

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 060511126–6126–01; I.D. 050306E]

RIN 0648–AT71

**Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule to Amendment 68 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This action would implement statutory provisions for the Central Gulf of Alaska Rockfish Pilot Program (hereinafter referred to as the Program). This proposed action is necessary to increase resource conservation and improve economic efficiency for harvesters and processors who participate in the fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable law.

**DATES:** Comments must be received no later than July 24, 2006.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Office. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: 907–586–7557.
- E-mail: 0648–AT71–

CGRockfish@noaa.gov. Include in the subject line of the e-mail the following document identifier: Central Gulf Rockfish RIN 0648–AT71. E-mail comments, with or without attachments, are limited to 5 megabytes.

• Web form at the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed

rule may be submitted to NMFS (see **ADDRESSES**) and by e-mail at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by fax to 202–395–7285.

Copies of Amendment 68 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at <http://www.fakr.noaa.gov/sustainablefisheries.htm>.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907–586–7228 or [glenn.merrill@noaa.gov](mailto:glenn.merrill@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages Gulf of Alaska (GOA) groundfish fisheries through the authority of the Magnuson-Stevens Act. Congress granted NMFS specific statutory authority to manage Central GOA rockfish fisheries in Section 802 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199; Section 802). In Section 802, Congress required the North Pacific Fishery Management (Council) to establish the Program with specific provisions. The Program was developed and recommended by the Council to meet the requirements of Section 802, which states:

SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM. The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) and historic participation of fish processors (1996 to 2000, best 4 of 5 years) for Pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. Such a pilot program shall (1) provide for a set-aside of up to 5 percent for the total allowable catch of such fisheries for catcher vessels not eligible to participate in the pilot program, which shall be delivered to shore-based fish processors not eligible to participate in the pilot program; (2) establish catch limits for non-rockfish species and non-target rockfish species currently harvested with Pacific ocean perch, northern rockfish, and pelagic shelf rockfish, which shall be based on historical harvesting of such bycatch species. The pilot program will sunset when a Gulf of Alaska Groundfish comprehensive rationalization plan is authorized by the Council and implemented by the Secretary, or 2 years from date of implementation, whichever is earlier.

The Council adopted the proposed Program on June 6, 2005. This proposed action would meet the requirements of Section 802 by considering harvesting activities from 1996 until 2002 and historic processing activities from 1996 until 2000. The Program would recognize the historic participation of

fishing vessels by allowing harvesters delivering onshore to form cooperatives and to receive an exclusive annual harvest privilege for those cooperatives. The Program would recognize the historic participation of processors by requiring cooperatives to form in association with a processor, effectively recognizing processors with processing activities during the historic period established in Section 802.

NOAA General Counsel reviewed Section 802 and in a February 3, 2005 legal opinion to the Council concluded that:

(1) Section 802 requires the Secretary of Commerce (Secretary) and the Council to recognize the historic participation of fishing vessels and fish processors for specific time periods, geographical areas, and rockfish species when establishing the [Program]; and (2) Section 802 does not authorize recognition of the historic participation of fishing vessels or processors in years other than those specified in Section 802. Further, Section 802 defines the range of years, but does not specify that a processor must have actually processed in each of those years in order to be eligible to participate in the [Program].

The opinion by NOAA General Counsel noted further that:

Section 802 authorizes the Council and Secretary to develop a program that would establish “[American Fisheries Act(AFA)]-style” cooperatives or a program that would establish limited entry licenses for processors in the CGOA rockfish fishery. However, Section 802 does not authorize the establishment of processor shares since they are prohibited under Section 802 of the [Consolidated Appropriations Act of 2004]. The legislative history supports the position that the Council is authorized to consider a broad range of “appropriate” management schemes, including “AFA-style” cooperatives, which are specifically mentioned in the legislative history. \* \* \*

The Council considered the Congressional guidance in the development of the Program, particularly in the selection of specific years on which to base participation, and for the “recognition” of processor participation. While NMFS does not have specific authority under the Magnuson-Stevens Act to directly regulate on-shore processing activities, Section 802 requires NMFS to regulate on-shore processors under this Program.

Concurrent with the enactment of Pub. L. 108–199, Section 802, in 2004, industry representatives for harvesters and processors developed proposed elements for the Program and vetted those alternatives, elements, and options and submitted them to the Council for consideration. The Council and NMFS prepared analytical documents (EA/RIR/IRFA) for the

Program that reviewed alternative methods to improve the economic efficiency in the Central GOA fisheries. These included: Status quo management under the License Limitation Program (LLP); the formation of harvester cooperatives that would receive an exclusive annual harvest privilege that did not require linkage with a specific processor but that established a limited number of eligible processors; and the preferred alternative, which would permit the formation of harvester cooperatives that must be formed in association with a qualified processor, and that would receive an exclusive annual harvest privilege.

Currently, rockfish fisheries, and many other groundfish fisheries, are managed under the LLP. The LLP requires harvesters to possess an LLP license to participate in GOA fisheries, but does not provide specific exclusive harvest privileges to LLP holders. Harvesters with LLP licenses compete with each other for the total allowable catch (TAC) assigned to the fishery. This competition creates economic inefficiencies. Harvesters increase the fishing capacity of their vessels to outcompete other vessels. This results in an accelerated rate of fishing as fishermen race to harvest more fish than their competitors. Similarly, processors increase their processing capacity to outcompete other processors. These incentives to increase harvesting and processing capacity reduce the ability of harvesters and processors to extract additional value from the fishery products because the TAC is harvested and processed quickly. This rapid pace provides few opportunities to focus on quality or produce product forms that require additional time but yield greater value.

#### **Central GOA Rockfish Pilot Program Overview**

The Program was developed by trawl industry representatives, primarily from Kodiak, Alaska, in conjunction with catcher/processor representatives. They sought to improve the economic efficiency of the Central GOA rockfish fisheries by developing a program that would establish cooperatives that would receive exclusive harvest privileges. These rockfish fisheries are almost exclusively harvested by trawl vessels in Federal waters.

This proposed rule would implement the Program as developed by the Council. The Program would be authorized for two years, from January 1, 2007, until December 31, 2008. The Program would provide exclusive harvesting and processing privileges for a specific set of rockfish species and for

associated species harvested incidentally to those rockfish in the Central GOA—an area from 147° W. long. to 159° W. long.

The rockfish species for which exclusive harvesting and processing privileges would be allocated under the Program are the primary rockfish species. The primary rockfish species are northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. The species incidentally harvested by vessels during rockfish fisheries in the Central GOA are the secondary species. The secondary species managed under this Program for which an exclusive harvesting and processing privilege would be allocated include: Pacific cod, rougheye rockfish, shorttraker rockfish, sablefish, and thornyhead rockfish.

The Program would also allocate a portion of the total GOA halibut mortality limit to participants based on historic halibut mortality rates in the primary rockfish species fisheries. Halibut caught by trawl gear is considered to be a prohibited species catch (PSC) and may not be retained or sold under regulations established under the authority of the Northern Pacific Halibut Act of 1982. However, the Program would provide participants a fixed amount of incidental halibut mortality for use through an allocation of halibut bycatch, specifically an allocation of the halibut mortality limit. Halibut is incidentally caught and killed in a number of the primary rockfish species and secondary species fisheries. The Program would account for this halibut mortality by providing a portion of the GOA halibut mortality limit to Program participants. To maintain consistency with terms currently used by NMFS and the fishing industry, this halibut mortality limit would be called a halibut PSC limit.

The Program would allocate harvest privileges to holders of LLP licenses with a history of Central GOA rockfish landings associated with those licenses. The allocation of legal landings to an LLP license would allow the holder of that LLP license to participate in the Program and receive an exclusive harvest privilege under certain conditions. Specifically, the Program would:

1. Assign quota share (QS) for primary rockfish species to an LLP license with a trawl gear designation in the Central GOA. The Program would assign QS to an LLP license based on the legal landings of primary rockfish species associated with that LLP license. A person could receive this QS if the LLP license had a history of primary rockfish species landings during a specific time period associated with the license and

the person holding the LLP license met other eligibility requirements. Once QS was assigned to a specific LLP license it could not be divided or transferred separately from that LLP license. On an annual basis, a LLP holder would assign the LLP license and QS assigned to that LLP license for use in a rockfish cooperative, limited access fishery, or opt-out fishery.

2. Establish eligibility criteria for processors to have an exclusive privilege to receive and process primary rockfish species and secondary species allocated to harvesters in this Program.

3. Allow a person holding a LLP license with QS to form a rockfish cooperative with other persons (*i.e.*, harvesters) on an annual basis. Rockfish cooperatives would receive an annual cooperative fishing quota (CFQ), which would be a dedicated amount of primary rockfish species and secondary species that the rockfish cooperative could harvest in a given year. Rockfish cooperatives also would receive an annual CFQ that would be a limit on the amount of halibut PSC the cooperative could use while prosecuting its primary rockfish species and secondary species CFQ. The amount of CFQ assigned to a cooperative would be based on the sum of the QS held by all the harvesters participating in the rockfish cooperative. A rockfish cooperative could form only under specific conditions. A person holding a LLP license that allows them to catch and process their catch at sea (catcher/processor vessel LLP) could form a rockfish cooperative with other persons holding catcher/processor LLP licenses. A person holding a LLP license that allows them only to deliver their catch onshore (catcher vessel LLP) could only form a rockfish cooperative with other persons holding catcher vessel LLP licenses and only in association with the processor to whom those persons have historically delivered most of their catch.

4. Allow rockfish cooperatives to transfer all or part of their CFQ to other rockfish cooperatives, with some restrictions.

5. Provide an opportunity for a person not in a rockfish cooperative, but who holds an LLP license with QS, to fish in a limited access fishery. NMFS would not allocate a specific amount of fish to a specific harvester in the limited access fishery. All harvesters in the limited access fishery would compete with all other such harvesters to catch the TAC assigned to the limited access fishery. The TAC assigned to the limited access fishery would represent the total amount of fish assigned to all the

persons with LLP licenses designated for the limited access fishery.

6. Establish a small entry level fishery for Central GOA rockfish for harvesters and processors not eligible to receive QS under this Program.

7. Allow holders of catcher/processor LLP licenses to opt-out of the Program, with certain limitations.

8. Limit the ability of processors to process catch outside the communities in which they have traditionally processed primary rockfish species and associated secondary species.

9. Establish catch limits, commonly called "sideboards," to limit the ability of participants eligible for this Program to harvest fish in fisheries other than the Central GOA rockfish fisheries. The Program would provide certain economic advantages to harvesters. Harvesters could use this economic advantage to increase their participation in other fisheries, adversely affecting the participants in other fisheries. Sideboards would limit the total amount of catch in other groundfish fisheries that could be taken by eligible harvesters to historic levels. Sideboards would limit harvests made in the state parallel groundfish fisheries, which are fisheries opened by the State of Alaska in state waters concurrent with the Federal season to allow the prosecution of the TAC. Sideboards would limit harvest in specific rockfish fisheries and the amount of halibut bycatch that could be used in certain flatfish fisheries. General sideboards would apply to all vessels and LLP licenses with legal landings associated with that vessel or LLP license that could be used to generate QS. Additionally, specific sideboards would apply to certain catcher/processor and catcher vessels and LLP licenses.

10. Create a monitoring and enforcement mechanism to ensure that harvesters maintain catches within their annual allocations and would not exceed sideboard limits.

The Program would provide greater security to harvesters in rockfish cooperatives by creating an exclusive harvest privilege. Although participants in the limited access fishery, opt-out fishery, and entry level fishery would not receive a guaranteed catch allocation, most harvesters would be likely to participate in a rockfish cooperative that receives CFQ. The Program likely would result in a slower-paced fishery and could provide the ability for the harvester to choose when to fish and therefore avoid poor weather. The Program likely would provide greater stability for processors by spreading out production over a greater period of time. These changes

would increase the focus on product quality in all sectors.

### **Cost Recovery and Fee Collection Provisions**

Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to "collect a fee to recover the actual costs directly related to the management and enforcement of any \* \* \* individual fishing quota program [or] community development quota program." Any individual fishing quota (IFQ) program, must follow the statutory provisions set forth by section 304(d)(2) of the Magnuson-Stevens Act and other provisions of the Magnuson-Stevens Act related to cost recovery and fee collection for IFQ programs. NMFS and NOAA General Counsel are reviewing the applicability of the Magnuson-Stevens Act provisions on cost recovery and fee collection to the Program. If subsequent review of the Magnuson-Stevens Act and the Program indicate that a fee collection provision is required, NMFS would implement any required provision in a subsequent regulatory amendment to the Program.

### **Specific Components of the Program**

#### *Quota Share Allocation and Eligibility*

The Program would establish eligibility criteria for harvesters and processors. Only harvesters that are eligible for the Program could receive an exclusive harvest privilege through the formation of a rockfish cooperative. Eligible harvesters would also be allowed to fish in a limited access fishery if they chose not to join a cooperative. Eligible harvesters with LLP licenses designated for the catcher/processor sector could choose to opt-out of most of the aspects of the Program. Processor eligibility would be established based on processors meeting minimum processing requirements during a specific historic period. Processors that are eligible for the Program could form exclusive associations with harvester cooperatives that are formed by eligible harvesters holding LLP licenses designated for the catcher vessel sector. The eligible processors would be authorized to process the fish harvested in the limited access fishery by harvesters not in cooperatives.

#### *Quota Share*

Quota share is the term used to describe the multi-year privilege to be eligible to receive exclusive harvest privileges under the Program. Although the Council did not use the specific term "quota share" when describing the ability to receive a harvest privilege

under this Program, the Council used the terms "LLP historic shares," "CV historic shares," "CP historic shares," and "harvest shares" to describe the harvest privilege that is linked to historic harvests attributed to an LLP license. Rather than create a new term to explain an established concept, NMFS would use the term "quota share" to describe a harvest privilege based on historic harvest activities. The use of the term "quota share" does not alter the original intent of the Council.

Quota share would be an attribute of the LLP license. Once NMFS calculated how much QS would be allocated to an LLP license, NMFS would modify that LLP license and designate that amount on the license. Quota share assigned to an LLP license could not be transferred independent from that LLP license. QS assigned to a LLP license would not confer a guaranteed harvest to the holder of that QS. QS would provide a harvest privilege, not a right, to its holder.

Quota share would be the basis for the annual calculation of the amount of fish that may be harvested or used if that QS were assigned to a rockfish cooperative. Once QS was assigned to an LLP license, it would authorize that LLP holder to participate in the Program with that LLP license. If an eligible harvester assigned that LLP license, and its associated QS, to a cooperative with other eligible harvesters, the sum of the QS of all of the eligible harvesters would yield an exclusive annual catch limit of rockfish species, secondary species, and halibut PSC that could be harvested by the members of the rockfish cooperative. Cooperatives would be formed by eligible harvesters holding LLP licenses in the same sector, either the catcher/processor sector or the catcher vessel sector.

If an eligible harvester assigned a LLP license with QS to the limited access fishery, that harvester could compete with other eligible harvesters for a portion of the TAC assigned to all participants in the limited access fishery, but would not receive a guaranteed harvest amount based on the QS on that LLP license. One limited access fishery would be established for catcher/processor sector, another for the catcher vessel sector.

If an eligible harvester assigned an LLP license with QS to the opt-out fishery, that QS would not yield any guaranteed amount and that LLP license could not be used in a rockfish cooperative or limited access fishery. Only eligible harvesters holding LLP licenses designated for the catcher/processor sector could choose to participate in the opt-out fishery.

*Eligibility for harvesters.* The Program would allocate QS to LLP license holders based on the catch history associated with the LLP licenses held by that person at the time of application. Eligibility to receive QS would be based on the history of legal landings of primary rockfish species in the Central GOA associated with an LLP license.

A person would be eligible to receive QS under this Program if: (1) That person held the LLP license at the time of application; (2) a vessel made landings of primary rockfish species attributed to that LLP license during a specific time period; (3) those landings were legal landings; and (4) that person submitted a timely application that is subsequently approved by NMFS.

A holder of an LLP license would be required to hold a permanent fully transferable LLP license endorsed for Central GOA groundfish with a trawl designation at the time of application to participate in the Program. Although the Council motion notes that an interim LLP license would be considered as eligible for QS under this Program, NMFS has resolved all claims for interim LLP licenses that are endorsed for Central GOA groundfish with a trawl designation. Therefore, interim LLP licenses would not be considered eligible LLP licenses for this Program.

NMFS would assign QS to a LLP license if legal landings were attributed to that LLP license, or made under the authority of that LLP license for any of the primary rockfish species during the directed fishing seasons during the time period established in Table 1. The LLP was effective on January 1, 2000 (63 FR 52642). Some of the primary rockfish species landings that could result in QS

could have been made on a vessel before the LLP was effective, and LLP licenses had been issued; this would include any landings made between 1996 and 1999. Any primary rockfish species landings made on a vessel between 1996 and 1999 would be attributed to the LLP license that was originally issued in 2000 based on the activities of that vessel. Some landings that would result in QS could have been made after the effective date of the LLP and under the authority of an LLP license; this would include landings made between 2000 and 2002. This Program would include legal landings made before and after the effective date of the LLP.

NMFS did not track the use of an LLP license on a specific vessel during the 2000 and 2001 calendar years. NMFS would attribute legal landings for 2000 to 2001 to an LLP license based on the presumption that the LLP license was used aboard the same vessel to which that LLP license was originally issued in 2000. An applicant to receive QS would be required to submit documentation establishing otherwise. This written documentation would have to be submitted to NMFS for review during the application process.

Multiple LLP licenses can be used on a vessel. Therefore, landings made on a vessel could have been assigned to more than one LLP license. If more than one person claims the same landing to be assigned to more than one LLP license, then each LLP license would be assigned an equal share of the QS resulting from that landing. NMFS would award the QS resulting from a landing in another manner, only if the applicants could provide written documentation of an agreement

establishing an alternative means for distributing the QS. This written documentation would have to be provided to NMFS for review during the application process. NMFS anticipates very few landings would be claimed by more than one person for more than one LLP license based on experience with previous rationalization programs.

A legal landing would include fish caught, retained, and reported in compliance with state and Federal regulations in effect at the time of landing. Specifically, the definition of a legal landing would be further defined for catcher vessels and catcher/processor vessels as follows:

For catcher vessels, a legal landing would include the harvest of groundfish from the Central GOA regulatory area that was offloaded and recorded on a State of Alaska fish ticket during the directed fishing season for the primary rockfish fisheries, and an amount of halibut mortality that was attributed to that catcher vessel sector during the directed fishing season for the primary rockfish fisheries as shown in Table 1.

For catcher/processors, a legal landing would include the harvest of groundfish from the Central GOA regulatory area that is recorded on a NMFS weekly production reports (WPRs) during the directed fishing season for the primary rockfish fisheries, and an amount of halibut mortality attributed to the catcher/processor sector during the directed fishing season for the primary rockfish fisheries as shown in Table 1.

The directed fishing season dates that would be used to establish a legal landing for each of the primary species are presented in Table 1:

TABLE 1.—DATES EACH YEAR FOR LEGAL LANDINGS OF PRIMARY SPECIES FISHERIES UNDER THE PROGRAM

A legal rockfish landing includes	Year						
	1996	1997	1998	1999	2000	2001	2002
Northern rockfish that were harvested between;	July 1–July 20	July 1–July 10	July 1–July 14	July 1–July 19 and Aug. 6–Aug. 10.	July 4–July 26	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.
and landed by .....	July 27 .....	July 17 .....	July 21 .....	July 26 and Aug. 16, respectively.	August 2 .....	July 30 and Oct. 28, respectively.	Aug. 2.
Pelagic shelf rockfish that were harvested between;	July 1–Aug. 7 and Oct. 1–Dec. 2.	July 1–July 20	July 1–July 19	July 1–Sept. 3	July 4–July 26	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.
and landed by .....	Aug. 14 and Dec. 9, respectively.	July 27 .....	July 26 .....	Sept. 10 .....	Aug. 2 .....	July 30 and Oct. 28, respectively.	July 28.
Pacific ocean perch that were harvested between;	July 1–July 11	July 1–July 7 ...	July 1–July 6 and July 12–July 14.	July 1–July 11 and Aug. 6–Aug. 8.	July 4–July 15	July 1–July 12	June 30–July 8.
and landed by .....	July 18 .....	July 14 .....	July 13 and July 21, respectively.	July 18 and Aug. 15, respectively.	July 22 .....	July 19 .....	July 15.

As shown in Table 1, NMFS would consider legal landings for QS if the

harvests were made during the season opening and the landings were reported

within seven days after the end of the directed fishing season. This seven day

extension would accommodate harvesters that caught rockfish during the directed fishing season, but were not able to deliver that catch until after the season ended. Several days may be required for a harvesting vessel to reach processing facilities after the end of a season, and the seven day extension would accommodate those harvesters. Additionally, this seven day period would accommodate catcher/processors that submitted WPRs in a timely manner. Because the WPR is required on a weekly basis, the season could have ended before the WPR submission deadline had been reached. A seven day period after the end of the directed fishing season to report landings would accommodate catcher/processors submitting WPRs.

A timely application would include a complete application to participate in the Program is that is received by NMFS not later than 5 p.m. on December 1, 2006, or postmarked by that date. The application process and specific components required in the application are detailed under *Application and Appeal Process* below.

NMFS would consider an eligible rockfish harvester as any person who holds an LLP license with QS. The LLP license holder may have obtained the QS by submitting an approved application to participate in the Program, or received the LLP license with QS through a NMFS-approved transfer. The procedures for receiving an LLP license through by transfer are described in regulations at 50 CFR 679.4(k)(7).

#### *Eligibility for Processors*

The Program would require that processors meet certain eligibility requirements to receive any primary or secondary species fish harvested by a rockfish cooperative, or in a limited access fishery. Processors that do not meet these eligibility requirements could receive only primary rockfish harvested from the Central GOA under the entry level fishery. Processor eligibility would not guarantee a processor a specific quantity of fish for delivery. It would give processors the ability to associate with a rockfish cooperative with catcher vessel harvesters or to compete with other eligible processors to receive fish harvested in the limited access fishery.

Eligibility to participate as a processor in the Program would be limited to those persons who: (1) Hold the processing history of a processing facility; (2) meet a minimum amount of annual primary rockfish processing; and (3) submit a timely application approved by NMFS. Persons who meet

this requirement would be an eligible rockfish processor and would be authorized to receive and process fish harvested under the Program. Once a person is an eligible processor, that person may transfer this privilege, subject to approval by NMFS.

A person would hold the processing history of a shoreside processor or stationary floating processor if he or she owned the processing facility at the time of application to participate in the Program, or if that person held the processing history from an otherwise qualified processing facility under the express terms of a written contract that clearly and unambiguously provides that such processing history is held by that person. A copy of this contract would need to be submitted to NMFS for review with the application.

The effect of this provision is that a person could hold processing history that was earned during the qualifying years even if that person does not own the processing facility where those rockfish were processed. This provision would address a concern raised by the public during the development of the Program. At least one processing facility that actively processed primary rockfish species during the qualifying years, and could be eligible under the Program is no longer active. The processing history from that processing facility was sold to another processing entity. Allowing a person to hold processing history without owning the facility at which that processing history was earned would allow the holder of the processing history to continue to receive primary rockfish species and secondary species under the Program and be eligible to associate with harvesters in a rockfish cooperative.

To become an eligible processor, the holder of processing history must hold processing history from a shoreside processor or stationary floating processor entity that received not less than 250 metric tons in round weight equivalent of legally landed primary rockfish species each calendar year in any four of the five calendar years from 1996 through 2000 during the directed fishing season. The season dates are the same as those established in Table 1 for harvesters. NMFS will use State of Alaska fish tickets to determine legal landings of rockfish for processors.

If the Program is approved by the Secretary of Commerce, a timely processor application would need to be submitted and received by NMFS not later than 5 p.m. on December 1, 2006. The specific components of the application are described under *Application and Appeal Process* below.

#### *The Official Rockfish Program Record*

NMFS would determine the amount of an eligible applicant's QS, or a person's eligibility as a processor, based on a review of the Official Rockfish Program Record (Official Record). NMFS would produce the Official Record from data including State of Alaska fish tickets, NMFS WPRs, and other relevant information. NMFS would presume the Official Record is correct and an applicant would have the burden of establishing otherwise through an evidentiary appeals process. That process is described under *Application and Appeal Process* below.

#### *Application and Appeal Process*

To receive QS or processor eligibility, a potentially eligible harvester or processor must submit an application to participate in the Program that is received by NMFS by 5 p.m. on December 1, 2006, or postmarked by that date (if mailed). NMFS would facilitate the application process by making the application form available on the NMFS, Alaska Region website <http://www.fakr.noaa.gov>. Interested persons may contact NMFS to request an application package. NMFS would mail an application package to all potentially eligible LLP license holders based on the address on record at the time the application period opens. An application may be submitted by mail, fax, or hand delivery. The proposed regulatory text (see § 679.81(e)) provides addresses and delivery locations.

NMFS would require an application to participate in the Program for potentially eligible processors and harvesters. The proposed regulatory text (see § 679.81(e)) provides a detailed list of the information required for the application. Briefly, the application would contain the following elements:

1. Identification and contact information for the applicant;
2. Harvester information, including vessel identification and LLP licenses used on a vessel (harvesters only);
3. Identification of processing activities, locations, and processing history held by the applicant (processors only); and
4. Name of the community in which fish were processed (processors only). The community is either the city if the community is incorporated as a city within the State of Alaska, or the borough if the community is not in a city incorporated within the State of Alaska and the city is in a borough as incorporated within the State of Alaska;
5. The four of the five calendar years from 1996 through 2000 to establish which harvesters would be included for

consideration when establishing a rockfish cooperative in association with that processor—the processor qualifying period (processors only);

6. A copy of the contract 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 the processing history has been transferred);

7. Any other information deemed necessary by NMFS. NMFS may request additional information to clarify the application and determine if an applicant's LLP license is qualified to receive QS, or if an applicant is an eligible rockfish processor; and

8. The applicant's signature and certification.

NMFS would evaluate applications submitted during the specified application period and compare all claims in an application with the information in the Official Record. NMFS would accept claims in an application it determines to be consistent with information in the Official Record. NMFS would not accept inconsistent claims in the applications, unless verified by documentation. An applicant who submits inconsistent claims, or an applicant who fails to submit information supporting his or her claims with their application, would 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 Record. An applicant who submits claims that are inconsistent with information in the Official Record would have the burden of proving that the submitted claims are correct.

NMFS would evaluate additional information or evidence to support an applicant's inconsistent claims submitted prior to or within the 30-day evidentiary period. If NMFS were to determine that the additional information or evidence met the applicant's burden of proving that the inconsistent claims in his or her application were correct, NMFS would amend the Official Record with that information or evidence. NMFS would use this information or evidence to determine the applicant's eligibility. However, if NMFS were to determine that the additional information or evidence did not meet the applicant's burden of proof that the inconsistent claims in his or her application were correct, NMFS would deny the inconsistent claims. NMFS would notify the applicant that the additional information or evidence did not meet the burden of proof to change the

information in the Official Record through an initial administrative determination (IAD).

NMFS would prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if NMFS were to determine that the information or evidence provided by the applicant failed to support the applicant's claims and is insufficient to rebut the presumption that the Official Record is correct. NMFS' IAD would indicate the deficiencies and discrepancies in the application, or revised application, including any deficiencies in the information, or the evidence submitted in support of the information. NMFS' IAD would indicate which claims could not be approved based on the available information or evidence. An applicant could appeal an IAD. The appeals process is described under 50 CFR 679.43. An applicant who appeals an IAD would not receive contested landing data until the appeal was resolved in the applicant's favor.

Once NMFS has approved an application from a person holding a valid fully transferrable LLP license with legal rockfish landings, that person would be an eligible rockfish harvester. Once NMFS has approved an application from a person with legal rockfish processing history, that person would be an eligible rockfish processor.

#### **Quota Share Calculation Method for Primary Rockfish Species**

Once NMFS has determined that a person is an eligible rockfish harvester, NMFS would specify the QS for the primary rockfish species for each LLP license held by that eligible rockfish harvester.

An eligible rockfish harvester who holds an LLP license endorsed for Central GOA groundfish fisheries with a catcher/processor trawl designation would be eligible to receive QS to participate in the catcher/processor sector. The allocation would be based on any legal landings of primary species that were harvested and processed aboard the vessel from which that LLP license was derived or used during the qualifying periods. If landings were made on a vessel that was originally issued an LLP license in 2000 with a catcher/processor designation, but the primary rockfish species legally landed by that vessel were not caught and processed onboard that vessel, NMFS would assign any QS resulting from those legal landings to the catcher vessel sector. Based on an initial review of legal landings data, NMFS does not anticipate any such allocations.

An eligible rockfish harvester who holds an LLP license endorsed for

Central GOA groundfish fisheries with a trawl designation and with landings that were not processed at sea would be eligible to receive QS to participate in the catcher vessel sector. The allocation would be based on any legal landings of primary species that were harvested aboard the vessel from which that LLP license was derived or used during the qualifying periods.

#### **QS Calculation Procedure**

NMFS would calculate the QS for each of the three primary rockfish species for each fully transferable LLP license held by an eligible rockfish harvester using the following procedures.

First, NMFS would sum the legal landings of each primary rockfish species for each year from 1996 through 2002, including years with zero pounds, during the fishery seasons listed in Table 1.

Second, NMFS would sum the five years with highest poundage of legal landings for that LLP license for that primary rockfish species (referred to the highest five years for that LLP license).

Third, NMFS would divide the highest five years for that LLP license by the sum of all the pounds for all of the highest five years for all LLP licenses for that primary rockfish species. This remaining amount is the ratio of the highest five years of legal landings for that LLP license compared to the highest five years for all LLP licenses with legal landings.

Fourth, NMFS would multiply this ratio by the initial QS pool for that primary rockfish species in units. This would yield the QS that would be issued for that LLP license in QS units. The Council recommended that the sum of all the initial QS units in a fishery would equal the sum of the 2002 TAC for that fishery (expressed in pounds). Using a conversion of 2204.6 pounds per metric ton for the 2002 TACs, the initial QS pool units that would be issued for the three primary species fisheries are: Northern rockfish—9,193,182 QS units; pelagic shelf rockfish—7,672,008 QS units; Pacific ocean perch—18,121,812 QS units. In future years, the total QS units in a fishery would vary from the initial QS pool only if subsequent appeals, enforcement actions, or other operations of law were to affect the total number of QS units (e.g., Congressional action).

Fifth, NMFS would determine the amount of QS units for that LLP license for a primary rockfish species that would be assigned to the catcher/processor sector. NMFS would determine the percentage of legal landings in the highest five years for

that LLP license used to calculate the QS assigned to the catcher/processor sector and would multiply the QS units for that license by this percentage. This yields the QS units that would be assigned to the catcher/processor sector for that LLP license.

