DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 110314196–1432–01]

RIN 0648–BA97

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Amendment 88

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 88 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), which regulates the Central Gulf of Alaska Rockfish Program. This proposed Rockfish Program would allocate exclusive harvest privileges to a specific group of license limitation program license holders who used trawl gear to target Pacific ocean perch, pelagic shelf rockfish, and northern rockfish during particular qualifying years. It would retain the conservation, management, safety, and economic gains realized under the Rockfish Pilot Program and resolve identified issues in the management and viability of the rockfish fisheries. This action is necessary to replace particular Rockfish Pilot Program regulations that are scheduled to expire at the end of 2011. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Comments must be received no later than September 19, 2011.

ADDRESSES: Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–BA97, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Fax: 907–586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of Amendment 88 to the FMP, and the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) (collectively, Analysis) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

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 at the above address, e-mailed to *OIRA_Submission@omb.eop.gov,* or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Gwen Herrewig, 907–586–7091.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) under the FMP. The North Pacific Fishery Management Council (Council) prepared this FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

This proposed rule would implement Amendment 88, the Central GOA Rockfish Program (Rockfish Program), to manage the rockfish fisheries in the Central GOA, which covers an area from 147° W. long. to 159° W. long. Rockfish in Federal waters of the Central GOA are harvested primarily by trawl vessels, and to a lesser extent by longline vessels.

The Council has submitted Amendment 88 for review by the Secretary of Commerce, and a Notice of Availability of this amendment was published in the **Federal Register** on July 28, 2011 (76 FR 45217) with comments invited through September 26, 2011. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 88 and addressed in the response to comments in the final decision.

The Council recommended the Rockfish Program to replace the existing Rockfish Pilot Program (Pilot Program) that is scheduled to expire December 31, 2011. The proposed Rockfish Program would retain the net national conservation, management, safety, and economic benefits realized under the Pilot Program as well as resolve identified issues in the management and viability of the rockfish fisheries under the Pilot Program.

The Pilot Program and the proposed Rockfish Program are a type of a limited access privilege program (LAPP) developed to enhance resource conservation and improve economic efficiency in the Central GOA rockfish fisheries. LAPPs, also called catch share programs, are limited access systems in which Federal permits are issued to harvest a quantity of fish representing a portion of the total allowable catch (TAC). Under the Pilot Program, and as proposed under the Rockfish Program, participants exercise their exclusive harvest privileges when they join a rockfish cooperative. The Rockfish Program, like the Pilot Program, would benefit Central GOA fishermen, shoreside processors, catcher/processors, and communities by (1) providing greater security to harvesters in rockfish cooperatives, (2) allowing a slower-paced fishery to provide harvesters the ability to choose when to fish, (3) providing greater stability for processors by spreading production over a longer period of time, (4) allowing for a more stable workforce, (5) increasing product quality and diversity, and (6) allowing catcher/processors greater spatial and temporal flexibility to reduce bycatch and develop more stable markets.

Rockfish Pilot Program Overview

The following section provides a brief overview of the current Pilot Program. A detailed description of the Pilot Program is provided in the preamble to the Pilot Program's proposed rule (71 FR 33040; June 7, 2006).

The Pilot Program was enacted by Congress. Section 802 of the Consolidated Appropriations Act of 2004 (Section 802, Pub. L. 108–199) required that the Secretary of Commerce, in consultation with the Council, establish a program that recognized the historical participation of fishing vessels and fish processors in

the Central GOA rockfish fishery. Section 802 states that the program shall (1) include the Central GOA rockfish species of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish; (2) recognize historical participation of fishing vessels in the Central GOA rockfish fisheries from 1996 to 2002; (3) recognize historical participation of processors in the Central GOA rockfish fisheries from 1996 to 2000; (4) establish catch limits for non-rockfish species and non-target rockfish species harvested with the Central GOA rockfish species and base such allocations on historical harvesting of these incidentally caught species; (5) set aside up to 5 percent of the TAC of the Central GOA rockfish fisheries for catcher vessels that are not eligible to participate in the program; and (6) have a 2-year duration.

The Council developed the Pilot Program to meet the requirements of Section 802. The Pilot Program was designed to enhance resource conservation and improve economic efficiency in the Central GOA rockfish fisheries by establishing cooperatives that receive exclusive harvest privileges. Following extensive public comment, the Council recommended the Pilot Program to the Secretary on June 6, 2005. NMFS published regulations implementing the Pilot Program on November 20, 2006 (71 FR 67210). Fishing began under the Pilot Program on May 1, 2007.

Section 802 authorized the Pilot Program for 2 years, from January 1, 2007, until December 31, 2008. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, which became public law on January 12, 2007 (Pub. L. 109–479), extended the Pilot Program for an additional 3 years, until December 31, 2011. NMFS implemented that regulatory extension on November 17, 2008 (73 FR 67809).

Prior to 2007, the Central GOA rockfish fisheries were managed under the License Limitation Program (LLP). The LLP required harvesters to hold an LLP license to participate in GOA fisheries, but did not provide specific exclusive harvest privileges to LLP license holders. Harvesters with LLP licenses competed with each other to harvest the TAC assigned to the fishery. Processors also competed with each other. The competition created economic inefficiencies and incentives to increase harvesting and processing capacity. Harvesters increased the fishing capacity of their vessels and accelerated their rate of fishing to outcompete other vessels. Similarly, processors increased their processing capacity to outcompete other processors. The rapid pace of fishing reduced the ability of harvesters and processors to improve product quality and extract more value from the fishery by producing high-value products that require additional processing time.

As anticipated, the Pilot Program provided greater security to harvesters through the formation of rockfish cooperatives. The program and cooperatives resulted in a slower-paced fishery that provided the ability for the harvester to choose when to fish. The Pilot Program also provided greater stability for processors by spreading out production over a broader period of time. Overall, the Pilot Program provided greater benefits to shoreside processors, catcher/processors, Central GOA fishermen, and communities than were realized under the LLP management scheme. For example, during the Pilot Program, fishermen made more rockfish and non-rockfish shoreside deliveries over a more extended period of time than under the LLP. This allowed for a more stable workforce and slower processing pace than the previous short periods of high volume rockfish processing. With a slower processing pace, product quality and diversity increased. Central GOA fishermen and processors noted fewer conflicts with other fisheries, especially the salmon fishery which traditionally overlapped with rockfish efforts. Catcher/processors noted greater flexibility in preparation and execution of the fishery which resulted in lower bycatch numbers, more stable markets, and a more efficient distribution of fishery effort.

The Pilot Program created a structure for fishery participants to form cooperatives to efficiently manage harvesting activities. Under the Pilot Program, exclusive harvesting and processing privileges were allocated for a specific set of rockfish species and for associated species harvested incidentally to those rockfish in the Central GOA. The primary features of the Pilot Program are described below.

Rockfish Quota Share. NMFS assigned Rockfish Quota Share (QS) for rockfish primary species to an LLP license with a trawl gear designation endorsed for the Central GOA. The rockfish primary species are northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. A person holding an LLP license received rockfish QS if the LLP license had a history of rockfish primary species landings during a specific time period and the person holding the LLP license met other eligibility requirements. The amount of rockfish QS assigned to each license was based on the legal landings of these rockfish species associated with that LLP license. Rockfish QS assigned to a specific LLP license could not be divided or transferred separately from that LLP license.

On an annual basis for the duration of the Pilot Program, the LLP license holder assigns the LLP license, and rockfish QS assigned to that LLP license, for use in a rockfish cooperative, limited access fishery, or opt-out fishery.

Entry level fishery. Harvesters and processors not eligible to receive rockfish QS under the Pilot Program, but that hold an LLP license, may participate in a small entry level fishery for Central GOA rockfish. Section 802 specifically provided 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'' during the 1996 through 2002 eligibility time period. The Pilot Program implemented this provision by establishing an entry level fishery that was allocated 5 percent of the TAC for each of the three rockfish primary species. This 5 percent set-aside was further apportioned between trawl and longline vessels.

Rockfish cooperatives. A person holding an LLP license with rockfish QS may form a rockfish cooperative with other persons (*i.e.,* harvesters) on an annual basis. Each rockfish cooperative receives an annual cooperative quota (CQ), which is an amount of rockfish primary species and secondary species dedicated to that rockfish cooperative for harvest in a given year. Secondary species are those species incidentally caught during the harvest of rockfish primary species fisheries in the Central GOA. The secondary species for which annual CQ are allocated include Pacific cod, rougheye rockfish, shortraker rockfish, sablefish, and thornyhead rockfish. The amount of CQ assigned to a cooperative is a portion of the annual TAC based on the sum of the rockfish QS held by all the harvesters participating in the rockfish cooperative.

Each rockfish cooperative also receives an annual CQ that limits the amount of halibut prohibited species catch (PSC) the cooperative may use while harvesting its rockfish primary species and secondary species CQ. Cooperatives are allocated a portion of the total GOA halibut PSC limit, as annually specified under § 679.21, based on historic halibut mortality rates in the rockfish primary species fisheries. Halibut is incidentally caught and killed in a number of the rockfish primary species and secondary species fisheries. However, halibut caught as bycatch may

not be retained or sold commercially under regulations established under the authority of the Northern Pacific Halibut Act of 1982, or under regulations implementing the FMP at § 679.21. Therefore, the Pilot Program provides participants a fixed amount of incidental halibut mortality through a halibut CQ allocation.

A rockfish cooperative can transfer all or part of their CQ to other rockfish cooperatives, with some restrictions.

A rockfish cooperative may form only under specific conditions. A person holding an LLP license that allows them to catch and process their catch at sea (catcher/processor vessel LLP license) may form a rockfish cooperative with other persons holding catcher/processor LLP licenses. A person holding an LLP license that allows them only to deliver their catch onshore (catcher vessel LLP license) may 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.

Cooperatives may associate with processors that NMFS determined met eligibility criteria and were allocated an exclusive privilege to receive and process the rockfish primary species and secondary species allocated to harvesters. Processors cannot process catch outside the communities in which they have traditionally processed rockfish primary species and associated secondary species.

Limited access fishery. A person not in a rockfish cooperative, but holding an LLP license with rockfish QS, can decide annually to fish in a limited access fishery. NMFS does not allocate a specific amount of fish to a specific harvester in the limited access fishery. All harvesters in the limited access fishery compete with all other such harvesters to catch the TAC assigned to the limited access fishery. The TAC assigned to the limited access fishery represents the sum of QS assigned to all the LLP licenses designated for the limited access fishery. No exclusive harvest privilege exists in the limited access fishery.

Opt-out fishery. Each year, holders of catcher/processor LLP licenses with rockfish QS can decide to opt-out of the Pilot Program for that year, with certain limitations.

Sideboards. Limitations on the ability of harvesters under the Pilot Program to harvest fish in fisheries other than the Central GOA rockfish fisheries are commonly called ''sideboards.'' The Pilot Program provides certain economic efficiencies to harvesters. Harvesters could use their improved economic efficiency to increase their participation in other fisheries, adversely affecting the harvesters in other fisheries. Sideboards limit the total amount of catch in other groundfish fisheries that can be taken by eligible harvesters to historic levels, including harvests made in the State of Alaska (State) parallel groundfish fisheries. Parallel fisheries are fisheries authorized by the State in its waters concurrent with the Federal fisheries in which harvest amounts are deducted from the Federal TAC. Sideboards limit harvest in specific rockfish fisheries and the amount of halibut bycatch that can be used in certain flatfish fisheries. General sideboards apply to all vessels and LLP licenses with associated legal landings that can be used to generate rockfish QS. Additionally, specific sideboards apply to certain catcher/processor and catcher vessels and LLP licenses.

Enforcement and monitoring. NMFS implemented provisions to ensure that harvesters maintain catches within annual allocations and do not exceed sideboard limits.

Proposed Central GOA Rockfish Program

The Council designed the proposed Rockfish Program to meet the requirements for limited access privileges in section 303A of the MSA. The Rockfish Program would include similar implementation, management, monitoring, and enforcement measures to those developed under the Pilot Program. The Rockfish Program would (1) continue to assign QS and CQ to participants for primary and secondary species, (2) allow a participant holding an LLP license with rockfish QS to form a rockfish cooperative with other persons, (3) allow holders of catcher/processor LLP licenses to opt-out of rockfish cooperatives for a given year, (4) include an entry level longline fishery, (5) establish sideboard limits, and (6) include monitoring and enforcement provisions. However, the Council also recommended changes to improve the functionality of the Rockfish Program relative to the Pilot Program.

Key Differences Between the Pilot Program and the Proposed Rockfish Program

After considering program requirements and issues identified under the Pilot Program, in order to ensure that the Rockfish Program complies with section 303A of the MSA, the Council decided to modify some aspects of the Pilot Program under the proposed Rockfish Program. The Council recommended the Rockfish Program based on the analysis of rockfish management under the LLP, the Pilot Program, and anticipated changes under the proposed Rockfish Program. The rationale underlying the Council's decision and details of this analysis are briefly discussed in this preamble and are contained in the Analysis prepared for this proposed action (see **ADDRESSES**).

Some key differences between the Pilot Program and Rockfish Program are outlined in Table 1. In summary, the proposed Rockfish Program would:

- Change the qualifying years for eligibility for QS;
- Use a different suite of years to determine the allocation of QS and sideboard limits;
- Assign to rockfish cooperatives a specific portion of the Central GOA TAC of species historically harvested in the rockfish fisheries;
- Assign a specific amount of halibut PSC to cooperatives and conserve a portion of the halibut that will remain unallocated;
- Restrict the entry level fishery to longline gear only;
- Relax the requirements to form a cooperative;
- Specify the location where harvesters in cooperatives may deliver rockfish;
- Remove the requirement that harvesters in a catcher vessel cooperatives deliver to a specific processor;
- Discontinue the limited access fishery;
- Simplify sideboards, and slightly modify sideboards for catcher/processors;
- Implement a cost recovery program, except for the entry level longline fishery;
- Establish a catch monitoring and control plan (CMCP) specialist; and
- Be authorized for 10 years, from January 1, 2012, until December 31, 2021.

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Table 1. Key Differences between the Pilot Program and the Proposed Rockfish Program

Management Provision		Pilot Program	Rockfish Program
Eligibility to receive QS		Made targeted legal landings of rockfish primary species during the qualifying years 1996 - 2002.	Made targeted legal landings of rockfish primary species during the qualifying years 2000–2006, or participated in the Pilot Program entry level trawl fishery in 2007, 2008, or 2009.
• Voluntary exclusion from the Rockfish Program		May not apply for or receive initial allocation of QS, but may still have sideboard limitations	LLP license holder may forego QS and be exempted from specific sideboard limits if legal landings were made both in 2000–2006 and in the entry level trawl fishery during 2007, 2008, or 2009. Must apply for exclusion during initial application process.
Initial QS Allocations		Based on landings (best 5 of 7) years between 1996 and 2002	97.5% of the initial allocation is based on landings (best 5 of 7 years) between 2000 and 2006.
• Entry level trawl "transition" QS allocation		N/A	Participants in the Pilot Program entry level trawl fishery would be transferred into catch share management where 2.5% of the allocation would be given to licenses that participated in the Pilot Program entry level trawl fishery in 2007, 2008, 2009.
Rockfish Cooperatives		Yes	Yes
• Forming a catcher vessel (CV) cooperative		May only form cooperatives with other CVs and the processor to whom they historically delivered catch from 1996–2000. No minimum number of LLP licenses required for CVs to form a cooperative.	May only form a cooperative with other CVs with an association with any shoreside processor located within the geographic boundaries of the City of Kodiak. No minimum number of LLP licenses required.
• Annual CV allocation of CQ	Primary	Based on member QS	Based on member QS
	Secondary	• Pacific cod based on QS • Sablefish based on QS • Rougheye/shortraker maximum retainable amount (MRA), may not exceed 9.72% of TAC • Thornyhead based on QS	• 3.81% of Pacific cod TAC • 6.7% of sablefish TAC • 7.84% of thornyhead TAC • Rougheye/shortraker MRA may not exceed 9.72% of TAC.

	Halibut PSC	Based on member QS. Calculation based on 1996–2002 data.	Based on member QS. Calculation based on 2000–2006 data with a 12.5% reduction. 74.1 mt to cooperatives. 16.8 mt remains unallocated and stays "in the water."
• Forming a catcher/processor (C/P) cooperative		May join a cooperative with other C/Ps. Two minimum LLP licenses required for C/Ps.	May join a cooperative with other C/Ps. No minimum number of LLP licenses required.
• Annual C/P allocation of CQ	Primary	Amount based on member QS	Amount based on member QS
	Secondary	• Pacific cod MRA • Sablefish based on QS • 30.03% Shortraker • 58.87% Rougheye • Thornyhead based on QS	• Pacific cod MRA • 3.51% of sablefish TAC • 40% of shortraker TAC • 58.87% of rougheye TAC • 26.50% of thornyhead TAC
	Halibut PSC	Based on member QS. Calculation based on 1996–2002 data.	Amount based on member QS. Calculation based on 2000–2006 data with a 12.5% reduction. 117.3 mt allocated. 10.6 mt remains in the water.
Transfer of CQ		• C/P may transfer to C/P or CV • CV may transfer to CV only. No minimum number of LLP licenses required to transfer CQ.	• C/P may transfer to C/P or CV, except no shortraker or rougheye may transfer from C/P to CV • CV may transfer to CV only • Minimum of 2 LLP licenses in each cooperative required to transfer CQ
Limited access fishery		Yes	None
Opt-out option for catcher/processors		Yes, but subject to opt-out sideboards	Yes, but subject to opt-out sideboards
Halibut PSC % rollover of unused CQ		100% of unused CQ halibut PSC will be added to the last seasonal apportionment during the current fishing year	≤ 55% of unused CQ halibut PSC will be added to the last seasonal apportionment during the current fishing year. Resulting 45% of unused CQ halibut PSC remains in the water.
Use caps for rockfish primary species		A person may not hold or use more than: • 5% of the QS assigned to the CV sector. • 20% of the QS assigned to the C/P sector.	A person may not hold or use more than: • 4% of the QS assigned to the CV sector. • 40% of the QS assigned to the C/P sector.

	CV cooperative may not hold or use more CQ than: • 30% QS assigned to CV sector.	CV cooperative may not hold or use more CQ than: • 30% QS assigned to CV sector.
	A vessel may not harvest more than: • 60% CQ issued to the C/P sector.	A vessel may not harvest more than: • 8% CQ issued to the CV sector. • 60% CQ issued to the C/P sector.
	Processors may not receive or process more than: • 30% CQ issued to CV sector (rockfish primary species only).	Processors may not receive or process more than: • 30% CQ issued to CV sector (rockfish primary species, Pacific cod, and sablefish).
Sideboards (in effect July 1–31)	Yes	Yes
• Catcher vessel	Exemption from sideboard limits: (1) Any AFA CVs not exempt under AFA regulations	Exemptions from sideboard limits: (1) Any AFA CVs not exempt under AFA regulations; (2) vessels that have been selected as being voluntarily excluded from the Rockfish Program; and (3) any vessels assigned an LLP license that has been selected as being voluntarily excluded from the Rockfish Program.
	• Prohibited from fishing in the BSAI groundfish fisheries and limits on Pacific cod • Prohibited from fishing in the West Yakutat/ Western GOA (for rockfish) • Deep and shallow water complex halibut PSC	Prohibited fishing restrictions: • West Yakutat District/Western GOA (rockfish primary species) • Deep water complex—arrowtooth flounder, deep water flatfish, rex sole
• Catcher/processor	• Prohibited from fishing in the BSAI groundfish fisheries and non-program groundfish fisheries in the GOA • Deep and shallow water halibut PSC limit	• West Yakutat/Western GOA limitation (rockfish primary species) • Deep and shallow water halibut PSC limit • Prohibited from fishing rockfish primary species in the Western GOA and West Yakutat District for non-Amendment 80 vessels
	Subject to sideboards and would receive the portion of each rockfish	

• Catcher/processor Opt-out vessels	sideboard limit not assigned to rockfish cooperatives	
	Prevents directed fishing in GOA groundfish fisheries without previous participation in 1996–2002	• Would prevent directed fishing in GOA groundfish fisheries without previous participation in 2000–2006 • Prohibit directed fishing for rockfish primary species in Western GOA and West Yakutat for non-Amendment 80 vessels
Entry level fishery	Yes, trawl and longline gear	Yes, longline gear only
• Annual application	Yes. Processor affirmation required.	None. May deliver to any shoreside processing facility in the GOA.
• TAC	5% of the rockfish primary species TAC goes to the entry level fishery, divided equally between trawl (2.5%) and longline gear (2.5%).	Annual set aside of the TAC would increase annually, to a predetermined cap, if the fishery harvests ≥ 90% of their allocation of a species in the previous year.
Monitoring and enforcement	Observer coverage: • 100% CV in July and when checked-in	• 100% CV when checked-in,
	• 200% C/P cooperative for CQ or sideboards, and • 100% C/P opt-out vessels in July only.	
• Shoreside/stationary processors:	Catch Monitoring and Control Plan (CMCP) is required except for the entry level longline fishery.	
	Notify the observer at least one hour prior to offloading of each delivery of groundfish harvested in a Pilot Program fishery. An observer must be available to monitor each delivery	Notify a NMFS CMCP specialist at least one hour prior to receiving a CQ delivery.
Cost recovery	None	Yes, fee liability payment would be a maximum of 3% of the ex-vessel value of rockfish primary and secondary species. Payment due on February 15 of the following year. No fees for the entry level longline fishery.
Duration	5 years	10 years

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Rockfish Quota Share

This proposed rule uses the term ''quota share'' to describe the Rockfish Program's multi-year exclusive harvest privileges based on historic harvest activities, consistent with similar North Pacific programs. The Council did not use this term in recommending the Rockfish Program. Instead the Council used the terms ''qualifying catch,'' and ''catch history'' to describe the harvest privilege that is linked to historic harvests attributed to an LLP license. However, in implementing this program, NMFS has determined that the use of the term ''quota share'' does not alter the original intent of the Council.

Rockfish QS would be an attribute of the LLP license. Once NMFS calculates the amount of QS to allocate to an LLP license, NMFS would modify that LLP license and designate that amount on the license. QS assigned to an LLP license could not be transferred independent from that LLP license, except to comply with the use caps as described below under *Transfer of*

Rockfish QS. QS assigned to an LLP license would provide a harvest privilege, not a right, to its holder and would not confer a guaranteed harvest to the holder of that QS.

QS would be the basis for the annual calculation of the amount of fish that could be harvested or used if the QS were assigned to a rockfish cooperative. Once QS was assigned to an LLP license, it would authorize that LLP license holder to participate in the Rockfish Program. If an LLP license holder assigned that LLP license, and its associated QS, to a cooperative with other LLP license holders, the sum of the QS of all of the eligible harvesters would yield CQ—an exclusive annual catch limit of rockfish primary 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.

NMFS would not issue separate QS for the rockfish secondary species or halibut PSC. Instead, NMFS would use the amount of rockfish primary species QS to determine the specific annual catch amount for the rockfish secondary species or halibut PSC. The Council recommended that NMFS base the annual catch limit of rockfish secondary species and halibut PSC on the total historic harvests of rockfish primary 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 rockfish primary species, secondary species, and halibut PSC are discussed below under ''TAC Apportionment to an Incidental Catch Allowance (ICA), Rockfish Cooperative, and Entry Level Fishery.''

Anticipated Changes in the Pelagic Shelf Rockfish Complex

NMFS notes that the Council's Science and Statistical Committee has been amenable to a recent recommendation by the GOA Groundfish Plan Team to dissolve the pelagic shelf rockfish complex. The proposed Rockfish Program would allocate QS based on harvests of all three species in the Pelagic shelf complex—dusky, widow, and yellowtail rockfish. Widow and yellowtail rockfish are currently managed with dusky rockfish in the pelagic shelf rockfish complex, but do not commonly coexist in the same geographic area and habitat. The GOA Groundfish Plan Team is considering a plan to rearrange some species in the GOA rockfish stock assessments for more precise management of yellowtail and widow rockfish. The Council derived the 2011 pelagic shelf rockfish TAC from NMFS projection models of acceptable biological catch that estimated 91 metric tons (mt) for widow and yellowtail rockfish, and 4,663 mt for dusky rockfish. These estimates yield the 2011 pelagic shelf rockfish TAC (4,754 mt). Observer data shows that 99.7 percent of pelagic shelf rockfish landed in 2010 were dusky rockfish, and the remaining 0.3 percent were widow and yellowtail rockfish. It is possible that the relatively large acceptable biological catch for pelagic shelf rockfish could be used to overharvest the small number of yellowtail and widow rockfish in this complex.

This action would not affect, or change, QS eligibility for primary species in the Rockfish Program. The GOA Groundfish Plan Team recommendation would remove dusky rockfish from the pelagic shelf rockfish complex and place the species into its own category. Dusky rockfish would then be a single species target, similar to northern rockfish or Pacific ocean perch. The GOA Groundfish Plan Team would combine the remaining rockfish species in the pelagic shelf rockfish complex (yellowtail and widow) with the Other Slope Rockfish complex and rename the complex ''Gulf of Alaska Other Rockfish.'' If the Council moves forward with this action, the three primary species of the Rockfish Program would then be Pacific ocean perch, northern rockfish, and dusky rockfish. If approved by the Secretary, NMFS would change every occurrence of ''pelagic shelf rockfish'' that appears in the Rockfish Program regulations and tables to ''dusky rockfish.''

NMFS anticipates this new arrangement would not have an impact on the Rockfish Program. If this recommendation would have been established in the 2011 season, removing yellowtail and widow rockfish from the complex and adopting a TAC based only on dusky rockfish would have resulted in a reduction of 91 mt to the pelagic shelf rockfish. This reduction is minimal relative to the overall 2011 pelagic shelf rockfish TAC of 4,754 mt.

Eligibility for Harvesters

Eligibility to receive QS would be based on the history of legal landings of rockfish primary species in the Central GOA associated with an LLP license. A person would be eligible to receive QS under the Rockfish Program if (1) that person held a permanent, fully transferable LLP license endorsed for Central GOA groundfish with a trawl designation at the time of application; (2) a vessel made legal landings of rockfish primary species under the authority of that LLP license during a specific time period; and (3) that person submitted a timely application that is subsequently approved by NMFS. A timely application would include a complete application for rockfish QS that is received by NMFS not later than 5 p.m. on January 3, 2012, or postmarked by that date. The application process and specific components required in the application are detailed under *Application and Appeal Process* below.

The amount of QS allocated to an LLP license would be based on the catch history associated with the LLP licenses held by that person at the time of application.

In addition, LLP license holders who would be eligible for rockfish QS could choose to be excluded from the Rockfish Program and not receive rockfish QS. These LLP license holders would be exempted from specific sideboard limitations applicable to LLP licenses that participate in the program. See ''Exclusion from the Rockfish Program'' for more information.

Legal Landings

NMFS would assign QS to an LLP license if legal landings of rockfish were made under the authority of an LLP license for any of the rockfish primary species during the directed fishing seasons described in Tables 2 and 3 of this preamble. A legal landing would include fish caught, retained, and reported in compliance with State and Federal regulations in effect at the time of landing. For catcher vessels, a legal landing would include the harvest of rockfish primary species from the Central GOA regulatory area that was offloaded and recorded on a State fish ticket during the directed fishing season for that rockfish primary fishery. For catcher/processors, a legal landing would include the harvest of groundfish from the Central GOA regulatory area that is recorded on NMFS weekly production reports (WPRs) during the directed fishing season for the applicable rockfish primary fisheries.

