

REVIEW DRAFT

Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Proposed Regulatory Amendment under the Pacific Coast Groundfish Fishery Management Plan

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Abstract: The proposed actions are to 1) increase or eliminate the 2020 annual catch target (ACT) for cowcod (*Sebastes levis*) south of 40°10' N. lat. with a potential adjustment to the set-aside or off-the-top deduction from the ACL, and 2) increase the 2020 annual catch limit (ACL) of shortbelly rockfish (*S. jordani*) to avoid negative socioeconomic impacts to the West Coast groundfish fishery.

Cowcod south of 40°10' N. lat. is one of two West Coast groundfish stocks currently managed under a rebuilding plan. Cowcod is also a quota species in the West Coast trawl catch share program with very small individual fishing quotas (IFQs) allocated to quota shareholders based on the sector's allocation of the 2020 ACT of 6 metric ton (mt). As such, cowcod is a constraining species to California trawlers south of 40°10' N. lat. Cowcod are successfully rebuilding and, according to the draft 2019 stock assessment that may be adopted by the Pacific Fishery Management Council (Council) at their September 2019 meeting, has now attained a healthy and rebuilt status.¹ As the stock has increased in abundance, incidental bycatch of cowcod has been increasingly difficult to avoid. Some LE groundfish trawlers south of 40°10' N. lat. are prematurely approaching their vessel limits of cowcod threatening their ability to prosecute their fishery. The Council is interested in providing some economic relief by raising or eliminating the ACT, with a

¹ The final stage of the assessment review process will occur by the Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) at their September 2019 meeting. If endorsed by the SSC, the Council will adopt the assessment and recommend to the National Marine Fisheries Service to declare the cowcod stock south of 40°10' N lat. rebuilt.

possible reduction to the yield set-aside. These actions would increase the annual cowcod vessel limit for affected LE trawl fishery participants south of 40°10' N. lat.

Shortbelly rockfish is one of the most abundant rockfish species in the California Current and is not targeted in any West Coast fishery (Field et al. 2008). While shortbelly rockfish are most abundant along the continental shelf break between the northern end of Monterey Bay and Point Reyes, California and around the Channel Islands in the Southern California Bight (Love et al. 2002; Moser et al. 2000; Pearson et al. 1991a; Phillips 1964), they have increasingly been encountered and incidentally caught in midwater trawl fisheries in waters north of 40°10' N. lat. as far north as northern Washington. The observed magnitude of encounters of shortbelly rockfish north of 40°10' N. lat. in recent years is unprecedented and may be the result of a climate change-driven distributional shift and/or the effect of large recruitments. The shortbelly ACL of 500 mt was exceeded in 2018 and has been exceeded this year according to catches to date. The Council is interested in specifying a higher shortbelly ACL in 2020 than the 500 mt ACL in regulations to avoid premature closure of groundfish fisheries that incidentally take shortbelly rockfish.

List of Acronyms and Abbreviations

ABC	acceptable biological catch
ACL	annual catch limit
ACT	annual catch target
AM	accountability measure
B ₀	unfished equilibrium spawning stock biomass or spawning output
B _{MSY}	The biomass estimated to result in maximum sustainable yield of a stock and the prescribed biomass target for West Coast groundfish stocks
CA	California
CCA	Cowcod Conservation Area
CP	catcher-processor
Council	Pacific Fishery Management Council
E.O.	Executive Order
EA	Environmental Assessment
EC species	Ecosystem Component species
EEZ	Exclusive Economic Zone
EFP	exempted fishing permit
FG	fixed gear
FMP	fishery management plan
FR	<i>Federal Register</i>
GAP	Groundfish Advisory Subpanel
GMT	Groundfish Management Team
HCR	harvest control rule
HG	harvest guideline
IFQ	individual fishing quota
IRFA	Initial Regulatory Flexibility Analysis
LE	limited entry (sectors of the West Coast groundfish fishery)
M	meter or meters
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
mt	metric ton or tonne
MS	Mothership
MW	midwater
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
OA	open access (sector of the West Coast groundfish fishery)
OFL	overfishing limit
OR	Oregon
OY	optimum yield
P*	overfishing probability (the Council's risk tolerance for potential overfishing due to the scientific uncertainty in estimating the OFL)
PCGFMP	Pacific Coast Groundfish Fishery Management Plan
PPA	preliminary preferred alternative
PacFIN	Pacific Fishery Information Network
QP	quota pounds
RCA	Rockfish Conservation Area
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
SBA	Small Business Act
SCB	Southern California Bight
SSC	Scientific and Statistical Committee
WA	Washington
WCGOP	West Coast Groundfish Observer Program

