

# Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area

1. Remove AI Catcher Vessel Harvest Set-Aside in Table ES-2.

2. Add in Summary of Management Measures in Table ES-2.

<b>Pacific Cod Trawl Cooperative Program</b>	<p><b>Access:</b> Limits fishery harvesting privilege access to holders of the qualified of LLP licenses and processor permits assigned quota shares.</p> <p><b>AI Set-Aside (CQ Reserve):</b> Requires cooperatives to set aside 12% of A season CQ or CQ equal to the AI DFA, whichever is less, for delivery to an Aleutian Island shoreplant during years an AI community notifies NMFS an AI processor intends to process Pacific cod.</p> <p><b>Allocation:</b> Within the trawl CV sector, the Pacific cod allocation is apportioned to two separate quota share pools: 77.5% to the harvesters and 22.5% to processors.</p> <p><b>Cooperatives:</b> Creates standards and limitations for the creation and operation of cooperatives.</p> <p><b>Sideboards:</b> Establishes harvesting and processing restrictions on participants to protect other fisheries.</p> <p><b>Catch monitoring:</b> Increases observer coverage requirements for catcher/vessels.</p>
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3. Remove Section 3.6.5 (Aleutian Islands Catcher Vessel Harvest Set-Aside)

4. Add in Section 3.7.6 (Pacific Cod Trawl Cooperative (PCTC) Program)

### 3.7.6 Pacific Cod Trawl Cooperative (PCTC) Program

The Pacific cod Trawl Cooperative Program (PCTC Program) is a limited access privilege program that allocates quota share (QS) to harvesters and processors in the BSAI Pacific cod trawl CV fishery based on their participation during qualifying years. Any LLP license that authorized a trawl CV's legal landings of targeted BSAI Pacific cod during the 2009 to 2019 qualifying years is eligible to receive QS (with the additional qualifying years of 2004 to 2009 for LLP licenses with transferable AI endorsements). Processors with a valid processing permit are also eligible to receive QS based on processing history of BSAI Pacific cod delivered by trawl CVs during the 2009 to 2019 qualifying years. Owners of qualifying LLP licenses must join a cooperative in association with eligible licensed processors each year. Combined, the QS pools of harvesters and associated processors in a cooperative yield an exclusive harvest privilege allocation for PCTC Program cooperatives during the BSAI trawl CV Pacific cod fishery sector A and B seasons, issued as cooperative quota (CQ). Of the total CQ pool, 77.5 percent will be derived from QS issued to LLP licenses (harvesters) and 22.5 percent will be derived from QS issued to processors.

### **3.7.6.1 Cooperatives**

The PCTC Program is a voluntary harvester cooperative program in which cooperatives shall be formed by holders of qualified LLP licenses with trawl CV Pacific cod QS. Holders of qualified trawl CV LLP licenses must join a cooperative annually in association with an eligible licensed processor (FFP or FPP) to pool their QS and harvest PCTC Program CQ. Each LLP license may be assigned to only one cooperative each year. A minimum of three LLP licenses are needed to form a cooperative. However, there is no limitation on the number of LLP license holders or qualifying catch history (legal landings) that may join a cooperative and there is no limitation on the number of cooperatives that may form. Harvesters may change cooperatives and processor associations may change annually without penalty. Inter-cooperative formation is allowed.

Annual cooperative applications must be filed on or before November 1 of the preceding year. Cooperative applications must list all member LLP licenses, associated processors, and trawl CVs eligible to harvest a portion of that cooperative's CQ. Cooperatives are intended only to conduct and coordinate harvest activities of members and are not Fishermen's Collective Marketing Act (FCMA) cooperatives. Membership agreements must specify that processor affiliated members cannot participate in any price setting negotiations, except as permitted by antitrust laws.

