

# **AMENDMENT 88**

## **to the Fishery Management Plan for Groundfish of the Gulf of Alaska**

**(1) Replace section 3.7.2 Central Gulf of Alaska Rockfish Demonstration Program with the following:**

### **Chapter 3.7.2: Central Gulf of Alaska Rockfish Program**

The Rockfish Program provides exclusive harvesting privileges for vessels using trawl gear to harvest a specific set of rockfish species and associated species incidentally harvested to those rockfish in the Central GOA. The rockfish species rationalized under the Rockfish Program are: northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. These rockfish species are called the rockfish primary species. The important incidentally harvested groundfish taken in the primary rockfish fisheries (which also are rationalized under the Rockfish Program) are called the rockfish secondary species. The rockfish secondary species are: Pacific cod, roughey rockfish, shortraker rockfish, and sablefish. In addition, the Rockfish Program apportions a share of the halibut PSC limit annually specified for the GOA trawl fisheries to Rockfish Program participants. This apportionment of halibut PSC could be used by Rockfish Program participants during harvest activities in the Rockfish Program fisheries.

Harvesters holding LLP licenses with rockfish quota share (QS) may participate in the Rockfish Program by joining a catcher vessel or catcher processor rockfish cooperative. Vessels that do not qualify for the Rockfish Program, are exempt from Central GOA LLP requirements, or any holder of a Central GOA longline LLP license, may participate in an entry level longline fishery.

#### **3.7.2.1 Eligibility**

A person is eligible to receive QS under the Rockfish Program if (1) that person held a permanent, fully transferable LLP license endorsed for Central GOA groundfish with a trawl designation at the time of application; (2) a vessel made a legal landing of rockfish primary species under the authority of that LLP license during a qualifying period; and (3) that person submitted a timely application that is subsequently approved by NMFS. Most LLP license holders are eligible to receive QS if they made one rockfish legal landing in a rockfish primary fishery during the 2000 through 2006 qualifying period. A smaller set of LLP license holders qualify to receive QS because they participated in the entry level trawl fishery during 2007, 2008, or 2009.

In addition, LLP license holders who would qualify for QS may choose to be excluded from the Rockfish Program and not receive QS. An LLP license holder who elects to exclude an LLP license from the Rockfish Program is exempted from specific sideboard limits that otherwise apply to that participating LLP license.

#### **3.7.2.2 Rockfish Quota Share**

To participate in a rockfish cooperative, a person must hold an LLP license with QS. QS is assigned to an LLP license and provides a harvest privilege, not a right or guaranteed harvest to the holder of that LLP license. NMFS determines the QS allocation for each qualifying LLP

license based on the retained catch (excluding landings processed into meal) of the vessel that harvested rockfish primary species under the authority of that LLP license. The amount of QS is determined either by that vessel's best five of the seven years during the 2000 through 2006 qualifying period or by participation in the entry level trawl fishery in 2007, 2008, or 2009. For the 2000 through 2006 qualifying period, the amount of QS attributed to each vessel is maximized by using different "best years" for each species based on that vessel's catch history.

### **3.7.2.3      *Rockfish Cooperatives***

Each year, if a person holding an LLP license with QS forms a rockfish cooperative with other persons (i.e., catcher vessels or catcher processors), that rockfish cooperative receives an annual cooperative quota (CQ). CQ is the annual amount of rockfish primary species and secondary species that that rockfish cooperative's members can harvest.

Each eligible catcher vessel cooperative must be associated with a processor within the boundaries of the City of Kodiak. This requirement does not obligate the LLP license holder to deliver catch to that specific processor. Membership agreements must specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by general antitrust law.

Each cooperative is required to file its agreement with NMFS to receive annual CQ allocations. Cooperative agreements have a term of one year, and include a fishing plan for the harvest of the cooperative's allocation and payment of cost recovery fees. Cooperatives are intended only to conduct and coordinate fishing of their members' allocations, and may not be formed under the Fishermen's Collective Marketing Act (and therefore may not negotiate prices).

No minimum number of LLP licenses is required to form a cooperative. A cooperative is required to accept membership of any LLP license holder eligible for the cooperative subject to the same terms and conditions as governing other members. A cooperative may include fishing practice codes of conduct in its membership agreement.

### **3.7.2.4      *Annual Allocations***

NMFS annually allocates rockfish primary and secondary species to the rockfish cooperatives. Two TAC set asides of the rockfish primary species are made prior to allocations to cooperatives. The first set aside is an incidental catch allowance to support incidental catch of rockfish by participants in other directed fisheries. This set aside is based on the incidental catch needs of other fisheries, which are estimated using rockfish incidental catch rates from those non-rockfish directed fisheries in recent years. The second set aside allocates a predetermined amount of rockfish primary species to an entry level longline fishery. After removal of the two set asides, the remainder of the TAC for the rockfish primary species are distributed to rockfish cooperatives as CQ.

The CQ allocations of rockfish primary species are based on the QS held by the cooperative members. Secondary species allocated as CQ to rockfish cooperatives are allocated in the catcher vessel sector and catcher processor sector based on the previous harvest patterns in those sectors, respectively.

