

DRAFT FOR INITIAL COUNCIL REVIEW

**GOA Groundfish Specifications
for 2012-2013**

Initial Regulatory Flexibility Analysis

September 2011

Lead Agency	National Oceanic and Atmospheric Administration National Marine Fisheries Service Alaska Regional Office Juneau, Alaska
Responsible Official	Dr. James Balsiger Regional Administrator, Alaska Regional Office
For Further Information Contact	Ben Muse National Marine Fisheries Service P.O. Box 21668 Juneau, AK 99802 907-586-7228

Abstract: This document contains an Initial Regulatory Flexibility Analysis (IRFA) for the groundfish specifications in the Gulf of Alaska 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 Gulf of Alaska Groundfish 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 specifications pursuant to the harvest strategy for the groundfish fishery in the Gulf of Alaska (GOA) 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 Plan (FMP) for the GOA, 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 GOA 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 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 GOA 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 GOA management area in 2012 and 2013. This strategy determines annual harvest specifications in compliance with Federal regulations, the FMP for the GOA 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 strategy¹, 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.²

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 the TACs, 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.

¹ 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)

² 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 GOA 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, which follows, 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. GOA OFL, ABC, and TAC recommendations for 2012 and 2013.

Species	Area	2011				2012 final			2012 proposed			2013		
		OFL	ABC	TAC	Catch (as of 8-20-11)	OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
Pollock	W(61)		27,031	27,031	8,560		34,932	34,932		34,932	34,932		34,932	34,932
	C(62)		37,365	37,365	27,864		48,293	48,293		48,293	48,293		48,293	48,293
	C(63)		20,235	20,235	7,113		26,155	26,155		26,155	26,155		26,155	26,155
	WYAK		2,339	2,339	2,273		3,024	3,024		3,024	3,024		3,024	3,024
	Subtotal	118,030	86,970	86,970	45,810	151,030	112,404	112,404	151,030	112,404	112,404	151,030	112,404	112,404
	SEO	12,326	9,245	9,245	0	12,326	9,245	9,245	12,326	9,245	9,245	12,326	9,245	9,245
	Total	130,356	96,215	96,215	45,810	163,356	121,649	121,649	163,356	121,649	121,649	163,356	121,649	121,649
Pacific cod	W		30,380	22,785	14,481		27,370	20,528		27,370	20,528		27,370	20,528
	C		53,816	40,362	22,503		48,484	36,362		48,484	36,362		48,484	36,362
	E		2,604	1,953	667		2,346	1,760		2,346	1,760		2,346	1,760
	Total	102,600	86,800	65,100	37,651	92,300	78,200	58,650	92,300	78,200	58,650	92,300	78,200	58,650
Sablefish	W		1,620	1,620	1,206		1,484	1,484		1,484	1,484		1,484	1,484
	C		4,740	4,740	4,059		4,343	4,343		4,343	4,343		4,343	4,343
	WYK		1,990	1,990	1,633		1,818	1,818		1,818	1,818		1,818	1,818
	SEO		2,940	2,940	2,345		2,700	2,700		2,700	2,700		2,700	2,700
	E subtotal		4,930	4,930			4,518	4,518		4,518	4,518		4,518	4,518
	Total	13,340	11,290	11,290	9,243	12,232	10,345	10,345	12,232	10,345	10,345	12,232	10,345	10,345
Shallow water flatfish	W		23,681	4,500	324		23,681	4,500		23,681	4,500		23,681	4,500
	C		29,999	13,000	2,323		29,999	13,000		29,999	13,000		29,999	13,000
	WYAK		1,228	1,228	0		1,228	1,228		1,228	1,228		1,228	1,228
	SEO		1,334	1,334	1		1,334	1,334		1,334	1,334		1,334	1,334
	Total	67,768	56,242	20,062	2,648	67,768	56,242	20,062	67,768	56,242	20,062	67,768	56,242	20,062
Deep water flatfish	W		529	529	10		541	541		541	541		541	541
	C		2,919	2,919	335		3,004	3,004		3,004	3,004		3,004	3,004
	WYAK		2,083	2,083	6		2,144	2,144		2,144	2,144		2,144	2,144
	SEO		774	774	1		797	797		797	797		797	797
	Total	7,823	6,305	6,305	352	8,046	6,486	6,486	8,046	6,486	6,486	8,046	6,486	6,486
Rex sole	W		1,517	1,517	104		1,490	1,490		1,490	1,490		1,490	1,490
	C		6,294	6,294	2,321		6,184	6,184		6,184	6,184		6,184	6,184
	WYAK		868	868	1		853	853		853	853		853	853
	SEO		886	886	0		889	889		889	889		889	889
	Total	12,499	9,565	9,565	2,426	12,279	9,396	9,396	12,279	9,396	9,396	12,279	9,396	9,396
Arrowtooth flounder	W		34,317	8,000	1,183		33,975	8,000		33,975	8,000		33,975	8,000
	C		144,559	30,000	15,423		143,119	30,000		143,119	30,000		143,119	30,000
	WYAK		22,551	2,500	144		22,327	2,500		22,327	2,500		22,327	2,500
	SEO		11,723	2,500	62		11,606	2,500		11,606	2,500		11,606	2,500

