



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 250528-0093]

RIN 0648-BL08

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program; Correction

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

ACTION: Correcting amendment.

SUMMARY: NMFS is clarifying the cost recovery process timing from the final rule implementing amendment 122 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). Amendment 122 established the Pacific Cod Trawl Cooperative Program (PCTC Program or Program) to allocate Pacific cod harvest quota to qualifying groundfish License Limitation Program (LLP) license holders and qualifying processors. In this correction, NMFS is clarifying the timing of the cost recovery fee schedule for the existing cost recovery requirements for participants. NMFS is also correcting an out-of-date cross reference.

DATES: Effective [*insert date of publication in the Federal Register*].

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone (Federal waters) of the BSAI under Federal regulations implementing the BSAI FMP. The North

Pacific Fishery Management Council (Council) prepared the BSAI FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI FMP appear at 50 CFR parts 600 and 679.

NMFS published a Notice of Availability for amendment 122 in the **Federal Register** on December 30, 2022 (87 FR 80519), with public comments invited through February 28, 2023. To implement amendment 122, NMFS published a proposed rule in the **Federal Register** on February 9, 2023 (88 FR 8592), with public comments invited through March 13, 2023. The Secretary of Commerce approved amendment 122 on March 24, 2023, after considering information from the public and determining that amendment 122 is consistent with the BSAI FMP, the Magnuson-Stevens Act, and other applicable laws. NMFS published a final rule on August 8, 2023 (88 FR 53704).

This action amends the final rule for clarity on two accounts: first, this action clarifies the timing of cost recovery process; second, this action updates an incorrect cross-reference.

Background on the PCTC Program

The PCTC Program implemented a complex suite of management measures to improve fishery conditions for all participants. The PCTC Program is a Limited Access Privilege Program (LAPP) that allocated harvester quota share to harvesters and processors based on their historical catch and processing history. This Program went into effect for the 2024 fishing season. More information about the Program can be found on the website here: <https://www.fisheries.noaa.gov/alaska/commercial-fishing/pacific-cod-trawl-cooperative-program>.

Background on Cost Recovery

The PCTC Program is a LAPP that NMFS established under the provisions of section 303A of the Magnuson-Stevens Act. As specified in section 304(d) of the

Magnuson-Stevens Act, for all LAPPs established under the Magnuson-Stevens Act, NMFS is required to collect fees from limited access privilege holders to cover the actual costs of management, data collection and analysis, and enforcement activities associated with LAPPs. Cost recovery fees may not exceed three percent of the ex-vessel value of the fish harvested under the LAPP. The final rule established a process for NMFS to assess a fee on the ex-vessel value of PCTC Program cooperative quota (CQ) harvested by cooperatives in the BSAI.

The annual PCTC Program cost recovery process builds upon existing cost recovery requirements implemented under other LAPPs in the North Pacific. For example, NMFS uses the existing Pacific Cod Ex-vessel Volume and Value Report, which is used to calculate Pacific cod standard ex-vessel prices in other limited access programs. For the PCTC Program, the fee collection process begins immediately after the B season ends on June 10 of each year, and, therefore, the standard ex-vessel prices that had been published in November of the previous year are used to calculate the current year's fees. This lagged standard ex-vessel price from the previous year is applied to the current cost recovery year's CQ landings.

The PCTC Program direct program costs are tracked from July 1 to June 30 of the following year. For example, the direct program costs for the current year of the PCTC Program started July 1, 2024, and will end on June 30, 2025, which will encompass the CQ application process, issuance of CQ, and the fishing seasons of the PCTC Program that extend from January 20 to June 10 each year.

Each year, NMFS publishes a cost recovery fee notice for the PCTC Program, with the most recent notice published August 1, 2024 (89 FR 62724). NMFS sends each cooperative a fee liability letter to inform each cooperative of the fee percentage applied to the current year's landings and the total amount due (fee liability). The letter includes a summary explaining the fee liability determination, including the current fee percentage

and details of CQ pounds debited from CQ allocations by permit, date, and prices. Fees must be paid by August 31 of each year.

Each cooperative is responsible for paying cost recovery fees assessed on CQ landings. Failure to pay cost recovery fee liabilities on time will result in NMFS not approving a cooperative's application for a CQ permit the following year until full payment of the fee liability is received by NMFS. The fee liability letter includes NMFS's contact information and provides ample opportunity for cooperatives to reconcile accounts. The agency may pursue collection of any unpaid fees if the formal determination is not appealed and the account remains unpaid or under-paid 30 days after fees are due (August 31 of each year).

To illustrate timing for the 2025 cost recovery cycle, the 2025 PCTC Program fishing year that will have landings subject to cost recovery ends June 10, 2025. NMFS will use 2024 fishing year ex-vessel standard prices derived from the Pacific Cod Ex-Vessel Volume and Value Report submitted by November 10, 2024, for landings made during the 2025 fishing year. Finally, NMFS will use the direct program costs from July 1, 2024, through June 30, 2025, to calculate the 2025 fee percentage (which cannot exceed the three percent statutory limit). By no later than August 1, 2025, the Regional Administrator will publish the standard price and fee percentage in a notice in the **Federal Register** and send invoices to cooperatives.

Need for Corrections

The following changes are applied to the regulations promulgated with the final rule (88 FR 53704, August 8, 2023).

