

movement corridors, or habitat fragmentation. There are a number of private inholdings within areas containing apparently suitable habitat for the species (Don DeLorenzo, pers. comm., 1999). We are unaware of any surveys conducted on private lands in the area, and available information on the amount of existing habitat and potential for development is insufficient to confidently predict the extent of this threat.

There likely is high interest by some collectors in the Sacramento Mountains checkerspot butterfly due to its extremely restricted distribution and apparent low numbers. High prices for prized species can provide an incentive for illegal take and trade. Listing in itself increases the publicity and interest in a species' rarity, and thus may directly increase the value and demand for specimens. Specimens of other subspecies of the anicia checkerspot butterfly have been offered for sale (Capps 1991; Entomological Clearing House 1986; Kral 1987, 1989).

Collecting from small colonies or repeated handling and marking, particularly of females and in years of low abundance, could seriously damage the populations through loss of individuals and genetic variability (Gall 1984b; Murphy 1988; Singer and Wedlake 1981). Since the known populations of the Sacramento Mountains checkerspot butterfly occur in a public campground, along public roadways, or in other areas readily accessible to the public, the species is easily collected, and the limited numbers and distribution of this species make it attractive to collectors and vulnerable to overcollection.

The Forest Service issued a one-year closure order for the collection of any butterflies without a permit on the Smokey Bear and Sacramento Districts of the Lincoln National Forest due to the threat of overcollection (Jose Martinez, *in litt.*, 1999). This closure order may offer protection from butterfly collecting; however, some butterfly collectors are known to have intentionally violated a similar closure order in the Uncomphagre National Forest in Colorado in order to collect the endangered Uncomphagre fritillary butterfly (*Boloria acrocneuma*) (U. S. Department of Justice 1993).

A significant long-term threat to the Sacramento Mountains checkerspot butterfly may be the change in community structure due to invasive exotic plants, and attempts to control them. According to the Forest Service (1999a), a 1993 survey found that approximately 737 hectares (1,822 acres) in the vicinity of Cloudcroft had

infestations of noxious weeds. Infestations occurring in non-forested openings and on road rights-of-way expanded and the densities of weeds increased where they have not been treated. These invasive foreign species may out-compete and reduce or eliminate the larvae food plant and adult nectar plants, resulting in adverse effects on the animal. Efforts to control the exotic plants with herbicides may pose a threat to the Sacramento Mountains checkerspot butterfly.

Periodic droughts, such as those that occurred in recent years in New Mexico, may adversely affect the Sacramento Mountains checkerspot butterfly. Drought is known to cause a decrease in the size of the populations of some butterfly species (C. Nagano, pers. obs., 1999). In addition to killing larvae by desiccation, drought conditions may—(1) cause the early senescence or death of the larvae food plant prior to the completion of larval development; or (2) lower the nutritional quality of the host plant (e.g., water content). Drought also may reduce the quantity and quality of adult nectar sources. Conversely, the species has evolved in an environment subject to extended droughts. It is unknown whether human-caused habitat changes have increased the species' susceptibility to droughts.

We reviewed the petition, the literature cited in the petition, other literature, and information in our files. Based on the best scientific information available, we find the petition presents substantial information that listing this species may be warranted. Therefore, with the completion of this 90-day finding, we will conduct a status review of the species and subsequently make a finding as to whether the petitioned action is warranted pursuant to section 4(b)(3)(B) of the Act.

We solicit information regarding occurrence and distribution of the species, threats to its continued existence, and any additional data or scientific information from the public, scientific community, Tribal, local, State, and Federal governments, and other interested parties concerning the status of the Sacramento Mountains checkerspot butterfly. Of particular interest is information regarding:

- (1) Additional historical and current population data which may assist in determining range and long-term population trends;
- (2) Pertinent information on biology and life history;
- (3) Additional information about habitat requirements; and,
- (4) Information on immediate and future threats to the Sacramento

Mountains checkerspot butterfly, and the areas inhabited by the species.

After consideration of additional information received during the comment period (see **DATES** section of this notice), we will prepare a 12-month finding as to whether listing of the species is warranted.

#### References Cited

You may request a complete list of all references we cited, as well as others, from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author: Chris Nagano (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 7, 1999.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 99-33481 Filed 12-23-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 991207325-9325-01; I.D. 100699A]

RIN 0648-AJ52

#### Fisheries in the Exclusive Economic Zone Off Alaska; A Cost Recovery Program for the Individual Fishing Quota Program

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

**ACTION:** Proposed rule, request for comments.

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**SUMMARY:** NMFS proposes regulations to implement cost recovery for the Individual Fishing Quota (IFQ) program for fixed gear halibut and sablefish fisheries in waters in and off of Alaska (IFQ Program). Section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce (Secretary) to collect fees to recover actual costs incurred for Federal management and enforcement of these IFQ fisheries. This action is intended to collect such fees.

**DATES:** Comments on the proposed rule must be received at the following address not later than January 26, 2000.

**ADDRESSES:** Comments may be sent to Sue Salvesson, Assistant Regional

Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668 Juneau, AK 99802-1668, Attn: Lori J. Gravel. Hand deliveries or courier deliveries of comments may be sent to the Federal Building, 709 West 9<sup>th</sup> Street, Room 453, Juneau, AK 99801. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for this action may be obtained from the address provided here. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer). Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Dr. John T. Sproul, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to "collect a fee to recover the actual costs directly related to the management and enforcement of any \* \* \* individual fishing quota program." Section 304(d)(2)(B) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

The proposed rule would recover costs for the IFQ Program only. NMFS intends to implement cost recovery for the Community Development Quota (CDQ) program through separate rulemaking.

