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

(2) All catch be made available for sampling by an observer; and

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

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

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

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

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

(i) Until November 15; or

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

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

(i) Until November 15; or

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

(3) *Groundfish sideboard limits*. All groundfish harvests (including harvests of those species in waters adjacent to the Central GOA that are deducted from the Federal TAC as specified under § 679.20) of a catcher/processor vessel that is subject to a sideboard limit for that groundfish species as described under § 679.82(e), except groundfish harvested by a vessel fishing under a CQ permit in the Central GOA, will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

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

[67 FR 79734, Dec. 30, 2002, as amended at 77 FR 6502, Feb. 8, 2012]

### § 679.85 Cost recovery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Price adjustments, including retroactive payments.

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

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

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

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

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

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

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

$$100 \times DPC/V$$

where:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Subpart H—Amendment 80 Program

SOURCE: 72 FR 52726, Sept. 14, 2007, unless otherwise noted.

### § 679.90 Allocation, use, and transfer of Amendment 80 QS permits.

Regulations under this subpart were developed by NMFS to implement the Amendment 80 Program. Additional regulations that implement specific portions of the Amendment 80 Program are set out at § 679.2 Definitions, § 679.4 Permits, § 679.5 Recordkeeping and reporting (R&R), § 679.7 Prohibitions, § 679.20 General limitations, § 679.21 Prohibited species bycatch management, § 679.27 Improved Retention/Improved Utilization Program, § 679.28 Equipment and operational requirements, § 679.31 CDQ and PSQ reserves, § 679.50 Groundfish Observer Program applicable through December 31, 2007, and § 679.64 Harvesting sideboard limits in other fisheries.

(a) *Issuance of Amendment 80 QS permits*—(1) *General*. NMFS will issue an Amendment 80 QS permit to a person who is eligible to receive Amendment 80 QS units as described in paragraph (a)(2) of this section and based on:

(i) The information contained in an approved application for Amendment 80 QS as described in paragraph (b) of this section;

(ii) The information contained in the Amendment 80 official record as described in paragraph (c) of this section;

(iii) The Amendment 80 QS permit allocation procedures as described in paragraph (d) of this section; and

(iv) In consideration of any use caps as described in § 679.92(a).

(2) *Eligibility to receive an Amendment 80 QS permit*—(i) *Owner of an Amendment 80 vessel*. A person may receive an Amendment 80 QS permit based on the legal landings of an Amendment 80 vessel if:

(A) That person owns that Amendment 80 vessel at the time of application for Amendment 80 QS as demonstrated on an abstract of title or USCG documentation;

(B) That person holds an Amendment 80 LLP license at the time of application for Amendment 80 QS;

(C) That person is a U.S. citizen;

(D) That person submits a timely application for Amendment 80 QS that is approved by NMFS as described in paragraph (b) of this section; and

(E) A person is not eligible to receive an Amendment 80 QS permit based on the legal landings of that Amendment 80 vessel under the provisions of paragraph (a)(2)(ii) of this section.

(ii) *Holder of an Amendment 80 LLP license*. A person may receive an Amendment 80 QS permit based on the legal landings of an Amendment 80 vessel if:

(A) At the time of application for Amendment 80 QS that person holds the LLP license originally assigned to that Amendment 80 vessel and that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108;

(B) The actual total loss, constructive total loss, or permanent ineligibility of that Amendment 80 vessel to receive a fishery endorsement under 46 U.S.C. 12108 has been clearly and unambiguously established and documented in written form in the application for Amendment 80 QS and that documentation is accepted by NMFS;

(C) The express terms of a written contract clearly and unambiguously provide that the owner(s) of that Amendment 80 vessel transferred all rights and privileges to use the Amendment 80 legal landings from that Amendment 80 vessel to the person holding the LLP license originally assigned to that Amendment 80 vessel;

(D) That person is a U.S. citizen; and

(E) That person has submitted a timely application for Amendment 80 QS that is approved by NMFS as described in paragraph (b) of this section.

(b) *Application for Amendment 80 QS*—(1) *Submission*. A person who wishes to receive an Amendment 80 QS permit must submit a timely and complete application for Amendment 80 QS. Once a person submits a timely and complete application for Amendment 80 QS that is approved by NMFS, an application