

DRAFT FOR SECRETARIAL REVIEW

**Bering Sea and Aleutian Islands
Groundfish Harvest Specifications
for 2020–2021**

Initial Regulatory Flexibility Analysis

October 2019

Lead Agency

National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Alaska Regional Office
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Abstract: This document contains an Initial Regulatory Flexibility Analysis (IRFA) for the groundfish harvest specifications in the Bering Sea and Aleutian Islands for the years 2020 and 2021. This IRFA identifies the small entities that may be directly regulated by this action, and describes the significant alternatives to the action that meet the objectives of the action, and their relative economic impacts on directly regulated small entities. This IRFA addresses the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. §§ 601-612).

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1 Initial Regulatory Flexibility Analysis

1.1 Introduction

The action under consideration is adoption of harvest specifications pursuant to the strategy to govern the harvest of groundfish in the Bering Sea and Aleutian Islands (BSAI) management area, recommended 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 recommended by its Scientific and Statistical Committee (SSC), and TACs recommended by the Council. This action is taken in accordance with the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) (Council 2015), pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (NMFS 2007c).

The preliminary survey information and analysis were evaluated by the Council's BSAI Groundfish Plan Team at its meeting in Seattle, Washington, in September 2019. The Plan Team recommended 2020 and 2021 overfishing levels (OFLs) and ABCs for the species included in the BSAI FMP. The Plan Team's recommendations were reviewed by the SSC at the Council's October 2019 meeting. The SSC recommended species OFLs and ABCs, which were adopted by the Council. In addition, the Council, with input from its SSC, its industry Advisory Panel (AP), and following public testimony, recommended TACs for the individual species. Under this proposed action, the Secretary of Commerce (Secretary) would adopt and publish the Council's October 2019 OFL, ABC, and TAC recommendations as the proposed 2020 and 2021 harvest specifications.

Alaska Fishery Science Center (AFSC) analysts are currently updating their models, and their OFL and ABC recommendations, in light of further analysis of information collected from fishery surveys in the summer of 2019, and information on fishery harvests in calendar year 2019. The Council's BSAI Groundfish Plan Team will meet again in November 2019 to review the updated analyses, and revise its 2020 and 2021 OFL and ABC recommendations, as necessary. The Council, SSC, and AP will review the updated Plan Team recommendations at the Council's December 2019 meeting, and may revise OFL, ABC, or TAC recommendations at that time. The final harvest specifications will take any December revisions, as well as public comment, into account.

This Initial Regulatory Flexibility Analysis (IRFA) addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. §§ 601-612).

The purpose of an IRFA

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

The RFA emphasizes predicting significant adverse economic impacts on small entities as a group distinct from other entities, and on the consideration of alternatives that may minimize adverse economic impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either "certify" that the action will not have a significant economic impact on a substantial number of

small entities and include the “factual basis” in support of certification (5 U.S.C. § 605), or it must prepare and make available for public review an IRFA. When an agency publishes a final rule, it must prepare a Final Regulatory Flexibility Analysis, unless, based on public comment, it chooses to certify the action.

In determining the scope, or “universe,” of the entities to be considered in an IRFA, National Marine Fisheries Service (NMFS) generally includes only those entities that are 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.

1.2 IRFA Requirements

This section addresses the requirements for an IRFA. Under 5 U.S.C. § 603(b) and (c) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply, including a description of the adverse economic impacts of the proposed rule on directly regulated small entities;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant 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.

In preparing an IRFA, an agency may provide either a quantitative or numerical description of the effects of a proposed action (and alternatives to the proposed action), or more general descriptive statements, if quantification is not practicable or reliable.

1.3 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 (5 U.S.C. § 601).

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 Small Business Act 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.”

Section 601(3) of the RFA provides that an agency, after consultation with the Office of Advocacy of the Small Business Administration (SBA) and after an opportunity for public comment, may establish one or more definitions of “small business” that are appropriate to the activities of the agency. In accordance with this provision, NMFS has established a small business size standard for all businesses in the commercial fishing industry, for the purpose of compliance with the RFA only (50 CFR 200.2). A business is considered to be a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual gross receipts not in excess of \$11.0 million for all its affiliated operations worldwide. The \$11.0 million standard applies to all businesses classified under the North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses.

