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Title 50 –Wildlife and Fisheries

Chapter VI –Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce

Part 679 –Fisheries of the Exclusive Economic Zone off Alaska

Subpart L –Pacific Cod Trawl Cooperative Program

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Editorial Note: Nomenclature changes to part 679 appear at 61 FR 56438, Nov. 1, 1996; 62 FR 2047, Jan. 15, 1997; 66 FR 27909, May 21, 2001; 67 FR 79739, Dec. 30, 2002; and 77 FR 6502, Feb. 8, 2012.

§ 679.130 Allocation, use, and transfer of PCTC Program QS permits.

(a) *Applicable areas and seasons.*

- (1) The PCTC Program applies to the Pacific cod trawl catcher vessel sector in the BSAI as defined at § 679.20(a)(7)(ii)(A).
- (2) The following fishing seasons apply to fishing under this subpart subject to other provisions of this part:
 - (i) Fishing by vessels participating in a cooperative is authorized for the PCTC Program A season from 1200 hours, A.I.t., January 20 through 1200 hours, A.I.t., April 1.
 - (ii) Fishing by vessels participating in a cooperative is authorized for the PCTC Program B season from 1200 hours, A.I.t., April 1 through 1200 hours, A.I.t., June 10.
 - (iii) The PCTC Program does not apply to the Pacific cod trawl catcher vessel C season, as defined at § 679.23(e)(5)(ii)(C)(1).

(b) *Pacific cod legal landings.* Pacific cod legal landings means the retained catch of Pacific cod caught using trawl gear in a management area in the BSAI by a catcher vessel during the directed fishing season for Pacific cod that:

- (1) Was made in compliance with State and Federal regulations in effect at that time; and
- (2) Was recorded on a State of Alaska fish ticket for shoreside deliveries or in observer data for mothership deliveries; and
- (3) Was the predominately retained species on the fishing trip; and
- (4) Was authorized by:
 - (i) An LLP license and caught in the A or B season of a Federal or parallel groundfish fishery during the qualifying years 2009 through 2019; or
 - (ii) An LLP license with a transferable AI endorsement prior to receiving the AI endorsement and was caught in a parallel fishery between January 20, 2004, and September 13, 2009; and
- (5) Was not made in a CDQ fishery; and

- (6) Was not made in a State of Alaska GHL fishery.
- (c) **Eligible PCTC Program harvesters.** NMFS will assign Pacific cod legal landings to an LLP license only if the qualifying Pacific cod legal landings of BSAI trawl catcher vessel Pacific cod were made under the authority of a fully transferable LLP license endorsed for BS or AI Pacific cod with a trawl gear designation from 2009 through 2019 or under the authority of an LLP license endorsed for Pacific cod with a trawl gear designation prior to earning a transferable AI endorsement from 2004 through September 13, 2009;
- (d) **Assigning trawl catcher vessel Pacific cod legal landings to an LLP license.**
 - (1) NMFS will assign Pacific cod legal landings to an LLP license in the form of PCTC Program QS only if the holder of the LLP license that authorized those landings submits a timely and complete application for PCTC Program QS under paragraph (h) of this section that is approved by NMFS.
 - (2) NMFS will assign Pacific cod legal landings to an LLP license that meets the requirements of paragraph (b) of this section.
 - (3) NMFS will reissue LLP licenses to eligible harvesters that specify the number of PCTC Program QS units assigned to their LLP licenses.
- (e) **Eligible PCTC Program processors.** NMFS will assign legal landings to an eligible PCTC Program processor if the processor operates under the authority of either a valid FPP or FFP and holds an LLP license with a BSAI Pacific cod trawl mothership endorsement, and received deliveries of legal landings of Pacific cod from the trawl catcher vessel sector from 2009 through 2019. A processor is ineligible to receive PCTC Program QS if it does not hold an active FFP or FPP as of September 7, 2023.
- (f) **Assigning Pacific cod processing history to an eligible processor.**
 - (1) NMFS will assign Pacific cod processing history to a processor in the form of PCTC Program QS only if the FFP or FPP holder submits a timely and complete application for PCTC Program QS that is approved by NMFS pursuant to paragraph (h) of this section.
 - (2) NMFS will assign Pacific cod processing history based on legal landings delivered to a processor authorized by an FPP or FFP that meets the requirements of this section.
 - (3) For the initial allocation of PCTC Program QS, qualifying processing history is attached to the processor at the time legal landings were received.
 - (4) An eligible processor will be issued a PCTC Program QS permit that specifies the number of QS units assigned to that processor.
- (g) **PCTC Program official record.**
 - (1) The PCTC Program official record will contain information used by the Regional Administrator to determine:
 - (i) The amount of Pacific cod legal landings as defined at in this section assigned to an LLP license;
 - (ii) The amount of Pacific cod processing history of legal landings as defined at § 679.130 assigned to an FPP or FFP;
 - (iii) The amount of PCTC Program QS resulting from Pacific cod legal landings assigned to an LLP license held by an eligible harvester, or QS resulting from Pacific cod processing history assigned to an FPP or FFP held by an eligible processor;

