

Bering Sea and Aleutian Islands Groundfish Specifications for 2014–2015

Final Regulatory Flexibility Analysis

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Abstract: This document contains a Final Regulatory Flexibility Analysis (FRFA) for the groundfish harvest specifications in the Bering Sea and Aleutian Islands for 2014 and 2015. This FRFA evaluates the potential adverse economic impacts on directly regulated small entities of alternative proposed harvest specifications for the groundfish fisheries managed under the North Pacific Fishery Management Council's Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. This FRFA 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).

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1 Final Regulatory Flexibility Analysis

1.1 Introduction

The action under consideration is adoption of harvest specifications pursuant to the strategy to govern the harvest of groundfish in the Bering Sea and Aleutian Islands (BSAI) management area 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 BSAI Groundfish Plan Team, and its Scientific and Statistical Committee (SSC), and TACs recommended by the Council. This action is taken in accordance with the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) (Council 2012), recommended by the Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (NMFS 2007c).

The preliminary survey information and analysis were evaluated by the Council's BSAI Groundfish Plan Team at its meeting in Seattle, Washington, September 10 through September 13, 2013. The Plan Team recommended 2014 and 2015 overfishing levels (OFLs) and ABCs for the species included in the BSAI FMP. The Plan Team's recommendations were reviewed by the SSC at the Council's October 2013 meeting in Anchorage, Alaska. The SSC recommended species OFLs and ABCs, which were adopted by the Council. In addition, the Council, with input from its SSC, its industry Advisory Panel (AP), and following public testimony, adopted recommendations for TACs for the individual species. These recommendations were incorporated into the proposed harvest specifications published by the Secretary of Commerce (Secretary) on December 10, 2013 (78 *FR* 74063).

During the Fall of 2013, Alaska Fishery Science Center (AFSC) analysts updated their models, and their OFL and ABC recommendations, in light of further analysis of information collected from fishery surveys in the summer of 2013, and information on fishery harvests in calendar year 2013. The Council's BSAI Plan Team met again from November 18 through 22, 2013, to review the updated analyses, and revise its 2014 and 2015 OFL and ABC recommendations, as necessary. The Council, SSC, and AP reviewed the updated Plan Team recommendations at the Council's December 2013 meeting in Anchorage, and the Council made its final OFL, ABC, or TAC recommendations at that time. This Final Regulatory Flexibility Analysis (FRFA) is based on the Council's final recommendations.

This Final Regulatory Flexibility Analysis (FRFA) addresses 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

1.2 The purpose of a FRFA

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

¹ National Marine Fisheries Services (2007d) provides current NOAA Fisheries guidance for preparation of an FRFA; Queirolo (2013) provides a more accessible overview.

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 SBREFA. 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 Small Business Administration (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 FRFA, 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 FRFA has been prepared and is included in this package for Secretarial review.

1.3 What is required in an FRFA?

Analytical requirements for the FRFA are described in the RFA, 5 U.S.C. 604(a)(1) through (5):

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain--

(1) a succinct statement of the need for, and objectives of, the rule;

(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

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) 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. Effective July 22, 2013, a business involved in finfish or shellfish 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 \$19.0 million for all its affiliated operations worldwide in the case of a finfish business, and \$5.0 million in the case of a shellfish business. 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 criteria 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 The need for and objectives of the rule

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 2014 and 2015. This strategy determines annual harvest specifications in compliance with Federal regulations, the BSAI FMP, and the Magnuson-Stevens Act. The Secretary approves the harvest specifications based on the recommendations of the Council. As described in the environmental impact statement (EIS) prepared when the Council chose its strategy,² 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.³

² The EIS, and a relevant erratum are available on the NMFS Alaska Region's web site at <http://www.alaskafisheries.noaa.gov/analyses/specs/eis/default.htm>. (NMFS 2007a, NMFS 2007b)

³ This was 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 (Alternatives 1, 3, 4, and 5) are listed below, in Section 1.9 of this FRFA.

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) limits. Groundfish harvests are controlled by the enforcement of TAC, bycatch and incidental catch limits, PSC allowances⁴, and apportionments of each among seasons, fishing sectors, and areas.

