

## DRAFT FOR SECRETARIAL REVIEW

# Gulf of Alaska 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 Gulf of Alaska for the years 2012 and 2013. This FRFA evaluates the expected 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 Gulf of Alaska. This FRFA addresses the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612).

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# 1 Final Regulatory Flexibility Analysis

## 1.1 Introduction

The action under consideration is adoption of harvest specifications pursuant to the harvest strategy for the groundfish fishery in the Gulf of Alaska (GOA) 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 GOA 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 GOA, recommended by the Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

In November 2011 the Council's GOA 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 GOA 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 limit (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 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 GOA in 2012 and 2013. This strategy determines annual harvest specifications in compliance with federal regulations, the FMP for the GOA 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,<sup>1</sup> the action is:

Set TACs that fall within the range of ABCs recommended through the Council harvest specifications process and TACs recommended by the Council. Under this scenario,  $F$  is set equal to a constant fraction of  $maxF_{ABC}$ . The recommended fractions of  $maxF_{ABC}$  may vary among species or stocks, based on other considerations unique to each. This is the method for determining TACs that has been used in the past.<sup>2</sup>

The harvest strategies are applied to the best available scientific information to determine the harvest specifications, which are the annual limits on the amount of each species of fish, or of each group of 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 GOA Plan Team in August and September 2011, and reviewed and modified by the Council's SSC in October

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<sup>1</sup> 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)

<sup>2</sup> 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 GOA, (2) while protecting the long run health of the fish stocks, and the social and ecological values that those fish stocks provide.

The GOA 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).

Tables 1 and 2 show the Council's recommended specifications for 2012 and 2013.

Table 1—Final 2012 ABCs, TACs, and OFLs of Groundfish for the Western/Central/West Yakutat, Western, Central, Eastern Regulatory Areas, and in the West Yakutat, Southeast Outside, and Gulfwide Districts of the Gulf of Alaska (Values are rounded to the nearest metric ton)

Species	Area <sup>1</sup>	OFL	ABC	TAC
Pollock <sup>2</sup>	Shumagin (610)	n/a	30,270	30,270
	Chirikof (620)	n/a	45,808	45,808
	Kodiak (630)	n/a	26,348	26,348
	WYK (640)	n/a	3,244	3,244
	W/C/WYK (subtotal)	143,716	105,670	105,670
	SEO (650)	14,366	10,774	10,774
	Total	158,082	116,444	116,444
Pacific cod <sup>3</sup>	W	n/a	28,032	21,024
	C	n/a	56,940	42,705
	E	n/a	2,628	1,971
	Total	104,000	87,600	65,700
Sablefish <sup>4</sup>	W	n/a	1,780	1,780
	C	n/a	5,760	5,760
	WYK	n/a	2,247	2,247
	SEO	n/a	3,173	3,173
	E (WYK and SEO) (subtotal)	n/a	5,420	5,420
	Total	15,330	12,960	12,960
Shallow-water flatfish <sup>6</sup>	W	n/a	21,994	13,250
	C	n/a	22,910	18,000
	WYK	n/a	4,307	4,307
	SEO	n/a	1,472	1,472
	Total	61,681	50,683	37,029
Deep-water flatfish <sup>5</sup>	W	n/a	176	176
	C	n/a	2,308	2,308
	WYK	n/a	1,581	1,581
	SEO	n/a	1,061	1,061
	Total	6,834	5,126	5,126
Rex sole	W	n/a	1,307	1,307
	C	n/a	6,412	6,412
	WYK	n/a	836	836
	SEO	n/a	1,057	1,057
	Total	12,561	9,612	9,612
Arrowtooth flounder	W	n/a	27,495	14,500
	C	n/a	143,162	75,000
	WYK	n/a	21,159	6,900
	SEO	n/a	21,066	6,900
	Total	250,100	212,882	103,300
Flathead sole	W	n/a	15,300	8,650
	C	n/a	25,838	15,400

