DRAFT FOR SECRETARIAL REVIEW

Bering Sea and Aleutian Islands Groundfish Specifications for 2012–2013

Final Regulatory Flexibility Analysis

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Abstract: This document contains a Final Regulatory Flexibility Analysis (FRFA) for the groundfish specifications in the Bering Sea and Aleutian Islands for 2012 and 2013. This FRFA evaluates the expected adverse economic impacts on 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 Bering Sea and Aleutian Islands Management Area. 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 Bering Sea and Aleutian Islands (BSAI) management area that was 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 BSAI Groundfish Plan Team and Scientific and Statistical Committee (SSC), and TACs recommended by the Council. This action is taken in accordance with the Fishery Management Plan (FMP) for Groundfish of the BSAI, recommended by the Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

In November 2011 the Council's BSAI Groundfish Plan Team met to review the species-specific analyses and ABC recommendations in the draft Stock Assessment and Fishery Evaluation reports prepared by Alaska Fisheries Science Center analysts, and to recommend BSAI groundfish harvest specifications for 2012 and 2013. At this time, analysts had available estimates of 2011 harvests, data collected during fishing surveys in the summer of 2011, the results of modeling work conducted during 2011, and new ecosystem and economic information. In December 2011, The Council, and its SSC, and Advisory Panel (AP), reviewed the Plan Team recommendations, and heard testimony from the public. On the basis of this information, the Council recommended the overfishing level (OFL), ABC, and TAC levels summarized in Tables 1 and 2 of this Final Regulatory Flexibility Analysis (FRFA).

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).

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 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 Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a)(1) through (5), and summarized below:

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 IRFA, 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) and 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 Need for, and Objectives of, the rule

The proposed action is the implementation of the Council's 2006 harvest strategy choice for the federally managed groundfish fisheries in the BSAI management area in 2012 and 2013. This strategy determines annual harvest specifications in compliance with federal regulations, the FMP for the BSAI groundfish fishery, and the Magnuson-Stevens Act. The Secretary of Commerce 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,[1] 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. [2]

The harvest strategies are applied to the best available scientific information to determine the harvest specifications, which are the annual limits on the amount of each species of fish, or of each group of species, that may be taken. Harvest specifications include the TACs, their seasonal apportionments and allocations, and prohibited species catch (PSC). Groundfish harvests are controlled by the enforcement of TAC, bycatch limits, and PSC allowances, 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 FMP or regulations. The Council apportions PSC limits among seasons and target fisheries, following criteria in the federal regulations.

The Council's Groundfish Plan Teams use stock assessments to calculate biomass, OFLs, and ABCs, for each target species or species group for specified management areas of the exclusive economic zone (EEZ) off Alaska. OFLs and ABCs are published with the harvest specifications, and provide the foundation for the Council and NMFS to develop the TACs. OFL and ABC amounts reflect fishery science, applied in light of the requirements of the FMPs.

The TACs associated with the preferred harvest strategy are those adopted by the Council in October 2011. OFLs and ABCs for the species were based on recommendations prepared by the Council's BSAI Plan Team in August and September 2011, and reviewed and modified by the Council's SSC in October

[1] The EIS, and a relevant erratum, are available on the NMFS Alaska Region's web site at http://alaskafisheries.noaa.gov/analyses/specs/eis/default.htm. (NMFS 2007a, NMFS 2007b)

[2] This is the status quo and preferred alternative before the Council and Secretary of Commerce 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.

2011. 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 management, PSC allowances, area closures, seasons, gear limitations, and inseason adjustments.

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 (1) allow commercial fishing for the groundfish stocks in BSAI, (2) while protecting the long run health of the fish stocks, and the social and ecological values that those fish stocks provide.

The BSAI FMP imposes procedures for setting the harvest specifications. Of particular importance are the definitions of areas and stocks (Section 3.1), procedures for determination of harvest levels (Section 3.2), rules governing time and area restrictions (Section 3.5), and rules governing catch restrictions (Section 3.6).

Table 1 shows the Council's recommended specifications for 2012 and 2013.

