



# Federal Register

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## **Part II**

### **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**15 CFR Part 902**

**50 CFR Part 679**

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

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 679**

[Docket No. 060511126-6285-02; I.D. 050306E]

RIN 0648-AT71

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

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

**ACTION:** Final rule.

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

**DATES:** Effective on December 20, 2006.

**ADDRESSES:** Copies of Amendment 68; the final Environmental Assessment (EA) and Regulatory Impact Review (RIR); Initial Regulatory Flexibility Analysis (IRFA); and Final Regulatory Flexibility Analysis (FRFA) for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Walsh, and on the NMFS Alaska Region website at <http://www.fakr.noaa.gov>. The proposed rule to implement Amendment 68 also may be accessed at this website.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS (at the above address, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by fax to 202-395-7285).

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

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the GOA are

managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 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.

Congress granted NMFS additional specific statutory authority to manage rockfish fisheries under the FMP in Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108-199; Section 802). In Section 802, Congress required the Secretary in consultation with the Council to establish the Program with specific provisions. The Program was developed and recommended by the Council to meet the requirements of Section 802, which states:

**SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM.**

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

The Council adopted the proposed Program on June 6, 2005. NMFS published a notice of availability for Amendment 68 on May 15, 2006 (71 FR 27984). The public comment period on Amendment 68 ended on July 14, 2006. NMFS received one comment specific to Amendment 68. That comment has been addressed in our Response to Comment section for this rule. On June 7, 2006, NMFS published a proposed rule to implement the Program (71 FR 33040). The public comment period ended on July 24, 2006. NMFS received nine letters on the proposed rule, including the letter submitted during the Amendment 68 comment period. These letters contained a total of 120 unique comments. These comments are

addressed in the Response to Comment section of this rule below. The Secretary approved Amendment 68 on August 11, 2006.

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

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

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

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

Concurrent with the enactment of Public Law 108-199, Section 802, in 2004, industry representatives for harvesters and processors developed proposed management alternatives for the Program and submitted them to the Council for consideration. The Council and NMFS prepared an analytical document (EA/RIR/IRFA) for the Program that reviewed alternative methods to improve the economic efficiency in the Central GOA rockfish fisheries. These included (1) status quo management under the License Limitation Program (LLP); (2) the formation of harvester cooperatives each of which would receive an exclusive annual harvest privilege, with no

required linkage between the cooperative and a specific processor, and establishment of a limited number of eligible processors; and (3) the preferred alternative, the formation of harvester cooperatives each of which would receive an exclusive annual harvest privilege, with a required linkage between the cooperative and a qualified processor.

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

#### Central GOA Rockfish Pilot Program Overview

A detailed overview of the Program is provided in the preamble to the proposed rule (71 FR 33040; June 6, 2006), and is not repeated here. The proposed rule is available via the internet and from NMFS (see **ADDRESSES**). The following section provides a brief overview of the Program.

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

The Program is authorized for two years, from January 1, 2007, until December 31, 2008. The Program provides exclusive harvesting and processing privileges for a specific set of rockfish species and for associated species harvested incidentally to those rockfish in the Central GOA—an area from 147° W. longitude to 159° W. longitude.

Exclusive harvesting and processing privileges are allocated under the Program for the primary rockfish species. The primary rockfish species are northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. Secondary species are those species incidentally harvested during the harvest of primary rockfish species fisheries in the Central GOA. The secondary species for which exclusive harvesting and processing privileges are allocated include Pacific cod, rougheye rockfish, shorttraker rockfish, sablefish, and thornyhead rockfish.

The Program allocates a portion of the total GOA halibut mortality limit annually specified under § 679.21 to participants based on historic halibut mortality rates in the primary rockfish species fisheries. Halibut is incidentally caught and killed in a number of the primary rockfish species and secondary species fisheries. Halibut caught by trawl gear is considered prohibited species catch (PSC) and 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. However, the Program provides participants a fixed amount of incidental halibut mortality through an allocation of halibut bycatch, specifically an allocation of the halibut mortality limit. To maintain consistency with terms currently used by NMFS and the fishing industry, this halibut mortality limit is called a halibut PSC limit.

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

1. Assign rockfish quota share (QS) for primary rockfish species to an LLP license with a trawl gear designation endorsed for the Central GOA. Under the Program, NMFS assigns Rockfish QS to an LLP license based on the legal landings of primary rockfish species

associated with that LLP license. A person holding an LLP license can receive Rockfish QS if the LLP license had a history of primary rockfish species landings during a specific time period associated with the license and the person holding the LLP license meets other eligibility requirements. Once Rockfish QS is assigned to a specific LLP license it cannot be divided or transferred separately from that LLP license. On an annual basis, a LLP 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.

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

3. Allow a person holding a LLP license with Rockfish QS to 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 primary rockfish species and secondary species dedicated to that rockfish cooperative for harvest in a given year. Each rockfish cooperative also receives an annual CQ that limits the amount of halibut PSC the cooperative can use while harvesting its primary rockfish species and secondary species CQ. 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. A rockfish cooperative can form only under specific conditions. A person holding a LLP license that allows them to catch and process their catch at sea (catcher/processor vessel LLP license) can form a rockfish cooperative with other persons holding catcher/processor LLP licenses. A person holding a LLP license that allows them only to deliver their catch onshore (catcher vessel LLP license) can only form a rockfish cooperative with other persons holding catcher vessel LLP licenses and only in association with the processor to whom those persons have historically delivered most of their catch.

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

5. Provide an opportunity for a person not in a rockfish cooperative, but who holds an LLP license with Rockfish QS, to fish in a limited access fishery. NMFS will 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 total amount of fish assigned to all LLP licenses designated for the limited access fishery.

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

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

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

9. Establish catch limits, commonly called "sideboards," to limit the ability of participants eligible for this Program to harvest fish in fisheries other than the Central GOA rockfish fisheries. The Program provides certain economic advantages to harvesters. Harvesters could use this economic advantage to increase their participation in other fisheries, adversely affecting the participants in other fisheries. Sideboards 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 parallel groundfish fisheries. These are fisheries authorized by the State in its waters concurrent with the Federal fishery for 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.

10. Establish monitoring and enforcement provisions to ensure that harvesters maintain catches within annual allocations and do not exceed sideboard limits.

The Program provides greater security to harvesters in rockfish cooperatives by creating an exclusive harvest privilege. Although individual participants in the limited access fishery, opt-out fishery, and entry level fishery do not receive a guaranteed catch allocation, most harvesters are likely to participate in a rockfish cooperative that receives CQ. The Program is anticipated to result in a slower-paced fishery and enable the harvester to choose when to fish and therefore take advantage of market

factors and avoid dangerous fishing conditions. The Program likely will provide greater stability for processors by spreading out production over a longer period. These changes will increase product quality in all sectors.

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

Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to "collect a fee to recover the actual costs directly related to the management and enforcement of any...individual fishing quota program [or] community development quota program." Any individual fishing quota (IFQ) program must follow the statutory provisions set forth by section 304(d)(2) of the Magnuson-Stevens Act and other provisions of the Magnuson-Stevens Act related to cost recovery and fee collection for IFQ programs. The Central GOA rockfish Program does not issue IFQ under the same criteria as current IFQ programs (i.e., the Halibut and Sablefish IFQ Program). Thus, the establishment of a cost recovery Program is not included in the final rule. However, NMFS and NOAA General Counsel are reviewing the applicability of the Magnuson-Stevens Act provisions on cost recovery and fee collection to fishery cooperative allocations and other more general limited access privilege programs. If subsequent review of the Magnuson-Stevens Act indicates that a fee collection provision is required for cooperative allocation privilege programs, and the Rockfish Program specifically, NMFS would implement any required provision in a subsequent regulatory amendment to the Program.

#### **Summary of Regulation Changes in Response to Public Comments**

This section provides a summary of the major changes made to the final rule in response to public comments on the proposed rule. All of the specific changes, and the reasons for making these changes, are contained under Response to Comments below. The changes are described by regulatory section.

In § 679.2, NMFS adopted a new term "cooperative quota (CQ)," to replace the term "cooperative fishing quota (CFQ)" to reduce confusion with an acronym used by the Council in the GOA rationalization program under development. NMFS also clarified the definitions of an "Rockfish entry level harvester," "Rockfish entry level processor," "Rockfish limited access fishery," and "Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program."

Last, NMFS added the terms "aggregate forage fish," "skates," and "other rockfish" to the group of species defined under "Non-allocated secondary species."

In § 679.4, NMFS clarified the circumstances under which a CQ permit assigned to a rockfish cooperative is valid, and the effect on a CQ permit once NMFS has approved a rockfish cooperative's termination of fishing declaration.

In § 679.5, NMFS made minor clarifications to the rockfish cooperative catch report requirement, and deleted a reference to a process for amending a CQ permit to select vessels that are eligible to fish under the CQ permit. NMFS also established a more flexible rockfish reporting system that allows a cooperative's designated representative to determine how and when vessels will fish under a CQ permit. Authorized cooperative representatives could "check-in" a vessel when it is fishing under a CQ permit during the rockfish cooperative fishing year, and "check-out" vessels no longer fishing under its CQ permit. For administrative efficiency, NMFS will constrain the number of times a vessel may check-in and check-out based on the number of LLP licenses assigned to that cooperative.

In § 679.7 NMFS made several modifications. NMFS clarified that an eligible rockfish harvester cannot assign their LLP license to more than one rockfish fishery in a year. NMFS also clarified that an eligible rockfish harvester or processor is prohibited from participating in the entry level fishery, detailed the prohibitions that apply for monitoring provisions in the opt-out fishery, and established provisions to complement a rockfish cooperative's designated representative ability to submit vessel check-in and check-out reports to designate fishing under a CQ permit. NMFS deleted the prohibition requiring retention of groundfish harvested while fishing under a sideboard limit. NMFS deleted prohibitions applicable to rockfish observer coverage and the catch monitoring control plan (CMCP) for rockfish entry level processors, and the prohibition on having primary rockfish species harvested under a CQ permit and rockfish incidentally retained in non-Program vessels aboard a catcher/processor vessel at the same time.

In § 679.21, NMFS inserted provisions to allow the reapportionment of halibut PSC CQ that is unused by rockfish cooperatives to the trawl sector after rockfish cooperatives have completed fishing.

In § 679.28, NMFS clarified that entry level processors are not required to have a CMCP.

In § 679.50, NMFS reduced observer coverage requirements for catcher/processor vessels fishing in the opt-out fishery, and clarified how observer coverage required under the Program affects processor facility observer coverage requirements in other non-Program groundfish fisheries.

In § 679.80, NMFS clarified that an LLP license is eligible to be assigned Rockfish QS only if a landing was made during the primary rockfish species qualifying periods in which rockfish were targeted (i.e., primary rockfish species were the predominant groundfish catch). Similarly, secondary species and halibut PSC is assigned to the catcher/processor or catcher vessel sector based on harvests or halibut PSC use attributed to specific landings in which primary rockfish species were targeted. Further, NMFS clarified that an onshore processing facility must be closed before the processing history associated with that facility may be transferred. NMFS made minor clarifications in the formula for determining a legal rockfish landing.

In § 679.81, NMFS made several modifications and changes in the process and formulas for allocating Rockfish QS among fishery participants, and the allocation of TAC for secondary species and halibut PSC between the catcher vessel and catcher/processor sectors. These changes clarified proposed regulatory text. NMFS extended the due date for the application to join a rockfish cooperative, limited access fishery, or opt-out fishery from December 1 of the year prior to fishing to March 1 of the year in which fishing occurs. NMFS clarified that CQ inter-cooperative transfers must be approved by the eligible rockfish processor with whom that rockfish cooperative is associated. NMFS made several clarifications on the process of forming a rockfish cooperative, specifically to requirements establishing the amount of Rockfish QS that must be assigned to a rockfish cooperative before it can form. NMFS specified the associations that can form between eligible rockfish harvesters and processors. NMFS deleted provisions concerning the transfer of processor eligibility, requirements on providing corporate ownership information on inter-cooperative CQ transfer forms, and provisions requiring modification of the CQ permit to add or delete the vessels fishing under that permit.

In § 679.82, NMFS clarified the calculation of use caps applicable to catcher vessel cooperatives and eligible

rockfish processors; how transfers of CQ are attributed to eligible rockfish harvesters in a rockfish cooperative; and which fisheries are subject to closure once a sideboard limit is reached. NMFS inserted the BSAI Pacific cod sideboard limit that applies to the catcher vessel sector in a table with other sideboard limited species and deleted redundant text. NMFS established the halibut PSC sideboard limit as a use cap applying to the entire GOA, not to specific management areas in the GOA. Last, NMFS clarified the method for calculating the amount of groundfish and halibut PSC sideboard limits that are attributed to rockfish cooperatives, the rockfish limited access fishery, and catcher/processor sector opt-out fishery.

In § 679.84, NMFS made several modifications that designate the specific catch monitoring requirements that apply to catcher/processor vessels assigned to the opt-out fishery. Specifically, NMFS relieved requirements for scales and an observer sampling station. NMFS also clarified that groundfish harvested or halibut PSC used under a CQ permit is not debited against groundfish or halibut PSC sideboard limits in July.

In Table 28 to part 679, NMFS corrected the closure date for primary rockfish species in 1999. In Table 30 to part 679, NMFS corrected typographic errors in the maximum retainable amount (MRA) percentages for other species, clarified the rockfish fisheries to which the MRA percentages in this table apply, and added an MRA for thornyhead rockfish in the rockfish limited access fishery.

#### Response to Comments

*Comment 1:* The use of the CFQ acronym for “cooperative fishing quota” is likely to be very confusing to the public because several Council actions under consideration refer to “community fisheries quota” as “CFQs.”

*Response:* NMFS agrees and has changed Cooperative Fishing Quota (CFQ) to Cooperative Quota (CQ) to avoid confusion that may result from the use of the same abbreviation as has been used to describe “community fishing quotas.”

*Comment 2:* Modify the definition in § 679.2 of “Eligible rockfish entry level harvester” to limit eligibility to harvesters not eligible to enter a rockfish cooperative.

*Response:* NMFS agrees and has modified the definition of an eligible entry level rockfish harvester at § 679.2 and in § 679.80(b)(2) to explicitly exclude eligible rockfish harvesters.

*Comment 3:* Modify the definition in § 679.2 of “Eligible rockfish entry level processor” to limit eligibility to processors not eligible to associate with a rockfish cooperative.

*Response:* NMFS agrees and has modified the definition of an eligible entry level rockfish processor in § 679.2 to explicitly exclude eligible rockfish processors.

*Comment 4:* Include skates, aggregate forage fish, and other rockfish in the definition in § 679.2 of “Non-allocated species.”

*Response:* NMFS agrees and has changed the definition of “Rockfish Program species” to include these species. These species are not specifically allocated under the Program and should be included in the definition of non-allocated species.

*Comment 5:* The definition of “Sideboard limit for purposes of the Rockfish Program” in § 679.2 includes primary rockfish, Pacific cod, and halibut. Is Pacific cod included because of the sideboard limit for the catcher vessel sector in the BSAI in July?

*Response:* Yes. BSAI Pacific cod is included in the definition of Sideboard limit for purposes of the Rockfish Program under § 679.2 because it is subject to a sideboard limit in the catcher vessel sector.

*Comment 6:* In the definition in § 679.2 of “Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program,” NMFS uses the term “entity” to define a “person.” This creates a circular definition in the rule. “Person” is currently defined in § 679.2 as an individual, corporation, or other entity. The new definition of “entity” includes “persons.”

*Response:* NMFS agrees. Although the existing definition of an “entity” contained within the definition of “Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program” effectively includes the definition of a “person” as that term is currently defined in § 679.2, it may reduce confusion to use the term “person” rather than “entity.” NMFS notes that because the current definition of “person” in § 679.2 includes an “entity,” any of the descriptions of an “entity” provided in the proposed rule, specifically an association, partnership, joint-stock company, trust, or any other type of legal entity; any receiver, trustee in bankruptcy or similar official or liquidating agent; or any organized group of persons whether incorporated or not, is presumed to be included in the existing definition of a “person” in § 679.2.

*Comment 7:* It has always been the vision of the Kodiak rockfish fishery participants that the linkages between eligible rockfish harvesters and processors may need to be modified somewhat. Thus, the rule needs to incorporate adequate flexibility to accommodate transfers of LLPs between cooperatives during initial cooperative formation and the time period afterwards, on the condition that the affiliated processor and the harvester members of the cooperative agree.

*Response:* The linkages between the legal rockfish landings attributed to an LLP license to a specific eligible rockfish processor were specifically recommended by the Council. However, requiring a vessel to deliver to a specific processor when fishing under a CQ permit based on the LLP license used by that vessel may limit vessel operators from coordinating with specific processors.

The Program does not modify current provisions for the transfer of LLP licenses, nor were such provisions recommended by the Council. LLP license holders may continue to transfer LLP licenses to a new LLP holder under § 679.4(k)(7). Rockfish cooperatives do not hold LLP licenses, eligible rockfish harvesters do. LLP licenses are not transferred among rockfish cooperatives and transfers are not subject to approval by an eligible rockfish processor. However, the regulations do not require an eligible rockfish harvester to assign a vessel to the same rockfish cooperative as the LLP license.

For example, if an LLP license holder wished to assign the Rockfish QS to a specific rockfish cooperative, that eligible rockfish harvester would submit an application for CQ as described in § 679.81(e)(4). If that same eligible rockfish harvester wished to have his vessel named on a different LLP license as one of the vessels eligible to harvest fish under the CQ for another cooperative, that eligible rockfish harvester could list the vessel under a CQ permit for another cooperative and deliver catch harvested by that vessel to a different eligible rockfish processor. The vessel would continue to be subject to existing requirements to maintain a valid LLP license onboard the vessel. This arrangement would allow eligible rockfish harvesters to separate vessel operations from the rockfish cooperative to which an LLP license is assigned. This provides considerable flexibility for vessel operators.

*Comment 8:* Paragraph (n) of § 679.4 suggests that quota is for “primary or secondary species” and “halibut PSC” and that the permit is no longer valid if the primary or secondary species or PSC

is fully fished. Modify the section in two ways. First, if quota is issued it will always be for “primary species, secondary species, and halibut PSC.” Under no circumstances will quota be issued for one of these without the other (modify (n)(1)(i)). And, second, the permit should remain valid until all amounts of all species are fully fished. Quotas are tradable and any amount should remain usable, if it is not fished (modify (n)(1)(ii)(B) and (C)).

*Response:* NMFS agrees. The intent of this provision is to ensure that a CQ permit is valid until the amounts of primary species, secondary species, and halibut PSC have been fully used by the rockfish cooperative holding that CQ permit. The regulations at § 679.4(n)(1)(ii)(B) have been modified to more clearly state that a CQ permit is valid until all amounts of all primary species, secondary species, and halibut PSC CQ have been fully used. This modification ensures that the CQ permit for all species is not invalidated because the CQ amount for one species has been reached. This modification does not relieve restrictions at § 679.7(n)(7)(i) that prohibit a rockfish cooperative from exceeding its CQ amount for any species. Section 679.4(n)(1)(ii)(C) has been removed and the contents of § 679.4(n)(1)(ii)(D) have been combined with § 679.4(n)(1)(ii)(B). Sections 679.4(n)(1)(ii)(D) through (G) have been renumbered accordingly as § 679.4(n)(1)(ii)(C) through (E).

*Comment 9:* Section 679.4(n)(2) allows a rockfish cooperative to extinguish its CQ permit by submitting a declaration of termination of fishing form to NMFS, which has to be reviewed and approved. How long will this take and what happens in the meanwhile? If the CQ permit is still active, do the sideboard restrictions and monitoring and enforcement requirements still apply? Please expedite this process so vessels are not stuck with unnecessary limits when they are done with the cooperative fishery?

*Response:* NMFS intends to process all termination of fishing declarations in a timely manner. Processing times for the declarations will be short, several days at the most. Until the application is approved, the vessel fishing under a CQ permit will continue to be subject to the sideboards and necessary monitoring and enforcement requirements. As is noted under the response to Comment 50, cooperative representatives may choose to check a vessel out at the end of a fishing trip. Once a vessel is checked out, if no other vessel is checked in, vessels assigned to a rockfish cooperative would not be

subject to monitoring and enforcement requirements that apply while fishing under a CQ permit. However, those vessels would still be subject to monitoring and enforcement provisions applicable for sideboard management in July. Cooperative managers may wish to ensure that all vessels assigned to that rockfish cooperative are checked out prior to submitting the termination of fishing declaration.

*Comment 10:* Section 679.4(n)(2)(v) notes that all CQ on the permit is set to zero when the termination of fishing declaration is approved. If this occurs before the residual CQ is transferred, does the rockfish cooperative lose their CQ allocation?

*Response:* Yes. If a rockfish cooperative submits and NMFS approves its declaration to terminate fishing prior to NMFS approving an inter-cooperative transfer submitted by that rockfish cooperative, the CQ amount remaining is extinguished. If a rockfish cooperative wishes to transfer CQ, it should submit its transfer application prior to its declaration to terminate fishing.

*Comment 11:* Section 679.5(r)(7)(i) incorrectly cites § 679.4(m). This citation refers to the Aleutian Island pollock fishery.

*Response:* NMFS agrees and has corrected the citation in § 679.5(r)(7)(i) from § 679.4(m) to § 679.4(n) to refer to the Program.

*Comment 12:* Section 679.5(r)(7)(i) requires all vessel operators under the Program to file rockfish cooperative catch reports. This provision should apply only to vessels assigned to rockfish cooperatives.

*Response:* NMFS agrees and has modified § 679.5(r)(7)(i) to clearly indicate that only vessel operators whose vessels are designated to receive catch under a CQ permit are required to submit a rockfish cooperative catch report.

*Comment 13:* Section 679.5(r)(8)(ii)(B) notes that annual rockfish cooperative reports are due by December 15<sup>th</sup>. Is the time estimated for completing the report consistent with AFA and Crab Rationalization Program requirements?

*Response:* Yes, the time required to complete the annual rockfish cooperative report is similar to that under the AFA and Crab Rationalization Program. The information collected in the report is similar to that required under the AFA and Crab Rationalization Program annual cooperative report.

*Comment 14:* Section 679.7(n)(1)(iv) requires full retention of any groundfish caught by a vessel that is subject to a sideboard limit as described at § 679.82(d) through (h), as applicable, if

directed fishing for that groundfish species in that area is authorized. Does this require full retention of sideboarded species? Why is this broad statement even in the rule?

*Response:* The intent of this provision was to ensure that groundfish subject to a sideboard limit under § 679.82(d) through (h) are retained and counted against the sideboard limit. The groundfish subject to a sideboard limit are listed in § 679.82(d)(6) and include rockfish species in the Western GOA and West Yakutat District, and Pacific cod in the BSAI for vessels in the catcher vessel sector. Flatfish that are harvested in the GOA are not subject to a groundfish limit; rather, the harvest of flatfish is restricted by halibut PSC sideboard limits established under § 679.82(d)(8). This provision does not require vessels to retain all flatfish harvested during July.

This provision was intended to ensure that NMFS accurately accounts for the total catch in a sideboard limited groundfish fishery. Full retention would ensure that all catch is fully counted. However, NMFS can obtain information from groundfish discard rates using observer data. All vessels subject to sideboard limits in July will have observer coverage. This observer coverage is sufficient to monitor any amount of discards of groundfish and include discard estimates in the total harvest of a groundfish species subject to a sideboard limit. Thus, NMFS is not requiring the full retention of groundfish harvested that are subject to a sideboard limit by deleting the prohibition in § 679.7(n)(1)(iv) and renumbering § 679.7(n)(1)(v) through § 679.7(n)(1)(vii) as § 679.7(n)(1)(iv) through § 679.7(n)(1)(vi).

*Comment 15:* Section 679.7(n)(1)(iv) states that vessel operators must retain any groundfish caught by a vessel that is subject to a sideboard limit as described § 679.81(d) through (h) if directed fishing for that groundfish species in that area is authorized. It is unclear in this provision whether retention is required only for GOA rockfish species and BSAI Pacific cod which are catch side-boarded, or if this provision also applies to flatfish species since they are side-boarded via deep and shallow halibut sideboards caps.

*Response:* NMFS has addressed this comment in the response to Comment 14.

*Comment 16:* Section 679.7(n)(1)(v) prohibits use of an LLP license in “any fishery” other than the rockfish fishery to which it is assigned. To the extent that this prevents a rockfish vessel from fishing other species, this is inconsistent with the analysis. The analysis suggests

that trip-by-trip declarations are made to ensure proper accounting of catch and adequate monitoring. Declared rockfish trips would be subject to different accounting and monitoring.

*Response:* NMFS agrees in part. NMFS has modified this prohibition to clearly state that an LLP license may not be used in “any Rockfish Program fishery” other than the Rockfish Program fishery to which that LLP license was originally assigned. The intent of this prohibition was not to limit the ability of Program participants from engaging in non-Program fisheries. This modification makes clear the intent of this provision is to limit the ability of an eligible rockfish harvester to use his LLP license to fish in more than one Rockfish Program fishery in a calendar year (i.e., fishing under a CQ permit for a rockfish cooperative, limited access fishery, opt-out fishery, entry level trawl fishery, or entry level longline gear fishery). Fishing in more than one of these fisheries would undermine the ability of NMFS to effectively manage cooperatives and the limited access fishery because Rockfish QS must be assigned to specific fisheries at the start of each fishing season to properly allocate fishery catch limits.

The portion of the comment relating to catch accounting of vessels on a trip-by-trip basis is addressed in response to Comment 50.

*Comment 17:* Section 679.7(n)(1)(v) appears to prevent a non-trawl entry level vessel from fishing in fisheries other than the Rockfish Program fishery from January 1 until the entry level fishery closes (possibly in November). This provision will make the entry level fishery impracticable for all non-trawl vessels. Managers should be able to account catch against the non-trawl entry level TAC in a manner similar to that currently used. Additionally, § 679.7(n)(1)(v) seems overly broad with respect to trawl entry level and trawl limited access vessels. Those fisheries open in May and July respectively and will likely close shortly after opening. This provision seems to limit the ability of those vessels to participate in any other fishery during the year. In addition, a vessel should be able to withdraw from these fisheries at any time with notice to the agency.

*Response:* Under the clarification made in response to Comment 16, NMFS will only require that if a vessel is directed fishing in a specific Rockfish Program fishery as defined in § 679.2 (e.g., entry level longline gear fishery), it cannot directed fish in another Rockfish Program fishery (e.g., entry level trawl fishery) in the same calendar year.

*Comment 18:* Paragraph (n) of § 679.7 does not appear to be a clear prohibition on eligible harvesters participating in the entry level fishery, or eligible processors taking deliveries from the entry level fishery. The provision in § 679.7(n)(5) suggests that eligible processors can take deliveries from the entry level fishery. Only ineligible processors can take entry level deliveries. These prohibitions could be included here.

*Response:* NMFS agrees. Although the definitions of an “eligible entry level rockfish harvester” and “eligible entry level rockfish processor” in § 679.2 have been modified to more explicitly exclude “eligible rockfish harvesters” and “eligible rockfish processors,” respectively, from participating in the entry level fishery as detailed in § 679.83, a prohibition would further clarify this issue. This prohibition would also be consistent with the description of the eligibility to participate in the entry level Rockfish Program fishery in the preamble to the proposed rule at 71 FR 33064, which states that “the Program would establish an entry level fishery for all persons who are not eligible rockfish harvesters or processors.”

These new prohibitions are inserted in § 679.7(n)(1)(vi) and (vii) and state that it is prohibited to receive any primary rockfish species harvested in the entry level rockfish fishery if that person is an eligible rockfish processor, or harvest any primary rockfish species in the entry level rockfish fishery if that person is an eligible rockfish harvester.

*Comment 19:* Section 679.7(n)(2)(ii) requires a catcher/processor vessel in the limited access fishery to meet the all monitoring and enforcement requirements from July 1 until directed fishing for all primary rockfish targets for the limited access fishery are closed. Catcher/processor vessels with less than 5 percent of the aggregate Pacific ocean perch Rockfish QS allocation can fish in the Bering Sea or in other GOA fisheries. Those catcher/processor vessels should be able to forego the monitoring and enforcement requirements if they are not fishing in the Program.

*Response:* Nothing in the FMP or Council motion recommending this action indicates that catcher/processor vessels using LLP licenses with less than 5 percent of the Pacific ocean perch Rockfish QS in the catcher/processor sector are relieved of the monitoring and enforcement requirements that apply to other catcher/processor vessels. If a catcher/processor vessel is fishing in the limited access fishery, or fishing in July and

subject to a sideboard limit, that vessel is subject to the monitoring and enforcement requirements established for that sector (See § 679.82(d) through (h)).

*Comment 20:* Section 679.7(n)(7)(i) prohibits exceeding the amount of CQ assigned to a rockfish cooperative. Can the CQ amount assigned to a rockfish cooperative be amended by a documented transfer from another rockfish cooperative?

*Response:* Yes. Rockfish cooperatives can increase or decrease the amount of CQ held by engaging in inter-cooperative transfers. See § 679.81(i)(4)(iii) for additional details.

*Comment 21:* Paragraphs (n)(7)(iv) and (vi) of § 679.7 prohibit fishing with a CQ permit if there are non-CQ fish on board. This means a catcher/processor will have to offload prior to entering a Rockfish Program fishery, and prior to completing fishing under a Rockfish Program fishery and beginning fishing in a non-Program groundfish fishery. If a vessel chooses to leave and enter a Rockfish Program fishery multiple times it would be forced to offload repeatedly. Offloads require several days away from the grounds and several thousand dollars worth of fuel. The level of monitoring and enforcement required is more than adequate to determine what fish was landed while in the Program. Requiring the offload is expensive and unnecessary.

*Response:* NMFS agrees, § 679.7(n)(7)(iv) is modified to apply only to catcher vessels, and § 679.7(n)(7)(vi) is removed. This effectively authorizes a catcher/processor vessel to have species harvested under a CQ permit and those not harvested under a CQ permit onboard the vessel at the same time. Therefore, if a catcher/processor vessel checked-out while at sea at the end of a week-ending date, it would not need to offload prior to fishing in other non-Program fisheries. This comment is more fully addressed in response to Comment 50.

*Comment 22:* There should be a mechanism to make halibut PSC CQ unused by rockfish cooperatives available to other trawl target fisheries. Halibut PSC could be released back to the open access trawl fisheries either when the rockfish fishery closes on November 15, or when the CQ permit is revoked through an approved rockfish cooperative termination of fishing declaration. If the remaining halibut PSC were made available to the other trawl target fisheries, it would offer an incentive for the rockfish cooperatives to work toward minimizing halibut PSC CQ use and bearing the additional cost

that comes with these bycatch reduction efforts.

*Response:* NMFS agrees. If a rockfish cooperative has not fully used its allocation of halibut PSC CQ in a year, or if that rockfish cooperative submits a termination of fishing declaration, that portion of the halibut PSC not used in the Program could be reallocated for use in other non-rockfish fisheries. This is consistent with the overall goals of halibut PSC management to apportion halibut by gear type. To facilitate the management of this "roll-over" NMFS will allow halibut PSC remaining after November 15, or after a cooperative has submitted a declaration to terminate fishing, to be reallocated to the final seasonal apportionment of halibut PSC for use by trawl gear in the GOA. Currently, the final season for halibut PSC apportionment begins on October 1. NMFS will review termination of fishing declarations and allow halibut PSC remaining to be redistributed for general use beginning on October 1. After November 15, any remaining halibut PSC allocated to rockfish cooperatives will be available for general use by vessels using trawl gear. NMFS has modified regulations at § 679.21(d)(5)(iii) to allow this reapportionment of unused halibut PSC, and has modified regulations at § 679.4(n)(2)(v) to clarify that once a rockfish cooperative termination of fishing declaration has been submitted, the halibut PSC that was allocated as CQ, is reapportioned to the trawl sector according to the provisions of the new § 679.21(d)(5)(iii)(B).

*Comment 23:* The title of § 679.50 states that the Groundfish Observer Program is applicable through December 31, 2007. Is this the current expiration date of the Observer Program?

*Response:* At its June, 2006 meeting, the Council recommended removing the December 31, 2007, expiration date. NMFS currently is drafting a proposed rule that would remove this expiration date. That rulemaking will be part of a separate action.

*Comment 24:* There are several questions regarding the new requirements for plant observers:

*Comment 24-1:* When are an observer's duties considered complete?

*Response 24-1:* Daily observer coverage begins when the first rockfish delivery occurs and ends 12 hours later regardless of the nature of the deliveries (i.e., Program or non-Program deliveries) during that period. Program deliveries after that 12 hour time in the calendar day will require a second observer. Other non-Program deliveries may occur after this 12 hour period has lapsed and the observer may decide to sample those

non-Program deliveries. This clarification does not modify the existing regulations.

*Comment 24-2:* Present regulations require specific coverage levels based on processing volumes. For example, if a plant processes less than 500 mt of groundfish in a month, then no observer coverage is required. We are assuming that rockfish deliveries would not count towards the processing volume level and therefore would not trigger observer requirements for other groundfish deliveries. We also assume that rockfish observer coverage would not count towards meeting the observer requirements for other groundfish delivery requirements. Is this the agency intent?

