

# **Gulf of Alaska Groundfish Specifications for 2013–2014**

## **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 2013 and 2014. 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 11 through September 14, 2012. The Plan Team recommended 2013 and 2014 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 2012 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 5, 2012 (77 FR 72297).

During the Fall of 2012, 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 2012, and information on fishery harvests in calendar year 2012. The Council's GOA Plan Team met from November 13 through 16, 2012, to review the updated analyses, and revise its 2013 and 2014 OFL and ABC recommendations, as necessary. The Council, SSC, and AP reviewed the updated Plan Team recommendations at the Council's December 2012 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 (2011) 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. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled

by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

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

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

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

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

## 1.5 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 2013 and 2014. 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>

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

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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.

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 2012. OFLs and ABCs for the species were based on recommendations prepared by the Council’s GOA Plan Team in November 2012, and reviewed by the Council’s SSC in December 2012. 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 2013 and 2014.

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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—2013 and 2014 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, 2012 (Values are rounded to the nearest metric ton)

Species	Area	2012				2013			2014		
		OFL	ABC	TAC	Catch (through 9-1- 12)	OFL	ABC	TAC	OFL	ABC	TAC
Pollock	W (61)		30,270	30,270	15,508		28,072	28,072		25,648	25,648
	C (62)		45,808	45,808	32,182		51,443	51,443		47,004	47,004
	C (63)		26,348	26,348	8,951		27,372	27,372		25,011	25,011
	WYAK		3,244	3,244	2,380		3,385	3,385		3,093	3,093
	Subtotal	143,716	105,670	105,670	59,021	150,817	110,272	110,272	138,610	100,756	100,756
	EYAK/SEO	14,366	10,774	10,774	-	14,366	10,774	10,774	14,366	10,774	10,774
	Total	158,082	116,444	116,444	59,021	165,183	121,046	121,046	152,976	111,530	111,530
Pacific Cod	W		28,032	21,024	13,194		28,280	21,210		29,470	22,103
	C		56,940	42,705	28,399		49,288	36,966		51,362	38,522
	E		2,628	1,971	342		3,232	2,424		3,368	2,526
	Total	104,000	87,600	65,700	41,935	97,200	80,800	60,600	101,100	84,200	63,150
Sablefish	W		1,780	1,780	1,129		1,750	1,750		1,641	1,641
	C		5,760	5,760	4,525		5,540	5,540		5,195	5,195
	WYAK		2,247	2,247	1,770		2,030	2,030		1,902	1,902
	SEO		3,176	3,176	2,516		3,190	3,190		2,993	2,993
	WYAK+SEO		5,423	5,423	4,286		5,220	5,220		4,895	4,895
	Total	15,330	12,960	12,960	9,940	14,780	12,510	12,510	13,871	11,731	11,731
Shallow-Water Flatfish	W		21,994	13,250	134		19,489	13,250		18,033	13,250
	C		22,910	18,000	1,955		20,168	18,000		18,660	18,000
	WYAK		4,307	4,307	-		4,647	4,647		4,299	4,647
	EYAK/SEO		1,472	1,472	-		1,180	1,180		1,092	1,180
	Total	61,681	50,683	37,029	2,089	55,680	45,484	37,077	51,580	42,084	37,077
Deep-Water Flatfish	W		176	176	5		176	176		176	176
	C		2,308	2,308	227		2,308	2,308		2,308	2,308
	WYAK		1,581	1,581	3		1,581	1,581		1,581	1,581
	EYAK/SEO		1,061	1,061	2		1,061	1,061		1,061	1,061
	Total	6,834	5,126	5,126	237	6,834	5,126	5,126	6,834	5,126	5,126
Rex Sole	W		1,307	1,307	215		1,300	1,300		1,287	1,287
	C		6,412	6,412	1,835		6,376	6,376		6,310	6,310
	WYAK		836	836	-		832	832		823	1,041
	EYAK/SEO		1,057	1,057	-		1,052	1,052		1,040	822
	Total	12,561	9,612	9,612	2,050	12,492	9,560	9,560	12,362	9,460	9,460
Arrowtooth Flounder	W		27,495	14,500	903		27,181	14,500		26,970	14,500
	C		143,162	75,000	13,852		141,527	75,000		140,424	75,000
	WYAK		21,159	6,900	30		20,917	6,900		20,754	6,900
	EYAK/SEO		21,066	6,900	65		20,826	6,900		20,663	6,900
	Total	250,100	212,882	103,300	14,850	247,196	210,451	103,300	245,262	208,811	103,300
Flathead	W		15,300	8,650	251		15,729	8,650		16,063	8,650



