

Regarding halibut Catch Skating Plan

AGENDA B-2  
Supplemental  
OCTOBER 2010

9/26/10

Members of the Council

I have been involved in the commercial halibut fishery since the age of twelve and bought into the fishery while in high school and have continued to purchase quota as I believe that this is a viable fishery and while expensive to do so I feel that the halibut fishery is a good investment as well an important part of me and my family's way of life. Along with this I hope to see this fishery maintained in a viable fashion for all user groups.

I am writing because I am concerned over the fact that the charter sector of this important resource, continues to exceed the GHLL. In area 2C the GHLL has been exceeded by the charter sector every year since 2004. It seems as though this shouldn't be happening but it continues too.

I am urging the council to take action in directing NMFS to implement CSP as soon as possible as it is long overdue and shouldn't be delayed any longer, two years is long enough. It is necessary to implement this new plan for the 2011 season and to keep all sectors involved in the harvest of the halibut resource play their part in keeping this a healthy and viable resource.

Thank you,

Ryan Nichols

RZ

## Regarding Halibut Catch Sharing Plan

Dear members of the Council,

I have been involved directly in the commercial halibut fishery since the age of twelve and am still involved in this fishery now nine years later. The commercial halibut fishery has been an important part of my family's way of life since the early 1980's. Since my involvement in this valuable fishery I have invested 90,000 dollars of my own money in the future of this fishery by having purchased my own halibut quota. Since my purchasing of this quota share the area 2C halibut quota which is what I own, has been cut by 43%, and with an outstanding loan and paying for college this has made paying off my quota share slower than originally anticipated.

While these reductions in the halibut quota are necessary for the health of the resource everyone who uses this resource should share in the burden of these reductions. As of this point only the commercial sector has had to bear any of this burden. I am urging the council to take action that would create a catch sharing plan that would establish a charter catch limit. If the charter industry exceeds this catch limit then they should be held accountable for this overage rather than taking more from the commercial sector.

With the idea of everyone sharing the burden of conserving this valuable resource the charter industry should be held to a catch limit that is no higher than their current GHL. This should be expressed as a percentage of the quota that is tied to the abundance of the halibut stocks, rather than a set amount of fish. It would also be good if the council committed to using verified real-time catch accounting for the charter sector.

I am urging the council to take these actions and reminding them that from 2006-2008 the commercial sector has taken a 43% reduction in halibut quota. Yet the charter sector when put on catch restrictions to help in the conservation of this resource went to court and had these restrictions stopped demonstrating that the charter sector has little respect for this valuable resource. The charter sector has exceeded there GHL in area 2C for 5 years now and has possibly exceeded the GHL in area 3A too. By doing this the charter sector has caused local depletion and made it so that local residents of some costal communities are unable to harvest their share of the halibut resource. I am asking the council to not reward the charter sector by giving them a higher allocation, but instead to hold the charter sector at there existing level.

Sincerely,

Ryan Nichols

Supt 26 2010

to: North Pacific Fisheries Management Council

Dear Council Chairman,

I am a Commercial Halibut fisherman with D-class quota from Sitka. I have fished halibut for almost 30 years as a significant part of my livelihood. My concern is with the overharvest of halibut by the guided sport sector. I would like to urge the council to implement the catch sharing plan adopted by the Council in October of 2008. This is important for those of us who want to see a diversified fleet continue to harvest halibut in the future.

Thank you,

Terry Perensovich

Terry Perensovich

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SEP 28 2010

North Pacific Fisheries Management Council, 9/28/10

I would like to comment on the Halibut Charter Catch sharing plan, and also the Federal Observer Program for boats under 60 feet. These issues are important to me as commercial longlining in area 2-C is about 80% of my income.

I believe the CSP should be implemented as soon as possible to control the charter harvest to the GHL. I've been very concerned about the charter fleet exceeding the GHL every year since 2004. The CSP was approved 2 years ago and any further delays would be unacceptable.

The 2% extra fee for the Federal Observer program would be a financial burden for me. Worst of all we fish as a family 2 adults and also 2 or 3 kids make up our crew. At least one of us is sleeping on the floor with camping pads. So having an observer on board would make it even more crowded, and feel like an invasion of privacy to our family. I would rather have the option of electronic monitoring (camera) if we must have observation

Sincerely, Marty Remund Port Alexander,  
AK.



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SEP 28 2010

September 28, 2010

Mr. Eric Olson, Chair  
North Pacific Fishery Management Council  
605 West 4th Ave, Ste 306  
Anchorage, AK 99501

Dear Chairman Olson and Members of the Council,

The Halibut Coalition is submitting these comments on the Agenda Item in B Reports: *Council review of Draft proposed rule to implement the Halibut Catch Sharing Plan (CSP)*.

#### Introduction

Because the draft CSP proposed rule is not yet publically available, we will defer comments on specific details of the regulations until public testimony on October 6<sup>th</sup> and the public comment period to the Secretary of Commerce. At this time, we offer one urgent and unified recommendation: **please direct NMFS to implement the halibut Catch Sharing Plan (CSP) without further delay.** The CSP provides timely management of charter catch to protect the resource and other halibut sectors against overharvest and establishes a mechanism for inter-sector trading—the win-win policy endorsed by this Administration in general and Dr. Lubchenco in particular:

*"The challenge is to address the issue of allocations and fairness while recognizing that re-allocation is most difficult when a fishery is over-fished and needs rebuilding. At that point everyone –recreational and commercial fishermen – is struggling just to make it. As a starting point, allocation needs to comply with the Magnuson Stevens Act. Within that framework I would like to see Councils phasing in mechanisms for inter-sector trading – especially at the five year re-evaluation point. I think trading can be a win-win, and can allow a more fluid (and less political) allocation process."*  
Dr Lubchenco, 2010 Recreational Saltwater Fishing Summit

Alaska Longline Fishermen's Association • Cordova District Fishermen • Deep Sea Fishermen's Union •  
Fishing Vessel Owners Association • Halibut Association of North America • Kachemak Bay Fisheries  
Association • North Pacific Fisheries Association • Petersburg Vessel Owners Association • Sea Food  
Producers Cooperative • Southeast Alaska Fishermen's Alliance • United Cook Inlet Driftnetters Association  
• United Fishermen's Marketing Association • United Southeast Alaska Gillnetters Association

## Background

Under the current GHL management system, The GHL in each area was set in fixed pounds and was only adjusted to reflect large declines in abundance in a stair-step fashion with fixed trigger points. The regulatory process to implement management measures in the halibut charter sector has not been timely and has been subject to interference. Charter associations have repeatedly delayed the process at the expense of the resource and the expense of all who depend on the halibut resource for sustenance or livelihood. The charter sector has exceeded its GHL every year from 2004 to 2009 in Area 2C with a cumulative overage of **+3.278 million pounds**. These overages occurred during a period of declining halibut abundance in 2C. Due to declining abundance and charter overages, the commercial IFQ annual catch limit has been reduced **-58%** from 2004 to 2010 (**a reduction of 6.1 million pounds**). Charter overages have also occurred in Area 3A with small overages in 2004 thru 2006, and a substantial overage in 2007 (352,000 pounds). These overages have created a conservation and management problem. In a letter of 9/19/08 to the NPFMC, the International Pacific Halibut Commission (IPHC) stated:

*“The lack of compliance with the GHL targets will exacerbate the present conservation problem in Area 2C. Estimates of exploitable biomass for Area 2C have decreased markedly in recent years and the lack of adherence by the charter fishery to the targets established by the Council in turn frustrates the ability of the IPHC to meet its management targets. The increased charter catch will delay the rebuilding of the Area 2C resource, and increase the harvest rate well above the 20 percent level we believe is appropriate.”*

The CSP was passed by the NPFMC in October 2008 on a 10-1 vote. The CSP addresses the conservation and allocation issues that have plagued the halibut fishery for the past 17 years. The CSP establishes clear sector allocations between the charter and longline sectors via a percentage allocation that will allow harvests to rise and fall with the abundance of the halibut resource. The CSP includes an improved method for timely implementation of management measures with the intent of keeping the charter sector within its allocation. **Finally, the CSP allows charter operators to lease QS to satisfy clients intent on harvesting halibut above the specified charter limits for the area,**--the market-based mechanism for inter-sector trading envisioned by Dr. Lubchenco.

At the time of final action, the CSP implementation goal was 2010. A 10/17/08 letter to the IPHC from the NPFMC states that, *“A final rule could be completed for the CSP by late 2009, in order to coincide with the 2010 IPHC Annual meeting [January, 2010].”* At this juncture, NMFS claims the earliest implementation is 2012. We are frustrated by the delay and assume that the Council is as well. We urge you to provide NMFS with any clarifications on Council intent, relative to the CSP regulations, and to direct NMFS to implement the CSP immediately.

## Allocation Clarification

The Coalition also requests that the Council clarify for NMFS that the CSP establishes ALLOCATIONS for the setline and charter sectors, and that reaching or exceeding these ALLOCATIONS dictates management actions. NMFS' previous decision to label the GHL a

“benchmark” invited multiple lawsuits that were costly to the industry, the public and the resource. Following NMFS’ lead, charter plaintiffs argued the GHL “merely set benchmarks and did not limit the halibut harvest.” 2009 W.L. 4068028 at 9. In last year’s ruling on the issue, the Court responded to Plaintiffs’ argument stating: “This argument is unsupported by the Administrative Record.” *Id.* The Court noted the word “benchmark” is to be understood in the context that the GHL is only a “benchmark” in that it tells the agency when it is necessary to adopt appropriate enforcement measures. *Id.* at 2, 9. Thus, the Court noted the GHL is not self-enforcing but sets the charter limit that is to be enforced “by subsequent regulation.” *Id.* at 2. Because the CSP builds on charter management under the GHL, we urge the Council to make absolutely clear to NMFS that the CSP establishes allocations and that managers are expected to take appropriate and timely action, as outlined in the CSP, to control harvest to those allocations. In fact, during the October 2008 discussion the Council made clear that managers would be expected to err on the side of conservation and caution, when projecting charter harvest relative to allocation, because charter overages do not trigger in-season closure. In short, NMFS must understand that the CSP establishes sector allocations and that the overages must stop.

#### GHL vs. CSP management

Certain charter associations have argued that they are worse off under the CSP than under the GHL, despite concessions by the setline industry that increased the percentage allocation to the charter industry at low biomass levels, and the market-based mechanism that allows avenues for increased harvest. Information has been compiled and presented to NMFS and the Council that compare charter allocations under the GHL and the CSP (SEAGO letter of September 1, 2010). These comparisons are erroneous and misleading for the following reasons:

1) The CSP is based on the combined catch limit, not on total constant exploitation yield (CEY) as presented in the projections. The combined catch limit incorporates the slow up/fast down adjustment and any policy considerations the IPHC Commissioners consider necessary. This results in a number very different than when the total CEY is used. For example, in 2010, the total CEY in 2C was 5.02 million pounds, yet the combined charter/commercial catch limit would have been 5.188 million pounds (4.4 million pound commercial catch limit + GHL of 0.788 million pounds). The resultant allocation under the CSP would be 15.1% or 0.783 million pounds compared to the GHL of 0.788 (only 5,000 pounds different). Yet the charts presented shows a big discrepancy at a total CEY of 5 million pounds.

2) The CSP sets an allowable range, not a point limit. Under the CSP, the actual charter catch is allowed to vary from the allocation percentage by up to 3.5% in either direction. Thus in 2010, the allowable charter catch in 2C under the CSP would have been from 0.600 to 0.960 million pounds with no management action needed. Under the GHL, if the charter catch exceeded 0.788 million pounds this year, management action would be triggered.

In sum, when the CSP vs. GHL is plotted as a range, and hind cast based on what the combined catch limit would have been (not the total CEY), the graph establishes a very different story (see attached). **The CSP levels bracket the GHL and in most years the allocation would have been higher than the GHL.** This is true for both 2C and 3A.

### Delay Tactics

Coalition members are aware that some members of the charter industry have requested the CSP be delayed until federal funding is secured to shift halibut quota from the setline to the charter sector. For a plethora of reasons, this approach was left out of the CSP but scheduled for further discussion as part of a “long-term” halibut charter management strategy. The Council did not want the obvious problems associated with this proposal to delay the CSP. The CSP must be implemented immediately to protect the resource and all who depend on the resource for sustenance and livelihood. As described above, further delays will allow continued overfishing by the charter industry at the expense of the resource, the commercial industry, and the sport and subsistence harvesters. The Council needs to call an end to the charter industry’s bait and switch tactics and direct NMFS to implement the CSP.

### Data Issues

In comments recently submitted to the Council concerning CSP implementation, certain charter operators argue that the CSP relies on stale data. Charter plaintiffs made the same argument in last year’s lawsuit, claiming their allocation should be based on “present participation.” Language from the lawsuit may be helpful to the Council in evaluating this claim. In *Van Valin v. Locke*, 2009 W.L. 4068028 (D.D.C. November 23, 2009), the Court stated that: “Where overfishing by one group in recent years is the precise concern that the regulation intends to address, it makes sense to disregard the most recent participation data.” *Id.* 11. The Court’s reasoning was that the charter sector should not be rewarded for ignoring the GHL. The Court stated:

*“The Charter Operators’ argument that the Secretary should have relied on recent participation data is in essence a claim that they are entitled to a greater allocation of the harvest because they have been harvesting a greater amount in recent years, i.e., that they should be rewarded for exceeding the guidelines year after year. The Secretary understandably chose not to encourage such overharvesting.” Id.*

The Council made a sound decision in establishing the CSP allocations. Rewarding a sector for overharvesting would place the resource and the North Pacific management system at risk. The CSP balances dependence on the halibut fishery by all who have historically depended on the resource while fairly considering recent participation.

### Economic impact

Certain charter associations continue to claim that recreational fisheries are more valuable than commercial fisheries and that the public and the Nation would benefit from the reallocation of resource access. These statements are unsubstantiated and incorrect. The annual economic output of the commercial seafood industry in Alaska is \$5.8 billion. The commercial halibut fishery



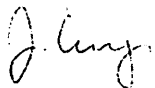
accounts for 14% of that economic output, or \$812 million.<sup>1</sup> The commercial sector delivers the fish to the public; the charter sector delivers the public to the fish—both provide the public access, although we would submit that the commercial sector provides access to a much greater public, people who are either disinclined, unable, or cannot afford to travel to Alaska to harvest fish for themselves. Charter growth has also displaced subsistence fishermen and caused local depletion of the halibut resource, which has a direct and negative economic impact on sport and subsistence fishermen.

Coastal communities in Alaska share revenues collected from commercial fish processed in Alaska with the State, and use the generated funds to maintain harbors and provide other necessary marine infrastructure and services. As halibut quotas drop, so too has the tax revenue to communities. Recreational fisheries do not pay a comparable tax to local communities, hence reallocation—and charter overharvest—do not off-set the impacts. Some Southeast communities, such as Pelican and Hoonah, are struggling to remain viable in the wake of declining quotas. As the residents of Pelican have learned, charter businesses leave town when the infrastructure previously funded by the commercial fishing industry falls apart. In all communities, the halibut allocation battles have pitted neighbors against each other, and residents are eager for a solution that resolves the conflict. **The market based mechanism for inter-sector transfer that is included in the CSP is that solution.**

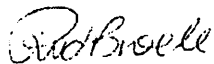
### Summary

Members of the Halibut Coalition urge the Council to direct NMFS to implement the halibut CSP without further delay. The CSP marks 17 years of public discourse on halibut charter management that engaged hundreds of people from all sectors of the halibut fishery: subsistence, sport, commercial fishermen; consumers; processors and distributors; and coastal communities. The CSP will allow halibut fishery managers to achieve conservation and management goals. It will provide a measure of stability to the halibut fishery. And, finally, it will establish a market-based mechanism to resolve the allocation conflict that has consumed the Council and torn apart coastal fishing communities for close to two decades.

Sincerely,



Julianne Curry, Petersburg Vessel Owners Association



Rochelle van den Broek, Cordova District Fishermen United

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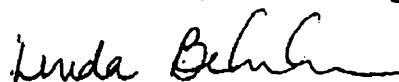
<sup>1</sup> The Seafood Industry in Alaska. January, 2009. Northern Economics



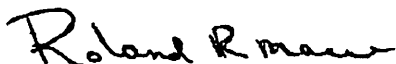
Jeff Stephan, United Fishermen's Marketing Association



Robert Alverson, General Manager, Fishing Vessel Owners Association



Linda Behnken, Alaska Longline Fishermen's Association



Roland Maw, Upper Cook Inlet Driftnetters Association



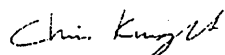
Buck Laukitis, North Pacific Fisheries Association



Tim Henkel, President, Deep Sea Fishermen's Union



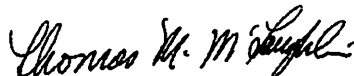
Rhonda Hubbard, Kruzof Fisheries, LLC



Chris Knight, United Southeast Alaska Gillnetters



Peggy Parker, Executive Director, Halibut Association of North America



Thomas M. McLaughlin, President/CEO Seafood Producers Cooperative



Kathy Hansen, Executive Director, Southeast Alaska Fishermen's Association



David Polushkin, Kachemak Bay Fisheries Association

Copy:

Mr Sean Parnell, Governor, State of Alaska

Senator Lisa Murkowski, U.S. Senate

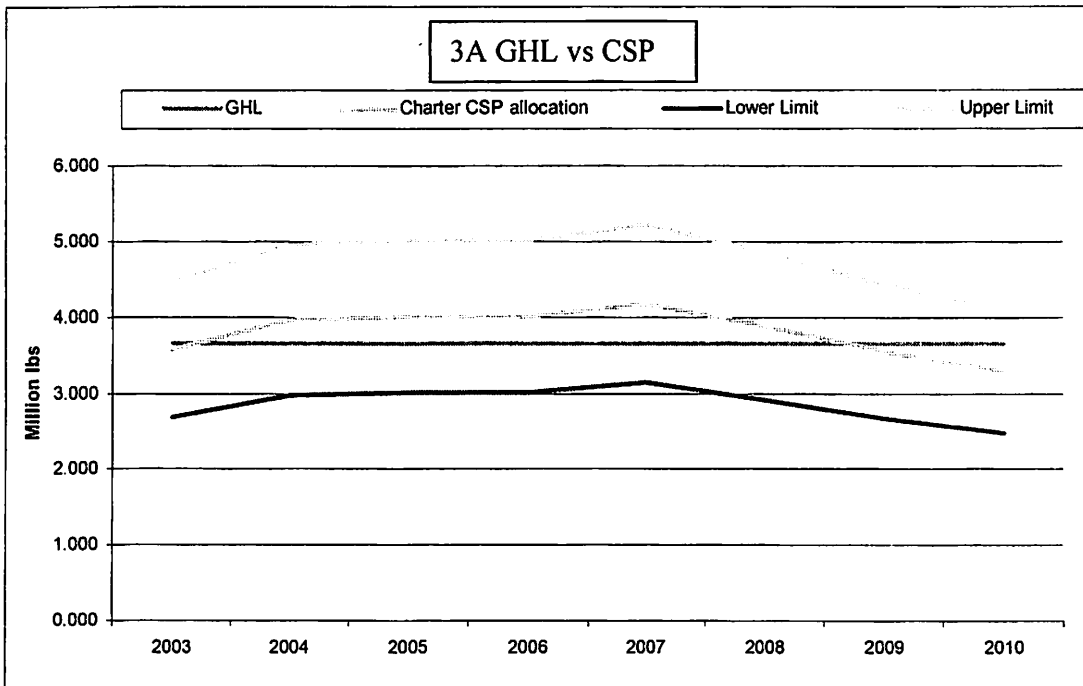
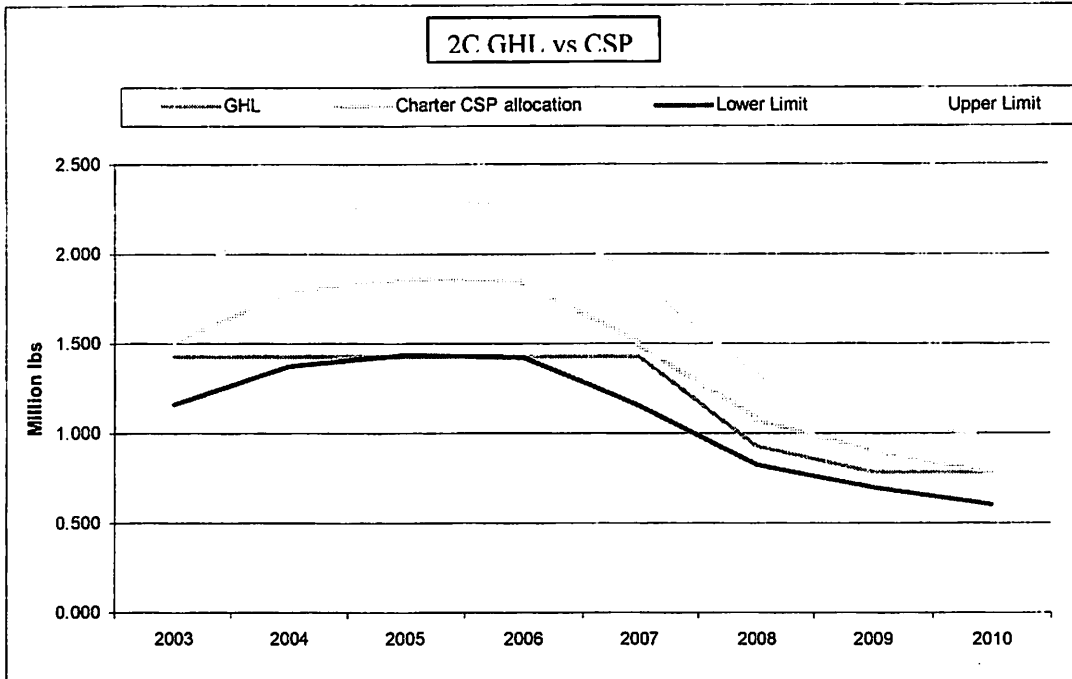
Senator Mark Begich, U.S. Senate

Congressman Don Young, U.S. House of Representatives

Mr. Eric Schwaab, Assistant Administrator for Fisheries

Mr. Denby Lloyd, Commissioner, Alaska Department of Fish and Game

Dr. Bruce Leaman, Executive Director, International Pacific Halibut Commission



## Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway

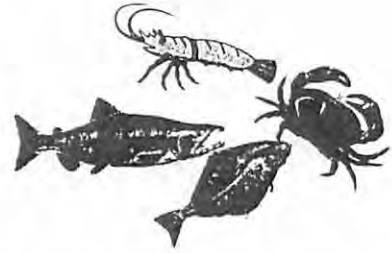
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September 28, 2010

North Pacific Fishery Management Council

605 West 4<sup>th</sup> Avenue, Ste 306

Anchorage, AK 99501

RE: Agenda Item B reports - Halibut Catch Share Plan (CSP)

Dear Chairman Olson and NPFMC Members,

Southeast Alaska Fishermen's Alliance (SEAFSA) has been involved since 2005 when the halibut charter IFQ program was rescinded. We believe the CSP is a significant improvement over the current GHL management of the halibut charter fleet. We hope that this is implemented in 2012 although we would prefer 2011 and we hope the regulations are done ASAP.

The draft regulations and NMFS cover letter was just posted on Monday and the comments were due Tuesday. We have had time to review the NMFS cover letter but not the regulations in detail. We will probably have more comments to make on the regulations specifically during public testimony.

We agree with how NMFS has handled all the issues listed in their cover letter but we are slightly confused between the attachment and the text. We agree that the attachment with the table would match our understanding of NPFMC intent. Unfortunately the text of the letter is not as clear. The text on page 2, second paragraph (under the indented text) states,

*"If that projected harvest is equal to or less than the highest value of the allowable range for the next higher trigger, the effective CSP restriction for would be the default CSP restriction of next trigger."*

This appears to be saying that looking at the management restriction for the next trigger level it needs to fall within the allocation range of the next trigger level not the allocation range of the CSP that the combined catch limit falls into.

We appreciate that the NPFMC will be having a chance to review these regulations but we strongly oppose any attempt to make changes to the CSP that are not within the very narrow scope of answering NMFS technical issues and that the regulations match the NPFMC motion.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Hansen". The signature is followed by a long horizontal line that extends to the right.

Kathy Hansen  
Executive Director

**RECEIVED**  
SEP 28 2010

September 28, 2010

NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99801

RE: Halibut Catch Sharing Plan

Dear Council Members:

This letter is to urge the North Pacific Fisheries Management Council to implement the halibut Catch Sharing Plan as quickly as possible. Throughout the years of negotiation it has taken the council to come to this agreement, the Charter sector has used stalling tactics to grab more of the resource from the Commercial longline fleet.

I am a commercial troller/longliner. I began longlining when we lost the King salmon season due to the International Salmon Treaty with Canada. Even though I had longlined prior to the implementation of the IFQ system, I did not qualify for initial issue of IFQ. The quota I own and fish, I purchased one block at a time. Until the drastic quota cuts of the last few years, halibut was more than 50% of my income.

The Charter fleet has been stealing my investment in the IFQ system by exceeding their GHJ since 2004. The unrestricted growth of the Charter fleet has undermined the stability promised by the IFQ system, and has hurt the resource by over-fishing the halibut stocks.

The Charter fleet's unrestricted growth needs to be checked to protect the resource and the livelihood of those depending on proper management of the resource. The CSP needs to be implemented as soon as possible to protect the resource and all user groups.

Sincerely,

Jay Haun  
Owner/Operator  
FV/CINNABAR

cc: ALFA  
JH/bkh



Agenda B-2 OCT 2010  
UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
*National Marine Fisheries Service*  
P.O. Box 21668  
Juneau, Alaska 99802-1668

September 27, 2010

Mr. Eric Olson, Chairman  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Dear Mr. Olson:

At its June 2010 meeting, the North Pacific Fishery Management Council (Council) requested National Marine Fisheries Staff (NMFS) provide draft regulations for the Central Gulf of Alaska (GOA) Rockfish Program. The Council's proposed Central GOA Rockfish Program would allocate exclusive harvest privileges to a select group of license limitation program (LLP) license holders who used trawl gear to target Pacific ocean perch, pelagic shelf rockfish, and northern rockfish during a suite of qualifying years. This catch share program, if approved, would be implemented in 2012, and would replace the existing Rockfish Program regulations that are scheduled to expire at the end of 2011.

The Council requested this review prior to taking action to deem the proposed regulations as necessary and appropriate. After the review of these regulations, the Council could choose to request to see the draft proposed regulations again as a scheduled agenda item, or the Council could determine that it does not need to review and vote on draft proposed regulations prior to their submission to the Secretary. If the Council chooses the second option, it would need to take action at this meeting to deem the proposed regulations as necessary and appropriate consistent with the guidance we have provided the Council. The second option described here is typically followed for most Council actions.

The draft proposed regulations have been prepared in consultation with Council staff. At this time, we have not identified issues that would indicate the need for additional Council direction, or that would prevent the implementation of the Rockfish Program. The draft regulations have not undergone Regional review or review by NOAA General Counsel. NMFS would change and modify these regulations, as necessary, as part of the review process to implement the Rockfish Program adopted by the Council. Those changes would clearly and directly flow from the Council's motion recommending the Rockfish Program.

To aid the Council, we have provided the draft regulations, a copy of the Council's final action on June 14, 2010 with notes to the regulatory citations addressing each element and option, and, in this letter, a brief overview of key regulatory issues that may be of interest to the Council.





