

§ 679.45

50 CFR Ch. VI (10–1–20 Edition)

(Civil Procedures), and to other applicable law. Penalties include but are not limited to permanent or temporary sanctions to QS and associated IFQ.

§ 679.45 IFQ cost recovery program.

(a) *Cost recovery fees*—(1) *Responsibility*. An IFQ permit holder is responsible for cost recovery fees for landings of his or her IFQ halibut and sablefish, including any halibut landed as guided angler fish (GAF), as defined in §300.61 of this title, derived from his or her IFQ accounts. An RQE is responsible for cost recovery fees for all RFQ issued to the RQE. An IFQ permit holder or RQE must comply with the requirements of this section.

(2) *IFQ Fee Liability Determination*—(i) *General*. IFQ fee liability means a cost recovery liability based on either the value of all landed IFQ and GAF derived from the permit holder's IFQ permit(s), or the value of all RFQ issued to an RQE.

(A) Each year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ equivalent pounds landed as IFQ and GAF and will issue an RQE a summary of its RFQ pounds issued as part of the IFQ Landing and Estimated Fee Liability page described at §679.5(1)(7)(ii)(D).

(B) The summary will include information on IFQ and GAF landings and an estimated IFQ fee liability using the IFQ standard ex-vessel value for IFQ and GAF landings. For fee purposes:

(1) Landings of GAF in IFQ regulatory area 2C or 3A are converted to IFQ equivalent pounds and assessed at the IFQ regulatory area 2C or 3A IFQ standard ex-vessel value.

(2) GAF that is returned to the IFQ permit holder's account pursuant to §300.65(c) of this title, and subsequently landed as IFQ during the IFQ fishing year, is included in the IFQ fee liability and subject to fee assessment as IFQ equivalent pounds.

(3) All RFQ issued to an RQE in IFQ regulatory area 2C or 3A will be assessed at the IFQ regulatory area 2C or 3A IFQ standard ex-vessel value.

(C) The IFQ permit holder must either accept NMFS' estimate of the IFQ fee liability or revise NMFS' estimate of the IFQ fee liability using the IFQ Permit Holder Fee Submission Form

described at §679.5(1)(7)(ii), except that the standard ex-vessel value used to determine the fee liability for GAF is not subject to challenge. If the IFQ permit holder revises NMFS' estimate of his or her IFQ fee liability, NMFS may request in writing that the permit holder submit documentation establishing the factual basis for the revised calculation. If the IFQ permit holder fails to provide adequate documentation on or by the 30th day after the date of such request, NMFS will determine the IFQ permit holder's IFQ fee liability based on standard ex-vessel values.

(D) An RQE may not challenge the standard ex-vessel value used to determine the fee liability for all RFQ issued to the RQE.

(ii) *Value assigned to GAF*. The IFQ fee liability is computed from all net pounds allocated to the IFQ permit holder that are landed, including IFQ landed as GAF.

(A) NMFS will determine the IFQ equivalent pounds of GAF landed in IFQ regulatory area 2C or 3A that are derived from the IFQ permit holder's account.

(B) The IFQ equivalent pounds of GAF landed in IFQ regulatory area 2C or 3A are multiplied by the standard ex-vessel value computed for that area to determine the value of IFQ landed as GAF.

(iii) The value of IFQ landed as GAF is added to the value of the IFQ permit holder's landed IFQ, and the sum is multiplied by the annual IFQ fee percentage to estimate the IFQ permit holder's IFQ fee liability.

(3) *Fee collection*. (i) An IFQ permit holder with IFQ and/or GAF landings is responsible for collecting his or her own fee during the calendar year in which the IFQ fish and/or GAF are landed.

(ii) An RQE is responsible for collecting its own fees during the calendar year in which the RFQ is issued to the RQE.

(4) *Payment*—(i) *Payment due date*. An IFQ permit holder or RQE must submit its IFQ fee liability payment(s) to NMFS as instructed at paragraph (a)(4)(iii) of this section not later than January 31 of the year following the calendar year in which the IFQ or GAF

landings were made or the RFQ was issued to the RQE.

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

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments may be made electronically through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the IFQ permit holder.

(iv) *Payment method—(A)* Prior to December 1, 2019, payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank-certified check, or electronically by credit card.

(B) On or after December 1, 2019, payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *IFQ ex-vessel value determination and use—(1) General.* (i) An IFQ permit holder must use either the IFQ actual ex-vessel value or the IFQ standard ex-vessel value when determining the IFQ fee liability based on ex-vessel value, except that landed GAF are assessed at the standard ex-vessel values derived by NMFS. An IFQ permit holder must base all fee liability calculations on the ex-vessel value that correlates to landed IFQ in IFQ equivalent pounds.

(ii) An RQE must use the IFQ standard ex-vessel value derived by NMFS for all RFQ issued to the RQE.

(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 for landed IFQ must document actual ex-vessel value for each IFQ permit. The actual ex-vessel value cannot be used to assign value to halibut landed as GAF or issued as RFQ.

(3) *IFQ standard ex-vessel value—(i) 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.

(ii) All landed GAF and RFQ issued to an RQE must be valued using the

standard ex-vessel value for the year and for the IFQ regulatory area of harvest—Area 2C or Area 3A.