- (iv) The amount of Pacific cod sideboard ratios assigned to LLP licenses;
 - (v) Eligibility to participate in the PCTC Program; and
 - (vi) QS assigned to PCTC Program participants.
- (2) The PCTC Program official record is presumed to be correct. An applicant participating in the PCTC Program has the burden to prove otherwise.
- (3) Only Pacific cod legal landings and processing history of legal landings, as described in paragraph (b) of this section, shall be used to establish an allocation of PCTC Program QS. Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of Pacific cod harvested, the groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the date of harvesting, landing, or reporting.

(h) **Application for PCTC Program quota share –**

- (1) **Submission of an application for PCTC Program quota share.** A person who wishes to receive QS to participate in the PCTC Program as an eligible harvester or an eligible processor must submit a timely and complete application for PCTC Program QS. An application form will be provided by NMFS or available from NMFS Alaska Region website as defined at § 679.2. The acceptable submittal methods will be described on the application form.
- (2) **Deadline.** A completed application for PCTC Program QS must be received by NMFS no later than 1700 hours, A.I.t., on October 10, 2023, or if sent by U.S. mail, postmarked by that time. Objective written evidence of timely application will be considered proof of a timely application.
- (3) **Contents of application.** A timely and complete application must contain the information specified on the application for PCTC Program QS with all required documentation attached.
- (i) Additional required documentation for LLP license holders. 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 from 2009 through 2019 or under the authority of an LLP license prior to earning a transferable AI endorsement from 2004-2019;
 - (ii) Additional required documentation for processors. Processor name, FFP or FPP number, and location of processing plant, including dates when landings were made under the authority of an LLP license from 2009 through 2019;
 - (iii) The applicant must sign and date the application certifying under penalty of perjury that all information is true and correct. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.
- (4) **Application evaluation.** The Regional Administrator will evaluate applications and compare all claims of catch history or processing history in an application with the information in the PCTC Program official record. Application claims that are consistent with information in the PCTC Program official record will be approved by the Regional Administrator. Application claims that are inconsistent with the PCTC Program official record will not be approved unless supported by documentation sufficient to substantiate such claims. An applicant who submits claims of catch history or processing history that are inconsistent with the official record without sufficient evidence, or an applicant who fails to submit the information specified in paragraph (d) of this section, will be provided a single 30-day evidentiary period to submit the specified information, submit evidence to verify their claims of catch

or processing history, or submit a revised application consistent with information in the PCTC Program official record. An applicant who claims catch or processing history that is inconsistent with information in the PCTC Program official record has the burden of proving that the submitted claims are correct. Any claims that remain unsubstantiated after the 30-day evidentiary period will be denied. All applicants will be notified of NMFS's final application determinations by an initial administrative determination (IAD), which will inform applicants of their appeal rights under 15 CFR part 906.

(5) **Appeals.** An applicant may appeal an IAD under the provisions in 15 CFR part 906.