The LLP was effective on January 1, 2000 (63 FR 52642); however, NMFS did not track the use of an LLP license on a specific vessel during the 2000 and 2001 calendar years, which are two of the qualifying years for the Rockfish Program. Therefore, NMFS would create a presumption that legal landings for 2000 to 2001 were made under authority of the LLP license that was used aboard the same vessel whose history was the

basis for the LLP issuance in 2000 at the start of the program (the ''original qualifying vessel''). In order to refute that presumption an applicant for QS would be required to submit written documentation to NMFS for review during the application process to establish otherwise.

Under the LLP program, multiple LLP licenses can be used on a vessel. Therefore, landings made by a vessel could have been assigned to more than one LLP license. If the same LLP holder or the holders of more than one LLP claims the same landing and would like the resulting QS to be assigned to more than one LLP license, then NMFS would credit each LLP license with that landing. NMFS would credit landings assigned to more than one LLP license in another manner only if the applicants could provide written documentation of an agreement among the LLP license holders establishing an alternative means for distributing the landing credit. This written documentation would have to be provided to NMFS for review during the application process. Based on experience with the Pilot Program, NMFS anticipates very few landings would be claimed for more than one LLP license.

Qualifying Years

The Council recommended two different methodologies for determining the amount of rockfish QS assigned to an LLP license, depending on the specific fisheries in which an LLP license holder participated. For most LLP license holders, QS would be assigned based on rockfish legal landings made during the rockfish primary fisheries during 2000 through 2006. LLP license holders eligible to receive rockfish QS based on legal landings from 2000 through 2006 represent those participants active in the Central GOA rockfish fisheries from the implementation of the LLP through 2006, the last year before the Pilot Program was implemented. The Council recommended these years as best representative of historic and recent fishery participation, after analysis of a range of qualifying years from 1996 through 2006.

A smaller set of LLP license holders would qualify to receive QS based on participation in the entry level trawl fishery during 2007, 2008, or 2009. LLP license holders would be eligible to receive rockfish QS if they demonstrate participation in the Central GOA entry level trawl fishery during the first 3 years of the Pilot Program (1996, 1997, 1998) and prior to the Council's final action (2007, 2008, or 2009). This eligibility would be based on landings data that are retained by NMFS. After reviewing a range of options to either maintain the existing entry level trawl fishery, or choose alternative methods to assign rockfish QS, the Council recommended assigning rockfish QS to LLPs held by entry level trawl fishery participants to ensure that those participants benefit from catch share management. Assigning QS would also reduce the need to establish and manage a separate ''race for fish'' fishery that could be exceeded, or remain closed if the potential fishing effort in the fishery would likely exceed the limited allocation available to the fishery.

The following sections describe these two methods for determining the amount of rockfish QS assigned to an LLP license and the rationale supporting those allocation methods.

Assigning QS to LLP Licenses Used During 2000 Through 2006

NMFS would assign rockfish QS based on legal landings made under the authority of an LLP license for the directed fishing season dates for each of the rockfish primary species presented in Table 2.

TABLE 2—SEASON DATES IN EACH YEAR FOR LEGAL LANDINGS OF ROCKFISH PRIMARY SPECIES FISHERIES UNDER THE ROCKFISH PROGRAM

A rockfish legal landing includes	Year						
	2000	2001	2002	2003	2004	2005	2006
Northern rockfish that were harvested in the Central GOA between.	July 4–July 26.	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.	June 29–July 29.	July 4–July 25.	July 5–July 24.	July 1–July 21.
and landed by	Aug. 2	July 30 and Oct. 28, respectively.	July 28	Aug. 5	Aug. 1	July 31	July 28.
Pelagic shelf rockfish that were harvested in the Central GOA between.	July 4–July 26.	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.	June 29–July 31.	July 4–July 25.	July 5–July 24, Sept. 1, Sept 4, and Sept. 8–Sept. 10.	July 1–July 21 and Oct. 2–Oct. 8.
and landed by	Aug. 2	July 30 and Oct. 28, respectively.	July 28	Aug. 7	Aug. 1	July 31, Sept. 11, and Sept. 17, respectively.	July 28 and Oct. 15, respectively.
Pacific ocean perch that were harvested in the Central GOA between.	July 4–July 15.	July 1–July 12.	June 30–July 8.	June 29–July 8.	July 4–July 12.	July 5–July 14.	July 1–July 6.
and landed by	July 22	July 19	July 15	July 15	July 19	July 21	July 13.

As shown in Table 2, NMFS would consider legal landings for QS if the harvests were made when the directed fishing season was open and the landings were reported within 7 days after the end of the season. This 7-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 7-day extension would accommodate those harvesters. Additionally, this 7-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 7-day period after the end of the directed fishing season to report landings would

accommodate catcher/processors submitting WPRs.

For each fully transferable LLP license under which a rockfish legal landing was made for one or more rockfish primary species during the season dates described in Table 2, NMFS would calculate the QS for each of the three rockfish primary species using the following procedures.

First, NMFS would sum the legal landings of each rockfish primary species for each year from 2000 through 2006, including years with zero pounds, during the fishery seasons listed in Table 2.

Second, NMFS would sum the 5 years with highest poundage of legal landings for that LLP license for that rockfish primary species (referred to as the highest 5 years for that LLP license). The highest 5 years could vary for each of the three rockfish primary species. This amount would yield the QS that would be issued for that LLP license in QS units. As with other catch share programs (*e.g.,* Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Program), NMFS would assign rockfish QS using a subset of qualifying years to accommodate the variability in fishing patterns that may occur annually due to a range of factors. Using a subset of years would accommodate conditions that could adversely affect overall harvests, such as illness, mechanical problems, poor market conditions, or other factors. Using a subset of the years would allow NMFS to consider these factors without undertaking the administratively complicated task of reviewing specific landing records for each vessel and LLP license holder and determining if specific landings should or should not be included based on specific criteria.

Third, NMFS would sum the highest 5 years for each rockfish primary species for each LLP license qualified to receive rockfish QS based on rockfish legal landings for all LLP licenses receiving rockfish QS based on landings from 2000 through 2006. The result is the sum of all highest 5 years for each rockfish primary species.

Catcher/Processor QS. An LLP license endorsed for Central GOA groundfish fisheries with a catcher/processor trawl designation would be assigned rockfish QS to participate in the catcher/processor sector based on any rockfish legal landings of primary species that were harvested by and processed aboard the vessel designated on the LLP license during the qualifying periods.

NMFS would determine the amount of QS units for a rockfish primary species that would be assigned to the catcher/processor sector. NMFS would determine the percentage of legal landings in the highest 5 years for the 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. 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.

The Council recommended that NMFS assign rockfish QS to the catcher/processor sector based on legal landings that were harvested at sea and processed onboard a vessel. The Council wanted to ensure that rockfish QS could be processed at sea only if the underlying legal landings that gave rise to that QS were harvested and processed at sea. Allocation of rockfish QS to the catcher/processor sector based on the designation on the LLP license alone would create the potential for allocations of rockfish QS based on landings that were not harvested and processed at sea.

Each year, the holder of a catcher/processor designated LLP license with QS could decide to opt-out of participating in a rockfish cooperative. Participants that choose to ''opt-out'' forgo the opportunity to fish rockfish primary species. CQ derived from the QS of LLP license holders that decide to ''opt-out'' would be reallocated to cooperatives within the catcher processor sector.

Catcher vessel QS. An LLP license endorsed for Central GOA groundfish fisheries with a trawl designation with rockfish legal landings that were not processed at sea would be assigned rockfish QS for 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. 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.

If landings were made on a vessel assigned an LLP license with a catcher/processor designation, but the rockfish primary 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 rockfish legal landings data, NMFS does not anticipate any such allocations of rockfish QS.

Allocation of Rockfish QS from an interim LLP license. NMFS would assign rockfish legal landings and any resulting rockfish QS only to permanent and fully transferable LLP licenses, with one exception. NMFS would assign rockfish legal landings that were made under the authority of an interim LLP license endorsed for Central GOA groundfish with a trawl gear designation during the season dates for the rockfish primary species, as described in Table 2 of this preamble, provided that (1) NMFS has determined that the interim LLP license is ineligible to receive a designation as a permanent LLP license endorsed for Central GOA groundfish with a trawl gear designation; and (2) a permanent fully transferable LLP license endorsed for Central GOA groundfish with a trawl gear designation was assigned to the vessel that made legal rockfish landings under the authority of an interim LLP license endorsed for Central GOA groundfish prior to December 31, 2003, and was continuously assigned to that vessel through June 14, 2010.

The Council recommended this specific exemption to provide an opportunity for persons who were active in the Central GOA rockfish fisheries but who did not receive a permanent fully transferable LLP license to be eligible to receive rockfish QS provided they demonstrate a clear intent to remain active in the fishery. This particular exemption would apply only to a person who: (1) Held an interim LLP license that was determined to be invalid by NMFS prior to December 31, 2003; and (2) assigned a different permanent LLP license to the same vessel that made the rockfish legal landings prior to December 31, 2003; and (3) maintained the permanent LLP license on that vessel until at least June 14, 2010. The Council recommended this provision and the December 31, 2003, deadline based on data that demonstrated that at least two LLP license holders had been active in the Central GOA rockfish fisheries with an interim LLP license prior to December 31, 2003, but subsequently purchased a fully transferable LLP license before December 31, 2003. This provision would ensure that LLP license holders who demonstrated participation in the Central GOA rockfish fisheries during the qualifying period would continue to be eligible to receive rockfish QS from rockfish legal landings made under the authority of the interim LLP licenses. The Council also wanted to ensure that any permanent LLP license was continuously maintained on that vessel from the time it replaced the interim LLP license until the date of final

Council action (June 14, 2010) on the Rockfish Program. The Council recommended this requirement to ensure that an LLP license holder was continuously active in the Central GOA rockfish fisheries with the permanent LLP license and did not reassign that LLP license to another vessel while the Rockfish Program was being developed by the Council.

This proposed rule would, assign rockfish legal landings made under the authority of an interim LLP license to the permanent fully transferable LLP license assigned to that vessel. NMFS would not assign any rockfish legal landings to the permanent fully transferable LLP license based on fishing conducted under the authority of the permanent fully transferable LLP license before it was assigned to the vessel. This method would ensure that the Council's intent that rockfish legal landings made during the same time period from more than one LLP license would not be assigned rockfish QS. Effectively, a person holding the permanent fully transferable LLP license could receive rockfish QS for rockfish legal landings made prior to the assignment of a permanent LLP license to the vessel that made those landings, and rockfish QS based on rockfish legal landings that were made under the authority of the permanent LLP license after it was transferred to the vessel.

Rationale for assigning Rockfish QS based on rockfish legal landings from 2000 through 2006. During the development of the Rockfish Program, the Council considered a range of years that could be used to determine the appropriate allocation of rockfish QS to the eligible LLP license holders. Originally, the Pilot Program assigned rockfish legal landings and rockfish QS based on the specific guidance provided in Section 802:

> 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. * * *

The specific guidance that Congress provided limited the suite of years that the Council could consider in the development of the Pilot Program. Section 802, however, did not preclude the Council from considering additional qualifying periods once the Pilot Program expired. Moreover, nothing in Section 802 or the regulations implementing the Pilot Program indicates that the Council or NMFS should or must consider or adopt the qualifying years of 1996 through 2002 when developing the Rockfish Program.

Therefore, the Council examined a broad range of years from the first year identified in section 802 (1996) through the last year prior to the implementation of the Pilot Program (2006). The Council looked at but rejected harvest during the Pilot Program (2007 through 2011) because the analysis showed harvests under the Pilot Program cooperatives and limited access fishery were made under a combination of CQ and limited access fishing that were based on a combination of cooperative contract provisions and a race for fish in the limited access fishery that are not reflective of the harvest patterns the analysis shows likely would have occurred in the absence of the Pilot Program.

The Council considered both historic and recent participation in the rockfish fisheries when recommending the appropriate qualifying years for assigning rockfish legal landings. In balancing the interests of historic and recent participants, the Council considered fishing patterns over the 11-year period from 1996 through 2006. Several general patterns emerged in the Council's review that is described in detail in section 2.3.1 of the Analysis (see **ADDRESSES**). Participation in the rockfish fisheries by catcher/processor vessels has decreased substantially since 1999. From 1996 through 1999, 8 to 15 catcher/processor vessels harvested fish in the Central GOA rockfish fisheries annually, and from 2000 through 2006, 5 to 7 catcher/processor vessels were active in the fishery annually. The stable participation of catcher/processor vessels since 2000 indicates that more recent fishing patterns may better reflect dependence and consistent participation in the fishery. A more stable pattern is evident in the catcher vessel fleet. From 1996 through 1999, 26 to 32 catcher vessels retained catch in the Central GOA rockfish fisheries annually, and from 2000 through 2006, 25 to 33 catcher vessels were active in the fisheries annually. Section 2.3.1 of the Analysis also notes that the proportion of catch retained by catcher vessels generally increased after 2000.

The Council also considered the effects of allocating rockfish QS based on legal landings prior to the implementation of the LLP in 2000. Rockfish legal landings prior to 2000 were made under a different management regime than management under the LLP. The LLP limited potential increased effort in the Central GOA. Catch patterns prior to the implementation of the LLP are not indicative of more recent catch patterns. The Council also considered whether catch in 1996 through 1999 characterizes historic and recent participation given the observed changes in fishing patterns and management since 2000. The Council noted that using rockfish legal landings from 2000 through 2006 would include 3 of the 7 years used in the allocation of rockfish QS under the Pilot Program, yet would also consider more recent fishery participation patterns from 2003 through 2006.

The Council also considered the potential effects of modifying the qualifying years from 1996 through 2002 on current rockfish Pilot Program QS holders. The Council noted that the Pilot Program was a 5-year program. Congress initially established the Pilot Program as a 2-year program under section 802 of the Consolidated Appropriations Act of 2004, and subsequently extended the duration of the Pilot Program to 5 years under section 218 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2007. Given the clear expiration dates for the Pilot Program established by Congress, LLP license holders should have reasonably assumed that the Council could set rockfish QS allocations under the Rockfish Program that could differ from those Congress established for the Pilot Program. In fact, the Council consistently considered a range of reasonable alternative qualifying years other than 1996 through 2002 while developing the Rockfish Program. The Council noted throughout the development of the Rockfish Program that, given the limited duration of the Pilot Program established by Congress, the qualifying years used to allocate rockfish QS were subject to change. The Council received public testimony through extensive hearings for consideration in determining the qualifying years during the deliberation process.

Given the observed changes in fishing patterns by catcher/processor vessels beginning in 2000, the changes in management of the fishery with the implementation of the LLP in 2000, and the consideration of both historic and more recent fishing patterns, the Council selected the qualifying years of 2000 through 2006.

Assigning QS to LLP Licenses Used During the Rockfish Entry Level Trawl Fishery During 2007, 2008, or 2009

The second method proposed for assigning rockfish QS to LLP licenses is based on the use of an LLP license in the entry level trawl fishery during any of the first 3 years of the Pilot Program; 2007, 2008, or 2009. The Council recommended a specific method to assign rockfish QS based on the number of years that the LLP license was assigned to a vessel that made a rockfish legal landing in the entry level trawl fishery in 2007, 2008, or 2009 during directed fishing season dates for each of the rockfish primary species presented in Table 3. NMFS notes that because only catcher vessels were eligible to participate in the entry level trawl fishery, the rockfish QS assigned to an eligible LLP license is designated as catcher vessel QS.

TABLE 3—SEASON DATES IN EACH YEAR FOR LEGAL LANDINGS OF ROCKFISH PRIMARY SPECIES FISHERIES UNDER THE ENTRY LEVEL TRAWL FISHERY

A rockfish legal landing includes . . .	2007	2008	2009
Northern rockfish that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between . . .	Sept.1–Nov. 8	Sept.1–Nov. 15	Sept.1–Nov. 15.
and landed by . . .	Nov. 15	Nov. 22	Nov. 22.
Pelagic shelf rockfish that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between . . .	July 4–July 25	July 5–July 24	July 1–July 21.
and landed by . . .	Aug 1	July 31	July 28.
Pacific ocean perch that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between . . .	July 4–July 12	July 5–July 14	July 1–July 6.
and landed by . . .	July 19	July 21	July 13.

As shown in Table 3, NMFS would consider legal landings for QS if the harvests were made when the directed fishing season was open and the landings were reported within 7 days after the end of the season. For each LLP license that made a rockfish legal landing for one or more rockfish primary species during the season dates established in Table 3, NMFS would calculate the QS for each of the three rockfish primary species for each fully transferable LLP license held by an eligible rockfish harvester using the following procedures.

First, NMFS would assign one Rockfish Landing Unit to an LLP license for each year a legal landing of any rockfish primary species was made under the authority of an LLP license during the season dates for the entry level trawl fishery in 2007, 2008, or 2009 as established in Table 3 of this preamble. This would yield the Rockfish Landing Units for that LLP license.

Second, NMFS would sum the Rockfish Landing Units of all eligible LLP licenses.

Third, NMFS would divide the Rockfish Landing Units for an LLP license by the sum of all Rockfish Landing Units of all LLP licenses. This calculation would result in the Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS pool that would be assigned to that LLP license.

Fourth, NMFS would determine the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each rockfish primary species. NMFS would divide the sum of all highest 5 years for each rockfish primary species that was calculated for the LLP licenses receiving rockfish QS based on rockfish legal landings from 2000 through 2006, divide that amount by 97.5 percent, and then subtract the sum of the highest 5 years for that rockfish primary species. This calculation would yield the Total Entry Level Trawl Fishery Transition Rockfish QS pool for that rockfish primary species. This calculation is summarized in the calculation below. In this equation ''s'' represents the rockfish primary species.

(Σ All Highest Five Years$_s$/0.975) − Σ All Highest Five Years$_s$ = Total Entry Level Trawl Fishery Transition Rockfish QS pool$_s$

This calculation ensures that 2.5 percent of the total rockfish QS pool for each rockfish primary species is established as a QS pool that would then be apportioned to each LLP license holder based on the number of years that the LLP license holder made a rockfish legal landing during the directed fishery season as defined in Table 3 of this preamble. This is consistent with the 2.5 percent of the combined TAC for the three rockfish fisheries assigned to trawl catcher vessels in the entry level fishery.

Fifth, NMFS would assign a portion of the Total Entry Level Trawl Fishery Transition Rockfish QS pool to each LLP license holder by multiplying the Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each LLP license, by the Total Entry Level Trawl Fishery Transition Rockfish QS pool for each rockfish primary species. This would yield the number of rockfish QS units for that LLP license for that rockfish primary species.

Rationale for assigning Rockfish QS based on rockfish legal landings in 2007, 2008, or 2009. NMFS noted throughout the development of the Pilot Program that the small allocations of TAC that were likely to be available to trawl catcher vessels could preclude the ability for NMFS to open the fishery if fishery effort was likely to exceed the allocation available. This concern was noted in the response to public comment section of the final rule implementing the Pilot Program.

NMFS' ability to open an entry level fishery would only be curtailed if large numbers of participants with sufficient harvest capacity register to fish for the fishery. Under alternative methods of management (i.e., IFQ fishing), small allocations may be more manageable, however, the entry level fishery was designed to provide an opportunity to persons not otherwise eligible for the Program, and not to institute complex quota-based management for a small amount of TAC for a two-year Program. NMFS does not anticipate that large numbers of participants will choose to participate in the entry level fishery due to the small amount of TAC available for harvest. (71 FR 67228; November 20, 2006).

Under the Pilot Program, NMFS assigned 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) was assigned to trawl catcher vessels and 50 percent (2.5 percent of the combined TAC for the three rockfish fisheries) was assigned for longline catcher vessels. Historically, Pacific ocean perch has been harvested almost exclusively with trawl gear. Northern rockfish and pelagic shelf rockfish have been harvested by longline vessels to a

limited degree. Rather than allocate Pacific ocean perch equally between the trawl and longline vessels, resulting in Pacific ocean perch remaining unharvested by longline vessels, NMFS allocated Pacific ocean perch to entry level trawl vessels first. NMFS allocated 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. NMFS made unharvested northern rockfish, pelagic shelf rockfish, or Pacific ocean perch available for harvest by trawl and longline on September 1. Any unharvested rockfish in either the longline or trawl gear allocations could be harvested by trawl and longline vessels beginning September 1.

During the Pilot Program, NMFS staff and entry level trawl fishery participants continued to express concerns about the potential for more than a limited number of participants to register for, and participate in, the entry level trawl fishery. Given the small amount of TAC assigned to the entry level trawl fishery (e.g., approximately 400 mt in 2010), if more than two or three vessels participated in the fishery, NMFS may need to close the fishery as a precautionary measure to avoid exceeding the entry level trawl allocation. Given these concerns, the Council recommended eliminating the entry level trawl fishery, yet providing an opportunity for those LLP license holders to receive rockfish QS for their participation in the years prior to the Council's final action in June 2010 (*e.g.,* 2007, 2008, or 2009). Allocating rockfish QS to participants in the entry level trawl fishery would recognize the participation of entry level trawl participants and ensure that those participants received the benefits of catch share management (*e.g.,* avoid a competitive and potentially wasteful race for fish, tailor fishing operations to specific catch limits to improve economic efficiency, and have the ability and incentive to adopt fishing practices with reduced bycatch).

The Council considered a variety of alternative methods to assign rockfish QS to entry level trawl participants. Through public testimony, the Council was made aware of some specific concerns and complexities that could arise if rockfish QS were allocated based on the amount of rockfish legal landings during 2007, 2008, and 2009. In all these years, the entry level fishery received an allocation of 5 percent of the Pacific ocean perch available to the Pilot Program or 346 mt per year in 2007 and 2008, and 339 mt in 2009. No allocation of northern rockfish or pelagic shelf rockfish was made to the trawl entry level fishery. Perhaps most problematic is a pending enforcement investigation concerning all catches from the fishery in 2008. At the extreme, the investigation could result in most catches from the 2008 entry level trawl fishery being determined to have been illegal, which would prevent their consideration for determining rockfish QS allocations under the Rockfish Program.

Section 2.4.1 of the Analysis (see **ADDRESSES**) notes that assigning rockfish QS to the trawl sector based on rockfish legal landings during 2007, 2008, or 2009, could result in some LLP licenses receiving a relatively large amount of rockfish QS compared to the total amount of rockfish QS issued to the catcher vessel sector. Under one allocation scenario considered, one LLP license could have received an allocation of Pacific ocean perch QS equal to roughly 10 percent of the available catcher vessel Pacific ocean perch QS. On the other hand, it is possible that an entry level participant could receive a very small allocation of northern rockfish or pelagic shelf rockfish QS, if that entry level participant recorded little or no landings of those species.

The Council considered an alternative approach to allocating rockfish QS to ensure that the initial allocation of rockfish QS more closely aligned with the years of participation in the entry level fishery rather than total catches, and to address concerns raised about the potential uncertainty about the legality of including catches from 2008 to allocate rockfish QS. Under the alternative approach, the Council considered assigning from 1.5 to 5 percent of the total rockfish QS to entry level trawl participants. This rockfish QS would be assigned to LLP licenses based on the proportion of the total number of years that rockfish legal landings were made under authority of the LLP licenses during 2007, 2008, or 2009. The Council ultimately chose to allocate 2.5 percent of the total rockfish QS to entry level trawl participants that apply for QS. This allocation is consistent with the proportion of the TAC that was initially assigned to entry level trawl vessels during the Pilot Program.

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 the best available data including State 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.

Exclusion From the Rockfish Program

The Council recommended a specific provision to allow an eligible LLP license holder to choose to be excluded permanently from the Rockfish Program and not receive rockfish QS. An LLP license holder eligible for this exclusion would be one who would qualify for rockfish legal landings made under the authority of an LLP license both during 2000 through 2006 and in the entry level trawl fishery during 2007, 2008, or 2009. If the LLP license were excluded from receiving rockfish QS, it would be exempted from specific sideboard limits that would otherwise apply to that LLP license.

The Council recommended this specific provision to recognize a situation in which a limited number of LLP licenses, possibly no more than one LLP license based on a review of the available information, had limited participation in Central GOA rockfish fisheries during 2000 through 2006, and during the entry level trawl fishery in 2007, 2008, or 2009. This license had also participated in rockfish fisheries in the West Yakutat District or the Western GOA in recent years. The one LLP license holder who had participated in the Central GOA rockfish fisheries during this time period testified that given the limited allocation of rockfish QS that would likely result from the Rockfish legal landings associated with that LLP license, the LLP license holder would prefer to have the option to forego an allocation of rockfish QS in order to continue to participate in the West Yakutat District and Western GOA rockfish fisheries consistent with recent participation patterns. NMFS would require that an LLP license holder submit an application for rockfish QS affirming their exclusion from the Rockfish Program and permanently forgo their rockfish QS. This requirement would ensure that an LLP license holder would have a one-time limited opportunity to be excluded from the Rockfish Program consistent with the Council's clear intent to provide a limited timeframe in which to seek an exclusion.

Application and Appeal Process

To receive rockfish QS, a potentially eligible LLP license holder must submit an application to participate in the Rockfish Program that is received by

NMFS by 5 p.m. on January 3, 2012, or postmarked by that date. The application form would be available on the NMFS Alaska Region Web site *http://alaskafisheries.noaa.gov*. Interested persons could contact NMFS to request an application package. Further and based on the official record, 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 could be submitted by mail, fax, or hand delivery. The proposed regulatory text (see § 679.81(f)) provides addresses and delivery locations. NMFS would determine if an application received by hand delivery or carrier is timely based on the receiving date of signature by NMFS staff. If the application is submitted by facsimile, the receiving date of the application is the date stamped received by NMFS. NMFS would not consider an application to have been received by the deadline if the applicant cannot provide objective written evidence that NMFS Alaska Region received it. Objective written evidence of timely application (*e.g.,* fax confirmation sheet, registered mail receipt) would be considered as proof of a timely application. This proposed regulation would serve to stress for participants that proof of filing should be maintained. Applicants who keep records of filing would effectively resolve any dispute prior to an administrative finding that an application was not filed. Adopting a practice of maintaining records of filings would aid applicants should NMFS dispute the timely filing of an application. Any application that is submitted by mail and postmarked, or submitted by hand delivery or fax, after the last day of the application period will be denied.

NMFS would require an application to participate in the Rockfish Program, or to be excluded, for potentially eligible processors and harvesters. Briefly, the application would contain the following elements:

- Identification and contact information for the applicant;
- Harvester information, including vessel identification and LLP licenses used on a vessel;
- Whether the applicant wishes to receive rockfish QS based on rockfish legal landings from 2000 through 2006, or during the entry level trawl fishery in 2007, 2008, or 2009, if eligible for both;
- If an applicant is choosing to exclude an LLP license from the Rockfish Program;
- 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
- 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 was 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.

If an application is denied by final agency action, then all rockfish QS that would have been assigned to that applicant based on that LLP license would be redistributed among all other eligible rockfish harvesters in proportion to the amount of their rockfish primary species QS. If an LLP license holder applied to receive rockfish QS based on rockfish legal landings from 2000 through 2006 and that application is subsequently denied, NMFS would redistribute any rockfish QS that would have been assigned to that LLP license to all other eligible LLP licenses that applied to receive rockfish QS based on rockfish legal landings from 2000 through 2006. Similarly, if an LLP license holder applied to receive rockfish QS based on rockfish legal landings during the entry level trawl fishery in 2007, 2008, or 2009, NMFS would redistribute any rockfish QS that would have been assigned to that LLP license to all other eligible LLP licenses held by persons who applied to receive rockfish QS based on rockfish legal landings during the entry level trawl fishery in 2007, 2008, or 2009. This redistribution of rockfish QS would ensure that the total amount of rockfish QS assigned to LLP licenses eligible to receive rockfish QS from 2000 through 2006, and during the entry level trawl fishery in 2007, 2008, or 2009 is maintained at a constant proportion of 97.5 percent and 2.5 percent, respectively. The initial rockfish QS pool is the sum of the rockfish QS issued to all eligible LLP licenses.