*Response 24-2:* The intent of the regulations is to ensure that non-Program deliveries count for non-Program coverage, but deliveries of Program groundfish would not be counted for purposes of meeting minimum observer coverage requirements for non-Program groundfish. Any non-Program deliveries that occur when the Program observer is present at that processing facility during that calendar day will be counted towards the non-Program observer coverage requirements for that month. NMFS has clarified the provisions of § 679.50(d)(7)(iv) to define the accounting of observer coverage.

*Comment 24-3:* There may be times that a processor will not need a rockfish observer for an entire 12 hour period. Can the processor use this observer for other groundfish deliveries if the 12 hour limit has not been reached?

*Response 24-3:* If a Program observer is not needed to observe Program deliveries during an entire 12 hour period, that processor may use this observer for other non-Program groundfish deliveries. During periods when an observer is monitoring both Program and non-Program deliveries, the observer coverage on non-Program catch may apply toward their observer requirements.

*Comment 24-4:* Is it possible that the processor can use an observer for monitoring Program deliveries and after 12 hours use that same observer for other groundfish observer requirements?

*Response 24-4:* Yes. At the end of a 12 hour period during a calendar day, a Program observer cannot observe any more Program deliveries until the next calendar day. However, that observer could monitor deliveries in other non-Program groundfish fisheries subject to existing observer coverage requirements.

*Comment 24-5:* Is it the intent of the observer program to use vessel observers to monitor the entire vessel offload?



*Response 24–5:* No. Program observers onboard vessels are limited to collating their at-sea sample data and transmitting these data to NMFS from shore.

*Comment 25:* While industry understands that monitoring and enforcement of a quota share program is important for managers and conservation, the 100 percent observer coverage requirement for the vessels creates a large financial burden for them. The Program is complicated because of the number of QS species required to accommodate the mixed nature of the fishery. However, Program observer requirements are the highest standard ever imposed on a small catcher vessel fleet in the North Pacific and are more restrictive than the requirements for the halibut IFQ fleet and the AFA pollock fleet. Both industry and managers must develop creative solutions that meets monitoring and enforcement requirements but that are affordable for industry participants. The Program offers the appropriate environment to experiment with creative solutions to find a way to reduce the monitoring and enforcement costs for this and other quota programs.

*Response:* NMFS agrees that the continued investigation of innovative solutions to the monitoring and enforcement issues associated with a complex quota-based program and suite of species such as rockfish is critical and we will continue to actively work with the fishing industry to investigate new approaches. However, at this time no feasible alternative to 100 percent observer coverage exists that can ensure that all catch is accounted for against the quotas. NMFS agrees that monitoring requirements, including observer coverage levels proposed for the Program, are more stringent than those imposed on either the halibut and sablefish IFQ fleets or the AFA pollock fleet. However, NMFS notes that neither of these programs are multispecies fisheries, nor is the ability to fully harvest quotas potentially constrained by the availability of halibut PSC. This constraint distinguishes the Program from all other quota-type programs developed to date and results in the need for the more rigorous monitoring and enforcement standards than have been imposed in previous programs.

*Comment 26:* The rockfish fishery is probably one of the most complicated fisheries to observe for species identification and catch monitoring. We believe that lead level-two observers should be required for the shoreside vessels and processors, as is required for the catcher processor fleet.

*Response:* NMFS disagrees. Level-two certified observers are trained in at-sea sample station requirements, at-sea motion compensated scale testing, and observer duties at-sea under the AFA and CDQ Program. Training for level-two observers does not include new duties for shoreside vessel and plant observers under the Program. Any shoreside duties for level-two observers are specific to CDQ Program requirements. Species identification and sampling methodologies for the shoreside component are covered during the three week training course that all certified observers receive.

*Comment 27:* The preamble to the proposed rule (71 FR 33044) on pages 33065 and 33068, state that the observer coverage requirements for shoreside processors apply to those processors taking rockfish deliveries from all categories of harvesters, including those in the entry level fishery. However, the proposed modifications to § 679.50(c)(7)(ii) of the proposed rule listing the catcher vessel categories subject to additional shoreside processor observer coverage requirements does not include entry level harvesters. Entry level processors taking deliveries from entry level harvesters, particularly small longline gear vessels, should not be subject to these observer requirements added by the implementation of a Program for which they are not eligible.

*Response:* NMFS agrees. Entry level processors are expected to only take a few deliveries that result from a modest amount of catch, and NMFS expects that current monitoring requirements will be sufficient to meet data needs. The page of the proposed rule preamble referenced in the comment (71 FR 33065) is inconsistent with the requirements of § 679.50(d)(7). Additionally, NMFS notes that without a dedicated rockfish observer present to monitor the sorting and weighing at the plant, a CMCP is not a functional monitoring tool. Therefore, NMFS removed the provisions at § 679.84(e) that require a CMCP for a rockfish entry level processor. NMFS modified § 679.7(n)(6) to limit this provision to catcher vessels delivering catch under a CQ permit, or in the rockfish limited access fishery. NMFS notes that these changes do not relieve processing facilities receiving entry level fishery catch from other monitoring and enforcement requirements that may apply to those facilities while receiving or processing fish in other fisheries.

*Comment 28:* Section 679.80(b)(1)(i)(B) of the proposed rule provides that a landing of a primary species during a directed fishery

opening qualifies an LLP license for the Program. The provision should provide that an LLP license is qualified to participate in the Program and receive Rockfish QS only if it has a targeted legal rockfish landing during a directed fishery, where a legal rockfish landing is considered to be targeted only if the catch of the primary species was the predominant catch in that trip.

*Response:* NMFS agrees. Clarifying that an LLP license is eligible to participate in the Program and receive Rockfish QS only if primary rockfish species were the predominant catch in at least one legal rockfish landing will reduce any potential claims for assigning Rockfish QS to LLP licenses based on legal rockfish landings that are attributed to incidental harvest in other groundfish fisheries. This is also consistent with the intent of the Council as described in Section 3.3.1.1 of the Council motion recommending this action. Section 3.3.1.1 indicates that targeted catch should be used to determine whether an LLP license is eligible to be used to participate in the Program. NMFS has modified § 679.80(b)(1)(i)(B) to require that an LLP license is eligible to qualify to receive Rockfish QS only if it is assigned a legal rockfish landing of any primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish according to the official rockfish record.

NMFS modified the criteria for establishing eligibility to participate in the entry-level fishery under § 679.80(b)(2)(iii) to indicate that a person cannot participate in the entry level fishery if that person holds an LLP license with landings attributed to it that reflect a directed rockfish target fishery and that person is otherwise eligible to receive Rockfish QS.

This comment also indirectly addresses the allocation of secondary species and halibut PSC between the catcher/processor and catcher vessel sector by noting that targeted catch is the basis for determining eligibility to participate in the Program and receive allocations. NMFS has modified § 679.81(b)(2) and (b)(3) to allocate an amount of secondary species to the catcher/processor and catcher vessel sectors based on secondary species that were harvested during the directed fishing seasons for primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish. This modification is consistent with the Section 3.3.1.2 of the Council motion

recommending this action which states that "secondary species history is allocated based on retained catch over retained catch while targeting the primary rockfish species." This clarification also is consistent with data presented in Table 27 in the final EA/RIR prepared for this action.

Similarly, NMFS has modified § 679.81(c)(2) and (c)(4) to allocate an amount of halibut PSC to the catcher/processor and catcher vessel sectors based on halibut PSC that was used during the directed fishing seasons for primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish. This modification is consistent with the Section 3.3.1.3 of the Council motion recommending this action which states that halibut PSC allocations between the catcher/processor and catcher vessel sector "will be based on historic average usage, calculated by dividing the total number of metric tons of halibut mortality in the CGOA rockfish target fisheries." This clarification also is consistent with data presented in Table 28 in the final EA/RIR prepared for this action.

*Comment 29:* Paragraphs (b)(3) through (b)(5) of § 679.80 should note that the assignment of legal rockfish landings for secondary species to the sector occurs only if the LLP license is eligible for the Program.

*Response:* NMFS agrees. NMFS would only assign legal landings to an LLP license if that LLP license was eligible to be used in the Program under the criteria listed in § 679.80(b)(1). These criteria prevent NMFS from assigning a legal landing to an LLP license that is not held by an eligible person. For clarity, NMFS notes that an LLP license must be eligible to have legal landings attributed to it under § 679.80(b)(3), (b)(4)(ii), and (b)(5)(ii). The allocation of secondary species to the catcher/processor and catcher vessel sector is discussed further in the response to Comment 28.

*Comment 30:* Paragraph (c) of § 679.80 should more clearly note that processing history transfers that are separate from the plant ownership only apply if the facility has closed and the purchaser remains in the same community. Paragraph (d)(4)(ii) of § 679.80 should limit the transfer of processing history. In general, a processing facility is eligible if it meets the processing criteria and its processing history remains attached to its originating facility, unless the facility is closed. If a facility is closed, the history can only be transferred to a facility in the community.

*Response:* NMFS agrees. Section 5.4 of the Council motion notes that "[i]f a processing facility has closed down and another processing facility has acquired that processing history through purchase, the history belongs to the facility that purchased that history."

The Council's intent is best met by limiting transfers of processing history to two cases: one in which the processing history can only be transferred with the sale of the processing facility at which that catch history was earned; and the other is to limit the transfer of processing history separate from the sale of the processing facility at which that history was earned only in the specific case in which the eligible processing facility at which that processing history was earned is closed. NMFS defines a "closed" facility as a facility which has not been issued a Federal Processor Permit (FPP). An FPP is required for any groundfish processing, and NMFS can easily ascertain whether a facility was operating by reviewing its records. Other definitions of a "closed" facility may be subject to greater uncertainty and interpretation and could create additional administrative burdens. NMFS clarifies that a facility remains closed if it did not receive an FPP at the time that the processing history had been transferred to another person through the express terms of a written contract.

NMFS has modified § 679.80(c)(2)(ii) to note that processing history, and therefore eligibility to participate as an eligible rockfish processor, must have been transferred by a clear and unambiguous contract, and that the processor from which this history was transferred must be closed. NMFS has modified § 679.80(d)(4)(ii) to note that any transfer of processing history must meet the requirements described at § 679.80(c)(2)(ii). Once transferred, any processing history, and resulting status as an eligible rockfish processor, must be used to receive and process groundfish under a CQ permit, or in the limited access fishery, in the community where the processing history was originally earned (see provisions at § 679.7(n)(6)). That community is designated on the application to participate in the Rockfish Program (see § 679.80(e)(4)(ii)(C)).

*Comment 31:* For a processor to qualify for a processing permit they must have processed at least 250 mt of primary rockfish species for at least four years from 1996 through 2000. Additionally, a processor would determine the four of five years from 1996 through 2000 used to determine

which LLP holders may form a rockfish cooperative in association with that processor. The four qualifying years for the permit could be different from the processing years chosen by the processor to determine fleet associations. The Council intended to provide processors the flexibility to use two different sets of years; one set of years to qualify as an eligible rockfish processor, and one set of years to determine which LLP licences may form rockfish cooperatives in association with that processor.

*Response:* NMFS will compute whether a processor is an eligible rockfish processor by determining whether the minimum processing tonnage requirement is met in each of any four of five years from 1996 through 2000 as described under § 679.80(c)(1). This decision is not subject to the discretion of the eligible rockfish processor; either the minimum processing requirements are met or they are not. Once NMFS determines that a processor meets these requirements, the eligible rockfish processor may select the four of five years from 1996 through 2000 to establish how that processor may associate with a catcher vessel rockfish cooperative. These years may differ from those used by NMFS to determine the processor's eligibility to participate in the Program. The rule has not been modified.

*Comment 32:* In § 679.80 paragraph (f)(3)(ii)(E) uses the phrase "multiplying the Percentage of the Total of the Total" which appears to be a typographic error.

*Response:* NMFS agrees and has removed the second phrase "of the Total." This is a minor typographical error that does not substantively affect this provision.

*Comment 33:* Paragraph (f)(3)(ii) of § 679.80 refers to the calculation of Rockfish QS based on "a percentage of legal rockfish landings" in that sector". This section should state the "Rockfish QS for a sector" is based on a percentage of legal rockfish landings in that sector.

*Response:* NMFS agrees. NMFS has modified § 679.80(f)(3)(ii) to more clearly state that the amount of Rockfish QS issued for a sector is based on the percentage of legal landings of eligible harvesters in that sector. The provision that follows at § 679.80(f)(3)(iii) describes the process of deriving Rockfish QS from each eligible LLP license and allocating Rockfish QS to that sector.

*Comment 34:* I do not understand the calculation in § 679.80(f)(3)(iii)(F). Should the total amount of Rockfish QS assigned to an LLP license in the catcher/processor sector be the sum of the Rockfish QS units, by species,

calculated for catcher/processor LLPs under § 679.80(f)(3)(iii)(E)?

*Response:* No, the calculation in § 679.80(f)(3)(iii)(F) multiplies the percentage of the total legal landings for a specific LLP license in a specific primary rockfish species determined in § 679.80(f)(3)(iii)(E) by the initial Rockfish QS pool established in Table 29 to part 679. This calculation is necessary to derive the number of Rockfish QS units that will be assigned to an LLP license. No change to this provision has been made.

*Comment 35:* Paragraph (f)(3)(iii)(F) of § 679.80 refers to the “five qualifying years” used to compute percentage of rockfish landings attributable to the catcher/processor sector. The Council motion states that a sector’s allocation is based on the individual vessel histories with the “drop two years” provision applied at the vessel level. As a result, the sector allocation will consider more than five years, since different LLP holders will drop different years. For clarity, remove the word five, referencing instead qualified catch or landings. Paragraph (f)(3)(iii)(G) of § 679.80 makes the same reference to five qualifying years for the catcher vessel sector allocation. Drop the word “five”.

*Response:* NMFS agrees and has removed the reference to “five” in these provisions. Although only five years are used in the calculation for the sum of harvests attributed to a specific LLP license in the catcher/processor sector, more than five years may be considered before that calculation is made.

*Comment 36:* Paragraph (a)(3) of § 679.81 suggests that a sector’s allocation is its Rockfish QS divided by the Rockfish QS of the sector—it should be all Rockfish QS in the pool (of both sectors). The formula accompanying the text appears to be correct. Revise text to say all Rockfish QS in the pool. Also, the result is not the “amount” of TAC, as written, but the “percent” of TAC.

*Response:* NMFS agrees and had modified the text in this section to match the text provided in the algorithm that is part of this provision. The text clearly indicates that the denominator for this computation is the total Rockfish QS pool for a primary rockfish species. In addition, NMFS changed the word amount to percent in § 679.81(a)(3) to correctly note that the results of the calculations in this section are each a “percent” of the total TAC for a primary rockfish species, and not a specific amount.

*Comment 37:* In § 679.81(a)(4)(ii), two issues arise from not making allocations of halibut PSC to the limited access fisheries. First, allowing the limited

access fishery to use halibut PSC from the overall trawl halibut PSC limit could allow the limited access fishery to use far more halibut PSC than would be allocated as halibut PSC CQ had limited access vessels joined cooperatives. Second, a specific halibut PSC limit is not assigned to the limited access fishery. Either, allocate a specific halibut PSC limit to the limited access fishery to limit the amount of halibut PSC that may be used by those vessels, or if a specific halibut PSC limit is not allocated to the limited access fishery, then halibut PSC should be deducted from the overall trawl halibut PSC limit.

*Response:* NMFS agrees in part. NMFS intends to deduct any halibut PSC assigned to the rockfish cooperatives as CQ and any halibut PSC used in the limited access fisheries from the third season halibut PSC allocation to the deep water complex. Prior to the Program, halibut PSC used in the rockfish fisheries and deep-water flatfish fisheries was deducted from the deep-water halibut PSC complex. NMFS will maintain a similar mechanism for the management of halibut PSC used for the limited access fishery. After reducing the third season halibut PSC allocation to the deep water complex to accommodate the CQ allocations, any remaining halibut PSC used in the limited access fishery would be deducted from the remaining third season allocation. This Program does not provide a specific allocation to the limited access fishery; any halibut PSC used by vessels not fishing under a CQ permit and in the deep-water fishery complex fisheries, or the limited access fishery would be deducted from this general halibut PSC account.

*Comment 38:* Paragraph (a)(5)(ii)(A) of § 679.81 contains a typographical error. The word “cooperatives” should be singular, not plural.

*Response:* NMFS agrees and has modified § 679.81(a)(5)(ii)(A) to correct the typographical error.

*Comment 39:* In § 679.81(b)(2), the allocation of secondary species to the catcher/processor sector should be based on the catch of secondary species by eligible catcher/processors while those vessels were targeting rockfish (where targeting is defined as a landing in which primary rockfish species are the dominant species). The provision, as currently written, seems to include all catch of secondary species by catcher/processors during the directed fishery, regardless of whether a catcher/processor is targeting rockfish. In § 679.81(b)(3), the allocation of secondary species to the catcher vessel sector should be based on the catch of secondary species by eligible catcher

vessels while those vessels were targeting rockfish. Include a targeting requirement.

*Response:* NMFS agrees. To reduce inconsistency with the Council intent, specifically Section 3.3.1.4 of the Council motion recommending this action, NMFS has modified § 679.81(b)(2) to note that secondary species shall be allocated to the catcher/processor sector based on catch of secondary species that was retained during the directed rockfish species fisheries. Additionally, NMFS has modified § 679.81(b)(3) to note that secondary species shall be allocated to the catcher vessel sector based on catch that was retained during the directed primary rockfish species fisheries.

*Comment 40:* According to the draft EA/RIR/IRFA, the sablefish allocation for catcher processors will be based on the cooperative’s aggregate primary species Rockfish QS holdings within the sector, and the rougheye allocation will be 58.87 percent and the shortraker allocation will be 30.03 percent of the TAC. Table 3 in the preamble to the proposed rule title “Secondary species allocated to rockfish cooperatives in the Central GOA by fishery sector” has the wrong allocation scheme within the table and appears to have mismatched the secondary species categories with their corresponding row text for the catcher processor sector.

*Response:* NMFS agrees that the preamble text in the table is inconsistent with the regulatory text in § 679.81(b)(2)(v) and (vi). The regulatory text is correct and the error in the preamble was a formatting error.

*Comment 41:* Paragraphs (b)(2) and (3) of § 679.81 contain typographical errors. The phrase “during the directed fishery for any primary rockfish fishery,” should read “during the directed fishery for any primary rockfish species.”

*Response:* NMFS agrees and has modified § 679.81(b)(2) and (3) to correct these typographical errors. NMFS has also made corrections in other sections of the rule to replace the term “primary rockfish fishery,” with the appropriate term “primary rockfish species.” These changes were made in § 679.2 under the definition of a “legal rockfish landing,” and in § 679.81(a)(3), and in the title to Table 28 to part 679.

*Comment 42:* Revise paragraphs (b)(5)(i) and (c)(4)(i) of § 679.81 to omit Rockfish QS assigned to the opt-out fishery from the denominator. In § 679.81(b)(5)(i) and § 679.81(c)(4)(i), the allocation of secondary species and halibut PSC, respectively, to catcher/processor cooperatives is based on target rockfish histories of cooperative members. The allocations use all

catcher/processor Rockfish QS in the denominator. This denominator includes Rockfish QS attributed to vessels that opt-out of the Program. The denominator should exclude "opt-out QS," as was done for primary species allocations in § 679.81(a)(5)(ii)(A).

*Response:* NMFS agrees and has revised § 679.81(b)(5)(i) and § 679.81(c)(4)(i) to make these changes. The same allocation protocol for CQ that applies to primary rockfish species for the catcher/processor sector should apply for secondary species and halibut PSC. This would effectively reallocate secondary species and halibut PSC to cooperative participants as envisaged in Section 9.1 of the Council motion supporting this action that notes that "the history of [catcher/processor] vessels which opt-out will remain with the sector." The algorithm for primary species allocations in § 679.81(a)(5)(ii)(A) does not consider the allocations that would be attributed to participants in the opt-out fishery as part of the denominator for allocating the primary rockfish species. This approach is also consistent with the approach described in the final EA/RIR prepared for this action.

*Comment 43:* The provision in § 679.81(c) references a use limitation for halibut PSC in § 679.82. No use limits in that section apply to halibut PSC. Remove this incorrect reference.

*Response:* NMFS agrees and has removed the reference to use caps in § 679.81(c)(1). Use caps are intended to apply only to the use of primary rockfish species and not to the use of halibut PSC that is assigned to a cooperative. The FMP and Section 6.2 of the Council motion recommending this action indicate that use caps should not apply to halibut PSC used by cooperatives.

*Comment 44:* In § 679.81(c)(1), both secondary species and halibut PSC are allocated based on the LLP holder's rockfish history. Therefore, use caps only apply to the Rockfish QS. This suggests secondary species and halibut PSC are non-severable from the Rockfish QS, and are allocated on an annual basis. Secondary and halibut PSC CQ need to be fully transferable between cooperatives and also be separable from the originating Rockfish QS for these transfers to be effective. These species will most likely be the most restrictive for participants, and therefore they need to be used by industry efficiently.

*Response:* This comment has been addressed in response to Comment 43. In addition, NMFS notes that the regulations concerning the transfer of CQ do not restrict the ability of a rockfish cooperative to transfer its

halibut PSC CQ or secondary species CQ separate from the primary rockfish species CQ. NMFS has clarified the regulations at § 679.81(i)(4)(iii) to note that secondary species and halibut PSC CQ are not assigned to specific members of a rockfish cooperative. Additionally, NMFS has clarified regulations at § 679.82(a)(1) to note that use caps do not apply to secondary species and halibut PSC CQ.

*Comment 45:* In paragraphs (c)(1) and (2) of § 679.81, the allocation of halibut PSC should be based on the use of halibut PSC by eligible catcher processors while targeting rockfish.

*Response:* NMFS agrees. However, these comments address the proposed rule at paragraphs (c)(2)(i) and (c)(3)(i) of § 679.81 rather than paragraphs (c)(1) and (c)(2) of that section as noted by the commenter. The response to this comment is similar to that provided to Comment 39, but is specific to the amount of halibut PSC attributed to the catcher/processor and catcher vessel sectors. To reduce inconsistency with the Council intent, NMFS modified § 679.81(c)(2)(i) to note that halibut PSC shall be allocated between the catcher/processor and catcher vessel sectors based on the amount of halibut PSC that was "used during the directed fishery for any targeted primary rockfish species."

*Comment 46:* In paragraphs (c)(2) and (3) of § 679.81, the division of halibut between the sectors should be based on the relative aggregate qualified rockfish catch of the sectors. The proposed rule incorrectly bases the allocation on halibut use. Revise to base the division on sector rockfish history.

*Response:* NMFS agrees. The allocation of halibut PSC between the catcher/processor and catcher vessel sectors is based on first determining the total amount of halibut PSC attributed to LLP licenses eligible for the Program. Second, the amount of halibut PSC used by these LLP licenses is divided between the catcher/processor and catcher vessel sectors based on the relative amount of primary species Rockfish QS assigned to these sectors.

To improve consistency with Council intent in Section 4.5 of the Council motion which notes that "each LLP holder will receive an allocation of halibut mortality equivalent to their proportion of the sector rockfish history," and Amendment 68, NMFS modified § 679.81(c)(2) so that the maximum amount of halibut PSC that may be used by participants in the Program is based on the amount of halibut PSC used by all eligible LLP licenses as a percentage of the total halibut mortality used by all fishery

participants during the seven year period from 1996 until 2002. This percentage of halibut mortality is then multiplied by the total GOA halibut mortality limit. This amount of halibut mortality is further divided between the catcher/processor and catcher vessel sectors based on the percentage of aggregate Rockfish QS assigned to each sector, with modifications made to accommodate LLP licenses assigned to the opt-out fishery in the catcher/processor sector. By making these changes, the regulations applicable to the catcher/processor and catcher vessel sectors have also been consolidated. The regulations at § 679.81(c)(2) include the allocation mechanism applicable to the catcher/processor and catcher vessel sectors and § 679.81(c)(3) has been deleted because those provisions are redundant with the revised § 679.81(c)(2). Accordingly, § 679.81(c)(4) and (5) of the final rule have been renumbered as § 679.81(c)(3) and (4).

*Comment 47:* The Council motion notes that a vessel's operational status determines how Rockfish QS should be assigned between the catcher vessel and catcher/processor sectors. If a vessel with a catcher/processor LLP license was not used to process the rockfish catch onboard the vessel, than the Rockfish QS derived from the landings on that vessel is assigned to the catcher vessel sector. The provisions in § 679.81(d)(2)(ii) and (d)(4)(ii) seem to dictate that Rockfish QS on a catcher/processor LLP license can only be allocated to the catcher/processor sector. Additionally, this suggests that a catcher/processor LLP license is only allowed to form cooperatives with other holders of catcher/processor LLP licenses and not with catcher vessel LLP license holders. The regulations need to allow catcher/processor LLP license holders that did not process on board to have that catch history assigned to the catcher vessel sector and be able to join catcher vessel cooperatives.

*Response:* NMFS agrees. The commenter correctly notes that if a vessel has an LLP license with a catcher/processor endorsement but that vessel did not harvest and process primary rockfish species aboard that vessel, the Rockfish QS derived from the legal rockfish landings attributed to that LLP license would be assigned to the catcher vessel sector. This is indicated in § 679.80(b)(5)(i). However, the proposed regulatory text at § 679.81(d)(2)(ii) and (d)(4)(ii) stated that an eligible rockfish harvester may assign Rockfish QS to a rockfish cooperative in the catcher vessel sector if that Rockfish QS is associated with an

LLP license with a catcher vessel designation that is endorsed for trawl gear in the Central GOA trawl fishery. This proposed provision was inconsistent with the provisions of § 679.80(b)(5)(i), and would seemingly limit the ability of an eligible rockfish harvester, with a catcher/processor endorsed LLP license with Rockfish QS assigned to the catcher vessel sector, from using that Rockfish QS in a catcher vessel cooperative.

To correct this inconsistency, and allow the use of Rockfish QS assigned to the catcher vessel sector regardless of the type of LLP license on which that Rockfish QS is assigned, NMFS has made the following modifications. In § 679.81(b)(5), NMFS has modified § 679.81(b)(5)(ii) and added a new § 679.81(b)(5)(iii) to state that a legal rockfish landings is attributed to the catcher vessel sector if it is a legal rockfish landing but does not meet the criteria of being a legal rockfish landing for the catcher/processor sector.

NMFS has also modified § 679.81(d)(2)(ii) and (d)(2)(iii), which address the use of Rockfish QS in a rockfish cooperative, and § 679.81(d)(4)(ii) and (d)(4)(iii), which address the use of Rockfish QS in the limited access fishery. These modifications allow an eligible rockfish harvester to assign Rockfish QS to a rockfish cooperative or limited access fishery based on the sector to which those Rockfish QS are assigned, not based on the designation of the LLP license that gave rise to that Rockfish QS.

*Comment 48:* Modify the language in the preamble on page 33045 to make it clear that Rockfish QS resulting from those legal landings made aboard a vessel with an LLP license endorsed for catcher/processor activity but not processed onboard that vessel is assigned to the catcher vessel sector. Further clarify that there is at least one vessel which operated under the authority of a catcher/processor LLP license with legal rockfish landings that did not process catch that rockfish catch onboard.

*Response:* NMFS notes the error in the preamble (71 FR 33045) to the proposed rule and has addressed the regulatory effects of this error in the response to Comment 47.

*Comment 49:* In § 679.81(d)(5), specify that only catcher/processors can assign their Rockfish QS to the opt-out fishery.

*Response:* NMFS agrees and has modified § 679.81(d)(5) to clearly state that only an eligible rockfish harvester with Rockfish QS assigned to the

catcher/processor sector may choose to apply for the opt-out fishery.

*Comment 50:* Revise § 679.81(e)(4)(i)(B) and § 679.81(e)(8) to allow trip declarations for moving from rockfish targets to other targets. In § 679.81(e)(4)(i)(B), at least one vessel must be designated to harvest the CQ assigned to a cooperative in the annual application for CQ. This provision forces a rockfish cooperative to devote one vessel exclusively to harvest under a CQ permit for that rockfish cooperative at all times, contravening the trip-by-trip method for accounting and monitoring rockfish activity as was discussed in Section 3.4.1 of the draft EA/RIR/IRFA that was under review by the Council at the time of final action. Rockfish cooperatives will require flexibility in determining how the CQ permit should be used.

Additionally, in § 679.81(e)(8), the requirement to amend an application for CQ to remove a vessel from the rockfish target fishery is inconsistent with the rockfish trip declaration contemplated by the analysis. Paragraph (i)(3)(xxii) in § 679.81 is also inconsistent with the draft EA/RIR/IRFA. It effectively creates “rockfish boats” that cannot fish in any fishery other than the Rockfish Program fishery after May 1 until the fishery is closed for the cooperative or the cooperative refiles its application for CQ. These provisions are completely unreasonable and remove most benefits from the Program. The analysis contemplates a trip declaration for entering the rockfish fishery to allow for adequate monitoring and accounting. This aspect of the Program is critical to achieving its intended benefits.

*Response:* Neither Amendment 68 nor the Council motion recommending Amendment 68 address specific fishing plans by vessels that are assigned to a cooperative or the methods that NMFS should use to determine how a vessel’s catch would be deducted from a CQ permit. Section 3.4.1 of the final EA/RIR prepared for the approval of Amendment 68 did review potential mechanisms of accounting for catch by vessels that are assigned to a rockfish cooperative. One of the mechanisms specifically mentioned was for NMFS to monitor vessels that were participating in the Program on a trip by trip basis in the catcher vessel sector, or on a haul-by-haul basis in the catcher/processor sector, with the assumption that this form of monitoring could be effectively provided within NMFS’ management and funding constraints.

The final EA/RIR noted that “given the complexity of the [Program] and the limited time period for its effectiveness, NOAA Fisheries intends to manage the

fishery to minimize costs and the complexity of quota management.” NMFS has attempted to develop a monitoring and enforcement program that is cost-effective, manageable, and effective. The final EA/RIR also notes that:

Share-based management programs can increase the incentive of participants to misreport and high grade catch, while at the same time increasing the burden on managers to provide highly defensible estimates of catch, especially when those estimates directly impact quota holders. NOAA Fisheries has dealt with these issues by clearly articulating goals for the management of share-based fisheries and imposing new and more stringent monitoring and observer requirements as these programs have been developed. All of these programs have been unique in terms of the fleet and fisheries rationalized, and interventions developed for the programs have varied as well. The Central Gulf of Alaska rockfish pilot program is no different in this regard and development of a suitable monitoring program will involve the development of new tools to ensure defensible catch data is collected to minimize unreported discard of allocated species catch.

The monitoring and enforcement provisions in the proposed rule were designed to meet the multiple objectives of NMFS’ catch accounting and reporting needs. Paragraph (e)(4)(i)(B) of § 679.81 of the proposed rule did create a condition in which rockfish cooperatives would need to designate at least one vessel to fish the CQ permit for that cooperative effective on May 1. Paragraph (e)(8) of § 679.81 did provide a mechanism for cooperatives to modify their CQ permit to redesignate a specific vessel or vessel(s) to fish under a CQ permit. This mechanism differs somewhat from a specific trip-by-trip declaration of CQ permit and non-CQ permit fishing. However, providing trip-by-trip accounting dramatically increases the administrative burden to track each individual vessel, particularly if vessels frequently transit between CQ and non-CQ fishing. Check-in/check-out provisions quickly absorb staff resources to collect, monitor, and verify check-in/check-out reports with fish ticket data when discrepancies arise.

Vessels that check in and out of CQ permit fishing frequently could create potential confusion for observers that may be switching monitoring standards and protocols for each trip. A check-in/check-out procedure is required in the halibut and sablefish individual fishing quota (IFQ) program. However, under the halibut and sablefish IFQ program, the costs of monitoring and administering a check-in/check-out procedure are recoverable under Section 303(d)(2)(B) of the Magnuson-Stevens

Act. Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to "collect a fee to recover the actual costs directly related to the management and enforcement of any...individual fishing quota program [or] community development quota program." Any IFQ program, must follow the statutory provisions set forth by section 304(d)(2) of the Magnuson-Stevens Act and other provisions of the Magnuson-Stevens Act related to cost recovery and fee collection for IFQ programs. NMFS and NOAA General Counsel are reviewing the applicability of the Magnuson-Stevens Act provisions on cost recovery and fee collection to the Program. Should subsequent analysis indicate that Section 303(d)(2)(B) of the Magnuson-Stevens Act applies to the Program, and a cost recovery program is implemented, more elaborate check-in/check-out procedures could become more affordable for NMFS and would warrant additional review.

The commenter appears to be most concerned about providing flexibility for cooperatives to designate specific vessels to fish under the CQ permits in a timely fashion, and redesignate vessels as necessary. NMFS has adopted several modifications to provide additional flexibility to cooperative members, while meeting existing catch accounting limitations and funding constraints.

First, NMFS has deleted provisions at § 679.81(e)(4)(i)(B) that required that if no vessels are designated to use the CQ issued to the rockfish cooperative on the application, then all vessels using LLP licenses assigned to the rockfish cooperative will be assumed to be designated to use the CQ.

