

Gulf of Alaska Groundfish Harvest Specifications for 2016–2017

Initial Regulatory Flexibility Analysis

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Lead Agency

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Abstract: This document contains an Initial Regulatory Flexibility Analysis (IRFA) for the groundfish harvest specifications in the Gulf of Alaska for the years 2016 and 2017. This IRFA identifies the small entities that may be directly regulated by this action, and describes the significant alternatives to the action that meet the objectives of the action and their relative economic impacts on directly regulated small entities. 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).

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1 Initial Regulatory Flexibility Analysis

1.1 Introduction

The action under consideration is adoption of harvest 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) recommended by the Council 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). This action is taken in accordance with the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) (Council 2014), 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 21 through September 24, 2015. The Plan Team recommended 2016 and 2017 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 2015 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. Under this proposed action, the Secretary of Commerce (Secretary) would adopt the Council's October 2015 OFL, ABC, and TAC recommendations.

Alaska Fishery Science Center (AFSC) analysts are currently updating their models, and their OFL and ABC recommendations, in light of further analysis of information collected from fishery surveys in the summer of 2015, and information on fishery harvests in calendar year 2015. The Council's GOA Plan Team will meet again from November 16 through 20, 2015, to review the updated analyses, and revise its 2016 and 2017 OFL and ABC recommendations, as necessary. The Council, SSC, and AP will review the updated Plan Team recommendations at the Council's December 2015 meeting in Anchorage, and the Council may revise its OFL, ABC, or TAC recommendations at that time. The final harvest specifications will take any December revisions into account.

This Initial Regulatory Flexibility Analysis (IRFA) 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 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

¹ National Marine Fisheries Services (2007d) provides current NMFS guidance for preparation of an IRFA; (Queirolo, 2014) provides a more accessible overview.

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 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 adverse 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(a) and (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 description of the adverse economic impacts of the proposed rule on directly regulated small entities;
- 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) 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 (SBA). “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 14, 2014, a business involved in *finfish 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 gross receipts not in excess of \$20.5 million for all its affiliated operations worldwide. A business involved in *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 gross receipts not in excess of \$5.5 million for all its affiliated operations worldwide. (79 FR 33647; June 12, 2014) 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 that *both harvests and processes* fish (i.e., a catcher/processor) is a small business if it meets the criteria for the applicable fish harvesting operation (i.e., finfish or shellfish). 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, controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers, 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 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 2016 and 2017. 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,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 https://alaskafisheries.noaa.gov/sites/default/files/analyses/gf_finaleis07.pdf. (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 1.10 of this IRFA.

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,⁴ and PSC allowances, and apportionments of each among seasons, fishing sectors, and areas.

TACs set upper limits on total (retained and discarded) harvest for a fishing year. TACs are set for each “target species” category defined in the fishery management plans (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, snow 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 October 2015. OFLs and ABCs for the species were based on recommendations prepared by the Council’s GOA Plan Team in September 2015, and reviewed by the Council’s SSC in October 2015. 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 2016 and 2017.

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. Section 679.2 defines 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 IRFA.

Table 1— The 2016 and 2017 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 2015 (Values are rounded to the nearest metric ton). The 2015 harvest specifications are provided for contrast.

