

# Gulf of Alaska Groundfish Specifications for 2014–2015

## Final Regulatory Flexibility Analysis

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**Lead Agency**

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**Abstract:** This document contains a Final Regulatory Flexibility Analysis (FRFA) for the groundfish harvest specifications in the Gulf of Alaska for the years 2014 and 2015. This FRFA evaluates the potential 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 Gulf of Alaska. 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 specifications pursuant to the harvest strategy for the groundfish fishery in the Gulf of Alaska (GOA) 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 GOA 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 Gulf of Alaska (GOA 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 GOA 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 GOA 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* 74079).

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 GOA Plan Team met 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 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).<sup>1</sup>

## 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

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<sup>1</sup> National Marine Fisheries Services (2007d) provides current NOAA Fisheries guidance for preparation of an analysis to address Regulatory Flexibility Act requirements; Queirolo (2013) provides a more accessible overview.

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 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 FRFA, 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 a 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 a 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 action is the implementation of the Council's 2006 harvest strategy choice for the federally managed groundfish fisheries in the GOA management area in 2014 and 2015. This strategy determines annual harvest specifications in compliance with Federal regulations, the GOA 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,<sup>2</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>3</sup>

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<sup>2</sup> 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)

<sup>3</sup> 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<sup>4</sup>, and PSC allowances, 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 GOA 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 GOA Plan Team in November 2013, and reviewed 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 and incidental catch management, PSC allowances, area closures, seasons, gear limitations, and inseason adjustments.

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

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<sup>4</sup> 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—2014 and 2015 ABCs, TACs, and OFLs of Groundfish for the Western/Central/West Yakutat, Western, Central, Eastern Regulatory Areas, and in the West Yakutat, Southeast Outside, and Gulf-wide Districts of the Gulf of Alaska as proposed by the North Pacific fishery Management Council in December, 2013 (Values are rounded to the nearest metric ton) 2013 harvest specifications provided for contrast.

