and all other goods or services exchanged in lieu of cash. Ex-vessel value would also be determined before any deductions are made for transferred or leased allocation, or for any goods or services. For the Shorebased IFQ Program, the ex-vessel value would be based on the value of all groundfish species from IFQ landings. For the MS Coop Program, the ex-vessel value would be based on the value of all groundfish species delivered by a catcher vessel to an MS-permitted vessel. For the C/P Coop Program, the ex-vessel value would be based on the value as determined by the aggregate pounds of all groundfish species harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Coop Program average price per pound as announced by NMFS. For the C/P Coop Program, ex-vessel value is not available because there is no payment between a catcher vessel and a processor because the same vessel both catches and processes. Therefore, MS pricing is used as a proxy because it is a similar fishery (both are at-sea whiting fisheries). NMFS will announce the MS pricing that the C/P Coop Program would use in the upcoming calendar year with announcement of the fee percentage. See the preamble discussion under ''Notification of the Fee Percentage and MS Pricing'' for the notification process and how MS pricing will be calculated for the first year of the program.

Fee Percentage Calculation

In addition to structuring the cost recovery program fee payment to coordinate with the buyback program requirements, NMFS is proposing to structure the fee percentage calculation to be similar to that used by NMFS, Alaska Region for their IFQ programs (halibut/sablefish, rockfish, crab) because these fisheries have experience implementing cost recovery that our Region can utilize. In addition, some participants in the trawl rationalization program either participate in or are familiar with requirements for Alaska fisheries, so use of this formula would provide consistency to the regulated public.

The fee percentage would be calculated using this formula: $(DPC/V) \times 100$, where V is the total ex-vessel value of all groundfish species from the previous fiscal year for each of the three sectors as described above, and DPC (direct program costs) are the direct, recoverable program costs attributable to the sector. The DPC was further defined through the Council process, and was determined to be the incremental costs associated with ongoing management, data collection, and enforcement activities that would not have been incurred but for the implementation of the program (*i.e.,* incremental costs). Both the V and the DPC variables in the fee percentage equation may change every year, but the resulting percentage may not exceed three percent as required by the MSA.

As described in the Supplemental NMFS Report (Agenda Item H.2.b), available at the September 2012 Council meeting, data from the previous fiscal year can be used to determine the fee percentage to be used and applied to calculate the cost recovery fee amounts for the next calendar year. Once the fiscal year has ended, NMFS plans to calculate the fee percentage in October and/or November each year. Given that the fee percentage to be applied in an upcoming calendar year will be determined based on NMFS' incremental costs and ex-vessel revenues from the previous fiscal year, the actual amount collected in a calendar year could differ from the costs NMFS intended to recover. For

example, if the incremental costs from fiscal year 2012 were equal to $100,000, and the ex-vessel value from that sector in fiscal year 2012 was $3.75 million, the fee percent to be applied in calendar year 2013 would be 2.67 percent, as calculated by: (100,000/3,750,000) × 100 = 2.67.

Under this example, in calendar year 2013, fish buyers would determine the fee due by collecting 2.67 percent of the ex-vessel revenue of any given delivery. For calendar year 2013, the total fee amount collected by NMFS will depend on the actual ex-vessel revenues for 2013. To the extent ex-vessel revenues in calendar year 2013 are different from fiscal year 2012; the amount NMFS collects could be slightly over or under NMFS' costs from fiscal year 2012. Accordingly, NMFS will ensure that the aggregate fees being collected are appropriate by making an adjustment to the following calendar year's fee percentage.

For example, assume that NMFS collected $125,000 rather than the $100,000 in calendar year 2013 because ex-vessel revenue increased in 2013 as compared to fiscal year 2012. In that case, if NMFS' incremental costs for fiscal year 2013 remained the same at an amount of $100,000, rather than using $100,000 as the DPC when calculating the fee percentage to be applied in 2014, NMFS would use $75,000. Therefore, the fee percentage in 2014 would be reduced to account for any amount collected in excess.

NMFS proposes the calculation for the fee percentage at § 660.115(b). The process to notify the public of the applicable fee percentage and how the fee percentage will be calculated for the first year of the program are described in this preamble under ''Notification of the Fee Percentage and MS Pricing.''

Determining Program Costs

There was extensive discussion between NMFS, industry, and the Council, during the April, June, and September 2011 Council meetings, regarding how best to determine which specific costs associated with ongoing management, data collection and analysis, and enforcement activities were eligible to be recovered. The Council formed a Cost Recovery Committee (CRC) tasked with assisting NMFS to identify specific incremental costs on a sector-by-sector basis, and to identify any opportunities for long-term cost efficiencies within the program. The Council recommended using Appendix B of the CRC Report from the September 2011 Council meeting (Agenda Item G.6.b) as guidance in calculating incremental costs associated with the program. An emphasis was placed on the need for transparency within cost accounting procedures, and ensuring that the Council has an ongoing, periodic role in reviewing fee percentages. NMFS is committed to transparent cost accounting practices, including publishing an annual report detailing recoverable costs. See the ''NMFS Annual Report'' section of the preamble for more details and the timing of the annual report. In addition, between the proposed and final rule for the cost recovery program, NMFS intends to discuss with the states whether the costs of some state-performed activities resulting from the trawl rationalization program are costs that could be recovered, consistent with the requirements of the MSA. During this time, NMFS will also be determining its DPC from the previous fiscal year (October 1, 2011 through September 30, 2012) to be used for the 2013 fee percentage calculation. The 2013 fee percentage would be announced in the preamble for the final rule.

Notification of the Fee Percentage and MS Pricing

In the last quarter of the calendar year, NMFS would announce the next year's applicable fee percentage and, for the C/P Coop Program, the applicable MS pricing. Once the fiscal year has ended, NMFS plans to calculate the fee percentage in October and November each year and announce the fee percentage to be applied for the next calendar year in November or December before the fee percentage would apply on January 1. The fee percentage by sector would be announced each year in a **Federal Register** notice. This notice would also include the MS pricing to be used by the C/P Coop Program in determining their ex-vessel value. The MS pricing will be based on values reported by the MS Coop Program from the previous fiscal year. The notification would also include information on how and where to pay cost recovery fees.

For the first year of the cost recovery program, NMFS proposes publishing the fee percentages for each sector and, for the C/P Coop Program, the MS pricing as a part of the final rule for the cost recovery program. At its September 2011 meeting, the Council indicated that the fee percentages for the first year for each of three sectors (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program) should not exceed three percent, two percent, and one percent, respectively. NMFS will calculate the actual fee percentage by sector between the proposed and final rule using the best available information and following the process explained in the preamble at ''Fee Percentage Calculation.'' The calculation may result in percentages above the Council recommendation, but would not exceed the MSA 3 percent cap. For the first year of the cost recovery program, NMFS may calculate the ex-vessel value to be used in the fee percentage calculation and the MS pricing using ex-vessel values reported on the buyback form or electronic fish tickets. Cost recovery fee collection would begin when the final rule becomes effective and would not be retroactive. In addition, NMFS will not include retroactive fees that were not collected in 2013, when calculating the fee percentage for 2014.

