

Initial Regulatory Flexibility Analysis Bering Sea Chinook Salmon Bycatch Management

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Abstract: This initial regulatory flexibility analysis evaluates the potential adverse economic impacts on directly regulated small entities accruing from the proposed action to implement Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. If approved, Amendment 91 would establish a Chinook salmon prohibited species catch limit for each Bering Sea pollock fishing season and sector, which, when reached, would require all directed pollock fishing to stop for that season. This IRFA address the requirements of the Regulatory Flexibility Act.

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INITIAL REGULATORY FLEXIBILITY ANALYSIS

Introduction

This initial regulatory flexibility analysis (IRFA) evaluates the potential adverse economic impacts on directly regulated small entities accruing from the proposed action to implement Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). If approved, Amendment 91 would establish a Chinook salmon prohibited species catch (PSC) limit for each Bering Sea (BS) pollock fishing season and sector, which, when reached, would require all directed pollock fishing to stop for that season. This action is necessary to minimize Chinook salmon bycatch in the BS pollock fishery while achieving optimum yield, and is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the FMP, and other applicable laws. One can find a further description of the proposed BS Chinook salmon bycatch management plan in the Final Environmental Impact Statement (EIS) and Final Regulatory Impact Review (RIR) for this action. This IRFA addresses the statutory requirement 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 IRFA

The Regulatory Flexibility Act (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 Small Business Regulatory Enforcement Fairness Act. 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), NMFS would consider that segment the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts,

not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, to permit preparation of a “factual basis” upon which to certify that the preferred alternative does not have the potential to result in “significant adverse impacts on a substantial number of small entities” (as those terms are defined under the RFA). Because, based on all available information, it is not possible to “certify” this outcome, should the proposed action be adopted, a formal IRFA has been prepared and is included in this package for Secretarial review.

What is required in an IRFA?

Under 5 U.S.C., section 603(b) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, record keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that would accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as :
 1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
 3. The use of performance rather than design standards;
 4. An exemption from coverage of the rule, or any part thereof, for such small entities.

Definition of 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 business: 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, controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint ventures 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 description of the reasons why action by the agency is being considered

Chinook salmon, taken incidentally in the BS pollock fishery, is classified as “prohibited species catch” and must be avoided to the extent practicable.¹ Chinook salmon is of significant economic and social importance, and as such, it is expressly regulated by NMFS in the BS pollock fishery. The purpose of Chinook salmon PSC management in the BS pollock fishery is to minimize Chinook salmon losses in trawl nets, to the extent practicable, while achieving optimum yield. Minimizing Chinook salmon bycatch while achieving optimum yield, is necessary to maintain a healthy marine ecosystem, ensure long-term conservation and abundance of Chinook salmon, provide maximum benefit to fishermen and communities that depend on Chinook salmon and pollock resources, and to comply with the MSA and other applicable federal law. As mentioned elsewhere in the EIS and RIR, the Council recognized the need for a management approach to balance the competing requirements of the MSA’s National Standard 1 and National Standard 9. Therefore, the Council determined that the institution of a comprehensive Chinook salmon bycatch management plan is needed to improve the management of the pollock fishery in the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

Chinook salmon PSC management has been a significant focus of past Council actions concerning the BS pollock fisheries. While reports from the current management system indicate that specific provisions designed to reduce Chinook salmon losses, such as the voluntary rolling hotspot system (VRHS) coordinated through an inter-cooperative agreement (ICA), have reduced Chinook salmon bycatch rates under some conditions, when compared with what they would have been without the measures, concerns remain, because of high numbers of Chinook salmon reported in the bycatch through 2007. Due to recent exceptionally high Chinook salmon Bycatch rates and declining in-river returns of some western Alaska Chinook salmon stocks, the Council and NMFS are considering alternative measures to more effectively reduce these losses in the BS pollock fishery. Despite significant decreases in the number of Chinook salmon caught as bycatch in 2008 and 2009, measures to prevent high levels of Chinook salmon bycatch in the future are needed.