**Key regulatory issues:**

**1. Initial allocation process**

The Council provided a precise description of the initial allocation process for assigning the long-term harvest privileges (Rockfish Quota Share(QS)) in its motion. Regulations at § 679.80, and in Tables 28a and 28b describe this allocation process in detail.

Consistent with Section 4.5 of the Council's motion, the formula to allocate rockfish QS to eligible entry level trawl fishery participants in 2007, 2008, or 2009 described at § 679.80(e)(3) ensures that 2.5 percent of the total rockfish QS pool, after all rockfish QS is allocated, is assigned to the entry level trawl fishery.

Consistent with Section 4.1 of the Council's motion, the draft regulations allow an interim LLP license that meets specific criteria to have the rockfish legal landings made on that interim LLP license be assigned to a permanent LLP license meeting specific criteria. (See draft regulations at § 679.80(b)(1)(iii) and (b)(2)(i)). NMFS would assign all legal landings made by the interim LLP license assigned to a vessel prior to the date a permanent LLP license was used on that vessel to the permanent LLP license. Any legal landings made on the permanent LLP license prior to being assigned to the vessel with the interim LLP license would not result in QS. In addition, legal landings made under the authority of the interim LLP license after the permanent LLP license was assigned to the vessel would not result in QS. This process ensures that there is only "one history per license" and that as described under Section 4.1 of the Council motion.

Section 4.4 of the Council's motion notes that "[a] vessel that qualifies for both the entry level and the main program must opt out of one or the other." The draft regulations would implement this aspect of the Council's motion by allowing an LLP license holder to choose to receive rockfish QS either as part of the "main program" or as an eligible entry level trawl fishery participant as a "a one-time selection" in the application for rockfish QS (See § 679.80(d)(4)(i)(G) & (H)).

Section 4.4 also notes that "[o]pt out qualified catch from the entry level trawl qualified vessels would be redistributed across the CV and CP sectors." If an LLP holder does not apply to receive QS as part of the "main program" then no legal landings would be assigned to that LLP license, resulting in fewer legal landings being assigned overall. This would effectively result in fewer total rockfish QS units being issued to the catcher/processor and catcher vessel sectors. Therefore, each QS holder would receive a proportionally greater share of the annual total allowable catch assigned per QS unit. The draft regulations do not provide for a specific process for a person to "opt out" of the program, but the regulations accomplish the same goal because a person can effectively "opt out" by choosing not to submit an application for rockfish QS.

## **2. Use Caps**

NMFS would determine the use caps for processors receiving or processing an amount of aggregate rockfish, sablefish, or Pacific cod based on percentage of the total amount of the annual cooperative quota (CQ) issued to the catcher vessel sector. This approach is consistent with Section 13 of the Council's motion, and reduces the complexity of use cap administration that could occur if the cap is based on a proportion of the aggregate historic legal landings received and processed during qualifying period of 2000 through 2006. The annual harvest specification process will determine the total amount of catcher vessel CQ issued. When calculating the aggregate rockfish processing cap, NMFS would sum the total poundage of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish catcher vessel CQ and multiply this amount by 0.3 (30 percent) to establish the annual cap. (See § 679.82(a)(5) for additional detail).

## **3. Cooperative quota permit issuance and use**

Consistent with Section 1 of the Council's motion, NMFS would allocate all of the rockfish primary species (Pacific ocean perch, northern rockfish, and pelagic shelf rockfish) total allowable catch to cooperatives after deducting an incidental catch allowance for non-rockfish target species, and the allocation to the rockfish entry level longline fishery. Section 7.2 of the Council's motion describes the amount of secondary species that will be allocated to rockfish cooperatives. Table 28c in the draft regulations includes the allocation of secondary species by sector. This allocation mirrors the allocation of secondary species described in Table 2-48 of the Council's analysis. Similarly, Table 28d incorporates Section 7.3 of the Council's motion detailing the allocation of halibut prohibited species catch (PSC) CQ. The allocation of halibut PSC to the catcher/processor and catcher vessel sectors in Table 28d is based on Tables 2-54 and 2-84 in the Council motion.

## **4. Electronic reporting and applications.**

The draft regulations incorporate electronic recordkeeping and reporting, and permit and transfer application processes to improve the administration of the program and reduce costs. For additional detail, see regulations at § 679.4, 679.5, and the rockfish QS transfer and CQ application and transfer provisions at § 679.80(f), and 679.81(f) and (g).

## **5. Cost recovery fees**

Regulations at § 679.85 detail the cost recovery program. Fees would be due on March 31 for fishing that occurred during the previous fishing year (see § 679.85(a)(4)(i)). To ensure the effective enforcement of cost recovery fees, NMFS would require that all CQ holders pay the fee. NMFS would not issue any CQ resulting from the QS held by a member of a cooperative if that member's cooperative did not pay fees due for the following year (see regulations at § 679.85(d)(3)(ii)). This provision would help ensure that members of a cooperative establish internal procedures for the proper collection and payment of any fees on behalf of its members.

I appreciate the opportunity to review the draft regulations for the Rockfish Program with the Council. My staff is available to provide additional detail and review of the draft regulations as required.

Sincerely,

*for Sue Salmons*

Dr. James W. Balsiger, PhD  
Administrator, Alaska Region

C-5 Rockfish Program motion -- June 14, 2010

**Elements and options defining the program alternatives**

**Regulatory citations for each element are listed in the comments.**  
Elements not in regulation are in highlight and bold text.

**Entry-Level Fishery Alternatives (EL)**

Fixed gear only fishery

Comment [gm1]: 679.83

**Catcher Processor Alternatives (CP)**

Catcher processor cooperative only

Comment [gm2]: 679.81

**Catcher Vessel Alternatives (CV)**

Annual harvester/processor association -- severable, no forfeiture

Comment [gm3]: 679.81(i)(3)(iv)

The above alternatives are defined by the following elements and options.

**1 ICA Set Aside**

Prior to calculating annual cooperative allocations within the sectors, NMFS shall set aside an Incidental Catch Allocation (ICA) of Pacific ocean perch (POP), northern rockfish, and pelagic shelf rockfish to meet the incidental catch needs of fisheries not included in the cooperative program.

Comment [gm4]: 679.81(a)(2)

**2 Entry-level Set Aside**

A percentage of CGOA POP, northern rockfish, and pelagic shelf rockfish for catcher vessels not eligible to participate in the program.

Comment [gm5]: 679.7(n)(1) & (n)(8)

**2.2 Fixed gear (non-trawl) only entry level fishery (EL-3)**

The annual set aside will be:

- 5 mt of the POP TAC
- 5 mt of the northern rockfish TAC
- 30 mt of the pelagic shelf rockfish TAC

If the entry-level fishery has retained harvests of 90% or more of their allocation of a species, the set-aside would increase the following year by:

- 5 mt POP
- 5 mt Northern rockfish
- 20 mt pelagic shelf rockfish

This increase would be capped at a maximum of:

POP  
1%

Northern Rockfish  
2%

Pelagic Shelf Rockfish  
5%

Comment [gm6]: 679.83, and Table x.

The entry level fishery will be managed as a limited entry fishery.

Comment [gm7]: 679.83, and existing general LLP management authority under 679.4(k).

Start date for the entry level fishery should be January 1.  
Prosecution of the entry level fishery will be supported by general allowance of halibut PSC to the gear type and the general allocations of secondary species.

Comment [gm8]: 679.80(a)(3)(i)

Comment [gm9]: 679.83(a)(3)

**Any fixed gear vessel or gear type exempt from CGOA LLP requirements or any holder of a CGOA fixed gear LLP may enter a vessel in the entry level fishery.**

Comment [gm10]: No additional regulatory text needed. Covered under existing general LLP management authority under 679.4(k).

**Entry level fixed gear sector targeting rockfish is exempt from VMS requirements (Pacific cod VMS requirements continue to apply).**

Comment [gm11]: No additional regulatory text needed. Covered under existing VMS regulations at 679.28.

3 **Program eligibility**

The eligibility for entry into the cooperative program is one targeted landing of POP, Northern rockfish or PSR caught in CGOA during the qualifying period using a CGOA trawl LLP license.

Comment [gm12]: 679.80(b)

In addition, the following participants would be eligible to enter the program:  
those persons whose vessel had one targeted landing of POP, northern rockfish or PSR caught in CGOA during the qualifying period with interim trawl CGOA license that was later determined to be an invalid trawl CGOA endorsement, but who acquired a valid CGOA trawl license prior to December 31, 2003, which has been continuously assigned to the vessel with the target landing since acquired until the date of final Council action.

Comment [gm13]: 679.80(b)(1)(ii)

4 **Qualified catch**

4.1 Basis for the qualifying catch assigned to the LLP license holder is the catch history of the vessel on which the LLP license is based, and shall be determined on a fishery-by-fishery basis. The underlying principle of this program is one history per license. In cases where the fishing privileges (i.e., moratorium qualification or LLP license) of an LLP qualifying vessel have been transferred, the qualifying catch assigned to the LLP shall be based on the aggregate catch histories of (1) the vessel on which LLP license was based, up to the date of transfer, and (2) the vessel owned or controlled by the LLP license holder and identified by the license holder as having been operated under the fishing privileges of the LLP qualifying vessel after the date of transfer. (Only one catch history per LLP license.)

Comment [gm14]: 679.80(b)

Comment [gm15]: 679.80(b)

Comment [gm16]: 679.80(b)(2) & 679.80(b)(3)

For licenses that qualify based on catch of an interim license (and for licenses used on a vessel that previously fished in the rockfish fishery during the qualifying years using an interim license), the basis of the allocation will be the catch history of such vessel using the interim license (plus the history of the vessel using the permanent license) during qualifying period, notwithstanding the invalidity of the interim endorsement under which the vessel operated during the qualifying period. However, 1) no permanent license shall be assigned history from two vessels for any portion of the qualifying period and 2) no history shall be assigned to two licenses. To qualify for this provision, the permanent license must be assigned to the vessel on or before December 31, 2003 and must not be assigned to any other vessel through the date of final Council action.

Comment [gm17]: 679.80(b)(2)

Comment [gm18]: 679.80(b)(2)

4.2 Catch history will be the history during the following qualifying period (dates inclusive):  
2000-2006 (drop two)

Comment [gm19]: 679.80(e) & Table 28a

4.3 Qualified target species history is allocated based on retained catch (excluding meal) during the rockfish target fishery. Different years may be used (or dropped) for determining the history of each of the three rockfish species.

Comment [gm20]: 679.80(c)(3)

Comment [gm21]: 679.80(e)

The CP catch history will be based on WPR data.

Comment [gm22]: 679.80(c)(3)(i)

CV catch history will be based on fish tickets.

Comment [gm23]: 679.80(c)(3)(ii)

Note: Only legal landings will be considered in determining catch history.

Comment [gm24]: 679.80(b) & 679.80(e)(3)

4.4 Entry level trawl qualification ~~allocations~~ for the main program:

The trawl LLP must have made a landing of fish in the entry level fishery with trawl gear in 2007, 2008, or 2009.

Comment [gm25]: 679.80(b)(1)(iii)

A vessel that qualifies for both the entry level and the main program must opt out of one or the other. A vessel that qualifies under this section may elect to opt out of the rockfish program. This is a one-time selection. Opt out qualified catch from the entry level trawl qualified vessels would be redistributed across the CV and CP sectors.

Comment [gm26]: 679.80(d)(4)(i)(G) & (H)

Comment [gm27]: 679.80(d)(4)(i)(G) & (H)

Comment [gm28]: 679.80(e) Note that only LLP licenses that apply. Those that do not, do not receive Rockfish QS.

Comment [gm29]: 679.80(e)(3)

4.5 The qualified entry level trawl LLPs, in aggregate, shall be assigned 2.5% of the primary rockfish species total qualified catch. Within that amount, qualified catch for each of the qualified entry level LLPs would be distributed for primary rockfish species in proportion to the number of years they made a delivery to an entry level processor from 2007 to 2009.

Comment [gm30]: 679.80(e)(3)

Note: secondary species qualified catch and halibut PSC allowances are calculated the same as the other qualified LLPs.

Comment [gm31]: 679.82(b) & (c)

Qualified catch for entry level trawl LLPs would be calculated as a set aside, such that the qualified catch for the entry level LLPs moving into the main program is established from the combined CV and CP sectors. The qualified catch for these LLPs would be assigned to the CV sector.

Comment [gm32]: 679.80(e)

Comment [gm33]: 679.80(b)(4)(ii)

5 Sector definitions

Trawl catcher vessel – A trawl catcher-vessel that has a CV or CP LLP license, but does not process its catch on board.

Comment [gm34]: 679.2 & 679.80(b)(4)

Trawl catcher processor - A trawl catcher-processor is a trawl vessel that has a CP LLP license and that processes its catch on board.

Comment [gm35]: 679.2 & 679.80(b)(3)

6 Rationalized areas

Eligible catch history is established for the CGOA only (NMFS statistical areas 620 and 630).

Comment [gm36]: 679.2, 679.80, 679.81

7 Sector catch history

7.1 Target rockfish species

Catch history is determined by the sector's qualified catch in pounds as a proportion of the total qualified catch in pounds.

Comment [gm37]: 679.80(h)

Sector catch histories of target rockfish species are based on individual qualified vessel histories applying any applicable drop year provision at the vessel level.

Comment [gm38]: 679.80(e)(4)

Full retention of the target rockfish species is required.

Comment [gm39]: 679.7(n)(6)(i)

7.2 Secondary species

Secondary species history is based on retained catch of the species while targeting rockfish, over retained catch in all fisheries.

Comment [gm40]: Table 28c

7.2.1 Except as provided below, qualifying history will be established in each sector for the following secondary species:

sablefish,  
shortraker rockfish,  
roughey rockfish,  
thornyhead rockfish, and  
Pacific cod.

7.2.3 Except as otherwise provided below, secondary species qualifying history will be based on: The sector's average annual percentage of retained catch of the secondary species by the rockfish target fisheries during the qualifying period. For each qualifying year calculate the sector's retained catch of the species in the target rockfish fisheries divided by the retained catch of all CGOA fisheries. Sum these percentages and divided by the number of qualifying years. The calculated average annual percentage is multiplied by the secondary species TAC for that fishery year to establish qualified catch for each sector in the cooperative program.

Comment [gm41]: Table 28c

7.2.4 Exceptions:

Shortraker and roughey

For shortraker and roughey:

For the CP sector:

A shortraker allocation of the TAC will be 40 percent, to be managed as a hard cap, and

A roughey allocation of 58.87% of the TAC, to be managed as a hard cap.

For the CV sector, shortraker and roughey will be managed with a combined MRA of 2 percent. If harvest of shortraker by the CV sector reaches 9.72% of the shortraker TAC, then shortraker will go on PSC status for that sector.

Comment [gm42]: Table 28c

Comment [gm43]: 679.81(h)(4)(iii)

Sablefish and Pacific cod

For the catcher processor sector, Pacific cod history will be managed by MRA of 4 percent.

Comment [gm44]: Table 30

Secondary species allocations may be fished independently of the primary species allocations.

Comment [gm45]: No regulations needed, not prohibited currently when fishing under a CQ permit

Full retention of all allocated species is required.

Comment [gm46]: 679.7(n)(6)(i)

Participants must retain all allocated secondary species and stop fishing when cap is reached.

Comment [gm47]: 679.7(n)(6)(i)

MRAs in the CP sector will be enforced on a trip-by-trip basis.

Comment [gm48]: 679.81(i)(5) and 679.20(e)(2)(ii)

7.3 Prohibited species (halibut mortality)

Allowance to the rockfish cooperative program will be based on 87.5 percent of the historical average usage (during the qualifying years), calculated by dividing the total number of metric tons of halibut mortality in the CGOA rockfish target fisheries during the qualifying years by the number of years, and multiplying by 0.875. The difference between the historical average usage and the allowance provided above will remain unavailable for use.

Comment [gm49]: Table 28d

The halibut PSC allowance will be divided between sectors based on the relative amount of qualifying target rockfish species catch in each sector.

Comment [gm50]: Table 28d

(b) GOA Rockfish CSP Motion

Option for supplementing the last seasonal halibut apportionment for trawl gear

55 percent of any allowance of halibut PSC that has not been utilized by November 15 or after the declaration to terminate fishing will be added to the last seasonal apportionment for trawl gear, during the current fishing year. The remaining portion of any allowance will remain unavailable for use.

**Comment [gm51]:** 679.4(n)(1)(iv), (n)(2)(iv), & 679.21(d)(5)(iii)(B)

8 Vessel catch history

Within each sector, history will be assigned to LLP holders with CGOA endorsement that qualify for a sector under the 'sector catch history' above. The history will be assigned to the current owner of the LLP of the vessel which earned the history.

**Comment [gm52]:** 679.80(b)

Target Species

Each LLP holder will receive catch history equivalent to the license's proportion of the total of the sector qualifying catch history.

**Comment [gm53]:** 679.80(b)

Secondary Species

Each LLP holder will be assigned qualifying catch of allocated secondary species equal to the license's proportion of the sector's target rockfish catch history.

**Comment [gm54]:** 679.81(c)

PSC (Halibut Mortality)

Each LLP holder will receive an allowance of halibut mortality equivalent to the license's proportion of the sector's target rockfish catch history.

**Comment [gm55]:** 679.81(d)

Halibut PSC in the CP sector shall be divided between the co-op(s) according to the history of the participating vessels.

**Comment [gm56]:** 679.81(d)

9 Catcher vessel/shore based processor provisions

9.4 Harvester cooperatives with annual processor associations and severable, no forfeiture

**Comment [gm57]:** 679.81(i)(3)(iv)

Harvesters must join a cooperative to participate in the target rockfish fisheries.

**Comment [gm58]:** 679.7(n)(4) & 679.81(a)

The shorebased Kodiak processor must have a federal processor permit and an approved Catch Monitoring and Control Plan (CMCP).

**Comment [gm59]:** Definition of rockfish eligible processor (679.2) & 679.28(g)(2) and general FFP regulations in 679.4.

A holder of catcher vessel harvest history must join a cooperative to coordinate the harvest of allocations. (Cooperatives are subject to general cooperative rules below).

**Comment [gm60]:** 679.81(i)

Membership agreements will specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by general antitrust law.

**Comment [gm61]:** 679.81(i)(3)

Cooperatives are intended only to conduct and coordinate harvest activities of the members and are not FCMA cooperatives.

**Comment [gm62]:** 679.81(i)

Co-ops of at least 2 LLPs may engage in intercooperative transfers of annual allocations with other cooperatives.

**Comment [gm63]:** 679.81(i)(4)(ii)

Annual allocations issued to cooperatives may be transferred between co-ops of at least two LLPs.

**Comment [gm64]:** 679.81(i)(4)(ii)



Regionalization – Apply to catcher vessel sector only:

All CV CQ must be landed in the City of Kodiak at a shorebased processing facility.

Comment [gm65]: 679.7(n)(5)

Entry-level fixed gear landings must be landed at a shorebased processing facility.

Comment [gm66]: 679.7(n)(8)(i)

**10 Catcher processor cooperatives**

More than one co-op may form within the sector.

Comment [gm67]: 679.81(i)(3)

Annual allocations issued to cooperatives may be transferred between co-ops of at least two LLPs.

Comment [gm68]: 679.81(i)(4)(ii)

Participants have a choice of participating in a co-op or opt out of the rockfish program.

Comment [gm69]: 679.81(e)

**11 General cooperative provisions – apply to both sectors**

Duration of cooperative agreements is 1 year.

Comment [gm70]: 679.81(i)(3)

The cooperative membership agreement (and an ancillary agreement with an associated processor, if applicable) will be filed with the RAM Division. The cooperative membership agreement must contain a fishing plan for the harvest of all cooperative fish.

Comment [gm71]: 679.81(f)(3)

The cooperative agreement must have a monitoring program. Cooperative members are jointly and severally responsible for cooperative vessels harvesting in the aggregate no more than their cooperative's allocation of target rockfish species, secondary species and PSC mortality allowance, as may be adjusted by intercooperative transfers.

Comment [gm72]: 679.81(i)(3)(xxvi)

Comment [gm73]: 679.81(i)(3)(xix)

A cooperative may adopt and enforce fishing practice codes of conduct as part of their membership agreement.

Comment [gm74]: 679.81(f)(4)

Cooperatives will submit a written report annually to the Council.

Comment [gm75]: 679.81(i)(3) & 679.7(r)(7)

Cooperatives will be required to notify RAM division which LLP holders are in a cooperative by March 1<sup>st</sup> of the fishing year.

Comment [gm76]: 679.81(f)(3)

**12 Sector Transfer provisions**

CP annual cooperative allocations may be transferred to CV cooperatives. CV annual cooperative allocations may not be transferred to CP cooperatives.

Comment [gm77]: 679.81(h)(

All transfers of annual cooperative allocations would be temporary, and history would revert to the original LLP at the beginning of the next year.

Comment [gm78]: 679.4(n)(1)(ii)

A person holding an LLP that is eligible for this program may transfer that LLP. That transfer will effectively transfer all history (below the holdings cap) associated with the LLP and any privilege to participate in this program that might be derived from the LLP.

Comment [gm79]: 679.80(f)

Permit post-delivery transfers of cooperative quota (annual allocations to cooperatives).

Comment [gm80]: 679.81(g)

There would be no limits on the number or magnitude of post-delivery transfers. All post-delivery transfers must be completed by December 31st.

Comment [gm81]: 679.7(n)(6)

No cooperative vessel shall be permitted to begin a fishing trip, unless the cooperative holds unused cooperative quota.

Comment [gm82]: 679.79n(6)

13 Cooperative Harvest Use Caps

CV cooperatives

No person may contribute more than 4% of the CV sector catch history to annual cooperative allocations, using the individual and collective rule (with grandfather provision).

Comment [gm83]: 679.82(a)(2)(i)

In the event qualifying history exceeds the applicable cap, the person holding that license will be grandfathered. The initial holder may sever the portion of the history that exceeds the cap on transfer, provided that the severed history is transferred to a qualified CV license holder, after which that history will attach to the license of the recipient. After the transfer, recipients must comply with all caps.

Comment [gm84]: 679.82(a)(6)

Comment [gm85]: 679.80(f)(2)

Comment [gm86]: 679.80(a)(2) & 679.80(f)(2)

Control of harvest shares by a CV cooperative shall be capped at 30% of aggregate POP, northern rockfish and PSR for the CV sector.

Comment [gm87]: 679.82(a)(3)

No CV may catch more than 8% of the target CV annual cooperative allocations in the aggregate

Comment [gm88]: 679.82(a)(4)(i)

CP cooperatives

No person may contribute more than 40% of the CP sector catch history to annual cooperative allocations, using the individual and collective rule (with grandfather provision).

Comment [gm89]: 679.82(a)(2)(ii)

No CP may catch more than 60% of aggregate POP, northern rockfish and PSR annual cooperative allocations for the CP sector.

Comment [gm90]: 679.82(a)(4)(ii)

Shoreside Processor Use Caps

Shoreside processors shall be capped at the entity level.

Comment [gm91]: 679.2 (definition of affiliation), 679.82(a)(5)(iv)

No processor shall process or receive more than 30% of aggregate POP, Northern Rockfish and PSR for the CV sector.

Comment [gm92]: 679.82(a)(5)(i)

No processor shall process or receive more than 30% of the sablefish allocated to the CV sector.

Comment [gm93]: 679.82(a)(5)(iii)

No processor shall process or receive more than 30% of the Pacific cod allocated to the CV sector.

Comment [gm94]: 679.82(a)(5)(ii)

(The average annual received catch over the qualifying years used to establish CV qualifying catch will be used as a base (or index) for applying the aggregate caps.)

Comment [gm95]: 679.82(a)(5) - CQ cap is based on 2000-2006 qualifying years.

14 Harvesting provisions

The cooperative season start date is May 1, and closing date is November 15.

Comment [gm96]: 679/80(a)(3)

All non-allocated species will be managed by MRA, as in the current regime. This includes arrowtooth flounder, deep water flatfish, shallow water flatfish, flathead sole, rex sole, pollock, 'other species', Atka mackerel, and 'other rockfish'. Basis species for purposes of determining MRAs will be all allocated species.

Comment [gm97]: Table 30, 679.81(h)

Full retention of all allocated species is required.

Comment [gm98]: 679.7(n)(6)(ii)

15 Program review

In addition to the review required under the MSA, a formal detailed review of the program shall be undertaken 3 years after implementation. The review shall assess:

- 1) the progress of the program in achieving the goals identified in the purpose and need statement and the MSA, and
- 2) whether management, data collection and analysis, and enforcement needs are adequately met.

In order to assess program objectives, specific elements of the detailed 3-year program review shall include:

- 1) whether the allocation of rockfish and associated incidental harvests are fair and equitable given consideration of
  - a) present participation in the fishery, including the participation of current rockfish harvesters and processors;
  - b) historical investments in and dependence upon the fishery, including investments and dependence upon the fishery by the historical harvesters and processors in the fishery; and
  - c) employment in the harvesting and processing sectors.
- 2) changes in annual cooperative formation, including number of LLPs associated with each cooperative, number of active vessels, and stability of annual cooperative membership
- 3) stability and use of annual processor associations
- 4) number of processing facilities, distribution of program harvests among facilities, temporal distribution of program harvests and 5<sup>th</sup> season flatfish opportunities made available from rockfish program halibut allowance
- 5) changes in product form, first wholesale value, and distribution of first wholesale value between the catcher vessel and shorebased processing sectors relative to those under Rockfish Pilot Program and LLP management

Comment [gm99]: Not in regulation consistent with review processes in other catch share programs. Will be included in FMP.

16 Duration

Program Duration

The CGOA rockfish LAPP program shall expire 10 years after implementation.

Comment [gm100]: 679.80(u)(2)

17 Cost recovery

A fee, not to exceed 3 percent of ex vessel value, will be charged on all program landings to cover the costs of administration of the program.

Comment [gm101]: 679.85, 679.5(r)(9) and (10), 679.7, and 679.81(i)(3)

18 Sideboards

18.1 Catcher vessel options

West Yakutat and Western Gulf Primary Rockfish Species

For catcher vessels, prohibit directed fishing for WYAK and WGOA primary rockfish species in the month of July.

Comment [gm102]: 679.82(d)

Halibut PSC

For the month of July, limit all CVs to the shallow water complex fisheries (except for rockfish target fisheries in CGOA, WYAK and WGOA).

Comment [gm103]: 679.82(d)

**IFQ halibut and sablefish are exempt from sideboard provisions**

Comment [gm104]: Not needed in regs because halibut PSC sideboard for CVs has been removed with this action.

**Bering Sea and Aleutian Island Sideboard Provisions**

**Yellowfin sole, other flatfish, and Pacific ocean perch fisheries**

The qualifying vessels in the trawl catcher vessel sector may participate in the limited access yellowfin sole, other flatfish, or Pacific ocean perch fisheries in the BSAI in the month of July.

Comment [gm105]: Not needed in regs because BSAI sideboards have been removed for CVs

**Pacific cod fishery**

The qualifying vessels in the trawl CV sector may participate in the BSAI Pacific cod fishery in the month of July, without any sideboard limit.

Comment [gm106]: Not needed in regs because BSAI Pacific cod sideboards have been removed for CVs

AFA non-GOA exempt CVs qualified under this program are subject to the restraints of AFA sideboards and their co-op agreements, and not subject to additional sideboards under this program.