### **3.7.6.2 Allocation of QS to harvesters**

The allocation of Pacific cod QS to LLP licenses authorizing trawl CVs (without transferable AI endorsements) is based on legal landings of Pacific cod during the qualifying years of 2009 to 2019, dropping from consideration the year with the least amount of legal landings. For LLP licenses with transferable AI endorsements, legal landings made in the parallel fishery from 2004 to September 13, 2009 prior to earning the AI endorsement is also considered. The initial allocation of QS will be made to eligible LLP licenses. If multiple LLP licenses authorized qualifying catch history, in the absence of an agreement provided by the LLP license holder at the time of application, qualifying catch history will be assigned to an LLP license by the owner of the vessel that made the catch. Eligible LLP licenses must be assigned to a cooperative to use their QS, which will be issued to the cooperative as annual Pacific cod CQ. CQ is issued to cooperatives by season, and the program allocates CQ only for the A season and B seasons, leaving the C season as a limited access fishery open to any trawl CVs with an eligible groundfish LLP license and appropriate endorsements. Total A and B season CQ is equivalent to the BSAI trawl CV sector's Pacific cod directed fishing allowance for each season. Unused A season CQ may be rolled over to the B season. C season trawl CV sector apportionments (including A and B season ICAs and CQ remaining after June 10) that NMFS projects to go unused are subject to reallocation to other sectors under current reallocation rules.

### **3.7.6.3 Allocation of QS to processors**

All processors with an eligible FPP or FFP are allowed to process BSAI Pacific cod (subject to eligibility requirements under BSAI FMP Amendment 120 to limit catcher/processors acting as motherships). Limits are established on the amount of CQ that can be delivered to trawl C/Ps acting as a mothership. Onshore and offshore processors with an eligible FFP or FFP that have a history of processing in the federal BSAI Pacific cod trawl CV fishery will be eligible to receive QS based on their processing history. A processor must associate with a CV cooperative to use their QS, which would be issued to the cooperative as CQ.

If a processor holding QS does not associate with a cooperative, that processor's CQ will be divided among cooperatives in the same proportion as the processor's CQ assigned to individual cooperatives by the associated processor that year relative to total processor derived CQ that was issued that year.

If a processor associated with more than one cooperative during a year, the CQ derived from their processor permit would be divided between the cooperatives in the same proportion as the CQ derived from LLP licenses.

A cooperative cannot assign a greater proportion of the CQ resulting from processor held QS to an LLP license owned by that processor for harvest by a vessel owned by that processor than the LLP license would have brought into the cooperative absent any processor held QS. The cooperative will monitor this provision and include reporting on harvest of CQ resulting from processor held QS in the BSAI Pacific cod cooperative annual report.

Processors that are no longer active (no longer hold an FPP) will not be issued QS. The processing history associated with those processors would be deducted from the total amount of eligible processing history during the qualifying years when calculating the distribution of QS to processors.

#### **3.7.6.4 PSC Limits**

Annual halibut and crab PSC limits for the BSAI trawl limited access sector are established through the annual specifications process. Halibut PSC limits for the BSAI trawl limited access sector Pacific cod fishery are apportioned between the trawl CV sector and the AFA C/P sector based on use during the qualifying years (2009-2019). Crab PSC limits are apportioned based on the proportion of BSAI Pacific cod allocated to the two sectors as under current conditions. 95 percent of the trawl CV sector PSC limits are apportioned to the A and B seasons for the PCTC Program, while the remaining 5 percent of the PSC limits will be apportioned to the C season. Each year after apportioning the halibut PSC limit to the trawl CV sector for the A and B season, NMFS will apply a fixed percentage reduction to that PSC limit. In the first year of the program, NMFS will apply a 12.5 percent reduction, and in the second year and each year thereafter, NMFS will apply a 25 percent reduction. The crab PSC limit for the BSAI trawl CV Pacific cod sector A and B seasons will be reduced by 35 percent at the start of the PCTC Program. The reductions in crab and halibut PSC will not be reapportioned to the other TLAS fisheries. These reductions apply only to PCTC program participants during the A and B seasons. The 5 percent C season apportionment is calculated prior to applying the A and B season PSC limit reductions. PSC limits are transferable between cooperatives based on the same rules established for transferring CQ.

PSC limits will be apportioned to cooperatives in proportion to its initial Pacific cod CQ apportionment and will be monitored at the cooperative level, resulting in a cooperative-level prohibition on directed fishing for Pacific cod throughout the BSAI (halibut PSC limit) or a prohibition on directed fishing for Pacific cod in a specified area (crab PSC limits) if the cooperative PSC limit apportionment is reached.