Second, NMFS has deleted regulations in § 679.81(e)(8) that provide the mechanism for amending the CQ permit to add or delete vessels that are permitted to fish under a CQ permit for a cooperative. NMFS has also deleted references to the CQ permit amendment in paragraphs § 679.5(r)(1)(ii), and § 679.81(i)(3)(x).

Third, NMFS has provided a check-in procedure by inserting a new § 679.5(r)(10) that allows the designated representative of a cooperative to designate when a vessel will fish under a CQ permit for that rockfish cooperative. A vessel check-in must be submitted 48 hours prior to the beginning of a fishing trip by that vessel. This advance notice will provide NMFS time to adjust catch accounting procedures and accurately monitor catch. The designated representative can not submit more check-in reports in a calendar year than an amount equal to three times the number of LLP licenses that are assigned to that rockfish

cooperative in that calendar year. This limit would reduce the number of check-in reports and vessels that must be tracked and reduce the chance that a specific vessel's catch is misapplied in NMFS' catch accounting system.

Fourth, NMFS, would include in § 679.5(r)(10) provisions that allow the designated representative of a cooperative to designate when a vessel will no longer fish under a CQ permit for that rockfish cooperative. The designated representative could submit no more check-out reports in a calendar year than an amount equal to three times the number of LLP licenses that are assigned to that rockfish cooperative in that calendar year. A vessel check-out is effective the earlier of:

- The end of a complete offload if that vessel is fishing under a CQ permit for a catcher vessel cooperative; or
- The end of the week-ending date as reported in the weekly production report if that vessel is fishing under a CQ permit for a catcher/processor cooperative; or
- The end of a complete offload if that vessel is fishing under a CQ permit for a catcher/processor cooperative.

A vessel check-out must be submitted within 6 hours after its effective date and time. This will ensure that catch is properly debited against a CQ account and reduces the risk that a subsequent trip would be misapplied to a CQ permit and have to be corrected.

Fifth, § 679.7(n)(7)(iii) is modified so that the designated representative of a rockfish cooperative would be responsible for submitting timely check-in/check-out reports for fishing under a CQ permit according to the provisions in § 679.4(n)(10).

Sixth, § 679.7(n)(7)(iv) is modified to apply only to catcher vessels, and § 679.7(n)(7)(vi) is removed. This effectively authorizes a catcher/processor vessel to have species harvested under a CQ permit and those not harvested under a CQ permit onboard the vessel at the same time. Therefore, if a catcher/processor vessel checked-out while at sea at the end of a week-ending date, it would not need to offload prior to fishing in other non-Program fisheries.

These modifications do not allow trip-by-trip or haul-by-haul designation of CQ and non-CQ harvests. That detailed level of catch accounting would require significant changes to the existing catch accounting system software, require additional resources to track a potentially large number of changes in accounting methods, and add a greater degree of complexity to an already complex Program that has a two-year duration. These modifications

accommodate the requirements and limitations of NMFS and the desire for maximum flexibility proposed by the commenter. These modifications adopted by NMFS do allow vessels to be checked in to fish under a CQ permit when needed and without a potentially lengthy approval process. Designated representatives for cooperatives will need to coordinate fishing plans with their members to ensure that once a vessel is checked in, it is used to effectively harvest fish under the CQ permit and recognize that once a vessel is checked out it can no longer be used to fish for that cooperative's CQ unless checked in again. This will limit vessels to fishing under a CQ permit for a specific time period, but cooperative managers should be able to coordinate fishing schedules with their members to avoid subjecting them to monitoring and enforcement requirements beyond those required to effectively manage this complex multispecies quota Program. Alternatively, if a cooperative is unable to effectively arrange fishing schedules with their members, it may transfer its CQ to another cooperative, thereby relieving its members of the requirements for fishing under a CQ permit.

*Comment 51:* How long will it take NMFS to process the application to amend vessels authorized to fish CQ under § 679.81(e)(8)(i)?

*Response:* With the changes made in the response to Comment 50, this application no longer is required and the comment is no longer applicable.

*Comment 52:* Although not explicit in the proposed rule, the preamble states that a vessel could not be redesignated to fish rockfish CQ, if any fish were onboard. This could be overly burdensome on catcher processors that would be forced to offload all products despite having adequately accommodated accounting and monitoring of catch under the Program and under sideboards.

*Response:* Catcher/processors are not required to offload all products harvested prior to being designated to fish under a CQ permit. Likewise, a catcher/processor vessel would not be required to offload all products harvested under a CQ permit prior to fishing in a non-Program fishery. Changes to the provisions for designating vessels to harvest CQ are addressed in the response to Comment 50.

*Comment 53:* Allow the rockfish cooperative vessels to declare, on a tow by tow basis as with CDQ fishing, whether they are fishing under a CQ permit or not. In May or June the vessel will declare a rockfish tow or an open

access tow. Nothing accrues to the rockfish allocation in May and June unless it's specifically rockfish harvested under a CQ permit. In July, the vessel will declare a rockfish tow or a sideboard tow (nothing accrues to open access in the month of July).

*Response:* Aspects of this comment addressing tow-by-tow declarations of harvest to the Program have been addressed in the response to Comment 50. In addition, during the month of July, it is assumed that if a vessel is subject to a sideboard limit, than all catch made by that vessel in July, unless fishing under a CQ permit, is applied to the sideboard limit for that vessel. More generally, it should be noted that rockfish fisheries in the Central GOA differ substantially from CDQ rockfish fisheries in the BSAI and similar catch accounting and monitoring principles are not applicable to the Program. NMFS notes that the allocations of rockfish species to the CDQ Program are much smaller than the allocations of primary rockfish species under the Program, and those small allocations are rarely fully prosecuted. As an example, in 2005, the Pacific ocean perch allocation to the CDQ Program was approximately 950 mt for the BSAI. However, only approximately 100 mt of Pacific ocean perch, equivalent to roughly one day of harvest by a catcher/processor vessel, was taken in a directed CDQ rockfish fishery. NMFS expects that rockfish allocations under the Program will be fully prosecuted consistent with historic harvest patterns. This difference means that NMFS is likely to be tracking a much greater number of hauls in the Program than NMFS monitors currently in the CDQ multispecies fisheries.

Additionally, designating specific hauls as CDQ or non-CDQ hauls is largely limited to the pollock fisheries. Effectively, this means that vessels do not target CDQ multispecies fisheries at the same time that they are targeting non-CDQ multispecies fisheries. NMFS has limited experience with monitoring CDQ and non-CDQ multispecies harvests on a haul-by-haul basis. The primary advantage of haul-by-haul accounting in the CDQ pollock fishery is that it allows vessels to assign specific pollock hauls to either an AFA cooperative, or to the CDQ group's allocation. This benefits the CDQ groups and the AFA cooperatives, by allowing vessel operators to attribute hauls, the associated incidental catch, and halibut PSC to either the AFA cooperative or the CDQ group, maximizing the use of either the CDQ group or the AFA cooperative's allocation. Information reviewed by NMFS indicates that

halibut PSC use in CDQ pollock fisheries differs from that in AFA directed pollock fisheries even through these fisheries are prosecuted by the same vessels simultaneously. This is likely due to the selective attribution of catches with higher halibut PSC rates to the AFA Program, which minimizes the use of halibut PSC quota allocated to CDQ groups.

Under the Program, attributing specific hauls to the Program or non-Program fisheries could create an incentive for vessel operators to attribute hauls with high incidental catch or halibut PSC to the non-rockfish fisheries. This could cause halibut PSC use rates in the non-Program fisheries to increase, and could constrain non-rockfish fisheries in the Central GOA limited by halibut PSC use, such as deep-water flatfish fisheries. As an example, a vessel operator could assess the species composition of hauls by making several hauls and designating hauls with lower quality rockfish or higher halibut PSC as non-Program hauls. This process of selectively attributing tows to a CQ permit or the rockfish limited access fishery could increase discarding of rockfish that are harvested in non-Program hauls to ensure that the rockfish harvested is below the MRA for the other species (e.g., flatfish) that are also harvested in these tows. Unlike pollock, rockfish species have life histories that may make them less resilient to fishing pressures. Given the TAC, allowable biological catch, and overfishing level of the primary rockfish fisheries, NMFS is cautious about potentially introducing additional incentives for high grading of catch which can occur in quota-based fisheries.

Finally, NMFS notes that the Program is intended, in part, as a two-year pilot project to provide additional information about quota management of a multispecies fishery. As with other aspects of this Program, changes in catch accounting can be initiated after NMFS and the industry have additional experience with the Program.

*Comment 54:* Paragraphs (e)(5)(i)(E) and (e)(6)(i)(F) of § 679.81 require detailed ownership information from persons assigning their LLP license to the limited access or opt-out fisheries. These fisheries do not receive an individual allocation of primary rockfish species, so neither sector is subject to an ownership cap. The information is unnecessary and should not be required.

*Response:* NMFS disagrees. The use caps that are established in § 679.82 are applicable to the amount of Rockfish QS that a person may hold, and the amount

of CQ that may be used by a rockfish cooperative that is derived from an eligible rockfish harvester's holdings of Rockfish QS. Although an eligible rockfish harvester who assigns his LLP license and associated Rockfish QS to the limited access fishery or the opt-out fishery may not receive CQ in a given year, that person is still a holder of Rockfish QS. As such, NMFS must have a means for determining whether that eligible rockfish harvester exceeds the Rockfish QS use cap. Ownership data is collected on an annual basis and because the application for the rockfish limited access fishery and application to opt-out are due annually, these forms provide a means for NMFS to gather timely ownership information. The rule has not been modified.

*Comment 55:* The estimated time line between the final regulation going into effect (November 1, 2006) and when a company must submit an application to participate in the Program (December 1, 2006) is unrealistic and simply not practical. The 30-day time period is inadequate to assemble and make a complete application as set forth in § 679.81(e). This application, which will likely bring together multiple companies to form a cooperative, is not a simple task. To form an entirely new "cooperative legal entity" that meets the multitude of administrative requirements in only 30 days is not practical.

*Response:* NMFS agrees and has modified the due date to apply to participate in the Program in § 679.80(e)(3) from December 1, 2006, to January 2, 2007. NMFS also modified the due date for the application for CQ, application for the rockfish limited access fishery, application to opt-out, and Application for the entry level fishery in § 679.81(e)(3), from December 1 of the year prior to the year in which a person wishes to participate, to March 1 of the year in which that person wishes to participate. These changes will allow potentially eligible harvesters and processors to apply to participate in the Program and then have nearly 60 days to decide whether to participate in a cooperative, limited access fishery, or opt-out. During this time period, harvesters could coordinate with each other. This will also provide additional time for eligible rockfish harvesters in the catcher vessel sector who wish to form a rockfish cooperative to coordinate with the eligible rockfish processor with whom they may associate.

*Comment 56:* In § 679.81(f), remove the statement concerning processor eligibility transfers because the Council motion makes no provision for the

transfer of processor licenses. Additionally, the provisions in paragraphs (f)(2) and (g)(1) of § 679.81 are inconsistent with the Council motion. Since the Program is short term, transfer of eligibility once the Program is implemented is not necessary. The Council motion makes no provision for the transfer of processor eligibility.

*Response:* NMFS agrees. Although processor eligibility transfers are likely to be necessary should Congress provide additional authority to NMFS to extend this Program, the Council did not specifically recommend provisions to allow processors to transfer their eligibility to another processor. NMFS has deleted the provision concerning the transfer of processor eligibility in § 679.81(f) and (f)(2). In addition, NMFS has modified § 679.81(g)(1) to note that a person may not transfer their eligibility as a rockfish processor to another person except in the case when a person purchases a processing facility and the processing history associated with that facility. In this case, that person would be eligible to operate that facility and use the processing history associated with that facility.

*Comment 57:* Paragraph (f)(1)(ii)(B) of § 679.81 requires the names of all persons with ownership interest in an LLP license upon the transfer of CQ. If NMFS already has this information from the annual application for CQ, it is not needed again when CQ is transferred.

*Response:* NMFS agrees and has deleted this requirement in § 679.81(f)(1)(ii)(B). The requirement to collect ownership information of rockfish cooperative members is addressed under the annual application for CQ requirements in § 679.81(e)(4)(i)(B)(2) and is not required again.

*Comment 58:* In § 679.81(f)(1), the permission of the affiliated processor is required for any CQ transfer by a catcher vessel cooperative.

*Response:* NMFS agrees. The regulations at § 679.81(f)(1)(v) and (vi) provide that any transfer must be signed by an designated representative of the cooperative. NMFS had presumed that this designated representative would have the authority of the eligible rockfish processor with whom that rockfish cooperative is associated. NMFS has modified § 679.81(f)(1)(v) and (vi) to require that the designated representative provide explicit authorization signed by the applicant and the eligible rockfish processor with whom that rockfish cooperative is associated with any application. This modification is consistent with Section 5.4 of the Council motion recommending this action which states

that rockfish cooperatives “may engage in inter-cooperative transfers of annual allocations to other cooperatives with agreement of the associated qualified processor.” An application will not be considered valid without this explicit authorization.

*Comment 59:* The provisions in § 679.81(h) suggest that MRAs apply when rockfish boats are participating in non-rockfish fisheries. Since “opting out” has been defined as a fishery with applicable MRAs defined, it suggests that all fishing by a rockfish boat is subject to rockfish MRAs. Applying the Program MRAs to cooperatives fails to distinguish between vessels assigned to a rockfish cooperative and fishing under a CQ permit, and vessels assigned to a rockfish cooperative but not fishing under a CQ permit. A sentence could be added stating the fishing outside cooperatives and outside of the limited access rockfish fishery is subject to Table 10 MRAs.

*Response:* NMFS agrees in part. The MRAs specific to the Program are applicable only when vessels are fishing in the Central GOA for primary rockfish species under a CQ permit, or in a limited access fishery. Fishing by vessels that are not fishing under a CQ permit or in the limited access fishery would continue to be subject to the MRAs applicable for non-Program fisheries. NMFS does agree that additional clarity is required in § 679.81(h)(1) to note that a vessel assigned to a rockfish cooperative and fishing under a CQ permit may harvest groundfish species not allocated as CQ up to the MRA for that species as established in Table 30 to this part. Any vessel assigned to a cooperative not fishing under a CQ permit (i.e., engaged in non-Program fisheries) will continue to be subject to MRA limits established under Table 10 to part 679.

*Comment 60:* In § 679.81(i)(1), persons who leave a rockfish cooperative are bound by the allocation of CQ during the year. This should also state that any sideboards applicable to a catcher/processor rockfish cooperative continue to bind the person. Include a provision stating that sideboards continue to bind a person that leaves a cooperative.

*Response:* NMFS agrees. Although § 679.82(f)(2) details those vessels and LLP licenses that are subject to sideboard limits for a catcher/processor sector, that section does not specifically state that once a vessel or LLP license is assigned to a rockfish cooperative it continues to be bound by the sideboard limits established for that rockfish cooperative. NMFS has modified § 679.82(f)(2), (f)(2)(i), (f)(2)(ii), and

(f)(2)(iii) so it clearly states that once an LLP license of vessel has been assigned to a rockfish cooperative that LLP license and vessel continues to be subject to the sideboard limits established for that rockfish cooperative under § 679.82(d) and (f), for that calendar year.

*Comment 61:* Paragraph (i)(3)(vi) of § 679.81 should note that 75 percent of the Rockfish QS eligible for the cooperative is necessary for cooperative formation.

*Response:* NMFS agrees. Section 5.4 of the Council motion recommending this action notes that “75 percent of historical shares” (i.e., Rockfish QS) delivered to an eligible rockfish processor, must be assigned to a rockfish cooperative in order for a rockfish cooperative to form. NMFS has modified § 679.81(i)(3)(vi) to note that a rockfish cooperative can form only if it is assigned Rockfish QS that represents at least 75 percent of all the legal rockfish landings delivered to that eligible rockfish processor during the four years selected by that processor. Legal rockfish landings that do not yield Rockfish QS would not be considered in the calculation.

*Comment 62:* In § 679.81(i)(3)(xii) the phrasing of the question and answer should be edited because the intent of this provision is not clear.

*Response:* NMFS agrees. Although the intent of this provision has not been modified, NMFS rephrased § 679.81(i)(3)(xii) to note that sideboard limits assigned to a rockfish cooperative in the catcher/processor sector are limits applicable to a specific rockfish cooperative, and may not be transferred between rockfish cooperatives.

*Comment 63:* Paragraph (i)(3)(xv) in § 679.81 is unclear and may deviate from the Council’s intent. Specifically, if a company owns two qualified processing facilities, it could have two associated cooperatives (one for each plant). The intent of the processing history transfer provisions are two-fold. First, a processor can buy a facility and its associated processing history and operate that facility. This allows a processor to operate two plants with two distinct rockfish cooperatives. Second, the processor could buy the processing history of a closed facility. This processing history could be combined with the processing history at another facility, and that combined processing history would be used to form associations with a single plant (which must be in the same community as the plant from which history was purchased). In any case, the processor must stay under the use caps.



*Response:* NMFS agrees and has modified § 679.81(i)(3)(xv) to more clearly note that an eligible rockfish processor will be issued a single eligible rockfish processor permit for the aggregate processing history based on (1) the holdings of processing history at a specific facility, and (2) acquired processing history from a shoreside processor or stationary floating processor that is closed. A person may only receive eligibility for processing history that is acquired without the purchase of the processing facility associated with that history if that person held that processing history prior to the end of the application period to be included in the Program. The eligible rockfish processor will select a single four year period applicable to the aggregate processing history held by that eligible rockfish processor for determining which eligible rockfish harvesters may form a rockfish cooperative in association with that eligible rockfish processor. Eligible rockfish harvesters are eligible for a rockfish cooperative in association with that processor, based on the aggregated processing history held by that processor. Once a rockfish cooperative associates with that eligible rockfish processor, that processor may receive rockfish delivered by that rockfish cooperative at a shoreside processor or stationary floating processor owned by that eligible rockfish processor, subject to any other restrictions that may apply.

NMFS has also modified § 679.81(i)(3)(v) to note that an eligible rockfish processor may select only one processor qualifying period (i.e., the four of five year period) that is applicable to the aggregated processing history held by that eligible rockfish processor.

If an eligible rockfish processor owns more than one processing facility, and therefore more than one processing history, that eligible rockfish processor would associate with one cooperative at one facility, and associate with another cooperative at another facility. As the commenter notes, any processing activity will continue to be subject to processing use caps.

*Comment 64:* Paragraph (i)(4)(i) of § 679.81 should be revised to state that 75 percent of the eligible Rockfish QS that was initially delivered to that processor is necessary for rockfish cooperative formation.

*Response:* NMFS agrees and has modified § 679.81(i)(4)(i) to clarify that if an eligible rockfish harvester has not delivered to an eligible rockfish processor, any Rockfish QS issued to that eligible rockfish harvester may not be considered as contributing to the

amount of Rockfish QS necessary to meet a minimum of 75 percent of the legal rockfish landings required to form a rockfish cooperative. This change is consistent with the response to Comment 62.

*Comment 65:* In § 679.81(i)(4)(ii) delete “for” from the second line which reads “a person fishing for CQ,” so it reads “a person fishing CQ.”

*Response:* NMFS agrees and has corrected the typographic error in § 679.81(i)(4)(ii).

*Comment 66:* Paragraph (i)(4)(iii) of § 679.81 should be revised to note that catcher vessel sector inter-cooperative transfers are required to be approved by the associated processor as is noted in section 5.4 in the Council motion recommending this action.

*Response:* NMFS agrees. As noted in the response to Comment 58, NMFS will require that any inter-cooperative transfer include explicit authorization from the eligible rockfish processor with whom that rockfish cooperative is associated as part of an inter-cooperative transfer of CQ under § 679.81(f)(1)(v) and (vi). With that change, no modification is required in this section.

*Comment 67:* Paragraph (i)(4)(iii)(F) of § 679.81 should prohibit transfers from a rockfish cooperative once that cooperative has submitted its termination of fishing declaration.

*Response:* NMFS disagrees. The intent of the termination of fishing declaration is that after that date no transfers of CQ could be received by a rockfish cooperative. Once NMFS has approved a termination of fishing declaration submitted by a rockfish cooperative, the total amount of CQ held by that rockfish cooperative is set to zero (see § 679.4(n)(2)(v)). Therefore, a rockfish cooperative would not have any CQ available for transfer to another cooperative. These requirements effectively prevent a rockfish cooperative from transferring any CQ to or from another rockfish cooperative. No change is required.

*Comment 68:* In § 679.81(i)(5)(ii)(A), delete “not” in the second to last line so that it reads, “No member of a cooperative may exceed. . .”

*Response:* NMFS agrees and has removed the word “not” from § 679.81(i)(5)(ii)(A). This provision is intended to state that no member of a rockfish cooperative may exceed the CQ use cap applicable to that member. The word “not” negates that intent and is a typographical error.

*Comment 69:* In paragraph (i)(5)(ii)(B) of § 679.81, the total CQ should be the amount assigned to the person from

transfers and the amount initially held from Rockfish QS.

*Response:* NMFS agrees and has clarified § 679.81(i)(5)(ii)(B) to provide that for purposes of CQ use cap calculation, the total amount of CQ held (used) by a person is equal to all pounds of CQ derived from the Rockfish QS held by that person and assigned to the rockfish cooperative, and all pounds of CQ assigned to that person by the rockfish cooperative from approved transfers. This change is consistent with the FMP and the intent of this provision as described on page 33054 of the preamble to the proposed rule (71 FR 33040).

*Comment 70:* Since a cooperative holds CQ directly only, the application of the individual and collective rule for indirect holdings in § 679.82(a)(3) is unnecessary. Use of the individual and collective rule could have some unintended consequences, particularly if a person owns shares that are eligible for two different cooperatives.

*Response:* NMFS agrees. A rockfish cooperative can only hold the CQ derived from the members of this cooperative. A rockfish cooperative cannot indirectly hold CQ and so the term “individual and collective” is not applicable and has been deleted from § 679.82(a)(3).

*Comment 71:* Paragraphs (a)(3) and (a)(6) of § 679.82 should be revised to clearly note that a rockfish cooperative is precluded from exceeding 30 percent of the CQ issued to the catcher vessel sector unless that cooperative qualifies for a “grandfather” exemption. The current structure of these paragraphs does not meet the intent of the grandfather provisions. The exemption to the use cap should apply only if the cooperative is eligible to receive in excess of 30 percent of the initial allocation of catcher vessel Rockfish QS.

*Response:* NMFS agrees. As worded, the provisions in the proposed rule at § 679.82(a)(3) would limit the ability of a rockfish cooperative to exceed 30 percent of the Rockfish QS pool allocated to the catcher vessel sector. This could inhibit the ability of a rockfish cooperative to form if the potentially eligible members of the rockfish cooperative held more than 30 percent of the Rockfish QS in the catcher vessel sector. To minimize the possibility of rockfish cooperatives being so limited, NMFS modified § 679.82(a)(3) to state that a rockfish cooperative may not hold or use an amount of CQ that is greater than the amount derived from 30.0 percent of the aggregate Rockfish QS initially assigned to the catcher vessel sector, unless the sum of the aggregate Rockfish QS held

by the eligible members of that rockfish cooperative is derived from legal rockfish landings held by those eligible members prior to June 6, 2005, and this results in Rockfish QS that exceeds the use cap. The rockfish cooperative will still be constrained by the sum of the use caps that apply to each member of the rockfish cooperative. With this change, modifications to § 679.82(a)(6) are not required.

*Comment 72:* Paragraphs (a)(5) and (a)(6) of § 679.82 are intended to prevent a processor from exceeding 30 percent of the catcher vessel sector allocation. The current exemption in (a)(6) appears to allow a processor to exceed the use cap if any member of the cooperative qualifies for an exemption from the use cap. It should provide that a processor can exceed that cap only if it would be associated with a cooperative comprised of members that receive in excess of 30 percent of the initial allocation of Rockfish QS.

*Response:* NMFS agrees. The intent of this provision is to limit the ability of a processor to receive more than 30 percent of the aggregate rockfish TAC assigned to the catcher vessel sector with a specific “grandfather” provision if the harvesters eligible to deliver to that eligible rockfish processor hold an amount of initially issued Rockfish QS that yields CQ in excess of the 30 percent processor use cap. NMFS has modified § 679.82(a)(5) to limit eligible rockfish processors to this grandfathered amount. With this change, modifications to § 679.82(a)(6) are not required.

*Comment 73:* Paragraph (a)(4) of § 679.82 should prevent a catcher/processor vessel from harvesting any amount greater than the amount of CQ attributable to the LLP license derived from that vessel. As currently written, it suggests that if the LLP license used on that vessel is allocated Rockfish QS in excess of the use cap, the use cap does not apply at all.

*Response:* NMFS agrees and has modified this provision to note that a catcher/processor vessel may not be used to harvest an amount greater than the amount derived from the Rockfish QS assigned to an LLP license that was used on that vessel prior to June 6, 2005. This change clarifies the intent of this provision.

*Comment 74:* In § 679.82(a)(6)(ii)(C), the reference to “or have any CQ received by a cooperative by transfer attributed to that eligible rockfish harvester” should restrict a rockfish cooperative from assigning CQ to a harvester limited by the Rockfish QS use cap.

*Response:* NMFS agrees. The intent of § 679.82(a)(6)(ii)(C) is to restrict a rockfish cooperative from assigning CQ to a cooperative member if that harvester is limited by the Rockfish QS use cap. This intent is unclear as worded in the proposed rule. NMFS has modified § 679.82(a)(6)(ii)(C) so that an eligible rockfish harvester may not receive any Rockfish QS by transfer or have any CQ attributed to that eligible rockfish harvester unless that harvester’s holding of Rockfish QS are below the use cap.

*Comment 75:* Paragraph (a)(6)(ii)(C) of § 679.82 states that a person exceeding the ownership cap through the initial allocation of Rockfish QS cannot “have any CQ attributed to that eligible rockfish harvester in a rockfish cooperative unless and until that person’s holdings of aggregate Rockfish QS in that sector are reduced to an amount below the use cap.” If the person is grandfathered for the initial Rockfish QS allocation they should receive CQ for that amount, but they cannot receive additional CQ. This seems to be indicated in § 679.82(a)(6)(iii), but this refers to a rockfish cooperative using CQ in excess of the use cap. Rockfish cooperatives do not have use caps, individuals do.

*Response:* NMFS has addressed the application of the CQ use cap in the response to Comment 74. NMFS notes that CQ is held by a rockfish cooperative and not by the members of the rockfish cooperative. The CQ use cap limits the amount of CQ that a member of a rockfish cooperative may attribute to that cooperative either by assigning his Rockfish QS to that rockfish cooperative, or by having CQ attributed to that cooperative member through an inter-cooperative transfer of CQ.

*Comment 76:* Paragraph (a)(6)(iii) of § 679.82 should prevent a cooperative from receiving CQ unless the CQ is held by an eligible rockfish harvester who was eligible for that cooperative prior to June 6, 2005.

*Response:* NMFS agrees. NMFS has modified § 679.82(a)(6)(iii) to clarify this provision by providing that a rockfish cooperative may use CQ in excess of the use cap only if that CQ is derived from the Rockfish QS assigned to an LLP license that was held by an eligible rockfish harvester prior to June 6, 2005, and who is eligible for that rockfish cooperative.

*Comment 77:* Paragraph (b)(2)(ii) of § 679.82 allows a person to enter the limited access fishery if they do not opt-out or join a cooperative. The quota should be allocated to the limited access fishery under those circumstances, but the person does not get to fish in the

limited access fishery unless an application for the limited access fishery is completed.

*Response:* NMFS disagrees. If an eligible rockfish harvester failed to apply for a rockfish cooperative, limited access fishery, or the opt-out fishery, then NMFS would assign the TAC derived from that person’s LLP license to the limited access fishery. These default provisions provide a reasonable opportunity for persons in either sector to continue to participate in the rockfish fishery if they choose not to participate in a cooperative. The opt-out fishery is applicable only to the catcher/processor sector. If NMFS allowed a participant in the catcher/processor sector who failed to apply to fish only in the opt-out fishery instead of the limited access fishery, NMFS would be treating the failure to apply differently between the two sectors. This would seem to foreclose harvest opportunities for only one sector without a clear distinction or need. No change has been made to the rule.

*Comment 78:* Paragraph (b)(5) of § 679.82 appears to be inconsistent with the Council motion that suggests that the use of halibut PSC in the limited access fishery should be limited to an amount which would have been allocated to vessels in the limited access had they not joined cooperatives.

*Response:* NMFS disagrees. The Council motion notes that “harvesters may elect not to join a co-op, and continue to fish in an LLP/Open Access fishery. The LLP’s share will be fished in a competitive fishery open to rockfish qualified vessels who are not members of a cooperative and must be delivered to one of the qualified processors.” It is clear that the limited access fishery is allocated a portion of primary rockfish species, but allocations of secondary species and halibut PSC to the limited access fishery is not explicit. However, it is clear throughout the final EA/RIR and in the structure of the Program that the limited access fishery is intended to provide an opportunity for harvesters who do not wish to join a cooperative to continue to fish in the rockfish fisheries, but that secondary species would not be explicitly allocated (see Executive Summary of the final EA/RIR).

Rockfish cooperatives are intended to provide exclusive harvest privileges to specific groups of harvesters, and in the case of catcher vessels, require an association with a specific processor. If the limited access fisheries in the catcher/processor and catcher vessel sectors were provided a distinct halibut PSC allocations, then the potential exists for a small number of participants

in a limited access fishery to coordinate the harvest of their primary rockfish species and apportion this halibut PSC allocation among their members. In so doing, the limited access fishery could effectively create a cooperative that would be able to manage an exclusive halibut PSC allocation, receive many of the benefits of a rockfish cooperative, but forego many of the requirements that the Council recommended as a condition for operating as a rockfish cooperative (e.g., association with a specific processor). This is contrary to Council recommendations and the structure of this Program.

The limited access fishery does receive a halibut allocation in the sense that the limited access fishery will receive a portion of the halibut PSC that remains after allocation as CQ to the rockfish cooperatives. Rockfish cooperatives are allocated a specific amount of halibut PSC based on historic use by eligible rockfish harvesters. Historically, halibut PSC use in the rockfish fisheries has been debited from the third season halibut PSC apportionment to trawl gear in the deep-water complex. NMFS will deduct the sum of the allocations of halibut PSC CQ made to cooperatives from that third season allocation. The apportionment of halibut PSC at other times of the year to support other fisheries would not be affected by halibut PSC CQ allocations made under the Program. This is consistent with the intent of the Program to enhance rockfish harvest opportunities without adversely affecting other fishery participants. Under this management model, after deduction of halibut PSC for the rockfish cooperatives, the third season halibut PSC limit remaining is available to the limited access fisheries, the opt-out fishery, and non-Program fisheries (i.e., flatfish fisheries). This mechanism of halibut PSC management for the limited access fishery is similar to current management practices in which the rockfish fisheries and flatfish fisheries use the same third season halibut PSC apportionment to trawl gear in the deep-water complex.

*Comment 79:* Paragraph (d)(4)(iii) of § 679.82 limits the use of halibut PSC in certain fisheries. The wording of this provision should clarify that the halibut PSC sideboard actually limits directed fishing in specific flatfish fisheries based on the use of halibut PSC.

*Response:* NMFS agrees and has modified § 679.82(d)(4)(iii) to more clearly indicate the intent of this provision that specific flatfish fisheries in the GOA are subject to closure once a specific halibut PSC sideboard limit has been reached.

*Comment 80:* In § 679.82(d)(5)(ii)(C), the reference to paragraph (d)(5) is circular. It would be clearer to reference paragraph (d)(5)(ii)(B) of this section.

*Response:* NMFS agrees and has modified § 679.82(d)(5)(ii)(C) to include this reference to § 679.82(d)(5)(ii)(B). This comment clarifies that specific vessels would be subject to a sideboard limit but does not alter the intent of this provision.

*Comment 81:* The table at § 679.82(d)(6) should include the BSAI Pacific cod sideboard amount for the catcher vessel sector (which is 0.0 percent) as that amount has been calculated in the final EA/RIR. In § 679.82(e)(4), the provision addressing the Pacific cod sideboard amount for catcher vessels is unnecessary, if the sideboard amount is included in the table at paragraph (d)(6) of this section. If this provision is maintained, the algorithm for the sideboard should be corrected. The sideboard limit for Pacific cod should be the catch of the catcher vessel sector in July during the period from 1996 through 2002 divided by the catch of all trawl catcher vessels during the entire year during the years 1996 through 2002. Either include the sideboard percentage in the table in § 679.82(d)(6) or correct the method for calculating the sideboard percentage.

*Response:* NMFS agrees. NMFS has deleted catcher vessel specific sideboards for BSAI Pacific cod in § 679.82(e)(4) and placed the catcher vessel BSAI Pacific cod sideboard limit in the table in § 679.82(d)(6). NMFS has described the catcher vessel sideboard limit applicable to catcher vessels directed fishing for Pacific cod in the BSAI in a new § 679.82(d)(4)(iv). This change benefits the reader by providing a list of all sideboard limits in one section of the regulations.