Comment [gm107]: 679.82(d)(2)

**18.2 Catcher processor options**

**West Yakutat and Western Gulf Primary Rockfish Species**

For fisheries that close on TAC in the Gulf, the qualified vessels in the trawl catcher processor sector would be limited, in aggregate, in the month of July, to the historical average catch of those vessels, based on the retained catch as a percentage of the retained catch in the fishery in the month of July, during the qualification years. Fisheries that this sideboard provision would apply to are the West Yakutat and Western Gulf primary rockfish species fisheries.

Comment [gm108]: 679.82(e)(3)

Non-Amendment 80 catcher processors will be prohibited from West Yakutat and Western Gulf rockfish species fisheries for the month of July.

Comment [gm109]: 679.82(e)(2)

**Halibut PSC**

For flatfish fisheries in the GOA that close because of halibut PSC, the qualified vessels in the trawl catcher processor sector would be limited, in the aggregate, in the month of July, to the historical average halibut mortality taken by those vessels in the target groundfish fisheries in the month of July, by deep water and shallow water complex targets, as a Gulf-wide cap.

Comment [gm110]: 679.82(e)(4) and (5)

Note: IFQ halibut and sablefish are exempt from sideboard provisions

Comment [gm111]: 679.82(f)(4)(i)

**Standdown for vessels that opt out of the rockfish fisheries**

CP vessels may decide to opt out of the CGOA cooperative program on an annual basis. These CP vessels may not target POP, northern rockfish or pelagic shelf rockfish in the CGOA, in the years they choose to opt out. They may retain these species up to the MRA amount in other fisheries. They will be sideboarded at the sector level in the GOA, as described in the general provisions.

Comment [gm112]: 679.82(f)(2)

The history of CP vessels which opt out will remain with the sector.

CPs that opt out of the rockfish cooperative program will be prohibited, for two weeks following the start of the traditional July rockfish fishery, from entering other GOA fisheries in which they have not previously participated. Participation shall be defined as having been in the shallow water flatfish complex or deep water flatfish complex or target rockfish fisheries during the first week of July in at least two of the qualifying years. For purposes of qualifying under this provision, history from area 650 (SEO) will be considered the same as history from area 640 (WY). The following week ending dates will be used for determining participation in a fishery:

- 1996 – July 6
- 1997 – July 5
- 1998 – July 4
- 1999 – July 10
- 2000 – July 15
- 2001 – July 7
- 2002 – July 6
- 2003 – July 5
- 2004 – July 10
- 2005 – July 9
- 2006 – July 8

Opting out is an annual decision. CP vessels which do not join cooperatives will be assigned opt out status. The decision to opt out should not, in any way, alter the status of their catch history for future rationalization programs.

Standdown for vessels that join cooperatives

In addition to the other limitations and restrictions described above, each cooperative and opt-out vessels will be limited in the aggregate:

- 1) for fisheries that close on TAC in the GOA in the month of July, to the historical average total catch of the cooperative members or opt-out vessels in the month of July during the qualification years. Fisheries that this sideboard provision would apply to include West Yakutat rockfish and WGOA rockfish, and
- 2) for flatfish fisheries in the GOA that close because of halibut PSC in the month of July, to the historical average halibut PSC mortality taken by cooperative members or opt-out vessels in the target flatfish fisheries in the month of July, by deep water and shallow water complex fisheries.

19 Observer Coverage

Shoreside observer coverage

Shoreside processor observer coverage requirements for all rockfish program deliveries will be:

Employ a CMCP Monitor to oversee deliveries

Catcher vessel observer coverage

Comment [gm113]: 679.80(a)(4) and 679.80(a)(4) for the CV sector to ensure a consistent approach.

Comment [gm114]: 679.82(f)(4)

Comment [gm115]: 679.82(f)(4)

Comment [gm116]: Not in regulation because no trawling was permitted in Area 650 during the qualifying years.

Comment [gm117]: 1996-1999 not in regulations because they are not qualifying years

Comment [gm118]: 679.82(f)(4)

Comment [gm119]: 679.81(c)(5)

Comment [gm120]: 679.80(e)(6)

Comment [gm121]: Not in regulations, statement of Council intent.

Comment [gm122]: 679.82(e)(3), (e)(5) through (e)(7)

Comment [gm123]: 679.82(e)(4), (e)(8) through (e)(10)

Comment [gm124]: 679.84(f)(4) & deleted 679.50(d)(7)

Fishing days and observer coverage under the rockfish program will be separate from and not count towards meeting a vessel's overall groundfish observer coverage requirement.

Comment [gm125]: 679.50(c)(7)(iv)

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**§ 679.2 Definitions.**

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**§ 679.2 Definitions.**

\* \* \*

Affiliation for the purpose of defining AFA and Rockfish eligible processor entities means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in another, exerts control over another, or has the power to exert control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts control over both, or has the power to exert control over both.

**(1) What is 10 percent or greater ownership?**

For the purpose of determining affiliation, 10 percent or greater ownership is deemed to exist if an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a second corporation or other business concern.

**(2) What is an indirect interest?** An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

**(3) What is control?** For the purpose of determining affiliation, control is deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:

(i) Controls 10 percent or more of the voting stock of another corporation or business concern;

(ii) Has the authority to direct the business of the entity which owns the fishing vessel or processor. The authority to direct the business of the entity does not include the right to simply participate in the direction of the business activities of an entity which owns a fishing vessel or processor;

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority shareholders to restrict the actions of the entity are not included in this definition of control provided they are unrelated to day- to-day

business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates or to guarantee the obligations of majority investors or their affiliates;

(iv) Has the authority to direct the transfer, operation or manning of a fishing vessel or processor. The authority to direct the transfer, operation, or manning of a vessel or processor does not include the right to simply participate in such activities;

(v) Has the authority to control the management of or to be a controlling factor in the entity that holds 10 percent or greater interest in a fishing vessel or processor;

(vi) Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor;

(vii) Has the responsibility to procure insurance on the fishing vessel or processor, or assumes any liability in excess of insurance coverage;

(viii) Has the authority to control a fishery cooperative through 10 percent or greater ownership or control over a majority of the vessels in the cooperative, has the authority to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts control over the cooperative; and

(ix) Has the ability through any other means whatsoever to control the entity that holds 10 percent or greater interest in a fishing vessel or processor.

Affiliates, for purposes of subparts E and H of this part, means business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the decertification, suspension, or proposed decertification of an observer provider that has the same or similar management, ownership, or principal employees as the observer provider that was decertified, suspended, or proposed for decertification.

§ 679.2 Definitions.

\*\*\*\*\*

Basis species means any species or species group that is open to directed fishing that the vessel is authorized to harvest (see Tables 10, 11, and 30 to this part).

\*\*\*\*\*

Cooperative quota (CQ) means:

\*\*\*

(2) For purposes of the Rockfish Program means:

(i) The annual catch limit of a rockfish primary species or rockfish secondary species that may be harvested by a rockfish cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while fishing under a CQ permit (see rockfish halibut PSC in this section).

\*\*\*\*\*

Delete:

— ~~Eligible rockfish harvester~~ means a person who is permitted by NMFS to hold rockfish QS.

— ~~Eligible rockfish processor~~ means a person who is authorized by NMFS to receive and process primary rockfish species and secondary rockfish species harvested by a rockfish cooperative or in a rockfish limited access fishery.

\*\*\*\*\*

Fishing trip means:

\*\*\*

(4) For purposes of § 679.7(n)(7), the period beginning when a vessel operator commences harvesting any Rockfish Program species and ending when the vessel operator offloads or transfers any processed or unprocessed Rockfish Program species from that vessel.

\*\*\*\*\*

Delete:

— ~~Halibut PSC sideboard limit~~ means the maximum amount of halibut PSC that may be used from July 1

through July 31 by eligible rockfish harvesters or rockfish cooperatives in the West Yakutat District, Central GOA, and Western GOA as established under § 679.82(d), as applicable.

Delete:

— ~~Initial rockfish QS pool~~ means the sum of rockfish QS units established for a Rockfish Program fishery based on the official Rockfish Program record and used for the initial allocation of rockfish QS units and use cap calculations as described in § 679.82(a).

\*\*\*\*\*

Delete:

— ~~Legal rockfish landing for purposes of qualifying for the Rockfish Program~~ means groundfish caught and retained in compliance with state and Federal regulations in effect at that time unless harvested and then processed as meal, and

— ~~(1) For catcher vessels:~~

— ~~(i) The harvest of groundfish from the Central GOA regulatory area that is offloaded and recorded on a State of Alaska fish ticket during the directed fishing season for that primary rockfish species as established in Table 28 to this part; and~~

— ~~(ii) An amount of halibut PSC attributed to that sector during the directed fishing season for the primary rockfish species as established in Table 28 to this part.~~

— ~~(2) For catcher/processors:~~

— ~~(i) The harvest of groundfish from the Central GOA regulatory area that is recorded on a production report based on harvests during the directed fishing season for that primary rockfish species as established in Table 28 to this part; and~~

— ~~(ii) An amount of halibut PSC attributed that sector during the directed fishing season for the primary rockfish species as established in Table 28 to this part.~~

\*\*\*\*\*

Delete

— ~~Official Rockfish Program record~~ means information used by NMFS necessary to determine eligibility to participate in the Rockfish Program and assign specific harvest or processing privileges to Rockfish Program participants.



§ 679.2 Definitions.

\* \* \* \* \*

Delete

~~—Opt out fishery means the fishery conducted by persons who are eligible rockfish harvesters holding an LLP license endorsed for catcher/processor activity and who are not participating in a rockfish cooperative or the rockfish limited access fishery in the catcher/processor sector.~~

\* \* \* \* \*

Delete

~~—Primary rockfish species (see Rockfish Program species in this section).~~

Rockfish (Catch Monitoring Control Plan) CMCP monitor, for purposes of subpart H of this part, means a designee authorized by the Regional Administrator to monitor compliance with catch monitoring and control plans or for other purposes of conservation and management of marine resources as specified by the Regional Administrator..

Rockfish cooperative means a group of eligible rockfish harvesters who have chosen to form a rockfish cooperative under the requirements of § 679.81 in order to combine and harvest fish collectively under a CQ permit issued by NMFS.

Rockfish CQ (See CQ)

Rockfish CQ equivalent pound(s) means the weight amount, recorded in pounds, for an Rockfish CQ landing and calculated as round weight.

Rockfish eligible processor means a shoreside processor with a federal processor permit that:

- (1) Receives groundfish harvested under the authority of a Rockfish CQ permit;
- (2) Receives groundfish within the boundaries of the City of Kodiak as those boundaries are defined by the State of Alaska on the effective date of this rule; and
- (3) Is operating in compliance with a CMCP approved by NMFS.

Rockfish fee liability means that amount of money for Rockfish Program cost recovery, in U.S. dollars, owed to NMFS by a Rockfish CQ permit holder as determined by multiplying the appropriate standard ex-vessel value of his or her rockfish landing(s) by the appropriate Rockfish fee percentage.

Delete

~~—Rockfish entry level fishery~~

Rockfish entry level trawl fishery means the trawl gear fisheries in the Central GOA conducted under the Rockfish Program by rockfish entry level harvesters during 2007 through 2011.

Rockfish entry level harvester means a person who is authorized by NMFS to harvest fish in the rockfish entry level fishery and who is not an eligible rockfish harvester.

Rockfish entry level trawl fishery means the longline gear fisheries in the Central GOA conducted under the Rockfish Program by rockfish entry level harvesters.

Delete

~~—Rockfish entry level processor means a person who is authorized by NMFS to receive and process fish harvested under the rockfish entry level fishery and who is not an eligible rockfish processor.~~

Rockfish fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use to calculate the IFQ cost recovery fee liability for an IFQ permit holder.

Rockfish halibut PSC means the amount of halibut PSC that may be used by a rockfish cooperative in the Central GOA as assigned on a CQ permit.

Delete

~~—Rockfish limited access fishery means the fishery for primary rockfish species conducted by persons who are eligible rockfish harvesters or eligible rockfish processors and who are not participating in a rockfish cooperative or opt out fishery for that applicable sector.~~

Delete:

Rockfish legal landing means groundfish caught and retained in compliance with state and Federal regulations in effect at that time unless harvested and then processed as meal, and

(1) For catcher vessels:

- (i) The harvest of groundfish from the Central GOA regulatory area that is offloaded and recorded on a State of Alaska fish ticket during the directed fishing season for that rockfish primary species as established in Tables 28a and 28b to this part; and

(2) For catcher/processors:

(i) The harvest of groundfish from the Central GOA regulatory area that is recorded on a production report based on harvests during the directed fishing season for that rockfish primary species as established in Table 28a to this part; and

(ii) The harvest of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish, and the use of halibut PSC in the Western GOA, or West Yakutat District during the directed fishing season for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish as established in Table 28x to this part.

Rockfish Program means the program authorized under the authority of Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108-199) and implemented under subpart G of this part to manage Rockfish Program fisheries.

Rockfish Program fisheries means one of following fisheries under the Rockfish Program:

(1) A rockfish cooperative in the catcher/processor sector;

(2) A rockfish cooperative in the catcher vessel sector;

~~—(3) The limited access fishery in the catcher/processor sector;~~

~~—(4) The limited access fishery in the catcher vessel sector;~~

(3) The rockfish opt-out fishery; and

~~—(6) The entry level trawl fishery; and~~

(4) The rockfish entry level longline gear fishery.

Rockfish Program official record means information used by NMFS necessary to determine eligibility to participate in the Rockfish Program and assign specific harvest privileges or limits to Rockfish Program participants.

Rockfish Program species means the following species in the Central GOA regulatory area that are managed under the authority of the Rockfish Program:

(1) Rockfish primary species means northern rockfish, Pacific Ocean perch, and pelagic shelf rockfish.

(2) Rockfish secondary species means the following species:

(i) Sablefish not allocated to the IFQ Program;

(ii) Thornyhead rockfish;

(iii) Pacific cod for the catcher vessel sector;

(iv) Rougheye rockfish for the catcher/processor sector; and

(v) Shortraker rockfish for the catcher/processor sector.

(3) Rockfish non-allocated secondary species means the following species:

(i) Aggregate forage fish, Atka mackerel, arrowtooth flounder, deep water flatfish, flathead sole, other rockfish, "other species," pollock, rex sole, shallow water flatfish, and skates;

(ii) Pacific cod for the catcher/processor sector; and

(iii) Rougheye rockfish and shortraker rockfish for the catcher vessel sector.

Rockfish Quota Share (QS) means a permit the amount of which is based on rockfish legal landings for purposes of qualifying for the Rockfish Program and that are assigned to an LLP license.

Rockfish QS pool means the sum of Rockfish QS units established for the Rockfish Program fishery based on the Rockfish Program official record.

Rockfish QS unit means a measure of QS based on rockfish legal landings.

Rockfish retro-payment means the U.S. dollar value of a payment, monetary or non-monetary, made to a Rockfish CQ permit holder for the purchase of Rockfish CQ groundfish landed at some previous time.

Rockfish Sector means:

(1) Catcher/processor sector: Those rockfish eligible harvesters who hold an LLP license with a catcher/processor designation and who are eligible to receive rockfish QS that may result in CQ that may be harvested and processed at sea.

(2) Catcher vessel sector: Those rockfish eligible harvesters who hold an LLP license who are eligible to receive rockfish QS that may result in CQ that may not be harvested and processed at sea.

§ 679.2 Definitions.

Rockfish sideboard fisheries means fisheries that are assigned a Rockfish sideboard limit that may be harvested by participants in the Rockfish Program.

Rockfish sideboard limit means:

(1) The maximum amount of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish that may be harvested by all vessels in the Rockfish Program in all areas as specified under § 679.82(d) through (f), as applicable; and

(2) The maximum amount of halibut PSC that may be used by all vessels in all areas as specified under § 679.82(d) through (f), as applicable.

Rockfish Sideboard ratio means a portion of a rockfish sideboard limit for a groundfish fishery that is assigned to the catcher vessel sector or catcher/processor sector based on the catch history of vessels in that sector.

Rockfish standard ex-vessel value means the total U.S. dollar amount of Rockfish CQ groundfish landings as calculated by multiplying the number of landed Rockfish CQ equivalent pounds by the appropriate Rockfish standard price determined by the Regional Administrator.

Rockfish standard price means a price, expressed in U.S. dollars per Rockfish CQ equivalent pound, for landed Rockfish CQ groundfish determined annually by the Regional Administrator.

\* \* \* \* \*

~~Delete~~

~~Secondary species (see Rockfish Program species in this section).~~

~~Delete~~

~~Sector for purposes of the Rockfish Program~~

~~Delete~~

~~Sideboard limit for purposes of the Rockfish Program~~

~~Delete~~

~~Sideboard limit for purposes of the Rockfish Program~~

\* \* \* \* \*

Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program and Rockfish Program means a relationship between two or more persons in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, another person; or a third person which directly or indirectly owns or controls, or otherwise controls a 10 percent or greater interest in both. For the purpose of this definition, the following terms are further defined:

(1) Person. A person is a person as defined in this section.

(2) Indirect interest. An indirect interest is one that passes through one or more intermediate persons. A person's percentage of indirect interest in a second person is equal to the person's percentage of direct interest in an intermediate person multiplied by the intermediate person's direct or indirect interest in the second person.

(3) Controls a 10 percent or greater interest. A person controls a 10 percent or greater interest in a second person if the first person:

(i) Controls a 10 percent ownership share of the second person; or

(ii) Controls 10 percent or more of the voting or controlling stock of the second person.

(4) Otherwise controls. A person otherwise controls another person, if it has:

(i) The right to direct, or does direct, the business of the other person;

(ii) The right in the ordinary course of business to limit the actions of, or replace, or does limit or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the other person;

(iii) The right to direct, or does direct, the Rockfish Program fishery processing activities of that other person;

(iv) The right to restrict, or does restrict, the day-to-day business activities and management policies of the other person through loan covenants;

(v) The right to derive, or does derive, either directly, or through a minority shareholder or partner, and in favor of the other person, a significantly disproportionate amount of the economic benefit from the processing of fish by that other person;

**§ 679.2 Definitions.**

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(vi) The right to control, or does control, the management of, or to be a controlling factor in, the other person;

(vii) The right to cause, or does cause, the purchase or sale of fish processed by that person;

(viii) Absorbs all of the costs and normal business risks associated with ownership and operation of the other person; or

(ix) Has the ability through any other means whatsoever to control the other person.

\* \* \* \* \*

§ 679.4 Permits.

(a) *Requirements.*

Only persons who are U.S. citizens are authorized to receive or hold permits under this section, with the exception that an IFQ hired master permit or a CDQ hired master permit need not be held by a U.S. citizen.

(1) What permits are available?

\*\*\*

If program permit type is:	Permit is in effect from issue date through the end of:	For more information, see...
*** (xii) Rockfish Program (A) CQ	Specified fishing year	§ 679.81(e)(4)

\*\*\*\*\*

(6) Issuance.

\*\*\*

(iii) NMFS will reissue a Federal fisheries permit to any person who holds a Federal fisheries permit issued for a vessel if that vessel was used to make any rockfish legal landings and is subject to a sideboard limit as described under § 679.82(d) through (f).

\*\*\*\*\*

(k) *Licenses for license limitation program (LLP) groundfish or crab species*

\*\*\*

(1) Rockfish QS.

(i) General. In addition to other requirements of this part, a license holder must have rockfish QS on his or her groundfish LLP license to conduct directed fishing for Rockfish Program fisheries with trawl gear.

(ii) Eligibility requirements for rockfish QS. The eligibility requirements to receive rockfish QS are established in § 679.80(b).

\*\*\*\*\*

(n) Rockfish Program

(1) Cooperative quota (CQ).

(i) A CQ permit is issued annually to a rockfish cooperative if the members of that rockfish cooperative have submitted a complete and timely application for CQ as described at § 679.81(e)(4) that is subsequently

approved by the Regional Administrator. A CQ permit authorizes a rockfish cooperative to participate in the Rockfish Program. The CQ permit will indicate the amount of rockfish primary species and rockfish secondary species that may be harvested by the rockfish cooperative, and the amount of rockfish halibut PSC that may be used by the rockfish cooperative. The CQ permit will list the members of the rockfish cooperative, the vessels that are authorized to fish under the CQ permit for that rockfish cooperative, and the rockfish eligible processor with whom that rockfish cooperative is associated, if applicable.

(ii) A CQ permit is valid under the following circumstances:

(A) Until the end of the year for which the CQ permit is issued;

(B) Until the amount harvested is equal to the amount specified on the CQ permit for all rockfish primary species, rockfish secondary species, and rockfish halibut PSC;

(C) Until the permit is modified by transfers under § 679.81(f);

(D) Until the permit is voided through an approved rockfish cooperative termination of fishing declaration; or

(E) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(iii) A legible copy of the CQ permit must be carried on board the vessel(s) used by the rockfish cooperative.

(iv) After November 15 of the year for which the CQ permit is issued:

(A) The CQ for all rockfish primary species and rockfish secondary species for all CQ permits will be set to zero;

(B) An amount of halibut PSC equal to 55 percent of the rockfish halibut PSC CQ assigned to all rockfish cooperatives will be reapportioned under the provisions described at § 679.21(d)(5)(iii)(B); and

(C) The amount of halibut PSC not reapportioned under the provisions described at § 679.21(d)(5)(iii)(B) will not be available for use as halibut PSC by any person for the remainder of that calendar year.

(2) Rockfish cooperative termination of fishing declaration.

(i) A rockfish cooperative may choose to extinguish its CQ permit through a declaration submitted to NMFS.

(ii) This declaration may only be submitted to NMFS electronically. The rockfish cooperative's designated representative must log into the system and create a request a termination of fishing declaration as indicated on the computer screen. By using the rockfish cooperative's NMFS ID, and password, and submitting the termination of fishing declaration request, the designated representative certifies that all information is true, correct, and complete.

(iii) A rockfish cooperative termination of fishing declaration must include the following information:

(A) CQ permit number;

(B) The date the declaration is submitted; and

(C) The rockfish cooperative's legal name, NMFS Person ID, the permanent business address, telephone number, fax number, and e-mail address (if available) of the rockfish cooperative or its designated representative, and the printed name and signature of the designated representative of the rockfish cooperative.

(iv) NMFS will review the declaration and notify the rockfish cooperative's designated representative once the declaration has been approved.

(v) Upon approval of a declaration:

(A) The CQ for all rockfish primary species and rockfish secondary species will be set to zero;

(B) An amount of halibut PSC equal to 55 percent of the rockfish halibut PSC CQ assigned to that rockfish cooperative will be reapportioned under the provisions described at § 679.21(d)(5)(iii)(B);

(C) The amount of halibut PSC not reapportioned under the provisions described at § 679.21(d)(5)(iii)(B) will not be available for use as PSC by any person for the remainder of that calendar year; and

(D) That rockfish cooperative may not receive any Rockfish CQ by transfer for the remainder of that calendar year.

~~— (3) Eligible rockfish processor.~~

~~— (i) The Regional Administrator will issue an eligible rockfish processor permit to persons who have submitted a complete application described at § 679.81(d), that is subsequently approved by the Regional Administrator. An eligible rockfish processor permit authorizes a shoreside processor or stationary floating processor to receive fish harvested under the Rockfish Program, except for fish harvested under the rockfish entry level fishery.~~

~~— (ii) A permit is valid under the following circumstances:~~

~~— (A) Until the permit is modified by transfers under § 679.81(g); or~~

~~— (B) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or 15 CFR part 904.~~

~~— (iii) A legible copy of the eligible rockfish processor permit must be available at the facility at which Rockfish Program fish are received.~~

~~\*\*\*\*\*~~

**§ 679.5 Recordkeeping and reporting (R&R).**

**(a) General R&R requirements.**

(iii) Management program defined.

\*\*\*

\*\*\*

If harvest made ...program	Record the...	For more information, see ...
***	***	***
(F) Rockfish Program	Cooperative number	Subpart H of this part

**(c) Logbooks.**

\*\*\*

**(4) Trawl gear catcher vessel DFL and catcher/processor DCPL.**

\*\*\*

**(ii) Data entry time limits.**

\*\*\*

(B) Catcher/processor. The operator of a catcher/processor using trawl gear must record in the DCPL or eLandings the information in the following table for each haul within the specified time limit:

DATA ENTRY TIME LIMITS, CATCHER/PROCESSOR TRAWL GEAR			
Required Information	Record In		Time limit for recording
	DCPL	eLandings	
(1) Haul number, time and date gear set, time and date gear hauled, begin and end positions of gear, CDQ group number (if applicable), and total estimated haul weight for each haul, or if required to use a NMFS approved scale, the scale weight for each haul	X	X	<p>Except for Rockfish Pilot Program, Within 2 hours after completion of gear retrieval.</p> <p>For Rockfish Pilot Program, Actual scale weight from the flow scale may be recorded within 24 hours after completion of gear retrieval.</p>

\*\*\*\*\*

**(2) Logbook.**

**(r) Rockfish Program**

**(1) General.**

The owners and operators of catcher vessels, catcher/processors, and shoreside processors authorized as participants in the Rockfish Program must comply with the applicable recordkeeping and reporting requirements of this section and must assign all catch to a rockfish cooperative, rockfish sideboard fishery, or rockfish opt-out fishery, as applicable at the time of catch or receipt of groundfish. All owners of catcher vessels, catcher/processors, and shoreside processors authorized as participants in the Rockfish Program must ensure that their designated representatives or employees comply with all applicable recordkeeping and reporting requirements.

(i) DFL. Operators of catcher vessels equal to or greater than 60 ft (18.3 m) LOA participating in a Rockfish Program fishery must maintain a daily fishing logbook for trawl gear as described in paragraphs (a) and (c) of this section.

(ii) ELB. Operators of catcher/processors permitted in the Rockfish Program must use a combination of NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish and PSC information as described in paragraph (f) of this section to record Rockfish Program landings and production.

## § 679.5 Recordkeeping and reporting

### (3) eLandings.

Managers of shoreside processors that receive rockfish primary species or rockfish secondary species in the Rockfish Program must use eLandings or NMFS-approved software as described in paragraphs (e) and (f) of this section, instead of a logbook and WPR, to record Rockfish Program landings and production.

### ~~(4) Check-in/check-out report, processors.~~

~~Operators or managers of a catcher/processor or mothership, stationary processor, or stationary floating processor that are authorized as processors in the Rockfish Program must submit check-in/check-out reports as described in paragraph (h) of this section.~~

### (4) Production reports.

Operators of catcher/processors that are authorized as processors in the Rockfish Program must submit a production report as described in paragraphs (e)(9) and (10) of this section.

### (5) Product transfer report (PTR), processors.

Operators of catcher/processors and managers of shoreside processors that are authorized as processors in the Rockfish Program must submit a PTR as described in paragraph (g) of this section

### (6) Annual rockfish cooperative report.

(i) Applicability. A rockfish cooperative permitted in the Rockfish Program (see § 679.4(n)(1)) annually must submit to the Regional Administrator an annual rockfish cooperative report detailing the use of the cooperative's CQ.

### (ii) Time limits and submittal.

(A) The annual rockfish cooperative report must be submitted to the Regional Administrator by an electronic data file in a NMFS-approved format by fax: 907-586-7557; or by mail to the  
Regional Administrator,  
NMFS Alaska Region,  
P.O. Box 21668,  
Juneau, AK 99802-1668; and

(B) The annual rockfish cooperative report must be received by the Regional Administrator by December 15th of each year.