Transfer of Rockfish QS and Excessive Share Caps

With one exception, rockfish QS would not be severable from an LLP license. The rockfish QS and LLP license would be subject to the LLP license transfer under 50 CFR 679.4(k)(7).

The exception recommended by the Council and proposed in this rule is intended to ensure that use caps apply to all persons except initial QS recipients. The Council recommended that an LLP license that is initially

assigned an amount of rockfish QS that exceeds the use caps can be transferred only if the amount of rockfish QS that exceeds the rockfish QS use cap is transferred to another LLP license so the LLP license would be transferred with a total amount of QS that is under the use cap. The excess QS could be transferred only to an LLP that has already been assigned rockfish QS of the same sector. For example, catcher/processor designated rockfish QS could only be transferred to an LLP license that is already assigned catcher/processor designated rockfish QS. Once the total amount of rockfish QS assigned to an LLP license is under the applicable use cap, it could be transferred under the LLP license transfer provisions. NMFS would require that, when transferring rockfish QS from one LLP license to another LLP license, the transferor and transferee submit an application to NMFS.

Rockfish Cooperatives

Holders of Rockfish QS may annually choose to be a member of a rockfish cooperative. The Rockfish Program would regulate the formation of rockfish cooperatives and the use of CQ. NMFS would issue a CQ permit to each rockfish cooperative that specified how much CQ it could harvest. This amount would be based on the sum of the QS of the cooperative members and any CQ 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 under the Rockfish Program. The Council recommended carrying over from the Pilot Program many of the basic administrative requirements to form a harvesting cooperative. Provisions for cooperatives include requiring registration as a U.S. corporation, meeting the applicable monitoring and requirements, and adhering to applicable antitrust restrictions when undertaking price and delivery negotiations. These provisions have been consistently applied in other North Pacific cooperative programs. The Council recommended their application in the proposed Rockfish Program.

The Council did recommend several key changes in the proposed Rockfish Program from the Pilot Program. These include recommendations concerning (1) the requirements to form a cooperative, (2) the interests of traditional shorebased rockfish processing companies, (3) CQ transfer requirements, and (4) reporting requirements.

The Council relaxed the requirements to form a rockfish cooperative. The Council sought to balance the desire to encourage cooperative formation and the flexibility for LLP license holders to coordinate with whomever they wished. Ultimately, the Council recommended there would be no minimum number of LLP licenses with affixed rockfish QS required to form a cooperative. The Council did recommend, however, that if a cooperative wished to receive CQ by transfer the CQ would need to be assigned to a minimum of two LLP licenses. This limitation would encourage cooperative formation among LLP license holders by providing them greater flexibility to transfer CQ to meet operational demands.

The Council also recommended modifying the requirement of the Pilot Program that LLP license holders with rockfish QS designated for the catcher vessel sector form a cooperative only with the processor to whom a majority of their catch was delivered during 1996 through 2000. The Council modified this requirement because the specific requirement and authority provided in section 802 will expire with the Pilot Program, and this specific provision was not necessary to meet the goals of the Rockfish Program.

Eligibility for Processors

Unlike the Pilot Program, processors would not be required to meet historical eligibility requirements to receive primary or secondary species fish harvested by rockfish cooperatives. For the Rockfish Program, the Council recommended that a catcher vessel cooperative can only form if a ''rockfish processor'' is an ''associate'' of the rockfish cooperative and is designated on the application for CQ. A rockfish processor would be any shoreside processor with a Federal processor permit that receives groundfish harvested under the authority of a rockfish CQ permit. In order to receive rockfish CQ, that shorebased processor would also need to be located within the boundaries of the City of Kodiak and have an approved CMCP as described in the ''Monitoring and Enforcement'' section of this preamble. This requirement would not limit a catcher vessel cooperative to only one processor, and it would not obligate the cooperative to deliver catch to that specific processor. The association requirement only indicates that a processor may be willing to receive the catch. A catcher vessel cooperative could form an association with any qualified processor, whether old or new, that meets the requirements to receive rockfish CQ. The processor is not required to be in business at the effective date of this rule to qualify to receive rockfish CQ. The association between a catcher vessel cooperative and processor is a requirement and must be submitted to NMFS by the cooperative in the application for CQ. A catcher vessel rockfish cooperative may not receive rockfish CQ unless a shoreside processor eligible to receive rockfish CQ has indicated in the annual application for CQ that it may be willing to receive rockfish CQ from that cooperative. The proposed requirement would encourage harvesters and processors to discuss and possibly coordinate fishing plans as part of the application process to form a rockfish cooperative, but without the specific mandate established under the Pilot Program. Membership agreements must specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by antitrust laws.

The Council also sought to address concerns raised by processors that allocation of exclusive harvest privileges would provide an undue competitive advantage for harvesters and could reduce the incentive for harvesters to continue to deliver to the traditional port of Kodiak. The Council recommended a requirement that all primary and rockfish secondary species CQ in the catcher vessel sector be delivered to a shorebased processor operating within the geographic boundaries of the City of Kodiak. The port delivery requirement is intended to protect the fishing community of Kodiak and the traditional shorebased processors from changes in the location of shorebased processing activities that could occur under the Rockfish Program. This provision would ensure that Kodiak processors and the community continue to benefit from the fishery. During the 2000 through 2006 period, all catch was delivered within Kodiak to shorebased processors; therefore, this provision does not represent a change from traditional harvest patterns. This proposed rule would define the boundaries of the City of Kodiak using the boundary specified by the State of Alaska on the date that a final rule, if approved, were published. This method for determining the boundary would ensure that the specific geographic limits are based on the official source of municipal boundaries and that those boundaries would be established on a specific date and would not vary over time. Changes in municipal boundaries could complicate enforcement of processing provisions.

During the development of the Rockfish Program, the Council reviewed and considered a range of options to address concerns raised by shorebased processors about potential consolidation of processing capacity under catch share management and the effects of catch share allocations on processing operations. The Council considered management measures that included the linkage between shorebased processors and catcher vessel cooperatives required under the Pilot Program, regional landing requirements, allocations of harvest shares to processors, annual cooperative/processor linkages (which may be changed, without penalty or forfeiture), and caps on the amount of landings that may be processed by any single processor. Ultimately, the Council chose to recommend a specific landing requirement within the City of Kodiak and processing caps to preserve flexibility for harvesters to deliver to multiple markets. The Council's recommendation sought to maintain the traditional shorebased processing activity within Kodiak and limit the consolidation of processing effort among rockfish processors that could be detrimental to existing processors and harvesters.

Overall, the Council's recommendations were intended to meet goals of the Rockfish Program, which include stabilization of the processing work force, increasing shoreside deliveries of rockfish, and removing of processing conflicts with GOA salmon production. The Council did not consider linkages, or allocation of harvesting quota to processors as necessary or appropriate to meet the overall goals the Council established for the Rockfish Program. The demonstrated ability of cooperatives to coordinate with processors under the Pilot Program would be expected to continue under the Rockfish Program. These relationships have reduced processing capacity conflicts with the salmon fishery that is active during summer months, and have provided a stable processing workforce by ensuring rockfish deliveries during months when other fisheries are less active. Section 2.4.6 of the Analysis describes the likely benefits to processing operations under the Rockfish Program.

Requirements for Rockfish Cooperatives

Table 4 details the key requirements of a rockfish cooperative.

TABLE 4—REQUIREMENTS FOR A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CQ BY THE ROCKFISH COOPERATIVE

Requirement	Catcher vessel sector	Catcher/processor vessel sector
(i) Who may join a rockfish cooperative?	Only persons who hold rockfish QS may join a rockfish cooperative.	
(ii) What is the minimum number of LLP licenses that must be assigned to form a rockfish cooperative?	No minimum requirement.	
(iii) Is an association with a rockfish processor required?	Yes. By a cooperative. A rockfish QS holder may only be a member of a rockfish cooperative formed in association with a rockfish processor.	No.
(iv) Is a Rockfish cooperative member required to deliver catch to the rockfish processor with whom the rockfish cooperative is formed?	No.	N/A.
(v) Is there a minimum amount of rockfish QS that must be assigned to a rockfish cooperative for it to be allowed to form?	No.	
(vi) What is allocated to the rockfish cooperative?	CQ for rockfish primary species, rockfish secondary species, and rockfish halibut PSC, based on the rockfish QS assigned to all of the LLP licenses that are assigned to the cooperative.	
(vii) Is this CQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CQ, or a cooperative can transfer all or a portion of this CQ to another rockfish cooperative.	
(viii) Is there a season during which designated vessels may catch CQ?	Yes, any vessel designated to catch CQ for a rockfish cooperative is limited to catching CQ during the season beginning at 1200 hours, A.l.t. on May 1 through 1200 hours A.l.t. on November 15.	
(ix) Can any vessel catch a rockfish cooperative's CQ?	No, only vessels that are named on the application for CQ for that rockfish cooperative can catch the CQ assigned to that rockfish cooperative. A vessel may be assigned to only one rockfish cooperative in a calendar year.	
(x) Can the member of a rockfish cooperative transfer CQ individually to another rockfish cooperative without the approval of the other members of the rockfish cooperative?	No, only the rockfish cooperative's designated representative, and not individual members, may transfer its CQ to another rockfish cooperative. Any such transfer must be approved by NMFS.	
(xi) Can a rockfish cooperative in the catcher/processor sector transfer its sideboard limit?	N/A.	No, sideboard limits assigned to a rockfish cooperative in the catcher/processor sector is a limit applicable to a specific rockfish cooperative, and may not be transferred between rockfish cooperatives.

TABLE 4—REQUIREMENTS FOR A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CQ BY THE ROCKFISH COOPERATIVE—Continued

Requirement	Catcher vessel sector	Catcher/processor vessel sector
(xii) Is there a hired master requirement?	No, there is no hired master requirement.	
(xiii) Can an LLP license be assigned to more than one rockfish cooperative in a calendar year?	No. An LLP license can only be assigned to one rockfish cooperative in a calendar year. A person holding multiple LLP licenses with associated rockfish QS may assign different LLP licenses to different rockfish cooperatives subject to any other restrictions that may apply.	
(xiv) Can a rockfish processor be associated with more than one rockfish cooperative?	Yes.	N/A.
(xv) Can an opt-out vessel harvest a rockfish cooperative's CQ?	No. An opt-out vessel is any vessel named on an LLP license with QS that is not assigned to a rockfish cooperative. Opt-out vessels cannot harvest rockfish primary species or rockfish secondary species CQ.	
(xvi) Which members may harvest the rock-fish cooperative's CQ?	That is determined by the rockfish cooperative contract signed by its members. Any violations of this contract by one cooperative member may be subject to private civil claims by other members of the rockfish cooperative. NMFS will not enforce the cooperative contracts among its members.	
(xvii) Does a rockfish cooperative need a contract?	Yes, a rockfish cooperative must have a membership agreement, or contract, that specifies how the rockfish cooperative intends to harvest its CQ. A copy of this agreement or contract must be submitted to NMFS with the cooperative's application for CQ.	
(xviii) What happens if the rockfish cooperative exceeds its CQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CQ. Exceeding a CQ is a violation of the Rockfish Program regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Rockfish Program regulations while fishing under authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to a rockfish cooperative. Each member of a rockfish cooperative is responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Rockfish Program.	
(xix) It there a limit on how much CQ a rockfish cooperative may hold or use?	Yes, see the *Use Cap* section of the preamble and the proposed regulations for the provisions that apply.	
(xx) Is there a limit on how much CQ a vessel may harvest?	Yes, see the *Use Cap* section of the preamble and the proposed regulations for the provisions that apply.	
(xxi) Is there a requirement that a rockfish cooperative pay rockfish cost recovery fees?	Yes, see the *Cost Recovery* section of the preamble for the provisions that apply.	

TABLE 4—REQUIREMENTS FOR A ROCKFISH COOPERATIVE AND THE LIMITATIONS ON THE USE OF CQ BY THE ROCKFISH COOPERATIVE—Continued

Requirement	Catcher vessel sector	Catcher/processor vessel sector
(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 rock-fish cooperative's CQ?	(A) Any vessel fishing under the authority of a rockfish CQ permit must count any catch of rockfish primary species, rockfish secondary species, or rockfish halibut PSC against that rockfish cooperative's CQ from May 1 until November 15, or until the effective date of a rockfish cooperative termination of fishing declaration that has been approved by NMFS. (B) Groundfish harvests would not be debited against the rockfish cooperative's CQ if the vessel is not fishing under the authority of a rockfish CQ permit. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type.	
(xxiii) Can my rockfish cooperative negotiate prices for me?	The rockfish cooperatives formed under the Rockfish Program are intended to conduct and coordinate harvest activities for their members. Rockfish cooperatives formed under the Rockfish Program are subject to 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. A rockfish cooperative must submit an annual rockfish cooperative report to NMFS by December 15 of each year.	
(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 CQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by- vessel basis; (B) The rockfish cooperative's actual retained and discarded catch of CQ, and sideboard limit on an area-by-area and vessel-by-vessel basis; (C) A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated; (D) A description of any private civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.	

Transfer of CQ

A rockfish cooperative could transfer rockfish QS to another rockfish cooperative in the same sector. For example, a catcher vessel rockfish cooperative could not transfer CQ to a rockfish cooperative in the catcher/processor sector. The Council recommended this restriction during the development of the Pilot Program to addresses concerns about the potential losses of shorebased processing, as well as potential employment and tax revenue if catcher/processor rockfish cooperatives could receive rockfish harvested with CQ from catcher vessel rockfish cooperatives that historically delivered to shoreside processors. The Council also recommended that a catcher/processor rockfish cooperative could not transfer rougheye or shortraker rockfish CQ to a catcher vessel rockfish cooperative. Rougheye and shortraker are managed under a maximum retainable amount (MRA) for catcher vessels.

Transfer of CQ would be valid only during the calendar year of the transfer. There would be no restrictions on the number or size of post delivery transfers. All post delivery transfers would need to be completed by December 31. Vessels in a cooperative could not begin a new fishing trip for that cooperative unless the cooperative holds unused CQ for all rockfish primary species and secondary species. At the end of the calendar year a cooperative could not have a negative balance of CQ for any species for which CQ is assigned.

To standardize the reporting of information, transfers would have to be completed using an electronic online transfer application available on the

NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* A rockfish cooperative could only transfer CQ if:

- The rockfish cooperative identified the amount and type of CQ transferred and the rockfish cooperative and rockfish cooperative member to which that CQ was transferred. CQ received by a rockfish cooperative would have to be attributed to a member of that rockfish cooperative to apply the use caps. See *Use Caps* section for more detail;
- 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
- All information was certified by the transferor and transferee as true, correct, and complete.

Participation in a Rockfish Cooperative or Opt-Out

Each year, an LLP license holder with rockfish QS would be required to assign all the QS associated with that LLP license to a specific rockfish cooperative to fish for rockfish primary species. A holder of a designated catcher/processor LLP license assigned rockfish QS could decide to opt-out of participating in a rockfish cooperative on an annual basis.

An LLP license holder could not assign portions of rockfish QS to different rockfish cooperatives within the same sector. Once an LLP license and its associated QS are assigned for a year, the LLP license holder could not reassign the LLP license or QS to a different cooperative during that year. The Council limited the LLP license holder to participating in only one cooperative per year to ensure that the catch derived from a specific LLP license could be reliably tracked and that the applicable cooperative management measures related to monitoring and enforcement, any voluntary codes of conduct, and the cost recovery requirements would be met.

Each year, an LLP license holder would be required to apply to use the LLP license and its associated QS to participate in a rockfish cooperative, or opt-out of participating in rockfish cooperative. Applications would be available on the NMFS Web site *http://www.alaskafisheries.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 a designated representative of the cooperative by March 1 each year. An eligible rockfish harvester could apply to participate in only one cooperative per year with an LLP license and its associated QS. The CQ issued under a NMFS approved application would be valid for 1 year. The contents of the specific applications are described below.

Application for Rockfish CQ

A designated representative of a rockfish cooperative that submits an application that is approved by NMFS would receive a CQ permit. The CQ permit would contain the rockfish cooperative's CQ of rockfish primary and secondary species and halibut PSC, based on the collective QS of the LLP licenses held by the cooperative members. The CQ permit also would identify the members of the rockfish cooperative and the vessels authorized to harvest the CQ. NMFS would consider a vessel named on a CQ permit as actively engaged in fishing the CQ for that rockfish cooperative and would be subject to all observers, permitting, and reporting requirements applicable to vessels when fishing under the cooperative's CQ permit. A rockfish cooperative would be required to submit an amended application for CQ to add or remove a vessel eligible to harvest the CQ assigned to that cooperative. NMFS would approve any amendments to the list of eligible vessels to the application for CQ unless otherwise prohibited. NMFS' issuance of a CQ permit to a rockfish cooperative, however, would not be a determination that the rockfish cooperative was formed or was operating in compliance with antitrust laws.

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

- Identification and contact information of the rockfish cooperative;
- Names of the rockfish cooperative members, including information on the LLP licenses assigned to the rockfish cooperative;
- A copy of the business license and articles of incorporation or partnership agreement signed by the rockfish cooperative members;
- Processor associates of the cooperative (if a cooperative formed with catcher vessel designated rockfish QS), and a requirement that LLP license holders affiliated with a processor could not participate in price setting negotiations except as permitted by general antitrust law;
- The proposed fishing plan to be used by members of the cooperative, including any proposed cooperative specific monitoring procedures and any voluntary codes of conduct that would apply to the members of the cooperative, if applicable; and
- Signature and certification of applicant(s).

Application to Opt-Out of Rockfish Cooperatives

An LLP license holder with catcher/processor designated rockfish QS would be required to submit an application to opt-out of participating in a rockfish cooperative for a fishing year. An application would include the following information:

- Identification and contact information of the eligible rockfish harvester;
- Information on the LLP license(s) and vessels that would opt-out; and
- Applicant's signature and certification.

Removal of the Limited Access Fishery

The Council recommended eliminating the limited access fishery for the catcher vessel sector in the Rockfish Program because almost all QS holders joined cooperatives. The very few QS holders that did not join catcher vessel cooperatives received very limited amounts of QS. The amount of TAC available to the catcher vessel limited access fishery was very small in relation to potential harvest capacity during the Pilot Program and NMFS has never opened the limited access fishery.

The Council recommended eliminating the limited access fishery for the catcher/processor sector in the Rockfish Program because the Analysis showed the limited access fishery created incentives for the catcher/processor sector to avoid joining a cooperative. The Central GOA limited access fishery under the Pilot Program opened in the beginning of July, and then closed when participants were estimated to have fully harvested the target rockfish allocations in that fishery. The differences in sideboard limitations between catcher/processor cooperatives and the limited access fishery as well as the management of shortraker rockfish, and the halibut PSC mortality allowance may have affected a participant's decision to either join a catcher/processor cooperative or take part in the limited access fishery. The Council discussed an alternative that would keep the limited access fishery in the Rockfish Program but ease the management burden with a downward adjustment of the MRAs to limit the incentive for participants to target secondary species and maintain catch at a level below the allocation. But the Council also noted that participants with small allocations of QS could choose to fish in the limited access

fishery and attempt to take a share of the catch greater than their individual historical allocation.

Based on the analysis, the Council recognized that under the Pilot Program the limited access fishery functioned more like a cooperative than the way it was intended to function as a limited access fishery for individual catcher/processor participants. A review of the data showed that many participants registered for the limited access fishery, but then consolidated onto a few vessels in a cooperative-like system. This system of fishing would not be required to follow the constraining management provisions (e.g., sideboard limitations and secondary species management) that are intended to apply to cooperatives. Furthermore, participation in the limited access fishery could not be predicted from year to year and the possibility of a ''race for the fish'' was recognized along with concern that the fishery would exceed the TAC before the season could be closed. Ultimately the Council opted to discontinue the limited access fishery and require catcher/processors to either join a cooperative or opt-out.

TAC Apportionment to an Incidental Catch Allowance (ICA), Rockfish Cooperatives, and Entry Level Fishery

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.

Rockfish Primary Species Allocation

NMFS would calculate the amount of rockfish primary species TAC that would be assigned to the Rockfish Program on an annual basis. Before NMFS would calculate annual cooperatives allocations for primary species within the sectors, NMFS would first deduct the incidental catch allowance (ICA). The ICA subtracts from the TAC for that fishery an incidental catch of rockfish primary species harvested in fisheries other than the Rockfish Program. The ICA accounts for rockfish primary species that are incidentally harvested in other fisheries (e.g., trawl flatfish fisheries) and NMFS must set aside some bycatch amount for those fisheries. On an annual basis, the Regional Administrator determines how much ICA is required in other non-target fisheries.

After deducting the ICA, NMFS would set aside a percentage of the TAC for the entry level longline fishery, which allows catcher vessels who are not eligible to participate in the Rockfish Program an opportunity to harvest rockfish. The amount set aside would be equal to the amounts described in Table 10 in the ''Entry Level Longline Fishery'' section of this preamble, depending on the year and whether 90 percent or more of the species was harvested by entry level fishery participants the year before.

Then, for each rockfish primary species, the TAC would be apportioned between the catcher/processor sector and the catcher vessel sector. The amount of TAC 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 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.

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

Opt-out: In the catcher/processor sector, an adjustment to the CQ assigned to rockfish cooperatives would be made to account for LLP licenses with QS that are not assigned to a rockfish cooperative. The QS assigned to LLP licenses that are opting-out in the catcher/processor sector would not yield any CQ for that LLP holder. Instead, the TAC would be assigned to rockfish cooperatives in the catcher/processor sector. See Table 4 for more information on the use of the CQ by a rockfish cooperative.

Rockfish Secondary Species Allocation

The proposed rule would define rockfish secondary species by listing the species that were historically harvested during the Central GOA directed rockfish fisheries. Secondary species would be allocated as an exclusive harvest privilege only to rockfish cooperatives. Rockfish cooperatives would receive CQ for specific secondary species. Secondary species allocated as CQ 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 CQ in relation 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 previous harvest patterns in those sectors. Historically, harvesters in both sectors 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/processor sector using an MRA that would reflect historic harvest rates but provide more flexibility for the fleet than a fixed ''hard cap'' allocation of CQ 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 allocations: The Council recommended specifying the percentage of the Central GOA TAC for each rockfish secondary species in regulation to provide clear allocations. For most species, these allocations are based on the average proportion of the Central GOA TAC harvested by vessels that were assigned LLP licenses during 2000 through 2006 that would be eligible to receive rockfish QS in each sector. For catcher/processors, 43.2 percent of the Central GOA TAC of shortraker rockfish was harvested using 2000 through 2006 qualifying years. The Council recommended slightly reducing the percentage of the TAC to 40 percent of the Central GOA TAC to provide slightly more harvest opportunities for vessels in the catcher vessel sector and non-Rockfish Program participants. The Council expressed concern that under an average percentage allocation, if all catcher/processors joined cooperatives, catches by Rockfish Program catcher

vessels and non-Rockfish Program fisheries could need to be constrained to prevent overharvest of the shortraker rockfish TAC.

The Council also recommended retaining the Pilot Program allocation of 58.87 percent of Central GOA TAC for rougheye rockfish. Although 34.3 percent of the rougheye rockfish catch was retained by vessels assigned an eligible catcher/processor LLP license from 2000 through 2006, the Council sought to ensure that rougheye rockfish catch would not unduly constrain catcher/processor cooperatives if a vessel were to unintentionally catch relatively large amounts of rougheye rockfish while targeting rockfish primary species. The Council determined that the allocation percentage available under the Pilot Program had not unduly constrained catcher/processor cooperatives and had not resulted in overharvest of the stock. These percentages and the details of this analysis are contained in section 2.4.1 of the Analysis (see **ADDRESSES**). Table 5 shows the specific secondary species that would be allocated as CQ to rockfish cooperatives in the catcher vessel sector and catcher/processor sector.

TABLE 5—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	3.81% of the Central GOA TAC	Not allocated. Managed under an 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.	58.87% of the Central GOA TAC.
Sablefish allocated to trawl gear	6.78% of the Central GOA TAC	3.51% of the Central GOA TAC.
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.	40.0% of the Central GOA TAC.
Thornyhead rockfish	7.84% of the Central GOA TAC	26.50% of the Central GOA TAC.

''Hard cap'' management of shortraker and rougheye rockfish: 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. If the catcher/processor sector as a whole exceeded either 40.0 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 Rockfish Program. This prohibition would include any vessels operating in a rockfish cooperative even if that cooperative still had unused CQ. The Council also recommended that if the harvest of shortraker by the catcher vessel sector exceeded 9.72 percent of the TAC (the historic proportion of the shortraker TAC harvested by catcher vessels), then NMFS would prohibit further retention for the catcher vessel sector. These provisions are intended to ensure that the relatively small TACs assigned to these stocks are not subject to overharvest. Shortraker and rougheye rockfish would not be allocated to the entry level longline fishery, but would be limited to an MRA to minimize harvests and the incentive to ''top off'' on these species.

Entry level longline fishery: QS assigned to the entry level longline fishery would not result in an annual exclusive allocation. Instead, secondary species would be managed according to an MRA in the entry level fishery. A person directed fishing in the rockfish entry level longline fishery may harvest secondary species up to the amounts of the MRAs for those species.

Opt-out: LLP license holders that opt-out of participating in a rockfish cooperative would not receive exclusive harvest privileges for secondary species but vessels fishing under an opt-out license would be able to retain secondary species in non-Rockfish Program fisheries, subject to an MRA limit. The MRA for the opt-out vessels would be the same as MRAs currently applicable in the GOA directed fisheries. Opt-out vessels could not target Central GOA rockfish; therefore, a lowered MRA in the Central GOA is not necessary. Opt-out vessels would not be able to use Central GOA rockfish as a source for basis species against which to ''top-off'' secondary species.

Maximum Retainable Amounts and Fishing Non-Allocated Groundfish Species

Some other non-allocated species of groundfish would be encountered while fishing under the Rockfish Program and caught as incidental catch. All non-allocated secondary species harvested by rockfish cooperative vessels would be managed by an MRA. These non-allocated species include arrowtooth flounder, deep-water flatfish, shallow-water flatfish, flathead sole, rex sole, pollock, the other species category, Atka mackerel, other rockfish, aggregated forage fish, and skates. Pacific cod would also be managed by an MRA for the catcher/processor sector, as well as shortraker and rougheye rockfish for the catcher vessel sector. See the section *Rockfish Secondary Species Allocation* for a discussion of Pacific cod, shortraker rockfish, and rougheye rockfish MRA management.

The MRA of an incidental catch species would be calculated as a proportion of the basis species, or allocated primary and secondary species, retained onboard the vessel by using the percentages described in Table 6. The MRA would be a percentage of the total retained rockfish primary species and rockfish secondary species onboard the vessel.

TABLE 6—NON-ALLOCATED SECONDARY SPECIES FOR ROCKFISH COOPERATIVE VESSELS IN THE CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS FISHING UNDER A ROCKFISH CQ PERMIT

Incidental catch species	MRA as a percentage of total retained rockfish primary species and rockfish secondary species (%)
Pollock	20.0
Deep-Water flatfish	20.0
Rex Sole	20.0
Flathead Sole	20.0
Shallow-water flatfish	20.0
Arrowtooth	35.0
Other Rockfish	15.0
Atka Mackerel	20.0
Aggregated forage fish	2.0
Skates	20.0
Other Species	20.0

The MRA for groundfish harvested in the Central GOA by a catcher/processor vessel fishing under a rockfish CQ permit would be calculated at the end of each weekly reporting period and is based on the basis species harvested since the previous weekly reporting period. If a vessel was taking part in another fishery and checked-out of the rockfish fishery for some time by a cooperative representative, the MRA would be based on the basis species harvested for any portion of a weekly reporting period that a vessel fished under a rockfish cooperative's CQ permit. The MRA would apply to catcher/processors fishing in an area closed to directed fishing for a species or species group for the duration of the fishing trip.