NMFS proposes the publication and notification process at § 660.115(b)(2).

NMFS Annual Report

NMFS intends to publish an annual report on the cost recovery program, likely in the spring of each year. The report would include information such as the fee percentage calculation, program costs, and ex-vessel value by sector. The report would likely be similar to those used by the Alaska Region in their IFQ Cost Recovery Programs (*http://www.fakr.noaa.gov/ram/ifqfees.htm* and *http://www.fakr.noaa.gov/sustainablefisheries/crab/crfaq.htm*) and may be included in the annual Trawl Rationalization Report. The report would be made available to the public electronically via the NMFS Northwest Region Groundfish Web site *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm*.

Fee Payment and Collection

The structure of fee payment and collection for the Shorebased IFQ Program and MS Coop Program is proposed to be different than for the C/P Coop Program. At the end of the calendar year, NMFS would calculate and announce the fee percentage to be applied in the upcoming year for all three sectors. For the Shorebased IFQ Program, the IFQ first receiver (first receiver site license holder), as the fish buyer, would collect the fee from each catcher vessel at the time of landing groundfish in the IFQ fishery (fish seller). The IFQ first receiver would hold those fee amounts in a separate deposit account. Each fish buyer (IFQ first receiver) would be required to maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS. This account is called a ''deposit account,'' as proposed in regulation at

§ 660.115(d)(1)(ii)(A). Each fish buyer would also be required to deposit all collected fee revenue not previously deposited that the fish buyer collects through a date not more than two calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to NMFS. The fish buyer would be entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes. The fish buyer would be responsible for remitting payment to NMFS on a monthly basis at the same time the buyback fee is due (*i.e.,* no later than the 14th of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes). Payment to NMFS would be the full amount of deposit principal from the deposit account. NMFS is proposing regulatory language for this section that very closely mirrors buyback program regulatory language from § 600.1102(i).

For the MS Coop Program, the structure of fee payment and collection would be the same as for the Shorebased IFQ Program, except that the fish buyer and fish seller would be different and, because the fleet operates at sea, there is no ''landing.'' For the MS Coop Program, each catcher vessel (fish seller, including vessels registered to an MS/CV-endorsed limited entry trawl permit and any limited entry trawl permits without an MS/CV endorsement while they are participating in the MS Coop Program) would be charged the fee at the time of delivery to the mothership (fish buyer—defined as the owner of a vessel registered to an MS permit, the operator of a vessel registered to an MS permit, and the owner of the MS permit registered to that vessel). The fish buyer would then be responsible for remitting payment to NMFS monthly in coordination with the buyback fee (*i.e.,* no later than the 14th of each month). For any post-delivery payments by the mothership to the catcher vessel, the mothership shall charge the fee from the catcher vessel at the time of payment and remit that fee to NMFS in the upcoming month's payment.

For the C/P Coop Program, the structure of fee payment and collection would be different than the Shorebased IFQ and MS Coop Programs. At the end of the calendar year, with NMFS' announcement of the fee percentage to be applied in the upcoming year, NMFS would also announce the MS pricing to be used by the C/P Coop Program to calculate their fee amount in the upcoming year. For the C/P Coop Program, the C/P (fish buyer—defined as the owner of a vessel registered to a C/P-endorsed limited entry trawl permit, the operator of a vessel registered to a C/P-endorsed limited entry trawl permit, and the owner of the C/P-endorsed limited entry trawl permit registered to that vessel) would be responsible for paying the full fee in the last quarter of the calendar year and by December 31 each year. The fee would be for the harvests of groundfish for the calendar year by each vessel registered to a C/P-endorsed limited entry trawl permit. For the purposes of the cost recovery program, the C/P would be described as both the fish buyer and fish seller. Unlike the Shorebased IFQ Program and the MS Coop Program, fish buyers in the C/P Coop Program would not be required to maintain segregated deposit accounts because the fish seller and the fish buyer is always the same entity and they only make one payment to NMFS per year.

As mentioned above under ''Fee Amount,'' for the C/P Coop Program, there could be an alternate approach to calculating the fee amount. Instead of multiplying the ex-vessel value (using MS pricing) by the fee percentage, NMFS could directly bill the sector in the last quarter of the year so long as the value for DPC of the C/P Coop Program in the fee percentage calculation for the previous fiscal year is an amount equal to or less than three percent of the ex-vessel value of the fishery (using MS pricing). Under this alternate approach, NMFS would still calculate the fee percentage using information from the previous fiscal year in order to ensure that the recovery fee would not exceed three percent. NMFS would also still announce the amount due from the C/P Coop Program in the fall before the fishing year in which the fee amount would be applied. This way, the C/P Coop Program would know at the start of the fishing year how much money would be due to NMFS for cost recovery at the end of the year. Under this alternate approach, the C/P Coop would be responsible for figuring out which ''fish buyers,'' as defined for the cost recovery program, are responsible for which portion of the payment and notifying NMFS. NMFS would then bill each fish buyer accordingly. This alternate approach would result in more accurate payment and less adjustments for over or under payment between years. While this approach is not included in the regulatory language in this proposed rule, NMFS is soliciting public comment on this approach and may implement it in the final rule.

NMFS proposes fee payment and collection regulations at § 660.115(d)(1) for the Shorebased IFQ Program and the MS Coop Program, and at § 660.115(d)(2) for the C/P Coop Program. NMFS proposes to define ''fish buyer'' and ''fish seller'' at § 660.111.

Recordkeeping, Reporting, and Auditing

Similar to the buyback program requirements at § 600.1102(i)(4), each fish buyer would be required to maintain certain information, in a secure and orderly manner, for a period of at least three years from the date of each transaction involved. The recordkeeping requirements for the cost recovery program vary by sector and are proposed at § 660.113(b)(5)(ii) for the Shorebased IFQ Program, § 660.113(c)(5)(ii) for the MS Coop Program, and § 660.113(d)(5)(ii) for the C/P Coop Program. The fish buyer would be required to maintain records by landing, delivery, or harvest for the IFQ, MS, and C/P sectors, respectively. For the Shorebased IFQ Program, if electronic fish tickets contain some or all of the data that § 660.113(b)(5)(ii) proposes to require, then fish buyers could use such records to meet appropriate portions of this section's recordkeeping requirements. In addition to records by landing, delivery, or harvest, fish buyers would be required to maintain records of all fee collection deposits to and disbursements from the deposit account. For the Shorebased IFQ and MS Coop Programs, this would include the following information: the dates and amounts of deposits, the dates and amounts of disbursements to NMFS, and the dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits. For the C/P Coop Program, which would not be required to have a separate deposit account, this would include the following information: the date of each fee disbursement and the total amount disbursed.

NMFS proposes reporting requirements that differ by sector. All three sectors would be required to complete a cost recovery form online with fee payment (as described above in the preamble under ''Coordinating Cost Recovery with Buyback''). However, the contents of what is reported in the form would vary by sector. In general, each fish buyer would be required to report their name, address, phone number, identifier (state buyer code or USCG vessel documentation number), dates, weight of groundfish, ex-vessel value, and fee collected.