Objectives of, and legal basis for, the proposed rule

Under the MSA, the management of marine fishery resources in the exclusive economic zone (EEZ) is vested in the Secretary of Commerce, and the Regional Fishery Management Councils. The BS pollock fishery in the EEZ is managed under the FMP. Statutory authority for measures designed to reduce bycatch is specifically addressed in 50 CFR 600.350.

As described elsewhere in the EIS and RIR for this action, the dual objectives of this proposed action are to implement conservation and management measures that minimize Chinook salmon bycatch, to the extent practicable, in the BS pollock fisheries, in compliance with National Standard 9 of the MSA and,

¹ In general, PSC is required to be returned to the sea with a minimum of injury regardless of its condition. Salmon PSC must be counted by an observer prior to being returned to the sea, and in some cases, this requires the retention of salmon PSC. In addition, immediate discard of salmon and halibut PSC is not required for PSC donated to authorized recipients for delivery to food banks.

further, to comply with National Standard 1 of the MSA, which requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, optimum yield from each fishery.

Number and description of small entities regulated by the proposed action

The proposed action applies only to those entities that participate in the directed pollock trawl fishery in the BS. These entities include the American Fisheries Act (AFA) affiliated pollock fleet and the six western Alaska Community Development Quota Program (CDQ) groups that receive allocations of BS pollock.

Table 11-1. Summary of Small and Large Entities for Regulatory Flexibility Act Purposes and Number of Vessels, Inshore Processors, and CDQ Groups.

Entity class	Units	Directly regulated by action	Small	Non-small
Catcher/processors	Vessels	Yes	0	16
Motherships	Vessels	Yes	0	3
Catcher vessels	Vessels	Yes	0	90
Inshore processors	Plants (including fixed floating platforms)	Yes	0	7
CDQ groups	Non-profit organizations	Yes	6	0

The RFA requires a consideration of affiliations among entities for the purpose of assessing if an entity is small. The AFA pollock cooperatives in the BS are an important type of affiliation. All of the non-CDQ entities directly regulated by the proposed action were members of AFA cooperatives in 2008 and, therefore, NMFS considers them “affiliated” large (non-small) entities for RFA purposes.

Due to their status as non-profit corporations, the six CDQ groups are identified as “small” entities. This proposed action directly regulates the six CDQ groups, and NMFS considers the CDQ groups to be small entities for RFA purposes. As described in regulations implementing the RFA (13 CFR 121.103) the CDQ groups’ affiliations with other large entities do not define them as large entities. Revenue derived from groundfish allocations and investments in BSAI fisheries enable these non-profit corporations to better comply with the burdens of this action, when compared to many of the large AFA affiliated entities. Nevertheless, the only small entities that are directly regulated by this action are the six CDQ groups.

Description of the CDQ groups

The CDQ Program was designed to improve the social and economic conditions in western Alaska communities by facilitating their economic participation in the BSAI fisheries. In aggregate, CDQ groups

share a 10 percent allocation of the BSAI pollock total allowable catch (TAC).² These allocations, in turn, provide an opportunity for residents of these communities to participate in and benefit from the BSAI fisheries, through their association with one of the CDQ groups. The 65 communities, with approximately 27,000 total residents, benefit from participation in the CDQ Program, but are not directly regulated by this action. The six non-profit corporations (CDQ groups), formed to manage and administer the CDQ allocations, investments, and economic development projects are:

- Aleutian Pribilof Island Community Development Association (APICDA)
- Bristol Bay Economic Development Corporation (BBEDC)
- Central Bering Sea Fishermen’s Association (CBSFA)
- Coastal Villages Region Fund (CVRF)
- Norton Sound Economic Development Corporation (NSEDC)
- Yukon Delta Fisheries Development Association (YDFDA)

The pollock fishery harvests on the order of 1 million metric tons of pollock each year (some years substantially more, some somewhat less) and provides millions of dollars in revenue to western Alaska CDQ communities through various channels, including the direct catch and sale or leasing of quota to various harvesting partners. The vessels harvesting CDQ pollock are the same vessels conducting AFA non-CDQ pollock harvesting. In addition to pollock allocations, CDQ groups have made significant investments in the at-sea pollock fleet. In 2007, the six CDQ groups held approximately \$543 million in assets and had invested more than \$140 million in BSAI fishery related projects, including, but not limited to, the pollock industry. Complete descriptions of the CDQ groups, and the impacts of this action, are located in sections 2.5 and 6.10.3 of the RIR.

