

Subpart H—Amendment 80 Program

Sec.

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

§ 679.91 Amendment 80 Program annual harvester privileges.

§ 679.92 Amendment 80 Program use caps and sideboard limits.

§ 679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.

§ 679.94 Economic data report (EDR) for the Amendment 80 sector.

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

Regulations under this subpart were developed by NMFS to implement the Amendment 80 Program. Additional regulations that implement specific portions of the Amendment 80 Program are set out at

- § 679.2 Definitions, § 679.4 Permits,
- § 679.5 Recordkeeping and reporting (R&R),
- § 679.7 Prohibitions,
- § 679.20 General limitations,
- § 679.21 Prohibited species bycatch management,
- § 679.27 Improved Retention/Improved Utilization Program,
- § 679.28 Equipment and operational requirements,
- § 679.31 CDQ and PSQ reserves,
- § 679.50 Groundfish Observer Program applicable through December 31, 2007, and
- § 679.64 Harvesting sideboard limits in other fisheries.

(a) Issuance of Amendment 80 QS permits.

(1) General.

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

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

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

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

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

(2) Eligibility to receive an Amendment 80 QS permit.

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

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

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

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

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

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

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

(A) At the time of application for Amendment 80 QS that person holds the LLP license originally assigned to that Amendment 80 vessel and that Amendment 80 vessel has suffered an actual total loss,

constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108;

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

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

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

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

(b) Application for Amendment 80 QS

(1) Submission.

A person who wishes to receive an Amendment 80 QS permit must submit a timely and complete application for Amendment 80 QS. Once a person submits a timely and complete application for Amendment 80 QS that is approved by NMFS, an application for Amendment 80 QS is not required to be resubmitted. An application for Amendment 80 QS may only be submitted to NMFS using any one of the following methods:

(i) Mail:
Regional Administrator,
c/o Restricted Access Management Program,
NMFS,
P.O. Box 21668,
Juneau, AK 99802-1668;

(ii) Fax: 907-586-7354; or

(iii) Hand delivery or carrier:
NMFS, Room 713,
709 West 9th Street,
Juneau, AK 99801.

(2) Application forms.

Application forms are available through the internet on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2.

(3) Deadline.

A completed application for Amendment 80 QS must be received by NMFS no later than 1700 hours A.l.t. on October 15 of the year prior to the fishing year for which the applicant is applying, or if sent by U.S. mail, postmarked by that time. Applications received or postmarked after the deadline will not be eligible to receive an Amendment 80 QS permit for the upcoming fishing year.

(4) Contents of application.

A completed application must contain the following information:

(i) Applicant identification.

(A) The applicant's name, NMFS person ID (if applicable), tax ID number, permanent business mailing address, business telephone number, business fax number, and e-mail (if available);

(B) Indicate (YES or NO) if the applicant is a U.S. citizen; if YES, enter his or her date of birth;

(C) Indicate (YES or NO) if the applicant is a U.S. corporation, partnership, association, or other business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) if the applicant is a successor-in-interest to a deceased individual or to a non-individual no longer in existence, if YES attach evidence of death or dissolution;

(E) Indicate whether the applicant is applying as the owner of an Amendment 80 vessel or the holder of an LLP license originally assigned to an Amendment 80 vessel;

(F) For an applicant claiming Amendment 80 legal landings associated with an Amendment 80 vessel, enter the following information for each Amendment 80 vessel: USCG documentation number of vessel on which Amendment 80 legal landings were caught and processed, vessel name, ADF&G vessel registration number, and LLP license held by that person at the time of application;

(G) If an Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement

under 46 U.S.C. 12108, provide clear and unambiguous documentation in written form that the Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108; and

(H) If applicable, a copy of the express terms of a written contract held by the applicant that clearly and unambiguously indicates that the owner of the Amendment 80 vessel that has suffered has an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108 has transferred all rights and privileges to use Amendment 80 legal landings and any resulting Amendment 80 QS or exclusive harvest privilege from that Amendment 80 vessel to the person holding the LLP license originally assigned to that Amendment 80 vessel.