Species	Area	2015			2016			2017		
		OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
Pollock	W (61)	n/a	31,634	31,634	n/a	41,472	41,472	n/a	41,472	41,472
	C (62)	n/a	97,579	97,579	n/a	127,936	127,936	n/a	127,936	127,936
	C (63)	n/a	52,594	52,594	n/a	68,958	68,958	n/a	68,958	68,958
	WYAK	n/a	4,719	4,719	n/a	6,187	6,187	n/a	6,187	6,187
	Subtotal	256,545	191,309	186,526	321,067	250,824	244,553		250,824	244,553
	EYAK/SEO	16,833	12,625	12,625	16,833	12,625	12,625		12,625	12,625
	Total	273,378	203,934	199,151	337,900	263,449	257,178		263,449	257,178
Pacific Cod	W	n/a	38,702	27,091	n/a	38,702	27,091	n/a	38,702	27,091
	C	n/a	61,320	45,990	n/a	61,320	45,990	n/a	61,320	45,990
	E	n/a	2,828	2,121	n/a	2,828	2,121	n/a	2,828	2,121
	Total	140,300	102,850	75,202	133,100	102,850	75,202	101,800	102,850	75,202
Sablefish	W	n/a	1,474	1,474	n/a	1,338	1,338	n/a	1,338	1,338
	C	n/a	4,658	4,658	n/a	4,232	4,232	n/a	4,232	4,232
	WYAK	n/a	1,708	1,708	n/a	1,552	1,552	n/a	1,552	1,552
	SEO	n/a	2,682	2,682	n/a	2,436	2,436	n/a	2,436	2,436
	Total	12,425	10,522	10,522	11,293	9,558	9,558	11,300	9,558	9,558
Shallow-Water Flatfish	W	n/a	22,074	13,250	n/a	19,577	13,250	n/a	19,577	13,250
	C	n/a	19,297	19,297	n/a	17,114	17,114	n/a	17,114	17,114
	WYAK	n/a	2,209	2,209	n/a	1,959	1,959	n/a	1,959	1,959
	EYAK/SEO	n/a	625	625	n/a	554	554	n/a	554	554
	Total	54,207	44,205	35,381	48,407	39,205	32,877	46,207	39,205	32,877
Deep-Water Flatfish	W	n/a	301	301	n/a	299	299	n/a	299	299
	C	n/a	3,689	3,689	n/a	3,645	3,645	n/a	3,645	3,645
	WYAK	n/a	5,474	5,474	n/a	5,409	5,409	n/a	5,409	5,409
	EYAK/SEO	n/a	3,870	3,870	n/a	3,824	3,824	n/a	3,824	3,824
	Total	15,993	13,334	13,334	15,803	13,177	13,177	15,955	13,177	13,177
Rex Sole	W	n/a	1,258	1,258	n/a	1,234	1,234	n/a	1,234	1,234
	C	n/a	5,816	5,816	n/a	5,707	5,707	n/a	5,707	5,707
	WYAK	n/a	772	772	n/a	758	758	n/a	758	758
	EYAK/SEO	n/a	1,304	1,304	n/a	1,280	1,280	n/a	1,280	1,280
	Total	11,597	9,150	9,150	11,733	8,979	8,979	11,963	8,979	8,979
Arrowtooth Flounder	W	n/a	30,752	14,500	n/a	29,545	14,500	n/a	29,545	14,500
	C	n/a	114,170	75,000	n/a	109,692	75,000	n/a	109,692	75,000
	WYAK	n/a	36,771	6,900	n/a	35,328	6,900	n/a	35,328	6,900
	EYAK/SEO	n/a	11,228	6,900	n/a	10,787	6,900	n/a	10,787	6,900
	Total	226,390	192,921	103,300	217,522	185,352	103,300	222,160	185,352	103,300
Flathead Sole	W	n/a	12,767	8,650	n/a	12,776	8,650	n/a	12,776	8,650
	C	n/a	24,876	15,400	n/a	24,893	15,400	n/a	24,893	15,400
	WYAK	n/a	3,535	3,535	n/a	3,538	3,538	n/a	3,538	3,538
	EYAK/SEO	n/a	171	171	n/a	171	171	n/a	171	171
	Total	50,792	41,349	27,756	50,818	41,378	27,759	50,376	41,378	27,759
Pacific Ocean Perch	W	n/a	2,302	2,302	n/a	2,358	2,358	n/a	2,358	2,358
	C	n/a	15,873	15,873	n/a	16,184	16,184	n/a	16,184	16,184
	WYAK	n/a	2,014	2,014	n/a	2,055	2,055	n/a	2,055	2,055
	W/C/WYAK	23,406		20,189	23,876	20,597	20,597	21,515	20,597	20,597
	SEO	954	823	823	973	839	839	1,334	839	839
Northern Rockfish	Total	24,360	21,012	21,012	24,849	21,436	21,436	22,849	21,436	21,436
	W	n/a	1,226	1,226	n/a	1,158	1,158	n/a	1,158	1,158
	C	n/a	3,772	3,772	n/a	3,563	3,563	n/a	3,563	3,563
	E	n/a	-	-	n/a	-	-	n/a	-	-
	Total	5,961	4,998	4,998	5,631	4,721	4,721	5,978	4,721	4,721
Shortraker Rockfish	W	n/a	92	92	n/a	92	92	n/a	92	92
	C	n/a	397	397	n/a	397	397	n/a	397	397
	E	n/a	834	834	n/a	834	834	n/a	834	834
	Total	1,764	1,323	1,323	1,764	1,323	1,323	1,764	1,323	1,323
Dusky Rockfish	W	n/a	296	296	n/a	273	273	n/a	273	273
	C	n/a	3,336	3,336	n/a	3,077	3,077	n/a	3,077	3,077