By moving these provisions to § 679.82(d)(6), the provisions at § 679.82(e)(4) and (5) were made redundant and were deleted. The regulatory text in § 679.82(e)(5) was also redundant because NMFS will not establish a sideboard limit for the catcher vessel sector for BSAI Pacific cod because the sideboard limit is 0.0 percent. The sideboard limit of 0.0 percent for directed Pacific cod fishing in the BSAI for the catcher vessel sector was determined based on the final EA/RIR prepared for this action (see Table 38 in Section 2.5.15 of the final EA/RIR), and is not modified by this change. NMFS indicated on page 33056 in the preamble of the proposed rule (71 FR 33040) that the sideboard limits calculated in the EA/RIR/IRFA would be used to establish the sideboard limits applicable to the catcher/processor and

catcher vessel sector. Table 9 in the preamble to the proposed rule (page 33059) notes that the BSAI Pacific cod catcher vessel sideboard is zero percent of the BSAI TAC.

*Comment 82:* Modify § 679.82(d)(8) to strike the reference to halibut PSC sideboard limits by each GOA management area and to provide for halibut PSC limits to be established for the entire GOA for the deep-water complex and shallow-water complex. The GOA sideboard limit amount should be the sum of the three GOA management area sideboard limits. When the sideboard limit is reached, the entire GOA would close to directed fishing for flatfish in the deep-water or shallow-water complex fisheries.

*Response:* NMFS agrees. At the time of final Council action on June 6, 2005, the Council recommended that halibut PSC sideboard limits should be administered based on a percentage of the total GOA halibut PSC sideboard limit rather than by specific limits for each GOA management area (See Section 9.1(b) of the Council motion recommending this action). This change in Council intent was not reflected in the proposed regulations.

NMFS has modified the table in § 679.82(d)(8) by summing the halibut mortality limits in each GOA management area in the shallow water complex for each sector to establish a shallow water halibut PSC sideboard limit for the GOA that is applicable to that sector.

Similarly, in § 679.82(d)(8), NMFS has summed the halibut mortality limits in each GOA management area in the deep water halibut PSC complex for each sector to establish a deep water halibut PSC sideboard limit for the GOA that is applicable to that sector.

*Comment 83:* Paragraph (d)(8) of § 679.82 should provide for the division of halibut PSC sideboards among rockfish cooperatives in the catcher/processor sector more clearly. The Council motion provides for the division of halibut PSC sideboard limits based on historic use. This is computed as the amount of halibut use of the vessels in the cooperative divided by the halibut use of all vessels subject to the sideboard multiplied by the GOA trawl halibut PSC sideboard limit.

*Response:* NMFS agrees. As written in the proposed rule, the provision at § 679.82(d)(8) did not clearly allocate a portion of the catcher/processor deep-water or shallow-water halibut PSC limit to a catcher/processor sector based on the historic halibut PSC use of the members of a rockfish cooperative. Section 9.2 of the Council motion notes that each rockfish cooperative in the

catcher/processor sector will be limited in the aggregate "to the historic average halibut mortality taken by cooperative members in the target flatfish fisheries in the month of July by deep-water and shallow-water complex." NMFS has revised § 679.82(d)(8) to clarify the allocation of halibut PSC sideboard limits among catcher/processor rockfish cooperatives, the limited access fishery, and opt-out fishery.

*Comment 84:* In § 679.82(d)(9)(i)(A) and (B), the reference to (d)(1)(ii) is unclear. It seems to reference certain fisheries, but section (d)(1)(ii) contains no list of fisheries.

*Response:* NMFS agrees. The references in § 679.82(d)(9)(i)(A) and (B) should be to the list of flatfish fisheries in § 679.82(d)(4)(iii) which are subject to closure for directed fishing if there is not a sufficient amount of halibut PSC sideboard limit. The reference to § 679.82(d)(1)(ii) is incorrect. NMFS has corrected this citation to § 679.82(d)(4)(iii).

*Comment 85:* In § 679.82, halibut PSC use in the limited access fishery should not be counted against the halibut PSC sideboard limit. In § 679.82(d)(9)(iii), the halibut catch from the Central GOA rockfish fishery is not included in calculating the sideboard amount, it should be excluded from the sideboard accounting. When determining the halibut PSC sideboard limits, halibut PSC use in the Central GOA rockfish fisheries was not used in the calculation. To administer the sideboard, halibut PSC use in the limited access fishery should be distinguished from halibut PSC use in other non-Program fisheries (e.g., flatfish fisheries). The simplest way to make this distinction may be to require limited access fishery vessels to declare their target (i.e., either limited access fishery or other non-rockfish fisheries) prior to fishing during the time period when the limited access fishery is open. Such a declaration would simplify catch accounting in general. NMFS should require a declaration of rockfish participation from limited access participants to simplify administration of halibut sideboards and accounting in the rockfish fishery.

*Response:* NMFS agrees in part. Section 2.5.15 of the final EA/RIR prepared for this action, and Section 9.2 of the Council motion recommending this action indicate that the halibut mortality in the Central GOA that is used in the limited access fishery would not be used to determine the halibut PSC sideboard limits that apply to the catcher/processor and catcher vessel sector. These sections of the final EA/RIR also clarify that catch made under

a CQ permit would not apply against a sideboard limit annually specified for a rockfish cooperative. NMFS has modified § 679.82(d)(9)(iii) to note that halibut PSC used while fishing under a CQ permit or in a limited access fishery will not be debited against the sideboard limit established for that sector. NMFS also modified § 679.84(g)(3) and (4), which contains a reference to catch accounting for groundfish and halibut PSC, to not debit catch harvested while fishing under a CQ permit or in the limited access fishery against the sideboard limit that is established for that sector or rockfish cooperative.

NMFS disagrees that a declaration or check-in procedure is required for the limited access fisheries. Based on expected TAC available to the limited access fishery, NMFS anticipates that the limited access fishery will have a limited duration. If a vessel has registered for the limited access fishery its harvests of primary rockfish species starting on July 1 will be deducted from the limited access fishery TAC assigned to that sector. Once the limited access fishery TAC for all primary rockfish species has been reached, or on the date it has been forecasted to be reached, the limited access fishery will be closed. If a vessel that had been fishing in the limited access fishery continues to fish in the GOA in July, any of its groundfish subject to a sideboard limit, and any halibut PSC use will be deducted from the sideboard limits applicable to that sector.

*Comment 86:* Paragraph (f)(4)(ii) of § 679.82 should provide that for catcher/processor cooperatives that begin fishing on their CQ permit prior to July 1, the stand down should last only until the earlier of either when 90 percent of the cooperative allocation is fished, or July 14.

*Response:* NMFS agrees. Section 9.2 of the Council motion recommending this action does note that the stand down period applicable to catcher/processor vessels named on an LLP license with more than 5.0 percent of the Pacific ocean perch QS assigned to a catcher/processor rockfish cooperative should begin on July 14 or when the 90 percent of the CQ assigned to that rockfish cooperative has been fished, whichever occurs earlier. NMFS has modified § 679.82(f)(4) and (f)(4)(i).

*Comment 87:* The proposed rule does not seem to clearly identify the rules of participation in the entry level fishery. Entry level processors do not seem to be required to apply for the entry level fishery, although application/registration might simplify management as well as clarify markets for entry level vessels. In addition, it should be clear

that if a processor tells an entry level harvester that he has a market for his catch, it does not bind the harvester to deliver all catch to the processor, nor the processor to accept all catch from that harvester.

*Response:* Fish harvested from the entry level fishery may be delivered to any processor that is not an eligible rockfish processor as is noted in § 679.83(a). Rather than requiring processors to register, NMFS intends to provide maximum flexibility to entry level harvesters to allow them to deliver to any eligible entry level processor they choose. The annual application to participate in the entry level fishery under § 679.81(e)(7)(i)(D) only requires that harvesters that wish to participate in an entry level fishery have a statement from an eligible entry level processor that they have a market for their product, but does not otherwise limit the entry level harvester to deliver only to that processor. No change in the regulations has been made.

*Comment 88:* As was pointed out during the Council development of the Program, NMFS would like to maintain the authority to not open the entry level fishery under certain circumstances, such as when more harvesters sign-up to fish than NMFS deems reasonable for the size of the TAC. However, this is not good news for the harvesters and processors hoping to participate in the entry level fishery. A closed entry level fishery is contrary to intent of the Council and the enabling legislation requiring an entry level fishery. Several solutions were suggested during the Council process, including a lottery among potential harvesters, with the understanding that there would be an attempt to arrive at a workable solution. The discussion about this issue in the preamble of the proposed rule indicates that NMFS has no solution to this potential problem. Develop a method to open both the trawl and non-trawl entry level fisheries, no matter the TAC size.

*Response:* As the Commenter notes, the entry level fishery receives a small allocation of primary rockfish TAC. This allocation should be sufficient to provide a limited fishery for entry level participants. 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. Therefore, NMFS anticipates to be able to provide harvest opportunities for the entry level fishery.

*Comment 89:* Clarify the likelihood of the unavailability of halibut PSC closing the entry level fisheries.

*Response:* NMFS allocates halibut PSC on a seasonal basis for various gear types to provide adequate fishing opportunities for fisheries that use halibut PSC throughout the year.

Although halibut PSC use varies on an annual basis, and halibut PSC use may constrain directed fisheries for specific gear types during certain times of the year, it is unlikely that halibut PSC use would limit the entry level fishery throughout the entire period when it may occur (May 1 through November 15 for trawl gear, and January 1 through December 31 for longline gear). Given the small amount of primary rockfish species TAC allocated to the entry level fishery, NMFS anticipates limited halibut PSC use in the entry level fishery, and a low likelihood that halibut PSC use in other fisheries would foreclose the opportunity for an entry level fishery.

*Comment 90:* The provisions in § 679.84(c) requiring vessels that opt-out of the Program to have observers and monitoring at the same level as vessels targeting rockfish would impose huge economic and compliance burdens on companies not electing to participate in the Program. Requiring the expense of increased observers and costly monitoring equipment, strictly for purposes of monitoring the sideboard limit applicable to these vessels in July, seems extreme. Opt-out vessels do not receive an individual allocation and fish off the general sideboard limit for the catcher/processor sector (the largest sideboard amount). Opt-out vessels do not need this level of monitoring and many of them are unable to support it. The purpose of the opt-out fishery is to allow vessels which qualified for the Program, but are not dedicated rockfish boats to remain unaffected by the Program. Why such onerous measures should apply to the opt-out sector is not at all apparent. Consider reducing the monitoring burden to opt-out vessels.

*Response:* NMFS agrees in part. NMFS modified the regulations in § 679.7(n)(2)(iii) to clarify that catch monitoring requirements in § 679.84(c) through (e) during July do not apply to catcher/processor vessels assigned to the opt-out fishery. Instead, NMFS has inserted a new § 679.7(n)(2)(iv) that

establishes a prohibition if a catcher/processor vessel assigned to the opt-out fishery fails to follow catch monitoring requirements specific to the opt-out fishery in a new paragraph § 679.84(d). NMFS also clarified the application of observer coverage levels in § 679.50(c)(7)(i)(C) by removing its applicability to catcher/processor vessels assigned to the opt-out fishery and inserting a new § 679.50(c)(7)(i)(F) that specifies observer coverage levels for vessels in the opt-out fishery. Finally, NMFS modified § 679.84(c) to remove its applicability to catcher/processor vessels in the opt-out fishery. NMFS inserted a new § 679.84(d) with catch monitoring provisions specific to catcher/processor vessels in the opt-out fishery, and renumbered § 679.84(d) through (f) as § 679.84(e) through (g).

As envisioned by the Council, vessels could choose to opt-out of the Program (opt-out vessels). Opt-out vessels do not receive allocations of primary rockfish species or secondary species but are subject to sideboard limits under the Program. Sideboard fisheries will occur in July and catch of target species will be monitored at the fleet level. However, in these sideboard fisheries, halibut PSC will likely be a limiting factor and thorough halibut PSC accounting is needed to manage the July sideboards. If halibut bycatch mortality is higher than the average mortality encountered during the qualifying years, participants would not be able to fully harvest their sideboard limits of the target species. Participants will have a strong incentive to under report halibut bycatch. Catch composition data collected by an observer onboard a vessel is the best source of information for NMFS' accounting of PSC. For this reason, the monitoring tools appropriate to ensure observers are able to obtain quality samples of halibut PSC are warranted.

NMFS reviewed the monitoring and enforcement standards in the proposed rule and made several modifications to meet its needs for accurate catch accounting for the sideboard limits applicable to opt-out vessels. These standards recognize the intent of the Council to subject opt-out vessels to sideboard limits, while still providing adequate opportunity for those vessels to continue to be used in other non-central GOA rockfish fisheries. Monitoring standards that NMFS is applying differ from those applied to sideboard management for catcher/processor vessels participating in cooperatives because each cooperative will receive a sideboard limit that will require more intensive management. NMFS has modified the monitoring and

enforcement regulations applicable to opt-out vessels. Opt-out vessels must maintain 100 percent observer coverage, are prohibited from mixing hauls inside the bin, must maintain bin monitoring, and may not allow fish on deck outside the codend. Justification for these specific monitoring provisions is provided below.

NMFS currently bases its calculation of halibut PSC for catcher/processor vessels on basket samples of approximately 300 kilograms (approximately 660 pounds) or less, depending on the time and space available to the observer. Catch composition data are extrapolated (the term commonly used is "expanded") to determine halibut catch for the entire haul. The sampled hauls are extrapolated to determine the quantity of halibut for the unsampled hauls on a trip. NMFS then calculates the halibut catch rate from the sampled hauls for each directed fishery. These rates are then applied to all unobserved vessels to determine total halibut mortality. The degree to which a given quantity of halibut is expanded varies enormously depending on the fraction of observed hauls and the fraction of sampled catch in the observed hauls. In order to reduce this extrapolation and thereby increase the reliability of halibut PSC rates, 100 percent observer coverage is required aboard the opt-out vessels.

Because the distribution of organisms by size and species often differs among hauls, an aggregation of hauls (i.e., mixing two or more hauls) could create errors in the calculation of total groundfish catch. For example, if a vessel mixes hauls from two different areas or depths, species catch composition and size could be significantly different between these hauls, and a composite sample may not be representative of each individual haul. Any errors would be exacerbated as the composite sample is expanded to represent the total weight of the mixed hauls.

Adequate accounting of the quota species under the Program will rely heavily on observer species composition samples. NMFS must have confidence that the data collected are representative of actual catch and that potential sources of bias have been minimized. Because the mixing of hauls could create unacceptable data errors in quota fisheries as described above, NMFS must prohibit the mixing of hauls.

Additionally, observers face many sampling difficulties when hauls are not kept separate inside fish bins. When multiple hauls are mixed, it is sometimes not possible for the observer to determine which catch is from a

particular haul and the observer may not collect a discreet sample from each of the mixed hauls. As noted above, bias introduced into the sample by mixing of hauls is exacerbated when the sample is expanded to the weight of the entire hauls. Observers have several sampling tools available to them to determine the total catch of multiple mixed hauls. However, all of these tools result in reduced accuracy and precision for total catch determinations, especially when each of the mixed hauls has significantly different actual catch compositions. For these reasons, opt-out vessels subject to CGOA sideboard limits during the month of July are prohibited from mixing hauls.

The prohibition of mixing hauls could be accommodated under this Program in a number of ways that would not result in loss of fish quality or maneuverability concerns. For example, under the Program, vessels could slow fishing effort and the frequency with which gear is deployed to minimize the amount of time the codend must be short-wired. Also, vessels have the ability to join cooperatives under this Program and be given a direct allocation of a quota species, thereby removing the race for fish.

Recent enforcement actions concerning intentional presorting of catch to bias observed catch rates of halibut document the practice of biasing observer samples to optimize groundfish catch relative to constraining PSC or other groundfish catch. However, NMFS expects that opportunities to bias observer samples will be reduced under the Program in comparison to the status quo because of the enhanced monitoring provisions established under this rule.

The observer must be able to view all the activities of crew inside the bin that occur before the observer collects unsorted catch. This requirement would help the observer ensure his or her sample consists of unsorted catch, and that no presorting activities are occurring. The vessel is required to choose, and have approved by NMFS, one of three options to meet this requirement.

These options are:

- *Limit tank access option.* No crew would be allowed inside the bin unless 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 vessel crew must enter the tank. Also, it would be required that the observer is given the opportunity to observe activities of the people in the

tank. Industry representatives are concerned that a total ban on crew entering the fish bin would prevent the flow of fish in rockfish fisheries or in cases where mud prevents the natural flow of fish from the bin. Therefore, when informed by the observer that all sampling activities are completed for any haul, crew would be allowed to enter the bin without meeting the requirement of stopping the flow of fish and clearing catch between the tank and location where the observer collects unsorted catch. These requirements would allow observers to monitor activities within the bin or tank while maintaining sample collection protocols.

- *Line of sight option.* From the locations where the observer sorts and weighs samples and collects unsorted catch, an observer must be able to see all areas of the bin where crew could be located. This requirement may be accomplished by creating a viewing port inside the bin, and must be approved by NMFS.

- *Video option.* A vessel may provide and maintain cameras, a monitor, and a digital video recording system for all areas of the bin where crew could be located. The video data must be maintained and made available to NMFS upon request for no less than a 120 day period. NMFS would approve the installation of viewing ports inside the bins.

If the line of sight option or the video option fail to meet the standard of allowing the observer to view all the activities of crew in the bin (for example, if a camera system becomes inoperable during any fishing trip), then the vessel must revert to the limit tank access option.

Unsorted catch may not remain on deck outside of the codend without an observer present, except for fish accidentally spilled from the codend during hauling and dumping. NMFS believes that fish that remain in a codend do not present a large opportunity for presorting activities. However, unsorted catch on deck outside of a codend could easily be presorted.

Flow scales and observer sample stations assist observers to obtain accurate haul-by-haul accounting of total catch. However, NMFS will make fishery closure decisions at the sector level (i.e., the joint opt-out and limited access sideboard limit) rather than for a specific rockfish cooperative. As a result, flow scales and observer sample stations are not required for the July sideboards for vessels that chose to opt-out of the Program. Given the other catch monitoring provisions described

above, NMFS will be able to rely on observer estimates of total catch for catch accounting. Inaccuracies associated with observer estimates as well as any inaccuracies that result from the observer not having a sample station, would be expanded to the fleet wide level and averaged over the fishery. Because observer sample stations are no longer required, opt-out vessels are not required to provide space for at least 10 observer baskets.

*Comment 91:* If a vessel has opted out it is only fishing on sideboards in the month of July. From the perspective of vessels whose sideboards could be encroached upon, 100 percent coverage for sideboard species in July should be adequate.

*Response:* NMFS agrees. This comment has been addressed in the response to Comment 90.

*Comment 92:* The modifications to the factory of catcher/processors to accommodate this two year pilot Program regulations would not allow a catcher/processor factory to work efficiently in other non-rockfish fisheries. The factory configured for the Program will not work efficiently for other fisheries.

*Response:* NMFS' catch accounting needs remain the same whether for a two year Program or for one that would be in place longer. Most of the modifications to a catcher/processor factory required under the Program are also required under Amendment 79 to the FMP for Groundfish of the BSAI (71 FR 17362, April 6, 2006). Amendment 79 establishes a groundfish retention standard (GRS) which requires a minimum percentage of groundfish catch to be retained to reduce discarding. To be effective, Amendment 79 required changes to monitoring and enforcement provisions to accurately track discards. The final rule implementing Amendment 79 will be effective on January 20, 2008. Amendment 80 to the FMP for Groundfish of the BSAI, which was recommended by the Council in June 2006 and is under development and review by NMFS, also would implement similar monitoring and enforcement requirements. Amendment 80, if approved and implemented, would establish a quota-based management program for several species in the BSAI and would require measures adequate to accurately track species specific catch and discards.

The majority of the vessels eligible for the Program are subject to the requirements of Amendment 79 when fishing in the BSAI, and all of the vessels eligible for the Program would be subject to similar monitoring and

enforcement provisions when fishing under Amendment 80, if approved. Therefore, factories configured for the Program will also meet factory modification requirements for the majority of the other fisheries in which the same vessels may participate beginning in 2008.

If vessel owners wished to forego the factory modifications required by this Program, several viable options exist. Vessel owners could join a cooperative and another vessel that meets the monitoring requirements could harvest that cooperative's CQ. A vessel owner could also join a cooperative which would then lease their CQ to another cooperative. Additionally, vessel owners could choose to opt-out of the Program and be subject to reduced monitoring requirements, as detailed in the response to Comment 90.

The EA/RIR notes that "given the complexity of the [Program] and the limited time period for its effectiveness, NOAA Fisheries intends to manage the fishery to reduce costs and the complexity of quota management." NMFS has attempted to develop a monitoring and enforcement program that is cost-effective, manageable, and effective. The EA/RIR also notes that: Share-based management programs can increase the incentive of participants to misreport and high grade catch, while at the same time increasing the burden on managers to provide highly defensible estimates of catch, especially when those estimates directly impact quota holders. NOAA Fisheries has dealt with these issues by clearly articulating goals for the management of share-based fisheries and imposing new and more stringent monitoring and observer requirements as these programs have been developed. All of these programs have been unique in terms of the fleet and fisheries rationalized, and interventions developed for the programs have varied as well. The Central Gulf of Alaska rockfish pilot program is no different in this regard and development of a suitable monitoring program will involve the development of new tools to ensure defensible catch data is collected to minimize unreported discard of allocated species catch.

The monitoring and enforcement provisions in this rule for vessels in rockfish cooperatives and the limited access fishery were designed to meet the multiple objectives of NMFS' catch accounting and reporting needs. The rule has not been modified.

*Comment 93:* The provision in § 679.84(c)(1) would prohibit vessels from bringing onboard any additional catch of fish until the prior net's fish had cleared the fish bin and passed over the scale. If this rule is implemented as written we will likely be forced to fish while processing and retain the full net off bottom and short-wired. Fishing in

this manner drastically reduces the quality of fish in the net being towed. Rockfish are sensitive to losing color (i.e., value) and flesh quality from being held for long periods of time in short-wired nets, we feel it is a poor fishing practice. Second it could create a safety problem related to maneuvering in close proximity to other vessels.

*Response:* NMFS has justified the prohibition for mixing hauls in the response to Comment 90. Specifically, if a vessel mixes hauls from two different areas or depths, catch composition and size could vary among hauls, and a composite sample may not be representative of each individual haul. Any errors would be exacerbated as the composite sample is expanded to the total weight of the mixed hauls.

Adequate accounting of the species under the Program will rely heavily on observer species composition samples. NMFS must have confidence that the data collected are representative of actual catch and that potential sources of bias have been minimized to the greatest extent practicable. Because the mixing of hauls could create unacceptable data errors as described above, NMFS must prohibit the mixing of hauls.

The prohibition of mixing of hauls under the Program could be accommodated in a number of ways that would not result in loss of fish quality or maneuverability concerns as detailed in the response to Comment 90.

*Comment 94:* Catcher/processors should be allowed to install two flow scales off existing conveyors, just forward of each fish bin. This would allow the flow of fish to move over the scales and onto the sorters on both sides of the bins. This would limit potential constraints on production that one operational line may cause. The observer could monitor the opposite side from where he/she was standing through the installation of video monitoring equipment, giving the observer 100 percent visual coverage of all fish prior to its entering onto the scales. Observer random samples could be taken from either conveyor.

*Response:* NMFS agrees that two flow scales are acceptable under certain circumstances. Regulations under § 679.84(c)(4) only require that a vessel not have more than one operational line for the passage of all unsorted catch between the scale used to weigh total catch and the single location where the observer collects his samples. The vessel may divide those lines both upstream and downstream of the flow scale in order to increase processing capacity or flexibility. This requirement will only result in a production-

reducing constraint in the event that the speed with which fish could pass over the scale was a limiting factor.

NMFS notes that a reduction in throughput resulting from the use of a single scale is highly unlikely in these fisheries and the vessel may have multiple lines both upstream and downstream of the flow scale in order to increase processing capacity or flexibility. This requirement will only result in a production-reducing constraint in the event that the speed with which fish could pass over the scale was a limiting factor. Given that NMFS-approved flow scales are capable of weighing catch at rates of 60–80 metric tons per hour, NMFS does not believe that such a bottleneck would be created. NMFS also notes that all the catcher/processors and motherships participating in the AFA pollock fishery are able to effectively pass fish across a single point in spite of the fact that factory throughput in these vessels is often considerably greater than the throughput of any of the catcher/processors regulated under the Program.

Regulations at § 679.84(c)(4) do not limit the ability of a vessel to use multiple scales simultaneously, provided that each scale is used to weigh separate hauls and the live bin configuration keeps each haul flowing over the scale separately. If two hauls were kept separate and two scales were in use at the same time, by regulation, a separate observer and sample station that met the requirements described at § 679.28(d) would be required. The commenter's suggestion to allow a single observer to monitor both lines in conjunction with video monitoring is not feasible because hauls are stratified to an unknown extent inside the live bin, the samples taken from different flow scales also would not be representative of the catch for the entire haul, and the samples taken from the different sides would thus not be representative of the total catch.

*Comment 95:* Because there is no regulatory justification for applying the monitoring and enforcement requirements to the opt-out fishery, the agency should reconsider its position on this matter and restore the Council's original recommendation.

*Response:* NMFS disagrees that there is no regulatory justification for applying monitoring and enforcement standards to catcher/processor vessels that participate in the opt-out fishery. See the response to Comment 90, which addresses modifications to the requirements applicable to catcher/processor vessels in the opt-out fishery, and responses to Comment 119 and the comment on the IRFA under the

classifications section, which address the regulatory justification for these monitoring and enforcement provisions.

*Comment 96:* In § 679.84, the change in observer coverage for catcher vessels subject to an aggregate sideboard is inconsistent with monitoring provisions for the AFA catcher vessel sideboards. The AFA trawl fleet sideboard provisions are managed at the aggregate level. This fleet has halibut mortality cap sideboards by season and by fishery complex in the GOA and no additional observer coverage was required for this fleet to manage these halibut caps. The rockfish catcher vessel fleet should not be held to a higher standard than the AFA fleet. To help the agency, the industry may be willing to provide timely reporting for the flatfish catch and observer rates through a self reporting system on a trip-by-trip basis to the inter-cooperative manager, if the observer requirements stay at 30 percent. This system would be much faster and time sensitive than present agency tools and this self-reporting system would foster a joint industry and NMFS management approach. Consider reducing monitoring burden to vessels subject to the aggregate catcher vessel sideboards.

*Response:* NMFS disagrees. Observer coverage for the AFA fleet was developed for a different fishery, and a different group of vessels with different expected behaviors than catcher vessels participating in the Central GOA flatfish fishery in July. Specifically, NMFS anticipates that the vessels that are subject to sideboards in the Program will fully harvest their sideboard limits. This has not been the case historically for the AFA sideboard fisheries. In particular, several of the vessels subject to the Program sideboard limits are expected to fish in the shallow-water complex and fully utilize the shallow-water halibut PSC limit assigned to the catcher vessel sector. Because the flatfish fisheries are constrained by the halibut PSC sideboard limit, halibut are required to be discarded, and halibut PSC estimates must be derived from observer coverage. NMFS must obtain timely observer data to ensure that the halibut PSC sideboard limits are not exceeded.

The purpose of sideboard management is to protect those not receiving the benefits of the Program and other members of the Program from being adversely affected. Vessel monitoring system (VMS) information gathered from catcher vessels in the Central GOA rockfish fisheries suggests that fishing behaviors differ when an observer is not onboard a vessel. One hundred percent observer coverage is

needed to ensure all different types of fishing activities and associated catch are observed.

Additionally, vessels may engage in activities that do not represent their fishing activities when an observer is present. As an example, vessels may set and immediately retrieve a net before midnight and then again after midnight to obtain observer coverage for two days. Further, because it is likely that vessels will cooperate, it is reasonable to assume that vessels may also cooperate when fishing under a sideboard limit. This may induce vessels to select specific vessels to carry observers and fish in areas with halibut PSC rates that are lower than those that would be encountered in other areas, which would effectively lower halibut PSC rates below those that would be observed if more complete observer coverage were available. This technique would effectively prolong fishing activities because the halibut PSC rate is low and the sideboard limit would be reached later.

Further, vessels with limited observer coverage requirements could adjust the timing of their observer to maintain favorable, but inaccurate halibut PSC rates. For example, if limited observer coverage and data are available from the Central GOA flatfish fisheries in the beginning of July, information on halibut PSC use rates must be derived from other sources. The proxies for the halibut PSC use rate in the flatfish fishery may differ significantly from the actual rates that would be observed. This is particularly true in cases where NMFS is using data from other target fisheries, or from other regions of the GOA. Since the limiting factor for the July sideboard fisheries is available halibut PSC, timely and accurate PSC information at the vessel-specific level is needed to manage the fishery.

Observer data collected from a subset of vessels under these conditions are not reflective of conditions that are likely on unobserved vessels and have limited value to the management of the fishery under the Program. Without a mechanism in place to evenly distribute observer coverage throughout a season among vessels and areas, and to ensure observer samples collectively represent true fishing behaviors for the fleet, no other option currently exists than 100 percent observer coverage. The rule has not been modified.

*Comment 97:* Paragraph (c)(9)(i)(E) in § 679.84 is inconsistent with paragraphs (c)(9)(i)(A) through (D). This paragraph should be revised to require that a catcher/processor meet the requirements of paragraphs (c)(9)(i)(A), (B), (C), and (D) or (E).

*Response:* NMFS agrees that, in the proposed rule, § 679.84(c)(9)(i)(E) is inconsistent with § 679.84(c)(9)(i)(D). NMFS has modified the catch monitoring provisions applicable to monitoring fish bins onboard catcher/processor vessels so that an observer should either observe operations in the bin as required by § 679.84(c)(9)(i)(D), or notify the vessel operator that all sampling has been completed and bin monitoring is no longer required, as required by § 679.84(c)(9)(i)(E). NMFS has also modified § 679.84(c)(9)(i) to note that the vessel operator must comply with the conditions of § 679.84(c)(9)(i)(A) through (D), or § 679.84(c)(9)(i)(A) through (C) and (E).

*Comment 98:* Paragraph (c) of § 679.84 states that monitoring and enforcement requirements apply at all times that a catcher/processor has fish on board that were harvested under a CQ permit or in the limited access fishery or while subject to sideboards (as in the opt-out fishery in July). This requirement would mandate either that the vessel offload after completing the rockfish fishery, or carry the additional monitoring and enforcement coverage into its next fishery. Either requirement is excessive and unnecessary. Offloads are extremely expensive in terms of fuel to and from the offload point, lost fishing time, etc. Once the vessel has completed the rockfish fishery it should no longer be subject to those monitoring and enforcement requirements. The coverage during the fishery is more than adequate to monitor how much fish was caught during that time.

*Response:* NMFS disagrees. Full offload will not be required after completing fishing in a Program fishery and, as the commenter notes, a vessel owner may choose between the cost of continued compliance with the monitoring and enforcement requirements or the cost of a premature offload. NMFS also notes that many of the monitoring and enforcement costs (continued weighing of all catch, continued availability of an observer sampling station) will not increase significantly if extended for the remainder of a trip. Continued high level observer coverage for non-rockfish portions of the trip may impose significant costs on the vessel. However, given that the vessel will be required to return to port in order to drop off extra observers in any event, the additional fuel costs associated with an early offload should be minimal. Further, the potential loss of fishing time can be mitigated by the increased flexibility in scheduling fishing activities afforded by the Program.



The Program will implement harvest restrictions for multiple species while fishing in the GOA. Vessels subject to the Program also could simultaneously harvest fish in the GOA under several other different management programs. Without adequate monitoring and enforcement provisions it would be difficult to account for fish under each possible scenario. For example, a vessel may choose to target fish subject to open access management, and then target fish subject to the Program during the same trip. Each of these species groups could be subject to differing harvest limitations, including MRAs. This necessitates separate accounting of catch for each specific program and purpose. NMFS must be able to ensure compliance with regulations governing each fishery and there must be an authoritative record of the amount of fish harvested under the Program.

The monitoring objectives and management structure are different between quota fisheries and non-quota fisheries, and switching monitoring programs mid-trip would create significant enforcement challenges. For example, if primary rockfish species or sablefish harvested under Program and non-Program fisheries were combined in an offload without the continued monitoring provisions, it would be impossible to verify non-Program catch from Program catch. Consequently, monitoring standards would need to remain in place for a vessel subject to the Program until the vessel offloaded all the Program catch.

*Comment 99:* Paragraphs (c)(9)(iii)(A) through (D) of § 679.84 requires storage of all video data from an entire trip for no less than 120 days after the start of the trip. If it is sufficient to have an observer watch activities in the tank (under the other two options) and the observer has a video monitor at their work station (section G), why is it necessary to record and store the video? There are concerns about the confidentiality of video data, particularly since this would be a “voluntary” collection. If an observer’s statement of what they observed is sufficient in the other options, it should be sufficient with the video option. There should be no requirement to store or retain the video data.

*Response:* NMFS disagrees. Observers will be required to complete other duties and will not be able to monitor the video output at all times. If the video is recorded, they will be able to review the video at a later time to ensure no presorting occurred during their sampling. Also, observers may not be aware of all potential violations that may have occurred on the vessel and

may only become aware of them during the debriefing process. The video data will be used as a tool to verify the information the observer provides during their debriefing. One of the goals of this Program is to determine the feasibility of a large scale GOA rationalization project. NMFS needs to evaluate how the video system functions aboard each of the vessels.