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

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

## Background

NMFS, Alaska Region, administers the IFQ Program. The IFQ Program is a limited access system authorized by section 303(b) of the Magnuson-Stevens Act and the Northern Pacific Halibut Act of 1982. NMFS implemented the IFQ Program in March 1995.

Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1998, NMFS developed this IFQ cost recovery proposal in accordance with the Magnuson-Stevens Act and with participation by the IFQ/CDQ Fee Collection Committee (Committee) comprised of stakeholder representatives appointed by the North Pacific Fishery Management Council (Council), the Council's Advisory Panel (AP), the full Council, and the general public.

In August 1998, NMFS identified an initial preferred alternative for the proposal, which included: (1) imposing on IFQ permit holders the responsibility of collecting and submitting IFQ fees to NMFS, (2) requiring registered buyers to provide NMFS with additional value and volume reports for developing standard prices, and (3) basing cost recovery fees on ex-vessel value as determined by the standard prices developed by NMFS.

NMFS presented a status report of the proposal to the Council and AP at their meetings in October 1998. At that time, the AP expressed concern that standard prices could differ greatly from the actual prices fishermen received for their fish. If the standard price were greater than the actual price received by fishermen, the use of NMFS standard prices would inflate the fees. The AP and Council recommended that NMFS revise the proposal to include a mechanism for basing fees on actual ex-vessel values. The Council also recommended that the proposal include an appeals process.

In response to these recommendations, NMFS has designed this proposed rule to require payment of fees based on standard ex-vessel value unless the IFQ permit holder can demonstrate a different actual ex-vessel value. The proposed rule includes an appeals process. The proposed rule would require IFQ permit holders to collect and submit fees associated with IFQ halibut and IFQ sablefish landings. It would also require IFQ registered buyers to submit information on the value and volume of purchased IFQ landings.

## Cost Recovery Program Description

An IFQ permit holder would incur a cost recovery fee liability for every

pound of IFQ halibut and sablefish that he or she lands. The IFQ permit holder would be responsible for self-collecting his or her own fee liability for all his or her IFQ halibut and IFQ sablefish landings. The IFQ permit holder would be responsible for submitting this payment to NMFS on or before the due date of January 31 following the year in which the landings were made. The dollar amount of the fee due would be determined by multiplying the IFQ fee percentage (approximately 3 percent) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

## Fee Percentage

Three percent of the ex-vessel value of fish harvested under an IFQ program is the maximum fee amount allowed by section 304(d)(2)(B) of the Magnuson-Stevens Act. This proposed rule would allow the Regional Administrator to reduce the fee percentage if actual management and enforcement costs could be recovered through a lesser percentage. NMFS will not know the actual annual costs of the IFQ Program until after the end of the Federal fiscal year (September 30). After that time, the Regional Administrator could reduce the fee percentage for that year to reflect more closely the actual IFQ-related management and enforcement costs for the past Federal fiscal year. However, in order to budget, fishermen need to know at the time of sale the maximum fee percentage that could apply to their IFQ landings made from March (season opening) through September (Federal fiscal year-end). The proposed rule would set the applicable fee percentage at 3 at the start of each year but would allow the Regional Administrator to reduce the fee percentage if management and enforcement costs could be recovered for a lesser percentage. During the development of this proposed rule, representatives of the halibut and sablefish fisheries suggested that many IFQ fishermen experience constraints in capital availability during the fishing season. If NMFS were to set a low percentage at the beginning of the fishing season that subsequently had to be increased, small-scale fishermen whose budgets were based on the lower percentage could experience negative economic consequences. Because fees are not due until January 31 of the following year, NMFS believes that for budget purposes it is preferable to establish a 3-percent fee that could be adjusted downward, based upon certain types of information, between October and December to reflect the actual costs incurred during the previous Federal fiscal year.

NMFS seeks public comment on the provision in the proposed rule to establish an initially "high" fee (e.g., 3 percent) that could be adjusted downward by the Regional Administrator in mid-season. NMFS requests public comment comparing this proposed approach with an alternative that would establish an initially "low" fee percentage (e.g., 2 percent) that could be adjusted upward by the Regional Administrator in mid-season.

NMFS would encourage IFQ permit holders to set aside the amount of the fees throughout the fishing year in order to facilitate a lump sum payment by January 31 of the following calendar year. Early payments would be allowed but would not relieve a permit holder of associated reporting requirements.

#### Calculating Ex-vessel Value

The ex-vessel value of an IFQ landing would equal the sum of all payments of monetary worth made to fishermen for the sale of the fish. This would include any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed halibut or sablefish. Retro-payments would be part of the ex-vessel value and as such have a fee liability. If they were received after the initial payment, but during the same calendar year, the cost recovery fee for those retro-payments also would be due by the following January 31. If retro-payments were received by IFQ permit holders during the year following the IFQ fishing season when those fish were landed, then cost recovery fees associated with those post-season retro-payments would be due the next January 31.

#### Ex-vessel Value: Standard Versus Actual

Throughout this discussion, "value" refers to the worth, in U.S. dollars, of any amount of landed IFQ halibut or IFQ sablefish as determined by the sale, or potential economic return for the sale, of those fish. "Price" is the worth in U.S. dollars, for 1 lb (0.45 kg) of landed IFQ fish. Therefore, in this context, value and price only mean the same thing when describing the worth of 1 lb (0.45 kg) of IFQ fish when sold.

For purposes of calculating IFQ cost recovery fees, NMFS would distinguish between two types of ex-vessel value: "actual ex-vessel value" and "standard ex-vessel value." "Actual ex-vessel value" would be the amount of money an IFQ permit holder received as payment for his or her IFQ fish sold. This proposed rule would establish "standard ex-vessel values" as the

default values on which to base fee liability calculations. However, IFQ permit holders would have the option of using "actual ex-vessel value" if they could satisfactorily document those values.

