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

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

[Docket No. 110314196–1725–02]

RIN 0648–BA97

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

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

ACTION: Final rule.

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

DATES: Effective on December 27, 2011.

ADDRESSES: Electronic copies of Amendment 88, the final Environmental Assessment (EA) and Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for the Central Gulf of Alaska Rockfish Program are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The proposed rule to implement Amendment 88 also may be accessed at this Web site.

FOR FURTHER INFORMATION CONTACT: Gwen Herrewig, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of Alaska are managed under the GOA FMP and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands

Management Area (BSAI FMP). The North Pacific Fishery Management Council (Council) prepared both FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600. This final rule implements Amendment 88, the Rockfish Program, to manage the rockfish fisheries in the Central GOA, which covers an area from 147° W. long. to 159° W. long.

Background

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

Since 2007, NMFS has managed the rockfish fisheries under the Pilot Program. Under the Pilot Program, NMFS allocated 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. A detailed description of the Pilot Program is provided in the preamble to the Pilot Program’s proposed rule (71 FR 33040; June 7, 2006).

The Pilot Program was designed to enhance resource conservation and improve economic efficiency in the Central GOA rockfish fisheries by establishing cooperatives that receive exclusive harvest privileges. Section 802 of the Consolidated Appropriations Act of 2004 (Section 802, Pub. L. 108–199) required that the Secretary of Commerce (Secretary), in consultation with the Council, establish a program for the rockfish fisheries that recognized the historical participation of fishing vessels

and fish processors in the Central GOA rockfish fisheries. Following extensive public comment, the Council recommended the Pilot Program to the Secretary on June 6, 2005. NMFS published regulations implementing Amendment 68 and the Pilot Program on November 20, 2006 (71 FR 67210). Fishing began under the Pilot Program on May 1, 2007. It created a structure for fishery participants to form cooperatives to efficiently manage harvesting activities. The allocation of cooperative quota (CQ), which is the annual catch limit that may be harvested by rockfish cooperatives, removes the incentives to maximize catch rates to capture a share of the available catch. As a result, vessel operators make operational choices to improve fishing practices.

The Council adopted the proposed Central GOA Rockfish Program on June 14, 2010, to replace the existing Pilot Program that will expire December 31, 2011. The Pilot Program and the Rockfish Program are a type of a limited access privilege program (LAPP) developed to enhance resource conservation and improve economic efficiency in the Central GOA rockfish fisheries. LAPPs, also called catch share programs, are limited access systems in which Federal permits are issued to harvest a quantity of fish representing a portion of the TAC. As noted earlier, the Pilot Program was authorized under 2004 appropriations legislation. Since that time, the Magnuson Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) (Pub. L. 109–479) was enacted. The MSRA amended the MSA to include a new section 303A describing requirements for LAPPs initiated after January 12, 2007. The Council designed the Rockfish Program to meet the requirements of section 303A.

The Rockfish Program implemented by this final rule includes similar implementation, management, monitoring, and enforcement measures to those developed under the Pilot Program. For example, the Rockfish Program will (1) continue to assign rockfish quota share (QS) and CQ to participants for rockfish primary and secondary species; (2) allow a participant holding an LLP license with rockfish QS to form a rockfish cooperative with other persons; (3) allow holders of catcher/processor LLP licenses to opt-out of rockfish cooperatives each year; (4) include an entry level longline fishery; (5) establish sideboard limits, which are limits designed to prevent participants in the Rockfish Program from increasing their historical effort in other GOA

groundfish fisheries; and (6) include monitoring and enforcement provisions.

After considering management issues identified under the Pilot Program, and new program requirements to ensure the Rockfish Program complies with section 303A of the MSA, the Council recommended a Rockfish Program that includes modified provisions of the Pilot Program as well as new provisions. This recommendation was based on the analysis of rockfish management under the LLP, the Pilot Program, and anticipated changes under the Rockfish Program. The rationale underlying the Council's decision and details of this analysis are briefly discussed in this preamble and are contained in the Analysis prepared for this action (see ADDRESSES).

Key Differences Between the Pilot Program and the Rockfish Program

Table 1 outlines some key differences between the Pilot Program and the Rockfish Program. In summary, the Rockfish Program will, in contrast to the Pilot Program:

- Change the qualifying years for eligibility for QS;
- Use a different suite of years to determine sideboard limits and the allocation of QS;
- Assign to rockfish cooperatives a specific portion of the Central GOA TAC of species historically harvested in the rockfish fisheries;
- Assign a specific amount of halibut prohibited species catch (PSC) to cooperatives and conserve a portion of the halibut that will remain unallocated;
- Restrict the entry level fishery to longline gear only;
- Relax the requirements to form a cooperative;

- Specify the location where harvesters in cooperatives must deliver rockfish;

- Remove the requirement that harvesters in a catcher vessel cooperative deliver to a specific processor;
- Discontinue the limited access fishery;
- Simplify sideboards, and slightly modify sideboards for catcher/processors;
- Implement a cost recovery program for all participants except for opt-out vessels and the entry level longline fishery;
- Establish a catch monitoring and control plan (CMCP) specialist staff position; and
- Be authorized for 10 years, from January 1, 2012, until December 31, 2021.

TABLE 1—KEY DIFFERENCES BETWEEN THE PILOT PROGRAM AND THE ROCKFISH PROGRAM

Management provision	Pilot program	Rockfish program
Eligibility to receive QS	Participants must have made targeted legal landings of rockfish primary species during the qualifying years 1996–2002.	Participants must have made targeted legal landings of rockfish primary species during the qualifying years 2000–2006, or participated in the Pilot Program entry level trawl fishery in 2007, 2008, or 2009.
• Voluntary exclusion from the Rockfish Program.	May not apply for or receive initial allocation of QS, but may still have sideboard limitations.	LLP license holder may forgo QS and be exempted from specific sideboard limits if legal landings were made both in 2000–2006 and in the entry level trawl fishery during 2007, 2008, or 2009. Must apply for exclusion during initial application process.
Initial QS Allocations	Based on landings (best 5 of 7) years between 1996 and 2002.	97.5% of the initial allocation is based on landings (best 5 of 7 years) between 2000 and 2006.
• Entry level trawl “transition” QS allocation.	N/A	Participants in the Pilot Program entry level trawl fishery will be transferred into catch share management whereby 2.5% of the allocation will be given to licenses that participated in the Pilot Program entry level trawl fishery in 2007, 2008, 2009.
Rockfish Cooperatives	Yes	Yes.
• Forming a catcher vessel (CV) cooperative.	May only form cooperatives with other CVs and the processor to whom they historically delivered catch from 1996–2000. No minimum number of LLP licenses required for CVs to form a cooperative.	May only form a cooperative with other CVs with an association with any shoreside processor located within the geographic boundaries of the City of Kodiak. No minimum number of LLP licenses required.
• Annual CV allocation of CQ:		
Primary	Based on member QS	Based on member QS.
Secondary	<ul style="list-style-type: none"> • Pacific cod based on QS • Sablefish based on QS • Rougheye/shortraker maximum retainable amount (MRA), may not exceed 9.72% of TAC. • Thornyhead based on QS 	<ul style="list-style-type: none"> • 3.81% of Pacific cod TAC. • 6.7% of sablefish TAC. • 7.84% of thornyhead TAC. • Rougheye/shortraker MRA may not exceed 9.72% of TAC.
Halibut PSC	Based on member QS. Calculation based on 1996–2002 data.	Based on member QS. Calculation based on 2000–2006 data with a 12.5% reduction. 117.3 mt to cooperatives. 16.8 mt remains unallocated and stays “in the water.”
• Forming a catcher/processor (C/P) cooperative.	May join a cooperative with other C/Ps. Minimum of 2 LLP licenses required for C/Ps.	May join a cooperative with other C/Ps. No minimum number of LLP licenses required.
• Annual C/P allocation of CQ		
Primary	Amount based on member QS	Amount based on member QS.
Secondary	<ul style="list-style-type: none"> • Pacific cod MRA • Sablefish based on QS • 30.03% of shortraker TAC • 58.87% of rougheye TAC • Thornyhead based on QS 	<ul style="list-style-type: none"> • Pacific cod MRA. • 3.51% of sablefish TAC. • 40% of shortraker TAC. • 58.87% of rougheye TAC. • 26.50% of thornyhead TAC.

TABLE 1—KEY DIFFERENCES BETWEEN THE PILOT PROGRAM AND THE ROCKFISH PROGRAM—Continued

Management provision	Pilot program	Rockfish program
Halibut PSC	Based on member QS. Calculation based on 1996–2002 data.	Amount based on member QS. Calculation based on 2000–2006 data with a 12.5% reduction. 74.1 mt allocated.
Transfer of CQ	<ul style="list-style-type: none"> • C/P may transfer to C/P or CV • CV may transfer to CV only. No minimum number of LLP licenses required to transfer CQ. 	<p>10.6 mt remains in the water.</p> <ul style="list-style-type: none"> • C/P may transfer to C/P or CV, except no shorttraker or roughey may transfer from C/P to CV. • CV may transfer to CV only • Minimum of 2 LLP licenses in each cooperative required to transfer CQ.
Limited access fishery	Yes	None.
Opt-out option for C/Ps	Yes, but subject to opt-out sideboards	Yes, but subject to opt-out sideboards.
Halibut PSC % rollover of unused CQ.	100% of unused CQ halibut PSC will be added to the last seasonal apportionment during the current fishing year.	55% of unused CQ halibut PSC will be added to the last seasonal apportionment during the current fishing year. Resulting 45% of unused CQ halibut PSC remains in the water.
Use caps for rockfish primary species.	<p>A person may not hold or use more than:</p> <ul style="list-style-type: none"> • 5% of the QS assigned to the CV sector • 20% of the QS assigned to the C/P sector <p>CV cooperative may not hold or use more CQ than:</p> <ul style="list-style-type: none"> • 30% QS assigned to CV sector <p>A vessel may not harvest more than:</p> <ul style="list-style-type: none"> • 60% CQ issued to the C/P sector <p>Processors may not receive or process more than:</p> <ul style="list-style-type: none"> • 30% CQ issued to CV sector (rockfish primary species only). 	<p>A person may not hold or use more than:</p> <ul style="list-style-type: none"> • 4% of the QS assigned to the CV sector • 40% of the QS assigned to the C/P sector. <p>CV cooperative may not hold or use more CQ than:</p> <ul style="list-style-type: none"> • 30% QS assigned to CV sector. <p>A vessel may not harvest more than:</p> <ul style="list-style-type: none"> • 8% CQ issued to the CV sector. • 60% CQ issued to the C/P sector. <p>Processors may not receive or process more than:</p> <ul style="list-style-type: none"> • 30% CQ issued to CV sector (rockfish primary species, Pacific cod, and sablefish).
Sideboards (in effect July 1–31)	Yes	Yes.
• Catcher vessel	Exemption from sideboard limits: (1) Any American Fisheries Act (AFA) CVs not exempt under AFA regulations.	Exemptions from sideboard limits: (1) Any AFA CVs not exempt under AFA regulations; (2) vessels that have been selected as being voluntarily excluded from the Rockfish Program; and (3) any vessels assigned an LLP license that has been selected as being voluntarily excluded from the Rockfish Program.
• C/P	<ul style="list-style-type: none"> • Prohibited from fishing in the BSAI groundfish fisheries and limits on Pacific cod. • Prohibited from fishing in the West Yakutat/Western GOA (for rockfish). • Deep and shallow water complex halibut PSC • Prohibited from fishing in the BSAI groundfish fisheries and non-program groundfish fisheries in the GOA. • Deep and shallow water halibut PSC limit 	<p>Prohibited fishing restrictions:</p> <ul style="list-style-type: none"> • West Yakutat District/Western GOA (rockfish primary species). • Deep-water complex—arrowtooth flounder, deep water flatfish, rex sole. • West Yakutat/Western GOA limitation (rockfish primary species). • Deep and shallow water halibut PSC limit. • Prohibited from fishing rockfish primary species in the Western GOA and West Yakutat District for non-Amendment 80 vessels.
• C/P Opt-out vessels	Subject to sideboards and receives the portion of each rockfish sideboard limit not assigned to rockfish cooperatives.	
Entry level fishery	Prevents directed fishing in GOA groundfish fisheries without previous participation in 1996–2002.	<ul style="list-style-type: none"> • Prevents directed fishing in GOA groundfish fisheries without previous participation in 2000–2006. • Prohibit directed fishing for rockfish primary species in Western GOA and West Yakutat for non-Amendment 80 vessels.
• Annual application	Yes, trawl and longline gear	Yes, longline gear only.
• TAC	Yes. Processor affirmation required	None. May deliver to any shoreside processing facility in the GOA.
• TAC	5% of the rockfish primary species TAC goes to the entry level fishery, divided equally between trawl (2.5%) and longline gear (2.5%).	Annual set aside of the TAC increases annually, to a predetermined cap, if the fishery harvests ≥ 90% of their allocation of a species in the previous year.
Monitoring and enforcement	<p>Observer coverage:</p> <ul style="list-style-type: none"> • 100% CV in July and when checked-in • 200% C/P cooperative for CQ or sideboards, and • 100% C/P opt-out vessels in July only. 	<ul style="list-style-type: none"> • 100% CV when checked-in.
• Shoreside/stationary processors:	Catch Monitoring and Control Plan (CMCP) is required except for the entry level longline fishery.	

TABLE 1—KEY DIFFERENCES BETWEEN THE PILOT PROGRAM AND THE ROCKFISH PROGRAM—Continued

Management provision	Pilot program	Rockfish program
Cost recovery	Notify the observer at least one hour prior to off-loading of each delivery of groundfish harvested in a Pilot Program fishery. An observer must be available to monitor each delivery. None	In the CMCP, describe how the CMCP specialist will be notified of deliveries. Yes, fee liability payment is a maximum of 3% of the ex-vessel value of rockfish primary and secondary species. Payment due on February 15 of the following year. No fees for the entry level longline fishery.
Duration	5 years	10 years.

Rockfish Program Overview

A detailed review of the provisions of Amendment 88 and its implementing rule is provided in the preamble to the proposed rule (76 FR 52148, August 19, 2011), and is not repeated here. The proposed rule is available from the NMFS Alaska Region Web site (see ADDRESSES). The following section provides a brief overview of the Rockfish Program.

The rockfish fisheries are conducted in Federal waters near Kodiak, Alaska, primarily by trawl vessels, and to a lesser extent by longline vessels. Exclusive harvesting privileges are allocated under the Rockfish Program for rockfish primary and secondary species. The rockfish primary species are northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. The rockfish secondary species include Pacific cod, rougheye rockfish, shortraker rockfish, sablefish, and thornyhead rockfish. The Rockfish Program also allocates halibut PSC, which is a portion of the total GOA halibut mortality limit annually specified under § 679.21. Halibut PSC is allocated to participants based on historic halibut mortality rates in the primary rockfish species fisheries.

Eligibility for Rockfish QS

The Rockfish Program allocates harvest privileges to holders of LLP groundfish licenses with a history of Central GOA rockfish legal landings associated with those licenses (Rockfish legal landings are groundfish caught and retained in compliance with state and Federal regulations). The allocation of legal landings to an LLP license allows the holder of that LLP license to participate in the Rockfish Program and receive an exclusive harvest privilege under certain conditions. The Rockfish Program assigns QS to LLP licenses for rockfish primary and secondary species based on legal landings associated with that LLP. LLP license holders are eligible to receive rockfish QS if the LLP license was used to make legal landings

of rockfish primary species during the qualifying years 2000 through 2006, or participated in the Pilot Program entry level trawl fishery in 2007, 2008, or 2009. An application to receive rockfish QS must be submitted to NMFS by 5 p.m. on January 17, 2012, or be postmarked by that date. Rockfish QS that is assigned to a specific LLP license cannot be divided or transferred separately from that LLP license, unless the QS is in excess of a use cap specified in § 679.82(a)(2).

LLP licenses that receive initial allocations based on legal landings (best 5 of 7 years) between 2000 and 2006 are given 97.5 percent of the total allowable catch (TAC). While selecting qualifying years, and in balancing the interests of historic and recent participants, the Council considered fishing patterns over the 11-year period before the Pilot Program, from 1996 through 2006. The Council also considered how modifying the Pilot Program’s 1996 through 2002 qualifying years might potentially affect rockfish Pilot Program QS holders under the new Rockfish Program. The Council explained throughout the development of the Rockfish Program that, given the limited duration of the Pilot Program established by Congress, the Council could use different qualifying years to allocate rockfish QS under a new program. Ultimately, the Council selected the qualifying years of 2000 through 2006 after (1) considering both historic and more recent fishing patterns; (2) changes in the management of the fishery with the implementation of the LLP in 2000; and (3) the fishing patterns of catcher/processor vessels beginning in 2000.

LLP licenses used to make rockfish legal landings in the Pilot Program entry level trawl fishery, in 2007, 2008, or 2009, will receive an initial allocation of 2.5 percent of the TAC under the Rockfish Program. In the Pilot Program, the entry level trawl fishery had a small amount of TAC. The Council chose to eliminate the entry level trawl fishery in the Rockfish Program due to concerns

about the potential for more than a limited number of participants to register for, and participate in, the entry level trawl fishery. Given the small amount of TAC assigned to the entry level trawl fishery in the Pilot Program, NMFS may need to close the fishery as a precautionary measure to avoid exceeding the entry level trawl allocation if more than two or three vessels participated in the fishery. As recommended by the Council, the final rule eliminates the entry level trawl fishery but provides an opportunity for LLP license holders who participated in the Pilot Program entry level trawl fishery in 2007, 2008, or 2009 to receive rockfish QS. The Council determined that assigning rockfish QS to participants in the Pilot Program entry level trawl fishery will reduce the need for NMFS to establish and manage a separate “race for fish” fishery. The potential fishing effort in such a fishery could exceed the limited allocation available to the fishery. The Rockfish Program assigns rockfish QS to the Pilot Program entry level trawl fishery participants to ensure that those participants benefit from catch share management under the Rockfish Program.

LLP license holders who made rockfish legal landings in both of the specified seasons—2000 through 2006 and in the entry level trawl fishery during 2007, 2008, or 2009—can choose to forgo rockfish QS and avoid specific sideboard limitations. The Council recommended this provision to address a situation in which a limited number of LLP license holders, possibly no more than one, would prefer to have the option to forego an allocation of rockfish QS in order to continue to participate in the West Yakutat District and Western GOA rockfish fisheries consistent with recent participation patterns. An LLP license holder must apply for the voluntary exclusion during the initial application process.

Rockfish Cooperative Fishing Quota

Rockfish QS may only be harvested through cooperative membership. No minimum number of LLP licenses is required to form a cooperative. On an annual basis, an LLP holder will assign the LLP license and rockfish QS for use in a rockfish cooperative. Catcher/processors may only form a cooperative with other catcher/processors. Catcher vessels may only form a cooperative with other catcher vessels in association with any shoreside processor located within the geographic boundaries of the City of Kodiak. The Council included the port delivery requirement to address industry concern that harvesters participating in the Rockfish Program continue to deliver catch to the traditional port of Kodiak. The association requirement between the catcher vessel cooperative and the shoreside processor only indicates that a processor may be willing to take delivery of the catch. The association requirement does not limit a catcher vessel cooperative to only one processor, and it does not obligate the cooperative to deliver catch to that specific processor. See Eligibility for Processors below for more information on the association between a catcher vessel cooperative and shoreside processors.

The designated representative of a rockfish cooperative must submit a timely application to NMFS each fishing year. The annual application for cooperative fishing quota is due to March 15, 2012, for the first year of the program, and then March 1 for all subsequent years. Each rockfish cooperative will receive an annual CQ, which is an amount of rockfish primary and secondary species, and halibut PSC that may be harvested by that rockfish cooperative in that fishing year. NMFS will base rockfish CQ on the collective rockfish QS of the LLP licenses held by the cooperative members. To reduce total halibut mortality in the Rockfish Program, NMFS will allocate halibut PSC to each sector based on an 87.5 percent reduction of the average total halibut PSC used from 2000 through 2006. The Council considered a range of alternative approaches to reduce the total halibut PSC CQ assigned to each sector. Ultimately, the Council recommended reducing the amount to 87.5 percent of the 2000 through 2006 average annual usage. This decision balances the need to provide adequate halibut PSC for use by rockfish cooperatives, while recognizing patterns of reduced halibut PSC use once exclusive harvest privileges are established, and meeting broader goals

to reduce halibut mortality. The Council combined this reduction in the amount of halibut CQ initially available to rockfish cooperatives with other measures detailed later in this preamble to reduce the amount of halibut PSC that may be reassigned to non-Rockfish Program fisheries. The fishing season for vessels participating in a rockfish cooperative is authorized each year from May 1 through November 15.