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Executive Summary

The proposed actions are to increase the 2020 ACL for shortbelly rockfish and to increase or eliminate the 2020 ACT for cowcod south of 40°10' N. lat. specified in Federal regulations. Both stocks are managed under the Pacific Coast Groundfish Fishery Management Plan.

Purpose and Need

The purpose and need for these proposed actions is to avoid unnecessary negative socioeconomic impacts to 2020 West Coast groundfish fisheries and fishing communities. Specifically, the proposed action to raise or eliminate the 2020 cowcod ACT will only affect limited entry (LE) trawlers south of 40°10' N. lat. who are finding it difficult to avoid the incidental bycatch of cowcod given the vessel limits determined from the ACT. The proposed action to raise the 2020 shortbelly rockfish ACL may potentially affect all West Coast fisheries that incidentally catch shortbelly rockfish in the event the ACL is again exceeded.

Alternatives

Cowcod Alternatives

Proposed “strawman” alternatives for the cowcod action are:

No Action: Maintain the 6 mt cowcod ACT for 2020. Cowcod annual vessel limit is 843 lbs.

Alternative 1: Increase the 2020 cowcod ACT to X mt. Cowcod annual vessel limit is X lbs.

Alternative 2: Eliminate the 6 mt cowcod ACT for 2020 and manage fisheries to stay within the 10 mt ACL. Cowcod annual vessel limits range from 1,124 to 1,335 lbs depending on whether the 2020 set-aside is reduced (0-75 percent reduction scenarios presented in strawman Alternative 2).

Shortbelly Rockfish Alternatives

Proposed “strawman” alternatives for the shortbelly rockfish action are:

No Action: Maintain the 500 mt shortbelly rockfish ACL for 2020.

Alternative 1: Increase the 2020 shortbelly rockfish ACL to X mt.

Alternative 2: Increase the 2020 shortbelly rockfish ACL to equal the acceptable biological catch (ABC) of 5,789 mt.

Regulatory Impact Review

Cowcod Alternatives 1 and 2 would potentially mitigate the constraint imposed by the low cowcod vessel limit in the 2020 IFQ trawl fishery south of 40°10' N. lat. by increasing the ACT and hence the vessel limit (Alternative 1) or basing the vessel limit solely on the trawl allocation of the fishery harvest guideline (HG) of the ACL (Alternative 2). The conservation objectives of the cowcod rebuilding plan would not be compromised by this action since all rebuilding alternatives are predicated on staying within the prescribed ACLs and associated harvest control rule (HCR),

which are not proposed to change in 2020. Further, the draft 2019 cowcod stock assessment indicates rebuilding objectives are already attained since the stock is now estimated to be above its biomass management target (B_{MSY}). If the Council's SSC endorses the draft 2019 cowcod assessment as best scientific information available at their September 2019 meeting, the Council will adopt the assessment and will recommend to the National Marine Fisheries Service (NMFS) the stock be declared rebuilt. In the unlikely event the new assessment is not adopted and any revised assessment indicates the stock is not rebuilt, the Council's Groundfish Management Team (GMT) recommends this action not be pursued.

Shortbelly rockfish Alternatives 1 and 2 would mitigate the potential constraint imposed by the low 2020 ACL if incidental bycatch once again exceeds the ACL. The proposed action to increase the 2020 ACL should not increase impacts on the stock since the stock is not targeted in any fishery. The current ACL of 500 mt was also set at less than 9 percent of the ABC despite the indication in the 2007 assessment the stock was healthy and the conclusion that environmental determinants of shortbelly recruitment rather than fishing mortality affect future biomass and status of the stock (Field et al. 2008). The 500 mt ACL was set at this low level to ensure most of the harvestable surplus was made available as forage in the California Current ecosystem.