	WYAK	n/a	1,288	1,288	n/a	1,187	1,187	n/a	1,187	1,187
	EYAK/SEO	n/a	189	189	n/a	174	174	n/a	174	174
	Total	6,246	5,109	5,109	5,759	4,711	4,711	6,213	4,711	4,711
Rougheye and Blackspotted Rockfish	W	n/a	115	115	n/a	117	117	n/a	117	117
	C	n/a	632	632	n/a	643	643	n/a	643	643
	E	n/a	375	375	n/a	382	382	n/a	382	382
	Total	1,345	1,122	1,122	1,370	1,142	1,142	1,518	1,142	1,142
Demersal Shelf Rockfish	Total	361	225	225	361	225	225	438	225	225
Thornyhead Rockfish	W	n/a	235	235	n/a	235	235	n/a	235	235
	C	n/a	875	875	n/a	875	875	n/a	875	875
	E	n/a	731	731	n/a	731	731	n/a	731	731
	Total	2,454	1,841	1,841	2,454	1,841	1,841	2,454	1,841	1,841
Other Rockfish	W/C	n/a	1,031	1,031	n/a	1,031	1,031	n/a	1,031	1,031
	WYAK	n/a	580	580	n/a	580	580	n/a	580	580
	EYAK/SEO	n/a	2,469	200	n/a	2,469	200	n/a	2,469	200
	Total	5,347	4,080	1,811	5,347	4,080	1,811	5,347	4,080	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	731	731	n/a	731	731	n/a	731	731
	C	n/a	1,257	1,257	n/a	1,257	1,257	n/a	1,257	1,257
	E	n/a	1,267	1,267	n/a	1,267	1,267	n/a	1,267	1,267
	Total	4,340	3,255	3,255	4,340	3,255	3,255	5,016	3,255	3,255
Longnose Skate	W	n/a	152	152	n/a	152	152	n/a	152	152
	C	n/a	2,090	2,090	n/a	2,090	2,090	n/a	2,090	2,090
	E	n/a	976	976	n/a	976	976	n/a	976	976
	Total	4,291	3,218	3,218	4,291	3,218	3,218	3,835	3,218	3,218
Other Skates	Total	2,980	2,235	2,235	2,980	2,235	2,235	2,652	2,235	2,235
Sculpins	GOA-wide	7,448	5,569	5,569	7,448	5,569	5,569	7,448	5,569	5,569
Sharks	GOA-wide	7,986	5,989	5,989	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	2,009	1,507	1,507	2,009	1,507	1,507	2,009	1,507	1,507
Total		870,064	685,597	536,158	910,895	731,049	590,161	910,895	731,049	590,161

Sources: 2015 OFLs, ABCs, and TACs; 2016 OFLs, ABCs, and TACs recommended by the North Pacific Fishery Management Council in December 2014; 2017 OFLs, ABCs, and TACs rolled over from 2016.

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; 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.

The GOA FMP imposes 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). (Council 2014)

Legal basis

Under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), the United States has exclusive fishery management authority over all marine fishery resources found within the EEZ, which extends between 3 nautical miles and 200 nautical miles from the baseline used to measure the territorial sea (NMFS 2007c).

The management of these marine resources is vested in the Secretary and regional fishery management councils. In the Alaska region, the Council has the responsibility to prepare FMPs for the marine resources that it finds require conservation and management and for submitting its 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 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 (OY) from each fishery to provide the greatest benefit to the Nation, and must state how OY 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, TAC specifications, PSC allowances, and/or fishery bycatch limits, based on biological and economic information provided by NMFS. The information includes determinations of ABC and OFL amounts for each of the FMP established target species or species groups. The groundfish fisheries in the Gulf of Alaska (GOA) region of the EEZ off Alaska are managed under the GOA FMP (Council 2014).