TACs set upper limits on total (retained and discarded) harvest limits for a fishing year. TACs are set for each “target 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 BSAI FMP or regulations. The Council apportions PSC limits among seasons and 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 (EEZ) 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 December 2013. OFLs and ABCs for the species were based on recommendations prepared by the Council’s BSAI Plan Team in November 2013, and reviewed and modified by the Council’s SSC in December 2013. 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, PSC allowances, area closures, seasons, gear limitations, and inseason adjustments.

Table 1 shows the Council’s recommended harvest specifications for 2014 and 2015.

⁴ The Magnuson-Stevens Act defines bycatch as fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards (section 3). Regulations at 50 CFR 679.2 define incidental catch as fish caught and retained while targeting on some other species, but does not include discard of fish that were returned to the sea. Regulations at § 679.2 also define prohibited species catch (PSC) as species listed in Table 2b of § 679, including various species of crab, Pacific halibut, Pacific herring, various species of Pacific salmon, and steelhead trout. PSC species must be avoided, to the extent practicable, and must be discarded, unless legally authorized to retain for donation to a charitable food organization. These definitions are used in this FRFA.

Table 1. BSAI OFL, ABC, and TAC recommendations for 2014 and 2015.

Species	Area	2013			2014			2015		
		OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
Pollock	BS	2,550,000	1,375,000	1,247,000	2,795,000	1,369,000	1,267,000	2,693,000	1,258,000	1,258,000
	AI	45,600	37,300	19,000	42,811	35,048	19,000	47,713	39,412	19,000
	Bogoslof	13,400	10,100	100	13,413	10,059	75	13,413	10,059	75
Pacific cod*	BS	359,000	307,000	260,000	299,000	255,000	246,897	319,000	272,000	251,712
	AI				20,100	15,100	6,997	20,100	15,100	6,487
Sablefish	BS	1,870	1,580	1,580	1,584	1,339	1,339	1,432	1,210	1,210
	AI	2,530	2,140	2,140	2,141	1,811	1,811	1,936	1,636	1,636
Yellowfin sole	BSAI	220,000	206,000	198,000	259,700	239,800	184,000	268,900	248,300	187,000
Greenland turbot	BSAI	2,540	2,060	2,060	2,647	2,124	2,124	3,864	3,173	3,173
	BS	n/a	1,610	1,610	n/a	1,659	1,659	n/a	2,478	2,478
	AI	n/a	450	450	n/a	465	465	n/a	695	695
Arrowtooth flounder	BSAI	186,000	152,000	25,000	125,642	106,599	25,000	125,025	106,089	25,000
Kamchatka flounder	BSAI	16,300	12,200	10,000	8,270	7,100	7,100	8,500	7,300	7,300
Rock sole	BSAI	241,000	214,000	92,380	228,700	203,800	85,000	213,310	190,100	85,000
Flathead sole	BSAI	81,500	67,900	22,699	79,633	66,293	24,500	77,023	64,127	25,129
Alaska plaice	BSAI	67,000	55,200	20,000	66,800	55,100	24,500	66,300	54,700	25,000
Other flatfish	BSAI	17,800	13,300	3,500	16,700	12,400	2,650	16,700	12,400	3,000
Pacific ocean perch	BSAI	41,900	35,100	35,100	39,585	33,122	33,122	37,817	31,641	31,641
	BS	n/a	8,130	8,130	n/a	7,684	7,684	n/a	7,340	7,340
	EAI	n/a	9,790	9,790	n/a	9,246	9,246	n/a	8,833	8,833
	CAI	n/a	6,980	6,980	n/a	6,594	6,594	n/a	6,299	6,299
	WAI	n/a	10,200	10,200	n/a	9,598	9,598	n/a	9,169	9,169
Northern rockfish	BSAI	12,200	9,850	3,000	12,077	9,761	2,594	11,943	9,652	3,000
Rougheye rockfish	BSAI	462	378	378	505	416	416	580	478	478
	EBS/EAI	n/a	169	169	n/a	177	177	n/a	201	201
	CAI/WAI	n/a	209	209	n/a	239	239	n/a	277	277
Shortraker rockfish	BSAI	493	370	370	493	370	370	493	370	370
Other rockfish	BSAI	1,540	1,159	873	1,550	1,163	773	1,550	1,163	873
	BS	n/a	686	400	n/a	690	300	n/a	690	400
	AI	n/a	473	473	n/a	473	473	n/a	473	473
Atka mackerel	BSAI	57,700	50,000	25,920	74,492	64,131	32,322	74,898	64,477	32,491
	EAI/BS	n/a	16,900	16,900	n/a	21,652	21,652	n/a	21,769	21,769
	CAI	n/a	16,000	7,520	n/a	20,574	9,670	n/a	20,685	9,722
	WAI	n/a	17,100	1,500	n/a	21,905	1,000	n/a	22,023	1,000
Skates	BSAI	45,800	38,800	24,000	41,849	35,383	26,000	39,746	33,545	26,000
Sculpin	BSAI	56,400	42,300	5,600	56,424	42,318	5,750	56,424	42,318	5,750
Sharks	BSAI	1,360	1,020	100	1,363	1,022	125	1,363	1,022	125
Squids	BSAI	2,620	1,970	700	2,624	1,970	310	2,624	1,970	325
Octopuses	BSAI	3,450	2,590	500	3,450	2,590	225	3,450	2,590	225
Total	BSAI	4,028,465	2,639,317	2,000,000	4,196,553	2,572,819	2,000,000	4,107,104	2,472,832	2,000,000