Species	Area	2013			2014			2015		
		OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
Pollock	W (61)	n/a	28,072	28,072	n/a	36,070	36,070	n/a	40,254	40,254
	C (62)	n/a	51,443	51,443	n/a	81,784	81,784	n/a	91,272	91,272
	C (63)	n/a	27,372	27,372	n/a	39,756	39,756	n/a	44,367	44,367
	WYAK	n/a	3,385	3,385	n/a	4,741	4,741	n/a	5,291	5,291
	Subtotal	150,817	110,272	110,272	211,998	162,351	162,351	248,384	181,184	181,184
	EYAK/SEO	14,366	10,774	10,774	16,833	12,625	12,625	16,833	12,625	12,625
Total	165,183	121,046	121,046	228,831	174,976	174,976	265,217	193,809	193,809	
Pacific Cod	W	n/a	28,280	21,210	n/a	32,745	22,922	n/a	31,117	21,782
	C	n/a	49,288	36,966	n/a	53,100	39,825	n/a	50,460	37,845
	E	n/a	3,232	2,424	n/a	2,655	1,991	n/a	2,523	1,892
	Total	97,200	80,800	60,600	107,300	88,500	64,738	101,800	84,100	61,519
Sablefish	W	n/a	1,750	1,750	n/a	1,480	1,480	n/a	1,338	1,338
	C	n/a	5,540	5,540	n/a	4,681	4,681	n/a	4,230	4,230
	WYAK	n/a	2,030	2,030	n/a	1,716	1,716	n/a	1,551	1,551
	SEO	n/a	3,190	3,190	n/a	2,695	2,695	n/a	2,435	2,435
	WYAK, SEO	n/a	5,220	5,220	n/a	4,411	4,411	n/a	3,986	3,986
	Total	14,780	12,510	12,510	12,500	10,572	10,572	11,300	9,554	9,554
Shallow-Water Flatfish	W	n/a	19,489	13,250	n/a	20,376	13,250	n/a	18,728	13,250
	C	n/a	20,168	18,000	n/a	17,813	17,813	n/a	16,372	16,372
	WYAK	n/a	4,647	4,647	n/a	2,039	2,039	n/a	1,875	1,875
	EYAK/SEO	n/a	1,180	1,180	n/a	577	577	n/a	530	530
	Total	55,680	45,484	37,077	50,007	40,805	33,679	46,207	37,505	32,027
Deep-Water Flatfish	W	n/a	176	176	n/a	302	302	n/a	300	300
	C	n/a	2,308	2,308	n/a	3,727	3,727	n/a	3,680	3,680
	WYAK	n/a	1,581	1,581	n/a	5,532	5,532	n/a	5,462	5,462
	EYAK/SEO	n/a	1,061	1,061	n/a	3,911	3,911	n/a	3,861	3,861
	Total	6,834	5,126	5,126	16,159	13,472	13,472	15,955	13,303	13,303
Rex Sole	W	n/a	1,300	1,300	n/a	1,270	1,270	n/a	1,245	1,245
	C	n/a	6,376	6,376	n/a	6,231	6,231	n/a	6,106	6,106
	WYAK	n/a	832	832	n/a	813	813	n/a	796	796
	EYAK/SEO	n/a	1,052	1,052	n/a	1,027	1,027	n/a	1,008	1,008
	Total	12,492	9,560	9,560	12,207	9,341	9,341	11,963	9,155	9,155
Arrowtooth Flounder	W	n/a	27,181	14,500	n/a	31,142	14,500	n/a	30,217	14,500
	C	n/a	141,527	75,000	n/a	115,612	75,000	n/a	112,178	75,000
	WYAK	n/a	20,917	6,900	n/a	37,232	6,900	n/a	36,126	6,900
	EYAK/SEO	n/a	20,826	6,900	n/a	11,372	6,900	n/a	11,035	6,900
	Total	247,196	210,451	103,300	229,248	195,358	103,300	222,160	189,556	103,300
Flathead	W	n/a	15,729	8,650	n/a	12,730	8,650	n/a	12,661	8,650
	C	n/a	26,563	15,400	n/a	24,805	15,400	n/a	24,670	15,400
	WYAK	n/a	4,686	4,686	n/a	3,525	3,525	n/a	3,506	3,506
	EYAK/SEO	n/a	1,760	1,760	n/a	171	171	n/a	170	170
	Total	61,036	48,738	30,496	50,664	41,231	27,746	50,376	41,007	27,726
Pacific Ocean Perch	W	n/a	2,040	2,040	n/a	2,399	2,399	n/a	2,456	2,456
	C	n/a	10,926	10,926	n/a	12,855	12,855	n/a	13,158	13,158
	WYAK	n/a	1,641	1,641	n/a	1,931	1,931	n/a	1,976	1,976
	W/C/WYAK	16,838			21,016			21,515	17,590	
	SEO	2,081	1,805	1,805	1,303	2,124	2,124	1,334	2,174	2,174
	Total	18,919	16,412	16,412	22,319	19,309	19,309	22,849	19,764	19,764
Northern Rockfish	W	n/a	2,008	2,008	n/a	1,305	1,305	n/a	1,229	1,229
	C	n/a	3,122	3,122	n/a	4,017	4,017	n/a	3,781	3,781
	E	n/a	-	-	n/a	-	-	n/a	-	-
	Total	6,124	5,130	5,130	6,349	5,322	5,322	5,978	5,010	5,010
Shortraker Rockfish	W	n/a	104	104	n/a	92	92	n/a	92	92
	C	n/a	452	452	n/a	397	397	n/a	397	397
	E	n/a	525	525	n/a	834	834	n/a	834	834
	Total	1,441	1,081	1,081	1,764	1,323	1,323	1,764	1,323	1,323