TABLE 1–FINAL 2012 AND 2013 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI[1]

[Amounts are in metric tons]

Species	Area	2012					2013				
		OFL	ABC	TAC	ITAC[2]	CDQ[3]	OFL	ABC	TAC	ITAC[2]	CDQ[3]
Pollock[3]	BS[2]	2,474,000	1,220,000	1,200,000	1,080,000	120,000	2,840,000	1,360,000	1,201,900	1,081,710	120,190
	AI[2]	39,600	32,500	19,000	17,100	1,900	42,900	35,200	19,000	17,100	1,900
	Bogoslof	22,000	16,500	500	150	0	22,000	16,500	500	150	0
Pacific cod[4]	BSAI	369,000	314,000	261,000	233,073	27,927	374,000	319,000	262,900	234,770	28,130
Sablefish[5]	BS	2,640	2,230	2,230	1,840	307	2,610	2,200	2,200	935	83
	AI	2,430	2,050	2,050	1,666	346	2,400	2,020	2,020	429	38
Atka mackerel	BSAI	96,500	81,400	50,763	45,331	5,432	78,300	67,100	42,083	37,580	4,503
	EAI/BS	n/a	38,500	38,500	34,381	4,120	n/a	31,700	31,700	28,308	3,392
	CAI	n/a	22,900	10,763	9,611	1,152	n/a	18,900	8,883	7,933	950
	WAI	n/a	20,000	1,500	1,340	161	n/a	16,500	1,500	1,340	161
Yellowfin sole	BSAI	222,000	203,000	202,000	180,386	21,614	226,000	207,000	203,900	182,083	21,817
Rock sole	BSAI	231,000	208,000	87,000	77,691	9,309	217,000	196,000	87,000	77,691	9,309
Greenland turbot	BSAI	11,700	9,660	8,660	7,361	n/a	9,700	8,030	8,030	6,826	n/a
	BS	n/a	7,230	6,230	5,296	667	n/a	6,010	6,010	5,109	643
	AI	n/a	2,430	2,430	2,066	0	n/a	2,020	2,020	1,717	0
Arrowtooth flounder	BSAI	181,000	150,000	25,000	21,250	2,675	186,000	152,000	25,000	21,250	2,675
Kamchatka flounder	BSAI	24,800	18,600	17,700	15,045	0	24,800	18,600	17,700	15,045	0
Flathead sole	BSAI	84,500	70,400	34,134	30,482	3,652	83,100	69,200	34,134	30,482	3,652

Other flatfish[6]	BSAI	17,100	12,700	3,200	2,720	0	17,100	12,700	3,200	2,720	0
Alaska plaice	BSAI	64,600	53,400	24,000	20,400	0	65,000	54,000	24,000	20,400	0
Pacific ocean perch	BSAI	35,000	24,700	24,700	21,812	n/a	33,700	28,300	28,300	24,991	n/a
	BS	n/a	5,710	5,710	4,854	0	n/a	6,540	6,540	5,559	0
	EAI	n/a	5,620	5,620	5,019	601	n/a	6,440	6,440	5,751	689
	CAI	n/a	4,990	4,990	4,456	534	n/a	5,710	5,710	5,099	611
	WAI	n/a	8,380	8,380	7,483	897	n/a	9,610	9,610	8,582	1,028
Northern rockfish	BSAI	10,500	8,610	4,700	3,995	0	10,400	8,490	4,700	3,995	0
Shortraker rockfish	BSAI	524	393	393	334	0	524	393	393	334	0
Rougheye rockfish	BSAI	576	475	475	404	0	605	499	499	424	0
	EBS/EAI	n/a	231	231	196	0	n/a	241	241	205	0
	CAI/WAI	n/a	244	244	207	0	n/a	258	258	219	0
Other rockfish[7]	BSAI	1,700	1,280	1,070	910	0	1,700	1,280	1,070	910	0
	BS	n/a	710	500	425	0	n/a	710	500	425	0
	AI	n/a	570	570	485	0	n/a	570	570	485	0
Squids	BSAI	2,620	1,970	425	361	0	2,620	1,970	425	361	0
Skates	BSAI	39,100	32,600	24,700	20,995	0	38,300	32,000	24,746	21,034	0
Sharks	BSAI	1,360	1,020	200	170	0	1,360	1,020	200	170	0
Octopuses	BSAI	3,450	2,590	900	765	0	3,450	2,590	900	765	0
Sculpins	BSAI	58,300	43,700	5,200	4,420	0	58,300	43,700	5,200	4,420	0
TOTAL		3,996,000	2,511,778	2,000,000	1,788,660	195,860	4,341,869	2,639,792	2,000,000	1,786,574	195,269