For fish processing businesses, the agency relies on the SBA size criteria. A seafood processor (NAICS 311710) is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business that both harvests and processes fish (i.e., a catcher/processor) is a small business if it meets the criteria for the applicable fish harvesting operation (i.e., the \$11.0 million standard described above). 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. §§ 1601-1629h), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. §§ 9801-9822 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

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

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

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

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

1.4 Why the action is being considered

The proposed action is the implementation of the Council's harvest strategy choice for the federally managed groundfish fisheries in the BSAI management area in 2020 and 2021. This strategy determines annual harvest specifications in compliance with Federal regulations, the BSAI FMP, and the Magnuson-Stevens Act. The Secretary approves the harvest specifications based on the recommendations of the Council. As described in the environmental impact statement (EIS) prepared when the Council chose its strategy,¹ the action is:

¹ The EIS and a relevant erratum are available on the NMFS Alaska Region's web site at <https://www.fisheries.noaa.gov/resource/document/alaska-groundfish-harvest-specifications-environmental-impact-statement-eis>. (NMFS 2007a, NMFS 2007b)

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 using the best available scientific information to determine the harvest specifications, which are the annual limits on the amount of each species of fish, or of each group of species, that may be taken. Harvest specifications include the TACs, their seasonal apportionments and allocations, and prohibited species catch (PSC) limits. Groundfish harvests are controlled by the enforcement of TAC, bycatch and incidental catch limits, PSC allowances,³ and apportionments of each among seasons, fishing sectors, and areas.

TACs set upper limits on total (retained and discarded) harvest for a fishing year. TACs are set for each “target species” category defined in the fishery management plans (FMPs) or harvest specifications. TAC seasonal apportionments and allocations are specified by regulations at 50 CFR part 679.

Prohibited species include halibut,⁴ herring, five species of salmon, steelhead, king crab, snow crab, and Tanner crab. A target fishery that has caught the seasonal (or annual) PSC limit apportioned to an area is closed in that area for the remainder of the season (or year). PSC limits are specified in the BSAI 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

² This was the status quo and preferred alternative before the Council and Secretary in 2006–07. At the time, this was Alternative 2. The significant alternatives to the proposed action (Alternatives 1, 3, 4, and 5) are listed below in Section 1.10 of this IRFA.

³ The Magnuson-Stevens Act defines bycatch as fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards (16 U.S.C. § 1802(2)). Regulations at 50 CFR 679.2 define incidental catch as fish caught and retained while targeting on some other species, but does not include discard of fish that were returned to the sea. Section 679.2 defines PSC as species listed in Table 2b of 50 CFR part 679, including various species of crab, Pacific halibut, Pacific herring, various species of Pacific salmon, and steelhead trout. PSC species must be avoided, to the extent practicable, and must be discarded, unless legally authorized to retain for donation to a charitable food organization. These definitions are used in this IRFA.

⁴ To monitor halibut PSC mortality allowances, NMFS uses observed halibut incidental catch rates, discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery’s halibut bycatch mortality allowance or seasonal apportionment is reached. DMRs are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. The attainment of a halibut PSC limit results in fisheries closures. Halibut DMRs are estimated using the best information available about halibut incidental catch in conjunction with the annual BSAI stock assessment process. The DMR methodology and findings are included as an appendix to the annual BSAI groundfish SAFE report.

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 recommended by the Council in October 2019. OFLs and ABCs for the species were based on recommendations prepared by the Council's BSAI Groundfish Plan Team in September 2019, and recommended by the Council's SSC in October 2019. 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.

Table 1 shows the Council's recommended harvest specifications proposed for 2020 and 2021.

Table 1. The Proposed BSAI OFL, ABC, and TAC recommendations for 2020 and 2021 as recommended by the North Pacific Management Council in October 2019. The 2019 harvest specifications are provided for reference.

