

Fishery Conservation and Management

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§ 679.65 [Reserved]

Subpart G—Rockfish Program

SOURCE: 71 FR 67252, Nov. 20, 2006, unless otherwise noted.

§ 679.80 Initial allocation of rockfish QS.

Regulations under this subpart were developed by National Marine Fisheries Service to implement Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108-199). 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 and BSAI.

(2) *Duration*. The Rockfish Program authorized under this part expires on December 31, 2011.

(3) *Seasons*. The following fishing seasons apply to fishing under this subpart subject to other provisions of this part:

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

(ii) *Rockfish entry level fishery—trawl vessels*. Fishing by vessels participating in the trawl gear portion of the rockfish entry level fishery is authorized from 1200 hours, A.l.t., May 1 through 1200 hours, A.l.t., November 15.

(iii) *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.

(iv) *Rockfish fishery—rockfish limited access fishery*. Fishing by vessels participating in the rockfish limited access fishery is authorized from 1200

hours, A.l.t., July 1 through 1200 hours, A.l.t., November 15.

(b) *Eligibility for harvesters to participate in the Rockfish Program*—(1) *Eligible rockfish harvester*. A person is eligible to participate in the Rockfish Program as an eligible rockfish harvester if that person:

(i) Holds a permanent fully transferrable LLP license at the time of application to participate in the Rockfish Program that:

(A) Is endorsed for Central GOA groundfish with a trawl gear designation; and

(B) Has a legal rockfish landing of any primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish; and

(ii) Submits a timely application to participate in the Rockfish Program that is approved by NMFS.

(2) *Rockfish entry level fishery harvester*. A person is eligible to participate in the Rockfish Program as a rockfish entry level fishery harvester if that person:

(i) Holds a valid LLP license endorsed for Central GOA groundfish at the time of application for the entry level fishery;

(ii) Submits a timely application for the entry level fishery that is approved by NMFS; and

(iii) That person does not hold a permanent fully transferrable LLP license that is endorsed for Central GOA groundfish with a trawl designation and has a legal rockfish landing of any primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish.

(3) *Assigning a legal rockfish landing to an LLP license*. A legal rockfish landing is assigned to an eligible LLP license endorsed for the Central GOA management area with a trawl gear designation if that legal rockfish landing was made onboard a vessel that gave rise to that LLP license prior to the issuance of that LLP license, or that legal rockfish landing was made on a vessel using trawl gear operating under the authority of that LLP license.

(4) *Legal rockfish landings assigned to the catcher/processor sector.* A legal rockfish landing for a primary rockfish species is assigned to the catcher/processor sector if:

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

(ii) The legal rockfish landings that were derived from that vessel resulted in, or 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.

(5) *Legal rockfish landings assigned to the catcher vessel sector.* A legal rockfish landing for a primary rockfish species is assigned to the catcher vessel sector if:

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

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

(iii) Those legal rockfish landings do not meet the criteria for being a legal rockfish landing assigned to the catcher/processor sector as defined in paragraph (b)(4) of this section.

(c) *Eligibility for processors to participate in the Rockfish Program—(1) Eligible rockfish processor.* A person is eligible to participate in the Rockfish Program as an eligible rockfish processor if that person:

(i) Holds the processing history of a shoreside processor or stationary floating processor that received not less than 250 metric tons in round weight equivalents of aggregate legal rockfish landings of primary rockfish species each calendar year in any four of the five calendar years from 1996 through 2000 during the season dates for that primary rockfish species as established in Table 28 to this part;

(ii) Submits a timely application to participate in the Rockfish Program that is approved by NMFS; and

(iii) That person or successor-in-interest exists at the time of application to participate in the Rockfish Program.

(2) *Holder of processing history.* A person holds the processing history of a shoreside processor or stationary floating processor if that person:

(i) Owns the shoreside processor or stationary floating processor at which the legal rockfish landings were received at the time of application to participate in the Rockfish Program, unless that processing history has been transferred to another person by the express terms of a written contract that clearly and unambiguously provides that such processing history has been transferred; or

(ii) (A) Holds the processing history of a shoreside processor or stationary floating processor at which the legal rockfish landings were received and obtained that processing history by the express terms of a written contract that clearly and unambiguously provides that such processing history is held by that person at the time of application to participate in the Rockfish Program; and

(B) The shoreside processor or stationary floating processor from which that processing history is derived did not have a valid Federal Processor Permit at the time that the processing history had been transferred by the express terms of a written contract.

(3) *Eligible entry level fishery processor.* A person is eligible to participate in the Rockfish Program as an eligible entry level fishery processor if that person is not an eligible rockfish processor.