Increasing the 2020 ACL should not induce targeting since shortbelly rockfish are small and not marketable. As such, a longer-term solution may be a reconsideration of an Ecosystem Component (EC) species designation with a continued monitoring requirement. An EC species designation for 2020 is not considered as part of this proposed action.

Comparison of Alternatives for Decision-making

Table 3 through Table 5 summarize the features and effects under each alternative and the impacts of implementing them. These features and effects are generalized in this draft RIR/IRFA given the range of alternatives and a preliminary preferred alternative are yet to be decided. The relative impacts/effects of the alternatives for cowcod south of 40°10' N. lat. presume the draft 2019 assessment results indicating the stock is rebuilt are endorsed by the SSC and the assessment is adopted by the Council at the September Council meeting. The analyses and summary of impacts/effects will be refined after these decisions are made.

1 Introduction

Cowcod South of 40°10' N. lat.

The National Marine Fisheries Service (NMFS) declared cowcod south of 40°10' N. lat. overfished in January 2000, after Butler et al. (1999) estimated the 1998 spawning biomass to be at 7 percent of B_0 , well below the 25 percent minimum stock size threshold. Cowcod has been managed with *de minimus* harvest specifications (optimum yields [OYs]/ACLs of 2.4 - 10 mt) under a rebuilding plan since that time.

Overfished species, such as cowcod, were designated as a quota species under FMP Amendment 20 which established the West Coast trawl catch share program. This was done as an expedient measure to control the incidental bycatch of overfished species in the trawl fishery through IFQ management. Vessel limits for LE trawl participants in the catch share program control the amount of quota pounds (QP) of a quota species registered to a vessel with the intent to prevent excessive control of quota by a participant. Vessel limits are determined based on the trawl participant's apportionment of the trawl sector's allocation of a quota species' ACL or ACT if one is specified.

The 2020 ACL and ACT for cowcod south of 40°10' N. lat. are 10 mt and 6 mt, respectively. The 2020 vessel limits for cowcod are based on an apportionment (17.7 percent) of the 6 mt ACT. Public comment at the Council's June 2019 meeting by participants in the trawl fishery south of 40°10' N. lat. urged the Council and NMFS to increase or eliminate the cowcod vessel limit. While no entity has exceeded the annual cowcod vessel limit through 2018, the comments received indicated that some trawl participants might exceed their vessel limit this year despite efforts to avoid incidental cowcod bycatch. Once the annual vessel limit is attained, the vessel needs to cease fishing for the rest of the year. This poses a significant economic cost to affected participants since they cannot fish their remaining quota of healthy target species. While there is no regulatory mechanism to avoid such impacts this year, the GMT recommended increasing or eliminating the 2020 cowcod ACT to potentially avoid such impacts next year. They also posed the option of reducing the yield set-aside or off-the top deduction of yield from the ACL to account for research activities, limits for exempted fishing permits (EFPs), and incidental bycatch in non-groundfish fisheries. The GMT will further explore this option in September.

It has been anticipated that cowcod would be increasingly difficult to avoid in groundfish fisheries south of 40°10' N. lat. given the prediction cowcod would be rebuilt at the start of 2019. This prediction is confirmed based on the draft 2019 cowcod stock assessment, which estimates the spawning stock is at 57 percent of B_0 at the start of 2019 (Dick and He 2019). If the Council's SSC endorses the assessment as the best scientific information available at its September 2019 meeting, the Council will adopt it and recommend to NMFS the stock be declared rebuilt. New harvest specifications would then be considered for 2021 and beyond based on the results of the new assessment. The action the Council is considering here is increasing or eliminating the 2020 ACT to avoid impacts to affected trawl fishery participants in the interim before new harvest specifications are implemented in 2021.

The Council is scheduled to adopt a range of alternatives (see the "strawman" alternatives above) and a preliminary preferred alternative (PPA) for this proposed action at its September 2019

meeting in Boise, Idaho. The PPA will go out for public review and final Council action is scheduled at its November 2019 meeting in Costa Mesa, California.