The MRA for catcher vessels fishing in areas closed to directed fishing is the lowest MRA applicable in any area, and this MRA would be applied at all times and to all areas for the duration of the fishing trip.

To calculate an individual retainable amount, one would multiply the retainable percentage for the incidental catch species (Table 6) by the basis species onboard the vessel. The MRA for that specific incidental catch species would be the sum of the individual retainable amount.

Halibut PSC Apportionment to Rockfish Cooperatives

Under the Rockfish Program, rockfish cooperatives would be allocated CQ for halibut PSC that could be used while fishing for rockfish primary species or secondary species. Halibut PSC CQ 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 Individual Fishing Quota (IFQ) and the Western Alaska Community Development Quota 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.

NMFS would allocate halibut PSC CQ to rockfish cooperatives within a sector based on the QS of LLP licenses assigned to the rockfish cooperatives. Halibut PSC CQ would be allocated only to participants in rockfish cooperatives.

Opt-out vessels would continue to be subject to the aggregate halibut PSC limits that NMFS establishes for that gear type and target fishery.

Assigning sector Halibut PSC CQ. The Council recommended allocating halibut PSC to each sector based on the average total halibut PSC used from 2000 through 2006, with a slight reduction in that amount. The Analysis (section 2.4.1, see **ADDRESSES**) shows that participants in rockfish cooperatives modified their fishing patterns and reduced halibut mortality during the Pilot Program. The Council sought to balance the need to provide adequate halibut PSC for use by rockfish cooperatives, recognize patterns of reduced halibut PSC use once exclusive harvest privileges are established, and meet broader goals to reduce halibut mortality. From 2000 through 2006, average halibut PSC mortality averaged 84.7 mt in the catcher vessel sector, and 134.1 mt in the catcher/processor sector.

The Council considered a range of alternative approaches that would have reduced total halibut PSC CQ assigned to each sector. Ultimately, the Council recommended reducing the amount of halibut PSC assigned to each sector to 87.5 percent of the 2000 through 2006 average annual usage. A total of 117.3 mt would be assigned as CQ to the catcher/processor sector, and 74.1 mt would be assigned to catcher vessel sector. The remaining 27.4 mt (16.8 mt from the catcher vessel sector and 10.6 mt from the catcher/processor sector) that would otherwise have been allocated using the 2000 through 2006 average use of halibut PSC would not be assigned as CQ or as halibut PSC for use by any other non-Rockfish Program fishery, and would not be made available for use by the halibut IFQ fishery. This 27.4 mt would remain ''in the water'' and contribute to the halibut biomass. The Council combined this reduction in the amount of halibut CQ initially available to rockfish cooperatives with other measures detailed later in this preamble to reduce the amount of halibut PSC that can be reassigned to non-Rockfish Program fisheries. Combined, these measures effectively reduce total halibut mortality in the Rockfish Program.

NMFS would assign each sector's portion of the halibut PSC among the rockfish cooperatives within that sector.

To determine the CQ assigned to a rockfish cooperative, NMFS would multiply the sector's assignment of halibut PSC TAC by the percentage of the aggregate rockfish primary species QS held by that cooperative in that sector.

Reassignment of Halibut PSC to Non-Rockfish Program Fisheries

The Rockfish Program would modify a provision from the Pilot Program to allow a rockfish cooperative to submit a Cooperative Termination of Fishing Declaration prior to the end of the fishing season. Once submitted, the primary and secondary rockfish CQ assigned to that cooperative would be set to zero, and the cooperative could not receive any CQ by transfer after NMFS has approved the termination of fishing declaration. NMFS would allow a portion of the halibut PSC CQ that was assigned to that rockfish cooperative to become available to trawl and non-trawl vessels during the last halibut PSC apportionment period of the year (currently November 1 through December 31). Under the Rockfish Program, up to 55 percent of any halibut PSC CQ remaining in a cooperative's account once a Termination of Fishing Declaration has been submitted, or after November 15, whichever occurs first, could be reassigned for any vessel to use while fishing during the last PSC apportionment period of the year.

The Council recommended reducing the amount of halibut PSC that could be reassigned to the last apportionment period to meet its overall goals of reducing halibut mortality, yet provide an incentive for participants in rockfish cooperatives to continue to operate in ways that minimized halibut mortality. Some of the participants eligible for the Rockfish Program are also active in a number of flatfish trawl fisheries that occur after November 1. Vessel operators that are active in rockfish cooperatives and these flatfish fisheries have consistently undertaken efforts to conserve their halibut PSC CQ while fishing in a rockfish cooperative to provide additional halibut PSC during the latter portion of the year. The Council recognized the importance of the reassigned halibut PSC to provide additional harvest opportunities in these flatfish fisheries. Typically, most flatfish fisheries are not fully harvested relative to their TAC. The Council reviewed a range of restrictions on the reassignment of halibut PSC and ultimately chose to recommend that no more than 55 percent of any unused halibut PSC be reassigned. The Council assessed the amount of halibut PSC that is typically used after November 1 and concluded that even with a limitation on the maximum amount of halibut PSC that could be reassigned, the fleet would continue to have an incentive to conserve halibut PSC CQ and have additional harvest opportunities in flatfish fisheries. The 45 percent of the unused halibut PSC CQ that is not reassigned is not made available as halibut PSC or to the commercial halibut IFQ fishery. This amount of halibut is conserved and contributes to the halibut biomass. The Rockfish Program would limit halibut mortality both by limiting the amount of halibut PSC that is initially allocated as halibut PSC CQ and by limiting the amount of halibut PSC that may be reassigned. NMFS cannot precisely predict the amount of halibut PSC that would be conserved because the amount of halibut PSC CQ reassigned would depend on fishing operations during a year, and those operations could vary from year-to-year.

Joint and Several Liability

A rockfish cooperative would not be authorized to harvest fish in excess of its CQ. Exceeding a CQ would be a violation. Each member of the rockfish cooperative would be jointly and severally liable for any violations of the Rockfish Program regulations while fishing under authority of a CQ permit. This liability extends to any persons who are hired to harvest or receive CQ assigned to a rockfish cooperative. Each member of a rockfish cooperative would be responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Rockfish Program.

Use Caps

The Rockfish Program would apply use caps to limit the amount of rockfish QS and CQ that may be harvested by harvesters and processors. As with other rationalization programs, the intent of the use caps under the Rockfish 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 rockfish primary 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 the Rockfish Program would apply to the rockfish primary 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 rockfish primary species CQ that a rockfish cooperative could hold; (3) a cap on the amount of rockfish primary species CQ that a vessel could harvest; and (4) a limit on the amount of rockfish primary species an eligible rockfish processor could receive and process. Different use caps would apply depending on whether the QS or CQ are for use in the catcher vessel sector 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.

QS Use Caps

QS use caps would limit the amount of aggregate primary species rockfish QS that could be held by an eligible rockfish harvester. These QS use caps would be based on the aggregate initial QS pool assigned to each sector. An eligible rockfish harvester could not hold more than 4 percent of the aggregate rockfish primary species QS assigned to the catcher vessel sector, or more than 40 percent of the aggregate rockfish primary species QS assigned to the catcher/processor sector. The Council acknowledged that allowing the fleet to consolidate may enable the remaining companies to operate more efficiently. The Council also recognized that harvests may be liberally redistributed among vessels in cooperatives, and it is likely that gains in efficiency may be achieved without further ownership concentration of share in the fishery. Consolidation by license transfers may also be limited by the caps that apply to the Amendment 80 Program.

The Council considered that LLP license holders who want to leave the fishery would presumably prefer more liberal use caps, which would allow them to sell their holdings to the buyer willing to pay the most for the harvest privileges. Restrictive caps would

exclude some buyers from the market, which may reduce sale prices relative to the prices that might be possible under more liberal use caps. In the catcher vessel sector, up to 7 of the 32 eligible rockfish harvesters would exceed the 4 percent use cap based on the 2000 to 2006 qualifying years. These license holders would not be allowed to purchase additional harvest privileges, as long as their holdings exceed the cap. In the catcher/processor sector, seven companies hold licenses qualifying them for the sector. Depending on the initial distribution of QS, it is possible that half of the companies might be able to consolidate their QS holdings under a 40 percent cap, before the cap would be binding.

The Official Record would indicate the relative percentage of the legal landings in the catcher vessel sector and the catcher/processor sector. NMFS would not be able to determine the exact amount of the initial QS pool that would be assigned to each sector until the applications to participate in the Rockfish Program were processed. Therefore, NMFS would determine the number of QS units for the catcher vessel sector and catcher/processor sector QS use caps 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 the 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.

CQ Use Caps

NMFS would apply CQ use caps to eligible rockfish harvesters, rockfish cooperatives, and processors. NMFS would apply CQ use caps to limit the amount of CQ derived from the QS held by an eligible rockfish harvester. For example, an eligible rockfish harvester could not harvest an amount of CQ greater than the amount derived from 4 percent of the aggregate initial QS pool in the catcher vessel sector, or 40 percent of the aggregate initial QS pool in the catcher/processor sector. An eligible rockfish harvester would be considered to use CQ if he or she assigns QS to a rockfish cooperative that results in CQ for use by that rockfish cooperative. The amount of CQ that is used by an eligible rockfish harvester also would include any CQ a rockfish cooperative receives by transfer that is attributed to an eligible rockfish harvester. All CQ 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 CQ than the maximum amount of CQ that could be derived from the maximum amount of QS that could be held by all of its members. Therefore, the total CQ usage by an eligible rockfish harvester would be the sum of the CQ derived from QS held by that eligible rockfish harvester and all CQ attributed to that eligible rockfish harvester as a result of a CQ transfer.

CQ use caps would limit the maximum amount of CQ that could be assigned to any one cooperative. NMFS would apply CQ 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 each be limited to harvesting not more than 30 percent of the CQ allocated to the catcher vessel sector.

The amount of CQ used by an eligible rockfish harvester would be calculated using the ''individual and collective rule.'' An eligible rockfish harvester's holding of CQ would include all CQ attributed to that individual and the percentage of any CQ attributed to that individual through a corporation, partnership, or other entity. Therefore, CQ use would include all CQ derived from an eligible rockfish harvester's QS holdings, either individually or through corporate ownership, and all CQ attributed to an individual as a result of an inter-cooperative transfer of CQ.

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

Vessel Use Caps

NMFS would limit a vessel participating in the catch vessel sector from harvesting more than 8 percent of the CQ of rockfish primary species during a calendar year. This cap would ensure that harvest activity would not exceed the specified threshold and that a certain number of vessels remain active in the fishery. Historically, only a few vessels have exceeded the 8 percent cap. As with the Pilot Program, NMFS would also limit a vessel participating in the catcher/processor sector from harvesting more than 60 percent of the CQ of rockfish primary species during a calendar year.

Processing Use Caps

Processors would be subject to CQ use caps, similar to the Pilot Program. NMFS would limit an eligible rockfish processor from receiving or processing more than 30 percent of the aggregate rockfish primary species harvested with CQ that would be allocated to the catcher vessel sector during a calendar year. NMFS would also limit an eligible rockfish processor from receiving or processing more than 30 percent of Pacific cod and 30 percent of sablefish harvested with CQ assigned to the catcher vessel sector during a calendar year. NMFS would apply the use cap calculation to all rockfish primary species, Pacific cod, and sablefish 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. NMFS would apply this more stringent provision to dissuade eligible rockfish processors from forming corporate arrangements that would further consolidate the already limited number of distinct processors and counteract the goal of the use cap, which is to limit the degree of consolidation in the fishery.

Table 7 describes the use cap amounts and limits that would apply to eligible rockfish harvesters, rockfish cooperatives, and eligible rockfish processors.

TABLE 7—USE CAPS IN THE ROCKFISH PROGRAM

Entity	Primary species aggregate QS and CQ use cap based on the initial QS pool assigned to each sector

TABLE 7—USE CAPS IN THE ROCKFISH PROGRAM—Continued

	Catcher vessel sector			Catcher/processor sector
Eligible rockfish harvester	4.0%			40.0%
	Primary species aggregate CQ use cap based on the initial QS pool assigned to each sector			
	Catcher vessel sector			Catcher/processor sector
Rockfish cooperative	30.0%			N/A
Processor	Primary species	Pacific cod	Sablefish	N/A
	30.0%	30.0%	30.0%	
Vessel	8%			60.0%

Use Cap Exemptions, Grandfather Provisions

As with other catch share programs in the North Pacific, the Rockfish Program would allow those persons whose initial allocation of QS and resulting CQ 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 or processor, or owner of a catcher/processor vessel transferred an LLP license and its associated QS, then the transferee would be limited to the use cap. The grandfather provisions would apply only to persons that held QS in excess of the use caps prior to the date of final Council action, June 14, 2010. This provision would reduce the incentive for QS holders to further consolidate their holdings after Council action and before the implementation of a final rule, if approved. This provision has been applied in other North Pacific catch share programs to reduce consolidation and ensure adherence to specific use caps. Table 8 defines the requirements that would apply for qualifying for a grandfather provision.

TABLE 8—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 to participate in the Rockfish Program that would result in QS or CQ in excess of the use caps; and (2) the LLP license(s) were held by that eligible rockfish harvester prior to June 14, 2010 (the time of final Council action on the Rockfish 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 CQ derived from a rockfish cooperative that meets the grandfather eligibility requirements.
Catcher/processor vessel	an LLP license used on that vessel prior to June 14, 2010, is assigned QS that results in CQ in excess of the use cap, and the CQ derived from that LLP license is used on that vessel.

Information Collection and Review Process

Section 303A(c)(1)(J) of the MSA notes that LAPPs should provide for the establishment of an information collection and review process to collect the information necessary to determine if any illegal acts of anticompetitive practice, antitrust, or related conduct, have occurred among persons receiving limited access program privileges. NMFS would establish a catch accounting system in the Rockfish Program that would allow for the collection of ownership, use caps, and landings information. These data can then be used to track and ensure that excessive consolidation among the fleet has not occurred and participants continue to deliver to different processors. In other LAPPs, NMFS has consulted with other federal agencies, including the Department of Justice Antitrust Division and the Federal Trade Commission, in identifying information that would be helpful in detecting antitrust and anticompetitive conduct among privilege holders, and would do so here, as well.

Sideboard Provisions

NMFS expects the Rockfish Program to improve the economic efficiency of eligible rockfish harvesters, primarily by encouraging a degree of 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 also anticipates that some 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 and Western GOA. With the added economic efficiency likely to be created by the Rockfish Program, 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 Rockfish Program elements that would limit the ability of rockfish harvesters to expand into other fisheries. These types of limitations are included in many of the 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 the Rockfish Program would prohibit directed fishing for certain groundfish fisheries. 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 in other groundfish fisheries during the historic timing of the rockfish fishery, but allow eligible rockfish harvesters to participate in fisheries before or after the historic rockfish season.

A sideboard would limit both the LLP license with QS assigned to it and the vessel on which legal landings were made that could generate QS. This provision would restrict an LLP license holder from assigning an LLP license to a rockfish cooperative, and using the vessel that generated the QS to target other fisheries. Sideboards would apply to Federally permitted vessels fishing in Federal waters and waters adjacent to the Central GOA when the harvest of rockfish primary species by that vessel is deducted from the Federal TAC. The opening of a State water fishery in concurrence with the Federal fishing season is commonly known as a parallel fishery. The State opens a parallel fishery to accommodate harvesters as they target fish stocks that freely move between State and Federal jurisdictions. 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 Rockfish 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-Rockfish 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 harvest in specific regions and fisheries during July; and directed fishery closures that prohibit fishing in specific fisheries and regions during July. The Rockfish Program would include three types of sideboards: (1) Catcher vessel sideboards, (2) catcher/processor rockfish cooperative sideboards, and (3) catcher/processor opt-out sideboards. In addition, if an LLP license holder chooses to be exempted from the Rockfish Program, that LLP license on which the legal landings were made that could generate QS would be exempted from sideboard restrictions.

The Council reviewed the suite of sideboard measures that were applied during the Pilot Program and modified the sideboards that would apply under this proposed rule to address changes in fishery management measures that have occurred since the implementation of the Pilot Program. Specifically, the Council recommended that sideboard measures applicable to the catcher vessel sector in this Rockfish Program should be simplified to prohibit fishing in specific rockfish fisheries in the West Yakutat District and Western GOA, and certain fisheries in the deep-water complex. The Council recommended that sideboard measures applicable to the catcher/processor cooperative sector in the Rockfish Program should be slightly modified from those applicable in the Pilot Program.

Catcher Vessel Sideboards

The Rockfish Program recommended by the Council provides for specific sideboard measures for catcher vessels. These sideboard measures include prohibitions on catcher vessels engaging in directed fishing in specific groundfish fisheries in the GOA. The prohibition on directed fishing in the West Yakutat District and the Western GOA Pacific ocean perch, northern rockfish, and pelagic shelf rockfish during July is based on a review of past participation by the catcher vessel fleet. Catcher vessels would be prohibited from directed fishing on these rockfish species in these areas because they have not historically harvested these species. The Council also recommended that catcher vessels would be prohibited from directed fishing in any target fishery in the deep-water complex in the month of July (except for Central GOA Rockfish). This limitation would prohibit catcher vessels from directed fishing in the Arrowtooth flounder, deep water flatfish, and rex sole fisheries from July 1 through 31. The Council recommended these restrictions to limit the ability of catcher vessels in these fisheries because they have not historically harvested these species in July.

The Council also recommended two exemptions from sideboards. The first would apply to catcher vessels and LLP licenses that (1) generated rockfish legal landings during 2000 through 2006 and in the entry level trawl fishery in the Pilot Program during 2007, 2008, or 2009; and (2) applied to be permanently exempted from the Rockfish Program and forego the ability to receive rockfish QS. This limited exemption would allow LLP license holders and catcher vessel operators who permanently forego their ability to participate in the Rockfish Program to be exempted from sideboard restrictions. The Council identified at least one vessel operator and LLP license holder who had limited participation during the qualifying years for the Rockfish Program but who were active in the West Yakutat District and Western GOA Rockfish fisheries and, to a limited extent, other flatfish fisheries. This exemption would allow the vessel operator and LLP license holder to choose either to participate in the Rockfish Program, receive rockfish QS, and be subject to sideboard limitations, or to forego participation in the Rockfish Program and participate in other GOA fisheries without sideboard restrictions.

The Council recommended a specific exemption from catcher vessels that would be otherwise subject to sideboard restrictions in the GOA under the American Fisheries Act (AFA). Based on a review of AFA sideboard limitations applicable to AFA vessels in the GOA, the Council believed the catcher vessels did not need further limits under this proposed rule. The Council reviewed AFA sideboard limits during the development of the Pilot Program and the proposed Rockfish Program and determined that those sideboard limitations effectively constrained AFA catcher vessels from expanding their ability to harvest in other fisheries. The Council considered that additional sideboard limitations under the Pilot Program and this proposed Rockfish Program were duplicative. This exemption to sideboard limits is the same as that currently applicable under the Pilot Program.

Catcher/Processor Cooperative Sideboards

The Council recommended sideboard limitations on cooperatives that are similar to those in place under the Pilot Program. The Council considered public testimony and catch data from the Pilot Program in its recommendation. The Council recommended these sideboard limitations to minimize potential adverse competition on non-Rockfish Program participants and potential conflicts among rockfish cooperatives in the Western GOA and West Yakutat District rockfish fisheries, as well as specific GOA flatfish fishermen.

Catcher/processor cooperatives would be subject to a sideboard limit in the Western GOA and West Yakutat District rockfish fisheries, and a limit on the

maximum amount of halibut PSC that could be used by that cooperative during the month of July.

The sideboard limit on participants in the Western GOA and West Yakutat District rockfish fisheries would be based on the historic share of catch for a specific rockfish fishery by catcher/processor vessels that generated legal landings that could generate QS under the Rockfish Program. The sideboard would be determined by measuring catch by these vessels during July from 2000 through 2006, 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. This sideboard provision would apply only to Pacific ocean perch, pelagic shelf rockfish, and northern rockfish (see **ADDRESSES**). Other groundfish species would not be subject to specific sideboard limits, but would be subject to existing management measures such as MRAs. Sideboards are intended to limit rockfish participants from exceeding their historic levels of participation in a fishery. The Council did not apply sideboard limits for other rockfish species because those species were not traditionally harvested in July so additional management measures were not needed.

NMFS would establish the sideboard limit for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish using the percentage of historic harvests of that rockfish species for that sector based on calculations in the Analysis prepared for this action. Table 9 displays the percentage of the annual TAC assigned as a sideboard limit in the Western GOA and West Yakutat District based on the information provided in section 2.5 of the Analysis. NMFS would not establish a sideboard limit for northern rockfish in the West Yakutat District because the fishery was not open for directed fishing during 2000 through 2006.

TABLE 9—CATCHER/PROCESSOR SIDEBOARD LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA ROCKFISH

Management area	Fishery	Catcher/processor sector (percent of the TAC)
West Yakutat District	Pelagic shelf rockfish	(Not released due to confidentiality requirements on fish ticket data established by the State of Alaska.)
	Pacific ocean perch	(Not released due to confidentiality requirements on fish ticket data established by the State of Alaska.)
Western GOA	Pelagic shelf rockfish	72.3 percent of the TAC.
	Pacific ocean perch	50.6 percent of the TAC.
	Northern rockfish	74.3 percent of the TAC.

The sideboard limits would limit the maximum amount of fish that the catcher/processor 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 sideboard limit 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 72.3 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 Pelagic shelf rockfish sideboard limit in the Western GOA, NMFS would assign that cooperative 10 percent of 72.3 percent, or 7.23 percent of the Western GOA TAC for pelagic shelf rockfish as a sideboard limit.

A sideboard limit specified for a catcher/processor cooperative would limit only that cooperative. This sideboard limit could not be transferred to another cooperative. Table 9 indicates that rockfish in the West Yakutat District have been harvested by a limited number of vessels, and data on the specific TAC percentage cannot be released due to the confidential nature of the catch. 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.

NMFS would also establish a sideboard limit on the amount of halibut PSC that could be used in the month of July. The halibut PSC sideboard would indirectly limit the harvests of specific groundfish flatfish species, primarily flatfish species, that historically have been limited not by their TAC, but by halibut PSC.

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 limits for the shallow-water fishery complex and the deep-water fishery complex for the catcher/processor sector based on the historic halibut PSC usage calculated in the Analysis prepared for this proposed action. 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 2000 through 2006 in that sector divided by the total average halibut mortality assigned to the GOA trawl sector during 2000 through 2006. During this time period, the average annual halibut PSC was equal to 2,000 mt. Based on these data, the deep-water halibut PSC limit assigned to the catcher/processor sector is equal to 2.5 percent of the GOA trawl PSC limit established in the harvest specifications. The shallow-water halibut PSC limit assigned to the catcher/processor sector is equal to 0.1 percent of the GOA trawl PSC limit established in the harvest specifications. A discussion of the data and analytic process used in the development of the

sideboard amounts is provided in section 2.5 of the Analysis.

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 2.5 percent of the annual GOA Halibut PSC trawl limit 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 2.5 percent, or 0.25 percent of the GOA halibut PSC trawl limit. 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.

Catcher/Processor Opt-Out Sideboards

In addition to the catcher/processor cooperative sideboards, NMFS would prohibit any vessel fishing under a catcher/processor LLP license with QS that decided to opt-out of participating in a rockfish cooperative from (1) directed fishing in any of the primary rockfish fisheries in the Central GOA during the calendar 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. Fishing in the first two weeks of July would be prohibited because participants would have historically participated in the rockfish fisheries during that time.

The Rockfish Program would define prior participation as having at least one landing in a directed GOA groundfish fishery during any 2 years from 2000 through 2006 during specific time periods in early July. This provision is intended to prevent participants with multiple licenses and substantial history from opting out of the program with one license and entering other fisheries in which the license holder has no history. This specific time period during the qualifying years corresponds with the weeks in which participants were historically active. The specific time periods for each year during which a landing could be made are (1) July 9, 2000, through July 15, 2000, (2) July 1, 2001, through July 7, 2001, (3) June 30, 2002, through July 6, 2002, (4) June 29, 2003, through July 5, 2003, (5) July 4, 2004, through July 10, 2004, (6) July 3, 2005, through July 9, 2005, and (7) July 2, 2006, through July 8, 2006.

For species other than flatfish in a management area (*e.g.,* Western GOA or West Yakutat District rockfish), the target fisheries are defined based on the specific species that is being targeted. For flatfish, the Council recommended a broader definition of a flatfish target to accommodate the common practice of catcher/processor vessels switching between specific species within the deep-water or shallow water complexes within the same weekly reporting period. For example, it is common for catcher/processors to target both rex sole and arrowtooth flounder, which are species in the deep-water complex, during the same weekly reporting period. The Council recommended that participation in flatfish fisheries should be based on meeting a minimum of 2 years of participation in either the deep-water complex or the shallow-water complex fisheries during the 2000 through 2006 weekly reporting periods. Specifically, a vessel and its associated LLP license would be considered to have participated in the arrowtooth flounder, deep water flatfish, and rex sole fisheries if that vessel participated in a directed groundfish fishery for any of these three fisheries during any 2 years during the 2000 through 2006 qualifying periods. Similarly, a vessel and its associated LLP license would be considered to have participated in the flathead sole and shallow-water flatfish fishery if that vessel participated in a directed groundfish fishery for any of these two fisheries during any two years during the 2000 through 2006 qualifying periods.

If a sideboarded LLP license or vessel made a landing in a directed fishery in any 2 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 the fixed-gear sablefish fishery that is managed under the existing IFQ program.

Catcher/Processor Sideboards for Non-Amendment 80 Vessels

General sideboard restrictions under the Pilot Program prohibit directed fishing for rockfish primary species in Western GOA, West Yakutat District, and adjacent waters to the Central GOA during the month of July. The Council motion for the Rockfish Program removes sideboard limits for Western GOA and West Yakutat District rockfish primary species for all catcher/processor vessels, except for non-Amendment 80 vessels. The Council initially included this option for consideration because of nearly identical sideboard restrictions on most eligible license holders from the Amendment 80 program. Implemented in 2008, the Amendment 80 program allows eligible members of the trawl catcher/processor sector to form cooperatives in the BSAI. To limit Amendment 80 vessels to their historical catch in the GOA from January 1 through December 31, the Amendment 80 program included sideboards for GOA pollock, Pacific cod, Pacific ocean perch, northern rockfish, pelagic shelf rockfish, and halibut PSC for Amendment 80 catcher/processor vessels. Amendment 80 sideboards are based on the retained catch of the rockfish species during the entire calendar year, while the sideboards for the Pilot Program are based on retained catch during the month of July.