Rockfish cooperatives may transfer all or part of their CQ to other rockfish cooperatives, with some restrictions. A minimum of 2 LLP licenses in each cooperative is required to transfer CQ. Transfer of CQ would be valid only during the calendar year of the transfer. All post-delivery transfers must be completed by December 31 of the calendar year of the transfer. Halibut PSC CQ is not available for transfer after November 15 of each year, or after a cooperative termination of fishing declaration has been submitted to NMFS.

Eligibility for Processors

Processors are not required to meet historical eligibility requirements to receive primary or secondary species fish harvested by rockfish cooperatives. The Council recommended that a catcher vessel cooperative may only form if a "rockfish processor" is an "associate" of the rockfish cooperative and is designated on the application for CQ. A rockfish processor is any shoreside processor with a Federal processor permit that receives groundfish harvested under the authority of a rockfish CQ permit. In order to receive rockfish CQ, the shoreside processor must be located within the boundaries of the City of Kodiak and have an approved CMCP. Any processor may qualify to receive CQ and is not required to be in business at the effective date of this rule. The association requirement is intended to encourage harvesters and processors to discuss and possibly coordinate fishing plans as part of the application process to form a rockfish cooperative, but without the specific mandate established under the Pilot Program. Membership agreements must specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by antitrust laws.

The Council also sought to address concerns raised by processors that allocation of exclusive harvest privileges would provide an undue competitive advantage for harvesters and could reduce the incentive for harvesters to continue to deliver to the traditional port of Kodiak. As a result,

this final rule requires harvesters to deliver all rockfish primary and secondary species CQ in the catcher vessel sector to a shorebased processor operating within the geographic boundaries of the City of Kodiak. The port delivery requirement is intended to protect the fishing community of Kodiak and the traditional shorebased processors from changes in the location of shorebased processing activities that could occur under the Rockfish Program. This provision ensures that Kodiak processors and the community continue to benefit from the fishery. During the 2000 through 2006 period, all catch was delivered within Kodiak to shorebased processors; therefore, this provision does not represent a change from traditional harvest patterns. NMFS defines the boundaries of the City of Kodiak using the boundary specified by the State of Alaska on the date this final rule is published.

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

Overall, the purposes of the Rockfish Program are to stabilize the processing work force, increase shoreside deliveries of rockfish, and remove processing conflicts with GOA salmon production. The Council determined that fixed linkages between harvesters and processors that require a harvester to deliver to a particular processor, or allocating harvest quota to processors, were not necessary or appropriate to meet the overall goals and purposes of the Council for the Rockfish Program.

The Council and NMFS expect cooperatives to coordinate with processors under the Rockfish Program as they have under the Pilot Program. These relationships have reduced processing capacity conflicts between the rockfish fishery and the salmon fishery, which is active during summer months; and have provided a stable processing workforce by ensuring rockfish deliveries during months when other fisheries are less active. Section 2.4.6 of the EA/RIR/IRFA describes the likely benefits to processing operations under the Rockfish Program.

Reassignment of Halibut PSC CQ to the Last Seasonal Apportionment

In an effort to reduce halibut mortality and provide incentives for participants in rockfish cooperatives to continue to operate in ways to minimize halibut mortality, the Council recommended reducing the amount of halibut PSC CQ that NMFS may add to the last seasonal apportionment during the current fishing year. The last seasonal apportionment is October 1 through December 31 of each year. Some of the participants eligible for the Rockfish Program are also active in a number of flatfish trawl fisheries that occur after November 1. Vessel operators that are active in rockfish cooperatives and these flatfish trawl fisheries have consistently undertaken efforts to conserve their halibut PSC CQ while fishing in a rockfish cooperative in order to provide additional halibut PSC during the latter portion of the year. The Council recognized the importance of reassigning halibut PSC to provide additional harvest opportunities in these flatfish trawl fisheries. The Council recommended that NMFS add 55 percent of unused halibut PSC CQ to the last seasonal apportionment during the current fishing year. In the interest of reducing halibut bycatch in these fisheries, the remaining 45 percent of halibut PSC CQ will not be available for the last season apportionment, or for transfer, or for the commercial halibut IFQ fishery. This amount of halibut is conserved and contributes to the halibut biomass. The Rockfish Program limits halibut mortality both by limiting the amount of halibut PSC that is initially allocated as halibut PSC CQ and by limiting the amount of halibut PSC that may be reassigned.

Opt-Out Vessels

Each fishing year, catcher/processors may opt-out of participating in rockfish cooperative. Participants that choose to "opt-out" forgo the opportunity to fish rockfish primary species. NMFS will assume a rockfish eligible harvester has

opted-out of participating in a rockfish cooperative if their LLP license with assigned rockfish QS is not named on a timely Annual Application for Cooperative Fishing Quota. Catcher/processor opt-out vessels are subject to opt-out sideboards and will receive the portion of each rockfish sideboard limit not assigned to rockfish cooperatives.

Use Caps

The Rockfish Program applies four types of use caps to limit the amount of rockfish QS and CQ that may be harvested by harvesters and processors: (1) A cap on the amount of QS an eligible rockfish harvester may hold; (2) a cap on the amount of rockfish primary species CQ that a rockfish cooperative may hold; (3) a cap on the amount of rockfish primary species CQ that a vessel may harvest; and (4) a limit on the amount of rockfish primary species an eligible rockfish processor may receive and process. The intent of the use caps under the Rockfish Program is to limit the degree of consolidation that could occur in the Central GOA rockfish fisheries. The Rockfish Program includes grandfather provisions that will allow persons to retain amounts of initial allocations of rockfish QS in excess of the use caps. Grandfather provisions apply to persons that held QS in excess of the use caps prior to the date of final Council action, June 14, 2010.

Sideboard Limitations

Sideboards limit the ability of rockfish harvesters to expand their participation into other fisheries during the month of July when the Central GOA rockfish fishery was traditionally open. Sideboards apply to Federally-permitted vessels fishing in Federal waters and waters adjacent to the Central GOA when the harvest of rockfish primary species by that vessel is deducted from the Federal TAC. They limit both the LLP license with rockfish QS assigned to it, and the vessel used for the legal landings that generated the rockfish QS. Sideboard limitations fall into two broad categories: (1) A limit that constrains the amount of harvest in specific regions and fisheries during July; and (2) directed fishery closures that prohibit fishing in specific fisheries and regions during July. The catcher vessel and catcher/processor sectors as well as catcher/processor opt-out vessels are all subject to sideboards.

Monitoring and Enforcement

Monitoring and enforcement provisions will ensure that harvesters maintain catches within annual allocations and do not exceed sideboard

limits. NMFS uses 5 primary tools for monitoring participants in the Rockfish Program. Specifically, NMFS:

1. Requires observers aboard vessels that are operating in a rockfish cooperative or a rockfish sideboard fishery to adequately account for catch and bycatch in the fishery;
2. Requires that vessels participating in a rockfish cooperative or a rockfish sideboard fishery carry and use a NMFS-approved vessel monitoring system (VMS) transmitter;
3. Requires that catcher/processors in a rockfish cooperative or rockfish sideboard fishery follow specified catch handling procedures prior to processing;
4. Requires the weighing of all catch from rockfish cooperatives on NMFS or State approved scales; and
5. Requires that shoreside processors receiving rockfish CQ operate under a NMFS approved Catch Monitoring and Control Plan (CMCP).

Cost Recovery

The Rockfish Program is established under the provisions of section 303A of the MSA. Section 303A requires that NMFS collect fees for limited access programs to recover the actual costs directly related to the management, data collection and analysis, and enforcement activities. NMFS will use a portion of the cost recovery fees collected under the Rockfish Program to hire personnel to monitor rockfish landings. The rockfish CMCP specialist will monitor program deliveries to ensure compliance with the CMCP by any processor receiving program landings, assist processors with rockfish species identification to ensure accurate catch sorting and quota accounting, and report the findings to NMFS. Section 304(d)(2) of the MSA also limits the cost recovery fee so that it may not exceed 3 percent of the ex-vessel value of the fish harvested under the Rockfish Program. NMFS will assess fees on the ex-vessel value of rockfish primary species and rockfish secondary species CQ harvested by rockfish cooperatives in the Central GOA and waters adjacent to the Central GOA when rockfish primary species caught by that vessel are deducted from the Federal TAC. The cost recovery fees will not apply to halibut PSC CQ since that halibut cannot be retained for sale and, therefore, does not have an ex-vessel value. The cost recovery fees will not apply to the entry level longline fishery and opt-out vessels because those participants do not receive rockfish CQ.

Entry Level Longline Fishery

The entry level fishery is available for harvesters who are fishing for rockfish

primary species using longline gear only. The entry level longline fishery did not create the same level of concern under the Pilot Program as the entry level trawl fishery because longline harvests never exceeded one percent of the TAC for any of the rockfish primary species during the qualifying years. Therefore, the entry level longline fishery will continue under the Rockfish Program and the season is from January 1 to November 15 of each year. A participant is not required to submit an application to NMFS. Participants in the entry level longline fishery may deliver their harvest to any shorebased processing facility in any community in the GOA. The annual set aside of the TAC for the entry level longline fishery will increase annually, to a predetermined cap as specified in Table 28e to Part 679, if the fishery harvests at least 90 percent of their allocation of a species in the previous year. The smaller TAC allocation is more in line with historical catch rates among the longline sector in the entry level fishery, since the sector has had minimal participation in the entry level fisheries.

Rockfish Program Duration and Review

The Rockfish Program is authorized for 10 years, from January 1, 2012, until December 31, 2021. The Council will conduct a formal review of the Rockfish Program 3 years after implementation to assess whether the program is achieving the goals of the MSA and the problem statement, as identified in the Analysis (ADDRESS). All permits will expire after 10 years and will not be renewed unless the Council and the Secretary take action to continue the Rockfish Program. Section 303A(f)(1) of the MSA states that permits are renewable unless revoked, limited, or modified. If the Council does not recommend continuing the Rockfish Program, all Rockfish Program permits will expire 10 years after the implementation of the Rockfish Program and will not be renewed.

Anticipated Changes in the Pelagic Shelf Rockfish Complex

The Rockfish Program allocates QS based on harvests of all three species in the pelagic shelf rockfish (PSR) complex—dusky, widow, and yellowtail rockfish. At the October 2011 meeting, the Council recommended the removal of widow and yellowtail rockfish from the PSR species group and the placement of these two species in the “other rockfish” species group. Extensive GOA trawl survey data and other information now exist that indicate dusky rockfish does not generally share the same geographic

distribution and habitat with the other two PSR species, yellowtail and widow rockfish. Upon the removal of widow and yellowtail rockfish, the PSR species group would then consist of a single species, dusky rockfish. NMFS intends to propose GOA FMP and regulatory amendments to dissolve the PSR species group and substitute a description of the dusky rockfish target fishery, and revise the description of the “other rockfish” fishery in the GOA FMP. If approved by the Secretary, NMFS would change every occurrence of “pelagic shelf rockfish” that appears in the Rockfish Program regulations and tables to “dusky rockfish.” The management measures associated with PSR and dusky rockfish would be identical. NMFS noted in the Rockfish Program proposed rule (76 FR 52148, August 19, 2011) that this action would not affect, or change, QS eligibility for rockfish primary species in the Rockfish Program.

Removal of the Limited Access Fishery

The Council recommended eliminating the limited access fishery for the catcher/processor sector in the Rockfish Program because the EA/RIR/IRFA showed the limited access fishery created incentives for the catcher/processor sector to avoid joining a cooperative. The Central GOA limited access fishery under the Pilot Program opened in the beginning of July, and then closed when NMFS estimated that participants fully harvested the target rockfish allocations in that fishery. Participants with small allocations of rockfish QS could choose to fish in the limited access fishery and harvest rockfish in an amount greater than their individual historical allocation. Additionally, NMFS could not predict participation in the limited access fishery from year to year. The Council recognized the possibility of a “race for the fish” that could result in the fishery exceeding the TAC before the fishery could be closed. Ultimately, the Council decided to discontinue the limited access fishery. NMFS published a notice of availability for Amendment 88 on July 28, 2011 (76 FR 45217). The public comment period on Amendment 88 ended on September 26, 2011, and the Secretary approved Amendment 88 on October 26, 2011. On August 19, 2011, NMFS published a proposed rule to implement Amendment 88 (76 FR 52148). The public comment period ended on September 19, 2011. Additional information on this action was provided in the preamble of the proposed rule and is not repeated here. NMFS received 13 comment letters from 11 unique individuals regarding

Amendment 88 and the proposed rule. These letters contained a total of 55 unique comments. These comments are addressed below.

Response to Comments

Comment 1: The definitions for the catcher vessel sector and catcher/processor sector at § 679.2 are wrong. The catcher vessel sector statement “those rockfish eligible harvesters who hold an LLP without a catcher/processor designation” would preclude catcher/processor LLP licenses that have generated legal rockfish landings but have only operated as a catcher vessel. The catcher/processor sector definition does not separate out the issue of catcher/processor LLP licenses operating as catcher vessels, but appears to lump all catcher/processor licenses together. The Pilot Program definitions were a better fit.

Response: NMFS agrees. The definitions in the proposed rule were based on an initial review of rockfish legal landings data. NMFS did not anticipate that any catcher/processor LLP licenses generated rockfish legal landings while operating as catcher vessels, but the definition should allow for such a circumstance. Under the Rockfish sector definition, at § 679.2, NMFS has replaced the proposed definitions for catcher vessel sector and the catcher/processor sector with the definitions used in the Pilot Program for the reasons indicated above.

Comment 2: Rockfish CQ accounts should not be set to zero for rockfish primary or secondary species after a cooperative submits a Declaration of Termination of Fishing to NMFS as suggested in the preamble text on page 52178. CQ should be available for transfer until the end of the calendar year as specified in the proposed regulatory text at § 679.4(n)(1)(ii) and (iv). Additionally, halibut PSC CQ may need to be available for transfer to cover cooperative overages. Observer data can change after debriefing and a halibut CQ overage could occur if no halibut PSC is available for transfer.

Response: NMFS agrees, in part. The preamble text to the proposed rule is incorrect and does not accurately explain the proposed regulations for a termination of fishing declaration, as specified in § 679.4(n)(2). In addition, some of the proposed regulatory text is conflicting. The cooperative rockfish CQ accounts for rockfish primary and secondary species will not be set to zero upon a party's submission of a Declaration of Termination of Fishing. A cooperative may transfer rockfish primary species and rockfish secondary species CQ until the end of the calendar

year, even after submitting a Declaration of Termination of Fishing. However, halibut PSC CQ may not be used for transfer after a termination of fishing declaration is submitted to NMFS, or after November 15 of each year. The Council recommended that 55 percent of the halibut PSC would be reassigned and made available for vessels fishing during the last halibut PSC apportionment period, which is October 1 through December 31 of each year. However, in the interest of reducing halibut bycatch in these fisheries, the remaining 45 percent halibut PSC CQ will not be available for the last season apportionment or for transfer. If a halibut PSC overage occurs after a cooperative submits a termination of fishing declaration, the adjustment will be made in the amount of halibut PSC reassigned for the last halibut PSC apportionment. In the case of an overage, the halibut PSC reassignment would be reduced.

NMFS made a number of regulatory changes in the final rule in response to this comment. NMFS deleted proposed text at § 679.4(n)(2)(iii) through (v) instead of only paragraph (n)(2)(v), to clarify that rockfish CQ accounts will not be set to zero for rockfish primary and secondary species after a rockfish cooperative termination of fishing declaration is submitted to NMFS. To clarify and remove duplicate provisions, NMFS moved regulatory language from § 679.4 regarding the reapportionment of halibut PSC and the transfer of CQ to §§ 679.21 and 679.81 of the final rule. Provisions at § 679.4(n)(1)(iv)(A) and (B) are specific to limitations on transfers of CQ after November 15, or upon approval of a rockfish cooperative termination of fishing declaration. NMFS has determined that this is more appropriately covered under § 679.81(i)(4)(ii)(H), which is the section regulating transfers of CQ between cooperatives. Provisions at § 679.4(n)(1)(iv)(C) duplicate regulatory text proposed at § 679.21(d)(5)(iii)(B); therefore, paragraph (n)(1)(iv)(C) has been removed from the final rule. Section 679.4(n)(1)(iv)(D) is specific to the reallocation of prohibited species bycatch management under the Rockfish Program. Such reallocation is covered in regulations on prohibited species bycatch management at § 679.21; therefore, paragraph (n)(1)(iv)(D) has been moved to § 679.21(d)(5)(iii)(C).

Comment 3: The 48-hour check-in requirement, as specified in § 679.5(r)(8)(i)(A) and (B), is operationally very difficult for catcher/processors when a vessel is changing areas from the Rockfish Program to Central GOA fishing, or vice versa.

Perhaps the 48-hour requirement is a good management tool for the catcher vessel sector, but since the catcher/processor sector submits the check-ins electronically, the 48-hour delay seems unnecessary and does not seem worth the operational cost. We recommend eliminating this requirement altogether, or at least reducing the lead time from 48 hours to 12 hours.

Response: NMFS agrees. NMFS reduced the 48-hour check-in requirement for catcher/processor cooperatives, to a one hour check-in requirement, as specified in § 679.5(r)(8)(i)(A)(2). This one hour check-in requirement will still provide adequate time for NMFS to properly track and account for catch against a cooperative CQ permit. Catcher vessel cooperatives are still subject to the 48-hour check-in requirement, as specified in § 679.5(r)(8)(i)(A)(1).

Comment 4: The proposed rule is confusing regarding check-out requirements for the catcher/processor sector. Check-out notification is required within 6 hours after the last haul of rockfish CQ, but does not take effect at the end of a weekly reporting period or offload, whichever comes first. With two observers on board and real-time reporting, the check-out should take effect upon submission of the notice itself.

Response: NMFS agrees. The effective date for check-out designations in the catcher/processor sector, as specified in § 679.5(r)(8)(i)(B), has been changed to be effective upon submission of the check-out designation to NMFS. Catcher/processors are encouraged to retain the submission receipt to ensure that the check-out designation was received by NMFS.

Comment 5: In § 679.5(r)(8)(ii), the captain of the vessel should be able to submit the check-in and check-out designations, instead of the cooperative designated representative, because a vessel may want to check-out at midnight when the representative is unavailable or unaware that the vessel decided to finish. The vessel also might have an operational reason where they had to check-out unplanned.

Response: NMFS disagrees. The cooperative designated representative must coordinate fishing plans with their members. This is because the cooperative designated representative is responsible for ensuring that once a vessel is checked in, it is used to harvest fish under the CQ permit, and once a vessel is checked-out it can no longer be used to fish for that cooperative's CQ unless checked in again. 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 the Rockfish Program. No change to this provision has been made.

Comment 6: NMFS should clarify the resulting difference between someone who timely submits an application affirming their exclusion from the Rockfish Program and someone who does not apply for rockfish QS by the regulatory deadline.

Response: The voluntary exclusion from the Rockfish Program, as specified under § 679.80(d)(4)(ii), is available only during the initial QS application process for a person who holds an LLP license that made rockfish legal landings during the specified seasons from 2000 to 2006 and during the entry level trawl fishery in 2007, 2008, or 2009. If a person eligible for the exclusion submits a timely Application for Rockfish QS to NMFS, and that application is approved, that person will be permanently excluded from the Rockfish Program, and ineligible for rockfish QS from that time forward. A person excluded from the Rockfish Program will not receive rockfish QS and sideboards will not apply to the applicant's LLP license or vessel. If a person fails to submit a timely Application for Rockfish QS, then the LLP license and vessel that made rockfish legal landings during the qualifying years will not receive Rockfish QS, but will still be subject to applicable sideboard limitations as specified in § 679.82. NMFS made no changes to this provision.