	C		25,838	15,400	1,361		26,563	15,400		27,126	15,400
	WYAK		4,558	4,558	-		4,686	4,686		4,785	4,785
	EYAK/SEO		1,711	1,711	-		1,760	1,760		1,797	1,797
	Total	59,380	47,407	30,319	1,612	61,036	48,738	30,496	62,296	49,771	30,632
Pacific Ocean Perch	W	2,423	2,102	2,102	2,450		2,040	2,040		2,005	2,005
	C	12,980	11,263	11,263	10,355		10,926	10,926		10,740	10,740
	WYAK		1,692	1,692	1,682		1,641	1,641		1,613	1,613
	W+C+WYAK		15,057	15,057	14,487	16,838			16,555		
	SEO		1,861	1,861	-	2,081	1,805	1,805	2,046	1,775	1,775
	Total	19,498	16,918	16,918	14,487	18,919	16,412	16,412	18,601	16,133	16,133
Northern Rockfish	W		2,156	2,156	1,816		2,008	2,008		1,899	1,899
	C		3,351	3,351	2,996		3,122	3,122		2,951	2,951
	E		0	0	-		0	0		0	0
	Total	6,574	5,507	5,507	4,812	6,124	5,130	5,130	5,791	4,850	4,850
Shortraker Rockfish	W		104	104	95		104	104		104	104
	C		452	452	202		452	452		452	452
	E		525	525	217		525	525		525	525
	Total	1,441	1,081	1,081	514	1,441	1,081	1,081	1,441	1,081	1,081
Other Rockfish (Other slope)	W		44	44	246		44	44		44	44
	C		606	606	693		606	606		606	606
	WYAK		230	230	34		230	230		230	230
	EYAK/SEO		3,165	200	16		3,165	200		3,165	200
	Total	5,305	4,045	1,080	989	5,305	4,045	1,080	5,305	4,045	1,080
Dusky Rockfish	W		409	409	433		377	377		354	354
	C		3,849	3,849	3,462		3,533	3,533		3,317	3,317
	WYAK		542	542	2		495	495		465	465
	EYAK/SEO		318	318	-		295	295		277	277
	Total	6,257	5,118	5,118	3,897	5,746	4,700	4,700	5,395	4,413	4,413
Rougeye and Blackspotted Rockfish	W		80	80	30		81	81		83	83
	C		850	850	342		856	856		871	871
	E		293	293	150		295	295		300	300
	Total	1,472	1,223	1,223	522	1,482	1,232	1,232	1,508	1,254	1,254
Demersal shelf rockfish	Total	467	293	293	59	487	303	303	487	303	303
Thornyhead Rockfish	W		150	150	156		150	150		150	150
	C		766	766	292		766	766		766	766
	E		749	749	182		749	749		749	749
	Total	2,220	1,665	1,665	630	2,220	1,665	1,665	2,220	1,665	1,665
Atka mackerel	Total	6,200	4,700	2,000	1,176	6,200	4,700	2,000	6,200	4,700	2,000
Big Skate	W		469	469	59		469	469		469	469
	C		1,793	1,793	1,276		1,793	1,793		1,793	1,793
	E		1,505	1,505	40		1,505	1,505		1,505	1,505
	Total	5,023	3,767	3,767	1,375	5,023	3,767	3,767	5,023	3,767	3,767
Longnose Skate	W		70	70	20		70	70		70	70
	C		1,879	1,879	531		1,879	1,879		1,879	1,879
	E		676	676	95		676	676		676	676
	Total	3,500	2,625	2,625	646	3,500	2,625	2,625		2,625	2,625

Other Skates	Total	2,706	2,030	2,030	1,032	2,706	2,030	2,030	2,706	2,030	2,030
Squid	GOA-wide	1,530	1,146	1,146	13	1,530	1,148	1,148	1,530	1,148	1,148
Sharks	GOA-wide	8,037	6,028	6,028	538	8,037	6,028	6,028	8,037	6,028	6,028
Octopus	GOA-wide	1,941	1,455	1,455	122	1,941	1,455	1,455	1,941	1,455	1,455
Sculpins	GOA-wide	7,641	5,731	5,731	717	7,614	5,884	5,884	7,614	5,884	5,884
Total		747,780	606,048	438,159	163,263	738,676	595,920	436,255	723,580	584,094	427,722
Sources: 2012 OFLs, ABCs, and TACs are from harvest specifications adopted by the Council in December 2011; 2013 and 2014 OFLs, ABCs, and TACs are from the harvest specifications adopted by the Council in December 2012; 2012 catches through September 1 from AKR Catch Accounting.											