See response to Comment 100 for confidentiality of video data concerns. This collection would not fit under “voluntary” collection. If NMFS requests the video data it must be submitted.

*Comment 100:* The costs of installation and maintenance of a video monitoring system for a two year program, based on unfounded assumptions, are excessive. If we install a video monitoring effort as prescribed by the regulations, how will NMFS exercise custody and control of the video. Will the video belong to our company even after we provide it to NMFS? Can the video be used in a court of law against our company?

*Response:* NMFS believes a substantial enforcement need exists to monitor crew activities within fish bins. A video monitoring system is one of three options designed to meet this need (see response to Comment 90). Recent enforcement actions concerning intentional presorting of catch to bias observed catch rates of halibut highlights behavior that biases observer samples to optimize groundfish catch relative to constraining PSC or other groundfish catch. Given the nature of this quota fishery, additional incentives may exist to sort limiting PSC or target species, particularly halibut, prior to an observer collecting a species composition sample. This potential was described in the preamble to the proposed rule (71 FR 33068). NMFS expects that opportunities to bias observer samples will be reduced under the Program in comparison to the status quo because of the enhanced monitoring provisions established under this rule. The EA/RIR/IRFA prepared for this action described the anticipated costs of a video monitoring system, if the vessel owner chooses the video option to meet the bin monitoring requirements. NMFS considers these costs reasonable compared with the expected reductions in bias introduced into observers’ samples.

Video data collected as a requirement of regulations belong to the vessel owner and, according to regulations at § 679.84(c)(9)(iii)(D), must be retained onboard the vessel for 120 days. These video data must be submitted to NMFS when requested. When NMFS takes

possession of these data, NMFS will maintain them for analytical or enforcement purposes within the confidentiality processes required by law.

NMFS agrees that there are confidentiality issues associated with the video surveillance requirements. Were a surveillance video requested by the public, NMFS would apply certain laws controlling the release of information it possesses. These laws include the Freedom of Information Act, the Trade Secrets Act, and the Magnuson-Stevens Act. According to Magnuson-Stevens Act Section 402(b), information that is submitted to NMFS pursuant to a requirement under the Act is considered confidential. Additionally, the Freedom of Information Act and Trade Secrets Act may prevent release of certain commercial information, which may include video data. In addition to the statutory protections, NMFS complies with regulatory guidelines at 50 CFR 600.415 *et seq.*, which control collection, handling, and disclosure of confidential fisheries information. Although confidential fisheries data are not publicly disclosed, legal guidelines do permit data release in aggregate form that does not reveal the identity of the person submitting the information or result in competitive harm. The commenter should consult their attorney for cases involving video data requested as part of a lawsuit against the company.

*Comment 101:* Paragraph (c)(9)(iv) of § 679.84 gives an observer the authority to insist on having no person in the tank if the observer “determines that a monitoring option selected by a vessel. . . fails to provide adequate monitoring of all areas of the bin where crew could be located.” An observer could abuse this discretion by insisting that every inch of the tank be visible from the observer station, which is clearly not necessary or possible. The observer should be able to challenge the viability of the monitoring plan and document their concerns without forcing the vessel to operate without a person in the tank.

*Response:* NMFS will certify a bin monitoring method that meets all regulatory requirements during the annual observer sample station inspection required under § 679.28(d). Vessels that choose to opt-out of the Program are not required to have an observer sampling station, but must contact NMFS to arrange to certify their bin monitoring method as required under § 679.84(c)(4)(v). Documentation relating to this certification is required to remain aboard the vessel while the vessel is engaged in fishing activities.

NMFS will use photographs and diagrams to provide the views of the bin for the line of sight option or the video option. Any portions of the bin that do not need to be monitored will be noted on the certification. If at any time the observer has doubts about the applicability of bin monitoring requirements, they must consult the sample station or bin monitoring certification and verify that the bin monitoring differs from the certification. Any decision made by the observer will be made in consultation with their NMFS inseason advisor. The rule has not been modified.

*Comment 102:* The provision in § 679.84(c)(2) that requires a large new and costly observer sampling station to be installed as a part of a two year rockfish demonstration program is not warranted or practical. The costs associated with the installation and major modifications to the existing vessel's factory are not justified nor could cost be amortized over a two year program.

*Response:* NMFS disagrees. Although this Program is intended to be a pilot project for the development of future GOA rationalization initiatives, the interim status of the Program does not obviate the need for adequate monitoring and enforcement. Because this Program is intended to test numerous aspects of multispecies quota management in the GOA, adequate monitoring and enforcement standards are essential for a comprehensive review. Further, vessels subject to this Program are subject to the same sample station requirements as in Amendments 79. This was done in part to reduce costs incurred by catcher/processors that also participate in the BSAI. For additional discussion, see the response to Comment 90.

Observer sample stations facilitate the collection of quality unbiased species composition samples. Each catcher/processor vessel choosing to fish for a rockfish cooperative or in the limited access fishery will be required to provide a location for observers to collect samples. Under the Program, observer samples will be used for catch accounting of quota species.

The proposed rule and the final EA/RIR, discuss the need for haul-by-haul catch monitoring standards to monitor and support this Program. NMFS' ability to adequately account for quota catch would be severely compromised or impossible under current regulations because these regulations do not provide the information needed to determine the haul-by-haul accounting of quota catch. NMFS has determined that the observer sampling station

requirements are necessary to adequately account for quota catch under this Program and are necessary and justified.

*Comment 103:* The proposed rule appears to limit a vessel to a single operational line and scale. Until publication of the proposed rule, we had the understanding that vessel owners could install two operational lines with flow scales so as not to impede the flow of fish out of the fish bin or through the factory. The rule limiting a vessel to one operational line results in a significant reduction in productivity and financial impact that was never analyzed during the Council process.

*Response:* NMFS has addressed operational aspects of this comment in the response to Comment 94. As noted there, NMFS does not anticipate that the number of flow scales will limit production capacity.

The EA/RIR/IRFA prepared for this action described the costs associated with the required monitoring provisions. These costs included the costs associated with flow scales and sampling station installations for one scale. While the EA/RIR/IRFA did not describe the costs associated with two observers available to sample at all times (necessitating a total of four observers per vessel), two flow scales, and two sample stations, these costs could be doubled to provide an estimate of total costs.

*Comment 104:* The effect of the regulation at § 679.84(c)(5) will be to significantly slow down fishing operations, because the vessel will no longer be able to use the deck area to hold fish while it resets the net. This standard industry operating practice of holding fish on deck has been allowed for the past 15 years and if prohibited will again increase the unit cost of production.

*Response:* A vessel operator may still use deck area for storage but all fish must be contained inside the codend. If vessel operators leave fish on deck outside a codend, incentives exist to sort fish without an observer present. Recent enforcement actions concerning intentional presorting of catch to bias observed catch rates of Pacific halibut highlight this practice of biasing observer samples to optimize groundfish catch by minimizing the potential constraints of properly observed halibut PSC or other groundfish catch. Fish on deck that are stored inside a codend are less likely to provide presorting opportunities.

Vessels have the ability to join cooperatives under this Program and receive a direct allocation of a quota

species, thereby removing the race for fish. Vessels will have the option to slow fishing and therefore reduce the need to store fish on deck outside the codend. The rule has not been modified.

*Comment 105:* In § 679.84(c)(8), turning control of the belt operations over to the observer is questionable. This not only has the effect of slowing down the production, but now puts the observer in direct control of factory operations. Does the observer assume any liability for the consequences of the stopping of the belt operation if it causes an injury?

*Response:* Regulations at § 679.84(c)(8) do not require observers to have physical control of belt operations. Rather, regulations require vessel operators to ensure crew members provide reasonable assistance to observers during the course of their sampling activities. For observers to collect random and discreet samples, they will need to request the crew to stop and start belts in the factory. Additionally, this will allow observers to help ensure no one is in the bin while they collect their sample. An observers' ability to request that belts be cleared or slowed down will not change current requirements. Furthermore, observers are advised during training not to perform duties of the crew aboard the vessels. Because observers will not have direct, physical control of the belts and will not be making the decision to stop or start a belt if a safety situation exists, the observer will not assume the liability. The rule has not been modified.

*Comment 106:* As an active participant in the development of the two year demonstration Program, our company never envisioned the far reaching, invasive, and costly regulation requirements being proposed in these regulations. Industry envisioned the two year experimental Program to be a program that would allow companies to catch and process fish without imposing significant costly catch or processing restrictions. Abandon these regulations and conduct a series of meetings with the industry involved to develop more reasonable and workable monitoring and enforcement provisions. The presumptions made by the agency of the accuracy and level of monitoring required to implement this Program are not in line with industry expectations. The proposed rule far exceeds what a reasonable person would look for to ensure the integrity of the Program. The participants within the Program should judge what accuracy is required for the accounting of catch within the cooperative.

*Response:* NMFS disagrees. Although the costs and extent of the monitoring and enforcement provisions required by this rule may be greater than desired by the commenter, NMFS and the Council provided extensive public opportunity for discussion and analysis of these provisions throughout the development of the Program. Additionally, in response to public comments on the proposed rule, NMFS has modified the final rule to reduce the burden of the monitoring and enforcement standards on the fleet while maintaining NMFS' ability to meet the monitoring and enforcement objectives of the Program (see the responses to Comments 50 and 90).

In developing the Program, NMFS and the Council analyzed and discussed the management, monitoring, and enforcement of the Program. NMFS and the Council clearly articulated the need for high quality monitoring and enforcement for this quota-based Program in the EA/RIR/IRFA prepared for the proposed rule and the final EA/RIR. The need for and nature of these monitoring and enforcement provisions are contained throughout these documents, and were addressed at Council meetings in 2004 and 2005 during which the Program was developed (see the Council website for additional information: <http://www.fakr.noaa.gov/npfmc>).

A series of public meetings were held with industry to develop workable monitoring and enforcement provisions. In addition to work done in conjunction with the Council process, NMFS held two public meetings on June 27, 2005, and December 16, 2005, (see 70 FR 72791 and 70 FR 36555), to gather industry input for the development of the monitoring and enforcement requirements for the Program. The two public meetings were held in Seattle, Washington, and addressed monitoring and enforcement requirements that would apply to the fishery participants, including the catcher/processor sector, under Amendment 80 and the Program. These meetings were well attended by numerous representatives from the affected public. Comments received at these meetings were considered and incorporated into the monitoring and enforcement provisions contained in this rule. After the publication of the proposed rule on June 7, 2006, NMFS held two public meetings to further explain the nature of the Program, and monitoring and enforcement requirements (see 71 FR 35859).

*Comment 107:* Reconsider approval and implementation of this rule or delay implementing the regulations until at least 2008, when we will know if

Amendment 80 is approved and implemented. These regulations will result in exorbitant costs and duplicate regulations that have been promulgated under Amendment 79 and will again be promulgated under Amendment 80 of the FMP.

*Response:* NMFS does not intend to delay the effective date of the Program. As the Commenter indicates, regulations already published under Amendment 79 to the BSAI groundfish FMP (April 6, 2006, 71 FR 17362) contain the same monitoring requirements as those implementing the Program, with limited modifications (e.g., bin monitoring requirements under § 679.84(c)(9)). Additionally, the draft EA/RIR/IRFA reviewed by the Council during the development of Amendment 80 analyzes many of the requirements of Amendment 79 and this Program. These monitoring provisions are necessary for monitoring, enforcement, and biological and management data collections. Where practicable, NMFS has intentionally promulgated or intends to promulgate regulations that are similar or the same among multiple management programs. NMFS' intent in creating similar monitoring provisions is to allow vessels that participate in multiple management programs to comply with each program's monitoring and enforcement provisions simultaneously and as efficiently as possible. Participants may meet many of the monitoring requirements of Amendment 79 and Amendment 80, if approved and implemented, by making the catcher/processor factory modifications required for this Program, and effectively offset the costs associated with vessel modifications and down time (see response to Comment 93).

Under the Program, options exist for the vessels that do not wish to make these modifications in the first year of the Program. A vessel operator could choose to opt-out of the fishery and have the reduced monitoring requirements and observer coverage apply; join a cooperative and arrange to have other vessels that meet the monitoring requirements fish the CQ for the cooperative; or create a cooperative and lease the resulting CQ to another cooperative. All of these options forego the need to modify the vessel, provided that vessel is not used to fish in the GOA during July. The rule has not been modified.

*Comment 108:* If vessels are fishing under a rockfish cooperative CQ permit in May or June, they can target rockfish using the CQ permit, or vessels assigned to a rockfish cooperative could target flatfish fisheries when not fishing under

the CQ permit. Prior to July, vessels would not be subject to sideboard limits. If the vessels are fishing in July, they can target on rockfish using their CQ permit, or target other fisheries, but would be subject to July sideboard limits.

*Response:* NMFS agrees. Vessels that are participating in a rockfish cooperative can begin fishing under a CQ permit on May 1. Harvests made by vessels in a rockfish cooperative that are not fishing under a CQ permit will be subject to current regulations regarding target species, halibut PSC accounting, and MRAs in May and June. From July 1 through July 31, vessels in a rockfish cooperative may fish under the CQ permit, and fish harvested under that CQ permit will not be debited from the sideboard limit that is applicable to that vessel. However, if that vessel is not fishing under a CQ permit, catch by that vessel will be debited from the sideboard limit that is applicable to that vessel. After July 31, sideboard limits are not applicable to that vessel.

*Comment 109:* As participants in the CGOA rockfish fishery, we do not want to see our allocation eroded by our own participation in second season GOA fisheries or our sideboard fisheries prosecuted prior to prosecution of our allocation.

*Response:* Sideboard limits are applicable only during July. If an eligible rockfish harvester chooses to operate in non-Program fisheries prior to July, existing regulations would apply.

*Comment 110:* According to the draft EA/RIR/IRFA, the 1999 rockfish opening date was July 4. Table 28 in part 679 indicates that the opening date for all three primary rockfish fisheries was July 1. The correct opening date is July 4. The regulations should be changed.

*Response:* NMFS agrees and has corrected Table 28 to part 679. Table 1 of the final EA/RIR prepared for this action as well as records maintained by NMFS note that the opening date for all three primary rockfish fisheries in 1999 was July 4, not July 1.

*Comment 111:* According to the EA/RIR/IRFA, Pacific cod will be managed as a hard cap for the catcher vessel sector and managed for the catcher/processor sector using an MRA. The following text in the preamble to the proposed rule is inconsistent with these management measures: "The Council recommended managing Pacific cod in the catcher vessel sector using an MRA that would reflect historic harvest rates but provide more flexibility for the fleet than a fixed hard cap" allocation of CQ might provide."

*Response:* NMFS agrees that the preamble text is inconsistent with the regulatory text in § 679.20(e) and in Table 30 to part 679. The regulatory text is correct and the error in the preamble is typographic.

*Comment 112:* Table 30 to part 679 lists the wrong MRA percentage for Skates and Other Species at 2.0 percent. These values should be 20 percent, which is consistent with what is presently in the regulations in Table 10 to part 679. The Council recommended changing the MRA percentage for only certain species. The Council did not recommend changing the MRA percentages for Skates and Other Species.

*Response:* NMFS agrees and has changed the MRA for "Skates" and "Other Species" to 20.0 percent. The text in Table 30 to part 679 of the proposed rule listing an MRA of 2.0 percent was a typographic error. This change is consistent with the MRAs established for other non-allocated secondary species.

*Comment 113:* The Council motion allocates a percentage of the overall halibut mortality cap to Program participants, either as cooperative allocations or as allocations to the limited access fishery. During the development of the sideboard provisions, industry participants have always assumed that the halibut mortality from the third season allocation was being modified by Council action for the Program. This means that the halibut apportionment for trawl gear for the third season (July 1) should be the only halibut apportionment that should be modified for the year, rather than modifying the annual GOA deep complex halibut mortality limit of 2000 mt.

Currently, the third season trawl halibut mortality apportionment is 400 mt for deep-water complex species, and 200 mt for shallow-water complex species. Allocation to the Program for halibut PSC CQ should be taken off this 400 mt apportionment instead of off of the entire 2000 mt limit. This will make the third season halibut sideboard cap functional for the industry where the catcher vessel Program participants are sideboarded at 101 mt in the deep-water complex, and at 137 mt in the shallow-water complex. If the halibut apportionments are not taken from the third season, then the July sideboard caps would not be indexed correctly. It is inappropriate to take the Program's halibut PSC allotment from the total yearly halibut cap, because there are many other fisheries that depend on that halibut PSC allotment. Additionally, the shallow complex apportionment for the

third season should remain unchanged at 200 mt for the sideboard cap to have any meaning.

*Response:* NMFS agrees that the use of halibut mortality in the Program should be debited from the trawl apportionments of halibut PSC currently made for fishing in the third season (July 1 through September 30). The mechanism that the Commenter describes for accounting for halibut PSC use in the Program is consistent with NMFS' intent to manage halibut PSC without modifying apportionment of halibut PSC available to the non-Program participants in other seasonal apportionments. No modification to the rule has been made.

*Comment 114:* Paragraph (h)(1) of § 679.81 states that rockfish cooperatives may harvest non-allocated species up to the MRA limits established in Table 30 to part 679. The regulation should specify that other non-allocated species may be harvested up to the MRA in Table 10 of GOA specifications. The same clarification should be made in § 679.81(h)(2) and (3).

*Response:* Table 30 to part 679 does note the MRA percentages that are applicable to non-allocated species and describes the amount that vessels participating in fishing under a CQ permit may harvest. Vessels not fishing under a CQ permit, but assigned to a rockfish cooperative, are subject to the MRA percentages established in Table 10 to part 679. Table 30 to part 679 has been modified to clarify this intent.

*Comment 115:* Table 30 to part 679 should be modified because the MRA for thornyhead rockfish for the limited access fishery seems to be missing.

*Response:* NMFS agrees. NMFS has modified Table 30 to part 679 to include a row for the MRA for thornyhead rockfish that would be 4.0 percent of the basis species for vessels fishing in the limited access fishery. This amount is consistent with the MRA percentages established for other rockfish species (e.g., northern rockfish) that may be incidentally harvested in the limited access fishery, except shortraker and roughey rockfish for which the Council recommended a lower MRA percentage. This MRA percentage is also consistent with the intent to lower MRA percentages for secondary species. As noted on page 22048 of the preamble to the proposed rule (71 FR 33040), "the secondary species MRA in the limited access fishery would be reduced from current MRA levels. This approach would reduce the incentive for eligible harvesters to participate in a limited access fishery and "top off," or

selectively target high value, secondary species."

*Comment 116:* Modify § 679.84(f)(3) and Table 10 to part 679 to clarify that rockfish cooperative MRAs apply to vessels fishing CQ only, and that the MRAs for northern rockfish, pelagic shelf rockfish, and Pacific ocean perch in the limited access fishery apply when directed fishing for those species is closed. Add an MRA amount for thornyhead rockfish in the limited access fishery for catcher vessels and catcher/processors.

*Response:* NMFS agrees. However, the comments are applicable to Table 30 to part 679, not to § 679.84(f)(3). Specifically, NMFS has modified Table 30 to note that the MRAs that are applicable to "Rockfish Cooperatives" apply only to vessels that are assigned to fish the CQ for a rockfish cooperative, but are not applicable to vessels that are assigned to a rockfish cooperative but fishing in other fisheries. Those vessels would continue to be subject to MRA restrictions applicable to the specific non-Program fishery in which they are engaged under Table 10. This provides additional clarification lacking in the original text of the table.

MRA percentages are applicable only when a directed fishery for a species is closed and that species is an incidental catch species as described under § 679.20(e)(1). No change is necessary to indicate when the MRA percentages apply to northern rockfish, pelagic shelf rockfish, and Pacific ocean perch in the limited access fishery.

An MRA percentage for thornyhead rockfish has been applied under the response to Comment 115.

*Comment 117:* Ban all trawling completely. It decimates the bottom for forty years before regrowth can take place. It is extremely anti-environmental. Cut all quotas by 50 percent this year. It is clear that the marine life in this area is starving when so many metric tons are taken by these greedy commercial fish industry profiteers, who are willing to decimate every single species. It is time to put a hold on the enormity of this depredation by these profiteers.

*Response:* This action is not intended to ban specific gear types. Amendment 68 is intended to provide an opportunity to implement the Program as directed by Congress and developed in coordination with the Council. The Final EA/RIR developed for Amendment 68 did review the impacts of this action and concluded that it would not result in a significant impact on the human environment. Each year, NMFS and the Council review the status of stocks through a public scientific

review process to ensure conservation of the resource before allocating TAC or quota. Banning trawling or reducing harvests are not the goals of this action and would need to be addressed in a separate regulatory action developed through the Council process.

*Comment 118:* NMFS' apparent purpose for sweeping all vessels with any legal rockfish harvests during the statutory qualification period into the Program is to avoid a situation in which owners of multiple vessels consolidate the history of one of more vessels under a cooperative, and use the other or others to increase capacity in non-rockfish fisheries. This is not a concern with vessels that have not participated in the rockfish fisheries at more than a minor level because they have nothing of value to transfer. Develop a reasonable threshold that excludes such vessels from the Program to remove the complexities attendant to the opt-out fishery.

*Response:* The Council and NMFS jointly developed the Program. The Council chose to use criteria that included vessels with limited historical harvests. This choice was made in consideration of the guidance provided in Section 802, the Magnuson-Stevens Act, and through the Council's public process. NMFS does not disagree that alternative sideboard provisions could have been developed for the vessels that choose to participate in the opt-out fishery. However, the decision to require those vessels to comply with sideboard limits was deliberated through the Council's public process, and the regulations developed by NMFS are consistent with the Council's motion recommending this action and Amendment 68. The rule has not been modified.

*Comment 119:* The Program stands on an unusual footing given that Congress directed the "Secretary" to establish the Program. Once the agency turned responsibility for the Program development over to the Council, it is not clear that NMFS can, without explanation, ignore the Council's recommendations with respect to the opt-out fishery. In so doing, NMFS has arbitrarily and capriciously failed "to consider an important aspect of the problem" that the Council has identified and resolved.

*Response:* NMFS has not ignored the recommendations of the Council with respect to the opt-out portion of the Program nor has it acted in an arbitrary and capricious manner. Section 9.2 of the Council motion recommending this action clearly states that a vessel that chooses to participate in the opt-out fishery is subject to sideboard limits

during July. NMFS merely placed into regulations the Council's intent. See also the response to Comment 90.

*Comment 120:* The Magnuson-Stevens Act imposes a substantive standard on NMFS and requires it to assess the benefits and burdens of its management measures and monitoring programs, in particular under National Standards 7 and 8. These regulations violate National Standard 7 of the Magnuson-Stevens Act. Failure to overlook such an important issue also raises questions of reasoned decision-making.

*Response:* National Standard 7 states that, "conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." National Standard 8 states that "conservation and management measures shall, consistent with the conservation requirements of this Act (including prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities."

NMFS has determined that this final rule meets the Magnuson-Stevens Act national standards. NMFS reviewed the requirements of all national standards, including National Standards 7 and 8, and explicitly address how the Program meets those standards in Section 4.1 of the final EA/RIR prepared for this action. Additionally, the final EA/RIR addresses issues related to the national standards. The final EA/RIR addresses the monitoring and enforcement costs of the Program and potential effects of the allocations on fishery dependent communities. Monitoring and enforcement needs and costs are also addressed in the classification section of the preamble to the proposed rule and this final rule.

#### **Additional Changes from the Proposed Rule**

NMFS made the following changes from the proposed rule to the final rule to clarify regulatory language or correct mistakes in the proposed rule.

In § 679.2, NMFS modified the definition of "Rockfish Program fishery" to specifically describe the fisheries that are managed under the Program, specifically, rockfish cooperatives, rockfish limited access fisheries, opt-out fishery, and the entry level fisheries. The terms "Rockfish fishery" and "Rockfish Program Fishery" are used in several places in the regulatory text, and NMFS has replaced the term "Rockfish Fishery" throughout the regulatory text

with the term "Rockfish Program fishery" to ensure greater consistency and clarity.

In § 679.7, NMFS made several modifications to prevent vessel operators from circumventing monitoring and enforcement provisions established for rockfish cooperatives, rockfish limited access fisheries, and the opt-out fishery by using an LLP license that is not assigned Rockfish QS. By removing the NMFS approval process for adding and removing specific vessels eligible to fish for a rockfish cooperative through a CQ permit modification in response to Comment 50, NMFS changed the method used to ensure that the activities of specific vessels is monitored adequately and catch are properly deducted. These changes are consistent with the intent of the monitoring and enforcement provisions in the proposed rule to adequately monitor all catch by vessels under the Program.

First, NMFS modified the prohibitions in § 679.7(n)(1)(i) through (iii), (n)(2)(i), (n)(2)(ii), (n)(3)(i), (n)(3)(ii), and (n)(3)(iv) to apply vessel monitoring and enforcement standards to vessels that are assigned to a rockfish cooperative, limited access fishery or opt-out fishery, even if those vessels are not named on an LLP license with Rockfish QS. This ensures that all vessels in the Program are properly monitored regardless of the specific LLP license used by that vessel.

Second, NMFS inserted a new prohibition in § 679.7(n)(1)(v) that prohibits a vessel from being used in more than one Program fishery in a calendar year. This change mirrors existing requirements in § 679.7(n)(1)(iv) that apply to LLP licenses. This change is necessary to ensure that all vessels fishing in the Program are properly assigned to only one Program fishery. Otherwise, vessels could be assigned to more than one cooperative, or to the limited access fishery and a cooperative, limiting the ability for NMFS to adequately monitor and track harvests and creating the potential for a small number of vessels to be assigned to multiple cooperatives.

Third, NMFS added text in § 679.81(i)(3)(ix) to clarify that a vessel may only be assigned to fish for one rockfish cooperative in a calendar year.

In § 679.28(b)(2)(v) and (d)(8)(ii), NMFS added provisions to allow observer sampling station and scale inspections in Kodiak, Alaska, in addition to Dutch Harbor, Alaska, and in the Puget Sound area of Washington State. NMFS made this change to accommodate the catcher/processor fleet that will be active in the waters of

the Central GOA near Kodiak. This change is also consistent with the locations where bin monitoring inspections can occur for catcher/processor vessels assigned to the opt-out fishery.

In § 679.80(f)(6), NMFS revised the regulatory text concerning the use of VMS to incorporate changes made to the VMS regulations that were made to this section after the proposed rule for the Program on June 6, 2006 (71 FR 33040). On June 22, 2006 (71 FR 36694), NMFS published a final rule to modify VMS requirements to incorporate necessary changes. NMFS is incorporating those changes in this rule.

In addition, NMFS is correcting a typographic error in the regulations that were published in the EFH final rule (71 FR 36694, June 28, 2006). The EFH final rule incorrectly revised § 679.28(f)(6)(i) to limit the VMS operation to when the vessel is “in” a fishery requiring VMS. That error unintentionally changed the provisions for VMS operation from the original intent. The VMS requirement for the pollock, Pacific cod, and Atka mackerel fisheries required the use of VMS whenever the endorsed fishery is open, regardless of whether the vessel is currently participating in the open fishery. This rule would remove the word “in” preceding “any fishery” to ensure this provision is interpreted consistent with its original intent.

In § 679.80(e)(3), NMFS changed the deadline for submitting the application to participate in the Program from December 1, 2006, until January 2, 2007. This change will provide potential

participants additional time to prepare their applications after the effective date of this rule.

In § 679.80(e)(4) and § 679.81(e)(3), NMFS added a requirement that the applicant provide Tax Identification Numbers (TINs), either Social Security Numbers for individuals or Employer Identification Numbers for corporations, on fishery permit applications. NOAA has the authority to require applicants for federal fishery permits to provide TINs pursuant to the Debt Collection Act. In addition NMFS will collect information on the date of birth of an individual or the date of incorporation of a corporation. These changes affect the application to participate in the Program, and the annual applications for CQ, the rockfish limited access fishery, and the opt-out fishery.

In § 679.82(f)(2)(iii), (g)(2)(iii), and (h)(2)(iii) NMFS clarified regulatory language stating that catcher/processor vessels that are designated for a rockfish cooperative, rockfish limited access fishery, or opt-out fishery in the annual application to participate in those rockfish fisheries are subject to the sideboard limits that apply to those fisheries. The regulatory text was unclear and has been corrected to better reflect Council intent and reduce confusion for the reader.

In § 679.84(c)(5), NMFS added a sentence which clarifies that fish accidentally spilled from the codend must be moved to the fish bin. This clarification ensures that an observer is provided an opportunity to sample all catch that is aboard a vessel.

In § 679.84(c)(9) and (c)(9)(v), NMFS added text to clarify that catcher/processor vessels assigned to the opt-out fishery must arrange for inspection of their bin monitoring option. Each option must be inspected and approved by NMFS annually and prior to its use for the first time. NMFS had intended to approve bin monitoring options during the annual observer sampling station inspection. Because NMFS removed the requirement for an observer sampling station on these vessels, NMFS must certify bin monitoring options through an alternative approval process. These changes do not increase the requirements that applies to these vessels, but merely clarifies the approval process.

In Table 29 to part 679, NMFS changed the date that is used to establish the amount of the initial Rockfish QS pool assigned to the catcher/processor and catcher vessel from December 31, 2006, to January 31, 2007. This change accommodates the change in the date of the application to participate in the Program and provides NMFS with time to review any claims for Rockfish QS prior to fixing the initial Rockfish QS pool used to calculate use caps.