Dusky Rockfish	W	n/a	377	377	n/a	317	317	n/a	295	295	
	C	n/a	3,533	3,533	n/a	3,584	3,584	n/a	3,318	3,318	
	WYAK	n/a	495	495	n/a	1,384	1,384	n/a	1,277	1,277	
	EYAK/SEO	n/a	295	295	n/a	201	201	n/a	191	191	
	Total		5,746	4,700	4,700	6,708	5,486	5,486	6,213	5,081	5,081
Rougheye and Blackspotted Rockfish	W	n/a	81	81	n/a	82	82	n/a	83	83	
	C	n/a	856	856	n/a	864	864	n/a	877	877	
	E	n/a	295	295	n/a	298	298	n/a	302	302	
	Total		1,482	1,232	1,232	1,497	1,244	1,244	1,518	1,262	1,262
Demersal shelf rockfish	Total		487	303	303	438	274	274	438	274	274
Thornyhead Rockfish	W	n/a	150	150	n/a	235	235	n/a	235	235	
	C	n/a	766	766	n/a	875	875	n/a	875	875	
	E	n/a	749	749	n/a	731	731	n/a	731	731	
	Total		2,220	1,665	1,665	2,454	1,841	1,841	2,454	1,841	1,841
Other Rockfish (Other slope)	W	n/a	44	44	n/a	-	-	n/a	-	-	
	C	n/a	606	606	n/a	1,031	1,031	n/a	1,031	1,031	
	WYAK	n/a	230	230	n/a	580	580	n/a	580	580	
	EYAK/SEO	n/a	3,165	200	n/a	2,470	200	n/a	2,470	200	
	Total		5,305	4,045	1,080	5,347	4,081	1,811	5,347	4,081	1,811
Atka mackerel	Total		6,200	4,700	2,000	6,200	4,700	2,000	6,200	4,700	2,000
Big Skate	W	n/a	469	469	n/a	589	589	n/a	589	589	
	C	n/a	1,793	1,793	n/a	1,532	1,532	n/a	1,532	1,532	
	E	n/a	1,505	1,505	n/a	1,641	1,641	n/a	1,641	1,641	
	Total		5,023	3,767	3,767	5,016	3,762	3,762	5,016	3,762	3,762
Longnose Skate	W	n/a	70	70	n/a	107	107	n/a	107	107	
	C	n/a	1,879	1,879	n/a	1,935	1,935	n/a	1,935	1,935	
	E	n/a	676	676	n/a	834	834	n/a	834	834	
	Total		3,500	2,625	2,625	3,835	2,876	2,876	3,835	2,876	2,876
Other Skates	Total		2,706	2,030	2,030	2,652	1,989	1,989	2,652	1,989	1,989
Sculpins	GOA-wide		7,614	5,884	5,884	7,448	5,569	5,569	7,448	5,569	5,569
Sharks	GOA-wide		8,037	6,028	6,028	7,986	5,989	5,989	7,986	5,989	5,989
Squids	GOA-wide		1,530	1,148	1,148	1,530	1,148	1,148	1,530	1,148	1,148
Octopuses	GOA-wide		1,941	1,455	1,455	2,009	1,507	1,507	2,009	1,507	1,507
Total			738,676	595,920	436,255	790,468	640,675	499,274	808,215	644,165	511,599

Sources: 2013 OFLs, ABCs, and TACs; 2014 and 2015 OFLs, ABCs, and TACs recommended by the North Pacific Fishery Management Council in December 2013.

## Objectives

The purpose of the TACs adopted pursuant to the harvest strategy, is to provide for orderly and controlled commercial fishing for groundfish; 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 GOA, 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 74079). 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 GOA FMP groundfish in Federal waters of the GOA; (b) all entities operating vessels catching FMP groundfish in the state GOA parallel fishery; (c) entities operating vessels fishing for halibut under the authority of IFQs inside or outside of Federal waters of the GOA.<sup>5</sup>

Small business firms, non-profit entities, and governments are the appropriate entities for consideration in a regulatory flexibility analysis. 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. The estimates of the number, and gross revenues of, small vessels in Tables 2 and 3 are based on this approach.<sup>6</sup> These tables show the numbers of small vessels, by finfish and shellfish status, and by catcher/processor or catcher vessel status, and reports the average gross revenues for these different classifications of vessels. These tables do not take account of affiliations.

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 BSAI crab rationalization cooperatives<sup>7</sup>, as well as the private voluntary cooperative recently formed among the BSAI freezer longline vessel operators, are considered.

Table 2 shows that, in 2012, there were 1,424 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 1,378 small catcher vessel entities remaining in the GOA groundfish sector. This latter group of small vessels had average gross revenues of about \$359,000.