Finally, NMFS would determine the amount of QS units for that LLP license for a primary rockfish species that would be assigned to the catcher vessel sector. NMFS would determine the percentage of legal landings in the highest five years for that LLP license used to calculate the QS assigned to the catcher vessel sector and multiply the QS units for that license by this percentage. This yields the QS units to that would be assigned to the catcher vessel sector for that LLP license.

The total amount of QS units assigned to the catcher vessel sector would be equal to the sum of all QS units assigned to all eligible rockfish harvesters in the catcher vessel sector. The total amount of QS assigned to the catcher/processor sector would be equal to the sum of all QS units assigned to all eligible rockfish harvesters in the catcher/processor sector.

If an application is denied by final agency action, then all primary rockfish species that would have been assigned to that applicant based on that LLP license would be redistributed among all other eligible rockfish harvesters in that sector in proportion to the amount of their primary species QS. Based on previous experience with other rationalization programs (e.g., the Halibut and Sablefish IFQ Program and the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program), NMFS anticipates that almost all potential recipients of QS will apply.

NMFS would not issue separate QS for the secondary species or halibut PSC. Instead, NMFS would use the amount of primary rockfish species QS to determine the specific annual catch amount for those species. The Council recommended that NMFS base the annual catch limit of secondary species and halibut PSC on the historic harvests of primary rockfish species attributed to LLP licenses in that sector. NMFS would incorporate this recommendation in the annual determination of the catch limit. The methods for calculating the annual catch limit for primary rockfish species, secondary species, and halibut PSC are discussed below under TAC Calculation Methods.

#### **Participation in a Rockfish Cooperative, Limited Access Fishery, and Opt-Out Fishery**

An eligible rockfish harvester who receives QS allocation assigned to a

specific LLP license would be required to assign all the QS associated with the LLP license to a specific rockfish cooperative, a limited access fishery, or the opt-out fishery. The eligible rockfish harvester could not assign portions of QS to different rockfish cooperatives, to a rockfish cooperative and the limited access fishery, or apportion the QS otherwise. Once an LLP license and its associated QS is assigned for a year, the eligible rockfish harvester could not reassign the LLP license or QS to a different fishery during that year.

Each year, an eligible rockfish harvester would be required to apply to use the LLP license and its associated QS to participate in a rockfish cooperative, in the limited access fishery, or in the opt-out fishery. Applications would be available on the NMFS website <http://www.fakr.noaa.gov>, or NMFS would mail applications to the applicant upon request. Applications would have to be submitted to NMFS by mail, fax, or hand delivery (see **ADDRESSES**). Applications would have to be submitted by December 1 each year. An eligible rockfish harvester could apply to participate in only one fishery per year with an LLP license and its associated QS. The application would be valid for one year. The contents of the specific applications are as follows:

**Application for CFQ.** A rockfish cooperative that submits an application that is approved by NMFS would receive a CFQ permit. The CFQ permit would contain the rockfish cooperative's CFQ of primary and secondary species and halibut PSC, based on the collective QS of the LLP licenses held by the cooperative members. The CFQ permit also would identify the members of the rockfish cooperative and the vessels authorized to harvest the CFQ. A vessel named on a CFQ permit would be considered to be actively engaged in fishing the CFQ for that rockfish cooperative fishery and would be subject to all observer, permitting, and reporting requirements applicable to vessels fishing CFQ. A rockfish cooperative would be required to submit an amended application for CFQ to add or remove a vessel eligible to fish the CFQ assigned to that cooperative. NMFS would be required to approve any amendments to the application for CFQ. NMFS' issuance of a CFQ permit to a rockfish cooperative would not be a determination that the rockfish cooperative was formed or was operating in compliance with antitrust law.

A complete application would be required to contain the following information:

1. Identification and contact information of the rockfish cooperative;
2. Names of the members of the rockfish cooperative, including information on the LLP licenses assigned to the rockfish cooperative;
3. A copy of the business license and articles of incorporation or partnership agreement signed by the members of the rockfish cooperative;
4. Terms that specify that: Processor affiliated harvesters could not participate in price setting negotiations except as permitted by general antitrust law, and that the cooperative must establish a monitoring program sufficient to ensure compliance with the Program; and
5. Applicant(s) signature and certification.

**Application for the limited access fishery.** In order to participate in the limited access fishery for a year, an eligible rockfish harvester would be required to submit an application for the limited access fishery. An application would include the following information:

1. Identification and contact information of the eligible rockfish harvester;
2. Information on the LLP license(s) and vessels that would be assigned to the limited access fishery; and
3. Applicant signature and certification.

**Application to opt-out.** In order to opt-out of the Program for a year, an eligible rockfish harvester with catcher/processor QS would be required to submit an application to opt-out. An application would include the following information:

1. Identification and contact information of the eligible rockfish harvester;
2. Information on the LLP license(s) and vessels that would be assigned to the opt-out fishery; and
3. Applicant signature and certification.

#### **TAC and Halibut PSC Calculation Method**

Annually, NMFS would determine the amount of primary species, secondary species, and halibut PSC that would be allocated to each fishery based on the total amount of QS assigned to each fishery. Table 2 describes the proposed annual allocations to a rockfish cooperative, limited access fishery, or opt-out fishery.



TABLE 2.—ANNUAL ALLOCATIONS BY FISHERY TYPE AND SPECIES

Fishery type	Primary rockfish species	Secondary species	Halibut PSC
Rockfish cooperatives .....	CFQ is allocated to each rockfish cooperative with an exclusive harvest privilege.		
Limited access fishery .....	TAC is allocated to the catcher vessel or C/P sector limited access fishery. There is no exclusive harvest privilege. Participants within the sector compete for the TAC.	No specific amount is allocated. The limited access fishery is limited by a trip-based maximum retainable amount (MRA) established in Table 3 of 50 CFR part 679.	No specific amount is allocated. Halibut bycatch is limited by the PSC limit for that time period specified for the respective deep and shallow water complex fisheries.
Opt-out (catcher/processor sector only).	No allocation. Any amount that would have been allocated is redistributed among catcher/processor sector participants in rockfish cooperatives and the limited access fishery.	No allocation .....	No allocation. Halibut bycatch is limited by the PSC limit for that time period specified for the respective deep and shallow water complex fisheries.

### Primary Rockfish Species

NMFS would calculate the amount of primary rockfish species TAC that would be assigned to the Program on an annual basis by first deducting the incidental catch allowance (ICA) for primary rockfish species harvests in other non-Program fisheries from the TAC for that fishery. Primary rockfish species are incidentally harvested in other fisheries (e.g., trawl flatfish fisheries) and NMFS must set aside some bycatch amount for those fisheries. After accounting for this ICA, 95 percent of the remaining TAC for a primary rockfish species (TACs) would be assigned for use by rockfish cooperatives and limited access fisheries in the catcher vessel and catcher/processor sectors. Five percent of the remaining TAC would be allocated for use in the entry level fishery.

The TAC<sub>s</sub> would be apportioned between the catcher/processor sector and the catcher vessel sector. The amount of TAC<sub>s</sub> assigned to the catcher/processor sector would be determined by multiplying the TAC by the ratio of QS units assigned to all LLP licenses that receive QS in the catcher/processor sector divided by the QS pool for that primary rockfish fishery. The amount of TAC<sub>s</sub> assigned to the catcher vessel sector would be determined by multiplying the TAC by the ratio of QS units assigned to all LLP licenses that receive QS in the catcher vessel sector divided by the QS pool for that primary rockfish fishery.

*Determining the TAC by Fishery Type.* Once NMFS determines how much TAC<sub>s</sub> is assigned to each sector, the TAC<sub>s</sub> for each sector would be divided between the rockfish cooperative fishery and the limited access fishery in that sector depending on the amount of QS held by each LLP license assigned to each fishery.

LLP licenses assigned to a rockfish cooperative would yield CFQ that would be based on the sum of all QS units associated with all LLP licenses assigned to the rockfish cooperative for a specific primary rockfish species. The annual CFQ issued to a cooperative would be equal to the TAC<sub>s</sub> assigned to that primary rockfish fishery in that sector multiplied by the QS units assigned to that cooperative divided by the QS pool for that sector in that fishery.

The TAC for a limited access fishery would be based on the proportion of the QS for that primary rockfish species in that sector associated with the LLP licenses assigned to the limited access fishery. The TAC<sub>s</sub> assigned to a limited access fishery for a sector would be equal to the primary rockfish fishery TAC<sub>s</sub> remaining after the allocation of CFQ was made to the rockfish cooperatives in that sector. These TAC<sub>s</sub> would be assigned to a catcher vessel limited access fishery and a catcher/processor limited access fishery.

In the catcher/processor sector, an adjustment to the CFQ assigned to rockfish cooperatives and TAC for the limited access fishery would be made to account for LLP licenses assigned to the opt-out fishery. The QS assigned to the opt-out fishery in the catcher/processor sector would not yield any TAC allocation for that QS. Instead, the TAC that would have resulted from that QS if it were assigned to a rockfish cooperative or limited access fishery would be redistributed to the rockfish cooperatives and the limited access fishery in the catcher/processor sector. This redistribution would be proportional to the relative holdings of QS held by a rockfish cooperative or limited access fishery in the catcher/processor sector.

See Table 4 for more information on the use of the CFQ by a rockfish cooperative.

### Secondary Species

The proposed rule would define secondary species as species that were historically harvested during the directed rockfish fisheries. Secondary species would be allocated as an exclusive harvest privilege only to rockfish cooperatives. Rockfish cooperatives would receive CFQ for specific secondary species. Eligible rockfish harvesters in a limited access fishery, or opt-out fishery, would not be allocated exclusive harvest privileges for secondary species. Harvesters in the limited access fishery or opt-out fishery would be able to retain secondary species during the limited access fishery, or in non-Program fisheries, but would be subject to a maximum retainable amount (MRA) limit. Secondary species allocated as CFQ to rockfish cooperatives would be allocated differently between cooperatives in the catcher vessel and catcher/processor sectors. For participants in a rockfish cooperative, NMFS would issue secondary species CFQ that would be linked to the amount of QS allocated to an LLP license.

The secondary species would be treated differently in the catcher/processor and catcher vessel sectors based on the historic harvest patterns in those sectors. Historically, harvesters in both sectors have tended to retain all sablefish harvested with trawl gear and thornyhead rockfish caught in conjunction with rockfish harvests because they were high value species. Traditionally, catcher vessels retained Pacific cod during the course of their rockfish harvests; however, this was less common among catcher/processors. Consequently, the Council recommended managing Pacific cod in the catcher vessel sector using an MRA that would reflect historic harvest rates but provide more flexibility for the fleet than a fixed "hard cap" allocation of CFQ might provide. Similarly, catcher/



processors typically had markets for rougheye and shortraker rockfish and tended to retain these species in greater proportion than catcher vessels and the Council recommended an allocation of these species to catcher/processors. However, the Council recommended an MRA for shortraker and rougheye rockfish for the catcher vessel fleet that

would require the discarding of all shortraker or rougheye rockfish if the aggregate shortraker/rougheye MRA limit was exceeded. The MRA percentages recommended for the catcher vessel sector for shortraker and rougheye rockfish would provide some flexibility for the harvesters in these

sectors yet maintain harvests within historic levels.

*Rockfish cooperative fishery.* Table 3 shows the specific secondary species that would be allocated as CFQ to rockfish cooperatives in the catcher vessel sector and catcher/processor sector.

TABLE 3.—SECONDARY SPECIES ALLOCATED TO ROCKFISH COOPERATIVES IN THE CENTRAL GOA BY FISHERY SECTOR

Secondary species	Rockfish cooperatives in the catcher vessel sector	Rockfish cooperatives in the catcher/processor sector
Pacific cod .....	CFQ allocated based on the cooperative's aggregate primary rockfish species QS holdings within the sector.	Not allocated. Managed under a maximum retainable amount (MRA) of 4.0% per trip.
Rougheye rockfish .....	Not allocated. Managed under an MRA of combined rougheye/shortraker rockfish up to 2.0% per trip.	Up to 30.03% of the TAC in the Central GOA is allocated as CFQ among cooperatives based on the cooperative's aggregate primary rockfish species QS holdings within the sector.
Sablefish allocated to trawl gear .....	CFQ allocated based on the cooperative's aggregate primary rockfish species QS holdings within the sector.	Up to 58.87% of the TAC in the Central GOA is allocated as CFQ among cooperatives based on the cooperative's aggregate primary rockfish species QS holdings within the sector.
Shortraker rockfish .....	Not allocated. Managed under an MRA of combined rougheye/shortraker rockfish up to 2.0% per trip. A maximum of 9.72% of the shortraker TAC on an annual basis may be retained.	CFQ allocated based on the cooperative's aggregate primary rockfish species QS holdings within the sector.
Thornyhead rockfish .....	CFQ allocated based on the cooperative's aggregate primary rockfish species QS holdings within the sector.	CFQ allocated based on the cooperative's aggregate primary rockfish species QS holdings within the sector.

Each calendar year, the Regional Administrator would determine the poundage of secondary species that would be assigned to the Program. NMFS would determine the maximum poundage of fish that could be harvested by the appropriate sector. The poundage of fish that could be harvested by a sector would be assigned only to rockfish cooperative(s) within that sector. The poundage of fish that could be harvested by a specific sector and assigned to a specific rockfish cooperative would be determined according to the following procedure:

First, NMFS would sum the amount of each secondary species retained by all catcher/processors and catcher vessels during the directed rockfish fisheries during all qualifying season dates. This would yield the Program catcher/processor sector harvests and catcher vessel sector harvests, respectively.

Second, NMFS would sum the amount of each secondary species retained by all catcher/processors and all catcher vessels in the Central GOA from January 1, 1996 through December 31, 2002. This would be the total harvest.

Third, for each secondary species, NMFS would divide the rockfish

harvests for that sector by the total harvests and multiply by 100. This would yield the percentages of secondary species assigned to the rockfish fishery catcher/processor sector and catcher vessel sector, respectively.

Fourth, NMFS would multiply the percentage of secondary species assigned to the sector by the TAC for that secondary species. This would be the TAC allocated to that sector. This method would be the same for all secondary species, except rougheye rockfish and shortraker rockfish for the catcher/processor sector.

The TAC of rougheye rockfish allocated to the catcher/processor sector would be 58.87 percent of the TAC for the Central GOA. The TAC of shortraker rockfish allocated to the catcher/processor sector would be 30.03 percent of the TAC for the Central GOA. This proposed rule would implement the Council's recommendation to fix the allocation of TAC with these percentages based on an analysis of the relative catch of the catcher/processor sector during the historic fishing periods. The details of this analysis are contained in the EA/RIR/IRFA prepared for this proposed action (see ADDRESSES).

NMFS would base the CFQ of secondary species assigned to each cooperative on the sum of QS associated with each LLP license assigned to the rockfish cooperative. To determine the CFQ assigned to a rockfish cooperative, NMFS would multiply the TAC of the secondary species that was assigned to each sector by the percentage of the aggregate primary rockfish species QS held by that cooperative in that sector.

*Limited access and opt-out fisheries.* QS assigned to a limited access fishery or the opt-out fishery would not result in an annual exclusive allocation. Instead, secondary species would be managed according to an MRA in the limited access fishery and the opt-out fishery. The secondary species MRA in the limited access fishery would be reduced from current MRA levels. This approach would reduce the incentive for eligible harvesters to participate in a limited access fishery and "top off," or selectively target high value, secondary species such as trawl sablefish or Pacific cod. The intent of the Program is to increase the economic viability of the rockfish species, not to create an accelerated race for secondary species in the limited access fishery. NMFS believes that lower MRAs would reduce that incentive. This approach was

analyzed in the EA/RIR/IRFA for this proposed action.

The MRA for the opt-out fishery would be the same as MRAs currently applicable in GOA directed fisheries. Participants in the opt-out fishery could not target Central GOA rockfish; therefore, a lowered MRA in the Central GOA is not necessary. Opt-out vessels are largely excluded from the Program and would not be able to use Central GOA rockfish as a source for basis species against which they could account their "top-off" secondary species.

*"Hard cap" management of shortraker and rougheye rockfish in the catcher/processor sector.* The Council directed that allocations of shortraker and rougheye rockfish should be managed as a "hard cap" for the catcher/processor sector. NMFS has interpreted this provision to mean that NMFS should manage to limit the maximum amount of harvests to this amount for all participants in that sector. NMFS therefore would allocate shortraker and rougheye rockfish to each rockfish cooperative by multiplying the percentage of QS assigned to the catcher/processor sector that is held by that cooperative by an amount equal to 30.03 percent of the Central GOA TAC for shortraker rockfish, or 58.87 percent of the Central GOA TAC for rougheye rockfish.

Shortraker and Rougheye rockfish would not be allocated to the limited access sector, but the limited access fishery would be limited to a reduced MRA to minimize harvests and the incentive to "top off" on these species. If the catcher/processor sector as a whole exceeded either 30.03 percent of the TAC for shortraker rockfish, or 58.87 percent of the TAC for rougheye rockfish, then NMFS would prohibit retention of that species for all catcher/processor vessels in the Program. This prohibition would include any vessels operating in a rockfish cooperative even if that cooperative still had unused CFQ. The intent of this prohibition is to meet the goals of maintaining catcher/processor harvests below the "hard cap" of 30.03 percent of the TAC for shortraker rockfish and 58.87 percent of the TAC for rougheye rockfish.

#### **Halibut PSC Allocation for Rockfish Cooperatives**

Under the Program, rockfish cooperatives would be allocated CFQ for halibut PSC that could be used while fishing for primary rockfish species or secondary species. Halibut PSC CFQ would represent the amount of halibut, in metric tons, that could be incidentally caught and killed by a

rockfish cooperative. Under current regulations, halibut can only be harvested and retained commercially under the Halibut IFQ Program and Community Development Quota (CDQ) Program; in all other fisheries halibut is considered a prohibited species and must be discarded at sea with a minimum of injury.

NMFS uses the halibut mortality rates established by the International Pacific Halibut Commission (IPHC) and observer data to estimate the amount of mortality of discarded halibut. The IPHC determines the halibut mortality rate for various gears and target fisheries based on data from prior years. These halibut mortality rates are published in the annual harvest specifications and the justification for these rates is published in Appendix A of the annual Stock Assessment and Fishery Evaluation Reports. NMFS estimates the amount of halibut that is killed in the various groundfish fisheries based on data from onboard observers and applies the mortality rate to the unobserved portion of the fleet. NMFS then apportions the available halibut mortality among fisheries. As halibut is caught, NMFS multiplies the estimated halibut caught by the mortality rates to produce a halibut bycatch mortality amount.

Halibut PSC CFQ allocated under the Program would allow cooperatives to continue fishing in fisheries with known halibut bycatch and resulting mortality. Each calendar year, the Regional Administrator would determine the metric tons of halibut bycatch mortality that would be assigned to the Program. This amount would be assigned to the appropriate sector. NMFS would allocate halibut PSC CFQ to rockfish cooperative(s) within a sector based on the QS of LLP licenses assigned to the rockfish cooperatives. Halibut PSC CFQ would be allocated only to participants in rockfish cooperatives.

Halibut PSC assigned to a limited access fishery or the opt-out fishery would not result in an individual allocation. Participants in those fisheries would continue to be subject to the aggregate halibut PSC limits that NMFS establishes for that gear type and target fishery.

*Calculation for the sector.* The total halibut PSC CFQ assigned to each sector would be determined according to the following procedure:

First, NMFS would sum the amount of halibut mortality by all vessels in a sector during the directed fishery for any primary rockfish species during all qualifying season dates. This would be

the rockfish sector halibut bycatch amount.

Second, NMFS would sum the amount of all halibut mortality by all vessels in the Central GOA Regulatory Area from January 1, 1996 through December 31, 2002. This would be the total halibut mortality.

Third, NMFS would divide the rockfish sector harvest by the total halibut mortality and multiply by 100. This would be the percentage of the halibut mortality assigned to the sector in the rockfish fishery.

Finally, NMFS would multiply the percentage of halibut mortality assigned to the sector in the rockfish fishery by the total halibut mortality for the GOA for that year. This would be the halibut PSC amount allocated to the sector.

The amount of halibut PSC CFQ that would be assigned to each cooperative in each sector would be determined according to the following procedures. In each sector, each cooperative would have halibut PSC CFQ assigned to it that would be derived from the QS units assigned to that rockfish cooperative. To determine the CFQ assigned to a cooperative, NMFS would multiply the halibut PSC amount allocated to that sector by the percentage of the aggregate primary rockfish species QS held by that cooperative in that sector.

#### *Example of the Annual Allocations*

The following example details the allocation of TAC and halibut PSC within the catcher/processor sector. The calculation method would be similar for the catcher vessel sector except that there is no opt-out fishery for the catcher vessel sector.

First, an ICA amount would be deducted for bycatch needs in other fisheries.

Second, ninety-five (95) percent of the TAC of each of the three allocated rockfish species, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish would be allocated for the non-entry level portion of the Program (*i.e.*, rockfish cooperatives and the limited access fisheries). The remaining 5 percent of the TAC would be allocated to the entry level fishery. To simplify the example, we will assume that half the aggregate QS of the three allocated rockfish species would be allocated to the catcher/processor sector, and half to the catcher vessel sector. Fifty (50) percent of 95 percent of the TAC of each of the three allocated rockfish species would be allocated to the catcher/processor sector and the other 50 percent of 95 percent of the TAC for each of the three species would be allocated to the catcher vessel sector.

Third, we will assume that there are 10 LLP licenses, each with 10 percent of the QS assigned to the catcher/processor sector for the three allocated rockfish species. Eligible rockfish harvesters holding four LLP licenses would assign those LLP licenses to a rockfish cooperative. This represents 40 percent of the total primary rockfish species QS in the catcher/processor sector. This would yield 40 percent of the total TAC assigned to the catcher/processor sector for each of the primary species as CFQ to be harvested by the rockfish cooperative. Eligible rockfish harvesters holding four LLP licenses would assign those licenses to the limited access fishery. This represents 40 percent of the total primary rockfish species QS in the catcher/processor sector. This would yield a limited access fishery TAC of 40 percent of the catcher/processor TAC for each of the primary species. Eligible rockfish harvesters holding two LLP licenses would assign those licenses to the opt-out fishery. This represents 20 percent of the total primary rockfish species QS in the catcher/processor sector.

Fourth, NMFS would reassign the portion of the TAC represented by the QS from the opt-out fishery to the rockfish cooperative fishery and the limited access fishery, in proportion to the holdings of aggregate QS associated with the LLP licenses assigned to each fishery. Because the cooperative and limited access fishery would have the same relative holdings of aggregate QS

for the three primary rockfish species (each would have 40 percent of the total), half the opt-out amount would be reassigned to the rockfish cooperative, and half to the limited access fishery. Adding the opt-out amount to their existing allocations means that the rockfish cooperative would be assigned CFQ for each of the primary rockfish species representing 50 percent of the TAC assigned to the catcher/processor sector, and the limited access fishery would be assigned 50 percent of the TAC for each of the primary rockfish species assigned to the catcher/processor sector. The CFQ assigned to the rockfish cooperative could be exclusively harvested by the rockfish cooperative, the eligible rockfish harvesters in the limited access fishery would compete with each other for their collective allocation of this rockfish TAC, in this case 50 percent of the remaining TAC.

Fifth, NMFS would determine the amount of CFQ for secondary species and halibut PSC that would be allocated to the rockfish cooperative. The allocation of CFQ for secondary species and halibut PSC would be based on the percentage of the primary species QS allocation that would be assigned to the rockfish cooperatives in a sector—in the example, 40 percent of the total QS in the sector. The limited access fishery would not receive a TAC of secondary species based on its primary rockfish QS; and the limited access fishery would not receive an allocation of

halibut PSC. So, in the example, NMFS would allocate the rockfish cooperative 40 percent of the total CFQ of secondary species and halibut PSC that could be allocated to the catcher/processor sector. The remaining 60 percent of the potential secondary species and halibut PSC CFQ for the catcher/processor sector would not be allocated for that year because 60 percent of the QS in the catcher/processor sector is not assigned to a rockfish cooperative. The harvest amounts of secondary species in the limited access fishery would be controlled by MRAs that apply to that limited access fishery. Halibut PSC usage in the limited access fishery would be subject to existing restrictions on trawl gear.

### Rockfish Cooperatives

The Program would regulate the formation of rockfish cooperatives and the use of CFQ. NMFS would issue a CFQ permit to each rockfish cooperative that specified how much CFQ it could harvest. This amount would be based on the sum of the QS of the cooperative members and any CFQ that the rockfish cooperative subsequently receives by transfer from another rockfish cooperative. The Council provided numerous recommendations on the specific requirements to form a rockfish cooperative that this proposed action would implement. Table 4 details those requirements through a question and answer format.

TABLE 4.—REQUIREMENTS TO JOIN A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CFQ BY THE ROCKFISH COOPERATIVE

Requirement	Catcher vessel sector	Catcher/processor vessel sector
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 authorized representative of a cooperative, but are not members.	
What is the minimum number of LLP licenses that must be assigned to form a cooperative?	No minimum requirement.	Two LLP licenses assigned QS in the catcher/processor sector. These licenses can be held by one or more persons.
Is an association with an eligible rockfish processor required?	Yes. An eligible rockfish harvester may only be a member of a cooperative formed in association with an eligible rockfish processor to which the harvester made the plurality of legal 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 Program.	No.
What if an eligible rockfish harvester did not deliver any legal 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 cooperative.	N/A.

TABLE 4.—REQUIREMENTS TO JOIN A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CFQ BY THE ROCKFISH COOPERATIVE—Continued

Requirement	Catcher vessel sector	Catcher/processor vessel sector
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 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 Program. 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 landings that are considered for purposes of eligible rockfish harvesters establishing an association with an eligible rockfish processor.	N/A.
Is there a minimum amount of QS that must be assigned to a rockfish cooperative for it to be allowed to form?	Yes. A rockfish cooperative must be assigned QS that represents at least 75 percent of all the legal landings of primary rockfish species delivered to that eligible rockfish processor during the Processor Qualifying Period selected by that processor.	No.
What is allocated to the rockfish cooperative?	CFQ for primary rockfish species, secondary species, and halibut PSC, based on the QS assigned to all of the LLP licenses that are assigned to the cooperative.	
Is this CFQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CFQ, or a cooperative can transfer all or a portion of this CFQ to another rockfish cooperative.	
Is there a season during which designated vessels must catch CFQ?	Yes, any vessel designated to catch CFQ for a rockfish cooperative is limited to catching CFQ during the season beginning on May 1 through November 15.	
Can any vessel catch a rockfish cooperative's CFQ?	No, only vessels that are named on the application for CFQ for that rockfish cooperative, including any vessels named on amendment(s) to that application, can catch the CFQ assigned to that rockfish cooperative.	
Can the member of a rockfish cooperative transfer CFQ individually without the approval of the other members of the rockfish cooperative?	No, only the rockfish cooperative, and not individual members, may transfer its CFQ to another rockfish cooperative, but only if that transfer is approved by NMFS.	
Can a rockfish cooperative in the catcher/processor sector transfer a sideboard limit assigned to that rockfish cooperative?	N/A.	No, sideboard limits are limits applicable to that rockfish cooperative, and may not be transferred among rockfish cooperatives.
Is there a hired master requirement?	No, there is no hired master requirement.	N/A.
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.	
Can an eligible rockfish processor be associated with more than one rockfish cooperative?	No. An eligible rockfish processor can only associate with one rockfish cooperative per year. A person who is permitted as an eligible rockfish processor based on holdings of more than one processing history would be issued a separate eligible rockfish processor permit for that processing history and may be able to form an association with a rockfish cooperative as a separate and distinct eligible rockfish processor subject to any other restrictions that may apply.	N/A.
Can an LLP license be assigned to a rockfish cooperative and the limited access fishery or opt-out fishery?	No. Once an LLP license is assigned to a rockfish cooperative, any QS assigned to that LLP license yields CFQ to that rockfish cooperative for the calendar year.	
Which members may harvest the rockfish cooperative's CFQ?	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.	
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 CFQ. A copy of this agreement or contract must be submitted with the application for CFQ.	

TABLE 4.—REQUIREMENTS TO JOIN A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CFQ BY THE ROCKFISH COOPERATIVE—Continued

Requirement	Catcher vessel sector	Catcher/processor vessel sector
What happens if the rockfish cooperative catch exceeds its CFQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CFQ. Exceeding a CFQ is a violation of the Program regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Program regulations while fishing under authority of a CFQ permit. This liability extends to any persons who are hired to catch or receive CFQ 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 Program.	
Is there a limit on how much CFQ 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 CFQ assigned to the sector for that calendar year. See the <i>Use Cap</i> section of the preamble for the provisions that apply.	No, but a catcher/processor vessel is still subject to any vessel use caps that may apply. See the <i>Use Cap</i> section of the preamble for the provisions that apply.
Is there a limit on how much CFQ a vessel may harvest?	No. However, a vessel may not catch more CFQ than the CFQ assigned to that rockfish cooperative.	Yes, generally, no vessel may harvest more than 60 percent of the aggregate primary rockfish species TAC assigned to the sector for that calendar year, unless subject to an exemption. See the <i>Use Cap</i> section of the preamble for the provisions that apply.
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 CFQ?	Any vessel authorized to harvest the CFQ assigned to a rockfish cooperative must count any catch of primary rockfish species, secondary species, or halibut PSC against that rockfish cooperative's CFQ from May 1 until November 15, or until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS. Groundfish harvests would not be debited against the rockfish cooperative's CFQ if the vessel is not authorized to harvest CFQ. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type.	
Can my rockfish cooperative negotiate prices for me?	The rockfish cooperatives formed under the Program are intended to conduct and coordinate harvest activities for their members. Rockfish cooperatives formed under the Program are subject to existing antitrust laws. Collective price negotiation by a rockfish cooperative must be conducted in accordance with existing antitrust laws.	
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.	
What is required in the annual rockfish cooperative report?	The annual rockfish cooperative report must include at a minimum: <ul style="list-style-type: none"> <li>• The rockfish cooperative's CFQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by-vessel basis;</li> <li>• The rockfish cooperative's actual retained and discarded catch of CFQ and sideboard limit on an area-by-area and vessel-by-vessel basis;</li> <li>• A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated;</li> <li>• A description of any civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.</li> </ul>	

*Exception for assigning an LLP to a processor.* An eligible rockfish harvester that holds an LLP license with QS for the catcher vessel sector and that does not have landings associated with an eligible rockfish processor from January 1, 1996 through December 31, 2000, may join any rockfish cooperative. However, any such harvester is not considered as contributing to the amount of landings necessary to meet a minimum of 75 percent of the total landings that were delivered to that processor during the four calendar years selected by that processor for the purposes of establishing the minimum landings required to form a rockfish cooperative.

### Transfers

The Program would allow transfers of CFQ between rockfish cooperatives. The Program would also permit the transfer of processor eligibility. QS can not be transferred separately from the LLP license. QS could only be transferred by transferring the LLP license with which the QS is associated. Transfer procedures for LLP licenses are in the Federal regulations at 50 CFR 679.4.