(d) *Official Rockfish Program record—(1) Use of the official Rockfish Program record.* The official Rockfish Program record will contain information used by the Regional Administrator to determine:

(i) The amount of legal rockfish landings and resulting processing history assigned to a shoreside processor or stationary floating processor;

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

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

(iv) Sideboard ratios assigned to eligible rockfish harvesters;

(v) The amount of legal rockfish landings assigned to an eligible rockfish processor for purposes of establishing a rockfish cooperative with eligible rockfish harvesters; and includes:

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

(2) *Presumption of correctness.* The official Rockfish Program 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 official Rockfish Program 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 written documentation is provided that establishes otherwise.

(ii) If more than one person is claiming the same legal rockfish landing, then each LLP license for which the legal rockfish 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 legal rockfish landings, as defined in § 679.2, shall be used to establish an allocation of rockfish QS or a sideboard ratio.

(ii) Evidence of legal rockfish landings used to establish processing history for an eligible rockfish processor is limited to State of Alaska fish tickets.

(4) *Non-severability of legal rockfish landings.* Legal rockfish landings are non-severable:

(i) From the LLP license to which those legal rockfish landings are assigned according to the official Rockfish Program record; or

(ii) From the shoreside processor or stationary floating processor at which the legal rockfish landings were received unless the processing history assigned to that shoreside processor or stationary floating processor is transferred, in its entirety, to another person under the provisions in paragraph (c)(2)(ii) of this section.

(e) *Application to participate in the Rockfish Program—(1) Submission of application to participate in the Rockfish Program.* A person who wishes to participate in the Rockfish Program as an eligible rockfish harvester or eligible rockfish processor must submit a timely and complete application to participate in the Rockfish Program. 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://www.fakr.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2.

(3) *Deadline.* A completed application to participate in the Rockfish Program must be received by NMFS no later than 1700 hours A.l.t. on January 2, 2007, or if sent by U.S. mail, post-marked by that time.

(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 legal rockfish 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 legal rockfish 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.

(ii) *Processor eligibility.* (A) Indicate (YES or NO) if the applicant received at least 250 metric tons in round weight equivalent of aggregate legal rockfish landings of primary rockfish species each calendar year in any four of the five calendar years from 1996 through 2000 during the season dates for that primary rockfish species as established in Table 28 to this part;

(B) If the answer to paragraph (e)(4)(ii)(A) of this section is YES, enter the facility name and ADF&G processor code(s) for each processing facility where legal rockfish landings were received and the qualifying years or seasons for which applicant is claiming eligibility.

(C) Enter the name of the community in which the primary rockfish species were received. The community is either:

(1) The city, if the community is incorporated as a city within the State of Alaska;

(2) The borough, if the community is not a city incorporated within the State of Alaska, but the community is in a borough incorporated within the State of Alaska.

(D) Enter the four calendar years from 1996 through 2000 that NMFS will use to determine the percentage of legal rockfish landings received by that eligible rockfish processor for purposes of forming an association with a rockfish cooperative.

(E) Submit a copy of the contract that demonstrates that the legal processing history and rights to apply for and receive processor eligibility based on that legal processing history have been transferred or retained (if applicable); and

(F) Any other information deemed necessary by the Regional Administrator.

(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 (e)(3) 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 official Rockfish Program record will be approved by the Regional Administrator. Application claims that are inconsistent with official Rockfish Program 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 (e)(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 official Rockfish Program record. An applicant who submits claims that are inconsistent with information in the official Rockfish Program 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.

(f) *Rockfish QS allocation*—(1) *General.* An eligible rockfish harvester who holds an LLP license at the time of application to participate in the Rockfish Pilot Program will receive rockfish QS assigned to that LLP license based on the legal rockfish landings assigned to that LLP license according to the official Rockfish Program record.

(2) *Non-severability of rockfish QS from an LLP license.* Rockfish QS assigned to an LLP license is non-severable from that LLP license.

(3) *Calculation of rockfish QS.* (i) Based on the official Rockfish Program record, the Regional Administrator shall determine the total amount of legal rockfish landings of each primary rockfish species in each year during the fishery seasons established in Table 28 to this part.

(ii) For each sector, Rockfish QS for each primary rockfish species shall be based on the percentage of the legal rockfish landings of each primary rockfish species in that sector associated with each fully transferrable LLP licenses held by eligible rockfish harvesters in that sector.

(iii) The Regional Administrator shall calculate rockfish QS for each sector for each primary rockfish species “s” based on each fully transferable LLP license “l” held by all eligible rockfish harvesters by the following procedure:

(A) Sum the legal rockfish landings for each year during the fishery seasons established in Table 28 to this part.

(B) Select the five years that yield the highest tonnage of that primary rockfish species, including zero pounds if necessary.

(C) Sum the tonnage of the highest five years, for that species for that LLP license as selected under para-

graph (f)(3)(iii)(B) of this section. This yields the Highest Five Years.

(D) Divide the Highest Five Years in paragraph (f)(3)(iii)(C) of this section for an LLP license and species by the sum of all Highest Five Years based on the official Rockfish Program record for that species as presented in the following equation:

$$\text{Highest Five Years}_{is} / \Sigma \text{ All Highest Five Years}_{is} = \text{Percentage of the Total}_{is}$$

The result (quotient) of this equation is the Percentage of the Total_{is}.

(E) Multiply the Percentage of the Total_{is} by the Initial Rockfish QS Pool for each relevant species as established in Table 29 to this part. This yields the number of rockfish QS units for that LLP license for that primary rockfish species in rockfish QS units.

(F) Determine the percentage of legal rockfish landings from the official Rockfish Program record in the qualifying years used to calculate the rockfish QS assigned to the catcher/processor sector and multiply the rockfish QS units calculated in paragraph (f)(3)(iii)(E) of this section by this percentage. This yields the rockfish QS units to be assigned to the catcher/processor sector for that LLP license and species. For each primary rockfish species, the total amount of rockfish QS units assigned to the catcher/processor sector is the sum of all catch history allocation units assigned to all eligible rockfish harvesters in the catcher/processor sector.

(G) Determine the percentage of legal rockfish landings from the official Rockfish Program record in the qualifying years used to calculate rockfish QS assigned to the catcher vessel sector and multiply the Rockfish QS units calculated in paragraph (f)(3)(iii)(E) of this section by this percentage. This yields the rockfish QS units to be assigned to the catcher vessel sector for that LLP license and species. For each primary rockfish species, the total amount of rockfish QS units assigned to the catcher vessel sector is equal to

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the sum of all rockfish QS units assigned to all eligible rockfish harvesters in the catcher vessel sector.

[71 FR 67252, Nov. 20, 2006, as amended at 72 FR 37681, July 11, 2007; 73 FR 67811, Nov. 17, 2008]

§ 679.81 Rockfish Program annual harvester and processor privileges.

(a) Sector and LLP license allocations of primary rockfish species—(1) General. Each calendar year, the Regional Administrator will determine the tonnage of primary rockfish species that will be assigned to the Rockfish Program. For participants in a rockfish cooperative, rockfish limited access fishery, or opt-out fishery, amounts will be allocated to the appropriate sector, either the catcher/processor sector or the catcher vessel sector. The tonnage of fish assigned to a sector will be further assigned to rockfish cooperative(s) or the rockfish limited access fishery within that sector.

(2) Calculation. The amount of primary rockfish species 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. Ninety-five (95) percent of the remaining TAC for that primary rockfish species (TAC_s) is assigned for use by rockfish cooperatives and the rockfish limited access fishery in the catcher vessel and catcher/processor sectors. Five (5) percent of the remaining TAC is allocated for use in the rockfish entry level fishery. The formulae are as follows in paragraphs (g)(2)(i) and (ii) of this section:

(i) $(TAC - ICA) \times 0.95 = TAC_s$.

(ii) $(TAC - ICA) \times 0.05 = TAC$ for the Rockfish Entry Level Fishery.

(3) Primary rockfish species TACs assigned to the catcher/processor and catcher vessel sector. TAC_s assigned for a primary rockfish species will be divided between the catcher/processor sector and the catcher vessel sector. Each sector will receive a percentage of TAC_s for each primary rockfish 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 primary rockfish species. Expressed algebra-

ically for each primary rockfish species ‘‘s’’ in paragraphs (g)(3)(i) and (ii) of this section:

(i) Catcher/Processor Sector $TAC_s = [(TAC_s) \times (\text{Rockfish QS Units in the Catcher/Processor Sector}/\text{Rockfish QS Pool}_s)]$.

(ii) Catcher Vessel Sector $TAC_s = [(TAC_s) \times (\text{Rockfish QS Units in the Catcher Vessel Sector}/\text{Rockfish QS Pool}_s)]$.

(4) Use of primary rockfish species by an eligible rockfish harvester. Once a TAC_s is assigned to a sector, the use of that TAC_s by eligible rockfish harvesters in that sector is governed by regulations applicable to the rockfish cooperative, limited access fishery, or opt-out fishery in which those eligible rockfish harvesters are participating. The TAC_s is assigned as follows:

(i) Any TAC_s 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 (f) of this section.

(ii) Any TAC_s assigned to the rockfish limited access fishery in the catcher vessel sector may be harvested by any eligible rockfish harvester who has assigned an LLP license with rockfish QS for use in the rockfish limited access fishery in the catcher vessel sector.

(iii) Any TAC_s assigned to the rockfish limited access fishery in the catcher/processor sector may be harvested by any eligible rockfish harvester who has assigned an LLP license with rockfish QS for use in the rockfish limited access fishery in the catcher/processor sector.

(iv) TAC_s is not assigned to an opt-out fishery. Any TAC_s that would have been derived from rockfish QS assigned to the opt-out fishery is reassigned to rockfish cooperatives and the rockfish limited access fishery in the catcher/processor sector as established in paragraph (a)(5)(ii) of this section.

(5) Determining the TACs of primary rockfish species. TAC_s is assigned to each rockfish cooperative or limited access fishery based on the rockfish QS