Shortbelly Rockfish

The expectation of eventual development of a domestic commercial fishery (Kato 1981) led to past efforts to estimate stock abundance and productivity (Lenarz 1980, Pearson et al. 1989, Pearson et al. 1991) as well as evaluations of commercial potential. The first ABC for shortbelly rockfish was set by the Council at 10,000 mt for 1983 through 1989. A stock assessment by Pearson et al. (Pearson et al. 1991b) estimated that allowable catches for shortbelly might range from 13,900 to 47,000 mt per year, based on life history data and hydroacoustic survey estimates of abundance. Subsequently, the Council established an ABC of 23,500 mt, which was reduced to 13,900 mt in 2001 based on observations of poor recruitment throughout the 1990s and the continued lack of a targeted fishery. Yet despite several attempts to develop a commercial fishery for shortbelly in the 1990s, domestic fishery landings had never exceeded 80 mt per year along the West Coast.

A shortbelly rockfish assessment was done as an academic exercise in 2007 to understand the potential environmental determinants of fluctuations in the recruitment and abundance of an unexploited rockfish population in the California Current ecosystem (Field et al. 2008). The results of the assessment indicated the shortbelly stock was healthy with an estimated spawning stock biomass of 67 percent of its unfished biomass in 2005.

Shortbelly rockfish were initially considered for an EC species designation under FMP Amendment 23. Rather than classifying shortbelly rockfish as an EC species, the Council chose to recommend a very restrictive ACL of 50 mt for the 2011-2012 and the 2013-2014 management cycles. The ACL was increased to 500 mt beginning in 2015 to prevent unavoidable bycatch from prematurely shutting down emerging midwater trawl fisheries targeting yellowtail and widow rockfish. The 500 mt ACL is less than 9 percent of the ABC and is a level of harvest meant to accommodate unavoidable incidental bycatch of shortbelly rockfish while allowing most of the harvestable surplus of the stock to be available as forage for species in the California Current ecosystem. Despite that, the apparent distribution shift to northern waters has resulted in a large bycatch of shortbelly rockfish in midwater fisheries targeting Pacific whiting. The 500 mt shortbelly rockfish ACL was exceeded by 8 mt (102 percent of the ACL) in 2018 and the 2019 incidental bycatch to date (August 16, 2019) has also exceeded the 500 mt ACL with an estimated total mortality of 511 mt.

The Council is therefore considering an increase in the 2020 shortbelly rockfish ACL to avoid the potential of early fishery closures next year if the ACL is again exceeded. The Council is scheduled to adopt a range of alternatives (see the “strawman” alternatives above) and a PPA for this proposed action at its September 2019 meeting in Boise, Idaho. The PPA will go out for public review and final Council action is scheduled at its November 2019 meeting in Costa Mesa, California.

1.1 Purpose and Need

Cowcod South of 40°10' N. lat.

The purpose and need for this proposed action is to avoid premature closure of the 2020 fishery for LE trawl participants south of 40°10' N. lat. that attain or exceed their cowcod annual vessel limit.

Shortbelly Rockfish

The purpose and need for this proposed action is to avoid premature closure of coastwide 2020 fisheries that incidentally catch shortbelly rockfish if the 500 mt ACL is again exceeded.

1.2 History of this Action

Cowcod South of 40°10' N. lat.

Cowcod south of 40°10' N. lat. have been managed conservatively under a rebuilding plan since the stock was declared overfished in 2000. In 2001 cowcod became a prohibited species (i.e., no allowable retention) and most of their habitat in the Southern California Bight (SCB) south of Pt. Conception at 34°27' N. lat. was closed to bottom fishing. Two Cowcod Conservation Areas (CCAs), in the SCB, were selected due to their high density of cowcod. The larger of the two areas (CCA West) is a 4,200 square mile area west of Santa Catalina and San Clemente Islands. A smaller area (CCA East) is about 40 miles offshore of San Diego, and covers about 100 square miles. Bottom fishing is prohibited deeper than 20 fathom (fm) within the CCAs.

These management measures have resulted in an apparent successful rebuilding of cowcod. Dick and He (2019) estimate the stock has attained a depletion of 57 percent of B_0 (above the B_{MSY} management target of 40 percent) at the start of 2019. If the draft 2019 cowcod stock assessment is judged to be the best scientific information available by the SSC and is adopted by the Council, the Council will recommend to NMFS to declare the stock rebuilt.