Sources: 2013 OFLs, ABCs, and TACs are from harvest specifications adopted by the Council in December 2012; 2014 and 2015 OFLs, ABCs, and TACs are those adopted by the Council in December 2013. *The Pacific cod specifications were split between the Bering Sea and Aleutian Islands beginning with the 2014-2015 harvest specifications.

Objectives

The purpose of the TACs adopted pursuant to the harvest strategy, is to provide for orderly and controlled commercial fishing for groundfish (including Community Development Quota [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 2007a: 1–4). The objectives of the proposed action are to allow commercial fishing for the groundfish stocks in the BSAI, while protecting the long run health of the fish stocks, and the social and ecological values that those fish stocks provide.

1.6 Public comments

NMFS published the proposed rule on December 10, 2013 (78 FR 74063). NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany this action (NMFS 2013), and included a summary in the proposed rule. The comment period closed on January 9, 2014. No comments were received on the IRFA.

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

The directly regulated entities include: (a) entities operating vessels with groundfish FFPs catching BSAI FMP groundfish in Federal waters of the BSAI; (b) all entities operating vessels catching FMP groundfish in the state BSAI parallel fishery; (c) entities operating vessels fishing for halibut under the authority of IFQs inside or outside of Federal waters of the BSAI.⁵

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. 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 entities, since several vessels may be owned by a single firm; and to an overestimate of the relative proportion of small entities, since more of the smaller vessels might have been treated as large entities, had multiple ownership structures been addressed. No large entities would have been moved to the small category. The estimates of the number, and gross revenues of, small vessels in Tables 2 and 3 are based on this approach.

It is possible, however, to take account of affiliations among vessels fishing in cooperatives. In this analysis, affiliations among entities participating in cooperatives formed pursuant to Secretarial regulation, such as the American Fisheries Act (AFA), GOA rockfish, and crab rationalization

⁵ State of Alaska Guideline Harvest Level (GHL) fisheries are conducted independently of the Federal groundfish fisheries under the direct regulation of the State of Alaska, and vessels operating in these fisheries but not falling into the categories above are not considered directly regulated by this action. State of Alaska parallel fisheries are managed in close coordination with the fisheries in Federal waters, and are treated here as directly regulated by this action for this reason. Vessels fishing for crab and trolling for salmon catch some FMP groundfish and estimates of these catches are used for groundfish OFL and ABC determinations. However, these catches are not actively monitored in-season and groundfish in-season management would only affect these operations under very unusual circumstances. This activity is not considered to be directly regulated by this action.

cooperatives⁶, as well as the private voluntary cooperative recently formed among the BSAI freezer longline vessel operators, are considered.

