FINAL REGULATORY FLEXIBILITY ANALYSIS

For Amendment 68 to the Fishery Management Plan for the Groundfish of the Gulf of Alaska.

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Abstract: This Final Regulatory Flexibility Analysis (FRFA) evaluates the impacts of the Central Gulf of Alaska Rockfish Pilot Program (Program) on small entities. In January of 2004, the U.S. Congress passed legislation directing the Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, to establish the Program (Pub. L. 108-199). The Program recognizes the historic participation of fishing vessels by allowing harvesters delivering onshore to form cooperatives and to receive an exclusive annual harvest privilege for those cooperatives. The Program recognizes the historic participation of processors by requiring cooperatives to form in association with a processor. This FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612).

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Introduction

This Final Regulatory Flexibility Analysis (FRFA) evaluates the impacts of the final rule implementing Amendment 68 to the Fishery Management Plan for the Groundfish of the Gulf of Alaska (FMP) on small entities.

The proposed rule for Amendment 68 was published in the Federal Register on June 6, 2006 (71 FR 33040). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications sections of the preamble to the rule. The public comment period ended on July 24, 2006. One comment was received that specifically addressed the IRFA.

In January of 2004, the U.S. Congress passed legislation directing the Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, to establish the Central Gulf of Alaska Rockfish Pilot Program (Program) (Pub. L. 108-199). The Program recognizes the historic participation of fishing vessels by allowing harvesters delivering onshore to form cooperatives and to receive an exclusive annual harvest privilege for those cooperatives. The Program recognizes the historic participation of processors by requiring cooperatives to form in association with a processor.

This FRFA meets the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612).

The purpose of an FRFA

The RFA, first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the SBREFA. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact 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 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.

Because, based on all available information, it is not possible to 'certify', NMFS has prepared a formal FRFA and included it in this package for Secretarial review.

What is required in an FRFA?

Under 5 U.S.C., Section 604(a) of the RFA, each FRFA is required to contain:

- A succinct statement of the need for, and objectives of, the rule;
- A summary of the significant issues raised by the public comments is 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;
- 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;
- 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; and
- A description of the steps the agency has taken to minimize any 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.

What is a small entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) and small government jurisdictions.

<u>Small businesses</u>. 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 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.

A succinct statement of the need for, and objectives of, the rule

The Program is needed to end the race for fish under the LLP. By ending this race, the pilot program is expected to accomplish the following objectives: improve economic efficiency, reduce incentives for bycatch, remove pressure to take unnecessary physical risk when fishing conditions are hazardous, and address a range of social concerns.

The Council has identified the following problem statement, which this action is intended to address:

> The present management structure of the CGOA rockfish fishery continues to exacerbate the race for fish with:
>
> - Increased catching and processing capacity entering the fishery,
> - Reduced economic viability of the historical harvesters (both catcher vessels and catcher processors) and processors,
> - Decreased safety,
> - Economic instability of the residential processor labor force,
> - Reduced product value and utilization,
> - Jeopardy to historical groundfish community stability,
> - Limited ability to adapt to Magnuson-Stevens Act (MSA) requirements to minimize bycatch and protect habitat.
>
> While the Council is formulating GOA comprehensive rationalization to address similar problems in other fisheries, a short-term solution is needed to stabilize the community of Kodiak. Kodiak has experienced multiple processing plant closings, its residential work force is at risk due to shorter and shorter processing seasons, and the community fish tax revenues continue to decrease as fish prices and port landings decline. Congress recognized these problems and directed the Secretary, in consultation with the Council, to implement a pilot rockfish program with the following legislation:
>
> > SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM. The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) and historic participation of fish processors (1996 to 2000, best 4 of 5 years) for pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. Such a pilot program shall (1) provide for a set-aside of up to 5 percent for the total allowable catch of such fisheries for catcher vessels not eligible to participate in the pilot program, which shall be delivered to shore-based fish processors not eligible to participate in the pilot program; (2) establish catch limits for non-rockfish species and non-target rockfish species currently harvested with pacific ocean perch, northern rockfish, and pelagic shelf rockfish, which shall be based on historical harvesting of such bycatch species. The pilot program will sunset when a Gulf of Alaska Groundfish comprehensive rationalization plan is authorized by the Council and implemented by

the Secretary, or 2 years from date of implementation, whichever is earlier.

