

§ 679.2 Definitions.

Editor's Note: Selected definitions pertaining to the CDQ Program are included here. For the full § 679 regulations, see the NMFS web site.

In addition to the definitions in the Magnuson-Stevens Act and in part 600 of this chapter, the terms used in this part have the following meanings:

Affiliation for the purpose of defining AFA entities (effective through 12/31/07) means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in another, exerts control over another, or has the power to exert control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts control over both, or has the power to exert control over both

(1) What is 10 percent or greater ownership?

For the purpose of determining affiliation, 10 percent or greater ownership is deemed to exist if an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a second corporation or other business concern.

(2) What is an indirect interest? An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) What is control? For the purpose of determining affiliation, control is deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:

(i) Controls 10 percent or more of the voting stock of another corporation or business concern;

(ii) Has the authority to direct the business of the entity which owns the fishing vessel or processor. The authority to direct the business

of the entity does not include the right to simply participate in the direction of the business activities of an entity which owns a fishing vessel or processor;

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority shareholders to restrict the actions of the entity are not included in this definition of control provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates or to guarantee the obligations of majority investors or their affiliates;

(iv) Has the authority to direct the transfer, operation or manning of a fishing vessel or processor. The authority to direct the transfer, operation, or manning of a vessel or processor does not include the right to simply participate in such activities;

(v) Has the authority to control the management of or to be a controlling factor in the entity that holds 10 percent or greater interest in a fishing vessel or processor;

(vi) Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor;

(vii) Has the responsibility to procure insurance on the fishing vessel or processor, or assumes any liability in excess of insurance coverage;

(viii) Has the authority to control a fishery cooperative through 10 percent or greater ownership or control over a majority of the vessels in the cooperative, has the authority to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the

board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts control over the cooperative; and

(ix) Has the ability through any other means whatsoever to control the entity that holds 10 percent or greater interest in a fishing vessel or processor.

Affiliates, for purposes of subpart E of this part, means business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the decertification, suspension, or proposed decertification of an observer contractor that has the same or similar management, ownership, or principal employees as the observer contractor that was decertified, suspended, or proposed for decertification.

Aleutian Islands Subarea (AI) of the BSAI means that portion of the EEZ contained in Statistical Areas 541, 542, and 543 (see Figure 1 to this part).

Bering Sea and Aleutian Islands Area, for purposes of regulations governing the commercial King and Tanner crab fisheries, means those waters of the EEZ off the west coast of Alaska lying south of Point Hope (68°21' N. lat), and extending south of the Aleutian Islands for 200 nm west of Scotch Cap Light (164°44'36" W. long).

Bering Sea and Aleutian Islands Management Area (BSAI), for purposes of regulations governing the groundfish fisheries, means the Bering Sea and Aleutian Islands subareas (see Figure 1 to this part).

Bering Sea Subarea of the BSAI means that portion of the EEZ contained in Statistical Areas 508, 509, 512, 513, 514, 516, 517, 518, 519, 521, 523, 524, and 530 (see Figure 1 to this part).

Bogoslof District means that part of the Bering Sea Subarea contained in Statistical Area 518 (see Figure 1 to this part).

CDQ allocation means a percentage of a CDQ reserve specified under § 679.31 that is assigned to a CDQ group when NMFS approves a proposed CDP.

CDQ group means a qualified applicant with an approved CDP.

CDQ group number means a number assigned to a CDQ group by NMFS that must be recorded in all logbooks and all reports submitted by the CDQ group or by vessels and processors catching CDQ or PSQ under an approved CDP.

CDQ project means any program that is funded by a CDQ group's assets for the economic or social development of a community or group of communities that are participating in a CDQ group, including, but not limited to, infrastructure development, CDQ investments, employment and training programs, and CDP administration.

CDQ representative means the individual who is the official contact for NMFS regarding all matters relating to a CDQ group's activities.

CDQ species means any species or species group that has been assigned to a CDQ reserve under § 679.31.

Central Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 542 (see Figure 1 to this part).