Tables 2 and 3 summarize information on the numbers of small catcher vessels and catcher/processors, and average gross revenues for small vessels. These tables show the counts of vessels falling into each category, by gear type, and the average gross revenues for these different classifications of vessels. These tables do not take account of affiliations.⁷

Table 2 shows that, in 2012, there were 595 individual catcher vessels with gross revenues meeting small entity criteria. Some of these vessels are members of AFA inshore pollock cooperatives, of GOA rockfish cooperatives, or of BSAI crab rationalization cooperatives and, therefore, under RFA it is the aggregate gross receipts of all participating members of the cooperative that must meet the threshold. 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 428 small catcher vessel entities remaining in the BSAI groundfish sector. This latter group of small vessels had average gross revenues of about \$0.4 million.

Table 2 indicates that in 2012 there were 45 catcher/processors meeting small entity criteria. After taking account of relevant cooperative affiliations, there were seven. The average gross revenue for these seven small catcher/processor entities was about \$1.8 million.

Table 2. Number of small BSAI groundfish vessels by sector, 2008 through 2012.

Year	Catcher vessels (Number of vessels)	Catcher/processors (Number of vessels)	All vessels (Number of vessels)
2008	586	66	652
2009	562	63	625
2010	547	60	607
2011	566	44	610
2012	550	45	595

Notes: includes both finfish and shellfish vessel classes meeting criteria explained in text. Separate small entity thresholds used for finfish and shellfish vessels as explained in text.
Source: data supplied by AKFIN.

Table 3. Average gross revenue of small BSAI groundfish vessels by sector, 2008 through 2012. (millions of dollars).

Year	Catcher vessels (Millions of \$)	Catcher/processors (Millions of \$)
2008	\$964,675	\$7,302,473
2009	\$691,204	\$6,159,681
2010	\$804,877	\$7,040,490
2011	\$1,026,296	\$8,257,387
2012	\$949,196	\$7,623,816

Notes: includes both finfish and shellfish vessel classes meeting criteria explained in text. Separate small entity thresholds used for finfish and shellfish vessels as explained in text.
Source: data supplied by AKFIN.

⁶ The Central GOA Rockfish Pilot Program expired on December 31, 2011. The Council's Amendment 88 to the GOA FMP replaced the Pilot Program with a new Rockfish Program that carried forward key elements of the older Pilot Program, while making changes to fix problems that had been identified. NMFS has published the Notice of Availability for the FMP amendment and the final rule (76 FR 45217, July 28, 2011; 76 FR 81248, December 27, 2011). The effective date for this action was December 27, 2011

⁷ 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 \$19.0 million in a year.

Through the CDQ program, the Council and NMFS allocate a portion of the BSAI groundfish TACs, and apportion 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.

The Aleut Corporation is an Alaska Native Corporation that receives an allocation of pollock in the Aleutian Islands. The Aleut Corporation is a holding company and evaluated according to the SBA criteria at 13 CFR 121.201, using a \$7 million gross annual receipts threshold for “Offices of Other Holding Companies” (NIACS code 551112). Aleut Corporation revenues exceed this threshold (Aleut Corporation, 2011), 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 2005: 413).

1.8 Recordkeeping and reporting requirements

The FRFA should include “a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which 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 Description of significant alternatives and their effects on small entities

A FRFA should include a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, included a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. 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 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 adverse economic impact on small entities. All 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 OY, which is set out in statute and the BSAI FMP. As shown in Table 1, the sum of ABCs in 2014 would be 2,572,819 metric tons, and the sum in 2015 would be about 2,472,832 metric tons. In both years it would exceed the 2,000,000 metric ton OY for the BSAI (Council 2012: ES-3). This would be inconsistent with the objectives of this action, as it would violate statutory law and the BSAI FMP, which both set a 2,000,000 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 through 3) or for the most recent five years' worth of harvests (for species in Tiers 4 through 6). This alternative is 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 OY range in the BSAI, to its lower end (1.4 million metric tons) (Council 2012: ES-3). This would lead to significant reductions in harvests of species by small entities. While reductions of this size may 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 would have an adverse economic impact on directly regulated small entities operating in the BSAI, compared to the preferred alternative.

Alternative 5, which sets all harvests equal to zero would have a significant adverse economic impact on small entities and would be contrary to obligations to achieve OY on a continuing basis, as mandated by the Magnuson-Stevens Act.