#### Fees Based on Standard Ex-vessel Value

In order to calculate standard ex-vessel values, NMFS would require IFQ registered buyers operating as shoreside processors to submit reports on the value and volume of IFQ landings. From the information contained in these reports, NMFS would extract standard prices, broken down by species, port or port group, and date. NMFS would use these standard prices to calculate standard ex-vessel values pursuant to the process described below.

#### IFQ Buyer Report

An IFQ registered buyer that also operates as a shoreside processor that receives and purchases IFQ fish landings would be required to complete and submit to NMFS by October 15 each year an IFQ registered buyer report (IFQ Buyer Report) that contained information regarding volume and value of IFQ landings by month, port, and IFQ registered buyer. NMFS would use information provided in these report to determine IFQ standard prices.

The IFQ Buyer Report would be based upon a reporting period from October 1 of the previous year to September 30 of the current year in order to allow NMFS to calculate standard prices and ex-vessel values before December 15. The information entered on the IFQ Buyer Report for January and February would relate to retro-payments made during those months by the registered buyer for IFQ landings that actually occurred during the previous calendar year. Similarly, information provided on the IFQ Buyer Report for October, November, and December would pertain to IFQ landings made in the calendar year prior to the report's due date (October 15).

These proposed new recordkeeping and reporting requirements are specified in the proposed regulations at § 679.5(1)(7).

#### NMFS Standard Price List

Based on the information received in the IFQ Buyers Report, NMFS would annually calculate and publish in the **Federal Register** a list of IFQ standard prices broken down by IFQ species, month, and port or port group.

These standard prices would remain in effect until changed by the Regional Administrator through publication in the **Federal Register** the following year.

The Regional Administrator would revise the standard prices annually based on information regarding current volume and value provided by IFQ registered buyers operating as shoreside processors. The IFQ standard prices would be calculated by NMFS to reflect as closely as practical the seasonal and regional variations in the actual ex-vessel prices of IFQ species.

The information that would be reviewed by the Regional Administrator to determine IFQ standard prices would include the following:

- (1) Landed pounds by species, port or port-group, and date;
- (2) Total ex-vessel value by species, port or port-group, and date; and
- (3) Price adjustments based on retro-payments.

#### Estimated Fee Based on Standard Ex-vessel Value

Using the IFQ Buyer Report and NMFS standard prices, NMFS would calculate standard ex-vessel values for all IFQ landings. Each year by December 31, NMFS would send each IFQ permit holder a multi-paged IFQ Fee Submission Form and a separate one-page IFQ Landing Summary and Estimated Fee Liability Form. The multi-paged Fee Submission Form would be completed by the IFQ permit holder. The one-page fee Estimate Form would be completed by NMFS and would reflect NMFS' calculations of the permit-holder's fee liability based on the amount of pounds landed and NMFS' standard ex-vessel values.

The one-page Fee Estimate Form would specify the number of IFQ pounds landed by species and area, the date of landing, the NMFS standard price per pound for those landings, the calculated standard ex-vessel value of the landings, the IFQ fee percentage, and the estimated fee liability for such landed IFQ pounds. The Fee Estimate Form would document standard ex-vessel values for all recorded IFQ pounds landed, but not necessarily sold, to IFQ registered buyers such as custom processed fish, fish sold by direct marketing, or take-home fish. NMFS would use the appropriate published IFQ standard price(S) to estimate the fee liability of landed IFQ pounds debited from each IFQ permit.

NMFS would base its calculations on the amount of IFQ halibut and IFQ sablefish landed in the pound weight equivalent deducted from an IFQ permit holder's account. This would allow a direct correlation between an IFQ permit holder's fee liability and the recorded number of IFQ pounds landed under his or her IFQ permit(s) as monitored by NMFS' Restricted Access

Management (RAM) Program. RAM would calculate the standard ex-vessel value of a permit holder's landed IFQ fish by multiplying the appropriate standard price (in U.S. dollars) by the weight (in IFQ equivalent pounds) of those fish represented in the IFQ deduction from his or her IFQ permit. The appropriate standard price used by NMFS on the IFQ fee estimate form for a given amount of landed IFQ pounds would be the price that corresponds to the same species, month of landing, and landing location documented on the NMFS standard price list. The IFQ permit holder could revise this estimated fee liability for each IFQ landing, or sub-portion of a landing, based on evidence of actual ex-vessel values.

#### **Fees Based on Actual Ex-vessel Value**

Under the proposed regulation, the actual value of landed IFQ fish would be determined when halibut or sablefish are actually sold. The IFQ permit holder could calculate his or her fee liability for landed fish based on the actual monetary value received. The fee amount would be the product (in U.S. Dollars) of multiplying that actual ex-vessel value by the fee percentage (approximately 0.03). The IFQ permit holder would document the calculations of fees based on actual ex-vessel value on the IFQ Fee Submission Form provided by NMFS.

The following example shows how an IFQ permit holder would adjust the calculation by NMFS of fee liabilities.