(ii) 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 for the designated representative signed by the applicant must accompany the application.

(5) Application evaluation.

The Regional Administrator will evaluate applications received as specified in this paragraph (b)(5) of this section and compare all claims in an application with the information in the Amendment 80 official record. Application claims that are consistent with information in the Amendment 80 official record will be approved by the Regional Administrator. Application claims that are inconsistent with the Amendment 80 official record, unless verified by documentation, will not be approved. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (b)(4) of this section, will be provided a single 30-day evidentiary period in which 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 Amendment 80 official record. An applicant who submits claims that are inconsistent with information in the Amendment 80 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 IAD of his or her appeal rights under § 679.43.

(6) Appeals.

If an applicant is notified by an IAD that inconsistent claims made by the applicant have been denied, that applicant may appeal that IAD under the provisions described at § 679.43.

(c) *Amendment 80 official record.*

(1) Use of the Amendment 80 official record.

The Amendment 80 official record will contain all information used by the Regional Administrator to determine eligibility to participate in the Amendment 80 Program, assign QS, and any other privileges or limits for the Amendment 80 Program.

(2) Amendment 80 official record presumed to be correct.

The Amendment 80 official record is presumed to be correct. An applicant to participate in the Amendment 80 Program has the burden to prove otherwise.

(3) Documentation is used to establish the amount of Amendment 80 legal landings.

Only Amendment 80 legal landings as defined in § 679.2 will be used to assign Amendment 80 QS units to an Amendment 80 QS permit unless an Amendment 80 vessel has no Amendment 80 legal landings, in which case Amendment 80 QS units will be allocated to the Amendment 80 QS permit derived from that Amendment 80 vessel according to the procedures established under paragraphs (d)(1)(iii) and (iv) of this section.

(4) Assignment of Amendment 80 legal landings.

An Amendment 80 legal landing is assigned only to the Amendment 80 vessel that was used to make that Amendment 80 legal landing.

(d) *Assigning an Amendment 80 QS permit to an Amendment 80 QS holder.*

(1) Amendment 80 QS units derived from an Amendment 80 vessel and issued to an Amendment 80 QS holder.

NMFS will assign a specific amount of Amendment 80 QS units to each Amendment 80 QS permit based on the Amendment 80 legal landings of each Amendment 80 vessel for each Amendment 80 species in each management area for that Amendment 80 species as listed in Table 32 to this part, using information from the Amendment 80 official record according to the following procedures:

(i) All Amendment 80 species.

(A) For each Amendment 80 species, sum the Amendment 80 legal landings for each Amendment 80 vessel in all management areas for that Amendment 80 species listed in Table 32 to this part for each calendar year from 1998 through 2004.

(B) Select the five calendar years that yield the highest amount of Amendment 80 legal landings of that Amendment 80 species in all management areas for that Amendment 80 species listed in Table 32 to this part, including zero metric tons if necessary.

(C) Sum the Amendment 80 legal landings of the highest five years for an Amendment 80 species. This yields the Highest Five Years for that Amendment 80 species.

(D) Divide the Highest Five Years for an Amendment 80 species in paragraph (d)(1)(i)(C) of this section for an Amendment 80 vessel by the sum of all Highest Five Years for all Amendment 80 vessels for that Amendment 80 species based on the Amendment 80 official record for that Amendment 80 species as presented in the following equation:

$$\frac{\text{Highest Five Years/S All Highest Five Years}}{\times 100} = \text{Percentage of the Total.}$$

The result (quotient) of this equation is the Percentage of the Total for that Amendment 80 vessel for that Amendment 80 species.

(ii) Aleutian Islands Pacific ocean perch and BSAI Pacific cod. Multiply the Percentage of the Total for that Amendment 80 vessel for Aleutian Islands Pacific ocean perch and BSAI Pacific cod as calculated in paragraph (d)(1)(i)(D) of this section by the Amendment 80 initial QS pool for Aleutian Islands Pacific ocean perch and BSAI Pacific cod as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for Aleutian Islands Pacific ocean perch and BSAI Pacific cod Pacific cod.

