Regulatory Impact Review / Initial Regulatory Flexibility Analysis to Amend Regulations for Participants in the Bering Sea/Aleutian Islands Regulatory Areas.

COST RECOVERY FROM AMENDMENT 80, GROUNDFISH AND HALIBUT/SABLEFISH COMMUNITY DEVELOPMENT QUOTA, AMERICAN FISHERIES ACT AND ALEUTIAN ISLANDS POLLOCK QUOTA RECIPIENTS, AND THE FREEZER LONGLINE COALITION

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Abstract: This document is a Regulatory Impact Review/Initial Regulatory Flexibility Analysis analyzing implementation of a cost recovery program for the Amendment 80 program, the groundfish and halibut/sablefish Community Development program, the American Fisheries Act program, and the Freezer Longline Coalition. The measures under consideration would define the fee structure to collect of up to 3 percent of the ex-vessel value of species allocated to participants in these programs. The fee paid by beneficiaries of each program would offset the actual costs agencies incur that are directly related to the management, data collection, and enforcement of each program that would not have been incurred had the program not been implemented.

Executive Summary

The proposed actions would implement a Limited Access Permit (LAP) program/CDQ cost recovery fee for the American Fisheries Act (AFA) and Aleutian Islands (AI) pollock, Amendment 80, Community Development Quota (CDQ) program for halibut and groundfish, and the Freezer Longline Coalition (FLC) for Bering Sea and Aleutian Islands (BSAI) Pacific cod. The MSA both authorizes and requires the collection of cost recovery fees for LAP programs and CDQ programs. MSA cost recovery fees may not exceed 3 percent of the ex-vessel value and must recover costs associated with the management, data collection, and enforcement, of these programs that are directly incurred by government agencies tasked with overseeing these fisheries.

Cost recovery fees would be collected from the AFA cooperatives, the Aleut Corporation, Amendment 80 cooperatives, Freezer Longline Coalition[1], and CDQ groups. The cost recovery fee percentage would be determined annually by the Regional Administrator of the NMFS Alaska Region and published in a Federal Register (FR) notice. Along with the fee percentage, standard prices will be reported in an FR notice for each species directly allocated to the LAP program or CDQ program. Three options are considered to determine standardized prices. The first system would require Volume and Value reports to be implemented for all species except CDQ halibut and fixed gear sablefish. Prices for those species will be based on the current IFQ cost recovery reporting system. The second option would use Commercial Operator's Annual Report (COAR) data currently being submitted to the State of Alaska to estimate standard prices. The third option is to use the standard ex-vessel prices calculated for the Alaska state landings tax (using COAR data). The last two methods would use prices from the previous year as a proxy for current year prices. However, implementing that system would reduce the reporting burden on industry and would, in most years, only affect the fee percentage and not the cost recovery fee amount realized by an individual. Given the estimates of fee percentages that would be imposed on each program, it is unlikely that using the previous year's prices would result in the cost recover fee exceeding 3 percent of ex-vessel value in any year. Different pricing methodologies could be developed for different cost recovery fee programs, since the mix of species allocated and, therefore, the impacts of selecting prices, varies by program.

Based on the estimated gross ex-vessel revenue from the species directly allocated to the Amendment 80 sector over the years 2008 through 2011, the sector generated between $77 million and $112 million, annually. Relative to the estimated recoverable costs, these values result in a cost recovery fee of about 1.2 percent to 1.8 percent, depending on the year to generate a projected $1.36 million to cover reimbursable costs. In 2011, the most recent year value data are available; the estimated fee is 1.22 percent. The CDQ program was estimated to annually generate between $47 million and $86 million during the years 2008 through 2011. Their recoverable costs are estimated to be $630,000 per year. That translates to a fee percentage that ranges from 0.7 percent to about 1.3 percent over those years. The fee percentage for 2011, the most recent year data are available, was about 0.86 percent of the gross ex-vessel value of species directly allocated to the CDQ program. Over the same 2008 through 2011 period, the AFA/AI pollock fishery was estimated to annually generate from $208 million to $398 million. Recoverable costs for the AFA/AI pollock fisheries were estimated at $1.21 million. These revenues and costs translate to an estimated fee percentage of 0.30 percent to 0.58 percent, with the most recent year being 0.34 percent of gross ex-vessel value. FLC annual revenues were estimated to be between $42 million and $99 million, from 2008 through 2011. Cost estimates for the sector were about $370,000, based on 2012 estimates. The estimated cost recovery fees are estimated to range between 0.37 percent and 0.88 percent, based on recent conditions. None of the fisheries included under the proposed cost recovery programs are projected to have a