NMFS also made several editorial corrections to the regulatory text for improved readability and accuracy. These changes clarify or correct errors in the phrasing of particular provisions. Changes from the proposed to final rule that may have a substantive effect are indicated in the following table:

Correction	Section modified
Changed the term “poundage” to “tonnage” throughout the regulatory text referring to TAC issuance of halibut PSC use because NMFS issues TAC and halibut PSC in metric tons, not pounds.	Throughout the regulatory text
Replaced the term referring to the fisheries opened by the State of Alaska “for which it adopts a Federal fishing season” with the term “for which it adopts the applicable Federal fishing season for that species” to provide clarity when referring to multiple groundfish fisheries opened in State waters.	Throughout the regulatory text
Replaced the term “until” with “through” when referring to actions that are effective up to and including a specific date and time.	Throughout the regulatory text
Replaced the term “authorized representative” with “designated representative” when referring to the individual acting on behalf of a rockfish cooperative to avoid confusion with individuals who may be authorized representatives of the corporation.	Throughout the regulatory text
Modified the definition of an rockfish entry level harvesters to be consistent with § 679.80(b)(2)	§ 679.2, Under the definition of <i>Rockfish entry level harvester</i>
Modified the definition of an eligible rockfish entry level processor to be consistent with § 679.80(c)(3)	§ 679.2, Under the definition of <i>Rockfish entry level processor</i>
Added the term “trawl and non trawl fisheries” to the definition of “Rockfish entry level fishery” to clarify that there are two gear types that may be used in the entry level rockfish fishery.	§ 679.2, Under the definition of <i>Rockfish entry level fishery</i>

Correction	Section modified
Added the terms "BSAI" and "catcher vessel" to clarify that Pacific cod sideboard limits apply only to catcher vessels in the BSAI.	§ 679.2, Under the definition of <i>Sideboard limit for purposes of the Rockfish Program</i>
Deleted the term "eligible" in the definitions of a "rockfish entry level harvester," and "Rockfish entry level processor." The term "eligible" is redundant.	§ 679.2, Under the definition of <i>Rockfish entry level harvester</i> and <i>Rockfish entry level processor</i> and throughout the regulatory text
Changed the term "entry level fixed gear" to "entry level longline gear." The term longline is defined in § 679.2, but the term fixed gear is not. Longline gear includes hook and line gear, jig gear, and troll gear. These gear types are commonly referred to as fixed gear.	§ 679.2, Under the definition of <i>Rockfish entry level harvester</i> and throughout the regulatory text
Corrected the citation of provisions related to FFP issuance in § 679.4(b)(10) to § 679.4(b)(6)(iii).	§ 679.4(b)(10)
Reordered the table in § 679.4(a)(1)(xii) so that the citations are referenced in the order in which they occur in the regulations.	§ 679.4(a)(1)(xii)
Replaced the word "revoked" with "voided." The term revoked has a specific meaning that refers to an enforcement action and is not applicable in this provision.	§ 679.4(n)(1)(ii)(D)
Added mailing as an option for submitting a termination of fishing declaration	§ 679.4(n)(2)(iii)(C)
Corrected the citation in this section from (f) to (g).	§ 679.4(n)(3)(ii)(A)
Replaced the term "permitted" with the term "authorized" in the regulatory text when referring to actions that NMFS authorizes (e.g., entry level rockfish fishery) but for which NMFS does not issue a specific permit.	Primarily in § 679.5 and in other sections throughout the regulatory text
Added the requirement to include a NMFS person ID in the Rockfish cooperative termination of fishing declaration.	§ 679.5(n)(2)(iii)(C)
Clarified that a rockfish cooperative termination of fishing declaration is effective from the date of approval to the end of the calendar year.	§ 679.5(n)(2)(v)
Corrected the citation to apply to § 679.81(g)	§ 679.5(n)(3)(ii)(A)
Clarified that the prohibition on retaining primary rockfish species when fishing under a CQ permit applies only to primary rockfish species harvested in the Central GOA	§ 679.7(n)(1)(i)
Inserted a prohibition which clarifies that it is prohibited to harvest primary rockfish species, secondary species, or use halibut PSC assigned to a rockfish cooperative without a valid CQ permit.	§ 679.7(n)(1)(viii)
Corrected the citation to apply to § 679.82(d) through (h).	§ 679.7(n)(2)(iii)
Changed the use of the work "that" to "any" to clarify that the prohibition applies to exceeding the CQ limit for all primary rockfish species	§ 679.7(n)(7)(i) and (ii)
Clarified language to indicate that halibut PSC may be reapportioned to the trawl fishery after the effective date of a rockfish cooperative termination of fishing declaration. NMFS has replaced references to the approval of the rockfish cooperative termination of fishing declaration to refer to the effective date of the declaration for additional clarity in other sections. The declaration is effective upon approval.	§ 679.21(d)(5)(iii)(B)(2) and throughout the regulatory text
Clarified that observer coverage is effective through the earlier of November 15 or the effective date and time of an approved rockfish cooperative termination of fishing declaration.	§ 679.50(c)(7)(i)(A)
Clarified that observer coverage is effective through the earlier of November 15 or the date and time NMFS closes all directed fishing for all primary rockfish species.	§ 679.50(c)(7)(i)(B)
Clarified that the allocation of Rockfish QS as "the" percentage of legal rockfish landings by an eligible rockfish harvester "in that sector" for which they are applying.	§ 679.80(f)(3)(ii)
Corrected text describing the allocation of secondary species CQ to a rockfish cooperative in the catcher/processor sector to match the text used in the algorithm.	§ 679.81(b)(5)(i)
Removed the reference to Central GOA and replace it with "GOA" to ensure that all halibut PSC used in the GOA is the denominator for determining the maximum amount of halibut PSC that may be allocated to the catcher/processor sector	§ 679.81(c)(2)(ii)
Corrected text describing the allocation of halibut PSC CQ to a rockfish cooperative in the catcher/processor sector to match the text used in the algorithm.	§ 679.81(c)(4)(i)

Correction	Section modified
Corrected the date from “on June 6, 2006” to “prior to June 6, 2005” consistent with Council intent and with the date of final Council action on Amendment 68 as established in other portions of the regulations.	§ 679.82(a)(3)
Rephrased the wording to remove redundant text establishing the criteria for establishing the use cap applicable to vessels in the catcher/processor sector	§ 679.82(a)(4)
Clarified that a use cap exemption applies only if that rockfish QS is assigned to LLP license(s) held by that eligible rockfish harvester at the time of application to participate in the Rockfish Program and prior to June 6, 2005.	§ 679.82(a)(6)(i)
Clarified the regulatory language applying a use cap to an eligible rockfish harvester who received an initial allocation of rockfish QS in excess of the use cap if that person transfers rockfish QS to another person, but the amount of rockfish QS remaining after the transfer is above the use cap.	§ 679.82(a)(6)(ii)(B)
Deleted the reference which indicated that halibut PSC used in the rockfish limited access fishery would be deducted from the seasonal apportionment “for that sector.” Seasonal apportionments of halibut are not made by sector	§ 679.82(b)(5)
Changed the term “halibut mortality sideboard limit” to “halibut PSC sideboard limit” to ensure consistency with regulations.	§ 679.82(d)(5)(ii)
Clarified that a catcher/processor sideboard limit is calculated based on the catch history of the LLP licenses assigned to that rockfish cooperative. This replaces the term “vessel” that is vague and could have applied to vessels that are hired to fish for the cooperative but are not otherwise eligible for the Program.	§ 679.82(d)(6)(iii) and § 679.82(d)(8)(iii)(A) and (B)
Edited text to clarify the amount of the sideboard limit that will apply to catcher/processor participants that are not in a rockfish cooperative as an aggregate of the sideboard limit remaining after allocation to catcher/processor cooperatives.	§ 679.82(d)(8)(iii)(C)
Edited text to clarify the how NMFS will close specific flatfish fisheries to directed fishing when a halibut PSC sideboard limit is reached.	§ 679.82(d)(9)(i) and (d)(9)(ii)(B)
Rephrased the description of halibut PSC sideboard management for improved clarity.	§ 679.82(d)(9)(iii)
Clarified that any catcher/processor LLP license that has been used to qualify for purposes of a rockfish cooperative allocation or a vessel that has been assigned to a rockfish cooperative remains subject to sideboard limits applicable to that rockfish cooperative for that calendar year.	§ 679.82(f)(1) and (2)
Clarified that vessels fishing in a rockfish limited access or under a CQ permit are not subject to prohibitions on directed groundfish fishing for species harvested during a rockfish limited access fishery or under a CQ permit during July.	§ 679.82(f)(4) and (g)(3)(i)
Corrected citation to § 679.82(d) through (g)	§ 679.84(c)
Added text to clarify that the observer must be present at the pre-cruise meeting. Otherwise, a vessel owner or operator could schedule a pre-cruise meeting prior to the observer even showing up at the boat. While it is helpful to have NMFS staff meet with vessel personnel, the goal of the pre-cruise meeting is to establish a working relationship between the vessel personnel and the observer.	§ 679.84(c)(7)
Corrected this provision to require that the owner or operator of a catcher vessel ensures the vessel operator complies with the observer coverage requirements. Previous wording had required the owner and operator to be responsible. Only one party is required. This change is consistent with the requirements for catcher/processor vessels.	§ 679.84(e)

Other editorial changes were made throughout the rule that NMFS determined had no substantive effect.

**Classification**

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

NMFS has determined that Amendment 68 and the provisions in this rule that implement Amendment 68 are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS made the determination that this rule is

consistent after taking into account the data, views, and comments received during the comment period.

A draft EA/RIR/IRFA was prepared for Amendment 68 and the proposed rule. A final EA/RIR was prepared for this rule. The EA analyzes the impacts of the proposed action and its alternatives on the human environment. The RIR assesses all costs and benefits of available regulatory alternatives. Copies of the final EA/RIR for this action are available from NMFS (see ADDRESSES). A final regulatory flexibility analysis (FRFA) has been

prepared for this rule. Copies of the FRFA are available from NMFS (see ADDRESSES).

The RIR presents an analysis of the extensive and elaborate series of alternatives, options, and suboptions the Council developed as it designed and evaluated the potential for rationalization of the Central GOA rockfish fisheries. The RIR considers all quantitative and qualitative measures. The Program was chosen based on those measures that maximize net benefits to affected participants in the Central GOA rockfish fisheries.



The EA presents an analysis of the three alternative programs for management of the Central GOA rockfish fisheries for catcher vessels: Status Quo/No Action (Alternative 1); rockfish cooperative management with a limited license program for processors (Alternative 2); and rockfish cooperative management with linkages between rockfish cooperatives and processors (Alternative 3). Three alternatives for catcher/processors also were considered: Status Quo/No Action (Alternative 1); rockfish cooperative management (Alternative 2); and a sector allocation (Alternative 3). Alternative 3 for catcher vessels and Alternative 2 for catcher/processors were combined to form the Council's preferred alternative (the rockfish cooperative alternative).

#### *Final Regulatory Flexibility Analysis*

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA). The FRFA incorporates the IRFA, response to public comments received on the IRFA, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). The FRFA did not reveal any Federal rules that duplicate, overlap, or conflict with the action. The following summarizes the FRFA.

The FRFA evaluates the impacts of the Program for groundfish fisheries in the GOA on small entities. The FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601–612). It specifically addresses the requirements at section 604(a).

*Issues raised by public comments on the IRFA.* The proposed rule for the Program was published in the **Federal Register** on June 7, 2006 (71 FR 33040). An IRFA was prepared for the proposed rule, and described in the classification section of the preamble to the rule. The public comment period ended on July 24, 2006. NMFS received nine letters of public comment on the proposed rule. NMFS summarized these letters into 120 separate comments. Of these, one comment was directly on the IRFA and is presented below. No changes were made to the final rule from the proposed rule in response to the comment on the IRFA. Several comments directly or indirectly dealt with economic impacts to small entities resulting from the management measures presented in the proposed rule. These comments and responses are under Response to Comments in this preamble.

*Comment:* The EA/RIR/IRFA prepared for the Program contains no analysis of

the economic impacts of applying the monitoring and enforcement requirements to the catcher/processor vessels in the opt-out fleet. The RFA requires the agency to determine the impacts of a proposed rule on small entities. It then requires the agency to identify and develop alternatives to ameliorate the economic and compliance impacts on small entities if the proposed rule has a significant impact on a substantial number of small entities.

*Response:* As discussed in the IRFA, the RFA requirements do not apply to catcher/processor vessels participating under this Program. As noted in Section 5.4 of the IRFA, no processors or catcher processors eligible for the Program and regulated by this action are small entities, as defined by the RFA.

Nevertheless, throughout the final EA/RIR and the draft EA/RIR/IRFA, NMFS provides information on the anticipated costs to directly regulated entities of meeting monitoring and enforcement standards that are applicable under this Program. Section 5.5 of the IRFA notes that “catcher/processors are also likely to be required to add flow scales and observer stations on their vessels. These observer requirements and their costs are fully described in Sections 2.5.1 and 2.5.9.” Section 2.5.1 of the EA/RIR notes that “monitoring will need to be modified so that these allocations are monitored at the individual or cooperative level. In addition, observer requirements will also need to be modified to suit the new system of allocations.” Section 3.4.1 of the EA/RIR includes a review of the potential costs and updated information on the specific monitoring and enforcement requirements applicable to catcher/processor vessels in the opt-out fishery.

Section 2.5.1 of the final EA/RIR also notes in the discussion of the preferred alternative selected by the Council (i.e., “Catcher/processor allocation with cooperatives”) that: In addition to managing aspects of the rockfish target fishery, NOAA Fisheries would need to approve and monitor and manage sideboards. Any participant who intends to, or does, participate in any of the fisheries governed by the sideboards during the July sideboard period must have adequate observer coverage onboard the vessel so that all catch taken under sideboards will be assessed against the overall sector harvest limit. Observer coverage would be the same as that required during a cooperative fishery to adequately manage rockfish harvests.

This statement strongly states that, under the Program, NMFS would thoroughly monitor and manage the sideboard limits applicable to this sector.

The final rule has not been modified to address this comment, however, NMFS refers the commenter to the response to comment 90, which addresses modifications made to the monitoring and enforcement provisions applicable to catcher/processor vessels under this rule.

#### *Need for and objectives of this action.*

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

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

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

processing segment of the entry level fishery cannot be predicted.

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

It is likely that a substantial portion of the catcher vessel participants in the entry level fishery will be small entities. Approximately 171 LLP licenses are qualified to fish in the Central GOA entry level trawl fishery and 900 LLP licenses are qualified to fish in the entry level longline gear fishery. However, it is not possible to determine how many persons may hold these LLP licenses and chose to participate in the entry level fishery prior to the time of application to participate in the fishery. The number of persons holding LLP licenses is likely to be less than the total number of LLP licenses because a person may hold more than one LLP license at a time.

Six entities made at least one rockfish landing from 1996 to 2002 and do not appear to qualify as an eligible rockfish harvesters. Five of these entities are not small entities and one entity qualifies as "small" by Small Business Administration (SBA) standards. The non-small entities owned five catcher/processors. The one small entity owns a catcher vessel. Entities that do not qualify for the Program either left the fishery, currently fish under interim LLP licenses, or do not hold a qualified LLP license. Moreover, the vessels the FRFA considers "non-qualified" cannot continue fishing for these species under the current LLP. The impacts to the small entities that are prohibited from fishing by the LLP were analyzed in the RIR/IRFA and FRFA prepared for the LLP. Therefore, the non-qualified vessels are not considered impacted by the proposed rule and are not discussed in this FRFA.

The community of Kodiak, Alaska, could be directly impacted by the

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

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

NMFS developed new databases to monitor harvesting and processing allocations. These changes require the existing reporting systems.

To participate in the Program, persons are required to complete application forms, transfer forms, reporting requirements, and other collections-of-information. These forms are either required under existing regulations or are required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms. With the exception of specific equipment tests, which are performed by NMFS employees or other professionals, basic word processing skills are the only skills needed for the preparation of these reports or records.

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

It will cost participants in the Program an estimated \$56 to complete applications to participate in the Program, \$55 for the application for CQ, application for the rockfish limited access fishery, or application to opt-out, and \$61 to complete an inter-cooperative transfer of CQ.

It will cost participants in the Program an estimated \$106 for annual rockfish cooperative report; \$15 for rockfish cooperative catch report; \$15 for a rockfish cooperative termination of fishing declaration; and \$15 for each check-in/check-out for vessels authorized to fish under a CQ permit.

*Description of significant alternatives and description of steps taken to minimize the significant economic impacts on small entities.*

The FRFA presents an analysis of the three alternative programs for management of the Central GOA rockfish fisheries for catcher vessels: Status Quo/No Action (Alternative 1); rockfish cooperative management with a limited license program for processors (Alternative 2); and rockfish cooperative management with linkages between rockfish cooperatives and processors (Alternative 3). Three alternatives for catcher/processors also were considered: Status Quo/No Action (Alternative 1); rockfish cooperative management (Alternative 2); and a sector allocation (Alternative 3). Alternative 3 for catcher vessels and Alternative 2 for catcher/processors were combined to form the Council's preferred alternative (the rockfish cooperative alternative). These alternatives constitute the suite of "significant alternatives" for the purposes of the RFA. The following is a summary of the FRFA, focusing on the aspects that pertain to small entities.

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

In response to desires to improve economic, social, and structural conditions in many of the rockfish fisheries, the Council found that the status quo management structure was causing significant adverse impacts to the participants in these fisheries. Many

small entities, as defined under RFA, are negatively impacted under current open access regulations. The management tools in the existing FMP (e.g., time/area restriction and LLP licenses) do not provide managers with the ability to effectively solve these problems, thereby making Magnuson-Stevens Act goals difficult to achieve and forcing reevaluation of the existing FMP.

In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council determined that the institution of some form of rationalization program was needed to improve fisheries management in accordance with the Magnuson-Stevens Act. After an exhaustive public process spanning several years, the Council concluded that the Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on the universe of directly regulated small entities. The preferred rockfish cooperative alternative appears to minimize negative economic impacts on small entities to a greater extent than an alternative that allocates limited processing licenses (Alternative 2 for catcher vessels), or that defines a smaller portion of the TAC for competition among a fixed number of vessels (Alternative 3 for catcher/processors).

The Program allocates annual harvesting privileges of rockfish and secondary species TAC to harvester rockfish cooperatives, creating a transferable access privilege as a share of the TAC, thus removing the "common property" attributes of the status quo on qualifying harvesters. The rationalization of the Central GOA fisheries will likely benefit the approximately 45 businesses that own harvest vessels and are considered small entities. In recent years these entities have competed in the race for fish against larger businesses. The rockfish cooperative alternative allows these operators to slow their rate of fishing and give more attention to efficiency and product quality.

The participants are permitted to form rockfish cooperatives that can lease or sell their allocations, and can obtain some return from their allocations. Differences in efficiency implications of rationalization by business size cannot be predicted. Some participants believe that smaller vessels can be more efficient than larger vessels in a rationalized fishery because a vessel only needs to be large enough to harvest the cooperative's CQ. Conversely, under open access, a vessel has to be large

enough to outcompete the other fishermen and, hence, contributes to the overcapacity problems under the race for fish.

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

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

The groundfish landing report (internet version and optional fax version) will be used to debit CQ. All retained catch must be weighed, reported, and debited from the appropriate account under which the catch was harvested. Under recordkeeping and reporting, NMFS considered the options of a paper-based reporting system or an electronic reporting system. NMFS chose to implement an electronic reporting system as a more convenient, accurate, and timely method. Additionally, the electronic reporting system will provide continuous access to accounts. These provisions will make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor their accounts and fishing activities. NMFS believes that the added benefits of the electronic reporting system outweigh any benefits of the paper-based system. However, NMFS will also provide an optional backup using existing telecommunication and paper-based methods, which will reduce the burden on small entities in more remote areas possessing less electronic infrastructure.

Under this rule, catcher/processors will be required to purchase and install motion-compensated scales to weigh all fish at-sea if participating as a vessel that is harvesting fish under a CQ permit, in the limited access fishery, or in the GOA during July. Such scales are

estimated to cost on a one-time basis, approximately \$69,000 per vessel. Currently, a flow scale costs \$60,000, an observer platform scale \$8,500, and test weights \$500. Additional one-time costs associated with the installation of the scales are estimated to be between \$10,000 and \$40,000, depending on the extent to which the vessel must be reconfigured to install the scale. Scale monitoring requirements are estimated to cost approximately \$6,235 per year. Based on discussions with equipment vendors, NMFS estimates that six catcher/processors will choose to fish under the Program and will be required to have scales. Based on public comments received on the proposed rule, NMFS modified this rule so that catcher/processor vessels that participate in the opt-out fishery are not required to purchase and install scales. This modification significantly reduces costs for vessels that are subject to sideboard limits, but are not harvesting rockfish in the Central GOA.

NMFS will increase observer coverage for Program participants in most cases. In similar NMFS-managed quota fisheries, NMFS requires that all fishing activity be observed. NMFS must maintain timely and accurate records of harvests in fisheries with small allocations that are harvested by a fleet with a potentially high harvest rate. Additionally, halibut PSC and halibut mortality rates must be monitored. Such monitoring can only be accomplished through the use of onboard observers. Although this imposes additional costs, participants in the fishery can form rockfish cooperatives, which will limit the number of vessels required to harvest a cooperative's CQ, and organize fishing operations to limit the amount of time when additional observer coverage is required to offset additional costs. The exact overall additional observer costs per vessel cannot be predicted because costs will vary with the specific fishing operations of that vessel. NMFS estimates that a requirement for increased observer coverage will cost approximately \$400 per day. Additional costs may be associated with catcher/processors that reconfigure their vessels to ensure that adequate space is available for the additional observer. These costs cannot be predicted and will vary from vessel to vessel depending on specific conditions on that vessel. Based on public comments received on the proposed rule, NMFS modified this rule to reduce observer costs applicable to catcher/processor vessels in the opt-out fishery from a 200 percent observer coverage level (i.e., two observers onboard the vessel) to 100

percent observer coverage level (i.e., one observer onboard the vessel). This change will substantially reduce the costs that this portion of the fishery will incur, but a precise cost estimate is not available at this time.

For monitoring of processing activity, it will cost shore-based processors approximately \$416 to complete the catch monitoring plan and an additional \$2,800 annually to complete all landing reports.

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

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

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

Installation costs will be a function of where the DVR/computer can be located in relation to an available power source, cameras, and the observer sampling

station. NMFS estimates that a fairly simple installation will cost approximately \$2,000, and a complex installation will cost approximately \$10,000, per vessel. However, these costs can be considerably lower if the vessel owner chooses to install the equipment while upgrading other wiring. Thus, total system costs, including DVR/computer equipment, cameras, data storage, and installation is expected to range between \$4,050 per vessel for a very simple inexpensive system with low installation costs, and \$24,500 per vessel for a complex, sophisticated system with high installation costs. Based on public comments received on the proposed rule, NMFS has modified the rule to remove the requirement for an observer sampling station for catcher/processor vessels participating in the opt-out fishery. This change will reduce costs of total system costs for the catch handling provisions, but the amount of the reduced costs cannot be predicted and will vary depending on the specific configuration of the vessel.

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

Additionally, NMFS made a number of changes as a result of public comments to the Program's compliance requirements to mitigate impacts on small entities. Changes in the monitoring and enforcement requirements applicable to catcher/processor vessels participating in the opt-out fishery are addressed in the previous paragraphs addressing motion compensated scales, observer coverage, and special catch handling requirements for catcher/processor vessels. NMFS has also relieved the requirement for a dedicated Program observer at entry level processing facilities, and the requirement that those facilities maintain a CMCP. These changes reduce costs to these entities, but do not undermine the overall monitoring goals of this Program given the small allocations available to the entry level fishery.

In response to the public comment requesting additional time to prepare and submit the annual applications for CQ, the rockfish limited access fishery, and opt-out fishery, NMFS changed the submittal date from December 1 of the year prior to fishing to March 1 of the year in which the person intends to fish. This deadline change provides both the

time to gather records and coordinate with other participants in the fishery. NMFS has also improved the flexibility of rockfish cooperatives to designate specific vessels to fish under the CQ permit through a vessel check-in and check-out procedure. This change provides greater flexibility than the more lengthy proposed requirement to modify the CQ permit. The specific details of this vessel check-in/check-out procedure are detailed in the response to comment section of the preamble.

#### *Collection-of-information*

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and that have been approved by the OMB under the control numbers listed below. Public reporting burdens per response for these requirements are listed by OMB control number.

#### *OMB Control No. 0648-0545*

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

#### *OMB Control No. 0648-0515*

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

#### *OMB Control No. 0648-0445*

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

#### *OMB Control No. 0648-0401*

35 minutes to electronically submit SPELR information (superceded by eLandings, 0515).

#### *OMB Control No. 0648-0330*

Forty (40) hours for catch monitoring requirements for catcher/processors; 40 hours for a CMCP; 10 minutes for observer sampling station inspection request; 1 hour for video monitoring system.

#### *OMB Control No. 0648-0213*

Fourteen (14) minutes for Vessel Activity Report; 20 minutes for product

transfer report; 28 minutes for catcher vessel longline and pot gear daily fishing logbook; and 41 minutes for catcher/processor longline and pot gear daily cumulative production logbook.

Response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

**Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed a Web site that provides easy access to details of this final rule, including links to the final rule, and frequently asked questions regarding Program.

The relevant information available on the Web site is the Small Entity Compliance Guide. The Web site address is <http://www.fakr.noaa.gov>. Copies of this final rule are available upon request from the NMFS, Alaska Regional Office (see ADDRESSES).

**List of Subjects**

*15 CFR Part 902*

Reporting and recordkeeping requirements.

*50 CFR Part 679*

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 7, 2006.

**Samuel D. Rauch III**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 15 CFR chapter IX, and 50 CFR chapter VI are amended as follows:

**15 CFR CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under the entry "50 CFR" is amended by:

■ a. Revising entries "679.4(g) and (k)"; and

■ b. Adding new entries "679.4(n)", "679.5(r)", and "679.80" through "679.84" in numerical order.

The additions and revisions read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*  
(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
<i>50 CFR</i>	
* * * * *	
679.4(g) and (k)	-0334 and -0545
* * * * *	
679.4(n)	-0545
* * * * *	
679.5(r)	-0213, -0401, -0445, and -0545
* * * * *	
679.80	-0545
679.81	-0545
679.82	-0545
679.83	-0545
679.84	-0213, -0330, and -0545
* * * * *	

**50 CFR Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce**

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

■ 3. The authority citation for part 679 is revised to read as follows:

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

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

**§ 679.2. Definitions.**

\* \* \* \* \*

*Cooperative quota (CQ)* means:

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

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

\* \* \* \* \*

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

*Eligible rockfish processor* means a person who is authorized by NMFS to receive and process primary rockfish

species and secondary rockfish species harvested by a rockfish cooperative or in a rockfish limited access fishery.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

*Opt-out fishery* means the fishery conducted by persons who are eligible

rockfish harvesters holding an LLP license endorsed for catcher/processor activity and who are not participating in a rockfish cooperative or the rockfish limited access fishery in the catcher/processor sector.

\* \* \* \* \*

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

\* \* \* \* \*

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

*Rockfish entry level fishery* means the trawl and longline gear fisheries conducted under the Rockfish Program by rockfish entry level harvesters and rockfish entry level processors.

*Rockfish entry level harvester* means a person who is authorized by NMFS to harvest fish in the rockfish entry level fishery and who is not an eligible rockfish harvester.

*Rockfish entry level processor* means a person who is authorized by NMFS to receive and process fish harvested under the rockfish entry level fishery and who is not an eligible rockfish processor.

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

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

*Rockfish Program* means the program authorized under the authority of Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108-199) and implemented under subpart G of 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;
- (3) The limited access fishery in the catcher/processor sector;
- (4) The limited access fishery in the catcher vessel sector;
- (5) The opt-out fishery;
- (6) The entry level trawl fishery; and
- (7) The entry level longline gear fishery.

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

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

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

- (i) Sablefish not allocated to the IFQ Program;
- (ii) Thornyhead rockfish;
- (iii) Pacific cod for the catcher vessel sector;
- (iv) Rougheye rockfish for the catcher/processor sector; and
- (v) Shortraker rockfish for the catcher/processor sector.

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

- (i) Aggregate forage fish, Atka mackerel, arrowtooth flounder, deep water flatfish, flathead sole, other rockfish, "other species," pollock, rex sole, shallow water flatfish, and skates;
- (ii) Pacific cod for the catcher/processor sector; and
- (iii) Rougheye rockfish and shortraker rockfish for the catcher vessel sector.

*Rockfish Quota Share (QS)* means a permit the amount of which is based on legal rockfish landings for purposes of qualifying for the Rockfish Program 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 official Rockfish Program record.

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

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

\* \* \* \* \*

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

*Sector for purposes of the Rockfish Program* means:

(1) *Catcher/processor sector:* those eligible rockfish harvesters who hold an LLP license with a catcher/processor designation and who are eligible to receive rockfish QS that may result in CQ that may be harvested and processed at sea.

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

\* \* \* \* \*

*Sideboard limit for purposes of the Rockfish Program* means:

- (1) The maximum amount of northern rockfish, Pacific ocean perch, and

pelagic shelf rockfish that may be harvested by all vessels in the Rockfish Program in all areas as specified under § 679.82(d) through (h), as applicable;

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

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

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

\* \* \* \* \*

*Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program* means a relationship between two or more 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 it 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 that 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 that 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.

\* \* \* \* \*

■ 5. In § 679.4, paragraphs (a)(1)(xii), (b)(6)(iii), (k)(11), and (n) are added to read as follows:

**§ 679.4 Permits.**

- (a) \* \* \*
- (1) \* \* \*

If program permit or card type is:	Permit is in effect from issue date through end of:	For more information, see. . .
***** (xii) Rockfish Program		
(A) CQ	Specified fishing year	§ 679.81(e)(4)
(B) Rockfish Limited Access Fishery	Specified fishing year	§ 679.81(e)(5)
(C) Opt-out Fishery	Specified fishing year	§ 679.81(e)(6)
(D) Rockfish Entry Level Fishery	Specified fishing year	§ 679.81(e)(7)

\* \* \* \* \*

- (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 legal rockfish landings and is subject to a sideboard limit as described under § 679.82(d) through (h).

\* \* \* \* \*

- (k) \* \* \*

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

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

\* \* \* \* \*

(n) *Rockfish Program*—(1) *Cooperative quota (CQ)*. (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 at § 679.81(e)(4) that is subsequently 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 primary rockfish species and 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 eligible rockfish processor with whom

that rockfish cooperative is associated, if applicable.

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

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

(B) Until the amount harvested is equal to the amount specified on the CQ permit for all primary rockfish species, secondary species, and rockfish halibut PSC;

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

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

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

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

(2) *Rockfish cooperative termination of fishing declaration*. (i) A rockfish

cooperative may choose to extinguish its CQ permit through a declaration submitted to NMFS.

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

(A) Fax: 907-586-7354;  
 (B) Hand Delivery or Carrier. NMFS, Room 713, 709 4<sup>th</sup> Street, Juneau, AK 99801; or

(C) By mail: Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802-1668

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

(A) CQ permit number;

(B) The date the declaration is submitted; and

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

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

(v) Upon approval of a declaration, the CQ for all primary rockfish species and secondary species will be set to zero, rockfish halibut PSC assigned to that rockfish cooperative will be reapportioned under the provisions described at § 679.21(d)(5)(iii)(B) and that rockfish cooperative may not receive any CQ for any primary rockfish species, secondary species, and rockfish halibut PSC by transfer for the remainder of that calendar year.

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

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

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

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

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

■ 6. Section 679.5 is amended by:

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

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

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

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

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

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

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

The additions and revisions read as follows:

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

(r) *Rockfish Program—(1) General.* The owners and operators of catcher vessels, catcher/processors, shoreside processors, and stationary floating processors 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, rockfish limited access fishery, sideboard fishery, opt-out fishery, or rockfish entry level fishery as applicable at the time of catch or receipt of groundfish. All owners of catcher vessels, catcher/processors, shoreside processors, and stationary floating processors 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 must maintain a daily fishing logbook for trawl gear as described in paragraphs (a) and (c) of this section.

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

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

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

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

(6) *Product transfer report (PTR), processors.* Operators of catcher/processors and managers of shoreside



processors or SFPs that are authorized as processors in the Rockfish Program must submit a PTR as described in paragraph (g) of this section.

(7) *Rockfish cooperative catch report*—(i) *Applicability*. Operators of catcher/processors and managers of shoreside processors or SFPs that are authorized to receive fish harvested under a CQ permit in the Rockfish Program (see § 679.4(n)) must submit to the Regional Administrator a rockfish cooperative catch report detailing each cooperative's delivery and discard of fish, as described in paragraph (r)(7) of this section.

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

(1) An electronic data file in a format approved by NMFS mailed to: Sustainable Fisheries, P.O. Box 21668, Juneau, AK 99802-1668; or

(2) By fax: 907-586-7131.

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

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

(A) CQ permit number;  
(B) ADF&G vessel registration number(s) of vessel(s) delivering catch;  
(C) Federal processor permit number of processor receiving catch;  
(D) Date the delivery was completed;  
(E) Amount of fish (in lb) delivered, plus weight of at-sea discards;  
(F) ADF&G fish ticket number(s) issued to catcher vessel(s).

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

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

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

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

(A) The cooperative's CQ, sideboard limit (if applicable), and any rockfish

sideboard fishery harvests made by the rockfish cooperative vessels on a vessel-by-vessel basis;

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

(C) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and

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

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

(10) *Rockfish cooperative vessel check-in and check-out report*—(i) *Applicability*—(A) *Vessel check-in*. The designated representative of a rockfish cooperative must designate any vessel that is fishing 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 this 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 report 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. This check-out report must be submitted within 6 hours after the effective date and time the rockfish cooperative wishes to end the vessel's authority to fish under the CQ permit. This designation is effective at:

(1) The end of a complete offload if that vessel is fishing under a CQ permit for a catcher vessel cooperative or the earlier of;

(2) The end of the weekend date as reported in a WPR if that vessel is fishing under a CQ permit for a catcher/processor cooperative; or

(3) The end of a complete offload if that vessel is fishing under a CQ permit for a catcher/processor cooperative.

(ii) *Submittal*. The designated representative of the rockfish cooperative must submit a vessel check-in or check-out report by one of the following methods:

(A) By mail: Sustainable Fisheries, P.O. Box 21668, Juneau, AK 99802-1668; or

(B) By fax: 907-586-7131.

(iii) *Information required*. The vessel check-in or check-out report must contain the following information:

(A) CQ permit number;  
(B) ADF&G vessel registration number(s) of vessel(s) designated to fish under the CQ permit;

(C) USCG designation number(s) of vessel(s) designated to fish under the CQ permit; and

(D) Date and time when check-in or check-out begins.

(iv) *Limitations on vessel check-in and check-out*. (A) A rockfish cooperative may submit no more check-in reports in a calendar year than an amount equal to three times the number of LLP licenses that are assigned to that rockfish cooperative in that calendar year.

(B) A rockfish cooperative may submit no more check-out reports in a calendar year than an amount equal to three times the number of LLP licenses that are assigned to that rockfish cooperative in that calendar year.

■ 7. In § 679.7, paragraph (n) is added to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

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

(ii) Fail to retain any primary rockfish species in the Central GOA caught by a vessel assigned to a rockfish limited access fishery, or to a rockfish entry level fishery, when that fishery is open.

(iii) Fail to retain any secondary species caught by a vessel assigned to a rockfish cooperative when that vessel is fishing under a CQ permit.

(iv) Use an LLP license assigned to a Rockfish Program fishery in any other Rockfish Program fishery other than the Rockfish Program fishery to which that LLP license was initially assigned for that fishing year.

(v) Operate a vessel assigned to a Rockfish Program Fishery in any other Rockfish Program fishery other than the Rockfish Program fishery to which that vessel was initially assigned for that fishing year.

(vi) Receive any primary rockfish species harvested in the entry level rockfish fishery if that person is an eligible rockfish processor.

(vii) Harvest any primary rockfish species in the entry level rockfish fishery if that person is an eligible rockfish harvester.

(viii) Harvest secondary primary rockfish species, secondary species, or use halibut PSC assigned to a rockfish cooperative without a valid CQ permit.

(2) *Vessels 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 at § 679.84(c) through (e) from May 1:

- (A) Until November 15; or
- (B) Until that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

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

- (A) Until November 15; or
- (B) Until NMFS closes all directed fishing for all primary rockfish species for that rockfish limited access fishery for that sector.

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

(iv) Operate a catcher/processor vessel assigned to the opt-out fishery, that is subject to a sideboard limit detailed at § 679.82(d) through (h), as applicable, and fail to follow the catch monitoring requirements detailed at § 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) *VMS.* (i) Operate a vessel that is assigned to a rockfish cooperative and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from May 1:

- (A) Until November 15; or
- (B) Until that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

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

- (A) Until November 15; or
- (B) Until NMFS closes all directed fishing for all primary rockfish species for that rockfish limited access fishery for that sector.