#### **Example of Actual Ex-vessel Value Determination**

An IFQ fisherman makes a landing of IFQ halibut at Sitka in June that results in a debit of 1,000 lbs (0.35 metric tons) from his or her halibut IFQ permit (1,000 IFQ equivalent pounds). He or she sells all the fish, headed and gutted, directly to supermarkets or restaurants. With an IFQ fee percentage of 3 percent and an actual price of \$1 per IFQ equivalent pound (IFQ lb.), the IFQ permit holder would bear a total fee liability of \$30.00 for the landing, determined as follows:

$$\begin{aligned} & (\text{IFQ Equivalent Pounds Sold} \times \text{Price per IFQ lb}) \times \text{Fee Percentage} = \text{Permit Holder Fee} \\ & (1,000 \text{ IFQ lb} \times \$1.00/\text{IFQ lb}) \times 0.03 \\ & = \$ 30.00 \end{aligned}$$

#### **Submission Form and Payment**

By January 31 of each year, each IFQ permit holder would be required to complete the multi-page IFQ Fee Submission Form and submit it to NMFS along with the fees due.

#### **Payment Compliance**

An IFQ permit holder who has incurred a fee liability would be required to pay the fee to NMFS by January 31 of the year following the calendar year in which the landing was made.

If an IFQ permit holder has made a timely payment to NMFS of an amount less than the fee liability NMFS estimated, the IFQ permit holder has the burden of demonstrating that the fee amount submitted is correct. If, upon preliminary review of the accuracy and completeness of a fee payment and the Fee Submission Form, NMFS determines the IFQ permit holder has not paid a sufficient amount, NMFS would notify the IFQ permit holder by letter. NMFS would explain the discrepancy and the IFQ permit holder would have 30 days to either pay the remaining amount that NMFS has determined should be paid or provide evidence that the amount paid is correct. If the IFQ permit holder submits evidence in support of his or her payment, NMFS will evaluate it and, if there is any remaining disagreement as to the appropriate IFQ fee, prepare an Initial Administrative Determination (IAD). The IAD would set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. An aggrieved IFQ permit holder could appeal an IAD through the Office of Administrative Appeals in NMFS as described in existing IFQ regulations (50 CFR 679.43). An IAD that is appealed within 60 days of issuance to the Office of Administrative Appeals in NMFS, would become a final agency action.

During the pendency of the appeal proceedings outlined here, the following conditions would exist: The IFQ permit holder could not transfer any QS and/or IFQ, and the IFQ permit holder could not receive QS and/or IFQ by transfer. An IFQ permit holder could pay, under protest, the disputed fee difference in order to avoid permit transfer restrictions. If the final agency action determines that the IFQ permit holder owes additional fees and if the IFQ permit holder has not paid such fees, all IFQ permit(s) held by the IFQ permit holder will be invalid until the required payment is received by NMFS. If NMFS does not receive such payment within 30 days of the issuance of the final agency action, NMFS would refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection.

#### **Limited Access System Administrative Fund (LASAF)**

Most of the IFQ fees collected would be deposited in the LASAF established in the U.S. Treasury. Up to 25 percent could be deposited separately in the U.S. Treasury and made available to cover the costs of the IFQ loan program, as required by paragraph 304(d)(2)(C) of the Magnuson-Stevens Act. Separate accounts would be created within the LASAF to ensure that the funds from the IFQ cost recovery are used only to pay for the actual costs directly related to the management and enforcement of the IFQ Program.

#### **Annual Report**

NMFS annually would publish a public report about the performance of the IFQ cost recovery. The annual report, which could be included with other reports on the performance of the IFQ Program, would provide information regarding the amount of the fees received by NMFS, the disposition of the fees, the status of the IFQ account in the LASAF, and the IFQ Program costs for the previous year.

#### **Classification**

NMFS prepared an EA/RIR/IRFA for this proposed rule that describes the management background, the purpose and need for action, the management action alternatives, and the environmental and socio-economic impacts of the alternatives. A copy of the EA/RIR/IRFA can be obtained from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

As amended October 1996, the Magnuson-Stevens Act requires the Secretary to impose a fee to recover the actual management and enforcement costs of the Alaska IFQ Program. The objective of developing the proposal for IFQ cost recovery is to collect revenue from fishermen participating in the IFQ Program to help recover the costs incurred by the Federal government as a result of the management and enforcement of the IFQ Program.

The proposed rule would apply to persons who possess and use IFQ Registered Buyer Permits or IFQ Permits (fishermen). IFQ registered buyer permit holders who do not operate as shoreside processors or those IFQ permit holders who do not land IFQ fish (i.e., possess unlanded permits) would not be subject to this proposed rule. In 1998, approximately 9 percent of IFQ pounds available remained unlanded by the end of the season. As for IFQ registered buyers, generally, fewer than 40 percent of those who held IFQ Registered Buyer Permits actually reported landings (i.e.,

active buyer permit users). In addition, imposition of the proposed cost recovery fees could indirectly impact the income of IFQ crew members if IFQ permit holders reduce the income to members of their crews due to the cost recovery fees. Detailed figures for the number of IFQ crew members are not available.

The actions being proposed could directly affect two types of registered small entities as defined by the Small Business Administration: (1) IFQ registered buyers who operate as shoreside processors and purchase IFQ halibut or sablefish from IFQ permit holders, and (2) halibut and sablefish IFQ permit holders. By year-end 1998, 3,978 persons held one or more IFQ permits (fishermen) and reported landings of at least 1 lb (0.45 kg) of IFQ fish. Also in 1998, NMFS issued 859 IFQ registered buyer permits, but only 309 were active IFQ registered buyers. Only 79 of the active IFQ registered buyers operated as shoreside processors that purchased IFQ halibut or sablefish. The 79 IFQ registered buyers identified themselves in 1998 as shoreside processors, and would be the only type of IFQ registered buyers regulated under the proposed action. The number of IFQ permits and IFQ registered buyer permits has decreased each year since 1995 when the program was initiated and is expected to stabilize near 1998 levels. For purposes of the IFRA, all 79 IFQ permit holders are considered small entities. Therefore, the total number of small entities that this rule would apply to IFQ registered buyers and permit holders would be expected to be equal to or less than 4,057. This proposed rule would impose new Recordkeeping and reporting requirements. These are discussed below in the context of the Paperwork Reduction Act burden.