The default HCR for a stock transitioning from a rebuilding to a healthy status is to set the ACL equal to the ABC under the current overfishing probability (P^*) in regulations. However, such a dramatic change in cowcod harvest specifications is not considered under this action which seeks to revise the 2020 ACT already in regulations. The harvest specifications projected in the 2019 assessment, if adopted, will be considered by the Council and NMFS in a separate process for managing the West Coast groundfish fishery in 2021 and beyond. If the assessment is not adopted and any revised assessment does not indicate cowcod has attained a healthy status, the GMT has recommended this action not be pursued.

The Council received public comment in June 2019 from affected trawl fishery participants south of 40°10' N. lat. requesting relief from the very small annual vessel limits for cowcod. They commented that cowcod have been increasingly hard to avoid in the last two years and some trawl fishermen are approaching their annual vessel limit prematurely, which threatens their ability to target healthy stocks such as chilipepper rockfish, thornyheads, and sablefish. The recent increase in total mortalities of cowcod absent significant changes to management measures that would affect cowcod bycatch bolsters the claim of cowcod being increasingly difficult to avoid (Table 1

and Figure 1). The GMT has recommended the action to increase or eliminate the 2020 cowcod ACT, with a possible adjustment to the 2020 cowcod set-aside, as a means to provide relief to affected trawl fishery participants.

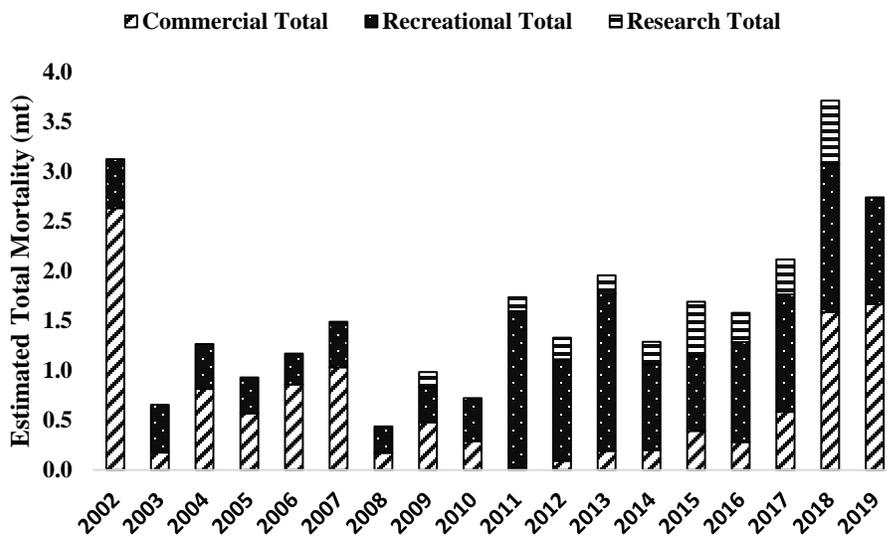


Figure 1. Estimated total mortality of cowcod south of 40°10' N. lat. by commercial and recreational sectors and through research activities. 2019 total mortality is uncertain and incomplete with commercial catches estimated through August 16, 2019 and recreational catches through May 2019.

Shortbelly Rockfish

Shortbelly rockfish have never been targeted and are recognized as an important forage species in the California Current ecosystem with the center of its population distribution on the shelf/slope break off central California (Field et al. 2008). The Council originally considered designating shortbelly rockfish an EC species when FMP Amendment 23 was being considered but ultimately decided to specify a low 50 mt ACL to accommodate unavoidable incidental bycatch beginning in 2011. This ACL was considered a safe level of harvest that would not disrupt groundfish fisheries while allowing most of the harvestable surplus of the stock to be available as forage. This low level of bycatch was considered safe given the observed mortalities at that time; the 2002-2009 average coastwide annual total mortality was 14.4 mt (Table 2).

The ACL was raised to 500 mt in 2015 in anticipation of the re-emergence of the midwater trawl rockfish fishery after widow and canary rockfish were declared rebuilt. Incidental bycatch remained low until 2017 when it abruptly increased by an order of magnitude and has been increasing since (Table 2; Figure 2). Most of this bycatch occurred in the Pacific whiting midwater trawl fisheries north of 40°10' N. lat. Total mortalities in 2018 groundfish fisheries have just been reconciled by the West Coast Groundfish Observer Program (WCGOP). The 500 mt ACL was exceeded by 8 mt in 2018 and catches to date (August 16, 2019) account for about 511 mt of shortbelly rockfish taken so far this year.