Pursuant to Magnuson-Stevens Act section 301, the 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. 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 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 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 Fishery Management Plan for Groundfish of the Bering Sea and Gulf of Alaska Management Area (BSAI FMP) and GOA FMP 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 (NMFS 2004). The groundfish fisheries in the BSAI region of the EEZ off Alaska are managed under the BSAI FMP (Council 2014).

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

Entities directly regulated by the groundfish harvest specifications include: (a) entities operating vessels with groundfish Federal fisheries permits (FFPs) catching FMP groundfish in Federal waters; (b) all entities operating vessels, regardless of whether they hold groundfish FFPs, catching FMP groundfish in the state-waters parallel fisheries; (c) all entities operating vessels fishing for halibut inside three miles of the shore (whether or not they have FFPs)⁵ (NMFS 2014). This definition is believed to include all vessels directed commercial fishing for Pacific halibut, whether in State or Federal waters off Alaska. Vessels fishing for halibut in Federal waters are likely to take incidental catches of FMP groundfish, and are required to carry FFPs for this reason.

Table 2 summarizes estimates of the numbers of small entities active in the GOA groundfish fisheries in 2014. These estimates account for corporate affiliations among vessels, and for cooperative affiliations among fishing entities. Since NMFS may have been unable to identify all relevant affiliations among entities, these estimates may overstate the numbers of small entities. Moreover, these counts of small entities take into account estimates of all fishing revenues for the entities in Federal and State waters off of Alaska, and off of the U.S. West Coast. However, to the extent that entities may have non-fishing revenues, or fishing revenues from other regions of the country, or revenues of affiliates operating outside the United States' jurisdiction, the analysis may have counted some large entities as small. To the extent this occurred, this would also tend to lead to an overstatement of the number of directly regulated small entities.

Table 2. Estimated numbers of small entities directly regulated by this action

Gear type	All vessels	Catcher/processors	Catcher vessels
All Gear	919	4	915
Hook & Line (including jig)	856	3	853
Pot	97	0	97
Trawl	35	1	34

Source: AFSC preliminary estimates for 2015 Groundfish Economic Stock Assessment and Fishery Evaluation report; based on activity in 2014.

Because too few entities are present in the gear specific segments of this sector, revenue data for catcher/processors remain confidential. However, average gross revenue data for 2014 may be reported for catcher vessels: average gross revenues were \$400,000 for small hook-and-line vessels; \$740,000 for small pot vessels; and \$2.5 million for small trawl vessels.⁶

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 or 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.

⁶ These vessel count and revenue estimates take account of known affiliations between entities, including corporate affiliations of individual fishing vessels, and cooperative affiliations. Gross revenues include those from all known fishing sources, including fishing in Federal waters off of Alaska, in State of Alaska waters, and in Federal and state waters off of the U.S. West Coast. Receipts from non-fishing sources, if any, are not available to analysts at present, nor are receipts from fishing outside the areas identified in the previous sentence.

1.8 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.

1.9 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.

1.10 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 $\max F_{ABC}$, 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 “ $\max F_{ABC}$ ” 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 (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 $\max F_{ABC}$. The recommended fractions of $\max F_{ABC}$ 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.

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, when compared to Alternative 2, and 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 sums of ABCs in both 2016 and 2017 are 731,049 metric tons. The sums of the TACs in both 2016 and 2017 are equal to 590,161 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-specific and fishery-specific circumstances:

- Pacific cod TACs are set equal to 75 percent of the Pacific cod ABCs in the Central and Eastern GOA and to 70 percent of the Pacific cod ABC in the Western GOA each year. This is done to account for the fact that the State of Alaska sets GHLs for Pacific cod in its fisheries that are equal to 25 percent (30 percent in the Western GOA) of the Council's ABCs. Thus, this difference does not actually reflect a Pacific cod harvest below the Pacific cod ABC.
- 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 District 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, 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 2016 TACs by about 80 percent. This would lead to significant reductions in harvests of species harvested by small entities. 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 reduced 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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