(iii) Operate a vessel that is subject to a sideboard limit detailed at § 679.82(d) through (h), as applicable, and fail to use functioning VMS equipment as

described at § 679.28(f) at all times when operating in a reporting area off Alaska from July 1 until July 31.

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

- (A) Until November 15; or
- (B) Until NMFS closes all directed fishing for all primary rockfish species for the rockfish entry level fishery for trawl gear.

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

(5) *Shoreside and stationary floating processors eligible for the Rockfish Program—(i) Catch weighing.* Process any groundfish delivered by a vessel assigned to a Rockfish Program fishery, or subject to a sideboard limit not weighed on a scale approved by the State of Alaska. The scale must meet the requirements specified in § 679.28(c).

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

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

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

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

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

(iii) 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)(10).

(iv) 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, thornyhead rockfish, aboard the vessel unless those fish were harvested under the authority of a CQ permit.

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

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

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

**§ 679.20 General Limitations.**

\* \* \* \* \*

(e) \* \* \*

(1) *Proportion of basis species.* The maximum retainable amount of an incidental catch species is calculated as a proportion of the basis species retained on board the vessel using:

(i) The retainable percentages in Table 10 to this part for the GOA species categories (except the Rockfish Program fisheries, which are described in Table 30 to this part for the Rockfish Program fisheries); and

(ii) Table 11 to this part for the BSAI species categories.

(2) \* \* \*

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

\* \* \* \* \*

(f) \* \* \*

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

species. Only primary rockfish species harvested under the Rockfish Program may be used to calculate retainable amounts of other species, as provided in Table 30 to this part.

\* \* \* \* \*

■ 9. In § 679.21, paragraph (d)(5)(iii) is revised to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(d) \* \* \*

(5) \* \* \*

(iii) *Unused seasonal apportionments.*

(A) Unused seasonal apportionments of halibut PSC limits specified for trawl, hook-and-line, or pot gear will be added to the respective seasonal apportionment for the next season during a current fishing year; and

(B) Unused halibut PSC that had been allocated as CQ 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) After November 15; or

(2) After the effective date of a declaration to terminate fishing.

\* \* \* \* \*

■ 10. In § 679.28, paragraphs (b)(2)(v), (d)(8)(ii), (f)(6), (g) introductory text, (g)(1) and (g)(2) are revised to read as follows:

**§ 679.28 Equipment and operational requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(v) Where will scale inspections be conducted? Scales inspections by inspectors paid by NMFS will be conducted on vessels tied up at docks in Kodiak, Alaska, Dutch Harbor, Alaska, and in the Puget Sound area of Washington State.

\* \* \* \* \*

(d) \* \* \*

(8) \* \* \*

(ii) Where will observer sample station inspections be conducted? Inspections will be conducted on vessels tied up at docks in Kodiak, Alaska, Dutch Harbor, Alaska, and in the Puget Sound area of Washington State.

\* \* \* \* \*

(f) \* \* \*

(6) *When must the VMS transmitter be transmitting?* Your vessel's transmitter must be transmitting if:

(i) You operate a vessel in any reporting area (see definitions at § 679.2) off Alaska while any fishery requiring VMS, for which the vessel has a species

and gear endorsement on its Federal Fisheries Permit under § 679.4(b)(5)(vi), is open.

(ii) You operate a federally permitted vessel in the Aleutian Islands subarea;

(iii) You operate a federally permitted vessel in the GOA and have mobile bottom contact gear on board; or

(iv) When that vessel is required to use functioning VMS equipment in the Rockfish Program as described in § 679.7(n)(3).

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

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

(i) AFA pollock,

(ii) AI directed pollock,

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

\* \* \* \* \*

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

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

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

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

(1) November 15; or

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

(B) *Rockfish limited access fishery.* A catcher/processor vessel harvesting fish

allocated to the rockfish limited access fishery for the catcher/processor sector must have onboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process in the Central GOA from July 1 through the earlier of:

(1) November 15; or

(2) The date and time NMFS closes all directed fishing for all primary rockfish species in the rockfish limited access fishery for the catcher/processor sector.

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

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

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

(F) *Sideboard fishery for catcher/processor vessels in the opt-out fishery.*

(i) A catcher/processor vessel assigned to the opt-out fishery, that is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, must have onboard at least one NMFS-certified observer for each day that the vessel is used to harvest or process from July 1 through July 31 while harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

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

(1) November 15; or

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

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

(1) November 15; or

(2) The date and time NMFS closes all directed fishing for all primary rockfish species in the rockfish limited access fishery for the catcher vessel sector.

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

(d) \* \* \*

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

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

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

(iv) *Observer coverage limitations.* Observer coverage requirements at paragraph (d)(7) of this section are in addition to observer coverage requirements in other fisheries. Observer coverage of deliveries of groundfish harvested by catcher vessels described at paragraph (c)(7)(ii) of this section are not counted for purposes of

meeting minimum delivery standards applicable to groundfish at a shoreside processor or stationary floating processor. Any observer coverage of deliveries by catcher vessels not described at paragraph (c)(7)(ii) of this section that occur when the Program observer is present at that shoreside processor or stationary floating processor during that calendar day will be counted towards the coverage requirements for that month.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(iii) \* \* \*

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

(1) *Hardware and software.* Make available for use by the observer a personal computer in working condition that contains: a full Pentium 120Mhz or greater capacity processing chip, at least 256 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 98 (or more recent) compatible operating system, an operating mouse, a 3.5-inch (8.9 cm) floppy disk drive, and a readable CD ROM disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. Except for a catcher vessel described at paragraph (c)(7)(ii) of this section, the computer equipment specified in paragraph (g)(1)(iii)(B) of this section must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Personal computers utilizing a modem must have at least a 28.8 kbs Hayes-compatible modem.

\* \* \* \* \*

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

**Subpart G—Rockfish Program**

Sec.

679.80 Initial allocation of rockfish QS.

679.81 Rockfish Program annual harvester and processor privileges.

679.82 Rockfish Program use caps and sideboard limits.

679.83 Rockfish Program entry level fishery.

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

**Subpart G—Rockfish Program**

**§ 679.80 Initial allocation of rockfish QS.**

Regulations under this subpart were developed by National Marine Fisheries Service to implement Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108–199). Additional regulations that implement specific portions of the Rockfish Program are set out at: § 679.2 Definitions, § 679.4 Permits, § 679.5 Recordkeeping and reporting, § 679.7 Prohibitions, § 679.20 General limitations, § 679.21 Prohibited species bycatch management, § 679.28 Equipment and operational requirements, and § 679.50 Groundfish Observer Program.

(a) *Applicable areas and duration—*

(1) *Applicable areas.* The Rockfish Program applies to Rockfish Program fisheries in the Central GOA Regulatory Area and rockfish sideboard fisheries in the GOA and BSAI.

(2) *Duration.* The Rockfish Program authorized under this part expires on December 31, 2008.

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

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

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

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

(iv) *Rockfish fishery—rockfish limited access fishery.* Fishing by vessels participating in the rockfish limited access fishery is authorized from 1200 hours, A.l.t., July 1 through 1200 hours, A.l.t., November 15.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The shoreside processor or stationary floating processor from which that processing history is derived did not have a valid Federal Processor

Permit at the time that the processing history had been transferred by the express terms of a written contract.

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

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

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

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

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

(iv) Sideboard ratios assigned to eligible rockfish harvesters;

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

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

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

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

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

(3) *Documentation.* (i) Only legal rockfish landings, as defined in § 679.2,

shall be used to establish an allocation of rockfish QS or a sideboard ratio.

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

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

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

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

(e) *Application to participate in the Rockfish Program—(1) Submission of application to participate in the Rockfish Program.* A person who wishes to participate in the Rockfish Program as an eligible rockfish harvester or eligible rockfish processor must submit a timely and complete application to participate in the Rockfish Program. This application may only be submitted to NMFS using the following methods:

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

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

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

(2) *Forms.* Forms are available through the internet on the NMFS Alaska Region website at <http://www.fakr.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2.

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

(4) *Contents of application.* A completed application must contain the following information:

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

(B) Indicate (YES or NO) if the applicant is a U.S. citizen; if YES, enter his or her date of birth;

(C) Indicate (YES or NO) if the applicant is a U.S. corporation, partnership, association, or other

business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) if the applicant is a successor-in-interest to a deceased individual or to a non-individual no longer in existence, if YES attach evidence of death or dissolution;

(E) For an applicant claiming legal rockfish landings associated with an LLP license, enter the following information for each LLP license: LLP license number, name of the original qualifying vessel(s) (OQV(s)) that gave rise to the LLP license, ADF&G vessel registration number of the OQV, and names, ADF&G vessel registration numbers, and USCG documentation numbers of all other vessels used under the authority of this LLP license, including dates when landings were made under the authority of an LLP license for 2000 and 2001;

(F) For an applicant claiming legal rockfish landings in the catcher/processor sector, enter the following information: LLP license numbers, vessel names, ADF&G vessel registration numbers, and USCG documentation numbers of vessels on which legal rockfish landings were caught and processed.

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

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

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

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

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

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

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

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

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

(5) *Application evaluation.* The Regional Administrator will evaluate applications received as specified in paragraph (e)(3) of this section and compare all claims in an application with the information in the official Rockfish Program record. Application claims that are consistent with information in the official Rockfish Program record will be approved by the Regional Administrator. Application claims that are inconsistent with official Rockfish Program record, unless verified by documentation, will not be approved. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (e)(4) of this section, will be provided a single 30-day evidentiary period to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official Rockfish Program record. An applicant who submits claims that are inconsistent with information in the official Rockfish Program record has the burden of proving that the submitted claims are correct. Any claims that remain inconsistent or that are not accepted after the 30-day evidentiary period will be denied, and the applicant will be notified by an initial administrative determination (IAD) of his or her appeal rights under § 679.43.

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

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

based on the legal rockfish landings assigned to that LLP license according to the official Rockfish Program record.

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

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

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

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

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

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

(C) Sum the tonnage of the highest five years, for that species for that LLP license as selected under paragraph (f)(3)(iii)(B) of this section. This yields the Highest Five Years.

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

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

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

(E) Multiply the Percentage of the Total<sub>s</sub> by the Initial Rockfish QS Pool for each relevant species as established in Table 29 to this part. This yields the number of rockfish QS units for that LLP license for that primary rockfish species in rockfish QS units.

(F) Determine the percentage of legal rockfish landings from the official Rockfish Program record in the qualifying years used to calculate the rockfish QS assigned to the catcher/processor sector and multiply the rockfish QS units calculated in

paragraph (f)(3)(iii)(E) of this section by this percentage. This yields the rockfish QS units to be assigned to the catcher/processor sector for that LLP license and species. For each primary rockfish species, the total amount of rockfish QS units assigned to the catcher/processor sector are the sum of all catch history allocation units assigned to all eligible rockfish harvesters in the catcher/processor sector.

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

#### **§ 679.81 Rockfish Program annual harvester and processor privileges.**

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

(2) *Calculation.* The amount of primary rockfish species allocated to the Rockfish Program is calculated by deducting the incidental catch allowance (ICA) the Regional Administrator determines is required on an annual basis in other non-target fisheries from the TAC. Ninety-five (95) percent of the remaining TAC for that primary rockfish species (TAC<sub>s</sub>) is assigned for use by rockfish cooperatives and the rockfish limited access fishery in the catcher vessel and catcher/processor sectors. Five (5) percent of the remaining TAC is allocated for use in the rockfish entry level fishery. The formulae are as follows in paragraphs (g)(2)(i) and (ii) of this section:

(i)  $(\text{TAC} - \text{ICA}) \times 0.95 = \text{TAC}_s$ .

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

(3) *Primary rockfish species TACs assigned to the catcher/processor and catcher vessel sector.* TAC<sub>s</sub> assigned for a primary rockfish species will be divided between the catcher/processor sector and the catcher vessel sector. Each sector will receive a percentage of TAC<sub>s</sub> for each primary rockfish species equal to the sum of the rockfish QS units assigned to all LLP licenses that receive rockfish QS in that sector divided by the rockfish QS pool for that primary rockfish species. Expressed algebraically for each primary rockfish species "s" in paragraphs (g)(3)(i) and (ii) of this section:

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

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

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

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

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

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

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

(5) *Determining the TACs of primary rockfish species.* TAC<sub>s</sub> is assigned to each rockfish cooperative or limited access fishery based on the rockfish QS assigned to that fishery in each sector according to the following procedures:

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

(A) *Rockfish cooperative.* The amount of TAC<sub>s</sub> for each primary rockfish species assigned to a rockfish cooperative is equal to the amount of rockfish QS units assigned to that rockfish cooperative divided by the total rockfish QS pool in the catcher vessel sector multiplied by the catcher vessel TAC<sub>s</sub>. Once TAC<sub>s</sub> for a primary rockfish species is assigned to a rockfish cooperative, it is issued as CQ specific to that rockfish cooperative. The amount of CQ for each primary rockfish species that is assigned to a rockfish cooperative is expressed algebraically as follows:

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

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

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

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

(A) *Rockfish cooperative.* The amount of TAC<sub>s</sub> for each primary rockfish species assigned to a rockfish cooperative is equal to the amount of rockfish QS units assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives and the limited access fishery in the catcher/processor sector multiplied by the catcher/processor TAC<sub>s</sub>. Once TAC<sub>s</sub> for a primary rockfish species is assigned to a rockfish cooperative it is issued as CQ specific to that rockfish cooperative. The amount of CQ for each primary rockfish species that is assigned to a rockfish cooperative is expressed algebraically as follows:

$$CQ = [(Catcher/Processor Sector TAC_s) \times (Rockfish QS Units assigned to that$$

Cooperative /  $\Sigma$  Rockfish QS Units assigned to all rockfish cooperatives and the Limited Access Fishery in the Catcher/Processor Sector).

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

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

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

(2) *Maximum amount of secondary species tonnage that may be assigned to the catcher/processor sector.* (i) Sum the amount of each secondary species retained by all vessels that gave rise to an LLP license with a catcher/processor designation or that fished under an LLP license with a catcher/processor designation during the directed fishery for any primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish during all qualifying season dates established in Table 28 to this part. This is the rockfish catcher/processor sector harvest for that secondary species.

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

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

(iv) Multiply the percentage of each secondary species assigned to the catcher/processor sector in the Rockfish Program fishery by the TAC for that

secondary species. This is the maximum amount of that secondary species that may be allocated to the catcher/processor sector in the Rockfish Program.

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

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

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

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

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

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

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



participating. The specific amount of each secondary species that may be used by eligible rockfish harvesters is determined by the following procedure:

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

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

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

(i) *CQ assigned to rockfish cooperatives in the catcher/processor sector.* The CQ for a secondary species that is assigned to a rockfish cooperative is equal to the maximum amount of that secondary species that may be allocated to the catcher/processor sector in the Rockfish Program multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives and the limited access fishery for all primary rockfish species in the catcher/processor sector. Expressed algebraically in the following equation:

$$\text{CQ for that Secondary Species} = \text{maximum amount of that Secondary Species that may be allocated to the Catcher/Processor Sector in the Rockfish Program} \times \left( \frac{\sum \text{Rockfish QS Units assigned to that Rockfish cooperative}}{\sum \text{Rockfish QS Units assigned to all rockfish cooperatives and the Limited Access Fishery in the Catcher/Processor Sector}} \right)$$

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

$$\text{CQ for that Secondary Species} = \text{maximum amount of that Secondary Species that may be allocated to the Catcher Vessel Sector in the Rockfish Program} \times \left( \frac{\sum \text{Rockfish QS Units assigned to that Rockfish Cooperative}}{\sum \text{Rockfish QS Units assigned to all primary rockfish species in the catcher vessel sector}} \right)$$

Rockfish QS Pool in the Catcher Vessel Sector).

(c) *Sector and LLP license allocations of rockfish halibut PSC—(1) General.*

Each calendar year, the Regional Administrator will determine the tonnage of rockfish halibut PSC that will be assigned to the Rockfish Program. This amount will be allocated to the appropriate sector, either the catcher/processor sector or the catcher vessel sector. The tonnage of rockfish halibut PSC assigned to a sector will be further assigned as CQ only to rockfish cooperative(s) within that sector.

(2) *Maximum amount of rockfish halibut PSC that may be assigned to the catcher/processor and catcher vessel sectors.* (i) Sum the amount of halibut PSC used by all vessels that gave rise to an LLP license or that fished under an LLP license used during the directed fishery for any primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish during all qualifying season dates established in Table 28 to this part. This is the rockfish halibut PSC amount.

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

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

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

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

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

(3) *Use of rockfish halibut PSC by an eligible rockfish harvester.* Once the maximum amount of rockfish halibut PSC that may be assigned to a sector has been determined, the use of that specific amount that is assigned to that sector is governed by the specific Rockfish Program fishery in which eligible rockfish harvesters are participating.

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

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

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

(i) *CQ assigned to rockfish cooperatives in the catcher/processor sector.* The CQ for rockfish halibut PSC that is assigned to a specific rockfish cooperative is equal to the maximum amount of rockfish halibut PSC that may be allocated to the catcher/processor sector multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives and the limited access fishery for all primary rockfish species in the catcher/processor sector. This is expressed algebraically in the following equation:

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

(ii) *CQ assigned to rockfish cooperatives in the catcher vessel sector.* The CQ for rockfish halibut PSC that is assigned to a specific rockfish cooperative is equal to the maximum amount of rockfish halibut PSC that may be allocated to the catcher vessel sector multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the rockfish QS pool for all primary rockfish species in the catcher vessel sector.

vessel sector. This is expressed algebraically in the following equation:

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

(d) *Assigning rockfish QS to a Rockfish Program fishery*—(1) *General*. Each calendar year, a person that is participating in the Rockfish Program must assign any LLP license and any rockfish QS assigned to that LLP license to a Rockfish Program fishery by the process specified in paragraph (e) of this section. A person may assign an LLP license and any rockfish QS assigned to that LLP license to only one Rockfish Program fishery in a fishing year. Any rockfish QS assigned to a person's LLP license after NMFS has issued CQ or the TAC for that calendar year will not result in any additional CQ or TAC being issued for that rockfish QS for that calendar year.

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

(i) That eligible rockfish harvester assigns the rockfish QS associated with that LLP license to a rockfish cooperative on a complete application for CQ that is approved by the Regional Administrator and that meets the requirements of paragraph (i) of this section; and

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

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

(i) That eligible rockfish harvester assigns the rockfish QS associated with that LLP license to a rockfish cooperative on a complete application for CQ that is approved by the Regional Administrator and that meets the requirements of paragraph (i) of this section; and

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

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

(A) Assigns the rockfish QS associated with that LLP license to a limited access fishery on a complete application for the rockfish limited access fishery that is

approved by the Regional Administrator; or

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

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

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

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

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

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

(e) *Applications for a Rockfish Program fishery*—(1) *General*.

Applications to participate in a Rockfish Program fishery are required to be submitted each year. A person who wishes to participate in a particular Rockfish Program fishery must submit a timely and complete application that is appropriate to that Rockfish Program fishery. These applications may only be submitted to NMFS using the following methods:

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

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

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

(2) *Forms*. Forms are available through the internet on the NMFS Alaska Region website at <http://www.fakr.noaa.gov>, or by contacting NMFS at: 800-304-4846, Option 2.

(3) *Deadline*. A completed application must be received by NMFS no later than 1700 hours A.l.t. on March 1 of the year

for which the applicant wishes to participate in a Rockfish Program fishery, or if sent by U.S. mail, the application must be postmarked by that time.

(4) *Application for CQ*. A rockfish cooperative that submits a complete application that is approved by NMFS will receive a CQ permit that establishes an annual amount of primary rockfish species, secondary species, and rockfish halibut PSC that is based on the collective rockfish QS of the LLP licenses assigned to the rockfish cooperative by its members. A CQ permit will list the amount of CQ, by fishery, held by the rockfish cooperative, the members of the rockfish cooperative and LLP licenses assigned to that rockfish cooperative, and the vessels which are authorized to harvest fish under that CQ permit.

(i) *Contents of an application for CQ*. A completed application must contain the following information:

(A) *Rockfish cooperative identification*. The rockfish cooperative's legal name; the type of business entity under which the rockfish cooperative is organized; the state in which the rockfish cooperative is legally registered as a business entity; Tax ID number, date of incorporation, the printed name of the rockfish cooperative's designated representative; the permanent business address, telephone number, fax number, and e-mail address (if available) of the rockfish cooperative or its designated representative; and the signature of the rockfish cooperative's designated representative and date signed.

(B) *Members of the rockfish cooperative*—(1) *Harvester identification*. Full name, NMFS Person ID, LLP license number(s), Tax ID or SSN, name of the vessel(s), ADF&G vessel registration number, and USCG documentation number of vessel(s) on which the CQ issued to the rockfish cooperative will be used.

(2) *LLP holdership documentation*. Provide the names of all persons, to the individual level, holding an ownership interest in the LLP license(s) assigned to the rockfish cooperative and the percentage ownership each person and individual holds in the LLP license(s).

(C) *Processor associates of the rockfish cooperative*—(1) *Identification*. Full name, NMFS Person ID, Tax ID, facility name, ADF&G processor code, SFP vessel name, ADF&G vessel registration number, and USCG documentation number of vessel (if a vessel), and Federal Processor Permit for each processing facility or vessel.

(2) *Processor ownership documentation*. Provide the names of all

persons, to the individual person level, holding an ownership interest in the processor and the percentage ownership each person and individual holds in the processor.

(D) *Additional documentation.* For the cooperative application to be considered complete, the following documents must be attached to the application:

(1) A copy of the business license issued by the state in which the rockfish cooperative is registered as a business entity;

(2) A copy of the articles of incorporation or partnership agreement of the rockfish cooperative;

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

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

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

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

(ii) *Issuance of CQ.* Issuance by NMFS of a CQ permit is not a determination that the rockfish cooperative is formed or is operating in compliance with antitrust law.

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

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

(A) *Applicant identification.* The applicant's name, NMFS person ID (if applicable), tax ID or social security number, date of birth or date of incorporation, permanent business mailing address, business telephone number, fax number, and e-mail (if available);

(B) Indicate (YES or NO) whether the applicant is an eligible rockfish harvester;

(C) Indicate (YES or NO) whether the applicant is participating in the rockfish limited access fishery;

(D) *Vessel identification.* The name of the vessel, ADF&G vessel registration number, USCG documentation number, and LLP license number(s) held by the applicant and used on that vessel in this rockfish limited access fishery;

(E) *LLP holdership documentation.* Provide the names of all persons, to the individual person level, holding an ownership interest in the LLP license assigned to the rockfish limited access fishery and the percentage ownership each person and individual holds in the LLP license; and

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

(ii) [Reserved]

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

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

(A) *Applicant identification.* The applicant's name, NMFS person ID (if applicable), tax ID or social security number, date of birth or date of incorporation, permanent business mailing address, business telephone number, fax number, and e-mail (if available);

(B) Indicate (YES or NO) whether the applicant is an eligible rockfish harvester;

(C) Indicate (YES or NO) whether the applicant is opting-out of the Rockfish Program;

(D) Indicate (YES or NO) whether the applicant holds an LLP license with rockfish QS assigned to the catcher/processor sector;

(E) *Vessel identification.* The name of the vessel, ADF&G vessel registration number, USCG documentation number, and LLP license number(s) held by the applicant and used on that vessel;

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

individual level, holding an ownership interest in the LLP license and the percentage ownership each person and individual holds in the LLP license; and

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

(ii) [Reserved]

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

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

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

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

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

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

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

(ii) [Reserved]

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

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

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

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

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

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

(v) *Certification of transferor.* The rockfish cooperative transferor's designated representative and the eligible rockfish processor with whom that rockfish cooperative in the catcher vessel sector is associated must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Also enter the printed name of the rockfish cooperative transferor's designated representative. Explicit authorization for the designated representative to act on behalf of the rockfish cooperatives must accompany the application.

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

complete to the best of his or her knowledge and belief. Also enter the printed name of the rockfish cooperative transferee's designated representative. Explicit authorization for the designated representative to act on behalf of the rockfish cooperatives must accompany the application.

(2) [Reserved]

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

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

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

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

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

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

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

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

(4) *Opt-out fishery.* An eligible rockfish harvester in the opt-out fishery may harvest groundfish species other than primary rockfish species up to the amounts of the MRAs for those species as established in Table 10 to this part.

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

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

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

(iii) Once the amount of shortraker rockfish harvested in the catcher vessel sector is equal to 9.72 percent of the shortraker rockfish TAC in the Central GOA regulatory area, then shortraker rockfish may not be retained by any participant in the catcher vessel sector.

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

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

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

(i) *Rockfish cooperative—(1) General.* This section governs the formation and operation of rockfish cooperatives. The regulations in this section apply only to rockfish cooperatives that have formed for the purpose of applying for and fishing with CQ issued annually by NMFS. Members of rockfish cooperatives should consult legal counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the rockfish cooperative's proposed conduct. Membership in a rockfish cooperative is voluntary. No person may be required to join a rockfish

cooperative. Upon receipt of written notification that a person is eligible and wants to join a rockfish cooperative, that rockfish cooperative must allow that person to join subject to the terms and agreements that apply to the members of the cooperative as established in the contract governing the conduct of the rockfish cooperative. Members may leave a rockfish cooperative, but any CQ contributed by the rockfish QS held by that member remains assigned to that rockfish cooperative for the remainder of the calendar year. An LLP license or vessel that has been assigned to a rockfish cooperative in the catcher/processor sector that leaves a rockfish cooperative continues to be subject to the sideboard limits established for that rockfish cooperative under § 679.82(d)

and (f), for that calendar year. If a person becomes the holder of an LLP license that has been assigned to a rockfish cooperative, then that person may join that rockfish cooperative upon receipt of that LLP license.

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

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

(ii) Each rockfish cooperative must appoint an individual as designated representative to act on the rockfish cooperative's behalf and serve as contact

point for NMFS for questions regarding the operation of the rockfish cooperative. The designated representative must be an individual, and may be a member of the rockfish cooperative, or some other individual designated by the rockfish cooperative;

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

(iv) Each rockfish cooperative must meet the mandatory requirements established in paragraphs (i)(3) and (4) of this section applicable to that rockfish cooperative.

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

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

Requirement	Catcher Vessel Sector	Catcher/Processor Vessel Sector
(vi) Is there a minimum amount of rockfish QS that must be assigned to a rockfish cooperative for it to be allowed to form?	Yes. A rockfish cooperative must be assigned rockfish QS that represents at least 75 percent of all the legal rockfish landings that yields Rockfish QS of primary rockfish species delivered to that eligible rockfish processor during the four years selected by that processor.	No
(vii) What is allocated to the rockfish cooperative?	CQ for primary rockfish species, secondary species, and rockfish halibut PSC, based on the rockfish QS assigned to all of the LLP licenses that are assigned to the cooperative.	
(viii) Is this CQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CQ, or a cooperative can transfer all or a portion of this CQ to another rockfish cooperative.	
(ix) Is there a season during which designated vessels must catch CQ?	Yes, any vessel designated to catch CQ for a rockfish cooperative is limited to catching CQ during the season beginning on 1200 hours, A.I.t. on May 1 through 1200 hours A.I.t. on November 15.	
(x) Can any vessel catch a rockfish cooperative's CQ?	No, only vessels that are named on the application for CQ for that rockfish cooperative can catch the CQ assigned to that rockfish cooperative. A vessel may be assigned to only one rockfish cooperative in a calendar year.	
(xi) Can the member of a rockfish cooperative transfer CQ individually without the approval of the other members of the rockfish cooperative?	No, only the rockfish cooperative's designated representative, and not individual members, may transfer its CQ to another rockfish cooperative, but only if that transfer is approved by NMFS as established under paragraph (i) of this section.	
(xii) Can a rockfish cooperative in the catcher/processor sector transfer its sideboard limit?	N/A	No, sideboard limits assigned to a rockfish cooperative in the catcher/processor sector is a limit applicable to a specific rockfish cooperative, and may not be transferred between rockfish cooperatives.
(xiii) Is there a hired master requirement?	No, there is no hired master requirement.	N/A
(xiv) Can an LLP license be assigned to more than one rockfish cooperative in a calendar year?	No. An LLP license can only be assigned to one rockfish cooperative in a calendar year. An eligible rockfish harvester holding multiple LLP licenses may assign different LLP licenses to different rockfish cooperatives subject to any other restrictions that may apply.	
(xv) Can an eligible rockfish processor be associated with more than one rockfish cooperative?	An eligible rockfish processor can only associate with one rockfish cooperative per year at each shoreside processor or stationary floating processor owned by that eligible rockfish processor. An eligible rockfish processor who holds more than one processing history based on a transfer of processing history under the provisions of § 679.80(c)(2)(ii) would be issued a single eligible rockfish processor permit that aggregates the processing history held by that eligible rockfish processor. That eligible rockfish processor may form an association with a rockfish cooperative with the eligible rockfish harvesters eligible to form a rockfish cooperative based on the aggregated processing history of that eligible rockfish processor and may receive rockfish delivered by that rockfish cooperative at a shoreside processor or stationary floating processor owned by that eligible rockfish processor subject to any other restrictions that may apply.	N/A
(xvi) Can an LLP license be assigned to a rockfish cooperative and the rockfish limited access fishery or opt-out fishery?	No. Once an LLP license is assigned to a rockfish cooperative, any rockfish QS assigned to that LLP license yields CQ for that rockfish cooperative for the calendar year. An LLP license may only be assigned to one Rockfish Program fishery in a calendar year.	
(xvii) Which members may harvest the rockfish cooperative's CQ?	That is determined by the rockfish cooperative contract signed by its members. Any violations of this contract by one cooperative member may be subject to civil claims by other members of the rockfish cooperative.	
(xviii) Does a rockfish cooperative need a contract?	Yes, a rockfish cooperative must have a membership agreement or contract that specifies how the rockfish cooperative intends to harvest its CQ. A copy of this agreement or contract must be submitted with the application for CQ.	

Requirement	Catcher Vessel Sector	Catcher/Processor Vessel Sector
(xix) What happens if the rockfish cooperative exceeds its CQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CQ. Exceeding a CQ is a violation of the regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Rockfish Program regulations while fishing under authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to a rockfish cooperative. Each member of a rockfish cooperative is responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Rockfish Program.	
(xx) Is there a limit on how much CQ a rockfish cooperative may hold or use?	Yes, generally, a rockfish cooperative may not hold or use more than 30 percent of the aggregate primary rockfish species CQ assigned to the catcher vessel sector for that calendar year. See § 679.82(a) for the provisions that apply.	No, but a catcher/processor vessel is still subject to any vessel use caps that may apply. See § 679.82(a) for the use cap provisions that apply.
(xxi) Is there a limit on how much CQ a vessel may harvest?	No. However, a vessel may not catch more CQ than the CQ assigned to that rockfish cooperative for which it is authorized to fish.	Yes, generally, no vessel may harvest more than 60 percent of the aggregate primary rockfish species TAC assigned to the catcher/processor sector for that calendar year, unless exempt from this restriction. See § 679.82(a) for the provisions that apply.
(xxii) If my vessel is fishing in a directed flatfish fishery in the Central GOA and I catch groundfish and halibut PSC, does that count against the rockfish cooperative's CQ?	(A) Any vessel authorized to harvest the CQ assigned to a rockfish cooperative must count any catch of primary rockfish species, secondary species, or rockfish halibut PSC against that rockfish cooperative's CQ from May 1 until November 15, or until the effective date of a rockfish cooperative termination of fishing declaration that has been approved by NMFS. (B) Groundfish harvests would not be debited against the rockfish cooperative's CQ if the vessel is not authorized to harvest CQ. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type.	
(xxiii) Can my rockfish cooperative negotiate prices for me?	The rockfish cooperatives formed under the Rockfish Program are intended to conduct and coordinate harvest activities for their members. Rockfish cooperatives formed under the Rockfish Program are subject to existing antitrust laws. Collective price negotiation by a rockfish cooperative must be conducted in accordance with existing antitrust laws.	
(xxiv) Are there any special reporting requirements?	Yes, each year a rockfish cooperative must submit an annual rockfish cooperative report to NMFS by December 15 of each year. The annual rockfish cooperative report may be made available to NMFS by mailing a copy to NMFS: Regional Administrator, P.O. Box 21668, Juneau, AK, 99802.	
(xxv) What is required in the annual rockfish cooperative report?	<p style="text-align: center;">The annual rockfish cooperative report must include at a minimum:</p> <p>(A) The rockfish cooperative's CQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by-vessel basis;</p> <p>(B) The rockfish cooperative's actual retained and discarded catch of CQ, and sideboard limit on an area-by-area and vessel-by-vessel basis;</p> <p>(C) A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated;</p> <p>(D) A description of any civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.</p>	

(4) *Additional mandatory requirements*—(i) *Calculation of minimum legal rockfish landings for forming a rockfish cooperative.* If an eligible rockfish harvester holds an LLP license with rockfish QS for the catcher vessel sector that does not have any legal rockfish landings associated with an eligible rockfish processor from January 1, 1996, through December 31, 2000, during the fishery seasons established in Table 28 to this part, that eligible rockfish harvester may join any rockfish cooperative with that LLP license. Any such eligible rockfish harvester that joins a rockfish cooperative may not be considered as contributing an amount of Rockfish QS necessary to meet a minimum of 75 percent of the legal rockfish landings that yielded Rockfish QS delivered to

that eligible rockfish processor during the four calendar years selected by that eligible rockfish processor for the purposes of establishing the rockfish cooperative.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) *Use caps*—(1) *General.* Use caps limit the amount of rockfish QS and CQ of primary rockfish species that may be held or used by an eligible rockfish harvester, and the amount of primary rockfish species TAC that may be received, by an eligible rockfish processor. Use caps do not apply to secondary species or halibut PSC CQ. Use caps may not be exceeded unless the entity subject to the use cap is specifically allowed to exceed a cap according to the criteria established under this paragraph (a) or by an operation of law. There are three types of use caps: person use caps; vessel use caps; and processor use caps. Person use caps limit the maximum amount of aggregate rockfish QS a person may hold and the maximum amount of aggregate primary rockfish species CQ that a person may hold or use. Person use caps apply to eligible rockfish harvesters and rockfish cooperatives. Vessel use caps limit the maximum amount of aggregate primary rockfish species CQ that a vessel operating as a catcher/processor may harvest. Processor use caps limit the maximum amount of aggregate primary rockfish species that may be received or processed by an eligible rockfish processor. All rockfish QS use caps are based on the aggregate primary rockfish species initial rockfish QS pool established by NMFS.