## *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 5, 2012 (77 FR 72297). NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany this action (NMFS 2012), and included a summary in the proposed rule. The comment period closed on January 4, 2013. No comments were received on the IRFA.

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

The entities directly regulated by this action are vessels fishing for groundfish or halibut and retaining or discarding catches of groundfish species managed under the GOA FMP. These include (a) vessels targeting species managed under the GOA FMP in Federal waters or in State of Alaska (State) parallel fisheries; (b) vessels active in State Guideline Harvest Level (GHL) groundfish fisheries with bycatch or incidental catch of GOA FMP groundfish; and (c) vessels targeting halibut in Federal or State waters with bycatch or incidental catch of GOA FMP groundfish.<sup>5</sup>

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 have been moved to the small category. The estimates of the number, and gross revenues of, small and large vessels in Tables 2 and 3 are based on this approach.

It is possible, however, to take account of 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), Amendment 80, GOA rockfish, and BSAI crab

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<sup>5</sup> The definition under part (b) does not limit the vessels with groundfish bycatch and incidental catch in State GHL fisheries to vessels with Federal Fisheries Permits (FFPs). The State normally adopts Federal rules in its parallel fisheries (which, for example, might govern the catch of rockfish as bycatch or incidental catch in a Pacific cod GHL fishery). Because of this, in order to interpret “directly regulated” in an inclusive manner, vessels in these fisheries with and without FFPs have been included in the analysis.

rationalization cooperatives<sup>6</sup>, 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.<sup>7</sup> 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.

Table 2 shows that, in 2011, there were 1,049 individual catcher vessels with gross revenues less than or equal to \$4 million. 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 “under \$4 million” 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 1,002 small catcher vessel entities remaining in the GOA groundfish sector. This latter group of small vessels had average gross revenues of about \$485,000, and median gross revenues of \$230,000. The 25<sup>th</sup> percentile of gross revenues was about \$79,000, and the 75<sup>th</sup> percentile was about \$661,000.

Table 2 indicates that in 2011, 9 catcher/processors grossed less than \$4 million. Three vessels in this group were estimated to be large entities, because of their affiliations with other vessels through an Amendment 80 cooperative, and the Freezer Longline Conservation Cooperative. After taking account of these affiliations, NMFS estimates that six of these vessels are small entities. The average gross revenue for these six small catcher/processor entities was \$1.17 million, and the median gross revenue was \$960,000.

Table 2. Number of GOA groundfish vessels that caught and processed less than \$4.0 million ex-vessel value or product value of groundfish and other species, by vessel type and gear, 2007 through 2011.

Year	Gear class	Catcher vessels (Number of vessels)	Catcher/processors (Number of vessels)	All vessels (Number of vessels)
2007	All gear	1,052	3	1,055
	Hook & line	925	2	927
	Pot	128	1	129
	Trawl	72	0	72
2008	All gear	1,080	5	1,085
	Hook & line	955	4	959
	Pot	128	0	128
	Trawl	73	1	74
2009	All gear	1,003	10	1,013
	Hook & line	898	7	905
	Pot	116	1	117
	Trawl	71	2	73
2010	All gear	1,032	12	1,044
	Hook & line	926	11	937

<sup>6</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. Because of the similarities between the programs, the experience during the Pilot Program in 2011 is used to evaluate the small entity status of vessels that are members of Rockfish Program cooperatives.

<sup>7</sup> As discussed in Section 1.4, fishing vessels, both catcher vessels and catcher/processors, are considered small, for RFA purposes, if their annual gross receipts, from all their economic activities combined, as well as those of any and all their affiliates anywhere in the world, (including fishing in federally managed non-groundfish fisheries and in Alaska managed fisheries), are less than or equal to \$4.0 million in a year.

	Pot	105	0	105
	Trawl	67	1	68
2011	All gear	1,049	9	1,058
	Hook & line	915	7	922
	Pot	141	0	141
	Trawl	66	2	68
Notes: Includes only vessels that fished part of Federal groundfish TACs. Determination that a vessel was below the \$4.0 million threshold was based on total revenue from catching or processing all species, not just groundfish. Some vessels used more than one gear type in the GOA during a year; gear totals show number using each gear type; all gear estimates are unique vessels. Source: Alaska Fisheries Science Center, October 29, 2012.				