Comment 7: An LLP license holder with a catcher vessel designation who chooses to be excluded from the Rockfish Program should still be held to the sideboard fisheries so that his or her participation is limited to those fisheries in which the license holder had history. It is unclear why a vessel being excluded from the entire program upon initial allocation is not subject to the same catcher/processor sideboards in the opt-out provisions, as specified in § 679.82(e)(7), (8), (10), and (11).

Response: The Council recommended specific provisions, based on public testimony, to allow a particular LLP license with a history of fishing in the West Yakutat District, to forgo rockfish QS and be exempt from sideboards in order to continue fishing in the West Yakutat District. This is a fishery in which this LLP license had history, but would be sideboarded and thus excluded from under the Rockfish Program. This LLP license not only has history in the West Yakutat District, but also made rockfish legal landings in both 2000 through 2006 and the entry

level trawl fishery in 2008, 2008, or 2009. NMFS anticipates that this LLP license is eligible to be excluded from the Rockfish Program. The LLP license holder has a one-time opportunity to be excluded and must submit a timely Application for Rockfish QS affirming his or her exclusion from the Rockfish Program.

Comment 8: The season dates are incorrect in Table 28b to Part 679—Qualifying Season Dates for Central GOA Rockfish Primary Species. The season dates should read as follows: Pacific ocean perch: May 1–May 17; July 1–Aug. 1 (2007), July 1–27 (2008), July 1–Nov. 15 (2009). Pelagic shelf rockfish: Sept. 1–Nov. 15 (2007), Sept. 1–Nov. 15 (2008), Sept. 1–Nov. 15 (2009). Northern rockfish: Sept. 1–Nov. 8 (2007), Sept. 1–Nov. 15 (2008), Sept. 1–Nov. 15 (2009).

Response: NMFS agrees. Table 28b to Part 679 has been corrected to reflect the qualifying season dates above. NMFS also corrected all landed by dates in the table to 7 days after the close of the season.

Comment 9: Some commenters expressed uncertainty about how QS is redistributed during the initial application process if a rockfish eligible harvester chooses to be voluntarily excluded from the Rockfish Program. Others believe that the catch history from that LLP license should flow back into the catcher vessel and catcher/processor pool, as indicated in the Council motion, and not into the 2.5 percent entry level trawl pool. Another commenter asserts that the real conflict is in the Council motion, and that Council intent is for the catch history to be divided among the remaining entry level trawl transition LLP licenses, to ensure the entry level trawl pool remains at 2.5 percent of the rockfish primary species total qualified catch. The commenter then suggests that Council intent could be directly altered by another section of the Council motion that appears to indicate that the catch history should be divided among all the other catcher vessels and catcher/processors.

Response: As recommended by the Council, rockfish QS will be available to the catcher/processor and catcher vessel sectors in proportion to individual license holders' QS holdings if a rockfish eligible harvester chooses to be voluntarily excluded from the Rockfish Program. The rockfish QS will not be divided among the remaining entry level trawl transition LLP licenses. NMFS addresses how rockfish QS and CQ is calculated in Comment 10. A discussion of QS redistribution on page 52161 of the preamble to the proposed rule refers to a different circumstance

during the initial application process where a rockfish eligible harvester does not submit a timely Application for Rockfish QS based on rockfish legal landings during the entry level trawl fishery in 2007, 2008, or 2009. In this case, the rockfish QS that would have been assigned to that LLP license will be available to all other eligible LLP licenses held by persons who applied to receive rockfish QS based on rockfish legal landings during the entry level trawl fishery in 2007, 2008, or 2009. No change to this provision has been made.

Comment 10: If NMFS does not receive an Application for Rockfish QS from a rockfish eligible harvester for an initial allocation of QS in the Rockfish Program, is the catch history reallocated to other Rockfish Program participants? Do sideboards still apply to both the vessel and the LLP license for the rockfish eligible harvester who did not apply for QS?

Response: If NMFS does not receive a timely Application for Rockfish QS from a rockfish eligible harvester who qualifies for the Rockfish Program with landings between 2000 and 2006, the catch history is reallocated to other program participants by distributing the entire annual sector pound allocation to cooperatives as CQ, and not by adding additional QS units during initial allocations of QS. (This is because the initial QS award calculation, as specified in § 679.80(e), is based on the highest 5 years per species per license rather than a percentage of the rockfish QS pool, whereas the allocation of rockfish primary species CQ to rockfish cooperatives, as specified in § 679.81(b), is based on the sector's TAC and is calculated with the rockfish QS pool.) However, the calculation for initial allocation of QS for the entry level trawl transition fishery is based on a percentage of the total entry level trawl transition fishery rockfish QS pool. For the entry level trawl transition fishery, the QS is redistributed within the 2.5 percent allocation in proportion to the number of years the participant made deliveries to an entry level processor from 2007 to 2009. For both quota and entry level sectors, the sideboards still apply to both the vessel and the LLP license if a rockfish eligible harvester does not submit a timely Application for Rockfish QS for an initial allocation.

Comment 11: Would it be possible for NMFS to release new denominators to account for interim license and entry level allocations for eligible participants to evaluate NMFS' Rockfish Program official record?

Response: No. Restricted Access Management (RAM) will mail each rockfish eligible harvester an

Application for Rockfish QS along with an estimated summary of eligibility during the initial application process. Rockfish QS is based on the highest five years for each LLP license. NMFS does not use a denominator to determine rockfish QS issuance, except in the issuance of QS in the entry level trawl transition fishery. For more information on the calculation of initial allocations of rockfish QS, see comment 12. A list of eligible harvesters issued rockfish QS and the initial rockfish QS pool will be posted after February 14, 2012 at www.alaskafisheries.noaa.gov.

Comment 12: The calculations for allocating catcher/processor QS and CQ are quite confusing. We would like to confirm that Council intent was not to change the underlying methodology for calculating each LLP and each sector QS. The years for qualification changed, but the harvest history of each primary species is based on best 5 of 7 years at the individual LLP and at the sector level.

Response: The underlying methodology to calculate initial allocations of rockfish QS is similar to the methodology in the Pilot Program, but it is not based on a percent of the rockfish QS pool. In the Rockfish Program, the initial allocation of QS, per species, is based on the harvest history of the applicant's best 5 of 7 years between 2000 and 2006. Specifically, the calculation to allocate rockfish QS, as specified in § 679.80(e)(2), sums rockfish legal landings to determine the Rockfish Total Catch for each eligible LLP license for each year, per rockfish primary species (the seasons are established in Table 28a). The highest 5 years of the Rockfish Total Catch is then summed for each eligible LLP license, per rockfish primary species. This amount is equal to the number of rockfish QS units for that LLP license per rockfish primary species. Each sector will receive a percentage of the cooperative TAC for each rockfish primary species, as specified in § 679.81(b). The percentage of the cooperative TAC is equal to the sum of the rockfish QS units assigned to all LLP licenses that receive rockfish QS in that sector divided by the rockfish QS pool for that rockfish primary species. Although this response clarifies the underlying methodology for calculating initial allocations of rockfish QS, the comment does not require a change to the regulations.

Comment 13: The qualifying years to receive initial rockfish QS in the Rockfish Program, 2000 to 2006, are a logical representation of the past and present dependence on the Central GOA rockfish fisheries.

Response: NMFS agrees. The rationale for allocating Rockfish QS based on legal landings from 2000 through 2006 and to the entry level trawl participants is described briefly in the Rockfish Program Overview of this preamble and in detail in the preamble to the proposed rule and is not repeated here (See **ADDRESSES**).

Comment 14: The concept of distributing qualified catch to entry level trawl LLP licenses based on deliveries made “to an entry level processor” from 2007 to 2009, appears to be completely missing in the proposed rule. Requiring delivery of entry level fish harvested by entry level trawlers to an entry level processor was an integral part of the Pilot Program, and was a regulatory requirement. The Council recognized that requirement and made it an element of their motion as one of the means of distribution of qualified catch. We request this element of the motion be reflected in the preamble and the regulatory language in the final rule, by adding the proportional calculation in every reference to the distribution process.

Response: NMFS disagrees. The Pilot Program defined a rockfish entry level processor as 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. The definition for entry level processor has been removed from Rockfish Program regulations because participants in the entry level longline fishery may deliver to any shoreside processing facility in the GOA. The Council intent to require the delivery of entry level fish to an entry level processor, as described above, was already captured in the proposed regulatory text at § 679.80(e)(1)(ii), and (e)(3)(i). Specifically, an entry level trawl participant was required to deliver all harvested fish in the entry level fishery to an entry level processor in order to generate rockfish legal landings, which are used to assign rockfish QS in the regulatory text.

As specified in § 679.80(e)(1)(ii), NMFS proposed that rockfish QS be distributed to entry level trawl applicants based on the number of years during which a person made a rockfish legal landing under the authority of an LLP license in the entry level trawl fishery during 2007, 2008, or 2009. Proposed regulatory text at § 679.80(e)(3)(i), also captured the Council intent by assigning “one Rockfish Landing Unit to an LLP license for each year a rockfish legal landing of any rockfish primary species was made to an entry level processor under the authority of an LLP license during the

season dates for the entry level trawl fishery in 2007, 2008, or 2009 as established in Table 28b to this part.” Adding the phrase “to an entry level processor” to regulatory text at § 679.80(e)(1)(ii), and (e)(3)(i), would be redundant and unnecessary because the use of “rockfish legal landings” already encompasses deliveries made to an entry level processor and would not change the distribution of rockfish QS to entry level trawl participants. NMFS made no changes to these provisions.

Comment 15: Some commenters support the elimination of the entry level trawl fishery in the Rockfish Program and believe that assigning the entry level trawl participants 2.5 percent of the rockfish primary species total qualified catch is fairly accurate for the entry level fleet.

Response: NMFS agrees. No changes in the regulations are required. This comment is consistent with the Council’s recommendation and the proposed rule.

Comment 16: The maximum retainable amount (MRA) limits that apply to non-rockfish primary and secondary species, under § 679.81(h)(4)(i) and (h)(5), and in the preamble on page 52168, are described as a percentage of the total allocated rockfish primary species and rockfish secondary species onboard the vessel. It should be clarified that the rockfish secondary species are only those that are allocated as QS under the Rockfish Program. They do not include species that are not allocated under the Rockfish Program.

Response: NMFS agrees. When a cooperative is checked-in and fishing under a CQ permit only rockfish primary species and rockfish secondary species allocated as CQ can be used as basis species to calculate an MRA for non-allocated species. For both the catcher/processor and catcher vessel sector the rockfish primary species are dusky rockfish, northern rockfish, and Pacific ocean perch. For the catcher/processor sector the rockfish secondary species that can be used as a basis species to calculate MRAs are sablefish, thornyhead, rougheye, and shorttraker rockfish. For the catcher vessel sector the rockfish secondary species that can be used as a basis species to calculate MRAs are sablefish, thornyhead, and Pacific cod. This clarification does not require changes to the regulations. Rockfish primary and secondary species are defined for the catcher vessel and catcher/processor sector at § 679.2.

Comment 17: The preamble to the proposed rule states on page 52156 that “LLP license holders would be eligible to receive rockfish QS if they

demonstrate participation in the Central GOA entry level trawl fishery during the first 3 years of the Pilot Program (1996,1997,1998) and prior to the Council’s final action (2007, 2008 or 2009).” But it should read: “LLP license holders would be eligible to receive rockfish QS if they demonstrate participation in the Central GOA entry level trawl fishery during the first 3 years of the Pilot Program (2007, 2008, or 2009) and prior to the Council’s final action.”

Response: NMFS agrees. The dates provided in the preamble to the proposed rule for the first three years of the Pilot Program and the Council’s final action were incorrect and the sentence should have been written as the commenter indicated above. All regulatory text is correct and, therefore, no changes were made to regulations.

Comment 18: The deadline for the Application for Rockfish Cooperative Fishing Quota, as specified at § 679.81(f)(3), should be extended to April 1, 2012, for the first year, and then March 1 for all subsequent years to allow participants more time to organize under the new Rockfish Program. After the January 3, 2012, deadline for the initial Application for Rockfish QS, actual allocations will not be known for some time. The organization of cooperatives will not be fully understood until a list of LLP licenses with QS is released by NMFS. The processing and harvesting sectors will need to define their associations under the new program, which will take some negotiation.

Response: The March 1 deadline for the Application for Rockfish Cooperative Fishing Quota in the first year of the Rockfish Program is consistent with requirements in the first year under the Pilot Program, when participants were in similar circumstances. However, NMFS changed the deadline for the Application for Rockfish QS to January 17, 2012. This change will provide potential participants additional time to prepare their applications after the effective date of this rule. To ensure rockfish cooperatives are allotted the same amount of time to apply for CQ as indicated in the proposed rule, NMFS changed the deadline for the Application for Rockfish Cooperative Fishing Quota, as specified at § 679.81(f)(3), to March 15, 2012, for the first year and then March 1 for all subsequent years. This change will allow 30 days for Rockfish Program participants to prepare for the fishing season, join rockfish cooperatives, and apply for CQ after NMFS revises and distributes LLP licenses.

Comment 19: What happens to the rockfish QS for LLP license holders that are not designated on a timely Application for Cooperative Fishing Quota?

Response: When an LLP license with assigned rockfish QS is not named on an Annual Application for Cooperative Fishing Quota, as specified in § 679.81(b), the QS associated with that LLP license is not included in the calculation of the percentage of TAC assigned to each cooperative. Therefore, the percentage of the TAC for each cooperative is greater because the total rockfish QS assigned to the cooperatives is smaller.

Comment 20: Since cooperative formation is voluntary and multiple cooperatives may form under the proposed cooperative formation rules, can a cooperative refuse membership to an eligible QS holder even if they agree to the same conditions as other members?

Response: Yes. A rockfish cooperative may refuse membership to an eligible QS holder, even if that holder is willing to agree to the same conditions as other members of the rockfish cooperative. The reason is that multiple cooperatives with a varying number of members may form under the Rockfish Program, including a cooperative of one member. Cooperative formation is voluntary.

Comment 21: Can any trawl vessel with a Central GOA endorsed LLP license harvest rockfish QS for a cooperative?

Response: A Central GOA LLP license must be assigned to a cooperative and assigned rockfish QS to harvest rockfish for that cooperative. Additionally, as specified in § 679.7(n)(1), a person may not operate a vessel assigned to a rockfish cooperative in any other rockfish cooperative other than the rockfish cooperative to which that vessel was initially assigned for that fishing year. The rockfish cooperative contract agreed upon among the members determines which members of the rockfish cooperative may harvest the rockfish CQ, as specified in § 679.81(i)(3)(xvi).

Comment 22: It is unclear why an Application to Opt-out of Rockfish Cooperative, as described at § 679.81(e)(2), is needed in the new Rockfish Program. If no Application for Rockfish Cooperative Fishing Quota is received by NMFS, then the default appears to be the same as opting-out. Are the observer coverage and monitoring requirements identical for both the opt-out vessels and participants that do not submit a timely application? Please explain. If there is no difference,

then the opt-out application seems unnecessary.

Response: NMFS agrees and has removed the Application to Opt-out of Rockfish Cooperative for the catcher/processor sector from all regulatory text in the final rule in §§ 679.81 and 679.82. Instead, a catcher/processor vessel that would like to opt-out of the Rockfish Program for any given year is not required to submit an Application to Opt-out of Rockfish Cooperative to NMFS. The Application to Opt-out of Rockfish Cooperative had a purpose in the Pilot Program where catcher/processors could choose between three participation options: (1) Join a rockfish cooperative; (2) participate in the limited access fishery; or (3) opt-out of the Pilot Program. The Council did not recommend the limited access fishery in the Rockfish Program, so it was not included in the proposed rule. Two options are available for catcher/processors: (1) join a rockfish cooperative; or (2) opt-out of the rockfish cooperative. Therefore, NMFS will consider that a catcher/processor has opted-out of participating in a rockfish cooperative if their LLP license with assigned rockfish QS is not named on an Annual Application for Cooperative Fishing Quota. No changes were made to observer coverage and monitoring requirements for catcher/processor opt-out vessels.

Comment 23: The processor association for a catcher vessel cooperative does not create stability for processors. Each delivery could depend on who is willing to pay the highest ex-vessel price on any particular day, which offers no stability for the processor. With a 30 percent use cap, it is possible for four processors to process the entire fishery and exclude processors that have historically been in the rockfish fishery. Processors need an annualized delivery requirement to meet market obligations for products and to provide employment and stability for their workforce.

Response: NMFS disagrees. As discussed in the preamble to the proposed rule, the association between a catcher vessel cooperative and processor is a requirement in order to form a rockfish cooperative as part of the application process. This association encourages harvesters and processors to discuss and possibly coordinate fishing plans for the upcoming season. The Council considered an annual delivery requirement whereby a cooperative would be required to deliver to a specific processor during its development of alternatives for the Rockfish Program but did not advance the measure for analysis. The Council

discussed that the existing Pilot Program requires that a cooperative associate with the processor to which the catcher vessel delivered the most pounds in a specified qualifying period. In developing the Rockfish Program alternatives, the Council considered that structure as well as other structures that could qualify catcher vessels for specific cooperatives and establish penalties or forfeitures payable on changing cooperatives and processor associations. The Council recognized that these associations could be used to protect processor and community interests by recognizing historical relationships in the fishery. The Council considered incorporating these or similar structures into its alternatives. However, due to requirements of section 303A of the MSA the Council elected to consider other measures to protect community and processor interests in the Rockfish Program, including possible regional landing requirements, allocations of harvest shares to processors, annual cooperative/processor associations that may be changed without penalty or forfeiture, and caps on the amount of landings that may be processed by any single processor. Section 303A of the MSA and the Council's recommendation for shoreside processors is addressed in Comment 49.

The Council ultimately recommended the port delivery requirement implemented by this final rule. The requirement is intended to protect the fishing community of Kodiak and traditional shorebased processors from changes in delivery location under the Rockfish Program. In addition, the processing cap the commenter notes limits the possible degree of consolidation among processors. These clear limits will reduce the potential instability to processing operations if no limits were established. As noted in the preamble to the proposed rule, the Council considered and rejected a number of measures to constrain processing operations.

Comment 24: It wasn't the Council's intent at final motion to create additional barriers to the transferability of American Fisheries Act (AFA) derived LLP licenses. The non-severability provision could diminish the value of an AFA vessel as well as its AFA fishing rights, and limits an entity's opportunity to acquire AFA pollock harvest shares up to the limit specified at § 679.20(a)(5)(i)(A)(6). The lack of severability of the rockfish QS from the LLP license for the purpose of transferring an AFA derived LLP license has significant negative consequences: (1) It limits the pool of potential purchasers who would otherwise be

eligible to purchase an AFA qualified catcher vessel operation; and (2) it limits the pool of AFA qualified catcher vessels that are available for purchase by someone that already holds some rockfish QS. The current pool of catcher vessel sector rockfish Pilot Program participants includes a number of AFA qualified catcher vessels with AFA derived LLPs. An AFA derived LLP may only be transferred to an AFA qualified vessel, thus limiting the pool of transferees to someone who owns an AFA qualified vessel but needs an AFA derived LLP (unlikely), or someone who wishes to purchase the transferor's AFA operation including the AFA qualified vessel and AFA fishing rights (the usual circumstance). Under the proposed regulations, an AFA derived LLP with rockfish QS attached to it could not be transferred if the transfer would cause the transferee to exceed the proposed 4% use cap. NMFS should revise the proposed regulations to allow for the severability or suppression of rockfish QS from an AFA derived LLP license, when necessary, to allow an LLP transfer that would otherwise be legal except for the non-severability of all or part of the rockfish QS.

Response: The Council motion does not provide for severability or surrender of rockfish QS, except as provided for under § 679.80(f)(2), and this is reflected in the Rockfish Program regulations. The proposed rule did not consider such a provision. The commenter may approach the Council with suggestions for future regulatory amendments to the Rockfish Program. No change has been made to the final rule.

Comment 25: The non-severability of QS from LLP licenses forces inefficiencies and cumbersome leasing agreements within the Rockfish Program. Many vessels have allocations too small to be fished effectively and much of the QS remains unharvested. This is contrary to National Standard 1, which requires managing each fishery to achieve optimum yield.