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and Amendment 80 species, 15 percent of each TAC is put into a reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves. For pollock and Amendment 80 species, ITAC is the non-CDQ allocation of TAC (see footnotes 3 and 5).

[3] Under § 679.20(a)(5)(i)(A)(1), the annual BS subarea pollock TAC after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (3.0 percent), is further allocated by sector for a directed pollock fishery as follows: inshore - 50 percent; catcher/processor - 40 percent; and motherships - 10 percent. Under § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (1,600 mt) is allocated to the Aleut Corporation for a directed pollock fishery.

[4] The Pacific cod TAC is reduced by 3 percent from the ABC to account for the State of Alaska's (State) guideline harvest level in State waters of the Aleutian Islands subarea.

[5] For the Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). Aleutian Islands Greenland turbot, "other flatfish," Alaska plaice, Bering Sea Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, "other rockfish," squids, sculpins, sharks, skates, and octopuses are not allocated to the CDQ program.

[6] "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, Kamchatka flounder, and Alaska plaice.

[7] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, dark, shortraker, and rougheye rockfish.

Note: Regulatory areas and districts are defined at § 679.2 (BS=Bering Sea subarea, AI=Aleutian Islands subarea, EAI=Eastern Aleutian Islands district, CAI=Central Aleutian Islands district, WAI=Western Aleutian Islands district.)

1.6 Summary of significant issues raised during public comments

NMFS published the proposed rule on December 27, 2011 (76 FR 80782). The rule was accompanied by an Initial Regulatory Flexibility Analysis (IRFA), which was summarized in the rule. The comment period closed on January 26, 2012. 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 those that receive allocations of groundfish in the EEZ of the BSAI, and in the parallel fisheries within State of Alaska waters, during the annual specifications process. These directly regulated entities include the groundfish catcher vessels and groundfish catcher/processor vessels active in these areas. Direct allocations of groundfish are also made to certain organizations, including the Community Development Quota (CDQ) groups, the American Fisheries Act (AFA) catcher/processor and inshore catcher vessel/processor sectors, the Aleut Corporation, and the Amendment 80 ("Head-and-gut") cooperative, and the Central Gulf of Alaska (GOA) Rockfish Program cooperatives. These entities are, therefore, also considered directly regulated.

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 when considering catcher vessels. 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 firms, since several vessels may be owned by a single firm, and to an overestimate of the relative proportion of small firms, since more of the smaller vessels might have been treated as large, if multiple ownership was addressed, while no large entities would be 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 AFA inshore cooperatives and GOA rockfish cooperatives among catcher vessels, and this is done below.

Information about firm-level affiliations is more readily available for the smaller number of catcher/processors. For these vessels, information on firm ownership, and cooperative affiliations, has been used when this information is readily available in the public domain, for example, on corporate and cooperative web sites, or on NMFS Alaska Region Restricted Access Management licensing reports posted to the web. However, NMFS has not conducted an audit of the information. Therefore, these are estimates of the numbers of small entities, not the results of a detailed evaluation of all possible records, or a survey of firms. The current approach was chosen as a cost effective one that would be minimally intrusive to regulated entities. Aside from firm affiliations, generally obtained from firm or association web sites listing vessel ownership, the key affiliations considered are among vessels in a fishery cooperative. Cooperatives formed pursuant to Secretarial regulation, such as the AFA and Amendment 80 trawl cooperatives, 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.[3] These tables show the counts of vessels falling into each

[3] 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.

category, by gear type, and the average gross revenues for these different classifications of vessels. These tables do not take account of firm or cooperative affiliations.