(iii) Information required. The annual rockfish cooperative report must include at a minimum:

(A) The cooperative's CQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests

made by the rockfish cooperative vessels on a vessel-by-vessel basis;

(B) The cooperative's actual retained and discarded catch of CQ, and sideboard limit (if applicable) by statistical area and vessel-by-vessel basis;

(C) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and

(D) A description of any actions taken by the cooperative in response to any members that exceeded their catch as allowed under the rockfish cooperative agreement.

(7) Vessel monitoring system (VMS) requirements (see § 679.28(f)).

(8) Rockfish cooperative vessel check-in and check-out report

### (i) Applicability.

(A) Vessel check-in. The designated representative of a rockfish cooperative must designate any vessel that is fishing under the rockfish cooperative's CQ permit before that vessel may fish under that CQ permit through a check-in procedure. The designated representative for a rockfish cooperative must submit this designation for a vessel:

(1) At least 48 hours prior to the time the vessel begins a fishing trip to fish under a CQ permit; and

(2) A check-in report is effective at the beginning of the first fishing trip after the designation has been submitted.

(B) Vessel check-out. The designated representative of a rockfish cooperative must designate any vessel that is no longer fishing under a CQ permit for that rockfish cooperative through a check-out procedure. This check-out report must be submitted within 6 hours after the effective date and time the rockfish cooperative wishes to end the vessel's authority to fish under the CQ permit. This designation is effective at:

(1) The end of a complete offload if that vessel is fishing under a CQ permit for a catcher vessel cooperative or the earlier of;

(2) The end of the weekend date as reported in a production report if that vessel is fishing under a CQ permit for a catcher/processor cooperative; or



(3) The end of a complete offload if that vessel is fishing under a CQ permit for a catcher/processor cooperative.

(ii) Submittal. The designated representative of the rockfish cooperative must submit a vessel check-in or check-out report electronically. The rockfish cooperative's designated representative must log into the system and create a vessel check-in or vessel check-out request as indicated on the computer screen. By using the transferor's NMFS ID, password, and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(iii) Information required. The vessel check-in or check-out report must contain the following information:

(A) CQ permit number;

(B) ADF&G vessel registration number(s) of vessel(s) designated to fish under the CQ permit;

(C) USCG designation number(s) of vessel(s) designated to fish under the CQ permit; and

(D) Date and time when check-in or check-out begins.

No longer a limit on the number of check-ins

(9) Rockfish CQ fee submission form (See § 679.85).

(i) Applicability.

A Rockfish CQ holder, who lands any Rockfish CQ pursuant to § 679.85 must submit to NMFS online a complete Rockfish CQ fee form as instructed on the form at NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

(ii) Due date and submittal.

The reporting period of the Rockfish CQ fee submission form shall be the calendar year. A Rockfish CQ holder must submit any Rockfish cost recovery fee liability payment(s) and the Rockfish CQ fee submission form to NMFS online not later than March 31 following the calendar year in which the Rockfish CQ landings were made.

(iii) Required information.

A Rockfish CQ holder must accurately record on the Rockfish CQ fee submission form the following information:

(A) Enter the printed full name, NMFS person ID, Rockfish CQ permit number, social security number or Federal tax identification number of the Rockfish CQ holder. Enter the permanent or temporary business mailing address (indicate whether permanent or temporary), and the business telephone number, facsimile number, and e-mail address (if available).

(B) Enter printed name and signature of applicant and date signed. If authorized representative, attach authorization to application.

(C) The Rockfish CQ holder must select the method of payment for fees; whether by personal check, bank certified check (cashier's check), money order, or credit card. If by credit card, the Rockfish CQ holder must select the type of credit card and enter the card number, expiration date, amount of payment, name as printed on the card, signature of the card holder, and date of signature.

(10) Rockfish Ex-vessel Volume and Value Report.

(i) Applicability.

A Rockfish Eligible Processor that receives and purchases landings of Rockfish CQ groundfish must submit annually to NMFS a complete Rockfish Ex-vessel Volume and Value Report, as described in this paragraph (r)(11), for each reporting period in which the Rockfish Eligible Processor receives Rockfish CQ groundfish.

(ii) Reporting period.

The reporting period of the Rockfish Ex-vessel Volume and Value Report shall extend from May 1 through November 15 of each year.

(iii) Due date.

A complete Rockfish Ex-vessel Volume and Value Report must be received by the Regional Administrator not later than December 31 of the year in which the Rockfish Eligible Processor received the Rockfish CQ groundfish.

(iv) Information required.

The Rockfish eligible processor must log in to <http://alaskafisheries.noaa.gov> using the Rockfish Eligible Processor's password and NMFS person ID to submit a Rockfish Ex-vessel Volume and Value Report. The NMFS software autofills the Rockfish Eligible Processor's name. The User must review the autofilled cells to ensure that they are accurate. The Rockfish Eligible processor must enter the information in paragraphs (r)(12)(iv)(A) through (C) of this section

for a complete Rockfish Ex-vessel Volume and Value Report for priced Rockfish CQ groundfish delivered:

(A) Rockfish eligible processor identification.

(1) Rockfish CQ permit number.

(2) Landing month.

(B) Rockfish CQ groundfish pounds purchased and ex-vessel value. Enter for each species and month.

(1) Pounds purchased. The total pounds purchased by species for each month.

(2) Ex-vessel value paid. The total gross ex-vessel value paid for landed Rockfish CQ groundfish pounds before any deductions are made for goods and services provided to the harvesters. The gross value includes all value paid in any form (e.g., dollars, goods, services, bait, ice, fuel, repairs, machinery replacement, etc.), and any retro payments paid for groundfish in paragraph (m)(4)(iii)(A) of this section.

(C) Certification. By using the Rockfish eligible processor NMFS ID and password and submitting the report, the Rockfish eligible processor certifies that all information is true, correct, and complete to the best of his or her knowledge and belief.

(v) Submittal.

The Rockfish eligible processor must complete and submit online by electronic submission to NMFS the Rockfish Ex-vessel Volume and Value Report available at <https://alaskafisheries.noaa.gov>.

§ 679.7 Prohibitions

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(n) Rockfish Program

(1) General.

(i) Use an LLP license assigned to a Rockfish Program fishery in any other Rockfish Program fishery other than the Rockfish Program fishery to which that LLP license was initially assigned for that fishing year.

(ii) Operate a vessel assigned to a Rockfish Program Fishery in any other Rockfish Program fishery other than the Rockfish Program fishery to which that vessel was initially assigned for that fishing year.

(2) Vessels operators participating in the Rockfish Program.

(i) Operate a vessel that is assigned to a rockfish cooperative and fishing under a Rockfish CQ permit and fail to follow the catch monitoring requirements detailed at § 679.84(c) through (e) from May 1:

(A) Until November 15; or

(B) Until that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(iii) Operate a vessel, other than a vessel assigned to the opt-out fishery, that is subject to a sideboard limit detailed at § 679.82(d) through (f), as applicable, and fail to follow the catch monitoring requirements detailed at § 679.84(c) and (d) from July 1 until July 31, if that vessel is harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(iv) Operate a catcher/processor vessel assigned to the opt-out fishery, that is subject to a sideboard limit detailed at § 679.82(d) through (f), as applicable, and fail to follow the catch monitoring requirements detailed at § 679.84(d) from July 1 until July 31, if that vessel is harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(3) VMS.

(i) Operate a vessel that is assigned to a rockfish cooperative and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from May 1:

(A) Until November 15; or

(B) Until that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(iii) Operate a vessel that is subject to a sideboard limit detailed at § 679.82(c) or (d), as applicable, and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from July 1 until July 31.

(4) Vessels participating in the rockfish opt-out fishery.

Operate a vessel that is assigned to the rockfish opt-out fishery to directed fish for northern rockfish, Pacific ocean perch, or pelagic shelf rockfish in the Central GOA.

(5) Rockfish eligible processors.

(i) Take deliveries of, or process, groundfish caught by a catcher vessel fishing under the authority of a Rockfish CQ permit unless operating as a shoreside processor.

(ii) Process any groundfish delivered by a catcher vessel fishing under the authority of a Rockfish CQ permit not weighed on a scale approved by the State of Alaska. The scale must meet the requirements specified in § 679.28(c).

(iii) Take deliveries of, or process, groundfish caught by a vessel fishing under the authority of a Rockfish CQ permit without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained at the facility and made available to authorized officers or NMFS-authorized personnel upon request.

(iv) Take deliveries of, or process, groundfish caught by a catcher vessel fishing under the authority of a Rockfish CQ permit outside of the geographic boundaries of the City of Kodiak as those boundaries are established by the State of Alaska on [INSERT THE EFFECTIVE DATE OF THIS RULE].

(v) Fail to submit a timely and complete Rockfish ex-vessel volume and value report as required under § 679.5(r)(12)

(6) Rockfish cooperatives.

(i) Fail to retain any rockfish primary species or rockfish secondary species caught by a vessel when that vessel is fishing under a Rockfish CQ permit.

**§ 679.7 Prohibitions**

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(ii) Harvest rockfish primary species, rockfish secondary species, or use halibut PSC assigned to a rockfish cooperative without a valid Rockfish CQ permit.

(iii) Begin a fishing trip for any Rockfish Program species with any vessel assigned to a Rockfish cooperative if the total amount of unharvested CQ that is currently held by that Rockfish cooperative is zero or less for any species for which CQ is assigned.

(iv) Exceed any sideboard limit assigned to a rockfish cooperative in the catcher/processor sector.

(v) Operate a vessel assigned to a rockfish cooperative to fish under a CQ permit unless the rockfish cooperative has notified NMFS that the vessel is fishing under a CQ permit as described under § 679.5(r)(8).

(vi) Operate a vessel fishing under the authority of a CQ permit in the catcher vessel sector and to have any Pacific ocean perch, pelagic shelf rockfish, northern rockfish, sablefish, thornyhead rockfish, aboard the vessel unless those fish were harvested under the authority of a CQ permit.

(vii) Operate a vessel fishing under the authority of a CQ permit in the catcher vessel sector and to have any Pacific cod aboard the vessel unless those fish were harvested under the authority of a CQ permit.

(viii) Catch and process onboard a vessel any rockfish primary species or rockfish secondary species harvested under the authority of a CQ permit issued to the catcher vessel sector.

(ix) Have a negative balance in a CQ account for any species for which CQ is assigned after the end of the calendar year for which a CQ permit was issued.

(x) Fail to submit a timely and complete Rockfish CQ fee submission form as required under § 679.5(r)(9).

(7) Use caps.

Exceed the use caps that apply under § 679.82(a).

(8) Rockfish entry level longline fishery.

(i) Take deliveries of, or process, groundfish caught by a catcher vessel fishing directed fishing in the rockfish entry level longline fishery unless operating as a shoreside processor.

(ii) Harvest any primary rockfish species in the rockfish entry level longline fishery if that person is a rockfish eligible harvester.

(iii) Use any gear other than longline gear to directed fish for a rockfish primary species in the rockfish entry level longline fishery.

(iv) Catch and process onboard a vessel any rockfish primary species harvested while directed fishing in the rockfish entry level longline fishery.

\* \* \* \* \*

## Subpart B – Management Measures

### § 679.20 General limitations.

\* \* \* \* \*

#### (e) *Maximum retainable amounts (MRA).*

##### (1) Proportion of basis species.

\* \* \*

(i) The retainable percentages in Table 10 to this part for the GOA species categories (except the Rockfish Program fisheries, which are described in Table 30 to this part for the Rockfish Program fisheries); and

\* \* \* \* \*

##### (2) Calculation.

\* \* \*

(ii) To obtain these individual retainable amounts, multiply the appropriate retainable percentage for the incidental catch species/basis species combination, set forth in Table 10 to this part for the GOA species categories (except the Rockfish Program fisheries, which are described in Table 30 to this part for the Rockfish Program fisheries), and Table 11 to this part for the BSAI species categories, by the amount of that basis species, in round-weight equivalents.

\* \* \* \* \*

##### (3) Application.

\* \* \*

(iv) The maximum retainable amount for groundfish harvested in the Central GOA by a catcher/processor vessel fishing under a Rockfish CQ permit is calculated at the end of each weekly reporting period, and is based on the basis species defined in Table 30 harvested since the previous weekly reporting period, or for any portion of a weekly reporting period that vessel was designated under a vessel check-in as specified in § 679.5(r)(9).

§ 679.21 *Prohibited species bycatch management.*

(d) *GOA halibut PSC limits.*

\* \* \*

(5) Seasonal apportionments.

\* \* \*

(iii) Unused seasonal apportionments.

\* \* \*

(B) An amount not greater than 55 percent of the unused halibut PSC that had been allocated as CQ that has not been used by a rockfish cooperative will be added to the last seasonal apportionment for trawl gear during the current fishing year:

(1) After November 15; or

(2) After the effective date of a declaration to terminate fishing according to the provisions set out in § 679.4(n)(2).

\* \* \* \* \*

§ 679.28 *Equipment and operational requirements.*

\* \* \* \* \*

*(f) Vessel Monitoring System (VMS)  
Requirements*

\* \* \*

(6) When must the VMS transmitter be transmitting?

\* \* \*

(iv) When that vessel is required to use functioning VMS equipment in the Rockfish Program as described under § 679.7(n)(3).

\* \* \* \* \*

*(g) Catch monitoring and control plan requirements (CMCP).*

\* \* \*

(2) Who is required to prepare and submit a CMCP for approval?

\* \* \*

(iii) Rockfish Program, unless those fish are harvested under the rockfish entry level longline fishery as described under § 679.83.

**Subpart E--Groundfish Observer Program**

§ 679.50 *Groundfish Observer Program*

(a) *General.*

\* \* \*

Program	Catcher/ processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
(4) Rockfish Program	(c)(7)(i)	(c)(7)(ii)	N/A	(d)(1)through (4)

\* \* \*

(c) *Observer requirements for vessels.*

\* \* \*

(2) Groundfish fishery categories requiring separate coverage.

\* \* \*

(vii) Rockfish Program. In retained catch from Rockfish Program fisheries.

\* \* \* \* \*

(7) Rockfish Program.

(i) Catcher/processor vessel.

(A) Rockfish cooperative. A catcher/processor vessel that is named on an LLP license that is assigned to a rockfish cooperative and is fishing under the authority of a CQ permit must have onboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process in the Central GOA from May 1 through the earlier of:

(1) November 15; or

(2) The effective date and time of an approved rockfish cooperative termination of fishing declaration.

(B) Rockfish Sideboard fishery for catcher/processor vessels in a rockfish cooperative. A catcher/processor vessel, other than a catcher/processor vessel assigned to the opt-out fishery, that is subject to a sideboard limit as described under § 679.82(c) and (e), as applicable, must have onboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process from July 1 through July 31 while harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(C) Observer lead level 2 requirements. At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if the observer workload restriction at paragraph (c)(7)(i)(E) of this section would otherwise preclude sampling as required.

(D) Observer workload. The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period.

(E) Sideboard fishery for catcher/processor vessels in the opt-out fishery.

(i) A catcher/processor vessel assigned to the opt-out fishery, that is subject to a sideboard limit as described under § 679.82(c) and (f), as applicable, must have onboard at least one NMFS-certified observer for each day that the vessel is used to harvest or process from July 1 through July 31 while harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(ii) Catcher vessels -- Rockfish cooperative. A catcher vessel that is named on an LLP license that is assigned to a rockfish cooperative and fishing under the authority of a CQ permit must have onboard a NMFS-certified observer at all times the vessel is used to harvest fish in the Central GOA from May 1 through the earlier of:

(A) November 15; or

(B) The effective date and time of an approved rockfish cooperative termination of fishing declaration.

(iv) Observer coverage limitations. Observer coverage requirements under this paragraph (c)(7) of this section are in addition to observer coverage requirements in other fisheries. Observer coverage of groundfish harvested by vessels described under this paragraph (c)(7) of this section are not counted for



purposes of meeting minimum observer coverage requirements applicable to any groundfish fishery described under paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

\* \* \* \* \*

*(d) Observer requirements for shoreside processors or stationary floating processors.*

\* \* \*

~~—Delete~~

~~—(7) Rockfish Program.~~

**Subpart G—Rockfish Program.**

**§ 679.80 Allocation and transfer of rockfish QS.**

Additional regulations that implement specific portions of the Rockfish Program are set out at:

- § 679.2 Definitions,
- § 679.4 Permits,
- § 679.5 Recordkeeping and reporting,
- § 679.7 Prohibitions,
- § 679.20 General limitations,
- § 679.21 Prohibited species bycatch management,
- § 679.28 Equipment and operational requirements, and
- § 679.50 Groundfish Observer Program.

**(a) Applicable areas and duration**

**(1) Applicable areas.**

The Rockfish Program applies to Rockfish Program fisheries in the Central GOA Regulatory Area and rockfish sideboard fisheries in the GOA.

**(2) Duration.**

The Rockfish Program authorized under this part expires on December 31, 2022.

**(3) Seasons.**

The following fishing seasons apply to fishing under this subpart subject to other provisions of this part:

(i) Rockfish entry level longline fishery. Fishing by vessels participating in the rockfish entry level longline fishery is authorized from 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., November 15.

(ii) Rockfish cooperative. Fishing by vessels participating in a rockfish cooperative is authorized from 1200 hours, A.l.t., May 1 through 1200 hours, A.l.t., November 15.

**(b) Rockfish legal landings**

**(1) Eligible LLP licenses.**

NMFS will assign rockfish legal landings only if a vessel made those landings:

(i) Under the authority of a permanent fully transferrable LLP license endorsed for Central GOA groundfish with a trawl gear designation during the season dates for a primary rockfish species as established in Table 28a to this part;

(ii) Under the authority of an interim LLP license endorsed for Central GOA groundfish with a trawl gear designation during the season dates for that

primary rockfish species as established in Table 28a to this part; provided that:

(A) NMFS has determined that interim LLP license is ineligible to receive a designation as a permanent LLP license endorsed for Central GOA groundfish with a trawl gear designation; and

(B) A permanent fully transferrable LLP license endorsed for Central GOA groundfish with a trawl gear designation was assigned to the vessel that made legal rockfish landings under the authority of an interim LLP license endorsed for Central GOA groundfish prior to December 31, 2003 and was continuously assigned to that vessel through June 14, 2010; or

(iii) Under the authority of a permanent fully transferrable LLP license endorsed for Central GOA groundfish with a trawl gear designation during the season dates for the entry level trawl fishery in 2007, 2008, or 2009 as established in Table 28b to this part.

**(2) Assigning rockfish legal landings.**

(i) NMFS will assign rockfish legal landings made under the authority of an interim LLP license that meets the requirements in paragraph (b)(1)(ii) prior to the date that the permanent fully transferrable LLP license specified in paragraph (b)(2)(ii)(B) of this section was assigned to the vessel that made legal rockfish landings under the authority of an interim LLP license to the permanent fully transferrable LLP license specified in paragraph (b)(2)(ii)(B) of this section. NMFS will not assign any legal rockfish landings made under the authority of the permanent fully transferrable LLP license specified in paragraph (b)(2)(ii)(B) of this section prior to the date that permanent fully transferrable LLP license was assigned to the vessel that made legal rockfish landings under the authority of an interim LLP license specified in paragraph (b)(2)(i) of this section.

(ii) NMFS will assign rockfish legal landings only if the holder of the LLP license with those landings submits a timely application to participate in the Rockfish Program that is approved by NMFS.

**(3) Rockfish landings assigned to the catcher/processor sector.**

A rockfish legal landing for a rockfish primary species is assigned to the catcher/processor sector if:

(i) The rockfish legal landing of that primary rockfish species was harvested and processed onboard a vessel during the season dates for that rockfish primary species as established in Table 28a to this part; and

(ii) The rockfish legal landings that were made under the authority of an eligible LLP license that is

endorsed for Central GOA groundfish fisheries with trawl gear with a catcher/processor designation.

**(4) Rockfish legal landings assigned to the catcher vessel sector.**

A rockfish legal landing for a rockfish primary species is assigned to the catcher vessel sector if:

(i) The rockfish legal landing of that rockfish primary species was harvested and not processed onboard a vessel during the season dates for that rockfish primary species as established under Table 28a or 28b to this part; or

(ii) The rockfish legal landings made under the authority of, an eligible LLP license that is endorsed for Central GOA groundfish fisheries with trawl gear; and

(iii) Those rockfish legal landings do not meet the criteria for being a rockfish legal landing assigned to the catcher/processor sector as defined in paragraph (b)(3) of this section.

**(c) Rockfish Program official record.**

**(1) Use of the Rockfish Program official record.**

The Rockfish Program official record will contain information used by the Regional Administrator to determine:

(i) The amount of rockfish legal landings assigned to an LLP license;

(ii) The amount of rockfish QS resulting from rockfish legal landings assigned to an LLP license held by an eligible rockfish harvester;

(iii) Rockfish sideboard ratios assigned to an LLP license;

(iv) All other information used by NMFS that is necessary to determine eligibility to participate in the Rockfish Program and assign specific harvest privileges to Rockfish Program participants.

**(2) Presumption of correctness.**

The Rockfish Program official record is presumed to be correct. An applicant to participate in the Rockfish Program has the burden to prove otherwise. For the purposes of creating the Rockfish Program official record, the Regional Administrator will presume the following:

(i) An LLP license is presumed to have been used onboard the same vessel from which that LLP license was derived during the calendar years 2000

and 2001, unless clear and unambiguous written documentation is provided that establishes otherwise.

(ii) If more than one person is claiming the same rockfish legal landing, each LLP license for which the rockfish legal landing is being claimed will receive an equal share of any resulting rockfish QS unless the applicants can provide written documentation that establishes an alternative means for distributing the catch history to the LLP licenses.

**(3) Documentation.**

(i) Only rockfish legal landings, as defined in § 679.2, shall be used to establish an allocation of rockfish QS or a rockfish sideboard ratio.

**(4) Non-severability of rockfish legal landings.**

Rockfish legal landings are non-severable from the LLP license to which those rockfish legal landings are assigned according to the Rockfish Program official record.

**(d) Application for Rockfish QS**

**(1) Submission of application for Rockfish QS.**

A person who wishes to receive rockfish QS to participate in the Rockfish Program as a rockfish eligible harvester must submit a timely and complete application for rockfish QS. This application may only be submitted to NMFS using the following methods:

(i) Mail:  
Regional Administrator,  
c/o Restricted Access Management Program,  
NMFS,  
P.O. Box 21668,  
Juneau, AK 99802-1668;

(ii) Fax: 907-586-7354; or

(iii) Hand Delivery or Carrier:  
NMFS, Room 713,  
709 West 9th Street,  
Juneau, AK 99801.

**(2) Forms.**

Forms are available through the internet on the NMFS Alaska Region website at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.fakr.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2.

**(3) Deadline.**

(i) A completed application for Rockfish QS must be received by NMFS no later than 1700 hours A.I.t. on

January 3, 2012, or if sent by U.S. mail, postmarked by that time.

(ii) The Regional Administrator will not consider an application to be have been received by the deadline if the applicant cannot provide objective written evidence that NMFS Alaska Region received it. The receiving date of signature by NMFS staff is the date the application was received.

(4) Contents of application.

A completed application must contain the following information:

(i) Applicant identification.

(A) The applicant's name, NMFS person ID (if applicable), tax ID or social security number, permanent business mailing address, business telephone number, and business fax number, and e-mail (if available);

(B) Indicate (YES or NO) if the applicant is a U.S. citizen; if YES, enter his or her date of birth;

(C) Indicate (YES or NO) if the applicant is a U.S. corporation, partnership, association, or other business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) if the applicant is a successor-in-interest to a deceased individual or to a non-individual no longer in existence, if YES attach evidence of death or dissolution;

(E) For an applicant claiming rockfish legal landings associated with an LLP license, enter the following information for each LLP license: LLP license number, name of the original qualifying vessel(s) (OQV(s)) that gave rise to the LLP license, ADF&G vessel registration number of the OQV, and names, ADF&G vessel registration numbers, and USCG documentation numbers of all other vessels used under the authority of this LLP license, including dates when landings were made under the authority of an LLP license for 2000 and 2001;

(F) For an applicant claiming rockfish legal landings in the catcher/processor sector, enter the following information: LLP license numbers, vessel names, ADF&G vessel registration numbers, and USCG documentation numbers of vessels on which legal rockfish landings were caught and processed.

(G) Indicate (YES or NO) if the applicant is applying to participate in the Rockfish Program based on rockfish legal landings made during the rockfish entry level trawl fishery in 2007, 2008, or 2009.

(H) For an applicant who holds an LLP license that made rockfish legal landings during the fishery seasons established in Table 28a to this part and during the entry level trawl fishery during 2007, 2008, or 2009 established in Table 28b to this part, indicate whether you wish to receive Rockfish QS based on rockfish legal landings during the during the fishery seasons established in Table 28a or Table 28b to this part.

(iii) Applicant signature and certification. The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(5) Application evaluation.

The Regional Administrator will evaluate applications received as specified in paragraph (d)(4) of this section and compare all claims in an application with the information in the official Rockfish Program record. Application claims that are consistent with information in the Rockfish Program official record will be approved by the Regional Administrator. Application claims that are inconsistent with Rockfish Program official record, unless verified by documentation, will not be approved. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (d)(4) of this section, will be provided a single 30-day evidentiary period to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the Rockfish Program official record. An applicant who submits claims that are inconsistent with information in the Rockfish Program official record has the burden of proving that the submitted claims are correct. Any claims that remain inconsistent or that are not accepted after the 30-day evidentiary period will be denied, and the applicant will be notified by an initial administrative determination (IAD) of his or her appeal rights under § 679.43.

(6) Appeals.

If an applicant is notified by an IAD that claims made by the applicant have been denied, that applicant may appeal that IAD under the provisions at § 679.43.

(e) Assigning Rockfish QS

(1) General. The Regional Administrator will assign Rockfish QS only to a person who submits a timely application for Rockfish QS that is approved by NMFS based on:

(i) The amount of rockfish legal landings assigned to an LLP license as established in paragraph (b) of this section; or

(ii) The number of years during which a person made a rockfish legal landing under the authority of an LLP license in the entry level trawl fishery during 2007, 2008, or 2009.

(2) Calculation of Rockfish QS allocation for LLP licenses not eligible to receive Rockfish QS under the entry level trawl fishery transition allocation.

(i) Based on the Rockfish Program official record, the Regional Administrator shall determine the initial allocation of rockfish QS for each rockfish primary species for each LLP eligible to receive rockfish QS indicated on a timely and complete application for rockfish QS that is approved by NMFS, and that is not receiving Rockfish QS under the provisions of paragraph (e)(3) of this section according to the following procedure:

(A) Sum the rockfish legal landings for each rockfish primary species “s” for each eligible LLP license “l” as described in paragraph (a)(1)(i) and (a)(1)(ii) of this section for each year during the fishery seasons established in Table 28a to this part. For purposes of this calculation, the Regional Administrator will not assign any amount of legal rockfish landings to an LLP license as described in paragraph (a)(1)(iii), or to an LLP license that is assigned Rockfish QS under the provisions of paragraph (e)(3) of this section. This yields the Rockfish Total Catch for each rockfish primary species for each year.

(B) Determine the highest five years of Total Rockfish Catch for each rockfish primary species for each eligible LLP licenses described under paragraph (e)(2)(iii)(A) of this section. This yields the Highest Five Years<sub>s</sub>. This amount is equal to the number of rockfish QS units for that LLP license for that rockfish primary species.

(C) Sum the Highest Five Years<sub>s</sub> in paragraph (e)(2)(iii)(B) of this section of all eligible LLP licenses for each rockfish primary species. The result is the  $\sum$  All Highest Five Years<sub>s</sub>.