	Total	251,068	213,150	43,000	16,812	248,576	211,027	43,000	248,576	211,027	43,000	248,576	211,027	43,000
Flathead sole	W		17,442	2,000	324		17,960	2,000		17,960	2,000		17,960	2,000
	C		28,104	5,000	1,758		28,938	5,000		28,938	5,000		28,938	5,000
	WYAK		2,064	2,064	0		2,125	2,125		2,125	2,125		2,125	2,125
	SEO		1,523	1,523	0		1,568	1,568		1,568	1,568		1,568	1,568
	Total	61,412	49,133	10,587	2,082	63,202	50,591	10,693	63,202	50,591	10,693	63,202	50,591	10,693
Pacific ocean perch	W	3,221	2,798	2,798	1,809	3,068	2,665	2,665	3,068	2,665	2,665	3,068	2,665	2,665
	C	11,948	10,379	10,379	9,007	11,379	9,884	9,884	11,379	9,884	9,884	11,379	9,884	9,884
	WYAK		1,937	1,937	1,870		1,845	1,845		1,845	1,845		1,845	1,845
	SEO		1,883	1,883	0		1,793	1,793		1,793	1,793		1,793	1,793
	E subtotal	4,397	3,820	3,820		4,188	3,638	3,638	4,188	3,638	3,638	4,188	3,638	3,638
Total	19,566	16,997	16,997	12,686	18,635	16,187	16,187	18,635	16,187	16,187	18,635	16,187	16,187	
Northern rockfish	W		2,573	2,573	1,734		2,446	2,446		2,446	2,446		2,446	2,446
	C		2,281	2,281	1,528		2,168	2,168		2,168	2,168		2,168	2,168
	E		0	0	0		0	0		0	0		0	0
	Total	5,784	4,854	4,854	3,262	5,498	4,614	4,614	5,498	4,614	4,614	5,498	4,614	4,614
Shortraker rockfish	W		134	134	78		134	134		134	134		134	134
	C		325	325	158		325	325		325	325		325	325
	E		455	455	208		455	455		455	455		455	455
	Total	1,219	914	914	444	1,219	914	914	1,219	914	914	1,219	914	914
Other slope rockfish	W		212	212	273		212	212		225	225		225	225
	C		507	507	320		507	507		573	573		573	573
	WYAK		276	276	180		275	275		284	284		284	284
	SEO		2,757	200	14		2,757	200		2,771	200		2,771	200
	Total	4,881	3,752	1,195	787	4,881	3,751	1,194	5,017	3,853	1,282	5,017	3,853	1,282
Pelagic shelf rockfish	W		611	611	363		570	570		557	557		557	557
	C		3,052	3,052	1,963		2,850	2,850		2,784	2,784		2,784	2,784
	WYAK		407	407	58		380	380		371	371		371	371
	SEO		684	684	1		638	638		624	624		624	624
	Total	5,570	4,754	4,754	2,385	5,387	4,438	4,438	5,251	4,336	4,336	5,251	4,336	4,336
Rougheye	W		81	81	26		81	81		81	81		81	81
	C		868	868	341		868	868		868	868		868	868
	E		363	363	128		363	363		363	363		363	363
	Total	1,579	1,312	1,312	495	1,579	1,312	1,312	1,579	1,312	1,312	1,579	1,312	1,312
Demersal shelf rockfish	SEO	479	300	300		479	300	300	479	300	300	479	300	300
Thornyhead rockfish	W		425	425	140		425	425		425	425		425	425
	C		637	637	267		637	637		637	637		637	637
	E		708	708	131		708	708		708	708		708	708
	Total	2,360	1,770	1,770	538	2,360	1,770	1,770	2,360	1,770	1,770	2,360	1,770	1,770
Atka	GW	6,200	4,700	2,000	1,571	6,200	4,700	2,000	6,200	4,700	2,000	6,200	4,700	2,000