Response: The Council recommended the non-severability of rockfish QS from LLP licenses, except as provided for under § 679.80(f)(2). This is consistent with Pilot Program provisions. LLP license endorsements are typically non-severable from LLP licenses under other NMFS programs. As specified under the provisions to transfer an LLP license in § 679.4(k)(7)(viii), area/species endorsements are not severable from the license and must be transferred with the license. Non-severability is consistent with the Council's intent to limit effort. Part of what makes the LLP effective is that a vessel may concentrate on only one gear, area, and fishery at a time. If

an LLP license's endorsements could be severed, owners of other vessels could maximize use of each endorsement, potentially vastly increasing effort in many areas, fisheries, and with numerous gears. NMFS does not have a system to manage endorsements separately from LLP licenses. The only exception to this provision is with Aleutian Island area endorsements on a groundfish license with a trawl gear designation issued under the provisions of § 679.4(k)(4)(ix)(A). This exception was intended to increase effort in the Aleutian Island area to support the development of fisheries.

Small allocations of Rockfish QS to specific LLP licenses should not result in unharvested CQ under cooperative management. As with the Pilot Program, LLP license holders with rockfish QS join rockfish cooperatives and the cooperative members can assign specific harvesting responsibilities to specific members of the cooperative. In the Rockfish Program as in the Pilot Program, LLP license holders will not be required to forgo harvesting the CQ derived from relatively small QS allocations. National Standard 1 states that "conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." NMFS has determined that this final rule meets the MSA national standards, including National Standard 1. Additionally, the final EA/RIR addresses issues related to the national standards.

Comment 26: The Secretary should disapprove two elements of the Rockfish Program that restrict consolidation in the Rockfish Program: (1) The inability to sever QS history from the LLP license; and (2) the low ownership use cap of 4 percent for the catcher vessel sector. The ideal program would allow LLP license holders to sweep-up QS that are severable from an LLP license so that participants remaining in the fishery are economically sound. The 5 percent ownership use cap for the catcher vessel sector in place for the Pilot Program was more appropriate because it was more appropriate to increase efficiency in the fishery.

Response: NMFS disagrees. The inability to sever QS history from the LLP license was addressed in Comment 25. The 4 percent vessel use cap in the catcher vessel sector, as recommended by the Council, limits consolidation to a reasonable level determined by the Council. The use caps help balance the Rockfish Program goals to improve economic efficiency, maintain employment opportunities for vessel

crew, and provide financially affordable access opportunities for new participants. The Council acknowledged that allowing the fleet to consolidate may enable the remaining companies to operate more efficiently. However, the Council also recognized that harvests may be liberally redistributed among vessels in cooperatives, and it is likely that gains in efficiency may be achieved without further ownership concentration of share in the fishery. As specified in the Analysis, in section 2.4.2, on page 124, the vessel use cap ensures that harvest activity does not exceed the threshold, specified by the Council, so that a certain minimum number of vessels remain active in the rockfish fisheries; under a 4 percent cap, this number is 25 vessels. The Council noted that under the 4 percent use cap, up to 5 LLP license holders would be grandfathered at a higher level and be able to continue to harvest rockfish consistent with their current harvesting practices.

Comment 27: Please explain how a QS use cap assignment based on a percentage of the initial pool works, and the difference between the two following statements in the preamble to the proposed rule: (1) Pages 52170 and 52171, "These QS use caps would be based on the aggregate initial QS pool assigned to each sector * * *. NMFS would establish a QS use cap that would not fluctuate with the changes in the QS pool that could occur due to the resolution of appeals * * *." and (2) page 52171 "The QS use cap would be based on a percentage of the initial QS pool."

Response: These two statements make the same point. The QS use cap for a sector is a fixed percentage of the initial QS pool assigned to a sector. The initial rockfish QS pool is based on the Rockfish Program official record on February 14, 2012. As an example, the use cap for the catcher/processor sector is equal to 40 percent of the initial QS pool assigned to that sector. No changes to the regulations are required.

Comment 28: Several commenters asked for clarification on language in the preamble to the proposed rule that suggested use caps will be unaffected by the resolution of appeals or other operations of law. The proposed rule provided rationale that this will bring stability to QS holders. The commenters believe this process will affect the value of the LLP licenses since the use cap and the actual tonnage allocation will be different after any appeals are won. One commenter requested responses to two hypothetical situations that would help clarify the practical impacts of such an approach.

1. QS pool. Based on applications received for Rockfish Program participation in the catcher/processor sector, RAM determines that 100 total QS units should be awarded to that sector. Applicant A is given credit for 40 QS units, and B is given credit for 10 QS units. RAM denies B credit for certain contested landings data, and B appeals to the National Appeals Office (NAO). NAO agrees with B and awards B an additional 10 QS units. We note that if the QS pool remains at 100 QS units, A's percentage of the pool would stand at the maximum 40 percent, notwithstanding B's successful appeal that might otherwise have increased the number of QS units in the QS pool and thus decreased A's percentage to 36 percent (40 QS units out of 110 QS units).

2. CQ Calculation. What is the impact of B's successful appeal on calculating CQ each year? Is the total QS pool for purposes of annually determining CQ for each Rockfish Program participant 100 QS units (before B's appeal) or 110 QS units (after B's appeal)? How many QS units do A and B have for purposes of calculating CQ—is it 40 QS units for A and 20 QS units for B?

Response: NMFS has established use caps based on a percentage of a fixed QS pool (typically, the initial pool) for all of its catch share programs, including the Pilot Program and the Rockfish Program. NMFS has established this procedure to resolve several problems that may result if the QS use cap fluctuates over time. Most catch share participants have sought a clear and fixed definition of QS use caps to ensure that they can plan business operations that transfer QS. Additionally, establishing a use cap based on a proportion of a QS pool that decreases would result in a QS holder who is at or slightly below the QS use cap to exceed the limit once the use cap percentage is calculated against this new QS pool. This result could require a QS holder to divest of QS due to actions taken by NMFS to withdraw QS through the resolution of an appeal, or other operation of law. Under this scenario, a QS holder would be adversely affected by actions taken by NMFS outside of his or her control. Therefore, NMFS has established use caps based on the initial QS pool to ensure that all QS holders are subject to a cap that will not vary over time and create conditions that could result in forced divestiture of QS.

NMFS does not anticipate that appeals will result in a change to the QS pool. Under the Pilot Program, NMFS did not receive any appeal to adjust a QS holder's allocation. As the

commenter notes, there are a limited number of potentially eligible LLP licenses under the Rockfish Program. NMFS has carefully reviewed landings data from those participants, particularly in the catcher/processor sector. NMFS does not believe that there are unique conditions within the Rockfish Program that require deviation from well-established use cap calculation procedures. However, should such a situation occur, it will not result in changes to the Initial Quota Share Pool used for use cap purposes but could change the calculation of annual CQ. This is because the additional QS would be included in the annual CQ calculation if the person holding that CQ joins a cooperative. Therefore, the amount of QS assigned to all cooperatives in each sector could be affected by the issuance of additional QS through the appeals process. In hypothetical situation 1 provided by the commenter, if the initial QS pool is 100 units, and the use cap is 40 percent of the initial QS pool (*i.e.*, 40 units), then the QS use cap would not vary if subsequent appeals resulted in the issuance of more QS. That is, the QS use cap would not increase if more QS is issued to a participant, but the amount of QS assigned to the sector for purposes of calculating the annual CQ would change.

In response to hypothetical situation 2, NMFS notes that although the QS use cap is fixed based on the initial QS pool, the total annual QS pool can vary as appeals or other operations of law occur. The annual QS pool for each sector is the total amount of QS assigned to rockfish cooperatives each year, based on rockfish cooperative applications. The annual QS pool may fluctuate if additional rockfish QS is issued as a result of an appeal, revoked by another action, or if an LLP license holder does not apply to be part of a rockfish cooperative. This may result in the QS of an individual cooperative member effectively generating more or less CQ as the annual QS pool fluctuates. If the annual QS pool were to increase due to the resolution of an appeal in favor of an appellant, NMFS would recalculate the annual QS pool in the year following the adjudication of the appeal. Each cooperative would then receive slightly less CQ per QS unit compared to the previous year. Conversely, if the annual QS pool decreased during a year, the following year, each cooperative would receive slightly more CQ per QS unit compared to the previous year. No changes in the regulations are required.

Comment 29: In the preamble to the proposed rule on page 52172, Table 8—

Eligibility Criteria for a Grandfather Provision appears to inaccurately describe the grandfather provisions for the Rockfish Program. The 30 percent catcher vessel harvester cooperative cap and the 30 percent processor cap apply no matter what; that is, there are no grandfather provisions for the two caps in the new Rockfish Program. Cooperative formation is voluntary, so staying within the 30 percent catcher vessel harvester cooperative cap is achievable. Additionally, no Kodiak processor processed more than 30 percent of the catcher vessel rockfish harvest during the qualifying time period 2000 to 2006. As the preamble notes, the processing caps were imposed to prevent processor consolidation.

Response: NMFS agrees. The use cap exemptions, as specified in § 679.82(a)(6), apply only to rockfish eligible harvesters and catcher/processor vessels, and not to catcher vessel rockfish cooperatives or shoreside processors. Table 8 in the preamble to the proposed rule does not accurately reflect the grandfather provisions under the Rockfish Program because the table indicates that eligibility criteria for grandfather provisions apply to catcher vessel rockfish cooperatives and shoreside processors. The processor cap and the catcher vessel cooperative cap apply without grandfather provisions. The regulatory text is correct, and therefore, no change to this final rule is required.

Comment 30: Three commenters asked for clarification on a requirement explained in the preamble, on page 52176, under Management of the Sideboards, which states that all vessels subject to a sideboard limit must retain "all rockfish caught during July 1 through July 31 in the Western GOA and the West Yakutat District. NMFS would require vessels to retain rockfish regardless of the specified target fishery." The commenters assert that this requirement would result in either a violation of the bycatch MRAs, or violation of this requirement to retain all rockfish. "All rockfish" includes minor species, which do not count against any allocation or sideboard and may not be marketable. The final rule should be corrected to clarify that full retention only applies to target rockfish species, as defined in the Rockfish Program, and that MRA regulations trump the retention requirement. In other words, retention requirements apply only to rockfish sideboarded species in the Western GOA and West Yakutat District, with 100 percent retention required if the sideboarded species is open to directed fishing and

retention up to the MRA if the species is on bycatch status.

Response: NMFS agrees that vessel operators will be required to retain rockfish primary species subject to a rockfish sideboard limit: (1) When that rockfish primary species in the Western GOA or West Yakutat District is open to directed fishing; or, (2) if it can be retained up to the MRA for that species if the species is on a bycatch status. Retention will not be required for species not subject to a rockfish sideboard limit, or if the species cannot be retained (*i.e.*, retention will cause the vessel operator to exceed the MRA for that species, or if the species is placed on PSC status and cannot be retained). This clarification to the description of the management of rockfish sideboard limits on page 52176 of the proposed rule does not require modification of the regulatory text.

Comment 31: As specified in § 679.82(e)(9)(iii), a rockfish cooperative may not exceed any deep-water or shallow-water halibut PSC sideboard limit assigned to that cooperative. NMFS has determined that deep-water halibut sideboards pertain to deep-water flatfish and the deep-water halibut PSC in the Pilot Program could be harvested in excess of the deep-water halibut PSC sideboard. The commenter raises three questions related to the application of the deep-water halibut complex halibut PSC sideboard. First, is the method for applying deep-water halibut PSC limits changing in the Rockfish Program? Second, are Western GOA rockfish sideboard harvesters going to be held to the deep-water halibut sideboard when harvesting in the rockfish sideboard fishery? And third, what is the rationale for not limiting halibut PSC use in the rockfish fishery.

Response: NMFS is clarifying § 679.7(n)(6)(iv) in response to this comment to note that a rockfish cooperative in the catcher/processor sector is prohibited from exceeding any rockfish sideboard limit. The reference to “any sideboard limit” has been removed to avoid potential confusion about the application of a halibut PSC sideboard limit. Section 679.82(e)(9)(iii), which addresses cooperative deep-water and shallow-water halibut PSC sideboard limits, has not been modified. Therefore, once a halibut PSC sideboard limit is reached by a rockfish cooperative, that cooperative is prohibited from directed fishing in the shallow-water flatfish complex if the shallow-water halibut PSC limit is reached, or is prohibited from directed fishing in the deep-water flatfish complex if the deep-water flatfish PSC limit is reached. If a cooperative uses

halibut PSC fishing for rockfish in the Western GOA or the West Yakutat District, any halibut PSC used will be debited from the deep-water complex halibut PSC limit assigned to that cooperative. Once a cooperative reaches its deep-water halibut PSC sideboard limit, it will be able to continue to fish for rockfish in the Western GOA or West Yakutat District. This clarification to § 679.7(n)(6)(iv) ensures that catcher/processor cooperatives that have historically fished rockfish in the Western GOA or the West Yakutat District will not be foreclosed from fishing for rockfish by a halibut PSC sideboard limit. The Council intended to limit the ability of cooperatives to expand their harvests of deep-water flatfish beyond an amount that could be supported by the proportion of the halibut PSC historically used by a cooperative during 2000 through 2006.

Comment 32: The regulatory text at § 679.82(d) indicates that sideboards are applied to both the vessel and LLP license. Is that a correct interpretation?

Response: Yes. Sideboards are applied to both the vessel and the LLP license derived from that vessel.

Comment 33: Three commenters identified a mistake in the halibut PSC allocation in Table 1 of the preamble to the proposed rule and the same mistake again in the text on page 52169.

Response: NMFS agrees. Halibut PSC allocations between the catcher vessel and catcher/processor sectors were incorrectly switched in the preamble to the proposed rule, but correctly represented in the proposed regulations. NMFS corrected the halibut PSC allocations in Table 1 of the final rule to 117.3 mt with 16.8 mt not allocated (*i.e.*, “left in the water”) for the catcher vessel sector, and 74.1 mt with 10.6 mt not allocated for the catcher/processor sector. No regulatory changes were made.

Comment 34: Three commenters assert that limiting 55 percent of the unused halibut PSC to be reassigned (*i.e.*, “rolled over”) to the fifth seasonal trawl PSC apportionment does not provide incentive for participants in rockfish cooperatives to operate in ways that minimize halibut mortality. The commenters believe that in making the decision to reduce the halibut PSC limits, the Council mistakenly interpreted efforts by participants to reduce halibut PSC as a lack of need for halibut PSC during the fifth season by the trawl fleet operating during the fifth season.

Response: NMFS disagrees. The Council considered reducing the halibut PSC rollover from 100 percent of the unused halibut PSC allowances to as

low as 25 percent. The Council understood that eliminating the halibut PSC rollover would result in the greatest savings of halibut PSC, but that reducing the amount of halibut PSC available for rollover dramatically would reduce the incentive for participants to minimize halibut mortality. Some Rockfish Program participants have more incentive than others to minimize halibut mortality because those participants are also active in a number of flatfish trawl fisheries that occur after November 1 of each year. As discussed in the preamble to the proposed rule, the Council assessed the amount of halibut PSC that is typically used after November 1 and concluded that even with the 55 percent rollover reduction of halibut PSC, the fleet would continue to have an incentive to conserve halibut PSC CQ and have additional harvest opportunities in flatfish fisheries.

Comment 35: The Secretary should disapprove the portion of the FMP that establishes halibut PSC reductions because the impact was not analyzed in the RIR/EA/IRFA and the public was not allowed to comment on the 12.5 percent halibut PSC reduction the Council recommended before halibut PSC CQ is allocated to cooperatives. It was unclear that the decision directly penalizes the catcher vessel trawl sector with virtually no penalty to the catcher/processor sector. Because halibut PSC allocations within the Pilot Program are not overly restrictive, cooperative members’ relationships and cooperation are not compromised. Under the new Rockfish Program there is no way to understand this dynamic with the halibut PSC reduction.

Response: NMFS disagrees. As discussed in the preamble to the proposed rule, the Council considered a range of alternative approaches that would have reduced total halibut PSC CQ assigned to each sector. The Council accepts public comment on agenda items at every meeting and the allocation of halibut PSC was discussed at a number of meetings during Council deliberation on the Rockfish Program. The Council sought to balance the need to provide adequate halibut PSC for use by rockfish cooperatives, recognize patterns of reduced halibut PSC use once exclusive harvest privileges are established, and meet broader goals to reduce halibut mortality. In the Analysis, the Council addressed halibut PSC reductions, on page 100, in section 2.4.1, under the Analysis of the alternatives. The Council considered each sector’s use of halibut PSC during the qualifying years. The Analysis recognizes that a reduction of the

halibut PSC rollover could cause cooperatives to place less emphasis on halibut PSC reductions in their cooperative agreements. It also noted that reductions might also affect trawlers that have benefitted from the halibut PSC rollover during the fifth season in the shallow-water flatfish, rex sole, arrowtooth flounder, flathead sole, and Pacific cod fisheries. Ultimately, halibut PSC reductions are meant to limit halibut mortality both by limiting the amount of halibut PSC that is initially allocated as halibut PSC CQ and by limiting the amount of halibut PSC that may be reassigned.

Comment 36: The Secretary should disapprove halibut PSC sections of the proposed rule because the Council will address halibut bycatch caps, both allocations and structures, in the GOA, holistically through a different amendment package.

Response: NMFS disagrees. The Council recommended specific halibut PSC provisions for the Rockfish Program. The Council will take the Rockfish Program halibut PSC reductions into account during deliberations on any future GOA halibut PSC amendment packages. Whether the Council should, or will, address halibut PSC through a different amendment package is outside the scope of this action.

Comment 37: The preamble to the proposed rule states on page 52170 under the section Reassignment of Halibut PSC to Non-Rockfish Program Fisheries that, "NMFS would allow a portion of the halibut PSC CQ that was assigned to that rockfish cooperative to become available to trawl and non-trawl vessels during the last halibut PSC apportionment period of the year.

* * *" This statement is incorrect because reassignment of halibut PSC only goes to trawl vessels, and not non-trawl vessels.

Response: NMFS agrees. Reassignment of halibut PSC goes to trawl vessels in the fifth season trawl allocation, which begins on October 1 of each year. No change was made to the regulations.

Comment 38: Since the Pilot Program will no longer exist, and a new Rockfish Program will be in its place, the Amendment 80 sideboards will need to be adjusted according to the new catcher/processor halibut CQ. Under the Rockfish Program, the catcher/processor sector will be allocated 84.7 mt of halibut PSC, which is less than under the Pilot Program, based on the new suite of qualifying years. The Council did not discuss any revisions to Amendment 80 as a result of the Rockfish Program.

Response: NMFS disagrees. The Council did not recommend any modifications to the Amendment 80 sideboard limits. The Amendment 80 halibut PSC sideboard limits were established through regulations that implemented the Amendment 80 Program and not through the Pilot Program or the Rockfish Program. The halibut PSC sideboards established under Amendment 80 are outside of the scope of this action. The Council could choose to amend the Amendment 80 halibut PSC sideboard limits through a separate action.

Comment 39: Under the calculation of rockfish and halibut PSC sideboard limits, as specified at § 679.82(e)(3)(i), it is difficult to know whether the denominator is all catcher/processors, all Rockfish Program catcher/processors, or split between Rockfish Program catcher/processors for (i) and all catcher/processors for (ii) and (iii).

Response: The denominator is split between Rockfish Program catcher/processors and all GOA-endorsed LLP licenses in the catcher/processor sector. As specified in § 679.82(e)(3)(i), the denominator for each rockfish sideboard fishery is the total retained catch by vessels operating under the authority of all eligible LLP licenses in the catcher/processor sector. The denominator for the deep-water and shallow-water halibut PSC as specified in § 679.82(e)(3)(ii) and (iii), is the total halibut PSC used by vessels operating under the authority of all LLP licenses. No changes were made to the regulations.

Comment 40: The Council motion and intent was for the calculation of rockfish and deep-water/shallow-water halibut sideboards to remain the same as in the Pilot Program. The intended calculation is that each LLP license and cooperative receives its pro-rata share of Western GOA and West Yakutat District rockfish and deep-water/shallow-water halibut history of the sector. The description in the preamble on page 52175, and as specified under § 679.82(e)(3)(i) through (iii), reflects the rockfish halibut QS and secondary species QS calculation, which states the amount assigned is based on the amount of primary rockfish QS as a percent of the sector's primary rockfish aggregate QS. This is incorrect. The sideboard history is the LLP license and cooperative's historic usage.