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<sup>5</sup> 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.

<sup>6</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 \$19.0 million in a year.

<sup>7</sup> 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.

Table 2 indicates that in 2012 there were 32 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 \$1.6 million.

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

Year	Catcher vessels (Number of vessels)	Catcher/processors (Number of vessels)	All vessels (Number of vessels)
2008	1377	46	1423
2009	1404	47	1451
2010	1391	46	1437
2011	1451	35	1486
2012	1424	32	1456

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 GOA groundfish vessels by sector, 2008 through 2012. (millions of dollars).

Year	Catcher vessels (Millions of \$)	Catcher/processors (Millions of \$)
2008	\$432,670	\$7,921,091
2009	\$309,179	\$6,609,183
2010	\$399,390	\$7,030,943
2011	\$483,571	\$7,934,332
2012	\$415,538	\$6,772,143

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.

## 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, 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. 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  $maxFABC$ , 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 “*maxFABC*” refers to the maximum permissible value of *FABC* 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 *FABC* 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 (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.

Alternative 2 is the preferred alternative chosen by the Council:

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 *maxFABC*. The recommended fractions of *maxFABC* 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.

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 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 the ABCs in 2014 is 640,675 metric tons and the sum of the ABCs in 2015 is 644,165 metric tons. The sum of the TACs in 2014 is 499,274 metric tons, and the sum of the TACs in 2015 is 511,599 metric tons. Thus, although the sum of ABCs in each year is less than 800,000 metric tons, the sums of the TACs in each year are less than the sums of the ABCs.

In most cases, the Council has set TACs equal to ABCs. The divergence between aggregate TACs and aggregate ABCs reflects a variety of special species- and fishery-specific circumstances:

- Pacific cod TACs are set equal to 70 percent in the Western GOA and 75 percent in the Central GOA of the Pacific cod ABCs in each year to account for the guideline harvest levels (GHL) set by the State of Alaska for its GHL Pacific cod fisheries (30 and 25 percent, respectively, of the Western and Central GOA ABCs). Thus, the difference between the Federal TACs and ABCs

does not actually reflect a Pacific cod harvest below the Pacific cod ABC, as the balance is available for the State's cod GHL fisheries.

- Shallow-water flatfish and flathead sole TACs are set below ABCs in the Western and Central GOA management areas. Arrowtooth flounder TACs are set below ABC levels in all GOA management areas. Catches of these flatfish species rarely, if ever, approach the proposed ABC or TAC levels. Important trawl fisheries in the GOA take halibut PSC, and are constrained by hard caps on the allowable halibut PSC mortality. These caps routinely force the closure of trawl fisheries before they have harvested the available groundfish ABC. Thus, actual harvests of groundfish in the GOA routinely fall short of some proposed ABCs and TACs. Markets can also constrain harvests below the proposed TAC levels, as has been the case with arrowtooth flounder, in the past. These TACs are set to allow for increased harvest opportunities for these targets while conserving the halibut PSC limit for use in other, more fully utilized, fisheries.
- The other rockfish TAC is set below the ABC in the Southeast Outside management area to reduce the amount of discards in this district.
- The GOA-wide Atka mackerel TAC is set below the species ABC. There is an important Atka mackerel fishery in the Aleutian Islands and Bering Sea, but Atka mackerel stocks in the GOA have not been large enough in the past to support a manageable directed fishery. Atka mackerel are taken as incidental catch in other GOA fisheries, and the Council has set a TAC that is smaller than the ABC in this fishery to accommodate this need.

Alternative 3 selects harvest rates based on the most recent five years of harvest rates (for species in Tiers 1 through 3) or for the most recent five years 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 GOA, to its lower end of 116,000 metric tons. Overall this would reduce TACs by about 77 percent in both 2014 and 2015. This would lead to significant reductions in harvests of species harvested by small entities. While reductions of this size may 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 BSAI and elsewhere. While production declines in the GOA would undoubtedly be associated with 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 would have a detrimental economic impact on directly regulated small entities operating in the GOA.

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.

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