NMFS also proposes additional reporting requirements for the at-sea whiting sectors (MS and C/P) to verify information reported on the cost recovery form. All three sectors require 100 percent monitoring which can be used to verify weights of groundfish. The Shorebased IFQ Program also already requires reporting weight and ex-vessel value through electronic fish tickets. This information can be used by NMFS to verify that fish buyers are making accurate cost recovery payments and reporting accurate information on the cost recovery form. The at-sea sectors do not have a similar way to verify the ex-vessel value they have paid or reported. In order to hold the three sectors to similar standards and to ensure fair and accurate fee payment among the sectors, NMFS proposes to require an annual report from the at-sea sectors. While the buyback program only requires an annual report of fish buyers in the MS Coop Program if requested by NMFS during an audit (as specified at § 600.1102(i)(5)), NMFS proposes for the cost recovery program to require an annual report from fish buyers in the MS and C/P Coop Programs. The report would be due by March 31 of the year following the fishing year (which is January 1—December 31). This would align with the deadline for the coop report to NMFS, streamlining when NMFS receives sector information. However, the cost recovery annual report would be submitted by fish buyers rather than the coop managers. The cost recovery annual report submitted by fish buyers would vary slightly between the at-sea sectors and is proposed at § 660.113(c)(5)(i)(B) for the MS Coop Program and § 660.113(d)(5)(i)(B) for the C/P Coop Program. The annual report submitted by fish buyers generally would include, but is not limited to: total weight, total ex-vessel value, total fee amounts collected, and dates and amounts of disbursement(s) to the Fund. NMFS is proposing an annual report for both of the at-sea sectors for fairness and consistency; however, there are some distinctions between the sectors. Because in the C/P Coop Program the fish buyer and fish seller are the same entity, because they would only pay at end of year, because they would not be required to have a deposit account, and because they are not paying the fee amount based on their own ex-vessel value (they pay based on MS ex-vessel value), NMFS solicits public comment on the need for an annual report in the C/P Coop Program. NMFS considered whether the mandatory economic data collection (EDC) report, required at § 660.114, could be used to verify information reported by the at-sea sectors. However, it would be nearly two years before EDC information would be available for comparison to ex-vessel values reported for cost recovery. If NMFS used that information to pursue any mispayments, it could cause problems for the fish buyers and fish sellers whose business arrangements may have changed over time. Therefore, NMFS is proposing the annual report as a more timely method to verify payment and values reported on the cost recovery form.

NMFS proposes reporting requirements that vary by sector at: § 660.113(b)(5)(i) for the Shorebased IFQ Program, § 660.113(c)(5)(i) for the MS Coop Program, and § 660.113(d)(5)(i) for the C/P Coop Program.

NMFS or its agents may audit the financial records of fish buyers and fish sellers in each sector in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers must respond to any inquiry by NMFS or an NMFS agent within 20 calendar days of the date of issuance of the inquiry, unless an extension is granted by NMFS. Fish buyers and fish sellers must make all relevant records available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records. NMFS may employ a third party agent to conduct the audits. The NMFS auditor may review and request copies of additional data provided by the submitter, including but not limited to: previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data submitted. NMFS proposes regulations on audits at § 660.115(d)(4)(iii).

Failure to Pay

If a fish buyer or fish seller is found responsible for failure to pay all or a portion of the cost recovery program fee, NMFS may pursue an enforcement action for violation of the MSA, and/or may forward the issue to the U.S. Department of Treasury for collections. In addition, the Council recommended, and NMFS is proposing, a linkage between failure to pay and non-renewal of a limited entry MS permit, non-renewal of C/P-endorsed limited entry permit, and non-issuance of IFQ first receiver site license. This mechanism is being proposed as an additional means for ensuring payment. Failure to pay would only affect permit renewal and would not affect permit transfers (*i.e.,* changes in owner of the permit or the vessel registered to the permit).

If NMFS determines a fish buyer, as the party responsible for payment to NMFS, has not submitted a complete cost recovery form and corresponding payment by the due date, NMFS would at any time thereafter notify the fish buyer in writing via an initial administrative determination (IAD) letter.

Fish buyers that receive an IAD letter would have 30 calendar days to pay the specified amount or appeal the IAD. All appeals must be submitted to NMFS in writing and must include any relevant information to support the appeal. If the fish buyer does not appeal and is still out of compliance, NMFS would notify the fish buyer via a final decision letter and would require payment within 30 calendar days of the final decision letter. If payment is still not received, NMFS would forward the case to the appropriate authorities for the purposes of collection. From the date on the final decision, if the fish buyer is determined to be out of compliance, NMFS would not renew any subject MS permit or C/P-endorsed limited entry trawl permit, or reissue an IFQ first receiver site license until all cost recovery fees due have been paid.

NMFS proposes prohibitions at § 660.112(a)(6) and the IAD and appeals process at § 660.115(d)(3)(ii).

NMFS advises the public that NMFS National Appeals Office (*http://www.nmfs.noaa.gov/mb/appeals/mb7.htm*) is expected to publish a final rule that may affect the appeals process for the cost recovery program. The National Appeals Office proposed rule (77 FR 33980, June 8, 2012) would establish procedures for the National Appeals Office to review, and if necessary correct, decisions about certain limited access privilege programs under Section 303A of the MSA, 16 U.S.C. 1853a. If the National Appeals Office rule goes final before the cost recovery program rule and if it would affect the appeals process for cost recovery, the cost recovery program final rule would announce those changes.

Housekeeping

NMFS proposes to remove paragraphs at §§ 660.150(d)(5) and 660.160(d)(5) that were previously placeholders for the cost recovery program. These paragraphs had the responsibility for payment falling on the coop permit when it should be on the MS permit and the C/P-endorsed limited entry permit, respectively.

NMFS proposes to remove paragraphs on initial issuance of MS limited entry

permits and C/P endorsements on limited entry trawl permits at §§ 660.150(f)(6) and 660.160(e)(6), respectively. These paragraphs are no longer needed because they were for a one-time issuance of these permits and endorsements and the deadline to apply was November 1, 2010. NMFS issued these permits and endorsements to qualifying applicants and they became effective beginning in 2011. NMFS is not proposing to remove the paragraphs on quota share (QS) permits and MS/CV endorsements because these sections of the regulations may be changed as a result of litigation.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The Council prepared a final environmental impact statement (EIS) for Amendment 20 and Amendment 21 to the Pacific Coast Groundfish FMP. The Amendment 20 and 21 EISs are available on the Council's Web site at *http://www.pcouncil.org/* or on NMFS' Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm.* The regulatory changes in this proposed rule were categorically excluded from the requirement to prepare a NEPA analysis.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A Regulatory Impact Review (RIR) was also prepared on the action and is included as part of the IRFA. A copy of the IRFA is available from NMFS (see **ADDRESSES**) and a summary of the IRFA, per the requirements of 5 U.S.C. 604(a) follows:

The cost recovery program is a regulatory amendment that further implements Amendment 20 to the FMP. While cost recovery is required by the MSA, the Council did consider alternative ways of recovering costs. Cost recovery was analyzed in the Amendment 20 EIS and additional implementation options were discussed over the Council's April, June, and September 2011, and September 2012 meetings.