#### *Transfer of CFQ*

Once NMFS issues CFQ to a rockfish cooperative, it could be fished by members of the rockfish cooperative, or transferred to another rockfish cooperative. A rockfish cooperative in the catcher vessel sector, however, could not transfer CFQ to a rockfish cooperative in the catcher/processor

sector. The Council recommended this restriction to address concerns about the loss of shorebased processing, potential employment and tax revenue if catcher/processor rockfish cooperatives could receive rockfish harvested with CFQ from catcher vessel rockfish cooperatives. Transfer of CFQ would be valid only during the calendar year of the transfer.

To standardize the reporting of information, transfers would have to be completed using an application for inter-cooperative transfer available on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>, or by directly contacting NMFS (see **ADDRESSES**). A rockfish cooperative could only transfer CFQ if:

1. The rockfish cooperative identified the amount and type of CFQ transferred

and the rockfish cooperative and rockfish cooperative member to which that CFQ was transferred. CFQ received by a rockfish cooperative would have to be attributed to a member of that rockfish cooperative to apply the use caps (see *Use Cap* section for more detail);

2. The transfer would not cause the receiving rockfish cooperative to exceed its use cap limitations. The rockfish cooperative would be responsible for ensuring that any transfer does not exceed rockfish cooperative use cap provisions; and

3. NMFS approved the transfer.

#### *Transfer of Processor Eligibility*

Eligible rockfish processors could transfer their eligibility to another person. Eligible rockfish processors could not suballocate their eligibility or the legal landings that were used to qualify that processor. Any transfer of rockfish processor eligibility would include the entire processing history and eligibility and the specific years that were originally selected to establish linkages with eligible rockfish harvesters. NMFS would prohibit the transfer of portions of processing history. This prohibition would prevent processing history from being divided, creating the potential for a large number of processors to form by transferring the minimum amount of processing history to create new eligible rockfish processors. This prohibition is necessary so that NMFS can reasonably establish which landings were delivered to a specific processor and determine if minimum landing standards to form rockfish cooperatives by a defined group of eligible rockfish harvesters have been met. This prohibition is also consistent with Council intent to limit the number of potentially eligible processors.

Additionally, any transfer of processor eligibility could not be made to a person who would use that processor eligibility to associate with a rockfish cooperative that would receive rockfish or secondary species fish outside the community where the processor eligibility was originally earned. This restriction would prevent a processor from associating with rockfish cooperatives outside of the community in which it historically operated.

A transfer of processor eligibility would require notification to NMFS through an application to transfer processor eligibility available on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>, or by directly contacting NMFS (see **ADDRESSES**). In order for a transfer application to be effective:

1. The transferor and transferee would have to provide identification information;

2. Both the transferor and transferee would have to certify the transfer; and

3. NMFS would have to approve the transfer.

#### **Limited Access Fishery**

The Program would establish separate limited access fisheries for eligible rockfish harvesters for the catcher vessel sector and catcher/processor sector. An eligible rockfish harvester would decide to participate in a limited access fishery on an annual basis through an application for the limited access fishery, available on the internet at <http://www.fakr.noaa.gov>, and submitted by December 1 of each year. NMFS would assume that unless an LLP license were assigned to either a rockfish cooperative or the opt-out fishery for the catcher/processor sector, that LLP license would be assigned to the limited access fishery for that sector. This would ensure that all LLP licenses are assigned to at least one of the Program fisheries.

The limited access fishery for both sectors would open on July 1 of each year and would remain open until the TACs for all three primary rockfish species is reached, or until November 15 of each year. NMFS would manage the limited access fishery for the catcher vessel sector and the catcher/processor sector separately. NMFS would announce the closure of a limited access fishery in the **Federal Register**.

The amount of primary rockfish species TAC for the limited access fishery would be a limit on the maximum collective amount of rockfish catch by participating vessels. NMFS would monitor the amount of fish available to a limited access fishery. If the amount of fish available to the fishery were small and the expected harvest rates of the participants in the fishery was high, NMFS could choose not to open that limited access fishery, or could choose to open a limited access fishery for only some of the primary rockfish species (*e.g.*, Pacific ocean perch but not northern rockfish).

If an eligible rockfish harvester assigned an LLP license to the limited access fishery, the QS from that license would be pooled with the QS from all other LLP licenses assigned to the limited access fishery. The limited access fishery would be issued a TAC equivalent to the percentage of the total QS allocated to the limited access fishery in that sector for that primary rockfish fishery. Quota share assigned to the limited access fishery in the catcher vessel sector would be part of the TAC

harvested by any eligible rockfish harvester who had assigned an LLP license for use in the limited access fishery in the catcher vessel sector. Likewise, QS assigned to the limited access fishery in the catcher/processor sector would be part of the TAC harvested by any eligible rockfish harvester who had assigned an LLP license for use in the limited access fishery in the catcher/processor sector. Unlike the rockfish cooperative fishery, no exclusive harvest privilege would exist in the limited access fishery. Primary rockfish species harvested by catcher vessels in the limited access fishery would have to be delivered to an eligible rockfish processor.

No CFQ of secondary species or halibut bycatch would be allocated to the limited access fishery. Instead, limited access fishery participants would be subject to an MRA based on the species that they target. The MRA would be a fixed percentage of incidentally caught fish that an eligible rockfish harvester may retain relative to the fish onboard the vessel. In the limited access fishery, the MRA would be measured against the amount of primary rockfish onboard the vessel. Incidental species, such as trawl sablefish, could only be retained as a percentage of the primary rockfish aboard the vessel.

To reduce the potential for limited access participants to "top-off" or target potentially valuable incidental species up to the MRA, the MRA assigned to participants in the limited access fishery would be set at a level adequate to allow some retention of these species, but low enough to avoid creating an incentive to specifically "top off" on those species. The MRA for the limited access fishery is set at a lower percentage than is currently applied in the rockfish fisheries. A lower MRA for the limited access fishery was recommended by the Council to reduce the incidental harvest of these species. The specific MRA rates for incidental species are provided in Table 30 of the proposed regulatory text.

#### **Opt-Out Fishery**

An eligible rockfish harvester that holds an LLP license with QS in the catcher/processor sector could choose to opt-out of many of the Program restrictions. The harvester could make the decision to opt-out on an annual basis by submitting an application to opt-out. The application is available on the internet at <http://www.fakr.noaa.gov>, and would have to be submitted by December 1 of each year. An eligible rockfish harvester holding an LLP license with QS in the catcher vessel sector could not choose to

opt-out of the Program. Some restrictions under the Program would still apply to the use of any LLP license assigned to the opt-out fishery during a year (see the *Sideboard Provisions* section, below). If an eligible rockfish harvester were to assign an LLP license to the opt-out fishery, the harvester could not use that LLP license on a vessel that is participating in a rockfish cooperative, limited access fishery, or the entry level fishery. Effectively, this would preclude a vessel that used an LLP license in the opt-out fishery from directed fishing for the three primary rockfish species in the Central GOA.

Any portion of the TAC that would be derived from the QS associated with an LLP license in the opt-out fishery would be redistributed to the eligible rockfish harvesters participating in cooperatives and the limited access fishery in the catcher/processor sector. This TAC would be redistributed in proportion to the QS holdings in each rockfish cooperative and the limited access fishery for the catcher/processor sector. Any TAC associated with the LLP licences assigned to the opt-out fishery would be reallocated for each year that the LLP license was assigned to the opt-out fishery.

#### Use Caps

As with other rationalization programs, the intent of the use caps under the Program is to limit the degree of consolidation that could occur in the Central GOA rockfish fisheries. These use caps would balance the goals of improving economic efficiency, maintaining employment opportunities for vessel crew, and providing financially affordable access opportunities for new participants. NMFS would require eligible rockfish harvesters, cooperatives, processors, and catcher/processor vessel operators to submit information through the annual applications, cooperative transfers, and annual catch reports. NMFS would use the information to enforce the use cap provisions, to track primary rockfish species QS use, and dissuade eligible rockfish harvesters from forming corporate arrangements that would frustrate the goal of the use caps. The use caps under this Program apply to the primary rockfish species. Use caps would not apply to the use of secondary species or halibut PSC.

There would be four types of use caps: (1) A cap on the amount of QS an eligible rockfish harvester could hold; (2) a cap on the amount of primary rockfish species CFQ that an eligible rockfish harvester could use; (3) a cap on the amount of primary rockfish species CFQ that a vessel in the catcher/

processor sector could harvest; and (4) a limit on the amount of primary rockfish species an eligible rockfish processor could receive and process. Different use caps would apply depending on whether the QS or CFQ are for use in the catcher vessel or the catcher/processor sector. For example, if an eligible rockfish harvester holds an LLP license with QS in the catcher vessel sector, then that harvester would be subject to a use cap that applies to the holding of QS in that sector. If that same eligible rockfish harvester holds a different LLP license with QS in the catcher/processor sector, then that holder would have a different use cap that would apply to the holding of QS in that sector.

*Quota share use caps.* QS use caps would limit the amount of aggregate primary species rockfish QS that may be held by an eligible rockfish harvester. These QS use caps would be based on the aggregate initial QS pool assigned to each sector. The initial QS pool in each of the three primary species fisheries, would be: Northern rockfish—9,193,182 QS units; pelagic shelf rockfish—7,672,008 QS units; Pacific ocean perch—18,121,812 QS units. The aggregate initial QS pool would be 34,987,002 units. A percentage of the aggregate initial QS pool would be allocated to the catcher vessel sector and a percentage to the catcher/processor sector. An eligible rockfish harvester could not hold more than 5 percent of the aggregate primary rockfish species QS assigned to the catcher vessel sector, or more than 20 percent of the aggregate primary rockfish species QS assigned to the catcher/processor sector.

The Official Record would indicate the relative percentage of the legal landings in the catcher vessel and the catcher/processor sector. NMFS could not determine the exact amount of the initial QS pool that would be assigned to each sector until the applications to participate in the program were processed. NMFS would determine the number of QS units for the catcher vessel and catcher/processor sector QS use cap once the applications are processed. The QS use cap would be based on a percentage of the initial QS pool. NMFS would establish a QS use cap that would not fluctuate with changes in the QS pool that could occur due to the resolution of appeals, or other operations of law that would modify the QS pool. This would provide stability to QS holders.

NMFS would calculate the amount of QS held by an eligible rockfish harvester using the "individual and collective rule." This method is similar to one

used in the Halibut and Sablefish IFQ Program. NMFS would include the sum of all QS held individually by an eligible rockfish harvester and the percentage of any holdings used collectively by that eligible rockfish harvester through a corporation, partnership, or other entity.

*CFQ use caps.* NMFS would apply CFQ use caps to eligible rockfish harvesters, rockfish cooperatives, and processors. NMFS would apply CFQ use caps to limit the amount of CFQ derived from the QS held by an eligible rockfish harvester. As an example, an eligible rockfish harvester could not use an amount of CFQ greater than the amount derived from: 5 percent of the aggregate initial QS pool in the catcher vessel sector; or 20 percent of the aggregate initial QS pool in the catcher vessel sector. An eligible rockfish harvester would be considered to use CFQ if he or she assigns QS to a rockfish cooperative that results in CFQ for use by that rockfish cooperative. The amount of CFQ that is used by an eligible rockfish harvester also would include any CFQ a rockfish cooperative receives by transfer that is attributed to an eligible rockfish harvester. All CFQ received by transfer would have to be assigned to an eligible rockfish harvester who is a member of that cooperative for purposes of calculating use caps. This would limit cooperatives to use no more CFQ than the maximum amount of CFQ that could be derived from the maximum amount of QS that could be held by all of its members. Therefore, the total CFQ usage by an eligible rockfish harvester would be the sum of the CFQ derived from QS held by that eligible rockfish harvester and all CFQ attributed to that eligible rockfish harvester as a result of a CFQ transfer.

CFQ use caps would limit the maximum amount of CFQ that could be assigned to any one cooperative. NMFS would apply CFQ use caps only to rockfish cooperatives in the catcher vessel sector. NMFS would apply the catcher vessel cooperative use cap as a percentage of the aggregate initial QS pool assigned to the catcher vessel sector. Catcher vessel rockfish cooperatives would be limited to using not more than 30 percent of the CFQ allocated to the catcher vessel sector.

The amount of CFQ used by an eligible rockfish harvester would be calculated using the "individual and collective rule." An eligible rockfish harvester's holding of CFQ would include all CFQ attributed to that individual and the percentage of any CFQ attributed to that individual through a corporation, partnership, or other entity. Therefore, CFQ use would



include all CFQ derived from an eligible rockfish harvester's QS holdings, either individually or through corporate ownership, and all CFQ attributed to an individual as a result of an inter-cooperative transfer of CFQ.

NMFS would not apply CFQ use caps to cooperatives in the catcher/processor sector. Although NMFS would not apply a CFQ use cap to catcher/processor cooperatives, NMFS would limit the maximum amount of CFQ that could be used on any one catcher/processor vessel.

*Use caps for the catcher/processor sector.* NMFS would limit a vessel participating in the catcher/processor sector from harvesting more than 60 percent of the CFQ of primary rockfish species in the catcher/processor sector.

*Primary rockfish species processing caps.* Eligible rockfish processors would

be subject to CFQ use caps. NMFS would limit an eligible rockfish processor from receiving or processing more than 30 percent of the aggregate rockfish primary species that would be allocated to the catcher vessel sector.

Unlike the other use caps, this processing limitation would include both CFQ and any primary rockfish species assigned to the limited access fishery. The intent of this use cap is to limit the degree of processor consolidation, including cases where the processor is receiving primary rockfish species harvested under a CFQ permit by a cooperative and by vessels in the catcher vessel sector limited access fishery. NMFS would calculate the usage of aggregate rockfish primary species usage by using the "AFA 10 percent threshold rule." This method is similar to one used in the AFA and the

BSAI Crab Rationalization Program. NMFS would include all primary rockfish species received by an eligible processor and all fish received by any other eligible rockfish processor in which that eligible rockfish processor has a 10 percent or greater direct or indirect ownership interest as applying to the use cap calculation. NMFS would apply this more stringent provision to processors to dissuade eligible rockfish processors from forming corporate arrangements that would consolidate the already limited number of distinct processors even further and frustrate the goal of the use cap, which is to limit the degree of consolidation in the fishery.

Table 5 describes the use cap amounts and limits that would apply to eligible rockfish harvesters, rockfish cooperatives, and eligible rockfish processors.

TABLE 5.—USE CAPS IN THE PROGRAM

Entity	Primary species aggregate QS and CFQ use cap based on the initial QS pool assigned to each sector (percent)	
	Catcher vessel sector	Catcher/processor sector
Eligible rockfish harvester .....	5.0	20.0
Rockfish cooperative .....	30.0	N/A
Processor .....	30.0	N/A
Vessel .....	N/A	60.0

*Grandfather provisions.* As with other rationalization programs in the North Pacific, the Program would allow those persons whose initial allocation of QS and resulting CFQ is in excess of the use caps to retain that amount. Commonly called "grandfather provisions," these provisions would accommodate

participants who historically had greater participation in the fishery than the use caps would allow. Any person eligible for the grandfather provisions would be limited to their initial holdings. If a grandfathered eligible rockfish harvester, processor, or owner of a catcher/processor vessel transferred an

LLP license and associated QS, then that person would be limited to that resulting amount, or the use cap, whichever is greater. Table 6 defines the requirements that would apply for qualifying for a grandfather provision.

TABLE 6.—ELIGIBILITY CRITERIA FOR A GRANDFATHER PROVISION

This entity . . .	Meets the grandfather eligibility requirements if . . .
Eligible rockfish harvester .....	(1) He or she held LLP license(s) at the time of application in the program that would result in QS or CFQ in excess of the use caps; and (2) the LLP license(s) were held by that eligible rockfish harvester prior June 6, 2005 (the time of final Council action on this Program).
Catcher vessel rockfish cooperative .....	It is comprised of members who include eligible rockfish harvesters that meet the grandfather eligibility requirements.
Processor .....	It receives and processes CFQ derived from a rockfish cooperative that meets the grandfather eligibility requirements.
Catcher/processor vessel .....	An LLP license used on that vessel prior to June 6, 2005, is assigned QS that results in CFQ in excess of the use cap, and the CFQ derived from that LLP license is used on that vessel.

### Sideboard Provisions

NMFS would expect the Program to improve the economic efficiency of eligible rockfish harvesters, primarily by encouraging consolidation through the

use of rockfish cooperatives. NMFS anticipates that rockfish cooperatives would be likely to use fewer vessels to harvest the same amount of fish with less cost, resulting in greater net profits for rockfish cooperative members.

NMFS anticipates that some eligible rockfish harvesters could use their vessels and LLP licenses to participate in other groundfish fisheries, particularly cod, flatfish, and rockfish fisheries in the West Yakutat District,

Western GOA, and in the BSAI. With the added economic efficiency likely to be created by this Program, eligible rockfish harvesters could use this economic efficiency to offset operational costs in other fisheries, or expand into new fisheries. This could economically disadvantage harvesters in these other fisheries.

The Council recommended Program elements that would limit the ability of eligible rockfish harvesters to expand into other fisheries. These types of limitations are common to North Pacific rationalization programs and are commonly called sideboards. Sideboards would limit the total amount of harvest by eligible rockfish harvesters in other fisheries. Sideboards would limit the amount of halibut PSC that may be used in certain directed groundfish fisheries. Some of the specific sideboard measures in this Program would prohibit directed fishing for certain groundfish fisheries. Most of the sideboard measures would be in effect only during the month of July. Traditionally, the Central GOA rockfish fishery was open in July, and therefore the sideboards would restrict fishing during the historic timing of the fishery, but allow eligible rockfish harvesters to participate in fisheries before or after the historic rockfish season.

A sideboard would limit both an LLP license with QS assigned to it, and a vessel on which legal landings were made that could generate QS. This provision would restrict an eligible rockfish harvester from assigning an LLP license to a rockfish cooperative, and using the vessel which generated the QS to target other fisheries. Sideboards would apply to federally permitted vessels fishing in Federal waters and adjacent waters opened by the State of Alaska when the state adopts a Federal fishing season. The opening of State of Alaska waters in concurrence with the Federal fishing season is commonly known as a parallel fishery. The State of Alaska opens a parallel fishery to accommodate harvesters as they target fish stocks that freely move between State and Federal jurisdiction. Harvests in state waters during the parallel fishery are considered part of the Federal TAC because vessels move between State and Federal waters during the concurrent parallel and Federal fisheries. The State opens the parallel fisheries through emergency order by adopting the groundfish seasons, bycatch limits, and allowable gear types that apply in the adjacent Federal fisheries.

Specific sideboards would apply to specific fishery components in the Program. The Council recommended a

suite of sideboard measures to meet two broad, potentially competing, goals: To constrain eligible rockfish harvesters from expanding their harvesting capacity in other non-Program fisheries; and to provide an opportunity for harvesters, particularly in the catcher/processor sector, to continue to participate in other fisheries they have historically fished. Sideboards would fall into two broad categories: Sideboard limits that constrain the amount of catch in specific regions and fisheries during July; and directed fishery closures that prohibit fishing in specific fisheries and regions during July. Some sideboards would apply to both sectors, some would apply only to the catcher vessel sector, and some would apply only to the catcher/processor sector. The Program would include five types of sideboards: (1) General sideboards; (2) catcher vessel sideboards; (3) catcher/processor rockfish cooperative sideboards; (4) catcher/processor limited access sideboards; and (5) catcher/processor opt-out sideboards.

#### *General Sideboards*

General sideboards would apply to all LLP licenses and vessels that could be used to generate QS. General sideboards would include eligible rockfish harvesters, and any vessel or LLP that could have generated QS, even if the holder of that LLP license or vessel owner did not submit an application to participate in the program. The Council intended that general sideboard provisions would apply to all LLP licenses and vessels potentially eligible for the Program. The Council intended to limit the ability of a person with limited legal landings to choose not to apply for the Program and expand their harvesting opportunities in fisheries that were traditionally harvested by vessel also eligible for the Program. The general sideboard provisions would meet that intent.

The Program would establish a specific exemption from general sideboards for vessels that would be otherwise subject to sideboard restrictions in the GOA under the AFA. Additional sideboards under this Program would impose additional restrictions on already limited vessels under the AFA regulations.

General sideboards would apply to the catcher vessel and catcher/processor sectors. General sideboards would establish a sideboard limit on rockfish harvests in the Western GOA, and West Yakutat District, and halibut PSC limits in the Central GOA, Western GOA, and West Yakutat District during the month of July.

A sideboard limit in the Western GOA and West Yakutat District rockfish fisheries would limit the pounds of fish that could be caught by vessels fishing subject to the sideboard restriction to historic harvest levels. The halibut PSC sideboard limit in the Central GOA, Western GOA, and West Yakutat District would indirectly limit the harvests of specific groundfish flatfish species that historically have been limited not by their TAC, but by halibut PSC. A halibut PSC sideboard would constrain the amount of halibut PSC that can be used when harvesting flatfish species.

The Western GOA and West Yakutat District rockfish sideboard limit would be based on the historic share of catch for a specific rockfish fishery by vessels that generated legal landings that could generate QS under the Program. The sideboard would be determined by measuring catch by these vessels during July from 1996 through 2002, as compared to the total harvests by all vessels during this period in the particular directed groundfish fishery. This would yield a percentage of the total harvests in that directed groundfish fishery. On an annual basis, this percentage would be multiplied by the TAC for that directed groundfish fishery. This amount would be the sideboard limit. Sideboard limits would be assigned to the appropriate sector, either the catcher/processor or the catcher vessel sector.

The EA/RIR/IRFA prepared for this action clarifies that the sideboard provisions would apply only to Pacific ocean perch, pelagic shelf rockfish, and northern rockfish (see **ADDRESSES**). Other rockfish species would not be subject to specific sideboard limits, but would be subject to existing management measures such as MRAs.

NMFS would establish the sideboard limit for each of the three rockfish species (*i.e.*, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish) for each sector using the percentage of historic harvests of that rockfish species for that sector based on calculations in the EA/RIR/IRFA prepared for this action. The EA/RIR/IRFA notes the amount of historic harvest by vessels and LLP licenses subject to sideboards for the three rockfish species in July as a percentage of the total harvests by all trawl vessels in July. This is further detailed by sector and management area. NMFS would establish the sideboard limit for each sector, fishery, and management area based on the computations provided in the EA/RIR/IRFA to provide the industry with sideboard limits that would be based on the best available information and would meet expectations discussed

throughout the public development of the sideboard limits during the Council process.

Table 7 displays the percentage of the annual TAC assigned to each sector for each rockfish fishery in the Western

GOA and West Yakutat District based on the information provided in the EA/RIR/IRFA. A discussion of the data and analytic process used in the development of the sideboard amounts is provided in Section 2.5 of the EA/

RIR/IRFA. NMFS would not establish a general sideboard limit for northern rockfish in the West Yakutat District because the fishery was not open for directed fishing during 1996 through 2002.

TABLE 7.—SIDEBOARD LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA ROCKFISH

Management area	Fishery	Catcher/processor sector (percent of the TAC)	Catcher vessel sector (percent of the TAC)
West Yakutat District .....	Pelagic shelf rockfish .....	72.4	1.7
	Pacific ocean perch .....	76.0	2.9
Western GOA .....	Pelagic shelf rockfish .....	63.3	0.0
	Pacific ocean perch .....	61.1	*
	Northern rockfish .....	78.9	0.0

\* Not released due to confidentiality requirements on fish ticket data established by the State of Alaska.

The sideboard limits established in Table 7 would be assigned to each sector for each fishery and would limit the maximum amount of fish that sector could harvest. A specific subset of this fixed percentage would be assigned to rockfish cooperatives in the catcher/processor sector only. Cooperatives in the catcher/processor sector would receive a sideboard limit equal to the percentage of rockfish QS assigned to that cooperative multiplied by the total sideboard limit assigned to the catcher/processor sector for a species in a specific management area. For example, if 61.1 percent of the Western GOA TAC for pelagic shelf rockfish were assigned to the catcher/processor sector, and a rockfish cooperative was assigned 10 percent of the total rockfish QS in the catcher/processor sector (i.e., 10 percent of the aggregate rockfish QS for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish), NMFS would assign that cooperative 10 percent of 61.1 percent, or 6.11 percent of the Western GOA TAC for pelagic shelf rockfish. A sideboard limit specified for a catcher/processor cooperative would limit only that cooperative. This sideboard limit could not be transferred to another cooperative. NMFS would not establish similar sideboard limits for cooperatives in the catcher vessel sector. Table 7 indicates that historically very small amounts of rockfish in the Western GOA and West Yakutat District have been harvested by the catcher vessel sector. Table 7 indicates that historically the catcher/processor sector has harvested most of the rockfish in the Western GOA and West Yakutat District. Cooperative specific sideboards for the catcher/

processor sector would reduce the incentive for cooperatives within the catcher/processor sector to race to catch the maximum amount allowed under a sideboard limit and potentially exceed the TAC established for these species.

The Program would establish sideboard limits on how much halibut PSC may be used in the Central GOA, Western GOA, and West Yakutat District in addition to sideboards on rockfish harvests in the Western GOA and West Yakutat District. Halibut PSC sideboards would limit the amount of halibut that may be incidentally caught and killed while fishing for groundfish.

NMFS would base the specific halibut PSC sideboard limit, the limit on the pounds of halibut PSC allocated to vessels fishing subject to a sideboard, on the historic use of halibut PSC in July by vessels in each sector. NMFS would establish distinct halibut PSC sideboards for a shallow-water species complex and a deep-water complex. Because halibut PSC limits in the GOA are established based on fishery complexes based on the depth of the targeted groundfish species, the halibut PSC sideboard limit for the shallow water complex would be based on average halibut PSC by vessels subject to sideboards in the shallow-water flatfish and flathead sole fisheries. The halibut PSC sideboard limit for the deep-waters species complex would be based on average halibut PSC by vessels subject to sideboards in the arrowtooth flounder, deep-water flatfish, rex sole, and rockfish fisheries.

NMFS proposes to establish the sideboard limit for the shallow-water fishery complex and the deep-water

fishery complex for each sector based on the historic halibut PSC usage calculated in the EA/RIR/IRFA prepared for this proposed action. The EA/RIR/IRFA describes the amount of historic halibut PSC by vessels and LLP licenses subject to sideboard limits in July as a percentage of the total halibut PSC by all trawl vessels in July for that fishery in that sector and management area. NMFS would establish the sideboard limit for each sector based on the computations provided in the EA/RIR/IRFA to provide the industry with sideboard limits that would be based on the best available information and would meet expectations discussed throughout the public development of the sideboard limits during the Council process.

Table 8 displays the percentage of the annual GOA halibut PSC limit in the shallow-water complex and deep-water complex assigned to each sector in the Central GOA, Western GOA, and West Yakutat District based on the information provided in the EA/RIR/IRFA. The percentage assigned as a sideboard limit would be equal to the annual average halibut PSC by vessels and LLP licenses subject to the sideboard limit during July from 1996 through 2002 in that sector divided by the total average halibut mortality assigned to the GOA trawl sector during 1996 through 2002. During this time period, the average annual halibut PSC was equal to 2000 metric tons. A discussion of the data and analytic process used in the development of the sideboard amounts is provided in Section 2.5 of the EA/RIR/IRFA.

TABLE 8.—SIDEBOARD LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT, CENTRAL GOA, AND WESTERN GOA ANNUAL HALIBUT MORTALITY

Management area	Sector	Shallow-water complex halibut mortality limit (percent of the GOA annual halibut mortality limit)	Deep-water complex halibut mortality limit (Percent of the GOA annual halibut mortality limit)
Western GOA .....	Catcher/Processor sector .....	0.16	1.56
	Catcher Vessel Sector .....	0.00	0.00
Central GOA .....	Catcher/Processor sector .....	0.37	1.78
	Catcher Vessel Sector .....	6.14	0.98
West Yakutat District .....	Catcher/Processor sector .....	0.01	0.65
	Catcher Vessel Sector .....	0.18	0.10

As with the rockfish sideboard limits, NMFS would establish a specific subset of the halibut PSC limit to rockfish cooperatives in the catcher/processor sector only. Cooperatives in the catcher/processor sector would receive a portion of the catcher/processor sideboard limit equal to the percentage of QS assigned to that cooperative in the catcher/processor sector multiplied by the halibut PSC limit. For example, if 1.78 percent of the Central GOA Halibut PSC is assigned to the catcher/processor sector, and a rockfish cooperative is assigned 10 percent of the total rockfish QS in the catcher/processor sector (*i.e.*, 10 percent of the aggregate rockfish QS for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish), NMFS would assign that cooperative 10 percent of 1.78 percent, or 0.178 percent of the Central GOA halibut PSC. A sideboard limit specified for a catcher/processor cooperative would limit that cooperative. This sideboard limit could not be transferred to another cooperative. NMFS would not establish similar sideboard limits for cooperatives in the catcher vessel sector.

NMFS would manage the sideboard to meet the intent of the Council, which is to maintain a limit on rockfish harvests and halibut PSC during the month of July. NMFS would review the sideboard limits for specific fisheries, sectors, and regions and would not open a fishery if a sideboard limit was not adequate to support harvests or halibut PSC. NMFS would close fisheries for vessels subject to a sideboard if harvests in those fisheries result in the harvest of sideboard species in excess of the sideboard limit. NMFS would use the following standards and require the necessary monitoring to ensure adequate accounting:

First, NMFS would require any vessel subject to sideboard limitations operating in the Central GOA, Western GOA, and West Yakutat District from July 1 until July 31 to adhere to all catch

monitoring requirements. This would allow NMFS to assess harvest rates, and monitor harvests in that fishery (see the *Observer* section of the preamble below for more information).

Second, NMFS would require all vessels subject to a sideboard limit to retain all rockfish caught during July 1 through July 31 in the Western GOA and the West Yakutat District. NMFS would require vessels to retain rockfish regardless of the specific target fishery. The goal of the sideboard limit would be to ensure historic harvest levels are not exceeded. NMFS would require retention of rockfish harvested incidental to other directed fisheries (*e.g.*, Western GOA arrowtooth flounder), and debit them against the sideboard limit applicable to that sector. NMFS would prohibit vessels from directed fishing in a specific rockfish fishery in a specific area for a specific sector, if that sideboard limit is reached.

Third, NMFS would debit all halibut PSC in a sector attributed to the shallow-water species complex or deep-water species complex in the Central GOA, Western GOA, and West Yakutat District in July against the shallow-water halibut PSC sideboard or deep-water halibut PSC sideboard limit, as appropriate, for a sector in a specific management area. This would ensure that all halibut PSC in July is debited against the sideboard limit established for the appropriate complex and sector.

NMFS would close directed fishing for non-rockfish fisheries in specific species complexes once the halibut PSC sideboard limit is reached. Specifically, if the halibut PSC limit for the deep-water complex in a management area is reached, NMFS would close directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in that management area. If the halibut PSC sideboard limit for the shallow-water complex in a management area is reached, NMFS would close directed

fishing for flathead sole and shallow water flatfish in that management area.