(3) Calculation of Rockfish QS allocation for LLP licenses that receive Rockfish QS under the entry level trawl fishery transition allocation.

(i) Based on the Rockfish Program official record, the Regional Administrator shall determine the initial allocation of Rockfish QS for each rockfish

primary species for each LLP license “l” as described in paragraph (a)(1)(iii) that is eligible to receive Rockfish QS under this paragraph (e)(2) as indicated on a timely and complete application for rockfish QS that is approved by NMFS according to the following procedure:

(A) Assign one Rockfish Landing Unit to an LLP license for each year a rockfish legal landing of any rockfish primary species was made under the authority of an LLP license as described under paragraph (a)(1)(iii) during the season dates for the entry level trawl fishery in 2007, 2008, or 2009 as established in Table 28b to this part. This yields the Rockfish Landing Units<sub>l</sub>.

(B) Sum the Rockfish Landing Units of all eligible LLP licenses.

(C) Divide the Rockfish Landing Units<sub>l</sub> in paragraph (e)(3)(i)(B) of this section for an LLP license by the sum of all Rockfish Landing Units of all LLP licenses eligible under (a)(1)(iii) as presented in the following equation:

$$\text{Rockfish Landing Units}_l / \sum \text{Rockfish Landing Units} = \text{Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS pool}_l$$

(D) Determine the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each rockfish primary species “s” as presented in the following equation:

$$(\sum \text{All Highest Five Years}_s / 0.975) - \sum \text{All Highest Five Years}_s \text{ (as calculated in paragraph (e)(2)(C) of this section)} = \text{Total Entry Level Trawl Fishery Transition Rockfish QS pool}_s$$

(E) Multiply the Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each LLP license, as calculated in paragraph (e)(3)(C) of this section, by the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each primary rockfish species, as calculated in paragraph (e)(3)(D) of this section. This yields the number of rockfish QS units for that LLP license for that rockfish primary species.

(F) All rockfish QS units calculated in paragraph (e)(3)(iii)(E) are assigned to the catcher vessel sector.

(4) Rockfish Initial QS pool

The Rockfish Initial QS pool for each rockfish primary species, and for each sector, is equal to the sum of all QS units assigned to LLP licenses, and in each sector, as calculated under paragraphs (e)(2) and (e)(3) as of January 31, 2012.

(5) Non-severability of rockfish QS from an LLP license.

Rockfish QS assigned to an LLP license is non-severable from that LLP license, except as provided for under §679.82(f)(2).

***(f) Transfer of Rockfish QS***

**(1) Transfer of Rockfish QS assigned to LLP licenses that do not exceed Rockfish QS use caps.**  
Unless an LLP license is initially allocated an amount of aggregate rockfish QS that exceeds the use cap specified in § 679.82(a)(2), a person may transfer that LLP license, and any Rockfish QS assigned to that LLP license, under the provisions of § 679.4(k)(1)(7)

**(2) Transfer of Rockfish QS assigned to LLP licenses that exceed Rockfish QS use caps.**

(i) If an LLP license is assigned an initial allocation of aggregate rockfish QS that exceeds a use cap specified in § 679.82 (a)(2) that LLP license, and any Rockfish QS associated with that LLP license, may be transferred only under the provisions of paragraph (f)(3) of this section.

(ii) If an LLP license is assigned an initial allocation of aggregate rockfish QS that exceeds a use cap specified in § 679.82 (a)(2), a person may not transfer that LLP license to another person unless and until the amount of aggregate rockfish QS assigned to that LLP is reduced to an amount below the use cap specified in.

(iii) NMFS will allow a person to designate the amount of Rockfish QS in excess of a use cap specified in § 679.82 (a)(2) to be reassigned to another eligible LLP license in the same sector only if the transferee and transferor submit a complete application to transfer Rockfish QS as specified in paragraph (f)(3) of this section.

**(3) Application to Transfer Rockfish QS.**

(i) NMFS will process an application to transfer Rockfish QS provided that an electronic online transfer application is completed by the transferor and transferee, with all applicable fields accurately filled-in, and all required additional documentation is attached.

(ii) The transferor's designated representative must log into the system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(iii) The transferee must log into the system and accept the transfer request. By using the transferee's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(iv) NMFS will not complete a transfer of Rockfish QS unless and until the total amount of Rockfish QS transferred and assigned to any and all LLP licenses does not cause any and all LLP license to exceed the use cap specified in § 679.82 (a)(2).

§ 679.81 Rockfish Program annual harvester privileges.

(a) *Sector and LLP license allocations of Rockfish Primary Species*

(1) General.

Each calendar year, the Regional Administrator will determine the tonnage of rockfish primary species that will be assigned to participants in a rockfish cooperative. Amounts will be allocated to the appropriate sector, either the catcher/processor sector or the catcher vessel sector.

(2) Calculation.

(i) The amount of rockfish primary species "s" allocated to the Rockfish Program is calculated by deducting the incidental catch allowance (ICA) the Regional Administrator determines is required on an annual basis in other non-target fisheries from the TAC. The remaining TAC for that rockfish primary species (TAC<sub>s</sub>) is assigned for use by the rockfish entry level longline fishery and rockfish cooperatives.

(ii) The allocation of TAC<sub>s</sub> for each rockfish primary species to the rockfish entry level longline fishery is established in Table 28e to this part.

(iii) The allocation of TAC<sub>s</sub> to rockfish cooperatives is equal to the amount remaining after allocation to the rockfish entry level non-trawl fishery.

(b) *Allocations of Rockfish Primary Species CQ to Rockfish Cooperatives*

(1) Rockfish primary species TAC<sub>s</sub> assigned to the catcher/processor and catcher vessel sector.

TAC<sub>s</sub> assigned for a rockfish primary species will be divided between the catcher/processor sector and the catcher vessel sector. Each sector will receive a percentage of TAC<sub>s</sub> for each rockfish primary species equal to the sum of the rockfish QS units assigned to all LLP licenses that receive rockfish QS in that sector divided by the rockfish QS pool for that rockfish primary species. Expressed algebraically for each rockfish primary species "s" in paragraphs (b)(1)(i) and (ii) of this section:

(i) Catcher/Processor Sector TAC<sub>s</sub> =  
[(TAC<sub>s</sub>) x (Rockfish QS Units in the Catcher/Processor Sector/Rockfish QS Pool)].

(ii) Catcher Vessel Sector TAC<sub>s</sub> =  
[(TAC<sub>s</sub>) x (Rockfish QS Units in the Catcher Vessel Sector/Rockfish QS Pool)].

(2) Use of rockfish primary species by a rockfish eligible harvester.

Once TAC<sub>s</sub> is assigned to a sector, the use of that TAC<sub>s</sub> by rockfish eligible harvesters in that sector is governed by regulations applicable to the rockfish cooperative. The TAC<sub>s</sub> is assigned as follows:

(i) Any TAC<sub>s</sub> assigned to a rockfish cooperative is issued as CQ and may be harvested only by the members of the rockfish cooperative that has been assigned that CQ and only on vessels that are authorized to fish under that CQ permit. Once issued, CQ may be transferred between rockfish cooperatives according to the provisions in paragraph (g) of this section.

(ii) TAC<sub>s</sub> is not assigned to the rockfish opt-out fishery.

(3) Assigning the TAC<sub>s</sub> of rockfish primary species.

TAC<sub>s</sub> is assigned to each rockfish cooperative based on the rockfish QS assigned to that fishery in each sector according to the following procedures:

(i) Catcher vessel sector rockfish cooperatives.

The amount of TAC<sub>s</sub> for each rockfish primary species assigned to a rockfish cooperative is equal to the amount of rockfish QS units assigned to that rockfish cooperative divided by the total rockfish QS assigned to rockfish cooperatives in the catcher vessel sector multiplied by the catcher vessel TAC<sub>s</sub>. Once TAC<sub>s</sub> for a rockfish primary species is assigned to a rockfish cooperative, it is issued as CQ specific to that rockfish cooperative. The amount of CQ for each rockfish primary species that is assigned to a rockfish cooperative is expressed algebraically as follows:

$$CQ = [(Catcher Vessel Sector TAC_s) \times (\text{Rockfish QS assigned to that rockfish cooperative} / \text{Rockfish QS Units assigned to all rockfish cooperatives in the Catcher Vessel Sector})].$$

(ii) Catcher/processor sector rockfish cooperatives.

The amount of TAC<sub>s</sub> for each rockfish primary species assigned to a rockfish cooperative is equal to the amount of rockfish QS units assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives in the catcher/processor sector multiplied by the catcher/processor TAC<sub>s</sub>. Once TAC<sub>s</sub> for a primary rockfish species is assigned to a rockfish cooperative it is issued as CQ specific to that rockfish cooperative. The amount of CQ for each primary rockfish species that is assigned to a rockfish cooperative is expressed algebraically as follows:

CQ = [(Catcher/Processor Sector TAC<sub>s</sub>) x (Rockfish QS Units assigned to that rockfish cooperative / Rockfish QS Units assigned to all rockfish cooperatives in the Catcher/Processor Sector)].

**(c) Allocations of secondary species CQ to Rockfish Cooperatives**

(1) General. Each calendar year, the Regional Administrator will determine the tonnage of rockfish secondary species that may be assigned to rockfish cooperatives as Rockfish CQ. This amount will be assigned to rockfish cooperatives in the catcher/processor sector and the catcher vessel sector.

(2) Amount of rockfish secondary species tonnage assigned. The amount of rockfish secondary species tonnage that may be assigned to the catcher vessel and catcher/processor sectors is specified in Table 28c to this part.

**(3) Assignment of rockfish secondary species.**

(i) Rockfish secondary species will be assigned only to rockfish cooperatives within that sector.

(ii) Rockfish secondary species are not assigned to the rockfish opt-out fishery.

**(4) Determining the amount of rockfish secondary species CQ assigned to a rockfish cooperative.**

The amount of CQ for each rockfish secondary species that is assigned to each rockfish cooperative is determined according to the following procedures:

(i) CQ assigned to rockfish cooperatives in the catcher/processor sector. The CQ for a rockfish secondary species that is assigned to a rockfish cooperative is equal to the amount of that secondary species allocated to the catcher/processor sector in the Rockfish Program as specified in Table 28c to this part, multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives for all primary rockfish species in the catcher/processor sector. Expressed algebraically in the following equation:

CQ for that Secondary Species = Amount of that rockfish secondary species allocated to the catcher/processor sector in the Rockfish Program x (∑ Rockfish QS units assigned to that rockfish cooperative / ∑ Rockfish QS units assigned to all rockfish cooperatives in the catcher/processor sector).

(ii) CQ assigned to rockfish cooperatives in the catcher vessel sector. The CQ for a rockfish secondary species that is assigned to a rockfish cooperative is equal to the amount of that rockfish secondary species allocated to the catcher vessel sector in the Rockfish Program as specified in Table 28c to this part, multiplied by the sum of the rockfish QS units for all rockfish primary species assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives for all rockfish primary species in the catcher vessel sector. Expressed algebraically in the following equation:

CQ for that Secondary Species = Amount of that Rockfish secondary species allocated to the catcher vessel sector in the Rockfish Program x (∑ Rockfish QS units assigned to that Rockfish cooperative / ∑ Rockfish QS units assigned to all rockfish cooperatives in the catcher vessel sector).

**(d) Allocations of Halibut PSC CQ to Rockfish Cooperatives**

**(1) General.**

Each calendar year, the Regional Administrator will determine the tonnage of rockfish halibut PSC that will be assigned to the Rockfish Program. This amount will be allocated to the appropriate sector, either the catcher/processor sector or the catcher vessel sector. The tonnage of rockfish halibut PSC assigned to a sector will be further assigned as CQ only to rockfish cooperative(s) within that sector.

**(2) Amount of halibut PSC that may be assigned.**

(i) The amount of halibut PSC that may be assigned to the catcher vessel and catcher/processor sectors is specified in Table 28d to this part.

(ii) The amount of halibut PSC that is not assigned to the catcher vessel and catcher/processor sectors as specified in Table 28d to this part will not be assigned for use as halibut PSC or as halibut IFQ.

**(3) Use of rockfish halibut PSC by an eligible rockfish harvester.**

(i) Rockfish halibut PSC assigned to a sector will be assigned only to rockfish cooperatives within that sector.

(ii) Rockfish halibut PSC specified in Table 28d is not assigned to the rockfish opt-out fishery.



(iii) Rockfish halibut PSC specified in Table 28d is not assigned to the rockfish entry level longline fishery.

(4) Determining the amount of rockfish halibut PSC CQ assigned to a rockfish cooperative.

The amount of CQ of rockfish halibut PSC that is assigned to each rockfish cooperative is determined according to the following procedures:

(i) CQ assigned to rockfish cooperatives in the catcher/processor sector. The CQ for a halibut PSC that is assigned to a rockfish cooperative is equal to the amount of halibut PSC allocated to the catcher/processor sector in the Rockfish Program as specified in Table 28d to this part, multiplied by the sum of the rockfish QS units for all rockfish primary species assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives for all primary rockfish species in the catcher/processor sector. Expressed algebraically in the following equation:

$$\text{CQ for rockfish halibut PSC} = \text{Amount halibut PSC allocated to the catcher/processor sector in the Rockfish Program} \times \left( \frac{\sum \text{Rockfish QS units assigned to that rockfish cooperative}}{\sum \text{Rockfish QS units assigned to all rockfish cooperatives in the catcher/processor sector}} \right).$$

(ii) CQ assigned to rockfish cooperatives in the catcher vessel sector. The CQ for a halibut PSC that is assigned to a rockfish cooperative is equal to the amount of halibut PSC allocated to the catcher vessel sector in the Rockfish Program as specified in Table 28d to this part, multiplied by the sum of the rockfish QS units for all rockfish primary species assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives for all primary rockfish species in the catcher vessel sector. Expressed algebraically in the following equation:

$$\text{CQ for rockfish halibut PSC} = \text{Amount halibut PSC allocated to the catcher vessel sector in the Rockfish Program} \times \left( \frac{\sum \text{Rockfish QS units assigned to that rockfish cooperative}}{\sum \text{Rockfish QS units assigned to all rockfish cooperatives in the catcher vessel sector}} \right).$$

***(e) Assigning rockfish QS to a Rockfish Program fishery***

(1) General.

Each calendar year, a person that is participating in the Rockfish Program must assign any LLP license and any rockfish QS assigned to that LLP license to a Rockfish Program fishery by the process specified in

paragraph (e) of this section. A person may assign an LLP license and any rockfish QS assigned to that LLP license to only one Rockfish Program fishery in a fishing year. Any rockfish QS assigned to a person's LLP license after NMFS has issued CQ that calendar year will not result in any additional CQ being issued for that rockfish QS for that calendar year.

(2) Rockfish cooperatives.

A rockfish eligible harvester may assign rockfish QS to a rockfish cooperative if:

(i) That rockfish eligible harvester assigns the rockfish QS associated with that LLP license to a rockfish cooperative on a complete application for CQ that is approved by the Regional Administrator and that meets the requirements of paragraph (i) of this section.

(ii) That LLP license and rockfish QS will be assigned to the catcher vessel sector if that rockfish QS is derived from legal rockfish landings assigned to the catcher vessel sector; and

(iii) That LLP license and rockfish QS will be assigned to the catcher/processor sector if that rockfish QS is derived from rockfish legal landings assigned to the catcher/processor sector

(4) Rockfish Opt-out fishery.

A rockfish eligible harvester may assign rockfish QS assigned to the to the rockfish opt-out fishery if that rockfish eligible harvester assigns the rockfish QS associated with that LLP license to the rockfish opt-out fishery on a complete application for the opt-out fishery that is approved by the Regional Administrator.

***(f) Applications for a Rockfish Program fishery.***

(1) General.

Applications to participate in a Rockfish Program fishery are required to be submitted each year. A person who wishes to participate in a particular Rockfish Program fishery must submit a timely and complete application that is appropriate to that Rockfish Program fishery. These applications may only be submitted to NMFS using the following methods:

(i) Mail:

Regional Administrator,  
c/o Restricted Access Management Program,  
NMFS,  
P.O. Box 21668,  
Juneau, AK 99802-1668;

(ii) Fax: 907-586-7354; or

(iii) Hand Delivery or Carrier:  
NMFS, Room 713,  
709 West 9th Street,  
Juneau, AK 99801.

(iv) Electronic: <http://alaskafisheries.noaa.gov>.

(2) Application forms.

Application forms are available on the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2.

(3) Deadline.

(i) A completed application must be received by NMFS no later than 1700 hours A.l.t. on March 1 of the year for which the applicant wishes to participate in a Rockfish Program fishery, or if sent by U.S. mail, the application must be postmarked by that time.

(ii) The Regional Administrator will not consider an application to be received by the deadline if the applicant cannot provide objective written evidence that NMFS Alaska Region received it. The receiving date of signature by NMFS staff is the date the application was received.

(4) Application for CQ.

A rockfish cooperative that submits a complete application that is approved by NMFS will receive a CQ permit that establishes an annual amount of rockfish primary species, rockfish secondary species, and rockfish halibut PSC CQ that is based on the collective rockfish QS of the LLP licenses assigned to the rockfish cooperative by its members. A CQ permit will list the amount of CQ, by fishery, held by the rockfish cooperative, the members of the rockfish cooperative, LLP licenses assigned to that rockfish cooperative, and the vessels which are authorized to harvest fish under that CQ permit.

(i) Contents of an application for CQ. A completed application must contain the following information:

(A) Rockfish cooperative identification. The rockfish cooperative's legal name; the type of business entity under which the rockfish cooperative is organized; the state in which the rockfish cooperative is legally registered as a business entity; Tax ID number, date of incorporation, the printed name of the rockfish cooperative's designated representative; the permanent business address,

telephone number, fax number, and e-mail address (if available) of the rockfish cooperative or its designated representative; and the signature of the rockfish cooperative's designated representative and date signed.

(B) Members of the rockfish cooperative.

(1) Harvester identification. Full name, NMFS Person ID, LLP license number(s), Tax ID or SSN, name of the vessel(s), ADF&G vessel registration number, and USCG documentation number of vessel(s) on which the CQ issued to the rockfish cooperative will be used.

(2) LLP holdership documentation. Provide the names of all persons, to the individual level, holding an ownership interest in the LLP license(s) assigned to the rockfish cooperative and the percentage ownership each person and individual holds in the LLP license(s).

(C) Processor associates of the rockfish cooperative.

(1) Identification. Full name, NMFS Person ID, Tax ID, facility name, ADF&G processor code, SFP vessel name, ADF&G vessel registration number, and USCG documentation number of vessel (if a vessel), Federal Processor Permit, and Catch Monitoring and Control Plan number for each processing facility.

(D) Additional documentation. For the cooperative application to be considered complete, the following documents must be attached to the application:

(1) A copy of the business license issued by the state in which the rockfish cooperative is registered as a business entity;

(2) A copy of the articles of incorporation or partnership agreement of the rockfish cooperative;

(3) A copy of the rockfish cooperative agreement signed by the members of the rockfish cooperative (if different from the articles of incorporation or partnership agreement of the rockfish cooperative) that includes terms that specify that:

(i) Rockfish QS holders affiliated with rockfish eligible processors cannot participate in price setting negotiations except as permitted by general antitrust law;

(ii) The rockfish cooperative must establish a monitoring program sufficient to ensure compliance with the Rockfish Program; and

(iii) The proposed fishing plan to be used by members of the cooperative, including any proposed cooperative specific monitoring procedures and any voluntary codes of conduct that apply to the members of the cooperative, if applicable;

(iv) Rockfish QS holders may not receive any Rockfish CQ derived from their rockfish QS in subsequent years if the rockfish cooperative does not make a complete payment of any rockfish cost recovery fees due as required under § 679.85. The rockfish cooperative may include terms and conditions to specify the obligations of rockfish QS holders who are members of the rockfish cooperative to ensure the full payment of rockfish cost recovery fees that may be due.

(E) Applicant signature and certification. The applicant, including the processor associate of the rockfish cooperative, must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) Issuance of CQ. Issuance by NMFS of a CQ permit is not a determination that the rockfish cooperative is formed or is operating in compliance with antitrust law.

(5) Application to opt-out.

A rockfish eligible harvester who wishes to opt-out of the Rockfish Program for a calendar year with an LLP license assigned rockfish QS must submit an application to opt-out. A completed application must contain the following information:

(i) Applicant identification. The applicant's name, NMFS person ID (if applicable), tax ID or social security number, date of birth or date of incorporation, permanent business mailing address, business telephone number, fax number, and e-mail (if available);

(B) Indicate (YES or NO) whether the applicant is an eligible rockfish harvester;

(C) Indicate (YES or NO) whether the applicant is opting-out of the Rockfish Program;

(D) Indicate (YES or NO) whether the applicant holds an LLP license with rockfish QS assigned to the catcher/processor sector;

(E) Vessel identification. The name of the vessel, ADF&G vessel registration number, USCG documentation number, and LLP license number(s) held by the applicant and used on that vessel;

(F) LLP holdership documentation. Provide the names of all persons, to the individual level, holding an ownership interest in the LLP license and the percentage ownership each person and individual holds in the LLP license; and

(G) Signature and certification. The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(5) Assignment of LLP licenses and rockfish QS held by rockfish eligible harvesters who do not submit a timely and complete application for a rockfish fishery.

NMFS will assign an LLP license, and any Rockfish QS assigned to that LLP license, to the opt-out fishery for a calendar year if that rockfish eligible harvester did not designate that LLP license on a timely and complete application for CQ for that calendar year.

*(g) Application for inter-cooperative transfer of cooperative quota (CQ).*

(1) Completed application.

NMFS will process an application for inter-cooperative transfer of cooperative quota (CQ) provided that an electronic online transfer application is completed by the transferor and transferee, with all applicable fields accurately filled-in, and all required additional documentation is attached.

(2) Certification of transferor.

(i) The transferor's designated representative must log into the system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(ii) The transferee's designated representative must log into the system and accept the transfer request. By using the transferee's NMFS ID,

password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

***(h) Maximum retainable amount (MRA) limits***

***(1) Rockfish cooperative.***

A vessel assigned to a rockfish cooperative and fishing under a CQ permit may harvest groundfish species not allocated as CQ up to the amounts of the MRAs for those species as established in Table 30 to this part.

***(2) Rockfish opt-out fishery.***

A rockfish eligible harvester in the rockfish opt-out fishery may harvest groundfish species other than primary rockfish species up to the amounts of the MRAs for those species as established in Table 10 to this part.

***(3) Rockfish entry level longline fishery.***

A person directed fishing in the rockfish entry level longline fishery may harvest groundfish species other than primary rockfish species up to amounts of the MRAs for those species as established in Table 10 to this part.

***(4) Maximum retainable amount (MRA) calculation and limits – catcher vessels.***

(i) The MRA for an incidental catch species for vessels participating fishing under the authority of a Rockfish CQ permit is calculated as a proportion of the total allocated rockfish primary species and rockfish secondary species on board the vessel in round weight equivalents using the retainable percentage in Table 30 to this part; except that:

(iii) Once the amount of shortraker rockfish harvested in the catcher vessel sector is equal to 9.72 percent of the shortraker rockfish TAC in the Central GOA regulatory area, then shortraker rockfish may not be retained by any participant in the catcher vessel sector.

***(5) Maximum retainable amount (MRA) calculation and limits – catcher/processor vessels.***  
The MRA for an incidental catch species for vessels participating fishing under the authority of a Rockfish CQ permit is calculated as a proportion of the total allocated rockfish primary species and rockfish secondary species on board the vessel in round weight equivalents using the retainable percentage in Table 30 to this part as determined under § 679.20(e)(3)(iv).

***(i) Rockfish cooperative***

***(1) General.***

This section governs the formation and operation of rockfish cooperatives. The regulations in this section apply only to rockfish cooperatives that have formed for the purpose of fishing with CQ issued annually by NMFS.

(i) Members of rockfish cooperatives should consult legal counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the rockfish cooperative's proposed conduct.

(ii) Membership in a rockfish cooperative is voluntary. No person may be required to join a rockfish cooperative. Members may leave a rockfish cooperative, but any CQ contributed by the rockfish QS held by that member remains assigned to that rockfish cooperative for the remainder of the calendar year.

(iv) An LLP license or vessel that has been assigned to a rockfish cooperative in the catcher/processor sector that leaves a rockfish cooperative continues to be subject to the sideboard limits established for that rockfish cooperative under § 679.82(d) and (e), for that calendar year.

(v) If a person becomes the holder of an LLP license that has been assigned to a rockfish cooperative, then that person may join that rockfish cooperative upon receipt of that LLP license.

***(2) Legal and organizational requirements.***

A rockfish cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

(i) Each rockfish cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia;

(ii) Each rockfish cooperative must appoint an individual as designated representative to act on the rockfish cooperative's behalf and serve as contact point for NMFS for questions regarding the operation of the rockfish cooperative. The designated representative must be an individual, and may be a member of the rockfish cooperative, or some other individual designated by the rockfish cooperative;

(iii) Each rockfish cooperative must submit a complete and timely application for CQ;

(iv) Each rockfish cooperative must meet the mandatory requirements established in paragraphs (i)

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(3) and (4) of this section applicable to that rockfish cooperative.

The following table describes the requirements to form a rockfish cooperative in the catcher vessel or catcher/processor sector.

(3) Mandatory requirements.

Requirement	Catcher Vessel Sector	Catcher/Processor Vessel Sector
(i) Who may join a rockfish cooperative?	Only persons who are rockfish eligible harvesters may join a rockfish cooperative. Persons who are not rockfish eligible harvesters may be employed by, or serve as the designated representative of a rockfish cooperative, but are not members of the rockfish cooperative.	
(ii) What is the minimum number of LLP licenses that must be assigned to form a rockfish cooperative?	No minimum requirement.	
(iii) Is an association with a rockfish eligible processor required?	Yes. An eligible rockfish harvester may only be a member of a rockfish cooperative formed in association with a rockfish eligible processor.	No
(iv) Is an eligible rockfish harvester required to deliver catch to the rockfish eligible processor with whom the rockfish cooperative is formed?	No	N/A
(vi) Is there a minimum amount of rockfish QS that must be assigned to a rockfish cooperative for it to be allowed to form?	No	
(vii) What is allocated to the rockfish cooperative?	CQ for rockfish primary species, rockfish secondary species, and rockfish halibut PSC, based on the rockfish QS assigned to all of the LLP licenses that are assigned to the cooperative.	
(viii) Is this CQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CQ, or a cooperative can transfer all or a portion of this CQ to another rockfish cooperative.	
(ix) Is there a season during which designated vessels may catch CQ?	Yes, any vessel designated to catch CQ for a rockfish cooperative is limited to catching CQ during the season beginning on 1200 hours, A.l.t. on May 1 through 1200 hours A.l.t. on November 15.	
(x) Can any vessel catch a rockfish cooperative's CQ?	No, only vessels that are named on the application for CQ for that rockfish cooperative can catch the CQ assigned to that rockfish cooperative. A vessel may be assigned to only one rockfish cooperative in a calendar year.	
(xi) Can the member of a rockfish cooperative transfer CQ individually without the approval of the other members of the rockfish cooperative?	No, only the rockfish cooperative's designated representative, and not individual members, may transfer its CQ to another rockfish cooperative, but only if that transfer is approved by NMFS as established under paragraph (i)(4)(ii) of this section.	

