

DRAFT FOR SECRETARIAL REVIEW

Gulf of Alaska Groundfish Harvest Specifications for 2020 and 2021

Initial Regulatory Flexibility Analysis

October 2019

Lead Agency	National Marine Fisheries Service National Oceanic and Atmospheric Administration
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Abstract: This document contains an Initial Regulatory Flexibility Analysis (IRFA) for the groundfish harvest specifications in the Gulf of Alaska 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 harvest strategy for the groundfish fishery in the Gulf of Alaska (GOA) 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) recommended by the Council fall within the range of acceptable biological catches (ABCs), recommended by the Council's GOA Groundfish Plan Team, and recommended by its Scientific and Statistical Committee (SSC). This action is taken in accordance with the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) (Council 2015a), 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 GOA 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 GOA 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 stock assessment models, and their OFL and ABC recommendations, in light of further analysis of information collected from fishery surveys conducted during 2019, and information on fishery harvests in calendar year 2019. The Council's GOA 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). This IRFA evaluates the potential adverse economic impacts on small entities directly regulated by the proposed action.

1.2 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, the 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.

1.3 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.

1.4 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.

1.5 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 GOA management area in 2020 and 2021. This strategy determines annual harvest specifications in compliance with Federal regulations, the GOA 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:

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,³ and PSC allowances, and apportionments of each among seasons, fishing sectors, and areas.

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)

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.

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 Pacific 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 GOA 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 recommended by the Council in October 2019. OFLs and ABCs for the species were based on recommendations prepared by the Council’s GOA 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 and incidental catch 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.

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 GOA stock assessment process. The DMR methodology and findings are included as an appendix to the annual GOA groundfish SAFE report.

Table 1 Proposed 2020 and 2021 OFLs, ABCs, and TACs of Groundfish for the Western/Central/West Yakutat, Western, Central, Eastern Regulatory Areas, and in the West Yakutat, Southeast Outside, and Gulf-wide Districts of the Gulf of Alaska recommended by the North Pacific Fishery Management Council in October 2019 (Values are rounded to the nearest metric ton). The 2019 harvest specifications are provided for contrast.

		2019			2020			2021		
Species	Area	OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
Pollock	W (61)	n/a	24,875	24,875	n/a	19,939	19,939	n/a	19,939	19,939
	C (62)	n/a	67,388	67,388	n/a	57,279	57,279	n/a	57,279	57,279
	C (63)	n/a	34,443	34,443	n/a	24,345	24,345	n/a	24,345	24,345
	WYAK	n/a	5,748	5,748	n/a	4,607	4,607	n/a	4,607	4,607
	Subtotal	194,230	135,850	132,454	148,968	108,892	106,170	148,968	108,892	106,170
	EYAK/SEO	11,697	8,773	8,773	11,697	8,773	8,773	11,697	8,773	8,773
	Total	205,927	141,227	141,227	160,665	117,665	114,943	160,665	117,665	114,943
Pacific Cod	W	n/a	7,633	5,343	n/a	9,695	6,787	n/a	9,695	6,787
	C	n/a	7,667	5,750	n/a	9,738	7,304	n/a	9,738	7,304
	E	n/a	1,700	1,275	n/a	2,159	1,619	n/a	2,159	1,619
	Total	23,669	17,000	12,368	26,078	21,592	15,709	26,078	21,592	15,709
Sablefish	W	n/a	1,581	1,581	n/a	2,105	2,105	n/a	2,105	2,105
	C	n/a	5,178	5,178	n/a	6,931	6,931	n/a	6,931	6,931
	WYAK	n/a	1,828	1,828	n/a	2,433	2,433	n/a	2,433	2,433
	SEO	n/a	2,984	2,984	n/a	3,993	3,993	n/a	3,993	3,993
	Total	25,227	11,571	11,571	34,782	15,462	15,462	34,782	15,462	15,462
Shallow-Water Flatfish	W	n/a	25,620	13,250	n/a	25,952	13,250	n/a	25,952	13,250
	C	n/a	25,731	25,731	n/a	26,065	26,065	n/a	26,065	26,065
	WYAK	n/a	2,279	2,279	n/a	2,308	2,308	n/a	2,308	2,308
	SEO	n/a	1,957	1,957	n/a	1,983	1,983	n/a	1,983	1,983
	Total	68,309	55,587	43,217	69,167	56,308	43,606	69,167	56,308	43,606
Deep-Water Flatfish	W	n/a	416	416	n/a	420	420	n/a	420	420
	C	n/a	3,443	3,443	n/a	3,488	3,488	n/a	3,488	3,488
	WYAK	n/a	3,280	3,280	n/a	3,323	3,323	n/a	3,323	3,323

