

**DRAFT FOR INITIAL COUNCIL REVIEW**

**BSAI Groundfish Specifications  
for 2012-2013**

**Initial Regulatory Flexibility Analysis**

**September 2011**

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**Abstract:** This document contains an Initial Regulatory Flexibility Analysis (IRFA) for the groundfish specifications in the Bering Sea and Aleutian Islands for the years 2012 and 2013. This IRFA evaluates the expected economic impacts on small entities of alternative proposed harvest specifications for the groundfish fisheries managed under the North Pacific Fishery Management Council's Bering Sea and Aleutian Islands Fishery Management Plan. This IRFA addresses the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612).



# 1 Initial Regulatory Flexibility Analysis

## 1.1 Introduction

The action under consideration is adoption of harvest specifications pursuant to the harvest strategy to govern the harvest of groundfish in the Bering Sea and Aleutian Islands (BSAI) that was adopted by the North Pacific Fishery Management Council (Council) in December 2006. The harvest strategy is one in which total allowable catches (TACs) fall within the range of acceptable biological catches (ABCs) recommended by the Council's Groundfish Plan Teams and Scientific and Statistical Committee (SSC) and TACs recommended by the Council. This action is taken in accordance with the Fishery Management Plans (FMPs) for the BSAI, recommended by the Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Preliminary survey information and analysis were evaluated by the Council's BSAI Plan Team at its August 30-September 2 meeting in Seattle, Washington. The Plan Team recommended 2012 and 2013 overfishing levels (OFLs) and ABCs for the species including in the FMP. The Plan Team's recommendations were reviewed by the Council's Scientific and Statistical Committee (SSC) at the Council's October 2011 meeting in Dutch Harbor, Alaska. The SSC recommended species OFLs and ABCs which were adopted by the Council at its October meeting. In addition, during the October meeting the Council, with input from its SSC, its industry Advisory Panel (AP), and following public testimony, adopted recommendations for TACs for the individual species. Under this proposed action, the Secretary of commerce (Secretary) would adopt the Council's October 2011 OFL, ABC, and TAC recommendations.

Alaska Fishery Science Center (AFSC) analysts are currently updating their models and OFL and ABC recommendations in light of further analysis of information collected from fishery surveys in the summer of 2011, and information on fishery harvests in calendar year 2011. The Council's BSAI Plan Team will meet again in November to review the updated analyses, and revise its 2012-2013 OFL and ABC recommendations, as necessary. The Council, its SSC, and its AP, will review the updated Plan Team recommendations at the Council's December 2011 meeting in Anchorage, and may revise its OFL, ABC, and TAC recommendations at that time. The final specifications will take any December revisions into account.

This Initial Regulatory Flexibility Analysis (IRFA) meets the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612).

## 1.2 The purpose of an IRFA

The RFA, first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on

the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant (adverse) economic impacts on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the SBA to file *amicus* briefs in court proceedings involving an agency's alleged violation of the RFA.

In determining the scope or "universe" of the entities to be considered in an IRFA, NMFS generally includes only those entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, to permit preparation of a "factual basis" upon which to certify that the preferred alternative does not have the potential to result in "significant economic impacts on a substantial number of small entities" (as those terms are defined under RFA). Because, based on all available information, it is not possible to "certify" this outcome, should the proposed action be adopted, a formal IRFA has been prepared and is included in this package for Secretarial review.

### **1.3 What is required in an IRFA?**

Under 5 U.S.C., Section 603(b) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
  1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. The use of performance rather than design standards;
4. An exemption from coverage of the rule, or any part thereof, for such small entities.