Species	Area	2019			2020			2021		
		OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
Pollock	BS	3,914,000	2,163,000	1,397,000	3,082,000	1,792,000	1,420,824	3,082,000	1,792,000	1,420,824
	AI	64,240	52,887	19,000	66,981	55,125	19,000	66,981	55,125	19,000
	Bogoslof	183,080	137,310	75	183,080	137,310	75	183,080	137,310	75
Pacific cod	BS	216,000	181,000	166,475	183,000	137,000	124,625	183,000	137,000	124,625
	AI	27,400	20,600	14,214	27,400	20,600	13,390	27,400	20,600	13,390
Sablefish	BS	3,221	1,489	1,489	4,441	1,994	1,994	4,441	1,994	1,994
	AI	4,350	2,008	2,008	5,997	2,688	2,688	5,997	2,688	2,688
Yellowfin sole	BSAI	290,000	263,200	154,000	284,000	257,800	166,425	284,000	257,800	166,425
Greenland turbot	BSAI	11,362	9,658	5,294	10,476	8,908	5,294	10,476	8,908	5,294

Species	Area	2019			2020			2021		
		OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
	BS	n/a	8,431	5,125	n/a	7,777	5,125	n/a	7,777	5,125
	AI	n/a	1,227	169	n/a	1,131	169	n/a	1,131	169
Arrowtooth flounder	BSAI	82,939	70,673	8,000	83,814	71,411	8,000	83,814	71,411	8,000
Kamchatka flounder	BSAI	10,965	9,260	5,000	11,260	9,509	5,000	11,260	9,509	5,000
Rock sole	BSAI	122,000	118,900	47,100	147,500	143,700	57,100	147,500	143,700	57,100
Flathead sole	BSAI	80,918	66,625	14,500	83,190	68,448	14,500	83,190	68,448	14,500
Alaska plaice	BSAI	39,880	33,600	18,000	37,860	31,900	18,000	37,860	31,900	18,000
Other flatfish	BSAI	21,824	16,368	6,500	21,824	16,368	6,500	21,824	16,368	6,500
Pacific ocean perch	BSAI	61,067	50,594	44,069	59,396	49,211	43,625	59,396	49,211	43,625
	BS	n/a	14,675	14,675	n/a	14,274	14,274	n/a	14,274	14,274
	EAI	n/a	11,459	11,009	n/a	11,146	11,146	n/a	11,146	11,146

Species	Area	2019			2020			2021		
		OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
	CAI	n/a	8,435	8,385	n/a	8,205	8,205	n/a	8,205	8,205
	WAI	n/a	16,025	10,000	n/a	15,586	10,000	n/a	15,586	10,000
Northern rockfish	BSAI	15,507	12,664	6,500	15,180	12,396	6,500	15,180	12,396	6,500
Blackspotted and Rougheye rockfish	BSAI	676	555	279	868	715	279	868	715	279
	BS/EAI	n/a	351	75	n/a	448	75	n/a	448	75
	CAI/WAI	n/a	204	204	n/a	267	204	n/a	267	204
Shortraker rockfish	BSAI	722	541	358	722	541	358	722	541	358
Other rockfish	BSAI	1,793	1,344	663	1,793	1,344	663	1,793	1,344	663
	BS	n/a	956	275	n/a	956	275	n/a	956	275
	AI	n/a	388	388	n/a	388	388	n/a	388	388
Atka mackerel	BSAI	79,200	68,500	57,951	73,400	63,400	53,635	73,400	63,400	53,635

Species	Area	2019			2020			2021		
		OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
	BS/EAI	n/a	23,970	23,970	n/a	22,190	22,190	n/a	22,190	22,190
	CAI	n/a	14,390	14,390	n/a	13,310	13,310	n/a	13,310	13,310
	WAI	n/a	30,140	19,591	n/a	27,900	18,135	n/a	27,900	18,135
Skates	BSAI	51,152	42,714	26,000	48,944	40,813	26,000	48,944	40,813	26,000
Sculpins	BSAI	53,201	39,995	5,000	53,201	39,995	5,000	53,201	39,995	5,000
Sharks	BSAI	689	517	125	689	517	125	689	517	125
Octopuses	BSAI	4,769	3,576	400	4,769	3,576	400	4,769	3,576	400
TOTAL		5,340,955	3,367,578	2,000,000	4,491,785	2,967,269	2,000,000	4,491,785	2,967,269	2,000,000