A broad variety of alternatives was considered in the development of the proposed regulations for IFQ cost recovery. The alternatives were considered in the context of combining various options associated with a specific set of necessary program elements. Some of the necessary program elements include the scope of the IFQ cost recovery regulations; identification of the IFQ fishery; the annual fee percentage value; the IFQ fish subject to the IFQ cost recovery fee; the method used to determine ex-vessel values of IFQ halibut and IFQ sablefish landings; the method used to establish standard ex-vessel prices for IFQ halibut and IFQ sablefish; the methods of accounting for post-season ex-vessel price adjustments and other corrections to ex-vessel value; IFQ fee collection

and submission mechanisms and schedules; and the implementation date.

In selecting the preferred alternative, NMFS incorporated many elements designed to minimize negative impacts on small entities.

1. The fee would apply only to IFQ halibut and sablefish landings, and not to all species landed by IFQ fishermen.

2. Fishermen would be able to choose whether to use actual or standard ex-vessel value of their IFQ landings whenever possible.

3. Standard prices would be primarily based on current year ex-vessel prices rather than previous year ex-vessel prices, and would be refined to represent ex-vessel prices by species, by month, and by port-group.

4. Registered buyers and IFQ permit holders would be required to submit recordkeeping and reporting information only once a year, rather than multiple mid-season submissions.

NMFS also considered the alternative of not implementing an IFQ cost recovery (status quo). The status quo alternative would minimize economic impacts on small entities in that no new fee would be imposed. However, this alternative would not be in compliance with the Magnuson-Stevens Act. Alternatives to the proposed recordkeeping and reporting requirements could reduce economic impacts on small entities. For instance, implementing an electronic reporting system could reduce the burdens associated with filing annual reports; however, NMFS has not ascertained whether electronic reporting would allow for comparable, easily interpreted data and costs associated with acquiring new software could counterbalance any benefits. NMFS also considered extracting data from reports currently required of AGF&G. The ADF&G reports would not provide all the necessary data in a sufficiently timely manner. NMFS also considered an alternative that would not have assessed a fee on retro-payments. While this approach would benefit permit-holders who accepted retro-payments, it would not be acceptable to those who do not. In addition, this approach might not comply with the spirit of the statute to assess a fee on the full amount of payment.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). Authorization for the proposed additional information collected under 50 CFR 679.5(l)(7) for this IFQ cost recovery has been requested from Office of Management and Budget (OMB). Notwithstanding any other provision of law, no person is required to respond to

and no person shall 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.

New recordkeeping and reporting requirements are proposed for the IFQ permit holder and for the IFQ registered buyer operating as a shoreside processor and buying halibut or sablefish landed under the IFQ Program. The estimated time for an IFQ permit holder to complete the IFQ payment submission form package is 2.0 hours per response. The time required to complete the buyer report is estimated to be 2.0 hours per report. The estimated response times shown include the time to review the instructions, search existing sources, gather and maintain the data needed, and complete and review the collection of information.

Public comment is sought regarding the necessity of the proposed collection of information for the proper performance of the function of the agency, including whether the information has 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, including the use of automated collection techniques or other types of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

None of the alternatives discussed in the EA/RIR/IRFA are likely to significantly affect the quality of the human environment, or are expected to have a significant impact on endangered or threatened species, or marine mammals.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

#### List of Subjects in 50 CFR Part 679

Alaska, Cost recovery, Fees, Fisheries, IFQ, and Recordkeeping and reporting requirements.

Dated: December 15, 1999.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended to read as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

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

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, definitions for listed terms are added in alphabetical order to read as follows:

**§ 679.2 Definitions**

\* \* \* \* \*

*IFQ actual ex-vessel value* means the U.S. dollar amount of all compensation, monetary or non-monetary, including any IFQ retro-payments received by an IFQ permit holder for the purchase of his or her IFQ halibut or IFQ sablefish landing(s) described in terms of IFQ equivalent pounds.

\* \* \* \* \*

*IFQ equivalent pound(s)* means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and headed and gutted weight for halibut.

*IFQ fee liability* means that amount of money for IFQ cost recovery, in U.S. dollars, owed to NMFS by an IFQ permit holder as determined by multiplying the appropriate standard ex-vessel value or actual ex-vessel value of his or her IFQ halibut or IFQ sablefish landing(s) by the appropriate IFQ fee percentage applicable at the time the ex-vessel value, or portion thereof, of such landing(s) is received by the IFQ permit holder.

*IFQ fee percentage* means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use to calculate the IFQ cost recovery fee liability for an IFQ permit holder.

\* \* \* \* \*

*IFQ permit holder* means the person identified on an IFQ permit, at the time a landing is made, as defined at § 679.4(d)(3)(B).

*IFQ program* means the individual fishing quota program for the fixed gear fisheries for Pacific halibut and sablefish in waters in and off Alaska and governed by regulations under this part.

*IFQ registered buyer* means the person identified on a registered buyer permit, as defined at § 679.4(d)(2).

\* \* \* \* \*

*IFQ retro-payment* means the U.S. dollar value of a payment, monetary or non-monetary, made to an IFQ permit holder for the purchase of IFQ halibut or IFQ sablefish landed at some previous time.

\* \* \* \* \*

*IFQ standard ex-vessel value* means the total U.S. dollar amount of IFQ halibut or IFQ sablefish landings as calculated by multiplying the number of landed IFQ equivalent pounds by the appropriate IFQ standard price determined by the Regional Administrator.