#### **1.4 What is a small entity?**

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) and small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a “small business” as having the same meaning as “small business concern” which is defined under Section 3 of the Small Business Act. “Small business” or “small business concern” includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor or subcontractor is treated as a participant in a joint venture if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small non-profit organizations The RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

## 1.5 Why the action is being considered

The proposed action is the implementation of the Council’s 2006 harvest strategy choice for the federally managed groundfish fisheries in the BSAI management area in 2012 and 2013. This strategy determines annual harvest specifications in compliance with Federal regulations, the FMPs for the BSAI groundfish fishery, and the Magnuson-Stevens Act. The Secretary approves the harvest specifications based on the recommendations of the Council. As described in the EIS analysis prepared when the Council choose its strategy<sup>1</sup>, the action is:

Set TACs that fall within the range of ABCs recommended through the Council harvest specifications process and TACs recommended by the Council. Under this scenario,  $F$  is set equal to a constant fraction of  $maxF_{ABC}$ . The recommended fractions of  $maxF_{ABC}$  may vary among species or stocks, based on other considerations unique to each. This is the method for determining TACs that has been used in the past.<sup>2</sup>

The harvest strategies are applied to the best available scientific information to determine the harvest specifications, which are the annual limits on the amount of each species of fish, or of each group of species, that may be taken. Harvest specifications include TAC, their seasonal apportionments and allocations, and prohibited species catch (PSC). Groundfish harvests are controlled by the enforcement of TAC and PSC limits, apportionments of those limits among seasons and areas, and allocations of the limits among fishing sectors.

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<sup>1</sup> The EIS, and a relevant errata, are available on the NMFS Alaska Region’s web site at <http://www.fakr.noaa.gov/analyses/specs/eis/default.htm> . (NMFS 2001a, NMFS 2007b)

<sup>2</sup> This is the status quo, and preferred, alternative, before the Council and Secretary in 2006-07. At the time, this was Alternative 2. The significant alternatives to the proposed action (Alts. 1, 3, 4, and 5) are listed below, in Section 1.10 of this IRFA.

TACs set upper limits on total (retained and discarded) harvest limits for a fishing year. TACs are set for each “target species” and “other species” category defined in the FMPs or harvest specifications. TAC seasonal apportionments and allocations are specified by regulations at 50 CFR part 679.

Prohibited species include halibut, herring, salmon, steelhead, king crab, and Tanner crab. A target fishery that has caught the seasonal (or annual) PSC limit apportioned to an area, is closed in that area for the remainder of the season (or year). PSC limits are specified in the FMP or regulations. The Council apportions PSC limits among seasons and allocates PSC limits among target fisheries, following criteria in the Federal regulations.

The Council’s Groundfish Plan Teams use stock assessments to calculate biomass, OFLs, and ABCs, for each target species or species group for specified management areas of the exclusive economic zone off Alaska. OFLs and ABCs are published with the harvest specifications, and provide the foundation for the Council and NMFS to develop the TACs. OFL and ABC amounts reflect fishery science, applied in light of the requirements of the FMPs.

The TACs associated with the preferred harvest strategy are those adopted by the Council in October 2011. OFLs and ABCs for the species were based on recommendations prepared by the Council’s BSAI Plan Teams in August-September 2011, and reviewed and modified by the Council’s SSC in October 2011. The Council based its TAC recommendations on those of its AP, which were consistent with the SSC’s OFL and ABC recommendations.

The Federal regulations at 50 CFR part 679 provide specific constraints for the harvest specifications by establishing management measures that create the framework for the TAC apportionments and allocations. Specifically, the Federal regulations establish the general limitations, bycatch management, closures, seasons, gear limitations, and inseason adjustments.

Table 1 shows the specifications for 2011, with estimated 2011 catch through August 20, 2011, and the Council’s recommended specifications for 2012 and 2013.

Table 1. BSAI OFL, ABC, and TAC recommendations for 2012 and 2013.