The regulations proposed in this rule are the basis of the Council and NMFS exploring various options. In the Amendment 20 EIS, Appendix A, Section A–2.3.3.a and b, provides some options for the cost recovery and fee structure in the Shorebased IFQ Program. The Amendment 20 EIS, Appendix A options for the Shorebased IFQ Program included options for fees of up to three percent of the ex-vessel value, consistent with the MSA and full cost recovery. The full cost recovery option would be achieved through landing fees and privatization of elements of the management system (noting that stock assessments and electronic fish tickets would not be privatized). The Council estimated that initially the costs of the Shorebased IFQ Program would exceed the three percent fee, so the Council also considered adjusting the provisions of tracking and monitoring program so that the three percent fee covers the agency costs. Appendix B to the Amendment 20 EIS mentions that cost recovery may apply to the MS and C/P Coop Programs, but does not discuss options.

The Council further discussed the structure and methodology of the cost recovery program over its April, June, and September 2011 meetings, with final Council recommendations to NMFS during the September 2011 Council meeting and further guidance on these issues at its September 2012 meeting. Some of the options considered by the Council over these meetings were: (1) Cost recovery for the trawl rationalization program and the sablefish permit stacking program at the same time; (2) cost recovery shared by all three sectors (1 program), shared by MS and C/P Coop Programs and separate cost recovery for IFQ (2 programs), or a program for each sector (3 programs); (3) what entity should pay the fee in each sector (catcher vessel, fish buyer, coop); (4) how fee collection should be structured (bill entity in last quarter of year, bill at time of landing and collect monthly); (5) link to permitting requirements (no linkage, suspend quota transactions until payment, suspend permit renewal until payment); (6) how agency costs are identified (implement a tracking system, random sampling, yearly projections); (7) how ex-vessel value is calculated (from EDC, from buyback, from electronic fish ticket, from paper fish tickets, use shorebased pricing and at-sea tonnage, require new document); and (8) what groundfish species to include when calculating ex-vessel value.

The administrative costs of this program are mainly associated with groundfish species and bycatch of Pacific halibut as managed under the trawl rationalization program. Human observation and electronic reporting tools account for all catch of these species. Computer programs match the catch against individual species quotas (quota pounds or QP) or coop allocations. All vessels must carry observers who watch and measure the harvests and discards of these groundfish. All shore plants must have catch monitors to watch all vessel offloads and record the species and amounts landed. In the Shorebased IFQ Program, online accounting programs issue and track QS, QP, and catch by species. Computer programs compare fish tickets to catch monitor reports and calculate the QP landed by an individual vessel. Observer reports are used to account for the vessel's discards. An online ''banking system'' is used to debit landings and discards against the vessel's QP. Quota pounds are deposited to a vessel's account based on a transfer from a QS account or from another vessel account.

The following provides some perspective on the economic dimensions of the fisheries. Over the years 2007 through 2010, according to Council estimates, shorebased ex-vessel revenues have averaged $38 million, the mothership sector $8 million, and the catcher-processor sector $12 million (*http://www.pcouncil.org/groundfish/background/document-library/historical-landings-and-revenue-in-groundfish-fisheries/*, Tables 22 and 28). Based on PacFIN data and on NMFS at-sea whiting data, in 2011 shorebased revenues increased $54 million, the mothership revenues are about $12 million, and the catcher-processor revenues are about $17 million. (Note: Ex-vessel revenues are just one indicator of ''revenue.'' They understate the wholesale, export, and retail revenues earned from the fishery. Data on these other indicators is either incomplete or unavailable.)

The cost recovery program applies to three groups of trawlers. Some trawlers deliver to shore-based processing plants. Other trawlers deliver to mothership processors. Some trawlers are catcher-processors—vessels that both trawl and process fish. In January 2011, NMFS and the Council set up a new management program called the trawl

rationalization program. This program significantly changes how two of these groups work. Shore-based trawlers now fish under their own set of individual species quotas by vessel. In prior years, there were different rules for shore-based trawlers depending on their target catch. Nonwhiting trawlers fished under common trip limits while whiting trawlers fished under a common quota without trip limits. In prior years, the mothership fishery consisted of independent at-sea processors each receiving catch from several trawlers. Now the mothership fishery works as a coop where catcher-vessels and motherships work together collectively. The catcher-processor fleet continues as a single coop, but now has a permit to do so.

Cost recovery for the trawl rationalization program requires the fish sellers to pay the fee and all parties making the first ex-vessel purchase of groundfish (i.e., the fish buyers) to collect the fee, account for, and forward the fee revenue to NMFS (Note: In the C/P Coop Program, a cooperative of vessels that both harvest and process whiting at-sea, the fish seller and the fish buyer are the same entity).

The Small Business Administration has established size criteria for all major industry sectors in the US, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a fulltime, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $7.0 million.

This rule directly affects vessel owners and first receivers who are responsible for the submission of electronic fish tickets, the catcher vessels and processors associated with the mothership coop, and the catcher-processors that are members of the catcher-processor coop. Each account holder, mothership catcher vessel, mothership processor, and catcher-processor must apply to participate in the trawl rationalization program. As part of the application process, applicants were asked if they considered themselves a ''small'' business. NMFS makes the following conclusions based on these responses. For the few non-respondents, NMFS relied on other information to assess their size. The Shorebased IFQ Program affects 144 vessel account holders (fish sellers) and 51 first receivers (fish buyers). There are 117 ''small'' vessel account holders and 30 ''small'' first receivers. The mothership sector involves 36 MS/CV-endorsed permits (fish sellers) and 6 MS permits (fish buyers). (Note that one of the MS/CV-endorsed permits has two endorsements). Twenty-one MS/CV-endorsed permits and two MS permits are considered small businesses. There are 10 C/P permits (fish buyer and seller). Of these, eight indicated they were large businesses and NMFS assumes the other two are also large businesses based on knowledge of operations off Alaska. The sum total of these permits and vessel accounts is 247, with 170 considered small.

The impacts on both small and large entities are the fees being collected—up to three percent of ex-vessel revenues or the mothership and catch processor equivalents discussed above. Because cost recovery is mandatory under the MSA, the ''no action'' alternative is not a viable alternative. All of the other alternatives would have the same expected effects among each other because the MSA requires fees of up to three percent of the ex-vessel value to be collected. Implementation costs were reduced by adapting the existing buyback fee collection processes and by adjusting these processes to each sector.