#### **3.7.6.5 AI Processor Provision**

Cooperatives must reserve 12 percent of the A season CQ allocation as a set-aside (AI set-aside) for delivery to an Aleutian Island shoreplant if the community of Adak or Atka file a notice of intent to process that year. The AI set-aside would be in effect during the A and B seasons and any remaining portion of the AI set-aside would be reallocated to cooperatives in the same proportion as the initial allocation if the intent to process is withdrawn by the community representative during the A or B seasons. An inter-cooperative agreement is required as part of the annual cooperative application process before NMFS will issue CQ. The inter-cooperative agreement must describe how cooperatives will administer and harvest the AI set-aside, and how cooperatives will ensure that CVs less than 60 feet LOA assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest 10 percent of the AI set-aside for delivery to an Aleutian Island shoreplant. A cooperative intending to harvest any amount of the AI set-aside would be required to provide the cooperative's plan for coordinating harvest and delivery of the set-aside with an Aleutian Island shoreplant in the annual cooperative application.

NMFS will establish a separate AI Incidental Catch Allowance (ICA) and AI Directed Fishing Allowance (DFA) to support the AI set-aside. NMFS would annually specify an ICA and a DFA derived from the AI non-CDQ TAC. Each year, during the annual harvest specifications process described at § 679.20(c), NMFS would specify an amount of AI Pacific cod that NMFS estimates will be taken as incidental catch when directed fishing for non-CDQ groundfish other than Pacific cod in the AI. This amount would be the

AI ICA and would be deducted from the AI non-CDQ TAC. The amount of the AI non-CDQ TAC remaining after subtraction of the AI ICA would be the AI DFA. When the AI set-aside is equal to the AI DFA, directed fishing for Pacific cod in the AI may only be conducted by PCTC Program vessels that deliver their catch of AI Pacific cod to an Aleutian Island shoreplant for processing. When the AI DFA is greater than the AI set-aside amount, the difference between the AI DFA and the AI set-aside will be available for directed fishing by all non-CDQ fishery sectors with sufficient A season allocations and may be processed by any eligible processor.

#### **3.7.6.6 GOA Sideboards**

The PCTC Program includes GOA groundfish sideboard limits for all non-exempt AFA LLP licenses and CVs based on the GOA catch history of the vessels during the 2009-2019 qualifying years, which would be managed as an aggregate annual limit for all the non-exempt AFA CVs. AFA non-exempt GOA halibut PSC limits would also be managed as an aggregate annual limit, based on 2009-2019 aggregate retained groundfish catch by the non-exempt AFA CVs in each PSC target category divided by the aggregated retained groundfish catch for all vessels in each PSC target category. Holders of LLP licenses authorizing AFA CVs that are exempt from AFA GOA sideboards, non-AFA trawl CVs, and CVs assigned to LLP licenses endorsed for less than 60' length overall with an AI transferable endorsement are restricted from leasing their BSAI Pacific cod CQ as a condition of being exempt from GOA sideboards. Holders of LLP licenses authorizing a GOA exempt CV that does not fish in the GOA during the calendar year—except for the CGOA Rockfish Program—would be allowed to lease CQ generated by that LLP license that calendar year. LLP licenses that authorize AFA GOA-exempt CVs, non-AFA CVs, or CVs assigned to an under 60' LLP license with an AI transferable endorsement that had, on average, less than 300 mt of annual qualifying BSAI Pacific cod catch history would be able to lease CQ derived from the QS assigned to their LLP licenses.

#### **3.7.6.7 Transferability of QS**

Transfer of an LLP license eligible for this program would result in the transfer of QS attached to the LLP license. PCTC Program QS permits issued to processors may only be transferred to another processor. QS permits held by shoreside processors could only be transferred to another shoreside processor that holds an FPP. QS assigned to these processor permits would be non-severable except in the case when a transfer results in the buyer exceeding the processor ownership cap. The portion of QS over the cap can be severed from permit and transferred to another eligible processor permit that holds an FPP.