The Council noted that if the Western GOA and West Yakutat rockfish sideboards were to be included in the proposed Rockfish Program, rockfish eligible license holders that were also Amendment 80 qualified would be limited in their catch of Western GOA and West Yakutat District rockfish during the month of July by both Rockfish Program sideboards and Amendment 80 sideboards. This duplication of Western GOA and West Yakutat District rockfish sideboards from the two programs would increase the management cost for NMFS and the industry and the complexity of these sideboarded fisheries. If the Western GOA and West Yakutat rockfish sideboards for the catcher/processor sector in the Rockfish Program were removed, most, but not all, of the eligible license holders would be limited to their historical catch of rockfish primary species during the month of July from Amendment 80 sideboard limits. However, two eligible catcher/processor participants in the Pilot Program do not qualify for the Amendment 80 program, and therefore would not be restricted by Amendment 80 sideboard limits, if the Council removed these sideboards in the proposed Rockfish Program. So, they would have no sideboards. Historically, the two eligible license holders have had very limited catch history in West Yakutat rockfish fisheries and no catch history in Western GOA rockfish fisheries during the month of July. The licenses do not have Western GOA

endorsements and the limited history in West Yakutat rockfish fisheries by these licenses was likely due to the small TACs, which corresponds with small sideboard limits of rockfish species in this area.

NMFS cannot predict whether these two eligible license holders would fish in West Yakutat District in the future. Despite the lack of history in the West Yakutat and Western GOA rockfish fisheries, these eligible licenses could be used to target West Yakutat and Western GOA rockfish during the month of July. To limit these participants from increasing their effort in Western GOA and West Yakutat rockfish fisheries, the Council included a sideboard limit for non-Amendment 80 licenses. Given these eligible licenses have little or no catch history in West Yakutat rockfish fisheries and no history in the Western GOA rockfish fisheries, the Council decided the simplest approach was to prohibit non-Amendment 80 catcher/processors from participating in the West Yakutat and Western GOA fisheries during the month of July. This would simplify management by eliminating the need to publish the annual sideboard limits for these fisheries and then a closure notice for these sideboard fisheries given there would not be a sufficient amount of catch available to conduct a directed fishery.

Assigning Sideboards

If NMFS determines that a specific sideboard limit for a directed fishery is small and insufficient to support any retained catch, then NMFS may set the directed fishing allowance for that sideboard fishery 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, NMFS would notify the vessel owner or LLP license holder through an IAD. NMFS' IAD would indicate discrepancies or deficiencies in the information submitted with the evidence or supporting documentation. Affected persons could appeal that decision using existing appeals procedures (see § 679.43 for additional details). 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.

Management of the Sideboards

NMFS would manage the sideboards to meet the intent of the Council, which is to limit rockfish harvests and halibut PSC during the month of July. NMFS would review the sideboard limits for specific fisheries, sectors, and regions in the Rockfish Program and would not open a fishery if a sideboard limit was not adequate to support harvests. 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 Rockfish Program 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 *Monitoring and Enforcement* section of the preamble 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) with Rockfish Program vessel participation, and debit them against the sideboard limit applicable to that cooperative. 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 GOA in July against the shallow-water halibut PSC sideboard or deep-water halibut PSC sideboard limit, as appropriate, for a cooperative. This would ensure that all halibut PSC caught in July is debited against the sideboard limit established for the appropriate complex and cooperative.

NMFS would close directed fishing by cooperatives 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.

Fourth, the sideboard limits recommended by the Council that are proposed 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 sideboarded 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.

Example of 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 catcher vessels would not be able to opt-out of participating in rockfish cooperatives.

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

Second, a percentage of the TAC would be set aside for the entry level fishery. This percent may change annually up to the capped amount depending on whether 90 percent or more of the entry level TAC was caught for each species the previous year. See Table 10.

Third, the remaining TAC of each of the three allocated rockfish species, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish would be allocated to rockfish cooperatives. To simplify the example, 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 the remaining TAC of each of the three allocated rockfish species would be allocated to the catcher/processor sector and the other 50 percent of the remaining TAC for each of the three species would be allocated to the catcher vessel sector.

Fourth, 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. Two eligible rockfish harvesters holding three LLP licenses would assign those licenses to two different rockfish cooperatives. Based on these LLP licenses, each cooperative would be assigned 30 percent of the total rockfish primary species QS in the catcher/processor sector based on these LLP licenses. Other eligible rockfish harvesters holding four LLP licenses would decide to opt-out. This represents 40 percent of the total rockfish primary species QS in the catcher/processor sector.

Fifth, NMFS would reassign 100 percent of the TAC assigned to the catcher/processor sector to the rockfish cooperatives. This means that because each cooperative would be assigned an equal amount of QS, the TAC assigned to the catcher/processor sector would be assigned equally to each cooperative. The vessels that have opted-out would not be assigned any TAC for the rockfish primary species and would be prohibited from directed fishing for those species in the Central GOA.

Sixth, NMFS would determine the amount of CQ for secondary species and halibut PSC that would be allocated to the rockfish cooperatives. The allocation of CQ 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, 50 percent of the total QS in the sector. NMFS would allocate each rockfish cooperative 50 percent of the total CQ of secondary species and halibut PSC that could be allocated to the catcher/processor sector.

Entry Level Longline Fishery

The entry level fishery would continue for harvesters who would be directed fishing for rockfish primary species using longline gear only. The industry and the Council commonly uses the term ''fixed gear'' to describe this fishery. However, NMFS notes that the regulatory text under Pilot Program as well as the proposed regulatory text for the Rockfish Program refer to the entry level ''longline'' fishery, not fixed gear, but is meant to be the same non-trawl fishery. Longline gear includes hook-and-line, jig, troll, and handline. Any vessel or gear type exempt from Central GOA LLP requirements (vessels that do not exceed 26 feet in length overall in the GOA or vessels that are using jig gear with less than 5 jigging machines, no more than 30 hooks per line and 150 hooks in total), or any holder of a Central GOA longline LLP license may enter a vessel in the entry level longline fishery. The start date for the entry level longline fishery would be January 1 of each year, and participants would not be required to apply annually. The Council discussed whether to require an annual application as was previously required under the Pilot Program when the entry level fishery included trawl and longline gear, but determined that the lack of registration may actually improve entry into these fisheries by removing an application deadline that would prevent a vessel from entering the fishery mid-season. Therefore, participants in the entry level longline fishery would not be required to submit an annual application in order to take part in the fishery. If a longline gear participant targets rockfish primary species in the Central GOA, then the catch would be deducted from the entry level longline TAC. If the longline participant is not directed fishing for rockfish primary species, and instead targets a different species such as Pacific cod, then the catch would be deducted from the ICA.

The entry level longline fishery would have a smaller initial TAC than was initially allocated in the Pilot Program. The smaller TAC allocation would be more in line with historical catch rates among the longline sector in the entry level fishery, since the sector has had minimal participation in the fisheries. Under the Pilot Program, longline harvests never exceeded one percent of the TAC for any of the target species during the qualifying years. Some longline fishermen who have small vessels and do not qualify for the Rockfish Program continue to express an interest in prosecuting the entry level fishery. Most have testified to the Council that they would participate primarily in the summer months when the weather is the best, allowing the fleet to more safely target these offshore rockfish. If some participants are successful in the fishery, additional entry can be expected, but NMFS cannot predict the potential success of these efforts.

The TAC for the entry level longline fishery would increase in a following year if most or all of the apportioned TAC in the fishery is caught. The set aside allocation for the entry level longline fishery would allow for a predetermined amount of rockfish primary species for the 2012 season that would increase incrementally each season if the sector harvests 90 percent or more of the allocation of a species. The incremental increase would continue each year until it reaches the cap set for the maximum percent of the TAC for that species. Table 10 shows the 2012 initial allocations for each rockfish primary species, the incremental increase for future seasons, and the cap for the entry level longline fishery.

TABLE 10—ENTRY LEVEL LONGLINE FISHERY ALLOCATION

Rockfish primary species	2012 Initial allocation	Incremental increase per season if ≥ 90% of allocation is harvested	Up to maximum % of TAC
Pacific ocean perch	5 metric tons	5 metric tons	1%
Northern rockfish	5 metric tons	5 metric tons	2%
Pelagic shelf rockfish	30 metric tons	20 metric tons	5%

The mechanism expressed in Table 10 increases the annual allocations as the sector grows. If the sector does not catch 90 percent or more of the TAC, then the allocation for the next year would be the same as the previous year. This process could help prevent unharvested portions of the TAC, which would occur

if the allocation to the longline sector was disproportionate to their catches.

Catcher vessels fishing under a CQ permit would be allowed to participate in the entry level longline fishery as long as the catcher vessel cooperative's designated representative submits a check-out report for the vessel. (see Application of Monitoring Requirements for Vessels for information on check-out procedures). Unlike catcher vessels fishing in cooperatives, participants in the entry level longline fishery may deliver their harvest to any shorebased processing facility in any community and are not restricted to delivery to a Kodiak processor. The Council noted that a requirement to deliver within the boundaries of Kodiak might discourage potential participants from attempting to develop the entry level longline fishery. The longline sector consists of relatively small vessels and the Central GOA extends to areas that are distant from Kodiak, but close to other ports such as Homer and Seward. Requiring entry level participants to comply with a landing requirement within the boundaries of Kodiak might present too great of an expense for the participants and expose participants to unacceptable safety risks.

Monitoring and Enforcement

Monitoring provisions would be necessary for accurate catch accounting and to monitor compliance with the Rockfish Program to ensure that rockfish QS holders maintain catches with annual rockfish CQ allocations, rockfish sideboard limits, and use caps. Monitoring and enforcement in the proposed Rockfish Program would be similar to monitoring and enforcement under the Pilot Program. The primary tools for monitoring would include (1) requiring observers aboard vessels operating in a rockfish cooperative or a rockfish sideboard fishery, (2) requiring that vessels participating in a rockfish cooperative or a rockfish sideboard fishery carry and use a NMFS-approved vessel monitoring system (VMS) transmitter, (3) requiring that catcher/processors in a rockfish cooperative or rockfish sideboard fishery follow specified catch handling procedures prior to processing, (4) requiring the weighing of all catch from rockfish cooperatives on NMFS or State approved scales, and (5) requiring that shoreside processors receiving rockfish CQ operate under NMFS approved CMCPs. Vessels participating in the entry level longline fishery would not be subject to specific Rockfish Program monitoring requirements, but would be subject to any applicable requirements as a result of participation in other fisheries. NMFS welcomes comment on any of the monitoring aspects of the Rockfish Program.

Application of Monitoring Requirements for Vessels

NMFS would require that owners and operators of all catcher vessels and catcher/processors harvesting under a cooperative CQ permit comply with the applicable observer and VMS requirements while fishing. In addition, NMFS would require that all vessels harvesting under a CQ permit or operating under a catcher/processor rockfish sideboard while fishing in July meet catch handling and catch weighing procedures to ensure proper accounting of catch.

Similar to the current Pilot Program, NMFS is proposing to establish a check-in designation procedure for a vessel that will fish under the authority of a CQ permit. This procedure would be necessary because vessels fish in the Rockfish Program fisheries, and non-Rockfish Program fisheries (e.g., pollock, Pacific cod, and various flatfish fisheries) that do not require the same catch monitoring provisions. The designated representative of a rockfish cooperative would be required to designate any vessel that intends to fish under the rockfish cooperative's CQ permit through a check-in procedure before that vessel may fish under that CQ permit. The designated representative for a rockfish cooperative must submit a check-in form for a vessel to NMFS at least 48 hours prior to the time the vessel would begin a fishing trip under a CQ permit. This check-in would provide adequate time for NMFS to properly track and account for catch against a cooperative CQ permit. A check-in designation for a vessel is effective at the beginning of the first fishing trip after the designation has been submitted.

NMFS would require that the designated representative of a rockfish cooperative specify any vessel that is no longer fishing under a CQ permit for that rockfish cooperative through a check-out procedure. A check-out report would need to be submitted within 6 hours after the effective date and time the rockfish cooperative ends the vessel's authority to fish under the CQ permit. A check-out designation would be effective at the end of a complete offload. If the vessel were fishing under a CQ permit for a catcher/processor cooperative, a check-out designation would be effective on the date at the end of the week as reported in a production report, or the end of a complete offload, whichever occurs first.

The proposed Rockfish Program includes several changes to the check-in and check-out procedures of the current Pilot Program. First, NMFS would require that the designated representative of the rockfish cooperative submit a vessel check-in or check-out report electronically, rather than by fax or email. The designated representative would need to certify that all information is true, correct, and complete. This procedure would ensure more timely collection of information. Second, NMFS would no longer limit or cap the number of check-in or check-out procedures for a vessel allowed in a season. NMFS would not need to limit check-in or check-out status to track vessels because the proposed electronic submission of the check-in and check-out report would efficiently facilitate tracking of vessel status.

NMFS would not require vessel operators to meet the monitoring provisions applicable to rockfish cooperatives once NMFS approves a Declaration of Termination of Fishing. Once this declaration is made, the CQ issued to that rockfish cooperative would be set to zero for all rockfish primary species, secondary species, and halibut PSC, and that cooperative could no longer receive CQ by transfer. This declaration procedure could occur after the cooperative has transferred its CQ to another cooperative, thereby limiting the loss of any unused CQ. A portion of any unused halibut CQ could be reassigned for use in other non-Rockfish groundfish fisheries as described under the *Transfer of CQ* section of this preamble.

Observer Coverage for Rockfish Cooperatives

Observers would be required aboard vessels participating in the Rockfish Program to adequately account for catch and bycatch in the fishery. NMFS must maintain timely and accurate records of harvest in fisheries with small allocations that are harvested by a fleet with a potentially high harvest rate. Ensuring adequate observer coverage would be particularly important for monitoring the complex suite of NMFS-managed quota allocations. 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 issues were outlined in the Analysis prepared to support this action (see **ADDRESSES** for more information). NMFS would require 100-percent observer coverage for vessels fishing under a catcher vessel CQ permit. For catcher/processors, the level and type of observer coverage

proposed under the Rockfish Program follows models that have been developed for monitoring catcher/processor vessels under the Amendment 80, American Fisheries Act (AFA), and Community Development Quota programs. Catcher/processors fishing under the authority of a rockfish CQ permit would be required to carry two observers, and at least one of these observers must be lead level 2 certified. This proposed rule would mirror the observer coverage requirements established under the Pilot Program. The specific level of observer coverage required for catcher/processor vessels and catcher vessels is detailed in Table 11. 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. Unless noted, the Rockfish Program would not affect existing observer coverage requirements that may apply to a vessel or processor when they are engaged in non-Rockfish Program fisheries.

Observer coverage under the Rockfish Program would maintain existing standards for observer workload restrictions for catcher/processors (see § 679.50 for more details on workload regulations). Additionally, regulations would clarify that observer coverage for catcher vessels required to monitor harvests would be separate from observer requirements in other fisheries. This provision would ensure that observer coverage necessary to meet the catch accounting and monitoring for the Rockfish Program would not affect observer coverage applicable for other non-Rockfish Program fisheries.

Observer Coverage for Sideboard Fisheries

NMFS would require observers on all catcher/processors subject to sideboard limits during July. This would help to ensure that vessels do not exceed the sideboard limits. Cather/processors assigned to a rockfish cooperative would receive a rockfish cooperative specific sideboard limit that could not be exceeded. NMFS proposes observer coverage that would ensure that these vessels do not exceed their specific limit. The sideboard limits established for a rockfish cooperative 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. NMFS would not require additional observer coverage for managing sideboard limits in the West Yakutat District, Central GOA, or Western GOA after July 31. Vessels fishing under a CQ permit in the Central GOA after July 31 would still be subject to any applicable additional observer requirements established under the Rockfish Program.

Catcher/processor opt-out vessels would be subject to less restrictive sideboard limits. Opt-out vessels would be assigned a Western Yakutat District, and Western GOA rockfish and GOA halibut PSC sideboard limit that would be managed by NMFS. This would allow NMFS to close a sideboard limit to these vessels if it appeared that the sideboard limit would not support directed fishing, therefore catch may be monitored with less observer coverage than applicable to catcher/processors assigned a cooperative-specific sideboard limit.

Observer Communication System

To ensure timely collection of data, NMFS would require that catcher vessels less than 125 feet (metric equiv.) length overall install and maintain a computer for use by an observer when the vessel is required to meet observer coverage requirements for the Rockfish Program. This would include all catcher vessels fishing under a rockfish CQ permit. Alternatively, vessels that already have computers meeting 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 that could be transferred to a disk and sent electronically to NMFS from a shore based computer. These requirements mirror regulations already in place for catcher vessels in the Pilot Program.

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 length overall) 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 Rockfish 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 to 3 days of delivery. However, halibut would be required to be returned to the sea with minimal injury and catch accounting would be based on expanded observer samples. Observer data from vessels are 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 receives data from the previous trip. Altogether, delays with faxing data could result in up to 2 weeks' delay in making data available to rockfish cooperative and NMFS managers. When seasonal catch amounts are near allocation limits, vessels' departures could be delayed until halibut PSC data become available.

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 identifies 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 § 679.50.

Table 11 summarizes the observer requirements for the Rockfish Program. Unless noted, the Rockfish Program would not affect existing observer coverage that may apply to a vessel or processor that is engaged in non-Rockfish Program fisheries, for example, directed Pollock fishery.

TABLE 11—PROPOSED OBSERVER REQUIREMENTS IN THE ROCKFISH PROGRAM

Component	Requirement	When applicable
A catcher/processor fishing in a rockfish cooperative . . .	Must have aboard at least two observers for each day that the vessel is used to harvest, process, or take deliveries from a catcher vessel under a CQ 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 CQ for a rockfish cooperative and end on November 15, or upon NMFS approval of a Declaration of Termination of Fishing by the rockfish cooperative.
A catcher/processor assigned to a rockfish cooperative and subject to sideboard limits during the month of July.	Must have aboard at least two 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 would be 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/processor opt-out vessel that is subject to sideboard limits during the month of July . . .	Must have aboard at least one observer for each day that the vessel is used to harvest, process, or take deliveries from a catcher vessel.	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 an observer aboard at all times the vessel is used to harvest fish under a CQ 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 CQ for a rockfish cooperative and end on November 15, or upon NMFS approval of a Declaration of Termination of Fishing by the rockfish cooperative.
A catcher vessel fishing in the entry level longline fishery.	No additional requirements established by the Rockfish Program. Subject to observer provisions at 50 CFR 679.50.	

Vessel Monitoring System (VMS)

As is required for many other rationalization programs in the North Pacific, most vessels participating in the Rockfish Program would be required to install, maintain, and operate a 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 fishery and BSAI Crab Rationalization Program. The Rockfish Program would extend existing VMS coverage to any vessel with a Federal fisheries permit endorsed for a Rockfish Program fishery and would require that those vessels have a transmitting VMS on board at all times when operating off Alaska when the Rockfish Program fishery for which they are endorsed is open. Non-trawl vessels participating only in the entry level longline fishery, for example longline vessels targeting Pacific ocean perch, 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. For example, vessels that participate in cooperatives and the entry-level longline fishery would still be required to use VMS because VMS is required for vessels participating in a cooperative. The existing VMS requirements are detailed in § 679.28(f).

The Rockfish Program would require that all vessels operating in a rockfish catcher vessel or catcher/processor cooperative use a VMS. The Analysis prepared for this action (see **ADDRESSES**) indicated that all the vessels that have legal landings in the Central GOA rockfish fishery are currently required to use a VMS. A VMS would not be required for vessels fishing in the longline portion of the entry level fishery. The Analysis prepared for the Rockfish Program indicates that there is likely to be relatively little participation by longline vessels in the entry level fishery. The Council recommended that longline entry level vessels would be exempt from the VMS requirements that apply to other vessels in the Rockfish Program. This exemption is applicable only to the Rockfish Program. If entry level vessels are required to use VMS for other fisheries in the GOA, then those VMS requirements would continue to apply.

Special Catch Handling Requirements for Catcher/Processors

NMFS recognizes that there would be a strong incentive for Rockfish 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 rockfish primary species and rockfish secondary species harvested by Rockfish 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. Lack of sufficient halibut PSC CQ could limit the ability of rockfish cooperatives to fully harvest their CQ for rockfish primary species and

secondary species. The special catch handling requirements proposed under the Rockfish Program mirror those implemented under the Pilot Program and those already established for catcher/processors operating under the Amendment 80 Program.

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 assigned to a rockfish cooperative. The procedures proposed for the Rockfish Program are similar to those currently required for the Pilot Program with some modifications to accommodate a CMCP specialist at shorebased facilities. In brief, these special catch handling requirements would require the vessel owner or operator to ensure:

- No fish remain on deck unless an observer is present, except for fish that spilled outside the codend;
- The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh the catch bins and the area where the observer collects species composition samples; and
- All crew activities within any bin or tank are observed and monitored prior to the observer sampling unsorted catch.

A vessel owner or operator of a catcher/processor 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 owners or operators who choose the first option would need to 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. However, NMFS acknowledges that a crew member may be required to be inside the bin to facilitate the movement of fish from the bin. For that reason, 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 members have indicated that water may degrade the quality of fish, which could decrease the value of these fish. Therefore, NMFS has developed the proposed options to allow a person to see inside the bin while fish are exiting the bin, and ensure that presorting activities are not occurring.

Vessel owners or operators who choose the second option would be required to provide a view into the bin. The observer must be able to see all actions of the crew member inside the bin from the same position where 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 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 proximity to the bin area.

Vessels owners or operators who 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 50 CFR 679.28(i).

If at any time during a trip, the line of sight 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).

Weighing of Catch

Catcher/processor vessels catching fish under the authority of a rockfish CQ permit or in sideboard fishery would be required to weigh all groundfish on a NMFS-approved scale in compliance with the scale requirements at 50 CFR 679.28(b). Each haul would need to be weighed separately, and all catch would need to be made available for sampling by an observer. This requirement would apply to any vessel assigned to a rockfish cooperative and fishing in a rockfish sideboard fishery, but not to opt-out vessels or vessels fishing in the entry level longline fishery. This requirement would ensure that all catch is properly accounted for and debited from either the cooperative's CQ account or sideboard fishery limit, as applicable. Vessels fishing under an LLP license that has opted-out of participating in a rockfish cooperative would not need to weigh catch from the opt-out sideboard fisheries in July given the reduced need for precision in catch accounting necessary for NMFS to manage the opt-out sideboard limits. Shoreside processors receiving catch from vessels fishing under the authority of a rockfish CQ permit would need to weigh all catch as specified in the CMCP described below.

Catch Monitoring and Control Plan (CMCP)

The owner and manager of a shoreside processor receiving groundfish harvested under the authority of a rockfish CQ permit would have to ensure that the facility is operating under an approved CMCP whenever receiving CQ allocated under the Rockfish Program. An acceptable CMCP describes how landings can be monitored effectively by a single individual authorized by NMFS, how

scales will be tested and used, and ensures that adequate facilities are made available for individuals authorized by NMFS (see § 679.28(g) for more details). CMCP requirements apply to the AFA and the Pilot Program. NMFS would not modify these requirements but merely extend their applicability to processing facilities participating in this proposed Rockfish Program.

CMCP Specialist

NMFS would use a portion of the cost recovery fees collected under the Rockfish Program to hire personnel to monitor rockfish landings to provide impartial verification of a processor's adherence to its CMCP. NMFS would distinguish the duties between the rockfish CMCP specialist and a fishery observer so their respective functions or duties do not overlap. The rockfish CMCP specialist would only monitor program deliveries and would not be trained as an observer or requested to complete any observer duties such as verifying non-rockfish fish tickets, assisting vessel observers, or collecting biological or scientific data. The duties of the rockfish CMCP specialist would be to monitor rockfish deliveries to ensure compliance with the CMCP of any processor receiving program landings, to assist processors with rockfish species identification to ensure accurate catch sorting and quota accounting, and to report the findings to NMFS. A shoreside processor would be required to include a description in the CMCP of how the CMCP specialist would be notified of rockfish CQ deliveries. The CMCP specialist would establish a monitoring schedule so most (if not all) deliveries would be monitored. In the event of conflicting deliveries, the CMCP specialist would determine which program deliveries will be monitored. Because cost recovery fees would not be available at the start of the Rockfish Program, NMFS would be required to fund the CMCP specialist position(s) until cost recovery fees are available.

Cost Recovery

The MSA requires that NMFS collect fees for the limited access programs established under section 303A of the MSA. The Rockfish Program would be established under the provisions of section 303A of the MSA. Section 304(d)(2) of the MSA requires that NMFS collect fees for the Rockfish Program equal to the actual costs directly related to the management, enforcement and data collection (management costs). Section 304(d)(2) of the MSA also limits the cost recovery fee so that it may not exceed 3 percent of the ex-vessel value of the fish harvested under the Rockfish Program. NMFS would assess a fee on the ex-vessel value of rockfish primary species and rockfish secondary species CQ harvested by rockfish cooperatives in the Central GOA and waters adjacent to the Central GOA when rockfish primary species caught by that vessel is deducted from the Federal TAC. Halibut PSC CQ would not be subject to a cost recovery fee because that halibut cannot be retained for sale and, therefore, does not have an ex-vessel value. The entry level longline fishery and opt-out vessels are not subject to cost recovery fees.

An effective fee collection program would require collecting data on rockfish primary species and rockfish secondary species CQ ex-vessel value, assessing management costs, assigning the appropriate fee to each rockfish cooperative, and ensuring that rockfish cooperatives comply with the fee collection requirements. The primary components of the fee collection program that would require submissions from Rockfish Program participants are (1) a requirement that shoreside processors receiving rockfish CQ submit an annual Rockfish Ex-vessel Volume and Value Report that details the ex-vessel value of harvests; and (2) a cost recovery fee liability statement from each rockfish CQ holder—effectively each rockfish cooperative.

NMFS would rely on the Rockfish Ex-vessel Volume and Value Report to provide information on the ex-vessel value and the price paid of rockfish primary and secondary species. Each shoreside processor receiving fish harvested under a rockfish CQ permit would be required to submit this report to NMFS for receipt by NMFS no later than December 1 of each year. This would allow NMFS to collect price data from the rockfish cooperative season which extends from May 1 through November 15 of each year. Shoreside processors would need to provide landing and price data for each primary and rockfish secondary species by month. These data would allow NMFS to generate a standard ex-vessel price for each rockfish primary and secondary species on a monthly basis and determine the average price paid per pound for all shoreside processors receiving rockfish primary and secondary species CQ. NMFS would scale the average price in proportion to the amount of landings receiving that price during the month. This method is the same used to calculate a standard price in the BSAI crab rationalization and halibut and sablefish IFQ cost recovery programs. NMFS would publish the standard ex-vessel price per month for each rockfish primary and secondary species in the **Federal Register** in the first quarter of the year following the year the landings were made to provide rockfish cooperatives with information necessary to assess their fee liability. For example, in 2012, each shoreside processor receiving rockfish primary and secondary species CQ would need to submit a Rockfish Ex-vessel Volume and Value Report so it was received by NMFS by December 1, 2012, and then NMFS would publish the standard ex-vessel price per species and per month in early 2013.

This standard ex-vessel price would apply to all rockfish primary and secondary CQ landings made in 2012. NMFS would use a standard ex-vessel price rather than specific actual price data provided by each rockfish CQ holder. Use of a standard ex-vessel price is allowed under sections 303A and 304(d)(2) of the MSA. The use of an actual ex-vessel price would require that the rockfish CQ holder document all landings and prices. Based on experience with the halibut and sablefish IFQ program, where IFQ holders may use either standard ex-vessel prices generated by NMFS or actual ex-vessel prices, very few IFQ holders subject to fee collection have used actual prices. The BSAI crab fee collection program does not provide for the use of actual ex-vessel price and NMFS applies a standard price to crab landings on a monthly basis. NMFS proposes to extend the use of standard ex-vessel price in the Rockfish Program. Standard ex-vessel prices would need to be applied to the catcher/processor rockfish cooperatives because catcher/processor vessels process catch at sea and do not use ex-vessel pricing to establish the value of catch because there is no processor receiving the catch and paying the harvester. NMFS has used the standard ex-vessel prices estimated from shorebased deliveries to assign an ex-vessel value to catcher/processor vessels in its cost recovery programs and would continue to do the same under this proposed action. Each year, NMFS would determine the total value of the rockfish fisheries subject to fee collection by summing the total value for all rockfish primary and rockfish secondary species harvest by all rockfish cooperatives during the previous year using the standard ex-vessel prices.

