

§ 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 the 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 **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 an eligible 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 **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 fishery.

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 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 at § 679.43.

(4) Duration of sideboard limits.

Unless otherwise specified, all sideboard limitations established under paragraph (c) 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 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.
	Pelagic 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/processers 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.**

(h) 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.

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.