in a party’s tax year which elapse before the adoption of the conditional fishery occurs. For example, if a party’s tax year runs from January 1, 1974, to December 31, 1974, and conditional fishery adoption occurs on August 15, 1974, (i.e., during the 8th month of the party’s tax year), then the pro-rata portion for that year is eight-twelfths of the total eligible ceilings generated during that year.

(2) Qualified withdrawals in excess of the amount specified in paragraph (f)(1) of this section shall not, during the continuance of the adopted conditional fishery, be consented to. Parties at this point shall have the following option:

(i) Make, with the Secretary’s consent, a nonqualified withdrawal of the excess and discontinue the future deposit of eligible ceilings (which may effect termination of the Interim CCF Agreement).

(ii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective not then involving an adopted conditional fishery. If amendment of an Interim CCF Agreement is necessary in order to include a Schedule B objective not then involving an adopted conditional fishery, the party may, with the Secretary’s consent, make the necessary amendment.

(iii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective involving a then adopted conditional fishery in anticipation that the then adopted conditional fishery will eventually be disadopted, in which case all deposits of eligible ceilings will once again be eligible for the Secretary’s consent as qualified withdrawals. If the adoption of a conditional fishery continues for a substantial length of time and there is no foreseeable prospect of disadoption, then the Secretary, in his discretion, may require paragraph (f)(2)(i) or (ii) of this section to be effected.

(g) The Secretary shall neither enter into a new Interim CCF Agreement, nor permit amendment of an existing one, which involves a Schedule B objective in a then adopted conditional fishery unless paragraph (b), (c) or (d) of this §259.32 applies or unless the Schedule B objective is expressly conditioned upon acquisition construction, or reconstruction of the type permitted under paragraph (e) of this §259.32. Such an express condition would not survive beyond the time at which conditional fishery status is removed.

§ 259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary’s consent; first tax year for which Interim CCF Agreement is effective.

(a) Periods controlling permissibility. For the purpose of this §259.33, the period between the beginning and the end of a party’s tax year is designated “Period (aa)”; the period between the end of a party’s tax year and the party’s tax due date for that tax year is designated “Period (bb)”; the period between the party’s tax due date and the date on which ends the party’s last extension (if any) of that tax due date is designated “Period (cc)”.

(b) Constructive deposits and withdrawals (before Interim CCF Agreement effectiveness date). Constructive deposits and withdrawals shall be permissible only during the Period (aa) during which a written application for an Interim CCF Agreement is submitted to the Secretary and so much of the next succeeding Period (aa), if any, which occurs before the Secretary executes the Interim CCF Agreement previously applied for. All otherwise qualified expenditures of eligible ceilings during Period (aa) may be consented to by the Secretary as constructive deposits and withdrawals: Provided, The applicant’s application for an Interim CCF Agreement and for consent to constructive deposit and withdrawal qualification (together with sufficient supporting data to enable the Secretary’s execution or issuance of consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc). If, however, the Secretary receives the completed application in proper form so close to the latest permissible period that the Interim CCF Agreement cannot be executed and/or the consent given before the end of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the applicant to negotiate with the Internal Revenue Service (IRS) for such relief as may be available (e.g.,
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filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Interim CCF Agreement and issue his consent however long past the applicant’s Period (bb) or Period (cc), whichever applies, the Secretary’s administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the applicant’s having failed to apply in a more timely fashion.

(2) All parties shall be counseled that it is manifestly in their best interest to request the Secretary’s consent 45 days in advance of the expected date of withdrawal. Withdrawals made without the Secretary’s consent, in reliance on obtaining the Secretary’s consent, are made purely at a party’s own risk. Should any withdrawal made without the Secretary’s consent prove, for any reason, to be one to which the Secretary will not or cannot consent by ratification, then the result will be either, or both, at the Secretary’s discretion, an unqualified withdrawal or an involuntary termination of the Interim CCF Agreement.

(3) Should the withdrawal made without the Secretary’s consent be made in pursuance of a project not then an eligible Schedule B objective, then the Secretary may entertain an application to amend the Interim CCF Agreement’s Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal, all under the same time constraints and conditions as otherwise specified herein.

(4) Any withdrawals made, after the effective date of an Interim CCF Agreement, without the Secretary’s consent are automatically non-qualified withdrawals unless the Secretary subsequently consents to them by ratification as otherwise specified herein.

(5) Redeposit of that portion of the ceiling withdrawn without the Secretary’s consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If such a non-qualified withdrawal adversely affects the Interim CCF Agreement’s general status in any wise deemed by the Secretary, at his discretion, to be significant and material, the Secretary may involuntarily terminate the Interim CCF Agreement.

(e) First tax year for which Interim CCF Agreement is effective. An Agreement, to be effective for any party’s Period (aa), must be executed and entered into by the party and submitted to the Secretary, before the end of Period (bb) or
§ 259.35 annual deposit and withdrawal reports required.

(a) The Secretary will require from each Interim CCF Agreement holder (Party) the following annual deposit