NMFS would also publish the rockfish fee percentage in the **Federal Register** that would determine the total fee, up to 3 percent of the total ex-vessel value of the fishery, required from all rockfish cooperatives based on landings

of rockfish primary and secondary species CQ made in the previous year. The fee percentage is the total percentage of ex-vessel value due for each pound of rockfish primary and secondary species CQ made by a cooperative during the previous year. With the halibut and sablefish IFQ cost recovery program, NMFS has published the standard ex-vessel prices and the rockfish fee percentage in the same **Federal Register** notice in the first quarter of the year, and NMFS anticipates using the same process for the Rockfish Program. The fee percentage is the amount of the ex-vessel value that is due to NMFS based on the standard ex-vessel value of the rockfish primary and secondary species CQ debited from all rockfish CQ accounts relative to the actual costs directly related to the management, enforcement and data collection of the Rockfish Program.

NMFS would determine the fee percentage that applies to landings made in the previous year by dividing the total value of the rockfish primary species and rockfish secondary species for all rockfish cooperatives made during the previous year by the total actual costs during the previous year. NMFS tracks expenditures and reports the actual costs of managing cost recovery program(s) applicable to the crab rationalization program and the halibut and sablefish IFQ program. NMFS would perform a similar function for the Rockfish Program fee collection as well. NMFS would capture the actual cost of managing the fishery through an established accounting system that allows staff to track labor, travel and procurement. Once the actual costs for the previous year are identified, a portion of that amount is recovered from all rockfish CQ holders in the fishery. NMFS would adjust the total management costs, annually, to account for any adjustments or payments received during the previous year. For example, if payments received by rockfish cooperatives in 2013 were slightly greater than the actual costs accrued during the previous year (2012), then NMFS would adjust the total management costs, which would then slightly lower the fee percentage in 2013. Some slight adjustment in the total management costs to account for rounding, slight overpayment, or corrections to actual costs after the fee liability is due, or for other reasons, is anticipated and NMFS would accommodate these factors on an annual basis. If applying a 3-percent fee would recover revenues in excess of those needed, the percentage will be set at less than 3 percent. The fee percentage could not be set at an amount higher than 3 percent of ex-vessel value even if the actual costs for the previous year exceeded 3 percent of the standard ex-vessel value for the rockfish primary and secondary CQ landings.

NMFS would inform each rockfish cooperative of the fee percentage applied to the previous year's landings and the total amount due (fee liability) through a letter sent to the address of record for each rockfish cooperative. NMFS advises rockfish cooperatives to inform NMFS if their contact information has changed. This fee liability letter would be sent to rockfish cooperative designated representatives during the first quarter of the year after the fee was incurred. The fee liability letter would be provided before fees are due on February 15 of each year. The letter would include a summary explaining the fee liability determination including the current fee percentage, details of rockfish primary species and rockfish secondary species CQ pounds debited from rockfish CQ allocations by permit, species, date, and prices.

Because fees are assessed based on landings made during the previous year, NMFS advises rockfish cooperatives to ensure that adequate funds are retained on an annual basis to ensure that the fee liability can be paid. For example, during 2012, it may be advisable for rockfish cooperatives to retain up to 3 percent of the value of ex-vessel prices paid to the rockfish cooperative members for rockfish primary and secondary species CQ throughout the year. This would ensure that the rockfish cooperative could pay the required fees for fishing during 2012 when the fee for rockfish primary and secondary species CQ is due on February 15, 2013.

NMFS would require that all payments be submitted electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account. Electronic payment and submission of the fee collection would reduce administrative costs that would have to be borne by industry. All the rockfish cooperatives operating under the Pilot Program are familiar with, and regularly use, electronic submissions of various forms under the Pilot Program, and NMFS would extend this common practice to fee submission for the Rockfish Program. Instructions for electronic payment would be made available on the payment Web site and through a fee liability summary letter NMFS would mail to the rockfish CQ permit holder.

Failure to pay on time would result in the permit holder's QS becoming non-transferable and the person would be ineligible to receive any additional QS by transfer. In addition, cooperative members would not receive any rockfish CQ the following year until full payment of the fee liability is received by NMFS. This is because CQ may not be issued until NMFS receives a complete application, which includes the full payment of an applicant's complete rockfish cost recovery fee liability. Communication with NMFS by using the contact information provided in the fee liability letter would provide ample opportunity for rockfish CQ permit holders to reconcile accounts. However, if the account is not reconciled and the individual does not pay, NMFS would send an IAD to the rockfish CQ permit holder. The IAD would state that the rockfish CQ permit holder's estimated fee liability due from the rockfish CQ permit holder had not been paid. Any such formal determination may be appealed. The appeals process is described under 50 CFR 679.43. An applicant who appeals an IAD would not receive any rockfish CQ derived from their rockfish QS until the appeal was resolved in the applicant's favor.

After 30 days, the agency may pursue collection of the unpaid fees if the formal determination is not appealed and the account remains unpaid or under-paid. The Regional Administrator may continue to prohibit issuance of a rockfish CQ permit for any subsequent calendar years until NMFS receives the unpaid fees. Upon issuance of final agency action, any overpayment of fees would be returned to the rockfish CQ permit holder unless the permit holder requests that the agency put the credit toward future cost recovery fees. NMFS notes that some payment processing fees may be deducted from any fees returned to the rockfish CQ permit holder. Currently for the 2011 fishing season, the processing fee is set at $30, but the fee may change from year to year.

Rockfish Program Duration and Review

The Rockfish Program would be authorized for 10 years, from January 1, 2012, until December 31, 2021. In making its recommendation, the Council considered the various consequences that a sunset date could have on the Rockfish Program. The Council discussed administrative and analytical burdens that would be caused by an in-depth review of the Rockfish Program prior to its expiration. Mandating a Council recommendation to extend the Rockfish Program would substantially increase Council and staff

workloads, as a formal extension of the program would be required if the Council follows the normal process for amending its FMPs. In addition, the Council recognized that uncertainty over the future management of the fishery would affect the rockfish industry and how it operates within the Rockfish Program. The sunset date would likely affect the value of LLP licenses that qualify for the Rockfish Program because the timeframe of the fishing privilege associated with the licenses would be uncertain. This limited duration may also affect planning by both sectors as well as future investments by the sectors that may be beneficial under the Rockfish Program management, but less useful under LLP management. Ultimately, the Council recommended an extension of the duration of the Rockfish Program to 10 years, which is 5 years longer than the duration of the Pilot Program, to allow for the opportunity to reevaluate the program's effectiveness in the future. The Council reviewed and considered the duration of the permits under Section 303A. All permits would expire after 10 years but be renewed unless the Council takes action to discontinue the Rockfish Program. Section 303A(f)(1) of the MSA states that permits are renewable unless revoked, limited, or modified. NMFS notes that the entire Rockfish Program, and not specifically the permits, would be subject to the ten year expiration date.

A formal review of the proposed Rockfish Program by the Council would take place 3 years after the implementation of the program. An early review of the Rockfish Program would help the Council determine if the program is functioning as intended. The review process would allow for a full evaluation of the program's successes or challenges, and provide the Council with details on unanticipated consequences. The Council determined that a formal review process was essential to the Rockfish Program as a key tool to assess whether the Rockfish Program was achieving the goals of the MSA and the problem statement as identified in the Analysis (**ADDRESSES**). This review and evaluation by the Council would include an assessment of the program objectives. Specifically, the Council would review whether the allocation of rockfish and associated incidental harvests were fair and equitable given participation in the fishery, historical investments in and dependence upon the fishery, and employment in the harvesting and processing sectors. The Council would also assess changes in annual cooperative formation, changes in product value, the number and distribution of processing facilities, and stability or use of annual processor associations among catcher vessels. The Council would focus on the impact of this action on the harvesting and processing sectors, as well as on fishery dependent communities. The Council would also assess whether the needs for management and enforcement, as well as data collection and analysis, were adequately met. Because the Council would undertake this review, and not NMFS, regulatory language requiring this review is not required or included in this proposed rule.

If the Council recommends an extension of the Rockfish Program beyond the 10-year duration, permits would be renewed before the expiration date unless they have been revoked, limited, or modified. NMFS would have full discretion in determining which permits would be subject to revocation, limitation, or modification. If the Council would not recommend a continuation of the Rockfish Program, then rockfish management would revert back to management under the LLP. If this should happen, all Rockfish Program permits would expire 10 years after the implementation of the Rockfish Program and not be renewed.

Classification

Pursuant to sections 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

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

Regulatory Flexibility Act

A Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) were prepared for this action. The RIR assesses all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. The Rockfish Program was chosen based on those measures that maximize net benefits to affected participants in the Central GOA rockfish fisheries. The IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (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 RIR and IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). A summary of these analyses follows.

Description of Significant Alternatives Considered

The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for the continued 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. Status Quo/No Action (Alternative 1); current entry level management under the Pilot Program (Alternative 2); and an entry level fishery for longline gear only (Alternative 3). The third alternative was selected. Three alternatives for catcher/processors also were considered: Status Quo/No Action (Alternative 1); a rockfish cooperative program where allocations are based on harvest history of sector members (Alternative 2); and the existing Pilot Program management (Alternative 3). Alternative 2 was selected. Four alternatives for the catcher vessel sector were considered: Status Quo/No Action (Alternative 1); a rockfish cooperative program where allocations are based on harvest history of sector members (Alternative 2); a rockfish cooperative program where allocations are divided between historical harvesters and processing participants (Alternative 3); and a cooperative program where a harvester must join in association with a processor where associations are severable (Alternative 4). Alternative 4 was selected.

These alternatives constitute the suite of ''significant alternatives,'' under this proposed action, for purposes of the RFA. Based upon the best available scientific data, and consideration of the objectives of this action, it appears that there are no alternatives to the proposed action that have the potential to accomplish the stated objectives of the MSA and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on small entities. After public process, the Council concluded that the proposed Rockfish Program would best accomplish the stated objectives articulated in the problem statement and applicable statutes, and minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Reasons Action Is Being Considered and the 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 large regulated entities to adequately characterize the fishery participants. Section 303A and other authorities from the MSA provide the legal basis for the proposed rule. This rule is meant to retain the conservation, management, safety, and economic gains realized under the Pilot Program.

Number and Description of Small Entities Regulated by the Proposed Action

The IRFA contains a description and estimate of the number of small entities to which the proposed rule would apply. The IRFA estimates that none of the 12 catcher/processors eligible for the Rockfish Program and regulated by this action are small entities, as defined by the RFA. Thirty-two catcher vessels eligible for the Rockfish Program were either members of cooperatives and, as such, are not considered small entities for the purpose of the RFA, or had annual gross revenues of at least $4 million. The remaining 14 eligible catcher vessels are all considered small entities. It is likely that some of the eligible 14 catcher vessels are affiliated through partnerships with other entities, and would be considered large entities for the purpose of this action, but in the absence of complete ownership information, these affiliations cannot be definitively determined.

In addition to the main program, this action also creates an ''entry level'' fishery for the longline sector. Since participation in that fishery is voluntary, the number of small entities participating cannot be predicted. It is likely that a substantial portion of the entry level longline fishery participants will be small entities. These impacts are analyzed in the RIR prepared for this action (see **ADDRESSES**).

Projected Reporting, Recordkeeping and Other Compliance Requirements

Implementation of the Rockfish Program would continue the overall reporting structure and recordkeeping requirements of the Pilot Program for participants in the Central GOA rockfish fisheries. The regulations proposed are not expected to increase the recordkeeping and reporting requirements for any small entities in the fishery.

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 Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The collections are listed below by OMB control number.

OMB Control No. 0206

The Federal Fisheries Permit and Federal Processor Permit are mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0213

Public reporting burden per response is estimated to average 30 minutes for Catcher/processor Trawl Gear Daily Cumulative Production Logbook; 35 minutes for Catcher/processor trawl gear ELB.

OMB Control No. 0330

Scale, catch weighing, and monitoring requirements are mentioned in this rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0334

LLP requirements are mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0445

The VMS requirements are mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0515

Elandings is mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0545

Public reporting burden per response is estimated to average 2 hours for Application for Rockfish Cooperative Quota; 15 minutes for Cooperative Termination of Fishing Declaration; 2 hours for Application for Rockfish Limited Access Fishery (this application is removed with this action); 30 minutes for Rockfish Cooperative Vessel Check-in and Check-out Report; 2 hours for Rockfish Ex-vessel Volume and Value Report; 4 hours for appeal of a NMFS decision; 2 hours for Application for Rockfish Quota Share; 2 hours for Application to Transfer Rockfish Quota Share; 2 hours for Application to Opt-out of Rockfish Cooperatives; 2 hours for Application for Inter-cooperative Transfer of Rockfish Cooperative Quota; 2 hours for Application for Rockfish Entry Level Longline Fishery; and 4 hours for the annual Rockfish Cooperative Report.

Public reporting burden includes 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 on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall 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.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 8, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, 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 part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* and Pub. L. 108–447.

2. In § 679.2,

a. Remove the definitions for ''Affiliation for the purpose of defining AFA entities'', ''Eligible rockfish harvester'', ''Eligible rockfish processor'', ''Halibut PSC sideboard limit'', ''Initial rockfish QS pool'', ''Legal rockfish landing for purpose of qualifying for the Rockfish Program'', ''Official Rockfish Program record'', ''Opt-out fishery'', ''Primary rockfish species'', ''Rockfish entry level fishery'', ''Rockfish entry level processor'', ''Rockfish limited access fishery'', ''Secondary species'', ''Sector for purposes of the Rockfish Program'', ''Sideboard limit for purposes of the Rockfish Program'', and ''Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program and the Rockfish Program'';

b. Revise the definitions of ''Affiliates'', ''Basis species'', ''Cooperative quota (CQ)'', ''Rockfish cooperative'', ''Rockfish entry level harvester'', ''Rockfish Program'', ''Rockfish Program fisheries'', ''Rockfish Program species'', ''Rockfish Quota Share (QS)'', ''Rockfish QS pool'', ''Rockfish QS unit'', and ''Rockfish sideboard fisheries''; and

c. Add definitions for ''Affiliation for the purpose of defining AFA and the Rockfish Program'', ''Rockfish (Catch Monitoring Control Plan) CMCP specialist'', ''Rockfish CQ (See CQ)'', ''Rockfish CQ equivalent pound(s)'', ''Rockfish eligible harvester'', ''Rockfish entry level longline fishery'', ''Rockfish entry level trawl fishery'', ''Rockfish fee liability'', ''Rockfish fee percentage'', ''Rockfish legal landings'', ''Rockfish processor'', ''Rockfish Program official record'', ''Rockfish sector'', ''Rockfish sideboard limit'', ''Rockfish sideboard ratio'', ''Rockfish standard ex-vessel value'', ''Rockfish standard price'', and ''Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program'' in alphabetical order to read as follows:

§ 679.2. Definitions.

* * * * *

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

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

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

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

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

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

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

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority shareholders to restrict the actions of the entity are not included in this definition of control provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates, or to guarantee the obligations of majority investors or their affiliates;

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

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

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

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

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

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

* * * * *

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

* * * * *

Cooperative quota (CQ) means:

(1) *For purposes of the Amendment 80 Program* means:

(i) The annual catch limit of an Amendment 80 species that may be caught by an Amendment 80 cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by an

Amendment 80 cooperative while fishing under a CQ permit.

(2) *For purposes of the Rockfish Program* means:

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

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

* * * * *

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

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

Rockfish CQ (See CQ)

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

Rockfish eligible harvester means a person who is permitted by NMFS to hold rockfish QS.

Rockfish entry level harvester means a person who is harvesting fish in the rockfish entry level longline fishery.

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

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

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

Rockfish fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the rockfish fee liability for a CQ permit holder.

* * * * *

Rockfish legal landings 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:* The harvest of groundfish from the Central GOA regulatory area that is offloaded and recorded on a State of Alaska fish ticket during the directed fishing season for that rockfish primary species as established in Tables 28a and 28b to this part.

(2) *For catcher/processors:* 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 rockfish primary species as established in Table 28a to this part.

Rockfish processor means a shoreside processor with a Federal processor permit that receives groundfish harvested under the authority of a CQ permit.

Rockfish Program means the program implemented under subpart G to this part to manage Rockfish Program fisheries.

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

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

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

(3) The rockfish entry level longline fishery.

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

Rockfish Program species means the following species that are managed under the authority of the Rockfish Program:

(1) *Rockfish primary species* means northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the Central GOA regulatory area.

(2) *Rockfish secondary species* means the following species in the Central GOA regulatory area:

(i) Sablefish not allocated to the IFQ Program;

(ii) Thornyhead rockfish;

(iii) Pacific cod for the catcher vessel sector;

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

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

(3) *Rockfish non-allocated species* means all groundfish species other than Rockfish Program species.

Rockfish quota share (QS) means a permit expressed in numerical units, the amount of which is based on rockfish legal landings for purposes of qualifying for the Rockfish Program and that are assigned to an LLP license.

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

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

Rockfish sector means:

(1) *Catcher/processor sector:* Those rockfish eligible harvesters who hold an LLP license with a catcher/processor designation that is assigned at least one rockfish legal landing that could, or does, generate rockfish QS.

(2) *Catcher vessel sector:* Those rockfish eligible harvesters who hold an LLP license without a catcher/processor designation with at least one rockfish legal landing that could, or does, generate rockfish QS.

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

Rockfish sideboard limit means:

(1) The maximum amount of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish that may be harvested in the Rockfish Program as specified in the sideboard provisions under § 679.82(e), as applicable; and

(2) The maximum amount of halibut PSC that may be used in the Rockfish Program as specified in the sideboard provisions under § 679.82(e), as applicable.

Rockfish sideboard ratio means a portion of a rockfish sideboard limit for a groundfish fishery that is assigned as specified under § 679.82(e).

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

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

* * * * *

Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program means a relationship between two or more persons in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, another person; or a third person which directly or indirectly owns or controls, or otherwise controls

a 10 percent or greater interest in both. For the purpose of this definition, the following terms are further defined:

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

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

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

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

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

(4) *Otherwise controls.* A person otherwise controls another person, if the first person has:

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

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

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

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

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

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

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

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

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

* * * * *

3. In § 679.4,

a. Remove paragraphs (a)(1)(xii)(C) and (D), and (n)(2)(v), (n)(3);

b. Revise paragraphs (a)(1)(xii)(A) and (B), (b)(6)(iii), (k)(12)(i), (n)(1)(i), (n)(1)(ii), and (n)(2)(i) through (iii); and

c. Add paragraph (n)(1)(iv) to read as follows:

§ 679.4 Permits.

* * * * *

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see . . .
* * * * * * *		
(xii) * * *		
(A) Rockfish QS	Indefinite	§ 679.80(a)
(B) CQ	Until expiration date shown on permit	§ 679.81(e)(4)
* * * * * * *		

* * * * *

(b) * * *

(6) * * *

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

* * * * *

(k) * * *

(12) * * *

(i) *General.* In addition to other requirements of this part, a license holder must have rockfish QS assigned to his or her groundfish LLP license to conduct directed fishing for rockfish primary species and rockfish secondary species with trawl gear.

* * * * *

(n) * * *

(1) * * *

(i) A CQ permit is issued annually to a rockfish cooperative if the members of that rockfish cooperative have submitted a complete and timely application for CQ as described in § 679.81(f) that is approved by the Regional Administrator. A CQ permit authorizes a rockfish cooperative to participate in the Rockfish Program. The CQ permit will indicate the amount of rockfish primary species and rockfish secondary species that may be harvested by the rockfish cooperative, and the amount of rockfish halibut PSC that may be used by the rockfish cooperative. The CQ permit will list the members of the rockfish cooperative, the vessels that are authorized to fish under the CQ permit for that rockfish cooperative, and the rockfish processor with whom that rockfish cooperative is associated, if applicable.

(ii) A CQ permit is valid only until the end of the calendar year for which the CQ permit is issued;

* * * * *

(iv) After November 15 of the year for which the CQ permit is issued, or upon approval of a rockfish cooperative termination of fishing declaration described in paragraph (n)(2) of this section:

(A) A cooperative may only use rockfish primary species and rockfish secondary species CQ for transfer;

(B) A cooperative may not transfer halibut PSC CQ;

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

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

(2) * * *

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

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

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

* * * * *

4. In § 679.5,

a. Remove paragraphs (r)(4), (r)(7), and (r)(8)(iv);

b. Redesignate paragraphs (r)(5), (r)(6) and (r)(8) through (r)(10) as (r)(4), (r)(5) and (r)(6) through (r)(8), respectively;

c. Revise newly redesignated paragraphs (r)(4), (r)(5), (r)(6)(i), (r)(8)(i)(A) and (B), and (r)(8)(ii);

d. Revise paragraphs (r)(1) through (3); and

e. Add paragraphs (a)(1)(iii)(F), (r)(9), and (r)(10) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(1) * * *

(iii) * * *

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

* * * * *

(r) * * *

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

(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 and using trawl gear must maintain a daily fishing logbook for trawl gear as described in paragraphs (a) and (c) of this section.

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

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

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

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

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

* * * * *

(8) * * *

(i) * * *

(A) *Vessel check-in.* The designated representative of a rockfish cooperative must designate any vessel that is authorized to fish under the rockfish cooperative's CQ permit before that vessel may fish under that CQ permit through a check-in procedure. The designated representative for a rockfish cooperative must submit to NMFS, in accordance with (8)(ii), a check-in designation for a vessel:

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

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

(B) *Vessel check-out.* The designated representative of a rockfish cooperative must designate any vessel that is no longer fishing under a CQ permit for that rockfish cooperative through a check-out procedure. A check-out report must be submitted to NMFS, in accordance with (8)(ii), within 6 hours after the effective date and time the rockfish cooperative ends the vessel's authority to fish under the CQ permit.

(*1*) If the vessel is fishing under a CQ permit for a catcher vessel cooperative, a check-out designation is effective at the end of a complete offload;

(*2*) If the vessel is fishing under a CQ permit for a catcher/processor cooperative, a check-out designation is effective at the end of the week-ending date as reported in a production report, or the end of a complete offload, whichever occurs first.

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

* * * * *

(9) *Rockfish CQ cost recovery fee submission* (See § 679.85).

(10) *Rockfish Ex-vessel Volume and Value Report*—(i) *Applicability.* A rockfish processor that receives and purchases landings of rockfish CQ groundfish must submit annually to NMFS a complete Rockfish Ex-vessel Volume and Value Report, as described in this paragraph (r)(10), for each reporting period for which the rockfish processor receives rockfish CQ groundfish.

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

(iii) *Due date.* A complete Rockfish Ex-vessel Volume and Value Report must be received by the Regional Administrator not later than December 1 of the year in which the rockfish processor received the rockfish CQ groundfish.

(iv) *Information required.* (A) The rockfish processor must log in using the rockfish processor's password and NMFS person ID to submit a Rockfish Ex-vessel Volume and Value Report. The NMFS software autofills the rockfish processor's name. The User must review the autofilled cells to ensure that they are accurate. A completed application must contain the information specified on the Rockfish Ex-vessel Volume and Value Report with all applicable fields accurately filled-in.

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

(v) *Submittal.* The rockfish processor must complete and submit online by electronic submission to NMFS the Rockfish Ex-vessel Volume and Value Report available at *https://alaskafisheries.noaa.gov.*

5. In § 679.7,

a. Remove paragraphs (n)(1)(iv) through (viii), (n)(2)(iv), (n)(3)(ii) and (iv), and (n)(7);

b. Redesignate paragraphs (n)(3)(iii) and (n)(8) as (n)(3)(ii) and (n)(7) respectively

c. Revise newly redesignated paragraph (n)(3)(ii);

d. Revise paragraphs (n)(1)(i) through (iii), (n)(2)(i) through (iii), (n)(4) through (n)(6); and

e. Add paragraph (n)(8) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(n) * * *

(1) * * *

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

(ii) Use an LLP license that was excluded from the Rockfish Program or that opted out of the Rockfish Program in any rockfish cooperative for that calendar year.

(iii) Operate a vessel assigned to a rockfish cooperative in any other rockfish cooperative other than the rockfish cooperative to which that vessel was initially assigned for that fishing year.

(2) *Vessel operators participating in the Rockfish Program*—(i) Operate a vessel that is assigned to a rockfish cooperative and fishing under a CQ permit and fail to follow the catch monitoring requirements detailed in § 679.84(c) through (e).

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

(iii) Operate a catcher/processor opt-out vessel, under § 679.81(f)(5), that is subject to sideboard provisions detailed in § 679.82(e) and (f), as applicable, and fail to follow the catch monitoring requirements detailed in § 679.84(d) from July 1 until July 31, if that vessel is harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(3) * * *

(i) * * *

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

(4) Catcher/processor *vessels that opt-out.* Operate a vessel that has opted-out of participating in a rockfish cooperative to directed fish for northern rockfish, Pacific ocean perch, or pelagic shelf rockfish in the Central GOA.

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

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

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

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

(v) Fail to submit a timely and complete Rockfish Ex-vessel Volume and Value Report as required under § 679.5(r)(10)

(6) *Rockfish cooperatives*—(i) Fail to retain any rockfish primary species or rockfish secondary species caught by a vessel when that vessel is fishing under the authority of a CQ permit.

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

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

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

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

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

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

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

(ix) Deliver rockfish primary species and rockfish secondary species harvested under the authority of a CQ permit to any processor other than a shoreside processor located within the geographic boundaries of the City of Kodiak as those boundaries are established by the State of Alaska on [INSERT THE EFFECTIVE DATE OF THIS FINAL RULE].

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

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

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

(ii) Deliver groundfish caught by a catcher vessel directed fishing in the rockfish entry level longline fishery to any processor other than a shoreside processor.

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

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

(v) Deliver groundfish caught by a catcher vessel directed fishing in the rockfish entry level longline fishery fishing after NMFS has closed directed fishing to the he rockfish entry level longline fishery or November 15 of each calendar year, whichever occurs first.

* * * * *

6. In § 679.20,

a. Add paragraph (e)(3)(iv) to read as follows:

§ 679.20 General limitations.

* * * * *

(e) * * *

(3) * * *

(iv) The maximum retainable amount for groundfish harvested in the Central GOA by a catcher/processor vessel fishing under a rockfish 4CQ permit is

calculated at the end of each weekly reporting period, and is based on the basis species defined in Table 30 harvested since the previous weekly reporting period, or for any portion of a weekly reporting period that vessel was designated under a vessel check-in as specified in § 679.5(r)(8).

* * * * *

7. In § 679.21,

a. Revise paragraphs (d)(5)(iii)(B) and (d)(5)(iii)(B)(*2*) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(5) * * *

(iii) * * *

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

(*1*) * * *

(*2*) After the effective date of a termination of fishing declaration according to the provisions set out in § 679.4(n)(2), whichever occurs first.

* * * * *

8. In § 679.28,

a. Revise paragraph (g)(2)(iii) and

b. Add paragraph (g)(7)(xi) to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(g) * * *

(2) * * *

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

* * * * *

(7) * * *

(xi) *CMCP specialist notification.* For shoreside processors receiving deliveries of groundfish harvested under the authority of a Rockfish CQ permit, describe how the CMCP specialist will be notified of deliveries of groundfish harvested under the authority of a Rockfish CQ permit.