(iii) BSAI rock sole and BSAI yellowfin sole.

(A) If an Amendment 80 vessel did not have any Amendment 80 legal landings during 1998 through 2004, that Amendment 80 vessel will receive 0.5 percent of the Percentage of the Total for BSAI rock sole and BSAI yellowfin sole as calculated in paragraph (d)(1)(i)(D) of this section.

(B) All Amendment 80 vessels that did have Amendment 80 legal landings will have the Percentage of the Total assigned to that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section adjusted to account for the assignment of the Percentage of the Total to Amendment 80 vessels under paragraph (d)(1)(iii)(A) of this section for BSAI rock sole and BSAI yellowfin sole as presented in the following equation:

$$\begin{aligned} &\text{Percentage of the Total for that Amendment} \\ &\text{80 vessel} \times (100 - \text{S Percentage of the Total} \\ &\text{assigned to all Amendment 80 vessels under} \\ &\text{paragraph (d)(1)(iii)(A) of this section}) = \\ &\text{Adjusted Percentage of the Total for that} \\ &\text{Amendment 80 vessel.} \end{aligned}$$

(C) Multiply the Adjusted Percentage of the Total for that Amendment 80 vessel by the Amendment 80 initial QS pool for BSAI rock sole and BSAI yellowfin sole as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI rock sole or BSAI yellowfin sole.

(iv) BSAI flathead sole.

(A) If an Amendment 80 vessel did not have any Amendment 80 legal landings during 1998 through 2004, that Amendment 80 vessel will receive 0.1 percent of the Percentage of the Total for BSAI flathead sole as calculated in paragraph (d)(1)(i)(D) of this section.

(B) All Amendment 80 vessels that did have Amendment 80 legal landings during 1998 through 2004 will have the Percentage of the Total assigned to that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section adjusted to account for the assignment of the Percentage of the Total to Amendment 80 vessels under paragraph (d)(1)(iv)(A) of this section for BSAI flathead sole as presented in the following equation:

$$\begin{aligned} &\text{Percentage of the Total for that Amendment} \\ &\text{80 vessel} \times (100 - \text{S Percentage of the Total} \\ &\text{assigned to all Amendment 80 vessels under} \\ &\text{paragraph (d)(1)(iv)(A) of this section}) = \\ &\text{Adjusted Percentage of the Total for that} \\ &\text{Amendment 80 vessel.} \end{aligned}$$

(C) Multiply the Adjusted Percentage of the Total for that Amendment 80 vessel by the Amendment 80 initial QS pool for BSAI flathead sole as set forth

in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI flathead sole.

(v) BSAI Atka mackerel.

(A) Multiply the Percentage of the Total for that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section by the Amendment 80 initial QS pool for BSAI Atka mackerel as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI Atka mackerel.

(B) If an Amendment 80 vessel is an Amendment 80 non-mackerel vessel, determine the percentage of the Amendment 80 QS pool that is assigned to each Atka mackerel management area listed in Table 32 to this part in each year from 1998 through 2004 for that Amendment 80 non-mackerel vessel based on the percentage of Amendment 80 legal landings in that Atka mackerel management area from 1998 through 2004 for that Amendment 80 non-mackerel vessel.

(C) The sum of the Amendment 80 QS units allocated to all Amendment 80 non-mackerel vessels is the Total Amendment 80 non-mackerel QS pool.

(D) The sum of the Amendment 80 QS units allocated to all Amendment 80 mackerel vessels is the Total Amendment 80 mackerel QS pool.

(2) Assigning Amendment 80 QS units to an Amendment 80 permit.