Species	Area	2011 final			8/20/2011	2012 final			2012 proposed			2013 proposed		
		OFL	ABC	TAC	Catch	OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
Pollock	EBS	2,450,000	1,270,000	1,252,000	956,577	3,170,000	1,600,000	1,253,658	3,170,000	1,600,000	1,253,658	3,170,000	1,600,000	1,253,658
	AI	44,500	36,700	19,000	1,019	50,400	41,600	19,000	50,400	41,600	19,000	50,400	41,600	19,000
	Bogoslof	22,000	156	150	140	22,000	156	150	22,000	156	150	22,000	156	150
	Total	2,516,500	1,306,856	1,271,150	957,736	3,242,400	1,641,756	1,272,808	3,242,400	1,641,756	1,272,808	3,242,400	1,641,756	1,272,808
Pacific cod	BSAI	272,000	235,000	227,950	153,563	329,000	281,000	229,608	329,000	281,000	229,608	329,000	281,000	229,608
Sablefish	BS	3,360	2,850	2,850	434	3,080	2,610	2,610	3,080	2,610	2,610	3,080	2,610	2,610
	AI	2,250	1,900	1,900	566	2,060	1,740	1,740	2,060	1,740	1,740	2,060	1,740	1,740
	Total	5,610	4,750	4,750	1,000	5,140	4,350	4,350	5,140	4,350	4,350	5,140	4,350	4,350
Atka mackerel	EAI/BS	n/a	40,300	40,300	23,199	n/a	36,800	36,800	n/a	36,800	36,800	n/a	36,800	36,800
	CAI	n/a	24,000	11,280	7,314	n/a	21,900	10,293	n/a	21,900	10,293	n/a	21,900	10,293
	WAI	n/a	21,000	1,500	205	n/a	19,200	1,500	n/a	19,200	1,500	n/a	19,200	1,500
	Total	101,000	85,300	53,080	30,718	92,200	77,900	48,593	92,200	77,900	48,593	92,200	77,900	48,593
Yellowfin sole	BSAI	262,000	239,000	196,000	98,656	266,000	242,000	197,660	266,000	242,000	197,660	266,000	242,000	197,660
Rock sole	BSAI	248,000	224,000	85,000	56,891	243,000	219,000	85,000	243,000	219,000	85,000	243,000	219,000	85,000
Greenland turbot	BS	n/a	4,590	3,500	1,974	n/a	4,300	3,500	n/a	4,300	3,500	n/a	4,300	3,500
	AI	n/a	1,550	1,550	464	n/a	1,450	1,450	n/a	1,450	1,450	n/a	1,450	1,450
	Total	7,220	6,140	5,050	2,438	6,760	5,750	4,950	6,760	5,750	4,950	6,760	5,750	4,950
Arrowtooth flounder	BSAI	186,000	153,000	25,900	13,471	191,000	157,000	25,900	191,000	157,000	25,900	191,000	157,000	25,900
Kamchatka flounder	BSAI	23,600	17,700	17,700	8,060	23,600	17,700	17,700	23,600	17,700	17,700	23,600	17,700	17,700
Flathead sole	BSAI	83,300	69,300	41,548	9,515	82,100	68,300	41,548	82,100	68,300	41,548	82,100	68,300	41,548
Other flatfish	BSAI	19,500	14,500	3,000	2,779	19,500	14,500	3,000	19,500	14,500	3,000	19,500	14,500	3,000
Alaska plaice	BSAI	79,100	65,100	16,000	17,293	83,800	69,100	16,000	83,800	69,100	16,000	83,800	69,100	16,000
Pacific Ocean perch	BS	n/a	5,710	5,710	856	n/a	5,710	5,710	n/a	5,710	5,710	n/a	5,710	5,710
	EAI	n/a	5,660	5,660	3,698	n/a	5,660	5,660	n/a	5,660	5,660	n/a	5,660	5,660
	CAI	n/a	4,960	4,960	3,938	n/a	4,960	4,960	n/a	4,960	4,960	n/a	4,960	4,960
	WAI	n/a	8,370	8,370	8,181	n/a	8,370	8,370	n/a	8,370	8,370	n/a	8,370	8,370
	Total	36,300	24,700	24,700	16,673	34,300	24,700	24,700	34,300	24,700	24,700	34,300	24,700	24,700
Northern rockfish	BSAI	10,600	8,670	4,000	2,164	10,400	8,330	4,000	10,400	8,330	4,000	10,400	8,330	4,000
Shortraker rockfish	BSAI	524	393	393	236	524	393	393	524	393	393	524	393	393
Rougheye rockfish	BS/EAI	n/a	234	234	60	n/a	240	204	n/a	240	204	n/a	240	204
	CAI/WAI	n/a	220	220	71	n/a	225	191	n/a	225	191	n/a	225	191
	Total	549	454	454	131	563	465	395	563	465	395	563	465	395
Other rockfish	BS	n/a	710	500	220	n/a	710	500	n/a	710	500	n/a	710	500
	AI	n/a	570	500	402	n/a	570	500	n/a	570	500	n/a	570	500
	Total	1,700	1,280	1,000	622	1,700	1,280	1,000	1,700	1,280	1,000	1,700	1,280	1,000
Squid	BSAI	2,620	1,970	425	222	2,620	1,970	425	2,620	1,970	425	2,620	1,970	425
Skates	BSAI	37,800	31,500	16,500	15,883	37,200	31,000	16,500	37,200	31,000	16,500	37,200	31,000	16,500
Sharks	BSAI	1,360	1,020	50	107	1,360	1,020	50	1,360	1,020	50	1,360	1,020	50
Octopuses	BSAI	528	396	150	174	528	396	150	528	396	150	528	396	150
Sculpins	BSAI	58,300	43,700	5,200	4,028	58,300	43,700	5,200	58,300	43,700	5,200	58,300	43,700	5,200
Total	BSAI	3,954,111	2,534,509	1,999,780	1,392,289	4,731,995	2,911,385	1,999,739	4,731,995	2,911,385	1,999,739	4,731,995	2,911,385	1,999,739