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Requirement	Catcher Vessel Sector	Catcher/Processor Vessel Sector
(xii) Can a rockfish cooperative in the catcher/processor sector transfer its sideboard limit?	N/A	No, sideboard limits assigned to a rockfish cooperative in the catcher/processor sector is a limit applicable to a specific rockfish cooperative, and may not be transferred between rockfish cooperatives.
(xiii) Is there a hired master requirement?	No, there is no hired master requirement.	
(xiv) Can an LLP license be assigned to more than one rockfish cooperative in a calendar year?	No. An LLP license can only be assigned to one rockfish cooperative in a calendar year. A rockfish eligible harvester holding multiple LLP licenses may assign different LLP licenses to different rockfish cooperatives subject to any other restrictions that may apply.	
(xv) Can a rockfish eligible processor be associated with more than one rockfish cooperative?	Yes	N/A
(xvi) Can an LLP license be assigned to a rockfish cooperative and the opt-out fishery?	No. An LLP license may only be assigned to one Rockfish Program fishery in a calendar year.	
(xvii) Which members may harvest the rockfish cooperative's CQ?	That is determined by the rockfish cooperative contract signed by its members. Any violations of this contract by one cooperative member may be subject to civil claims by other members of the rockfish cooperative.	
(xviii) Does a rockfish cooperative need a contract?	Yes, a rockfish cooperative must have a membership agreement, or contract, that specifies how the rockfish cooperative intends to harvest its CQ. A copy of this agreement or contract must be submitted with the application for CQ.	
(xix) What happens if the rockfish cooperative exceeds its CQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CQ. Exceeding a CQ is a violation of the regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Rockfish Program regulations while fishing under authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to a rockfish cooperative. Each member of a rockfish cooperative is responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Rockfish Program.	
(xx) It there a limit on how much CQ a rockfish cooperative may hold or use?	Yes, see § 679.82(a) for the provisions that apply.	
(xxi) Is there a limit on how much CQ a vessel may harvest?	Yes, see § 679.82(a) for the provisions that apply.	
(xxii) Is there a requirement that a rockfish cooperative pay rockfish cost recovery fees?	Yes, see § 679.85 for the provisions that apply.	

**§ 679.81 Rockfish Program annual harvester privileges**

Requirement	Catcher Vessel Sector	Catcher/Processor Vessel Sector
(xxiii) If my vessel is fishing in a directed flatfish fishery in the Central GOA and I catch groundfish and halibut PSC, does that count against the rockfish cooperative's CQ?	(A) Any vessel fishing under the authority of a Rockfish CQ permit must count any catch of rockfish primary species, rockfish secondary species, or rockfish halibut PSC against that rockfish cooperative's CQ from May 1 until November 15, or until the effective date of a rockfish cooperative termination of fishing declaration that has been approved by NMFS. (B) Groundfish harvests would not be debited against the rockfish cooperative's CQ if the vessel is not fishing under the authority of a Rockfish CQ permit. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type.	
(xxiv) Can my rockfish cooperative negotiate prices for me?	The rockfish cooperatives formed under the Rockfish Program are intended to conduct and coordinate harvest activities for their members. Rockfish cooperatives formed under the Rockfish Program are subject to existing antitrust laws. Collective price negotiation by a rockfish cooperative must be conducted in accordance with existing antitrust laws.	
(xxv) Are there any special reporting requirements?	Yes, each year a rockfish cooperative must submit an annual rockfish cooperative report to NMFS by December 15 of each year. The annual rockfish cooperative report may be made available to NMFS by mailing a copy to NMFS: Regional Administrator, P.O. Box 21668, Juneau, AK, 99802.	
(xxvi) What is required in the annual rockfish cooperative report?	The annual rockfish cooperative report must include at a minimum: (A) The rockfish cooperative's CQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by- vessel basis; (B) The rockfish cooperative's actual retained and discarded catch of CQ, and sideboard limit on an area-by-area and vessel-by-vessel basis; (C) A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated; (D) A description of any civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.	

(4) Additional mandatory requirements.

(i) Restrictions on fishing CQ assigned to a rockfish cooperative. A person fishing CQ assigned to a rockfish cooperative must maintain a copy of the CQ permit onboard any vessel that is being used to harvest any rockfish primary species, or rockfish secondary species, or that uses any rockfish halibut PSC CQ.

(ii) Transfer of CQ between rockfish cooperatives. Rockfish cooperatives may transfer CQ during a calendar year with the following restrictions:

(A) A rockfish cooperative may only transfer CQ to another rockfish cooperative;

(B) A rockfish cooperative may only receive CQ from another rockfish cooperative;

(C) A rockfish cooperative may transfer or receive Rockfish CQ only if that cooperative has at been assigned at least two LLP licenses with Rockfish QS affixed to those LLP licenses;

(D) A rockfish cooperative in the catcher vessel sector may not transfer any CQ to a rockfish cooperative in the catcher/processor sector;

(E) A rockfish cooperative in the catcher/processor sector may not transfer any rougheye CQ or shortraker CQ to a rockfish cooperative in the catcher vessel sector.

(F) A rockfish cooperative receiving rockfish primary species CQ by transfer must assign that rockfish primary species CQ to a member(s) of the rockfish cooperative for the purposes of applying the use caps established under § 679.82(a). Rockfish secondary species or halibut PSC CQ is not assigned to a specific member of a rockfish cooperative;

(G) A rockfish cooperative may not transfer any sideboard limit assigned to it; and

(H) A rockfish cooperative may not receive any CQ by transfer after NMFS has approved a rockfish cooperative termination of fishing declaration that was submitted by that rockfish cooperative.

(5) Use of CQ.

(i) A rockfish cooperative in the catcher vessel sector may not use rockfish primary species CQ in excess of the amounts specified in § 679.82(a).

(A) For purposes of CQ use cap calculation, the total amount of CQ held or used by a person is equal to all tons of CQ derived from the Rockfish QS held by that person and assigned to the rockfish cooperative and all tons of CQ assigned to that person by the rockfish cooperative from approved transfers.

(B) The amount of rockfish QS held by a person, and CQ derived from that rockfish QS is calculated using the individual and collective use cap rule established in § 679.82(a).

(6) Successors-in-interest.

If a member of a rockfish cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the LLP license(s) and associated rockfish QS held by that person will be transferred to the legal successor-in-interest under the procedures described at § 679.4(k)(6)(iv)(A). However, the CQ derived from that rockfish QS and assigned to the rockfish cooperative for that year from that person remains under the control of the rockfish cooperative for the duration of that calendar year. Each rockfish cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season to reflect the transfer of an LLP license and associated rockfish QS.



**§ 679.82 Rockfish Program use caps and sideboard limits.**

**(a) Use caps.**

**(1) General.**

(i) Use caps limit the amount of rockfish QS and CQ that may be held or used by a rockfish eligible harvester, or received or processed by a rockfish eligible processor.

(ii) Use caps do not apply to halibut PSC CQ.

(iii) Use caps may not be exceeded unless the entity subject to the use cap is specifically allowed to exceed a cap according to the criteria established under this paragraph (a) or by an operation of law.

(iv) All rockfish QS use caps are based on the aggregate rockfish primary species initial rockfish QS pool established by NMFS in Table 29 to this part.

**(2) Rockfish QS use cap.**

A person may not individually or collectively hold or use more than:

(i) Four (4.0) percent of the aggregate rockfish primary species QS initially assigned to the catcher vessel sector and resulting CQ unless that rockfish eligible harvester qualifies for an exemption to this use cap under paragraph (a)(6) of this section;

(ii) Forty (40.0) percent of the aggregate rockfish primary species QS initially assigned to the catcher/processor sector and resulting CQ unless that rockfish eligible harvester qualifies for an exemption to this use cap under paragraph (a)(6) of this section.

**(3) Rockfish CQ use cap.**

A rockfish cooperative may not hold or use an amount of rockfish primary species CQ greater than 30.0 percent of the aggregate rockfish primary species CQ issued to the catcher vessel sector during a calendar year.

**(4) Vessel use cap.**

(i) A vessel may not harvest an amount of rockfish primary species CQ greater than 8.0 percent of the aggregate rockfish primary species CQ issued to the catcher vessel sector during a calendar year.

(ii) A vessel may not harvest an amount of rockfish primary species CQ greater than an amount equal to 60.0 percent of the aggregate rockfish primary species CQ issued to the catcher/processor sector during a calendar year.

**(5) Use cap for rockfish eligible processors.**

(i) A rockfish eligible processor may not receive or process an amount of rockfish primary species

harvested with CQ assigned to the catcher vessel sector greater than 30.0 percent of the aggregate rockfish primary species CQ issued to the catcher vessel sector during a calendar year.

(ii) A rockfish eligible processor may not receive or process an amount of Pacific cod harvested with CQ assigned to the catcher vessel sector greater than 30.0 percent of Pacific cod CQ issued to the catcher vessel sector during a calendar year.

(iii) A rockfish eligible processor may not receive or process an amount of sablefish harvested with CQ assigned to the catcher vessel sector greater than 30.0 percent of sablefish CQ issued to the catcher vessel sector during a calendar year.

(iv) The amount of aggregate rockfish primary species, Pacific cod, or sablefish CQ that is received by a rockfish eligible processor is calculated based on the sum of all landings made with CQ received or processed by that rockfish eligible processor and the CQ received or processed by any person affiliated with that eligible rockfish processor as that term is defined in § 679.2.

**(6) Use cap exemptions**

(i) **Rockfish QS.** A rockfish eligible harvester may receive an initial allocation of aggregate rockfish QS in excess of the use cap in that sector only if that rockfish QS is assigned to LLP license(s) held by that eligible rockfish harvester prior to June 14, 2010, and at the time of application to participate in the Rockfish Program.

**(ii) Transfer limitations.**

(A) A rockfish eligible harvester that receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section shall not receive any rockfish QS by transfer or have any CQ attributed to the that rockfish eligible harvester unless and until that person's holdings of aggregate rockfish QS in that sector are reduced to an amount below the use cap specified in paragraph (a)(2) of this section.

(B) If a rockfish eligible harvester receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section, and that rockfish eligible harvester transfers rockfish QS to another person, and the amount of aggregate rockfish QS held by that rockfish eligible harvester after the transfer is greater than the use cap established in paragraph (a)(2) of this section, that rockfish eligible harvester may not hold more than the amount of aggregate rockfish QS remaining after the transfer.

***(b) Opt-out fishery.***

A rockfish eligible harvester who submits an application to opt-out with that LLP license that is subsequently approved by NMFS, or whose LLP licenses are assigned to the opt-out fishery, may not fish for that fishing year in any directed fishery for any rockfish primary species in the Central GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species with any vessel named on that LLP license.

***(c) Sideboard limitations.***

General. The regulations in this section restrict the vessels and holders of LLP licenses with rockfish legal landings that could generate rockfish QS from using the increased flexibility provided by the Rockfish Program to expand their level of participation in other groundfish fisheries. These limitations are commonly known as "sideboards."

**(1) Classes of sideboard restrictions.**

Three types of sideboard restrictions apply under the Rockfish Program:

(i) Catcher vessel sideboard restrictions as described under paragraph (d) of this section;

(ii) Catcher/processor rockfish sideboard restrictions as described under paragraph (e) of this section; and

(iii) Opt-out sideboard restrictions as described under paragraph (f) of this section.

**(2) Notification of affected vessel owners and LLP license holders.**

After NMFS determines which vessels and LLP licenses meet the criteria described in paragraphs (d) through (f) of this section, NMFS will inform each vessel owner and LLP license holder in writing of the type of rockfish sideboard limitation and issue a revised Federal Fisheries Permit and/or LLP license that displays the limitation on the face of the permit or LLP license.

**(3) Calculation of rockfish and halibut PSC sideboard limits assigned to each LLP license in the catcher/processor sector.**

NMFS will determine specific rockfish sideboard ratios for each LLP licenses that could generate rockfish QS that could be assigned to the catcher/processor sector. These rockfish sideboard ratios will be noted on the face of an LLP license and will be calculated as follows.

(i) For each rockfish sideboard fishery, divide the retained catch of that rockfish sideboard fishery, from July 1 through July 31 in each year from 2000 through 2006, made under the authority of that LLP license, by the total retained catch of that rockfish sideboard fishery from July 1 through July 31 in each year from 2000 through 2006 by vessels operating under the authority of all eligible LLP licenses in the catcher/processor sector.

(ii) For the deep-water halibut PSC sideboard limit, divide the halibut PSC used in the deep-water complex from July 1 through July 31 in each year from 2000 through 2006 under the authority of that LLP license, by the total deep-water halibut PSC used from July 1 through July 31 in each year from 2000 through 2006 by vessels operating under the authority of all LLP licenses in the catcher/processor sector.

(iii) For the shallow-water halibut PSC sideboard limit, divide the halibut PSC used in the shallow-water complex from July 1 through July 31 in each year from 2000 through 2006 under the authority of that LLP license, by the total shallow-water halibut PSC used from July 1 through July 31 in each year from 2000 through 2006 by vessels operating under the authority of all LLP licenses in the catcher/processor sector.

**(4) Appeals.**

A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a sideboard limitation, or who disagrees with the specific sideboard ratio assigned to that LLP license, may make a contrary claim and provide evidence to NMFS. All claims must be submitted in writing to the RAM Program, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, together with any documentation or evidence supporting the request within 30 days of being notified by NMFS of the sideboard limitation. If NMFS finds the claim is unsupported, the claim will be denied in an Initial Administrative Determination (IAD). The affected persons may appeal this IAD using the procedures described at § 679.43.

**(5) Duration of sideboard limits.** Unless otherwise specified, all sideboard limitations established under paragraphs (d) through (f) of this section only apply from July 1 through July 31 of each year.

***(d) Sideboard provisions for catcher vessels***

**(1) Vessels subject to catcher vessel sideboard limits.** Any vessel not specified in paragraph (d)(2) of this section that NMFS has determined meets any of

**§ 679.82 Rockfish Program use caps and sideboard limits**

the following criteria is subject to the provisions under this paragraph (d):

(i) Any vessel whose rockfish legal landings could be used to generate rockfish QS for the catcher vessel sector in the Rockfish Program; or

(ii) Any vessel named on an LLP license under whose authority rockfish legal landings were made that could be used to generate rockfish QS for the catcher vessel sector in the Rockfish Program.

**(2) Applicability of sideboard provisions for specific AFA catcher vessels.**

Any AFA catcher vessel that is not exempt from GOA groundfish sideboards under the AFA as specified under § 679.64(b)(2)(ii) is exempt from the sideboard limits in paragraph (d) of this section.

**(3) Prohibition for directed fishing in the Western GOA and West Yakutat District rockfish during July.**

Vessels subject to the provisions of this paragraph (d) may not participate in directed fishing in the Western GOA and West Yakutat District and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species from July 1 through July 31 in any of the following directed fisheries:

- (i) Northern rockfish;
- (ii) Pacific ocean perch; and
- (iii) Pelagic shelf rockfish.

**(4) Prohibition for directed fishing in the specific GOA flatfish fisheries during July.** Vessels subject to the provisions of this paragraph (d) may not participate in directed fishing in the GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species from July 1 through July 31 in any of the following directed fisheries:

- (A) Arrowtooth flounder;
- (B) Deep water flatfish; and
- (C) Rex sole.

***(e) Rockfish and halibut PSC Sideboard provisions for catcher/processor vessels***

**(1) Vessels subject to catcher/processor sideboard limits.**

Any vessel that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (e):

(i) Any vessel whose rockfish legal landings could be used to generate rockfish QS for the catcher/processor sector in the Rockfish Program; or

(ii) Any vessel named on an LLP license under whose authority rockfish legal landings were made that could be used to generate rockfish QS for the catcher/processor sector in the Rockfish Program.

**(2) Prohibition directed rockfish fishing in the Western GOA and West Yakutat District by Non-Amendment 80 vessels assigned to the catcher processor sector.**

Any vessel that meets the criteria established in paragraph (e)(1) of this section and that is not an Amendment 80 vessel is prohibited from directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the Western GOA and West Yakutat District from July 1 through July 31.

**(3) Western GOA and West Yakutat District rockfish sideboard ratios.**

The rockfish sideboard ratio for each rockfish fishery in the Western GOA and West Yakutat is established in the following table:

<b>For the Management Area of the...</b>	<b>In the directed fishery for...</b>	<b>The Sideboard Limit for the Catcher/Processor Sector is...</b>
West Yakutat District	Pelagic Shelf Rockfish	** percent of the TAC
	Pacific ocean perch	** percent of the TAC
Western GOA	Pelagic Shelf Rockfish	72.3 percent of the TAC
	Pacific ocean perch	50.6 percent of the TAC
	Northern Rockfish	74.3 percent of the TAC

**(Table 2-77)**

**(4) GOA halibut PSC sideboard ratios.**

(i) The annual deep-water complex halibut PSC sideboard limit in the GOA is a 50.5 mt halibut mortality limit. **(Table 2-82).**

(ii) The annual shallow-water complex halibut PSC sideboard limit in the GOA is a 1.5 mt halibut mortality limit. **(Table 2-82).**

**(5) Assigning a rockfish sideboard limit to a rockfish cooperative.**

Each rockfish cooperative in the catcher/processor sector will be assigned a portion of the rockfish

sideboard limit for each rockfish species established in paragraph (e)(3) of this section according to the following formula.

(i) For each rockfish sideboard fishery, sum the rockfish sideboard ratios of all LLP licenses as calculated under paragraph (c)(3) of this section assigned to that rockfish cooperative and multiply this result by the amount of TAC (in metric tons) assigned to that rockfish sideboard fishery .

(iii) Once assigned, a rockfish cooperative may not exceed any rockfish sideboard limit assigned to that cooperative from July 1 through July 31.

(6) Assigning a rockfish sideboard limit to catcher/processor vessels in the opt-out fishery.

Catcher/processor vessels in the opt-out fishery will receive the portion of each rockfish sideboard limit established in paragraph (e)(3) of this section not assigned to rockfish cooperatives.

(7) Management of a rockfish sideboard limit assigned to catcher/processor vessels in the opt-out fishery.

(i) If the Regional Administrator determines that an annual rockfish sideboard limit for a rockfish sideboard fishery is sufficient to support directed fishing for that rockfish sideboard fishery, the Regional Administrator may establish a directed fishing allowance applicable to catcher/processers assigned to the opt-out fishery.

(ii) If the Regional Administrator determines that a sideboard limit is insufficient to support a directed fishing allowance for that rockfish sideboard fishery, then the Regional Administrator may set the directed fishing allowance to zero for catcher/processers assigned to the opt-out fishery from July 1 through July 31.

(iii) Upon attainment of a rockfish sideboard limit, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the rockfish sideboard fishery in the regulatory area, or district for catcher/processers assigned to the opt-out fishery that will be effective until July 31.

(8) Assigning deep-water and shallow-water halibut PSC sideboard limits to a rockfish cooperative.

Each rockfish cooperative in the catcher/processor sector will be assigned a percentage of the deep-water and shallow-water halibut PSC sideboard limits based on the following calculation:

(i) Sum the deep-water ratios of all LLP licenses assigned to that rockfish cooperative and multiply this result by 50.5 mt; and

(ii) Sum the shallow-water ratios of all LLP licenses assigned to that rockfish cooperative and multiply this result by 1.5 mt; and

(iii) Once assigned, a rockfish cooperative may not exceed any deep-water or shallow-water halibut PSC sideboard limit assigned to that cooperative from July 1 through July 31.

(9) Assigning a halibut PSC limit to catcher/processor vessels in the opt-out fishery.

Catcher/processor vessels in the opt-out fishery will receive the portion of the deep-water and shallow-water halibut PSC sideboard limit not assigned to rockfish cooperatives.

(10) Management of halibut PSC sideboard limits assigned to catcher/processor vessels in the opt-out fishery.

(i) If the Regional Administrator determines that a halibut PSC sideboard limit is sufficient to support a directed fishing allowance for groundfish in the deep-water or shallow-water halibut PSC complex, then the Regional Administrator may establish a directed fishing allowance for that species or species group applicable to catcher/processers assigned to the opt-out fishery.

(ii) If the Regional Administrator determines that a sideboard limit is insufficient to support a directed fishing allowance for groundfish in the deep-water or shallow-water halibut PSC complex, then the Regional Administrator may set the directed fishing allowance to zero for that species or species group in that complex for catcher/processers assigned to the opt-out fishery from July 1 through July 31.

(iii) Upon attainment of a halibut PSC sideboard limit, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for groundfish in the deep-water or shallow-water halibut PSC complex for catcher/processers assigned to the opt-out fishery that will be effective until July 31.

(iv) Upon determining that a halibut PSC sideboard limit is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species in that complex for catcher/processers assigned to the opt-out fishery. The following specific directed fishing closures will be implemented if a halibut PSC sideboard limit is reached:

(A) If the shallow-water halibut PSC sideboard limit for catcher/processors assigned to the opt-out fishery is reached, then NMFS will close directed fishing in the GOA for:

- (1) Flathead sole; and
- (2) Shallow water flatfish.

(B) If the deep-water halibut PSC sideboard limit is reached for catcher/processors assigned to the opt-out fishery is reached, then NMFS will close directed fishing in the GOA for:

- (1) Rex sole;
- (2) Deep water flatfish; and
- (3) Arrowtooth flounder.

(iii) Halibut PSC accounting. Any halibut mortality occurring under a CQ permit from July 1 through July 31 will not apply against the halibut PSC sideboard limits established paragraph (e)(8) of this section.

*(f) Sideboard provisions--catcher/processor opt-out provisions*

(1) General.

In addition to the sideboard provisions that apply under paragraph (e) of this section, the following sideboards under this paragraph (f) apply to any catcher/processor vessels and LLP license assigned to the opt-out fishery.

(2) Vessels subject to opt-out sideboard provisions.

Any vessel that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (f):

(i) Any vessel whose legal rockfish landings could be used to generate rockfish QS for the catcher/processor sector in the Rockfish Program that is not assigned to a rockfish cooperative; or

(ii) Any vessel named on an LLP license under whose authority legal rockfish landings were made that could be used to generate rockfish QS for the catcher/processor sector in the Rockfish Program and that is not assigned to a rockfish cooperative.

(3) Prohibitions on Central GOA rockfish directed harvest by opt-out vessels.

Any vessel that is subject to the opt-out sideboard restriction under this paragraph (f) is prohibited from

directed fishing for the following species in the following management areas:

(i) Central GOA northern rockfish and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season;

(ii) Central GOA Pacific ocean perch and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season; and

(iii) Central GOA pelagic shelf rockfish and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(4) Prohibitions on directed fishing in GOA groundfish fisheries without previous participation.

(i) Any vessel that is subject to the opt-out sideboard restriction under paragraph (c) of this section is prohibited from directed fishing in any groundfish fishery in the GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species (except sablefish harvested under the IFQ Program) from July 1 through July 14 of each year if that vessel has not participated in that directed groundfish fishery in any two years from 2000 through 2006 during the following time periods:

- (A) July 8, 2000 through July 15, 2000;
- (B) July 1, 2001 through July 7, 2001; and
- (C) June 30, 2002 through July 6, 2002.
- (D) June 29, 2003 through July 5, 2003;
- (E) July 4, 2004 through July 10, 2004;
- (F) July 3, 2005 through July 9, 2005; and
- (G) July 2, 2006 through July 8, 2006;

(ii) For purposes of determining participation in a directed groundfish fishery for this paragraph (f)(4)(i), a vessel may participate:

(A) In the flathead sole and shallow-water flatfish fishery if that vessel participated in a directed groundfish fishery for any of these two fisheries during any two years during the 2000 through 2006 qualifying period defined in paragraph (f)(4)(i) of this section; and

(B) In the arrowtooth flounder; deep water flatfish; and rex sole fishery if that vessel participated in a directed groundfish fishery for any of these three fisheries during any two years during the 2000 through

**§ 679.82 Rockfish Program use caps and sideboard limits**

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2006 qualifying period defined in paragraph (f)(4)(i) of this section.

**§ 679.83 Rockfish Program entry level longline fishery.**

***(a) Rockfish entry level longline fishery***

(1) Longline gear vessels. Vessels participating in the rockfish entry level longline fishery may collectively harvest an amount not greater than the total allocation to the rockfish entry level fishery as specified in Table 28e to this part.

(2) Rockfish Secondary species allocations. Rockfish secondary species shall not be allocated to the rockfish entry level longline fishery. Rockfish secondary species shall be managed based on a MRA for the target species as described in Table 10 to this part.

(3) Halibut PSC allocations. Halibut PSC from longline gear vessels in the rockfish entry level longline fishery shall be accounted against the allocation to the other non-trawl fishery category for that seasonal apportionment. If the Halibut PSC allocation in the other non-trawl fishery category has been reached or exceeded for that seasonal apportionment, the rockfish entry level longline fishery will be closed until deep water species fishery complex halibut PSC is available.

(4) Opening of the rockfish entry level longline fishery.

The Regional Administrator maintains the authority to not open the rockfish entry level longline fishery if he deems it appropriate for conservation or other management measures. Factors such as the total allocation, anticipated harvest rates, and number of participants will be considered in making any such decision.

***(b) [Reserved]***

**§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.**

**(a) Recordkeeping and reporting.** (See § 679.5(r)).

**(b) Permits.** (See § 679.4(n)).

**(c) Catch monitoring requirements for catcher/processors assigned to a rockfish cooperative.**

The requirements under paragraphs (c)(1) through (9) of this section apply to any catcher/processor vessel assigned to a rockfish cooperative at all times when that vessel has groundfish onboard that were harvested under a Rockfish CQ permit, or that were harvested by a vessel subject to a rockfish sideboard limit as described under § 679.82(c) through (f), as applicable. The vessel owner or operator must ensure that:

**(1) Catch weighing.**

All groundfish are 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 a NMFS-certified observer.

**(2) Observer sampling station.**

An observer sampling station meeting the requirements at § 679.28(d) is available at all times.

**(3) Observer coverage requirements.**

The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(7)(i).

**(4) Operational line.**

The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.

**(5) Fish on deck.**

No fish are allowed to remain on deck unless an observer is present, except for fish inside the codend and fish accidentally spilled from the codend during hauling and dumping. Fish accidentally spilled from the codend must be moved to the fish bin.

**(6) Sample storage.**

The vessel owner or operator provides sufficient space to accommodate a minimum of 10 observer sampling baskets. This space must be within or adjacent to the observer sample station.

**(7) Pre-cruise meeting.**

The Observer Program Office is notified by phone at 1-907-271-1702 at least 24 hours prior to departure

when the vessel will be carrying an observer who had not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

**(8) Belt and flow operations.**

The vessel operator stops the flow of fish and clear all belts between the bin doors and the area where the observer collects samples of unsorted catch when requested to do so by the observer.

**(9) Vessel crew in tanks or bins.**

The vessel owner or operator must comply with the bin monitoring standards specified in § 679.28(i).

**(d) Catch monitoring requirements for catcher/processors assigned to the opt-out fishery.**

The requirements under paragraphs (c)(1) through (9) of this section apply to any catcher/processor vessel assigned to the opt-out fishery at all times when that vessel has groundfish onboard that were harvested by a vessel subject to a sideboard limit as described under § 679.82(c) through (f), as applicable. The vessel owner or operator must ensure that:

(1) Catch from an individual haul is not mixed with catch from another haul prior to sampling by a NMFS-certified observer;

(2) All catch be made available for sampling by a NMFS-certified observer; and

(3) The requirements in paragraphs (c)(3), (4) (5), (8), and (9) of this section are met.