mackerel														
Big skate	W		598	598	44		598	598		598	598		598	598
	C		2,049	2,049	1,373		2,049	2,049		2,049	2,049		2,049	2,049
	E		681	681	94		681	681		681	681		681	681
	Total	4,438	3,328	3,328	1,511	4,438	3,328	3,328	4,438	3,328	3,328	4,438	3,328	3,328
Longnose skate	W		81	81	22		81	81		81	81		81	81
	C		2,009	2,009	585		2,009	2,009		2,009	2,009		2,009	2,009
	E		762	762	56		762	762		762	762		762	762
	Total	3,803	2,852	2,852	663	3,803	2,852	2,852	3,803	2,852	2,852	3,803	2,852	2,852
Other skates	GW	2,791	2,093	2,093	612	2,791	2,093	2,093	2,791	2,093	2,093	2,791	2,093	2,093
Squids	GW	1,530	1,148	1,148	223	1,530	1,148	1,148	1,530	1,148	1,148	1,530	1,148	1,148
Sharks	GW	8,263	6,197	6,197	368	8,263	6,197	6,197	8,263	6,197	6,197	8,263	6,197	6,197
Octopi	GW	1,273	954	954	247	1,272	954	954	1,272	954	954	1,272	954	954
Sculpins	GW	7,328	5,496	5,496	547	7,328	5,496	5,496	7,328	5,496	5,496	7,328	5,496	5,496
Total	GOA	723,930	590,121	318,288	143,435	743,422	603,990	335,078	743,422	603,990	335,064	743,422	603,990	335,064

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 (with minor adjustments for the changes made by the plan team to the Pelagic shelf rockfish and Other slope rockfish ABCs). 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 GOA, (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 GOA region of the EEZ off Alaska are managed under the FMP for Groundfish of the GOA (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 GOA, 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 Rockfish pilot program cooperatives. These entities are therefore also considered directly regulated.

Small 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.³ 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 660 individual catcher vessels with revenues less than or equal to \$4 million. Some of these vessels are members of AFA inshore pollock cooperatives, or of 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 627 small catcher vessels remaining in the GOA. These vessels had average gross revenues of about \$413,000, and median gross revenues of \$250,000. The 25th percentile of gross revenues was \$90,000 and the 75th percentile was \$600,000.

Table 2 indicates that in 2009, 9 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 8 separate firms. Vessels in this group were also affiliated through membership in two cooperatives (the Amendment 80 Best Use cooperative and the Freezer Longline Conservation Cooperative). After taking account of firm and cooperative affiliations, NMFS estimates that these 9 vessels represent four small entities.

Table 2. Number of GOA 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	847	8	855
	Hook & line	679	4	683
	Pot	151	1	152
	Trawl	78	3	81
2006	All gear	710	5	715
	Hook & line	536	4	540
	Pot	145	0	145
	Trawl	74	1	75
2007	All gear	646	3	649
	Hook & line	473	2	475
	Pot	136	1	137
	Trawl	72	0	72
2008	All gear	700	5	705
	Hook & line	522	4	526
	Pot	140	0	140
	Trawl	73	1	74
2009	All gear	660	9	669
	Hook & line	510	6	516
	Pot	123	1	124
	Trawl	71	2	73

Notes: Includes only vessels that fished part of federal groundfish TACs. Determination that a vessel was below the \$4.0 million threshold was

³ 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.

based on total revenue from catching or processing all species, not just groundfish. Some vessels used more than one gear type in the GOA 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 GOA 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	.42	2.38	.43
	Hook & line	.35	2.38	.36
	Pot	.53	-	.53
	Trawl	1.00	-	1.00
2006	All gear	.53	2.94	.54
	Hook & line	.45	2.94	.47
	Pot	.61	-	.61
	Trawl	1.12	-	1.12
2007	All gear	.63	-	.63
	Hook & line	.54	-	.54
	Pot	.76	-	.76
	Trawl	1.25	-	1.25
2008	All gear	.63	1.53	.64
	Hook & line	.5	1.53	.51
	Pot	.86	-	.86
	Trawl	1.48	-	1.48
2009	All gear	.44	2.49	.46
	Hook & line	.39	2.49	.42
	Pot	.55	-	.55
	Trawl	.84	-	.84

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.

The Rockfish Pilot Program is a 5-year pilot project effective from 2007 through 2011 which permits harvesters to form voluntary cooperatives and receive an exclusive harvest privilege to groundfish species in the Central GOA. Catch history is allocated as rockfish quota share (QS) based on vessels with landings of primary rockfish species (northern rockfish, pelagic shelf rockfish, and Pacific ocean perch) that gave rise to limited licenses (LLPs). (NMFS n.d.)

The number of rockfish program cooperatives can change from year to year. In 2010 there were 8 separate cooperatives (NMFS 2011b). The Rockfish Pilot Program cooperatives are directly regulated, since they receive allocations of TAC through the specifications process. The cooperatives are large entities, since they are affiliated with firms with joint revenues over \$4 million.

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.