Notes: Final 2011 and 2012 OFLs, ABCs, and TACs from the final 2011-2012 harvest specifications rule. 2011 Catch from the NMFS Catch Accounting System. 2012 and 2013 proposed OFLs and ABCs from the August-September GOA Groundfish Plan Team meeting. 2012-2013 TACs rolled over from the 2012 final TACs. These were the best TAC estimates available to NMFS prior to the Council's October meeting. This table will be modified after the October meeting and before publication of the proposed specifications, as necessary to take account of the Council's October decisions.



## **1.6 The objectives of, and the legal basis for, the proposed rule**

### *Objectives*

The purpose of the TACs adopted pursuant to the harvest strategy, is to provide for orderly and controlled commercial fishing for groundfish (including CDQ fishing), promote sustainable incomes to the fishing, fish processing, and support industries; support sustainable fishing communities, and provide sustainable flows of fish products to consumers. The harvest strategy balances groundfish harvest in the fishing year with ecosystem needs (such as target and non-target fish stocks, marine mammals, seabirds, and habitat). (NMFS 2007: 1-4) The objectives of the proposed action are to (1) allow commercial fishing for the groundfish stocks in the BSAI, (2) while protecting the long run health of the fish stocks, and the social and ecological values that those fish stocks provide.

The FMPs impose procedures for setting the harvest specifications. Of particular importance are the definitions of areas and stocks (Section 3.1), procedures for determination of harvest levels (Section 3.2), rules governing time and area restrictions (Section 3.5), and rules governing catch restrictions (Section 3.6).

### *Legal basis*

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 USC 1801, et seq.), the United States has exclusive fishery management authority over all marine fishery resources found within the exclusive economic zone (EEZ), which extends between 3 and 200 nautical miles from the baseline used to measure the territorial sea (NMFS, 2007).

The management of these marine resources is vested in the Secretary and in Regional Fishery Management Councils. In the Alaska region, the Council has the responsibility to prepare FMPs for the marine resources it finds require conservation and management and for submitting their recommendations to the Secretary. NMFS is charged with carrying out the federal mandates of the Department of Commerce with regard to marine fish. The Alaska Regional Office of NMFS and Alaska Fisheries Science Center (AFSC), research, draft, and support the management actions recommended by the Council, upon approval by the Secretary.

The Magnuson-Stevens Act requires that the FMPs specify the optimum yield from each fishery to provide the greatest benefit to the Nation, and must state how much of that optimum yield may be harvested in U.S. waters. The FMPs must also specify the level of fishing that would constitute overfishing. Using the framework of the FMPs and current information about the marine ecosystem (stock status, natural mortality rates, and oceanographic conditions), the Council annually recommends to the Secretary, total allowable catch (TAC) specifications, prohibited species catch (PSC) limits, and/or fishery bycatch allowances, based on biological and economic information provided by NMFS. The information includes determinations of acceptable biological catch (ABC) and overfishing level (OFL) amounts for each of the FMP established target species or species groups.