Description of recordkeeping, reporting, and other compliance requirements

Recordkeeping and reporting requirements needed to implement the preferred alternative include those related to—

- reporting Chinook salmon bycatch by vessels directed fishing for pollock in the BS;
- applications to receive transferable Chinook salmon PSC allocations;
- applications to transfer Chinook salmon PSC allocations to another eligible entity;
- development and submission of proposed incentive plan agreements (IPAs) and amendments to approved IPAs; and
- an annual report from the participants in each IPA, documenting information and data relevant to the BS Chinook salmon bycatch management program.

²The CDQ Program also receives allocations of other groundfish TAC that range from 10.7% for Amendment 80 species, to 7.5% for most other species; however, these allocated amounts are not affected by this action.

The CDQ groups enter contracts with partner vessels to harvest their pollock allocation. Many of these vessels are at least partially owned by the CDQ groups. The accounting of Chinook salmon bycatch by partner vessels fishing under CDQ allocations would accrue against each respective CDQ group's seasonal PSC limit. Most of the recordkeeping, reporting, and compliance requirements necessary to implement the preferred alternative will apply to the vessels harvesting pollock, and to the processors processing pollock delivered by catcher vessels. For example, landings and production reports that include information about Chinook salmon bycatch are required to be submitted by processors, under existing requirements at 50 CFR 679.5.

The CDQ groups already receive transferable Chinook and non-Chinook salmon PSC allocations and have received such allocations under the CDQ Program since 1999. Therefore, NMFS will not require CDQ groups to apply for recognition as entities eligible to receive transferable allocations of Chinook salmon. The CDQ groups are already authorized to transfer their salmon PSC allocations to and from other CDQ groups, using existing transfer applications submitted to NMFS. A few minor revisions to these transfer applications may be necessary; however, these revisions will not significantly increase the time or cost involved with submitting transfer applications. New under this proposed action, is the authorization for the CDQ groups to transfer Chinook salmon PSC allocations to and from AFA entities, outside of the CDQ Program, including the AFA inshore cooperatives and the entities representing the AFA catcher/processor sector and the AFA mothership sector.

Participation in an IPA to reduce Chinook salmon bycatch is voluntary, but it is necessary to receive transferable allocations of a portion of the higher Chinook salmon PSC limit of 60,000 Chinook salmon. Therefore, it is likely that the CDQ groups will participate in an IPA. They may participate in an IPA together with members of the other AFA sectors or they may develop an IPA that applies only to vessels while they are fishing on behalf of a CDQ group. In either case, submission of a proposed IPA is necessary. In addition, filing of an annual report by the participants of each IPA also will be necessary. If the CDQ groups participate in an IPA together with members of other sectors, the time and cost involved in developing and submitting a proposed IPA, amendments to the IPA, and the annual report will be less per CDQ group than it would be if the CDQ groups developed an IPA that just applied to the CDQ groups.

The professional skills necessary to prepare the reporting and recordkeeping requirements that will apply to the CDQ groups under the preferred alternative include the ability to read, write, and understand English; the ability to use a computer and the internet to submit electronic transfer request applications, and the authority to take actions on behalf of the CDQ group. Each of the six CDQ groups has executive and administrative staff capable of complying with the reporting and recordkeeping requirements of the preferred alternative and the financial resources to contract for any additional legal or technical expertise that they require to advise them.

Identification of all relevant federal rules that may duplicate, overlap, or conflict with the proposed action

No duplication, overlap, or conflict between this proposed action and existing federal rules has been identified.