Other than raising the costs of operation, the total effects of this program are hard to assess. This program is for the long term while the fishery has yet to adjust in the short term to the program because of the prohibition on QS trading. While the cost recovery fees may be affordable for the average fisherman, for other fishermen the cost recovery fee may not be affordable given the other costs they incur. Many fishermen, particularly shorebased fishermen, have voiced concerns that paying for costs of state landing taxes, the buyback fees, the costs of observers, and cost recovery fees will be challenging. The Northwest Fisheries Science Center (NWFSC) has recently developed estimates of net accounting profits by trawl permits involved in the shoreside fishery including those that operate in at sea fisheries but excluding catcher-processors and mothership catcher vessels that do not also deliver to shoreplants. In the calculation of accounting net revenue, costs include trawl buyback fees and landings taxes. Economic net revenue also considers the opportunity costs incurred by vessel owners who serve as captain but do not pay themselves for their captain services, and the opportunity cost of capital. NWFSC estimates that the average limited entry groundfish trawl fleet member earned accounting net revenue of $115,983 and economic net revenue of $77,381 during 2008 from operations in all fisheries. During 2008, the average limited entry groundfish trawl survey respondent earned $585,048 from all revenue sources and $339,504 from operations in the West Coast groundfish fishery. The 127 vessels in the West Coast limited entry groundfish trawl survey population during 2008 earned accounting net revenue of $14,729,841 and economic net revenue of $9,827,387 from operations in all fisheries.

While NMFS has not yet calculated the actual fee percent for the upcoming year, preliminary estimates show that NMFS expects the Shorebased IFQ Program to be subject to the maximum three percent fee. The MS and C/P Coop Program are expected to cost NMFS less money for management, data collection, and enforcement and, therefore, be subject to less than the three percent fee. Using a fee rate of three percent and 2011 revenues, for the Shorebased IFQ Program, NMFS would collect approximately $1.62 million ($54 million × 0.03). For the MS Coop Program, NMFS would collect approximately $360,000 (($12 million × 0.03). For the C/P Coop Program, NMFS would collect approximately $510,000 (($17 million × 0.03). Using this example, NMFS would recover approximately $2.5 million by implementing cost recovery.

Fishermen have been paying state landing taxes for years. The buyback fees, on the other hand, are associated with a reduction of the fleet that has significantly increased the amount of fish that the post buyback fishermen were able to harvest under the trip limit regime (prior to trawl rationalization) or received as QS that fishermen now receive under trawl rationalization. (Buyback history was equally divided among all shorebased groundfish permits.) Fishermen are now petitioning Congress for a reduction in the interest rate associated with the $36 million buyback loan. While the costs of

observers may be high, NMFS and the Council are looking at the feasibility of electronic monitoring to lower administrative and fishermen costs. The costs of paying the cost recovery fees can be reduced by developing a lower cost administrative system or by increased revenues as fishermen develop techniques to reduce bycatch so they can increase their target catch. The effects of all factors on current and future individual and industry profits are hard to assess, particularly as QS trading is not allowed until 2014. When QS trading is initiated, it is expected that the number of participants in the Shorebased IFQ Program will be reduced. A reduction in the number of participants may lower administrative costs while raising average revenues per participant.

We do not believe that this rule will have a significant impact when comparing small versus large businesses in terms of disproportionality and profitability given available information. Nonetheless, NMFS has prepared this IRFA. Through the rulemaking process associated with this action, we are requesting comments on this conclusion.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules. A copy of this analysis is available from NMFS (see **ADDRESSES**).

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the FMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

As Steller sea lions and humpback whales are also protected under the Marine Mammal Protection Act (MMPA), incidental take of these species from the groundfish fishery must be addressed under MMPA section 101(a)(5)(E). West coast pot fisheries for sablefish are considered Category II fisheries under the MMPA's List of Fisheries, indicating occasional interactions. All other west coast groundfish fisheries, including the trawl fishery, are considered Category III fisheries under the MMPA, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals. On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed in NMFS' December 29, 2010 Negligible Impact Determination (NID) and this fishery has been added to the list of fisheries authorized to take Steller sea lions. 77 FR 11493 (Feb. 27, 2012). NMFS is currently developing MMPA authorization for the incidental take of humpback whales in the fishery.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the cost recovery form is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for a failure to pay report is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the annual report for the at-sea sector is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Northwest Region at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB Control Number.

This proposed rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. The proposed regulations have no direct effect on the tribes; these proposed regulations were deemed by the Council as ''necessary or appropriate'' to implement the FMP as amended.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: January 25, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Chapter VI is proposed to be amended as follows:

50 CFR Chapter VI

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11, add the definition for ''fiscal year'' and ''fund'' in alphabetical order to read as follows:

§ 660.11 General definitions.

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Fiscal year means the year beginning at 0001 local time on October 1 and ending at 2400 local time on September 30 of the following year.

* * * * *

Fund means, for the purposes of subparts C through G of this part, the U.S. Treasury's Limited Access System Administration Fund (LASAF) established by the Magnuson-Stevens Act, 16 U.S.C. 1855(h)(5)(B), specifically the LASAF subaccounts associated with the PCGFMP cost recovery programs.

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■ 3. In § 660.25, add paragraph (b)(4)(i)(G) to read as follows:

§ 660.25 Permits.

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(b) * * *

(4) * * *

(i) * * *

(G) An MS permit or a limited entry permit with a C/P endorsement will not be renewed, if it was the permit owner that failed to pay, until payment of all cost recovery program fees required pursuant to § 660.115 has been made. The IAD, appeals, and final decision process for the cost recovery program is specified at § 660.115(d)(3)(ii).

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■ 4. In § 660.111, add the definitions for ''ex-vessel value,'' ''fish buyer,'' ''fish seller,'' and ''net ex-vessel value'' in alphabetical order to read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Ex-vessel value means, for the purposes of the cost recovery program specified at § 660.115, all compensation (based on an arm's length transaction between a buyer and seller) that a fish buyer pays to a fish seller in exchange for groundfish species (as defined in § 660.11), and includes the value of all in-kind compensation and all other goods or services exchanged in lieu of cash. Ex-vessel value shall be determined before any deductions are made for transferred or leased allocation, or for any goods for services.

(1) For the Shorebased IFQ Program, the value of all groundfish species (as defined in § 660.11) from IFQ landings.

(2) For the MS Coop Program, the value of all groundfish species (as defined in § 660.11) delivered by a catcher vessel to an MS-permitted vessel.

(3) For the C/P Coop Program, the value as determined by the aggregate pounds of all groundfish species (as defined in § 660.11) harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Coop Program average price per pound as announced pursuant to § 660.115(b)(2).

* * * * *

Fish buyer means, for the purposes of the cost recovery program specified at § 660.115,

(1) For the Shorebased IFQ Program, the IFQ first receiver as defined in § 660.111.

(2) For the MS Coop Program, the owner of a vessel registered to an MS permit, the operator of a vessel registered to an MS permit, and the owner of the MS permit registered to that vessel. All three parties shall be jointly and severally responsible for fulfilling the obligations of a fish buyer.