*IFQ standard price* means a price, expressed in U.S. dollars per IFQ equivalent pound, for landed IFQ halibut and IFQ sablefish determined annually by the Regional Administrator and documented in an IFQ standard price list published by NMFS.

\* \* \* \* \*

*Limited Access System Administrative Fund (LASAF)* means the administrative account used for depositing cost recovery fee payments into the U.S. Treasury as described in the Magnuson-Stevens Act under section 304(d)(2)(C)(i) and established under section 305(h)(5)(B).

\* \* \* \* \*

*NMFS Person Identification Number* means a unique number assigned by NMFS to any person who applied for, or who has been issued, a Certificate, License, or Permit under any fishery management program administered by the Alaska Region for purposes of the NMFS/Alaska Region Integrated Regional Data System.

\* \* \* \* \*

3. In § 679.4, revise paragraph (a)(5) and add paragraph (d)(7) to read as follows:

**§ 679.4 Permits.**

(a) \* \* \*

(5) *Sanctions and denials.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904. Such procedures are required for enforcement purposes, not administrative purposes.

\* \* \* \* \*

(d) \* \* \*

(7) *Validity.* An IFQ permit issued under this part is valid only if all IFQ fee liability of the IFQ permit holder that is due as a result of final agency action has been paid as specified in §§ 679.45 and 679.4(e)(7)(ii).

\* \* \* \* \*

4. In § 679.5, add paragraph (l)(7) to read as follows:

**§ 679.5 Recordkeeping and reporting.**

\* \* \* \* \*

(l) \* \* \*

(7) *IFQ cost recovery program* —(i) *IFQ buyer report.*

(A) *Applicability.* An IFQ registered buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut annually must submit to NMFS a complete IFQ Buyer Report as described in this paragraph (l) and as provided by NMFS for each reporting period, as described at § 679.5(1)(7)(i)(E), in which the registered buyer receives IFQ fish.

(B) *Due date.* A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than the October 15 following the reporting period in which the IFQ registered buyer receives the IFQ fish.

(C) *Information required.* A complete IFQ Buyer Report must include the following information:

(1) *IFQ registered buyer identification,* including:

- (i) name,
- (ii) registered buyer number,
- (iii) social security number or tax identification number,
- (iv) NMFS person identification number (if applicable),
- (v) business address,
- (vi) telephone number,
- (vii) facsimile telephone number,
- (viii) primary registered buyer activity,

(ix) other registered buyer activity, and

(x) landing port location;

(2) *Pounds purchased and values paid.* (i) The monthly total weights, represented in IFQ equivalent pounds by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(ii) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(3) *Value paid for price adjustments.*

(i) The monthly total U.S. dollar amount of any IFQ retro-payments (correlated by IFQ species, landing month(s), and month of payment) made in the current year to IFQ permit holders for landings made during the previous calendar year;

(ii) *Certification,* including the signature of the individual authorized by the IFQ registered buyer to submit the IFQ Buyer Report, and date of signature.

(D) *Submission address.* A complete IFQ Buyer Report must be received at the following address by mail or facsimile transmission: Administrator Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802-1668, Facsimile: (907) 586-7354.

(E) *Reporting period.* The reporting period of the IFQ Buyer Report shall

extend from October 1 through September 30 of the following year, inclusive.

(ii) *IFQ permit holder Fee Submission Form*—(A) *Applicability*. An IFQ permit holder who holds an IFQ permit against which a landing was made must submit to NMFS a complete IFQ permit holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal*. A complete IFQ permit holder Fee Submission Form must be postmarked or received by the Regional Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Contents of an IFQ Fee Submission Form*. For each of the sections described below, a permit holder must provide the specified information.

(1) *Identification of the IFQ permit holder*:

An IFQ permit holder with an IFQ landing must accurately record on the identification section of the IFQ Fee Submission Form the following information:

(i) the printed name of the IFQ permit holder;

(ii) the NMFS person identification number;

(iii) the social security number or tax ID number of the IFQ permit holder;

(iv) the business mailing address of the IFQ permit holder; and

(v) the telephone and facsimile number (if available) of the IFQ permit holder.

(2) *IFQ landing summary and estimated fee liability*

NMFS will provide to an IFQ permit holder an IFQ Landing Summary and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with (2)(i) of this paragraph. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(i) *Revised fee liability calculation*. To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(ii) *Documentation*. If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate

documentation by the 30<sup>th</sup> day after the date of such request.

(3) *Fee calculation section*—(i) *Information required*. An IFQ permit holder with an IFQ landing must record the following information on the Fee Calculation page: The name of the IFQ permit holder; the NMFS person identification number; the fee liability amount due for each IFQ permit he or she may hold; the IFQ permit number corresponding to such fee liability amount(s) due; the total price adjustment payment value for all IFQ halibut and/or sablefish (e.g., IFQ retro-payments) received during the reporting period for the IFQ Fee Submission Form as described in § 679.5(l)(7)(ii)(D); and the fee liability amount due for such price adjustments.

(ii) *Calculation of total annual fee amount*. An IFQ permit holder with an IFQ landing must perform the following calculations and record the results on the Fee Calculation page: add all fee liability amount(s) due for each IFQ permit and record the sum as the sub-total fee liability for all permits; multiply price adjustment payment(s) received for each IFQ species by the fee percentage in effect at the time the payment(s) was received by the IFQ permit holder; add the resulting fee liability amounts due for all price adjustment payments for each IFQ species, then enter the sum as the sub-total fee for price adjustments; add the sub-total fee liability for all permits and the sub-total fee for price adjustments, then enter the resulting sum as the total annual fee amount on the Fee Calculation page and on the Fee Payment page.