Pursuant to Magnuson-Stevens Act section 301, FMP and regulations promulgated to implement the FMP must be consistent with the national standards for fishery conservation and management. Upon approval by the Secretary, NMFS is charged with carrying out the Federal mandates of the Department of Commerce with regard to marine and anadromous fish.

The groundfish fisheries in the BSAI region of the EEZ off Alaska are managed under the FMP for Groundfish of the BSAI (Council, 2010). Actions taken to amend FMPs or implement other regulations governing these fisheries must meet the requirements of Federal laws and regulations.

TACs adopted pursuant to the harvest strategy meet the need for the management of the groundfish fisheries and the conservation of marine resources, as required by the Magnuson-Stevens Act and as described in the management policy, goals, and objectives in the FMPs, and comply with the Magnuson-Stevens Act and other relevant laws, the groundfish FMPs, and applicable Federal regulations.

TACs adopted pursuant to the harvest strategy meet the Magnuson-Stevens Act's ten national standards for fisheries conservation and management. Perhaps the most influential of these is National Standard 1, which states "conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the United States fishing industry" (16 U.S.C. 1851).

TACs adopted pursuant to the harvest strategy comply with provisions of the groundfish FMPs. The FMPs contain management objectives to guide fishery management decision-making. These objectives were embodied in the FMPs by Amendments 81 and 74, respectively (69 FR 31091, June 2, 2004, approved August 26, 2004). The environmental impacts of managing fisheries to meet these objectives were evaluated in the Alaska Groundfish Fisheries Programmatic Supplemental EIS (PSEIS) (NMFS-AKR 2004).

### **1.7 Number and description of small entities directly regulated by the proposed action**

The entities directly regulated by this action are those that receive allocations of groundfish in the EEZ of the BSAI, and in parallel fisheries within State of Alaska waters, during the annual specifications process. These directly regulated entities include the groundfish catcher vessels and groundfish catcher/processor vessels active in these areas. Direct allocations of groundfish are also made to certain organizations, including the CDQ groups, the American Fisheries Act (AFA) catcher-processor and inshore processor sectors, the Aleut Corporation, and the Amendment 80 ("Head-and-gut") cooperative, and the Rockfish Pilot Project cooperatives. These entities are therefore also considered directly regulated.

Business firms, non-profit entities, and governments are the appropriate entities for consideration in a regulatory flexibility analysis. Following the practice in other analyses in the Alaska Region, fishing vessels have been used as a proxy for business firms when considering catcher vessels. This is a practical response to the relative lack of information currently available on the ownership of multiple vessels by individual firms. This approach leads to overestimates of the numbers of firms, since several vessels may be owned by a single firm, and to an overestimate of the relative proportion of small firms, since more of the smaller vessels might have been treated as large if multiple ownership was addressed, while no large entities would be moved to the small category. The estimates of the number, and gross revenues of, small and large vessels in Tables 2 and 3 are based on this approach. It is possible, however, to take account of American Fisheries Act (AFA) inshore cooperative and GOA rockfish cooperative affiliations among catcher vessels, and this is done below.

Information about firm-level affiliations is more readily available for the smaller number of catcher/processors. For these vessels, information on firm ownership, and cooperative affiliations, has been used when this information is readily available in the public domain, for example, on corporate and cooperative web sites, or on Restricted Access Management (RAM) licensing reports posted to the web. However, NMFS has not conducted an audit of the information. Therefore, these are estimates of the

numbers of small entities, not the results of a detailed evaluation of all possible records, or a survey of firms. The current approach was chosen as a cost effective one, that would be minimally intrusive to regulated entities. Aside from firm affiliations, generally obtained from firm or association web sites listing vessel ownership, the key affiliations considered are among vessels in a fishery cooperative. Cooperatives formed pursuant to Secretarial regulation, such as the AFA and Amendment 80 trawl cooperatives are considered, as well as the private voluntary cooperative recently formed among the BSAI freezer longline vessel operators.