1.5 The objectives of, and the legal basis for, the proposed rule

Objectives

The purpose of the TACs adopted pursuant to the harvest strategy is to provide for orderly and controlled commercial fishing for groundfish (including Community Development Quota [CDQ] fishing); promote sustainable incomes to the fishing, fish processing, and support industries; support sustainable fishing communities; and provide sustainable flows of fish products to consumers. The harvest strategy balances groundfish harvest in the fishing year with ecosystem needs (such as target and non-target fish stocks, marine mammals, seabirds, and habitat) (NMFS 2007a: 1–4). The objectives of the proposed action are to allow commercial fishing for the groundfish stocks in the BSAI, 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) (Council 2015).

Legal basis

Under the Magnuson-Stevens Act (16 U.S.C. §§ 1801-1891h), the United States has exclusive fishery management authority over all marine fishery resources found within the EEZ, which extends between 3 nautical miles and 200 nautical miles from the baseline used to measure the territorial sea (NMFS 2007c).

The management of these marine resources is vested in the Secretary and regional fishery management councils. In the Alaska region, the Council has the responsibility to prepare FMPs for the marine resources it finds require conservation and management, and for submitting its recommendations to the Secretary. NMFS is charged with carrying out the Federal mandates of the Department of Commerce with regard to marine fish. The NMFS Alaska Regional Office and AFSC research, draft, and support the management actions recommended by the Council, upon approval by the Secretary.

The Magnuson-Stevens Act requires that the FMPs specify the optimum yield (OY) from each fishery to provide the greatest benefit to the Nation, and must state how OY may be harvested in U.S. waters. The FMPs must also specify the level of fishing that would constitute overfishing. Using the framework of the FMPs and current information about the marine ecosystem (stock status, natural mortality rates, and oceanographic conditions), the Council annually recommends to the Secretary TAC specifications, PSC allowances, and/or fishery bycatch limits, based on biological and economic information provided by NMFS. The information includes determinations of ABC and OFL amounts for each of the FMP established target species or species groups.

Pursuant to Magnuson-Stevens Act section 301 (16 U.S.C. § 1851), the FMP and regulations promulgated to implement the FMP must be consistent with the National Standards for fishery conservation and management. Upon approval by the Secretary, NMFS is charged with carrying out the Federal mandates of the Department of Commerce with regard to marine and anadromous fish.

TACs adopted pursuant to the harvest strategy meet the need for the management of the groundfish fisheries and the conservation of marine resources, as required by the Magnuson-Stevens Act and as described in the management policy, goals, and objectives in the FMPs, and comply with other relevant laws, the groundfish FMPs, and applicable Federal regulations. Actions taken to amend FMPs or implement other regulations governing these fisheries must meet the requirements of Federal laws and regulations.

TACs adopted pursuant to the harvest strategy meet the Magnuson-Stevens Act’s ten national standards for fisheries conservation and management. Perhaps the most influential of these is National Standard 1, which states “[c]onservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry” (16 U.S.C. § 1851(a)(1)).

TACs adopted pursuant to the harvest strategy comply with provisions of the groundfish FMPs. The FMPs contain management objectives to guide fishery management decision-making. These objectives were embodied in the BSAI FMP and the Fishery Management Plan for Groundfish of the Gulf of Alaska by Amendments 81 and 74, respectively (69 FR 31091, June 2, 2004, approved August 26, 2004). The environmental impacts of managing fisheries to meet these objectives were evaluated in the Alaska Groundfish Fisheries Programmatic Supplemental EIS (NMFS 2004).⁵ The groundfish fisheries in the BSAI region of the EEZ off Alaska are managed under the BSAI FMP (Council 2015).