Commercial fishing means:

(1) For purposes of the High Seas Salmon Fishery, fishing for fish for sale or barter; and

(2) For purposes of the Pacific halibut fishery, fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing for halibut, as defined at 50 CFR 300.61.

Commissioner of ADF&G means the principal executive officer of ADF&G.

Community Development Plan (CDP) means a business plan for the economic and social development of a specific Western Alaska community or group of communities under the CDQ program at § 679.30.

Community Development Quota (CDQ) means the amount of a CDQ species established under § 679.31 that is allocated to the CDQ program.

Community Development Quota Program (CDQ Program) means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

Community Development Quota reserve (CDQ reserve) means a percentage of a total allowable catch for groundfish, a percentage of a catch limit for halibut, or percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ program.

Council means North Pacific Fishery Management Council.

Crab species means (see also king crab and tanner crab) all crab species covered by the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, including, but not limited to:

red king crab (*Paralithodes camtschatica*),
blue king crab (*Paralithodes platypus*),
brown or golden king crab (*Lithodes aequispina*),
scarlet or deep sea king crab (*Lithodes couesi*),
Tanner or bairdi crab (*Chionoecetes bairdi*),
opilio or snow crab (*Chionoecetes opilio*),
grooved Tanner crab (*Chionoecetes tanneri*), and
triangle Tanner crab (*Chionoecetes angulatus*).

Direct financial interest means any source of income to, or capital investment or other interest held by, an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer or observer contractor duties.

Eastern Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 541 (see Figure 1 to this part).

Eligible community means (for purposes of the CDQ program) a community that is listed in Table 7 to this part or that meets all of the following requirements:

(1) The community is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea.

(2) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92-203) to be a native village.

(3) Whose residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI.

(4) That has not previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The community of Unalaska is excluded under this provision.

Fixed gear sablefish CDQ reserve means 20 percent of the sablefish fixed gear TAC for each subarea in the BSAI for which a sablefish TAC is specified under § 679.20(b)(1)(iii)(B). See also § 679.31(b).

Groundfish means (1) FMP species as listed in Table 2 to this part.

(2) Target species and the "other species" category, specified annually pursuant to § 679.20(a)(2) (See also the definitions for: License limitation groundfish; CDQ species; and IR/IU species of this section).

Groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any groundfish CDQ species, but that does not meet the definition of halibut CDQ fishing.

Halibut means Pacific halibut (*Hippoglossus stenolepis*).

Halibut CDQ fishing means the following:

(1) Catcher vessel. The following conditions are met at all times:

(i) Halibut CDQ is retained and the weight of halibut CDQ plus halibut IFQ onboard the vessel at any time represents the largest proportion of the retained catch in round weight equivalent onboard the vessel at that time, and

(ii) For catcher vessels less than 60 ft (18.3 m) LOA, the round weight equivalent of non-CDQ groundfish does not exceed the maximum retainable amounts for these species or species groups as established in § 679.20(e) and (f).

(2) Catcher/processor. Halibut CDQ is retained from a set and the weight of halibut CDQ plus halibut IFQ represents the largest proportion of the retained catch in round weight equivalent from that set.

Halibut CDQ reserve means the amount of the halibut catch limit for IPHC regulatory areas 4B, 4C, 4D, and 4E that is reserved for the halibut CDQ program (see § 679.31(b)).

IPHC means International Pacific Halibut Commission (see part 300 of chapter III of this title).

IR/IU means the improved retention/improved utilization program set out at § 679.27.

IR/IU species means any groundfish species that is regulated by a retention or utilization requirement set out at § 679.27.

King crab means: red king crab (*Paralithodes camtschatica*), blue king crab (*P. platypus*), brown (or golden) king crab (*Lithodes aequispina*), and scarlet (or deep sea) king crab (*Lithodes couesi*).