The fishing fleets have had little experience with cooperative fishery management and needs to begin the educational process. For the fishery to be rationalized, all aspects of the economic portfolio of the fishery need to be recognized. To stabilize the fishery economy all the historical players – harvesters (both catcher vessels and catcher processors) and onshore processors need to be recognized in a meaningful way. The demonstration program is designed as a short-term program for immediate economic relief, until comprehensive GOA rationalization can be implemented.

Public Comments

The proposed rule for Amendment 68 was published in the Federal Register on June 6, 2006 (71 FR 33040). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications sections of the preamble to the rule. The public comment period ended on July 24, 2006. NMFS received 9 letters of public comment on the proposed rule. NMFS summarized these letters into 163 separate comments. Of these, one comment was specifically directed to the IRFA and is presented below. No changes were made to the final rule from the proposed rule in response to the comment on the IRFA.

Several comments directly or indirectly dealt with economic impacts to small entities resulting from the management measures presented in the proposed rule. These comments and responses are included in the preamble to the final rule and, as indicated in the preamble, changes were made in response to these comments. A summary of regulation changes in response to public comments is contained below. Additionally, NMFS made a number of changes to the compliance requirements as a result of public comments. These changes are discussed in the section, A description of the projected reporting, record keeping, and other compliance requirements of the final rule.

<u>Comment</u>: The EA/RIR/IRFA prepared for the Program contains no analysis of the economic impacts of applying the monitoring and enforcement requirements to the catcher/processor vessels in the opt-out fleet. The RFA requires the agency to determine the impacts of a proposed rule on small entities. It then requires the agency to identify and develop alternatives to ameliorate the economic and compliance impacts on small entities if the proposed rule has a significant impact on a substantial number of small entities.

<u>Response</u>: As discussed in the IRFA, the RFA requirements do not apply to catcher/processor vessels participating under this Program. As noted in Section 5.4 of the IRFA, no processors or catcher processors eligible for the Program and regulated by this action are small entities, as defined by the RFA.

Nevertheless, throughout the Final EA/RIR and the Draft EA/RIR/IRFA, NMFS provides information on the anticipated costs to directly regulated entities of meeting monitoring and enforcement standards that are applicable under this Program. Section 5.5 of the IRFA notes that "catcher processors are also likely to be required to add flow scales and observer stations on their vessels. These observer requirements and their costs are fully described in Sections 2.5.1 and 2.5.9." Section 2.5.1 of the EA/RIR notes that "monitoring will need to be modified so that these allocations are monitored at the individual or cooperative level. In addition, observer requirements will also need to be modified to suit the new system of allocations." Section 3.4.1 of the EA/RIR includes a review of the potential costs and updated information on the specific monitoring and enforcement requirements applicable to catcher/processor vessels in the opt-out fishery.

The EA/RIR, in Section 2.5.1, also notes in the discussion of the preferred alternative selected by the Council (i.e., "Catcher processor allocation with cooperatives") that:

> In addition to managing aspects of the rockfish target fishery, NOAA Fisheries would need to approve and monitor and manage sideboards. Any participant who intends to, or does, participate in any of the fisheries governed by the sideboards during the July sideboard period must have adequate observer coverage onboard the vessel so that all catch taken under sideboards will be assessed against the overall sector harvest limit. Observer coverage would be the same as that required during a cooperative fishery to adequately manage rockfish harvests.

This statement strongly suggests that, under the Program, NMFS would thoroughly monitor and manage the sideboard limits applicable to this sector.

The final rule has not been modified to address this comment, however, NMFS refers the commenter to the response to comment 63, which addresses modifications made to the monitoring and enforcement provisions applicable to catcher/processor vessels under this rule.

A description of, and an estimate of the number of small entities to which the final rule will apply

Information concerning ownership of vessels and processors, which would be used to estimate the number of small entities that are regulated by this action, is somewhat limited. Using available information and data, however, estimates of the number of small entities regulated by the action are provided.

As many as 63 entities, that own approximately 48 catcher vessels and 15 catcher/processor vessels, are eligible to receive QS under the Program. Of the estimated 63 entities owning vessels eligible for fishing under the Program (other than the entry-level fishery), 45 are estimated to be small entities because they generated $4.0 million or less in gross revenue based on participation in 1996 through 2002. Approximately 171 trawl vessels and 900 non-trawl vessels could participate in the entry level fishery. The number of vessels that will choose to participate in the entry level fishery component of the Program is not known; therefore, there is no estimate of the number of entities in the entry level fishery that are directly regulated under this Program.

