

Dated: July 31, 2006.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 679 and 680

[Docket No. 060424108-6204-02; I.D. 040706A]

RIN 0648-AT43

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to amend the Individual Fishing Quota (IFQ) Cost Recovery Program for the Halibut and Sablefish IFQ and the Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Programs. This action modifies the procedure NMFS uses to publish notification of adjustment of the IFQ fee percentage for the IFQ Cost Recovery Program in the Halibut and Sablefish IFQ and the Crab Rationalization Programs. This action is necessary to provide timely and efficient notice of fee obligations while ensuring consistency with all applicable statutes. This action is intended to improve the fee collection methods required for all Alaska IFQ programs under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is necessary to promote the objectives of the Magnuson-Stevens Act with respect to the IFQ fisheries managed by NMFS in the Alaska Region.

**DATES:** Effective on September 5, 2006.

**ADDRESSES:** Copies of the Categorical Exclusion (CE), regulatory impact review (RIR), and regulatory flexibility certification prepared for this action are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Walsh, or from NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK 99801, or by calling the Sustainable Fisheries

Division, Alaska Region, NMFS, at 907-586-7228.

**FOR FURTHER INFORMATION CONTACT:**

Bubba Cook, 907-586-7425 or [bubba.cook@noaa.gov](mailto:bubba.cook@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

#### Halibut and Sablefish IFQ Cost Recovery

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

Section 304(d)(2)(B) of the Magnuson-Stevens Act sets a maximum fee of 3 percent of the ex-vessel value of fish harvested under an IFQ program. Current regulations allow NMFS to reduce the fee percentage if actual management and enforcement costs are recoverable through a lesser percentage. NMFS will not know the actual annual costs of IFQ-related management and enforcement until after the end of each Federal fiscal year (September 30). If the management and enforcement costs total less than the 3 percent fee, NMFS will reduce the fee percentage for the new Federal fiscal year. Fishermen will not know at the time they sell their IFQ fish exactly what fee percentage will be applied to their IFQ landings made from February (season opening) through September (Federal fiscal year-end). Therefore, NMFS encourages IFQ permit holders to set aside the full 3 percent throughout the fishing year so a lump sum payment may be made by January 31 of the following calendar year. Early payments are allowed but do not relieve a permit holder of associated reporting requirements.

#### Crab Rationalization Cost Recovery

In 2005, section 313(j) of the Magnuson-Stevens Act provided supplementary authority to section

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

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

Section 313(j) includes specific cost recovery requirements to accommodate the crab processing industry and to address problems experienced under the Halibut and Sablefish IFQ cost recovery program. This section provides NMFS the authority to collect 133 percent of the actual costs of management and enforcement. By collecting 133 percent, 25 percent of that amount can be set aside for the IFQ loan program, authorized by section 303(d)(4), and the remaining 75 percent more fully reimburses the management and enforcement costs of the program. Additionally, section 313(j) requires cost recovery fees to be paid in equal shares by the harvesting and processing sectors. Catcher/Processors, a combination of both sectors, pay the full fee percentage.

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

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

#### The Effect of this Action

This final rule amends the existing regulations at §§ 679.45 and 680.44 addressing the methods by which NMFS calculates fee percentages and provides notice under the cost recovery provisions of the Halibut and Sablefish IFQ Program and Crab Rationalization Program. Calculation of the fee percentage under this action becomes a ministerial duty conducted by NMFS. This action does not affect the ex-vessel value determination under either program nor does it affect the current structure or administration of the standard prices calculated for the Halibut and Sablefish IFQ Program or the Catcher/Processor ex-vessel values calculated for the Crab Rationalization Program. NMFS makes minor changes to the current fee regulations to ensure full compliance with the APA (5 U.S.C. 501 *et seq.*, 701 *et seq.*) while improving administrative efficiency.

The principal elements of this amendment are described and explained in detail in the preamble to the proposed rule and are not repeated here. This final rule is substantively the same as the proposed rule published May 8, 2006 (71 FR 26728). However, this final rule corrects an incorrect cross-reference at § 680.44(g) by changing the reference citation for § 680.5(f) to § 680.5(g).

The proposed rule to amend the IFQ Cost Recovery Program for the Halibut and Sablefish IFQ and the BSAI Crab Rationalization Programs was published in the **Federal Register** on May 8, 2006 (71 FR 26728). Comments on the proposed rule were invited through June 7, 2006. NMFS received no comments on the proposed rule.

#### Classification

The Administrator, Alaska Region, NMFS, determined that the regulatory amendment is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification or the economic impact of the rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

#### List of Subjects in 50 CFR Parts 679 and 680

Alaska, Determinations and appeals, Fisheries, Recordkeeping and reporting requirements.

Dated: July 31, 2006.

#### Samuel D. Rauch III

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

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

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

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

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

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

#### § 679.45 IFQ cost recovery program.

\* \* \* \* \*

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

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and

publish the fee percentage according to the following factors and methodology:

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

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

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

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

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

$$100 \times (\text{DPC} / \text{V})$$

where:

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

“V” is the ex-vessel value of the catch subject to the IFQ fee for the current year.

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

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

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

\* \* \* \* \*

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

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

**Authority:** 16 U.S.C. 1862.

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

#### § 680.44 Cost recovery.

(a) \* \* \*

(2) \* \* \*

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

port or port-group, species, date, and prices.

\* \* \* \* \*

(c) \* \* \*

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

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

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

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

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

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

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

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

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

Harvesting and Processing Sectors:  
[100 (DPC/ V)] 0.5

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

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

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

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

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

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(g) *Fee submission form.* An RCR must submit an RCR permit holder fee submission form according to § 680.5(g).  
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