	WYK	n/a	4,558	4,558
	SEO	n/a	1,711	1,711
	Total	59,380	47,407	30,319
Pacific ocean perch <sup>7</sup>	W	2,423	2,102	2,102
	C	12,980	11,263	11,263
	WYK	n/a	1,692	1,692
	SEO	n/a	1,861	1,861
	E (WYK and SEO) (subtotal)	4,095	n/a	n/a
	Total	19,498	16,918	16,918
	Northern rockfish <sup>8,9</sup>	W	n/a	2,156
C		n/a	3,351	3,351
E		n/a	0	0
Total		6,574	5,507	5,507
Shortraker rockfish <sup>11</sup>	W	n/a	104	104
	C	n/a	452	452
	E	n/a	525	525
	Total	1,441	1,081	1,081
Other rockfish <sup>9,12</sup>	W	n/a	44	44
	C	n/a	606	606
	WYK	n/a	230	230
	SEO	n/a	3,165	200
	Total	5,305	4,045	1,080
Pelagic shelf rockfish <sup>13</sup>	W	n/a	409	409
	C	n/a	3,849	3,849
	WYK	n/a	542	542
	SEO	n/a	318	318
	Total	6,257	5,118	5,118
Rougheye and Blackspotted rockfish <sup>10</sup>	W	n/a	80	80
	C	n/a	850	850
	E	n/a	293	293
	Total	1,472	1,223	1,223
Demersal shelf rockfish <sup>14</sup>	SEO	467	293	293
Thornyhead rockfish	W	n/a	150	150
	C	n/a	766	766
	E	n/a	749	749
	Total	2,220	1,665	1,665
Atka mackerel	GW	6,200	4,700	2,000
Big skate <sup>15</sup>	W	n/a	469	469
	C	n/a	1,793	1,793
	E	n/a	1,505	1,505
	Total	5,023	3,767	3,767
Longnose skate <sup>16</sup>	W	n/a	70	70
	C	n/a	1,879	1,879

	E	n/a	676	676
	Total	3,500	2,625	2,625
Other skates <sup>17</sup>	GW	2,706	2,030	2,030
Squids	GW	1,530	1,148	1,148
Sharks	GW	8,037	6,028	6,028
Octopus	GW	1,941	1,455	1,455
Sculpins	GW	7,641	5,731	5,731
Total		747,780	606,048	438,159

<sup>1</sup> Regulatory areas and districts are defined at § 679.2. (W=Western Gulf of Alaska; C=Central Gulf of Alaska; E=Eastern Gulf of Alaska; WYK=West Yakutat District; SEO=Southeast Outside District; GW=Gulf-wide).

<sup>2</sup> Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 23 percent, 55 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 23 percent, 67 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 37 percent, 28 percent, and 35 percent in Statistical Areas 610, 620, and 630, respectively. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

<sup>3</sup> The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod in the Eastern Regulatory Area is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component.

<sup>4</sup> Sablefish is allocated to trawl and hook-and-line gears for 2012.

<sup>5</sup> “Deep-water flatfish” means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

<sup>6</sup> “Shallow-water flatfish” means flatfish not including “deep-water flatfish,” flathead sole, rex sole, or arrowtooth flounder.

<sup>7</sup> “Pacific ocean perch” means Sebastes alutus.

<sup>8</sup> “Northern rockfish” means Sebastes polyspinous. For management purposes the 2 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the slope rockfish species group.

<sup>9</sup> “Slope rockfish” means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergrey), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), S. reedi (yellowmouth), S. entomelas (widow), and S. flavidus (yellowtail). In the Eastern GOA only, slope rockfish also includes northern rockfish, S. polyspinous.

<sup>10</sup> “Rougheye rockfish” means Sebastes aleutianus (rougheye) and Sebastes melanostictus (blackspotted).

<sup>11</sup> “Shortraker rockfish” means Sebastes borealis.

<sup>12</sup> “Other rockfish” in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The “other rockfish” species group in the SEO District means slope rockfish.