Response: NMFS disagrees. Page 52175 of the preamble to the proposed rule and § 679.82(e)(3)(i) through (iii) establish a method to assign a portion of a rockfish sideboard limit or halibut PSC limit to a rockfish cooperative based on the proportion of the rockfish catch or halibut PSC used under the

authority of an LLP license compared to the total rockfish catch or halibut PSC use by all eligible LLP licenses in the catcher/processor sector. This method is the same method that was used in the Pilot Program.

Comment 41: When NMFS publishes the 2011 Rockfish Pilot Program Catcher/Processor Sideboard Limits, please carry the catcher/processor sideboard out to the thousandths decimal, as that is how the information is presented on LLP licenses and CQ permits. Rounding up the numbers shows some allocations as higher than they really are.

Response: The sideboard percentages posted in the 2011 Rockfish Pilot Program Catcher/Processor Sideboard Limits currently display decimals to the tenths to make the spreadsheet easier to read, but the full number is available when a cell is selected. To avoid confusion in the future, NMFS will post the Rockfish Program Catcher/Processor Sideboard Limits with sideboard percentages carried out to the thousandths decimal to match percentages listed on the LLP licenses and CQ permits. NMFS can provide this additional information online at <http://www.alaskafisheries.noaa.gov>, without any change to the regulations.

Comment 42: The Pilot Program language stipulated that the waters adjacent to the Western GOA and West Yakutat District were those waters "open by the State of Alaska." Should this be included in this program's language under § 679.82(d)(3) and (4), and (e)(2) for clarification?

Response: In the Rockfish Program regulations, NMFS replaced the language "waters adjacent to the Western GOA and West Yakutat District were those waters open by the State of Alaska" with "in waters adjacent to the Western GOA and West Yakutat District when northern rockfish, Pacific ocean perch, and pelagic shelf rockfish by that vessel is deducted from the Federal TAC as specified under § 679.20." NMFS would like to avoid incorporating State of Alaska regulations by reference to avoid triggering a Federal requirement based on a State of Alaska action. Instead, under this final rule the regulation becomes effective when fish are caught and subsequently subtracted from the Federal TAC. That can only happen after the State of Alaska has made the choice to open the parallel fishery. Thus, the new language preserves the State of Alaska authority, but bases the trigger on a Federal action. No changes were made to the regulations.

Comment 43: Several commenters oppose the proposed Cost Recovery

regulations at § 679.85 that require the rockfish cooperative representative to collect and submit up to a 3 percent cost recovery fee for the members of the cooperative. The commenters also opposed the provisions that require NMFS to withhold all forthcoming CQ for all cooperative members, if the cooperative fails to pay the fee liability in full. Commenters assert that the individual QS holders should be responsible for the portion of fee liability associated with the amount of QS assigned to the cooperative by each QS holder. The commenters expressed the following reason for their position on this issue:

- The payment schedule creates logistical issues. There is a very real possibility that the paying (or even new) members of a cooperative could be subject to a financial burden if a member of a cooperative did not submit adequate payments according to the cooperative contract during the prior year. This may result in costly lawsuits.

- QS holders will be subject to the performance of another entity. For example, if a rockfish vessel with QS wants to move to a different cooperative associated with a different processor the following year, the original cooperative can withhold fee payment and prevent issuance of CQ to the new cooperative.

- It is burdensome and creates accounting, reporting, and tax liability not analyzed by the proposed rule. The five primary catcher vessel rockfish harvesting cooperatives are currently classified as non-profit entities under state and Federal law. This requirement will result in the generation of more than \$5,000 in gross receipts for each cooperative, which will, in turn, require each to seek formal approval as a non-profit by filing an application for recognition with the Internal Revenue Service. Significant and unnecessary accounting and reporting obligations will be created as well. These consequences were neither contemplated nor analyzed, either as part of the Council action or in connection with this rulemaking process.

- By shifting responsibility for cost recovery to cooperatives, as opposed to individual harvesters, the proposed regulations simultaneously increase cooperative liability and limit the ability of cooperatives to recover those costs from their members. The proposed rule frees harvesters to change cooperative and processor affiliations on an annual basis, which hinders the ability for cooperatives to enforce their membership agreements on a multi-season basis. The withholding of CQ from all members is a disincentive to

form cooperatives with other QS holders.

Response: MSA section 304(d)(2) requires NMFS to collect fees for the Rockfish Program equal to the actual costs directly related to the management, enforcement, and data collection. This fee may not exceed 3 percent of ex-vessel value of fish harvested under the Rockfish Program. The analysis noted in section 2.4.18 that a cost recovery fee would be collected by NMFS and that any participant granted a limited access privilege (a Federal permit) would be responsible for the payment of cost recovery fees. This means that NMFS collects the fee from the person who is authorized to fish under the authority of the permit. The person authorized to receive the Rockfish Program annual permit is the rockfish cooperative.

Assigning a fee to the members who hold QS in the rockfish cooperative poses considerable administrative challenges. QS holders do not receive a permit authorizing the harvest of a specific portion of the TAC, and therefore, NMFS does not have a method for determining the specific pounds or timing of landings that should be assigned to each individual QS holder within the rockfish cooperative. Additionally, NMFS may not develop a method for determining specific pounds or timing of landings based on the amount of fish each QS holder harvested on the cooperative report, because the Council intended for CQ permits to be assigned to the rockfish cooperative and not to specific QS holders. Even if NMFS had a method for determining the specific pounds or timing of landings, NMFS would not have a mechanism to effectively determine which specific landings should be assigned to each QS holder. This is because there is no requirement for QS holders to actually make the legal landings for their QS associated with the CQ permit. For example, a QS holder could be a member of a rockfish cooperative and another member of that rockfish cooperative could harvest the amount of CQ derived from that individual QS holder.

In order to facilitate the internal administration of fee collection within the rockfish cooperative, this rule requires that each rockfish cooperative describe how the rockfish cooperative will collect fees from its members in its contract submitted to NMFS each year. The Council was clear under the development of the Rockfish Program that the responsibility of monitoring catch by its members rests with the rockfish cooperative. In the preamble to the proposed rule, given the small size

of the Rockfish Program relative to the administrative costs, NMFS noted it is likely the cost will exceed 3 percent. Each rockfish cooperative may want to ensure that 3 percent of all landings are set aside for future cost recovery fees.

Ultimately, the CQ permit holder (the cooperative) is responsible for paying the fee. Accounting, reporting, and tax liability for rockfish cooperatives were not specifically addressed in the analysis because the Council left the method by which cost recovery fees are collected to be established within the agreement for each individual rockfish cooperative. Cost recovery fees could be collected in a number of ways. For example, each vessel operator could be required to set aside 3 percent of the ex-vessel landings and then reassign that money to the rockfish cooperative at the end of the fishing year. This would not require each rockfish cooperative to have separate holdings, and other alternative methods are available for rockfish cooperatives to hold fees.

Almost all participants in the Rockfish Program have extensive experience establishing contractual arrangements to fish within a cooperative structure under the Pilot Program, AFA, or Amendment 80 Program. These programs have operated successfully in the North Pacific fisheries for over a decade. The Council specifically chose to develop the Rockfish Program based in part on the success of cooperative management in other catch share programs. Given their extensive experience establishing contractual relationships, rockfish cooperative members are well-suited to establish agreements to ensure the timely collection of fees from its members. Adherence to tax regulations as either for-profit or a non-profit corporation is established by the IRS. These matters are well outside the scope of this action and beyond the responsibility and authority of NMFS. No changes were made to the regulations in response to this comment.

Comment 44: In § 679.85(b)(2), establishing a complex and onerous system to create standardized values to use as a basis for determining cost recovery fees may unfairly and inaccurately impact crewmembers on all vessels. Cost recovery fees resulting from this program will be treated as a "cost of doing business" by most vessels and subtracted from gross revenues before crews are paid. NMFS should use fish tickets instead of standard ex-vessel values to clearly and simply establish the value of deliveries made by a vessel.

Response: NMFS disagrees. NMFS does not anticipate that cost recovery fees will unfairly or inaccurately impact

crewmembers on all vessels. The Rockfish Program retains the economic gains realized under the Pilot Program. Participants in the Rockfish Program, including crew members, receive the benefits of catch share management under the program. Participants benefit by avoiding a competitive and potentially wasteful race for fish, and tailoring fishing operations to specific catch limits to improve economic efficiency. The MSA requires that NMFS collect cost recovery fees for limited access programs but limits those fees so that it may not exceed 3 percent of the ex-vessel value of the fish harvested under the program.

NMFS uses standardized ex-vessel values instead of fish tickets because the State of Alaska does not require the reporting of prices on fish tickets. In cases where price is reported on fish tickets they do not necessarily reflect complete price information and are not intended to be used as an indication of the ex-vessel value of Alaska's fisheries. No change was made to the regulations.

Comment 45: Using the rockfish standard ex-vessel value by month for each rockfish primary and secondary species to determine cost recovery fee percentages, as described under § 679.85(b)(2), is overly complicated. The ex-vessel value for low-value, high-volume species has not fluctuated by month within the Pilot Program, and no price fluctuations are expected under the new Rockfish Program. Processors should report an annual price for each rockfish species instead of a rockfish standard ex-vessel value by month.

Response: NMFS disagrees in part. A review of past landings from fish ticket prices confirms that the ex-vessel value by month has remained reasonably stable within the Pilot Program. However, NMFS received comments asserting that the new terms of the catcher vessel cooperative processor association, which allows catcher vessels to deliver to any shoreside processor in the City of Kodiak, may change the relationship between the catcher vessel sector and shoreside processors in Kodiak. See comment 23. NMFS also does not anticipate a great degree of price fluctuation under the Rockfish Program, but acknowledges that catcher vessels may choose to deliver to a different processor, instead of the processor associated with the catcher vessel cooperative, if a higher price is offered. Therefore, NMFS will continue to collect the rockfish standard ex-vessel value by month from shoreside processors to account for any variation in prices. NMFS may revisit this matter in the future if prices remain

stable under the Rockfish Program. No change was made to the regulations.

Comment 46: There should be a mechanism for an appeal of the ex-vessel price used to determine cost recovery fee percentages. It would be prudent to have the option to provide supporting documentation, such as product invoices, if there is a discrepancy between market values since the Rockfish Program cost recovery fees will be based on shorebased values. Catcher/processors might encounter different values.

Response: NMFS disagrees. As detailed in the preamble to the proposed rule, an appeal of the ex-vessel price is rarely used under existing cost recovery programs and has not proven to be an obstacle for industry to pay fees, particularly in the halibut and sablefish IFQ program, where IFQ holders may use either standard ex-vessel prices generated by NMFS or actual ex-vessel prices. The BSAI crab fee collection program does not provide for the use of actual ex-vessel price. The use of an actual ex-vessel price would require that the rockfish CQ holder document all landings and prices. NMFS has used the standard ex-vessel prices estimated from shorebased deliveries to assign an ex-vessel value to catcher/processor vessels in its other cost recovery programs and will continue to do the same under the Rockfish Program. The data used to determine the cost recovery fee are based on the data required to be provided to NMFS from each rockfish processor receiving rockfish CQ. No change was made to the regulations.

Comment 47: The Secretary should disapprove the 10-year duration of the Rockfish Program because the limited duration indicates that the program is inherently unstable. Additionally, it does not encourage long-term stewardship of the resource, but instead a view centered on short-term gains. Since participation in the rockfish fisheries is unlikely to change, the permits should automatically renew at the end of the 10-year duration unless revoked, limited, or modified by NMFS.

Response: Section 303A(f)(1) of the MSA limits permits under LAPPs established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 to 10 years. Permits are renewable unless revoked, limited, or modified. All Rockfish Program permits will expire after 10 years, and can be renewed only if the Council and Secretary take action to continue the Rockfish Program. By its terms, the Rockfish Program will expire after 10 years. The Council did consider options that would have extended the

Rockfish Program beyond 10 years. However, the Council recommended limiting the duration of the Rockfish Program to provide additional opportunities for review and reconsideration. The Council considered the substantial improvements in redistributing harvest throughout the year and reducing conflicts with processors under the limited duration Pilot Program before recommending to limit the duration of the Rockfish Program.

Comment 48: A commenter provided opinions on QS allocations and the Federal Government's general management of fish populations and other marine resources.

Response: This comment is outside the scope of this action.

Comment 49: Two commenters expressed concern about the role of processors in the proposed Rockfish Program compared with that in the Pilot Program. The commenters stated that the Council did not engage in a full analysis of the Pilot Program as an alternative in the development of the Rockfish Program. The Pilot Program requires harvesters in the catcher vessel sector to deliver their catch to the same processor they historically delivered their catch to. Both commenters stated that the Council eliminated from further analysis the alternative to extend the existing Pilot Program after a NOAA General Counsel (GC) opinion was presented to the Council stating that the existing program could not be extended. They also suggested that the Council did not have enough time to fully explore the options due to pressure to make a recommendation to the Secretary in time to meet the December 31, 2011, sunset date of the Pilot Program.

One commenter stated that the Pilot Program was a reasonable alternative to be considered in the analysis, that the Pilot Program alternative was required by the National Environmental Policy Act (NEPA), and legal uncertainty or concerns about staff time are not excuses to discontinue consideration of an alternative. The commenter claims that after the Council eliminated the Pilot Program alternative from the analysis, the only option remaining to include processors in a LAPP for the rockfish fisheries was to allocate harvesting quota directly to processors, and that approach did not have the broad support among stakeholders that the processor linkage under the Pilot Program had. The commenter requested that the Secretary disapprove the Council's recommended proposed regulations to implement Amendment 88 to the GOA FMP because the Council violated NEPA by not considering the

management system under the Pilot Program as an alternative.

Response: NMFS disagrees. It was reasonable not to include as an alternative in the EA the Pilot Program and its processor linkage structure because (1) that option was not consistent with the Council's Problem Statement and its focus on protecting communities and sectors, not individual processors; and (2) the Magnuson Stevens Act does not authorize allocation of onshore processing privileges. An EA must include a reasonable range of alternatives, but it does not require consideration of alternatives that do not satisfy that need for the proposed action, or ones that require legislative action that is remote or speculative.

In developing a new program to take the place of the Pilot Program, the Council recognized the limited duration of the Pilot Program in the Problem Statement (purpose and need statement) developed for the action. The Council indicated in its Problem Statement that the "intent of this action is to retain the conservation, management, safety, and economic gains created by the Rockfish Pilot Program to the extent practicable, while also considering the goals and limitations of the Magnuson-Stevens Fishery Conservation and Management Act LAPP provisions. The existing CGOA Rockfish Pilot Program (RPP) will sunset after 2011. Consequently, if the management, economic, safety and conservation gains enjoyed under the RPP are to be continued, the Council must act to create a long term CGOA rockfish LAPP." The Problem Statement also recognized that the "the rockfish fishery dependent community in the CGOA and the shorebased processing sector have benefited from stabilization of the work force, more shoreside deliveries of rockfish, additional non-rockfish deliveries with the [Pilot Program] halibut savings, and increased rockfish quality and diversity of rockfish products. Moreover, the CGOA fishermen, and the shorebased processing sector have benefited from the removal of processing conflicts with GOA salmon production."

After reviewing a range of options to address program requirements as well as concerns raised by Pilot Program participants, the Council included some modified aspects of the Pilot Program in the new Rockfish Program to ensure that Amendment 88 complies with section 303A of the MSA and meets the Council's goals and objectives. The Council considered the processor linkage structure under the Pilot Program, but did not advance that option for detailed analysis. Instead, the

Council decided that other alternatives for the new program would better address the interests of harvesters, communities, and processors and be consistent with the Council's Problem Statement and goals and objectives for this action.

Two of the four alternatives that were advanced for analysis for the catcher vessel sector looked at the role of the processing sector relative to the Council's goals and objectives and meeting the action's purpose and need. For example, Alternative 3 considered a rockfish cooperative program where harvesting allocations would have been divided between historical harvesters and processing participants, and Alternative 4 considered a cooperative program where a harvester would be required to join in association with a processor where associations were severable. The Council selected Alternative 4 because the Council found, and NMFS agreed, that it best meets the purpose and need of the action and complies with statutory and national standard requirements, including consideration of employment in the harvesting and processing sectors and policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries.

It was also reasonable for the Council not to advance the Pilot Program for detailed analysis in the EA because the MSA does not authorize the continuation of the Pilot Program or the establishment of a processor linkage structure like that under the Program. By its terms, the special authority for the Pilot Program expires at the end of 2011, so the Council could not "extend" the Program, but would need to develop a new program under the authority of the Magnuson-Stevens Act. Section 303A of the Magnuson-Stevens Act sets out the requirements for limited access privilege programs to harvest fish. The Act defines a limited access privilege to mean a Federal permit to harvest a quantity of fish, including an individual fishing quota. Section 303A therefore authorizes the allocation of individual fishing quotas but does not authorize onshore processing privileges. Nor does the Act generally authorize the allocation of onshore processing privileges, based on the agency's long-standing interpretation of the definition of "fishing" and related provisions under the Act. Thus, absent a legislative change, the Council and agency therefore could not include in the Rockfish Program a provision similar to the Pilot Program's requirement that harvesters in the catcher vessel sector deliver their catch to the same processor

to whom they historically delivered their catch. Given the exceedingly remote and speculative possibility that Congress would further extend the Pilot Program or otherwise amend the Act to authorize allocation of onshore processing privileges, this alternative was reasonably excluded from further analysis for this reason as well.

Comment 50: The Council should have chosen a preliminary preferred alternative (PPA), or several, before taking final action on issues such as processor association to allow the analysis to focus on the impacts, to fully understand cumulative impacts, and to allow the public to engage with the multiple policies and decisions that needed to be made.

Response: The Council is not required to identify a PPA before taking final action. The Council may do so to help facilitate the review and analysis of specific policy and technical issues. However, the lack of a PPA does not mean the Council neglected to consider the effects of its actions in its analysis or at the time of final action. Over several meetings and several versions of the analytical documents the Council considered numerous alternatives that include processors within the Rockfish Program. The alternatives considered but not advanced for detailed analysis are summarized in the Analysis for this action in section 2.2.3, on page 26. Two of the four alternatives that were advanced for analysis for the catcher vessel sector included a mechanism to include the processing sector and is discussed in Comment 49. The Analysis of Alternatives for this action is summarized in the analysis for this action in section 2.4.

Comment 51: A commenter requested that the Secretary disapprove Amendment 88 to the GOA FMP and the proposed rule because the commenter views specific regulatory language pertaining to one particular vessel as discriminatory. The commenter also asserts that the Council's analysis of the entry level trawl transition allocation methodology is incomplete. The commenter made the following three main points in the letter. (1) The Council discriminated against the commenter because he is the only Rockfish Program applicant who is not entitled to his entire catch history. The commenter holds the only LLP license to qualify for an initial allocation from rockfish legal landings made in both 2000 through 2006 and in the entry level trawl fishery, with participation in 2007, 2008, or 2009. A rockfish eligible harvester may apply for an initial allocation of QS based on landings made in 2000 through 2006, or the entry

level trawl fishery, but not both. Therefore the commenter is not eligible to receive an initial allocation based on the entire catch history of the LLP license. (2) The commenter believes he should not be subject to sideboards under the Rockfish Program that would prevent him from fishing in the West Yakutat District in July. He did not qualify for the Pilot Program and depended on the rockfish fisheries in the West Yakutat District as well as the Central GOA during the Rockfish Program qualifying years. (3) The allocation for the entry level trawl transition is based on years of participation instead of the amount of pounds landed during a period of time. The commenter views this structure as a new methodology of allocation that was not completely analyzed by the Council and does not meet National Standard 4 of the MSA under which one entity should not receive an excess allocation, in this case, 60 percent.