**Catcher Processor Secondary Species CQ:** NMFS annually allocates CQ to catcher processor cooperatives for four of the five secondary species (sablefish, shortraker rockfish, rougheye rockfish, and thornyhead rockfish). Pacific cod is managed using a maximum retainable

allowance (MRA) percentage of 4 percent of target rockfish. All other species (except halibut PSC) is managed using the current MRA levels. Halibut PSC is apportioned as CQ to cooperatives, based on the cooperative members' QS.

For the secondary species, the CQ amount is based on the sector's annual percentage of retained secondary species catch while targeting rockfish, relative to total retained catch of that secondary species by all gear types and participants, averaged over the qualifying years. Within the catcher processor sector, these secondary species allocations are usually allocated in proportion to the cooperative's rockfish primary species CQ. However, the percentage of TAC for shortraker rockfish was slightly reduced below the average for the catcher processor sector to provide more harvest opportunities for catcher vessel participants. Rougheye rockfish remains at the same level as under the Rockfish Demonstration Program because that level had not unduly constrained harvests in catcher processor cooperatives and did not result in an overharvest of the stock.

**Catcher Vessel Secondary Species CQ:** NMFS annually allocates CQ to the catcher vessel cooperatives for the secondary species (with the exception of shortraker rockfish and rougheye rockfish) in proportion to the cooperative's rockfish primary species CQ. Shortraker and rougheye are managed under an MRA, along with a provision to put shortraker rockfish on PSC status, if the fleet catches in excess of 9.72 percent of the shortraker TAC.

### **3.7.2.5 Halibut Prohibited Species Catch**

Halibut PSC is allocated as CQ to cooperatives based on the QS held by the members. The total allocation to the Rockfish Program is based on 87.5 percent of the average annual usage during the qualifying period (2000 through 2006, inclusive). To determine the annual allocation to the Rockfish Program, the average annual usage per sector is multiplied by 0.875 to yield the amount of Halibut PSC assigned as CQ. The remaining 12.5 percent remains in the water.

### **3.7.2.6 Catcher Processor Opt-out**

Each year, a person holding a catcher processor designated LLP license with QS may decide to opt-out of participating in a rockfish cooperative for that year, with certain sideboard limitations. Eligible catcher processors that choose to opt-out forgo the opportunity to fish for rockfish primary species. Participants that choose to opt-out are subject to two-week stand-downs in each GOA fishery in which the vessel, or LLP license, does not have prior participation (except for fixed gear sablefish). CQ derived from the QS of LLP license holders that decide to opt-out of the Rockfish Program is reallocated to cooperatives within the catcher processor sector.

### **3.7.2.7 Seasons**

The rockfish season opens for rockfish cooperatives on May 1, and extends until November 15, or until the allocations are harvested.

### **3.7.2.8 Transfers**

**LLP License Transfers:** An LLP license holder with QS is permitted to transfer the license; however, each license transfer also transfers the QS. QS derived from the license is not severable from the license, except with QS above the use cap is initially issued to an LLP holder.

**Cooperative Transfers:** Cooperatives assigned a minimum of two LLP licenses are permitted to transfer CQ to other cooperatives. Catcher vessel cooperatives can transfer CQ to other catcher

vessel cooperatives. Catcher vessel cooperatives are also permitted to acquire CQ from catcher processor cooperatives, but may not transfer CQ to catcher processor cooperatives.

All CQ transfers are valid for a single year. The QS remains with the associated LLP license. To apply the CQ use cap, inter-cooperative transfers must be conducted through individuals.

There is no limit on the number or magnitude of post delivery transfers of CQ, but all post delivery transfers must be complete by December 31 of each year. No cooperative vessel is permitted to begin a fishing trip unless its cooperative holds unused CQ.

### **3.7.2.9 Use Caps**

Use caps limit the degree of consolidation that could occur in the Central GOA rockfish fisheries. There are four types of use caps under the Rockfish Program: (1) a cap on the amount of QS an eligible rockfish harvester could hold, (2) a cap on the amount of rockfish primary species CQ that a rockfish cooperative could hold, (3) a cap on the amount of rockfish primary species CQ that a vessel could harvest, and (4) a limit on the amount of rockfish primary species, Pacific cod, and sablefish a rockfish processor may receive and process. Persons or vessels with history in excess of these limits at the time of final Council action, June 14, 2010, are grandfathered in to receive QS based on their historic harvest.

**Catcher Processor Use Caps:** No person is permitted to hold or use in excess of 40 percent of the catcher processor QS pool. In addition, no vessel participating in the catcher processor sector may harvest more than 60 percent of the rockfish primary species CQ during a calendar year. This cap ensures that harvest activity does not exceed the specified threshold and, that a certain number of vessels remain active in the fishery.

**Catcher Vessel Use Caps:** Catcher vessels are subject to a number of use caps. No person in the catcher vessel sector is permitted to hold QS or use CQ in excess of 4 percent of the catcher vessel QS pool. In addition, no catcher vessel may harvest in excess of 8 percent of the CQ issued to the catcher vessel sector. This cap ensures that harvest activity does not exceed the specified threshold and that a certain number of vessels remain active in the fishery. Each catcher vessel rockfish cooperatives is limited to using not more than 30 percent of the CQ allocated to the catcher vessel sector. This provision prevents harvesters from forming cooperatives beyond the cap to avoid consolidation within cooperatives that could be detrimental to other processors in the fishery if a cooperative developed a strong relationship with a processor that limited the ability of other processors to compete for landings.