Description of significant alternatives that minimize adverse impacts on small entities

The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated ways to minimize Chinook salmon bycatch in the BS pollock fishery. The EIS presents the five alternative management actions, including combinations of various alternatives and options that emerged from this vetting process.

- **Alternative 1: Status Quo (No Action)**
- **Alternative 2: Hard cap**
- **Alternative 3: Triggered closures**
- **Alternative 4: Hard caps with an intercooperative agreement**
- **Alternative 5: The Preferred Alternative – Hard caps with an incentive plan agreement and performance standard.**

As the “preferred alternative,” Alternative 5 constitutes the “proposed action.” The remaining four alternatives (in various combinations of options and suboptions) constitute the suite of “significant alternatives,” under the proposed action, for RFA purposes. Each is addressed below. Please refer to section 2.5 of the EIS for more detail, where the accompanying components are presented with the corresponding impacts analyses. Data on cost and operating structure within the CDQ sector are unavailable, so a wholly quantitative evaluation of the size and distribution of burdens cannot be provided. The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities.

Alternative 1

Under the status quo alternative (Alternative 1), the Chinook Salmon Savings Area, established by Amendment 84 to the BSAI FMP, creates separate non-CDQ and CDQ Chinook salmon PSC limits. The Chinook Salmon Savings Area triggered closures occur upon attainment of Chinook salmon PSC limits in the BS. The CDQ Program receives allocations of 7.5 percent of the Chinook salmon PSC limit (or 2,175 Chinook salmon), as prohibited species quota (PSQ) reserve. NMFS further allocates PSQ reserves among the six CDQ groups, based on a recommendation by the State of Alaska in 2005. The State of Alaska recommended that the percentage allocation of Chinook salmon PSC and non-Chinook salmon PSC among the CDQ groups be the same as the CDQ groups’ percentage allocations of pollock. The percentage allocation of Chinook salmon PSC by CDQ group is as follows: APICDA 14 percent, BBEDC 21 percent, CBSFA 5 percent, CVRF 24 percent, NSEDC 22 percent, and YDFDC 14 percent. Allocations of Salmon PSQ to the CDQ groups are made to the specific entities, but are transferable among entities within the CDQ Program.

Unless exempted because of participation in the VRHS ICA, a CDQ group is prohibited from directed fishing for pollock in the Chinook Salmon Savings Area when the Chinook salmon PSQ is reached. The VRHS ICA provides real-time salmon PSC information, so that the fleet can avoid areas of high Chinook salmon interception rates. The fleet voluntarily started the VRHS in 2002 for Chinook salmon, and in 2008 NMFS approved the regulations implementing Amendment 84 to the BSAI FMP. In 2008 and 2009, all CDQ groups were voluntarily participating in an ICA, so they were exempt from the closure of the Chinook Salmon Savings Area.

Alternative 1 would likely impose the least burden on the CDQ groups, because it does not impose a Chinook salmon PSC limit that could prevent the full harvest of their respective pollock allocations. While the annual reports indicate that the VRHS ICA has reduced Chinook salmon encounter rates compared to what they would have been without the ICA, the highest historical Chinook salmon bycatch

occurred in 2007 when the ICA was in effect under an exempted fishing permit. This high level of bycatch illustrated that, while the management measures implemented under Amendment 84 provided the pollock fleet with tools to reduce salmon bycatch, these measures contained no effective upper limit on the amount of salmon bycatch that could occur in the BS pollock fishery. Therefore, the Council found that the conservation objective that was the basis for approving Amendment 84 had not been achieved, and the Council remains concerned that the status quo management has the potential for high amounts of Chinook salmon bycatch as experienced in 2007.

Alternative 2

The hard cap alternative (Alternative 2) would establish an upper limit to Chinook salmon bycatch in the BS pollock fishery. A range of suboption caps, from 29,323 to 87,500 Chinook salmon, were considered, based on various averages of Chinook salmon bycatch in the BS pollock trawl fishery over a range of historical year combinations from 1997 through 2006. Analysis in sections 6.10.3 and 7.3 of the RIR examined the potential impacts on CDQ groups over this range. All Chinook salmon caught by vessels participating in the BS directed pollock fishery would accrue toward the cap. Under this alternative, upon reaching a Chinook salmon PSC limit, all directed pollock fishing must stop, regardless of potential forgone pollock harvests.