The Council received public comment at their June 2019 meeting from representatives of the at-sea whiting fishery asking for inseason relief given the high bycatch of shortbelly rockfish and an

increase in the 2020 shortbelly ACL to avoid exceeding the ACL again. The at-sea whiting fleets employ a fishery monitoring company, Sea State, Inc., to monitor each catcher vessel’s bycatch in near real time. When there is a large bycatch event (aka a “lightning strike”) for a non-target species of concern, Sea State notifies the entire fleet of the location and magnitude of the bycatch event and advises vessels to move from these bycatch “hot spots”. There were a number of shortbelly rockfish lightning strikes during the 2019 whiting fishery. While the fleets were not necessarily monitoring shortbelly rockfish bycatch as a noted species of concern (shortbelly were rarely encountered north of 40°10’ N. lat. and the fleet does not operate in the south), these lightning strikes in such a short period compelled the fleet to investigate and self-reported these bycatches to NMFS. They also immediately implemented the Sea State protocol to move from these bycatch areas and actively avoid shortbelly rockfish. NMFS responded with a public notice to all fishery participants, including shoreside trawl vessels that do not employ Sea State, to avoid shortbelly rockfish and the areas where the at-sea fleets experienced high bycatch. While the ACL had not been exceeded at the time of the June 2019 Council meeting, it was clear this would happen given the season was ongoing and sector whiting allocations were not close to being attained. NMFS advised the Council and industry they would not automatically close the 2019 fishery upon attainment of the shortbelly ACL and urged avoidance to minimize shortbelly bycatch. (It is notable the incidental shortbelly rockfish catch rate has decreased since the fleets began actively avoiding them.) The GMT and Groundfish Advisory Subpanel (GAP, the groundfish industry advisory body for the Council) recommended increasing the 2020 shortbelly ACL to avoid a disruption of coastwide fisheries, especially midwater trawl fisheries targeting Pacific whiting and healthy semi-pelagic rockfish species north of 40°10’ N. lat. (Table 2 and Figure 2), should the ACL again be exceeded.

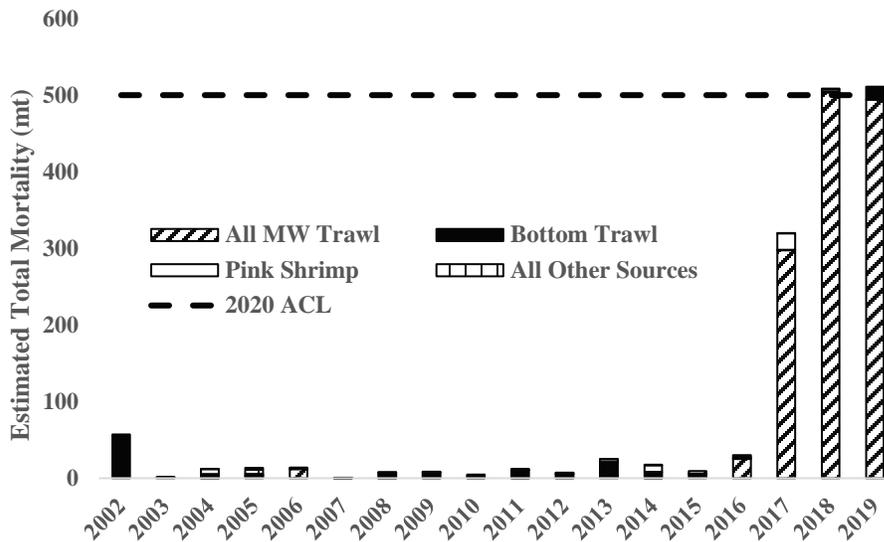


Figure 2. Total fishing-related mortality of shortbelly rockfish on the West Coast, 2002-2019. Mortalities in 2019 are estimated through August 16, 2019. The dotted horizontal line is the 2020 ACL in regulations.

Table 1. Estimated total fishing-related mortality (in mts) by sector of cowcod south of 40°10' N. lat. on the U.S. West Coast, 2002-2019.