[1] The FLC formed a cooperative called the Freezer Longline Coalition Cooperative (FLCC). That voluntary cooperative fishing program is designed to end the "race for fish" that has characterized the Alaska freezer longline fishery since its inception in the 1980s. Members of the FLC are also considered a person through their $35.7 million federal loan to purchase freezer longliner groundfish licenses.

cost recovery fee of the maximum 3 percent when the program is implemented. However, fluctuations in TACs and ex-vessel prices in the future, or increases in agency costs could result in the fee increasing to the 3 percent maximum, or decreasing relative to the projected values provided in this analysis. Uncertainty associated with each of these factors precludes making specific projections of future trends. However, the 3 percent limit imposed on any cost recovery fee creates a cap that may not be exceeded, and any agency costs above that limit must be borne by the management agencies.

All costs recovery fees must be submitted to NMFS by the designated representative of the CDQ group, Cooperative, the Aleut Corporation, or the FLC. The entire fee liability payment must be submitted to NMFS using an approved electronic method by the deadline defined for their sector. However, NMFS would retain the option of reducing the allocation to a person[2] by the same percentage as the cost recovery fee that was not submitted. This flexibility would allow NMFS to issue quota to a cooperative so that members that paid the fee would not be penalized. Insufficient or late fee submissions may result in the sending of an IAD to the designated representative stating that the permit holder's estimated fee liability was not submitted and NMFS may disapprove any or part of the allocation or application for allocation transfers to or from the CQ permit holder.

It is expected that the cost of fee will be borne by the harvesting vessel owners (or shared by the owner and the harvesting crew as a cost of business). The amount of the fee will determine the annual impact, but the overall fee assessed is expected to be less than the benefits the quota recipients derive from harvesting or leasing their allocation. To the extent that a portion of the cost that is taken from the crew shares it will result in a reduction in crew revenue. The overall impact to the crew that results from the LAP programs will depend on how crew shares were modified under the program in general. Crew shares may be reduced, relative to the status quo, as a result of implementing the cost recovery program, regardless of whether their shares and crew payments increased or decreased after the LAP program was implemented.

Participants in the Amendment 80 and CDQ groundfish programs will be required to submit Volume and Value reports for the landings of species that are subject to the cost recovery fee. It is estimated, based on previous Volume and Value reports for the Central Gulf Rockfish Program that each annual submission will require two hours of staff time from the processors, in addition to their time spent filing numerous other required reports. Participants in the AFA and FLC cooperative may use price data that are currently submitted, or request that NMFS impose a Volume and Value Report to determine prices.

Communities are not expected to be substantially impacted by this action. This action will not change the amount of fish landed under the subject LAP programs and the CDQ program, nor will the action change the location of deliveries. The greatest potential impact to communities, as represented by the CDQ groups or the Aleut Corporation, would occur if the CDQ groups or the Aleut Corporation are unable to pass the cost of the fee on to their harvesters/partners when contracts are negotiated. Other communities may realize very modest impacts through reduced income of residents, and therefore reduced expenditures. Residents include any vessel owners or crew that realize reduced income as a result of cost recovery fee payments.

Because the cost recovery fee is a transfer payment[3], it is excluded from net benefit calculations. Therefore, this action will not impact net benefits to the nation.

[2] Person in this case refers to the CDQ groups or the cooperatives that are formed in the LAP programs

[3] Payments that are made without any good or service being directly received in return. They are essentially a redistribution of income within a market system.