May 29, 2026

North Pacific Fishery Management Council
1007 West 3rd Avenue, Suite 400
L92 Building, 4th Floor
Anchorage, AK 99501

Subj: Cost Recovery Report – Agenda Item C - 4

Dear Chair Drobnica and Members of the North Pacific Fishery Management Council,

On behalf of the associations representing stakeholders in the various Limited Access Privilege Programs (LAPPs) and the Community Development Quota (CDQ) Program, thank you for the opportunity to provide comments regarding NOAA Fisheries' 2025 Cost Recovery Report for Alaska (Agenda Item C – 4). For years, the undersigned Alaska fishing industry participants have repeatedly requested that NOAA Fisheries improve transparency, accountability, and consistency in the administration of cost recovery for LAPP and CDQ programs. Those longstanding concerns were comprehensively captured in a June 2025 motion made by the Council which requested that the National Marine Fisheries Service Alaska Region (NMFS) and the NOAA Office of Law Enforcement (NOAA OLE) make specific changes to cost recovery practices as well as include additional information in subsequent cost recovery reports that improved transparency of this program.

After reviewing the 2025 Cost Recovery Report (the Report), we appreciate and acknowledge that NOAA and partner agencies have made some progress on this highly important topic and appreciate rent, lease and utility costs are no longer included as a part of cost recovery. However, we continue to have significant concerns because the Report has revealed that NOAA OLE has adopted a significantly broader interpretation of recoverable enforcement costs than what is allowed by the Magnuson Stevens Act (MSA), implementing regulations, and multiple agency policy documents; and have not provided specific information on violations that are billed to cost recovery or on personnel hours billed to cost recovery. While this non-responsiveness to the specific information requests is troubling and should be addressed immediately, even more concerning is NOAA OLE's departure from the clear statutory, regulatory, and administrative policies governing cost recovery. As such, we respectfully request that the Council initiate action at this meeting to specifically define in regulation the NOAA OLE activities that are "incremental" and "directly related" to the management of a LAPP or CDQ program and those activities which are not.

What NOAA OLE Cost Recovery Is Allowed?

The MSA authorizes NOAA Fisheries to recover only the "actual costs directly related to the management, data collection, and enforcement" of LAPPs and CDQ programs. From the inception of these programs nearly a decade ago, NOAA repeatedly represented in rulemaking and policy that recoverable costs would be limited to “incremental” costs — meaning costs that would not exist “but/for” the LAPP or CDQ program itself. The 2025 Cost Recovery Report strongly reaffirms this principle in multiple sections by citing the MSA, cost recovery rulemaking for multiple LAPPs and multiple agency policies. Section 2 of the Report states that recoverable costs must satisfy three criteria:

1. the cost must be directly associated with the LAPP or CDQ program;
2. the cost must go beyond general fisheries management; and
3. the cost must exist because the program exists.

Specifically, Appendix A provides updated internal guidance to NOAA staff and partner agencies directs how incremental costs should be tracked and justified. Appendix B further directs partner agencies to specifically document how billed costs are incremental and directly related to the LAPP or CDQ program before those costs are assessed to industry. <u>The Report, its appendices, and agency memos contained or reference therein articulate clear guidance consistent with statute, rulemaking, and long-standing agency policy.</u>

Alaska NOAA OLE Broader Interpretation of Recoverable Costs

While most NOAA divisions and partner agencies appear to have embraced this policy guidance, NOAA OLE’s statement in Appendix E and related sections of the Report reveals that NOAA OLE has adopted a much broader interpretation of recoverable costs than was originally contemplated under the MSA, implementing regulations, and NOAA policy guidance. The clearest example appears on page 5, “NOAA OLE considers the majority of work performed by Enforcement Officers and Agents in investigating violations, potential and confirmed, within LAPPs to be recoverable.” This approach represents a major policy shift. Rather than distinguishing between general fisheries enforcement and uniquely incremental LAPP enforcement, NOAA OLE now presumes that most enforcement activity occurring within a LAPP fishery is recoverable simply because it occurs within the LAPP. NOAA OLE does not appear to meaningfully apply the concepts of “but/for” and “incremental costs.” Instead, NOAA OLE appears to rely heavily on the generalized assertion that LAPP fisheries are “more complex” and therefore justify broader application of cost recovery. While LAPP fisheries certainly involve additional complexity, complexity alone does not satisfy the “incremental cost” standard described throughout the Report.

Further, the Report also raises substantial concerns regarding NOAA OLE’s transparency and documentation of hours spent on cost recovery. The Council requested additional information regarding investigations, including the number of investigations, the extent to which investigations are specifically LAPP-related, and staffing levels and hours necessary to carry out NOAA OLE’s work. NOAA OLE responded that they do not track enforcement activities at an individual case level using 15-minute increments and instead uses broad allocation methodologies based on case load, patrol hours, boardings, and pulse operations. That admission is significant because it suggests NOAA OLE may not actually be identifying whether specific enforcement work is incremental to the LAPP itself. Rather, the agency appears to seek cost recovery across broad categories of enforcement action and programs based on generalized workload assumptions. While that methodology may be more administratively efficient, it is not consistent with the directive to only pursue cost recovery for those actions "directly associated" and "beyond general fisheries management" standards established in Section 2 and Appendix A of the Report.