Year	Commercial Fisheries									CA Recreational	Res.	Est. Fishing Mortality
	IFQ/Co-op Management		Non-IFQ									
	Bottom Trawl	FG	CA Halibut	Sea Cucumber	Pink Shrimp	Ridgeback Prawn	Non-nearshore FG	Nearshore FG	Inc. Fisheries			
2002	2.61	--	--	--	--	--	0.02	--	--	0.49	--	3.12
2003	0.18	--	--	--	--	--	--	--	0.00	0.48	--	0.66
2004	0.72	--	0.00	--	0.01	--	0.05	--	0.03	0.45	--	1.26
2005	0.57	--	--	--	--	--	0.00	0.00	--	0.36	--	0.93
2006	0.86	--	--	--	--	--	--	--	--	0.31	--	1.17
2007	1.00	--	0.02	--	--	--	0.01	--	--	0.46	--	1.49
2008	0.17	--	--	--	--	--	--	--	--	0.27	--	0.44
2009	0.42	--	--	--	--	--	0.06	--	--	0.35	0.15	0.98
2010	0.26	--	--	--	--	--	--	--	0.03	0.43	--	0.72
2011	0.02	--	--	--	--	--	--	--	--	1.58	0.14	1.73
2012	0.09	--	--	--	--	--	--	--	--	1.02	0.22	1.33
2013	0.19	--	--	--	--	--	--	--	--	1.58	0.18	1.96
2014	0.18	0.01	--	0.00	--	--	0.01	0.00	--	0.86	0.22	1.29
2015	0.39	--	--	--	--	--	--	--	--	0.76	0.54	1.69
2016	0.28	--	--	--	0.00	--	--	--	--	1.00	0.29	1.58
2017	0.42	--	--	--	0.09	0.07	--	--	0.01	1.18	0.35	2.12
2018	0.42	--	--	--	0.08	0.10	0.99	--	--	1.49	0.63	3.71
2019 a/					1.67					1.07	NA	2.74

a/ Catches to date (8/16/2019) are incomplete. All commercial catches are combined and were downloaded from the GMT scorecard available on the PacFIN web site on August 16, 2019. The CA recreational catch is estimated through May 2019 and was downloaded from the RecFIN database on August 16, 2019.

Table 2. Estimated total fishing-related mortality (in mts) by sector of shortbelly rockfish on the U.S. West Coast, 2002-2019.

Year	Commercial Fisheries													WA Tribal Shoreside	Res.	Est. Fishing Mortality
	IFQ/Co-op Management						Non-IFQ									
	Bottom Trawl	FG	MW Rockfish	Shoreside MW Hake	At-sea CP	At-sea MS	CA Halibut	Sea Cucumber	Pink Shrimp	Ridgeback Prawn	Non-nearshore FG	Nearshore FG	Inc. Fisheries			
2002	56.61	--	--	0.07	0.48	0.10	0.00	--	--	--	--	--	--	--	--	57.26
2003	0.47	--	--	0.04	0.49	0.02	--	--	--	--	--	--	0.01	--	--	1.03
2004	5.29	--	--	0.01	0.00	0.02	0.05	--	6.42	--	--	0.00	0.04	--	--	11.82
2005	0.84	--	--	--	0.01	2.69	--	--	1.91	--	--	--	--	--	8.21	13.65
2006	0.84	--	--	0.28	0.31	11.24	--	--	--	--	--	--	--	--	1.10	13.77
2007	0.24	--	--	--	0.00	0.01	--	--	0.06	--	0.02	--	--	0.03	0.33	0.69
2008	7.03	--	--	0.00	--	--	--	--	--	--	0.02	--	--	--	1.21	8.26
2009	7.42	--	--	0.05	--	--	--	--	--	--	--	0.00	--	--	1.09	8.57
2010	2.47	--	--	0.33	--	0.00	--	--	0.24	--	--	--	0.00	--	1.77	4.80
2011	10.55	--	--	0.00	--	--	--	--	0.21	--	--	--	--	--	1.45	12.21
2012	5.46	--	--	0.09	0.02	0.27	--	--	0.38	--	--	--	--	--	1.22	7.44
2013	18.22	0.00	0.02	2.12	0.00	0.73	--	--	3.49	--	--	--	--	0.02	0.50	25.10
2014	8.02	0.00	--	0.01	0.01	0.00	--	--	8.92	--	--	--	0.00	--	0.74	17.69
2015	4.49	--	0.01	0.73	0.02	0.01	--	--	0.93	--	--	--	--	--	3.09	9.28
2016	0.60	--	0.00	22.88	0.24	1.91	--	--	2.23	--	--	--	--	--	2.16	30.03
2017	0.58	--	3.64	125.31	140.81	27.73	--	0.00	21.54	0.04	--	--	--	0.01	0.57	320.21
2018	0.69	--	31.75	243.65	85.89	142.16	--	--	3.02	0.67	0.03	--	--	0.00	0.48	508.35
2019 a/	16.93	--	--	127.92	30.21	335.82	--	--	--	--	--	--	--	--	--	510.88