Species	Area	2019			2020			2021		
		OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
Deep-Water Flatfish	SEO	n/a	2,362	2,362	n/a	2,393	2,393	n/a	2,393	2,393
	Total	11,434	9,501	9,501	11,581	9,624	9,624	11,581	9,624	9,624
Rex Sole	W	n/a	2,951	2,951	n/a	2,956	2,956	n/a	2,956	2,956
	C	n/a	8,357	8,357	n/a	8,371	8,371	n/a	8,371	8,371
	WYAK	n/a	1,657	1,657	n/a	1,664	1,664	n/a	1,664	1,664
	SEO	n/a	1,727	1,727	n/a	1,734	1,734	n/a	1,734	1,734
	Total	17,889	14,692	14,692	17,942	14,725	14,725	17,942	14,725	14,725
Arrowtooth Flounder	W	n/a	35,994	14,500	n/a	34,765	14,500	n/a	34,765	14,500
	C	n/a	70,995	70,995	n/a	68,575	68,575	n/a	68,575	68,575
	WYAK	n/a	15,911	6,900	n/a	15,368	6,900	n/a	15,368	6,900
	SEO	n/a	22,941	6,900	n/a	22,157	6,900	n/a	22,157	6,900
	Total	174,598	145,841	99,295	168,634	140,865	96,875	168,634	140,865	96,875
Flathead Sole	W	n/a	13,234	8,650	n/a	13,771	8,650	n/a	13,771	8,650
	C	n/a	21,109	15,400	n/a	21,965	15,400	n/a	21,965	15,400
	WYAK	n/a	2,016	2,016	n/a	2,097	2,097	n/a	2,097	2,097
	SEO	n/a	423	423	n/a	440	440	n/a	440	440
	Total	44,865	36,782	26,489	46,666	38,273	26,587	46,666	38,273	26,587
Pacific Ocean Perch	W	n/a	3,227	3,227	n/a	3,125	3,125	n/a	3,125	3,125
	C	n/a	19,646	19,646	n/a	19,024	19,024	n/a	19,024	19,024
	WYAK	n/a	3,296	3,296	n/a	3,192	3,192	n/a	3,192	3,192
	W/C/WYAK	31,113	26,169	26,169	30,128	25,341	25,341	30,128	25,341	25,341
	SEO	2,838	2,386	2,386	2,748	2,311	2,311	2,748	2,311	2,311
	Total	33,951	28,555	28,555	32,876	27,652	27,652	32,876	27,652	27,652
Northern Rockfish	W	n/a	1,190	1,190	n/a	1,122	1,122	n/a	1,122	1,122
	C	n/a	3,338	3,338	n/a	3,147	3,147	n/a	3,147	3,147
	E	n/a	1	-	n/a	1	-	n/a	1	-
	Total	5,402	4,529	4,528	5,093	4,270	4,269	5,093	4,270	4,269

Species	Area	2019			2020			2021		
		OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
Shortraker Rockfish	W	n/a	44	44	n/a	44	44	n/a	44	44
	C	n/a	305	305	n/a	305	305	n/a	305	305
	E	n/a	514	514	n/a	514	514	n/a	514	514
	Total	1,151	863	863	1,151	863	863	1,151	863	863
Dusky Rockfish	W	n/a	781	781	n/a	774	774	n/a	774	774
	C	n/a	2,764	2,764	n/a	2,742	2,742	n/a	2,742	2,742
	WYAK	n/a	95	95	n/a	94	94	n/a	94	94
	SEO	n/a	60	60	n/a	60	60	n/a	60	60
	Total	4,521	3,700	3,700	4,484	3,670	3,670	4,484	3,670	3,670
Rougheye and Blackspotted Rockfish	W	n/a	174	174	n/a	n/a	172	n/a	n/a	172
	C	n/a	550	550	n/a	n/a	545	n/a	n/a	545
	E	n/a	704	704	n/a	n/a	697	n/a	n/a	697
	Total	1,715	1,428	1,428	1,699	1,414	1,414	1,699	1,414	1,414
Demersal shelf rockfish	Total	411	261	261	411	261	261	411	261	261
Thornyhead Rockfish	W	n/a	326	326	n/a	326	326	n/a	326	326
	C	n/a	911	911	n/a	911	911	n/a	911	911
	E	n/a	779	779	n/a	779	779	n/a	779	779
	Total	2,688	2,016	2,016	2,688	2,016	2,016	2,688	2,016	2,016
Other Rockfish	W/C	n/a	1,737	1,737	n/a	1,737	1,737	n/a	1,737	1,737
	WYAK	n/a	368	368	n/a	368	368	n/a	368	368
	SEO	n/a	3,489	3,489	n/a	3,489	3,489	n/a	3,489	3,489
	Total	7,356	5,594	5,594	7,356	5,594	5,594	7,356	5,594	5,594
Atka mackerel	Total	6,200	4,700	3,000	6,200	4,700	3,000	6,200	4,700	3,000
Big Skate	W	n/a	504	504	n/a	504	504	n/a	504	504
	C	n/a	1,774	1,774	n/a	1,774	1,774	n/a	1,774	1,774
	E	n/a	570	570	n/a	570	570	n/a	570	570

Species	Area	2019			2020			2021		
		OFL	ABC	TAC	OFL	ABC	TAC	OFL	ABC	TAC
	Total	3,797	2,848	2,848	3,797	2,848	2,848	3,797	2,848	2,848
Longnose Skate	W	n/a	149	149	n/a	149	149	n/a	149	149
	C	n/a	2,804	2,804	n/a	2,804	2,804	n/a	2,804	2,804
	E	n/a	619	619	n/a	619	619	n/a	619	619
	Total	4,763	3,572	3,572	4,763	3,572	3,572	4,763	3,572	3,572
Other Skates	Total	1,845	1,384	1,384	1,845	1,384	1,384	1,845	1,384	1,384
Sculpins	GOA-wide	6,958	5,301	5,301	6,958	5,301	5,301	6,958	5,301	5,301
Sharks	GOA-wide	10,913	8,184	8,184	10,913	8,184	8,184	10,913	8,184	8,184
Octopuses	GOA-wide	1,300	975	975	1,300	975	975	1,300	975	975
Total		664,889	509,507	430,069	627,049	487,218	408,534	627,049	487,218	408,534
Sources: 2019 OFLs, ABCs, and TACs as specified in the Federal Register in March 2019 (84 FR 9416, March 14, 2019); 2020 and 2021 OFLs, ABCs, and TACs recommended by the North Pacific Fishery Management Council in October 2019.										

1.6 The objectives of the Proposed Action and its Legal Basis

Objectives

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 allow commercial fishing for the groundfish stocks in the GOA, 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). (Council 2015a)

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 that 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. The groundfish fisheries in the GOA region of the EEZ off Alaska are managed under the GOA FMP (Council 2015a).

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. 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 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.

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 Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and GOA FMP 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 2015b).

1.7 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

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>.

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 (NMFS 2014). This definition is believed to include all vessels commercially directed fishing for Pacific halibut, whether in State or Federal waters off Alaska. 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 GOA 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 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, or revenues of affiliates operating outside the United States’ jurisdiction, 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 small entities.

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

Gear type	All vessels	Catcher/processors	Catcher vessels
All Gear	759	3	756
Hook & Line (including jig)	708	2	706
Pot	74	0	74
Trawl	29	1	28

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

⁶ State of Alaska Guideline Harvest Level (GHL) 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.

Because too few catcher/processor entities are present in this sector, their revenue data remain confidential. However, average revenue data for 2018 may be reported for catcher vessels: average gross revenues were \$390,000 for small hook-and-line vessels; \$870,000 for small pot vessels; and \$2 million for small trawl vessels.⁷

1.8 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...” No relevant Federal rules have been identified that would duplicate, conflict, or overlap with the proposed action.

1.9 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.

1.10 Description of significant alternatives and their effects on small entities

An IRFA should include a description of any significant alternatives to the proposed action 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.

Alternative 2 is the proposed action chosen by the Council. Alternatives 1, 3, 4, and 5, the significant alternatives to the proposed action, do not simultaneously meet the objectives of this action and result in a smaller adverse economic impact on directly regulated small entities, when compared to Alternative 2.

The significant alternatives, listed below, were considered as alternative harvest strategies when the Council selected its preferred harvest strategy in 2006. Each was evaluated and rejected as a harvest strategy by the Council at its December meeting that year, and by the Secretary in 2007.

The significant alternatives 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.

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. Receipts from non-fishing sources, if any, are not available to analysts at present, nor are receipts from fishing outside the areas identified in the previous sentence.

- 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 roughey rockfish in the GOA. (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 (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 1 selects harvest rates that would 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 (50 CFR 679.20(a)(1)(i)(B)). As shown in Table 1, the sums of ABCs in both 2020 and 2021 are 487,218 metric tons. The sums of the TACs in both 2020 and 2021 are equal to 408,534 metric tons. 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-specific and fishery-specific circumstances:

- Pacific cod TACs are set equal to 75 percent of the Pacific cod ABCs in the Central and Eastern GOA, and to 70 percent of the Pacific cod ABC in the Western GOA each year. This is done to account for the fact that the State of Alaska sets Guideline Harvest Levels (GHLs) for Pacific cod in its fisheries that are equal to 25 percent (30 percent in the Western GOA) of the Council's ABCs. Thus, this difference does not actually reflect a Pacific cod harvest below the Pacific cod ABC. Similarly, the combined Western, Central, and West Yakutat pollock TAC is set to account for the State of Alaska's GHL of 2.5 percent for the State water pollock fisheries, but this difference does not actually reflect a pollock harvest below the Western, Central, and West Yakutat pollock ABC.
- Shallow-water flatfish and flathead sole TACs are set below ABCs in the Western and Central GOA management areas. Arrowtooth flounder TACs are set below ABC levels in all GOA management 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 limits 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 GOA-wide Atka mackerel TAC is set below the species ABC. There is an important Atka mackerel fishery in the Aleutian Islands, 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 based on 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 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 GOA, to its lower end of 116,000 metric tons. Overall this would reduce 2020 TACs by about 72 percent. This would lead to significant reductions in harvests of species targeted by directly regulated small entities. While production declines in the GOA would likely be associated with price increases in the GOA, these increases would still be constrained by the supply of substitutes into the marketplace, and are very unlikely to fully offset revenue declines from reduced GOA production. Thus, this alternative would have a detrimental economic impact on directly regulated small entities operating in the GOA.

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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4 References

NMFS. 2007a. Alaska Groundfish Harvest Specifications Final Environmental Impact Statement. Juneau, Alaska. January 2007. Retrieved from <https://www.fisheries.noaa.gov/resource/document/alaska-groundfish-harvest-specifications-environmental-impact-statement-eis> on October 10, 2019.

NMFS. 2007b. Errata for the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (January 2007). Retrieved from <https://www.fisheries.noaa.gov/resource/document/alaska-groundfish-harvest-specifications-environmental-impact-statement-eis> on October 10, 2019.

NMFS. 2007c. Magnuson-Stevens Fishery Conservation and Management Act. As Amended Through January 12, 2007. Retrieved from <https://www.fisheries.noaa.gov/resource/document/magnuson-stevens-fishery-conservation-and-management-act> on October 10, 2019.

- NMFS. 2007d. Guidelines for economic review of National Marine Fisheries Service regulatory actions. Washington, D.C.: National Marine Fisheries Service. Retrieved from <https://www.fisheries.noaa.gov/national/laws-and-policies/guidance-conducting-economic-and-social-analyses-regulatory-actions> on October 10, 2019.
- NMFS. 2004. Alaska Groundfish Fisheries Programmatic Supplemental EIS, Juneau, Alaska. June 2004. Retrieved from <https://www.fisheries.noaa.gov/resource/document/alaska-groundfish-fisheries-programmatic-supplemental-environmental-impact> on October 10, 2019.
- North Pacific Fishery Management Council (Council). 2015a. Fishery Management Plan for Groundfish of the Gulf of Alaska Management Area. Anchorage, Alaska. January. Retrieved from <https://www.npfmc.org/wp-content/PDFdocuments/fmp/GOA/GOAfm.pdf> on October 10, 2019.
- Council. 2015b. Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. Anchorage, Alaska. August. Retrieved from <https://www.npfmc.org/wp-content/PDFdocuments/fmp/BSAI/BSAIfm.pdf> on October 10, 2019.

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