For the LLP licenses associated with non-exempt AFA vessels, within ninety (90) days of initial issuance of QS, the owners of the LLP licenses that had engaged in fish transfer agreements during the qualifying periods may transfer the QS to other LLP licenses associated with AFA non-exempt vessels, subject to the ownership caps specified below. After these transfers are approved by NMFS, the BSAI Pacific cod QS will no longer be severable from the LLP license to which it was reassigned unless modification is supported by an operation of law.

QS based on processing history are issued as separate permits, and the permit is transferable only to another processor. Permits issued to shoreside processors can be transferred only to other shoreside processors that hold an FPP. The QS is non-severable from the permit unless the transfer would result in the transferee exceeding an ownership cap. In that case, the portion of the QS over the cap is allowed to be severed from the permit and transferred to another eligible processor that holds an FPP.

Annual Pacific cod CQ and PSC limits (whether derived from harvesting or processing histories) are transferable between cooperatives.

Post-delivery transfers of CQ are permitted but must be completed by August 1.

### **3.7.6.8 Ownership and Use Caps**

With the exception of persons qualifying with a legacy exemption from the ownership caps, no person would be permitted to individually or collectively hold more than 5 percent of the aggregate PCTC QS units initially assigned to eligible LLP licenses. In the event of transferring QS, the person receiving the transfer would be prohibited from holding or using QS over the 5 percent cap. Processor-issued QS does not count toward this use cap.

With the exception of persons qualifying with a legacy exemption from the ownership caps, no person would be permitted to individually or collectively hold more than 20 percent of the aggregate PCTC QS units initially assigned to PCTC Program QS permits held by eligible processors. This cap would be applied at the aggregate firm level (not the individual facility level).

With the exception of vessels qualifying with a legacy exemption from the vessel use cap, no vessel would be permitted to harvest more than 5 percent of the annual PCTC CQ issued in the fishery.

With the exception of persons qualifying with a legacy exemption from the processing use cap, no person may process more than 20 percent of the PCTC CQ using the individual and collective rule.

A legacy exemption exists for persons whose history in the BSAI trawl CV Pacific cod fishery qualified them to receive initial allocations of QS in excess of the holding caps specified above or whose history demonstrated an average level of participation during the qualifying years in excess of the use caps specified above. Legacy exemptions are not transferrable.

### **3.7.6.9 Share Duration**

All QS and CQ under this program are revocable privileges that 1) may be revoked, limited or modified at any time; 2) shall not confer any right of compensation to the holder, if they are revoked limited, or modified, and; 3) shall not create or be construed to create any right, title or interest in or to any fish before the fish is harvested by the holder.

The duration of all QS is 10 years. These permits will be renewed before their expiration, unless revoked, limited, or modified.

### **3.7.6.10 Monitoring**

All vessels harvesting CQ will be in 100% observer coverage category. This element is not intended to modify the observer coverage exception provided for CVs delivering unsorted codends to a mothership or the current at-sea observer data transmission requirements for non-AFA trawl CVs for the first 3 years after implementation. Monitoring and enforcement provisions will be implemented to track quota, harvest, PSC, and use caps. The Council authorizes NMFS to report weekly vessel-level PSC information as authorized under Magnuson-Stevens Act (MSA) Sec 402(b)(2)(A).

### **3.7.6.11 Cooperative Reports and Program Review**

Each cooperative shall annually produce a report for the Council describing its membership, cooperative management, and performance in the preceding year including use of CQ derived from processor issued QS and harvest and delivery of the AI set-aside, if applicable.

Per the MSA, a formal detailed review of the program shall be undertaken 5 years after implementation, with additional reviews, at a minimum, each seven years thereafter.

### **3.7.6.12 Cost Recovery**

A fee, not to exceed 3% of the ex-vessel value, will be charged on all program landings to cover the actual costs directly related to the management, data collection, and enforcement of the program.

5. In Appendix A, add the following:

Amendment 122, implemented on (*insert effective date of amendment*), removes Amendment 113:

Amendment 122 implements the Pacific cod Trawl Cooperative Program (PCTC Program) and removes vacated provisions of Amendment 113.

Swarpinski 5/11/22, 8/8/22, 9/1/22, 10/24/2022  
Josh Fortenbery 10/24/22

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