As described in the EIS section 2.2, this alternative includes several different options for management of a PSC limit, including separate PSC limits for the CDQ Program and the remaining AFA sectors, and hard caps divided by season, by sector, or a combination of both. In addition, the Council included an option to allow small entities (i.e., CDQ groups) and non-CDQ groups to transfer Chinook PSC allocations among sectors, between the A and B seasons, or a combination of both, that would allow small entities more flexibility to harvest the full TAC in high Chinook salmon encounter years.

Regardless of the hard cap level or allocation option chosen, the establishment of an upper limit on the amount of Chinook salmon bycatch in the BS pollock fishery would require participants in the CDQ Program to stop directed fishing for pollock, if a hard cap was reached, because further directed fishing for pollock would likely result in exceeding the Chinook salmon hard cap. As the analysis in sections 6.10 of the analysis in RIR demonstrates, the lower the hard cap selected, the higher the probability of a fishery closure, and the greater the potential for forgone pollock revenues for the CDQ groups.

Although this alternative would have established an upper limit to Chinook salmon bycatch, the hard cap alternative alone would fail to promote Chinook salmon avoidance during years of low salmon encounter rates and could result in a loss of revenues to CDQ groups, due to the closure of the fishery before the TAC has been harvested. Additionally, this alternative could create a race for Chinook salmon bycatch, similar to a race for fish in an open access fishery, which could increase the likelihood of wasteful fishing practices, a truncated directed fishing season, forgone pollock harvest, and of not achieving optimum yield. The proposed action retains components of Alternative 2 that would limit the burden on these smaller entities and further increases flexibility for small entities through an IPA to minimize Chinook bycatch at all levels of salmon or pollock abundance, while establishing an upper limit on Chinook salmon bycatch. Furthermore, the Council rejected Alternative 2 in partial response to public testimony.

During public comment, the Council received varying perspectives from CDQ participants on the costs and benefits of the range of PSC limits under consideration. NMFS received written comments from three of the six CDQ groups. While two CDQ groups (BBEDC and YDFDA) argued for a lower limit than this proposed action provides, it was asserted by some, (including members of CVRF communities) that a hard cap higher than 68,000 Chinook salmon would increase the possibility that they could both harvest their full pollock allocation, under AFA, and receive full royalty and profit sharing payments from those allocations. The importance of the pollock resource, as a source of revenue for these small entities, indicates that any loss of pollock catch represents an increased economic burden on the CDQ groups

(small entities). Public comment from CDQ members revealed the complexity of the issue for CDQ groups and communities. Although CDQ communities derive revenue from pollock and other BSAI fisheries, many of these CDQ stakeholders also depend on sustainable Chinook salmon runs for subsistence, cultural, and spiritual practices; therefore, this issue is not strictly a matter of finances. The Council ultimately rejected Alternative 2 in recognition that a hard cap alone would not achieve the Council's objectives for this action.

Alternative 3

The modified area triggered closure alternative (Alternative 3) is similar to the status quo in that regulatory time and area closures would be invoked when specified Chinook salmon PSC limits are reached, although NMFS would remove the VRHS ICA exemptions to the closed areas. This alternative would incorporate new cap levels for triggered closures, sector allocations, and transfer provisions and could impose a lower burden on the CDQ groups than the preferred alternative. If triggered, NMFS would only close the seasonal areas, described in section 2.3 of the EIS, to directed pollock fishing. This alternative would not necessarily prevent small entities from the full harvest of their pollock TAC, because fishing effort outside of the closed areas could continue until the fishing season ended.