An example of the management of rockfish sideboard limits and halibut PSC sideboard limits follows. Assuming that catcher vessels subject to the sideboard restrictions target Pacific ocean perch rockfish in the Western GOA, then all rockfish harvested by those vessels would be debited against the rockfish sideboard for the catcher vessel sector. Because rockfish are in the deep-water complex, all halibut PSC occurring in the rockfish fishery would be debited against the deep-water species complex halibut PSC sideboard for catcher vessels as well. NMFS would close the deep-water species complex (arrowtooth flounder, deep-water flatfish, and rex sole), for the catcher vessel sector once the halibut PSC sideboard limit is reached. NMFS would still account for any halibut PSC in the rockfish fishery and debit it against the general halibut PSC limit for the GOA. NMFS would close the rockfish sideboard fishery for directed fishing (*e.g.*, Pacific ocean perch), once the rockfish sideboard limit for the catcher vessel sector had been reached.

In the Central GOA, NMFS would calculate the shallow-water halibut PSC sideboard limit and deep-water halibut PSC sideboard limit by including all halibut mortality for that sector in the month of July. NMFS would assign vessels that participate in a rockfish cooperative an allocation of halibut PSC CFQ for the incidental mortality of halibut occurring during the Central GOA Program fisheries. This halibut PSC CFQ allocation would be derived from usage in the rockfish fisheries that are in the deep-water complex. NMFS would debit all halibut PSC in a sector, including CFQ, against the deep-water halibut mortality halibut PSC sideboard limit. This accounting method would ensure that all halibut PSC in July is debited against the proper sideboard limit. If the deep-water halibut PSC

sideboard limit is reached, vessels participating in rockfish cooperatives could continue to use halibut PSC CFQ during the prosecution of their primary rockfish species and secondary species CFQ, but would be precluded from directed fishing for arrowtooth flounder, rex sole, and deep-water flatfish.

Fourth, the sideboard limits recommended by the Council, and which would be implemented by this action, are intended to limit harvests by vessels that are harvesting fish allocated under a TAC. NMFS would account for all catch by federally licensed vessels in Federal waters and the State parallel fishery against the sideboard limit. Additionally, federally permitted vessels would be precluded from fishing in the parallel fishery during July if the sideboard limit for that fishery is reached or the sideboard fishery is not open. NMFS would not manage the

activities of non-federally permitted vessels in the parallel fishery or in other state-managed fisheries.

#### *Catcher Vessel Sideboards*

The Program recommended by the Council provides for specific sideboard measures for catcher vessels. These sideboard measures include prohibitions on catcher vessels fishing specific groundfish fisheries in the BSAI, and limitations on fishing Pacific cod in the BSAI during July. The prohibition on directed fishing in specific fisheries in the BSAI during July is based on a review of past participation by the catcher vessel fleet. Catcher vessels would be prohibited from directed fishing on species in the BSAI that they have not historically harvested as determined by the Council. These species would include: Alaska plaice; arrowtooth flounder; flathead

sole; other flatfish; Pacific ocean perch; rock sole; and yellowfin sole.

BSAI Pacific cod sideboard limits in July would be calculated and managed similar to general sideboards in the GOA. The sideboard restrictions do not provide for specific allocations of sideboard limits to rockfish cooperatives in the catcher vessel sector. The BSAI Pacific cod sideboard limit would apply to the entire catcher vessel sector—rockfish cooperatives and the limited access fishery as a whole. Based on data from the EA/RIR/IRFA, the sideboard limit for BSAI Pacific cod in the catcher vessel sector is likely to be small, and NMFS may choose not to permit directed fishing by vessels subject to the BSAI Pacific cod sideboard limit.

Table 9 summarizes the elements of general sideboards and catcher vessel sideboards.

TABLE 9.—GENERAL AND CATCHER VESSEL SIDEBOARDS

Element	General sideboards	Catcher vessel sideboards
Which sector does it apply to?	Both the catcher vessel catcher/processor sector.	Only the catcher vessel sector.
When does the sideboard apply?	From July 1 through July 31.	
Which LLP licenses are subject to sideboards?	All LLP licenses that are eligible to receive QS under the Program are subject to sideboards, including LLP licenses that could generate QS but were not designated in an application to participate in the Program.	
Which vessels are subject to sideboards?	All vessels with legal landings that could generate QS under this Program.	
Are there any exemptions to this sideboards?	Yes, vessels that are identified as not exempt from GOA sideboards under the AFA, as specified under 50 CFR this 679.63(b)(1)(i)(B), are exempted from these sideboards.	
Does this sideboard prohibit directed fishing in specific groundfish fisheries?	No.	Yes, any vessel or LLP license subject to this sideboard may not directed fish for: Alaska plaice; arrowtooth flounder; flathead sole; other flatfish; Pacific ocean perch; rock sole; or yellowfin sole in the BSAI during July.
Which fisheries are subject to sideboard limits?	Western GOA and Western Yakutat District Pacific ocean perch, pelagic shelf rockfish, and northern rockfish during July.	Pacific cod in the BSAI during July.
How is the sideboards ratio determined?	For each sector, and for each fishery subject to a sideboard, NMFS will: (1) Add up the total retained catch by all vessels subject to sideboards during the month of July during 1996 through 2002; and (2) divide this amount by the total retained catch by all vessels during the same period. The resulting quotient is the sideboard ratio for that sector.	In addition to the general sideboard, for each fishery subject to a sideboard, NMFS will: (1) add up the total retained catch by all vessels subject to sideboards during the month of July during 1996 through 2002; and (2) divide this amount by the total retained catch vessels during the same period. The resulting ratio is the sideboard ratio. Based on the data from EA/RIR/IRFA prepared for this action, this amount represents 0.0 percent of the BSAI Pacific cod average annual TAC during this period.
How is the annual sideboard determined?	The sideboard ratio is multiplied by the TAC for that specific sideboard fishery. If the TAC for that sideboard fishery is divided among management areas, or seasons then the annual sideboard limit is proportionally divided among areas and seasons.	
Is halibut PSC sideboarded in specific directed groundfish fisheries?	Yes, this sideboard limits the amount of halibut PSC that may be used by any vessel fishing in the directed groundfish fisheries in the GOA with a halibut PSC sideboard limit in the: (1) shallow-water complex fisheries; and (2) deep-water complex fisheries.	Yes, under the general sideboards.

TABLE 9.—GENERAL AND CATCHER VESSEL SIDEBOARDS—Continued

Element	General sideboards	Catcher vessel sideboards
How is the halibut PSC sideboard ratio determined?	For each sector, and for the deep water species and the shallow water species complexes, NMFS will calculate the halibut PSC ratio for that sector and fishery complex by: (1) adding up the total halibut mortality by all vessels subject to sideboards in July during 1996 through 2002; and (2) dividing this amount by the total halibut mortality by all vessels during the same period. The resulting ratio is the halibut PSC ratio for that sector and fishery complex.	Yes, under the general sideboards.
How is the annual halibut PSC sideboard limit determined?	For each sector, the halibut PSC sideboard ratio is multiplied by limit the total halibut PSC limit for the deep water species complex, or the shallow waters species complex, as applicable, in the GOA. The annual halibut PSC sideboard limit is proportionally divided among areas based on the proportion of groundfish in the shallow-water or deep-water complex harvested by that sector in that management area in the month of July.	Yes, under the general sideboards.
Does all halibut mortality in species complex in July count against the sideboard limit?	Yes, all halibut mortality counts against a specific species complex in specific management area.	Yes, under the general sideboards.
Which fisheries are closed once a halibut PSC sideboard limit is reached?	<i>Shallow-water halibut PSC sideboard limit.</i> For each sector, directed fishing for shallow-water flatfish and flathead sole fisheries is closed once the shallow-water halibut PSC sideboard limit is reached in that management area. <i>Deep water halibut PSC sideboard limit.</i> For each sector, directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole once the deep-water halibut PSC sideboard limit is reached.	See general sideboards.

#### *Catcher/Processor Rockfish Cooperative Sideboard Limits*

Under the Council's recommendations, the participants in the catcher/processor sector would be subject to specific prohibitions and sideboard limits if they are participating in a rockfish cooperative.

Vessels and LLP licenses assigned to a catcher/processor rockfish cooperative would be prohibited from fishing in BSAI groundfish fisheries from July 1 through July 14, other than fixed-gear sablefish, which is managed under the IFQ Program, and pollock, which is managed under the AFA. This two-week prohibition would limit the ability of participants in the Program to expand harvests in BSAI groundfish fisheries during the historic Central GOA rockfish season.

In addition, the Program would prohibit the harvest of non-Program groundfish except pollock and fixed-gear sablefish (IFQ sablefish) in the GOA during early July by vessels and LLP licenses assigned to a cooperative. The limitation would either be a prohibition on directed groundfish fishing from July 1 to July 14, or if a

catcher/processor cooperative does not use any CFQ prior to July 1, then all vessels participating in a cooperative would be prohibited from directed fishing in any GOA non-Program groundfish fishery except fixed-gear sablefish and pollock from July 1 until 90 percent of that cooperative's primary species CFQ has been harvested.

The Council recommended that this prohibition on fishing would not apply if "NMFS accepts the rockfish cooperative sideboard monitoring program." NMFS would require all vessels to maintain adequate monitoring to participate in the Program (See *Monitoring* section of the preamble below for additional details). The extensive monitoring that would be required by catcher/processor vessels participating in a rockfish cooperative would be sufficient to ensure adequate accounting of the sideboard limits. A rockfish cooperative would fail to meet monitoring standards only if it were in violation of these general monitoring provisions.

NMFS proposes not applying this prohibition on fishing in early July to catcher/processors participating in rockfish cooperatives in the GOA for

several reasons. First, the monitoring standards required by NMFS would meet the requirements for monitoring sideboard restrictions. Second, applying a prohibition on fishing if a monitoring requirement is not met would require NMFS to provide any affected parties adequate due process to appeal any decisions before implementing the prohibition on fishing. In most cases, NMFS anticipates this due process requirement could not be satisfied in a timely fashion to allow the implementation of the prohibition on fishing. If a catcher/processor vessel participating in a rockfish cooperative fails to meet the monitoring requirements of this Program, it could be subject to enforcement action. If vessels meet the monitoring requirements of this Program, then NMFS would effectively accept the monitoring of sideboard limits by the rockfish cooperative, thereby, meeting the recommendation of the Council that this restriction would not apply if "NMFS accepts the co-op sideboard monitoring program."

In addition to the prohibition on fishing in BSAI groundfish fisheries

other than pollock and fixed-gear sablefish from July 1 through July 14, NMFS would assign a portion of the general sideboard limit and halibut PSC sideboard limit in the catcher/processor sector to each catcher/processor rockfish cooperative. The method for assigning a portion of the general sideboard limit to cooperatives is discussed under the *General Sideboards* section of the preamble. The general sideboard limit that would be assigned to a cooperative in the catcher/vessel sector would be subject to the following restrictions: (1) The sideboard limit allocated would be based on the proportion of the QS in the catcher/processor sector assigned to the rockfish cooperative; and (2) a rockfish cooperative could not transfer any sideboard limit specifically assigned to it. These restrictions are necessary to administer the sideboard limits and ensure that a rockfish cooperative does not exceed its limit. Because sideboard limits, in particular the halibut PSC sideboard limit, would be based on data gathered from observers and other data sources, it would not be possible to attribute a sideboard limit to a specific rockfish cooperative in a timely fashion if transfers were permitted. Given the administrative complexities of tracking sideboard transfers accurately and the nature of this Program, a pilot project with a limited duration, NMFS would prohibit sideboard limit transfers to ensure compliance and reduce additional administrative burdens and confusion. The specific sideboard limits for West Yakutat District and Western GOA rockfish applicable to the catcher/processor sector are detailed in Table 9.

A similar method would be used to assign a sideboard limit for the shallow-water halibut PSC sideboard limit and the deep-water halibut PSC sideboard limit to each rockfish cooperative in the Western GOA, Central GOA and West Yakutat District in the month of July.

The method for assigning a portion of the halibut PSC general sideboard limits to cooperatives is discussed under the *General Sideboards* section of the preamble. The specific sideboard limits for halibut mortality for the West Yakutat District, Central GOA, and Western GOA rockfish applicable to the catcher/processor sector are detailed in Table 9.

#### *Catcher/Processor Limited Entry Sideboards*

NMFS would apply specific sideboards to catcher/processor vessels participating in the catcher/processor limited entry fishery. These sideboards would prohibit fishing in early July for a specific set of catcher/processor vessels. Any vessel using an LLP license with greater than 5 percent of the QS of Pacific ocean perch assigned to the catcher/processor limited access fishery would be prohibited from directed fishing in any BSAI or GOA groundfish fishery except pollock or fixed-gear sablefish from July 1 until 90 percent of the CFQ of Pacific ocean perch assigned to the catcher/processor sector has been harvested.

This sideboard restriction would limit vessels with significant historic participation in the Pacific ocean perch fisheries in the GOA from expanding their activities into other BSAI and GOA groundfish fisheries, specifically BSAI Pacific ocean perch fisheries, during the historic Central GOA rockfish season in early July.

#### *Catcher/Processor Opt-Out Sideboards*

In addition to the general sideboards, NMFS would prohibit any catcher/processor LLP license and associated vessel assigned to the opt-out fishery from: (1) Directed fishing in any of the primary rockfish fisheries in the Central GOA during the year; and (2) directed fishing in any GOA groundfish fishery

from July 1 through July 14, in which that vessel or LLP license does not have prior participation, except fixed-gear sablefish.

The Program would define prior participation as at least one landing in a directed GOA groundfish fishery during any two years from 1996 through 2002 during specific time periods in early July. The specific time periods for each year during which a landing could be made are: (1) June 30, 1996 through July 6, 1996; (2) June 29, 1997 through July 5, 1997; (3) June 28, 1998 through July 4, 1998; (4) July 4, 1999 through July 10, 1999; (5) July 8, 2000 through July 15, 2000; (6) July 1, 2001 through July 7, 2001; and (7) June 30, 2002 through July 6, 2002.

If a sideboarded LLP license or vessel made a landing in a directed fishery in any two years during these time periods, it could continue to directed fish in that groundfish fishery during July 1 through July 14. If the vessel or LLP license did not meet these criteria, it could not directed fish in that groundfish fishery during July 1 through July 14—except fixed-gear sablefish which is managed under the existing IFQ program. NMFS would consider any landing in a directed groundfish fishery in the Southeast Outside region (Statistical Area 650), as a landing for that directed fishery in the Western Yakutat District (Statistical Area 640) for purposes of considering participation in a directed fishery. This provision would address a unique situation in the Eastern GOA. Area 650 was closed to trawling in 1998 and some vessels that had participated in that region moved their operations to the Western Yakutat District. This provision would accommodate their historic participation patterns in the Eastern GOA.

Table 10 summarizes the sideboard restrictions that are specific to the catcher/processor sector.

TABLE 10.—CATCHER/PROCESSOR SPECIFIC SIDEBARDS

Element	Catcher/processor rockfish cooperatives	Catcher/processor limited access fishery	Catcher/processor opt-out fishery
When does the prohibited fishing sideboard apply?	From July 1 through July 14 for sideboards in the BSAI.	The sideboard prohibits fishing in BSAI groundfish fisheries, except fixed-gear sablefish and pollock, from July 1 until 90 percent of the TAC allocated to the catcher/processor limited access fishery is taken.	Some of the sideboard measures apply the entire year, most provisions apply from July 1–July 14.
Which LLP licenses are subject to sideboard?	All LLP licenses that are assigned to a catcher/processor rockfish cooperative.	All LLP licenses that are assigned to the limited access fishery with QS of Pacific ocean perch equal to or greater than 5 percent of the QS of Pacific ocean perch to the catcher/processor sector.	All LLP licenses that are assigned to the opt-out fishery.



TABLE 10.—CATCHER/PROCESSOR SPECIFIC SIDEBOARDS—Continued

Element	Catcher/processor rockfish cooperatives	Catcher/processor limited access fishery	Catcher/processor opt-out fishery
Which vessels are subject to directed fishing prohibitions?	All vessels with legal landings that generated QS, if that vessel is named on an LLP license assigned to a catcher/processor rockfish cooperative.	All vessels with legal landings that generated QS of Pacific ocean perch equal to or greater than 5 percent of the QS of Pacific ocean perch allocated to the catcher/processor sector, if that vessel is named on an LLP license assigned to the limited access fishery.	All vessels with legal landings that generated QS on an LLP license, if that vessel is named on an LLP license is assigned to the opt-out fishery.
Are there any exemptions to these directed fishing prohibitions?	No.		
Does this sideboard prohibit directed fishing in specific groundfish fisheries?	Yes. Any vessel or LLP license subject to this sideboard may not directed fish in any BSAI groundfish fishery, except pollock or fixed-gear sablefish, from July 1–July 14.	Yes. Any vessel or LLP license subject to this sideboard may not: (1) Directed fish in any BSAI groundfish fishery, except pollock or fixed-gear sablefish; or (2) directed fish in any GOA directed sideboard fishery from July 1 until 90 percent of the Pacific ocean perch TAC assigned to the catcher/processor sector has been harvested.	Yes. Any vessel or LLP license subject to this sideboard may not: (1) directed fish in any of the primary rockfish fisheries during the year; and (2) directed fish in any GOA groundfish fishery from July 1 through July 14, in which that vessel or LLP license does not have prior participation, except fixed-gear sablefish, (see the section on <i>catcher/processor opt-out sideboards</i> for more information).
Which directed groundfish fisheries are sideboarded?	See general sideboard restrictions.		
How is the groundfish sideboard ratio determined?	For each rockfish cooperative, and for each fishery subject to a sideboard, NMFS will: (1) Add up the total retained catch by all vessels in the rockfish cooperative subject to sideboards during the month of July, from 1996 through 2002; and (2) divide this amount by the total retained catch by all vessels during the same period. The resulting ratio is the sideboard ratio for that sector.	See general sideboard restrictions.	
How is the annual sideboard limit determined?	The sideboard ratio is multiplied by the TAC for that specific sideboard fishery. If the sideboard fishery is divided by management area and season, then the annual sideboard limit is proportionally divided among areas and seasons.	See general sideboard restrictions.	
Is halibut PSC sideboarded in specific directed groundfish fisheries?	Yes, this sideboard limits the amount of halibut PSC that may be used by any vessel fishing in the directed fisheries in the GOA for: (1) Flathead sole and shallow water flatfish—the shallow-water complex fisheries; and (2) arrowtooth flounder, deep water flatfish, and rex sole—the deep-water complex fisheries.	See general sideboard restrictions.	

TABLE 10.—CATCHER/PROCESSOR SPECIFIC SIDEBOARDS—Continued

Element	Catcher/processor rockfish cooperatives	Catcher/processor limited access fishery	Catcher/processor opt-out fishery
How is the halibut PSC sideboard ratio determined?	For each rockfish cooperative, and for the shallow-water species complex and the deep-water species complex separately, NMFS will calculate the halibut PSC ratio for that sector and fishery complex by: (1) Adding up the total halibut mortality by all vessels subject to sideboards in July during 1996 through 2002; and (2) dividing this amount by the total halibut mortality by all vessels during the same period. The resulting ratio is the halibut PSC ratio for that rockfish cooperative for that fishery complex.	See general sideboard restrictions.	
How is the annual halibut PSC sideboard limit determined?	For each sector, the halibut PSC sideboard ratio is multiplied by the total halibut PSC limit for the deep-water species complex, or the shallow-water species complex, as applicable, in the GOA. If the halibut PSC limit is divided by management area and season, then the annual halibut PSC sideboard limit is proportionally divided among areas and seasons.	See general sideboard restrictions.	

*Management of the Sideboards*

If NMFS determines that a specific sideboard limit for a directed fishery is small and insufficient to support any retained catch, then the directed fishing allowance for that sideboard fishery may be set to zero for a particular sector, fishery, or area. This determination would be made based on the estimated harvest rates in the fishery, the size of the sideboard limit, and whether that limit can support a directed fishery. The notification of the directed fishing allowance would be established in the harvest specifications that define the allocations to the various fishery components.

After NMFS determines which vessels and LLP licenses would be subject to sideboards, NMFS would inform each

vessel owner and LLP license holder in writing of the type of sideboard limitation, provide an opportunity to challenge these findings, and issue a revised Federal fisheries permit and/or LLP license that displays the limitation on the face of the permit or license.

A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a sideboard limitation could request reconsideration. All requests for reconsideration would have to be submitted in writing to NMFS, together with any documentation or evidence supporting the request. If the request for reconsideration were denied, affected persons could appeal that decision using existing appeals procedures (see § 679.43 for additional details). During

an appeal, an LLP holder appealing the sideboard restrictions applicable to that LLP license or vessel could fish with that vessel or LLP license under appeal in the limited access fishery. Until final agency action on the appeal, NMFS would not reissue that person an LLP license with associated QS. This would limit a person from assigning that LLP license to a rockfish cooperative.

*Summary of CFQ Allocations, TACs, and Sideboard Limit Assignments*

The assignment of the combination of CFQ allocations, TACs, and sideboards among the various sectors, fisheries, and rockfish cooperatives is complex. Table 11 summarizes the allocations and sideboards that would apply to components in the Program.

TABLE 11.—ALLOCATIONS AMONG THE VARIOUS COMPONENTS OF THE PROGRAM

Fishery component	QS and CFQ			Sideboard limits		
	Primary species	Secondary species	Halibut PSC	Groundfish	Shallow-water halibut	Deepwater halibut
Catcher vessel rockfish cooperative.	Allocation to the rockfish cooperative of CFQ based on the sum of the QS held by all the members. This allocation is for the exclusive use of the rockfish cooperative that holds the allocation. CFQ may be transferred among rockfish cooperatives once allocated. CFQ may not be transferred from a cooperative in the catcher vessel sector to a cooperative in the catcher/processor sector.			Sideboard limits are established for the entire sector, and are not assigned to catcher vessel rockfish cooperatives.		

TABLE 11.—ALLOCATIONS AMONG THE VARIOUS COMPONENTS OF THE PROGRAM—Continued

Fishery component	QS and CFQ			Sideboard limits		
	Primary species	Secondary species	Halibut PSC	Groundfish	Shallow-water halibut	Deepwater halibut
Catcher vessel limited access fishery.	The limited access fishery TAC is based on the sum of the QS assigned to the limited access fishery. This TAC may be harvested by any eligible rockfish harvester participating in the limited access fishery.	No allocation is made. The limited access fishery is subject to an MRA specific to the Program. Halibut is managed as a PSC and is debited off of the general halibut mortality limit applicable to the GOA.		Sideboard limits are established for the entire sector.		
Catcher/processor rockfish cooperative.	Allocation to the rockfish cooperative of CFQ based on the sum of the QS held by all the members. This allocation is for the exclusive harvest of the rockfish cooperative that holds the CFQ. CFQ may be transferred among rockfish cooperatives once allocated.			Sideboard limits are assigned to a catcher/processor rockfish cooperative based on the sideboard ratio attributed to vessels and LLP license that are participating in that rockfish cooperative.		
Catcher/processor limited access fishery.	The limited access fishery TAC is based on the sum of the QS assigned to the limited access fishery. This TAC may be harvested by any eligible rockfish harvester participating in the limited access fishery.	No allocation is made. The limited access fishery is subject to an MRA specific to the Program. Halibut is managed as a PSC and is debited off of the general halibut mortality limit applicable to the GOA.		Sideboard limits are established for the entire sector. Any sideboard limit that is not assigned to a catcher/processor rockfish cooperative is the amount established for the catcher/processor sector, which includes the limited access fishery and vessels in the opt-out fishery.		
Catcher/processor opt-out fishery.	No allocation is made. The opt-out fishery is subject to an MRA applicable to that directed fishery. Vessels in the opt-out fishery may not direct fish in the Central GOA for northern rockfish, Pacific ocean perch, or pelagic shelf rockfish.			Sideboard limits are established for the entire sector. Any sideboard limit that is not assigned to a catcher/processor rockfish cooperative is the amount established for the catcher/processor sector, which includes the limited access fishery and vessels in the opt-out fishery.		

### Entry Level Fishery

In addition to rockfish cooperatives, limited access fisheries, and a catcher/processor opt-out fishery, the Program would establish an entry level fishery for all persons who are not eligible rockfish harvesters or processors. NMFS would allocate 5 percent of the Central GOA TAC in the northern rockfish, pelagic shelf rockfish, and Pacific ocean perch fisheries to the entry level fishery. This fishery would provide opportunities for harvesters and processors who had not traditionally participated in the Central GOA rockfish fisheries.

NMFS would not allocate the entry level fishery secondary species, halibut PSC, or sideboards. NMFS would assign TAC of northern rockfish, pelagic shelf rockfish, and Pacific ocean perch to the

entry level fishery so that 50 percent (or 2.5 percent of the combined TAC for the three rockfish fisheries) would be assigned to trawl catcher vessels and 50 percent (2.5 percent of the combined TAC for the three rockfish fisheries) would be assigned for fixed gear catcher vessels. Historically, Pacific ocean perch has been harvested almost exclusively with trawl gear. Northern rockfish and pelagic shelf rockfish have been harvested by fixed gear vessels to a limited degree. Rather than allocate Pacific ocean perch equally between the trawl and fixed gear vessels, resulting in Pacific ocean perch remaining unharvested by fixed gear vessels, NMFS would allocate Pacific ocean perch to entry level trawl vessels first. NMFS would allocate any remaining pounds up to the combined 2.5 percent TAC for the three rockfish species from

the TAC that would be assigned to northern rockfish and pelagic shelf rockfish. In most years, this would result in Pacific ocean perch comprising most of the allocation to trawl gear vessels.

Harvests of other species in the entry level fishery would be governed by an MRA that applies to vessels targeting these species (see Table 30 to part 679 in the regulatory text for more detail). The entry level fishery for trawl gear would begin on May 1 and end November 15, or when the TAC for each of the rockfish fisheries was reached. The entry level fishery for fixed gear would begin on January 1 and end on November 15, or when the TAC for each of the rockfish fisheries was reached.

In order to participate in the entry level fishery, a person: (1) Could not be an eligible rockfish harvester or

processor; and (2) would have to submit an application to participate in the entry level fishery by December 1. A completed application would contain the following information: (1) Contact information for the applicant; (2) identification of the LLP license and vessel to be used in the entry level fishery (vessels less than 26 feet length overall would not be required to have an LLP under existing regulations); (3) declaration that the harvester has a market for any rockfish delivered in the entry level fishery; and (4) certification by the applicant. NMFS would require a harvester that plans to harvest in the entry level fishery submit information establishing that the harvester has established a market relationship with a processor. This would reduce the potential for harvesters to apply for the entry level fishery but not be able to harvest and deliver fish for lack of a market.

NMFS would account halibut PSC available for trawl vessels in the entry level fishery against the allocation of halibut PSC to the deep-water species fishery complex for that seasonal apportionment. This apportionment is derived from the general halibut PSC apportionment for the GOA, it would not be derived from the same apportionment that applies to Halibut PSC allocated as CFQ, or the sideboard limits for the non-entry level portion of the fishery. If the Halibut PSC allocation in the deep-water fishery complex has been reached or exceeded for that seasonal apportionment, the entry level fishery for trawl vessels, NMFS would close the fishery until deep-water species fishery complex halibut PSC was available.

Halibut PSC available for fixed gear vessels in the entry level fishery would be accounted against the allocation to the other non-trawl fishery category for that seasonal apportionment. If the halibut PSC allocation in the other non-trawl fishery category has been reached or exceeded for that seasonal apportionment, the entry level fishery for fixed gear vessels would be closed until the non-trawl deep water species fishery complex halibut PSC is available.

NMFS would make unharvested northern rockfish, pelagic shelf rockfish, or Pacific ocean perch available for harvest by trawl and fixed gear on September 1. Any unharvested rockfish in either the fixed gear or trawl gear allocations could be harvested by trawl and fixed gear vessels beginning September 1.

NMFS would maintain the authority to not open the entry level fishery if it is appropriate for conservation or other

management reasons. NMFS would consider factors such as the total allocation, anticipated harvest rates, and number of participants in making any such decision. Because participants in the entry level fishery are required to register to participate, NMFS would have information prior to the opening of the fishery to assess harvest rates and season closures.

#### Monitoring

As is the case for any quota-based program, NMFS would need to be able to accurately monitor the use of all CFQ, sideboard limits, and use caps. The primary tools for monitoring would include: (1) Requiring the use of observers aboard vessels and at processing facilities; (2) requiring that shoreside and floating processors operate under NMFS approved catch monitoring and control plans (CMCP); (3) requiring the weighing of all catch on NMFS or State of Alaska approved scales; (4) requiring that catcher/processors follow specified procedures when handling catch prior to processing; and (5) requiring that most vessels participating in the rockfish pilot program carry and use a NMFS-approved vessel monitoring system (VMS) transmitter. NMFS welcomes comment on any of the monitoring aspects of the Program.

#### Observers

Observers would be required aboard vessels and at processing facilities to adequately account for catch and bycatch in the fishery. Observer coverage would increase from existing coverage levels in most cases to ensure that catch accounting is adequate for a quota based fishery. Because this is a new program, ensuring adequate observer coverage would be particularly important for monitoring the complex suite of allocations and sideboard limits. Observer coverage would be essential to monitor halibut mortality rates in the fishery and ensure that a rockfish cooperative does not exceed its halibut PSC allocation. Observer coverage would also be essential for monitoring primary rockfish species for rockfish cooperatives and the limited access fishery, or to monitor sideboard limits.

Observer coverage would be expanded from existing levels on all vessels fishing under a CFQ permit for a rockfish cooperative, in a limited access fishery, or when subject to sideboard limits. Because much of the catch accounting for the Program would be based on shoreside delivery reports, NMFS would require observers at all processing facilities that receive primary rockfish species or secondary species.

This would include both eligible rockfish processors and any processor receiving rockfish in the entry level fishery.

Observer coverage issues were outlined in the EA/RIR/IRFA analysis prepared to support this action (see **ADDRESSES** for more information). Generally, the level and type of observer coverage required under this Program follows models that have been developed for monitoring catcher/processor vessels under the AFA and CDQ Program for catcher vessels, with some important distinctions for the catcher/processor sector. Observer coverage under the Program would maintain existing standards for observer workload restrictions (see § 679.50 for more details on workload regulations). The Program would clarify that an observer assigned to one processing facility could not be assigned to multiple facilities in a day. This would reduce potential conflicts in observer scheduling and ensure adequate coverage of Program catch on shore. Additionally, regulations would clarify that observer coverage required to monitor harvests would be separate from observer requirements in other fisheries.