Once the Regional Administrator determines the amount of Amendment 80 QS units to be issued for an Amendment 80 species derived from an Amendment 80 vessel based on the criteria described in paragraphs (b) through (d) of this section, NMFS will assign that amount of Amendment 80 QS units for each Amendment 80 species as an Amendment 80 QS permit to the Amendment 80 QS holder as follows:

(i) Amendment 80 vessel owner. NMFS will issue an Amendment 80 QS permit for each Amendment 80 vessel to the owner of that Amendment 80 vessel if that person submitted a timely and complete Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(i) of this section; or

(ii) Amendment 80 LLP/QS license. NMFS will issue an Amendment 80 QS permit as an endorsement on an Amendment 80 LLP license to the holder of an LLP license originally assigned to an Amendment 80 vessel if that person submitted a timely and complete

Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(ii) of this section.

(e) *Transfers of Amendment 80 QS Permits*

(1) Non-severability of Amendment 80 QS permits.

(i) An Amendment 80 QS holder may not transfer an Amendment 80 QS permit to another person unless all Amendment 80 QS units for all Amendment 80 species on that Amendment 80 QS permit are transferred in their entirety to the same person at the same time; **and**

(ii) Once an Amendment 80 QS permit is assigned to an Amendment 80 LLP license, that Amendment 80 LLP license is designated as an Amendment 80 LLP/QS license and a person may not separate the Amendment 80 QS permit from that Amendment 80 LLP/QS license.

(2) Transfer of an Amendment 80 LLP/QS license.

A person holding an Amendment 80 LLP/QS license may transfer that Amendment 80 LLP/QS license to another person only under the provisions of § 679.4(k)(7).

(3) Transfers of Amendment 80 QS permits.

A person holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to another person only by submitting an application to transfer Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(4) Assigning an Amendment 80 QS permit to an Amendment 80 LLP license.

An Amendment 80 vessel owner holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to the LLP license originally assigned to that Amendment 80 vessel only by submitting an application to transfer an Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(f) Application to transfer an Amendment 80 QS permit.

(1) General.

An Amendment 80 QS holder who wishes to transfer an Amendment 80 QS permit must submit a complete application that is approved by NMFS. This application may only be submitted to NMFS using any one of the following methods:

(i) Mail:

Regional Administrator,
c/o Restricted Access Management Program,
NMFS, P.O. Box 21668,
Juneau, AK 99802-1668;

(ii) Fax: 907-586-7354; or

(iii) Hand delivery or carrier:

NMFS, Room 713,
709 West 9th Street,
Juneau, AK 99801.

(2) Application forms.

Application forms are available through the internet on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2.

(3) Application.

(i) Transferor information.

(A) Transferor identification. The transferor's name, NMFS person ID (if applicable), tax ID number, date of incorporation or date of birth, permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(B) Type of transfer.

(1) Indicate whether the transferor is applying to transfer an Amendment 80 QS permit to another person; or

(2) Indicate whether the transferor is applying to transfer an Amendment 80 QS permit to the LLP license originally assigned to that Amendment 80 vessel as listed in Table 31 to this part.

(C) Amendment 80 QS permit. Indicate the Amendment 80 QS permit to be transferred.

(D) Information for transfers of Amendment 80 QS permit to another person. If transferring an Amendment 80 QS permit assigned to an Amendment

80 vessel owner to another person, attach abstract of title or USCG documentation that clearly and unambiguously indicates that the Amendment 80 QS permit transferee is named on the abstract of title or USCG documentation as the owner of the Amendment 80 vessel to which that Amendment 80 QS permit would be assigned.

(E) Information for transfers of Amendment 80 QS permits to an Amendment 80 LLP license. If transferring Amendment 80 QS assigned to an Amendment 80 vessel owner to the LLP license originally assigned to that Amendment 80 vessel, provide clear and unambiguous written documentation that can be verified by NMFS that the Amendment 80 vessel for which that Amendment 80 LLP license was originally assigned is no longer able to be used in the Amendment 80 Program due to the actual total loss, constructive total loss, or permanent ineligibility of that vessel to receive a fishery endorsement under 46 U.S.C. 12108.

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

(ii) Transferee information.

(A) Transferee identification. The transferee's name, NMFS person ID (if applicable), tax ID number, date of incorporation or date of birth, permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(B) Certification of transferee. The transferee 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.