Table 2 shows that, in 2009, there were 191 individual catcher vessels with total gross revenues less than or equal to $4 million. Many of these vessels are members in AFA inshore pollock cooperatives or GOA rockfish cooperatives. 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 103 small catcher vessels remaining in the BSAI. These 103 vessels had average gross revenues of $975,000, and median gross revenues of $751,000. The 25th percentile of gross revenues was $287,000, and the 75th percentile was $1.585 million.

Table 2 indicates that in 2009, 18 catcher/processors grossed less than $4 million. Some of these vessels were affiliated through ownership by the same business firm. NMFS estimates that these vessels were owned by 11 separate firms. In 2011, the vessels in this group are also affiliated through membership in two cooperatives (the Amendment 80 "Best Use" cooperative, or the Freezer Longline Conservation Cooperative). Applying the 2011 firm and cooperative affiliations to these vessels, NMFS estimates that these 18 vessels represent two small entities.[4]

Table 2. Number of BSAI 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, 2005 through 2009.

Year	Gear class	Catcher vessels (Number of vessels)	Catcher/processors (Number of vessels)	All vessels (Number of vessels)
2005	All gear	215	11	226
	Hook & line	56	8	64
	Pot	71	1	72
	Trawl	97	2	99
2006	All gear	199	8	207
	Hook & line	46	5	51
	Pot	69	2	71
	Trawl	93	1	94
2007	All gear	206	6	212
	Hook & line	36	4	40
	Pot	69	2	71
	Trawl	103	0	103
2008	All gear	192	11	203
	Hook & line	46	7	53
	Pot	61	3	64
	Trawl	91	2	93
2009	All gear	191	18	209
	Hook & line	38	15	53
	Pot	51	3	54
	Trawl	107	2	109

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 on the BSAI during a year; gear totals show number using each gear type, all gear estimates are unique vessels.
Source: Hiatt et al. 2010 Table 37, page 74.

[4] Many of these vessels were hook-and-line catcher/processors that would have become large entities through affiliation, following the creation of the Freezer Longline Conservation Cooperative catch sharing cooperative in 2010. Thus, the use of the 2011 affiliations with the 2009 data provides a more meaningful estimate of the number of small entities in this sector.

Table 3. Average gross revenue of BSAI 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, 2005 through 2009 (millions of dollars).

Year	Gear class	Catcher vessels (Millions of $)	Catcher/processors (Millions of $)	All vessels (Millions of $)
2005	All gear	1.31	2.96	1.37
	Hook & line	0.52	2.96	0.82
	Pot	1.08	-	1.08
	Trawl	1.88	-	1.88
2006	All gear	1.44	3.22	1.48
	Hook & line	0.78	3.22	1.02
	Pot	1.05	-	1.05
	Trawl	2.00	-	2.00
2007	All gear	1.53	2.31	1.55
	Hook & line	0.70	2.31	0.86
	Pot	1.41	-	1.41
	Trawl	1.91	-	1.91
2008	All gear	1.68	2.53	1.71
	Hook & line	0.58	2.53	0.83
	Pot	1.77	-	1.77
	Trawl	2.12	-	2.12
2009	All gear	1.28	2.53	1.37
	Hook & line	0.60	2.53	1.15
	Pot	1.37	-	1.37
	Trawl	1.49	-	1.49

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: Hiatt et al. 2010 Table 39, page 76.

Through the CDQ program, the Council and NMFS allocate a portion of the BSAI groundfish TACs, and prohibited species halibut and crab PSC limits, to 65 eligible Western Alaska communities. These communities work through six non-profit CDQ groups, and are required to use the proceeds from the CDQ allocations to start or support activities that will result in ongoing, regionally based, commercial fishery or related businesses. The CDQ groups receive allocations through the specifications process, and are directly regulated by this action, but the 65 communities are not directly regulated. Because they are nonprofit entities, the CDQ groups are considered small entities for RFA purposes.

The AFA and Amendment 80 fisheries cooperatives are directly regulated because they receive allocations of TAC through the specifications process. However, the Freezer Longline Conservation Cooperative (FLCC), a voluntary private cooperative which became fully effective in 2010, is not considered to be directly regulated. The FLCC runs a catch sharing program among its members, but it does not, itself, receive an allocation under specifications. NMFS allocates TAC to the freezer longline sector, and the cooperative members voluntarily allocate this TAC among themselves via the FLCC. The AFA and Amendment 80 cooperatives are large entities, since they are affiliated with firms with joint revenues over $4 million.