#### *Observer Coverage for Rockfish Cooperatives*

Observer coverage would differ in rockfish cooperatives from the existing requirements for several reasons. Observer coverage for rockfish cooperatives would be similar to that under the CDQ Program, with some importation distinctions. Under the CDQ Program, catcher/processors may choose to designate specific hauls that are attributed to the CDQ Program. The catch from other hauls would be managed according to the directed fisheries that were open at that time. In the CDQ Program, all catch is debited against the CDQ account applicable for that vessel, and all catch is counted and debited against the CDQ allocation.

The CDQ catch accounting model is not applicable for the Program in several respects. First, under the Program, all catch from directed fishing for a primary rockfish species (e.g., Pacific ocean perch) should be counted against the CFQ. In cases where the operator of the vessel chooses which hauls are allocated to which fisheries, it introduces additional accounting complexities. Designating specific hauls prior to fishing would require notification to the observer, and should confusion arise, hauls would likely be attributed to the Program, creating the potential for additional administrative burdens should specific haul

designations be challenged, and significant new accounting burdens on observers. In any case, if a catcher/processor vessel were to designate any haul during a trip as a Program haul, full observer coverage would need to be provided. Observer and other monitoring costs would not be significantly lower if catcher/processor vessel operators were designating non-Program and Program hauls once at sea.

To avoid such complex accounting situations for a two-year pilot program, NMFS would require that all primary rockfish species, secondary species, or halibut mortality attributed to vessels in the cooperative that are specifically authorized to harvest that cooperative's CFQ to be debited against that cooperative's CFQ. NMFS would propose this catch monitoring protocol for vessels harvesting under a CFQ permit to ensure proper accounting of catch. This coverage would apply for any vessel authorized to fish under a CFQ permit from May 1 until November 15, or until a rockfish cooperative notifies NMFS that the rockfish cooperative is no longer fishing under the Program and rescind fishing privileges to any remaining CFQ. This "check out" procedure could occur after the cooperative has transferred its CFQ to another cooperative, thereby limiting the loss of any unused CFQ.

This check-out procedure would ensure that vessels are fully monitored as long as the rockfish cooperative holds CFQ. The check-out process would be made through a formal Declaration for Termination of Fishing. Once this declaration is made, the CFQ issued to that rockfish cooperative would be set to zero for all primary rockfish species, secondary species, and halibut PSC, and that cooperative could no longer receive CFQ by transfer.

If a vessel is named on an LLP license that is assigned to a cooperative, and that vessel is not authorized to fish the CFQ for that cooperative, that vessel would be subject to current non-Program observer coverage requirements. Vessels named on LLP licenses assigned to a cooperative, but not authorized to fish under a CFQ permit, could continue to fish in other non-Program fisheries. Any secondary species (e.g., Pacific cod), or halibut PSC caught by these vessels would not be debited against the CFQ for the cooperative, and would be subject to existing regulations that apply to the management of non-Program fisheries.

NMFS would also permit the authorized representative of a cooperative to redesignate the vessels assigned to fish that cooperative's CFQ. This would accommodate changes in

vessel availability and accommodate any unforeseen circumstances (e.g., mechanical failure). However, any such redesignation would need to be submitted to NMFS 48 hours prior to that vessel fishing under a CFQ permit. To ensure proper accounting of fish aboard a vessel, any vessel that is redesignated to fish under the cooperative's CFQ permit, could not have fish onboard the vessel prior to fishing under a CFQ permit. Additionally, that redesignated vessel would need to meet all other applicable monitoring requirements.

The specific level of observer coverage required for catcher/processor vessels and catcher vessels is detailed in Table 12. Generally, observer coverage is greater for catcher/processors than catcher vessels due to the nature of shipboard operations and the difficulty for one observer to adequately monitor catch.

#### *Observer Coverage for Limited Access Fisheries*

Observer coverage requirements in the limited access fisheries would be similar to those vessels assigned to cooperatives. However, observer requirements for vessels in a limited access fishery would not begin until July 1. These requirements would remain in place until November 15, or until NMFS closes directed fishing for all three of the primary rockfish fisheries for the limited access fishery. Typically, these fisheries close in mid-July. Observer coverage required for catcher/processor vessels and catcher vessels is detailed in Table 12. NMFS would require observer coverage adequate to ensure proper management of the TAC. This would be particularly critical in the limited access fisheries because the TAC assigned is likely to be small and limited observer coverage could reduce the ability of NMFS to close fisheries in a timely manner.

#### *Observer Coverage for Sideboard Fisheries*

NMFS would require observers on all vessels subject to sideboard limits that directed fish in the West Yakutat District, Central GOA, and Western GOA during July. This would help to ensure that vessels do not exceed the general sideboard limits. The sideboard limits for the Western GOA and West Yakutat District rockfish fisheries are likely to be small relative to potential harvest rates and would need to be intensively managed to ensure adequate catch accounting and avoid exceeding sideboard limits. Additionally, the sideboard limits that would be established for halibut PSC in the deep-

water and shallow-water fishery complex would need to be managed based on data gathered by observers. These halibut PSC limits are small relative to potential halibut PSC rates. Additional observer coverage for managing sideboard limits would not be required in the West Yakutat District, Central GOA, or Western GOA after July 31. Vessels fishing under a CFQ permit, or in a limited access fishery in the Central GOA after July 31, would still be subject to any applicable additional observer requirements established under this Program.

#### *Observer Communication System*

To ensure timely collection of data, NMFS would require that catcher vessels less than 125 feet length overall install and maintain a computer for use by an observer when the vessel is required to meet observer coverage requirements for the Program. This would include all catcher vessels fishing for a rockfish cooperative, in the limited entry fishery, or in the West Yakutat District, Central GOA, and Western GOA during July. Alternatively, vessels that already have computers which meet NMFS specifications could provide the observer access to that computer. NMFS would install custom software on each of these computers. This software would allow the vessel's observer to enter and edit data, which could be transferred to a disk and sent electronically to NMFS from a plant observer's computer.

Currently, all vessels that carry an observer 100 percent of the time, as well as all shoreside and stationary floating processors required to have an observer present, are required to maintain a computer for use by an observer as part of the Observer Communication System (OCS). The OCS was implemented in 1995 and is comprised of: (1) Electronic hardware that meets NMFS specifications and is supplied by the vessel, shoreside, or stationary floating processor, and (2) dedicated software provided by NMFS. This hardware and software allow observers to communicate with, and transmit data to, NMFS.

Although a component of the OCS allows observers to communicate with and transmit data directly to NMFS, all participating catcher vessels that are not currently required to carry an observer 100 percent of the time (those less than 125 feet) would only be required to provide the computer component of the OCS. This is because these vessels make short duration trips and, at this time, the costs of requiring communications equipment outweigh the benefits of

increased timeliness of data transmission.

NMFS anticipates that enabling observers to enter and send their data electronically would result in significant reductions in the time required to provide data to NMFS and rockfish cooperative managers. Under the Program, vessels and rockfish cooperatives would be required to monitor their catch and stop fishing when target and PSC allocations are reached. For catcher vessels, target species would be required to be retained and delivered to a shore based processor where they can be weighed and accounted for on a trip by trip basis. Information on these species would be available within 2–3 days of delivery. However, halibut would be required to be returned to the sea with minimal injury, and, as mentioned above, catch accounting would be based on expanded observer samples. Observer data from vessels is faxed to NMFS, keypunched by NMFS staff, and typically made available within a few days of receipt. However, observers are often not able to fax their data from the current trip. Rather, NMFS staff typically receive data from the previous trip. Altogether, delays with faxing data could result in up to two weeks delay in making data available to rockfish

cooperative and NMFS managers. When seasonal catch amounts near allocation limits, this could delay vessels' departures until halibut PSC data become available.

While fishing under the Program would slow as a result of rationalization, these delays could result in increased costs to vessels due to additional time spent in port. Additionally, NMFS in-season managers may choose not to open directed sideboard fisheries if data are not received in enough time to make timely closure decisions and there is a risk of overfishing. This would reduce the potential revenue of participating vessels and processors.

Data entered electronically by observers also result in significant improvements to overall data quality. Custom software provided by NMFS has several built-in data checking functions that will not allow some erroneous information to be entered, and automatically checks for likely keypunch errors. Additionally, NMFS staff that identify data errors may be able to resolve these errors quickly by working with the observer. This could result in improved management decisions by rockfish cooperatives and NMFS managers. The computer hardware and software requirements are

specified in the regulatory text at § 679.28.

Alternatives to requiring computers on catcher vessels participating in the Program include allowing vessel observers to enter and send data on a shoreside computer and requiring observer providers to purchase computers to be deployed with the observer. NMFS considered and rejected these alternatives for the following reasons. First, allowing observers to enter data on a shoreside computer could result in significant departure delays for the vessel. An observer would have to arrange a time when other vessel observers, or the plant observer, were not using the computer. Then they would have to enter and send their data. The time needed to complete these activities could take longer than the offload of catch and delay departure of the vessel. Second, because of the service delivery model used to procure observers, there are logistical concerns if observer providers were required to provide computers for observers.

Table 12 summarizes the observer requirements for the various components of the Program. Unless noted, the Program would not affect existing observer coverage that may apply to a vessel or processor when they are engaged in non-Program fisheries.

TABLE 12.—OBSERVER REQUIREMENTS IN THE PROGRAM

Component	Requirement	When applicable
A catcher/processor fishing in a rockfish cooperative.	Must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest, process, or take deliveries from a catcher vessel under a CFQ permit. At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if observer workload restrictions would preclude adequate sampling.	This coverage requirement would begin on May 1 for all vessels harvesting CFQ for a rockfish cooperative and end on November 15, or upon the approval of a declaration to terminate fishing by the rockfish cooperative.
A catcher/processor fishing in a limited access fishery.	Must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest, process, or take deliveries from a catcher vessel in the limited access fishery. At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if observer workload restrictions would preclude adequate sampling.	This coverage requirement would begin on July 1 for all vessels participating in a limited access fishery and end on November 15, or when the limited access fishery for all primary rockfish species is closed by NMFS.
A catcher/processor fishing in the West Yakutat District, Central GOA, or Western GOA during the month of July.	Must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest, process, or take deliveries from a catcher vessel. At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if observer workload restrictions would preclude adequate sampling.	This coverage requirement would begin on July 1 for all vessels participating in groundfish fisheries except fixed gear sablefish in the West Yakutat District, Central GOA, and Western GOA and end on July 31.
A catcher vessel fishing in a rockfish cooperative.	Must have a NMFS-certified observer aboard at all times the vessel is used to harvest fish under a CFQ permit. The vessel must provide a computer for use by the observer for electronic data entry.	This coverage requirement would begin on May 1 for all vessels harvesting CFQ for a rockfish cooperative and end on November 15, or upon the approval of a declaration to terminate fishing by the rockfish cooperative.

TABLE 12.—OBSERVER REQUIREMENTS IN THE PROGRAM—Continued

Component	Requirement	When applicable
A catcher vessel fishing in a limited access fishery.	Must have a NMFS-certified observer aboard at all times the vessel is used to harvest fish in a limited access fishery. The vessel must provide a computer for use by the observer for electronic data entry.	This coverage requirement would begin on July 1 for all vessels participating in a limited access fishery and end on November 15, or when the limited access fishery for all primary rockfish species is closed by NMFS.
A catcher vessel fishing in the West Yakutat District, Central GOA, or Western GOA during the month of July.	Must have a NMFS-certified observer aboard at all times the vessel is used to harvest fish. The vessel must provide a computer for use by the observer for electronic data entry.	This coverage requirement would begin on July 1 for all vessels participating in ground-fish fisheries except fixed gear sablefish in the West Yakutat District, Central GOA, and Western GOA, and end on July 31.
A shoreside or stationary floating processor. ....	Must provide a NMFS-certified observer for each consecutive 12-hour period each day it receives deliveries from catcher vessels fishing in a rockfish cooperative, limited access fishery, or entry level fishery.	

*Catch monitoring and control plan (CMCP).* The owner and manager of a shoreside or stationary floating processor would have to ensure that the facility is operating under an approved CMCP whenever receiving fish allocated to the Program. An acceptable CMCP describes how landings can be monitored effectively by a single observer, how scales will be tested and used, and ensures that adequate facilities are made available for observers (see § 679.28(g) in the regulatory text for more details). The CMCP requirements apply to the AFA, and the Program would not modify these requirements but merely extends their applicability to processing facilities participating in this Program.

*Special catch handling requirements for catcher/processors.* NMFS recognizes that there would be a strong incentive for Program participants to under-report the amount of halibut caught as bycatch. Halibut PSC may not be retained by the vessel and thus has no economic value. However, it is quite possible that the lack of sufficient halibut PSC could limit the amount of primary rockfish species harvested by Program participants and under reported halibut PSC could potentially allow the under reporting vessel or rockfish cooperative to harvest a larger amount of target species. This is particularly true for vessels in rockfish cooperatives because this Program would allocate a share of available halibut PSC to rockfish cooperatives as CFQ. Lack of sufficient halibut PSC CFQ could limit the ability of rockfish cooperatives to fully harvest their CFQ for primary rockfish species and secondary species.

Both catcher vessels and catcher/processor vessels would be monitored to ensure proper compliance with all reporting requirements. However, the opportunity to under-report halibut PSC would be greater on catcher/processor

vessels than catcher vessels due to the placement of observer sampling stations and construction of the vessels. These factors reduce the ability for observers to adequately monitor the passage of fish, particularly halibut PSC, from the net through the processing facilities. In order to ensure proper catch accounting on catcher/processors, NMFS has developed a set of special catch handling requirements for catcher/processors. In brief, these special catch handling requirements would:

1. Prohibit a vessel from having fish remain on deck outside of the codend;
2. Prohibit the use of multiple lines for conveying the fish between the bins and the area where unsorted catch is sampled by the observer; and
3. Require observation and monitoring of all crew activities within any bin or tank prior to the observer sampling unsorted catch.

Catcher/processors may facilitate observation and monitoring of crew activities within a bin or tank by one of three options:

1. Prohibit crew members from entering bins unless the observer is able to monitor all crew activities within the bin;
2. Install viewing ports in the bins; or
3. Install video monitoring system in the bins.

Each vessel participating in a Program fishery must choose one of these options.

Vessel operators which choose the first option must ensure that crew members do not enter a bin when fish are moving out of the bin, unless the observer has been given a chance to observe the activities of the crew inside the bin. Based on conversations with vessel owners and operators in this sector, a crew member may be required to be inside the bin to facilitate the movement of fish from the bin. Crew members would be allowed inside bins if the flow of fish has been stopped

between the tank and the location where the observer collects unsorted catch, all catch has been cleared from all locations between the tank and the location where the observer collects unsorted catch, and the observer has been given notice that the vessel crew must enter the tank. When informed by an observer that all sampling has been completed for a given haul, crew would be able to enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station. Vessel operators may be able to use water to facilitate the movement of fish in some fisheries. However, industry has indicated that water may degrade the quality of fish, which could decrease the value of these fish. Therefore, options were developed to allow a person to see inside the bin while fish are exiting the bin, and ensure that presorting activities are not occurring.

Vessels that choose the second option would be required to provide a viewing window into the bin. The observer must be able to see all actions of the crew member inside the bin from the same position they are conducting their normal sampling duties. For example, while the observer is sorting catch at the observer sample station table, crew member activities inside the bin must be viewable by the observer through the window from the sample station table. This option would be acceptable for vessels that may not need a crew member in the bin frequently or have uniformly shaped bins and an observer sampling station in close proximity to the bin area.

Vessels which choose the third option would be required to develop and install a digital video monitoring system. The system would include a sufficient number of cameras to view all activities of anyone inside the bin. Video cameras would be required to record images in color and in low light



conditions. To ensure that an observer can monitor crew member activities in the bin while sampling, a color monitor would be required to be located in the observer sampling station. An observer would be given the opportunity to review any video data at any time during a trip. Each video system would be required to provide enough storage capacity to store all video data for an entire trip. Because NMFS may not be aware of potential presorting violations until after an observer disembarks the vessel and is debriefed, the vessel must retain all data for a minimum of 120 days from the beginning of each trip unless notified by NMFS that the data may be removed. Specific requirements for cameras, resolution, recording formats, and other technical information is detailed in the regulatory text under § 679.84(a) through (e).

If at any time during a trip, the viewing port or video options do not allow an observer to monitor crew activities within the fish bin or do not meet the required specifications, the vessel must revert to the first option and prohibit crew from entering the bin. The use of any of these three options would be approved by NMFS during the vessel's annual observer sampling station inspection as described at § 679.28(d).

*Vessel Monitoring System (VMS).* As is required for many other rationalization programs in the North Pacific, most vessels participating in the Program would be required to install, maintain, and operate an electronic VMS while fishing. A VMS allows NMFS to track a vessel's location, providing useful enforcement information and safety benefits by providing additional information during search and rescue operations. Currently, a VMS is required for any vessel with a Federal fisheries permit endorsed for Pacific cod, pollock, or Atka mackerel that is operating in any reporting area off Alaska when the fishery for which the vessel is endorsed is open. VMS is also required for vessels operating in the AFA and BSAI Crab Rationalization Program. The Program would extend existing VMS coverage to any vessel with a Federal fisheries permit endorsed for a Program fishery and would require that those vessels have a transmitting VMS on board at all times when operating off Alaska when the Program fishery for which they are endorsed is open. Non-trawl vessels participating only in the entry level fixed-gear fishery would be exempted from the new VMS requirements but would still be required to use a VMS if endorsed for other species/gear combinations for which

VMS is required. The existing VMS requirements are detailed in § 679.28(f).

The Program would require that all vessels operating in a rockfish cooperative, limited access fishery, opt-out fishery, or trawl gear entry level fishery use a VMS. The EA/RIR/IRFA prepared for this action (see **ADDRESSES**) indicated that all of the vessels that have legal landings in the Central GOA rockfish fishery are currently required to use a VMS. Some of the trawl vessels that choose to participate in the entry level fishery may not already be covered under existing VMS requirements for directed fishing in the Atka mackerel, Pacific cod, or pollock fisheries. If vessels participated in the entry level fishery, a VMS would be required. A VMS would not be required for vessels fishing in the fixed gear portion of the entry level fishery. The EA/RIR/IRFA prepared for the Program indicates that there is likely to be relatively little participation by fixed gear vessels in the entry level fishery. The Council recommended and the Program would exempt fixed gear entry level vessels from the VMS requirements that apply to other vessels.

*Changes in recordkeeping and reporting.* The Program would require some modification of existing recordkeeping and reporting (R&R) requirements in § 679.5. In addition to the R&R requirements already described to apply for and participate in the Program, R&R requirements would be revised to require Program participants use the Shoreside Processor Electronic Logbook Report (SPELR) to report data. The SPELR is software used by shoreside processors and stationary floating processors (SFPs) to electronically report groundfish data to NMFS.

As groundfish, rockfish are recorded and reported through existing R&R systems described in the regulations under § 679.4. Operators of catcher/processors and managers of shoreside processors or SFPs that are permitted as rockfish cooperatives would be required to submit a rockfish cooperative catch report detailing each cooperative's delivery of fish. Operators of catcher/processors and managers of shoreside processors or SFPs that are permitted as rockfish cooperatives would be required to submit a rockfish cooperative annual report detailing the use of the cooperative's CFQ.

#### **Integration With BSAI Crab Rationalization and AFA Sideboards**

This Program would implement limits or allocations for numerous fisheries in the GOA, but is not otherwise intended to affect management of existing

sideboard limits that exist in other fisheries. The management of allocations under this Program would be integrated with existing limitations in other rationalized fisheries. Under the AFA, the inshore sector is limited to their historic harvests in the GOA. This would continue to be the case under this Program. Vessels subject to AFA sideboards in the GOA would be exempt from the sideboard provisions applied under the Program, but the Program would not exempt AFA vessels from AFA sideboards. Similarly, vessels and LLP licenses that are subject to sideboard provisions in the BSAI Crab Rationalization Program would continue to be subject to the sideboards implemented under that program. This proposed action would not modify the regulations that apply to sideboards in the AFA or the BSAI Crab Rationalization Program.

#### **Classification**

At this time, NMFS has not determined that Amendment 68 and the provisions in this rule that would implement Amendment 68 are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the determination that this proposed rule is consistent, will take into account the data, views, and comments received during the comment period (see **DATES**).

#### *Environmental Assessment*

The Council prepared an environmental assessment for Amendment 68 that discusses the impact on the environment as a result of this rule. A copy of the environmental assessment is available from NMFS (see **ADDRESSES**). The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for rationalization of the Central GOA rockfish fisheries, including the "no action" alternative. The RIR presents the complete set of alternatives, in various combinations with the complex suite of options. The EA presents three alternative programs for management of the Central GOA rockfish fisheries for catcher vessels: Status Quo/No Action (Alternative 1); rockfish cooperative management with a limited license program for processors (Alternative 2); and rockfish cooperative management with linkages between rockfish cooperatives and processors (Alternative 3). Three alternatives for catcher/processors also were considered: Status Quo/No Action (Alternative 1); rockfish cooperative management (Alternative 2); and a sector allocation (Alternative 3).

Alternative 3 for catcher vessels and Alternative 2 for catcher/processors were combined to form the Council's preferred alternative—the rockfish cooperative alternative. These alternatives constitute the suite of “significant alternatives,” under the proposed action, for purposes of the Regulatory Flexibility Act (RFA). Each is addressed briefly below. Please refer to the EA and its appendices for more detail. The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities.

Under the status quo, the Central GOA rockfish fisheries have followed the well known pattern associated with managed open access. Central GOA rockfish fisheries have been characterized by a “race-for-fish” capital stuffing behavior, excessive risk taking, and a dissipation of potential rents. Participants in these fisheries are confronted by significant surplus capacity (in both the harvesting and processing sectors), and widespread economic instability, all contributing to resource conservation and management difficulties.

In response to desires to improve economic, social, and structural conditions in many of the rockfish fisheries, the Council found that the status quo management structure was causing significant adverse impacts to the participants in these fisheries. As indicated in the IRFA, many small entities, as defined under RFA, are negatively impacted under current open access regulations. The management tools in the existing FMP (e.g., time/area restriction and LLP licenses) do not provide managers with the ability to effectively solve these problems, thereby making Magnuson-Stevens Act goals difficult to achieve and forcing reevaluation of the existing FMP.

In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council determined that the institution of some form of rationalization program was needed to improve fisheries management in accordance with the Magnuson-Stevens Act.

The rockfish cooperative alternative would allocate annual harvesting privileges of rockfish and secondary species TAC to harvester rockfish cooperatives, creating a transferable access privilege as a share of the TAC, thus removing the “common property” attributes of the status quo on qualifying harvesters. The rationalization of the Central GOA fisheries would likely benefit the approximately 63 businesses that own harvest vessels and are considered small entities. In recent

years these entities have competed in the race for fish against larger businesses. The rockfish cooperative alternative would allow these operators to slow their rate of fishing and give more attention to efficiency and product quality.

The participants would be permitted to form rockfish cooperatives that could lease or sell their allocations, and could obtain some return from their allocations. Differences in efficiency implications of rationalization by business size cannot be predicted. Some participants believe that smaller vessels could be more efficient than larger vessels in a rationalized fishery because a vessel only needs to be large enough to harvest the cooperative's CFQ. Conversely, under open access, a vessel has to be large enough to outcompete the other fishermen and, hence, contributes to the overcapacity problems under the race for fish.

In addition, the rockfish cooperative alternative holds promise by providing efficiency gains to both small entity harvesters and the processors. Data on cost and operating structure within each sector are unavailable, so a quantitative evaluation of the size and distribution of these gains accruing to harvesters and processors under this management regime cannot be provided. Nonetheless, it appears that the rockfish cooperative alternative offers improvements over the status quo through the institution of a “rights-based management” structure. The rockfish cooperative alternative also includes provisions for fishery participants the Council expressly sought to include—specifically, rockfish processors and the community in which those processors have historically been active.

The rockfish cooperative alternative appears to minimize negative economic impacts on small entities to a greater extent than an alternative that allocates limited processing licenses (Alternative 2 for catcher vessels), or that defines a smaller portion of the TAC for competition among a fixed number of vessels (Alternative 3 for catcher/processors).

After an exhaustive public process spanning several years, the Council concluded that the Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

#### *Regulatory Impact Review (RIR)*

An RIR was prepared to assess all costs and benefits of available regulatory

alternatives. The RIR considers all quantitative and qualitative measures. The Program was chosen based on those measures that maximize net benefits to affected participants in the Central GOA rockfish fisheries. Specific aspects of the RIR are discussed under the heading of the IRFA.

#### *Initial Regulatory Flexibility Analysis (IRFA)*

An IRFA was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble. Copies of the EA/RIR/IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). A summary of that analysis follows.

*Why action by the agency is being considered and objectives of, and legal basis for, the proposed rule.* The IRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the proposed rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. Section 802 of the Consolidated Appropriations Act of 2004 and the Magnuson-Stevens Act provide the legal basis for the proposed rule, namely to achieve the objective of reducing excessive fishing capacity and ending the race for fish under the current management strategy for commercial fishing vessels operating in the Central GOA rockfish fisheries. By ending the race for fish, NMFS expects the proposed action to increase resource conservation, improve economic efficiency, and address social concerns.

*Number of small entities to which the proposed rule will apply.* The IRFA contains a description and estimate of the number of small entities to which the proposed rule would apply. The IRFA estimates that as many as 63 entities, that own approximately 48 catcher vessels and 15 catcher/processor vessels, would be eligible to receive QS under the Program. The IRFA estimates that approximately 171 trawl vessels and 900 non-trawl vessels could participate in the entry level fishery. The number of vessels that would choose to participate in the entry level fishery component of the Program is not known; therefore, there is no estimate of the number of entities in the entry level fishery that are directly regulated under this Program.

In addition, six entities that process rockfish are estimated to be eligible rockfish processors and would be

regulated under this Program. None of these eligible rockfish processors are estimated to be small entities based on the number of persons employed by these processors. Additionally, some of these eligible rockfish processors are estimated to be involved in both the harvesting and processing of seafood products and exceed the \$4.0 million in revenues as a fish harvesting operation. Some processors that are not eligible rockfish processors may choose to compete for landings from the entry level fishery and would be regulated by this Program. Some of these processors may be small entities. The extent of participation by small entities in the processing segment of the entry level fishery cannot be predicted.

Of the estimated 63 entities owning vessels eligible for fishing under the Program (other than the entry-level fishery), 45 are estimated to be small entities because they generated \$4.0 million or less in gross revenue based on participation in 1996 through 2002. All 15 of the entities owning eligible catcher/processor vessels are non-small entities as defined by the RFA. No catcher vessel individually exceeds the small entity threshold of \$4.0 million in gross revenues. At least three catcher vessels are believed to be owned by entities whose operations exceed the small entity threshold, leaving an estimated many as 45 small catcher vessel entities that are directly regulated by this action. The ability to estimate the number of small entities that operate catcher vessels regulated by this action is limited due to incomplete information concerning vessel ownership.

It is likely that a substantial portion of the catcher vessel participants in the entry level fishery will be small entities. Based on data from NOAA Fisheries, there are approximately 171 LLP licenses that would be qualified to fish in the Central GOA entry level trawl fishery, and 900 LLP licenses that would qualify to fish in the entry level fixed gear fishery. However, it is not possible to determine how many persons may hold these LLP licenses and chose to participate in the entry level fishery at the time of application to participate in the fishery. The number of persons holding LLPs is likely to be less than the total number of LLP licenses that may be used to participate in the entry level fishery because a person may hold more than one LLP license at a time.

Six entities made at least one rockfish landing from 1996 to 2002, but none appeared to qualify as an eligible rockfish harvester. Five of these entities are not small entities and one entity

qualifies as "small" by Small Business Administration (SBA) standards. The non-small entities owned five catcher/processors. The one small entity owns a catcher vessel. Entities that do not qualify for the Program either left the fishery, currently fish under interim LLP licenses, or do not hold an LLP license. Moreover, the vessels the IRFA considers "non-qualified" could not or would not be allowed to continue fishing under the current LLP. The impacts to the small entities that would be prohibited from fishing by the LLP were analyzed in the RIR/IRFA and Final Regulatory Flexibility Analysis (FRFA) prepared for the LLP. Therefore, the non-qualified vessels are not considered impacted by the proposed rule and are not discussed in this IRFA.

For purposes of the RIR, the community of Kodiak, Alaska, could be directly impacted by the Program. All of the eligible rockfish processors are located in Kodiak. The specific impacts on Kodiak cannot be determined until NMFS issues QS and eligible rockfish harvesters begin fishing under the Program. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the RIR prepared for this action (see **ADDRESSES**).

*Projected reporting, recordkeeping and other compliance requirements.* Implementation of the Program would change the overall reporting structure and recordkeeping requirements of the participants in the Central GOA rockfish fisheries. All participants would be required to provide additional reporting. Each harvester would be required to track harvests to avoid exceeding his or her allocation. As in other North Pacific rationalized fisheries, processors would provide catch recording data to managers to monitor harvest of allocations. Processors would be required to record deliveries and processing activities to aid in the Program administration.

NMFS would be required to develop new databases to monitor harvesting and processing allocations. These changes could require the development of new reporting systems.

To participate in the Program, persons would be required to complete application forms, transfer forms, reporting requirements, and other collections-of-information. These forms are either required under existing regulations or are required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms. With the

exception of specific equipment tests, which are performed by NMFS employees or other professionals, basic word processing skills are the only skills needed for the preparation of these reports or records.

NMFS has estimated the costs of complying with the reporting requirements based on the burden hours per response, number of responses per year, and a standard estimate of \$25 per burden hour. Persons would be required to complete most of the forms at the start of the Program, such as the application to participate in the Program. Persons would be required to complete some forms every year, such as the application to fish in a rockfish cooperative, limited access fishery, or opt-out fishery. Additionally, reporting for purposes of catch accounting, or transfer of CFQ among rockfish cooperatives would be completed more frequently.

It would cost participants in the Program an estimated \$56 to complete applications to participate in the Program, \$55 for the annual application to participate in a rockfish cooperative, limited access fishery, or opt-out, \$61 to complete a transfer of CFQ, and \$61 to complete a transfer of rockfish processor eligibility.

NMFS considered multiple alternatives to effectively implement specific provisions within the Program through regulation. In each instance, NMFS attempted to impose the least burden on the public, including the small entities subject to the Program.

The groundfish landing report (internet version and optional fax version) would be used to debit CFQ. All retained catch must be weighed, reported, and debited from the appropriate account under which the catch was harvested. Under recordkeeping and reporting, NMFS considered the options of a paper based reporting system or an electronic reporting system. NMFS chose to implement an electronic reporting system as a more convenient, accurate, and timely method. Additionally, the proposed electronic reporting system would provide continuous access to accounts. These provisions would make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor their accounts and fishing activities. NMFS recognizes that participants in the current fishery might be more comfortable with the paper based fish ticket system, but believes that the added benefits of the electronic reporting system outweigh any benefits of the paper based system. However, NMFS would also provide an

optional backup using existing telecommunication and paper based methods, which would reduce the burden on small entities in more remote areas possessing less electronic infrastructure.