(3) For the C/P Coop Program, the owner of a vessel registered to a C/P-endorsed limited entry trawl permit, the operator of a vessel registered to a C/P-endorsed limited entry trawl permit, and the owner of the C/P-endorsed limited entry trawl permit registered to that vessel. All three parties shall be jointly and severally responsible for fulfilling the obligations of a fish buyer.

Fish seller means the party who harvests and first sells or otherwise delivers groundfish species (as defined in § 660.11) to a fish buyer.

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Net ex-vessel value means, for the purposes of the cost recovery program specified at § 660.115, the ex-vessel value minus the cost recovery fee.

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■ 5. In § 660.112, add paragraph (a)(6) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(a) * * *

(6) *Cost recovery program.* (i) Fail to fully pay or collect any fee due under the cost recovery program specified at § 660.115 and/or otherwise avoid, decrease, interfere with, hinder, or delay any such payment or collection.

(ii) Convert, or otherwise use any paid or collected fee for any purpose other than the purposes specified in this subpart.

(iii) Fail to deposit on time the full amount of all fee revenue collected under the cost recovery program specified at § 660.115 into a deposit account, or fail to timely disburse the full amount of all deposit principal to the Fund.

(iv) Fail to maintain records as required by § 660.113 and/or fail to make reports to NMFS as required under § 660.113.

(v) Fail to advise NMFS of any fish buyer's failure to collect any fee due and payable under the cost recovery program specified at § 660.115.

(vi) Refuse to allow NMFS employees, agents, or contractors to review and audit all records and other information required to be maintained as set forth in § 660.113, and/or § 660.115.

(vii) Make any false statement to NMFS, including any NMFS employee, agent or contractor, concerning a matter related to the cost recovery program described in this subpart.

(viii) Obstruct, prevent, or delay, or attempt to obstruct, prevent, or delay, any audit or investigation NMFS employees, agents, or contractors conduct, or attempt to conduct, in connection with any of the matters in the cost recovery program described in this subpart.

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■ 6. In § 660.113, add paragraphs (b)(5), (c)(5), and (d)(5) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(b) * * *

(5) *Cost recovery program.* In addition to the requirements at paragraph (a) of this section, the fish buyer, as defined at § 660.111 for the Shorebased IFQ

Program, is required to comply with the following recordkeeping and reporting requirements:

(i) *Reporting.* The fish buyer must submit a cost recovery form at the time cost recovery fees are paid to NMFS as specified at § 660.115. The cost recovery form requires providing information that includes, but is not limited to, fee collector's name, address, phone number, state buyer code, month and year of landings, weight of landings, ex-vessel value, and fee collected.

(ii) *Recordkeeping.* The fish buyer must maintain the following records:

(A) For all deliveries of groundfish that the fish buyer buys from each fish seller:

(*1*) The date of delivery,

(*2*) The fish seller's identity,

(*3*) The weight of each species of groundfish delivered,

(*4*) Information sufficient to specifically identify the fishing vessel which delivered the groundfish,

(*5*) The ex-vessel value of each species of groundfish,

(*6*) The net ex-vessel value of each species of groundfish,

(*7*) The identity of the payee to whom the net ex-vessel value is paid, if different than the fish seller,

(*8*) The date the net ex-vessel value was paid,

(*9*) The total fee amount collected as a result of all groundfish.

(B) For all fee collection deposits to and disbursements from the deposit account:

(*1*) The date of each deposit in to the deposit account required at § 660.115(d)(1)(ii)(A),

(*2*) The total amount deposited in to the deposit account,

(*3*) The date of each disbursement,

(*4*) The total amount disbursed,

(*5*) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits.

* * * * *

(c) * * *

(5) *Cost recovery program.* In addition to the requirements at paragraph (a) of this section, the fish buyer, as defined at § 660.111 for the MS Coop Program, is required to comply with the following recordkeeping and reporting requirements:

(i) *Reporting.* (A) The fish buyer must submit a cost recovery form at the time cost recovery fees are paid to NMFS as specified at § 660.115. The cost recovery form requires providing information that includes, but is not limited to, fee collector's name, address, phone number, USCG vessel documentation number, month and year of deliveries, weight of deliveries, ex-vessel value, and fee collected.

(B) *Annual report.* By March 31 each year, each fish buyer must submit to NMFS a report containing the following information from the preceding calendar year for all groundfish each fish buyer purchases from fish sellers:

(*1*) Total weight bought,

(*2*) Total ex-vessel value paid,

(*3*) Total fee amounts collected,

(*4*) Total fee collection amounts deposited by month,

(*5*) Dates and amounts of monthly disbursements to the Fund.

(ii) *Recordkeeping.* The fish buyer must maintain the following records:

(A) For all deliveries of groundfish that the fish buyer buys from each fish seller:

(*1*) The date of delivery,

(*2*) The fish seller's identity,

(*3*) The weight of each species of groundfish delivered,

(*4*) Information sufficient to specifically identify the fishing vessel which delivered the groundfish,

(*5*) The ex-vessel value of each species of groundfish,

(*6*) The net ex-vessel value of each species of groundfish,

(*7*) The identity of the payee to whom the net ex-vessel value is paid, if different than the fish seller,

(*8*) The date the net ex-vessel value was paid,

(*9*) The total fee amount collected as a result of all groundfish.

(B) For all fee collection deposits to and disbursements from the deposit account:

(*1*) The date of each deposit in to the deposit account required at § 660.115(d)(1)(ii)(A),

(*2*) The total amount deposited in to the deposit account,

(*3*) The date of each disbursement,

(*4*) The total amount disbursed,

(*5*) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits.

* * * * *

(d) * * *

(5) *Cost recovery program.* In addition to the requirements at paragraph (a) of this section, the fish buyer, as defined at § 660.111 for the C/P Coop Program, is required to comply with the following recordkeeping and reporting requirements:

(i) *Reporting.* (A) The fish buyer must submit a cost recovery form at the time cost recovery fees are paid to NMFS as specified at § 660.115. The cost recovery form requires providing information that includes, but is not limited to, fee collector's name, address, phone number, USCG vessel documentation number, month and year of deliveries, weight of deliveries, ex-vessel value, and fee collected.

(B) *Annual report.* By March 31 each year, each fish buyer must submit to NMFS a report containing the following information from the preceding calendar year for all groundfish:

(*1*) Total weight,

(*2*) Total ex-vessel value paid (based on MS pricing),

(*3*) Total fee amount collected,

(*4*) Date and amount of the disbursement to the Fund.

(ii) *Recordkeeping.* The fish buyer must maintain the following records:

(A) For all groundfish:

(*1*) The date of harvest,

(*2*) The weight of each species of groundfish harvested,

(*3*) Information sufficient to specifically identify the fishing vessel which harvested the groundfish,

(*4*) The ex-vessel value of each species of groundfish,

(*5*) The net ex-vessel value of each species of groundfish,

(*6*) The total fee amount collected as a result of all groundfish.

(B) For all disbursements to NMFS:

(*1*) The date of each disbursement,

(*2*) The total amount disbursed.

■ 7. Section 660.115 is added to read as follows:

§ 660.115 Trawl fishery—cost recovery program.