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

This section provides estimates of the number of harvesting vessels that are considered small entities. These estimates may overstate the number of small entities (and conversely, understate the number of large entities). The RFA requires a consideration of affiliations between entities for the purpose of assessing if an entity is small. The estimates in Table 2 may not take into account all affiliations between entities. There is not a strict one-to-one correlation between vessels and entities; many persons and firms are known to have ownership interests in more than one vessel, and many of these vessels with different ownership are otherwise affiliated with each other. For example, vessels in the American Fisheries Act (AFA) catcher vessel sectors are categorized as “large entities” for the purpose of the RFA under the principles of affiliation, due to their being part of the AFA pollock cooperatives. However, vessels that have other types of affiliation, (i.e., ownership of multiple vessel or affiliation with processors), not tracked in available data, may be misclassified as a small entity.

Entities directly regulated by the groundfish harvest specifications include: a) entities operating vessels with groundfish Federal fisheries permits (FFPs) catching FMP groundfish in Federal waters; b) all entities operating vessels, regardless of whether they hold groundfish FFPs, catching FMP groundfish in the state-waters parallel fisheries; and c) all entities operating vessels fishing for halibut inside three miles of the shore (whether or not they have FFPs)⁶ (Queirolo 2014). This definition is believed to include all vessels commercially directed fishing for Pacific halibut, whether in State or Federal waters off Alaska.

⁵ The 2004 Programmatic Supplemental EIS is available on the NMFS Alaska Region’s web site at <https://www.fisheries.noaa.gov/action/alaska-groundfish-programmatic-supplemental-environmental-impact-statement-pseis>.

⁶ State of Alaska Guideline Harvest Level fisheries are conducted independently of the Federal groundfish fisheries under the direct regulation of the State of Alaska, and vessels operating in these fisheries, but not falling into the categories above, are not considered directly regulated by this action. State of Alaska parallel fisheries are managed in close coordination with the fisheries in Federal waters, and are treated here as directly regulated by this action for this reason. Vessels fishing for crab or trolling for salmon catch some FMP groundfish and estimates of these catches are used for groundfish OFL and ABC determinations. However, these catches are not actively monitored in-season, and groundfish in-season management would only affect these operations under very unusual circumstances. This activity is not considered to be directly regulated by this action.

Vessels fishing for halibut in Federal waters are likely to take incidental catches of FMP groundfish, and are believed to carry FFPs for this reason.

Table 2 summarizes estimates of the numbers of small entities active in the BSAI groundfish fisheries in 2018. These estimates account for corporate affiliations among vessels, and for cooperative affiliations among fishing entities. Since NMFS may have been unable to identify all relevant affiliations among entities, these estimates may overstate the numbers of small entities. Moreover, these counts of small entities take into account all estimates of all fishing revenues for the entities in Federal and State waters off Alaska, and off the U.S. West Coast. However, to the extent that entities may have non-fishing revenues, or fishing revenues from other regions of the country, the analysis may have misidentified some large entities as small. To the extent this occurred, this would also tend to lead to an overstatement of the number of directly regulated small entities.

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

Gear type	All vessels	Catcher/processors	Catcher vessels
All Gear	185	3	182
Hook & Line (including jig)	129	2	127
Pot	52	2	50
Trawl	20	0	20

Source: AFSC preliminary estimates for 2019 Groundfish Economic Stock Assessment and Fishery Evaluation report; based on activity in 2018.

The average gross revenue for catcher/processors are not reported, due to confidentiality considerations. The average gross revenue for 2018 catcher vessels was: \$520,000 for small hook-and-line vessels, \$1.2 million for small pot vessels, and \$2.6 million for small trawl vessels.⁷

Through the CDQ Program, the Council and NMFS allocate a portion of the BSAI groundfish TACs, and apportion 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 fishing or related businesses. The CDQ groups receive allocations through the harvest specifications

⁷ These vessel count and revenue estimates take account of known affiliations between entities, including corporate affiliations of individual fishing vessels, and cooperative affiliations. Gross revenues include all known fishing sources, including fishing in Federal waters off Alaska, in State of Alaska waters, and in Federal and state waters off the U.S. West Coast.

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 Aleut Corporation is an Alaska Native Corporation that receives an annual 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 \$22 million gross annual receipts threshold for “Offices of Other Holding Companies” (NAICS code 551112). Aleut Corporation revenues exceed this threshold (Aleut Corporation 2011), and the Aleut Corporation is considered to be a large entity. This follows the analysis in the RFA certification for BSAI FMP Amendment 82 (70 FR 9856; March 1, 2005) (NMFS 2005: 413).

1.7 Federal rules that may duplicate, overlap, or conflict with proposed action

An IRFA should include “an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule...” This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

1.8 Recordkeeping and reporting requirements

The IRFA should include “a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities 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, reporting, or compliance requirements.

1.9 Description of significant alternatives and their effects on small entities

An IRFA should include a description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant (implicitly adverse) economic impacts of the proposed rule on small entities. This section provides a general descriptive statement regarding any adverse economic impacts of the alternatives on directly regulated small entities, because quantification is not practical or reliable at this time.

The significant alternatives were those considered as alternative harvest strategies when the Council selected its preferred harvest strategy in December 2006. These included the following:

- Alternative 1: Set TACs to produce fishing mortality rates, F , that are equal to maxFABC , unless the sum of the TACs is constrained by the OY established in the FMPs. This is equivalent to setting TACs to produce harvest levels equal to the maximum permissible ABCs, as constrained by OY. The term “ maxFABC ” refers to the maximum permissible value of FABC under Amendment 56 to the groundfish FMPs. Historically, the TAC has been set at or below the ABC, therefore, this alternative represents a likely upper limit for setting the TAC within the OY and ABC limits.
- Alternative 2: 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.

- 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 5-year average actual fishing mortality rates. For stocks with insufficient scientific information, TACs would be set equal to the most recent 5-year average actual catch. This alternative recognizes that for some stocks, catches may fall well below ABCs, and recent average F may provide a better indicator of actual F than FABC does.
- Alternative 4: (1) Set TACs for rockfish species in Tier 3 at F75%. Set TACs for rockfish species in Tier 5 at F=0.5M. Set spatially explicit TACs for shortraker and rougheye rockfish in the BSAI. (2) Taking the rockfish TACs as calculated above, reduce all other TACs by a constant 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). 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. Alternatives 1, 3, 4, and 5 do not simultaneously meet the objectives of this action and have a smaller adverse economic impact on directly regulated small entities. Each of the alternatives to the proposed action were fully evaluated and rejected as harvest strategies by the Council in 2006 and by the Secretary in 2007.

Alternative 1 would lead to TACs whose sum exceeds the fishery OY, which is set out in statute, in regulation (50 CFR 679.20(a)(1)(i)(A)), and in the BSAI FMP. As shown in Table 1, the sum of ABCs in 2020 and in 2021 would be about 2,967,269 metric tons, exceeding the 2,000,000 metric ton OY limit for the BSAI (Council 2015: ES-3). This would be inconsistent with the objectives of this action, in that it would violate statutory law, regulations, and the BSAI FMP, which 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 based on the most recent five years' worth of harvests (for species in Tiers 4 through 6). This alternative is inconsistent with the objectives of this action, because it does not take account of the best, most recent biological information for this fishery, as required by the Magnuson-Stevens Act (16 U.S.C. § 1851(a)(2)).

Alternative 4 would lead to significantly lower harvests of all groundfish species in order to reduce TACs from the upper end of the OY range in the BSAI, to its lower end (1.4 million metric tons) (Council 2015: ES-3). This would lead to significant reductions in harvests of species targeted by directly regulated small entities. While reductions of this size would likely be associated with offsetting price increases, the size of these price responses is, however, very uncertain, and it is unlikely that they would be sufficient to offset the volume decreases and leave revenues unchanged. Thus, this alternative would be expected to have an adverse economic impact on directly regulated small entities operating in the BSAI, and would not minimize such impacts, as required under RFA, when compared to the preferred alternative.

Alternative 5, which sets all harvests equal to zero, would have a significant adverse economic impact on small entities and would be contrary to obligations to achieve OY on a continuing basis, as mandated by the Magnuson-Stevens Act (16 U.S.C. § 1851(a)(1)).

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