Under this proposed rule, catcher/processors would be required to purchase and install motion-compensated scales to weigh all fish at-sea. Such scales would cost on a one-time basis, approximately \$69,000 per vessel. Currently a flow scale costs \$60,000, an observer platform scale \$8,500, and test weights \$500. Additional costs on a one-time basis associated with the installation of the scales are estimated to be between \$10,000 and \$40,000, depending on the extent to which the vessel must be reconfigured to install the scale. Scale monitoring requirements would cost approximately \$6,235 per year. Based on discussions with equipment vendors, NMFS estimates that six catcher/processors, one of which is a small entity, would choose to fish under the Program and would be required to have scales.

NMFS would increase observer coverage for Program participants in most cases. In similar NMFS managed quota fisheries, NMFS requires that all fishing activity be observed. NMFS must maintain timely and accurate records of harvests in fisheries with small allocations that are harvested by a fleet with a potentially high harvest rate. Additionally, halibut PSC and halibut mortality rates must be monitored. Such monitoring can only be accomplished through the use of onboard observers. Although this imposes additional costs, participants in the fishery can form rockfish cooperatives, which would limit the number of vessels required to harvest a cooperative's CFQ, and organize fishing operations to limit the amount of time when additional observer coverage would be required and offset additional costs. The exact overall additional observer costs per vessel cannot be predicted because costs will vary with the specific fishing operations of that vessel. NMFS estimates that a requirement for increased observer coverage would cost approximately \$400 per day. Additional costs may be associated with catcher/processors that reconfigure their vessels to ensure that adequate space is available for the additional observer. These costs cannot be predicted and will vary from vessel to vessel depending on specific conditions on that vessel.

For monitoring of processing activity, it would cost shore-based processors approximately \$416 to complete the

catch monitoring plan and an additional \$2,800 annually to complete all landing reports.

NMFS determined that a VMS program is essential to the proper enforcement of the Program. Therefore, all vessels, except for non-trawl entry level vessels, participating in the Program would be required to participate in a VMS program. Depending on which brand of VMS a vessel chooses to purchase, NMFS estimates that this requirement would impose a cost of \$2,000 per vessel for equipment purchase, \$780 for installation and maintenance, and \$5 per day for data transmission costs. NMFS does not estimate that any additional vessels would incur this cost if they choose to participate in the Program. This estimate is based on information on those vessels that may participate in the Program which are already subject to VMS requirements under existing regulations.

NMFS has determined that special catch handling requirements for catcher/processors may subject vessel owners and operators to additional costs depending on the monitoring option chosen. The costs for providing line of sight for observer monitoring are highly variable depending on bin modifications the vessel may make, the location of the observer sample station, and the type of viewing port installed. These costs cannot be estimated with existing information.

Because NMFS has chosen to implement the video option using performance standards, the costs for a vessel to implement this option could be quite variable, depending on the nature of the system chosen. In most cases, the system would be expected to consist of one digital video recorder (DVR)/computer system and between two and five cameras. DVR systems range in price from \$1,500 to \$10,000, and cameras cost from \$75 to \$300 each. Data storage costs will vary depending on the frame rate, color density, amount of compression, image size, and need for redundant storage capacity. NMFS estimates data storage will cost between \$400 and \$3,000 per vessel.

Installation costs will be a function of where the DVR/computer can be located in relation to an available power source, cameras, and the observer sampling station. NMFS estimates that a fairly simple installation will cost approximately \$2,000, a complex installation will cost approximately \$10,000, per vessel. However, these costs could be considerably lower if the vessel owner chooses to install the equipment while upgrading other wiring. Thus, total system costs,

including DVR/computer equipment, cameras, data storage, and installation would be expected to range between \$4,050 per vessel for a very simple inexpensive system with low installation costs, and \$24,500 per vessel for a complex, sophisticated system with high installation costs.

Annual system maintenance costs are difficult to estimate because much of this technology has not been extensively used at-sea in the United States. However, we estimate an annual cost of \$680 to \$4,100 per year based on a hard disk failure rate of 20 percent per year, and a DVR/computer lifespan of three years.

*Federal rules which may duplicate, overlap or conflict with the proposed rule.* No Federal rules that may duplicate, overlap, or conflict with this proposed action have been identified.

#### *Collection-of-Information*

This rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden per response for these requirements are listed by OMB control number.

#### *OMB Control No. 0648–New (Pending Approval)*

Two (2) hours for application to participate in the Program; 2 hours for the application for CFQ; 2 hours for the application for the limited access fishery; 2 hours for the application for the entry-level fishery; 2 hours for the application to opt-out; 2 hours for the application for inter-cooperative transfer; 2 hours for the application to transfer processor eligibility; 4 hours for annual rockfish cooperative report; 6 minutes for rockfish cooperative catch report; 4 hours for a letter of appeal, if denied a permit; 15 minutes for a rockfish cooperative termination of fishing declaration; and 15 minutes for modification of the application for CFQ for vessels authorized to fish CFQ.

#### *OMB Control No. 0648–0515*

Fifteen (15) minutes for application for user ID; 35 minutes to electronically submit landing report and print receipts.

#### *OMB Control No. 0648–0330*

Forty (40) hours for complying with special catch handling requirements for catcher/processors; 40 hours for catch monitoring and control plan (CMCP).

This rule contains collection-of-information requirements subject to the PRA and which have been approved by

OMB. Public reporting burden per response for these requirements are listed by OMB control number.

OMB Control No. 0648-0213

Fourteen (14) minutes for Vessel Activity Report; 20 minutes for product transfer report; 28 minutes for catcher vessel longline and pot gear daily fishing logbook; and 41 minutes for catcher/processor longline and pot gear daily cumulative production logbook.

OMB Control No. 0648-0445

Twelve (12) minutes for VMS check-in form; 6 hours for VMS installation; 4 hours for VMS annual maintenance; and 6 seconds for each VMS transmission.

Response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to NMFS (see **ADDRESSES**), and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 23, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; and Pub. L. 108-199, 118 Stat. 110.

2. In § 679.2, add the definitions of “Cooperative fishing quota (CFQ)”, “Eligible rockfish harvester”, “Eligible rockfish processor”, “Eligible rockfish entry level harvester”, “Eligible rockfish entry level processor”, “Halibut PSC sideboard limit”, “Initial rockfish QS pool”, “Legal rockfish landing for purposes of qualifying for the Rockfish Program”, “Non-allocated secondary species”, “Official Rockfish Program record”, “Opt-out fishery”, “Primary rockfish species”, “Rockfish cooperative”, “Rockfish entry level fishery”, “Rockfish halibut PSC”, “Rockfish limited access fishery”, “Rockfish Program”, “Rockfish Program fisheries”, “Rockfish Program species”, “Rockfish Quota Share (QS)”, “Rockfish QS pool”, “Rockfish QS unit”, “Rockfish sideboard fisheries”, “Secondary species”, “Sector for purposes of the Rockfish Program”, “Sideboard limit for purposes of the Rockfish Program”, “Sideboard ratio for purposes of the Rockfish Program”, and “Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program” in alphabetical order to read as follows:

#### § 679.2. Definitions.

\* \* \* \* \*

*Cooperative fishing quota (CFQ) means:* (1) The annual catch limit of a primary rockfish species or secondary species that may be harvested by a rockfish cooperative that may lawfully harvest an amount of the TAC for a primary rockfish species or secondary species while participating in the Rockfish Program;

(2) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while participating in the Rockfish Program (see *rockfish halibut PSC* in this section).

\* \* \* \* \*

*Eligible rockfish entry level harvester means* a person who is permitted by NMFS to harvest fish in the rockfish entry level fishery.

*Eligible rockfish entry level processor means* a person who is permitted by NMFS to receive and process fish harvested under the rockfish entry level fishery.

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

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

\* \* \* \* \*

*Halibut PSC sideboard limit means* the maximum amount of halibut PSC that may be used from July 1 through July 31 by eligible rockfish harvesters or rockfish cooperatives in the West Yakutat District, Central GOA, and Western GOA as established under § 679.82(d), as applicable.

\* \* \* \* \*

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

\* \* \* \* \*

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

(1) *For catcher vessels:* (i) The harvest of groundfish from the Central GOA regulatory area that is offloaded and recorded on a State of Alaska fish ticket during the directed fishing season for that Primary rockfish fishery as established in Table 28 to this part; and

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

(2) *For catcher/processors:* (i) The harvest of groundfish from the Central GOA regulatory area that is recorded on a Weekly Production Report based on harvests during the directed fishing season for that Primary rockfish fishery as established in Table 28 to this part; and

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

\* \* \* \* \*

*Non-allocated secondary species (see Rockfish Program species in this section).*

\* \* \* \* \*

*Official Rockfish Program record means* information used by NMFS necessary to determine eligibility to participate in the Rockfish Program and

assign specific harvest or processing privileges to Rockfish Program participants.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

*Rockfish entry level fishery* means the fishery conducted under the Rockfish Program by eligible rockfish entry level harvesters and eligible rockfish entry level processors.

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

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

*Rockfish Program* means the Program authorized under the authority of Section 802 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199) and implemented under subpart G of this part to manage Rockfish Program fisheries.

*Rockfish Program fisheries* means those directed fisheries that catch primary rockfish species, secondary species, rockfish halibut PSC, and rockfish sideboard fisheries.

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

(1) *Primary rockfish species* means northern rockfish, Pacific ocean perch, and pelagic shelf rockfish.

(2) *Secondary species* means the following species:

(i) Sablefish not allocated to the IFQ Program;

(ii) Thornyhead rockfish;

(iii) Pacific cod for the catcher vessel sector;

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

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

(3) *Non-allocated secondary species* means the following species:

(i) Atka mackerel, arrowtooth

flounder, deep water flatfish, flathead sole, “other species,” pollock, rex sole, and shallow water flatfish;

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

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

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

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

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

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

\* \* \* \* \*

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

*Sector for purposes of the Rockfish Program means:* (1) Catcher/processor sector means those eligible rockfish harvesters who hold an LLP license with a catcher/processor designation and who are eligible to receive rockfish QS that may result in CFQ that may be harvested and processed at sea.

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

\* \* \* \* \*

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

(2) The maximum amount of Pacific cod that may be harvested by all vessels in all areas as specified under § 679.82(d) through (h), as applicable; or

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

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

\* \* \* \* \*

*Ten percent or greater direct or indirect ownership interest for purposes*

*of the Rockfish Program* means a relationship between two or more entities in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, another entity; or a third entity which directly or indirectly owns or controls a 10 percent or greater interest in both. For the purpose of this definition, the following terms are further defined:

(1) *Entity*. An entity may be a person, association, partnership, joint-stock company, trust, or any other type of legal entity; any receiver, trustee in bankruptcy or similar official or liquidating agent; or any organized group of persons whether incorporated or not.

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

(3) *Controls a 10 percent or greater interest*. An entity controls a 10 percent or greater interest in a second entity if the first entity:

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

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

(4) *Otherwise controls*. An entity otherwise controls another entity, if it has:

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

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

(iii) The right to direct, or does direct, the rockfish fishery processing activities of that entity;

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

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

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

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

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

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

\* \* \* \* \*

3. In § 679.4, paragraphs (a)(1)(xii), (b)(10), (k)(11), and (n) are added to read as follows:

#### § 679.4 Permits.

(a) \* \* \*

(1) \* \* \*

If program permit or card type is:

Permit is in effect from issue date through end of:

For more information, see . . .

(xii) Rockfish Program

(A) CFQ .....	Specified fishing year .....	§ 679.81(e)(4).
(B) Rockfish Entry Level Fishery .....	Specified fishing year .....	§ 679.81(e)(7).
(C) Opt-out Fishery .....	Specified fishing year .....	§ 679.81(e)(6).
(D) Rockfish Limited Access Fishery .....	Specified fishing year .....	§ 679.81(e)(5).

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

(k) \* \* \*

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

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

\* \* \* \* \*

(n) *Rockfish Program*—(1) *Cooperative fishing quota (CFQ)*. (i) A CFQ permit is issued annually to a rockfish cooperative if the members of that rockfish cooperative have submitted a complete and timely application for CFQ as described at § 679.81(e)(4) that is subsequently approved by the Regional Administrator. A CFQ permit authorizes a rockfish cooperative to participate in the Rockfish Program. The CFQ permit will indicate the amount of primary rockfish species or secondary species that may be harvested by the rockfish cooperative, and the amount of rockfish halibut PSC that may be used by the rockfish cooperative. The CFQ permit will list the members of the rockfish cooperative, the vessels that are authorized to fish under the CFQ permit for that rockfish cooperative, and the eligible rockfish processor with whom that rockfish cooperative is associated, if applicable.

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

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

(B) Until the amount harvested is equal to the amount specified on the CFQ permit for a specific primary rockfish species or secondary species;

(C) Until the amount of halibut PSC used is equal to the amount of rockfish halibut PSC specified on the CFQ permit;

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

(E) Until the permit is amended to add or remove vessels authorized to fish the CFQ for that rockfish cooperative;

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

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

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

(2) *Rockfish cooperative termination of fishing declaration*. (i) A rockfish cooperative may choose to extinguish its CFQ permit through a declaration submitted to NMFS.

(ii) This declaration may only be submitted to NMFS using the following methods:

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

(B) Hand Delivery or Carrier. NMFS, Room 713, 709 4th Street, Juneau, AK 99801.

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

(A) CFQ permit number;

(B) The date the declaration is submitted; and

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

representative of the rockfish cooperative.

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

(v) Upon approval of a declaration, the CFQ for all primary rockfish species, secondary species, and rockfish halibut PSC assigned to that rockfish cooperative will be set to zero and that rockfish cooperative may not receive any CFQ for any primary rockfish species, secondary species, and rockfish halibut PSC by transfer for that calendar year.

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

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

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

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

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

4. Section 679.5 is amended by:

A. Removing and reserving paragraph (a)(4).

B. Redesignating paragraphs (e)(3) through (e)(7) as paragraphs (e)(4) through (e)(8), respectively.

C. Adding paragraphs (e)(3) and (r).

D. Revising the introductory text of paragraph (e) and paragraphs (e)(1) and (e)(2).



E. In newly redesignated paragraph (e)(4), remove the phrase “paragraphs (e)(1) and (2)” and add in its place the phrase “paragraphs (e)(1), (e)(2), and (e)(3)”.

F. In newly redesignated paragraph (e)(5)(ii), remove the phrase “paragraph (e)(6)” and add in its place the phrase “paragraph (e)(7)”.

G. In newly redesignated paragraph (e)(5)(iii), remove the phrase “paragraph (e)(4)(iv)” and add in its place the phrase “paragraph (e)(5)(iv)”.

H. In newly redesignated paragraph (e)(5)(iii), remove the phrase “paragraph (e)(4)(iv)” and add in its place the phrase “paragraph (e)(5)(iv)”.

The additions and revisions read as follows:

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

\* \* \* \* \*

(e) *Shoreside processor electronic logbook report (SPELR)*. The owner or manager of a shoreside processor or stationary floating processor:

(1) That receives groundfish from AFA catcher vessels or receives pollock harvested in a directed pollock fishery from catcher vessels:

(i) Must use SPELR or NMFS-approved software to report every delivery of harvest made during the fishing year, including but not limited to groundfish from AFA catcher vessels and pollock from a directed pollock fishery participant; and

(ii) Must maintain the SPELR and printed reports as described in paragraphs (e) and (f) of this section.

(2) That receives groundfish from catcher vessels that are permitted as harvesters in the Rockfish Program:

(i) Must use SPELR or NMFS-approved software to report every delivery of harvests made during the fishing year, including but not limited to groundfish from catcher vessels permitted as harvesters in the Rockfish Program; and

(ii) Must maintain the SPELR and printed reports as described in paragraphs (e) and (f) of this section.

(3) Receives groundfish and that is not required to use SPELR under paragraph (e)(1) or (e)(2) of this section:

(i) May use, upon approval by the Regional Administrator, SPELR or NMFS-approved software in lieu of the shoreside processor DCPL and shoreside processor WPR.

(ii) If using SPELR, must maintain the SPELR and printed reports as described in paragraphs (e) and (f) of this section.

\* \* \* \* \*

(r) *Rockfish Program*—(1) *General*. The owners and operators of catcher vessels, catcher/processors, shoreside

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

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

(ii) *DCPL*. Operators of catcher/processors permitted in the Rockfish Program must use a daily cumulative production logbook for trawl gear as described in paragraph (a) of this section to record Rockfish Program landings and production.

(3) *SPELR*. Managers of shoreside processors or SFPs that are permitted as processors in the Rockfish Program must use SPELR or NMFS-approved software as described in paragraphs (e) and (f) of this section, instead of a logbook and WPR, to record Rockfish Program landings and production.

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

(5) *Weekly production report (WPR)*. Operators of catcher/processors that are permitted as processors in the Rockfish Program and that use a DCPL must submit a WPR as described in paragraph (i) of this section.

(6) *Product transfer report (PTR), processors*. Operators of catcher/processors and managers of shoreside processors or SFPs that are permitted as processors in the Rockfish Program must submit a PTR as described in paragraph (g) of this section.

(7) *Rockfish cooperative catch report*—(i) *Applicability*. Operators of catcher/processors and managers of shoreside processors or SFPs that are permitted to receive fish harvested under the Rockfish Program (see

§ 679.4(m)) must submit to the Regional Administrator a rockfish cooperative catch report detailing each cooperative's delivery and discard of fish, as described in paragraph (r)(7) of this section.

(ii) *Time limits and submittal*. (A) The rockfish cooperative catch report must be submitted by one of the following methods:

(1) An electronic data file in a format approved by NMFS mailed to:

Sustainable Fisheries, P.O. Box 21668  
Juneau, AK 99802–1668; or

(2) By fax: 907–586–7131.

(B) The rockfish cooperative catch report must be received by the Regional Administrator by 1200 hours, A.L.T. one week after the date of completion of delivery.

(iii) *Information required*. The rockfish cooperative catch report must contain the following information:

(A) CFQ Permit number;

(B) ADF&G vessel registration

number(s) of vessel(s) delivering catch;

(C) Federal processor permit number of processor receiving catch;

(D) Date delivery completed;

(E) Amount of fish (in lb) delivered, plus weight of at-sea discards;

(F) ADF&G fish ticket number(s) issued to catcher vessel(s).

(8) *Annual rockfish cooperative report*—(i) *Applicability*. A rockfish cooperative permitted in the Rockfish Program (see § 679.4(m)(1)) annually must submit to the Regional Administrator an annual rockfish cooperative report detailing the use of the cooperative's CFQ.

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

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

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

(A) The cooperative's CFQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the rockfish cooperative vessels on a vessel-by-vessel basis;

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

(C) A description of the method used by the cooperative to monitor fisheries

in which cooperative vessels participated; and

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

(9) *Vessel monitoring system (VMS) requirements* (see § 679.28(f))

5. In § 679.7, paragraph (n) is added as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(n) *Rockfish Program*—(1) *General.* (i) Fail to retain any primary rockfish species caught by a vessel named on an LLP license that is assigned to a rockfish cooperative when that vessel is fishing under a CFQ permit.

(ii) Fail to retain any primary rockfish species caught by a vessel named on an LLP license that is assigned to a rockfish limited access fishery, or to a rockfish entry level fishery, when that rockfish fishery is open.

(iii) Fail to retain any secondary species caught by a vessel named on an LLP that is assigned to a rockfish cooperative when that vessel is fishing under a CFQ permit.

(iv) Fail to retain any groundfish caught by a vessel that is subject to a sideboard limit as described at § 679.82(d) through (h), as applicable, if directed fishing for that groundfish species in that area is authorized.

(v) Use an LLP license assigned to a rockfish cooperative, limited access fishery, or opt-out fishery, or rockfish entry-level fishery in any other fishery other than the fishery to which that LLP license was initially assigned for that fishing year.

(2) *Vessels operators participating in the Rockfish Program.* (i) Operate a vessel that is named on an LLP license with rockfish QS that is assigned to a rockfish cooperative and fishing under a CFQ permit and fail to follow the catch monitoring requirements detailed at § 679.84(c) through (e) from May 1:

(A) Until November 15; or

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

(ii) Operate a vessel that is named on an LLP license with rockfish QS that is assigned to a rockfish limited access fishery and fail to follow the catch monitoring requirements detailed at § 679.84(c) through (e) from July 1:

(A) Until November 15; or

(B) Until NMFS closes all directed fishing for all primary rockfish species for that rockfish limited access fishery for that sector.

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

(3) *VMS.* (i) Operate a vessel that is named on an LLP license with rockfish QS that is assigned to a rockfish cooperative and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from May 1:

(A) Until November 15; or

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

(ii) Operate a vessel that is named on an LLP license with rockfish QS that is assigned to a rockfish limited access fishery and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from July 1:

(A) Until November 15; or

(B) Until NMFS closes all directed fishing for all primary rockfish species for that rockfish limited access fishery for that sector.

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

(iv) Operate a vessel that is named on an LLP license that is assigned to the rockfish entry level fishery for trawl gear and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from July 1:

(A) Until November 15; or

(B) Until NMFS closes all directed fishing for all primary rockfish species for the rockfish entry level fishery for trawl gear.

(4) *Catcher/processor vessels participating in the opt-out fishery.*

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

(5) *Shoreside and stationary floating processors eligible for the Rockfish Program*—(i) *Catch weighing.* Process any groundfish delivered by a vessel participating in a rockfish cooperative, rockfish limited access fishery, rockfish entry level fishery, or sideboard fishery

not weighed on a scale approved by the State of Alaska. The scale must meet the requirements specified in § 679.28(c).

(ii) *Catch monitoring and control plan (CMCP).* Take deliveries of, or process, groundfish caught by a vessel in a rockfish cooperative or the rockfish limited access fishery as detailed under this subpart without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained at the facility and made available to authorized officers or NMFS-authorized personnel upon request.

(iii) *Delivery location limitations.* Receive or process outside of the geographic boundaries of the community that is designated on the permit issued by NMFS to the eligible rockfish processor any groundfish caught by a vessel while that vessel is harvesting groundfish under a CFQ permit or in a rockfish limited access fishery.

(6) *Catcher vessels participating in the Rockfish Program and rockfish entry level fishery.* Deliver groundfish harvested by a catcher vessel fishing under a CFQ permit, in a rockfish limited access fishery, or in a rockfish entry level fishery to a shoreside or stationary floating processor that is not operating under an approved CMCP pursuant to § 679.28(g).

(7) *Rockfish cooperatives.* (i) Exceed the CFQ permit amount assigned to that rockfish cooperative for that Rockfish Program species.

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

(iii) Operate a vessel with an LLP license assigned to a rockfish cooperative to fish under a CFQ permit unless the operator of that vessel, or that rockfish cooperative's authorized representative has notified NMFS that the vessel is fishing under a CFQ permit in the application for CFQ or by amending that application by notification as described under § 679.81(e)(8).

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

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

(vi) Operate a vessel fishing under the authority of a CFQ permit in the catcher/processor sector and to have any

rougheye rockfish or shorttraker rockfish aboard the vessel unless those fish were harvested under the authority of a CFQ permit.

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

6. In § 679.20, paragraphs (e)(1), (e)(2)(ii), and (f)(2) are revised to read as follows:

**§ 679.20 General Limitations.**

\* \* \* \* \*

(e) \* \* \*

(1) *Proportion of basis species.* The maximum retainable amount of an incidental catch species is calculated as a proportion of the basis species retained on board the vessel using the retainable percentages in Table 10 to this part for the GOA species categories (except the Rockfish Program fisheries, which are described in Table 30 to this part for the Rockfish Program fisheries) and in Table 11 to this part for the BSAI species categories.

(2) \* \* \*

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

\* \* \* \* \*

(f) \* \* \*

(2) *Retainable amounts.* Except as provided in Table 10 to this part, arrowtooth flounder, or any groundfish species for which directed fishing is closed may not be used to calculate retainable amounts of other groundfish species. Only fish harvested under the CDQ Program may be used to calculate retainable amounts of other CDQ species. Only primary rockfish species fish harvested under the Rockfish Program may be used to calculate retainable amounts of other species, as provided in Table 30 to this part.

\* \* \* \* \*

7. In § 679.28, paragraphs (f)(6), (g) introductory text, (g)(1) and (g)(2) are revised to read as follows:

**§ 679.28 Equipment and operational requirements.**

\* \* \* \* \*

(f) \* \* \*

(6) *When must the VMS transmitter be transmitting?* Your vessel's transmitter must be transmitting if the vessel is operating in any reporting area (see definitions at § 679.2) off Alaska while

any fishery requiring VMS, for which the vessel has a species and gear endorsement on its Federal fisheries permit under § 679.4(b)(5)(vi), is open, or when that vessel is required to use functioning VMS equipment in the Rockfish Program as described in § 679.7(n)(3).

(g) *Catch monitoring and control plan requirements (CMCP)*—(1) *What is a CMCP?* A CMCP is a plan submitted by the owner and manager of a processing plant, and approved by NMFS, detailing how the processing plant will meet the catch monitoring and control standards detailed in paragraph (g)(7) of this section.

(2) *Who is required to prepare and submit a CMCP for approval?* The owner and manager of shoreside or stationary floating processors receiving fish harvested in the following fisheries must prepare, submit, and have approved a CMCP prior to the receipt of fish harvested in these fisheries:

- (i) AFA pollock,
- (ii) AI directed pollock,
- (iii) Rockfish Program.

\* \* \* \* \*

8. In § 679.50, paragraphs (g)(1)(iii)(B) introductory text, and (g)(1)(iii)(B)(1) are revised and (c)(2)(vii), (c)(7), and (d)(7) are added to read as follows:

**§ 679.50 Groundfish Observer Program applicable through December 31, 2007.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

(7) *Rockfish Program*—(i) *Catcher/processor vessel*—(A) *Rockfish cooperative.* A catcher/processor vessel that is named on an LLP license that is assigned to a rockfish cooperative and is fishing under a CFQ permit must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process in the Central GOA from May 1:

- (1) Until November 15; or
- (2) Until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(B) *Rockfish limited access fishery.* A catcher/processor vessel harvesting fish allocated to the rockfish limited access fishery for the catcher/processor sector must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process in the Central GOA from July 1:

- (1) Until November 15; or
- (2) Until NMFS closes all directed fishing for all primary rockfish species

in the rockfish limited access fishery for the catcher/processor sector.

(C) *Sideboard fishery.* A catcher/processor vessel that is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process from July 1 until July 31.

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

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

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

- (1) Until November 15; or
- (2) Until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(B) *Rockfish limited access fishery.* A catcher vessel harvesting fish allocated to the rockfish limited access fishery for the catcher vessel sector must have aboard a NMFS-certified observer at all times the vessel is used to harvest in the Central GOA from July 1:

- (1) Until November 15; or
- (2) Until NMFS closes all directed fishing for all primary rockfish species in the rockfish limited access fishery for the catcher vessel sector.

(C) *Sideboard fishery.* A catcher vessel that is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas must have aboard a NMFS-certified observer at all times the vessel is used to harvest from July 1 until July 31.

(d) \* \* \*

(7) *Rockfish Program*—(i) *Coverage level.* A shoreside or stationary floating processor must have a NMFS-certified observer for each 12 consecutive hour period in each calendar day during

which it receives deliveries from a catcher vessel described at paragraph (c)(7)(ii) of this section. A shoreside or stationary floating processor that receives deliveries or processes catch from a catcher vessel described at paragraph (c)(7)(ii) of this section for more than 12 consecutive hours in a calendar day is required to have two NMFS-certified observers each of these days.

(ii) *Multiple processors.* An observer deployed to a shoreside or stationary floating processor that receives deliveries from a catcher vessel described at paragraph (c)(7)(ii) of this section harvested under the Rockfish Program fisheries may not be assigned to cover more than one processor during a calendar day.

(iii) *Observers transferring between vessels and processors.* An observer transferring from a catcher vessel delivering to a shoreside or stationary floating processor that receives deliveries from a catcher vessel described at paragraph (c)(7)(ii) of this section may not be assigned to cover the shoreside or stationary floating processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is complete.

(iv) *Observer coverage limitations.* Observer coverage requirements at paragraph (d)(7) of this section are in addition to observer coverage requirements in other fisheries.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor or mothership that is required to carry one or more observers, or a catcher vessel required to carry an observer as specified in paragraph (c)(1)(iv) or (c)(7)(ii) of this section:

(1) *Hardware and software.* Making available for use by the observer a personal computer in working condition that contains: a full Pentium 120Mhz or greater capacity processing chip, at least 256 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 98 (or more recent) compatible operating system, an operating mouse, a 3.5-inch (8.9 cm) floppy disk drive, and a readable CD ROM disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8cm) and minimum display settings of 600 x 800 pixels. Except for a catcher vessel described at paragraph (c)(7)(ii) of this section, the computer equipment specified in paragraph (g)(1)(iii)(B) of

this section must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Personal computers utilizing a modem must have at least a 28.8 kbs Hayes-compatible modem.

\* \* \* \* \*

9. Subpart G, consisting of §§ 679.80 through 679.84, is added to read as follows:

#### **Subpart G—Rockfish Program**

Sec.

- 679.80 Initial allocation of rockfish QS.
- 679.81 Rockfish Program annual harvester and processor privileges.
- 679.82 Rockfish Program use caps and sideboard limits.
- 679.83 Rockfish Program entry level fishery.
- 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.

#### **Subpart G—Rockfish Program**

##### **§ 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 (Pub. L. 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, 2008.

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

(i) *Rockfish entry level fishery—fixed gear vessels.* Fishing by vessels participating in the fixed 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 Program 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 a directed fishery for any primary rockfish species assigned to that LLP license; and

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

(2) *Eligible entry-level fishery harvester.* A person is eligible to participate in the Rockfish Program as an eligible 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 endorsed for Central GOA groundfish with a trawl designation and with a legal rockfish landing of any primary rockfish species in a directed fishery assigned to that LLP license.

(3) *Assigning a legal rockfish landing to an LLP license.* A legal rockfish landing is assigned to an LLP license endorsed for the Central GOA management area with a trawl gear designation, if that legal rockfish landing was made aboard 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 aboard 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 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 aboard 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 LLP license that is endorsed for Central GOA groundfish fisheries with trawl gear that does 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 his 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) Holds the processing history by the express terms of a written contract that clearly and unambiguously provides that such processing history is held by that person.

(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;

(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 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 aboard the same vessel from which that LLP license is 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;

(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 by the express terms of a written contract that clearly and unambiguously provides that such processing history has been transferred.

(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 Web site 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 December 1, 2006, or if sent by U.S. mail, postmarked 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 (required), 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 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 an authorized 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 accepted by the Regional Administrator. Application claims that are inconsistent with official Rockfish program record, unless verified by documentation, will not be accepted. 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 IAD of his or her appeal rights under § 679.43.

(6) *Appeals.* If an applicant is notified by an IAD that inconsistent claims made by the applicant have been denied, that applicant may appeal that IAD under the provisions described 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) Rockfish QS for each primary rockfish species shall be based on a percentage of the legal rockfish landings of each primary rockfish species in that sector associated with each fully transferrable LLP license held by the eligible rockfish harvester.