No processors or catcher processors that are eligible for the Program regulated by this action are small entities, as defined by the RFA. All 15 of the entities owning eligible catcher/processor vessels are non-small entities as defined by the RFA.

Six entities that process rockfish are estimated to be eligible rockfish processors and are regulated under this Program. None of these eligible rockfish processors are estimated to be small entities based on the number of persons employed by these processors. Additionally, some of these eligible rockfish processors are estimated to be involved in both the harvesting and processing of seafood products and exceed the $4.0 million in revenues as a fish harvesting operation. Some processors that are not eligible rockfish processors may choose to compete for landings from the entry level fishery and are regulated by this Program. Some of these processors may be small entities. The extent of participation by small entities in the processing segment of the entry level fishery cannot be predicted.

The ability to estimate the number of small entities that operate catcher vessels and that are directly regulated by this action is limited due to incomplete information concerning vessel ownership. No catcher vessel individually exceeds the small entity threshold of $4.0 million in total annual gross revenues from all sources. At least three catcher vessels are believed to be owned by entities whose operations exceed the small entity threshold, leaving 45 small catcher vessel entities that are directly regulated by this action. This likely overstates to true number of small entities in this group.

In addition to the main pilot program, this action also creates an “entry level” fishery for catcher vessels and processors that are ineligible for the main program. Since participation in that fishery is voluntary, the number of small entities participating cannot be predicted. Based on data from NMFS, there are approximately 114 LLPs that would be qualified to fish in the CGOA entry level trawl fishery, and 773 LLPs that would qualify to fish in the entry level fixed gear fishery. However, it is not possible to determine how many persons may hold these LLP licenses and chose to participate in the entry level fishery at the time of application to participate in the fishery. The number of persons holding LLPs is likely to be less than the total number of LLP licenses that may be used to participate in the entry level fishery because a person may hold more than one LLP license at a time. It is likely that a substantial portion of the catcher vessel participants will be small entities. It is also possible that some small processing entities could choose to participate in the entry level fishery.

Six entities made at least one rockfish landing from 1996 to 2002 and do not appeared to qualify as an eligible rockfish harvester. Five of these entities are not small entities and one entity qualifies as “small” by Small Business Administration (SBA) standards. The non-small entities owned five catcher/processors. The one small entity owns a catcher vessel. Entities that do not qualify for the Program either left the fishery, currently fish under interim LLP licenses, or do not hold an LLP license. Moreover, the “non-qualified” vessels cannot continue fishing under the current LLP. The impacts to the small entities that are prohibited from fishing by the LLP were analyzed in the RIR/IRFA and Final Regulatory Flexibility Analysis (FRFA) prepared for the LLP. Therefore, the non-qualified vessels are not considered impacted by the proposed rule and are not discussed in this FRFA.

The community of Kodiak, Alaska, could be directly impacted by the Program. All of the eligible rockfish processors are located in Kodiak. The specific impacts on Kodiak cannot be determined until NMFS issues QS and eligible rockfish harvesters begin fishing under the Program. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the EA/RIR prepared for this action.

A description of the projected recordkeeping, reporting, and other compliance requirements of the final rule

Implementation of the Program changes the overall reporting structure and recordkeeping requirements of the participants in the Central GOA rockfish fisheries. All participants are required to provide additional reporting. Each harvester is required to track harvests to avoid exceeding his or her allocation. As in other North Pacific rationalized fisheries, processors will provide catch recording data to managers to monitor harvest of allocations. Processors will be required to record deliveries and processing activities to aid in the Program administration. These requirements are similar to those currently imposed, and therefore would not be new or duplicative, under the Program.

In addition, vessels are likely to be required to increase observer coverage in both the rockfish fisheries and sideboarded fisheries under the Program. Catcher processors are required to add flow scales and observer stations on their vessels unless participating in the opt-out fishery. These observer requirements and their costs are fully described in the EA/RIR. Equipment requirements for catcher processors are consistent with the requirements of Amendments 79 and 80 of the Bering Sea and Aleutian Islands Groundfish FMP. Since most of the catcher processors in this fishery also participate in that fishery, these equipment costs are appropriately distributed across, and are likely to be supported by, activities in both the CGOA rockfish fisheries and the Bering Sea and Aleutian Islands fisheries.