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

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

(ii) Twenty (20.0) percent of the aggregate rockfish QS initially assigned to the catcher/processor sector and resulting CQ unless that eligible rockfish harvester qualifies for an exemption to this use cap under paragraph (a)(6) of this section.

(3) *CQ use cap for rockfish cooperatives in the catcher vessel sector.* A rockfish cooperative may not hold or use an amount of CQ that is greater than the amount derived from 30.0 percent of the aggregate rockfish QS initially assigned to the catcher vessel sector unless the sum of the aggregate rockfish QS held by the eligible members of that rockfish cooperative prior to June 6, 2005 exceeds this use cap.

(4) *CQ use cap for a vessel in the catcher/processor sector.* (i) A vessel

harvesting CQ in the catcher/processor sector may not harvest an amount of CQ that is greater than the amount derived from 60.0 percent of the aggregate rockfish QS initially assigned to the catcher/processor sector; unless:

(ii) the CQ harvested by a vessel is not greater than the amount of CQ derived from the rockfish QS assigned to the LLP licence(s) that was used on that vessel prior to June 6, 2005; and

(iii) This amount is greater than the CQ use cap for a vessel in the catcher/processor sector.

(5) *Primary rockfish species use cap for eligible rockfish processors.* (i) An eligible rockfish processor may not receive or process in excess of 30.0 percent of the aggregate primary rockfish species TAC, including CQ, assigned to the catcher vessel sector unless that eligible rockfish processor is receiving or processing an amount of aggregate primary rockfish species TAC that is not greater than the sum of the aggregate rockfish CQ derived from the amount of Rockfish QS initially assigned to those eligible rockfish harvesters eligible to form a rockfish cooperative in association with that eligible rockfish processor.

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

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

(ii) *Transfer limitations.* (A) An eligible rockfish harvester that receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section shall not receive any rockfish QS by transfer unless and until that person's holdings of aggregate rockfish QS in that sector are reduced to an amount below the use cap specified in paragraph (a)(2) of this section.

(B) If an eligible rockfish harvester receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section,



and that eligible rockfish harvester transfers rockfish QS to another person, and the amount of aggregate rockfish QS held by that eligible rockfish harvester after the transfer is greater than the use cap established in paragraph (a)(2) of this section, that eligible rockfish harvester may not hold more than the amount of aggregate rockfish QS remaining after the transfer.

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

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

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

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

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

(ii) [Reserved]

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

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

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

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

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

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

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

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

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

(2) *Appeals*. A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a sideboard limitation may make a contrary claim and provide evidence to NMFS. All claims must be submitted in writing to the RAM Program, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668,

together with any documentation or evidence supporting the request within 30 days of being notified by NMFS of the sideboard limitation. If NMFS finds the claim is unsupported, the claim will be denied in an Initial Administrative Determination (IAD). The affected persons may appeal this IAD using the procedures described at § 679.43.

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

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

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

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

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

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

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

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

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

(iii) Directed fishing for the following species in the West Yakutat District, Central GOA, and Western GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species based on the use of halibut PSC:

- (A) Rex sole;
- (B) Deep water flatfish;
- (C) Arrowtooth flounder;
- (D) Shallow water flatfish;
- (E) Flathead sole; and

(iv) Directed fishing by a vessel in the catcher vessel sector for Pacific cod in the BSAI and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(5) *Vessels and LLP licenses subject to general and halibut PSC sideboard limitations*. (i) The sideboard fishing limitations described in paragraph (d) of this section apply both to the fishing

vessel itself and to any LLP license derived in whole or in part from the history of that vessel. The sideboard limitations apply to any vessel named on that LLP license. These sideboard restrictions apply even if an LLP license holder did not submit an application to participate in the Rockfish Program but that LLP license is otherwise eligible to receive rockfish QS under the Rockfish Program based on legal rockfish landings.

(ii) Except as described in paragraph (d)(5)(iii) of this section, the owner of any vessel that NMFS has determined

meets one of the following criteria is subject to groundfish directed fishing sideboard limits and halibut PSC sideboard limits issued under this paragraph (d):

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

(B) Any LLP license under whose authority legal rockfish landings were made;

(C) Any vessel named on an LLP license that was generated in whole or in part by the legal rockfish landings of a vessel meeting the criteria in paragraph (d)(5)(ii)(B) of this section.

(iii) Any AFA vessel that is not exempt from GOA groundfish sideboards under the AFA as specified under § 679.63(b)(1)(i)(B) is exempt from the sideboard limits in this paragraph (d).

(6) *Determination of general sideboard ratios.* (i) Separate sideboard ratios for each rockfish sideboard fishery are established for the catcher vessel and the catcher/processor sectors. The general sideboard ratio for each fishery is determined according to the following table:

For the Management Area of the...	In the directed fishery for...	The Sideboard Limit for the Catcher/Processor Sector is...	The Sideboard Limit for the Catcher Vessel Sector is...
West Yakutat District	Pelagic Shelf Rockfish	72.4 percent of the TAC	1.7 percent of the TAC
	Pacific ocean perch	76.0 percent of the TAC	2.9 percent of the TAC
Western GOA	Pelagic Shelf Rockfish	63.3 percent of the TAC	0.0 percent of the TAC
	Pacific ocean perch	61.1 percent of the TAC	(Not released due to confidentiality requirements on fish ticket data established by the State of Alaska).
	Northern Rockfish	78.9 percent of the TAC	0.0 percent of the TAC
BSAI	Pacific cod	N/A	0.0 percent of the TAC

(ii) Each rockfish cooperative in the catcher/processor sector will be assigned a sideboard limit for that rockfish cooperative as a percentage of the general sideboard ratio for that fishery.

(iii) The sideboard ratios that are applicable for each general sideboarded fishery for a rockfish cooperative in the catcher/processor sector are calculated by dividing the aggregate retained catch of that fishery, from July 1 through July 31 in each year from 1996 through 2002, caught by LLP licenses assigned to that rockfish cooperative that are subject to directed fishing closures under this paragraph (d), by the total retained catch from July 1 through July 31 in each year from 1996 through 2002 caught by all groundfish vessels in that sector.

(7) *Management of annual sideboard limits—(i) Sideboard directed fishing allowance.* (A) If the Regional Administrator determines that an annual sideboard limit for a general rockfish sideboard fishery has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to the group of vessels to which the general sideboard limit applies. A directed fishing allowance that is established for

a rockfish cooperative in the catcher/processor sector may be fished only by that rockfish cooperative to which it is assigned.

(B) If the Regional Administrator determines that a sideboard limit is insufficient to support a directed fishing allowance for that species or species group, then the Regional Administrator may set the directed fishing allowance to zero for that species or species group for that sector or rockfish cooperative, as applicable.

(ii) *Directed fishing closures.* Upon attainment of a general directed fishing sideboard limit, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species group in the specified sector, regulatory area, or district.

(8) *Determination of halibut PSC sideboard ratios.* (i) Sideboards for halibut PSC are established for the catcher vessel and the catcher/processor sectors separately. Sideboard limits for halibut PSC are calculated for each rockfish cooperative in the catcher/processor sector separately. The halibut PSC sideboard limit for each sector is established according to the following table:

For the following Sector...	the annual Deep-water complex halibut PSC Sideboard Limit in the GOA is...	the annual Shallow-water complex halibut PSC Sideboard Limit in the GOA is...
Catcher/Processor Sector	3.99 percent of the GOA annual halibut mortality limit	0.54 percent of the GOA annual halibut mortality limit
Catcher Vessel Sector	1.08 percent of the GOA annual halibut mortality limit	6.32 percent of the GOA annual halibut mortality limit

(ii) Each rockfish cooperative in the catcher/processor sector will be assigned a percentage of each halibut PSC sideboard limit established under paragraph (d)(8) of this section based on the following calculation:

(A) The aggregate halibut PSC used in the deep-water complex from July 1 through July 31 in each year from 1996 through 2002 by LLP licenses assigned to that rockfish cooperative that are subject to directed fishing closures under this paragraph (d), except primary rockfish fisheries in the Central GOA,

divided by 3.99 percent of the GOA annual halibut mortality limit; and

(B) The aggregate halibut PSC used in the shallow-water complex from July 1 through July 31 in each year from 1996 through 2002 by LLP licenses assigned to that rockfish cooperative that are subject to directed fishing closures under this paragraph (d), divided by 0.54 percent to the GOA annual halibut mortality limit.

(C) Catcher/processor sector participants that are not in a rockfish cooperative will receive the aggregate portion of the deep water halibut PSC sideboard limit and shallow-water halibut PSC sideboard limit not assigned to rockfish cooperatives.

(9) *Management of halibut PSC sideboard limits*—(i) *Halibut PSC sideboard limits*. The resulting halibut PSC sideboard limits established under this paragraph (d) will be published in the annual GOA groundfish harvest specification notice and expressed in metric tons.

(A) If the Regional Administrator determines that a halibut PSC sideboard limit is sufficient to support a directed fishery for groundfish specified under paragraph (d)(4)(iii) of this section for a particular sector, then the Regional Administrator may establish a halibut PSC sideboard limit for the species complex applicable only to the group of vessels in that sector to which the halibut PSC sideboard limit applies. A halibut PSC sideboard limit that is established for a rockfish cooperative in the catcher/processor sector may be fished only by that rockfish cooperative in the catcher/processor sector to which it is assigned.

(B) If the Regional Administrator determines that a halibut PSC sideboard limit is insufficient to support a directed fishery for a groundfish fishery specified under paragraph (d)(4)(iii) of this section for a particular sector then the Regional Administrator may close directed fishing by that sector or rockfish cooperative in the catcher/processor sector.

(ii) *Directed fishing closures*. Upon determining that a halibut PSC sideboard limit is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species complex in the specified sector, rockfish cooperative in the catcher/processor sector, regulatory area, or district. The 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 a sector or rockfish cooperative in the catcher/processor

sector is reached, then NMFS will close directed fishing in that management area for:

- (1) Flathead sole; and
- (2) Shallow water flatfish.

(B) If the deep-water halibut PSC sideboard limit is reached for a sector or rockfish cooperative in the catcher/processor sector, then NMFS will close directed fishing in that management area for:

- (1) Rex sole;
- (2) Deep water flatfish; and
- (3) Arrowtooth flounder.

(iii) *Halibut PSC accounting*. Any halibut mortality occurring under a CQ permit or in a rockfish limited access fishery will not apply against the halibut PSC sideboard limits established paragraph (d)(8) of this section.

(e) *Sideboard provisions for catcher vessels*—(1) *General*. In addition to the sideboard provisions that apply under paragraph (d) of this section, except as described in paragraph (d)(5)(iii) of this section, the following additional sideboards apply to catcher vessels.

(2) *Catcher vessels subject to catcher vessel sideboard limits*. Any catcher vessel that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (e):

- (i) Any catcher vessel whose legal rockfish landings could be used to generate rockfish QS for the catcher vessel sector in the Rockfish Program;
- (ii) Any catcher vessel named on an LLP license under which catch history could be used to qualify that LLP license for eligibility in the Rockfish Program; or
- (iii) Any catcher vessel named on an LLP license that was generated in whole or in part by the legal rockfish landings of a catcher vessel.

(3) *Prohibition for directed fishing in BSAI groundfish fisheries during July*. Vessels subject to the provisions of this paragraph (e) may not participate in directed fishing in the BSAI and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species from July 1 through July 31 in any of the following directed fisheries:

- (i) Alaska plaice;
- (ii) Arrowtooth flounder;
- (iii) Flathead sole;
- (iv) Other flatfish;
- (v) Pacific ocean perch;
- (vi) Rock sole; and
- (vii) Yellowfin sole.

(f) *Sideboard provision—catcher/processor rockfish cooperative provisions*—(1) *General*. In addition to the sideboard provisions that apply under paragraph (d) of this section, the

following additional sideboard limits under this paragraph (f) apply to catcher/processor vessels and LLP licenses that are assigned to a rockfish cooperative in the catcher/processor sector during a calendar year.

(2) *Vessels subject to rockfish cooperative sideboard provisions*. Any vessel that NMFS has determined meets any of the following criteria is subject to groundfish sideboard directed fishing closures issued under this paragraph (f):

(i) Any catcher/processor vessel whose legal rockfish landings has been used to qualify for the Rockfish Program and the vessel named on that LLP license is assigned to a rockfish cooperative;

(ii) Any catcher/processor vessel named on an LLP license under which catch history has been used to qualify that LLP license for the Rockfish Program and that LLP license is used in a rockfish cooperative; or

(iii) Any catcher/processor vessel that has been designated in an application for CQ.

(3) *Prohibition from fishing in BSAI groundfish fisheries*. A vessel subject to a rockfish cooperative sideboard provision under this paragraph (f) may not participate in directed groundfish fisheries in the BSAI and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species between July 1 and July 14 except for sablefish harvested under the IFQ Program and pollock.

(4) *Prohibitions for fishing in GOA groundfish fisheries*. A vessel subject to a rockfish cooperative sideboard provision under this paragraph (f) may not participate in any directed groundfish fishery the GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species except sablefish harvested under the IFQ Program and groundfish harvested under a CQ permit in the GOA, until the earlier of:

(i) From July 1 through July 14 if:

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(4)(iii) of this section; and

(B) The rockfish cooperative has harvested any CQ prior to July 1; or

(ii) From July 1 until 90 percent of the rockfish cooperative's primary rockfish species CQ has been harvested if:

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(4)(iii) of this section; and

(B) The rockfish cooperative has not harvested any CQ prior to July 1.

(iii) The prohibition on fishing in any directed groundfish fishery in the GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species, except sablefish harvested under the IFQ Program, does not apply if all vessels in the rockfish cooperative maintain an adequate monitoring plan during all fishing for any CQ or any directed sideboard fishery as required under § 679.84(c) through (e).

(g) *Sideboard provisions—catcher/processor limited access provisions—(1) General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, the following sideboard limits under this paragraph (g) apply to any catcher/processor vessels and LLP licenses that are used in the rockfish limited access fishery for the catcher/processor sector.

(2) *Vessels subject to rockfish limited access fishery sideboard provisions.* Any vessel that NMFS has determined meets any of the following criteria is subject to groundfish sideboard directed fishing closures issued under this paragraph (g):

(i) Any catcher/processor vessel named on an LLP license whose legal rockfish landings were used to qualify for the Rockfish Program and the vessel named on that LLP license is assigned to a catcher/processor rockfish limited access fishery;

(ii) Any catcher/processor vessel named on an LLP license under which catch history was used to qualify that LLP license for the Rockfish Program and that LLP license is used in the catcher/processor rockfish limited access fishery;

(iii) Any catcher/processor vessel designated in an application for the rockfish limited access fishery for the catcher/processor sector; or

(iv) Any vessel named on an LLP license with legal rockfish landings in the catcher/processor sector if that LLP license is not specified in an application for CQ or an application to opt-out.

(3) *Prohibition from directed fishing in GOA and BSAI groundfish fisheries.* If a vessel named on an LLP license used in the rockfish limited access fishery has been assigned rockfish QS greater than an amount equal to 5 percent of the Pacific ocean perch rockfish QS allocated to the catcher/processor sector, then that vessel may not participate in any:

(i) GOA groundfish fishery and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species other than the rockfish

limited access fishery and sablefish harvested under the IFQ Program; or

(ii) BSAI groundfish fishery and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species other than sablefish harvested under the IFQ Program or pollock, from July 1 until 90 percent of the Central GOA Pacific ocean perch that is allocated to the rockfish limited access fishery for the catcher/processor sector has been harvested.

(h) *Sideboard provisions—catcher/processor opt-out provisions—(1) General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, the following sideboards under this paragraph (h) apply to any catcher/processor vessels and LLP license designated in an application to opt-out that is subsequently approved by NMFS.

(2) *Vessels subject to opt-out sideboard provisions.* (i) Any catcher/processor vessel whose legal rockfish landings were used to qualify for the Rockfish Program and for which the vessel named on that LLP license is assigned to the opt-out fishery;

(ii) Any catcher/processor vessel named on an LLP license under which catch history was used to qualify that LLP license for the Rockfish Program and that LLP license is used in the opt-out fishery; or

(iii) Any catcher/processor vessel designated in an application to opt-out.

(3) *Prohibitions on Central GOA rockfish directed harvest by opt-out vessels.* Any vessel that is subject to the opt-out sideboard restriction under this paragraph (h) is prohibited from directed fishing for the following species in the following management areas:

(i) Central GOA northern rockfish and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season;

(ii) Central GOA Pacific ocean perch and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season; and

(iii) Central GOA pelagic shelf rockfish and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(4) *Prohibitions on directed fishing in GOA groundfish fisheries without previous participation.* (i) Any vessel that is subject to the opt-out sideboard restriction under paragraph (c) of this section is prohibited from directed fishing in any groundfish fishery in the GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for

that species (except sablefish harvested under the IFQ Program) from July 1 through July 14 of each year if that vessel has not participated in that directed groundfish fishery in any two years from 1996 through 2002 during the following time periods:

(A) June 30, 1996 through July 6, 1996;

(B) June 29, 1997 through July 5, 1997;

(C) June 28, 1998 through July 4, 1998;

(D) July 4, 1999 through July 10, 1999;

(E) July 8, 2000 through July 15, 2000;

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

and

(G) June 30, 2002 through July 6, 2002.

(ii) For purposes of this paragraph (h), participation in a fishery in Statistical Area 650 during a time period specified in paragraph (h)(4)(i) of this section shall be considered as participation in that same fishery in Statistical Area 640 during that time period.

#### **§ 679.83 Rockfish Program entry level fishery.**

(a) *Rockfish entry level fishery—(1) General.* A rockfish entry level harvester and rockfish entry level processor may participate in the rockfish entry level fishery as follows:

(i) *Trawl catcher vessels.* Trawl catcher vessels participating in the rockfish entry level fishery may collectively harvest, prior to September 1, an amount not greater than 50 percent of the total allocation to the rockfish entry level fishery as calculated under § 679.81(ab)(2). Allocations to trawl catcher vessels shall be made first from the allocation of Pacific ocean perch available to the rockfish entry level fishery. If the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for trawl catcher vessels in the rockfish entry level fishery, then northern rockfish and pelagic shelf rockfish shall be allocated to trawl catcher vessels.

(ii) *Longline gear vessels.* Longline gear vessels participating in the rockfish entry level fishery may collectively harvest, prior to September 1, an amount not greater than 50 percent of the total allocation to the rockfish entry level fishery as calculated under § 679.81(a)(2). Allocations of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish to longline gear vessels shall be made after the allocation to trawl catcher vessels.

(iii) *Secondary species allocations.* Secondary species shall not be allocated

to the rockfish entry level fishery. Secondary species shall be managed based on a MRA for the target species as described in Table 10 to this part.

(iv) *Halibut PSC allocations—trawl vessels.* Halibut PSC from trawl vessels in the rockfish entry level fishery shall be accounted against the allocation to the deep water species fishery complex for that seasonal apportionment. If the Halibut PSC allocation in the deep water fishery complex has been achieved or exceeded for that seasonal apportionment, the rockfish entry level fishery for trawl vessels will be closed until deep water species fishery complex halibut PSC is available.

(v) *Halibut PSC allocations—longline gear vessels.* Halibut PSC from longline gear vessels in the rockfish entry level fishery shall be accounted against the allocation to the other non-trawl fishery category for that seasonal apportionment. If the Halibut PSC allocation in the other non-trawl fishery category has been reached or exceeded for that seasonal apportionment, the rockfish entry level fishery for longline gear vessels will be closed until deep water species fishery complex halibut PSC is available.

(2) *Reallocation among trawl and longline gear vessels.* Any allocation of Pacific ocean perch, northern rockfish, or pelagic shelf rockfish that has not been harvested by 1200 hours, A.L.T. on September 1, may be harvested by either trawl or longline gear vessels in the rockfish entry level fishery.

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

(b) [Reserved]

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

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

(b) *Permits.* See § 679.4(m).

(c) *Catch monitoring requirements for catcher/processors assigned to a rockfish cooperative or rockfish limited access fishery.* The requirements under paragraphs (c)(1) through (9) of this section apply to any catcher/processor vessel participating in a rockfish cooperative or the rockfish limited access fishery, and that is subject to a sideboard limit as described in this section. At all times when a vessel has groundfish onboard that were harvested

under a CQ permit that were harvested during a rockfish limited access fishery, or that were harvested by a vessel subject to a sideboard limit as described under § 679.82(d) through (g), as applicable, the vessel owner or operator must ensure that:

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

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

(3) *Observer coverage requirements.* The vessel 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 accidentally spilled from the codend during hauling and dumping. Fish accidentally 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. 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 the observer assigned to that vessel.

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

(9) *Vessel crew in tanks or bins.* The vessel owner complies with the requirements specified in paragraph (c)(9)(i) of this section unless the vessel owner has elected, and has had approved by NMFS at the time of the annual observer sampling station

inspection or as described at paragraph (c)(9)(v) of this section, one of the three monitoring options described at paragraph (c)(9)(ii) or (iii) of this section.

(i) *Option 1—No crew in bin or tank.*

No crew may enter any bin or tank preceding the point where the observer samples unsorted catch, unless:

(A) The flow of fish has been stopped between the tank and the location where the observer samples unsorted catch;

(B) All catch has been cleared from all locations between the tank and the location where the observer samples unsorted catch;

(C) The observer has been given notice that the vessel crew must enter the tank; and

(D) The observer is given the opportunity to observe the activities of the person(s) in the tank; or,

(E) The observer informs the vessel operator, or his designee that all sampling has been completed for a given haul, in which case crew may enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station.

(ii) *Option 2—Line of sight option.* From the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch, an observer of average height (between 64 and 74 inches (140 and 160 cm)) must be able to see all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. If clear panels are used to comply with this requirement, those panels must be maintained with sufficient clarity to allow an individual with normal vision to read text located two feet inside of the bin or tank. The text must be written in 87 point type (corresponding to line four on a standard Snellen eye chart) and the text must be readable from the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch. The observer must be able to view the activities of crew in the bin from these locations.

(iii) *Option 3—Video option.* A vessel must provide and maintain cameras, a monitor, and a digital video recording system for all areas of the bin or tank where crew could be located preceding the point where the observer collects catch. The vessel owner or operator must ensure that:

(A) The system has sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date

stamp. At a minimum, all periods of time when fish are inside the bin must be recorded and stored;

(B) The system includes at least one external USB (1.1 or 2.0) hard drive and use commercially available software;

(C) Color cameras have at a minimum 420 TV lines of resolution, a lux rating of 0.1, and auto-iris capabilities;

(D) The video data is maintained and made available to NMFS staff, or any individual authorized by NMFS, upon request. These data must be retained onboard the vessel for no less than 120 days after the beginning of a trip, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120 day period;

(E) The system provides sufficient resolution and field of view to see and read a text sample written in 130 point type (corresponding to line two of a standard Snellen eye chart) from any location within the tank where crew could be located;

(F) The system is recording at a speed of no less than 5 frames per second at all times when fish are inside the tank;

(G) A 16-bit or better color monitor, for viewing activities within the tank in real time, is provided within the observer sampling station (or location where the observer sorts and weighs samples, if applicable) and has the capacity to display all cameras simultaneously. That monitor must be operating at all times when fish are in the tank. The monitor must be placed at or near eye level and provide the same resolution as specified in paragraph (c)(9)(iii)(E) of this section;

(H) The observer is able to view any earlier footage from any point in the trip and is assisted by crew knowledgeable in the operation of the system in doing so;

(I) The vessel owner has, in writing, provided the Regional Administrator with the specifications of the system. At a minimum, this must include:

(1) The length and width (in pixels) of each image;

(2) The file type in which the data are recorded;

(3) The type and extent of compression;

(4) The frame rate at which the data will be recorded;

(5) The brand and model number of the cameras used;

(6) The brand, model, and specifications of the lenses used;

(7) A scale drawing of the location of each camera and its coverage area;

(8) The size and type of storage device;

(9) The type, speed, and operating system of any computer that is part of the system;

(10) The individual or company responsible for installing and maintaining the system;

(11) The individual onboard the vessel responsible for maintaining the system and working with the observer on its use; and

(12) Any additional information requested by the Regional Administrator.

(J) Any change to the video system that would affect the system's functionality is submitted to, and approved by the Regional Administrator in writing before that change is made.

(iv) *Failure of line of sight or video option.* If the observer determines that a monitoring option selected by a vessel owner or operator specified in paragraph (c)(9)(ii) or (c)(9)(iii) of this section fails to provide adequate monitoring of all areas of the bin where crew could be located, then the vessel shall use the monitoring option specified in paragraph (c)(9)(i) of this section until the observer determines that adequate monitoring of all areas of the bin where crew could be located is provided by the monitoring option selected by the vessel owner or operator.

(v) *Bin or tank monitoring for opt-out vessels.* Vessel owners or operators choosing to participate in the opt-out fishery must arrange for inspection of their bin monitoring option. Each option must be inspected and approved by NMFS annually and prior to its use for the first time. If the bin monitoring option is changed or altered once approved, it is invalid and the owner or operator must arrange for another inspection.

(A) *How does a vessel owner arrange for a bin monitoring option inspection?* The time and place of the inspection may be arranged by submitting to NMFS a written request for an inspection. Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection, including the following information:

(1) Name and signature of the person submitting the application, and the date of the application.

(2) Street address, business address, telephone number, and fax number of the person submitting the application.

(3) Whether the vessel has received a bin monitoring option inspection before and, if so, the date of the most recent inspection report.

(4) Vessel name.

(5) Federal fishery permit number.

(6) Location of vessel where the inspection is requested to occur, including street address and city.

(7) A diagram drawn to scale showing the locations where all catch will be weighed and sorted by the observer, the location where unsorted catch will be collected, and the location of any video equipment or viewing panels or ports.

(B) *Where will bin monitoring option inspections be conducted?* Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska, Kodiak, Alaska, and in the Puget Sound area of Washington State.

(C) *Bin monitoring option inspection report.* A bin monitoring option inspection report, valid for 12 months from the date it is signed by NMFS, will be issued to the vessel owner if the bin monitoring option meets the requirements of paragraph (c)(9)(v). The vessel owner must maintain a current bin option inspection report on board the vessel at all times the vessel is required to provide an approved bin monitoring option under this paragraph (c)(9)(v)(C). The bin monitoring option inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

(d) *Catch monitoring requirements for catcher/processors assigned to the opt-out fishery.* At all times any catcher/processor vessel assigned to the opt-out fishery has groundfish onboard that vessel that were harvested subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, the vessel owner or operator must ensure that the requirements in paragraphs (c)(3), (5), (8), and (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 at § 679.50(c)(7)(ii) at all times the vessel is participating in a rockfish cooperative, rockfish limited access fishery, or rockfish sideboard fishery described in this section.

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

(2) *Catch weighing.* All groundfish landed by catcher vessels described at § 679.50(c)(7)(ii) must be sorted,

weighed on a scale approved by the State of Alaska as described at § 679.28(c), and be made available for sampling by a NMFS-certified observer. The observer must be allowed to test any scale used to weigh groundfish to determine its accuracy.

(3) *Notification requirements.* The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of groundfish harvested in a Rockfish Program fishery at least 1 hour prior to offloading. An observer must be available to monitor each delivery of groundfish harvested in a Rockfish Program fishery. The observer must be available the entire time the delivery is being weighed or sorted.

(g) *Catch accounting—(1) Primary rockfish species and secondary species.* All primary rockfish species and secondary species harvested by a vessel, including harvests in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is named on an LLP license that is assigned to a rockfish cooperative and

fishing under a 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 rockfish halibut PSC used by a vessel, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a 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 harvested by a vessel, except groundfish harvested by a vessel fishing under a CQ permit in the Central GOA

including groundfish harvested in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is subject to a sideboard limit for that groundfish species as described under § 679.82(d) through (h), as applicable, from July 1 until July 31 will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

(4) *Halibut sideboard limits.* All halibut PSC used by a vessel, except halibut PSC used by a vessel fishing under a CQ permit, or in a rockfish limited access fishery including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, from July 1 until July 31 will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

■ 13. In part 679, Tables 28, 29, and 30 are added to read as follows:

TABLE 28 TO PART 679—QUALIFYING SEASON DATES IN THE CENTRAL GOA PRIMARY ROCKFISH SPECIES

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

TABLE 29 TO PART 679—INITIAL ROCKFISH QS POOLS

Initial Rockfish QS Pool	Northern Rockfish	Pelagic Shelf Rockfish	Pacific ocean perch	Aggregate Primary Species Initial Rockfish QS Pool
Initial Rockfish QS Pool	9,193,183 units	7,672,008 units	18,121,812 units	34,987,002 units
Initial Rockfish QS Pool for the Catcher/Process or Sector	Based on the Official Rockfish Program Record on January 31, 2007.			

TABLE 29 TO PART 679—INITIAL ROCKFISH QS POOLS—Continued

Initial Rockfish QS Pool	Northern Rockfish	Pelagic Shelf Rockfish	Pacific ocean perch	Aggregate Primary Species Initial Rockfish QS Pool
Initial Rockfish QS Pool for the Catcher Vessel Sector	Based on the Official Rockfish Program Record on January 31, 2007.			

TABLE 30 TO PART 679—ROCKFISH PROGRAM RETAINABLE PERCENTAGES (IN ROUND WT. EQUIVALENT)

Fishery	Incidental Catch Species	Sector	MRA as a percentage of total retained primary rockfish species
Rockfish Cooperative Fishery for vessels fishing under a CQ permit.	Pacific Cod	Catcher/Processor	4.0 percent
	Shortraker/Rougheye aggregate catch	Catcher Vessel	2.0 percent
	See Non-Allocated Secondary species for "other species"		
Rockfish Limited Access Fishery.	Pacific Cod	Catcher Vessel	8.0 percent
	Pacific Cod	Catcher/Processor	4.0 percent
	Sablefish (trawl gear)	Catcher/Processor and Catcher Vessel	3.0 percent
	Shortraker/Rougheye aggregate catch	Catcher/Processor and Catcher Vessel	2.0 percent
	Northern Rockfish	Catcher/Processor and Catcher Vessel	4.0 percent
	Pelagic Shelf Rockfish	Catcher/Processor and Catcher Vessel	4.0 percent
	Pacific ocean perch,	Catcher/Processor and Catcher Vessel	4.0 percent
	Thornyhead rockfish	Catcher/Processor and Catcher Vessel	4.0 percent
	See Non-Allocated Secondary species for other species		
Non-Allocated Secondary Species for vessels fishing under a CQ permit in Rockfish Cooperatives and Rockfish Limited Access Fisheries.	Pollock	Catcher/Processor and Catcher Vessel	20.0 percent
	Deep-Water flatfish	Catcher/Processor and Catcher Vessel	20.0 percent
	Rex Sole	Catcher/Processor and Catcher Vessel	20.0 percent
	Flathead Sole	Catcher/Processor and Catcher Vessel	20.0 percent
	Shallow-water flatfish	Catcher/Processor and Catcher Vessel	20.0 percent
	Arrowtooth	Catcher/Processor and Catcher Vessel	35.0 percent
	Other Rockfish	Catcher/Processor and Catcher Vessel	15.0 percent
	Atka Mackerel	Catcher/Processor and Catcher Vessel	20.0 percent



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 primary rockfish species
	Aggregated forage fish	Catcher/Processor and Catcher Vessel	2.0 percent
	Skates	Catcher/Processor and Catcher Vessel	20.0 percent
	Other Species	Catcher/Processor and Catcher Vessel	20.0 percent
Longline gear Rockfish Entry Level Fishery.	See Table 10 to this part.		
Trawl Rockfish Entry Level Fishery.	See Table 10 to this part.		
Opt-out Fishery.	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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