Tables 2 and 3 below summarize information on the numbers of small catcher vessels and catcher/processors, and on average gross revenues for small vessels.<sup>3</sup> Tables show the counts of vessels falling into each category, by area and gear type, and the average gross revenues for these different classifications of vessels. These tables do not take account of firm or cooperative affiliations.

Table 2 shows that, in 2009, there were 191 individual catcher vessels with revenues less than or equal to \$4 million. Many of these vessels are members in AFA inshore pollock cooperatives, or in GOA rockfish cooperatives. Vessels that participate in these cooperatives are considered to be large entities within the meaning of the RFA. After accounting for membership in these cooperatives, there are an estimated 103 small catcher vessels remaining in the BSAI. These vessels had average gross revenues of \$975,000, and median gross revenues of \$751,000. The 25<sup>th</sup> percentile of gross revenues was \$287,000 and the 75<sup>th</sup> percentile was \$1.585 million.

Table 2 indicates that in 2009, 18 catcher/processors grossed less than \$4 million. Some of these vessels were affiliated through ownership by the same business firm. NMFS estimates that these vessels were owned by 10 separate firms. Vessels in this group were also affiliated through membership in three cooperatives (the AFA catcher/processor cooperative, the Amendment 80 Best Use cooperative, or the Freezer Longline Conservation Cooperative). After taking account of firm and cooperative affiliations, NMFS estimates that these 18 vessels only represent two small entities.

Table 2. Number of BSAI groundfish vessels that caught and processed less than \$4.0 million ex-vessel value or product value of groundfish and other species by area, vessel type and gear, 2005-2009.

Year	Gear class	Catcher vessels (Number of vessels)	Catcher/processors (Number of vessels)	All vessels (Number of vessels)
2005	All gear	215	11	226
	Hook & line	56	8	64
	Pot	71	1	72
	Trawl	97	2	99
2006	All gear	199	8	207
	Hook & line	46	5	51
	Pot	69	2	71
	Trawl	93	1	94
2007	All gear	206	6	212
	Hook & line	36	4	40
	Pot	69	2	71
	Trawl	103	0	103
2008	All gear	192	11	203
	Hook & line	46	7	53

<sup>3</sup> As discussed in Section 1.4, fishing vessels, both catcher vessels and catcher/processors, are considered small, for RFA purposes, if their annual gross receipts, from all their economic activities combined, as well as those of any and all their affiliates anywhere in the world, (including fishing in Federally managed non-groundfish fisheries, and in Alaska managed fisheries), are less than or equal to \$4.0 million in a year.

	Pot	61	3	64
	Trawl	91	2	93
2009	All gear	191	18	209
	Hook & line	38	15	53
	Pot	51	3	54
	Trawl	107	2	109

Notes: Includes only vessels that fished part of federal groundfish TACs. Determination that a vessel was below the \$4.0 million threshold was based on total revenue from catching or processing all species, not just groundfish. Some vessels used more than one gear type on the BSAI during a year; gear totals show number using each gear type, all gear estimates are unique vessels.  
Source: Hiatt, *et al.* Table 37, page 74.

Table 3. Average revenue of BSAI groundfish vessels that caught and processed less than \$4.0 million ex-vessel value or product value of groundfish and other species by area, vessel type and gear, 2005-2009 (millions of dollars)

Year	Gear class	Catcher vessels (Millions of \$)	Catcher/processors (Millions of \$)	All vessels (Millions of \$)
2005	All gear	1.31	2.96	1.37
	Hook & line	0.52	2.96	0.82
	Pot	1.08	-	1.08
	Trawl	1.88	-	1.88
2006	All gear	1.44	3.22	1.48
	Hook & line	0.78	3.22	1.02
	Pot	1.05	-	1.05
	Trawl	2.00	-	2.00
2007	All gear	1.53	2.31	1.55
	Hook & line	0.70	2.31	0.86
	Pot	1.41	-	1.41
	Trawl	1.91	-	1.91
2008	All gear	1.68	2.53	1.71
	Hook & line	0.58	2.53	0.83
	Pot	1.77	-	1.77
	Trawl	2.12	-	2.12
2009	All gear	1.28	2.53	1.37
	Hook & line	0.60	2.53	1.15
	Pot	1.37	-	1.37
	Trawl	1.49	-	1.49

Notes: Includes only vessels that fished part of federal groundfish TACs. Categories with fewer than four vessels are not reported. Averages are obtained by adding the total revenues, across all areas and gear types, of all the vessels in the category, and dividing that sum by the number of vessels in the category. Averages include revenue realized from catching or processing all species, not just groundfish. Catcher vessel revenues reported at the ex-vessel level, catcher/processor revenues reported at the first wholesale level.  
Source: Hiatt, *et al.* Table 39, page 76.

