

## Subpart G—Rockfish Program

SOURCE: 76 FR 81277, Dec. 27, 2011, unless otherwise noted.

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

Additional regulations that implement specific portions of the Rockfish Program are set out under: § 679.2 Definitions, § 679.4 Permits, § 679.5 Record-keeping 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 seasons*—(1) *Applicable areas.* The Rockfish Program applies to Rockfish Program fisheries in the Central GOA Regulatory Area.

(2) [Reserved]

(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 to an LLP license only if a vessel made those landings:

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

(A) NMFS has determined that an 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 transferable 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 transferable 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 for a rockfish primary species as established in Table 28b to this part.

(2) *Assigning rockfish legal landings to an LLP license.* (i) NMFS will assign rockfish legal landings to an LLP license only if the holder of the LLP license with those landings submits a timely application for Rockfish QS, in paragraph (d) of this section, that is approved by NMFS.

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

(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 landings of that rockfish primary species were 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 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 landings of that rockfish primary species were 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; and

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

(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 a rockfish eligible harvester;

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

(iv) 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 has 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, then each LLP license for which the rockfish legal landing is being claimed will receive an equal division of credit for the landing unless the applicants can provide written documentation

that establishes an alternative means for distributing the catch history to the LLP licenses.

(3) *Documentation.* Only rockfish legal landings, as defined in § 679.2, shall be used to establish an allocation of rockfish QS.

(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 Quota Share. This application may only be submitted to NMFS using the methods described on the application.

(2) *Forms.* Forms are available through the Internet on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at (800) 304-4846, Option 2.

(3) *Deadline.* (i) A completed Application for Rockfish Quota Share must be received by NMFS no later than 1700 hours, A.l.t., on January 17, 2012, or if sent by U.S. mail, postmarked by that time. For applications delivered by hand delivery or carrier only, the receiving date of signature by NMFS staff is the date the application was received. If the application is submitted by facsimile, the receiving date of the application is the date stamped received by NMFS.

(ii) Objective written evidence of timely application will be considered proof of a timely application.

(4) *Contents of application.* A completed application must contain the information specified on the Application for Rockfish Quota Share identifying the applicant and LLP license numbers, with all applicable fields accurately filled-in and all required documentation attached.

(i) *Additional documentation.* (A) Vessel names, ADF&G vessel registration numbers, and USCG documentation numbers of all vessels that fished under the authority of each LLP license, including dates when landings were made

under the authority of an LLP license for 2000 and 2001;

(B) 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; and,

(C) 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 fishery seasons established in Table 28a or Table 28b to this part.

(ii) *Exclusion from Rockfish Program for LLP licenses with rockfish legal landings.* A person 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 may choose to be excluded from the Rockfish Program and not receive rockfish QS. A person must submit an Application for Rockfish QS affirming exclusion from the Rockfish Program and forgo all rockfish QS.

(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 or 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 Rockfish Program official 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 the Rockfish Program official record, unless verified by sufficient 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 in § 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 (e)(2) of this section; or

(ii) The number of years during which a person made a rockfish legal landing to an entry level processor under the authority of an LLP license in the entry level trawl fishery during 2007, 2008, or 2009 as established in paragraph (e)(3) of this section.

(2) *Calculation of rockfish QS allocation for LLP licenses.* Based on the Rockfish Program official record, the Regional Administrator shall determine the initial allocation of rockfish QS for each rockfish primary species assigned to each LLP license indicated on a timely and complete Application for Rockfish QS that is approved by NMFS, and that qualifies for an allocation of QS based on rockfish legal landings from 2000 to 2006 (and that is not assigned rockfish QS under the entry level trawl fishery transition allocation under the provisions in paragraph (e)(3) of this section), according to the following procedure:

(i) Sum the rockfish legal landings for each rockfish primary species “s” for each eligible LLP license “l” 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 rockfish legal landings to an LLP license that is assigned rockfish QS under the provisions in paragraph (e)(3) of this section. This yields the Rockfish Total Catch for each rockfish primary species for each year.

(ii) For each rockfish primary species, sum the highest 5 years of Rockfish Total Catch for each eligible LLP license described under paragraph (e)(2)(i) of this section. This yields the Highest 5 Years<sub>ls</sub>. This amount is equal to the number of rockfish QS units for that LLP license for that rockfish primary species.