While Alternative 3 appears to reduce the economic impacts of forgone pollock revenue on small entities, when compared to the hard cap alternative, it does not provide any incentive to minimize Chinook salmon bycatch below the trigger amount. This alternative would not achieve the Council's objective for the proposed action, because this alternative shifts the fleet's fishing effort to areas that may (or, as experienced in recent seasons, may not) have a lower risk of Chinook salmon encounters, but does not promote Chinook salmon avoidance at the vessel level, establish an upper limit on Chinook salmon bycatch in the BS pollock fishery, or hold the industry accountable for minimizing Chinook salmon bycatch. Therefore, the Council found that Alternative 3 is inferior to the proposed action.

Alternative 4

At its June 2008 meeting, the Council developed a preliminary preferred alternative (Alternative 4) that contains components of Alternatives 1 through 3. Alternative 4 would set a hard cap for all vessels participating in the BS pollock fisheries and includes provisions for a voluntary ICA that must encourage Chinook salmon avoidance, at all levels of pollock and Chinook salmon abundance and encounter rates. This alternative would minimize the burden on small entities by setting a relatively high PSC limit (68,392 Chinook salmon), allowing participants in an ICA to share the burden of reducing Chinook bycatch, and allowing sector level PSC allocation transfers.

PSC allocations under Alternative 4 would have limited the burden on the small entities by increasing their annual allocation of the Chinook salmon PSC limit. Under component 2 of this alternative, a sector's allocation of Chinook salmon bycatch would be calculated at 75 percent historical bycatch and 25 percent AFA pollock quota, with allowances for the CDQ sector. Estimates of historic bycatch in the CDQ sector were based on lower bycatch hauls when compared to non-CDQ sectors, due in part, to agreement with the catcher/processor fleet contracted to harvest pollock on behalf of the CDQ sector. These biased historical bycatch estimates would have resulted in a lower initial allocation of Chinook salmon to CDQ groups, potentially increasing forgone revenue loss for small entities. Therefore, component 2 estimates the historic CDQ bycatch rates by blending CDQ bycatch rates with those of sectors harvesting pollock on behalf of the CDQ groups. The resulting higher PSC allocations would decrease the probability of forgone pollock revenue and the financial burden of this action on the CDQ groups. NMFS provides a further description of the sector allocation in Chapter 2 section 2.4 of the FEIS.

During public comment on the Draft EIS, a different sector allocation was proposed to Alternative 4 component 2. The suggested allocation would further reduce the burden on the small entities by

allocating Chinook salmon based on 25 percent history and 75 AFA pollock allocation. Such an allocation would further benefit CDQ groups by increasing the PSC allocations to the CDQ groups above the amount provided under component 2 of Alternative 4. The Council considered and rejected this suggestion because such an allocation would not adequately represent the different fishing practices and patterns each sector utilizes to fully harvest their pollock allocations.

Despite the advantages of Alternative 4, the Council did not recommend this alternative, noting that it failed to meet the Chinook salmon conservation objective of this action, by setting too high a PSC limit and by not establishing a performance standard to promote and ensure that the pollock fishery minimized Chinook salmon bycatch. However, the preferred alternative retained component 2 from Alternative 4, which is designed to reduce the economic burden on the CDQ groups.

No additional alternatives were identified to those analyzed in the EIS, RIR and the IRFA that had the potential to further reduce the economic burden on small entities, while achieving the objectives of this action. The EIS section 2.6, contains a detailed discussion of alternatives considered and eliminated for further analysis.

This proposed action includes performance, rather than design standards, to minimize Chinook salmon bycatch, while limiting the burden on CDQ groups. A system of transferable PSC allocations and a performance standard would allow CDQ groups to decide how best to comply with the requirements of this action, given the other constraints imposed on the pollock fishery (e.g., pollock TAC, market conditions, area closures associated with other rules, gear restrictions, climate and oceanographic change).

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LQueirolo rev7/28/09
GHarrington rev 7/31/09, 12/04/09, 1/07/10
SBibb rev 8/3/09 and 11/24/09
Gaberle 10/23/09
SKelly edits through 10/27/09 and 1/25/10
Ssalveson 11/30/09