Through the Community Development Quota (CDQ) program, the Council and NMFS allocate a portion of the BSAI groundfish TACs, and prohibited species halibut and crab PSC limits, to 65 eligible Western Alaska communities. These communities work through six non-profit CDQ Groups, and are required to use the proceeds from the CDQ allocations to start or support activities that will result in ongoing, regionally based, commercial fishery or related businesses. The CDQ groups receive allocations through the specifications process, and are directly regulated by this action, but the 65 communities are not directly regulated. Because they are nonprofit entities, the CDQ groups are considered small entities for RFA purposes.

While the AFA and Amendment 80 fisheries cooperatives are directly regulated, since they receive allocations of TAC through the specifications process, the Freezer Longline Conservation Cooperative (FLCC), a voluntary private cooperative which became fully effective in 2010, is not considered to be directly regulated. The FLCC runs a catch sharing program among its members, but it does not, itself, receive an allocation under specifications. An allocation is made to the freezer longline sector which the cooperative members allocate among themselves via the FLCC. The AFA and Amendment 80 cooperatives are large entities, since they are affiliated with firms with joint revenues over \$4 million.

In 2011, there were seven inshore AFA cooperatives, a mothership cooperative, and a catcher processor cooperative. In 2011, there were two Amendment 80 cooperatives, the Alaska Seafood Cooperative (formerly the Best Use Cooperative) and the Alaska Groundfish Cooperative.<sup>4</sup>

The Aleut Corporation is an Alaska Native Corporation that receives an allocation of pollock in the Aleutian Islands (AI). The Aleut Corporation is a holding company and evaluated according to the SBA criteria at 13 CFR 121.201, using a \$6 million gross annual receipts threshold for “Offices of Other Holding Companies.” Aleut Corporation revenues are believed to exceed this threshold, and the Aleut Corporation is considered to be a large entity. This follows the analysis in the RFA certification for BSAI FMP Amendment 82. (NMFS-AKR, 2005: 413).

## **1.8 Recordkeeping and reporting requirements**

The IRFA should include “a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record...” This action does not modify recordkeeping or reporting requirements.

## **1.9 Federal rules that may duplicate, overlap, or conflict with proposed action**

An IRFA should include “An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule...” This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

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<sup>4</sup> The count of 2011 AFA cooperatives was obtained from the NMFS Alaska Region Restricted Access Management (RAM) web site: [http://alaskafisheries.noaa.gov/ram/daily/afa\\_ic.htm](http://alaskafisheries.noaa.gov/ram/daily/afa_ic.htm). (accessed July 27, 2011). The Amendment 80 cooperatives were obtained from the RAM web site [http://alaskafisheries.noaa.gov/ram/daily/A80\\_coop\\_list-en-us.pdf](http://alaskafisheries.noaa.gov/ram/daily/A80_coop_list-en-us.pdf) (accessed July 27, 2011).

## 1.10 Description of significant alternatives and their effects on small entities

An IRFA should include “A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant (implicitly adverse) economic impact of the proposed rule on small entities.” This section provides a general descriptive statement regarding the effects of the alternatives on small entities, because quantification is not practical or reliable at this time.