(i) **Assigning PCTC Program QS to Harvesters and Processors.** The Regional Administrator will assign PCTC Program QS only to an eligible harvester or eligible processor who submits a timely application for PCTC Program QS that is approved by NMFS.

(1) **Calculation of PCTC Program QS allocation to LLP licenses without a transferable AI endorsement.** NMFS will assign a specific amount of PCTC Program QS units to each LLP license based on the Pacific cod legal landings of each LLP license using information from the PCTC Program official record according to the following procedures:

(i) Determine the Pacific cod legal landings for each LLP license for each calendar year from 2009 through 2019.

(ii) Select the 10 calendar years from the qualifying time period with the highest amount of legal landings for each LLP license, including years with zero metric tons if necessary.

(iii) Sum the Pacific cod legal landings of the highest 10 years for each LLP license. This yields the PCTC Program QS units (in metric tons) for each LLP license.

(2) **Calculation of PCTC Program QS allocation to LLP licenses with a transferable AI endorsement.** NMFS will assign a specific amount of PCTC Program QS units to each LLP license with a transferable AI endorsement based on the Pacific cod legal landings of each using information from the PCTC Program official record according to the following procedures:

(i) Determine the Pacific cod legal landings for each LLP license with a transferable AI endorsement for each calendar year from 2004 through 2019.

(ii) Select the fifteen calendar years that yield the highest amount of legal landings for each LLP license, including years with zero metric tons if necessary.

(iii) Sum the Pacific cod legal landings of the highest fifteen years for each LLP license with transferable AI endorsement. This yields the PCTC Program QS units (in metric tons) for each LLP license with a transferable AI endorsement.

(3) **Official record date.** The initial PCTC Program QS pool for all LLP licenses, with and without a transferable AI endorsement, is the sum of the sum of the PCTC Program QS units assigned to all LLP licenses in metric tons based on the PCTC Program official record as of December 31, 2022.

(4) **Calculation of PCTC Program QS allocation to processors.** NMFS will assign a specific amount of PCTC Program QS units to each eligible processor based on the Pacific cod legal landings delivered to each FPP or FFP using information from the PCTC Program official record according to the following procedures:

(i) Sum the Pacific cod legal landings delivered to each FPP or FFP for each calendar year from 2009 through 2019;

- (ii) Select the ten calendar years that yield the highest amount of legal landings delivered to each FPP or FFP, including years with zero metric tons if necessary;
 - (iii) Sum the Pacific cod legal landings of the highest 10 years for each FPP or FFP. This yields the QS units for each eligible processor, which will be specified on a PCTC Program QS permit for that processor;
 - (iv) The PCTC Program QS pool for processors is the sum of all QS units assigned to processors in metric tons based on the PCTC official record as of December 31, 2022.
- (5) **Non-severability and exceptions.** Pacific cod legal landings are non-severable from the LLP license, transferable AI endorsement, or FPP to which those Pacific cod legal landings are assigned in the PCTC Program official record except under the following provisions:
- (i) If multiple LLP licenses authorized catch by a vessel, the LLP license holders must submit to NMFS an agreement specifying the amount of shared catch history to assign to each LLP license with the application for PCTC Program QS. In the absence of an agreement, the owner of the vessel that made the catch will assign qualifying catch history to each LLP license.
 - (ii) For the LLP licenses associated with non-exempt AFA catcher vessels, within 90 days of initial issuance of PCTC Program QS, the owners of the LLP licenses that are associated with AFA non-exempt catcher vessels that engaged in fish transfer agreements during the qualifying periods may transfer PCTC Program QS to other LLP licenses associated with AFA non-exempt vessels, subject to the ownership cap at § 679.133.
 - (A) NMFS will execute permanent transfers of PCTC Program QS between eligible LLP licenses during the 90-day transfer provision upon request. The transferor and transferee must show they agree to the one-time permanent transfer of PCTC Program QS, or show a transfer is authorized by an operation of law (e.g., a court order). Requests to transfer PCTC Program QS must specify which LLP license is transferring PCTC Program QS, which LLP license is receiving PCTC Program QS, and the amount of PCTC Program QS to be transferred.
 - (B) After the expiration of the 90-day transfer provision, PCTC Program QS will no longer be severable from the LLP license to which it is assigned unless authorized by the transfer rules specified in paragraph (j) or modification is supported by an operation of law.
- (j) **Transfer of PCTC Program QS.**
- (1) Transfer of an LLP license with PCTC Program QS. A person may transfer an LLP license and the PCTC Program QS assigned to that LLP license under the provisions at § 679.4(k)(7), provided that the LLP license is not assigned PCTC Program QS in excess of the ownership cap specified at § 679.133 at the time of transfer.
 - (2) Transfer of PCTC Program QS assigned to LLP licenses that exceeds PCTC Program QS ownership caps.
 - (i) If an LLP license receives an initial allocation of PCTC Program QS that exceeds an ownership cap specified at § 679.133(a), upon transfer of the LLP license, the LLP license holder may transfer the amount of PCTC Program QS in excess of the ownership cap separately from the LLP license and assign it to one or more LLP licenses. However, a transfer will not be approved by NMFS if that transfer would cause the receiving LLP license to exceed an ownership cap specified at § 679.133(a).