**(e) Catch monitoring requirements for catcher vessels.**

The owner or operator of a catcher vessel must ensure the vessel complies with the observer coverage requirements described at § 679.50(c)(7)(ii) at all times the vessel is participating in a rockfish cooperative or rockfish sideboard fishery described in this section.

**(f) Catch monitoring requirements for shoreside processors**

**(1) Catch monitoring and control plan (CMCP).**

The owner or operator of a shoreside processor receiving deliveries from a catcher vessel described at § 679.50(c)(7)(ii) must ensure the shoreside processor complies with the CMCP requirements described at § 679.28(g).

**(2) Catch weighing.**



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**§679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting**

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All groundfish landed by catcher vessels described at § 679.50(c)(7)(ii) must be sorted, weighed on a scale approved by the State of Alaska as described at § 679.28(c), and be made available for sampling by an observer, NMFS staff, or any individual authorized by NMFS must be allowed to test any scale used to weigh groundfish to determine its accuracy.

(3) CMCP Specialist.

Any shoreside processor that receives deliveries from a catcher vessel described at § 679.50 (c)(7)(ii) of this section is required to notify a NMFS CMCP Specialist at least one hour prior to receiving any delivery of groundfish harvested under the authority of a Rockfish CQ permit.

(g) *Catch accounting*

(1) Rockfish primary species and rockfish secondary species.

All rockfish primary species and rockfish secondary species harvested by a vessel, including harvests in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CQ permit will be debited against the CQ for that rockfish cooperative from May 1:

(i) Until November 15; or

(ii) Until that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(2) Rockfish halibut PSC.

All rockfish halibut PSC used by a vessel, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CQ permit will be debited against the CQ for that rockfish cooperative from May 1:

(i) Until November 15; or

(ii) Until the designated representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(3) Groundfish sideboard limits.

All groundfish harvested by a catcher/processor vessel, except groundfish harvested by a vessel fishing under a CQ permit in the Central GOA including groundfish harvested in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is subject to a sideboard limit for that

groundfish species as described under § 679.82(c) through (f), as applicable, from July 1 until July 31 will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

(4) Halibut sideboard limits.

All halibut PSC used by a catcher/processor vessel, except halibut PSC used by a vessel fishing under a CQ permit, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is subject to a sideboard limit as described under § 679.82(c) through (f), as applicable, from July 1 until July 31 will be debited against the sideboard limit established for that rockfish cooperative or opt-out fishery, as applicable.

§ 679.85 Rockfish cost recovery.

(a) *Cost recovery fees.*

(1) Responsibility.

The person documented on the rockfish CQ permit as the permit holder at the time of a rockfish CQ landing must comply with the requirements of this section.

(i) Subsequent transfer of rockfish CQ or rockfish QS held by Rockfish cooperative members does not affect the Rockfish CQ permit holder's liability for noncompliance with this section.

(ii) Non-renewal of a rockfish CQ permit does not affect the rockfish CQ permit holder's liability for noncompliance with this section.

(iii) Changes in the membership in a rockfish cooperative or rockfish QS holdings of those members does not affect the rockfish CQ permit holder's liability for noncompliance with this section.

(2) Fee Liability determination.

(i) All rockfish CQ holders will be subject to a fee liability for any rockfish primary species and rockfish secondary species CQ debited from a rockfish CQ allocation during a calendar year, except any rockfish primary species or rockfish secondary species harvested under a rockfish CQ permit that is subsequently confiscated by NMFS or the State of Alaska.

(ii) Fee liability must be calculated by multiplying the applicable fee percentage by the ex-vessel value of the rockfish primary species and rockfish secondary species CQ received by the rockfish eligible processor at the time of receipt, except as provided by paragraph (b)(3) of this section.

(iii) NMFS will provide a summary to all rockfish CQ permit holders during the first quarter of the year following the calendar year in which the rockfish CQ landings were made. The summary will explain the fee liability determination including the current fee percentage, details of rockfish primary species and rockfish secondary species CQ pounds debited from rockfish CQ allocations by permit, species, date, and prices.

(3) Fee collection.

(i) All rockfish CQ holders who receive rockfish CQ are responsible for submitting the cost recovery payment for all rockfish CQ landings made under the authority of a rockfish CQ permit.

(ii) All rockfish CQ holders who receive a rockfish CQ permit for a calendar year must maintain and submit records for any rockfish cost recovery fees collected under the corresponding rockfish CQ permit.

(4) Payment

(i) Payment due date. A rockfish CQ permit holder must submit any rockfish cost recovery fee liability payment(s) to NMFS at the address provided in paragraph (a)(4)(iii) of this section no later than March 31 of the year following the calendar year in which the Rockfish CQ landings were made.

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

(iii) Payment address. Submit payment and related documents as instructed on the fee form; payments may also be submitted electronically to NMFS. Forms are available on the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at: 800-304-4846, Option 2.

(iv) Payment method. Payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank certified check, or credit card.

(b) *Ex-vessel value determination and use.*

(1) General.

A rockfish CQ permit holder must use either the ex-vessel value determined for shoreside rockfish eligible processors or the ex-vessel value determined for at-sea catcher/ processors (CP), depending on their activity. Ex-vessel value includes all cash, services, or other goods-in-kind exchanged for rockfish primary species and rockfish secondary species CQ.

(2) Rockfish eligible processor Ex-vessel value.

Rockfish eligible processing facilities must use the price paid at the time of purchase as ex-vessel value for the purposes of calculating fee liability. Rockfish eligible processing facilities must include any subsequent retroactive payments as adjustments to the initial calculation of fee liability.

(3) Catcher/Processor Ex-vessel value

(i) General. Catcher/processors must use the corresponding CP standard price(s) for the purposes of calculating fee liability.

(ii) CP standard prices. As part of the summary described in paragraph (a)(2)(iii) of this section, the Regional Administrator will provide CP standard

prices calculated for a calendar year during the first quarter of the year following the calendar year in which the rockfish CQ landings were made. The CP standard prices will be described in U.S. dollars per pound, for rockfish primary species and rockfish secondary species CQ debited from rockfish CQ allocations during the current fishing year.

(iii) Effective period. CP standard prices established by NMFS shall apply to all landings made during a calendar year as the CP standard price provided for that year and shall replace any CP standard prices previously provided by NMFS.

(iv) Determination. NMFS will calculate the CP standard prices to reflect, as closely as possible, the average rockfish eligible processor price by fishery and by species, and any variations in reported ex-vessel values of Rockfish primary species and rockfish secondary species during a calendar year. The Regional Administrator will base CP standard prices on the following types of information:

(A) Landed pounds of rockfish primary species and rockfish secondary species, and month;

(B) Total rockfish eligible processor ex-vessel value by of rockfish primary species and rockfish secondary species, and month; and

(C) Price adjustments, including retroactive payments.

(4) Fee liability calculation.

All rockfish CQ holders must base all fee liability calculations on the ex-vessel value that correlates to Rockfish primary species and rockfish secondary species CQ that is debited from a rockfish CQ allocation and recorded in pounds.

(c) Rockfish fee percentage.

(1) Established percentage.

The rockfish 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).

(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 rockfish cost recovery fee will apply;

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

(C) The costs directly related to the management, data collection, and enforcement of the Rockfish Program.

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

$$100 \times (DPC / V)$$

where:

DPC is the direct program costs for the Rockfish Program for the previous fiscal year, and

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

(3) Publication.

(i) General. During the first quarter of the year following the calendar year in which the rockfish CQ landings were made, NMFS shall calculate the rockfish fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) Effective period. The calculated rockfish fee percentage remains in effect through the end of the calendar year in which it was determined.

(4) Applicable percentage.

The rockfish CQ permit holder must use the rockfish fee percentage in effect at the time a rockfish primary species and rockfish secondary species CQ landing is debited from a Rockfish CQ allocation to calculate the rockfish cost recovery fee liability for such rockfish primary species and rockfish secondary species. The rockfish CQ permit holder must use the rockfish fee percentage in effect at the time a rockfish primary species and rockfish secondary species landing is debited from a rockfish CQ allocation to calculate the rockfish cost recovery fee liability for any retroactive payments for that rockfish primary species and rockfish secondary species.

(d) Underpayment of fee liability.

(1) No rockfish CQ holder will receive any rockfish CQ until the Rockfish CQ holder submits a complete application. A complete application shall include full payment of an applicant's complete

## § 679.85 Rockfish cost recovery

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rockfish cost recovery fee liability as reported by the rockfish CQ holder.

(2) If a rockfish CQ holder fails to submit full payment for crab cost recovery fee liability by the date described in paragraph (a)(4) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the rockfish CQ permit holder stating that the Rockfish CQ permit holder's estimated fee liability, as indicated by his or her own submitted information, is the rockfish cost recovery fee liability due from the rockfish CQ permit holder.

(ii) Disapprove any transfer of Rockfish CQ to or from the Rockfish CQ permit holder in accordance with § 679.81.

(3) If a rockfish CQ holder fails to submit full payment by the application deadline described at § 679.4:

(i) No rockfish CQ permit will be issued to that rockfish CQ holder for that crab fishing year; and

(ii) No rockfish CQ will be issued that is derived from any rockfish QS that was held by a member of the rockfish cooperative to which that rockfish CQ permit was assigned.

(4) Upon final agency action determining that a rockfish CQ permit holder has not paid his or her rockfish cost recovery fee liability, the Regional Administrator may continue to prohibit issuance of a rockfish CQ permit for any subsequent calendar years. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

### *(e) Over payment.*

Upon issuance of final agency action, any amount submitted to NMFS in excess of the rockfish cost recovery fee liability determined to be due by the final agency action will be returned to the Rockfish CQ permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future rockfish cost recovery fee liability.

### *(f) Appeals and requests for reconsideration.*

An Rockfish CQ permit holder who receives an IAD may either appeal the IAD pursuant to 50 CFR 679.43 or request reconsideration. Within 60 days from the date of issuance of the IAD, the Regional Administrator may undertake reconsideration of the IAD on his or her own initiative. If a request for reconsideration is submitted or the Regional Administrator initiates reconsideration, the 60-day

period for appeal under 50 CFR 679.43 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 a Rockfish CQ permit holder fails to file an appeal of the IAD pursuant to 50 CFR 679.43 or request reconsideration within the time period provided, the IAD will become the final agency action. In any appeal or reconsideration of an IAD made under this section, an RCR permit holder has the burden of proving his or her claim.

### *(g) Rockfish Eligible Processor Ex-vessel Volume and Value Report.*

A rockfish eligible processor must submit a Ex-vessel Volume and Value Report according to § 679.5(n)(10).

### *(h) Rockfish CQ Fee submission form.*

A rockfish CQ permit holder must submit a rockfish CQ fee submission form according to § 679.5(n)(9).

**Table 28a to Part 679 – Qualifying Season Dates for Central GOA Primary Rockfish Species**

A Rockfish Legal Landing includes...	Year						
	2000	2001	2002	2003	2004	2005	2006
Northern rockfish that were harvested between...	July 4 - 26	July 1 - 23 and Oct. 1 - 21	June 30 – July 21	June 29 – July 29	July 4 – July 25	July 5 July 24	July 1 – July 21
and landed by ...	Aug. 2	July 30 and Oct. 28, respectively	July 28	Aug 5	Aug 1	July 31	July 28
Pelagic shelf rockfish that were harvested between...	July 4 - 26	July 1- 23 and Oct. 1- 21	June 30 – July 21	June 29 – July 31	July 4 – July 25	July 5 – July 24, Sept. 1 Sept 4, and Sept. 8 – Sept. 10	July 1 – July 21 and Oct. 2 – Oct 8
and landed by ...	Aug. 2	July 30 and Oct. 28, respectively	July 28	Aug 7	Aug 1	July, 31, Sept. 11, and Sept 17 respectively	July 28 and Oct. 15 respectively
Pacific ocean perch that were harvested between...	July 4 - 15	July 1 - 12	June 30 - July 8	June 29 – July 8	July 4 – July 12	July 5 – July 14	July 1 – July 6
and landed by ...	July 22	July 19	July 15	July 15	July 19	July 21	July 13

**Table 28b to Part 679 – Qualifying Season Dates for Central GOA Primary Rockfish Species**

A Rockfish Legal Landing includes...	2007	2008	2009
Northern rockfish that were harvested by vessels authorized to fish with trawl gear in the rockfish entry level fishery between ...	Sept.1 – Nov. 8	Sept.1 – Nov. 15	Sept.1 – Nov. 15
and landed by ...	Nov. 15	Nov. 22	Nov. 22
Pelagic shelf rockfish that were harvested by vessels authorized to fish with trawl gear in the rockfish entry level fishery between...	July 4 –July 25	July 5 – July 24,	July 1 – July 21
and landed by ...	Aug 1		
Pacific ocean perch that were harvested by vessels authorized to fish with trawl gear in the rockfish entry level fishery between...	July 4 – July 12	July 5 – July 14	July 1 – July 6
and landed by ...	July 19	July 21	July 13

**Table 28c to Part 679 – Allocation of Rockfish Secondary Species**

For the following Rockfish Secondary Species...	The following percentage of the Central GOA TAC is allocated to Rockfish cooperatives as CQ...	
	For the catcher vessel sector...	For the catcher/processor sector...
Pacific cod	3.81 %	N/A
Sablefish	6.78 %	3.51 %
Rougheye rockfish	N/A	58.87 %
Shortraker rockfish	N/A	40.00 %
Thornyhead rockfish	7.84%	26.50 %

Tables 2-48 (As updated by Council staff)

**Table 28d to Part 679 – Allocation of halibut PSC under the Central GOA Rockfish Program**

For the following Rockfish sectors...	The following amount of halibut ...	Is multiplied by...	To yield the following amount of Halibut PSC assigned as Rockfish CQ...	The following amount of halibut is not assigned as Rockfish CQ, halibut PSC, or halibut IFQ for use by any person...
Catcher Vessel Sector	134.1 mt	0.875	117.3 mt	27.4 mt (16.8 mt from the catcher vessel sector & 10.6 mt from the catcher/processor sector)
Catcher/Processor Sector	84.7 mt		74.1 mt	

Tables 2-54 & 2-84



**Table 28e to Part 679 – Rockfish entry level longline fishery allocations**

The allocation to the rockfish entry level non-trawl fishery of the following rockfish primary species...	For 2012 will be...	This amount will increase in each subsequent year by an additional ...	Provided that in the preceding year the total retained harvests in the rockfish entry level non-trawl fishery exceeded...	Except that the maximum amount of the TAC assigned to the Rockfish Program (after deducting the ICA) that may be allocated to the rockfish entry level non-trawl fishery for each rockfish primary species is...
Northern rockfish	5 mt	5 mt	90% of the allocation for that rockfish primary species	2 percent
Pacific ocean perch	5 mt	5 mt		1 percent
Pelagic shelf rockfish	30 mt	20 mt		5 percent

**Table 29 to Part 679–Initial Rockfish QS Pools**

Initial Rockfish QS Pool	Northern Rockfish	Pelagic Shelf Rockfish	Pacific ocean perch	Aggregate Primary Species Initial Rockfish QS Pool
Initial Rockfish QS Pool	Based on the Official Rockfish Program Record on January 31, 2012.			
Initial Rockfish QS Pool for the Catcher/Processor Sector				
Initial Rockfish QS Pool for the Catcher Vessel Sector				

**Table 30 to Part 679 – Rockfish Program Retainable Percentages (in round wt. equivalent)**

Fishery	Incidental Catch Species	Sector	MRA as a percentage of total retained rockfish primary species and rockfish secondary species
Rockfish Cooperative Vessels fishing under a Rockfish CQ permit.	Pacific Cod	Catcher/Processor	4.0 percent
	Shortraker/Rougheye aggregate catch	Catcher Vessel	2.0 percent
See Non-Allocated Secondary species for “other species”			
Non-Allocated Secondary Species for Rockfish Cooperative vessels fishing under a Rockfish CQ permit.	Pollock	Catcher/Processor and Catcher Vessel	20.0 percent
	Deep-Water flatfish	Catcher/Processor and Catcher Vessel	20.0 percent
	Rex Sole	Catcher/Processor and Catcher Vessel	20.0 percent
	Flathead Sole	Catcher/Processor and Catcher Vessel	20.0 percent
	Shallow-water flatfish	Catcher/Processor and Catcher Vessel	20.0 percent
	Arrowtooth	Catcher/Processor and Catcher Vessel	35.0 percent
	Other Rockfish	Catcher/Processor and Catcher Vessel	15.0 percent
	Atka Mackerel	Catcher/Processor and Catcher Vessel	20.0 percent
	Aggregated forage fish	Catcher/Processor and Catcher Vessel	2.0 percent
	Skates	Catcher/Processor and Catcher Vessel	20.0 percent
Other Species	Catcher/Processor and Catcher Vessel	20.0 percent	
Longline gear Rockfish Entry Level Fishery.	See Table 10 to this part.		
Opt-out Fishery.	See Table 10 to this part.		
Rockfish Cooperative Vessels not fishing under a CQ permit	See Table 10 to this part.		

# STATE OF ALASKA

SEAN PARNELL, GOVERNOR

## DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

P.O. BOX 115526  
JUNEAU, AK 99811-5526  
PHONE: (907) 465-4100  
FAX: (907) 465-2332

October 1, 2010

**RECEIVED**  
OCT -1 2010

James Balsiger, Ph.D.  
Administrator, Alaska Region  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, AK 99802-1668

Dear Dr. Balsiger: *Jim*

We have reviewed your recent letter requesting the Alaska Department of Fish and Game's (department) cooperation in filling information needs to support implementation of the North Pacific Fishery Management Council's (council) proposed halibut catch share plan (CSP) for Area 2C and Area 3A. The department is committed to providing the projections and summary data needed in order to advance rulemaking and, ultimately, implementation of a final rule for the CSP. Your letter specifies data elements the draft proposed rule would require if approved. Department staff time and expertise will be made available to refine the information request and establish deadlines necessary to support the earliest possible implementation date.

As you suggest, the department welcomes review and input from the council's Scientific and Statistical Committee on the department's halibut harvest projection methodology, and we will work with your staff and council staff to develop a process for regular review.

Thank you for providing the opportunity for staff review of the preliminary draft proposed rule and for clearly outlining the associated information needs. I would like to compliment your staff on their methodical work in completing the draft, which represents significant progress in establishing a comprehensive halibut management program in the North Pacific. We look forward to assisting in its successful implementation. Please contact Stefanie Moreland or Scott Meyer as additional coordination is needed.

Sincerely,



Denby S. Lloyd  
Commissioner

cc: Chris Oliver, North Pacific Fishery Management Council  
Sue Salvesson, National Marine Fisheries Service

# Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway

Juneau, AK 99801

Phone: 907-586-6652

Email: [seafa@gci.net](mailto:seafa@gci.net)

Fax: 907-523-1168

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October 6, 2010

North Pacific Fishery Management Council

605 W 4<sup>th</sup> Avenue, Suite 306

Anchorage, AK 99501-2252

RE: B-2 (1) Halibut Catch Sharing Plan proposed regulation review

Dear Eric Olson, Chair and Council Members,

In addition to the previous general comments submitted by Southeast Alaska Fishermen's Alliance (SEAFA), we would like to bring to the attention of the NPFMC members the following sections of the draft regulatory language:

### Page 10 and 11

The Tables for Area 2C and Area 3A appear out of place or incomplete. In addition because it is the first area of the regulation that the allocation percentages are listed and since they only cover the first two tiers of the Area allocation since this section is dealing with the formula for developing under a one fish rule a maximum size limit when necessary it appears that there is not an allocation available to the charter fleet above certain levels of combined commercial and charter catch limits.

- *SEAFA recommends that NMFS staff review this section and correct or clarify before publication.*

### Page 12

(6) (i) *General.* (A) GAF is derived from halibut IFQ that is transferred from an Area 2C or Area 3A IFQ permit account held by a quota share (QS) holder, as defined in §679.2 of this title, to a GAF permit held by a GAF permit holder.

- *It is possible that the language should state charter halibut limited entry permit holder rather than GAF permit holder at the end of the sentence. Otherwise there is not any reference or connection that to use GAF fish you have to have a halibut charter limited entry permit and gives the impression that if you are a GAF permit holder and hold GAF fish you can use it to harvest halibut without a charter halibut limited entry permit. SEAFA recommends that the language be corrected to read as follows: "(6) (i)*

*General. (A) GAF is derived from halibut IFQ that is transferred from an Area 2C or Area 3A IFQ permit account held by a quota share (QS) holder, as defined in §679.2 of this title, to a GAF permit held by a halibut charter limited entry permit holder.*

**Page 17**

(4) A GAF permit is linked to only one charter halibut permit, community charter halibut permit, or military charter halibut . . .

- *When reading the regulations overall it appeared that a GAF permit account is set up for every Guide business to withdraw fish as harvested from but only in this specific language is there a requirement that there be a GAF permit linked to a specific charter halibut permit. This raises the issue if it is the intent of the NPFMC to have a guide business with multiple vessels to have one GAF account that they withdraw fish from for multiple vessels and a copy of that permit is on each vessel or is there specifically one GAF account/permit for each individual halibut charter vessel and the GAF is not transferrable between vessels within the same business.. SEAFA recommends that the NPFMC clarify their intent and the regulations corrected to be consistent with NPFMC intent. There are pros and cons in either choice and enforcement issues that should be considered.*

**Page 19 (d) (iii) and page 25 (v)**

Page 25 (v) is a prohibition against be(ing) an operator of a vessel in Area 2C and Area 3A during one charter vessel fishing trip and is in conflict with the text on page 19 (d)(iii) which states that if halibut were caught and retained in IPHC Regulatory Area 2C and Area 3A during the same charter vessel fishing trip, then a separate Alaska Dept of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet must be completed and submitted for each regulatory area to record the halibut caught and retained within that regulatory area. The completed logbook sheets for each area must indicate the primary statistical area in which the halibut were caught and retained.

- *The prohibition section is current regulatory language implemented as part of the halibut charter limited entry permit process. The halibut LEP motion in March 2007 stated "If a business owner qualifies for a permit in both areas based on the history from a single vessel, he/she would be issued a separate permit for both areas. ONLY ONE PERMIT COULD BE USED ON ANY GIVEN TRIP." SEAFA recommends that the prohibition language implemented as part of the halibut LEP is the language that should remain and the conflicting language on page 19 be removed.*

**Page 21**

Language deleted in (4) Regulatory area fished.

- **SEAFa strongly believes it is important to retain the requirement in the logbook and during the electronic reporting for GAF for marking the IPHC regulatory Area 2C or 3A when halibut is harvested and retained. We do not see in the language where this requirement exists. We believe the intent was to delete the second sentence which was replaced in another section.**

**Page 22**

(7) Signature: At the end of a charter vessel fishing trip, acknowledge that the recorded information is correct by signing the logbook data sheet.

- *While it is clear when put in context of the overall signature that this section is referring to the guide signature, SEAFa recommends that for clarity this section be relabeled as "Guide Signature".*

Thank you for the opportunity to comment on these draft proposed regulations on this issue and we encourage the NPFMC and NMFS to continue to make the halibut charter CSP a priority for implementation.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Hansen" followed by a long horizontal line.

Kathy Hansen  
Executive Director

<b><i>NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE 01-114-01</i></b> <b><i>EFFECTIVE DATE: March 9, 2009</i></b>	
<b><i>Fisheries Management</i></b>	
<b><i>Regional Fishery Management Council Consultation in MPA Nomination Process</i></b>	
<b>NOTICE:</b> This publication is available at: <a href="http://www.nmfs.noaa.gov/directives/">http://www.nmfs.noaa.gov/directives/</a> .	
<b>OPR:</b> F/SF (A. Risenhoover) <b>Type of Issuance:</b> Initial	<b>Certified by:</b> F (J. Balsiger)
<b><i>SUMMARY OF REVISIONS:</i></b>	

### 1.0 Introduction

In the United States and around the world, marine protected areas (MPAs) are increasingly recognized as an important and promising management tool for mitigating or buffering impacts to the world's oceans from human activities. Presidential Executive Order 13158 of May 26, 2000 (Order) calls for the development of a National System of Marine Protected Areas (National System) and directs the establishment of a National MPA Center within NOAA to lead its development and implementation. The Order requires collaboration with federal agencies as well as coastal states and territories, tribes, regional fishery management councils (Councils), and other entities as appropriate, including the MPA Federal Advisory Committee. (The collaborative process described in this policy applies only to sites established through conservation and management measures per the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq.* (MSA), as a result of Council action.)

The Order further specifies that the National System be scientifically based, comprehensive, and represent the nation's diverse marine ecosystems and natural and cultural resources.

The National System provides the first comprehensive mechanism for coordinating MPAs managed by diverse federal, state, territorial, tribal, and local agencies to work toward national conservation objectives. The National System will benefit the nation's collective conservation efforts and participating MPAs, providing those sites with a means to address issues beyond their boundaries. The National System should benefit participating MPAs by enhancing stewardship, building partnerships, increasing support for marine conservation, fostering more effective and efficient outreach, promoting cultural heritage, and protecting MPA resources. The National System should benefit the nation by protecting representative ecosystems and resources, enhancing connectivity among MPAs, identifying gaps in current protection of ocean resources, providing new educational opportunities, enhancing research opportunities, and improving international coordination.



The National System outlines a science-based, transparent process for identifying gaps in current protection efforts where new or enhanced MPAs may be needed to address resource conservation needs. Effective stakeholder review and consultation is critical to this process. The National System does not provide any new authority for establishing or managing MPAs, but lays out design and implementation principles that will guide the development of the system. These principles include a commitment to balanced stakeholder involvement, respect for local and indigenous values, and adaptive management.

Additional information about Marine Protected Areas, the National Framework for a National System of MPAs, and the nomination process can be found at:  
<http://www.mpa.gov>.

## 2.0 Objective

The objective of this policy directive is to establish the process for consulting with Councils:

1. on whether sites that were established under the authorities of the MSA as a result of Council action should be nominated to be included in the National System, and
2. when adding, modifying, or removing MPAs in the National System.

To provide a roadmap for building the National System, the Order calls for the development of a framework for a National System. The 2008 Framework for the National System of MPAs of the United States of America (Framework) is the result of a multi-year development effort. The Framework proposes a National System that is, initially, an assemblage of existing MPA sites, systems, and networks established and managed by federal, state, tribal, or local governments. The Framework outlines several key components of the National System, including:

- A set of overarching National System goals and priority conservation objectives;
- MPA eligibility criteria and other key definitions; and
- A nomination process for MPAs to be included in the National System.

MPA eligibility criteria are:

1. Meets the definition of an MPA as defined in the Framework.
2. Has a management plan (can be site-specific or part of a broader programmatic management plan; must have specified conservation goals and call for monitoring or evaluation of those goals).
3. Contributes to at least one priority conservation objective as listed in the Framework.
4. Cultural heritage MPAs must conform to criteria for the National Register of Historic Places.