Response: NMFS disagrees with the three points made in the commenter's letter. In response to the commenter's first point, and after NMFS' review of the record, NMFS concludes that the Council did not discriminate against any of the LLP license holders in its decision to limit an applicant to an initial allocation of rockfish QS either from legal landings in 2000 through 2006 or the entry level trawl fishery, with participation in 2007, 2008, or 2009. In terms of qualifying years, the Council considered a range of alternatives for eligibility to receive initial QS allocations for participants in the Rockfish Program. Ultimately, the Council recommended specific eligibility provisions to limit a Rockfish Program applicant to QS derived from legal landings in 2000 through 2006, or the entry level trawl fishery under which a participant fished in 2007, 2008, or 2009, but not both. The Council believed it would not be fair and equitable to allow an LLP license holder eligibility for both QS allocations because this would amount to a disproportionate allocation. This determination is consistent with National Standard 4, which requires that allocations be fair and equitable. The initial QS allocation for legal landings in 2000 through 2006 is assigned to applicants based on rockfish legal landings made during the rockfish primary fisheries during 2000 through 2006. The initial QS allocation for the entry level trawl transition is based on a different methodology, which allocates 2.5 percent of the total rockfish QS to entry level trawl fishery applicants, who will proportionally

divide the 2.5 percent. This allocation is consistent with the proportion of the TAC that was initially assigned to entry level trawl vessels during the Pilot Program.

In response to the commenter's second point, all rockfish eligible harvesters with QS in the Rockfish Program are subject to sideboards under the Rockfish Program. Sideboards are designed to prevent LLP license holders with exclusive QS privileges from further expanding their effort into fisheries that remain open access. However, based on public testimony, the Council recommended provisions to allow an LLP license holder to forgo rockfish QS and be exempt from sideboards in order to continue fishing in the West Yakutat District. These provisions allow a rockfish eligible harvester that does not want to be subject to sideboards to be permanently excluded from the Rockfish Program. An LLP license holder is eligible for the exclusion if it made rockfish legal landings in both 2000 through 2006 and the entry level trawl fishery in 2008, 2008, or 2009. The LLP license holder must submit a timely Application for Rockfish QS affirming his or her exclusion from the Rockfish Program.

In response to the commenter's third point, the allocation for the entry level trawl fishery is based on years of participation, rather than the amount landed during a period of time, so that each person will receive an equitable share of catch. The MSA does not require that QS be distributed based on catch history. The Council considered alternative methodologies for allocating catch in the entry level trawl transition fishery, which included allocations based on catch shares as well as years of participation. Due to a pending law enforcement investigation indicating that some catch in the Pilot Program entry level trawl fishery may have been illegally harvested, and so the landings history could be unreliable, the Council chose a method for QS allocation based on years of participation, instead of the amount of pounds landed during a period of time. In this decision, the Council also considered the relative allocations of QS assigned to the fishery overall, including within the entry level trawl transition fishery, but was limited in its ability to consider the allocation available to specific vessels due to MSA data confidentiality requirements. The Council allocated 2.5 percent of the TAC to the entry level trawl transition vessels, which is consistent with the proportion of TAC initially assigned to the entry level trawl fishery during the Pilot Program.

Comment 52: A commenter asserts that the Council does not support LAPPs as a market-based approach for fishery management. The Council wanted to capture the benefits of the Pilot Program but demonstrated lack of vision in their action to develop a long-term plan that creates stability for participants or that encourages investment and change within the Central GOA rockfish fisheries. This is demonstrated in many statements in the preamble that describe the Council's action. For example, (1) on page 52154, the Council did not use the term "quota share" in describing the Rockfish Program; (2) on page 52184, the Council decided on a 10-year limited duration; (3) on page 52170, the Council believed that consolidation through leasing is acceptable but consolidation through ownership is unacceptable; and (4) on page 52171, the Council recognized that lower ownership caps will restrict ownership changes.

Response: The Council developed the Rockfish Program under section 303A of the MSA, which lays out the requirements for LAPPs. The Rockfish Program is a LAPP, which is a market-based approach to fishery management that provides exclusive harvesting privileges to harvest fish. Previously, competition under the LLP created economic inefficiencies and incentives to increase harvesting and processing capacity. NMFS anticipates the Rockfish Program will retain the conservation, management, safety, and economic gains realized under the Pilot Program. The Council has the authority and discretion to develop LAPPs, such as the Rockfish Program, in a manner in which it deems necessary to manage the fisheries. The Council considered a range of alternatives, deliberated over the options, suboptions, and public testimony over of multiple meetings, and ultimately recommended the elements and option defining the Rockfish Program alternatives at final action.

The Council does not always use the same language as NMFS during the regulatory process to describe the multi-year exclusive harvest privileges, as indicated in the commenter's first point. The fact that the Council used the terms "qualifying catch" and "catch history" instead of "quota share" to describe the harvest privilege that is linked to historic harvests attributed to an LLP license does not mean that the Council discourages the use of quota share in LAPPs. While implementing this program, NMFS determined that the use of the term "quota share" does not alter the original intent of the Council.

The ten year limited duration of the Rockfish Program is not intended to discourage investments or stability for participants as indicated in the commenter's second point. The ten year limited duration and formal review is intended to ensure that the program is achieving the goals of the MSA and the problem statement as identified in the EA/RIR/IRFA (ADDRESS). The Council considered the various consequences that a sunset date could have on the Rockfish Program and recommended the 10 year duration to allow for the opportunity to reevaluate the program's effectiveness after an adequate amount of time has passed to gain and compare results. The Council's review allows for a full evaluation of the program's successes or challenges, and provides the Council with details on unanticipated consequences. The duration of the Rockfish Program is 5 years longer than the duration of the Pilot Program.

The commenter's third and fourth points regarding consolidation through ownership and ownership use caps were addressed in Comments 25 and 26.

Comment 53: If there is a non-catcher/processor sector component that the Secretary cannot approve or promulgate, then the Secretary should not let that prevent the implementation of the Rockfish Program for the catcher/processor sector as outlined in the Council motion.

Response: NMFS acknowledges the comment. Upon publication of the final rule, the Secretary has determined that the provisions in this rule that implement the Rockfish Program are consistent with the national standards of the MSA and other applicable laws for the catcher vessel and catcher/processor sectors. The Secretary approved the full Amendment on December 6, 2011.

Comment 54: The proposed Rockfish Program, which incorporates more recent qualifying years, results in an overall decrease in both target and secondary species and PSC allocations to the catcher/processor sector. We nonetheless believe that the Rockfish Program should be enacted to ensure the operational gains resulting from the program are retained.

Response: NMFS notes the comment, and agrees that the Rockfish Program extends many of the operational gains realized under the Pilot Program. No changes in the regulations are required.

Comment 55: The commenter supports changes from the Pilot Program that will benefit conservation and reduce regulatory discards such as (1) allowing for retention of incidental catches using all CQ species as basis

species for determining MRAs and not just rockfish CQ; and (2) determining qualifications for opt-out catcher/processor participation in GOA flatfish fisheries during July based on past participation during the first two weeks of July by deep-water complex instead of each individual species. The commenter also supports other changes that improve efficiencies, reduce costs, and increase flexibility for the industry such as (1) simplifying sideboard rules for the catcher vessel sector by closing fisheries where minimal historical participation has occurred (West Yakutat District and Western GOA rockfish) and removing unnecessary monitoring and sideboards in other fisheries (GOA shallow-water flatfish, BSAI cod, and BSAI flatfish fisheries); (2) removing limits on the number of check-ins and check-outs for the fishery due to the efficiencies of the new electronic system; and (3) introducing a CMCP specialist instead of requiring 100 percent observer coverage for shoreside processors every 12-hours.

Response: NMFS agrees that the technical fixes mentioned above improve the functionality of the Rockfish Program relative to the Pilot Program. No changes in the regulations are required.

Summary of Regulation Changes in Response to Public Comments

This section summarizes the 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 above. The changes are described by regulatory section.

In § 679.2, NMFS clarified definitions under Rockfish sector for the catcher vessel sector and the catcher/processor sector, as indicated in Comment 1, to include the catcher/processor LLP licenses that have generated rockfish legal landings but have only operated as catcher vessels.

In § 679.4, NMFS clarified that rockfish cooperative CQ accounts will not be set to zero for rockfish primary and secondary species after a rockfish cooperative termination of fishing declaration is submitted to NMFS. The reason for this change is discussed in Comment 2. Rockfish primary and secondary species will be available for transfer after November 15, or upon approval of a rockfish cooperative termination of fishing declaration. NMFS also moved regulatory language from § 679.4 regarding the reapportionment of halibut PSC and the transfer of CQ to §§ 679.21 and 679.81

to better clarify regulations and reduce duplicative language.

In § 679.5, NMFS changed the check-in requirement for the catcher/processor sector to one hour prior to the time the catcher/processor begins a fishing trip to fish under a CQ permit. The reason for this change is discussed in Comment 3. The 48-hour check-in requirement is still in place for the catcher vessel sector only. Additionally, the catcher/processor sector check-out designation effective date is effective upon the submission of the designation to NMFS, as indicated in Comment 4.

In § 679.7, NMFS clarified that catcher/processors may not exceed a "rockfish" sideboard limit assigned to a rockfish cooperative in the catcher/processor sector in response to Comment 31. This change is necessary to avoid potential confusion about the application of a halibut PSC sideboard limit.

In § 679.21, NMFS relocated provisions from § 679.4(n)(1)(iv)(D), specific to the reapportionment of halibut PSC to clarify and reduce duplication of provisions, as indicated in Comment 2.

In § 679.80, NMFS clarified that rockfish QS will be assigned if rockfish legal landings were made "to an entry level processor" under the authority of an LLP license in the entry level trawl fishery during 2007, 2008, or 2009. This clarification was made in paragraphs (e)(1) and (e)(3), in response to Comment 14.

In § 679.81, NMFS made several changes. NMFS removed the requirement to submit the Application to Opt-out of Rockfish Cooperative for catcher/processor vessels. As discussed earlier in Comment 22, NMFS determined this application is unnecessary. All references to the Application to Opt-out of Rockfish Cooperative have been removed in the regulatory text. In § 679.81(f)(3), NMFS changed the deadline for the Application for Rockfish Cooperative Fishing Quota from March 1 each year, to March 15, 2012, for the first year of the program, and to March 1 for all subsequent years to ensure rockfish cooperatives are allotted 30 days to apply for rockfish CQ, as discussed in Comment 18. NMFS also relocated provisions regarding the transfer of CQ from § 679.4(n)(1)(iv)(A) and (B), to § 679.81(i)(4)(ii)(H), because these provisions are specific to limitations on transfers of CQ and are more appropriately covered in § 679.81, as discussed earlier in Comment 2. Further, NMFS also clarified that a rockfish cooperative may transfer rockfish primary and secondary species

CQ after November 15, or after NMFS has approved a rockfish cooperative termination of fishing declaration for that rockfish cooperative in response to Comment 2.

In § 679.82(b), NMFS clarified that an opt-out vessel is any vessel named on an LLP license that is not named on a timely-submitted and approved Annual Application for Cooperative Fishing Quota. As discussed earlier in response to Comment 22, NMFS will determine that a catcher/processor is opting-out if NMFS does not receive an Application for Cooperative Fishing Quota from that holder. This change is necessary because NMFS removed the Application to Opt-out of Rockfish Cooperative.

In Table 28b to Part 679—Qualifying Season Dates for Central GOA Rockfish Primary Species, and as discussed earlier in comment 8, NMFS corrected the qualifying season dates for Pacific ocean perch and pelagic shelf rockfish.

Additional Changes From the Proposed Rule

NMFS made the following changes from the proposed rule to the final rule to clarify provisions and correct typographical errors, including numerous errors in capitalization and in grammar.

In § 679.4(a)(1), NMFS clarified that more information on CQ permits may be found in paragraph (n) of this section. The previous paragraph reference did not exist.

In § 679.4(b)(6)(iii), NMFS removed language about rockfish legal landings to clarify that NMFS will reissue a Federal fisheries permit to any person who holds a Federal fisheries permit issued for a vessel if that vessel is subject to sideboard provisions. This change simplifies the provision and does not change the intent of the proposed language.

In § 679.7, NMFS clarified the paragraph redesignation instructions. These changes are administrative in nature. All regulatory text remains the same, unless noted below.

In § 679.7(n)(1)(i) and (iii), NMFS removed the word “other” because its use was repetitive in these paragraphs.

In § 679.7(n)(2)(iii), NMFS changed a reference for opt-out vessels to § 679.81(e)(2) from 679.81(f)(5) as a result of changes made in response to Comment 22 to remove the Application to Opt-out of a Rockfish Cooperative.

In § 679.7(n)(8)(v), NMFS corrected a typographical error and removed the word “he,” which was erroneously placed in the paragraph.

In § 679.20(e)(3)(iv), NMFS corrected a typographical error to remove the

number “4” from the word CQ in the paragraph.

NMFS clarified the revision instructions for Subpart G to ensure that all section titles in the instructions match the section titles in the proposed regulations. These changes are administrative in nature. All regulatory text remains the same, unless noted below.

In § 679.80(a)(3), NMFS notes that the fishing seasons are subject to other provisions of this part. The rockfish cooperative fishing season, as specified in paragraph (a)(3)(ii), ends on November 15 of each year, however; as specified in § 679.23(d)(3)(ii)(B), trawl vessels may not directed fish for Pacific cod after November 1 of each year. This means that vessels that have rockfish CQ onboard would be in violation of seasonal provisions if that vessel is directed fishing for Pacific cod after November 1 of each year. A review of available data indicates that this clarification would not impact the fishery. No changes in the regulations are required.

In § 679.80(d)(3), NMFS changed the Application for Rockfish QS deadline to January 17, 2012, from January 3, 2012. NMFS anticipates the final rule will publish on or about December 15, 2011. This change will allow potential participants at least 30 days to submit applications for initial allocations of rockfish QS.

In § 679.80(f)(2)(i), NMFS reworded a sentence to clarify that the use cap specified in § 679.82(a)(2), applies to the receiving LLP license in a transfer of rockfish QS. This change simplifies the provision and does not change the intent of the proposed language.

In § 679.80(f)(2)(ii), NMFS corrected the paragraph reference for transferring rockfish QS in excess of the use cap to paragraph (f)(2)(i) rather than paragraph (f)(1)(i), which does not exist.

In § 679.80(e)(4), and Table 29 to Part 679—Initial Rockfish QS Pools, NMFS changed the date to establish the Rockfish Program official record from January 31, 2012, to February 14, 2012. The Application for Rockfish QS deadline is January 17, 2012, and NMFS requires approximately 30 days to process applications and finalize the official record used to determine initial rockfish QS pools.

In § 679.81(a), NMFS clarified that sector and LLP license allocations of rockfish primary species will be assigned as described in paragraph (b) of this section.

In § 679.81(e)(2) and (f)(1), NMFS clarified that to receive a CQ permit, a cooperative representative must submit a complete and timely Application for

Rockfish Cooperative Fishing Quota that is approved by NMFS. This clarification is necessary to determine whether a catcher/processor has opted-out of participating in a rockfish cooperative.

In § 679.81(g)(2), NMFS clarified that a designated representative must log in to the “NMFS’ online system” rather than an “online system.”

In § 679.82, NMFS corrected several typographical errors in paragraph references. In paragraph (e)(7), NMFS clarified that the provision is for holders of catcher/processor designated “LLP licenses” rather than “LLP” only.

In § 679.84, NMFS clarified in paragraph (g)(4) that all halibut PSC in the GOA 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.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined this rule is consistent with Amendment 88 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, the MSA, and other applicable laws.

Executive Order 12866

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

Pursuant to 5 U.S.C. 553(d)(3), NOAA finds good cause to waive the 30-day delay in effectiveness for this final rule. The 30-day delay in effectiveness is unnecessary and contrary to the public interest. Amendment 88 is necessary to replace the Central GOA Rockfish Pilot Program (Pilot Program), scheduled to expire December 31, 2011. If NMFS fails to implement Amendment 88 to take the place of Pilot Program regulations, the fishery will return to management under the LLP Program, thus undermining the purpose of this rule and of the MSA. Moreover, reverting to the LLP Program will remove the benefits to the fish stock that this rule would put in place.

NMFS requires approximately 170 days to prepare for the management of the rockfish fisheries under Amendment 88 before fishing begins on May 1, 2012. Delaying the effective date of Amendment 88 until after mid-December, 2011, will reduce the amount of time available for participants to review and submit applications to NMFS under the new program requirements. It will also reduce the time available for NMFS to prepare and mail permits to program participants. Immediate effectiveness will ensure the final rule is effective in time to initiate

the permit application processes for Amendment 88 as Pilot Program regulations expire, and thus ensure the highest level of participation in the Rockfish Program and therefore the greatest benefit to the public. Additional time is required for the two permit application periods prior to the start of fishing.

The first application period is for Rockfish QS, which must be submitted to NMFS by a rockfish eligible harvester by January 17, 2012. Typically, this application period opens 30 days prior to the application deadline. Immediate effectiveness will enable NMFS to open the application period on or about December 15, 2011, in order to allow applicants enough time to apply for initial QS allocations. After the first application deadline, NMFS requires one month to process applications and assign QS to LLP licenses so that participants may join rockfish cooperatives. NMFS is unable to calculate QS allocations until all timely applications are submitted. The Rockfish Program official record for initial rockfish QS pools is established February 14, 2012.

The second application period is for the annual CQ, which must be submitted by rockfish cooperatives by March 15 of the first year of the program. Immediate effectiveness of this rule will provide 30 days to rockfish eligible harvesters to join rockfish cooperatives and prepare for the fishing season after the revised LLP licenses are distributed by NMFS. The processing and harvesting sectors must have time after the issuance of rockfish QS to establish new associations under Amendment 88 before the rockfish cooperative is required to submit the annual CQ application to NMFS. Waiving the 30-day delay in effectiveness ensures that these processes can be completed in a timely manner. NMFS then requires 47 days to calculate, issue, and mail out rockfish CQ permits after the March 15 application deadline. NMFS anticipates extra time will be needed to verify that the CQ calculations generated by the database under the new program are correct. Immediate effectiveness of the Amendment 88 final rule will give the fishing industry the earliest possible opportunity to prepare and apply for participation under Amendment 88 before the fishing season begins, and thus will help maximize participation in the Rockfish Program. A 30-day delay in effectiveness would disrupt the initial and annual application processes, which may create confusion and frustration in the industry if NMFS is unable to allow sufficient time for

applicants to apply for participation under new program requirements.

Because the only immediate regulatory effect is the enhancement and increased opportunity to prepare and submit applications, immediate effectiveness will not harm or prejudice any Amendment 88 participants or applicants. This rule improves an applicant's opportunity to participate under new program requirements and does not require any party to come into immediate compliance with any measures. Immediate effectiveness of Amendment 88 will allow NMFS and industry to better prepare for the upcoming fishing season, which does not begin until May 1, 2012. This timeframe allows participants ample time to organize and adjust to the new management criteria under Amendment 88 before the fishing season begins. Therefore, immediate effectiveness of this provision will not create a burden for the affected industry. Immediate effectiveness will benefit the industry and allow sufficient time for applicants to prepare for participation under new program requirements. For these reasons, NMFS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS published the proposed rule on August 19, 2011 (76 FR 52148) with comments invited through September 19, 2011. An IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are summarized below. The impacts on small entities, which are defined in the IRFA for this action, are not repeated here. Analytical requirements for the FRFA are described in the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a)(1) through (5), and summarized below.

The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

3. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The "universe" of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objectives of This Final Action

The Rockfish Program is a long-term program designed to replace the short-term Pilot Program that is scheduled to expire December 31, 2011. Recognizing the management, economic, safety, and conservation gains created by the Pilot Program, the Council developed a problem statement defining the purpose for development of the Rockfish Program, as described in Section 2.1 of the Analysis. The Rockfish Program is intended to continue the success of the Pilot Program by continuing to improve economic efficiency, reduce incentives for bycatch, encourage PSC avoidance, reduce unnecessary physical risk when fishing conditions are hazardous, and address a range of social concerns.

The legal basis for this action is the MSA. One of the stated purposes of the MSA is to promote domestic commercial fishing under sound conservation and management

principles and to achieve and maintain the optimum yield from each fishery. The MSA also requires that conservation and management measures 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.

Summary of Significant Issues Raised during Public Comment

The proposed rule was published in the **Federal Register** on August 19, 2011 (76 FR 52148). NMFS received one comment related to the IRFA. The commenter stated that halibut PSC reductions were not addressed in the Analysis, and NMFS did not make any changes to the rule as a result of the comment. See Comment 35 in the section above titled "Comments and Responses."