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 rougheye rockfish in the GOA. (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 GOA 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: (No Action) Set TACs at zero. This ‘no action’ alternative does not reflect the status quo. This alternative is outside the scope of this action, but is necessary because the CEQ regulations require the evaluation of a no action alternative.

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 selects harvest rates that will allow fishermen to harvest stocks at the level of ABCs, unless total harvests were constrained by the upper bound of the GOA OY of 800,000 metric tons. As shown in Table 1, the sum of ABCs in 2012 and in 2013 would be about 603,990 metric tons, which falls below the

upper bound of the optimum yield range. However, the sum of TACs is about 335,078 metric tons, which is substantially below the sum of the ABCs.

For many species, such as pollock, Pacific cod⁴, sablefish, and rockfish, TACs are set equal to ABCs. However, there are other fisheries where historical catches have rarely if ever approached current ABC levels. Important trawl fisheries in the GOA catch halibut PSC, and are constrained by hard caps on the allowable halibut PSC. These caps routinely force the closure of trawl fisheries before they have harvested the available ABC. Thus, actual harvests of groundfish in the GOA routinely fall short of ABCs, and the TACs simply reflect this normal relationship. This is particularly the case for Arrowtooth flounder, flathead sole, and shallow water flatfish. These three species together account for about 91 percent of the difference between the aggregate ABC and aggregate TAC in the current 2012 GOA specifications (“2012 final” in Table 1). Thus, because industry would not be able to harvest these species at ABC levels, the Council’s decision to set TACs at levels commensurate with expected fishery harvests does not create a significant economic impact on small entities.

Alternative 3 selects harvest rates based on the most recent five years of harvest rates (for species in Tiers 1 to 3) or for the most recent five years 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 GOA, to its lower end of 116,000 metric tons. Overall this would reduce 2012 TACs by about 81 percent. 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. There are close substitutes for GOA groundfish species available in significant quantities from the Bering Sea and Aleutian Islands. While production declines in the GOA would undoubtedly be associated with significant price increases in the GOA, these increases would still be constrained by production of substitutes, and are very unlikely to offset revenue declines from smaller production. 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. With one exception (discussed in the next paragraph), 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.

The exception alluded to above is that in the proposed specifications, yellowtail and widow rockfish have been moved from the pelagic shelf rockfish (PSR) species group, and grouped with the other slope rockfish species group. This has been done to leave dusky rockfish alone in the pelagic shelf category. Dusky dominate the PSR category and supports a valuable fishery in the Central GOA. Dusky rockfish have been assessed with an age-structured model and are a Tier 3a species, unlike yellowtail and widow

⁴ GOA Pacific cod TACs are actually smaller than the GOA ABCs, but only because of a set-aside for a state Pacific cod fishery which is defined as a portion of the ABC.

rockfish, which are Tier 5 species. This separation allows managers to treat Dusky rockfish like other rockfish species Tier 3a species with age-structured models and to have an OFL and ABC specific to this species. A discussion paper reviewing this action found that this management reorganization would have no economic impact on commercial fishermen in the GOA because the PSR fishery rarely harvested the TAC, so that a reduction in TACs associated with the shift in species would be inconsequential. The paper also concluded that it would not have an adverse impact on participants in the reauthorized Central Gulf of Alaska Rockfish Program (GOA FMP Amendment 88). The action has the effect of increasing the OFL and ABC for other slope rockfish. (Clausen et. al. 2011: 4) Thus, this action is not expected to have an adverse impact on small entities.

The 2012-2013 specifications should also 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 GOA was 318,288 metric tons; under the proposed specifications the aggregate TACs in 2012 and 2013 are expected to be 335,078 metric tons. The reduction in aggregate tonnage is relatively small.

2 Contributors

Ben Muse, Ph.D. Industry Economist. Sustainable Fisheries Division, National Marine Fisheries Service, Alaska Regional Office. Juneau, Alaska.

Lewis Queirolo, Ph.D. Regional Economist. National Marine Fisheries Service, Alaska Regional Office, Camano Island, Washington.

3 Persons Consulted

Obren Davis. Sustainable Fisheries Division, National Marine Fisheries Service, Alaska Regional Office. Juneau, Alaska.

Mary Furuness. Sustainable Fisheries Division, National Marine Fisheries Service, Alaska Regional Office. Juneau, Alaska.

Tom Pearson. Sustainable Fisheries Division, National Marine Fisheries Service, Alaska Regional Office. Kodiak, Alaska.

Maura Sullivan. NOAA Office of General Counsel, Alaska Regional Office. Juneau, Alaska.

Steve Whitney. Sustainable Fisheries Division, National Marine Fisheries Service, Alaska Regional Office. Juneau, Alaska.

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