Participating catcher vessels are required to install and maintain a computer for use by an observer when the vessel is meeting coverage requirements for the Program. This includes all catcher vessels fishing for a cooperative or in the limited entry fishery. NMFS will install custom software on each of these computers. This software would allow the vessel's observer to enter and edit data, which could be transferred to a disk and sent electronically to NMFS from the plant observer's computer. This requirement and its costs are discussed in more detail in the EA/RIR.

NMFS developed new databases to monitor harvesting and processing allocations. These changes require the development of new reporting systems.

To participate in the Program, persons are required to complete application forms, transfer forms, reporting requirements, and other collections-of-information. These forms are either required under existing regulations or are required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms. With the exception of specific equipment tests, which are performed by NMFS employees or other professionals, basic word processing skills are the only skills needed for the preparation of these reports or records.

NMFS has estimated the costs of complying with the reporting requirements based on the burden hours per response, number of responses per year, and a standard estimate of $25 per burden hour. Persons are required to complete most of the forms at the start of the Program, such as the application to participate in the Program. Persons are required to complete some forms every year, such as the application to fish in a rockfish cooperative, limited access fishery, or opt-out fishery. Additionally, reporting for purposes of catch accounting, or transfer of CQ among rockfish cooperatives is completed more frequently.

It will cost participants in the Program an estimated $56 to complete applications to participate in the Program, $55 for the annual application to participate in a rockfish cooperative, limited access fishery, or opt-out, and $61 to complete a transfer of CQ.

It will cost participants in the Program an estimated $106 for an annual rockfish cooperative report; $15 for a rockfish cooperative catch report; $15 for a rockfish cooperative termination of fishing declaration; and $15 for each check-in/check-out for vessels authorized to fish under a CQ permit.

NMFS addressed the suite of public comments as follows:

- Clarified and modified several definitions.
- Clarified the circumstances under which a CQ permit assigned to a rockfish cooperative is valid, and the effect on a CQ permit once NMFS has approved a rockfish cooperative's termination of fishing declaration.
- Made minor adjustments to the rockfish cooperative catch report requirement, and deleted a reference to a process for amending a CQ permit to select vessels that are eligible to fish under the CQ permit. NMFS also established a more flexible rockfish reporting system that allows a cooperative's authorized representative to determine how and when vessels will fish under a CQ permit. Authorized cooperative representatives could "check-in" a vessel when it is fishing under a CQ permit during the rockfish cooperative fishing year, and "check-out" vessels no longer fishing under its CQ permit.
- Clarified that an eligible rockfish harvester cannot assign their LLP license to more than one rockfish fishery in a year. NMFS also clarified that an eligible rockfish harvester or processor is prohibited from participating in the entry level fishery, detailed the prohibitions that apply for monitoring provisions in the opt-out fishery, and established provisions to complement a rockfish cooperative's authorized representative ability to submit vessel check-in and check-out reports to designate fishing under a CQ permit.
- NMFS deleted the prohibition requiring retention of groundfish harvested while fishing under a sideboard limit. NMFS deleted prohibitions applicable to rockfish observer coverage and the catch monitoring control plan (CMCP) for entry level rockfish processors, and the prohibition on having primary rockfish species harvested under a CQ permit and rockfish incidentally retained in non-Program vessels aboard a catcher/processor vessel at the same time.
- Inserted provisions to allow the reapportionment of halibut PSC CQ that is unused by rockfish cooperatives to the trawl sector after rockfish cooperatives have completed fishing.
- Clarified that entry level processors are not required to have a catch monitoring control plan (CMCP).
- Reduced observer coverage requirements for catcher/processor vessels fishing in the opt-out fishery, and clarified how observer coverage required under the Program affects processor facility observer coverage requirements in other non-Program groundfish fisheries.
- Clarified that an LLP license is eligible to be assigned Rockfish QS only if a landing was made during the primary rockfish species qualifying periods in which rockfish were targeted (i.e., primary rockfish species were the predominant groundfish catch). Similarly, secondary species and halibut PSC is assigned to the catcher/processor or catcher vessel sector based on harvests or halibut PSC use attributed to specific landings in which primary rockfish species were targeted. Further, NMFS clarified that an onshore processing facility must be closed before the processing history associated with that facility may be transferred. NMFS made minor clarifications in the formula for determining a legal rockfish landing.
- Modified the process and formulas for allocating Rockfish QS among fishery participants, and the allocation of TAC for secondary species and halibut PSC between the catcher vessel and catcher/processor sectors. These changes clarified proposed regulatory text. NMFS extended the due date for the application to join a rockfish cooperative, limited access fishery, or opt-out fishery from December 1 of the year prior to fishing to March 1 of the year in which fishing occurs. NMFS clarified that CQ intercooperative transfers must be approved by the eligible rockfish processor with whom