* * * * *

9. In § 679.50,

a. Remove paragraphs (c)(7)(i)(B) and (d)(7);

b. Redesignate paragraphs (c)(7)(i)(C) through (F) as (c)(7)(i)(B) through (E), respectively;

c. Revise paragraphs (a)(4), (c)(7)(i) heading, (c)(7)(i)(A) introductory text, and (c)(7)(ii);

d. Revise newly redesignated paragraphs (c)(7)(i)(B) and (c)(7)(i)(E); and

e. Add paragraph (c)(7)(iii) to read as follows:

§ 679.50 Groundfish Observer Program.

(a) * * *

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

* * * * *

(c) * * *

(7) * * *

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

* * * * *

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

* * * * *

(E) *Sideboard fishery for catcher/processors not in a rockfish cooperative.* A catcher/processor vessel that is subject to a sideboard limit as described under § 679.82(e) and (f), must have at least one NMFS-certified observer onboard for each day that the vessel is used to harvest or process in the West Yakutat District, Central GOA, or Western GOA management areas from July 1 through July 31.

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

(A) November 15; or

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

(iii) *Observer coverage limitations.* Observer coverage requirements under paragraph (c)(7) of this section are in addition to observer coverage requirements in other fisheries. Observer coverage of groundfish harvested by vessels described under paragraph (c)(7) of this section are not counted for purposes of meeting minimum observer coverage requirements applicable to any groundfish fishery described under paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

* * * * *

10. Subpart G is revised, to read as follows:

Subpart G—Rockfish Program

Sec.

Subpart G—Rockfish Program

§ 679.80 Allocation and transfer of rockfish QS.

Additional regulations that implement specific portions of the

Rockfish Program are set out under: § 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.

(2) *Duration.* The Rockfish Program authorized under this part 679 expires on December 31, 2021.

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

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

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

(b) *Rockfish legal landings*—(1) *Eligible LLP licenses.* NMFS will assign rockfish legal landings to an LLP license only if a vessel made those landings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Eligibility to participate in the Rockfish Program and assign specific harvest privileges to Rockfish Program participants.

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

(i) An LLP license has been used onboard the same vessel from which that LLP license was derived during the calendar years 2000 and 2001, unless clear and unambiguous written documentation is provided that establishes otherwise.

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

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

(4) *Non-severability of rockfish legal landings.* Rockfish legal landings are non-severable from the LLP license to which those rockfish legal landings are assigned according to the Rockfish Program official record.

(d) *Application for rockfish QS*—(1) *Submission of application for rockfish QS.* A person who wishes to receive rockfish QS to participate in the Rockfish Program as a rockfish eligible harvester must submit a timely and complete Application for Rockfish Quota Share. This application may only be submitted to NMFS using the methods described on the application.

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

(3) *Deadline*—(i) A completed Application for Rockfish Quota Share must be received by NMFS no later than 1700 hours, A.l.t., on January 3, 2012, or if sent by U.S. mail, postmarked by that

time. For applications delivered by hand delivery or carrier only, the receiving date of signature by NMFS staff is the date the application was received. If the application is submitted by facsimile, the receiving date of the application is the date stamped received by NMFS.

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

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

(i) *Additional documentation*—(A) Vessel names, ADF&G vessel registration numbers, and USCG documentation numbers of all vessels that fished under the authority of each LLP license, including dates when landings were made under the authority of an LLP license for 2000 and 2001;

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

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

(ii) *Exclusion from Rockfish Program for LLP licenses with rockfish legal landings.* A person who holds an LLP license that made rockfish legal landings during the fishery seasons established in Table 28a to this part and during the entry level trawl fishery during 2007, 2008, or 2009 established in Table 28b to this part may choose to be excluded from the Rockfish Program and not receive rockfish QS. A person must submit an application for rockfish QS affirming exclusion from the Rockfish Program and forgo all rockfish QS.

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

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

(6) *Appeals.* If an applicant is notified by an IAD that claims made by the applicant have been denied, that applicant may appeal that IAD under the provisions in § 679.43.

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

(i) The amount of rockfish legal landings assigned to an LLP license as established in paragraph (e)(2) of this section; or

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

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

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

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

(iii) Sum the Highest 5 $Years_{ls}$ in paragraph (e)(2)(ii) of this section of all eligible LLP licenses for each rockfish primary species. The result is the **Σ** Highest 5 $Years_{ls}$. (or All Highest 5 $Years_{s)}$.

(3) *Calculation of rockfish QS allocation for LLP licenses that receive rockfish QS under the entry level trawl fishery transition allocation.* Based on the Rockfish Program official record, the Regional Administrator shall determine the initial allocation of rockfish QS for each rockfish primary species assigned to each LLP license indicated on a timely and complete application for rockfish QS that is approved by NMFS, that qualifies for an allocation of QS based on rockfish legal landings from 2007, 2008, or 2009 under the entry level trawl fishery transition allocation (and that is not assigned rockfish QS under the provisions in paragraph (e)(2) of this section), according to the following procedure:

(i) Assign one Rockfish Landing Unit to an LLP license for each year a rockfish legal landing of any rockfish primary species was made under the authority of an LLP license during the season dates for the entry level trawl fishery in 2007, 2008, or 2009 as established in Table 28b to this part. This yields the Rockfish Landing $Units_{l.}$ For purposes of this calculation, the Regional Administrator will not assign any Rockfish Landing Units to an LLP license that is assigned rockfish QS under the provisions in paragraph (e)(2) of this section.

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

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

Rockfish Landing $Units_l$/**Σ** Rockfish Landing $Units_l$ = Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS $pool_l$.

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

(**Σ** All Highest 5 $Years_s$/0.975) − **Σ** All Highest 5 $Years_s$ (as calculated in paragraph (e)(2)(iii) of this section) = Total Entry Level Trawl Fishery Transition Rockfish QS $pool_s$

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

(vi) All rockfish QS units calculated in paragraph (e)(3)(v) of this section are assigned to the catcher vessel sector.

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

(5) *Non-severability of rockfish QS from an LLP license.* Rockfish QS assigned to an LLP license is non-severable from that LLP license, except as provided for under § 679.80(f)(2).

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

(2) *Transfer of rockfish QS assigned to LLP licenses that exceeds rockfish QS use caps.*

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

(ii) Prior to the transfer of an LLP license that is assigned an initial allocation of aggregate rockfish QS that exceeds a use cap specified in § 679.82(a)(2), the LLP license holder must transfer the rockfish QS that is in excess of the use cap specified in § 679.82(a)(2), separate from that LLP license, and assign it to one or more LLP licenses under paragraph (f)(1)(i) of this section. On completion of the transfer of QS, the LLP license that was initially allocated an amount of aggregate rockfish QS in excess of the use cap may not exceed the use cap specified in § 679.82(a)(2).

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

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

(v) Rockfish QS that is transferred from an LLP license that was initially allocated an amount of aggregate rockfish QS in excess of the use cap specified in § 679.82(a)(2) and assigned to another LLP license may not be severed from the receiving LLP license.

§ 679.81 Rockfish Program annual harvester privileges.

(a) *Sector and LLP license allocations of rockfish primary species*—(1) *General.* Each calendar year, the Regional Administrator will determine the tonnage of rockfish primary species that will be assigned to participants in a rockfish cooperative. This amount will be assigned to rockfish cooperatives in the catcher/processor sector or the catcher vessel sector.

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

(ii) The allocation of TAC_s for each rockfish primary species to the rockfish entry level longline fishery is established in Table 28e to this part.

(iii) The allocation of TAC_s to rockfish cooperatives is equal to the amount remaining after allocation to the rockfish entry level longline fishery (cooperative TACs).

(b) *Allocations of rockfish primary species CQ to rockfish cooperatives*—(1) *Rockfish primary species TAC_s* assigned to the catcher/processor and catcher vessel sector. Cooperative TAC_s assigned for a rockfish primary species will be divided between the catcher/processor sector and the catcher vessel sector. Each sector will receive a percentage of cooperative TAC_s for each rockfish primary species equal to the sum of the rockfish QS units assigned to all LLP licenses that receive rockfish QS in that sector divided by the rockfish QS pool for that rockfish primary species. Expressed algebraically for each rockfish primary species ''s'' in paragraphs (b)(1)(i) and (ii) of this section:

(i) Catcher/Processor Sector TAC_s = [(Cooperative TAC_s) × (Rockfish QS Units in the Catcher/Processor $Sector_s$/Rockfish QS $Pool_s$)].

(ii) Catcher Vessel Sector TAC_s = [(Cooperative TAC_s) × (Rockfish QS Units in the Catcher Vessel $Sector_s$/Rockfish QS $Pool_s$)].

(2) *Allocations of rockfish primary species to rockfish cooperatives.* TAC is assigned to each rockfish cooperative based on the rockfish QS assigned to that fishery in each sector according to the following procedures:

(i) *Catcher vessel sector rockfish cooperatives.* The amount of TAC_s for each rockfish primary species assigned to a catcher vessel rockfish cooperative is equal to the amount of rockfish QS units assigned to that rockfish cooperative divided by the total rockfish QS assigned to rockfish cooperatives in the catcher vessel sector multiplied by the catcher vessel TAC_s. Once TAC_s for a rockfish primary species is assigned to a catcher vessel rockfish cooperative, it is issued as CQ specific to that rockfish cooperative. The amount of CQ for each rockfish primary species that is assigned to a rockfish cooperative is expressed algebraically as follows:

CQ_s = [(Catcher Vessel Sector TAC_s) × (Rockfish QS assigned to that rockfish $cooperative_s$/Rockfish QS Units assigned to all rockfish cooperatives in the Catcher Vessel $Sector_s$)].

(ii) *Catcher/processor sector rockfish cooperatives.* The amount of TAC_s for

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

CQ = [(Catcher/Processor Sector TAC_s) × (Rockfish QS Units assigned to that rockfish cooperative/Rockfish QS Units assigned to all rockfish cooperatives in the Catcher/Processor Sector)].

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

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

(3) *Assignment of rockfish secondary species.* Rockfish secondary species will be assigned only to rockfish cooperatives.

(4) *Determining the amount of rockfish secondary species CQ assigned to a rockfish cooperative.* The amount of CQ for each rockfish secondary species that is assigned to each rockfish cooperative is determined according to the following procedures:

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

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

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

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

(d) *Allocations of rockfish halibut PSC CQ to rockfish cooperatives*—(1) *General.* Each calendar year, the Regional Administrator will determine the tonnage of rockfish halibut PSC that will be assigned to the Rockfish Program. This amount will be allocated appropriately to the catcher/processor sector and the catcher vessel sector. The tonnage of rockfish halibut PSC assigned to a sector will be further assigned as CQ only to rockfish cooperative(s) within that sector.

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

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

(3) *Use of rockfish halibut PSC by a rockfish eligible harvester*—(i) Rockfish halibut PSC assigned to a sector will be assigned only to rockfish cooperatives within that sector.

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

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

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

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

CQ for rockfish halibut PSC = Amount halibut PSC allocated to the catcher/processor sector in the Rockfish Program × (**Σ** Rockfish QS units assigned to that rockfish cooperative/**Σ** Rockfish QS units assigned to all rockfish cooperatives in the catcher/processor sector).

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

CQ for rockfish halibut PSC = Amount halibut PSC allocated to the catcher vessel sector in the Rockfish Program × (**Σ** Rockfish QS units assigned to that rockfish cooperative/**Σ** Rockfish QS units assigned to all rockfish cooperatives in the catcher vessel sector).

(e) *Assigning rockfish QS to a rockfish cooperative*—(1) *General.* Each calendar year, a person that is participating in the

Rockfish Program may assign an LLP license and the rockfish QS assigned to that LLP license to a Rockfish cooperative. A rockfish eligible harvester assigns rockfish QS to a rockfish cooperative on a complete application for CQ that is approved by NMFS and that meets the requirements of paragraph (f) of this section.

(i) An LLP license and rockfish QS may be assigned to a catcher vessel cooperative if that rockfish QS is derived from legal rockfish landings assigned to the catcher vessel sector.

(ii) An LLP license and rockfish QS may be assigned to a catcher/processor cooperative if that rockfish QS is derived from rockfish legal landings assigned to the catcher/processor sector.

(2) *Catcher/Processor opt-out.* Each calendar year, a person holding an LLP license assigned rockfish QS in the catcher/processor sector may opt-out of participating in a rockfish cooperative by completing a timely Application to Opt-out of Rockfish Cooperative that is approved by NMFS. A person may not assign an LLP license assigned rockfish QS in the catcher/processor sector to both a rockfish cooperative and opt-out of participating in a rockfish cooperative.

(f) *Annual Applications for the Rockfish Program*—(1) *General.* Applications to participate in the Rockfish Program are required to be submitted each calendar year. To receive rockfish CQ, a designated rockfish cooperative representative must submit a complete application for rockfish CQ. A person who wishes to opt-out of participating in a rockfish cooperative for a calendar year with an LLP license assigned rockfish QS must submit an Application to Opt-out of Rockfish Cooperative. These applications may only be submitted to NMFS using the methods described on the application.

(2) *Application forms.* Application forms are available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov,* or by contacting NMFS at 800–304–4846, Option 2.

(3) *Deadline*—(i) A completed application must be received by NMFS no later than 1700 hours, A.l.t., on March 1 of each year, or if sent by U.S. mail, the application must be postmarked by that time. For applications delivered by hand delivery or carrier only, the receiving date of signature by NMFS staff is the date the application was received. If the application is submitted by facsimile, the receiving date of the application is the date stamped received by NMFS.

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

(4) *Application for Rockfish Cooperative Fishing Quota (CQ).* If a designated rockfish cooperative representative submits a complete application that is approved by NMFS, the cooperative will receive a CQ permit. The CQ permit will list the amount of CQ, by rockfish primary species, rockfish secondary species, and halibut PSC held by the rockfish cooperative, the members of the rockfish cooperative, LLP licenses assigned to that rockfish cooperative, and the vessels that are authorized to harvest fish under that CQ permit.

(i) *Contents of the Application*—(A) *General information.* A completed application must contain the information specified on the Application for Rockfish Cooperative Fishing Quota identifying the rockfish cooperative, members of the cooperative, and processor associate of a catcher vessel rockfish cooperative, with all applicable fields accurately filled-in and all required documentation attached.

(B) *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*) 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;

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

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

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

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

(*iv*) Terms and conditions to specify the obligations of rockfish QS holders who are members of the rockfish cooperative to ensure the full payment of rockfish cost recovery fees that may be due.

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

(ii) *Issuance of CQ.* NMFS will not issue a CQ permit if an application is not complete and approved by NMFS. Issuance by NMFS of a CQ permit is not a determination that the rockfish cooperative is formed or is operating in compliance with antitrust law.

(5) *Application to Opt-out of Rockfish Cooperative.* An LLP license holder with a catcher/processor operation type and rockfish QS assigned to that LLP license who wishes to opt-out of participating in a rockfish cooperative for a calendar year must submit an application.

(i) *General information.* A completed application must contain the information specified on the application identifying the applicant, vessel, and LLP licenses, with all applicable fields accurately filled-in and all required additional documentation attached. A completed application must contain the following additional documentation:

(ii) *Additional documentation*—(A) *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

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

(6) *LLP licenses and rockfish QS not designated on a timely and complete application for rockfish CQ.* NMFS will prohibit any LLP licenses with rockfish QS assigned to that LLP license from fishing in the directed rockfish primary fisheries in the Central GOA for a calendar year if that LLP license is not designated on a timely and complete application for CQ for that calendar year

that is approved by NMFS. Rockfish sideboard provisions described in § 679.82 shall apply to that LLP license, as applicable.

(g) *Application for inter-cooperative transfer of cooperative quota (CQ)*—(1) *Completed application.* NMFS will process an application for inter-cooperative transfer of CQ provided that an electronic online transfer application is completed by the transferor and transferee, with all applicable fields accurately filled-in.

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

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

(h) *Maximum retainable amount (MRA) limits*—(1) *Rockfish cooperative.* A vessel assigned to a rockfish cooperative and fishing under a CQ permit may harvest groundfish species not allocated as CQ up to the amounts of the MRAs for those species as established in Table 30 to this part.

(2) *Opt-out vessels.* A rockfish eligible harvester who opted-out of participating in a rockfish cooperative is subject to MRAs for rockfish primary species and rockfish secondary species as established in Table 10 to this part.

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

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

(ii) Once the amount of shortraker rockfish harvested in the catcher vessel sector is equal to 9.72 percent of the shortraker rockfish TAC in the Central GOA regulatory area, then shortraker rockfish may not be retained by any participant in the catcher vessel sector while fishing under the authority of a CQ permit.

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

(i) *Rockfish cooperative* —(1) *General.* This section governs the formation and operation of rockfish cooperatives. The regulations in this section apply only to rockfish cooperatives that have formed for the purpose of fishing with CQ issued annually by NMFS.

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

(ii) Membership in a rockfish cooperative is voluntary. No person may be required to join a rockfish cooperative.

(iii) Members may leave a rockfish cooperative, but any CQ contributed by the rockfish QS held by that member remains assigned to that rockfish cooperative for the remainder of the calendar year.

(iv) An LLP license, or vessel that has been assigned to a rockfish cooperative that leaves a rockfish cooperative continues to be subject to the sideboard provisions established for that rockfish cooperative under § 679.82(d) and (e), as applicable, for that calendar year.

(v) If a person becomes the holder of an LLP license that had been previously assigned to a rockfish cooperative, then that person may join that rockfish cooperative upon receipt of that LLP license, but may not assign that LLP license to another rockfish cooperative during that calendar year.

(2) *Legal and organizational requirements.* A rockfish cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

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

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

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

(3) *General 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 sector
(i) Who may join a rockfish cooperative?	Only persons who hold rockfish QS may join a rockfish cooperative.	
(ii) What is the minimum number of LLP licenses that must be assigned to form a rockfish cooperative?	No minimum requirement.	
(iii) Is an association with a rockfish processor required?	Yes, a rockfish QS holder may only be a member of a rockfish cooperative formed in association with a rockfish processor. The rockfish cooperative may not receive rockfish CQ unless a shoreside processor eligible to receive rockfish CQ has indicated that it may be willing to receive rockfish CQ from that cooperative in the application for CQ, as described under § 679.81, that is submitted by that cooperative.	No.

Requirement	Catcher vessel sector	Catcher/Processor sector
(iv) Is a rockfish cooperative member required to deliver catch to the rockfish processor with whom the rockfish cooperative is associated?	No.	N/A.
(v) Is there a minimum amount of rockfish QS that must be assigned to a rockfish cooperative for it to be allowed to form?	No.	No.
(vi) What is allocated to the rockfish cooperative?	CQ for rockfish primary species, rockfish secondary species, and rockfish halibut PSC, based on the rockfish QS assigned to all of the LLP licenses that are assigned to the cooperative.	
(vii) Is this CQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CQ, or a cooperative may transfer all or a portion of this CQ to another rockfish cooperative.	
(viii) Is there a season during which designated vessels may catch CQ?	Yes, any vessel designated to catch CQ for a rockfish cooperative is limited to catching CQ during the season beginning on 1200 hours, A.l.t., on May 1 through 1200 hours, A.l.t., on November 15.	
(ix) Can any vessel catch a rockfish cooperative's CQ?	No, only vessels that are named on the application for CQ for that rockfish cooperative may catch the CQ assigned to that rockfish cooperative. A vessel may be assigned to only one rockfish cooperative in a calendar year.	
(x) Can a member of a rockfish cooperative transfer CQ individually to another rockfish cooperative without the approval of the other members of the rockfish cooperative?	No, only the rockfish cooperative's designated representative, and not individual members, may transfer its CQ to another rockfish cooperative. Any such transfer must be approved by NMFS as established under paragraph (i)(4)(ii) of this section.	
(xi) Can a rockfish cooperative in the catcher/processor sector transfer its sideboard limit?	N/A.	No, a sideboard limit assigned to a rockfish cooperative in the catcher/processor sector is a limit applicable to a specific rockfish cooperative, and may not be transferred between rockfish cooperatives.
(xii) Is there a hired master requirement?	No, there is no hired master requirement.	
(xiii) Can an LLP license be assigned to more than one rockfish cooperative in a calendar year?	No, an LLP license may only be assigned to one rockfish cooperative in a calendar year. A person holding multiple LLP licenses with associated rockfish QS may assign different LLP licenses to different rockfish cooperatives subject to any other restrictions that may apply.	
(xiv) Can a rockfish processor be associated with more than one rockfish cooperative?	Yes.	N/A.
(xv) Can an LLP license be assigned to a rockfish cooperative and opt-out of participating in a rockfish cooperative?	N/A.	No, each calendar year an LLP license must either be assigned to a rockfish cooperative or opt-out.
(xvi) Which members may harvest the rockfish cooperative's CQ?	That is determined by the rockfish cooperative contract signed by its members. Any violations of this contract by one cooperative member may be subject to civil claims by other members of the rockfish cooperative.	
(xvii) Does a rockfish cooperative need a contract?	Yes, a rockfish cooperative must have a membership agreement or contract that specifies how the rockfish cooperative intends to harvest its CQ. A copy of this agreement or contract must be submitted to NMFS with the cooperative's application for CQ.	
(xviii) What happens if the rockfish cooperative exceeds its CQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CQ and must not exceed its CQ amount at the end of the calendar year. Exceeding a CQ is a violation of the Rockfish Program regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Rockfish Program regulations while fishing under authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to a rockfish cooperative. Each member of a rockfish cooperative is responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Rockfish Program.	
(xix) Is there a limit on how much CQ a rockfish cooperative may hold or use?	Yes, see § 679.82(a) for the provisions that apply.	
(xx) Is there a limit on how much CQ a vessel may harvest?	Yes, see § 679.82(a) for the provisions that apply.	
(xxi) Is there a requirement that a rockfish cooperative pay rockfish cost recovery fees?	Yes, see § 679.85 for the provisions that apply.	

Requirement	Catcher vessel sector	Catcher/Processor sector
(xxii) When does catch count against my CQ permit?	Any vessel fishing checked-in (and therefore fishing under the authority of a CQ permit must count any catch of rockfish primary species, rockfish secondary species, or rockfish halibut PSC against that rockfish cooperative's CQ from May 1 until November 15, or until the effective date of a rockfish cooperative termination of fishing declaration that has been approved by NMFS.)	
(xxiii) If my vessel is checked-out and fishing in a directed flatfish fishery in the Central GOA and I catch groundfish and halibut PSC, does that count against the rockfish cooperative's CQ?	No. If you are fishing in a directed flatfish fishery and checked-out of the Rockfish Program fisheries, you are not fishing under the authority of a CQ permit. Groundfish harvests would not be debited against the rockfish cooperative's CQ permit. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type and any applicable sideboard limit.	
(xxiv) Can my rockfish cooperative negotiate prices for me?	The rockfish cooperatives formed under the Rockfish Program are intended to conduct and coordinate harvest activities for their members. Rockfish cooperatives formed under the Rockfish Program are subject to existing antitrust laws. Collective price negotiation by a rockfish cooperative must be conducted in accordance with existing antitrust laws.	
(xxv) Are there any special reporting requirements?	Yes, each year a rockfish cooperative must submit an annual rockfish cooperative report to NMFS by December 15 of that year. See § 679.5(r)(6) for the reporting requirements.	
(xxvi) What is required in the annual rockfish cooperative report?	The annual rockfish cooperative report must include at a minimum: (A) The rockfish cooperative's CQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by-vessel basis; (B) The rockfish cooperative's actual retained and discarded catch of CQ, and sideboard limit on an area-by-area and vessel-by-vessel basis; (C) A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated; and (D) A description of any civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.	

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

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

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

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

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

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

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

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

(G) A rockfish cooperative in the catcher/processor sector may not transfer any sideboard limit assigned to it; and

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

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

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

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

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

§ 679.82 Rockfish Program use caps and sideboard limits.

(a) Use caps—(1) *General.* (i) Use caps limit the amount of rockfish QS that may be held or used by a rockfish eligible harvester and the amount of CQ that may be held or used by a rockfish cooperative, harvested by a vessel, or received or processed by a rockfish processor.

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

(iii) Use caps may not be exceeded unless the entity subject to the use cap is specifically allowed to exceed a cap according to the criteria established

under this paragraph (a), or by an operation of law.

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

(v) Sablefish and Pacific cod CQ processing use caps are based on the amount of CQ assigned to the catcher vessel sector during a calendar year.

(2) *Rockfish QS use cap.* A person may not individually or collectively hold or use more than:

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

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

(3) *Catcher vessel cooperative rockfish CQ use cap.* A catcher vessel rockfish cooperative may not hold or use an amount of rockfish primary species CQ during a calendar year that is greater than an amount resulting from 30.0 percent of the aggregate rockfish primary species QS initially assigned to the catcher vessel sector.

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

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

(5) *Use cap for rockfish processors*—(i) A rockfish processor may not receive or process an amount of rockfish primary species harvested with CQ assigned to the catcher vessel sector greater than 30.0 percent of the aggregate rockfish primary species CQ assigned to the catcher vessel sector during a calendar year.

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

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

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

(6) *Use cap exemptions*—(i) *Rockfish QS.* A rockfish QS holder 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 rockfish eligible harvester prior to June 14, 2010, and continuously through the time of application for Rockfish QS.

(ii) *Transfer limitations.* A rockfish eligible harvester that receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section shall not receive any rockfish QS by transfer (except by operation of law) unless and until that harvester'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) *Opt-out.* An LLP license holder who submits an Application to Opt-out of Rockfish Cooperative that is subsequently approved by NMFS, may not fish with any vessel named on the opted-out LLP license during that fishing year in any directed fishery for any rockfish primary species in the Central GOA and waters adjacent to the Central GOA when the rockfish primary species caught by that vessel is deducted from the Federal TAC specified under § 679.20.

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

(1) *Classes of sideboard restrictions.* Three types of sideboard restrictions apply under the Rockfish Program:

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

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

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

(2) *Notification of affected vessel owners and LLP license holders.* After NMFS determines which vessels and LLP licenses may be subject to sideboard limitations as described in paragraphs (d) through (f) of this section, NMFS will inform each vessel owner and LLP license holder in writing of the type of rockfish sideboard limitation and issue a revised Federal Fisheries Permit and/or LLP license that displays the sideboard limitation(s) that may apply to that FFP or LLP on its face.

(3) *Appeals.* A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a sideboard limitation, or who disagrees with the specific sideboard ratio assigned to that LLP license, may make a contrary claim and provide evidence to NMFS. All claims must be submitted in writing with any documentation or evidence supporting the request within 30 days of being notified by NMFS of the sideboard limitation. NMFS will provide instructions for submitting such claims with the sideboard notification. An applicant must submit any documentation or evidence supporting a claim 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 in § 679.43.

(4) *Duration of sideboard limits.* Unless otherwise specified, all sideboard limitations established under paragraphs (e) of this section only apply from July 1 through July 31 of each year.

(d) *Sideboard provisions for catcher vessels*—(1) *Vessels subject to catcher vessel sideboard limits.* Any vessel not specified in paragraph (d)(2) of this section that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (d):

(i) Any vessel whose rockfish legal landings could be used to generate rockfish QS for the catcher vessel sector; and,

(ii) Any vessel named on an LLP license under whose authority rockfish legal landings were made that could be used to generate rockfish QS for the catcher vessel sector.