(4) *Fee payment and certification section*—(i) *Information required*. An IFQ permit holder with an IFQ landing must provide his or her NMFS person identification number and must sign and date and have notarized by a Notary Public the Fee Payment section and record the following: (i) his or her printed name; (ii) the total annual fee amount as calculated and recorded on the Fee Calculation page; (iii) the total of any pre-payments submitted to NMFS that apply to the total annual fee amount; (iv) the remaining balance fee; and (v) the enclosed payment amount.

(ii) *Calculation of balance fee payment*. An IFQ permit holder with an IFQ landing must perform the following calculation on the Fee Payment section of the Fee Submission Form: Subtract from the total annual fee amount the total of all pre-payments made (if any) to NMFS and any credits held by NMFS that are applicable to that year's total IFQ cost recovery fees, and record the result as the balance fee amount due.

(D) *Reporting Period*. The reporting period of the IFQ Fee Submission Form shall extend from January 1 to December 31 of the year prior to the January 31 due date described in § 679.5(l)(7)(ii)(B).

\* \* \* \* \*

5. In § 679.41, revise paragraph (c)(8) and add paragraph (c)(9) to read as follows:

**§ 679.41 Transfer of quota shares and IFQ.**

\* \* \* \* \*

(c) \* \* \*

(8)(i) The person applying to make or receive the IFQ or QS transfer has paid all IFQ fees that have become due as a result of an initial administrative determination.

(ii) The person applying to make or receive the IFQ or QS transfer who has not paid all IFQ fees that are due (as provided under § 679.45(a)) has timely appealed the administrative determination that IFQ fees have not been paid in full and has submitted to NMFS an amount sufficient to satisfy any disputed liability pending a final agency action.

(9) Other pertinent information requested on the Application for Transfer has been supplied to the satisfaction of the Regional Administrator.

\* \* \* \* \*

6. Section 679.45 is added to read as follows:

**§ 679.45 IFQ cost recovery program.**

(a) *Cost recovery fees*—(1) *Responsibility*. The person documented on the IFQ permit as the permit holder at the time of an IFQ landing must comply with the requirements of this section. Subsequent transfer of QS or IFQ does not affect the permit holder's liability for noncompliance with this section.

(2) *IFQ Fee Liability Determination*. After each IFQ fishing year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ pounds landed during that IFQ fishing year for each permit as part of the IFQ Landing and Estimated Fee Liability page described at § 679.5(l)(7)(ii)(C)(2). The summary will include an estimated IFQ fee liability based on the standard ex-vessel values of the landings. The summary and estimated fee liability will include details of IFQ equivalent pounds landed by permit, port or port-group, species, date, and IFQ standard prices. The permit holder must either accept NMFS' estimate of IFQ liability or revise NMFS' estimate of IFQ fee liability using the Fee Submission Form described at § 679.5(1)(7)(ii). If the permit holder revises NMFS' estimate of his or her fee



liability, NMFS may request in writing that the permit holder submit documentation establishing the factual basis for the revised calculation. If the permit holder fails to provide adequate documentation by the 30<sup>th</sup> day after the date of such request, NMFS will determine the IFQ permit holder's fee liability based on standard ex-vessel values.

(3) *Fee Collection.* An IFQ permit holder with an IFQ landing is responsible for self-collecting his or her own fee during the calendar year in which the IFQ fish is harvested.

(4) *Payment*—(i) *Payment due date.* An IFQ permit holder must submit his or her IFQ fee liability payment(s) to NMFS at the address provided in this section at paragraph (a)(4)(iii) not later than by January 31 of the year following the calendar year in which the IFQ landings were made.

(ii) *Payment recipient.* Make payment payable to NMFS.

(iii) *Payment address.* Mail payment and related documents to: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802-1668, Facsimile: (907) 586-7354.

(iv) *Payment method.* Payment must be made by personal check drawn on a U.S. bank account, money order, or bank certified check.

(b) *IFQ ex-vessel value determination and use*—(1) *General.* An IFQ permit holder must use either the IFQ standard ex-vessel value or the IFQ actual ex-vessel value when determining the IFQ fee liability based on ex-vessel value. An IFQ permit holder must base all fee liability calculations on the ex-vessel value that correlates to landed IFQ fish that is recorded in IFQ equivalent pounds.

(2) *IFQ actual ex-vessel value.* An IFQ permit holder that uses actual ex-vessel value, as defined in § 679.2, to determine IFQ fee liability must document actual ex-vessel value for each IFQ permit.

(c) *IFQ standard ex-vessel value determination and use*—(1) *Use of standard price.* An IFQ permit holder that uses standard ex-vessel value to determine the IFQ fee liability as part of a revised IFQ fee liability submission must use the corresponding standard price(s) as published in the **Federal Register**.

(2) *Duty to publish list.*(i) *General.* Each year the Regional Administrator will publish IFQ standard prices in the **Federal Register** during the last quarter of each calendar year. The standard prices will be described in U.S. dollars per IFQ equivalent pound, for IFQ

halibut and sablefish landings made during the current calendar year.

(ii) *Effective duration.* The IFQ standard prices will remain in effect until revised by the Regional Administrator by notification in the **Federal Register** based upon new information of the type set forth in this section. IFQ standard prices published in the **Federal Register** by NMFS shall apply to all landings made in the same calendar year as the IFQ standard price publication and shall replace any IFQ standard prices previously provided by NMFS that may have been in effect for that same calendar year.