<sup>13</sup> “Pelagic shelf rockfish” means Sebastes variabilis (dusky).

<sup>14</sup> “Demersal shelf rockfish” means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye).

<sup>15</sup> “Big skate” means Raja binoculata.

<sup>16</sup> “Longnose skate” means Raja rhina.

<sup>17</sup> “Other skates” means Bathyraja spp.

Table 2—Final 2013 ABCs, TACs, and OFLs of Groundfish for the Western/Central/West Yakutat, Western, Central, Eastern Regulatory Areas, and in the West Yakutat, Southeast Outside, and Gulfwide Districts of the Gulf of Alaska (Values are rounded to the nearest metric ton)

Species	Area <sup>1</sup>	OFL	ABC	TAC
Pollock <sup>2</sup>	Shumagin (610)	n/a	32,816	32,816
	Chirikof (620)	n/a	49,662	49,662
	Kodiak (630)	n/a	28,565	28,565
	WYK (640)	n/a	3,517	3,517
	W/C/WYK (subtotal)	155,402	114,560	114,560
	SEO (650)	14,366	10,774	10,774
	Total	169,768	125,334	125,334
Pacific cod <sup>3</sup>	W	n/a	29,120	21,840
	C	n/a	59,150	44,363
	E	n/a	2,730	2,047
	Total	108,000	91,000	68,250
Sablefish <sup>4</sup>	W	n/a	1,757	1,757
	C	n/a	5,686	5,686
	WYK	n/a	2,219	2,219
	SEO	n/a	3,132	3,132
	E (WYK and SEO) (subtotal)	n/a	5,351	5,351
	Total	15,129	12,794	12,794
Shallow-water flatfish <sup>6</sup>	W	n/a	20,171	13,250
	C	n/a	21,012	18,000
	WYK	n/a	3,950	3,950
	SEO	n/a	1,350	1,350
	Total	56,781	46,483	36,550
Deep-water flatfish <sup>5</sup>	W	n/a	176	176
	C	n/a	2,308	2,308
	WYK	n/a	1,581	1,581
	SEO	n/a	1,061	1,061
	Total	6,834	5,126	5,126
Rex sole	W	n/a	1,283	1,283
	C	n/a	6,291	6,291
	WYK	n/a	821	821
	SEO	n/a	1,037	1,037
	Total	12,326	9,432	9,432
Arrowtooth flounder	W	n/a	27,386	14,500
	C	n/a	142,591	75,000
	WYK	n/a	21,074	6,900
	SEO	n/a	20,982	6,900
	Total	249,066	212,033	103,300
Flathead sole	W	n/a	15,518	8,650
	C	n/a	26,205	15,400

	WYK	n/a	4,623	4,623
	SEO	n/a	1,735	1,735
	Total	60,219	48,081	30,408
Pacific ocean perch <sup>7</sup>	W	2,364	2,050	2,050
	C	12,662	10,985	10,985
	WYK	n/a	1,650	1,650
	SEO	n/a	1,815	1,815
	E (WYK and SEO) (subtotal)	3,995	n/a	n/a
	Total	19,021	16,500	16,500
	Northern rockfish <sup>8,9</sup>	W	n/a	2,017
C		n/a	3,136	3,136
E		n/a	0	0
Total		6,152	5,153	5,153
Shortraker rockfish <sup>11</sup>	W	n/a	104	104
	C	n/a	452	452
	E	n/a	525	525
	Total	1,441	1,081	1,081
Other rockfish <sup>9,12</sup>	W	n/a	44	44
	C	n/a	606	606
	WYK	n/a	230	230
	SEO	n/a	3,165	200
	Total	5,305	4,045	1,080
Pelagic shelf rockfish <sup>13</sup>	W	n/a	381	381
	C	n/a	3,581	3,581
	WYK	n/a	504	504
	SEO	n/a	296	296
	Total	5,822	4,762	4,762
Rougheye and Blackspotted rockfish <sup>10</sup>	W	n/a	82	82
	C	n/a	861	861
	E	n/a	297	297
	Total	1,492	1,240	1,240
Demersal shelf rockfish <sup>14</sup>	SEO	467	293	293
Thornyhead rockfish	W	n/a	150	150
	C	n/a	766	766
	E	n/a	749	749
	Total	2,220	1,665	1,665
Atka mackerel	GW	6,200	4,700	2,000
Big skate <sup>15</sup>	W	n/a	469	469
	C	n/a	1,793	1,793
	E	n/a	1,505	1,505
	Total	5,023	3,767	3,767
Longnose skate <sup>16</sup>	W	n/a	70	70
	C	n/a	1,879	1,879

	E	n/a	676	676
	Total	3,500	2,625	2,625
Other skates <sup>17</sup>	GW	2,706	2,030	2,030
Squids	GW	1,530	1,148	1,148
Sharks	GW	8,037	6,028	6,028
Octopus	GW	1,941	1,455	1,455
Sculpins	GW	7,641	5,731	5,731
Total		756,621	612,506	447,752

<sup>1</sup> Regulatory areas and districts are defined at § 679.2. (W=Western Gulf of Alaska; C=Central Gulf of Alaska; E=Eastern Gulf of Alaska; WYK=West Yakutat District; SEO=Southeast Outside District; GW=Gulf-wide).

<sup>2</sup> Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 23 percent, 55 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 23 percent, 67 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 37 percent, 28 percent, and 35 percent in Statistical Areas 610, 620, and 630, respectively. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

<sup>3</sup> The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod in the Eastern Regulatory Area is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component.

<sup>4</sup> Sablefish is only allocated to trawl gear for 2013.

<sup>5</sup> “Deep-water flatfish” means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

<sup>6</sup> “Shallow-water flatfish” means flatfish not including “deep-water flatfish,” flathead sole, rex sole, or arrowtooth flounder.

<sup>7</sup> “Pacific ocean perch” means Sebastes alutus.

<sup>8</sup> “Northern rockfish” means Sebastes polyspinous. For management purposes the 2 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the slope rockfish species group.

<sup>9</sup> “Slope rockfish” means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergrey), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), S. reedi (yellowmouth), S. entomelas (widow), and S. flavidus (yellowtail). In the Eastern GOA only, slope rockfish also includes northern rockfish, S. polyspinous.

<sup>10</sup> “Rougheye rockfish” means Sebastes aleutianus (rougheye) and Sebastes melanostictus (blackspotted).

<sup>11</sup> “Shortraker rockfish” means Sebastes borealis.

<sup>12</sup> “Other rockfish” in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The “other rockfish” species group in the SEO District means slope rockfish.

<sup>13</sup> “Pelagic shelf rockfish” means Sebastes variabilis (dusky).

<sup>14</sup> “Demersal shelf rockfish” means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye).

<sup>15</sup> “Big skate” means Raja binoculata.

<sup>16</sup> “Longnose skate” means Raja rhina.

<sup>17</sup> “Other skates” means Bathyraja spp.

## 1.6 Summary of significant issues raised during public comments

NMFS published the proposed rule on December 22, 2011 (76 FR 79620). NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany this action (NMFS 2011b), and included a summary in the proposed rule. The comment period closed on January 23, 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 GOA, 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 Central GOA Rockfish Program cooperatives. These entities are, therefore, also considered to be directly regulated.

Small business firms, non-profit entities, and governments are the appropriate entities for consideration in a regulatory flexibility analysis. Following the practice in other analyses in the Alaska Region, fishing vessels have been used as a proxy for business firms 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 3 and 4 are based on this approach. It is possible, however, to take account of affiliations among American Fisheries Act (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 Bering Sea/Aleutian Islands (BSAI) freezer longline vessel operators, are considered.

Tables 3 and 4 summarize information on the numbers of small catcher vessels and catcher/processors, and average gross revenues for small vessels.<sup>3</sup> These tables show the counts of vessels falling into each category, by gear type, and the average gross revenues for these different classifications of vessels. These

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<sup>3</sup> As discussed in Section 1.4, fishing vessels, both catcher vessels and catcher/processors, are considered small, for RFA purposes, if their annual gross receipts, from all their economic activities combined, as well as those of any and all their affiliates anywhere in the world, (including fishing in federally managed non-groundfish fisheries, and in Alaska managed fisheries), are less than or equal to \$4.0 million in a year.

tables do not take account of firm or cooperative affiliations.

Table 3 shows that, in 2009, there were 660 individual catcher vessels with revenues less than or equal to \$4 million. Some of these vessels are members of AFA inshore pollock cooperatives, or of 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 627 small catcher vessels remaining in the GOA. These vessels had average gross revenues of about \$413,000, and median gross revenues of \$250,000. The 25<sup>th</sup> percentile of gross revenues was \$90,000, and the 75<sup>th</sup> percentile was \$600,000.

Table 3 indicates that in 2009, nine 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 eight separate firms. Vessels in this group were also affiliated through membership in two cooperatives (the Amendment 80 Alaska Seafood Cooperative and the Freezer Longline Conservation Cooperative). After taking account of firm and cooperative affiliations, NMFS estimates that these nine vessels represent four small entities.

Table 3. Number of GOA groundfish vessels that caught and processed less than \$4.0 million ex-vessel value or product value of groundfish and other species by vessel type and gear, 2005 through 2009.

Year	Gear class	Catcher vessels (Number of vessels)	Catcher/processors (Number of vessels)	All vessels (Number of vessels)
2005	All gear	847	8	855
	Hook & line	679	4	683
	Pot	151	1	152
	Trawl	78	3	81
2006	All gear	710	5	715
	Hook & line	536	4	540
	Pot	145	0	145
	Trawl	74	1	75
2007	All gear	646	3	649
	Hook & line	473	2	475
	Pot	136	1	137
	Trawl	72	0	72
2008	All gear	700	5	705
	Hook & line	522	4	526
	Pot	140	0	140
	Trawl	73	1	74
2009	All gear	660	9	669
	Hook & line	510	6	516
	Pot	123	1	124
	Trawl	71	2	73

Notes: Includes only vessels that fished part of federal groundfish TACs. Determination that a vessel was below the \$4.0 million threshold was based on total revenue from catching or processing all species, not just groundfish. Some vessels used more than one gear type in the GOA during a year; gear totals show number using each gear type, all gear estimates are unique vessels.  
Source: Hiatt et al. 2010 Table 37, page 74.

Table 4. Average gross revenue of GOA groundfish vessels that caught and processed less than \$4.0 million ex-vessel value or product value of groundfish and other species, 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	.42	2.38	.43
	Hook & line	.35	2.38	.36
	Pot	.53	-	.53
	Trawl	1.00	-	1.00
2006	All gear	.53	2.94	.54
	Hook & line	.45	2.94	.47
	Pot	.61	-	.61

	Trawl	1.12	-	1.12
2007	All gear	.63	-	.63
	Hook & line	.54	-	.54
	Pot	.76	-	.76
	Trawl	1.25	-	1.25
2008	All gear	.63	1.53	.64
	Hook & line	.5	1.53	.51
	Pot	.86	-	.86
	Trawl	1.48	-	1.48
2009	All gear	.44	2.49	.46
	Hook & line	.39	2.49	.42
	Pot	.55	-	.55
	Trawl	.84	-	.84
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.				

The Central GOA Rockfish Pilot Program expired on December 31, 2011. This program allowed harvesters to form voluntary cooperatives and receive an exclusive harvest privilege to groundfish species in the Central GOA. Catch history was allocated as rockfish quota shares, based on vessels with landings of primary rockfish species (northern rockfish, pelagic shelf rockfish, and Pacific ocean perch) that gave rise to limited licenses. (NMFS n.d.)

The Council's Amendment 88 to the FMP for Groundfish of the GOA, and associated regulations, replaced the Pilot Program with a new Rockfish Program that carries forward key elements of the older Pilot Program, while making changes that should fix problems that have been identified. NMFS has published the Notice of Availability for the FMP Amendment and the final rule (76 FR 45217, July 28, 2011; 76 FR 81248, December 27, 2011). The effective date for this action is December 27, 2011. Because of the similarities between the programs the experience during the Pilot Program is used to evaluate the small entity status of the Rockfish Program cooperatives.

The number of Rockfish Program cooperatives can change from year to year. In 2010, there were eight separate cooperatives (NMFS 2011). The Rockfish Pilot Program cooperatives are directly regulated, since they receive allocations of TAC through the specifications process. The cooperatives are large entities, since they are affiliated with firms with combine total gross revenues over \$4 million.

## 1.8 Recordkeeping and reporting requirements

The FRFA 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 that 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 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 impact of the proposed rule on small entities." This section provides a general descriptive statement regarding the effects of the alternatives on small entities, because quantification is not practical or reliable at this time.

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

- Alternative 1: Set TACs to produce fishing mortality rates,  $F$ , that are equal to  $maxFABC$ , unless the sum of the TACs is constrained by the 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 “ $maxFABC$ ” refers to the maximum permissible value of  $FABC$  under Amendment 56 to the groundfish FMPs. Historically, the TAC has been set at or below the ABC, therefore, this alternative represents a likely upper limit for setting the TAC within the OY and ABC limits.
- Alternative 3: For species in Tiers 1, 2, and 3, set TAC to produce  $F$  equal to the most recent 5-year average actual  $F$ . For species in Tiers 4, 5, and 6, set TAC equal to the most recent 5-year average actual catch. For stocks with a high level of scientific information, TACs would be set to produce harvest levels equal to the most recent five year average actual fishing mortality rates. For stocks with insufficient scientific information, TACs would be set equal to the most recent five year average actual catch. This alternative recognizes that for some stocks, catches may fall well below ABCs, and recent average  $F$  may provide a better indicator of actual  $F$  than  $FABC$  does.
- Alternative 4: (1) Set TACs for rockfish species in Tier 3 at  $F75\%$ . Set TACs for rockfish species in Tier 5 at  $F=0.5M$ . Set spatially explicit TACs for shortraker and rougheye rockfish in the GOA. (2) Taking the rockfish TACs as calculated above, reduce all other TACs by a proportion that does not vary across species, so that the sum of all TACs, including rockfish TACs, is equal to the lower bound of the area OY (116,000 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: (No Action) Set TACs at zero.

Alternative 2 is the preferred alternative chosen by the Council:

Set TACs that fall within the range of ABCs recommended through the Council harvest specifications process and TACs recommended by the Council. Under this scenario,  $F$  is set equal to a constant fraction of  $maxFABC$ . The recommended fractions of  $maxFABC$  may vary among species or stocks, based on other considerations unique to each. This is the method for determining TACs that has been used in the past.

Alternatives 1, 3, 4, and 5 do not both meet the objectives of this action and have a smaller adverse economic impact on small entities. All were rejected as harvest strategies by the Council, in 2006, and by the Secretary of Commerce in 2007.

Alternative 1 selects harvest rates that will allow fishermen to harvest stocks at the level of ABCs, unless total harvests were constrained by the upper bound of the GOA OY of 800,000 metric tons. As shown in Tables 1 and 2, the sums of ABCs in 2012 and in 2013 are 606,048 metric tons, and 612,506 metric tons, respectively. The sums of the TACs in 2012 and 2013 are equal to 438,159 metric tons and 447,752 metric tons, respectively. Thus, although the sum of ABCs in each year is less than 800,000 metric tons, the sums of the TACs in each year are less than the sums of the ABCs.

In most cases, the Council has set TACs equal to ABCs. The divergence between aggregate TACs and

aggregate ABCs reflects a variety of special species- and fishery-specific circumstances:

Pacific cod TACs are set equal to 75 percent of the Pacific cod ABCs in each year to account for the fact that the State of Alaska sets guideline harvest levels for Pacific cod in its fisheries that are equal to 25 percent of the Council's ABCs. Thus, this difference does not actually reflect a Pacific cod harvest below the Pacific cod ABC.

Shallow-water flatfish and flathead sole TACs are set below ABCs in the western and central GOA regulatory areas. Arrowtooth flounder TACs are set below ABC levels in all GOA regulatory areas. Catches of these flatfish species rarely, if ever, approach the proposed ABC or TAC levels. Important trawl fisheries in the GOA take halibut PSC, and are constrained by hard caps on the allowable halibut PSC mortality. These caps routinely force the closure of trawl fisheries before they have harvested the available groundfish ABC. Thus, actual harvests of groundfish in the GOA routinely fall short of some proposed ABCs and TACs. Markets can also constrain harvests below the proposed TAC levels, as has been the case with arrowtooth flounder, in the past. These TACs are set to allow for increased harvest opportunities for these targets while conserving the halibut PSC limit for use in other, more fully utilized, fisheries.

The other rockfish TAC is set below the ABC in the Southeast Outside district based on several factors. In addition to conservation concerns for the rockfish species in this complex, there is a regulatory prohibition against using trawl gear east of 140° W. longitude. Because most species of other rockfish are caught exclusively with trawl gear, the catch of such species with other gear types, such as hook-and-line, is low. The commercial catch of other rockfish in the Eastern regulatory area (which includes the West Yakutat and Southeast Outside districts) in the last decade has ranged from approximately 70 metric tons to 248 metric tons per year.

The GOA-wide Atka mackerel TAC is set below the species ABC. There is an important Atka mackerel fishery in the Aleutian Islands and Bering Sea, but Atka mackerel stocks in the GOA have not been large enough in the past to support a manageable directed fishery. Atka mackerel are taken as incidental catch in other GOA fisheries, and the Council has set a TAC that is smaller than the ABC in this fishery to accommodate this need.

Alternative 3 selects harvest rates based on the most recent five years of harvest rates (for species in Tiers 1 through 3) or for the most recent five years of harvests (for species in tiers 4 through 6). This alternative is inconsistent with the objectives of this action, because it does not take account of the most recent biological information for this fishery.

Alternative 4 would lead to significantly lower harvests of all species, in order to reduce TACs from the upper end of the OY range in the GOA, to its lower end of 116,000 metric tons. Overall this would reduce 2012 TACs by about 81 percent. This would lead to significant reductions in harvests of species harvested by small entities. While reductions of this size would be associated with offsetting price increases, the size of these increases is very uncertain. There are close substitutes for GOA groundfish species available in significant quantities from the BSAI. While production declines in the GOA would undoubtedly be associated with price increases in the GOA, these increases would still be constrained by production of substitutes, and are very unlikely to offset revenue declines from smaller production. Thus, this action would have a detrimental economic impact on small entities.

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.

In the 2012-2013 harvest specifications, yellowtail and widow rockfish have been moved from the pelagic

shelf rockfish (PSR) species group, and grouped with the other slope rockfish species group. This has been done to leave dusky rockfish alone in the PSR category. Dusky rockfish dominate the PSR category and support a valuable fishery in the Central GOA. Dusky rockfish have been assessed with an age-structured model and are a Tier 3a species, unlike yellowtail and widow rockfish, which are Tier 5 species. This separation allows managers to treat dusky rockfish like other rockfish species Tier 3a species with age-structured models and to have an OFL and ABC specific to this species. A discussion paper reviewing this action found that this management reorganization would have no adverse economic impact on commercial fishermen in the GOA, because the PSR fishery rarely harvested the TAC, so that a reduction in TACs associated with the shift in species would be inconsequential. The paper also concluded that it would not have an adverse impact on participants in the reauthorized Central Gulf of Alaska Rockfish Program (Clausen, et al.: 5). The action has the effect of increasing the OFL and ABC for other slope rockfish. Thus, this action is not expected to have an adverse impact on small entities.

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