(iii) *Duty to publish list.* Each year the Regional Administrator will publish a list of IFQ standard prices in the FEDERAL REGISTER during the last quarter of the calendar year. The IFQ 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.

(iv) *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.

(v) *Determination.* NMFS will apply the standard price, aggregated by IFQ regulatory area 2C or 3A, to GAF landings and RFQ issued to an RQE. NMFS will calculate the IFQ standard prices to reflect, as closely as possible 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 Registered Buyer Ex-Vessel Value and Volume Report as described in §679.5(1)(7)(i). The Regional Administrator will base IFQ standard prices on the following types of information:

(A) Landed net 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.

(c) [Reserved]

(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 the fee percentage.* 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 IFQ, RFQ, and GAF landings to which the IFQ fee will apply;

(B) The ex-vessel value of that landed IFQ, RFQ, and GAF; and

(C) The costs directly related to the management and enforcement of the IFQ Program, which include RQE and GAF costs.

(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 determined for IFQ landed as commercial catch, RFQ, or GAF subject to the IFQ fee liability for the current year.

(3) *Publication*—(i) *General.* During or before the last quarter of each calendar year, NMFS shall publish the IFQ fee percentage in the FEDERAL REGISTER. NMFS shall base any IFQ fee liability 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 for the year in which the IFQ, RFQ, and GAF landings are made to calculate his or her fee liability for such landed IFQ, RFQ, and GAF. The IFQ permit holder or RQE must use the IFQ fee 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.* (1) If an IFQ permit holder or RQE does not submit a complete IFQ Permit Holder Fee Submission Form and corresponding payment by the due date described in § 679.45(a)(4), the Regional Administrator will:

(i) *Send Initial Administrative Determination (IAD).* Send an IAD to the IFQ permit holder or RQE stating that the estimated fee liability, as calculated by the Regional Administrator and sent to the IFQ permit holder or RQE pursuant to § 679.45(a)(2), is the amount of IFQ fee liability due from the IFQ permit holder or RQE. An IFQ permit holder or RQE who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(ii) *Disapprove transfer.* Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder or RQE in accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS may return unused GAF to the IFQ permit holder's account from which it was derived on or after the automatic GAF return date.

(2) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, as described in paragraph (f) of this section, any IFQ fishing permit or RFQ permit account held by the IFQ permit holder or RQE is not valid until all IFQ fee liabilities are paid.

(3) If payment is not received on or before the 30th 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 or RQE 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 IFQ Permit Holder Fee Submission Form and related documentation submitted by the IFQ permit holder or RQE. If the Regional Administrator determines that the IFQ permit holder or RQE has not paid a sufficient amount, the Regional Administrator will:

(i) *Disapprove transfer.* Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder or RQE in accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS may return unused GAF to the IFQ permit holder's account from which it was derived 15 days prior to the closing

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of the commercial halibut fishing season each year.

(ii) *Notify permit holder.* Notify the IFQ permit holder or RQE by letter that an insufficient amount has 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.

(2) After the expiration of the 30-day period, the Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder or RQE in support of its payment. If the Regional Administrator determines that the additional documentation does not meet the burden of proving the payment is correct, the Regional Administrator will send the IFQ permit holder or RQE an IAD indicating that the IFQ permit holder or RQE 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. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the IFQ permit holder or RQE. An IFQ permit holder or RQE who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(3) If the permit holder fails to file an appeal of the IAD pursuant to 15 CFR part 906, the IAD will become the final agency action.

(4) If the IAD is appealed and the final agency action is a determination that additional sums are due from the IFQ permit holder or RQE, the IFQ permit holder or RQE must pay any IFQ fee amount determined to be due not later than 30 days from the issuance of the final agency action.

(5) Upon final agency action determining that an IFQ permit holder or RQE has not paid his or her IFQ fee liability, any IFQ fishing permit held by the IFQ permit holder or RQE is not valid until all IFQ fee liabilities are paid.

(6) If payment is not received on or before the 30th 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 or RQE unless the IFQ permit holder or RQE requests the agency to credit the excess amount against the IFQ permit holder's or RQE's future IFQ fee liability.

(h) *Appeals and requests for reconsideration.* An IFQ permit holder who receives an IAD may either appeal the IAD pursuant to 15 CFR part 906 or request reconsideration. Within 60 days from the date of issuance of the IAD, 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 15 CFR part 906 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 15 CFR part 906, 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.

[65 FR 14924, Mar. 20, 2000, as amended at 67 FR 4133, Jan. 28, 2002; 71 FR 44232, Aug. 4, 2006; 76 FR 40633, July 11, 2011; 78 FR 75893, Dec. 12, 2013; 81 FR 23649, Apr. 22, 2016; 83 FR 47833, Sept. 21, 2018]

### Subpart E—North Pacific Observer Program

SOURCE: 61 FR 56431, Nov. 1, 1996, unless otherwise noted.

#### § 679.50 Applicability.

(a) *General.* (1) The operator of a vessel designated or required to be designated on a Federal fisheries permit (FFP) under § 679.4(b); the operator of a processor designated or required to be designated on a Federal processor permit (FPP) under § 679.4(f)(1) or a Registered Buyer permit under § 679.4(d)(3);