

8.0 REGULATORY IMPACT REVIEW AND REGULATORY FLEXIBILITY ACT DETERMINATION

In compliance with Executive Order (EO) 12866 and the Regulatory Flexibility Act (RFA), National Marine Fisheries Service requires the preparation of a Regulatory Impact Review (RIR) and analysis of impacts under the RFA for all regulatory actions or for significant policy changes that are of public interest.

8.1 Executive Order 12866

EO 12866, Regulatory Planning and Review, was signed on September 30, 1993, and established guidelines for promulgating new regulations and reviewing existing regulations.

The RIR analysis has many aspects in common with EAs. Much of the information required for the RIR analysis has been provided above in the EA. Table 8.1 identifies where previous discussions relevant to the EA can be found in this document. In addition to the information provided in the EA, above, a basic economic profile of the fishery is provided annually in the Council's SAFE document.

Regulatory Impact Review

RIR Elements of Analysis	Corresponding Sections in EA
Description of management objectives	1.0, 6.1
Description of the fishery	3.3
Statement of the problem	1.0
Description of each selected alternative	2.0
An economic analysis of the expected effects of each selected alternative relative to status quo	4.1, 4.3, 4.4, 5.0

The RIR is designed to determine whether the proposed actions could be considered a "significant regulatory actions" according to Executive Order (E.O.) 12866. Table 8.2 identifies E.O. 12866 test requirements used to assess whether or not an action would be a "significant regulatory action," and identifies the expected outcomes of the proposed management alternatives. Regulatory actions are judged as significant if they 1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; 2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; 3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or 4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O. For the purposes of E.O. 12866, none of the proposed alternatives would meet the E.O.'s criteria for a significant regulatory action.

Summary of E.O. 12866 Test Requirements

E.O. 12866 Test of "Significant Regulatory Actions "	Alternative 1.1 Low OYs	Alternative 1.2 High OYs	Alternative 1.3 Preferred OYs
1. Have a annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.	No	No	No
2. Create a serious inconsistency or otherwise interfere with action taken or planned by another agency.	No	No	No
3. Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof.	No	No	No
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.	No	No	No

8.2 Impacts on Small Entities (Regulatory Flexibility Act)

The RIR is also designed to determine whether the proposed rule has a "significant economic impact on a substantial number of small entities"^{10/} under the Regulatory Flexibility Act (RFA). The purpose of the RFA is to relieve small businesses, small organizations, and small governmental entities from burdensome regulations and record-keeping requirements. 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 the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. An initial regulatory flexibility analysis (IRFA) is conducted unless it is determined that an action will not have a "significant economic impact on a substantial number of small entities." For the actions proposed here, information is not sufficient to determine an IRFA is unnecessary. The RFA specifically requires an initial regulatory flexibility analysis include the following information:

A description of the reasons why action by the agency is being considered.

The Council has proposed to NMFS year 2002 annual specifications and management measures to allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of healthy groundfish stocks, while also ensuring those fisheries do not exceed the allowable catch levels intended to protect overfished and depleted stocks.

A succinct statement of the objectives of, and the legal basis for, the proposed rule.

The form of the specifications, in ABCs and OYS, follows the guidance of the Magnuson-Stevens Act, the National Standard Guidelines, and the FMP for protecting and conserving fish stocks. Annual management measures include trip and bag limits, size limits, season restrictions, gear restrictions, and

10/ The Small Business Administration defines a small business in commercial fishing as "a fish harvesting or hatchery business that is independently owned and operated and not dominant in its field of operation" with "annual receipts not in excess of \$3,000,000."

other measures intended to allow year-round West Coast groundfish landings without compromising overfished species rebuilding measures.

A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate).

The following is a summary of more detailed information provided in Sections 3.3 and 4.1. of the EA.

Approximately 2,000 commercial vessels participate in the West Coast groundfish fisheries. Of those, about 500 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,500 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at nongroundfish species. All but 10 to 20 of those vessels are considered small businesses by the Small Business Administration. There are also about 700 groundfish buyers on the West Coast, approximately 250 of which annually purchased at least \$33,000 of groundfish in 2000. In the 2001 recreational fisheries, there were 106 charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast, and 415 charter vessels active on the California coast.

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 subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The main compliance activity associated with the proposed action will be the reduction of harvest.

Revenues for many participants in the commercial groundfish fishery are expected to decline in 2002. Harvest levels for some key species, such as sablefish, Dover sole, and widow rockfish are set significantly lower in 2002 than in 2001 and will affect coastwide groundfish revenues. For example, the proposed 2002 sablefish commercial OY is 37% lower than in 2001. Comparing 2000 sablefish revenue data (2001 data is not yet complete) with the available sablefish commercial OY in 2002, 2002 coastwide sablefish revenue could be 39% to 48% lower than in 2000. Overall, commercial fishery groundfish revenues in 2002 are expected to be \$31 million, which is a 22.5% decrease from estimated 2001 revenues (\$40 million) and a 39% decrease from 2000 revenues (\$51 million).

It is difficult to estimate exactly how this overall decline in commercial landings and revenue will affect individual members of the groundfish fleet. However, the overall decline is significant enough to suggest small businesses with a substantial portion of their incomes dependent on groundfish will be negatively affected by implementation of the 2002 proposed harvest levels. Limited entry vessels generally harvest in excess of \$50,000 of West Coast fish per year and tend to depend on groundfish for over 35% of their gross West Coast revenue. Open access vessels tend to harvest less than \$50,000 per year, and those harvesting in excess of \$50,000 generally rely on groundfish for less than 5% of their exvessel revenue. Thus limited entry vessels and the people relying on these vessels for income are likely to be more adversely affected from the decline in groundfish revenue opportunity than open access vessels. Of the approximately 700 groundfish buyers, about 300 have groundfish as at least 35% of their fish products purchase from fishing vessels.

For the recreational fishery, the only significant catch and effort reductions would occur in California. Little change in overall recreational effort is expected in Washington or Oregon. Reduction in effort in California is expected to result in a reduction in revenue for businesses catering to recreational fishers. In northern and southern California, \$13.6 million and \$6.9 million, respectively, of community level personal income were associated with the recreational groundfish fishery in 2001. These personal income values are a measure of the contribution of recreational fishing to businesses and local communities. Under the proposed action, effort is expected to decline by about 15%. The decline in effort would be expected to reduce associated community level personal income by similar amounts. Gross receipts for recreational groundfish activities will likely decline in proportion with the decline in number of angler trips, however, net profits may decline more given certain costs will be fixed on an annual and per trip basis. Revenue declines from groundfish may be offset to the degree that charter vessels operate in other fisheries.

This rule does not propose any new reporting and record keeping requirements; however, it does announce EFPs for 2002, which include reporting and record keeping requirements. Reporting and record keeping requirements associated with EFPs are described in the section on the Paperwork Reduction Act.

An identification to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

No rules that duplicate, overlap or conflict with the proposed rule have been identified.

A description of any significant alternatives to the proposed rule that accomplish the stated objectives that minimizing any significant economic impact of the proposed rule on small entities.

The actions considered in this document may have significant impacts on small entities. Public comment was solicited on alternative management measures and considerations at the November 2001 Council meeting focused on meeting conservation objectives while minimizing adverse impacts on the fishing industry. No alternatives were identified that could lessen the impacts on small entities without threatening the long term viability of the resource, and hence, the fishery industry.