Cross-reference Citation Update

At § 679.134(c)(1), NMFS corrects an incorrect cross-reference to halibut deck-sorting (§ 679.120), which now can be found at § 679.102.

Cost Recovery Clarifications

NMFS identifies that the regulations pertaining to cost recovery fees could be improved for clarity at § 679.135.

In several places within § 679.135, NMFS changes references to “prices” to “standard ex-vessel prices” to be consistent with terminology.

In several places within § 679.135, NMFS changes references to “catch” or “CQ” to “CQ landings” to be consistent with terminology.

At § 679.135(a)(3)(i), NMFS clarifies when a cooperative must submit payment. Under amendment 122, the intention was for payment to be submitted following the end of the fishing season. The current language states that a cooperative must submit any cost recovery payment no later than August 31 “following” the calendar year in which the CQ landings were made. NMFS replaces “following” with “of,” to clarify that payment is due within the same year as the landings were made, consistent with amendment 122 and the manner in which NMFS has implemented the Program.

At § 679.135(c)(2)(ii), NMFS removes “for the previous calendar year” in describing direct program costs and clarifies language describing value. NMFS clarifies direct program costs are equal to the annual direct program costs for the PCTC Program with any adjustments to the account from payments received in the previous year. For example, the time period for the current PCTC Program year includes direct program costs from July 1, 2024, to June 30, 2025. NMFS corrects language in the definition of value (V) used for the equation to calculate the fee percentage, clarifying that the standard ex-vessel price is multiplied by CQ landings for that fishing year to calculate the total value of the PCTC Program fishery.

At § 679.135(c)(2)(iii), NMFS clarifies that the fee percentage is based on the current year’s CQ landings using the standard ex-vessel price from the previous year.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, this action is necessary to carry out amendment 122 to the BSAI FMP because the current regulatory language at 50 CFR 679.135 has generated some confusion among fishery participants. This rule clarifies the timing of the cost recovery process published in the final rule regulations (88 FR 53704, August 8, 2023) and represents minor, non-substantive changes to those regulations. The NMFS Assistant Administrator (AA) has determined that this final rule is consistent with amendment 122 to the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

The AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such requirement is unnecessary and contrary to the public interest. This action corrects a cross-reference and corrects regulatory language to clarify the timing and calculation of cost recovery fees, consistent with amendment 122 to the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law. These minor, non-substantive corrections reflect the manner in which NMFS has implemented the PCTC Program and attempt to alleviate some confusion among fishery participants. If this correction is delayed to allow for notice and comment, it would result in continued confusion for fishery participants, who will be required to pay cost recovery fees for the current fishing year before NMFS would be able to complete notice and comment rulemaking. Without this correction, commercial fishermen may have difficulty understanding when their cost recovery fees are due, which could lead to problems when applying for CQ next year. In addition, the public was already provided with notice and opportunity to comment on this issue during the public comment period for the Notice of Availability for amendment 122 (87 FR 80519), and the proposed rule (88 FR 8592), so

additional opportunity for public comment at this point would not be meaningful. Therefore, in order to avoid any negative consequences that could result from failure to make this correction, the AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment. For the reasons above, the AA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and make this rule effective immediately upon publication. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 28, 2025.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS corrects 50 CFR part 679 by making the following correcting amendment:

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.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

2. Amend § 679.134 by revising paragraph (c)(1) to read as follows:

§ 679.134 PCTC Program permits, catch monitoring, catch accounting, and recordkeeping and reporting.

* * * * *

(c) * * *

(1) *Catch weighing.* All catch, except halibut sorted on deck by vessels participating in the halibut deck sorting described at § 679.102, must be weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by an observer.

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3. Amend § 679.135 by revising paragraphs (a)(3)(i), (b), (c)(2)(i)(A) and (B), (c)(2)(ii) and (iii), (c)(3), and (c)(4)(iii) to read as follows:

§ 679.135 PCTC Program cost recovery.

(a) * * *

(3) * * *

(i) A cooperative must submit any cost recovery fee liability payment(s) no later than August 31 of the calendar year in which the CQ landings were made.

* * * * *

(b) *Pacific cod standard ex-vessel value determination and use.* NMFS will use standard ex-vessel prices calculated for Pacific cod based on information provided in the Pacific Cod Ex-vessel Volume and Value Report described at § 679.5(u)(1) from the previous calendar year.

(c) * * *

(2) * * *

(i) * * *

(A) The CQ landings to which the PCTC Program cost recovery fee will apply;

(B) The ex-vessel value of the CQ landings; and

* * * * *

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

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

Where:

DPC = the direct program costs for the PCTC Program with any adjustments to the account from payments received in the previous year.

V = total value, which is the standard ex-vessel price multiplied by the CQ landings subject to the PCTC cost recovery fee liability.

(iii) The calculated fee percentage is applied to the CQ landings made in the current year using the standard ex-vessel price from the previous year.

(3) *Applicable fee percentage.* The cooperative must use the fee percentage applicable at the time a CQ landing is debited from a CQ allocation to calculate the cost recovery fee liability for any retroactive payments for CQ landed.

(4) * * *

(iii) NMFS will provide a fee liability summary letter to all cooperatives by no later than August 1 of each year. The summary will explain the fee liability determination including the current fee percentage and details of CQ landings debited from CQ allocations by permit, species, date, and prices.

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