Table 3. Average gross revenue of GOA groundfish vessels that caught and processed less than \$4.0 million ex-vessel value or product value of groundfish and other species, by vessel type and gear, 2007 through 2011 (millions of dollars).

Year	Gear class	Catcher vessels (Millions of \$)	Catcher/processors (Millions of \$)
2007	Hook & line	0.40	C
	Pot	0.80	C
	Trawl	1.25	-
2008	Hook & line	0.40	1.53
	Pot	0.90	-
	Trawl	1.48	C
2009	Hook & line	0.32	2.18
	Pot	0.59	C
	Trawl	0.94	C
2010	Hook & line	0.40	1.78
	Pot	0.78	-
	Trawl	1.20	C
2011	Hook & line	0.47	1.38
	Pot	0.91	-
	Trawl	1.46	C
Notes: Includes only vessels that fished part of Federal groundfish TACs. Categories with fewer than four vessels are not reported. Averages are obtained by adding the total revenues, across all areas and gear types, of all the vessels in the category, and dividing that sum by the number of vessels in the category. Averages include revenue realized from catching or processing all species, not just groundfish. Catcher vessel revenues reported at the ex-vessel level, catcher/processor revenues reported at the first wholesale level. Source: Alaska Fisheries Science Center, October 29, 2012.			

## 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  $maxFABC$ , 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  $F75\%$ . Set TACs for rockfish species in Tier 5 at  $F=0.5M$ . Set spatially explicit TACs for shortraker and roughey 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 2013 is 595,920 metric tons and the sum of the ABCs in 2014 is 584,094 metric tons. The sum of the TACs in 2013 is 436,255 metric tons, and the sum of the TACs in 2014 is 427,722 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 75 percent of the Pacific cod ABCs in each year, to account for the fact that the State of Alaska sets GHs for Pacific cod in its fisheries that are equal to 25 percent 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 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 73 percent in both 2013 and 2014. 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.

At its June 2012 meeting, the Council took final action to reduce halibut PSC limits in the GOA trawl and hook-and-line groundfish fisheries. The Council's preferred alternative would amend the GOA FMP (Amendment 95) to change the process for setting halibut PSC limits. Instead of being set when the annual groundfish harvest specifications are established each fall, halibut PSC levels will be set in Federal

regulations; those limits would remain in effect until changed by a subsequent Council action to amend those regulations.

If approved by the Secretary of Commerce, this preferred alternative would reduce the GOA halibut PSC limit for the groundfish trawl gear sector and groundfish catcher vessel hook-and-line gear sector by 15 percent. The proposed reduction would be phased in over three years: 7 percent in year 1, 5 percent in year 2 (to 12 percent), and 3 percent in year 3 (for a total of 15 percent). The proposed reduction for the catcher/processor hook-and-line gear sector would be 7 percent, which would be implemented in one step, in year 1. The Council directed that year 1 would occur in 2014, and that all reductions would be completed by 2016.

Amendment 95 would result in new halibut PSC limits of 1,848 mt (in 2014), 1,759 mt (in 2015), and 1,705 mt (in 2016 and later years) for the trawl sector. The hook-and-line halibut PSC sector limits may vary annually, as these limits are based on how the Pacific cod TAC is annually apportioned between the Central and Western Management Areas of the GOA. Based on 2012 Pacific cod TACs in the Western and Central GOA the hook-and-line catcher/processor sector would receive a 109 mt halibut PSC limit. The hook-and-line catcher vessel sector PSC limits would be 161 mt (in 2014), 152 mt (in 2015), and 147 mt (in 2016 and beyond). The Council used 1,973 mt as the baseline for its proposed trawl PSC limit reduction. This is based on a deduction of 27 mt from the 2,000 mt trawl PSC limit, per halibut PSC limit reductions made in conjunction with the implementation of the Central Gulf Rockfish Program in 2011.

Amendment 95 was fully evaluated by the Council at the time it was adopted. An IRFA was prepared for that action to evaluate the impacts of the action on small entities (Council 2012). While this action may have adverse impacts on some small groundfish vessels, the Council took this action to protect halibut stocks, and the fisheries (dominated by small entities) that depend on them.

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