

FINAL REGULATORY FLEXIBILITY ANALYSIS

for an Amendment to the Gulf of Alaska Groundfish FMP
to move skates from the “other species” category
to the “target species” category

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Abstract: This Final Regulatory Flexibility Analysis (FRFA) evaluates the small entity impacts of a amendment to change the Gulf of Alaska FMP to move skates from the “other species” category to the “target species” category. This FRFA addresses the requirements of the Regulatory Flexibility Act at 5 U.S.C. 604(a).

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Executive Summary

This Final Regulatory Flexibility Analysis (FRFA) examines the small entity impacts of a proposed GOA FMP Amendment 63 to remove skates from the GOA FMP “other species” category, and add them to the target species category. This FRFA addresses the requirements of the Regulatory Flexibility Act at section 604(a).

Purpose and need

In 2003 a directed fishery for skates emerged in the Central GOA for the first time. This fishery appears to have harvested larger skates (females and members of the Big skates species) disproportionately. This fishery is also of concern due to the limited information available on skate stocks. In 2003, skates were managed under a single TAC with several other species. The TAC provided relatively little protection to the skate stocks. Amendment 63 to the GOA FMP, approved by the Council and the Secretary, took the skates from the “other species” category and made them a target species. However, the 2004 specifications, passed by the Council and approved by the Secretary, were implemented before Secretarial approval of the FMP amendment. Thus, current specifications continue to treat skates in the “other species” category. This revision to specifications would provide skate OFL, ABC, and TAC measures to treat skates as a target species.

The objective of this action is to increase the control managers have over skate removals, in order to prevent overfishing, maintain healthy stocks of skate species, and make a sustainable fishery more likely. The regulatory amendment will clarify the maximum retainable amounts (MRAs) of skates in other groundfish directed fisheries and the MRAs for other groundfish in the directed fishery for skates. No changes are made to the MRA amounts that apply to skates or to other groundfish from the MRAs that apply to the “other species” complex. This action will allow for the consistent management of incidental harvest in the directed fisheries during the fishing year.

Comments on the IRFA

The proposed rule was published in the *Federal Register* on January 6, 2004 (69 FR 614). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on February 20, 2002. No comments were received on the IRFA.

Numbers of small entities

The entities directly regulated by this action, if adopted, would be the fishing operations harvesting species in the “other species” complex in the GOA, using hook-and-line gear or trawls. These vessels may be targeting skates (the only species in the “other species” category currently fished as a target), or they may be harvesting skates and other species in the “other species” category incidentally to other targeted fishing operations; (e.g., fishing for Pacific cod or shallow water flatfish). Since any hook-and-line or trawl operation in the GOA may harvest the other species complex, the universe of potentially affected operations includes all GOA hook-and-line and trawl vessels.

In 2001, the universe of potentially affected vessels included 670 hook-and-line vessels, and 138 trawlers. Of these, 650 were small hook-and-line catcher vessels, 15 were small hook-and-line catcher-processors,

120 were small trawl catcher vessels, and 4 were small trawl catcher-processors. This size determination is based on operation revenues from groundfish fishing in Alaska. Moreover, the data is not available to take account of affiliations between fishing operations and associated processors, or other associated fishing operations. For these reasons, these counts may overstate the numbers of small entities potentially directly regulated by the proposed action. Average Alaska groundfish revenues, in 2001, for these small entities were \$100,000 for hook-and-line catcher vessels, \$1.82 million for hook-and-line catcher processors, \$370,000 for trawl catcher vessels, and \$1.80 million for trawl catcher-processors. (NMFS, 2003d).

The directed skate fishery that emerged in 2003 is described in Section 1.0 of the EA. As noted there, 77 hook-and-line catcher vessels, 53 trawl catcher-vessels, 13 hook-and-line catcher-processors, and 10 trawl catcher-processors, took part in the fishery in 2003, producing an estimated ex-vessel gross revenue of about \$1.7 million. This suggests average revenues for these vessels were about \$11,000.

Recordkeeping and reporting

This action does not impose new recordkeeping or reporting requirements on the regulated small entities.

Alternatives to the proposed action

The Council considered the alternative of taking no action. This would have left skates in the “other species” category. The other species category includes additional species such as sculpin, shark, and octopus. The other species TAC is set equal to 5% of the aggregate TACs for all target species in the GOA. In 2004, this was 12,592 mt. This amount far exceeded the biologically desirable skate harvest in 2004; the 2004 skate OFL for all skate species together was projected to be 10,859. It was also higher than the OFLs would have been for individual species or species-groupings. Nevertheless, fishermen would have been able to harvest skates, or any of the individual skate species or species-groups up to the other species TAC.

This alternative was rejected because of the need for improved management controls to protect skate species, in light of the serious concerns about the health of the skate resource under a continuing directed fishery.

1 Introduction

This Final Regulatory Flexibility Analysis (FRFA) examines the small entity impacts of a proposed GOA FMP Amendment 63 to remove skates from the GOA FMP “other species” category, and add them to the target species category. This FRFA addresses the requirements of the Regulatory Flexibility Act at section 604(a).

The proposed rule was published in the *Federal Register* on January 6, 2004 (69 *FR* 614). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on February 20, 2002. No comments were received on the IRFA.

The regulatory amendment for Amendment 63 will clarify the maximum retainable amounts (MRAs) of skates in other groundfish directed fisheries and the MRAs for other groundfish in the directed fishery for skates. No changes are made to the MRA amounts that apply to skates or to other groundfish from the MRAs that apply to the “other species” complex. This action will allow for the consistent management of incidental harvest in the directed fisheries during the fishing year.

2 The purpose of a FRFA

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency’s compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file *amicus* briefs in court proceedings involving an agency’s violation of the RFA.

In determining the scope, or ‘universe’, of the entities to be considered in 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 adverse 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.

3 What is required in a FRFA?

Under 5 U.S.C., Section 604(a) of the RFA, each FRFA is required to contain:

- (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 initial regulatory flexibility analysis, 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.

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) 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 U.S., 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 \$3.5 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 \$3.5 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

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

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor 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 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 less than 50,000.

5 What is this action?

The proposed action is to remove skates from the “other species” category in the GOA FMP, and to add them to the “target species” category.

6 Need for and objectives of the rule

Better management is needed to prevent the likelihood of overfishing in the rapidly developing targeted GOA skate fishery. The purpose of the proposed action is to provide the tools to allow for better management by revising the harvest specifications and regulations to specifically address skate harvest.

The following section describes the history of the skate fisheries and further explains the purpose and need for this change in 2004 GOA specifications.

The state skate fishery

Initial Alaska regulation of the skate fishery came in 1998, when the Alaska Board of Fisheries (Board) took action in response to concerns over the possibility of an emerging ‘shark’ fishery in Prince William Sound. Charter fishermen there had begun to target salmon sharks. The Board took preemptive action given concerns over the emergence of a fishery on this slow growing species with relatively low reproductive rates. The action took the form of heavy restrictions on shark harvests.¹

In conjunction with this action, the Board also arranged for the Alaska Department of Fish and Game (ADF&G) to issue Commissioner’s permits for commercial skate harvests (authorized at 5 ACC 28.083). The Board allowed ADF&G to impose a number of requirements on permit recipients, including seasonal, area, and other operational restrictions and logbook requirements. The Commissioner’s permits became effective in 1999. Permits were only available for longline gear since non-pelagic trawls were not allowed in state waters and pots are not effective gear for skates.²

Although the commissioner’s permit program was in place for 1999, the state did not issue any commissioner’s permits until 2002. The emergence of the state-waters fishery will be discussed below, in

¹Personal communication from Michael Ruccio, Alaska Department of Fish and Game. Commercial Fisheries Division. Kodiak. 211 Mission Road Kodiak, AK 99615. September 10, 2003.

²Ruccio, *ibid.*

conjunction with the development of the fishery in federal waters. Since, the state did not want a fishery to emerge in its waters independently of the federal fishery, the commissioner's permits contained conditions requiring fishermen to use legal federal gear and only to take species at times when it was legal to do so in federal regulations. These conditions essentially created a parallel fishery in state waters. Initial permits were issued for 90 days at a time. However only a few were issued for that long; most have been issued for 60 days, making it easier for ADF&G to enforce logbook requirements.³

Background to the federal fishery

In 1998, the ADF&G, on behalf of the Board, requested complementary federal action to the Board's actions regulating directed commercial fishing of sharks, skates, and rays in territorial waters of Alaska. In response, the Council initiated GOA Plan Amendment 63. Under the GOA FMP, skates are groups with several other non-targeted species (including sculpins, sharks, and octopus) and given a single "other species" TAC. In 2003, this was 11,260 mt. This entire TAC could have been used for the harvest of skates, and thus provided little constraint to the expansion of the skate fishery. Since 1998, NMFS Alaska Fisheries Science Center and Alaska Department of Fish and Game stock assessment authors, the BSAI and GOA Groundfish Plan Teams, SSC, and Council have been moving towards revising management of non-target species. However, the target fishery for skates in the Western and Central GOA, around Kodiak Island developed in 2003, while the protective measures were still under development.

There are active commercial skate fisheries elsewhere in the world, for example off of British Columbia (B.C.) and the east coast of the United State. There are Asian, European, and domestic U.S. markets for skate products. The current interest in skates in the GOA appears to stem from market development work by Kodiak entrepreneurs in 2001. At that time, individuals developed relationships with Korean firms interested in skate products. Efforts were also put into adapting trawl nets to incorporate features used in B.C. to target skates.⁴

Expansion of the federal fishery in 2003

Despite the work on market and gear development in 2001, significant targeted longline or trawl skate fisheries did not emerge in 2002. The rapid growth in the fishery came in 2003. In 2003 there was an early closure of the Pacific cod longline fishery. Prices for skates were more attractive in 2003 than in 2002. Anecdotal evidence indicates that skate ex-vessel prices rose by \$0.05 to \$0.10 per pound, between 2002 and 2003 (Spring 2003 ex-vessel prices reached the area of \$0.25/pound - they were apparently lower in Fall 2003). In the trawl fisheries, these skate price increases combined with lower prices on an alternative target species, shallow water flats. Prices for these flatfish may have dropped from about \$0.22 to about \$0.18 per pound. In 2003 trawl fishermen may also have responded to large incidental Pacific cod catches in the 2002 shallow water flat fishery by directing their efforts towards skates to a

³Ruccio, *ibid.*

⁴Ruccio, *ibid.*; Personal communication with Robert Foy, Assistant Professor, University of Alaska Fairbanks School of Fisheries and Ocean Sciences. 118 Trident Way, Kodiak, AK 99615. September 10, 2003.

greater extent. The lag in development of the skate fishery may also have been a result of a failure by longline fishermen to view the “other species” complex as a target fishery.⁵

The longline and trawl fisheries for skates expanded considerably in 2003 among catcher-processors (CP) and for catcher vessels (CV). In summary:

1. The number of hook-and-line CPs delivering skates, and their retained incidental and targeted harvest rose modestly (from 8 to 13 vessels, and from 139 to 164 mt).
2. The number of trawl CPs delivering skates stayed the same (at 10 vessels), but retained incidental and targeted harvest rose dramatically (from 137 to 405 mt).
3. The number of hook-and-line CVs delivering skates rose dramatically (from 23 to 77 vessels), as did their retained incidental and targeted harvest (from 33 mt to 1,309 mt). This was because of increases in retained incidental catch, but much more so because of increases in targeted harvest.
4. The number of trawl CVs delivering skates rose from 39 to 53. Total retained incidental and targeted harvests rose, as well, from 473 mt to 1,146 mt. Much of this was because of an increase in retained targeted harvest (from 2 mt to 490 mt), but part was also due to increased retained incidental catch.

Thirteen distinct processors accepted deliveries of skates from longline and trawl operations in 2002, and 23 accepted delivery in 2003. Anecdotal evidence suggests that a plausible ex-vessel price estimate for early 2003 is \$0.25/pound (prices may be from \$0.12 to \$0.20 now). At the higher price, the total ex-vessel value of the harvest would have been on the order of \$1.7 million. This is a very crude estimate and is only provided to give an indication of the approximate ex-vessel value of the fishery.⁶

The rapid expansion of the skate fishery in 2003 raised a number of serious concerns about the health of the skate resource under a continuing directed fishery.

- The harvest was spatially concentrated on the Central Gulf skate resource. Relatively little additional harvest came from the Eastern or Western districts. This raised concerns for localized depletion of the Central Gulf skate population.
- Skate harvests from the Central GOA appear to have been concentrated on larger skates. Excessive harvest of Big skates is a particular concern. Big skates tend to be larger than Longnose skates, and female Big skates tend to be larger than males. Female Big skates are believed to make up a disproportionate part of the catch. Overharvest of particular skate species within a species group has been a problem in other skate fisheries, for example in New England.
- Information on skate biology (population sizes, mortality and reproduction rates, etc.) in the GOA is limited.
- Skates were treated under the “other species” TAC, which imposed little constraint on potential harvests.

The Fall 2003 Council and Regulatory Process

⁵Ruccio, *ibid.* Personal communication from Julie Bonnie. Alaska Groundfish Data Bank. P.O. Box 788, Kodiak, AK 99615. September 17, 2003.

⁶Bonnie, *ibid.* This estimate includes an “implicit” ex-vessel unprocessed valuation for fish harvested by catcher-processors.

At its October 2003 meeting, the Council approved an action under Gulf of Alaska (GOA) Plan Amendment 63 to separate GOA skates from the “other species” category and add them to the target category because of concern over the rapidly developing directed skate fishery in 2003. The Council determined that the current FMP does not offer sufficient protection for the skate resource. Currently, skates are managed under the “other species” category TAC in combination with sharks, sculpin, octopus and squid. The GOA FMP does not authorize a separate ABC or TAC for the skate complex, nor for any of the individual skate species which make up that complex. Instead a TAC is calculated for the five taxonomic groups in the “other” species category as 5 percent of the total TACs for all of the combined GOA species TACs.

NMFS published a Notice of Availability (NOA) for Amendment 63 on December 2. The comment period for the NOA expired on February 2, 2004 (68 *FR* 67390). Secretarial approval was granted on February 27, 2004. NMFS published a proposed rule to change the FMP to make skates a target fishery, contingent on the Secretarial decision, on January 6, 2004. The comment period for this proposed rule ended on February 20, 2004. (69 *FR* 614).

In December, the Council approved specifications that retained skates as one of the other species. The Council did this since GOA FMP Amendment 63 had not yet been approved by the Secretary of Commerce. Secretarial approval, if it came, was not expected until early 2004. Thus the GOA groundfish fisheries began in 2004 with skates treated as one of the “other species.”

The Council’s recommendation reflected a balance of different fishery objectives: (1) the need to protect the skate resource, particularly the larger animals in the Central GOA that had become the subject of a targeted fishery; (2) the desire to provide an opportunity for at least some targeted harvest of skates by the fishermen who had earned income from the fishery in 2003; (3) the desire to avoid closures of valuable fisheries for other species which took skates as an incidental harvest; (4) a recognition that the information on GOA skate biology, on the species composition of skate harvests, and on historical skate discards, was scanty.

The objective of this action is to increase the control managers have over skate removals, in order to prevent overfishing, maintain healthy stocks of skate species, and make a sustainable fishery more likely. Control over skate removals include revising the “other species” MRA listings to break out skates into a separate listing to that incidental take of skates and during the skate directed fishery can be controlled. The MRA amounts do not change with this action, so the regulatory amendment does not add any additional requirement to participants in the groundfish fisheries, only clarifies current practices.

7 Public Comments

The proposed rule was published in the *Federal Register* on January 6, 2004 (69 *FR* 614). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on February 20, 2002. No comments were received on the IRFA.

8 Number and description of small entities affected by the proposed action

What are the directly regulated entities?

The entities directly regulated by this action, if adopted, would be the fishing operations harvesting species in the “other species” complex in the GOA, using hook-and-line gear or trawls. These vessels may be targeting skates (the only species in the “other species” category currently fished as a target), or they may be harvesting skates and other species in the “other species” category incidentally to other targeted fishing operations; (e.g., fishing for Pacific cod or shallow water flatfish). Since any hook-and-line or trawl operation in the GOA may harvest the other species complex, the universe of potentially affected operations includes all GOA hook-and-line and trawl vessels.

Number of small directly regulated entities

In 2001, the universe of potentially affected vessels included 670 hook-and-line vessels, and 138 trawlers. Of these, 650 were small hook-and-line catcher vessels, 15 were small hook-and-line catcher-processors, 120 were small trawl catcher vessels, and 4 were small trawl catcher-processors.⁷ This size determination is based on operation revenues from groundfish fishing in Alaska. Moreover, the data is not available to take account of affiliations between fishing operations and associated processors, or other associated fishing operations. For these reasons, these counts may overstate the numbers of small entities potentially directly regulated by the proposed action. Average Alaska groundfish revenues, in 2001, for these small entities were \$100,000 for hook-and-line catcher vessels, \$1.82 million for hook-and-line catcher processors, \$370,000 for trawl catcher vessels, and \$1.80 million for trawl catcher-processors. (NMFS, 2003d).

The directed skate fishery that emerged in 2003 is described in Section 1.0 of the EA. As noted there, 77 hook-and-line catcher vessels, 53 trawl catcher-vessels, 13 hook-and-line catcher-processors, and 10 trawl catcher-processors, took part in the fishery in 2003, producing an estimated ex-vessel gross revenue of about \$1.7 million. This suggests average revenues for these vessels were about \$11,000.

9 Recordkeeping and reporting requirements

The FRFA should include “a description of the projected reporting, record keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record...”

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

10 Description of significant alternatives

A FRFA should include “a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule

⁷The counts of small and large entities in this paragraph are based on estimates from Appendix D (the Economic SAFE report) of the 2003 Specifications EA/IRFA. As noted earlier in this analysis, these counts are based on revenues from groundfish fishing in the BSAI and GOA.

why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. ”

This action, by itself, has no impact on directly regulated small entities. This action makes it possible for the Council to create a target fishery specification for skates during its annual specifications process. No impact for small entities is created until the Council takes that action. There are many different ways that the Council could create an OFL, ABC and TAC for skates. The Council considered six separate approaches to 2004 skate specifications at its December 2003 meeting. These included a single GOA-wide OFL, ABC, and TAC, as well as a separate OFL, ABC, and TAC for each of three skate species or species-groups.⁸

The Council’s preferred alternative in December, adopted contingent on Secretarial approval of the FMP amendment, are shown below in Table 1.

Table 1 Council’s December Skate ABC and TAC Recommendations (in metric tons)

| Species | Area | 2004 OFL | 2004 ABC | 2004 TAC |
|-------------------------|-------------|----------|----------|----------|
| Big and Longnose skates | Central GOA | 5,914 | 4,435 | 3,284 |
| All other skates | GOA-wide | 4,935 | 3,709 | 3,709 |

Note: “All other skates” includes Big skates and Longnose skates in the Eastern and Western GOA management areas (but not in the Central GOA management area) and all Other skates species in all three management areas.

The Council stated that it may not allow a directed fishery in 2005 without an approved data collection plan. The Council requested that staff work with industry to develop an adequate data collection plan, and that state and federal agencies also work together to enhance data collection and research to address the serious data gaps identified for these skate species.

The Council could change these specifications in 2006 to implement a new approach to skates in the GOA.

The Council considered the alternative of taking no action. This would have left skates in the “other species” category. The other species category includes additional species such as sculpin, shark, and octopus. The other species TAC is set equal to 5% of the aggregate TACs for all target species in the GOA. In 2004, this was 12,592 mt. This amount far exceeded the biologically desirable skate harvest in 2004; the 2004 skate OFL for all skate species together was projected to be 10,859. It was also higher than the OFLs would have been for the individual species or species-groupings. Nevertheless, fishermen would have been able to harvest skates, or any of the individual skate species or species-groups up to the other species TAC.

This alternative was rejected because of the need for improved management controls to protect skate species, in light of the serious concerns about the health of the skate resource under a continuing directed fishery mentioned earlier.

⁸The details of these may be found in NMFS, 2004.

- The harvest was spatially concentrated on the Central Gulf skate resource. Relatively little additional harvest came from the Eastern or Western districts. This raised concerns for localized depletion of the Central Gulf skate population.
- Skate harvests from the Central GOA appear to have been concentrated on larger skates. Excessive harvest of Big skates is a particular concern. Big skates tend to be larger than Longnose skates, and female Big skates tend to be larger than males. Female Big skates are believed to make up a disproportionate part of the catch. Overharvest of particular skate species within a species group has been a problem in other skate fisheries, for example in New England.
- Information on skate biology (population sizes, mortality and reproduction rates, etc.) in the GOA is limited.

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Literature cited (during preparation of the EA/RIR/IRFA and FRFA)

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