Length overall (LOA) of a vessel means the centerline longitudinal distance, rounded to the nearest foot, measured between:

(1) The outside foremost part of the vessel visible above the waterline, including bulwarks,

but excluding bowsprits and similar fittings or attachments, and

(2) The outside aftermost part of the vessel visible above the waterline, including bulwarks, but excluding rudders, outboard motor brackets, and similar fittings or attachments (see Figure 6 to this part).

Manager, with respect to any shoreside processor, stationary floating processor or land-based buying station, means the individual responsible for the operation of the shoreside processor, stationary floating processor, or land-based buying station.

Managing organization means the organization responsible for managing all or part of a CDP.

Maximum LOA (MLOA) means:

(1) With respect to the scallop license limitation program, the MLOA is equal to the length overall on February 8, 1999, of the longest vessel that was:

(i) Authorized by a Federal or State of Alaska Scallop Moratorium Permit to harvest scallops;

(ii) Used by the eligible applicant to make legal landings of scallops during the scallop LLP qualification period, as specified at § 679.4(g)(2)(iii) of this part.

(2) With respect to the groundfish and crab species license limitation program, the LOA of the vessel on June 24, 1992, unless the vessel was less than 125 ft (38.1 m) on June 24, 1992, then 1.2 times the LOA of the vessel on June 24, 1992, or 125 ft (38.1 m), whichever is less. However, if the vessel was under reconstruction on June 24, 1992, then the basis for the MLOA will be the LOA of the vessel on the date that reconstruction was completed and not June 24, 1992. The following exceptions apply regardless of how the MLOA was determined.

(I) If the vessel's LOA on June 17, 1995, was less than 60 ft (18.3 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was less than 60 ft (18.3 m), then the vessel's MLOA cannot exceed 59 ft (18 m).

(ii) If the vessel's LOA on June 17, 1995, was greater than or equal to 60 ft (18.3 m) but less than 125 ft (38.1 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was greater than or equal to 60 ft (18.3 m) but less than 125 ft (38.1 m), then the vessel's MLOA cannot exceed 124 ft (37.8 m).

(iii) If the vessel's LOA on June 17, 1995, was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on June 17, 1995, or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on the date reconstruction was completed.

Net weight (IFQ or CDQ halibut only).
Net weight of IFQ or CDQ halibut means the weight of a halibut that is gutted, head off, and washed or ice and slime deducted.

Non-allocated or nonspecified species
means those fish species, other than prohibited species, for which TAC has not been specified (e.g., grenadier, prowlfish, lingcod).

Non-chinook salmon means coho, pink, chum or sockeye salmon.

North Pacific fishery means any commercial fishery in state or Federal waters off Alaska.

Observed or observed data refers to data collected by observers (see § 679.21(f)(7) and subpart E of this part).

Observer means any

(1) Individual who is awarded NMFS observer certification to carry out observer responsibilities under this part, and who is employed by an observer provider for the purposes of providing observer services to vessels, shoreside processors or stationary floating processors under this part; or

(2) NMFS staff or other individual authorized by NMFS deployed, at the direction of the Regional Administrator, aboard vessels or at shoreside processors or stationary floating processors for purposes of providing observer services as required for vessels, shoreside processors or stationary floating processors

under § 679.50(c) or (d), or for other purposes of conservation and management of marine resources as specified by the Regional Administrator.

Other flatfish (see Table 11 to this part pursuant to § 679.20(c).)

Other red rockfish (see Table 10 to this part pursuant to § 679.20(c); see also "rockfish" at § 679.2)

Other rockfish (see Table 10 to this part pursuant to § 679.20(c); see also "rockfish" at § 679.2)

Other species is a category that consists of groundfish species in each management area that are not specified as target species (see Tables 10 and 11 to this part pursuant to § 679.20(c)).

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such aforementioned governments.

Pollock roe means product consisting of pollock eggs, either loose or in sacs or skeins.

Preponderance of the evidence, for purposes of subpart E of this part, means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Primary product (see Table 1 to this part).

Program Administrator, RAM means the Program Administrator of Restricted Access Management Program, Alaska Region, NMFS.