NMFS also received comments on the general economic impacts of the Rockfish Program on different sectors of the industry. These comments are included in the "Comments and Responses" section above.

Number and Description of Directly Regulated Small Entities

For purposes of a FRFA, the U.S. Small Business Administration has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of \$4.0 million for all its affiliated operations worldwide. This final action directly affects catcher/processors and catcher vessels that participate in the Central GOA rockfish fisheries. None of the 12 catcher/processors eligible for the Rockfish Program and regulated by this action are estimated to be small entities, as defined by the RFA. Thirty-two catcher vessels eligible for the Rockfish Program were either members of cooperatives and, as such, are not considered small entities for the purpose of the RFA, or had annual gross revenues of at least \$4 million. The remaining 14 eligible catcher vessels are all considered small entities. It is likely that some of the eligible 14 catcher vessels are affiliated through partnerships with other entities, and would be considered large entities for the purpose of this action, but in the absence of complete ownership information, these affiliations cannot be definitively determined.

In addition to the main program, this action also creates an "entry level"

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

Recordkeeping and Reporting

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

Description of Significant Alternatives to the Final Action

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

These alternatives constitute the suite of "significant alternatives" under this action for purposes of the RFA. Based upon the best available scientific data, and consideration of the objectives of

this action, it appears that there are no alternatives to this action that have the potential to accomplish the stated objectives of the MSA and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of this action on small entities. After public process, the Council concluded that its preferred alternative for the Rockfish Program would best accomplish the stated objectives articulated in the problem statement and applicable statutes, and minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

The Council and NMFS have taken several steps to minimize the burden on directly regulated small entities. The Council developed the alternatives from a list of elements and options, beginning with the elements of the Pilot Program, and proposed changes of stakeholders, the public, and the Council's Advisory Panel. The Council used an iterative process for defining alternatives, deliberating the specific provisions, after receiving staff discussion papers and public testimony, over the course of several meetings.

This action establishes an entry level fishery for the longline sector only. Any longline vessel exempt from CGOA LLP requirements or any holder of a CGOA longline LLP license may enter a longline vessel in the entry level fishery. To improve entry into these fisheries, no application is necessary to participate. The Council determined that vessels should not be prevented from entering the fishery mid-season because of a missed application deadline.

The preferred alternative defined for the catcher/processor sector, which establishes a cooperative only structure for the rockfish fisheries, allows catcher/processors to join a cooperative or opt-out of the Rockfish Program for the year. One annual application is required to be submitted before the application deadline to participate in a cooperative. Whether some or all of these catcher/processor vessels would choose not to join a cooperative and opt-out of the Rockfish Program cannot be predicted, and depends on their opportunities in other fisheries. The preferred catcher/processor alternative appears to minimize negative economic impacts on small entities to a greater extent than alternative 3, which allows sector participants to annually choose whether to fish in a cooperative, opt-out of the fishery, or participate in the limited access fishery. The limited access fishery has the potential to lead participants into a "race for fish" if too many participants register.

The fourth alternative defined for the catcher vessel sector, which establishes a cooperative program with annual, severable processor associations, was selected as the preferred alternative. The preferred catcher vessel alternative appears to minimize negative economic impacts on small entities to a greater extent than alternatives 2 and 3. NMFS and the Council anticipates that catcher vessels under this alternative may realize substantial improvements in harvest sector efficiency due to the ability to coordinate harvest activity, and a relative improvement in bargaining strength as a result of no processor allocations.

The Council and Secretary considered a no-action alternative, but this was rejected because it would not accomplish the objective of this action to retain the conservation, management, safety, and economic gains created by the Pilot Program to the extent practicable, while also considering the goals and limitations of the MSA LAPP provisions. The Council also considered structures similar to the Pilot Program in its alternatives, some of which were advanced for analysis and others were not as the Council opted to consider other structures that better met program goals.

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by Office of Management and Budget (OMB). The collections are listed below by OMB control number.

OMB Control No. 0206

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

OMB Control No. 0213

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

OMB Control No. 0330

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

OMB Control No. 0334

LLP requirements are mentioned in this rule; however, the public reporting

burden for this collection-of-information is not directly affected by this rule.

OMB Control No. 0445

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

OMB Control No. 0515

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

OMB Control No. 0545

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

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395-7285.

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

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. NMFS has posted a small entity compliance guide on its Web site at <http://alaskafisheries.noaa.gov/> to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 19, 2011.

Samuel D. Rauch III,

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

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

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

■ 2. In § 679.2,

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

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

■ c. Add definitions for “Affiliation for the purpose of defining AFA and the Rockfish Program”, “Rockfish (Catch Monitoring Control Plan) CMCP

specialist”, “Rockfish CQ”, “Rockfish CQ equivalent pound(s)”, “Rockfish eligible harvester”, “Rockfish entry level longline fishery”, “Rockfish entry level trawl fishery”, “Rockfish fee liability”, “Rockfish fee percentage”, “Rockfish legal landings”, “Rockfish processor”, “Rockfish Program official record”, “Rockfish sector”, “Rockfish sideboard limit”, “Rockfish sideboard ratio”, “Rockfish standard ex-vessel value”, “Rockfish standard price”, and “Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program” in alphabetical order to read as follows:

§ 679.2. Definitions.

* * * * *

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

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

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

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

interest in an intermediate entity multiplied by the intermediate entity’s direct or indirect interest in the second entity.

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

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

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

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

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

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

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

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

(viii) Has the authority to control a fishery cooperative through 10 percent or greater ownership or control over a majority of the vessels in the cooperative, has the authority to

appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts control over the cooperative; or

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

* * * * *

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

* * * * *

Cooperative quota (CQ):

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

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

(ii) The amount of annual halibut and crab PSC that may be used by an Amendment 80 cooperative while fishing under a CQ permit.

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

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

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

* * * * *

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

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

Rockfish CQ (See CQ)

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

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

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

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

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

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

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

* * * * *

Rockfish legal landings means groundfish caught and retained in compliance with state and Federal regulations in effect at that time unless harvested and then processed as meal, and—

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

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

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

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

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

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

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

(3) The rockfish entry level longline fishery.

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

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

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

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

(i) Sablefish not allocated to the IFQ Program;

(ii) Thornyhead rockfish;

(iii) Pacific cod for the catcher vessel sector;

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

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

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

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

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

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

Rockfish sector means:

(1) *Catcher/processor sector*: Those rockfish eligible harvesters who hold an LLP license with a catcher/processor designation 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 rockfish eligible 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.

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

Rockfish sideboard limit means:

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

(2) The maximum amount of halibut PSC that may be used in the Rockfish

Program as specified in the sideboard provisions under § 679.82(e), as applicable.

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

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

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

* * * * *

Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program means a relationship between two or more persons in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, another person; or a third person which directly or indirectly owns or controls, or otherwise controls a 10 percent or greater interest in both. For the purpose of this definition, the following terms are further defined:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

■ 3. In § 679.4,

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

■ b. Revise paragraphs (a)(1)(xii)(A) and (B), (b)(6)(iii), (k)(12)(i), (n)(1)(i), (n)(1)(ii), and (n)(2)(i) and (ii) to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:

Permit is in effect from issue date through the end of:

For more information, see . . .

(xii) * * *	*	*	*	*	*	*	*
(A) Rockfish QS	Indefinite					§ 679.80(a).	
(B) CQ	Until expiration date shown on permit					Paragraph (n) of this section.	
* * * * *	*	*	*	*	*	*	*

* * * * *

(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 is subject to sideboard provisions as described under § 679.82(d) through (f).

* * * * *

(k) * * *

(12) * * *

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

* * * * *

(n) * * *

(1) * * *

(i) A CQ permit is issued annually to a rockfish cooperative if the members of that rockfish cooperative have submitted a complete and timely application for CQ as described in § 679.81(f) that is approved by the Regional Administrator. A CQ permit

authorizes a rockfish cooperative to participate in the Rockfish Program. The CQ permit will indicate the amount of rockfish primary species and rockfish secondary species that may be harvested by the rockfish cooperative, and the amount of rockfish halibut PSC that may be used by the rockfish cooperative. The CQ permit will list the members of the rockfish cooperative, the vessels that are authorized to fish under the CQ permit for that rockfish cooperative, and the rockfish processor with whom that rockfish cooperative is associated, if applicable.

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

* * * * *

(2) * * *

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

(ii) This declaration may only be submitted to NMFS electronically. The rockfish cooperative's designated representative must log into the online system and create a request for termination of fishing declaration as

indicated on the computer screen. By using the rockfish cooperative's NMFS ID and password, and submitting the termination of fishing declaration request, the designated representative certifies that all information is true, correct, and complete.

* * * * *

■ 4. In § 679.5,

■ a. Remove paragraphs (r)(4), (r)(7), and (r)(10)(iv);

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

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

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

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

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(1) * * *

(iii) * * *

If harvest made under . . . program

Record the . . .

For more information, see . . .

(F) Rockfish Program	Cooperative number	subpart H to this part.
----------------------------	--------------------------	-------------------------

* * * * *

(r) * * *

(1) *General.* The owners and operators of catcher vessels, catcher/processors,

and shoreside processors authorized as participants in the Rockfish Program must comply with the applicable recordkeeping and reporting

requirements of this section and must assign all catch to a rockfish cooperative or rockfish sideboard fishery, as applicable at the time of catch or receipt

of groundfish. All owners of catcher vessels, catcher/processors, and shoreside processors authorized as participants in the Rockfish Program must ensure that their designated representatives or employees comply with all applicable recordkeeping and reporting requirements.

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

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

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

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

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

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

* * * * *

(8) * * *

(i) * * *

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

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

(2) At least 1 hour prior to the time the catcher/processor begins a fishing trip to fish under a CQ permit; and

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

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

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

(2) If the vessel is fishing under a CQ permit for a catcher/processor cooperative, a check-out designation is effective upon submission to NMFS.

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

* * * * *

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

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

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

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

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

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

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

* * * * *

- 5. In § 679.7,
- a. Remove paragraphs (n)(1)(iv) through (viii), (n)(2)(iv), (n)(3)(ii) and (iv), and (n)(6);
- b. Redesignate paragraphs (n)(3)(iii) as (n)(3)(ii), (n)(7) as (n)(6), and (n)(8) as (n)(7);
- c. Redesignate newly redesignated paragraphs (n)(6)(i) through (vi) as (n)(6)(iii) through (viii);
- d. Revise newly redesignated paragraphs (n)(3)(ii), and (n)(6)(iii) through (vii);
- e. Revise paragraphs (n)(1)(i) through (iii), (n)(2)(i) through (iii), (n)(4), and (n)(5); and
- f. Add paragraphs (n)(6)(i), (ii), (ix), and (x), and (n)(8) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(n) * * *

(1) * * *

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

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

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

(2) * * *

(i) Operate a vessel that is assigned to a rockfish cooperative and fishing under

a CQ permit and fail to follow the catch monitoring requirements detailed in § 679.84(c) through (e).

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

(iii) Operate a catcher/processor opt-out vessel, under § 679.81(e)(2), that is subject to sideboard provisions detailed in § 679.82(e) and (f), as applicable, and fail to follow the catch monitoring requirements detailed in § 679.84(d) from July 1 until July 31, if that vessel is harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(3) * * *

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

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

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

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

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

(iv) Take deliveries of, or process, groundfish harvested by a catcher vessel fishing under the authority of a rockfish CQ permit outside of the geographic boundaries of the City of Kodiak as those boundaries are established by the State of Alaska on December 27, 2011.

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

(6) * * *

(i) Fail to retain any rockfish primary species or rockfish secondary species

caught by a vessel when that vessel is fishing under the authority of a CQ permit.

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

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

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

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

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

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

* * * * *

(ix) Deliver rockfish primary species and rockfish secondary species harvested under the authority of a CQ permit to any processor other than a shoreside processor located within the geographic boundaries of the City of Kodiak as those boundaries are established by the State of Alaska on December 27, 2011.

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

* * * * *

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

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

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

(iv) Catch and process onboard a vessel any rockfish primary species

harvested while directed fishing in the rockfish entry level longline fishery.

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

* * * * *

■ 6. In § 679.20, add paragraph (e)(3)(iv) to read as follows:

§ 679.20 General limitations.

* * * * *

(e) * * *

(3) * * *

(iv) The maximum retainable amount for groundfish harvested in the Central GOA by a catcher/processor vessel fishing under a rockfish CQ permit is calculated at the end of each weekly reporting period, and is based on the basis species defined in Table 30 harvested since the previous weekly reporting period, or for any portion of a weekly reporting period that vessel was designated under a vessel check-in as specified in § 679.5(r)(8).

* * * * *

■ 7. In § 679.21,

■ a. Revise paragraphs (d)(5)(iii)(B) introductory text and (d)(5)(iii)(B)(2); and

■ b. Add paragraph (d)(5)(iii)(C) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(5) * * *

(iii) * * *

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

* * * * *

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

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

* * * * *

■ 8. In § 679.28,

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

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

§ 679.28 Equipment and operational requirements.

* * * * *

(g) * * *

(2) * * *

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

* * * * *

(7) * * *

(xi) *CMCP specialist notification*. For shoreside processors receiving

deliveries of groundfish harvested under the authority of a rockfish CQ permit, describe how the CMCP specialist will be notified of deliveries of groundfish harvested under the authority of a rockfish CQ permit.

* * * * *

- 9. In § 679.50,
- a. Remove paragraphs (c)(7)(i)(B) and (d)(7);
- b. Redesignate paragraphs (c)(7)(i)(C) through (F) as (c)(7)(i)(B) through (E), respectively;

- c. Revise paragraphs (a)(4), (c)(7)(i) heading, (c)(7)(i)(A) introductory text, and (c)(7)(ii);
- d. Revise newly redesignated paragraphs (c)(7)(i)(B) and (c)(7)(i)(E); and
- e. Add paragraph (c)(7)(iii) to read as follows:

§ 679.50 Groundfish observer program.
(a) * * *

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

* * * * *

(c) * * *

(7) * * *

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

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

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

(ii) *Catcher vessels—rockfish cooperative*. A catcher vessel that is named on an LLP license that is assigned to a rockfish cooperative and fishing under the authority of a CQ permit must have a NMFS-certified observer onboard at all times the vessel

is used to harvest fish in the Central GOA from May 1 through the earlier of:
(A) November 15; or
(B) The effective date and time of an approved rockfish cooperative termination of fishing declaration.

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

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

Subpart G—Rockfish Program

- Sec.
- 679.80 Allocation and transfer of rockfish QS.
- 679.81 Rockfish Program annual harvester privileges.
- 679.82 Rockfish Program use caps and sideboard limits.
- 679.83 Rockfish Program entry level longline fishery.
- 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.
- 679.85 Cost recovery.

Subpart G—Rockfish Program

§ 679.80 Allocation and transfer of rockfish QS.

Additional regulations that implement specific portions of the Rockfish Program are set out under: § 679.2 Definitions, § 679.4 Permits,

§ 679.5 Recordkeeping and reporting, § 679.7 Prohibitions, § 679.20 General limitations, § 679.21 Prohibited species bycatch management, § 679.28 Equipment and operational requirements, and § 679.50 Groundfish Observer Program.

(a) *Applicable areas and duration—(1) Applicable areas*. The Rockfish Program applies to Rockfish Program fisheries in the Central GOA Regulatory Area.

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

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

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

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

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

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

(ii) Under the authority of an interim LLP license endorsed for Central GOA groundfish with a trawl gear designation during the season dates for that rockfish

primary species as established in Table 28a to this part; provided that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

assigned according to the Rockfish Program official record.

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

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

(3) *Deadline.* (i) A completed Application for Rockfish Quota Share must be received by NMFS no later than 1700 hours, A.l.t., on January 17, 2012, or if sent by U.S. mail, postmarked by that time. For applications delivered by hand delivery or carrier only, the receiving date of signature by NMFS staff is the date the application was received. If the application is submitted by facsimile, the receiving date of the application is the date stamped received by NMFS.

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

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

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

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

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

(ii) *Exclusion from Rockfish Program for LLP licenses with rockfish legal*

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

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

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

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

(e) *Assigning rockfish QS—(1) General.* The Regional Administrator will assign rockfish QS only to a person who submits a timely application for

rockfish QS that is approved by NMFS based on:

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

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

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

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

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

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

(3) *Calculation of rockfish QS allocation for LLP licenses that receive rockfish QS under the entry level trawl fishery transition allocation.* Based on the Rockfish Program official record, the Regional Administrator shall determine the initial allocation of rockfish QS for each rockfish primary species assigned to each LLP license indicated on a timely and complete Application for Rockfish QS that is approved by NMFS, that qualifies for an allocation of QS

based on rockfish legal landings from 2007, 2008, or 2009 under the entry level trawl fishery transition allocation (and that is not assigned rockfish QS under the provisions in paragraph (e)(2) of this section), according to the following procedure:

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

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

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

$$\text{Rockfish Landing Units}_l / \Sigma \text{Rockfish Landing Units}_l = \text{Percentage of the Total Entry Level Trawl Fishery Transition Rockfish QS pool}_l.$$

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

$$(\Sigma \text{All Highest 5 Years}_s / 0.975) - \Sigma \text{All Highest 5 Years}_s \text{ (as calculated in paragraph (e)(2)(iii) of this section)} = \text{Total Entry Level Trawl Fishery Transition Rockfish QS pool}_s.$$

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

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

(4) *Rockfish initial QS pool.* The rockfish initial QS pool for each rockfish primary species, and for each sector, is equal to the sum of all QS units assigned to LLP licenses, and in

each sector, as calculated under paragraphs (e)(2) and (e)(3) of this section as of February 14, 2012.

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

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

(2) *Transfer of rockfish QS assigned to LLP licenses that exceeds rockfish QS use caps.* (i) If an LLP license is assigned an initial allocation of aggregate rockfish QS that exceeds a use cap specified in § 679.82(a)(2), the LLP license holder may transfer rockfish QS in excess of the use cap specified in § 679.82(a)(2) separate from that LLP license and assign it to one or more LLP licenses. However, a transfer may not be approved by NMFS if that transfer would cause the receiving LLP license to exceed a use cap specified in § 679.82(a)(2).

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

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

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

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

§ 679.81 Rockfish Program annual harvester privileges.

(a) *Sector and LLP license allocations of rockfish primary species—(1) General.* Each calendar year, the Regional Administrator will determine the tonnage of rockfish primary species that will be assigned to participants in a rockfish cooperative. This amount will be assigned to rockfish cooperatives as described in paragraph (b) of this section.

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

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

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

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

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

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

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

(i) *Catcher vessel sector rockfish cooperatives.* The amount of TAC_s for each rockfish primary species assigned

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

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

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

The amount of CQ for each rockfish primary species that is assigned to a rockfish cooperative is expressed algebraically as follows:

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

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

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

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

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

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

$$\text{CQ for that Secondary Species} = \text{Amount of that rockfish secondary species allocated to the catcher/processor sector in the Rockfish Program} \times (\Sigma \text{Rockfish QS units for all rockfish primary species assigned to that rockfish cooperative} / \Sigma \text{Rockfish QS units for all rockfish primary species assigned to all rockfish cooperatives in the catcher/processor sector}).$$

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

$$\text{CQ for that Secondary Species} = \text{Amount of that rockfish secondary species allocated to the catcher vessel sector in the Rockfish Program} \times (\Sigma \text{Rockfish QS units for all rockfish primary species assigned to that rockfish cooperative} / \Sigma \text{Rockfish QS units assigned to all rockfish cooperatives for all rockfish primary species in the catcher vessel sector}).$$

(d) *Allocations of rockfish halibut PSC CQ to rockfish cooperatives—(1) General.* Each calendar year, the Regional Administrator will determine the tonnage of rockfish halibut PSC that will be assigned to the Rockfish Program. This amount will be allocated appropriately to the catcher/processor

sector and the catcher vessel sector. The tonnage of rockfish halibut PSC assigned to a sector will be further assigned as CQ only to rockfish cooperative(s) within that sector.