(a) *General.* The cost recovery program collects mandatory fees of up to three percent of the ex-vessel value of fish harvested by sector under the trawl rationalization program in accordance with the Magnuson-Stevens Act. NMFS collects the fees to recover the actual costs directly related to the management, data collection, and enforcement of the trawl rationalization program. In addition to the requirements of this section, the following groundfish regulations also apply:

(1) Regulations set out in the following sections of subpart C: § 660.11 Definitions and § 660.25 Permits.

(2) Regulations set out in the following sections of subpart D: § 660.111 Definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.140 Shorebased IFQ Program, § 660.150 MS Coop Program, and § 660.160 C/P Coop Program.

(b) *Fee percentage by sector.* The annual fee percentage by sector is calculated as described in paragraph (b)(1) of this section. NMFS will establish the fee percentage each year and will announce the fee percentage by sector in accordance with paragraph (b)(2) of this section. The fee percentage must not exceed three percent of the ex-vessel value of fish harvested by sector

under the trawl rationalization program pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1854(d)(2)(B).

(1) *Calculation.* In the last quarter of each calendar year, NMFS will calculate the fee percentage by sector based on information from the previous fiscal year (defined at § 660.11). The fee percentage will be rounded to the nearest 0.1 percent and must not exceed three percent for each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). NMFS will use the following equation to annually determine the fee percentage by sector: Fee percentage = the lower of 3% or (DPC/V) × 100, where:

(i) ''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. If the amount of fees collected by NMFS is greater or less than the actual net incremental costs incurred, the DPC will be adjusted accordingly for calculation of the fee percentage in the following year.

(ii) ''V'' is, for each applicable sector, the total ex-vessel value, as defined at § 660.111, from the previous fiscal year attributable to that sector of the trawl rationalization program (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program).

(2) *Notification of the fee percentage and MS average pricing.* During the last quarter of each calendar year, NMFS will announce the following through a **Federal Register** notice:

(i) The fee percentage to be applied by fish buyers and fish sellers, for each sector, that will be in effect for the upcoming calendar year, and

(ii) The average MS price per pound from the previous fiscal year as reported for the MS Coop Program to be used in the C/P Coop Program to calculate the fee amount for the upcoming calendar year as specified in paragraph (c) of this section.

(iii) Information on how to pay in to the Fund subaccount as specified at paragraph (d) of this section.

(c) *Fee amount.* The fee amount is the ex-vessel value, as defined at § 660.111, for each sector multiplied by the fee percentage for that sector as announced in accordance with paragraph (b)(2) of this section.

(d) *Fee payment and collection*—(1) *Fee payment and collection in the Shorebased IFQ Program and MS Coop Program.* Payment of fees at the fee percentage rate announced in paragraph (b)(2) of this section begins January 1 and continues without interruption through December 31 each year.

(i) *Between the fish seller and fish buyer.* Except as described below, the full fee is due and payable at the time of fish landing/delivery. Each fish buyer must collect the fee at the time of fish landing/delivery by deducting the fee from the ex-vessel value before paying the net ex-vessel value to the fish seller. Each fish seller must pay the fee at the time of fish landing/delivery by receiving from the fish buyer the net ex-vessel value, as defined at § 660.111.

(A) In the event of any post-delivery payment for fish, the fish seller must pay, and the fish buyer must collect, at the time the amount of such post-landing/delivery payment, the fee that would otherwise have been due and payable at the time of initial fish landing/delivery.

(B) When the fish buyer and fish seller are the same entity, that entity must comply with the requirements for both the fish seller and the fish buyer as specified in this section.

(ii) *Between the fish buyer and NMFS*—(A) *Deposit accounts.* Each fish buyer shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue from the cost recovery program specified in this section and disbursing the deposit principal directly to NMFS in accordance with paragraph (d)(1)(ii)(C) of this section.

(B) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (d)(1)(ii)(A) of this section, all fees collected, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit principal may not be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (d)(1)(ii)(C) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(C) *Deposit principal disbursement.* Not later than the 14th calendar day after the last calendar day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit principal then in the deposit account. The fish buyer shall disburse deposit principal by electronic payment to the Fund subaccount to which the deposit principal relates. NMFS will announce information about how to make an electronic payment to the Fund subaccount in the notification on fee percentage specified in paragraph (b)(2) of this section. Each disbursement must be accompanied by a cost recovery form provided by NMFS. Recordkeeping and reporting requirements are specified in paragraph (d)(4) of this section and at § 660.113(b)(5) for the Shorebased IFQ Program and § 660.113(c)(5) for the MS Coop Program. The cost recovery form will be available on the pay.gov Web site.

(2) *Fee payment and collection in the C/P Coop Program.* Payment of fees for the calendar year at the fee percentage rate announced in paragraph (b)(2) of this section is due in the last quarter of the calendar year and no later than December 31 each year. The fish buyer is responsible for fee payment to NMFS. The fish seller and the fish buyer, as defined at § 660.111, are considered the same entity in the C/P Coop Program. The fish buyer shall disburse to NMFS the full fee amount for the calendar year by electronic payment to the Fund subaccount. NMFS will announce information about how to make an electronic payment to the Fund subaccount in the notification on fee percentage specified in paragraph (b)(2) of this section. Each disbursement must be accompanied by a cost recovery form provided by NMFS. Recordkeeping and reporting requirements are specified in paragraph (d)(4) of this section and at § 660.113(d)(5) for the C/P Coop Program. The cost recovery form will be available on the pay.gov Web site.

(3) *Failure to pay or collect*—(i) *Responsibility to notify NMFS.* (A) If a fish buyer fails to collect the fee in the amount and manner required by this section, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's cost recovery fee collection obligation. If the fish buyer still fails to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing at the address in paragraph (d)(3)(i)(C) of this section of the full particulars, including:

(*1*) The fish buyer's and fish seller's name, address, and telephone number,

(*2*) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(*3*) The weight and ex-vessel value of each species of fish that the fish seller delivered, and

(*4*) The fish buyer's reason, if known, for refusing to collect the fee in accordance with this subpart;

(B) Notifications must be mailed or faxed to: National Marine Fisheries Service, Northwest Region, Office of Management and Information, ATTN: Cost Recovery Notification, 7600 Sand Point Way NE., Seattle, WA 98115; Fax: 206–526–6426; or delivered to National Marine Fisheries Service at the same address.

(ii) *IAD, appeals, and final decision.* If NMFS determines the fish buyer or other responsible party has not submitted a complete cost recovery form and corresponding payment by the due date specified in paragraphs (d)(1) and (d)(2) of this section, NMFS will at any time thereafter notify the fish buyer or other responsible party in writing via an initial administrative determination (IAD) letter.

(A) *IAD.* In the IAD, NMFS will state the discrepancy and provide the person 30 calendar days to either pay the specified amount due or appeal the IAD in writing.