Prohibited species means any of the species of Pacific salmon (*Oncorhynchus spp.*), steelhead trout (*Oncorhynchus mykiss*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab, and Tanner crab, caught by a vessel regulated under this part while fishing for groundfish in the BSAI or GOA, unless retention is authorized by other applicable laws, including the annual management measures published in the Federal Register pursuant to § 300.62 of this title.

Prohibited species quota (PSQ) means the amount of a prohibited species catch limit established under § 679.21(e)(1) and (e)(2) that is allocated to the groundfish CDQ program under § 679.21(e)(1)(i) and (e)(2)(ii).

PSQ allocation means a percentage of a PSQ reserve specified under § 679.21(e)(1)(i) and (e)(2)(ii) that is assigned to a CDQ group when NMFS approves a proposed CDP. See also § 679.31(d).

PSQ species means any species that has been assigned to a PSQ reserve under § 679.21(e)(1)(i) and (e)(2)(ii) for purposes of the CDQ program. See also § 679.31(d).

Qualified applicant means, for the purposes of the CDQ program:

(1) A local fishermen's organization that:

(i) Represents an eligible community or group of eligible communities;

(ii) Is incorporated under the laws of the State of Alaska or under Federal law; and

(iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities); or

(2) A local economic development organization that:

(i) Represents an eligible community or group of communities;

(ii) Is incorporated under the laws of the State of Alaska or under Federal law specifically for the purpose of designing and implementing a CDP; and

(iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities).

Quarter, or quarterly reporting period, means one of four successive 3-month periods, which begin at 0001 hours, A.l.t., on the first day of each quarter, and end at 2400 hours, A.l.t., on the last day of each quarter, as follows:

- (1) 1st quarter: January 1 through March 31.
- (2) 2nd quarter: April 1 through June 30.

(3) 3rd quarter: July 1 through September 30.

(4) 4th quarter: October 1 through December 31.

Regional Administrator, for purposes of this part, means the Administrator, Alaska Region, NMFS, as defined at § 600.10 of this chapter, or a designee.

Regulatory area means any of three areas of the EEZ in the GOA (see Figure 3 to this part).

Resident fisherman means (for purposes of the CDQ Program) an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in an eligible community and is eligible to receive an Alaska Permanent Fund dividend at that address.

Rockfish means:

(1) For the GOA: Any species of the genera *Sebastes* or *Sebastolobus* except *Sebastes melanops*, (black rockfish), and *Sebastes mystinus*, (blue rockfish).

(2) For the BSAI: Any species of the genera *Sebastes* or *Sebastolobus*.

Sablefish (black cod) means *Anoplopoma fimbria*. (See also IFQ sablefish; fixed gear sablefish at § 679.21(b)(5); and sablefish as a prohibited species at § 679.24(c)(2)(ii)).

Salmon means the following species:

- (1) Chinook (or king) salmon (*Oncorhynchus tshawytscha*);
- (2) Coho (or silver) salmon (*O. kisutch*);
- (3) Pink (or humpback) salmon (*O. gorbuscha*);
- (4) Sockeye (or red) salmon (*O. nerka*); and
- (5) Chum (or dog) salmon (*O. keta*).

Stationary floating processor (effective through 12/31/07) means a vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI.

Tanner crab means *Chionoecetes* species or hybrids of these species.

Target species are those species or species groups, except the "other species" category, for which a TAC is specified pursuant to § 679.20(a)(2).

Tax-exempt organization means an organization that received a determination letter from the Internal Revenue Service recognizing tax exemption under 26 CFR part 1 (§§ 1.501 to 1.640).

Transfer means:

(1) Groundfish fisheries of the GOA and BSAI. Any loading, offloading, shipment or receipt of any groundfish product by a mothership, catcher/ processor, shoreside processor, or stationary floating processor, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, stationary floating processor, or at any offsite meal reduction plant.

(2) IFQ/CDQ fisheries. Any loading, offloading, shipment or receipt of any groundfish product, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, stationary floating processor, or at any offsite meal reduction plant.

Western Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 543 (see Figure 1 to this part).

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