(iii) The Regional Administrator shall calculate rockfish QS for each primary rockfish species “s” based on each fully transferable LLP license “l” held by an eligible rockfish harvester 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 poundage of that primary rockfish species, including zero pounds if necessary.

(C) Sum the poundage of the highest five years, for that species for that LLP license as selected under paragraph (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:

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

The result (quotient) of this equation is the Percentage of the Total<sub>ls</sub>.

(E) Multiply the Percentage of the Total<sub>ls</sub> of the Total 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 in the five 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 in the five qualifying years used to calculate rockfish QS that are assigned to the catcher vessel sector and multiply the amount 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 the sum of all rockfish QS units assigned to all eligible rockfish harvesters in the catcher vessel sector.

**§ 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 poundage 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 poundage 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<sub>s</sub>) 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 TAC<sub>s</sub> assigned to the catcher/processor and catcher vessel sector.* TAC<sub>s</sub> assigned for a primary rockfish species will be divided between the catcher/processor sector and the catcher vessel sector.

Each sector will receive an amount of TAC<sub>s</sub> 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 fishery in that sector. Expressed algebraically for each primary rockfish species “s” in paragraphs (g)(3)(i) and (ii) of this section:

- (i) *Catcher/Processor Sector TAC<sub>s</sub> =*  

$$[(TAC_s) \times (\text{Rockfish QS Units in the Catcher/Processor Sector}_s / \text{Rockfish QS Pool}_s)].$$
- (ii) *Catcher Vessel Sector TAC<sub>s</sub> =*  

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

(4) *Use of primary rockfish species by an eligible rockfish harvester.* Once a TAC<sub>s</sub> is assigned to a sector, the use of that TAC<sub>s</sub> 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<sub>s</sub> is assigned as follows:

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

(ii) Any TAC<sub>s</sub> 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<sub>s</sub> 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<sub>s</sub> is not assigned to an opt-out fishery. Any TAC<sub>s</sub> 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 TAC<sub>s</sub> of primary rockfish species.* TAC<sub>s</sub> is assigned to each rockfish cooperative or limited access fishery based on the rockfish QS assigned to that fishery in each sector according to the following procedures for the catcher vessel sector and the catcher/processor sector:

(i) *Catcher vessel sector.* The assignment of TAC<sub>s</sub> to a rockfish cooperative or limited access fishery is governed by the rockfish fishery to which an LLP license is assigned under this paragraph (a).

(A) *Rockfish cooperative.* The amount of TAC<sub>s</sub> 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<sub>s</sub>. Once TAC<sub>s</sub> for a primary rockfish species is assigned to a rockfish cooperative, it is issued as CFQ specific to that rockfish cooperative. The amount of CFQ for each primary rockfish species that is assigned to a rockfish cooperative is expressed algebraically as follows:

$$CFQ = [(Catcher Vessel Sector TAC_s) \times (\text{Rockfish QS assigned to that Cooperative} / \text{Rockfish QS Units in the Catcher Vessel Sector}_s)].$$

(B) *Rockfish limited access fishery.* The amount of TAC<sub>s</sub> for each primary rockfish species assigned to the rockfish limited access fishery is equal to the catcher vessel sector TAC<sub>s</sub> subtracting all CFQ 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<sub>s</sub> = Catcher Vessel Sector TAC<sub>s</sub> — (Σ CFQ issued to Rockfish Cooperatives in the Catcher Vessel Sector).

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

(A) *Rockfish cooperative.* The amount of TAC<sub>s</sub> 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<sub>s</sub>. Once TAC<sub>s</sub> for a primary rockfish species is assigned to a rockfish cooperative it is issued as CFQ specific to that rockfish cooperative. The amount of CFQ for each primary rockfish species that is assigned to a rockfish cooperative is expressed algebraically as follows:

$$CFQ = [(Catcher/Processor Sector TAC_s) \times (\text{Rockfish QS Units assigned to that Cooperative} / \Sigma \text{Rockfish QS Units assigned to all rockfish})].$$



cooperatives and the Limited Access Fishery in the Catcher/Processor Sector).

(B) *Rockfish limited access fishery.* The amount of TAC<sub>s</sub> for each primary rockfish species assigned to the limited access fishery is equal to the catcher/processor TAC<sub>s</sub> subtracting all CFQ 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<sub>s</sub> = [(Catcher/Processor Sector TAC<sub>s</sub>)—(Σ CFQ 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 poundage of secondary species that may be assigned to the Rockfish Program. This amount will be assigned to either the catcher/processor sector or the catcher vessel sector. The poundage of fish assigned to a sector will be assigned to rockfish cooperatives within that sector. CFQ of secondary species is subject to the use limitations established in paragraph (b)(4) of this section.

(2) *Maximum amount of secondary species poundage 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 fishery during all 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 adopts 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 fishery.

(iv) Multiply the percentage of each secondary species assigned to the catcher/processor sector in the rockfish 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 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 poundage 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 fishery 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 adopts 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 fishery.

(iv) Multiply the percentage of each secondary species assigned to the catcher vessel sector in the rockfish 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 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 CFQ, 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 CFQ assigned to a rockfish cooperative.* The amount of CFQ for each secondary species that is assigned to each rockfish cooperative is determined according to the following procedures:

(i) *CFQ assigned to rockfish cooperatives in the catcher/processor sector.* The CFQ 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 rockfish QS pool for all primary rockfish species in the catcher/processor sector. Expressed algebraically in the following equation:

CFQ for that Secondary Species = maximum amount of that Secondary Species that may be allocated to the Catcher/Processor Sector in the Rockfish Program × (Σ Rockfish QS Units assigned to that Rockfish cooperative/Rockfish QS Pool in the Catcher/Processor Sector).

(ii) *CFQ assigned to rockfish cooperatives in the catcher vessel sector.* The CFQ 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:

CFQ for that Secondary Species = maximum amount of that Secondary Species that may be allocated to the Catcher Vessel Sector in the Rockfish Program × (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 poundage 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 poundage of rockfish halibut PSC assigned to a sector will be further assigned as CFQ only to rockfish cooperative(s) within that sector. CFQ of rockfish halibut PSC is subject to the use limitations established in § 679.82(a) of this section.

(2) *Maximum amount of rockfish halibut PSC that may be assigned to the catcher/processor sector.* (i) Sum the amount of halibut PSC used 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 fishery during all qualifying season dates established in Table 28 to this part. This is the catcher/processor sector rockfish halibut PSC amount.

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

(iii) Divide the catcher/processor sector rockfish halibut PSC amount by the total halibut PSC and multiply by 100. This is the percentage of rockfish halibut PSC assigned to the catcher/processor sector in the rockfish fishery.

(iv) Multiply the percentage of rockfish halibut PSC assigned to the catcher/processor sector in the rockfish fishery by the GOA halibut PSC limit. This is the maximum amount of rockfish halibut PSC that may be allocated to the catcher/processor sector.

(3) *Maximum amount of rockfish halibut PSC that may be assigned to the catcher vessel sector.* (i) Sum the amount of halibut PSC used 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 fishery during all qualifying season dates established in Table 28 to this part. This is the catcher vessel sector rockfish halibut PSC amount.

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

(iii) Divide the catcher vessel sector rockfish halibut PSC amount by the total halibut PSC and multiply by 100. This is the percentage of rockfish halibut PSC assigned to the catcher vessel sector in the rockfish fishery.

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

(4) *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 fishery in which eligible rockfish harvesters are participating. The specific amount of rockfish halibut PSC that may be used by eligible rockfish harvesters is determined by the following procedure:

(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 CFQ, 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.

(5) *Determining the amount of rockfish halibut PSC CFQ assigned to a rockfish cooperative.* The amount of CFQ of rockfish halibut PSC that is assigned to each rockfish cooperative is determined according to the following procedures:

(i) *CFQ assigned to rockfish cooperatives in the catcher/processor sector.* The CFQ 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 rockfish QS pool for all primary rockfish species in the catcher/processor sector. Expressed algebraically in the following equation:

CFQ for Rockfish Halibut PSC = maximum amount of Rockfish Halibut PSC that may be allocated to the Catcher/Processor Sector  $\times$  ( $\Sigma$ Rockfish QS Units assigned to that Rockfish Cooperative/Rockfish QS Pool in the Catcher/Processor Sector).

(ii) *CFQ assigned to rockfish cooperatives in the catcher vessel sector.* The CFQ 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 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. Expressed algebraically in the following equation:

CFQ for Rockfish Halibut PSC = maximum amount of Rockfish Halibut PSC that may be allocated to the Catcher Vessel Sector  $\times$  ( $\Sigma$ Rockfish QS Units assigned to that Rockfish Cooperative/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 after NMFS has issued CFQ or the TAC for that calendar year will not result in any additional CFQ 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 CFQ that is approved by the Regional Administrator; and

(ii) That rockfish QS is associated with an LLP license with a catcher vessel designation that is endorsed for trawl gear in the Central GOA trawl fishery.

(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 CFQ that is approved by the Regional Administrator; and

(ii) That rockfish QS is associated with an LLP license with a catcher/processor designation that is endorsed for trawl gear in the Central GOA trawl fishery.

(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 CFQ, or 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 associated with an LLP license with a catcher vessel designation that is endorsed for trawl gear in the Central GOA trawl fishery.

(iii) The rockfish QS is assigned to the rockfish limited access fishery in the catcher/processor sector if that rockfish QS is associated with an LLP license with a catcher/processor designation that is endorsed for trawl gear in the Central GOA trawl fishery.

(5) *Opt-out fishery.* An eligible rockfish harvester may assign rockfish QS 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) An eligible rockfish entry level harvester may assign an LLP license to the rockfish entry level fishery if that eligible rockfish entry level harvester assigns that LLP license to the rockfish entry level fishery on a complete application for the rockfish entry level fishery that is approved by the Regional Administrator.

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

(e) *Applications for a rockfish fishery—(1) General.* Applications to participate in a rockfish fishery are required to be submitted each year. A person who wishes to participate in a particular rockfish fishery must submit a timely and complete application that is appropriate to that rockfish 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.

(2) *Forms.* Forms are available through the internet on the NMFS Alaska Region Web site at <http://www.fakr.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 December 1 of the year prior to the year for which the applicant wishes to participate in a rockfish fishery, or if sent by U.S. mail, the application must be postmarked by that time.

(4) *Application for CFQ.* A rockfish cooperative that submits a complete application that is approved by NMFS will receive a CFQ 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 CFQ permit will list the amount of CFQ, 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 a CFQ permit.

(i) *Contents of an application for CFQ.* 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; the printed name of the rockfish cooperative's authorized representative; the permanent business address, telephone number, fax number, and e-mail address (if available) of the rockfish cooperative or its authorized representative; and the signature of the rockfish cooperative's authorized representative and date signed.

(B) *Members of the rockfish cooperative—(1) Harvester identification.* Full name; NMFS Person ID; LLP license number(s); name of the vessel(s), ADF&G vessel registration number, and USCG documentation number of vessel(s) on which the CFQ issued to the rockfish cooperative will be used. If no vessel(s) are designated to use the CFQ issued to the rockfish cooperative on the application, then all vessels using LLP license assigned to the rockfish cooperative will be assumed to be designated to use the CFQ.

(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; 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); and

(4) Any article of incorporation or agreement submitted by the rockfish cooperative must include 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.

(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 authorized representative, then explicit authorization signed by the applicant must accompany the application.

(ii) *Issuance of CFQ.* Issuance by NMFS of a CFQ 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 (required), 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 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) 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 authorized 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 (required), 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) 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 authorized representative, then explicit authorization signed by the applicant must accompany the application.

(ii) [Reserved]

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

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

(A) *Applicant information.* 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 (if available);

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

(C) *Vessel identification.* 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 authorized representative, then explicit

authorization signed by the applicant must accompany the application.

(ii) [Reserved]

(8) *Modification of vessels authorized to fish CFQ.* (i) The authorized representative of a rockfish cooperative must notify NMFS of any change in the vessel(s) that are authorized to fish CFQ for that rockfish cooperative from those indicated in the application for CFQ. This notification must be made on an amended application for CFQ. This amended application for CFQ would request that NMFS add or remove vessels authorized to fish CFQ for that rockfish cooperative. Such a change does not take effect until it is approved by NMFS through the issuance of a revised CFQ permit.

(ii) This amended application for CFQ may be submitted at any time after the initial issuance of CFQ to that rockfish cooperative for that calendar year until:

(A) November 15; or

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

(iii) This modification to the application for CFQ may only be submitted to NMFS using the following methods:

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

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

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

(f) *Transfer applications.* A rockfish cooperative may transfer all or part of its CFQ to another rockfish cooperative. This transfer requires the submission of an application for inter-cooperative transfer to NMFS. An eligible rockfish processor may transfer its eligible rockfish processor permit. This transfer requires the submission to NMFS of an application to transfer an processor eligibility.

(1) *Application for inter-cooperative transfer.* NMFS will notify the transferor and transferee once the application has been received and approved. A transfer of CFQ is not effective until approved by NMFS. A completed transfer of CFQ issued to a rockfish cooperative requires that the following information be provided to NMFS in the application for inter-cooperative transfer:

(i) *Identification of transferor.* Enter the name; NMFS Person ID; name of rockfish cooperative's authorized representative; permanent business mailing address; and business telephone number, fax number, and e-mail address

(if available) of the rockfish cooperative transferor. A temporary mailing address for each transaction may also be provided.

(ii) *Identification of transferee.* (A) Enter the name; NMFS Person ID; name of rockfish cooperative's authorized representative; permanent business mailing address; and business telephone number, fax number, and e-mail address (if available) of the rockfish cooperative transferee. A temporary mailing address for each transaction may also be provided.

(B) Provide the names of all persons, to the individual person level, holding a holdership interest in the LLP license(s) and the percentage ownership each person holds in each LLP license.

(iii) *Identification of rockfish cooperative member.* Enter the name and NMFS Person ID of the member(s) to whose use cap the rockfish cooperative CFQ will be applied, and the amount of CFQ applied to each member for purposes of applying use caps established under the Rockfish Program under § 679.82(a).

(iv) *CFQ to be transferred.* Identify the type and amount of Primary species, secondary species, or rockfish halibut PSC CFQ to be transferred.

(v) *Certification of transferor.* The rockfish cooperative transferor's authorized representative 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. Also enter the printed name of the rockfish cooperative transferor's authorized representative. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(vi) *Certification of transferee.* The rockfish cooperative transferee's authorized representative 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. Also enter the printed name of the rockfish cooperative transferee's authorized representative. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(2) *Application to transfer processor eligibility.* NMFS will notify the transferor and transferee once the application has been received and approved. A transfer is not effective until approved by NMFS. A completed transfer of processor eligibility requires that the following information be provided to NMFS in the application to transfer processor eligibility:

(i) *Identification of transferor.* Enter the name; NMFS Person ID; permanent business mailing address; and business telephone number, fax number, and e-mail address (if available). A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address. Enter the facility name of SFP, ADF&G processor code, and FPP for each processing facility for which that processor eligibility applies. Enter the name of the community in which that processor eligibility applies.

(ii) *Identification of transferee.* Enter the name; NMFS Person ID; permanent business mailing address; and business telephone number, fax number, and e-mail address (if available) of the transferee. A temporary mailing address for each transaction may also be provided. Enter the facility name or SFP, ADF&G processor code, and FPP for each processing facility where that processor eligibility will apply. Enter the name of the community in which that processor eligibility will be used.

(iii) *Certification of transferor.* The processor eligibility transferor's authorized representative 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. Also enter the printed name of the processor eligibility transferor's authorized representative. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(iv) *Certification of transferee.* The processor eligibility transferee's authorized representative 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. Also enter the printed name of the processor eligibility transferee's authorized representative. If the application is completed by an authorized representative, then explicit authorization signed by the applicant must accompany the application.

(g) *Transfer of processor eligibility—*  
(1) *General.* An eligible rockfish processor may transfer eligibility to receive and process under the Rockfish Program to another person only by submitting an application to transfer processor eligibility that is subsequently approved by NMFS.

(2) *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).

(3) *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 rockfish cooperative may harvest groundfish species not allocated as CFQ up to the MRA for that 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 MRA for that 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 MRA for that 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 MRA for that species as established in Table 10 to this part.

(5) *Rockfish entry level fishery.* An eligible entry level harvester in the rockfish entry level fishery may harvest groundfish species other than primary rockfish species up to the MRA for that species as established in Table 10 to this part.

(6) *Maximum retainable amounts (MRA).* (i) The MRAs 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 percentages in Table 30 to this part; except that:

(ii) In the catcher vessel sector, shortraker and rougheye 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 retained 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 the catcher vessel sector.

(iv) In the rockfish limited access fishery for the catcher/processor sector, shortraker and rougheye 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 retained 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 rougheye rockfish retained in the catcher/processor sector is equal to 58.87 percent of the rougheye rockfish TAC in the Central GOA regulatory area, then rougheye 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 CFQ issued annually by NMFS. Members of rockfish cooperatives should consult 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 that 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 CFQ contributed by the rockfish QS held by that member remains with that rockfish cooperative for the remainder of the 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 CFQ:

(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 authorized representative to act on the rockfish cooperative's behalf and serve as contact point for NMFS for questions regarding the operation of the rockfish cooperative. The authorized representative may be a member of the rockfish cooperative, if an individual person, or some other individual authorized by the rockfish cooperative to act on its behalf;

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

(iv) Each rockfish cooperative must meet the mandatory requirements established 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 authorized 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. 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.

Requirement	Catcher vessel sector	Catcher/processor vessel sector
(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 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?	CFQ for primary rockfish species, secondary species, and rockfish halibut PSC, based on the rockfish QS assigned to all of the LLP license that are assigned to the cooperative.	
(viii) Is this CFQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CFQ, or a cooperative can transfer all or a portion of this CFQ to another rockfish cooperative.	
(ix) Is there a season during which designated vessels must catch CFQ?	Yes, any vessel designated to catch CFQ for a rockfish cooperative is limited to catching CFQ during the season beginning on 1200 hours A.l.t. on May 1 through 1200 hours A.l.t. on November 15.	
(x) Can any vessel catch a rockfish cooperative's CFQ?	No. only vessels that are named on the application for CFQ for that rockfish cooperative, including any vessels named on amendment(s) to that application, can catch the CFQ assigned to that rockfish cooperative.	
(xi) Can the member of a rockfish cooperative transfer CFQ individually without the approval of the other members of the rockfish cooperative.	No, only the rockfish cooperative, and not individual members, may transfer its CFQ 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 a sideboard to that rockfish cooperative?	N/A.	No, sideboard limits are limits applicable to that rockfish cooperative, and may not be transferred among rockfish cooperative.
(xiii) Is there a hired master requirement?	No, there is no hired master requirement.	N/A.
(xiv) Can an LLP license be reassigned 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?	No. An eligible rockfish processor can only associate with one rockfish cooperative per year. A person who is permitted as an eligible rockfish processor based on holdings of more than one processing history would be issued a separate eligible rockfish processor permit for that processing history and may be able to form an association with a rockfish cooperative as a separate and distinct eligible rockfish processor subject to any other restrictions that may apply.	
(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 CFQ to that rockfish cooperative for the calendar year.	
(xvii) Which members may harvest the rockfish cooperative's CFQ?	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 CFQ. A copy of this agreement or contract must be submitted with the application for CFQ.	
(xix) What happens if the rockfish cooperative exceeds its CFQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CFQ. Exceeding a CFQ is a violation of the regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Program regulations while fishing under authority of a CFQ permit. This liability extends to any persons who are hired to catch or receive CFQ 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 CFQ 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 CFQ 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.

Requirement	Catcher vessel sector	Catcher/processor vessel sector
(xxi) Is there a limit on how much CFQ a vessel may harvest?	No. However, a vessel may not catch more CFQ than the CFQ assigned to that rockfish cooperative.	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 subject to an exemption. 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 CFQ?	(A) Any vessel authorized to harvest the CFQ assigned to a rockfish cooperative must count any catch of primary rockfish species, secondary species, or rockfish halibut PSC against that rockfish cooperative's CFQ from May 1 until November 15, or until the authorized representative of that rockfish cooperative has submitted 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 CFQ if the vessel is not authorized to harvest CFQ. 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 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?	The annual rockfish cooperative report must include at a minimum: (A) The rockfish cooperative's CFQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by-vessel basis; (B) The rockfish cooperative's actual retained and discarded catch of CFQ, and sideboard limit on an area-by-area and vessel-by-vessel basis; (C) A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated; (D) A description of any civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.	

(4) *Additional mandatory requirements*—(i) *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 legal rockfish landings necessary to meet a minimum of 75 percent of the total legal rockfish landings that were delivered to that eligible rockfish processor during the four calendar years selected by that eligible rockfish processor for the purposes of establishing the minimum legal rockfish landings required to form a rockfish cooperative.

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

(iii) *Transfer of CFQ among rockfish cooperatives.* Rockfish cooperatives may transfer CFQ during a calendar year with the following restrictions:

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

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

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

(D) A rockfish cooperative receiving primary rockfish species CFQ by transfer must assign that primary rockfish species CFQ to a member(s) of the rockfish cooperative for the purposes of calculating the amount of primary rockfish species CFQ held by that member for application of the use caps established under § 679.82(a);

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

(F) A rockfish cooperative may not receive any CFQ by transfer after NMFS has approved a rockfish cooperative Termination of Fishing Declaration that was submitted by that rockfish cooperative.

(5) *Use of CFQ.* (i) A rockfish cooperative in the catcher vessel sector may not use a primary rockfish species

CFQ in excess of the amounts specified in § 679.82(a).

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

(A) Each pound of CFQ must be assigned to a member of the rockfish cooperative receiving the CFQ for purposes of use cap calculations. No member of a rockfish cooperative may not exceed the CFQ use cap applicable to that member.

(B) For purposes of CFQ use cap calculation, the total amount of CFQ held or used by a person is equal to all pounds of CFQ assigned to that person by the rockfish cooperative from approved transfers.

(C) The amount of rockfish QS held by a person, and CFQ 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 CFQ



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.

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

(a) *Use caps*—(1) *General*. Use caps limit the amount of rockfish QS and CFQ of primary rockfish species that may be held or used, and the amount of primary rockfish species TAC that may be received, by an eligible rockfish processor. 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 limit the maximum amount of aggregate rockfish QS a person may hold and the maximum amount of aggregate primary rockfish species CFQ that a person may hold or use. Person use caps apply to eligible rockfish harvesters and rockfish cooperatives. Vessel use caps limit the maximum amount of aggregate primary rockfish species CFQ that a vessel operating as a catcher/processor may harvest. Processor use caps limit the maximum amount of aggregate primary rockfish species that may be received or processed by an eligible rockfish processor. All rockfish QS use caps are based on the aggregate primary rockfish species initial rockfish QS pool established by NMFS. The use caps apply as follows:

(2) *Eligible rockfish harvester use cap*. An eligible rockfish harvester may not individually or collectively hold or use more than:

(i) Five (5.0) percent of the aggregate rockfish QS initially assigned to the catcher vessel sector and resulting CFQ unless that eligible rockfish harvester qualifies for an exemption to this use cap under paragraph (a)(6) of this section;

(ii) Twenty (20.0) percent of the aggregate rockfish QS initially assigned to the catcher/processor sector and resulting CFQ unless that eligible rockfish harvester qualifies for an

exemption to this use cap under paragraph (a)(6) of this section.

(3) *CFQ use cap for rockfish cooperatives in the catcher vessel sector*. A rockfish cooperative may not individually or collectively hold or use an amount of CFQ that is greater than the amount derived from 30.0 percent of the aggregate rockfish QS initially assigned to the catcher vessel sector unless all members of that rockfish cooperative qualify for an exemption to this use cap under paragraph (a)(6) of this section.

(4) *CFQ use cap for a vessel in the catcher/processor sector*. A vessel harvesting CFQ in the catcher/processor sector may not harvest an amount of CFQ that is greater than the amount derived from 60.0 percent of the aggregate rockfish QS initially assigned to the catcher/processor unless the CFQ harvested by that vessel is derived from the rockfish QS assigned to an LLP license that was used on that vessel prior to June 6, 2005, and that LLP license is assigned rockfish QS that results in CFQ in excess of the use cap.

(5) *Primary rockfish species use cap for eligible rockfish processors*. (i) An eligible rockfish processor may not receive or process in excess of 30.0 percent of the aggregate primary rockfish species TAC, including CFQ, assigned to the catcher vessel sector unless the eligible rockfish processor is receiving or processing CFQ assigned to a rockfish cooperative and the members of that rockfish cooperative qualify for an exemption to this CFQ use cap under paragraph (a)(6) of this section.

(ii) The amount of aggregate primary rockfish species TAC that is received by an eligible rockfish processor is calculated based on the sum of all aggregate primary rockfish species TAC, including CFQ, received or processed by that eligible rockfish processor and the aggregate primary rockfish species TAC received or processed by any entity in which that eligible rockfish processor has a “10 percent or greater direct or indirect ownership interest for purposes of the Rockfish Program” as that term is defined in § 679.2.

(6) *Use cap exemptions*—(i) *Rockfish QS*. An eligible rockfish harvester may receive an initial allocation of aggregate rockfish QS in excess of the use cap in that sector only if that rockfish QS is assigned to LLP license(s) held by that eligible rockfish harvester prior to June 6, 2005.

(ii) *Transfer limitations*. (A) An eligible rockfish harvester that receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section shall not receive any rockfish QS by transfer

unless and until that person's holdings of aggregate rockfish QS in that sector are reduced to an amount below the use cap specified in paragraph (a)(2) of this section.

(B) If an eligible rockfish harvester transfers an LLP license and assigned rockfish QS to another person, the eligible rockfish harvester that transferred that LLP license may not hold more than the amount of rockfish QS held by that eligible rockfish harvester after the transfer or the rockfish QS use cap established in paragraph (a)(2) of this section, whichever is greater.

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

(iii) *CFQ*. An rockfish cooperative may use CFQ in excess of the use cap in that sector only if that CFQ is derived from the rockfish QS assigned to an LLP license that was held by that eligible rockfish harvester prior to June 6, 2005.

(b) *Rockfish limited access fishery*—(1) *General*. (i) An eligible rockfish harvester may use an LLP license and assigned rockfish QS in the appropriate rockfish limited access fishery only if:

(A) That person submitted a complete and timely application for the rockfish limited access fishery that is approved by NMFS; or

(B) That LLP is not assigned to a rockfish cooperative for that calendar year, and that person has not submitted a complete and timely application to opt-out of the Rockfish Program that is approved by NMFS.

(ii) [Reserved]

(2) *Limited access fishery sectors*. (i) If an LLP license with rockfish QS in the catcher vessel sector is assigned to a limited access fishery, it is assigned to the catcher vessel rockfish limited access fishery.

(ii) If an LLP license with a rockfish QS in the catcher/processor sector is assigned a limited access fishery, it is assigned to the catcher/processor rockfish limited access fishery.

(3) *Primary rockfish species harvest limit*. All vessels that are participating in a rockfish limited access fishery may harvest an amount of primary rockfish species not greater than the TAC assigned to that primary rockfish



species for the rockfish limited access fishery in that sector.

(4) *Secondary species allocations.* Secondary species shall be managed based on an MRA as established under Table 30 to this part.

(5) *Rockfish halibut PSC allocations.* Halibut caught by vessels in the rockfish limited access fishery shall be accounted against the halibut PSC allocation to the deep water species fishery complex for trawl gear for that seasonal apportionment for that sector. If the halibut PSC limit in the deep water fishery complex has been reached or exceeded for that seasonal apportionment for that sector, the rockfish limited access fishery will be closed until deep water species fishery complex halibut PSC is available for that sector.

(6) *Opening of the rockfish limited access fishery.* The Regional Administrator maintains the authority to not open a rockfish limited access fishery if he deems it appropriate for conservation or other management measures. Factors such as the total allocation, anticipated harvest rates, and number of participants will be considered in making any such decision.

(c) *Opt-out fishery.* An eligible rockfish harvester who holds an LLP license and who submits an application to opt-out with that LLP license that is subsequently approved by NMFS may not fish in any directed fishery for any primary rockfish species in the Central GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season with any vessel named on that LLP license.

(d) *Sideboard limitations—General.* The regulations in this section restrict the holders of LLP licenses eligible to receive rockfish QS from using the increased flexibility provided by the Rockfish Program to expand their level of participation in other groundfish fisheries. These limitations are commonly known as “sideboards.”

(1) *Notification of affected vessel owners and LLP license holders.* After NMFS determines which vessels and LLP licenses meet the criteria described in paragraphs (d) through (h) of this section, NMFS will inform each vessel owner and LLP license holder in writing of the type of sideboard limitation and issue a revised Federal Fisheries Permit

and/or LLP license that displays the limitation on the face of the permit or LLP license.

(2) *Appeals.* A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a sideboard limitation may make a contrary claim and provide evidence to NMFS. All claims must be submitted in writing to the RAM Program, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, together with any documentation or evidence supporting the request within 30 days of being notified by NMFS of the sideboard limitation. If NMFS finds the claim is unsupported, the claim will be denied in an Initial Administrative Determination (IAD). The affected persons may appeal this IAD using the procedures described at § 679.43.

(3) *Classes of sideboard restrictions.* There are several types of sideboard restrictions that apply under the Rockfish Program:

(i) General sideboard restrictions as described under this paragraph (d);

(ii) Catcher vessel sideboard restrictions as described under paragraph (e) of this section;

(iii) Catcher/processor rockfish cooperative sideboard restrictions as described under paragraph (f) of this section;

(iv) Catcher/processor limited access sideboard restrictions as described under paragraph (g) of this section; and

(v) Catcher/processor opt-out sideboard restrictions as described under paragraph (h) of this section.

(4) *General sideboard restrictions.* General sideboard restrictions apply to fishing activities during July 1 through July 31 of each year in each fishery as follows:

(i) Directed fishing for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish fisheries in the regulatory area of the Western GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season;

(ii) Directed fishing for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish fisheries in the Western Yakutat District and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season; and

(iii) The use of halibut PSC in the following directed fisheries in the West Yakutat District, Central GOA, and Western GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season:

(A) Rex sole;

(B) Deep water flatfish;

(C) Arrowtooth flounder;

(D) Shallow water flatfish; and

(E) Flathead sole.

(5) *Vessels and LLP licenses subject to general and halibut PSC sideboard limitations.* (i) The sideboard fishing limitations described in paragraph (d) of this section apply both to the fishing vessel itself and to any LLP license derived in whole or in part from the history of that vessel. The sideboard limitations apply to any vessel named on that LLP license. These sideboard restrictions apply even if an LLP license holder did not submit an application to participate in the Rockfish Program but that LLP license is otherwise eligible to receive rockfish QS under the Rockfish Program based on legal rockfish landings.