(iii) Sum the Highest 5 Years<sub>ls</sub> in paragraph (e)(2)(ii) of this section of all eligible LLP licenses for each rockfish primary species. The result is the  $\Sigma$ Highest 5 Years<sub>ls</sub> (or All Highest 5 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.* Based on the Rockfish Program official record, the Regional Administrator shall determine the initial allocation of rockfish QS for each rockfish primary species assigned to each LLP license indicated on a timely and complete Application for Rockfish QS that is approved by NMFS, that qualifies for an allocation of QS based on rockfish legal landings from 2007, 2008, or 2009 under the entry level trawl fishery transition allocation (and that is not assigned rockfish QS under the provisions in paragraph (e)(2) of this section), according to the following procedure:

(i) Assign one Rockfish Landing Unit to an LLP license for each year a rockfish legal landing of any rockfish primary species was made to an entry level processor under the authority of an LLP license 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>. For purposes of this calculation, the Regional Adminis-

trator will not assign any Rockfish Landing Units to an LLP license that is assigned rockfish QS under the provisions in paragraph (e)(2) of this section.

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

(iii) Divide the Rockfish Landing Units<sub>l</sub> in paragraph (e)(3)(i) of this section for an LLP license by the sum of all Rockfish Landing Units<sub>l</sub> of all eligible LLP licenses in paragraph (e)(3)(ii) of this section. The result is the Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS Pool<sub>l</sub> as presented in the following equation:

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

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

$$(\Sigma \text{All Highest 5 Years}_s / 0.975) - \Sigma \text{All Highest 5 Years}_s \text{ (as calculated in paragraph (e)(2)(iii) of this section)} = \text{Total Entry Level Trawl Fishery Transition Rockfish QS pool}_s$$

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

(vi) All rockfish QS units calculated in paragraph (e)(3)(v) of this section 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) of this section as of February 14, 2012.

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

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that LLP license, except as provided for under § 679.80(f)(2).

(f) *Transfer of rockfish QS*—(1) *Transfer of rockfish QS*. A person may transfer an LLP license, and any rockfish QS assigned to that LLP license under the provisions in § 679.4(k)(7), provided that the LLP license is not assigned rockfish QS in excess of the use cap specified in § 679.82(a)(2) at the time of transfer.

(2) *Transfer of rockfish QS assigned to LLP licenses that exceeds 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), the LLP license holder may transfer rockfish QS in excess of the use cap specified in § 679.82(a)(2) separate from that LLP license and assign it to one or more LLP licenses. However, a transfer may not be approved by NMFS if that transfer would cause the receiving LLP license to exceed a use cap specified in § 679.82(a)(2).

(ii) Prior to the transfer of an LLP license that is assigned an initial allocation of aggregate rockfish QS that exceeds a use cap specified in § 679.82(a)(2), the LLP license holder must transfer the rockfish QS that is in excess of the use cap specified in § 679.82(a)(2), separate from that LLP license, and assign it to one or more LLP licenses under paragraph (f)(2)(i) of this section. On completion of the transfer of QS, the LLP license that was initially allocated an amount of aggregate rockfish QS in excess of the use cap may not exceed the use cap specified in § 679.82(a)(2).

(iii) Any rockfish QS associated with the LLP license that is in excess of the use cap may be transferred only if Block C of the Application for Transfer License Limitation Program Groundfish/Crab License is filled out entirely.

(iv) Rockfish QS may only be transferred to an LLP license that has been assigned rockfish QS with the same sector designation as the rockfish QS to be transferred.

(v) Rockfish QS that is transferred from an LLP license that was initially allocated an amount of aggregate rockfish QS in excess of the use cap specified in § 679.82(a)(2) and assigned to an-

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other LLP license may not be severed from the receiving LLP license.

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### § 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. This amount will be assigned to rockfish cooperatives as described in paragraph (b) of this section.

(2) *Calculation*. (i) The amount of rockfish primary species “s” allocated to the Rockfish Program is calculated by deducting the incidental catch allowance 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 longline fishery (cooperative TAC<sub>s</sub>).

(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*. Cooperative 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 cooperative 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> = [(Cooperative TAC<sub>s</sub>) × (Rockfish QS