The significant alternatives were those considered as alternative harvest strategies when the Council selected its preferred harvest strategy in December 2006. These included the following:

- Alternative 1: Set TACs to produce fishing mortality rates,  $F$ , that are equal to  $maxF_{ABC}$ , unless the sum of the TACs is constrained by the OY established in the FMPs. This is equivalent to setting TACs to produce harvest levels equal to the maximum permissible ABCs, as constrained by OY. The term “ $maxF_{ABC}$ ” refers to the maximum permissible value of  $F_{ABC}$  under Amendment 56 to the groundfish FMPs. Historically, the TAC has been set at or below the ABC, therefore, this alternative represents a likely upper limit for setting the TAC within the OY and ABC limits.
- Alternative 3: For species in Tiers 1, 2, and 3, set TAC to produce  $F$  equal to the most recent 5-year average actual  $F$ . For species in Tiers 4, 5, and 6, set TAC equal to the most recent 5-year average actual catch. For stocks with a high level of scientific information, TACs would be set to produce harvest levels equal to the most recent five year average actual fishing mortality rates. For stocks with insufficient scientific information, TACs would be set equal to the most recent five year average actual catch. This alternative recognizes that for some stocks, catches may fall well below ABCs, and recent average  $F$  may provide a better indicator of actual  $F$  than  $F_{ABC}$  does.
- Alternative 4: (1) Set TACs for rockfish species in Tier 3 at  $F_{75\%}$ . Set TACs for rockfish species in Tier 5 at  $F=0.5M$ . Set spatially explicit TACs for shortraker and roughey rockfish in the BSAI. (2) Taking the rockfish TACs as calculated above, reduce all other TACs by a proportion that does not vary across species, so that the sum of all TACs, including rockfish TACs, is equal to the lower bound of the area OY (1,400,000 mt in the BSAI and 116,000 mt in the GOA). This alternative sets conservative and spatially explicit TACs for rockfish species that are long-lived and late to mature and sets conservative TACs for the other groundfish species.
- Alternative 5: Set TACs at zero.

Alternative 2, which was described in Section 1.5, is the preferred alternative chosen by the Council.

Alternatives 1, 3, 4, and 5 do not both meet the objectives of this action, and have a smaller impact on small entities. All of them were rejected as harvest strategies by the Council in 2006, and by the Secretary in 2007.

Alternative 1 would lead to TACs whose sum exceeds the fishery optimum yield, which is set out in statute and the FMP. As shown in Table 1, the sum of ABCs in 2012 and in 2013 would be about 2,900,000 metric tons, in excess of the 2,000,000 metric ton optimum yield for the BSAI. This would be inconsistent with the objectives of this action, in that it would violate statutory law and the FMP for the BSAI groundfish fishery, which both set a two million metric ton maximum harvest for BSAI groundfish.

Alternative 3 selects harvest rates based on the most recent five years’ worth of harvest rates (for species

in Tiers 1 to 3) or for the most recent five years' worth of harvests (for species in tiers 4 to 6). This alternative is also inconsistent with the objectives of this action, because it does not take account of the most recent biological information for this fishery.

Alternative 4 would lead to significantly lower harvests of all species in order to reduce TACs from the upper end of the optimum yield range in the BSAI, to its lower end. This would lead to significant reductions in harvests of species harvested by small entities. While reductions of this size would be associated with offsetting price increases, the size of these increases is very uncertain, and there can be no confidence that they would be sufficient to offset the volume decreases and leave revenues unchanged. Thus, this action has a detrimental impact on small entities.

Alternative 5, which sets all harvests equal to zero, while it may also address conservation issues, would have a significant adverse impact on small entities.

The proposed specifications are not expected to have adverse impacts on small entities compared to a failure to adopt specifications. A failure to adopt new specifications for 2012-2013, means the fishery would operate under the current 2012 specifications in 2012, and fishing would not be authorized in 2013. The proposed specifications for 2012 are equal to the actual current specifications for 2012, so failure to adopt specifications would mean no impact in this case. A failure to adopt specifications for 2013 could mean that fishing would not be authorized in the early months of 2013, pending final action on 2013-2014 specifications. This would have an adverse impact on small entities intending to fish early in the year.

Similarly, the 2012-2013 specifications should have little adverse impact on small entities compared to the 2011 specifications, using the aggregate tonnage harvested as a metric. In 2011, the aggregate TAC in the BSAI was 1,999,780 metric tons; under the proposed specifications the aggregate TACs in 2012 and 2013 are expected to be 1,999,739 metric tons. The reduction in aggregate tonnage is relatively small.

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