In 2011, there were seven inshore AFA cooperatives, a mothership cooperative, and a catcher/processor cooperative. In 2011, there were two Amendment 80 cooperatives, the Alaska Seafood Cooperative (formerly the Best Use Cooperative) and the Alaska Groundfish Cooperative. [5]

The Aleut Corporation is an Alaska Native Corporation that receives an allocation of pollock in the Aleutian Islands. The Aleut Corporation is a holding company and evaluated according to the SBA criteria at 13 CFR 121.201, using a $6 million gross annual receipts threshold for "Offices of Other Holding Companies." Aleut Corporation revenues are believed to exceed this threshold, and the Aleut Corporation is considered to be a large entity. This follows the analysis in the RFA certification for BSAI FMP Amendment 82. (NMFS-AKR 2005: 413).

1.8 Recordkeeping and reporting requirements

The FRFA should include "a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record..." This action does not modify recordkeeping or reporting requirements.

1.9 Description of significant alternatives and their effects on small entities

A FRFA should include "A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."

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 $maxF_{ABC}$, unless the sum of the TACs is constrained by the optimum yield (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 "$maxF_{ABC}$" refers to the maximum permissible value of F_{ABC} under Amendment 56 to the groundfish FMPs. Historically, the TAC has been set at or below the ABC, therefore, this alternative represents a likely upper limit for setting the TAC within the OY and ABC limits.

- Alternative 3: For species in Tiers 1, 2, and 3, set TAC to produce *F* equal to the most recent 5-year average actual *F*. For species in Tiers 4, 5, and 6, set TAC equal to the most recent 5-year average actual catch. For stocks with a high level of scientific information, TACs would be set to produce harvest levels equal to the most recent five year average actual fishing mortality rates. For stocks with insufficient scientific information, TACs would be set equal to the most recent five year average actual catch. This alternative recognizes that for some stocks, catches may fall well below ABCs, and recent average *F* may provide a better indicator of actual *F* than F_{ABC} does.

[5] The count of 2011 AFA cooperatives was obtained from the NMFS Alaska Region Restricted Access Management (RAM) web site: http://alaskafisheries.noaa.gov/ram/afa/11afa_ic.htm (accessed July 27, 2011). The Amendment 80 cooperatives were obtained from the RAM web site http://alaskafisheries.noaa.gov/ram/amd80/11_A80_coop_list-en-us.pdf (accessed July 27, 2011).

- Alternative 4: (1) Set TACs for rockfish species in Tier 3 at $F_{75\%}$. Set TACs for rockfish species in Tier 5 at F=0.5M. Set spatially explicit TACs for shortraker and rougheye rockfish in the BSAI. (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 (1,400,000 metric tons in the BSAI and 116,000 metric tons 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: 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 of Commerce in 2007.

Alternative 1 would lead to TACs whose sum exceeds the fishery OY, which is set out in statute and the FMP. As shown in Table 1, the sum of ABCs in 2012 and in 2013 would be 2,511,778 and 2,639,792 metric tons, respectively. Both of these are substantially in excess of the fishery OY for the BSAI. This would be inconsistent with the objectives of this action, in that it would violate statutory law and the FMP for the BSAI groundfish fishery, which both set a 2,000,000 metric ton maximum harvest for BSAI groundfish.

Alternative 3 selects harvest rates based on the most recent five years' worth of harvest rates (for species in Tiers 1 through 3) or for the most recent five years' worth of harvests (for species in tiers 4 through 6). This alternative is also 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 BSAI, to its lower end. This would lead to significant reductions in harvests of species by small entities. While reductions of this size could be associated with offsetting price increases, the size of these increases is very uncertain, and there can be no confidence that they would be sufficient to offset the volume decreases and leave revenues unchanged. Thus, this action would have an adverse economic impact on small entities, compared to the preferred alternative.

Alternative 5, which sets all harvests equal to zero, may also address conservation issues, but would have a significant adverse economic impact on small entities.

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