NOAA OLE's Approach in Alaska Is a National Outlier

The concerns highlighted here are not mere abstractions of policy decision – they have real world financial consequences for Alaskan fishmen as enforcement costs have remained substantial over the past decade – averaging over $3.75 million annually. The Report documents that NOAA OLE costs represent more than $3.82 million in 2025, which is 42% of total Alaska catch share program costs. We appreciate the Report acknowledges that NOAA is engaged in a national review of cost recovery consistency across regions. That review is important because the current Alaska methodology appears considerably broader than the cost recovery practices historically applied in other NOAA regions. You do not have to conduct an in-depth review to quickly determine that Alaska LAPP enforcement costs substantially exceed comparable catch share programs anywhere else in the country (see Table 1). In fact, many NOAA regions throughout the country have reported $0 expended for NOAA OLE cost recovery.

Recommendations

The fishing industry signatories fully support sustainable fisheries management, robust compliance programs, and strong enforcement of fishery regulations. Industry is not arguing that no NOAA OLE costs are recoverable. Rather, the concern is that NOAA OLE appears to have shifted away from the longstanding "incremental cost" framework governed by law and regulation and instead have adopted a presumption that most enforcement occurring within a LAPP fishery is recoverable. That interpretation risks transforming cost recovery from a narrow reimbursement mechanism into a broad funding source for general federal fisheries enforcement operations in Alaska. We would note that if Congress and the agency had intended that all enforcement costs be recoverable under cost recovery, then Congress and the Agency could and would have clearly stated such a mandate.

It is clear at this juncture that NOAA OLE in Alaska does not intend to limit their broad interpretation of allowable cost recovery activities without additional guidance and direction. The lack of transparency on NOAA OLE costs makes it difficult for industry or the Council to independently evaluate whether NOAA OLE's billed costs are appropriately recoverable. Accordingly, we respectfully request that the Council take action at this meeting to initiate a rulemaking which defines in regulation those costs and activities that are considered to be baseline / general fisheries enforcement and then also define incremental LAPP enforcement activities. Due to the differing elements associated with each LAPP program, these "but/for" distinctions may vary for each LAPP program, however with a robust public process that draws upon the expertise and experience of LAPP fishery program participants, we are confident that working together on a mutually acceptable definition for these activities can be developed.

Conclusion

The “incremental cost” principle has governed Alaska cost recovery programs for many years and remains the central organizing principle repeatedly described throughout NOAA’s own 2025 Cost Recovery Report. Maintaining that standard is essential to ensuring fairness, accountability, transparency, and consistency in the administration of Alaska’s cost recovery programs. Thank you for your consideration of these comments and for your continued oversight of Alaska’s cost recovery programs.

Sincerely,

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Table 1: Limited Access Privilege Program (LAPP) Costs, OLE Costs Outside of Alaska

Program & Sector	Year	Total Program Costs	OLE Costs	OLE Staff Hours	Participation -- Number of Permittees & Vessels (where available)
Pacific Fishery Management Council (PFMC)[1]					
Trawl IFQ (Inshore Sector)	2025	$2,112,278	**$52,970**	1,041	119 Eligible IFQ Vessel Accounts, ~75 active vessels (non-Pacific whiting & Pacific whiting catcher vessels)
Trawl IFQ (Catcher/Processor Sector)	2025	$28,615	**$2,216**	38	1 cooperative permit, 10 active vessels (Pacific whiting only)
Trawl IFQ (Mothership Sector)	2025	$322,467	**$1,358**	23	1 cooperative permit, 4 Mothership vessels, 17 active catcher vessels (Pacific whiting only)
New England Fishery Management Council (NEFMC)[2]					
Sea Scallop IFQ Program	2025	$112,656	**$0**	0	109 Limited Access General Category IFQ permit holders.
Mid-Atlantic Fishery Management Council (MAFMC)					
Golden Tilefish IFQ Program[3]	2023	$46,892	**$0**	0	~10 IFQ holders, 8 active vessels, 8 dealers (2021 data).
Surf Clam Individual Transferable Quota (ITQ) Program[4]	2025	$47,754	**Not Provided**	N/A	~62 ITQ Permits with harvestable bushels and tags (2024 data).
Ocean Quahog ITQ Program	2025	$49,366	**Not Provided**	N/A	~31 ITQ Permits with harvestable bushels and tags (2024 data).
South Atlantic Fishery Management Council (SAFMC)					
Wreckfish IFQ Program	IFQ Program subject to cost recovery but **no cost recovery program in place**.				
Gulf of Mexico Fishery Management Council (GMFMC)					
Red Snapper IFQ Program[5]	2023	$1,303,834	**Not Provided**	N/A	624 Allocation holders, 404 vessels, 97 dealers
Grouper-Tilefish IFQ Program	2022	$765,542			790 Allocation holders, 371 vessels, 98 dealers
Total for All non-Alaska LAPP Programs		**$ 4,789,404**	**$56,544**	**~1,747 Permits, ~ 889 Vessels (Upper Bound Estimate).**	

[1] https://www.fisheries.noaa.gov/s3//2026-02/2025-cr-annual-report.pdf
[2] https://www.fisheries.noaa.gov/new-england-mid-atlantic/sustainable-fisheries/2025-annual-report-atlantic-sea-scallop-individual-fishing-quota-cost-recovery-program
[3] https://www.fisheries.noaa.gov/s3/2024-06/2023-Tilefish-IFQ-Report.pdf
[4] https://www.fisheries.noaa.gov/bulletin/2025-cost-recovery-surfclam-and-ocean-quahog-cage-tag-fees
[5] https://noaa-sero.s3.amazonaws.com/drop-files/cs/2023_RS_AnnualReport_FINAL.pdf