(iii) *Determination.* NMFS will calculate the IFQ standard prices to reflect, as closely as practical by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided in the IFQ Buyer Reports as described in § 679.5(l)(7)(i). The Regional Administrator will base IFQ standard prices on the following types of information:

(A) Landed pounds by IFQ species, port-group, and month;

(B) Total ex-vessel value by IFQ species, port-group, and month; and

(C) Price adjustments, including IFQ retro-payments.

(d) *IFQ fee percentage.*—(i) *Default percentage.* The IFQ fee percentage is 3 percent (0.03) unless adjusted by the Regional Administrator by publication in the **Federal Register** in accordance with § 679.45(d)(3).

(2) *Calculating fee percentage value.* Each year the Regional Administrator will calculate the fee percentage.—(i) *Factors.* In making the calculations the Regional Administrator will consider the following factors:

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

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

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

(D) The funds available for the IFQ program in the Limited Access System Administrative Fund (LASAF); and

(E) Nonpayment of fee liabilities.

(ii) *Methodology.* In making the calculation, the Regional Administrator will use the methodology described here.

$$[100 \times (DPC - AB) / V] / (1 - NPR)$$
 where:

DPC is the direct program costs for the IFQ fishery for the previous fiscal year,

AB is the projected end of the year LASAF account balance for the IFQ program,

V is the projected ex-vessel value of the catch subject to the IFQ fee for the current year, and

NPR is the fraction of the fee assessments that is expected to result in nonpayment.

(3) *Adjustments.* (1) *General.* During or before the last quarter of each year, the Regional Administrator will consider adjusting the IFQ fee percentage. Consideration will be based on the calculations described in § 679.45(d)(2). The Regional Administrator may reduce the IFQ fee percentage at any time based on new information of the type set forth in § 679.45(d)(2).

(ii) *In-season effective period.* An in-season reduction in the IFQ fee percentage supersedes the IFQ fee percentage previously in effect for the calendar year and remains in effect through the end of the calendar year in which it was determined unless otherwise adjusted by the Regional Administrator.

(4) *Publication.* The Regional Administrator will publish notification in the **Federal Register** any adjustment of the IFQ fee percentage.

(5) *Applicable percentage.* The IFQ permit holder must use the IFQ fee percentage in effect at the time an IFQ landing is made to calculate his or her fee liability for such landed IFQ pounds unless the percentage is subsequently adjusted as described in § 679.45(d)(3). The IFQ permit holder must use the IFQ percentage in effect at the time an IFQ retro-payment is received by the IFQ permit holder to calculate his or her IFQ fee liability for the IFQ retro-payment.

(e) *Non-payment of fee.* If an IFQ permit holder does not submit a complete Fee Submission Form and corresponding payment by the due date described in § 679.45(a)(2) and (3), the Regional Administrator may:

(1) at any time thereafter send an IAD to the IFQ permit holder stating that the IFQ permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the IFQ permit holder pursuant to § 679.45(a)(2) is the amount of IFQ fee due from the IFQ permit holder.

(2) disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with § 679.41(c)(8)(i). Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, any IFQ permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid. If payment is not received by the 30<sup>th</sup> day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(f) *Underpayment of IFQ fee.* (1) When an IFQ permit holder has incurred a fee liability and made a timely payment to NMFS of an amount



less than the NMFS estimated IFQ fee liability, the Regional Administrator will review the Fee Submission Form and related documentation submitted by the IFQ permit holder. If the Regional Administrator determines that the IFQ permit holder has not paid an sufficient amount, the Regional Administrator may disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with § 679.41(c)(4). The Regional Administrator will notify the IFQ permit holder by letter that an sufficient amount has not been paid and that the IFQ permit holder has 30 days from the date of the letter to either pay the amount determined to be due or provide additional documentation to prove that the amount paid was the correct amount. The Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder in support of his or her payment. If the Regional Administrator determines that the additional documentation does not meet the IFQ permit holder's burden of proving his or her payment is correct, the Regional Administrator will send the permit holder an IAD indicating that the permit holder did not meet the burden of proof to change the IFQ fee liability as calculated by the Regional Administrator based upon the IFQ standard ex-vessel value.

(2) After expiration of the 30-day period, the Regional Administrator will issue and IAD and notify the IFQ permit holder. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the permit holder. An IFQ permit holder who receives an IAD may appeal pursuant to § 679.43. In an appeal of an IAD made under this section, the IAD permit holder has the burden of proving his or her claim.

(3) If the permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination that additional sums are due from the IFQ permit holder, the IFQ permit holder must pay any IFQ fee amount determined to be due not later than 30 days from the issuance of the final agency action. Once a fee liability determination becomes final, any IFQ permit held by the IFQ permit holder will be deemed not valid until all IFQ fee liabilities have been paid. If payment is not received by the 30<sup>th</sup> day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(g) *Over payment.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the IFQ fee liability determined to be due by the

final agency action will be returned to the IFQ permit holder unless the permit holder requests the agency to credit the excess amount against the IFQ permit holder's future IFQ fee liability.

(h) *Appeals and requests for reconsideration.* An IFQ permit holder who receives and IAD may either appeal the IAD pursuant to § 679.43 or request reconsideration. Within 60 days from the date of issuance of the IAD or the Regional Administrator may undertake a reconsideration of the IAD on his or her own initiative. If a request for reconsideration is submitted or the Regional Administrator initiates a reconsideration, the 60-day period for appeal under § 679.43 will begin anew upon issuance of the Regional Administrator's reconsidered IAD. The Regional Administrator may undertake only one reconsideration of the IAD, if any. If an IFQ permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. In any appeal or reconsideration of an IAD made under this section, an IFQ permit holder has the burden of proving his or her claim.

(i) *Annual report.* NMFS will publish annually a report describing the status of the IFQ Cost Recovery Program.

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