(ii) Except as described in paragraph (d)(5)(iii) of this section, the owner of any vessel that NMFS has determined meets one of the following criteria is subject to groundfish directed fishing sideboard limits and halibut mortality sideboard limits issued under this paragraph (d):

(A) Any vessel whose legal rockfish landings could generate rockfish QS;

(B) Any LLP license under whose authority legal rockfish landings were made;

(C) Any vessel named on an LLP license that was generated in whole or in part by the legal rockfish landings of a vessel meeting the criteria in paragraph (d)(5) of this section.

(iii) Any AFA vessel that is not exempt from GOA groundfish sideboards under the AFA as specified under § 679.63(b)(1)(i)(B) is exempt from the sideboard limits in this paragraph (d).

(6) *Determination of general sideboard ratios.* (i) Separate sideboard ratios for each rockfish sideboard fishery are established for the catcher vessel and the catcher/processor sectors. The general sideboard ratio for each fishery is determined according to the following table:

For the management area of the . . .	In the directed fishery for . . .	The sideboard limit for the catcher-processor sector is . . .	The sideboard limit for the catcher vessel sector is . . .
West Yakutat District	Pelagic Shelf Rockfish .....	72.4 percent of the TAC .....	1.7 percent of the TAC.
	Pacific ocean perch .....	76.0 percent of the TAC .....	2.9 percent of the TAC.
Western GOA .....	Pelagic Shelf Rockfish .....	63.3 percent of the TAC .....	0.0 percent of the TAC.
	Pacific ocean perch .....	61.1 percent of the TAC .....	*

For the management area of the . . .	In the directed fishery for . . .	The sideboard limit for the catcher-processor sector is . . .	The sideboard limit for the catcher vessel sector is . . .
	Northern Rockfish .....	78.9 percent of the TAC .....	0.0 percent of the TAC.

\* Not released due to confidentiality requirements on fish ticket data established by the State of Alaska.

(ii) Each rockfish cooperative in the catcher/processor sector will be assigned a sideboard limit for that rockfish cooperative as a percentage of the general sideboard ratio for that fishery in that catcher/processor sector.

(iii) The sideboard ratios that are applicable for each general sideboarded fishery for a rockfish cooperative in the catcher/processor sector are calculated by dividing the aggregate retained catch of that fishery, from July 1 through July 31 in each year from 1996 through 2002, caught by vessels in that rockfish cooperative that are subject to directed fishing closures under this paragraph (d), by the total retained catch from July 1 through July 31 in each year from 1996 through 2002 caught by all groundfish vessels in that sector.

(7) *Management of annual sideboard limits*—(i) *Sideboard directed fishing*

*allowance.* (A) If the Regional Administrator determines that an annual sideboard limit for a general rockfish sideboard fishery has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to the group of vessels to which the general sideboard limit applies. A directed fishing allowance that is established for a rockfish cooperative in the catcher/processor sector may be fished only by that rockfish cooperative to which it is assigned.

(B) If the Regional Administrator determines that a sideboard limit is insufficient to support a directed fishing allowance for that species or species group, then the Regional Administrator may set the directed fishing allowance to zero for that species or species group

for that sector or rockfish cooperative, as applicable.

(ii) *Directed fishing closures.* Upon attainment of a general directed fishing sideboard limit, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species group in the specified sector, regulatory area, or district.

(8) *Determination of halibut PSC sideboard ratios.* (i) Sideboards for halibut PSC are established for the catcher vessel and the catcher/processor sectors separately. Sideboard limits for halibut PSC are calculated for each rockfish cooperative in the catcher/processor sector separately. The halibut PSC sideboard limit for each sector is established according to the following table:

For the management area in the . . .	And for following sector . . .	The annual deep-water complex halibut PSC sideboard limit is . . .	The annual shallow-water complex halibut PSC sideboard limit is . . .
Western GOA .....	Catcher/Processor Sector .....	1.56 percent of the GOA annual halibut mortality limit.	0.16 percent of the GOA annual halibut mortality limit.
	Catcher Vessel Sector .....	0.00 percent of the GOA annual halibut mortality limit.	0.00 percent of the GOA annual halibut mortality limit.
Central GOA .....	Catcher/Processor Sector .....	1.78 percent of the GOA annual halibut mortality limit.	0.37 percent of the GOA annual halibut mortality limit.
	Catcher Vessel Sector .....	0.98 percent of the GOA annual halibut mortality limit.	6.14 percent of the GOA annual halibut mortality limit.
West Yakutat District	Catcher/Processor Sector .....	0.65 percent of the GOA annual halibut mortality limit.	0.01 percent of the GOA annual halibut mortality limit.
	Catcher Vessel Sector .....	0.10 percent of the GOA annual halibut mortality limit.	0.18 percent of the GOA annual halibut mortality limit.

(ii) Each rockfish cooperative in the catcher/processor sector will be assigned a sideboard for that rockfish cooperative as a percentage of the halibut PSC sideboard limit for the catcher/processor sector. The catcher/processor sector not in a rockfish cooperative will receive the portion of the halibut PSC sideboard limit not assigned to rockfish cooperatives.

(9) *Management of halibut PSC sideboard limits*—(i) *Halibut PSC sideboard limits.* The resulting halibut PSC sideboard limits expressed in metric tons will be published in the annual GOA groundfish harvest specification notices.

(A) If the Regional Administrator determines that a halibut PSC sideboard limit is sufficient to support a directed fishery for groundfish specified under paragraph (d)(1)(ii) of this section for a particular sector, then the Regional

Administrator may establish a halibut PSC sideboard limit for the species complex applicable only to the group of vessels in that sector to which the halibut PSC sideboard limit applies. A halibut PSC sideboard limit that is established for a rockfish cooperative in the catcher/processor sector may be fished only by that rockfish cooperative in the catcher/processor sector to which it is assigned.

(B) If the Regional Administrator determines that a halibut PSC sideboard limit is insufficient to support a directed fishery for a groundfish fishery specified under paragraph (d)(1)(ii) of this section for a particular sector, then the Regional Administrator may set the halibut PSC sideboard limit to zero for that sector or rockfish cooperative in the catcher/processor sector for that species complex.

(ii) Directed fishing closures. Upon determining that a halibut PSC sideboard limit is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species complex in the specified sector, rockfish cooperative in the catcher/processor sector, regulatory area, or district. The specific directed fishing closures that will be implemented if a halibut PSC sideboard limit is reached are:

(A) If the shallow-water halibut PSC sideboard limit for a sector or rockfish cooperative in the catcher/processor sector is reached, then NMFS will close directed fishing in that management area for:

- (1) Flathead sole; and
- (2) Shallow water flatfish.

(B) If the deep-water halibut PSC sideboard limit is reached for a sector,

or rockfish cooperative in the catcher/processor sector is reached, then NMFS will close directed fishing in that management area for:

- (1) Rex sole;
- (2) Deep water flatfish; and
- (3) Arrowtooth flounder.

(iii) *Halibut PSC accounting.* The halibut PSC sideboard limit in the deep-water species complex in the GOA from July 1 through July 31 will include any halibut mortality occurring under a CFQ permit or in a rockfish limited access fishery.

(e) *Sideboard provisions for catcher vessels*—(1) *General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, except as described in paragraph (d)(5)(iii) of this section, the following additional sideboards apply to catcher vessels.

(2) *Catcher vessels subject to catcher vessel sideboard limits.* Any catcher vessel that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (e):

- (i) Any catcher vessel whose legal rockfish landings could be used to generate rockfish QS for the catcher vessel sector in the Rockfish Program;
- (ii) Any catcher vessel named on an LLP license under which catch history was used to qualify that LLP license for eligibility in the Rockfish Program; or
- (iii) Any catcher vessel named on an LLP license that was generated in whole or in part by the legal rockfish landings of a catcher vessel.

(3) *Prohibition for directed fishing in BSAI groundfish fisheries during July.* Vessels subject to the provisions of this paragraph (e) may not participate in directed fishing in the BSAI and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season from July 1 through July 31 in any of the following directed fisheries:

- (i) Alaska plaice;
- (ii) Arrowtooth flounder;
- (iii) Flathead sole;
- (iv) Other flatfish;
- (v) Pacific ocean perch;
- (vi) Rock sole; and
- (vii) Yellowfin sole.

(4) *Limitation on directed fishing for BSAI Pacific cod in July*—(i)

*Applicability.* Vessels subject to the provisions of this paragraph (e) are limited to a BSAI Pacific cod sideboard limit during July 1 through July 31.

(ii) *Determination of BSAI Pacific cod sideboard ratio.* The sideboard ratio for the BSAI Pacific cod fishery is calculated by dividing the aggregate retained catch of BSAI Pacific cod from July 1 through July 31 in each year from 1996 through 2002 caught by catcher vessels that are subject to the BSAI

Pacific cod sideboard under this paragraph (e), by the total retained catch of BSAI Pacific cod caught by all groundfish trawl catcher vessels from July 1 through July 31 in each year from 1996 through 2002.

(iii) *Conversion of BSAI Pacific cod sideboard ratio into sideboard limits.* NMFS will convert BSAI Pacific cod sideboard ratios into annual sideboard limits according to the following procedures:

(A) *Sideboard amount determination.* Each year, the sideboard limit for BSAI Pacific cod from July 1 through July 31 is established by multiplying the sideboard ratios calculated under this paragraph (e) by the final TACs in each sector and gear type for which a TAC is specified. The resulting harvest limits expressed in metric tons will be published in the annual BSAI groundfish harvest specification notice.

(B) *Management of the sideboard.* (1) If the Regional Administrator determines that a limit for the BSAI Pacific cod sideboard fishery has been or will be reached, then the Regional Administrator may establish a BSAI Pacific cod directed fishing allowance applicable only to the group of vessels to which the BSAI Pacific cod sideboard limit applies.

(2) If the Regional Administrator determines that a limit is insufficient to support a directed fishery for BSAI Pacific cod, then the Regional Administrator may set the BSAI Pacific cod sideboard directed fishing allowance at zero.

(5) *Directed fishing closures.* Upon determination that a BSAI Pacific cod sideboard limit is, or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species.

(f) *Sideboard provisions—catcher/processor rockfish cooperative provisions*—(1) *General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, the following additional sideboard limits under paragraph (f) of this section apply to any catcher/processor vessels and LLP licenses that are participating in a rockfish cooperative in the catcher/processor sector.

(2) *Vessels subject to rockfish cooperative sideboard provisions.* Any vessel that NMFS has determined meets any of the following criteria is subject to groundfish sideboard directed fishing closures issued under paragraph (f) of this section:

- (i) Any catcher/processor vessel whose legal rockfish landings were used to qualify for the Rockfish Program and

the vessel named on that LLP license is assigned to a rockfish cooperative;

(ii) Any catcher/processor vessel named on an LLP license under which catch history was used to qualify that LLP license for the Rockfish Program and that LLP license is used in a rockfish cooperative; or

(iii) Any catcher/processor vessel named on an LLP license specified in an application for CFQ.

(3) *Prohibition from fishing in BSAI groundfish fisheries.* A vessel subject to a rockfish cooperative sideboard provision under this paragraph (f) may not participate in directed groundfish fisheries in the BSAI and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season between July 1 and July 14 except for sablefish harvested under the IFQ Program and pollock.

(4) *Prohibitions for fishing in GOA groundfish fisheries.* A vessel subject to a rockfish cooperative sideboard provision under this paragraph (f) may not participate in any directed groundfish fishery in the GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season except sablefish harvested under the IFQ Program:

(i) From July 1 through July 14 if:

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(4)(iii) of this section; and

(B) The rockfish cooperative has harvested any CFQ of any primary rockfish species prior to July 1.

(ii) From July 1 until 90 percent of the rockfish cooperative's primary rockfish species CFQ has been harvested if:

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(4)(iii) of this section; and

(B) The rockfish cooperative has not harvested any CFQ prior to July 1.

(iii) The prohibition on fishing in any directed groundfish fishery in the GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season except sablefish harvested under the IFQ Program does not apply if all vessels in the rockfish cooperative maintain an adequate monitoring plan during all fishing for any CFQ or any directed sideboard fishery as required under § 679.84(c) through (e).

(g) *Sideboard provisions—catcher/processor limited access provisions*—(1) *General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, the following sideboard limits under paragraph (g) of this section apply to any catcher/processor vessels and LLP licenses that

are used in the rockfish limited access fishery for the catcher/processor sector.

(2) *Vessels subject to rockfish limited access fishery sideboard provisions.* Any vessel that NMFS has determined meets any of the following criteria is subject to groundfish sideboard directed fishing closures issued under paragraph (g) of this section.

(i) Any catcher/processor vessel whose legal rockfish landings were used to qualify for the Rockfish Program and the vessel named on that LLP license is assigned to a catcher/processor rockfish limited access fishery;

(ii) Any catcher/processor vessel named on an LLP license under which catch history was used to qualify that LLP license for the Rockfish Program and that LLP license is used in the catcher/processor rockfish limited access fishery;

(iii) Any catcher/processor vessel named on an LLP license specified in an application for the rockfish limited access fishery for the catcher/processor sector; or

(iv) Any vessel named on an LLP license with legal rockfish landings in the catcher/processor sector if that LLP license is not specified in an application for CFQ or an application to opt-out.

(3) *Prohibition from directed fishing in GOA and BSAI groundfish fisheries.* If a vessel named on an LLP license used in the rockfish limited access fishery that has been assigned rockfish QS greater than an amount equal to 5 percent of the Pacific ocean perch rockfish QS allocated to the catcher/processor sector, then that vessel may not participate in any:

(i) GOA groundfish fishery and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season other than sablefish harvested under the IFQ Program; or

(ii) BSAI groundfish fishery and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season other than sablefish harvested under the IFQ Program or pollock, from July 1 until 90 percent of the Central GOA Pacific ocean perch that is allocated to the rockfish limited access fishery for the catcher/processor sector has been harvested.

(h) *Sideboard provisions—catcher/processor opt-out provisions—(1) General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, the following sideboards under paragraph (h) of this section apply to any catcher/processor vessels and LLP licenses that have submitted an application to opt-out that is subsequently approved by NMFS.

(2) *Vessels subject to opt-out sideboard provisions.* (i) Any catcher/

processor vessel whose legal rockfish landings were used to qualify for the Rockfish Program and the vessel named on that LLP license is assigned to the opt-out fishery;

(ii) Any catcher/processor vessel named on an LLP license under which catch history was used to qualify that LLP license for the Rockfish Program and that LLP license is used in the opt-out fishery; or

(iii) Any catcher/processor vessel named on an LLP license specified in an application to opt-out.

(3) *Prohibitions on Central GOA rockfish directed harvest by opt-out vessels.* Any vessel that is subject to the opt-out sideboard restriction under this paragraph (h) is prohibited from directed fishing for the following species in the following management areas:

(i) Central GOA northern rockfish and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season;

(ii) Central GOA Pacific ocean perch and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season; and

(iii) Central GOA pelagic shelf rockfish and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(4) *Prohibitions on directed fishing in GOA groundfish fisheries without previous participation.* (i) Any vessel

that is subject to the opt-out sideboard restriction under paragraph (c) of this section is prohibited from directed fishing in any groundfish fishery in the GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season (except sablefish harvested under the IFQ Program) from July 1 through July 14 of each year if that vessel has not participated in that directed groundfish fishery in any two years from 1996 through 2002 during the following time periods:

(A) June 30, 1996 through July 6, 1996;

(B) June 29, 1997 through July 5, 1997;

(C) June 28, 1998 through July 4, 1998;

(D) July 4, 1999 through July 10, 1999;

(E) July 8, 2000 through July 15, 2000;

(F) July 1, 2001 through July 7, 2001;

and  
(G) June 30, 2002 through July 6, 2002.

(ii) For purposes of this paragraph (h), participation in a fishery in Statistical Area 650 during a time period specified in paragraph (h)(4)(i) of this section shall be considered as participation in that same fishery in Statistical Area 640 during that time period.

#### **§ 679.83 Rockfish Program entry level fishery.**

(a) *Rockfish entry level fishery—(1) General.* An eligible entry level harvester and eligible entry level processor may participate in the rockfish entry level fishery under the following regulations under this section:

(i) *Trawl catcher vessels.* Trawl catcher vessels participating in the rockfish entry level fishery may collectively harvest, prior to September 1, an amount not greater than 50 percent of the total allocation to the rockfish entry level fishery as calculated under § 679.81(a)(2). Allocations to trawl catcher vessels shall be made first from the allocation of Pacific ocean perch available to the rockfish entry level fishery. If the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for trawl catcher vessels in the rockfish entry level fishery, then northern rockfish and pelagic shelf rockfish shall be allocated to trawl catcher vessels.

(ii) *Fixed gear vessels.* Fixed gear vessels participating in the rockfish entry level fishery may collectively harvest, prior to September 1, an amount not greater than 50 percent of the total allocation to the rockfish entry level fishery as calculated under § 679.81(a)(2). Allocations of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish to fixed gear vessels shall be made after the allocation to trawl catcher vessels.

(iii) *Secondary species allocations.* Secondary species shall not be allocated to the rockfish entry level fishery. Secondary species shall be managed based on a MRA for the target species as described in Table 10 to this part.

(iv) *Halibut PSC allocations—trawl vessels.* Halibut PSC from trawl vessels in the rockfish entry level fishery shall be accounted against the allocation to the deep water species fishery complex for that seasonal apportionment. If the Halibut PSC allocation in the deep water fishery complex has been achieved or exceeded for that seasonal apportionment, the rockfish entry level fishery for trawl vessels will be closed until deep water species fishery complex halibut PSC is available.

(v) *Halibut PSC allocations—fixed gear vessels.* Halibut PSC from fixed gear vessels in the rockfish entry level fishery shall be accounted against the allocation to the other non-trawl fishery category for that seasonal apportionment. If the Halibut PSC allocation in the other non-trawl fishery category has been reached or exceeded for that seasonal apportionment, the rockfish entry level fishery for fixed gear vessels will be closed until deep water

species fishery complex halibut PSC is available.

(2) *Reallocation among trawl and fixed gear vessels.* Any allocation of Pacific ocean perch, northern rockfish, or pelagic shelf rockfish that has not been harvested by 1200 hours A.L.T. on September 1, may be harvested by either trawl or fixed gear vessels in the rockfish entry level fishery.

(3) *Opening of the rockfish entry level fishery.* The Regional Administrator maintains the authority to not open the rockfish entry level fishery if he deems it appropriate for conservation or other management measures. Factors such as the total allocation, anticipated harvest rates, and number of participants will be considered in making any such decision.

(b) [Reserved]

**§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.**

(a) *Recordkeeping and reporting.* See § 679.5(r).

(b) *Permits.* See § 679.4(m).

(c) *Catch monitoring requirements for catcher/processors.* The requirements under paragraphs (c)(1) through (9) of this section apply to any catcher/processor vessel participating in a rockfish cooperative or the rockfish limited access fishery, or subject to a sideboard limit as described in this section. At all times when a vessel has groundfish aboard that were harvested under a CFQ permit, harvested during a rockfish limited access fishery, or harvested by a vessel subject to a sideboard limit as described under § 679.82(d) through (h) of this section, as applicable, the vessel owner or operator must ensure that:

(1) *Catch weighing.* All groundfish are weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by a NMFS-certified observer.

(2) *Observer sampling station.* An observer sampling station meeting the requirements at § 679.28(d) is available at all times.

(3) *Observer coverage requirements.* The vessel in compliance with the observer coverage requirements described at § 679.50(c)(7)(i).

(4) *Operational line.* The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.

(5) *Fish on deck.* No fish are allowed to remain on deck unless an observer is present, except for fish inside the

codend and fish accidentally spilled from the codend during hauling and dumping.

(6) *Sample storage.* The vessel owner or operator provides sufficient space to accommodate a minimum of 10 observer sampling baskets. This space must be within or adjacent to the observer sample station.

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1-907-271-1702 at least 24 hours prior to departure when the vessel will be carrying an observer who had not previously been deployed on that vessel. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager.

(8) *Belt and flow operations.* The vessel operator stops the flow of fish and clear all belts between the bin doors and the area where the observer collects samples of unsorted catch when requested to do so by the observer.

(9) *Vessel crew in tanks or bins.* The vessel owner must comply with the requirements specified in paragraph (c)(9)(i) of this section unless the vessel owner has elected, and had approved by NMFS at the time of the annual observer sampling station inspection, one of the two monitoring options described at paragraph (c)(9)(ii) or (iii) of this section.

(i) *Option 1—No crew in bin or tank.* No crew may enter any bin or tank preceding the point where the observer samples unsorted catch, unless:

(A) The flow of fish has been stopped between the tank and the location where the observer samples unsorted catch;

(B) All catch has been cleared from all locations between the tank and the location where the observer samples unsorted catch;

(C) The observer has been given notice the vessel crew must enter the tank;

(D) The observer is given the opportunity to observe the activities of the person(s) in the tank; and,

(E) The observer informs the vessel operator, or his designee that all sampling has been completed for a given haul, in which case crew may enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station.

(ii) *Option 2—Line of sight option.* From the observer sampling station and the location from which the observer samples unsorted catch, an observer of average height (between 64 and 74 inches (140 and 160 cm)) must be able to see all areas of the bin or tank where

crew could be located preceding the point where the observer samples catch. If clear panels are used to comply with this requirement, those panels must be maintained with sufficient clarity to allow an individual with normal vision to read text located two feet inside of the bin or tank. The text must be written in 87 point type (corresponding to line four on a standard Snellen eye chart) and the text must be readable from the observer sampling station and the location from which the observer collects unsorted catch. The observer must be able to view the activities of crew in the bin while collecting unsorted catch or processing their sample.

(iii) *Option 3—Video option.* A vessel must provide and maintain cameras, a monitor, and a digital video recording system for all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. The vessel owner or operator must ensure that:

(A) The system has sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date stamp. At a minimum, all periods of time when fish are inside the bin must be recorded and stored;

(B) The system must include at least one external USB (1.1 or 2.0) hard drive and use commercially available software;

(C) Color cameras must have at a minimum 420 TV lines of resolution, a lux rating of 0.1, and auto-iris capabilities;

(D) The video data must be maintained and made available to NMFS staff, or any individual authorized by NMFS, upon request. These data must be retained onboard the vessel for no less than 120 days after the beginning of a trip, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120 day period;

(E) The system provides sufficient resolution and field of view to see and read a text sample written in 130 point type (corresponding to line two of a standard Snellen eye chart) from any location within the tank where crew could be located;

(F) The system is recording at a speed of no less than 5 frames per second at all times when fish are inside the tank;

(G) A 16-bit or better color monitor, for viewing activities within the tank in real time, must be provided within the observer sampling station and have the capacity to display all cameras simultaneously. That monitor must be operating at all times when fish are in the tank. The monitor must be placed at

or near eye level and provide the same resolution as specified in paragraph (c)(9)(iii)(E) of this section;

(H) The observer is able to view any earlier footage from any point in the trip and is assisted by crew knowledgeable in the operation of the system in doing so;

(I) The vessel owner has, in writing, provided the Regional Administrator with the specifications of the system. At a minimum, this must include:

(1) The length and width (in pixels) of each image;

(2) The file type in which the data are recorded;

(3) The type and extent of compression;

(4) The frame rate at which the data will be recorded;

(5) The brand and model number of the cameras used;

(6) The brand, model, and specifications of the lenses used;

(7) A scale drawing of the location of each camera and its coverage area;

(8) The size and type of storage device;

(9) The type, speed, and operating system of any computer that is part of the system;

(10) The individual or company responsible for installing and maintaining the system;

(11) The individual onboard the vessel responsible for maintaining the system and working with the observer on its use; and

(12) Any additional information requested by the Regional Administrator.

(J) Any change to the video system that would affect the system's functionality be submitted to, and approved by the Regional Administrator in writing before that change is made.

(iv) *Failure of line of sight or video option.* If the observer determines that a

monitoring option selected by a vessel owner or operator specified in paragraph (c)(9)(ii) or (c)(9)(iii) of this section fails to provide adequate monitoring of all areas of the bin where crew could be located, then the vessel shall use the monitoring option specified in paragraph (c)(9)(i) of this section until the observer determines that adequate monitoring of all areas of the bin where crew could be located is provided by the monitoring option selected by the vessel owner or operator.

(d) *Catch monitoring requirements for catcher vessels.* The owner and operator of a catcher vessel must ensure the vessel complies with the observer coverage requirements described at § 679.50(c)(7)(ii) at all times the vessel is participating in a rockfish cooperative, rockfish limited access fishery, or rockfish sideboard fishery described in this section.

(e) *Catch monitoring requirements for shoreside and stationary floating processors—(1) Catch monitoring and control plan (CMCP).* The owner or operator of a shoreside or stationary floating processor receiving deliveries from a catcher vessel described at § 679.50(c)(7)(ii) must ensure the shoreside or stationary floating processor complies with the CMCP requirements described at § 679.28(g).

(2) *Catch weighing.* All groundfish landed by catcher vessels described at § 679.50(c)(7)(ii) must be sorted, weighed on a scale approved by the State of Alaska as described at § 679.28(c), and be made available for sampling by a NMFS-certified observer. The observer must be allowed to test any scale used to weigh groundfish to determine its accuracy.

(3) *Notification requirements.* The plant manager or plant liaison must notify the observer of the offloading

schedule for each delivery of groundfish harvested in a Rockfish Program fishery at least 1 hour prior to offloading. An observer must be available to monitor each delivery of groundfish harvested in a Rockfish Program fishery. The observer must be available the entire time the delivery is being weighed or sorted.

(f) *Catch accounting—(1) Primary rockfish species and secondary species.* All primary rockfish species and secondary species harvested, including harvests in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by a vessel that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CFQ permit will be debited against the CFQ for that rockfish cooperative from May 1:

(i) Until November 15; or

(ii) Until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(2) *Rockfish halibut PSC.* All rockfish halibut PSC used by a vessel, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CFQ permit will be debited against the CFQ for that rockfish cooperative from May 1:

(i) Until November 15; or

(ii) Until the authorized representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(3) *Groundfish sideboard limits.* All groundfish harvested by a vessel, including groundfish harvested in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is subject to a sideboard limit for that groundfish species as described under § 679.82(d) through (h), as applicable, from July 1

until July 31 will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

(4) *Halibut sideboard limits.* All halibut PSC used by a vessel, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that

is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, from July 1 until July 31 will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

10. In part 679, Tables 28, 29, and 30 are added to read as follows:

TABLE 28 TO PART 679.—QUALIFYING SEASON DATES IN THE CENTRAL GOA PRIMARY ROCKFISH FISHERIES

A legal rockfish landing includes	Year						
	1996	1997	1998	1999	2000	2001	2002
Northern rockfish that were harvested between;	July 1–July 20	July 1–July 10	July 1–July 14	July 1–July 19 and Aug. 6–Aug. 10.	July 4–July 26	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.
and landed by .....	July 27 .....	July 17 .....	July 21 .....	July 26 and Aug. 17, respectively.	Aug. 2 .....	July 30 and Oct. 28, respectively.	July 28.
Pelagic shelf rockfish that were harvested between;	July 1–Aug. 7, and Oct. 1–Dec. 2.	July 1–July 20	July 1–July 19	July 1–Sept. 3	July 4–July 26	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.
and landed by .....	Aug. 14 and Dec. 9, respectively.	July 27 .....	July 26 .....	Sept. 10 .....	Aug. 2 .....	July 30 and Oct. 28, respectively.	July 28.
Pacific ocean perch that were harvested between;	July 1–July 11	July 1–July 7 ...	July 1–July 6 and July 12–July 14.	July 1–July 11 and Aug. 6–Aug. 8.	July 4–July 15	July 1–July 12	June 30–July 8.
and landed by .....	July 18 .....	July 14 .....	July 13 and July 21, respectively.	July 18 and Aug. 15, respectively.	July 22 .....	July 19 .....	July 15.

TABLE 29 TO PART 679.—INITIAL ROCKFISH QS POOLS

Initial rockfish QS pool	Northern rockfish	Pelagic shelf rockfish	Pacific ocean perch	Aggregate primary species initial rockfish QS pool
Initial Rockfish QS Pool	9,193,183 units.	7,672,008 units.	18,121,812 units.	34,987,002 units.
Initial Rockfish QS Pool for the Catcher/Process or Sector.	Based on the Official Rockfish Program Record on December 31, 2006.			
Initial Rockfish QS Pool for the Catcher Vessel Sector.	Based on the Official Rockfish Program Record on December 31, 2006.			

TABLE 30 TO PART 679.—ROCKFISH PROGRAM RETAINABLE PERCENTAGES

[In round wt. equivalent]

Fishery	Incidental catch species	Sector	MRA as a percentage of total retained primary rockfish species
Rockfish Cooperative Fishery .....	Pacific Cod .....	Catcher/Processor .....	4.0
	Shortraker/Rougheye aggregate catch ...	Catcher Vessel .....	2.0
	See Non-Allocated Secondary species for "other species."		
Rockfish Limited Access Fishery .....	Pacific Cod .....	Catcher Vessel .....	8.0
	Pacific Cod .....	Catcher/Processor .....	4.0
	Sablefish (trawl gear) .....	Catcher/Processor and Catcher Vessel	3.0
	Shortraker/Rougheye aggregate catch ...	Catcher/Processor and Catcher Vessel	2.0
	Northern Rockfish .....	Catcher/Processor and Catcher Vessel	4.0
	Pelagic Shelf Rockfish .....	Catcher/Processor and Catcher Vessel	4.0
	Pacific ocean perch .....	Catcher/Processor and Catcher Vessel	4.0
	See Non-Allocated Secondary species for other species.		
Non-Allocated Secondary Species for Rockfish Cooperatives and Rockfish Limited Access Fisheries.	Pollock .....	Catcher/Processor and Catcher Vessel	20.0
	Deep-Water flatfish .....	Catcher/Processor and Catcher Vessel	20.0
	Rex Sole .....	Catcher/Processor and Catcher Vessel	20.0
	Flathead Sole .....	Catcher/Processor and Catcher Vessel	20.0
	Shallow-water flatfish .....	Catcher/Processor and Catcher Vessel	20.0
	Arrowtooth .....	Catcher/Processor and Catcher Vessel	35.0
	Other Rockfish .....	Catcher/Processor and Catcher Vessel	15.0
	Atka Mackerel .....	Catcher/Processor and Catcher Vessel	20.0

TABLE 30 TO PART 679.—ROCKFISH PROGRAM RETAINABLE PERCENTAGES—Continued  
[In round wt. equivalent]

Fishery	Incidental catch species	Sector	MRA as a percentage of total retained primary rockfish species
Fixed gear Rockfish Entry Level Fishery Trawl Rockfish Entry Level Fishery ..... Opt-out Fishery .....	Aggregated forage fish .....	Catcher/Processor and Catcher Vessel	2.0
	Skates .....	Catcher/Processor and Catcher Vessel	2.0
	Other Species .....	Catcher/Processor and Catcher Vessel	2.0
		See Table 10 to this part.	
		See Table 10 to this part.	
		See Table 10 to this part.	

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