that rockfish cooperative is associated. NMFS made several clarifications on the process of forming a rockfish cooperative, specifically requirements establishing the amount of Rockfish QS that must be assigned to a rockfish cooperative before it can form. NMFS specified the associations that can form between eligible rockfish harvesters and processors. NMFS deleted provisions concerning the transfer of processor eligibility, requirements on providing corporate ownership information on intercooperative CQ transfer forms, and provisions requiring modification of the CQ permit to add or delete the vessels fishing under that permit.

- Clarified the calculation of use caps applicable to catcher vessel cooperatives and eligible rockfish processors; how transfers of CQ are attributed to eligible rockfish harvesters in a rockfish cooperative; and which fisheries are subject to closure once a sideboard limit is reached. NMFS inserted the BSAI Pacific cod sideboard limit that applies to the catcher vessel sector in a table with other sideboard limited species and deleted redundant text. NMFS established the halibut PSC sideboard limit as a use cap applying to the entire GOA, not to specific management areas in the GOA. Last, NMFS clarified the method for calculating the amount of groundfish and halibut PSC sideboard limits that are attributed to rockfish cooperatives, the rockfish limited access fishery, and catcher/processor sector opt-out fishery.
- Modified the specific catch monitoring requirements that apply to catcher/processor vessels assigned to the opt-out fishery. Specifically, NMFS relieved requirements for scales and an observer sampling station. NMFS also clarified that groundfish harvested or halibut PSC used under a CQ permit is not debited against groundfish or halibut PSC sideboard limits in July.
- Corrected typographic errors in the several tables.

Description of significant alternatives and description of steps taken to minimize the significant economic impacts on small entities

The EA/RIR presents an analysis of the three alternative programs for management of the Central GOA rockfish fisheries for catcher vessels: Status Quo/No Action (Alternative 1); rockfish cooperative management with a limited license program for processors (Alternative 2); and rockfish cooperative management with linkages between rockfish cooperatives and processors (Alternative 3). Three alternatives for catcher/processors also were considered: Status Quo/No Action (Alternative 1); rockfish cooperative management (Alternative 2); and a sector allocation (Alternative 3). Alternative 3 for catcher vessels and Alternative 2 for catcher/processors were combined to form the Council’s preferred alternative–the rockfish cooperative alternative, also know as the Program. These alternatives constitute the suite of “significant alternatives” for the purposes of the RFA. The following is a summary of the FRFA, focusing on the aspects which pertain to small entities.

Under the status quo, the Central GOA rockfish fisheries have followed the well known pattern associated with managed open access. Central GOA rockfish fisheries have been characterized by a “race-for-fish” capital stuffing behavior, excessive risk taking, and a dissipation of potential rents. Participants in these fisheries are confronted by significant surplus capacity (in both the harvesting and processing sectors), and widespread economic instability, all contributing to resource conservation and management difficulties.

In response to desires to improve economic, social, and structural conditions in many of the rockfish fisheries, the Council found that the status quo management structure was causing significant adverse impacts to the participants in these fisheries. Many small entities, as defined under RFA, are negatively impacted under current open access regulations. The management tools in the existing FMP (e.g., time/area restriction and LLP licenses) do not provide managers with the ability to effectively solve these problems, thereby making Magnuson-Stevens Act goals difficult to achieve and forcing reevaluation of the existing FMP.

In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council determined that the institution of some form of rationalization program was needed to improve fisheries management in accordance with the Magnuson-Stevens Act. After an exhaustive public process spanning several years, the Council concluded that the Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on the universe of directly regulated small entities. The preferred rockfish cooperative alternative appears to minimize negative economic impacts on small entities to a greater extent than an alternative that allocates limited processing licenses (Alternative 2 for catcher vessels), or that defines a smaller portion of the TAC for competition among a fixed number of vessels (Alternative 3 for catcher/processors).