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

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

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

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

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

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

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

$$\text{CQ for rockfish halibut PSC} = \text{Amount halibut PSC allocated to the catcher/processor sector in the Rockfish Program} \times (\Sigma \text{Rockfish QS units assigned to that rockfish cooperative} / \Sigma \text{Rockfish QS units assigned to all rockfish cooperatives in the catcher/processor sector}).$$

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

that catcher vessel rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives for all rockfish primary species in the catcher vessel sector. This is expressed algebraically in the following equation:

$$\text{CQ for rockfish halibut PSC} = \text{Amount halibut PSC allocated to the catcher vessel sector in the Rockfish Program} \times (\Sigma \text{Rockfish QS units assigned to that rockfish cooperative} / \Sigma \text{Rockfish QS units assigned to all rockfish cooperatives in the catcher vessel sector}).$$

(e) *Assigning rockfish QS to a rockfish cooperative—(1) General.* Each calendar year, a person that is participating in the Rockfish Program may assign an LLP license and the rockfish QS assigned to that LLP license to a Rockfish cooperative. A rockfish eligible harvester assigns rockfish QS to a rockfish cooperative on a complete application for CQ that is approved by NMFS and that meets the requirements of paragraph (f) of this section.

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

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

(2) *Catcher/Processor opt-out.* Each calendar year, a person holding an LLP license assigned rockfish QS in the catcher/processor sector may opt-out of participating in a rockfish cooperative. NMFS will presume a person has opted-out of participating in a rockfish cooperative if that person and LLP license with rockfish QS is not named on a timely submitted Annual Application for Cooperative Fishing Quota. A person may not assign an LLP license assigned rockfish QS in the catcher/processor sector to both a rockfish cooperative and opt-out of participating in a rockfish cooperative.

(f) *Annual Application for the Rockfish Program—(1) Application for Rockfish Cooperative Fishing Quota (CQ).* If a designated rockfish cooperative representative submits a complete and timely application that is approved by NMFS, the cooperative will receive a CQ permit. The CQ permit will list the amount of CQ, by rockfish primary species, rockfish secondary species, and halibut PSC held by the rockfish cooperative, the members of the rockfish cooperative, LLP licenses assigned to that rockfish cooperative, and the vessels that are authorized to harvest fish under that CQ permit. This application may only be submitted to

NMFS using the methods described on the application.

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

(3) *Deadline.* (i) A completed application must be received by NMFS no later than 1700 hours, A.L.T., on March 15, 2012, for the first year of the program and March 1 for all subsequent years, or if sent by U.S. mail, the application must be postmarked by that time. For applications delivered by hand delivery or carrier only, the receiving date of signature by NMFS staff is the date the application was received. If the application is submitted by facsimile, the receiving date of the application is the date stamped received by NMFS.

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

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

(i) *Additional documentation.* For the cooperative application to be considered complete, the following documents must be attached to the application:

(A) A copy of the business license issued by the state in which the rockfish cooperative is registered as a business entity;

(B) A copy of the articles of incorporation or partnership agreement of the rockfish cooperative;

(C) 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;

(D) 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:

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

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

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

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

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

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

(6) *LLP licenses and rockfish QS not designated on a timely and complete application for rockfish CQ.* NMFS will prohibit any LLP licenses with rockfish QS assigned to that LLP license from fishing in the directed rockfish primary fisheries in the Central GOA for a calendar year if that LLP license is not designated on a timely and complete application for CQ for that calendar year that is approved by NMFS. Rockfish sideboard provisions described in § 679.82 shall apply to that LLP license, as applicable.

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

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

(ii) The transferee's designated representative must log into the online system and accept the transfer request. By using the transferee's NMFS ID,

password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

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

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

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

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

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

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

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

(i) Members of rockfish cooperatives should consult legal counsel before commencing any activity if the members are uncertain about the legality under

the antitrust laws of the rockfish cooperative's proposed conduct.

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

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

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

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

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

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

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

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

(3) *General requirements.* The following table describes the requirements to form a rockfish cooperative in the catcher vessel or catcher/processor sector.

Requirement	Catcher vessel sector	Catcher/processor sector
(i) Who may join a rockfish cooperative?	Only persons who hold rockfish QS may join a rockfish cooperative.	
(ii) What is the minimum number of LLP licenses that must be assigned to form a rockfish cooperative?	No minimum requirement.	
(iii) Is an association with a rockfish processor required?	Yes, a rockfish QS holder may only be a member of a rockfish cooperative formed in association with a rockfish processor. The rockfish cooperative may not receive rockfish CQ unless a shoreside processor eligible to receive rockfish CQ has indicated that it may be willing to receive rockfish CQ from that cooperative in the application for CQ, as described under § 679.81, that is submitted by that cooperative.	No.
(iv) Is a rockfish cooperative member required to deliver catch to the rockfish processor with whom the rockfish cooperative is associated?	No	N/A.
(v) Is there a minimum amount of rockfish QS that must be assigned to a rockfish cooperative for it to be allowed to form?	No	No.
(vi) What is allocated to the rockfish cooperative?	CQ for rockfish primary species, rockfish secondary species, and rockfish halibut PSC, based on the rockfish QS assigned to all of the LLP licenses that are assigned to the cooperative.	
(vii) Is this CQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CQ, or a cooperative may transfer all or a portion of this CQ to another rockfish cooperative.	
(viii) Is there a season during which designated vessels may catch CQ?	Yes, any vessel designated to catch CQ for a rockfish cooperative is limited to catching CQ during the season beginning on 1200 hours, A.I.t., on May 1 through 1200 hours, A.I.t., on November 15.	
(ix) Can any vessel catch a rockfish cooperative's CQ?	No, only vessels that are named on the application for CQ for that rockfish cooperative may catch the CQ assigned to that rockfish cooperative. A vessel may be assigned to only one rockfish cooperative in a calendar year.	
Can a member of a rockfish cooperative transfer CQ individually to another rockfish cooperative without the approval of the other members of the rockfish cooperative?	No, only the rockfish cooperative's designated representative, and not individual members, may transfer its CQ to another rockfish cooperative. Any such transfer must be approved by NMFS as established under paragraph (i)(4)(ii) of this section	
(xi) Can a rockfish cooperative in the catcher/processor sector transfer its sideboard limit?	N/A	No, a sideboard limit assigned to a rockfish cooperative in the catcher/processor sector is a limit applicable to a specific rockfish cooperative, and may not be transferred between rockfish cooperatives.

Requirement	Catcher vessel sector	Catcher/processor sector
(xii) Is there a hired master requirement?	No, there is no hired master requirement.	
(xiii) Can an LLP license be assigned to more than one rockfish cooperative in a calendar year?	No, an LLP license may only be assigned to one rockfish cooperative in a calendar year. A person holding multiple LLP licenses with associated rockfish QS may assign different LLP licenses to different rockfish cooperatives subject to any other restrictions that may apply.	
(xiv) Can a rockfish processor be associated with more than one rockfish cooperative?	Yes	N/A
(xv) Can an LLP license be assigned to a rockfish cooperative and opt-out of participating in a rockfish cooperative?	N/A	No, each calendar year an LLP license must either be assigned to a rockfish cooperative or opt-out.
(xvi) Which members may harvest the rockfish cooperative's CQ?	That is determined by the rockfish cooperative contract signed by its members. Any violations of this contract by one cooperative member may be subject to civil claims by other members of the rockfish cooperative.	
(xvii) Does a rockfish cooperative need a contract?	Yes, a rockfish cooperative must have a membership agreement or contract that specifies how the rockfish cooperative intends to harvest its CQ. A copy of this agreement or contract must be submitted to NMFS with the cooperative's application for CQ.	
(xviii) What happens if the rockfish cooperative exceeds its CQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CQ and must not exceed its CQ amount at the end of the calendar year. Exceeding a CQ is a violation of the Rockfish Program regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Rockfish Program regulations while fishing under authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to a rockfish cooperative. Each member of a rockfish cooperative is responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Rockfish Program.	
(xix) Is there a limit on how much CQ a rockfish cooperative may hold or use?	Yes, see § 679.82(a) for the provisions that apply.	
(xx) Is there a limit on how much CQ a vessel may harvest?	Yes, see § 679.82(a) for the provisions that apply.	
(xxi) Is there a requirement that a rockfish cooperative pay rockfish cost recovery fees?	Yes, see § 679.85 for the provisions that apply.	
(xxii) When does catch count against my CQ permit?	Any vessel fishing checked-in (and therefore fishing under the authority of a CQ permit must count any catch of rockfish primary species, rockfish secondary species, or rockfish halibut PSC against that rockfish cooperative's CQ from May 1 until November 15, or until the effective date of a rockfish cooperative termination of fishing declaration that has been approved by NMFS).	
(xxiii) If my vessel is checked-out and fishing in a directed flatfish fishery in the Central GOA and I catch groundfish and halibut PSC, does that count against the rockfish cooperative's CQ?	No. If you are fishing in a directed flatfish fishery and checked-out of the Rockfish Program fisheries, you are not fishing under the authority of a CQ permit. Groundfish harvests would not be debited against the rockfish cooperative's CQ permit. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type and any applicable sideboard limit.	
(xxiv) Can my rockfish cooperative negotiate prices for me?	The rockfish cooperatives formed under the Rockfish Program are intended to conduct and coordinate harvest activities for their members. Rockfish cooperatives formed under the Rockfish Program are subject to existing antitrust laws. Collective price negotiation by a rockfish cooperative must be conducted in accordance with existing antitrust laws.	
(xxv) Are there any special reporting requirements?	Yes, each year a rockfish cooperative must submit an annual rockfish cooperative report to NMFS by December 15 of that year. See § 679.5(r)(6) for the reporting requirements.	
(xxvi) What is required in the annual rockfish cooperative report?	The annual rockfish cooperative report must include at a minimum: (A) The rockfish cooperative's CQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by-vessel basis; (B) The rockfish cooperative's actual retained and discarded catch of CQ, and sideboard limit on an area-by-area and vessel-by-vessel basis; (C) A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated; and (D) A description of any civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.	

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

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

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

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

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

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

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

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

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

(H) After November 15 of the year for which the CQ permit is issued, or upon approval of a rockfish cooperative termination of fishing declaration described in § 679.4(n)(2):

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

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

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

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

rockfish cooperative and all tons of CQ assigned to that person by the rockfish cooperative from approved transfers.

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

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

§ 679.82 Rockfish Program use caps and sideboard limits.

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

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

(iii) Use caps may not be exceeded unless the entity subject to the use cap is specifically allowed to exceed a cap according to the criteria established under this paragraph (a), or by an operation of law.

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

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

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

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

(ii) Forty (40.0) percent of the aggregate rockfish primary species QS initially assigned to the catcher/

processor sector and resulting CQ unless that rockfish eligible harvester qualifies for an exemption to this use cap under paragraph (a)(6) of this section.

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

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

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

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

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

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

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

(6) *Use cap exemptions*—(i) *Rockfish QS.* A rockfish QS holder may receive an initial allocation of aggregate rockfish QS in excess of the use cap in that sector only if that rockfish QS is assigned to LLP license(s) held by that rockfish eligible harvester prior to June 14, 2010,

and continuously through the time of application for rockfish QS.

(ii) *Transfer limitations.* A rockfish eligible harvester that receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section shall not receive any rockfish QS by transfer (except by operation of law) unless and until that harvester's holdings of aggregate rockfish QS in that sector are reduced to an amount below the use cap specified in paragraph (a)(2) of this section.

(b) *Opt-out.* Any vessel named on an LLP license that is not named on an approved Annual Application for Cooperative Fishing Quota, may not fish with any vessel named on the opted-out LLP license during that fishing year in any directed fishery for any rockfish primary species in the Central GOA and waters adjacent to the Central GOA when the rockfish primary species caught by that vessel is deducted from the Federal TAC specified under § 679.20.

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

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

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

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

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

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

(3) *Appeals.* A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a sideboard limitation, or who disagrees with the specific sideboard ratio assigned to that LLP

license, may make a contrary claim and provide evidence to NMFS. All claims must be submitted in writing with any documentation or evidence supporting the request within 30 days of being notified by NMFS of the sideboard limitation. NMFS will provide instructions for submitting such claims with the sideboard notification. An applicant must submit any documentation or evidence supporting a claim within 30 days of being notified by NMFS of the sideboard limitation. If NMFS finds the claim is unsupported, the claim will be denied in an Initial Administrative Determination (IAD). The affected persons may appeal this IAD using the procedures described in § 679.43.

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

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

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

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

(2) *Applicability of sideboard provisions for specific catcher vessels.* The following vessels are exempt from the sideboard limits in paragraph (d) of this section:

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

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

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

being excluded from the Rockfish Program as specified under § 679.80(d)(4)(ii).

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

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

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

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

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

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

(3) *Calculation of rockfish and halibut PSC sideboard limits assigned to each*

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

(i) For each rockfish sideboard fishery, divide the retained catch of that rockfish sideboard fishery from July 1 through July 31 in each year from 2000 through 2006 made under the authority of that LLP license, by the total retained catch of that rockfish sideboard fishery from July 1 through July 31 in each year

from 2000 through 2006 by vessels operating under the authority of all eligible LLP licenses in the catcher/processor sector.

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

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

(4) *Western GOA and West Yakutat District rockfish sideboard ratios.* The rockfish sideboard ratio for each rockfish fishery in the Western GOA and West Yakutat District is established in the following table:

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

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

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

(6) *Assigning a rockfish sideboard limit to a rockfish cooperative.* Each rockfish cooperative in the catcher/processor sector will be assigned a portion of the rockfish sideboard limit for each rockfish species established in paragraph (e)(4) of this section according to the following formula.

(i) For each rockfish sideboard fishery specified in paragraph (e)(4) of this section, sum the rockfish sideboard ratios of all LLP licenses as calculated under paragraph (e)(3) of this section assigned to that rockfish cooperative and multiply this result by the amount of TAC (in metric tons) assigned to that rockfish sideboard fishery.

(ii) Once assigned, a catcher/processor rockfish cooperative may not exceed any rockfish sideboard limit assigned to that cooperative from July 1 through July 31.

(7) *Assigning a rockfish sideboard limit to catcher/processors that opt-out of participating in rockfish cooperatives.* Holders of catcher/processor designated LLP licenses that opt-out of participating in a rockfish cooperative will receive the portion of each rockfish sideboard limit established in paragraph

(e)(3) of this section not assigned to rockfish cooperatives.

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

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

(iii) Upon determining that a halibut PSC sideboard limit is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the rockfish sideboard fishery in the regulatory area or district for catcher/processor opt-out vessels that will be effective from July 1 through July 31.

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

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

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

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

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

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

(ii) If the Regional Administrator determines that a sideboard limit is insufficient to support a directed fishing allowance for groundfish in the deep-water or shallow-water halibut PSC complex, then the Regional

Administrator may not allow directed fishing and set the allowance to zero for the deep-water or shallow-water halibut PSC complex for catcher/processor opt-out vessels from July 1 through July 31.

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

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

- (1) Flathead sole; and
- (2) Shallow-water flatfish.

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

- (1) Rex sole;
- (2) Deep-water flatfish; and
- (3) Arrowtooth flounder.

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

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

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

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

(2) *Prohibitions on directed fishing in GOA groundfish fisheries without previous participation.* (i) Any vessel that is subject to the opt-out sideboard restriction under paragraph (f) of this section is prohibited from directed fishing in any groundfish fishery in the GOA and waters adjacent to the GOA when groundfish caught by that vessel is deducted from the Federal TAC

specified under § 679.20 (except sablefish harvested under the IFQ Program) from July 1 through July 14 of each year if that vessel has not participated in that directed groundfish fishery in any 2 years from 2000 through 2006 during the following time periods:

- (A) July 9, 2000, through July 15, 2000;
- (B) July 1, 2001, through July 7, 2001;
- (C) June 30, 2002, through July 6, 2002;
- (D) June 29, 2003, through July 5, 2003;
- (E) July 4, 2004, through July 10, 2004;
- (F) July 3, 2005, through July 9, 2005; and
- (G) July 2, 2006, through July 8, 2006.

(ii) For purposes of determining participation in a directed groundfish fishery for paragraph (f)(2)(i) of this section, a vessel may participate:

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

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

§ 679.83 Rockfish Program entry level longline fishery.

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

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

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

(4) *Opening of the rockfish entry level longline fishery.* The Regional Administrator maintains the authority to not open the rockfish entry level longline fishery if he or she deems it

appropriate for conservation or other management measures. Factors such as the total allocation, anticipated harvest rates, and number of participants will be considered in making any such decision.

(b) [Reserved]

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

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

(b) *Permits.* See § 679.4(n).

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

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

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

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

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

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

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

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1-(907) 271-1702 at least 24 hours prior to departure when the vessel will be carrying an observer who had not previously been deployed on that vessel within the last 12 months. Subsequent

to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

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

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

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

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

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

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

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

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

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

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

to test any scale used to weigh groundfish to determine its accuracy.

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

(i) Until November 15; or

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

(2) *Rockfish halibut PSC.* All halibut PSC in the Central GOA (including halibut PSC in the waters adjacent to the Central GOA when rockfish primary species and rockfish secondary species caught by that vessel 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.

§ 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:

$$100 \times \text{DPC}/V$$

where:

DPC = the direct program costs for the Rockfish Program for the previous

calendar year with any adjustments to the account from payments received in the previous year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A Rockfish Legal Landing includes . . .	2007	2008	2009
Northern rockfish that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between. . .	Sept. 1–Nov. 8	Sept. 1–Nov. 15	Sept. 1–Nov. 15.
and landed by	Nov. 15	Nov. 22	Nov. 22.
Pelagic shelf rockfish that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between. . .	Sept. 1–Nov. 15	Sept. 1–Nov. 15	Sept. 1–Nov. 15.
and landed by	Nov. 22	Nov. 22	Nov. 22.
Pacific ocean perch that were harvested by vessels authorized to fish in the rockfish entry level trawl fishery between. . .	May 1–May 17; July 1–Aug. 1.	July 1–July 27 ..	July 1–Nov. 15.
and landed by	Aug. 8	Aug. 3	Nov. 22.

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

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

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

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

TABLE 28e TO PART 679—ROCKFISH ENTRY LEVEL LONGLINE FISHERY ALLOCATIONS

The allocation to the rockfish entry level longline fishery for the following rockfish primary species . . .	For 2012 will be . . .	If the catch of a rockfish primary species during a calendar year exceeds 90 percent of the allocation for that rockfish primary species then the allocation of that rockfish primary species in the following calendar year will increase by . . .	Except that the maximum amount of the TAC assigned to the Rockfish Program (after deducting the incidental catch allowance) that may be allocated to the rockfish entry level non-trawl fishery for each rockfish primary species is . . .
Northern rockfish	5 mt	5 mt	2 percent.
Pacific ocean perch	5 mt	5 mt	1 percent.
Pelagic shelf rockfish	30 mt	20 mt	5 percent.

■ 17. Revise Tables 29 and 30 to part 679 to read as follows:

TABLE 29 TO PART 679—INITIAL ROCKFISH QS POOLS

Initial Rockfish QS Pool	Northern Rockfish	Pelagic Shelf Rockfish	Pacific Ocean Perch	Aggregate Primary Species Initial Rockfish QS Pool
Initial Rockfish QS Pool Initial Rockfish QS Pool for the Catcher/Processor Sector. Initial Rockfish QS Pool for the Catcher Vessel Sector.	Based on the Rockfish Program official record on February 14, 2012.			

TABLE 30 TO PART 679—ROCKFISH PROGRAM RETAINABLE PERCENTAGES (IN ROUND WT. EQUIVALENT)

Fishery	Incidental Catch Species	Sector	MRA as a percentage of total retained rockfish primary species and rockfish secondary species
Rockfish Cooperative Vessels fishing under a Rockfish CQ permit.	Pacific cod	Catcher/Processor	4.0 percent.
	Shortraker/Rougheye aggregate catch.	Catcher Vessel	2.0 percent.
	See rockfish non-allocated species for “other species”		
Rockfish non-allocated species for Rockfish Cooperative vessels fishing under a Rockfish CQ permit.	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 flounder	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.
	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.		
Opt-out vessels	See Table 10 to this part.		

TABLE 30 TO PART 679—ROCKFISH PROGRAM RETAINABLE PERCENTAGES (IN ROUND WT. EQUIVALENT)—Continued

Fishery	Incidental Catch Species	Sector	MRA as a percentage of total retained rockfish primary species and rockfish secondary species
Rockfish Cooperative Vessels not fishing under a CQ permit.		See Table 10 to this part.	

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