### **3.7.2.10 Sideboards**

Sideboards limit the encroachment of participants in the Rockfish Program on other fisheries. Since the Central GOA rockfish fishery was historically prosecuted in July, sideboards are generally intended to limit Rockfish Program participants to their historic harvests in other fisheries during the month of July. Specifically, in Central GOA fisheries that are historically constrained by a TAC, eligible participants from each sector are limited to their historic catch, in the aggregate. Sideboards for Central GOA fisheries that are historically constrained by halibut PSC limit eligible participants in each sector to their historic halibut mortality in the month of

July, in the aggregate. Halibut in the GOA is not managed in each fishery, but is managed Gulf-wide for the deep-water complex and the shallow-water complex.<sup>1</sup>

**Catcher Processor Sideboards:** Catcher processor cooperatives are subject to sideboards in the Western GOA and West Yakutat District rockfish fisheries. Non-Amendment 80 catcher processors are prohibited from West Yakutat and Western GOA rockfish species fisheries for the month of July. Catcher processor cooperatives are also subject to sideboard limits for the deep-water fishery complex and the shallow-water fishery complex based on historic halibut PSC usage. These July halibut sideboards are administered by ending fishing in halibut limited fisheries in a complex when the halibut PSC limit is reached in that complex.

**Catcher Vessel Sideboards:** Catcher vessel sideboard measures prohibit fishing in primary rockfish fisheries in the West Yakutat District and Western GOA, and from directed fishing in any target fishery in the deep-water complex in the month of July.

**Exemption from Sideboard Limits:** A catcher vessel is exempt from the Rockfish Program sideboards if the vessel (1) is an AFA vessel that is not exempt from GOA sideboards under the AFA and (2) has an associated LLP license that is excluded from the Rockfish Program. A person permanently excluded from the Rockfish Program must have generated landings in 2000 through 2006 and took part in specific seasons of the entry level trawl fishery during 2007, 2008, or 2009. Participants interested in being excluded from the Rockfish Program must apply during the initial application process.

### **3.7.2.11 Shoreside Processors**

The Rockfish Program includes provisions for shoreside processors that receive rockfish harvested with CQ. A shoreside processor receiving rockfish CQ must have a federal processor permit, an approved catch monitoring and control plan, and be located within the geographic boundaries of the City of Kodiak. A shoreside processor may not receive in excess of 30 percent of the aggregate catcher vessel sector allocation. Additionally, a shoreside processor must submit to NMFS an annual Rockfish Ex-vessel Volume and Value Report that details the ex-vessel value of harvests.

Shoreside processors may be associated with more than one catcher vessel cooperative.

### **3.7.2.12 Entry Level Longline Fishery**

Harvesters holding a Central GOA longline LLP license, or harvesters exempt from Central GOA LLP requirements, may participate in a small entry level longline fishery for Central GOA rockfish. This non-trawl fishery is a competitive fishery open to all harvesters eligible to participate in the Central GOA limited access fisheries. Rockfish deliveries from the entry level longline fishery may be made to any shorebased processing facility in the GOA.

The entry level longline fishery opens on January 1 every year. NMFS sets aside a predetermined amount of rockfish primary species TAC to the entry level longline fishery. If the sector harvests 90 percent or more of the allocation of a species, the set aside would increase incrementally each season until it reaches a cap.

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<sup>1</sup> The deep-water complex includes sablefish, rockfish, deepwater flatfish, rex sole, and arrowtooth flounder. The shallow-water complex includes flathead sole, shallow water flatfish, pollock, and Pacific cod.

### **3.7.2.13 Cost Recovery**

Cost recovery funds are collected in accordance to provisions of section 303A of the Magnuson-Stevens Act, which allows for the collection of actual costs up to 3 percent of ex-vessel gross revenues to cover the costs of Rockfish Program administration. The fee is assessed against rockfish primary species and rockfish secondary species CQ caught by rockfish cooperatives based on the prior year's ex-vessel values and costs to administration. Shoreside processors receiving CQ are required to submit an annual Rockfish Ex-vessel Volume and Value Report that details the ex-vessel value of harvests. These data allow NMFS to generate an average ex-vessel price for each rockfish primary and secondary species on a monthly basis. Each CQ holder is required to submit to NMFS a cost recovery fee liability statement. All participants fishing under a cooperative are subject to cost recovery fees based on their catch. Entry level and opt-out participants are not responsible for cost recovery fees.

### **3.7.2.14 Duration**

The Rockfish Program is authorized for ten years, from January 1, 2012, until December 31, 2021. Unless the Council takes action to discontinue the Rockfish Program, NMFS would renew QS permits after December 31, 2021, unless they have been revoked, limited, or modified. If the Council does not recommend continuing the Rockfish Program, then rockfish management would revert back to management under the LLP.