- (ii) Prior to the transfer of an LLP license that received an initial allocation of PCTC Program QS that exceeds an ownership cap specified at § 679.133(a), the LLP license holder must transfer the PCTC Program QS that is in excess of the ownership cap separately from that LLP license and assign it to one or more LLP licenses. On completion of the transfer of PCTC Program QS, the LLP license that was initially allocated an amount of PCTC Program QS in excess of the ownership cap may not exceed any ownership cap specified at § 679.133(a).
 - (iii) Any PCTC Program QS associated with the LLP license that is in excess of the ownership cap may be assigned to another LLP license through the application used to transfer LLP licenses, and only if the application is approved as specified at § 679.4(k)(7).
 - (iv) PCTC Program QS that is transferred from an LLP license that was initially allocated an amount of PCTC Program QS in excess of the ownership cap specified at § 679.133(a) and assigned to another LLP license may not be severed from the receiving LLP license.
- (3) Transfer of processor PCTC Program QS Permits. A person may transfer a PCTC Program QS permit to another processor with an active FPP issued under § 679.4. A transfer of processor-held PCTC Program QS may not cause the receiver of the permit to exceed the ownership cap specified at § 679.133(a) at the time of transfer. A PCTC Program QS permit held by a processor and associated QS may be transferred only if the application for transfer of PCTC Program QS permit is filled out entirely. A PCTC Program QS permit initially issued to an FPP holder may be transferred to a processor with an active FPP issued under § 679.4 or to a processor with an active FPP that authorizes a vessel named on an LLP license with a BSAI Pacific cod trawl mothership endorsement.
- (4) Transfer of PCTC Program QS assigned to a processor-held PCTC Program QS permit that exceeds PCTC Program ownership caps.
- (i) If a PCTC Program QS permit receives an initial allocation of QS that exceeds an ownership cap specified at § 679.133(a), the processor may transfer QS in excess of the ownership cap separately from that PCTC Program QS permit and assign it to the PCTC Program QS permit of one or more processors with an active FPP or FFP. However, a transfer will not be approved by NMFS if that transfer would cause the receiving processor to exceed an ownership cap specified at § 679.133(a).
 - (ii) Prior to the transfer of a PCTC Program QS permit that received an initial allocation of QS that exceeds an ownership cap specified at § 679.133(a), the permit holder must transfer the QS that is in excess of the ownership cap separately from that PCTC Program QS permit and assign it to one or more PCTC Program QS permits. On completion of the transfer of QS, the PCTC Program QS permit that was initially allocated an amount of QS in excess of the ownership cap may not exceed any ownership cap specified at § 679.133(a).
 - (iii) Any QS associated with the PCTC Program QS permit held by a processor that is in excess of an ownership cap may be transferred only if the application for transfer of PCTC Program QS permit is filled out entirely.