In December 2013, the Council adopted separate harvest specifications for the Aleutian Islands and the Bering Sea in the 2014 and 2015 fishing years. The intent is that this will be a permanent split in the harvest specifications for this species. While separate OFLs, ABCs, and TACs, have been created for the Aleutian Islands and for the Bering Sea, the actual sector allocations (except CDQ allocations) remain BSAI-wide allocations. Sector allocations are calculated as a percent of the summed Aleutian Island and Bering Sea TACs, after adjustments are made to account for CDQ allocations. Because sector allocations (except CDQ allocations) continue to be defined BSAI-wide, sectors remain free to redeploy between the two areas. However, if the non-CDQ portion of the TAC in either sub-area is reached NMFS will close

directed fishing for Pacific cod in that subarea. Thus if the resources in one of the areas is fully utilized, one sector will not be able to increase its harvest, unless at the expense of another sector's harvest.

It is possible that in some years that an Aleutian Island-specific Pacific cod TAC, in combination with a deduction from the ABC for a GHF fishery, and a deduction for an ICA, may leave the Aleutian Islands TAC too small to permit a directed fishery. The ultimate impact of the Pacific cod split will depend on policy decisions made by the Council and the Secretary. In the 10 years since the first year of the baseline period for this analysis (2004), the BSAI Pacific cod TAC was only set equal to the ABC in two years. There may be scope for the Council to offset anticipated Aleutian Island production limits by setting the Aleutian Islands TAC less than the ABC, and the Bering Sea TAC equal to the ABC. The 2 million metric ton groundfish optimum yield is the sum of the BSAI TACs, so a decrease in the Aleutian Islands TAC, coupled with an equal increase in the Bering sea TAC, would leave the aggregate BSAI Pacific cod TAC unchanged, and would not require reductions in TACs for other species so as to comply with the optimum yield requirement.

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4 References

National Marine Fisheries Service, Alaska Regional Office (NMFS). 2004. Programmatic Supplemental Environmental Impact Statement for the Alaska Groundfish Fisheries Implemented Under the Authority of the Fishery Management Plans for the Groundfish Fishery of the Gulf of Alaska and the Groundfish of the Bering Sea and Aleutian Islands Area. Juneau, Alaska. June. Retrieved from <http://alaskafisheries.noaa.gov/sustainablefisheries/seis/final062004/COVER.pdf> on December 31, 2013.

National Marine Fisheries Service, Alaska Regional Office (NMFS). 2005. Environmental Assessment/Regulatory Impact Review for Amendment 82 to the BSAI FMP and regulatory amendments to allow the allocation of future Aleutian Islands pollock harvest to the Aleut Corporation as required by Public Law 108-199. Juneau, Alaska. January. Retrieved from <http://alaskafisheries.noaa.gov/analyses/amd82/bsai82finalea0205.pdf> on December 31, 2013.

NMFS. 2007a. Alaska Groundfish Harvest Specifications Final Environmental Impact Statement. Juneau, Alaska. January 2007. Retrieved from <http://alaskafisheries.noaa.gov/analyses/specs/eis/final.pdf> on December 31, 2013.

NMFS 2007b. Errata for the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (January 2007). Retrieved from <http://alaskafisheries.noaa.gov/analyses/specs/eis/gfisherrata.pdf> on December 31, 2013.

NMFS. 2007c. Magnuson-Stevens Fishery Conservation and Management Act. As Amended Through January 12, 2007. May. Retrieved from http://www.nero.noaa.gov/sfd/MSA_amended_20070112_FINAL.pdf on December 31, 2013.

NMFS. (2007d). Guidelines for economic review of National Marine Fisheries Service regulatory actions. Washington, D.C.: National Marine Fisheries Service. Retrieved from http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf on December 31, 2013.

NMFS (2012). Bering Sea and Aleutian Islands Groundfish Specifications for 2013-2014. Initial Regulatory Flexibility Analysis. Draft for Secretarial Review. Juneau, Alaska. October.

North Pacific Fishery Management Council (Council). 2013. Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. Anchorage, Alaska. June. Retrieved from <http://www.npfmc.org/wp-content/PDFdocuments/fmp/BSAI/BSAIfmp613.pdf> on December 31, 2013.

Queirolo, L. E. 2013. Conducting Economic Impact Analyses for NOAA Fisheries Service. Retrieved from http://alaskafisheries.noaa.gov/analyses/RIR_RFAAguidance.pdf on December 30, 2013.