(2) *Applicability of sideboard provisions for specific catcher vessels.* The following vessels are exempt from

the sideboard limits in paragraph (d) of this section:

(i) Any AFA catcher vessel that is not exempt from GOA groundfish sideboards under the AFA as specified under § 679.64(b)(2)(ii);

(ii) Any vessel that made rockfish legal landings during the fishery seasons established in Table 28a to this part and during the entry level trawl fishery during 2007, 2008, or 2009 established in Table 28b to this part and that is designated on an approved application for rockfish QS as being excluded from the Rockfish Program as specified under § 679.80(d)(4)(ii); and

(iii) Any vessel named on an LLP license under whose authority rockfish legal landings were made during the fishery seasons established in Table 28a to this part and during the entry level trawl fishery during 2007, 2008, or 2009 established in Table 28b to this part if that LLP license is designated on an approved application for rockfish QS as being excluded from the Rockfish Program as specified under § 679.80(d)(4)(ii).

(3) *Prohibition for directed fishing in the Western GOA and West Yakutat District rockfish fishery during July.* Vessels subject to the provisions in this paragraph (d) may not participate in directed fishing in the Western GOA and West Yakutat District for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish (or in waters adjacent to the Western GOA and West Yakutat District when northern rockfish, Pacific ocean perch, and pelagic shelf rockfish by that vessel is deducted from the Federal TAC as specified under § 679.20) from July 1 through July 31.

(4) *Prohibition for directed fishing in the specific GOA flatfish fisheries during July.* Vessels subject to the provisions in this paragraph (d) may not participate in directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in the GOA (or in waters adjacent to the GOA when arrowtooth flounder, deep-water flatfish, and rex sole caught by that vessel is deducted from the Federal TAC as specified under § 679.20) from July 1 through July 31.

(e) *Rockfish and halibut PSC sideboard provisions for catcher/processor vessels*—(1) *Vessels subject to catcher/processor sideboard limits.* Any vessel that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (e):

(i) Any vessel whose rockfish legal landings could be used to generate rockfish QS for the catcher/processor sector in the Rockfish Program; or

(ii) Any vessel named on an LLP license under whose authority rockfish legal landings were made that could be used to generate rockfish QS for the catcher/processor sector in the Rockfish Program.

(2) *Prohibition for directed rockfish fishing in the Western GOA and West Yakutat District by non-Amendment 80 vessels assigned to the catcher/processor sector.* Any vessel that meets the criteria established in paragraph (e)(1) of this section and that is not an Amendment 80 vessel is prohibited from directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the Western GOA and West Yakutat District (or in waters adjacent to the Western GOA and West Yakutat District when northern rockfish, Pacific ocean perch, and pelagic shelf rockfish by that vessel is deducted from the Federal TAC as specified under § 679.20) from July 1 through July 31.

(3) *Calculation of rockfish and halibut PSC sideboard limits assigned to each LLP license in the catcher/processor sector.* NMFS will determine specific rockfish sideboard ratios for each LLP license assigned to the catcher/processor sector that could generate rockfish QS. These rockfish sideboard ratios will be noted on the face of an LLP license and will be calculated as follows:

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

(ii) For the deep-water halibut PSC sideboard limit, divide the halibut PSC used in the deep-water complex, except in the Central GOA rockfish fisheries, from July 1 through July 31 in each year from 2000 through 2006 under the authority of that LLP license, by the total deep-water halibut PSC used from July 1 through July 31 in each year from 2000 through 2006 by vessels operating under the authority of all LLP licenses in the catcher/processor sector.

(iii) For the shallow-water halibut PSC sideboard limit, divide the halibut PSC used in the shallow-water complex from July 1 through July 31 in each year from 2000 through 2006 under the authority of that LLP license, by the total shallow-water halibut PSC used from July 1 through July 31 in each year from 2000 through 2006 by vessels operating under the authority of all LLP licenses in the catcher/processor sector.

(4) *Western GOA and West Yakutat District rockfish sideboard ratios.*

The rockfish sideboard ratio for each rockfish fishery in the Western GOA and West Yakutat District is established in the following table:

For the management area of the. . .	In the directed fishery for . . .	The sideboard limit for the catcher/processor sector is . . .
West Yakutat District	Pelagic shelf rockfish	** percent of the TAC.
	Pacific ocean perch	** percent of the TAC.
Western GOA	Pelagic shelf rockfish	72.3 percent of the TAC.
	Pacific ocean perch	50.6 percent of the TAC.
	Northern rockfish	74.3 percent of the TAC.

(5) *GOA halibut PSC sideboard ratios*—(i) The annual deep-water complex halibut PSC sideboard limit in the GOA is 2.5 percent of the annual halibut mortality limit.

(ii) The annual shallow-water complex halibut PSC sideboard limit in the GOA is 0.1 percent of the annual halibut mortality limit.

(6) *Assigning a rockfish sideboard limit to a rockfish cooperative.* Each rockfish cooperative in the catcher/processor sector will be assigned a portion of the rockfish sideboard limit for each rockfish species established in paragraph (e)(5) of this section according to the following formula.

(i) For each rockfish sideboard fishery specified in paragraph (e)(4) of this section, sum the rockfish sideboard ratios of all LLP licenses as calculated under paragraph (e)(5) of this section assigned to that rockfish cooperative and multiply this result by the amount of TAC (in metric tons) assigned to that rockfish sideboard fishery.

(ii) Once assigned, a catcher/processor rockfish cooperative may not exceed any rockfish sideboard limit assigned to

that cooperative from July 1 through July 31.

(7) *Assigning a rockfish sideboard limit to catcher/processors that opt-out of participating in rockfish cooperatives.* Holders of catcher/processor designated LLPs that opt-out of participating in a rockfish cooperative will receive the portion of each rockfish sideboard limit established in paragraph (e)(3) of this section not assigned to rockfish cooperatives.

(8) *Management of a rockfish opt-out sideboard limit*—(i) If the Regional Administrator determines that an annual rockfish sideboard limit for opt-out vessels is sufficient to support directed fishing for that rockfish sideboard fishery, the Regional Administrator may establish a directed fishing allowance applicable to holders of catcher/processor designated LLPs that have opted-out of participating in a rockfish cooperative.

(ii) If the Regional Administrator determines that a sideboard limit is insufficient to support a directed fishing allowance for that rockfish sideboard fishery, then the Regional Administrator may not allow directed fishing and set the allowance to zero for catcher/processor opt-out vessels from July 1 through July 31.

(iii) 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 rockfish sideboard fishery in the regulatory area or district for catcher/processor opt-out vessels that will be effective from July 1 through July 31.

(9) *Assigning deep-water and shallow-water halibut PSC sideboard limits to a rockfish cooperative.* Each rockfish cooperative in the catcher/processor sector will be assigned a percentage of the deep-water and shallow-water halibut PSC sideboard limits based on the following calculation:

(i) Sum the deep-water ratios of all LLP licenses assigned to that rockfish cooperative and multiply this result by the amount set out in paragraph (e)(5)(i) of this section; and

(ii) Sum the shallow-water ratios of all LLP licenses assigned to that rockfish cooperative and multiply this result by the amount set out in paragraph (e)(5)(ii) of this section; and

(iii) A rockfish cooperative may not exceed any deep-water or shallow-water halibut PSC sideboard limit assigned to that cooperative.

(10) *Assigning a halibut PSC limit to catcher/processor opt-out vessels.* Catcher/processor opt-out vessels will receive the portion of the deep-water and shallow-water halibut PSC sideboard limit not assigned to catcher/processor rockfish cooperatives.

(11) *Management of halibut PSC limits assigned to catcher/processor opt-out vessels*—(i) If the Regional Administrator determines that a halibut PSC sideboard limit for opt-out vessels is sufficient to support a directed fishing allowance for groundfish in the deep-water or shallow-water halibut PSC complex, then the Regional Administrator may establish a directed fishing allowance for that species or species group applicable to catcher/processor opt-out vessels.

(ii) If the Regional Administrator determines that a sideboard limit is insufficient to support a directed fishing allowance for groundfish in the deep-water or shallow-water halibut PSC complex, then the Regional Administrator may not allow directed fishing and set the allowance to zero for the deep-water or shallow-water halibut PSC complex for catcher/processor opt-out vessels from July 1 through July 31.

(iii) Upon determining that a halibut PSC sideboard limit is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species in that complex for catcher/processors opt-out vessels that will be effective from July 1 through July 31. The following specific directed fishing closures will be implemented if a halibut PSC sideboard limit is reached:

(A) If the shallow-water halibut PSC sideboard limit for catcher/processor opt-out vessels is or will be reached, then NMFS will close directed fishing in the GOA for:

(*1*) Flathead sole; and

(*2*) Shallow-water flatfish.

(B) If the deep-water halibut PSC sideboard limit is or will be reached for catcher/processor opt-out vessels, then NMFS will close directed fishing in the GOA for:

(*1*) Rex sole;

(*2*) Deep-water flatfish; and

(*3*) Arrowtooth flounder.

(iv) *Halibut PSC accounting.* Any halibut mortality occurring under a CQ permit from July 1 through July 31 will not apply against the halibut PSC sideboard limits established paragraph (e)(5) of this section.

(f) *Sideboard provisions—catcher/processor opt-out provisions*—(1) *Vessels subject to opt-out sideboard provisions.* In addition to the sideboards for opt-out vessels in paragraph (e)(7) and (e)(10) of this section, any catcher/processor opt-out vessel that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (f):

(i) Any vessel whose legal rockfish landings could be used to generate rockfish QS for the catcher/processor sector that is not assigned to a rockfish cooperative; or,

(ii) Any vessel named on an LLP license under whose authority legal rockfish landings were made that could be used to generate rockfish QS for the catcher/processor sector and that is not assigned to a rockfish cooperative.

(2) *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 (f) of this section is prohibited from directed fishing in any groundfish fishery in the GOA and waters adjacent to the GOA when groundfish caught by that vessel is deducted from the Federal TAC specified under § 679.20 (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 2 years from 2000 through 2006 during the following time periods:

(A) July 9, 2000, through July 15, 2000;

(B) July 1, 2001, through July 7, 2001;

(C) June 30, 2002, through July 6, 2002;

(D) June 29, 2003, through July 5, 2003;

(E) July 4, 2004, through July 10, 2004;

(F) July 3, 2005, through July 9, 2005; and

(G) July 2, 2006, through July 8, 2006.

(ii) For purposes of determining participation in a directed groundfish fishery for paragraph (f)(3)(i) of this section, a vessel may participate:

(A) In the flathead sole and shallow-water flatfish fisheries if that vessel participated in a directed groundfish fishery for either of these two fisheries during any 2 years during the 2000 through 2006 qualifying period defined in paragraph (f)(3)(i) of this section; and

(B) In the arrowtooth flounder, deep-water flatfish, and rex sole fisheries if that vessel participated in a directed groundfish fishery for any of these three fisheries during any 2 years during the 2000 through 2006 qualifying period defined in paragraph (f)(3)(i) of this section.

§ 679.83 Rockfish Program entry level longline fishery.

(a) *Rockfish entry level longline fishery*—(1) *Rockfish primary species allocations.* Vessels participating in the rockfish entry level longline fishery may collectively harvest an amount not greater than the total allocation to the rockfish entry level longline fishery as described in Table 28e to this part.

(2) *Participation.* Catcher vessels fishing under a CQ permit must first be checked-out of the Rockfish Program by the catcher vessel cooperative's designated representative to participate in the entry level longline fishery (see § 679.5(r)(8)(i)(B) for check-out procedures).

(3) *Rockfish secondary species allocations.* Rockfish secondary species shall not be allocated to the rockfish entry level longline fishery. Rockfish secondary species shall be managed based on an MRA for the target species as described in Table 10 to this part.

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

(b) [Reserved].

§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.

(a) *Recordkeeping and reporting. See § 679.5(r).*

(b) *Permits. See § 679.4(n).*

(c) *Catch monitoring requirements for catcher/processors assigned to a rockfish cooperative.* The requirements under paragraphs (c)(1) through (10) of this section apply to any catcher/processor vessel assigned to a rockfish cooperative at all times when that vessel has groundfish onboard that were harvested under a CQ permit, or that were harvested by a vessel subject to a rockfish sideboard limit as described under § 679.82(c) through (f), as applicable. The vessel owner or operator must ensure that:

(1) *Catch weighing.* All catch is weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by a NMFS-certified observer.

(2) *Observer sampling station.* An observer sampling station meeting the requirements at § 679.28(d) is available at all times.

(3) *Observer coverage requirements.* The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(7)(i).

(4) *Operational line.* The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.

(5) *Fish on deck.* No fish are allowed to remain on deck unless an observer is present, except for fish inside the codend and fish spilled from the codend during hauling and dumping. Fish spilled from the codend must be moved to the fish bin.

(6) *Sample storage.* The vessel owner or operator provides sufficient space to accommodate a minimum of 10 observer sampling baskets. This space must be within or adjacent to the observer sample station.

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1–907–271–1702 at least 24 hours prior to departure when the vessel will be carrying an observer who had not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

(8) *Belt and flow operations.* The vessel operator stops the flow of fish and clears all belts between the bin doors and the area where the observer collects samples of unsorted catch when requested to do so by the observer.

(9) *Vessel crew in tanks or bins.* The vessel owner or operator must comply with the bin monitoring standards specified in § 679.28(i).

(10) *Mixing of hauls.* Catch from an individual haul is not mixed with catch from another haul prior to sampling by a NMFS-certified observer.

(d) *Catch monitoring requirements for catcher/processors opt-out vessels.* The requirements under paragraphs (c)(1) through (9) of this section apply to any catcher/processor opt-out vessels at all times when that vessel has groundfish onboard that were harvested by a vessel subject to a sideboard limit as described under § 679.82(f), as applicable. The vessel owner or operator must ensure that:

(1) Catch from an individual haul is not mixed with catch from another haul prior to sampling by a NMFS-certified observer;

(2) All catch be made available for sampling by a NMFS-certified observer; and

(3) The requirements in paragraphs (c)(3), (c)(4), (c)(5), (c)(8), and (c)(9) of this section are met.

(e) *Catch monitoring requirements for catcher vessels.* The owner or operator of a catcher vessel must ensure the vessel complies with the observer coverage requirements described in § 679.50(c)(7)(ii) at all times the vessel is participating in a rockfish cooperative.

(f) *Catch monitoring requirements for shoreside processors*—(1) *Catch monitoring and control plan (CMCP).* The owner or operator of a shoreside processor receiving deliveries from a catcher vessel described in § 679.50(c)(7)(ii) must ensure the shoreside processor complies with the CMCP requirements described in § 679.28(g).

(2) *Catch weighing.* All groundfish landed by catcher vessels described in § 679.50(c)(7)(ii) must be sorted, weighed on a scale approved by the State of Alaska as described in § 679.28(c), and be made available for sampling by an observer, NMFS staff, or any individual authorized by NMFS. Any of these persons must be allowed to test any scale used to weigh groundfish to determine its accuracy.

(g) *Catch accounting*—(1) *Rockfish primary species and rockfish secondary species.* All rockfish primary species and rockfish secondary species harvests (including harvests of those species in waters adjacent to the Central GOA that are deducted from the Federal TAC as specified under § 679.20) of a vessel, that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CQ permit, will be debited against the CQ for that rockfish cooperative from May 1:

(i) Until November 15; or

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

(2) *Rockfish halibut PSC.* All halibut PSC in the Central GOA (including halibut PSC in the waters adjacent to the Central GOA when rockfish primary species and rockfish secondary species caught by that vessel is deducted from the Federal TAC specified under § 679.20) used by a vessel, that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CQ permit, will be debited against the CQ for that rockfish cooperative from May 1,

(i) Until November 15; or

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

(3) *Groundfish sideboard limits.* All groundfish harvests (including harvests of those species in waters adjacent to the Central GOA that are deducted from the Federal TAC a specified under § 679.20) of a catcher/processor vessel that is subject to a sideboard limit for that groundfish species as described

under § 679.82(e), except groundfish harvested by a vessel fishing under a CQ permit in the Central GOA, will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

(4) *Halibut sideboard limits.* All halibut PSC in the GOA (including halibut PSC in the waters adjacent to the GOA when rockfish primary species and rockfish secondary species caught by that vessel is deducted from the Federal TAC specified under § 679.20) used by a catcher/processor vessel, except halibut PSC used by a vessel fishing under a CQ permit will be debited against the sideboard limit established for the rockfish cooperative or catcher/processor opt-out vessel, as applicable from July 1 until July 31.

§ 679.85 Cost recovery.

(a) *Cost recovery fees*—(1) *Responsibility.* The person documented on the rockfish CQ permit as the permit holder at the time of a rockfish CQ landing must comply with the requirements of this section.

(i) Subsequent transfer of rockfish CQ or rockfish QS held by rockfish cooperative members does not affect the rockfish CQ permit holder's liability for noncompliance with this section.

(ii) Non-renewal of a rockfish CQ permit does not affect the CQ permit holder's liability for noncompliance with this section.

(iii) Changes in the membership in a rockfish cooperative, such as members joining or departing during the relevant year, or changes in the amount of rockfish QS holdings of those members does not affect the rockfish CQ permit holder's liability for noncompliance with this section.

(2) *Fee collection.* All rockfish CQ holders who receive rockfish CQ are responsible for submitting the cost recovery payment for all rockfish CQ landings made under the authority of their rockfish CQ permit.

(3) *Payment*—(i) *Payment due date.* A rockfish CQ permit holder must submit any rockfish cost recovery fee liability payment(s) to NMFS at the address provided in paragraph (a)(3)(iii) of this section no later than February 15 of the year following the calendar year in which the rockfish CQ landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the CQ permit holder.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *Rockfish standard ex-vessel value determination and use*—(1) *General.* A CQ permit holder must use the rockfish standard ex-vessel value determined by NMFS under paragraph (b)(2) of this section.

(2) *Rockfish standard ex-vessel value*—(i) *General.* Each year the Regional Administrator will publish rockfish standard ex-vessel values in the **Federal Register** during the first quarter of each calendar year. The standard prices will be described in U.S. dollars per equivalent pound, for rockfish primary species and rockfish secondary species landings made by rockfish CQ holders during the previous calendar year.

(ii) *Effective duration.* The rockfish standard ex-vessel value published by NMFS shall apply to all rockfish primary species and rockfish secondary species landings made by a rockfish CQ holder during the previous calendar year.

(iii) *Determination.* NMFS will calculate the rockfish standard ex-vessel value to reflect, as closely as possible by month, the variations in the actual ex-vessel values of landings based on information provided in the Rockfish Ex-vessel Volume and Value Report as described in § 679.5(r)(10). The Regional Administrator will base rockfish standard ex-vessel values on the following types of information:

(A) Landed pounds by rockfish primary species and rockfish secondary species landings and month;

(B) Total ex-vessel value by rockfish primary species and rockfish secondary species landings and month; and

(C) Price adjustments, including retroactive payments.

(c) *Rockfish fee percentage*—(1) *Established percentage.* The rockfish fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS must use the following factors to determine the fee percentage:

(A) The catch to which the rockfish cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the Rockfish Program.

(ii) *Methodology.* NMFS must use the following equations to determine the fee percentage:

$100 \times DPC/V$

where:

DPC = the direct program costs for the Rockfish Program for the previous calendar year with any adjustments to the account from payments received in the previous year.

V = total of the standard ex-vessel value of the catch subject to the rockfish cost recovery fee liability for the current year.

(3) *Publication*—(i) *General.* During the first quarter of the year following the calendar year in which the rockfish CQ landings were made, NMFS shall calculate the rockfish fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* The calculated rockfish fee percentage is applied to rockfish CQ landings made in the previous calendar year.

(4) *Applicable percentage.* The CQ permit holder must use the rockfish fee percentage applicable at the time a rockfish primary species and rockfish secondary species landing is debited from a rockfish CQ allocation to calculate the rockfish cost recovery fee liability for any retroactive payments for that rockfish primary species and rockfish secondary species.

(5) *Fee liability determination for a rockfish CQ holder.* (i) All rockfish CQ holders will be subject to a fee liability for any rockfish primary species and rockfish secondary species CQ debited from a rockfish CQ allocation during a calendar year.

(ii) The rockfish fee liability assessed to a rockfish CQ holder will be based on the proportion of the standard ex-vessel value of rockfish primary species and rockfish secondary species debited from a rockfish CQ holder relative to all rockfish CQ holders during a calendar year as determined by NMFS.

(iii) NMFS will provide a fee liability summary letter to all CQ permit holders during the first quarter of the year following the calendar year in which the rockfish CQ landings were made. The summary will explain the fee liability determination including the current fee percentage, details of rockfish primary species and rockfish secondary species

CQ pounds debited from rockfish CQ allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) Pursuant to § 679.81(f), no rockfish CQ holder will receive any rockfish CQ until the rockfish CQ holder submits a complete application. A complete application shall include full payment of an applicant's complete rockfish cost recovery fee liability.

(2) If a rockfish CQ holder fails to submit full payment for rockfish cost recovery fee liability by the date described in paragraph (a)(3) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the CQ permit holder stating that the CQ permit holder's estimated fee liability, as indicated by his or her own submitted information, is the rockfish cost recovery fee liability due from the CQ permit holder.

(ii) Disapprove any application to transfer rockfish CQ to or from the CQ permit holder in accordance with § 679.81(g).

(3) If a rockfish CQ holder fails to submit full payment by the rockfish cost recovery fee liability payment deadline described at paragraph (a)(3) of this section:

(i) No CQ permit will be issued to that rockfish CQ holder for that calendar year; and

(ii) No rockfish CQ will be issued based on the rockfish QS held by the members of that rockfish cooperative to any other CQ permit for that calendar year.

(4) Upon final agency action determining that a CQ permit holder has not paid his or her rockfish cost recovery fee liability, the Regional Administrator may continue to prohibit issuance of a CQ permit for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Over payment.* Upon issuance of final agency action, payment submitted to NMFS in excess of the rockfish cost recovery fee liability determined to be due by the final agency action will be returned to the CQ permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future rockfish cost recovery fee liability. Payment processing fees may be deducted from any fees returned to the CQ permit holder.

(f) *Appeals.* A CQ permit holder who receives an IAD for incomplete payment of a rockfish fee liability may appeal the IAD pursuant to 50 CFR 679.43.

11. Remove Table 28 to part 679 and add Tables 28a through 28e to part 679 to read as follows:

TABLE 28a TO PART 679—QUALIFYING SEASON DATES FOR CENTRAL GOA ROCKFISH PRIMARY SPECIES

A Legal Rockfish Landing includes	Year						
	2000	2001	2002	2003	2004	2005	2006
Northern rockfish that were harvested in the Central GOA between. . .	July 4–July 26.	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.	June 29–July 29.	July 4–July 25.	July 5–July 24.	July 1–July 21.
and landed by	Aug. 2	July 30 and Oct. 28, respectively.	July 28	Aug. 5	Aug. 1	July 31	July 28.
Pelagic shelf rockfish that were harvested in the Central GOA between. . .	July 4–July 26.	July 1–July 23 and Oct. 1–Oct. 21.	June 30–July 21.	June 29–July 31.	July 4–July 25.	July 5–July 24, Sept. 1–Sept. 4, and Sept. 8–Sept. 10.	July 1–July 21 and Oct. 2–Oct. 8.
and landed by	Aug. 2	July 30 and Oct. 28, respectively.	July 28	Aug. 7	Aug. 1	July 31, Sept. 11, and Sept. 17, respectively.	July 28 and Oct. 15, respectively.
Pacific ocean perch that were harvested in the Central GOA between. . .	July 4–July 15.	July 1–July 12.	June 30–July 8.	June 29–July 8.	July 4–July 12.	July 5–July 14.	July 1–July 6.
and landed by	July 22	July 19	July 15	July 15	July 19	July 21	July 13.

TABLE 28b TO PART 679—QUALIFYING SEASON DATES FOR CENTRAL GOA ROCKFISH PRIMARY SPECIES

A Rockfish Legal Landing includes . . .	2007	2008	2009
Northern rockfish that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between. . .	Sept.1–Nov. 8	Sept.1–Nov. 15	Sept.1–Nov. 15.
and landed by	Nov. 15	Nov. 22	Nov. 22.
Pelagic shelf rockfish that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between. . .	July 4–July 25	July 5–July 24	July 1–July 21.
and landed by	Aug 1	July 31	July 28.
Pacific ocean perch that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between. . .	July 4–July 12	July 5–July 14	July 1–July 6.
and landed by	July 19	July 21	July 13.

TABLE 28c TO PART 679—ALLOCATION OF ROCKFISH SECONDARY SPECIES

For the following rockfish secondary species . . .	The following percentage of the Central GOA TAC is allocated to rockfish cooperatives as CQ . . .	
	For the catcher vessel sector . . .	For the catcher/processor sector . . .
Pacific cod	3.81%	N/A
Sablefish	6.78%	3.51%
Rougheye rockfish	N/A	58.87%
Shortraker rockfish	N/A	40.00%
Thornyhead rockfish	7.84%	26.50%

TABLE 28d TO PART 679—ALLOCATION OF HALIBUT PSC UNDER THE CENTRAL GOA ROCKFISH PROGRAM

For the following rockfish sectors . . .	The following amount of halibut . . .	Is multiplied by . . .	To yield the following amount of halibut PSC assigned as rockfish CQ . . .	The following amount of halibut is not assigned as rockfish CQ, halibut PSC, or halibut IFQ for use by any person . . .
Catcher vessel sector	134.1 mt	0.875	117.3 mt	27.4 mt (16.8 mt from the catcher vessel sector and 10.6 mt from the catcher/processor sector).
Catcher/processor sector	84.7 mt		74.1 mt.	

TABLE 28e TO PART 679—ROCKFISH ENTRY LEVEL LONGLINE FISHERY ALLOCATIONS

The allocation to the rockfish entry level longline fishery for the following rockfish primary species . . .	For 2012 will be . . .	If the catch of a rockfish primary species during a calendar year exceeds 90 percent of the allocation for that rockfish primary species then the allocation of that rockfish primary species in the following calendar year will increase by . . .	Except that the maximum amount of the TAC assigned to the Rockfish Program (after deducting the incidental catch allowance) that may be allocated to the rockfish entry level non-trawl fishery for each rockfish primary species is . . .
Northern rockfish	5 mt	5 mt	2 percent.
Pacific ocean perch	5 mt	5 mt	1 percent.
Pelagic shelf rockfish	30 mt	20 mt	5 percent.

17. Revise Tables 29 and 30 to part 679 to read as follows:

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 Initial Rockfish QS Pool for the Catcher/Processor Sector Initial Rockfish QS Pool for the Catcher Vessel Sector	Based on the Rockfish Program official record on January 31, 2012.			

TABLE 30 TO PART 679—ROCKFISH PROGRAM RETAINABLE PERCENTAGES (IN ROUND WT. EQUIVALENT)

Fishery	Incidental Catch Species	Sector	MRA as a percentage of total retained rockfish primary species and rockfish secondary species
Rockfish Cooperative Vessels fishing under a Rockfish CQ permit.	Pacific cod	Catcher/Processor	4.0
	Shortraker/Rougheye aggregate catch	Catcher Vessel	2.0
	See rockfish non-allocated species for "other species"		

TABLE 30 TO PART 679—ROCKFISH PROGRAM RETAINABLE PERCENTAGES (IN ROUND WT. EQUIVALENT)—Continued

Fishery	Incidental Catch Species	Sector	MRA as a percentage of total retained rockfish primary species and rockfish secondary species
Rockfish non-allocated species for Rockfish Cooperative vessels fishing under a Rockfish CQ permit.	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 Flounder	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
	Aggregated forage fish	Catcher/Processor and Catcher Vessel	2.0
	Skates	Catcher/Processor and Catcher Vessel	20.0
	Other species	Catcher/Processor and Catcher Vessel	20.0
Longline gear Rockfish Entry Level Fishery.	See Table 10 to this part.		
Opt-outvessels	See Table 10 to this part.		
Rockfish Cooperative Vessels not fishing under a CQ permit.	See Table 10 to this part.		

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