(B) *Appeals.* If the fish buyer appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 30 calendar days after the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day. The appeal must be in writing, must allege credible facts or circumstances, and must include any relevant information or documentation to support the appeal. Appeals must be mailed, faxed, or hand-delivered to: National Marine Fisheries Service, Northwest Region, Office of Management and Information, ATTN: Cost Recovery Appeals, 7600 Sand Point Way NE., Seattle, WA 98115; Fax: 206–526–6426; or delivered to National Marine Fisheries Service at the same address.

(C) *Final decision*—(*1*) *Final decision on appeal.* For the appeal of an IAD, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on the appeal to the Regional Administrator, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator, acting on behalf of the Secretary of Commerce, will issue a written decision on the appeal which is the final decision of the Secretary of Commerce.

(*2*) *Final decision if there is no appeal.* If the fish buyer does not appeal the IAD within 30 calendar days, NMFS will notify the fish buyer or other responsible party in writing via a final decision letter. The final decision will be from the Regional Administrator acting on behalf of the Secretary of Commerce.

(*3*) *If the final decision determines that the fish buyer is out of compliance,* the final decision will require payment within 30 calendar days. If such payment is not received within 30 calendar days of issuance of the final decision, NMFS will refer the matter to the appropriate authorities for purposes of collection. As of the date of the final decision if the fish buyer is out of compliance, NMFS will not approve a permit renewal for an MS permit or a C/P-endorsed limited entry trawl permit until all cost recovery fees due have been paid as specified at § 660.25(b)(4)(i)(G); or reissue an IFQ first receiver site license until all cost recovery fees due have been paid, as specified at § 660.140(f)(4).

(4) *Recordkeeping, reporting, and audits*—(i) *Recordkeeping.* Each fish buyer and fish seller shall retain records in accordance with § 660.113(a). In addition, fish buyers shall retain records in accordance with the following paragraphs: § 660.113(b)(5) for the Shorebased IFQ Program, § 660.113(c)(5) for the MS Coop Program, and § 660.113(d)(5) for the C/P Coop Program.

(ii) *Reporting, including annual report.* Each fish buyer shall submit reports in accordance with the following paragraphs: § 660.113(b)(5) for the Shorebased IFQ Program, § 660.113(c)(5) for the MS Coop Program, and § 660.113(d)(5) for the C/P Coop Program. The fish buyer must submit a cost recovery form along with fee payment to NMFS. By March 31 each year, fish buyers in the MS and C/P Coop Programs must submit an annual report to NMFS containing information from the preceding calendar year as specified at § 660.113(c)(5) and § 660.113(d)(5) for the MS and C/P Coop Programs, respectively.

(iii) *Audits.* NMFS or its agents may audit, in whatever manner NMFS determines reasonably necessary for the duly diligent administration of the cost recovery program, the financial records of fish buyers and fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers must respond to any inquiry by NMFS or a NMFS agent within 20 calendar days of the date of issuance of the inquiry, unless an extension is granted by NMFS. Fish buyers and fish sellers shall make all relevant records available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records. NMFS may employ a third party agent to conduct the audits. The NMFS auditor may review and request copies of additional data provided by the submitter, including but not limited to, previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data submitted.

■ 8. In § 660.140,

■ a. Revise paragraphs (a)(2), (e)(8), (f)(4), and (f)(6);

■ b. Add paragraphs (b)(1)(x), (b)(2)(ix), and (f)(10) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(a) * * *

(2) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(1) * * *

(x) Fish sellers must pay cost recovery program fees, as specified at § 660.115.

(2) * * *

(ix) Collect and remit to NMFS cost recovery program fees, as specified at § 660.115.

* * * * *

(e) * * *

(8) *Cost recovery.* The fish seller, as defined at § 660.111, is subject to the cost recovery program specified at § 660.115.

* * * * *

(f) * * *

(4) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a first receiver site license. If disapproved, the IAD will provide the reasons for this determination. NMFS will not reissue a first receiver site license until the required cost recovery program fees, as specified at § 660.115,

have been paid. The IAD, appeals, and final decision process for the cost recovery program is specified at § 660.115(d)(3)(ii).

* * * * *

(6) *Reissuance in subsequent years.* Existing license holders must reapply annually. If the existing license holder fails to reapply, the first receiver's site license will expire as specified in paragraph (f)(5) of this section. The IFQ first receiver will not be authorized to receive IFQ species from a vessel if their first receiver site license has expired. NMFS will not reissue a first receiver site license until all required cost recovery program fees, as specified at § 660.115, associated with that license have been paid.

* * * * *

(10) *Cost recovery.* The first receiver site license holder is considered the fish buyer as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

* * * * *

■ 9. In § 660.150,

■ a. Remove paragraph (d)(5);

■ b. Revise paragraphs (a)(4), (b)(1)(ii)(A), and (f)(6);

■ c. Add paragraphs (b)(1)(ii)(D), (b)(2)(ii)(C), and (g)(7) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(a) * * *

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d); maintain records as specified at § 660.113(a); and maintain and submit all records and reports specified at § 660.113(c) including, economic data, scale tests records, cease fishing reports, and cost recovery.

* * * * *

(D) *Cost recovery program.* Collect and remit to NMFS cost recovery program fees as specified at § 660.115.

* * * * *

(2) * * *

(ii) * * *

(C) *Cost recovery program.* Vessel must pay cost recovery program fees, as specified at § 660.115.

* * * * *

(f) * * *

(6) *Cost recovery.* The owner of a vessel registered to an MS permit, the operator of a vessel registered to an MS permit, and the owner of the MS permit registered to that vessel, are considered to be the fish buyer as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

* * * * *

(g) * * *

(7) *Cost recovery.* The fish seller, as defined at § 660.111, is subject to the cost recovery program specified at § 660.115.

* * * * *

■ 10. In § 660.160,

■ a. Remove paragraphs (d)(5) and (e)(6);

■ b. Revise paragraphs (a)(4) and (b)(1)(ii)(A); and

■ c. Add paragraphs (b)(1)(ii)(D), and (e)(5) to read as follows:

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

* * * * *

(a) * * *

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d); maintain records as specified at § 660.113(a); and maintain and submit all records and reports specified at § 660.113(d) including, economic data, scale tests records, cease fishing reports, and cost recovery.

* * * * *

(D) *Cost recovery program.* Collect and remit to NMFS cost recovery program fees, as specified at § 660.115.

* * * * *

(e) * * *

(5) *Cost recovery.* The owner of a vessel registered to a C/P-endorsed limited entry trawl permit, the operator of a vessel registered to a C/P-endorsed limited entry trawl permit, and the owner of the C/P-endorsed limited entry trawl permit registered to that vessel, are considered both the fish buyer and the fish seller as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–BA98

Western Pacific Fisheries; Fishing in the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery ecosystem plan amendments; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council proposes to amend four fishery ecosystem plans to establish fishing requirements consistent with the Presidential proclamations that created the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments.

DATES: NMFS must receive comments on the proposed amendments by April 2, 2013.

ADDRESSES: You may submit comments on the proposed amendments, identified by NOAA–NMFS–2012–0070, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2012–0070,* click the *''Comment Now!''* icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying