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

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§ 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

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assigned to that fishery in each sector according to the following procedures:

(i) *Catcher vessel sector.* The assignment of TAC_s to a rockfish cooperative or limited access fishery is governed by the Rockfish Program fishery to which an LLP license is assigned under this paragraph (a).

(A) *Rockfish cooperative.* The amount of TAC_s for each primary rockfish 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 pool in the catcher vessel sector multiplied by the catcher vessel TAC_s. Once TAC_s 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:

$$CQ = [(Catcher Vessel Sector TAC_s) \times (Rockfish QS assigned to that Cooperative/Rockfish QS Units in the Catcher Vessel Sector_s)].$$

(B) *Rockfish limited access fishery.* The amount of TAC_s for each primary rockfish species assigned to the rockfish limited access fishery is equal to the catcher vessel sector TAC_s subtracting all CQ issued to rockfish cooperatives in the catcher vessel sector for that primary rockfish species. Expressed algebraically in the following equation:

$$Catcher Vessel Sector Rockfish Limited Access Fishery TAC_s = Catcher Vessel Sector TAC_s - (\Sigma CQ issued to Rockfish Cooperatives in the Catcher Vessel Sector).$$

(ii) *Catcher/processor sector.* The assignment of TAC_s to a rockfish cooperative or limited access fishery is determined by the Rockfish Program fishery to which an LLP license is assigned under this paragraph (a).

(A) *Rockfish cooperative.* The amount of TAC_s for each primary rockfish 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 and the limited access fishery in the catcher/processor sector multiplied by the catcher/processor

TAC_s. Once TAC_s 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:

$$CQ = [(Catcher/Processor Sector TAC_s) \times (Rockfish QS Units assigned to that Cooperative / \Sigma Rockfish QS Units assigned to all rockfish cooperatives and the Limited Access Fishery in the Catcher/Processor Sector)].$$

(B) *Rockfish limited access fishery.* The amount of TAC_s for each primary rockfish species assigned to the limited access fishery is equal to the catcher/processor TAC_s subtracting all CQ issued to rockfish cooperatives in the catcher/processor sector for that primary rockfish species. Expressed algebraically in the following equation:

$$Catcher/Processor Sector Rockfish Limited Access Fishery TAC_s = [(Catcher/Processor Sector TAC_s) - (\Sigma CQ issued to rockfish cooperatives in the Catcher/Processor Sector)].$$

(b) *Sector and LLP license allocations of secondary species—(1) General.* Each calendar year, the Regional Administrator will determine the tonnage of secondary species that may be assigned to the Rockfish Program. This amount will be assigned to the catcher/processor sector and the catcher vessel sector. The tonnage of fish assigned to a sector will be assigned only to rockfish cooperatives within that sector. CQ of secondary species is subject to the use limitations established in paragraph (b)(4) of this section.

(2) *Maximum amount of secondary species tonnage that may be assigned to the catcher/processor sector.* (i) Sum the amount of each secondary species retained by all vessels that gave rise to an LLP license with a catcher/processor designation or that fished under an LLP license with a catcher/processor designation during the directed fishery for 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 during the qualifying season dates established in

Table 28 to this part. This is the rockfish catcher/processor sector harvest for that secondary species.

(ii) Sum the amount of each secondary species retained by all vessels in the Central GOA regulatory Area and adjacent waters open by the State of Alaska for which it adopted a Federal fishing season from January 1, 1996, until December 31, 2002. This is the total secondary species harvest.

(iii) For each secondary species, divide the rockfish catcher/processor sector harvest by the total secondary species harvest and multiply by 100. This is the percentage of secondary species that may be assigned to the catcher/processor sector in the Rockfish Program fishery.

(iv) Multiply the percentage of each secondary species assigned to the catcher/processor sector in the Rockfish Program fishery by the TAC for that secondary species. This is the maximum amount of that secondary species that may be allocated to the catcher/processor sector in the Rockfish Program.

(v) The maximum amount of rougheye rockfish that may be allocated to the catcher/processor sector is equal to 58.87 percent of the TAC for the Central GOA.

(vi) The maximum amount of shortraker rockfish that may be allocated to the catcher/processor sector is equal to 30.03 percent of the TAC for the Central GOA.

(3) *Maximum amount of secondary species tonnage that may be assigned to the catcher vessel sector.* (i) Sum the amount of each secondary species retained by all vessels that gave rise to an LLP license with a catcher vessel designation or that fished under an LLP license with a catcher vessel designation during the directed fishery for 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 during all qualifying season dates established in Table 28 to this part. This is the rockfish catcher vessel sector harvest for that secondary species.

(ii) Sum the amount of each secondary species retained by all vessels in the Central GOA regulatory Area and adjacent waters open by the State

of Alaska for which it adopted a Federal fishing season from January 1, 1996, until December 31, 2002. This is the total secondary species harvest.

(iii) For each secondary species, divide the rockfish catcher vessel sector harvest by the total secondary species harvest and multiply by 100. This is the percentage of each secondary species that may be assigned to the catcher vessel sector in the Rockfish Program fishery.

(iv) Multiply the percentage of each secondary species assigned to the catcher vessel sector in the Rockfish Program fishery by the TAC for that secondary species. This is the maximum amount of that secondary species that may be allocated to the catcher vessel sector in the Rockfish Program.

(4) *Use of a secondary species by an eligible rockfish harvester.* Once the maximum amount of secondary species that may be assigned to a sector has been determined, the use of that specific amount that is assigned to that sector is governed by regulations applicable to the specific Rockfish Program fishery in which eligible rockfish harvesters are participating. The specific amount of each secondary species that may be used by eligible rockfish harvesters is determined by the following procedure:

(i) Secondary species may only be assigned to a rockfish cooperative. Once a secondary species is assigned to a rockfish cooperative it is issued as CQ, which may only be used by the rockfish cooperative to which it is assigned.

(ii) Secondary species are not assigned to a rockfish limited access fishery or the opt-out fishery and there is not a dedicated harvestable allocation for any specific participant in these rockfish fisheries.

(5) *Determining the amount of secondary species CQ assigned to a rockfish cooperative.* The amount of CQ for each 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 secondary species that is assigned to a rockfish cooperative is equal to

the maximum amount of that secondary species that may be allocated to the catcher/processor sector in the Rockfish Program 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 and the limited access fishery for all primary rockfish species in the catcher/processor sector. Expressed algebraically in the following equation:

CQ for that Secondary Species = maximum amount of that Secondary Species that may be allocated to the Catcher/Processor Sector in the Rockfish Program x (Σ Rockfish QS Units assigned to that Rockfish cooperative / Σ Rockfish QS Units assigned to all rockfish cooperatives and the Limited Access Fishery in the Catcher/Processor Sector)

(ii) CQ assigned to rockfish cooperatives in the catcher vessel sector. The CQ for a secondary species that is assigned to a specific rockfish cooperative is equal to the maximum amount of that secondary species that may be allocated to the catcher vessel sector in the Rockfish Program multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the rockfish QS pool for all primary rockfish species in the catcher vessel sector. Expressed algebraically in the following equation:

CQ for that Secondary Species = maximum amount of that Secondary Species that may be allocated to the Catcher Vessel Sector in the Rockfish Program x (Σ Rockfish QS Units assigned to that Rockfish Cooperative / Rockfish QS Pool in the Catcher Vessel Sector).

(c) Sector and LLP license allocations of rockfish halibut PSC—(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) Maximum amount of rockfish halibut PSC that may be assigned to the catcher/processor and catcher vessel sectors. (i) Sum the amount of halibut PSC used by all vessels that gave rise to an LLP license or that fished under an LLP license used during the directed fishery for 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 during all qualifying season dates established in Table 28 to this part. This is the rockfish halibut PSC amount.

(ii) Sum the amount of halibut PSC by all vessels in the GOA Regulatory Area and adjacent waters open by the State of Alaska for which it adopted a Federal fishing season from January 1, 1996, until December 31, 2002. This is the Total Halibut PSC.

(iii) Divide the rockfish halibut PSC amount by the total halibut PSC and multiply by 100. This is the percentage of rockfish halibut PSC assigned to the Rockfish Program fishery.

(iv) Multiply the percentage of rockfish halibut PSC assigned to the Rockfish Program fishery by the GOA halibut PSC limit. This is the maximum amount of rockfish halibut PSC that may be allocated to the Rockfish Program fishery.

(v) Multiply the maximum amount of rockfish halibut PSC that may be allocated to the Rockfish Program fishery by the percentage of the aggregate Rockfish QS assigned to the catcher/processor sector. This is the maximum amount of rockfish halibut PSC that may be allocated to the catcher/processor sector.

(vi) Multiply the maximum amount of rockfish halibut PSC that may be allocated to the Rockfish Program fishery by the percentage of the aggregate Rockfish QS assigned to the catcher vessel sector. This is the maximum amount of rockfish halibut PSC that may be allocated to the catcher vessel sector.

(3) Use of rockfish halibut PSC by an eligible rockfish harvester. Once the maximum amount of rockfish halibut PSC that may be assigned to a sector has

been determined, the use of that specific amount that is assigned to that sector is governed by the specific Rockfish Program fishery in which eligible rockfish harvesters are participating.

(i) *Rockfish halibut PSC is assigned only to a rockfish cooperative.* Once rockfish halibut PSC is assigned to a rockfish cooperative, it is issued as CQ, which may only be used by the members of the rockfish cooperative to which it is assigned.

(ii) Rockfish halibut PSC is not assigned to a rockfish limited access fishery or the opt-out fishery and there is not a dedicated allocation for any specific participant in these rockfish fisheries.

(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 rockfish halibut PSC that is assigned to a specific rockfish cooperative is equal to the maximum amount of rockfish halibut PSC that may be allocated to the catcher/processor sector 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 and the limited access fishery for all primary rockfish species in the catcher/processor sector. This is expressed algebraically in the following equation:

$$\text{CQ for Rockfish Halibut PSC to a specific rockfish cooperative} = \frac{\text{maximum amount of Rockfish Halibut PSC that may be allocated to the Catcher/Processor Sector} \times (\sum \text{Rockfish QS Units assigned to that Rockfish Cooperative})}{\sum \text{Rockfish QS Units assigned to all rockfish cooperatives and the Limited Access Fishery in the Catcher/Processor Sector}}$$

(ii) *CQ assigned to rockfish cooperatives in the catcher vessel sector.* The CQ for rockfish halibut PSC that is assigned to a specific rockfish cooperative is equal to the maximum amount of rock-

fish halibut PSC that may be allocated to the catcher vessel sector multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the rockfish QS pool for all primary rockfish species in the catcher vessel sector. This is expressed algebraically in the following equation:

$$\text{CQ for Rockfish Halibut PSC to a specific rockfish cooperative} = \frac{\text{maximum amount of Rockfish Halibut PSC that may be allocated to the Catcher Vessel Sector} \times (\sum \text{Rockfish QS Units assigned to that Rockfish Cooperative/Rockfish QS Pool in the Catcher Vessel Sector})}{\text{Rockfish QS Pool in the Catcher Vessel Sector}}$$

(d) *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 or the TAC for that calendar year will not result in any additional CQ or TAC being issued for that rockfish QS for that calendar year.

(2) *Rockfish cooperatives in the catcher vessel sector.* An eligible rockfish harvester may assign rockfish QS to a rockfish cooperative in the catcher vessel sector if:

(i) That eligible rockfish 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; and

(ii) That rockfish QS is derived from legal rockfish landings assigned to the catcher vessel sector.

(3) *Rockfish cooperative in the catcher/processor sector.* An eligible rockfish harvester may assign rockfish QS to a rockfish cooperative in the catcher/processor sector if:

(i) That eligible rockfish 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; and

(ii) That rockfish QS is derived from legal rockfish landings assigned to the catcher/processor sector.

(4) *Rockfish limited access fishery.* (i) An eligible rockfish harvester may assign rockfish QS to a rockfish limited access fishery if that eligible rockfish harvester:

(A) Assigns the rockfish QS associated with that LLP license to a limited access fishery on a complete application for the rockfish limited access fishery that is approved by the Regional Administrator; or

(B) Does not submit a complete application for CQ, or an application for the opt-out fishery that is approved.

(ii) The rockfish QS is assigned to the rockfish limited access fishery in the catcher vessel sector if that rockfish QS is assigned to the catcher vessel sector.

(iii) The rockfish QS is assigned to the rockfish limited access fishery in the catcher/processor sector if that rockfish QS is assigned to the catcher/processor sector.

(5) *Opt-out fishery.* An eligible rockfish harvester may assign rockfish QS assigned to the catcher/processor sector to the opt-out fishery if that eligible rockfish harvester assigns the rockfish QS associated with that LLP license to the opt-out fishery on a complete application for the opt-out fishery that is approved by the Regional Administrator.

(6) *Rockfish entry level fishery.* (i) A rockfish entry level harvester may assign an LLP license to the rockfish entry level fishery if that rockfish entry level harvester assigns that LLP license to the rockfish entry level fishery on a complete application for the entry level fishery that is approved by the Regional Administrator.

(ii) A rockfish entry level processor may participate in the rockfish entry level fishery if that rockfish entry level processor submits a complete application for the entry level fishery that is approved by the Regional Administrator.

(e) *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.* 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.

(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 primary rockfish species, secondary species, and rockfish halibut PSC 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 and 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), and Federal Processor Permit for each processing facility or vessel.

(2) *Processor ownership documentation.* Provide the names of all persons, to the individual person level, holding an ownership interest in the processor and the percentage ownership each person and individual holds in the processor.

(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) Eligible rockfish processor affiliated harvesters cannot participate in price setting negotiations except as permitted by general antitrust law; and

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

(E) *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 an 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 for the rockfish limited access fishery.* An eligible rockfish harvester who wishes to participate in the rockfish limited access fishery for a calendar year must submit an application for the rockfish limited access fishery.

(i) *Contents of application for the rockfish limited access fishery.* A completed application must contain the following information:

(A) *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 participating in the rockfish limited access fishery;

(D) *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 in this rockfish limited access fishery;

(E) *LLP holdership documentation.* Provide the names of all persons, to

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the individual person level, holding an ownership interest in the LLP license assigned to the rockfish limited access fishery and the percentage ownership each person and individual holds in the LLP license; and

(F) *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 an designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) [Reserved]

(6) *Application to opt-out.* An eligible rockfish harvester who wishes to opt-out of the Rockfish Program for a calendar year with an LLP license assigned rockfish QS in the catcher/processor sector must submit an application to opt-out.

(i) *Contents of application to opt-out.* A completed application must contain the following information:

(A) *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 an designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) [Reserved]

(7) *Application for the rockfish entry level fishery.* A rockfish entry level harvester who wishes to participate in the rockfish entry level fishery must submit an application for the rockfish entry level fishery.

(i) *Contents of application for the entry level fishery.* A completed application must contain the following information:

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

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

(C) For harvesters who are applying to participate in the entry level fishery, enter the name, ADF&G vessel registration number, and USCG documentation number of the vessel to be used in the entry level fishery, and LLP license number(s) held by the applicant and used on that vessel in the rockfish entry level fishery;

(D) Harvesters who are applying to participate in the entry level fishery must attach a statement from an eligible entry level processor that affirms that the harvester has a market for any rockfish delivered by that harvester in the entry level fishery; and

(E) 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 an designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) [Reserved]

(f) *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 a paper or 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) *Non-electronic submittal*. The transferor's designated representative and the eligible rockfish processor with whom that rockfish cooperative in the catcher vessel sector is associated must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(ii) *Electronic submittal*. (A) 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.

(B) (Catcher vessel transfer to catcher vessel only) The transferor's eligible rockfish processor must log into the system and accept the transfer request. By using the processor's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(3) *Certification of transferee*—(i) *Non-electronic submittal*. The transferee's designated representative and the eligible rockfish processor with whom that rockfish cooperative in the catcher vessel sector is associated must sign and date the application certifying that all information is true, correct, and complete.

(ii) *Electronic submittal*

(A) (Catcher vessel transfer to catcher vessel or catcher/processor transfer to catcher vessel only) The transferee's eligible rockfish processor must log into the system and accept the transfer request. By using the processor's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(B) 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.

(g) *Transfer of processor eligibility*. A person may not transfer eligibility to receive and process under the Rockfish Program to another person except:

(1) As provided for under § 679.80(c)(2)(ii); or

(2) If an eligible rockfish processor transfers complete ownership of a stationary floating processor or shoreside processing facility and all processing history associated with that stationary floating processor or shoreside processing facility to another person.

(3) *Limitation on use of processor eligibility*. Any person becoming an eligible rockfish processor by transfer may not receive fish harvested under the Rockfish Program outside of the community listed by the original recipient of the processor eligibility in the application to participate in the Rockfish Program under § 679.80(e)(4)(ii)(C).

(4) *Non-severability of processor eligibility*. An eligible rockfish processor permit may not be divided or suballocated.

(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) *Catcher/processor sector rockfish limited access fishery*. An eligible rockfish harvester in the catcher/processor rockfish limited access fishery may harvest groundfish species other than primary rockfish species up to the amounts of the MRAs for those species as established in Table 30 to this part.

(3) *Catcher vessel sector rockfish limited access fishery*. An eligible rockfish harvester in the catcher vessel rockfish limited access fishery may harvest groundfish species other than primary rockfish species up to the amounts of the MRAs for those species as established in Table 30 to this part.

(4) *Opt-out fishery*. An eligible rockfish harvester in the opt-out fishery may harvest groundfish species other than primary rockfish species up to the

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amounts of the MRAs for those species as established in Table 10 to this part.

(5) *Rockfish entry level fishery.* An rockfish entry level harvester in the rockfish entry level 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.

(6) *Maximum retainable amounts (MRA).* (i) The MRA for an incidental catch species for vessels participating in a rockfish cooperative, or a rockfish limited access fishery, is calculated as a proportion of the total allocated primary rockfish species on board the vessel in round weight equivalents using the retainable percentage in Table 30 to this part; except that:

(ii) In the catcher vessel sector, shortraker and roughey rockfish are incidental catch species and are limited to an aggregate MRA of 2.0 percent of the retained weight of all primary rockfish species during that fishing trip.

(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.

(iv) In the rockfish limited access fishery for the catcher/processor sector, shortraker and roughey rockfish are incidental catch species and are limited to an aggregate MRA of 2.0 percent of the retained weight of all primary rockfish species during that fishing trip.

(v) Once the amount of shortraker rockfish harvested in the catcher/processor sector is equal to 30.03 percent of the shortraker rockfish TAC in the Central GOA regulatory area, then shortraker rockfish may not be retained in the rockfish limited access fishery in the catcher/processor sector.

(vi) Once the amount of roughey rockfish harvested in the catcher/processor sector is equal to 58.87 percent of the roughey rockfish TAC in the Central GOA regulatory area, then roughey rockfish may not be retained in the rockfish limited access fishery in the catcher/processor sector.

(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 applying for and fishing with CQ issued annually by NMFS. 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. Membership in a rockfish cooperative is voluntary. No person may be required to join a rockfish cooperative. Upon receipt of written notification that a person is eligible and wants to join a rockfish cooperative, that rockfish cooperative must allow that person to join subject to the terms and agreements that apply to the members of the cooperative as established in the contract governing the conduct of the 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. 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 (f), for that calendar year. 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

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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 es-

tablished in paragraphs (i)(3) and (4) of this section applicable to that rockfish cooperative.

(3) *Mandatory requirements.* The following table describes the requirements to form a rockfish cooperative in the catcher vessel or catcher/processor sector.

Requirement	Catcher Vessel Sector	Catcher/Processor Vessel Sector
(i) Who may join a rockfish cooperative?	Only persons who are eligible rockfish harvesters may join a rockfish cooperative. Persons who are not eligible rockfish 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.	2 LLP licenses assigned rockfish QS in the catcher/processor sector. These licenses can be held by one or more persons.
(iii) Is an association with an eligible rockfish processor required?	Yes. An eligible rockfish harvester may only be a member of a rockfish cooperative formed in association with an eligible rockfish processor to which the harvester made the plurality of legal rockfish landings assigned to the LLP license(s) during the applicable processor qualifying period chosen by an eligible rockfish processor in the application to participate in the Rockfish Program.	No
(iv) What if an eligible rockfish harvester did not deliver any legal rockfish landings assigned to an LLP license to an eligible rockfish processor during a processor qualifying period?	That eligible rockfish harvester can assign that LLP license to any rockfish cooperative.	N/A
(v) What is the processor qualifying period?	The processor qualifying period is the four of five years from 1996 through 2000 that are used to establish the legal rockfish landings that are considered for purposes of establishing an association with an eligible rockfish processor. Each eligible rockfish processor will select a processor qualifying period in the application to participate in the Rockfish Program. An eligible rockfish harvester that has acquired the processing history of a shoreside processor or stationary floating processor under the provisions of § 679.80(c)(2)(ii) must select only one processor qualifying period that is applicable to the aggregated processing history held by that eligible rockfish processor. The processor qualifying period may not be changed once selected for that eligible rockfish processor, including upon transfer of processor eligibility. The same processor qualifying period will be used for all LLP licenses to determine the legal rockfish landings that are considered for purposes of eligible rockfish harvesters establishing an association with an eligible rockfish processor.	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?	Yes. A rockfish cooperative must be assigned rockfish QS that represents at least 75 percent of all the legal rockfish landings that yields Rockfish QS of primary rockfish species delivered to that eligible rockfish processor during the four years selected by that processor.	No
(vii) What is allocated to the rockfish cooperative?	CQ for primary rockfish species, secondary species, and rockfish halibut PSC, based on the rockfish QS assigned to all of the LLP licenses that are assigned to the cooperative.	

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Requirement	Catcher Vessel Sector	Catcher/Processor Vessel Sector
(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 must 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.I.t. on May 1 through 1200 hours A.I.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) of this section.	
(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.	N/A
(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. An eligible rockfish harvester holding multiple LLP licenses may assign different LLP licenses to different rockfish cooperatives subject to any other restrictions that may apply.	
(xv) Can an eligible rockfish processor be associated with more than one rockfish cooperative?	An eligible rockfish processor can only associate with one rockfish cooperative per year at each shoreside processor or stationary floating processor owned by that eligible rockfish processor. An eligible rockfish processor who holds more than one processing history based on a transfer of processing history under the provisions of § 679.80(c)(2)(ii) would be issued a single eligible rockfish processor permit that aggregates the processing history held by that eligible rockfish processor. That eligible rockfish processor may form an association with a rockfish cooperative with the eligible rockfish harvesters eligible to form a rockfish cooperative based on the aggregated processing history of that eligible rockfish processor and may receive rockfish delivered by that rockfish cooperative at a shoreside processor or stationary floating processor owned by that eligible rockfish processor subject to any other restrictions that may apply.	N/A
(xvi) Can an LLP license be assigned to a rockfish cooperative and the rockfish limited access fishery or opt-out fishery?	No. Once an LLP license is assigned to a rockfish cooperative, any rockfish QS assigned to that LLP license yields CQ for that rockfish cooperative for the calendar year. 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.	

Requirement	Catcher Vessel Sector	Catcher/Processor Vessel Sector
(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) Is there a limit on how much CQ a rockfish cooperative may hold or use?	Yes, generally, a rockfish cooperative may not hold or use more than 30 percent of the aggregate primary rockfish species CQ assigned to the catcher vessel sector for that calendar year. See § 679.82(a) for the provisions that apply.	No, but a catcher/processor vessel is still subject to any vessel use caps that may apply. See § 679.82(a) for the use cap provisions that apply.
(xxi) Is there a limit on how much CQ a vessel may harvest?	No. However, a vessel may not catch more CQ than the CQ assigned to that rockfish cooperative for which it is authorized to fish.	Yes, generally, no vessel may harvest more than 60 percent of the aggregate primary rockfish species TAC assigned to the catcher/processor sector for that calendar year, unless exempt from this restriction. See § 679.82(a) for the provisions that apply.
(xxii) 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 authorized to harvest the CQ assigned to a rockfish cooperative must count any catch of primary rockfish species, 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 authorized to harvest CQ. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type.	
(xxiii) 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.	
(xxiv) 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.	
(xxv) What is required in the annual rockfish cooperative report?	<p style="text-align: center;">The annual rockfish cooperative report must include at a minimum:</p> <p>(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;</p> <p>(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;</p> <p>(C) A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated;</p> <p>(D) A description of any civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.</p>	

(4) *Additional mandatory requirements*—(i) *Calculation of minimum legal rockfish landings for forming a rockfish cooperative.* If an eligible rockfish harvester holds an LLP license with rockfish QS for the catcher vessel sector that does not have any legal rockfish landings associated with an eligible rockfish processor from January 1, 1996, through December 31, 2000, during the fishery seasons established in Table 28 to this part, that eligible rockfish harvester may join any rockfish cooperative with that LLP license. Any

such eligible rockfish harvester that joins a rockfish cooperative may not be considered as contributing an amount of Rockfish QS necessary to meet a minimum of 75 percent of the legal rockfish landings that yielded Rockfish QS delivered to that eligible rockfish processor during the four calendar years selected by that eligible rockfish processor for the purposes of establishing the rockfish cooperative.

(ii) *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 primary rockfish species, or secondary species, or that uses any rockfish halibut PSC.

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

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

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

(F) 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 a primary rockfish species CQ in excess of the amounts specified in § 679.82(a).

(ii) Rockfish cooperative primary rockfish species CQ transferred to another rockfish cooperative will apply to the use caps of a named member(s) of the rockfish cooperative receiving the CQ, as specified in the transfer application.

(A) Each pound of CQ must be assigned to a member of the rockfish cooperative receiving the CQ for purposes of use cap calculations. No member of a rockfish cooperative may exceed the CQ use cap applicable to that member.

(B) 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.

(C) 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, or the transfer of the processor eligibility due to the death or dissolution of a rockfish cooperative member or associated eligible rockfish processor.

[71 FR 67252, Nov. 20, 2006, as amended at 75 FR 51518, Oct. 7, 2009]

§ 679.82 Rockfish Program use caps and sideboard limits.

(a) *Use caps—(1) General.* Use caps limit the amount of rockfish QS and CQ of primary rockfish species that may be held or used by an eligible rockfish harvester, and the amount of primary rockfish species TAC that may be received, by an eligible rockfish processor. Use caps do not apply to secondary species or halibut PSC CQ. 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. There are three types of use caps: person use caps; vessel use caps; and processor use caps. Person use caps