Additional information about the Framework can be found at:  
[http://www.mpa.gov/national\\_system/final\\_framework\\_sup.html](http://www.mpa.gov/national_system/final_framework_sup.html)

### 3.0 Overview of Nomination Process

As established in the Framework, the nomination process includes the following steps:

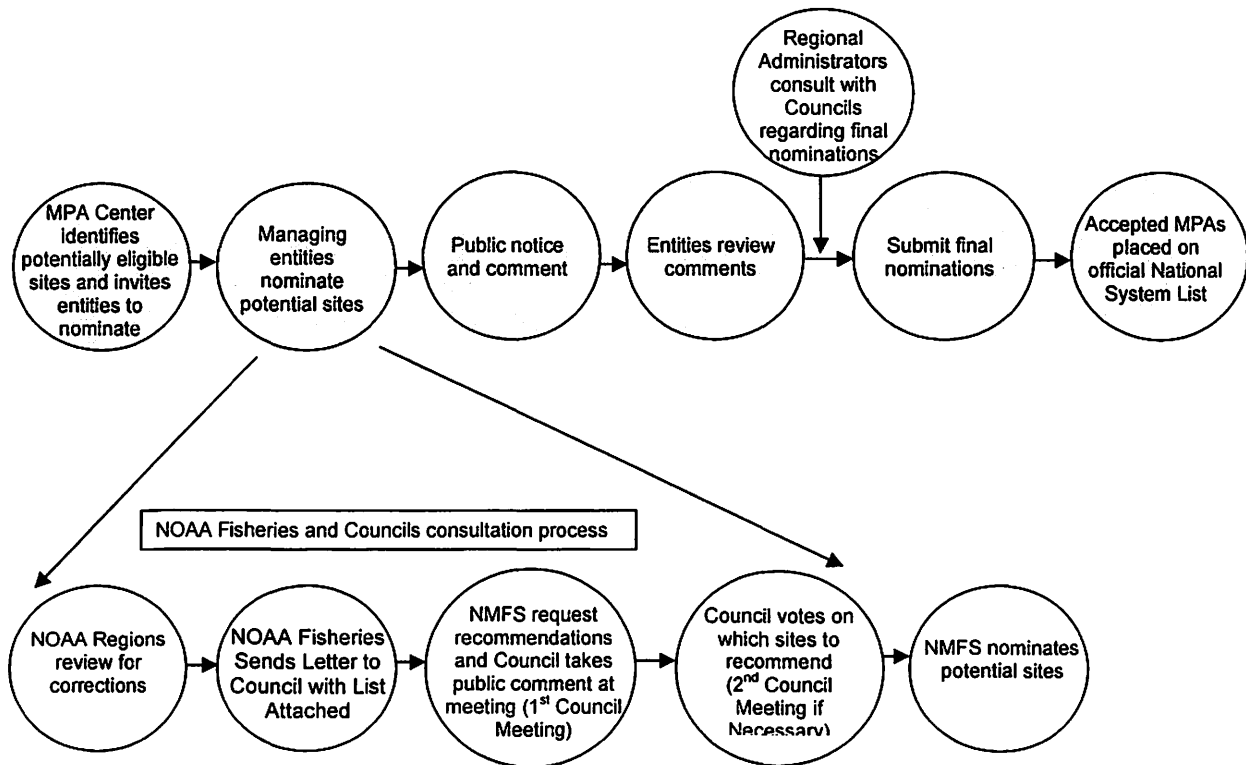
1. The MPA Center will review sites in the U.S. MPA Inventory and identify the set of sites that, on initial review, meet the three (or four, for cultural sites) MPA eligibility criteria described above. Information on whether sites meet criterion 3, supporting at least one priority goal and conservation objective of the National System, will be provided by the managing entity as part of the nomination process. The MPA Inventory ([www.mpa.gov](http://www.mpa.gov)) is a refinement of the early NOAA Marine Managed Areas Inventory, which was a broader collection of place-based management areas in U.S. waters.
2. For those sites that are potentially eligible, the MPA Center will send the managing entity or entities a letter of invitation to nominate the site, including the rationale for eligibility. In the case of sites established through conservation and management measures per the MSA, the managing entity is NOAA Fisheries.
3. The managing entity or entities will be asked to consider nominating identified sites for inclusion in the National System and provide any additional information required to evaluate site eligibility relative to meeting priority conservation objectives. The managing entity may also provide a brief justification and nomination for (a) unsolicited sites believed to meet the requirements for entry into the National System, or (b) other sites that do not appear to currently meet the management plan eligibility criterion but are deemed to be a priority for inclusion based on their ability to fill gaps in national system coverage of the priority conservation objectives and design principles.
4. The MPA Center will review the set of nominated sites to ensure that nominations are sufficiently justified.
5. The MPA Center will notify the public, via the *Federal Register* and other means, of the sites nominated for inclusion in the National System and provide the opportunity to comment on the eligibility of nominated sites (or sites that have not been nominated) relative to eligibility criteria and any additional justification. The MPA Center will work with the managing entities to ensure adequate public involvement, including public meetings and tribal coordination, as appropriate.
6. The MPA Center will receive, evaluate, and forward public comment to the relevant managing entity or entities, which will then have the opportunity to reaffirm or withdraw the nomination based on public comment received and any other factors deemed relevant.
7. The MPA Center will review the final determination for each nomination, consult as necessary with the managing entity or entities should there be any discrepancies, and accept mutually agreed upon MPAs into the National System.
8. MPAs that are accepted into the National System will be listed in the official List of National System MPAs comprising the National System and made available to the public via the *Federal Register*, the website <http://www.mpa.gov>, and other means.

### 4.0 Process to Consult with Regional Fishery Management Councils in MPA Nominations and Revisions to Designations

The Councils have a unique and important role as partners with NOAA Fisheries in fisheries management, which includes establishing federal fishery management plans and plan amendments and habitat conservation areas. Therefore, the Councils will be a key partner with NOAA Fisheries in nominating sites to the National System and, conversely, identifying sites that should be removed from the National System due to management or other changes. Through a transparent process, NOAA Fisheries will consult with the Councils and nominate fisheries sites to the National System. This process applies only to sites established through conservation and management measures per the MSA as a result of Council action. Figure 1 shows how the Council consultation process fits within the overall nomination process. Because of the need for a transparent consultation process, MSA sites will be nominated and accepted into the National System as indicated below.

Figure 1. Summary of Nomination Process

# Nomination Process



4.1 NOAA Fisheries Service and Regional Fishery Management Council Consultation for Nomination to National System. [Steps in brackets correspond to the overall nomination process discussed in Section 3.0]

- [Steps 1, 2] The MPA center will send NOAA Fisheries a list of sites that are eligible to be included in the National System.
- [Step 3] After receiving the list of eligible sites from the MPA Center, NOAA Fisheries will notify each Council, by letter, of those sites that fall within each Council's jurisdiction.
- [Step 3] In consultation with the appropriate Regional Administrator, each Council will establish a process for reviewing the list of eligible sites, including providing opportunity for public comment at Council meetings. The Council process is expected to occur over the course of two consecutive Council meetings, and conclude with a Council vote on a proposed list of sites to be included in the National System. Should an MPA fall in an area where two Councils or Regions have jurisdiction, the Council or Region that has the lead on the FMP implementing the MPA will nominate the site. The Council recommendations should be documented in a letter to the Regional Administrator and include the following:
  - For sites that a Council recommends be included in the National System, the Council should provide any additional supporting information as required by the MPA Center (<http://www.mpa.gov/pdf/national-system/nominationpackage1208.pdf>)
  - For sites that a Council recommends not be included in the National System, the Council should include a brief justification for that conclusion.
  - Note: The Councils may also use this process to nominate additional sites that are not currently on the list of eligible sites for inclusion in the National System.
- [Step 3] The Regional Administrator will review the Council's recommendation and prepare the proposed list of sites for submission to the MPA Center. NOAA Fisheries will justify the reasons for any changes from the Council's recommendations and in such a case will provide the required supporting information to the MPA Center.
- [Steps 4, 5] NOAA Fisheries will submit the nominations to the MPA Center for review and publication in the Federal Register and provide opportunity for public comment
- [Step 6] After the public comment period has ended, the MPA Center will provide the comments received back to NOAA Fisheries, which will in turn share the public comments received with the applicable Councils.
- [Step 6] The Regional Administrators will coordinate with the respective Council to review the comments and determine whether changes should be made to the list of nominated sites. Council recommendations for changes to the list of nominated sites should be documented in a letter to the Regional Administrator, including any required supporting information required by the MPA Center. It is expected that this process would occur over the course of one Council meeting.
- [Steps 7, 8] The Regional Administrator will review the Council's final

recommendation and a final list of sites for submission to the MPA Center. NOAA Fisheries will justify the reasons for any changes from the Council's recommendations and in such a case will provide the required supporting information to the MPA Center.

#### 4.2 Regional Fishery Management Council Consultation for Modifying or Removing MPAs

Participation in the National System does not constrain the managing entity from changing its

management of the MPA. The managing entity has the ability to, within its own authorities and processes, add or reduce levels of MPA protection, change the size of an MPA, or make other changes. It is expected that a similar consultation process between NOAA Fisheries and the Council as described in section 4.1 would be followed for modifying or removing sites from the National System, although the process may be modified to fit into the overall management process that a Council is following.

In general, to make changes to the National System, the managing entity will provide all significant updates to the MPA Center, but would not be required to re-nominate a site in the case of changes. If NOAA Fisheries and the appropriate Council determine that an MPA no longer meets the National System MPA criteria, then the MPA would be removed from the system by following the procedures established by the MPA Center.

MPA sites that have been included in the List of National System MPAs may be removed at any time by the MPA Center in response to a written request from the managing entity for reasons including:

- The MPA ceases to exist;
- The MPA no longer meets National System MPA eligibility criteria; or
- The managing entity requests removal

All requests from managing entities or actions by the MPA Center to remove an MPA from the National System will be published at [www.mpa.gov](http://www.mpa.gov) and in the *Federal Register* for comment. Any comments received will be forwarded to the managing entity for consideration in making its final determination for removal. Upon request of the managing entity, and based upon a supporting rationale, the MPA will be removed from the List of National System MPAs.

For additional detail on the process that the MPA Center will follow for adding, modifying, or removing sites from the National System, refer to the MPA Framework at: [http://www.mpa.gov/national\\_system/final\\_framework\\_sup.html](http://www.mpa.gov/national_system/final_framework_sup.html)

The duration of this policy directive will be indefinite because the National System will be continuously updated with new MPA designations or revisions to existing MPA designations

This policy directive's objective will be attained when the above-described consultation process is carried out effectively on a routine basis

Procedural directives will be issued to implement this policy as needed.

References

This policy directive is supported by the references listed in Attachment 1.

/s/ Jim Balsiger  
2/23/2009  
Assistant Administrator for Fisheries (acting)

Attachment 1

References:

*Framework for the National System of Marine Protected Areas of the United States of America*

*Presidential Executive Order 13158*

*Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et seq.*

To be sent via email to: Lauren Wenzel, Heather Sagar, and Bill Chappell.

Dear Lauren et al.:

Thank you for the opportunity for the North Pacific Fishery Management Council to comment on the draft NOAA guidance on implementing the "avoid harm" provisions of the MPA Executive Order 13158. While appreciative that you are addressing this important issue, there remain a number of concerns with the "avoid harm" provision and the draft guidance document.

Most important, the guidance fails to specify any role for the Regional Councils to play in the Federal agency requirement to assess and determine that Council actions do no harm. Under the Magnuson-Stevens Act (MSA), it is the Councils who initiate actions to modify fishing regulations; it is the Councils who weigh the relative impacts of a proposed action; and it is the Councils who determine what actions are taken. Further, for most actions, it is Council staff who prepares the environmental review documents (e.g., NEPA analyses) for regulatory changes, which also ultimately support the record of decision (ROD) -- including changes that establish MPAs and changes to fisheries that may affect MPA resources. It is the Council and its staff who would (and should) make a decision in the early stages of an analysis as to whether an action would potentially affect MPA resources, and it is the Council staff who would identify any adverse effects, document the steps taken to minimize the effects, and conclude whether harm has been avoided to the maximum extent practicable. **Thus, the guidance should be revised to specify that the Regional Councils, and not NMFS, are the drivers in evaluating "avoid harm" as part of the standard environmental impact review process, and at the least make the initial determination.**

Further, the guidance is unclear as to who in NOAA makes the final determination on the avoid harm provision. In some sections the guidance refers to NOAA, and in other sections refers to NOAA Line Office. **The guidelines should specify that for Regional Council actions, the final determination is made by the NMFS Regional Assistant Administrator.**

We remain concerned about the determination of compliance certification as detailed in Attachment 1 to the guidance. Such a determination statement appears to carry the same level of certification as an ESA Section 7 conclusion or a NEPA Finding of No Significant Impact statement. We are concerned that such a certification will result in greatly increased expectations and analytical requirements, and opens up the potential that NMFS could reject, modify, or delay a Council action based on a different finding relative to "avoid harm." The Council remains concerned about the possibility of agency use of the avoid harm provision to supersede Council authority. Additionally, review of the compliance determination is likely to add additional time to an already lengthy review process for implementation of management actions. **Therefore, the guidance should be revised to eliminate the formalized certification statements and just make it part of the ROD.**

The term "maximum extent practicable" includes social and economic components not mentioned anywhere within the guidance. The term "practicable" infers cost and benefit tradeoffs that must be considered in the avoid harm evaluation, similar to the analysis required to minimize the effects of fishing on essential fish habitat to the extent practicable. Simply put, the Council may take actions that cause harm to MPA resources—actions that could be avoided by not going forward with the action—simply because it is not practicable to not take the action. For example, in situations when an action to increase an annual catch limit for a groundfish stock would cause fishing effort, and thus related effects on MPA resources, to increase, the Council may determine that it is practicable to take action and achieve optimum yield as required by the MSA. **The**

**guidelines should be revised to include a definition of “practicable” that includes biological, social, and economic tradeoffs. In the case of the Councils, this also includes meeting the National Standards of the MSA and other applicable laws.**

Lastly, we suggest that the definitive source for determining MPA resources should not be limited to the regulation or management plans that established the MPA, but rather the list of resources supplied by the Council or Federal agency when nominating an MPA. In many cases, the resource(s) protected by a fishery-related MPA are not identified or listed in the regulations or in the fishery management plans. Rather, the resources protected are normally identified in the NEPA analysis that amends the fishery management plans. Even then, in some cases, it may be difficult for individual analysts to obtain the older amendment analyses and ascertain what resources are protected by a particular fishery closure area. In the Alaska region, for example, the Council has established quasi-marine reserves to protect sensitive areas such as seamounts, highly complex habitats with corals and sponges, and, as a precautionary approach, relatively un-fished areas of the Bowers Ridge and the Arctic Ocean area. The analysis of these quasi-marine reserves included discussion of the benthic ecosystem in these areas, but did not necessarily identify specific resources protected by these fishery closure areas. Without an official list of resources supplied by the Council at the time of an MPA nomination, there is no assurance that potential effects of different actions on MPA resources would be evaluated consistently. **Thus, the guidelines should be revised to indicate that the “definitive source” for resources protected by an MPA are those identified by the nominating agency — in this case the Councils in conjunction with the relevant Regional Office of NMFS — as part of the MPA nomination process.**

In conclusion, the draft guidance as written fails to provide assurance to the Council that its authority is not diminished, and as such discourages the Council from nominating sites for the National MPA System. Please contact me if you have additional questions.



CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order and notified the U.S. International Trade Commission. See Letter to Ms. Catherine DeFilippo, Director, Office of Investigations, U.S. International Trade Commission, from James Maeder, Director, Office 2, AD/CVD Operations, entitled "Expedited and Full Sunset Reviews of the Antidumping Duty Orders Initiated in June 2010," dated July 22, 2010.

On September 15, 2010, the Department contacted Aqualon regarding the reference to Harmonized Tariff Schedule of the United States (HTSUS) number 3913.31.00.10 at 12 of the Appendix of its substantive response, dated July 1, 2010. Aqualon stated on September 15, 2010, that it had mistakenly referenced the wrong HTSUS number in its substantive response and intended to reference HTSUS number 3912.31.00.10. See Memorandum to the File from Dena Crossland, Regarding Preliminary Results of First Sunset Review of the Antidumping Duty Order on Purified Carboxymethylcellulose from Mexico; Correction to Domestic Interested Party's July 1, 2010, Substantive Response, dated September 16, 2010.

#### Scope of the Order

The merchandise covered by the order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to the order is currently classified in the HTSUS at subheading 3912.31.00.<sup>2</sup> This tariff classification is provided for convenience and Customs purposes;

<sup>2</sup> Although HTSUS number 3912.31.00.10 may be more specific to subject merchandise, it was not created until 2005. As such, we are relying on HTSUS number 3912.31.00 for purposes of this sunset review because in determining whether revocation of an order would likely lead to continuation or recurrence of dumping, the Department considers the margins established in the investigation and/or reviews conducted during the sunset review period as well as the volume of imports for the periods before and after the issuance of the order. See section 752(c)(1) of the Act.

however, the written description of the scope of the order is dispositive.

#### Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum for the Preliminary Results of First Sunset Review of the Antidumping Duty Order on Purified Carboxymethylcellulose from Mexico," from Susan H. Kubbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (Decision Memo), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Commerce Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memo are identical in content.

#### Preliminary Results

The Department preliminarily determines that revocation of the antidumping duty order on CMC from Mexico is likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

Quimica Amtex .....	12.61 percent
All Others .....	12.61 percent

#### Public Comment

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Consistent with 19 CFR 351.309(c)(1)(i), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 5 days after the time limit for filing the case briefs, in accordance with 19 CFR 351.309(d)(1). Any hearing, if requested will be held two days after rebuttal briefs are due, unless the Department alters the date, in accordance with 19 CFR 351.310(d)(1). The Department intends to issue a notice of final results of the first sunset review, which will include the results of its analysis of

issues raised in any such briefs, no later than January 28, 2011.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: September 20, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-24458 Filed 9-28-10; 8:45 am]

BILLING CODE 3510-DS-5

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XZ29

### NOAA Proposed Policy on Prohibited and Authorized Uses of the Asset Forfeiture Fund

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

ACTION: Notice; request for comments.

**SUMMARY:** The Magnuson-Stevens Fishery Conservation and Management Act authorizes the Secretary of Commerce through NOAA to pay certain enforcement related costs from sums received as fines, penalties, and forfeitures of property for violations of any marine resource law enforced by the Secretary. Fines, penalties, and forfeitures of property received by NOAA are deposited in an enforcement asset forfeiture fund. The Secretary is proposing a new policy to clearly articulate prohibited and authorized uses of these funds to ensure no conflict of interest—either real or perceived—associated with its use while continuing to promote a sound enforcement program dedicated to conserving and protecting our nation's marine resources. The Secretary requests comments from the public on listed prohibited and authorized uses of the funding and, in particular, expenditures for activities that would promote compliance with regulations promulgated by NOAA.

**DATES:** Written comments must be received on or before 5 p.m., EST, on November 29, 2010.

**ADDRESSES:** Written comments may be sent by any of the following methods:

- E-mail to the following address: [DraftAFFPolicy@noaa.gov](mailto:DraftAFFPolicy@noaa.gov). Please note on your correspondence and in the subject line of e-mail comments the following identifier: "Draft Asset Forfeiture Fund Policy Comments.";
- Mail or hand deliver to Mr. Mark Paterni, Assistant Director, Office of

Law Enforcement, National Oceanic and Atmospheric Administration, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910. Mark the outside of the envelope "Draft Asset Forfeiture Fund Policy Comments"; or

• Fax to 301-427-2055 noting "Draft Asset Forfeiture Fund Policy Comments."

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Paterni, Assistant Director, Office of Law Enforcement, National Oceanic and Atmospheric Administration, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910, (telephone 301-427-2300).

**SUPPLEMENTARY INFORMATION:**

**I. Proposed Policy on Prohibited and Authorized Uses of the Asset Forfeiture Fund**

Strong management and oversight of the Asset Forfeiture Fund (AFF) is essential to restoring the public's trust in the National Oceanic and Atmospheric Administration's (NOAA) Enforcement Program. It is the goal of the Department of Commerce and NOAA to establish a stringent policy for effective oversight of the AFF that will ensure no conflict of interest — real or perceived — associated with its use while continuing to promote a sound enforcement program dedicated to conserving and protecting our nation's marine resources. This policy statement provides clear guidance on the approved uses of the AFF that are consistent with applicable legal authority and that will help assure those regulated that all fines and penalties are fairly and equitably assessed based solely on the severity of the violation. This policy statement also prohibits funding for specific activities. In addition, the Department will expand the use of AFF funding to include compliance assistance to better serve the needs of our stakeholders and improve the way NOAA engages and interacts with its regulated community.

Monies within the AFF are derived from fines, penalties, and property forfeitures associated with violations of marine resource laws (Magnuson-Stevens Act, Endangered Species Act, Marine Mammal Protection Act, and Lacey Act, among others). The Department believes, as did the Congress in establishing the AFF and specifying the allowable uses, that it is appropriate to use the proceeds of NOAA's enforcement program to offset in part the costs of administering that program. Those who violate these laws should help offset the cost of protecting our marine resources in lieu of those costs being borne by taxpayers. Further,

the availability of these funds for enforcement reduces the requirement for additional appropriations and expands NOAA's ability to respond to violations of the laws it is charged with enforcing. NOAA's Office of Law Enforcement's (OLE) National Enforcement Operations Manual and the Office of the General Counsel for Enforcement and Litigation's (GCEL) Operating Procedures Manual will include the new policy, along with detailed guidance.

To ensure accountability and transparency in AFF accounting, NOAA will take a number of actions. The Agency will clearly identify and track AFF monies received and expended, and centralize the AFF approval processes for expenditures. Starting with the FY 2012 budget submission, NOAA will identify and account for the AFF in its annual budget. Beginning in FY2011, an annual operating budget will be developed for the AFF based upon the policy, and proposed modifications to that budget must be approved by the NOAA Chief Financial Officer.

Separately, NOAA will establish appropriate uses of other enforcement proceeds retained by the Secretary but not part of the AFF. In particular, NOAA will examine the use of fines and penalties collected for violations of the Northeast Multispecies Fishery Management Plan, which under section 311(f) of the Magnuson-Stevens Act must be used to enforce the Plan.

**Prohibited Uses**

The policy prohibits the use of the AFF for the following activities:

- Funding for any NOAA employee labor, benefits, or awards;
- Funding for any vehicle purchases or leases, including patrol vehicles, undercover vehicles, all terrain vehicles, vehicles assigned to agents to carry out their enforcement duties, or associated equipment, upgrades, modification, or maintenance of current vehicles;
- Funding for any vessel purchases or leases, including patrol vessels, undercover vessels, or associated equipment upgrades, modification, or maintenance of current vessels;
- Funding for any domestic or foreign travel that is not related to specific investigations, enforcement proceedings, or required training, such as attendance at general conferences or seminars except as specifically authorized below;
- Funding for any training that is not specifically required by policy as an integral part of an employee's job as detailed below; and

- Funding for the purchase of any equipment that is not directly related to a specific investigation or enforcement proceeding, including weapons and ammunition, uniforms, copiers or facsimile machines, desktop or laptop computers, Blackberries or other PDAs, cell phones or radios, video or audio recording equipment; or office furniture.

**Authorized Uses**

The policy *authorizes* funding for certain specific enforcement-related activities:

- Compliance assistance as discussed further below;
- Costs directly related to the proper storage of seized fish, vessels, or other property during a civil or criminal proceeding;
- Rewards for information related to enforcement actions;
- Valid liens, mortgages, and claims against, or interest in, seized or forfeited property;
- Reimbursement to other Federal or State agencies for enforcement related services provided pursuant to an agreement entered into with the Secretary;
- Expenditures related directly to specific investigations and enforcement proceedings; such as interviewing expert witnesses, witness participation at trials, hearings or depositions, expert witness fees, case support contracts, or required forensic or evidence handling supplies;
- Attendance at international bi- or multi-lateral meetings and negotiations to discuss enforcement specific agenda items;
- Training and associated travel required by policy for all enforcement personnel, mandatory courses at the Federal Law Enforcement Training Center and required field training assignments;
- Mandatory annual in-service or national training for OLE and GCEL employees;
- Training for Federal and state partners regarding Federal statutes and regulations under NOAA's authorities;
- Enforcement unique information technology infrastructure, including hardware, software and maintenance, required specifically for NOAA's enforcement and legal systems and databases;
- Annual interagency agreement and contract costs for the administrative adjudication process, including Administrative Law Judges; and,
- Efforts to combat international unregulated and unreported fishing through annual funding to the International Monitoring, Control, and Surveillance Network.

### Compliance Assistance

The Department will implement activities to better serve the needs of our stakeholders and improve the way NOAA engages and interacts with its regulated community. This new component will be aimed at improving and expanding NOAA's compliance assistance, collaboration, and outreach activities. The Department will work with the Marine Fisheries Advisory Committee (additional information at: <http://www.nmfs.noaa.gov/ocs/mafac/>) to develop proposals for activities or program enhancements that will improve compliance with all marine resource statutes. Activities may include, but are not limited to:

- Placing a full or part-time Compliance Assistance Liaison in NMFS Regional Offices as needed, beginning with New England;
- Expanding the use of regional enforcement workshops and training sessions to bring together and educate stakeholders on regulations and other requirements associated with fishery management plans, National Marine Sanctuaries, and activities related to the protection of endangered species and marine mammals;
- Educating and involving fishermen in the development of potential solutions to regional and national enforcement-related issues; and
- Improving communication with regulated communities and the general public relative to enforcement issues through increased OLE and GCEL participation in Regional Fishery Management Council meetings or Sanctuary Advisory Committee meetings, improved websites, easy to understand compliance guides, and timely electronic or other notifications of changes in regulations.

These compliance assistance activities would likely be funded by the AFF through agreements with federal and state partners, or in the case of efforts addressing NE Multispecies, through enforcement proceeds available to the Secretary under section 311(f) of the Magnuson-Stevens Act.

### II. Additional Information

#### Ensuring a Strong Enforcement Program

NOAA and other federal agencies with similar authorities must maintain adequate funding for enforcement. At the National Enforcement Summit held in early August, participants stressed the need for effective and fair enforcement around the country. They offered suggestions that NOAA should focus more on compliance and outreach to better balance its deterrence efforts.

The need for a strong enforcement program is widely recognized and supported as a key component of supporting legal fishers and the American public through barring illegal imports, ending illegal domestic harvests, and ensuring safe and wholesome seafood products. As NOAA completes the broad set of activities aimed at improving its enforcement programs, including a corrective action plan for the AFF, NOAA must ensure an adequate funding level is maintained. Otherwise, the many benefits of a strong enforcement program would be at risk.

#### Legislative Authorities

The specific statutory authority for use of the fund for certain enforcement related purposes is found in section 311(e)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861). Section 311(e)(1) authorizes six types of expenditures: (A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other marine resource law enforced by the Secretary with respect to that fish or other property; (B) a reward of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount, to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other fishery resource law enforced by the Secretary; (C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings; (D) any valid liens or mortgages against any property that has been forfeited; (E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)), as made applicable by section 310(c) of this Act or by any other marine resource law enforced by the Secretary, to seizures made by the Secretary, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and (F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law. Though not part of the AFF, section 311(f) provides that

finances and penalties collected for violations of the Northeast Multispecies Fishery Management Plan shall be used for purposes of enforcing the Plan.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 24, 2010.

Eric C. Schwaab,

Assistant Administrator For Fisheries,  
National Marine Fisheries Service

[FR Doc. 2010-24446 Filed 9-24-10; 4 15 pm]

BILLING CODE 3510-22-S

### COMMODITY FUTURES TRADING COMMISSION

#### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0049, Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to procedures for submitting requests for exemptive, no-action, and interpretative letters.

**DATES:** Comments must be submitted on or before November 29, 2010.

**ADDRESSES:** Comments may be mailed to Christopher W. Cummings, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Christopher W. Cummings (202) 418-5445; Fax: (202) 418-5528; e-mail: [ccummings@cftc.gov](mailto:ccummings@cftc.gov).

**SUPPLEMENTAL INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide