


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: January 13, 1993

SUBJECT: Groundfish Regulatory Amendments

ACTION REQUIRED

- A. Final action on definition of legal gear types.
- B. Comment on Proposed Rule for hook and line fair start provisions.
- C. Comment on Proposed Rule for delay of GOA 2nd quarter pollock season.

BACKGROUND

Legal Gear Types

At the September 1992 meeting the Council reviewed a discussion paper prepared by NMFS which proposed a regulatory amendment to define legal gear types. This amendment would explicitly define acceptable, legal gear types as opposed to current regulations which only stipulate illegal gear types. The Council recommended that NMFS proceed with development of this amendment and bring it back to the Council for final action at a later meeting. That amendment may be completed and available for Council review at this meeting. If not available in time for this meeting, action could be scheduled on this issue for the April meeting.

Hook and Line Fair Start

In September the Council approved a regulatory amendment prepared by NMFS to address violations by vessels setting gear in advance of the sablefish longline fishery opening date in the Gulf of Alaska. The regulations prepared by NMFS reflect the following intent: (1) it would apply only to the sablefish hook and line fisheries in the Gulf of Alaska and it would prohibit deployment of gear during the 72-hour period immediately before opening of directed fishing for sablefish, and (2) would establish a regulatory framework for annual determination of the opening date for the sablefish fisheries. This addition provides for some flexibility in scheduling the opening based on tidal periods, similar to how the halibut openings are determined. A copy of the draft analysis (EA/RIR) is contained under Item D-2(b)(1). The Proposed Rule is also provided (Item D-2(b) Supplemental) for Council comment.

The Council's Enforcement Committee reviewed the intent of this regulation in December and recommended that the Proposed Rule proceed as structured. However, the Committee did wish to note to the Council that the regulation, as structured, would place a hardship on some vessels. For example, a vessel wishing to fish for rockfish in the Eastern Gulf during that 72 hour period would then be prohibited from fishing for sablefish in the Western Gulf later in the year.

GOA 2nd quarter pollock season delay

Also in September, the Council approved a delay of the GOA 2nd quarter pollock opening from its current date of April 1 until the Monday closest to June 1. For 1993, the opening date would be May 31. The Proposed Rule for this action, Item D-2(c)(1) in your notebook, was published on January 6, 1993 and the comment period ends on February 5, 1993. The Proposed Rule is provided for Council comment if necessary.

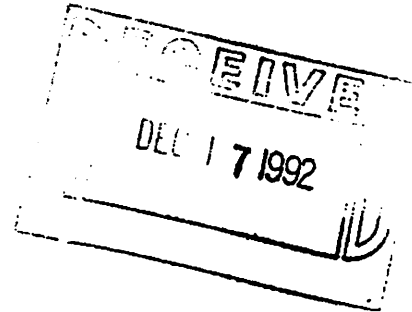


UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA D-2(b)(1)
JANUARY 1993

December 11, 1992

Mr. Clarence G. Pautzke
Executive Director, North Pacific
Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510



Dear Clarence,

We have prepared proposed rulemaking to amend regulations governing the Gulf of Alaska (GOA) sablefish hook-and-line fishery. These amendments will, if approved, establish (1) a "fair start" provision in the GOA by prohibiting participation in the directed sablefish fishery by vessels from which hook-and-line gear is deployed within 72 hours prior to the opening of that directed fishery in the GOA; and, (2) a regulatory framework for the annual determination of the May season opening date based on dates of optimal ocean tides.

These amendments were approved by the Council at its September 1992 meeting. We anticipate final rulemaking will be implemented prior to May 15, 1993, which is the opening date of the sablefish hook-and line fishery.

Enclosed is a copy of the draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for your information.

Sincerely,

Steven Pennoyer
Director, Alaska Region

Enclosure



ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW/
INITIAL REGULATORY FLEXIBILITY ANALYSIS
OF A REGULATORY AMENDMENT APPLICABLE TO
THE GROUNDFISH FISHERIES OFF ALASKA

- I. Regulation prohibiting participation in the directed sablefish fishery by vessels from which hook-and-line gear is deployed within 72 hours prior to the opening of that directed fishery in the Gulf of Alaska (GOA).
- II. Regulatory framework for the annual determination of the May season opening date of the GOA hook-and-line sablefish fishery.

INTRODUCTION

This Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) addresses rulemaking that proposes to (1) implement a regulation to prohibit participation in the directed sablefish fishery by vessels from which hook-and-line gear is deployed within 72 hours prior to the opening of that directed fishery; and, (2) provide a regulatory framework for the annual determination of the May season opening date of the GOA hook-and-line sablefish fishery.

A description of, and reasons for, these actions follow.

Management background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the GOA are managed by the Secretary of Commerce (Secretary) in accordance with the fishery Management Plan (FMP) for groundfish of the GOA. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations codified at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

In the GOA, separate total allowable catch (TAC) amounts of sablefish are specified for four different regulatory areas and districts. These TAC amounts are further allocated between hook-and-line and trawl gear. During 1992, 985 vessels participated in the GOA sablefish hook-and-line fishery. This large number of fishing vessels competing for relatively small TAC amounts results in directed fisheries that only last one or two weeks before directed fishing allowances are harvested and the fishery is closed. Intense competition among fishermen to harvest available TAC amounts has created safety, equity, and resource management concerns. The Council has taken long-term action to address these concerns by adopting for Secretary review an FMP amendment that would authorize an individual fishing quota (IFQ)

program for the hook-and-line sablefish fishery. A proposed rule to implement the IFQ program was published in the Federal Register on December 3, 1992, (57 FR 57130). Pending approval by the Secretary, actual implementation the IFQ program is not anticipated before 1994 or 1995.

During its September 22-27, 1992, meeting, the Council recommended that a regulatory amendment be prepared that would provide immediate relief from some of the management concerns that exist for the GOA sablefish hook-and-line fishery. The regulatory amendment proposed by the Council would establish a "fair start" provision in the GOA hook-and-line fishery by prohibiting participation in the directed sablefish fishery by vessels from which hook-and-line gear is deployed within 72 hours prior to the opening of that directed fishery. NMFS also proposes a regulatory amendment that would establish a regulatory framework for annually specifying the May season opening date for the GOA sablefish fishery with hook-and-line gear based on tidal activity.

Reasons for, and a description of each of the proposed measures follow:

"Fair Start" in the Gulf of Alaska Sablefish Hook-And-Line Fishery

The proposed rule would establish a "fair start" in the GOA sablefish hook-and-line fishery by prohibiting participation in the directed sablefish fishery by vessels from which hook-and-line gear is deployed within 72 hours prior to the opening of that directed fishery. No vessel from which hook-and-line gear was used to fish for any species of fish in the GOA during the 72-hour period immediately before an opening to directed fishing for sablefish with hook-and-line gear may be used to participate in that opening of the sablefish fishery.

Existing regulations do not prohibit the deployment of hook-and-line gear prior to an opening for directed fishing for sablefish with this gear type. Some fishermen take advantage of this opportunity by deploying hook-and-line gear prior to the start of the sablefish fishery with the intent to fish for sablefish. These fishermen then retrieve the resulting directed sablefish catch after the directed fishery has opened. Gear deployment before the opening, under these circumstances, constitutes unlawful directed fishing for sablefish. However, enforcement of this prohibition has proved problematic because fishery enforcement officers cannot determine a vessel's catch composition from aerial observations alone.

Other problems with the existing regulations were highlighted during 1992 when NMFS opened the sablefish directed hook-and-line fishery concurrently with the International Pacific

Halibut Commission's (IPHC's) summer openings of the Pacific halibut hook-and-line fishery. The intent of the concurrent openings was to avoid wasteful discard of the sablefish resource and fully harvest the specified sablefish TACs by providing vessel operators the opportunity to retain any amount of sablefish that were taken incidental to the Pacific halibut fishery. NMFS also expected that some vessels would be used to fish only for sablefish during the concurrent openings. Existing regulations do not prohibit the deployment of hook-and-line gear prior to an opening for directed fishing for sablefish with this gear type. Some fishermen, therefore, deploy hook-and-line gear prior to the start of the sablefish fishery with the intent to fish for sablefish, but do not bring fish on board until after the directed fishery has opened. Hook-and-line gear deployed in advance of the opening may not be used to retain directed fishing quantities of sablefish as it violates existing regulations, however, enforcement has proved problematic because vessels are not prohibited from participating in the remainder of the opening which makes compliance difficult to monitor.

Regulations that govern the Pacific halibut fishery (50 CFR part 301) clearly prohibit a person on board a vessel from which hook-and-line was deployed during the 72-hour period immediately before the opening of a halibut fishing period from catching or possessing halibut during that halibut fishing period. The Pacific halibut fishery regulations also provide that no vessel from which hook-and-line gear was deployed during the 72-hour period immediately preceding an opening of a halibut fishing period may be used to catch or possess halibut during that halibut fishing period (50 CFR §§ 301.16(g) and (h)). However, regulations governing the hook-and-line sablefish fishery do not similarly prohibit deployment of hook-and-line fishing gear prior to the opening of the sablefish fishery. As a result, concurrent openings of the Pacific halibut and sablefish fisheries during 1992 created additional confusion in the interpretation of current regulations and caused, in some instances, the deployment of hook-and-line gear in advance of these directed fisheries.

Reports of vessels deploying gear in advance of an opening of the directed sablefish hook-and-line fishery were brought to the Council's attention. A clarification of existing regulations was requested at the June 23-28, 1992, Council meeting. NMFS issued a news release on June 26, 1992, stating that hook-and-line gear used in the directed fishery for GOA sablefish may not be deployed until 12:00 noon of the opening date of that fishery. Under existing regulations, hook-and-line gear that is deployed prior to the opening may not be used to retain any sablefish in excess of the 4 percent bycatch limitation specified under directed fishing standards at § 672.20(g)(4).

During its September meeting, the Council was petitioned by industry representatives to adopt a regulatory amendment that

would provide a "fair start" provision in the GOA sablefish fishery. If approved by the Secretary, this action would prohibit participation in the directed sablefish fishery by vessels from which hook-and-line gear is deployed within 72 hours prior to the opening of that directed fishery. No vessel from which hook-and-line gear was deployed to fish for any species in the GOA during this 72-hour period could be used to participate in the directed fishery for sablefish during that opening.

Vessels that could be impacted under this proposed regulation are those fishing with hook-and-line gear for other species during the 72-hour prohibition period. In 1992, thirty one vessels fished for other species of groundfish prior to the opening of directed fishing for GOA sablefish with hook-and-line gear. NMFS specifically requests comments on the potential impact of the proposed action on vessels fishing for other species during the 72-hour period prior to an opening for directed fishing for sablefish with hook-and-line gear. If approved by the Secretary, this regulatory amendment could be effective by May 15, 1993.

Regulatory Framework for Establishing the Season Opening Date

Industry representatives have petitioned NMFS for regulations establishing a regulatory framework for the annual determination of the season opening date of the directed sablefish hook-and-line fishery in the GOA. Regulations at 50 CFR § 672.23 authorize directed fishing for sablefish with hook-and-line gear in the regulatory areas and districts of the GOA from May 15 through December 31, or until closed by inseason action, whichever occurs earlier. In contrast, the IPHC annually selects the opening dates of the Pacific halibut fishery after considering the variation in tides. The GOA has semidiurnal tides which have large ranges. For example, on May 15, 1992, the sablefish hook-and-line fishery commenced on a tide of maximum range which resulted in gear losses and related economic costs. NMFS's fixed opening date does not take into account tidal variability and causes gear losses and economic costs when spring tides occur.

A regulatory framework for the annual selection date is proposed based on the semidiurnal tides with the minimum range in the two week period surrounding May 15. The commencement date would be selected from the tide with the minimum range in the two week period from May 9 to May 22. This date would be selected from Tide Tables which is published annually by the Department of Commerce, NOAA. The commencement date of the directed sablefish hook-and-line fishery would be published annually in the Federal Register by January 1, or as soon as possible thereafter, for the new fishing year.

Alternatives

Two alternatives are considered for each of the proposed regulations:

Deployment of Hook-and-line Gear Prior to an Opening of the Sablefish Hook-and-line Fishery

Alternative 1 is status quo; do nothing.

Adoption of this alternative would maintain the current regulations.

Alternative 2 (preferred) would prohibit participation in the directed sablefish fishery by vessels from which hook-and-line gear is deployed within 72 hours prior to the opening of that directed fishery.

Adoption of this alternative would prohibit participation in the directed sablefish fishery by vessels from which hook-and-line gear is deployed within 72 hours prior to the opening of that directed fishery. This alternative would provide a fair start for all vessels participating in the directed fishery for GOA sablefish with hook-and-line gear. Additionally, this would reduce preemption of the grounds, gear conflicts and economic losses for vessels participating in the directed sablefish hook-and line in the GOA. Vessels intending to participate in the sablefish directed sablefish hook-and-line fishery would have to remove gear from the water during the 72-hour period immediately before the opening. A vessel with hook-and-line gear deployed during the 72-hour period immediately before an opening of directed fishing for GOA sablefish could not participate in that opening.

Regulatory Framework for Establishing the Season Opening Date

Alternative 1 is status quo, do nothing.

Adoption of this alternative would maintain the May 15 opening date for the sablefish hook-and-line fishery.

Alternative 2 (preferred) would provide regulatory framework for the annual determination of the May season opening date of the GOA hook-and-line sablefish fishery.

Adoption of this alternative would provide regulatory framework for determining the season opening date of the directed sablefish hook-and-line fishery based on tidal activity. The opening date would be selected from the two week period of May 9 to May 22. This date will be selected from Tide Tables which is published annually by the Department of Commerce, NOAA. The opening date of the directed sablefish hook-and-line fishery

would be published annually in the Federal Register by January 1, or as soon as possible thereafter, for the new fishing year. If approved this alternative would provide safer fishing conditions and net benefits as gear conflicts and fish losses would be minimized.

BIOLOGICAL AND ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

The types of environmental impacts that are generally associated with fishery management actions concern effects resulting from (1) overharvesting groundfish stocks, which might involve changes in predator-prey relationships among invertebrates and vertebrates, including marine mammals and birds, (2) physical changes as a direct result fishing practices affecting the sea bed, and (3) nutrient changes due to fish processing and discarding fish wastes into the sea. No measurable biological or environmental impacts will occur by adopting any of the alternatives.

The adoption of alternative 2 for the above proposed actions would reduce the potential of gear loss, gear conflicts and subsequent gear left on the grounds. Gear left on the grounds has been reported to catch fish. Hooked fish in turn become bait causing the continuous fishing by abandoned gear. Alternative 1 of both proposed actions may result in more gear losses and some greater level of unaccounted fish mortality.

REGULATORY IMPACT REVIEW - AN ECONOMIC ANALYSIS OF THE PROPOSED ACTIONS

A large number of hook-and-line vessels competing for relatively small TAC amounts results in directed fisheries that only last one or two weeks before directed fishing allowances are harvested and the fishery is closed. Intense competition among fishermen to harvest available TAC amounts has created safety, equity, and resource management concerns. Because existing regulations do not specifically prohibit the deployment of hook-and-line gear prior to an opening for directed fishing, some fishermen deploy gear prior to the start of the sablefish fishery with the intent to fish for sablefish but do not retrieve gear until after the directed fishery has opened. This practice violates existing regulations and creates inequities to those who fish in accordance with regulations by those who do not.

Although hook-and-line gear deployed prior to the 12:00 noon opening may not be used to retain any sablefish in excess of the bycatch limitation, some vessels set gear prior to the commencement date, ostensibly fishing for other species, and bring their first load of sablefish immediately after the opening. This gives an economic advantage to vessels preempting the grounds under the pretense of fishing for other species and

then switching to directed sablefish quantities once that fishery opens because current regulations are difficult to enforce.

In 1992, 985 hook-and-line vessels participated in the GOA directed sablefish fishery based on the Alaska Department of Fish and Game fish ticket data system. This data provided an average of cost of one fisherman deploying gear in advance of the opening of the fishery to the remainder of hook-and-line fleet. Although the fishing mortality rate, fishing effort, and set size vary the approximate value of sablefish that one set of hook-and-line gear could fetch is provided. For example, if one set of hook-and-line gear had 2,500 hooks with a finished weight of .75 lbs per hook and an ex-vessel price of \$1.80 per pound then one set of hook-and-line gear set in advance of the fishery could cost the fishery \$3,375 per vessel deploying gear in advance of the fishery. Catch rates during first days of the fishery are the highest because hooks have the highest likelihood of catching sablefish when the density of fish has yet to be exploited. This would yield 1875 pounds of finished product or about 2900 pounds of fish in the round per vessel per set deploying gear in advance of the opening date. If 10 percent of the vessels participating in this fishery each deployed one set of gear in advance of the opening, over 130 metric tons of sablefish could be taken prior to the opening date. The cost of 10 percent of the vessels participating in this fishery deploying gear in advance of the opening could be approximately \$334,000 or a potential loss of approximately \$370 to each vessel that does not deploy gear in advance of the fishery.

Prohibiting deployment of hook-and-line gear in the 72-hour period immediately before an opening of directed fishing in the GOA is an effective method of preventing preemption, gear conflicts and economic losses. Although current regulations prohibit the deployment of gear in a directed fishery prior to the opening of this fishery, reports of vessels deploying gear in advance of the directed sablefish fishery opening have been made to the Council because current regulations are difficult to enforce. Although only 31 vessels targeted on other species in the 72-hour period prior to the opening date of the GOA directed sablefish hook-and-line fishery in 1992, about 985 vessels participated in the GOA hook-and-line sablefish fishery. These 31 vessels could be negatively impacted as they would be prohibited from fishing in that directed sablefish opening. In addition, current regulations have a fixed commencement date for the sablefish fishery causing economic losses when tides of high range fall on the fixed date.

Prohibition of the deployment of gear in the 72-hour period immediately before an opening of directed fishing for the GOA sablefish fishery and regulatory framework for the annual determination of the May season opening date of the GOA hook-and-line sablefish fishery could benefit nearly all the participants

in the fishery by reducing occurrences of ground preemptions and gear conflicts. The benefits obtained from this action outweigh the costs. In addition, economic losses due to a fixed commencement date of the May season opening date could cause net losses when varying tides occur causing gear conflicts and fish loss to all participants.

REPORTING COSTS

Neither of the alternatives for these actions would increase the reporting burden on fishermen or processors.

ADMINISTRATIVE, ENFORCEMENT, AND INFORMATION COSTS AND BENEFITS

Neither of the alternatives for these actions would increase NMFS' or other management agency staff beyond that which is already required for the inseason monitoring and enforcement. This action will reduce enforcement costs as enforcement will be able to monitor compliance by checking for vessels in the 72-hour period without having to determine species composition or directed fishing quantities.

EFFECT ON ENDANGERED AND THREATENED SPECIES

None of the alternatives would have any effect on endangered or threatened species or their habitat. Thus, formal consultation under Section 7 of the Endangered Species Act is not required.

COASTAL ZONE MANAGEMENT ACT

Also, for each of the reasons discussed above, each of the alternatives would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of Section 30(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

IMPACT OF THE AMENDMENTS RELATIVE TO THE REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act (RFA) requires that impacts of regulatory measures imposed on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions with limited resources) be examined to determine whether a substantial number of such small entities will be significantly impacted by the measures. Fishing vessels are considered to be small businesses. Over 1,000 hook-and-line vessels may fish for groundfish off Alaska in 1993, based on Federal groundfish permits issued by NMFS. While this number of vessels is considered substantial, this regulatory measure will only affect a portion of the fleet.

FINDINGS OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

For the reasons discussed above, neither implementation of the final action nor any of the alternatives to that action would significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the preferred action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

Executive ORDER 12291 REQUIREMENTS

Executive Order 12291 requires that the following three issues be considered:

(1) Will the action have an annual effect on the economy of \$100 million or more?

(2) Will the action lead to an increase in the costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions?

(3) Will the action have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign enterprises in domestic or export markets?

Regulations impose cost and cause redistribution of cost and benefits. If the proposed regulations are implemented to the extent anticipated, these costs are not expected to be significant relative to total operational costs.

The action would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign enterprises in domestic or export markets.

The proposed action should not lead to a substantial increase in the price paid by consumers, local governments, or geographic regions since no significant quantity changes are expected in the groundfish markets. Where more enforcement and management effort are required, costs of state and federal fishery management agencies will increase.

The proposed action should not have an annual effect of \$100 million, since although the total value of the domestic catch of all groundfish species is over \$100 million, these amendments are not expected to substantially alter the amount of distribution of this catch.

Billing Code: 3510-22

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration (NOAA)
50 CFR Part 672
[Docket No. 921226-2326]
Groundfish of the Gulf of Alaska
AGENCY: National Marine Fisheries Service (NMFS), NOAA,
Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to delay the opening of the second quarter for pollock fishing in the Combined Western and Central Regulatory Areas (W/C) of the Gulf of Alaska (GOA) from the beginning of the second quarterly reporting period (around April 1) until the first day of the weekly reporting period closest to June 1. This action is necessary to increase revenues from the GOA pollock harvest by avoiding a second quarter directed fishery at a time when pollock have recently spawned and flesh yield is low. Additionally, NMFS anticipates this action would reduce discards of undersized pollock, and of incidental bycatch amounts of chinook salmon in the pollock fishery. By increasing the value of the pollock harvest, this action would foster economic growth. This action is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time, February 5, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, AK 99802, Attention: Lori Gravel. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for the proposed action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Fisheries Management Division, (907) 586-7229.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by the Secretary of Commerce (Secretary) under the Fishery Management Plan for Groundfish of the GOA (FMP). The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR

part 672. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

Under regulations at § 672.20(a)(2)(iv), the total allowable catch (TAC) for pollock in the W/C GOA is apportioned among statistical areas Shumagin (61), Chirikof (62), and Kodiak (63) in proportion to known distribution of the pollock biomass. Each apportionment is divided equally into the four quarterly reporting periods of the fishing year. Under § 672.2, a "quarterly reporting period" means one of four successive 3-month periods during a calendar year. Under § 672.20(c)(1)(ii)(A), directed fishing for pollock in the W/C GOA will commence on dates that coincide with anticipated quarterly reporting periods for 1993. Pollock fishing quarters in the W/C GOA for 1993 commence on the first day of each of the four quarterly reporting periods: January 1, March 29, June 28, and October 4.

At its September 22-27, 1992, meeting, the Council considered an industry proposal to delay the opening of the second quarter pollock fishery in the W/C GOA from the first day of the second quarterly reporting period until the first day of the weekly reporting period nearest June 1. Under § 672.2, a "weekly reporting period" means from 0001 hours Monday morning until 2400 hours the following Sunday night, Alaska local time. For the 1993 fishing year, this date falls on May 31. For the reasons given below, the Council found the industry proposal would provide economic benefits to pollock harvesters and processors and recommended that NMFS prepare a proposed rule delaying the opening of the second quarter pollock fishery in the W/C GOA. Pending approval by NMFS, this action would be implemented prior to the start of the second 1993 W/C GOA pollock quarter, currently scheduled for March 29.

The most recent year in which a W/C GOA directed pollock fishery occurred in April was 1990; in 1991 and 1992, the opening of the second quarter was delayed until June. In 1991, the second quarter directed pollock fishery commenced on June 13. This change was the result of a delay in approval of the pollock harvest specification to complete additional analyses and a Section 7 consultation for Steller sea lions under the Endangered Species Act (ESA) (56 FR 28112, June 19, 1991). In 1992, the opening of the second quarter was delayed until June 1, under an emergency rule (57 FR 11272, April 2, 1992). This emergency rule was intended to prevent preemption of the inshore component by the offshore component until allocations of pollock under a final rule implementing Amendment 23 to the FMP were effective (57 FR 23321, June 3, 1992). Adoption of this proposed rule would maintain the second quarter pollock fishing and processing seasons as they occurred in 1991 and 1992.

The allocation of pollock into quarters and among several areas has resulted in small quarterly pollock allowances for pollock. Because the domestic groundfish industry has more than adequate capacity to harvest and process the pollock TAC in the W/C GOA, the resultant directed fishery is of short duration; the

number of days directed fishing for pollock was open during the second quarter in 1992 was: 2 days for area 61; 16 days for area 62; and 11 days for area 63. This proposed delay is not anticipated to alter effort, and would not be likely to change the length of the directed fishery. The opening of the second quarter directed fishery for pollock would be displaced by approximately 2 months, from the beginning of April to the beginning of June. The opening of the third pollock quarter in the W/C GOA would not be altered by this proposed rule.

The allocation of the W/C GOA pollock TAC to 3 areas will ensure that the harvest remains distributed spatially. Harvesters may be able to fish closer to ports and make shorter trips if searching time to avoid encounters with young and undersized pollock is reduced, and if pollock are not as dispersed as they are in early spring just after spawning.

If the opening of the second quarter pollock fishery is delayed, the same individuals would likely participate in the harvesting and processing of GOA pollock as in 1992, including some processors in close proximity to the Bering Sea and Aleutian Islands Area (BSAI) who also participate in BSAI pollock fisheries. GOA pollock harvesters and processors who participate both in the pollock fishery and in June salmon fisheries may not be able to participate fully in the second quarter fishery if the opening is delayed until June. Participation would depend on the starting dates of the salmon fisheries. In 1992, operators of more than 300 vessels held Federal groundfish permits for trawl gear in the GOA. While this number of vessels is considered substantial, this regulatory measure would only affect the portion of the fleet that participates in the second quarter pollock fishing season. Processors who intend to participate in fisheries for pollock as well as other species in the second quarter may experience labor and/or equipment conflicts. These costs, or the extent to which pollock fishing would be foregone, are not quantifiable at this time. Although some processing operations may incur additional labor costs, most operators would realize net benefits resulting from increased yields.

Delaying the opening of the second quarter pollock fishery could result in a fishery that is conducted with pelagic, rather than with non-pelagic, trawl gear, although no additional costs to the industry are anticipated. Under § 672.20(f), an annual halibut bycatch limit is specified for trawl gear. When the limit, or seasonal apportionment thereof, is reached, all GOA groundfish trawl fisheries are closed with the exception of trawling for pollock with pelagic trawl gear. Delay of the opening of the second quarter pollock fishery to around June 1 would increase the likelihood that a seasonal trawl bycatch allowance is taken in other trawl fisheries prior to the start of the second quarter pollock fishery. This situation occurred in the past 2 years and, because such trawl closures typically occur in other seasons as well, many pollock fishermen have acquired pelagic trawl gear. Therefore, any additional costs to

harvesters to purchase pelagic nets under the proposed rule are expected to be minimal.

NMFS anticipates that under this proposed action, a pollock fishery conducted with pelagic trawl gear would accrue negligible amounts of additional halibut bycatch. Any savings in halibut bycatch experienced by the pollock fishery because of a prohibition on the use of non-pelagic trawl gear may support additional catches of other groundfish species during the second quarter and result in a higher overall groundfish harvest.

NMFS also anticipates that a delayed opening of the second quarter pollock fishery could result in a substantial decrease in the bycatch rates of chinook salmon. Data from 1991 and 1992 indicate that bycatch rates (number of salmon/metric ton (mt) of groundfish) in the pelagic trawl pollock fishery are significantly lower in June than at the end of the first quarter (0.02 and 0.20, respectively). In contrast, bycatch rates for salmon other than chinook salmon and for herring may be higher. Bycatch rates of crabs in June are very low and would likely not be different from earlier in the quarter.

The proposed delay of the second quarter opening is anticipated to increase the first wholesale value of the pollock harvest during the second quarter by allowing harvest when recovery of flesh is higher, and to result in potentially higher value products, such as larger fillets and higher grades of surimi. Because the amount of pollock harvest would not be altered under the proposed season delay, an estimate of the increased value is dependent on improved yields, product mix, and wholesale prices. Information on product recovery rates indicates that the increase in flesh yield between pollock harvested in April, when fish have recently spawned, and June, is about 3 percent for fillets, and 4 percent for surimi. Based on 1991 first wholesale values, the value increase would likely be between \$2.6 million and \$3.6 million for 1993. In addition to increased product value, harvesters and processors also would benefit from decreased fishing, sorting, processing, and storage time, and from decreased disposal of unsuitable fish.

NMFS preliminarily concurs with the Council's recommendation and proposes to delay the opening of the second quarter pollock fishery until the first day of the weekly reporting period nearest June 1.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

NMFS prepared an EA for this proposed rule that discusses the impact on the environment as a result of this rule. The public may obtain a copy of the EA from the Regional Director (see ADDRESSES).

The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the NMFS. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

NMFS prepared an IRFA that concludes that this proposed rule, if adopted, would have significant effects on small entities. In 1992, operators of over 300 vessels were issued permits to fish for GOA groundfish with trawl gear. While this number of vessels is considered substantial, this regulatory measure would affect only the portion of the fleet that participates in the second quarter pollock fishing season. In addition, 14 processors processed pollock during the second quarter pollock fishery of 1992. The proposed action to delay the opening of the second quarter pollock fishery in the W/C GOA is superior to the status quo alternative, because economic benefits will be gained by allowing harvest of pollock when flesh recovery is improved in June as opposed to April. Based on 1991 first wholesale prices, the value increase under the proposed rule is estimated to be between \$2.6 and \$3.6 million for 1993. Additionally, costs to harvesters and processors may be lower due to decreased time required for fishing, sorting, processing, and product storage. The bycatch and discard of young and undersized pollock, and of chinook salmon, are likely to be lower. Conservation of groundfish and salmon resources would be improved to the extent that these bycatch rates would be reduced. A copy of this analysis is available from the Regional Director (see ADDRESSES).

This rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

Pursuant to the requirements of the ESA, the Regional Director has determined that this action is not likely to adversely affect any endangered or threatened species or critical habitat within NMFS' jurisdiction.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under Section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 12612.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated:

For the reasons set out in the preamble, 50 CFR part 672 is proposed to be amended as follows:

PART 672--GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801, et seq.

2. In § 672.23, paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 672.23 Seasons.

(a) Fishing for groundfish in the regulatory areas and districts of the Gulf of Alaska is authorized from 00:01 a.m., Alaska local time (A.l.t.), January 1, through 12 midnight, A.l.t., December 31, subject to the other provisions of this part, except as provided in paragraphs (c) through (f) of this section.

* * * * *

(f) Directed fishing for pollock in the Western and Central Regulatory Areas of the Gulf of Alaska is authorized from 12 noon, A.l.t., on the first day of each quarterly reporting period through the end of that quarterly reporting period, subject to other provisions of this part, except that directed fishing for pollock during the second quarterly reporting period is authorized from 12 noon, A.l.t., on the first day of the weekly reporting period closest to June 1, through the end of the second quarterly reporting period, subject to other provisions of this part.

NMFS
Alaska Region
Juneau, AK
Jan 18, 1993

Agenda Item D-2(a)
'Define legal gears'

DRAFT

ENVIRONMENTAL ASSESSMENT
and
REGULATORY IMPACT REVIEW/INITIAL REGULATORY FLEXIBILITY ANALYSIS
FOR REGULATORY AMENDMENTS TO
PROHIBIT UNDEFINED GEAR TYPES IN THE DIRECTED FISHERIES FOR
GROUNDFISH IN THE GULF OF ALASKA AND THE BERING/SEA ALEUTIAN
ISLANDS AREAS

1.0 INTRODUCTION

The groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Gulf of Alaska (GOA) and Bering Sea Aleutian Island area (BSAI) are managed under the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish of the BSAI. Both plans were developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The GOA FMP was approved by the Secretary of Commerce and become effective in 1978 and the BSAI FMP become effective in 1982.

At times, amendments to the FMPs and/or their implementing regulations are necessary to resolve problems pertaining to management of the groundfish fisheries. The structure of the FMP allows certain measures to be changed by regulatory amendments without amending the FMP itself.

Actions taken to amend the FMPs or their implementing regulations must meet the requirements of Federal laws and regulations. Among the most important of these are the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Executive Order (E.O.) 12291, and the Regulatory Flexibility Act (RFA).

NEPA, E.O. 12291, and the RFA require a description of the purpose and need for the proposed action as well as a description of alternative actions which may address the problem. This information is included in Section 1 of this document. Section 2 contains information on the biological and environmental impacts of the alternatives as required by NEPA. Impacts on endangered species and marine mammals also are addressed in this section. Section 3 contains a Regulatory Impact Review (RIR) which addresses the requirements of both E.O. 12291 and the RFA that economic impacts of the alternatives be considered. Section 4 contains the Initial Regulatory Flexibility Analysis (IRFA) required by the RFA which specifically addresses the impacts of the proposed action on small businesses.

This Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA)

addresses regulatory amendments that propose to prohibit the use of undefined fishing gear in a directed fishery for groundfish in the GOA and BSAI.

1.1 Description of the problem and need for action

The proposed regulatory amendment would prohibit the use of undefined gear types to participate in a directed fishery for groundfish in the GOA and BSAI. This action is necessary to more fully implement FMP provisions governing the groundfish fishery that are intended to authorize the use of only those gear types defined in regulations. This action also is proposed to (1) prevent additional grounds preemption and gear conflict problems in the overcapitalized groundfish fisheries, (2) clarify the application of gear specific fishery closures under prohibited species bycatch restrictions, and (3) prohibit the use of undefined gear types that have unknown effects on prohibited species bycatch mortality and the biological or physical environment. This action is intended to promote the goals and objectives of the North Pacific Fishery Management Council with respect to groundfish management off Alaska.

Traditional gear-types used to fish for groundfish are defined in regulations at 50 CFR 675.2 and 672.2. These defined gear types are: hook-and-line, jig, longline, longline pot, pelagic trawl, pot-and-line and trawl. Notwithstanding gear specific restrictions set forth under CFR 672.24 and 675.24, regulations generally do not prohibit the use of undefined gear types to participate in a directed fishery for groundfish.

Groundfish harvest with undefined gear occurred in 1992. Additional interest has been expressed by members of the fishing industry to use other than defined gear types in a directed fishery for groundfish. Concerns exist that additional fishing effort using undefined gear types in the overcapitalized groundfish fisheries would aggravate grounds preemption and gear conflict problems within the groundfish fisheries. Although the amount of groundfish harvested during 1992 with undefined gear types is small (320 mt) relative to the total 1992 groundfish harvest off Alaska (2,214,206 mt), potential exists for increased use of undefined gear in directed groundfish fisheries.

Concern also exists about the unknown effects that undefined gear types may have on the biological and physical environment. Furthermore, prohibited species bycatch management measures have been developed specifically for defined gear types that implement gear specific fishery closures when specified bycatch limits are reached. Although all gear types are prohibited from directed fishing for a groundfish species when the directed fishing allowance for that species are reached, only specific gear types (those defined at 50 CFR 672.2 and 675.2) may be prohibited from directed fishing for groundfish under prohibited species bycatch

closures authorized under §675.21 and §672.20(f). These closures are intended to limit further bycatch amounts of prohibited species after established bycatch limits have been reached. Without the proposed action, no regulatory authority exists to prohibit the use of undefined gear as long as directed fishing allowances remain. As a result, regulatory intent to limit prohibited species bycatch amounts under existing bycatch management measures are potentially thwarted. As competition increases for groundfish quotas and associated PSC limits, prohibited species bycatch allowances are being reached more quickly, resulting in earlier closures for specified gear types. Interest to fish for groundfish with undefined gear types has increased accordingly.

In response to similar concerns, the Alaska Board of Fisheries adopted a proposal to prohibit the use of sunken gillnet gear at it's November 8-12, 1992, meeting. Sunken gillnets are undefined gear in federal regulations and fishermen have been targeting on Pacific cod with this gear type in both state and federal waters off Alaska.

Under the proposed action, industry interest in new gear types to fish for groundfish could be developed under experimental fishing permits. Under these permits, fishing efficiency, bycatch mortality rates, and the effects on the environment could be assessed. Gear types assessed under this process could be subsequently authorized to fish for groundfish under future regulatory amendments.

1.2 The Alternatives

Alternative 1. (Status quo alternative) Do not prohibit the use of undefined gear types.

Under this alternative undefined gear types could be used in directed groundfish fisheries and continue to be used to harvest groundfish after gear-specific bycatch limits are reached. In addition, additional fishing effort using undefined gear types in the overcapitalized groundfish fisheries could aggravate grounds preemption and gear conflict problems in the groundfish fisheries.

Alternative 2. Prohibit the use of gear-types that are not defined in 50 CFR 672.2 and 675.2.

Only those gear types defined in the regulations could be used to participate in directed fishing for groundfish. Defined gear types include: hook-and-line, jig (which includes troll), longline, longline pot, pelagic trawl, pot-and-line, and trawl. Vessels participating in a non-groundfish fishery using undefined gear could retain bycatch amounts of groundfish consistent with directed fishing standards set forth in regulations 50 CFR

672.20(g) and 675.20(h).

New gear types to fish for groundfish could be developed under experimental permits. Under these permits, fishing efficiency, bycatch mortality rates, and the effects on the environment could be assessed. Gear types assessed under this process could be subsequently authorized to fish for groundfish under future regulatory amendments.

2.0 NEPA Requirements: Environmental Impacts of the Alternatives

An environmental assessment (EA) is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the action considered will result in significant impact on the human environment. An Environmental Impact Study (EIS) must be prepared if the proposed action may be reasonably expected: (1) to jeopardize the productive capability of the target resource species or any related stocks that may be affected by the action; (2) to allow substantial damage to the ocean and coastal habitats; (3) to have a substantial adverse impact on public health or safety; (4) to affect adversely an endangered or threatened species or a marine mammal population; or (5) to result in cumulative effects that could have a substantial adverse effect on the target resource species or any related stocks that may be affected by the action. An EA is sufficient as the environmental assessment document if the action is found to have no significant impact (FONSI) on the human environment.

An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. The purpose and alternatives for the subject proposed action were discussed in Sections 1.1 and 1.2 of this document, and the list of preparers is in Section 8. Section 2 contains the discussion of the environmental impacts of the alternatives, including impacts on threatened and endangered species and marine mammals.

The following two alternatives are analyzed in response to the requirements described above.

2.1 Environmental Impacts of the Alternatives

Potential biological effects on the environment under Alternatives 1 and 2 are those caused by changes in the associated mortality of groundfish or other fish species, marine mammals, including Steller sea lions and harbor seals, and sea birds that could result from the use of undefined gear types in directed groundfish operations. A summary of the effects of the 1993 groundfish total allowable catch amounts on the biological

environment and associated impacts on marine mammals, seabirds, other predators and prey, and threatened or endangered salmon is set forth in the final environmental assessment for 1993 groundfish total allowable catch specifications (USDOC, 1993).

Physical impacts under Alternatives 1 and 2 are those that would be caused by fishing activity using undefined gear types on the sea bed and associated benthos (i.e., attached animals and plants).

Alternative 1. (Status quo alternative) Do not prohibit the use of undefined gear types.

Adoption of the status quo alternative could potentially aggravate any adverse effects that groundfish harvesting operations have on the biological and physical environment if mortality of non-target species are increased through the use of undefined gear or the continued "ghost fishing" of lost gear.

For example, gillnets, or any other undefined gear-type, could be used in directed groundfish fisheries and continue to harvest groundfish after gear-specific bycatch limits are reached. Under current authority, a closure to a specific gear-type when specified bycatch limits are reached, would not prohibit the use of undefined gear (in this case, gillnets). Gillnets are non-selective and have a high potential to capture protected, endangered or threatened species. Lost gillnets also have the capacity to "ghost fish", after they have been abandoned or lost. Some evidence exists that lost gillnets continue to catch fish and crustaceans for years (Way, 1977). Gillnets have also been known to catch marine mammals and shore birds (AFJ, 1991). The Alaska Board of Fisheries recently adopted to prohibit the use of sunken gillnets at it's November 8-12, 1992, meeting. Under federal regulations the use of undefined gear, including sunken gillnets, could continue to be used in the EEZ.

Alternative 2. Prohibit the use of gear-types that are undefined in 50 CFR 672.2 and 675.2.

Adoption of this alternative would prohibit the use of undefined gear to fish for groundfish off Alaska. Only those gear types defined in the GOA and BSAI groundfish regulations could be used to participate in directed fishery for groundfish. Those gear types are: hook-and-line, jig, longline, longline pot, pelagic trawl, pot-and-line and trawl.

This alternative would provide all the conservation benefits that have been developed specifically for defined gear-types. This is consistent with the original intent and objective of the Council bycatch management measures and without the implementation of this alternative, these objectives and intent

to protect prohibited and bycatch species are thwarted.

Under the proposed action, industry interest in new gear types to fish for groundfish could be developed under experimental fishing permits. Under these permits, fishing efficiency, bycatch mortality rates, and the effects on the environment could be assessed. Gear types assessed under this process could be subsequently authorized to fish for groundfish under future regulatory amendments.

2.2 EFFECTS ON ENDANGERED AND THREATENED SPECIES AND ON THE ALASKA COASTAL ZONE

None of the alternatives are expected to have any adverse effect on endangered or threatened species or their habitat. Thus, formal consultation under Section 7 of the Endangered Species Act is not required.

Also, each of the alternatives would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of Section 307(c) (1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

2.3 FINDINGS OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

For the reasons discussed above, neither implementation of the proposed action nor any of the alternatives to that action would significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the preferred action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

3.0 Regulatory Impact Review: Social and Economic Impacts of the Alternatives

A review of the social and economic impacts of the alternatives provides information about those industry members affected by the proposed action and the economic gains or losses they are likely to experience as a result of the action. This section also addresses the requirements of both E.O. 12291 and the Regulatory Flexibility Act to provide adequate information to determine whether an action is "major" under E.O. 12291 or will result in "significant" ~~impacts on small entities under the RFA.~~

Executive Order 12291 applies to the issuance of new rules, the review of existing rules, and the development of legislative proposals concerning regulations. The EO requires that:

- (1) regulatory objectives and priorities be established

with the aim of maximizing aggregate net benefits to society, taking into account the condition of the particular industries affected by the regulations, the condition of the national economy, and other actions contemplated for the future;

(2) decisions be based on adequate information concerning the need for and consequences of the proposed rules;

(3) the chosen regulatory approach or alternative be the one with the least net cost to society, if practicable; and

(4) regulatory action should not be undertaken unless the potential benefits outweigh the potential costs to society.

E.O. 12291 also requires the Secretary of Commerce to determine whether the impact of a regulation is "major" and, if so, complete a Regulatory Impact Analysis (RIA) of the alternatives. A major regulation is one that is likely to result in: (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

A description of the purpose and need for the action and alternatives considered to address these problems were described in Sections 1.2 and 1.4. The social and economic impacts of these alternatives are discussed below.

3.1 Alternative 1. (Status quo alternative) Do not prohibit the use of undefined gear types.

Status quo means that NMFS takes no action to reduce the possibility that potential problems discussed in Section 1.1 will occur. These problems include the need to clarify defined gear-types to make the regulations consistent with the FMP intent, to prevent future harvests of groundfish by gear types that are not covered by the prohibited species catch limits in the Gulf of Alaska, and to discourage the development of groundfish fisheries using new or undefined gear types.

In 1992, 19 of the 2,300 vessels that were issued federal groundfish permits were permitted to harvest groundfish using undefined or "other gear". Each of these vessels were also authorized to harvest groundfish with hook-and-line gear. Seventeen of the vessels listed gillnet as their other gear and 2 listed seine.

with undefined gear

Shore plants reported harvests of groundfish with "other" gear that totalled 179 mt in the GOA and 141 mt in the BSAI. These landings were primarily Pacific cod (288 mt or 90% of the groundfish landed). The ex-vessel value of the Pacific cod landings was approximately 178,000 dollars.¹ Processor reports do not indicate the specific gear used for these cod harvests nor do they indicate whether the harvests took place in state or federal waters. Although individual fish tickets have not been examined, discussions with ADFG groundfish biologists indicate that most of these landings were taken with gillnet gear in directed fisheries for Pacific cod. The landings occurred primarily from January through April, a time when no other non-groundfish directed fisheries were occurring.

The status quo alternative would continue to permit harvests of groundfish with undefined gear, including sunken gillnets, in the EEZ. However, any harvests using sunken gillnets that formerly had occurred in state waters will be prohibited in the future under State of Alaska regulations.

While groundfish harvests by "other" or undefined gear currently is a small proportion of overall groundfish harvests, the associated mortality of prohibited species are unknown. Furthermore, since prohibited species bycatch mortality limits are gear specific, the closing of gear specific fisheries will not prevent undefined gear types from continuing to fish if TAC amounts remain unharvested. As a result, regulatory intent to limit prohibited species bycatch amounts under existing bycatch management measures could be undermined. This problem would be alleviated in the BSAI pending approval of proposed Amendment 21 to the FMP for the Groundfish Fishery in the BSAI. This amendment authorizes the establishment of halibut bycatch mortality limits for trawl and non-trawl gear. However, the problem still exists in the GOA because bycatch mortality limits remain specific to trawl, hook-and-line, and pot-and-line gear.

The status quo has the potential to encourage the development of groundfish fisheries using new or undefined gear types. The degree to which fisheries using alternative, undefined gear types will develop is unknown, as are the impacts on groundfish fisheries. However, because the groundfish fisheries in the GOA and BSAI are generally overcapitalized, with harvesting and processing capabilities well above that necessary to harvest existing TACs, regulations which allow continued expansion of these fisheries are not desirable from a social or economic perspective. Any addition of effort in these fisheries is a loss to the nation unless the new gear types are more efficient and they are used to replace other, less efficient gear

¹. The average ex-vessel value for Pacific cod landed by "other" gear in 1992 was 28 cents per pound (PACFIN, 1992).

types. Under 50 CFR 672.6 and 675.6, the effects and development of new gear types that are more efficient could be monitored and analyzed under experimental fishing permits.

Alternative 2. Prohibit the use of gear types that are undefined in 50 CFR 672.2 and 675.2.

Directed fishing for groundfish would be permitted only for those gear types defined in the regulations. The only harvests that have occurred in 1992 which would be prohibited under Alternative 2 would be those made using gillnets or seines. It is difficult to use historical harvest information to determine the number of vessels or value of harvests which may be affected by this alternative. The impact of a recent Board of Fisheries decision to prohibit the use of sunken gillnets will probably reduce future harvests of Pacific cod using gear that is undefined under federal regulation. Alternative 2 only impacts that portion of the fleet that harvested groundfish with undefined gear in the EEZ.

The proposed regulation only prohibits directed fishing for groundfish with undefined gear. Gillnet and seine vessels may continue to land groundfish as bycatch in non-groundfish fisheries such as salmon and herring.

If groundfish landings such as those made in 1992 are prohibited in the future under this alternative, the owners of these vessels may experience a loss. However, the extent of their loss depends on whether their harvests are already prohibited under state regulations, how important these groundfish harvests are to their overall income and whether they have the capability to harvest this groundfish with a legal gear. The extent of these losses is unknown but probably less than the estimated ex-vessel value of the Pacific cod harvest (\$178,000). Some portion of these harvests are now prohibited under state law and this loss should not be attributed to the proposed change in federal regulations. Second, some of the income lost as a result of this alternative may be made up by groundfish harvests with legal gear. All vessels with 1992 federal groundfish permits listing gillnet and seine gear also listed hook-and-line gear, so these vessel owners would still be able to harvest groundfish with defined, legal gear in the future.

The intent of this regulation is not to prevent the development of more efficient or effective methods of harvesting groundfish. However, any increased effort, regardless of the technical improvements it may represent, will result in net losses to the industry and the nation unless it is an improvement in technology that replaces less efficient harvesting techniques. In the case of the current groundfish fisheries, it is more likely that this effort using new or undefined gears would be in addition to current effort, not a more efficient replacement for

it.

Industry members interested in the use of new or undefined gear types are able to apply for experimental fishing permits to do so. It is preferable to have new fisheries develop through the permitting process under the control of experimental fishing permits. This would allow monitoring of the biological and environmental affects of the gear. Additional legal gear types would have to be added by regulation which would allow consideration of the potential social and economic impacts before industry members became dependent on these fisheries.

3.3 Reporting Costs

Reporting costs by vessels currently participating in the groundfish fisheries off Alaska will not change as a result of this proposed regulation.

3.4 Administrative, Enforcement and Information Costs

Prohibiting the use of undefined gear types will not significantly change administrative, enforcement and information costs. However, failure to implement this regulation may lead to additional administrative and enforcement costs in the future if fisheries using undefined gear develop.

3.5 Summary of Economic Impacts: Distribution of Costs and Benefits

The proposed regulation may have an impact on up to 19 vessels permitted to harvest groundfish using undefined gear types (gillnets or seines), however, many of the landings made by these vessels in 1992 would be prohibited in the future under State of Alaska regulations. In addition, all vessels with permits for other gear had hook-and-line permits. It is difficult to estimate the net loss of this proposed regulation change to fishermen who would have been able to continue to fish or develop new fisheries under the status quo. The estimated ex-vessel value of Pacific cod harvests in 1992 using "other" gear was \$178,000. However, this probably overestimates the loss to fishermen because some of this income will be lost as a result of the State of Alaska prohibition against sunken gillnets and some of the income can be made up in other groundfish fisheries using legal gear. All vessels authorized to use undefined gear also were authorized to use hook-and-line gear.

Alternative 2 is beneficial from both a social and economic perspective because it discourages the development of new effort in already overcapitalized fisheries and prevents the overharvest of prohibited species, gear conflicts, and fishing ground preemptions among all vessels in the GOA and BSAI. The proposed regulation to prohibit the use of undefined gear in groundfish

fisheries off Alaska is not expected to have major impacts as defined by E.O. 12291.

4.0 Initial Regulatory Flexibility Analysis

The objective of the Regulatory Flexibility Act is to require consideration of the capacity of those affected by regulations to bear the direct and indirect costs of regulation. If an action will have a significant impact on a substantial number of small entities an Initial Regulatory Flexibility Analysis (IFRA) must be prepared to identify the need for the action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of net benefits.

NMFS has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$2,000,000 as small businesses. In addition, seafood processors with 500 employees or less, wholesale industry members with 100 employees or less, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. A "substantial number" of small entities would generally be 20% of the total universe of small entities affected by the regulation. A regulation would have a "significant impact" on these small entities if it resulted in a reduction in annual gross revenues by more than 5 percent, annual compliance costs that increased total costs of production by more than 5 percent, or compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

If an action is determined to affect a substantial number of small entities, the analysis must include:

- (1) description and estimate of the number of small entities and total number of entities in a particular affected sector, and total number of small entities affected; and
- (2) analysis of economic impact on small entities, including direct and indirect compliance costs, burden of completing paperwork or recordkeeping requirements, effect on the competitive position of small entities, effect on the small entity's cashflow and liquidity, and ability of small entities to remain in the market.

4.1 Economic Impact on Small Entities

Most commercial fishing vessels harvesting groundfish off Alaska and delivering to shore-based processing plants meet the

definition of a small entity under the RFA. In 1992, approximately 2,000 catcher vessels landed groundfish from the GOA or BSAI. The maximum number of vessels which would be impacted by limiting harvests to legal gears would have been less than 20 vessels in 1992. These vessels represent less than 1% of the catcher vessel fleet and, therefore, this proposed regulation does not impact a substantial number of small entities.

5.0 SUMMARY

The adoption of alternative 2 would prohibit the use of undefined gear types to participate in a directed fishery for groundfish in the GOA and BSAI. This action is necessary to more fully implement FMP provisions governing the groundfish fishery that are intended to authorize the use of only those gear types defined in regulations. This action is also intended to (1) prevent additional grounds preemption and gear conflict problems in the overcapitalized groundfish fisheries, (2) clarify the application of gear specific fishery closures under prohibited species bycatch restrictions, and (3) prohibit the use of undefined gear types that have unknown effects on prohibited species bycatch mortality and the biological or physical environment. This action is intended to promote the goals and objectives of the North Pacific Fishery Management Council with respect to groundfish management off Alaska.

Adoption of Alternative 2 may negatively affect up to 19 vessels that in 1992 harvested 179 mt and 141 mt of groundfish in the GOA and BSAI, respectively. The extent of losses to these vessels is unknown but probably less than the estimated ex-vessel value of the Pacific cod harvest (\$178,000). Some portion of these harvests are now prohibited under state law and this loss should not be attributed to the proposed change in federal regulations. In addition, some of the income lost as a result of this alternative may be made up by groundfish harvests with legal gear.

Adoption of Alternative 1 would not prevent additional grounds preemption and gear conflict problems in the overcapitalized groundfish fisheries. In addition, adoption of Alternative 1 would allow directed fisheries to remain open to undefined gear types once PSC limits are reached and specific gear-types are closed to fishing. Furthermore, authority exists at 50 CFR 672.6 and 675.6 for vessels seeking to develop new gear types to apply for an experimental fishery permit for that purpose. Under Alternative 2, therefore, industry interest in new gear types to fish for groundfish could be developed under experimental fishing permits. Under these permits, fishing efficiency, bycatch mortality rates, and the effects on the environment could be assessed. Gear types assessed under this process could be subsequently authorized to fish for groundfish under future regulatory amendments.

Without the proposed action to prohibit undefined gear-types no regulatory authority exists to prohibit the use of undefined gear as long as directed fishing allowances remain. Use of undefined gear-type has unknown and undocumented effects on the environments.

6.0 References

1. United States Department of Commerce, USDOC, 1993. Final Environmental Assessment for 1993 Groundfish Total Allowable Catch Specifications Implemented under the Authority of the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska. NOAA, NMFS, Alaska Region, Juneau, AK, January 1993
2. Way, E.W. 1977. Lost gillnet (ghost net) retrieval project. 1976 Industrial Development Branch, Newfoundland Region, Canada
3. Staff, September 1992. The Marbled Murrelet. Old growth savior or double whammy? Alaska Fisherman's Journal.
4. PACFIN, 1992. Pacific Coast Fisheries Information Network Portland, OR. Report No. 128, December 10, 1992.

7.0 Agencies and Individuals consulted

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8.0 List of Preparers

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