The Program allocates annual harvesting privileges of rockfish and secondary species TAC to harvester rockfish cooperatives, creating a transferable access privilege as a share of the TAC, thus removing the “common property” attributes of the status quo on qualifying harvesters. The rationalization of the Central GOA fisheries will likely benefit the approximately 45 businesses that own harvest vessels and are considered small entities. In recent years these entities have competed in the race for fish against larger businesses. The rockfish cooperative alternative allows these operators to slow their rate of fishing and give more attention to efficiency and product quality.

The participants are permitted to form rockfish cooperatives that can lease or sell their allocations, and can obtain some return from their allocations. Differences in efficiency implications of rationalization by business size cannot be predicted. Some participants believe that smaller vessels can be more efficient than larger vessels in a rationalized fishery because a vessel only needs to be large enough to harvest the cooperative’s CQ. Conversely, under open access, a vessel has to be large enough to outcompete the other fishermen and, hence, contributes to the overcapacity problems under the race for fish.

In addition, the Program provides efficiency gains to both small entity harvesters and the processors. Data on cost and operating structure within each sector are unavailable, so a quantitative evaluation of the size and distribution of these gains accruing to harvesters and processors under this management regime cannot be provided. Nonetheless, it appears that the rockfish cooperative alternative offers improvements over the status quo through the institution of a “rights-based management” structure. The rockfish cooperative alternative also includes provisions for fishery participants the Council expressly sought to include--specifically, rockfish processors and the community in which those processors have historically been active.

No additional significant alternatives to the rule exist that accomplish the stated objectives, that are consistent with applicable statutes, and that would minimize the economic impact of the proposed rule on small entities. No significant adverse effects are shown for this action, therefore, no additional steps were taken to minimize the significant economic impacts on small entities.

However, NMFS considered multiple alternatives to effectively implement specific provisions within the Program through regulation. In each instance, NMFS attempted to impose the least burden on the public, including the small entities subject to the Program.

The groundfish landing report (internet version and optional fax version) will be used to debit CQ. All retained catch must be weighed, reported, and debited from the appropriate account under which the catch was harvested. Under recordkeeping and reporting, NMFS considered the options of a paper-based reporting system or an electronic reporting system. NMFS chose to implement an electronic reporting system as a more convenient, accurate, and timely method. Additionally, the proposed electronic reporting system will provide continuous access to accounts. These provisions will make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor their accounts and fishing activities. NMFS recognizes that participants in the current fishery might be more comfortable with the paper-based fish ticket system, but believes that the added benefits of the electronic reporting system outweigh any benefits of the paper based system. However, NMFS will also provide an optional backup using existing telecommunication and paper based methods, which will reduce the burden on small entities in more remote areas possessing less electronic infrastructure.

Under the final rule, catcher/processors will be required to purchase and install motion-compensated scales to weigh all fish at-sea if participating as a vessel that is harvesting fish under a CQ permit, in the limited access fishery, or in the GOA during July. Such scales are estimated to cost on a one-time basis, approximately $69,000 per vessel. Currently a flow scale costs $60,000, an observer platform scale $8,500, and test weights $500. Additional costs on a one-time basis associated with the installation of the scales are estimated to be between $10,000 and $40,000, depending on the extent to which the vessel must be reconfigured to install the scale. Scale monitoring requirements are estimated to cost approximately $6,235 per year. Based on discussions with equipment vendors, NMFS estimates that six catcher/processors will choose to fish under the Program and will be required to have scales. Based on public comments received on the proposed rule, NMFS modified this rule so that catcher/processor vessels that participate in the opt-out fishery are not required to purchase and install scales. This modification significantly reduces costs for vessels that are subject to sideboard limits but are not harvesting rockfish in the Central GOA.

NMFS will increase observer coverage for Program participants in most cases. In similar NMFS managed quota fisheries, NMFS requires that all fishing activity be observed. NMFS must maintain timely and accurate records of harvests in fisheries with small allocations that are harvested by a fleet with a potentially high harvest rate. Additionally, halibut PSC and halibut mortality rates must be monitored. Such monitoring can only be accomplished through the use of onboard observers. Although this imposes additional costs, participants in the fishery can form rockfish cooperatives, which will limit the number of vessels required to harvest a cooperative's CQ, and organize fishing operations to limit the amount of time when additional observer coverage are required and offset additional costs. The exact overall additional observer costs per vessel cannot be predicted because costs will vary with the specific fishing operations of that vessel. NMFS estimates that a requirement for increased observer coverage will cost approximately $400 per day. Additional costs may be associated with catcher/processors that reconfigure their vessels to ensure that adequate space is available for the additional observer. These costs cannot be predicted and will vary from vessel to vessel depending on specific conditions on that vessel. Based on public comments received on the proposed rule, NMFS modified this rule to reduce observer costs applicable to catcher/processor vessels in the opt-out fishery from a 200 percent observe coverage level (i.e., two observers onboard the vessel) to 100 percent observer coverage level (i.e., one observer onboard the vessel). This change will substantially reduce costs that this portion of the fishery will incur, but a precise estimate is not available at this time.

