

(e) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is *prima facie* evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(f) A limited entry permit under subpart C is not required for participation in a tribal fishery described in paragraph (d) of this section.

(g) Fishing under this section by a member of a Pacific Coast treaty Indian tribe within their usual and accustomed fishing area is not subject to the provisions of other sections of this part.

(h) Any member of a Pacific Coast treaty Indian tribe must comply with this section, and with any applicable tribal law and regulation, when participating in a tribal groundfish fishery described in paragraph (d) of this section.

(i) Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's usual and accustomed fishing area, or for a species of groundfish not covered by an allocation or regulation under this section, is subject to the regulations in the other sections of this part.

(j) *Black rockfish.* Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established annually for the areas between the U.S.-Canadian border and Cape Alava (48°09'30" N. lat.) and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), in accordance with the procedures for implementing annual specifications. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of this part.

(k) *Groundfish without a tribal allocation.* Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery.

#### **§ 660.331 Limited entry and open access fisheries—general.**

All commercial fishing for groundfish must be conducted in accordance with the regulations governing limited entry and open access fisheries, except such fishing by treaty Indian tribes as may be separately provided for.

#### **§ 660.332 Allocations.**

(a) *General.* The commercial portion of the Pacific Coast groundfish fishery, excluding the treaty Indian fishery, is divided into limited entry and open access fisheries. Separate allocations for the limited entry and open access fisheries will be established annually for certain species and/or areas using the procedures described in this subpart or the PCGFMP.

(1) *Limited entry allocation.* The allocation for the limited entry fishery is the allowable catch (harvest guideline or quota excluding set asides for recreational or tribal Indian fisheries) minus the allocation to the open access fishery.

(2) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual harvest guideline or quota after subtracting any set asides for recreational or tribal Indian fisheries. For management areas where quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(b) *Open access allocation percentage.* For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(1) Computing the total catch for that species during the window period by any vessel that does not initially receive a limited entry permit.

(2) Dividing that amount by the total catch during the window period by all gear.

(3) The guidelines in this paragraph (b)(3) apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following year's open access allocation. If a gear