For monitoring of processing activity, it will cost shore-based processors approximately $416 to complete the catch monitoring plan and an additional $2,800 annually to complete all landing reports.

NMFS determined that a VMS program is essential to the proper enforcement of the Program. Therefore, all vessels, except for non-trawl entry level vessels, participating in the Program are required to participate in a VMS program. Depending on which brand of VMS a vessel chooses to purchase, NMFS estimates that this requirement will impose a cost of $2,000 per vessel for equipment purchase, $780 for installation and maintenance, and $5 per day for data transmission costs. NMFS does not estimate that any additional vessels will incur this cost if they choose to participate in the Program. This estimate is based on information that vessels that may participate in the Program already are subject to VMS requirements under existing regulations.

NMFS has determined that special catch handling requirements for catcher/processors may subject vessel owners and operators to additional costs depending on the monitoring option chosen. The costs for providing line of sight for observer monitoring are highly variable depending on bin modifications the vessel may make, the location of the observer sample station, and the type of viewing port installed. These costs cannot be estimated with existing information.

Because NMFS has chosen to implement the video option using performance standards, the costs for a vessel to implement this option can be quite variable, depending on the nature of the system chosen. In most cases, the system is expected to consist of one digital video recorder (DVR)/computer system and between two and five cameras. DVR systems range in price from $1,500 to $10,000, and cameras cost from $75 to $300 each. Data storage costs will vary depending on the frame rate, color density, amount of compression, image size, and need for redundant storage capacity. NMFS estimates data storage will cost between $400 and $3,000 per vessel.

Installation costs will be a function of where the DVR/computer can be located in relation to an available power source, cameras, and the observer sampling station. NMFS estimates that a fairly simple installation will cost approximately $2,000, a complex installation will cost approximately $10,000, per vessel. However, these costs can be considerably lower if the vessel owner chooses to install the equipment while upgrading other wiring. Thus, total system costs, including DVR/computer equipment, cameras, data storage, and installation is expected to range between $4,050 per vessel for a very simple inexpensive system with low installation costs, and $24,500 per vessel for a complex, sophisticated system with high installation costs. Based on public comments received on the proposed rule, NMFS has modified the rule to remove the requirement for an observer sampling station for catcher/processor vessels participating in the opt-out fishery. This change will reduce costs of total system costs for the catch handling provisions, but the amount of the reduced costs cannot be predicted and will vary depending on the specific configuration of the vessel.

Annual system maintenance costs are difficult to estimate because much of this technology has not been extensively used at-sea in the United States. However, we estimate an annual cost of $680 to $4,100 per year based on a hard disk failure rate of 20 percent per year, and a DVR/computer lifespan of three years.

Additionally, NMFS made a number of changes as a result of public comments to the Program's compliance requirements to mitigate impacts on small entities. Changes in the monitoring and enforcement requirements applicable to catcher/processor vessels participating in the opt-out fishery are addressed in the previous paragraphs addressing motion compensated scales, observer coverage, and special catch handling requirements for catcher/processor vessels. NMFS has also relieved the requirement for a dedicated Program observer at entry-level processing facilities, and the requirement that those facilities maintain a catch monitoring control plan (CMCP). These changes reduce costs to these entities, but do not undermine the overall monitoring goals of this program given the small allocations available to the entry level fishery.

In response to public comment requesting additional time to prepare and submit the annual applications for CQ, the rockfish limited access fishery, and opt-out fishery, NMFS changed the submittal date from December 1 of the year prior to fishing to March 1 of the year in which the person intends to fish. This deadline change provides both the time to gather records and coordinate with other participants in the fishery. NMFS has also improved the flexibility of rockfish cooperatives to designate specific vessels to fish under the CQ permit through a vessel check-in and check-out procedure. This change provides greater flexibility than the more lengthy proposed requirement to modify the CQ permit. The specific details of this vessel check-in/check-out procedure is detailed in the response to comment section of the preamble to the final rule.

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