a/ Catches to date (8/16/2019) are incomplete. Commercial catches were downloaded from the PacFIN web site on August 16, 2019.

1.3 Description of Management Area and Affected Fisheries

The management area for this action is the Exclusive Economic Zone (EEZ)—defined as 3–200 nautical miles from state baselines along the coasts of Washington, Oregon, and California—and communities that engage in fishing in waters off these states. The Pacific Coast Groundfish Fishery management Plan (PCGFMP) Figure 3-1 depicts this management area and is incorporated by reference.

2 Description of Alternatives

The alternatives in this chapter were designed to accomplish the stated purpose and need for the action.

This section will be refined based on the range of alternatives and the PPA adopted by the Council in September 2019. The description of alternatives presented herein are strawman alternatives and subject to change.

2.1 Alternatives for Cowcod South of 40°10' N. lat.

2.1.1 No Action

No regulatory amendment would be considered to revise the 2020 ACT for cowcod south of 40°10' N. lat. Annual vessel limits for cowcod would be based on an apportionment of the trawl allocation of the 2020 ACT of 6 mt.

2.1.2 Alternative 1: Specify a 2020 ACT of X mt for Cowcod South of 40°10' N. lat.

Federal regulations would be amended to implement a 2020 ACT of X mt for cowcod south of 40°10' N. lat. under Cowcod Alternative 1.

2.1.3 Alternative 2: Eliminate the 2020 ACT for Cowcod South of 40°10' N. lat.

Federal regulations would be amended to eliminate the 2020 ACT of 6 mt for cowcod south of 40°10' N. lat. under Cowcod Alternative 2. Annual vessel limits for cowcod would be based on an apportionment of the trawl allocation of the 2020 ACL of 10 mt. The effect of adjusting the set-aside to account for research activities, exempted fishing permit activities, and incidental bycatch in non-groundfish is explored under Alternative 2.

2.1.4 Alternative 3: The Preliminary Preferred Alternative for Cowcod south of 40°10' N. lat.

The Council chose a PPA at its September 2019 meeting. The PPA would ...

2.2 Alternatives for Shortbelly Rockfish

No Action

No regulatory amendment would be considered to revise the 2020 ACL of 500 mt for shortbelly rockfish.

2.2.1 Alternative 1: Specify a 2020 ACL of X mt for Shortbelly Rockfish

Federal regulations would be amended to implement a 2020 ACL of X mt for shortbelly rockfish under Shortbelly Alternative 1.

2.2.2 Alternative 2: Specify a 2020 ACL for Shortbelly Rockfish of 5,789 mt

Federal regulations would be amended to implement a 2020 ACL of 5,789 mt for shortbelly rockfish under Shortbelly Alternative 2. Under this alternative the 2020 ACL would be equal to the 2020 ABC, which is a common harvest control rule for healthy West Coast groundfish stocks with an estimated depletion above B_{MSY} .

2.2.3 Alternative 3: The Preliminary Preferred Alternative for Shortbelly Rockfish

The Council will choose a PPA at its September 2019 meeting.

2.3 Comparison of Alternatives

The tables below summarize the features and relative impacts under each strawman alternative. These comparisons will be refined after the Council decides a PPA at their September 2019 meeting.

Table 3. Summary of the features of the alternatives for cowcod south of 40°10' N. lat.

Feature	No Action (mt, lbs)		Alt. 1 (mt, lbs)		Alt. 2 (mt, lbs)					
					No Adj. to Set-aside		1/2 Set-aside		1/4 Set-aside	
ACL	10	22,046	10	22,046	10	22,046	10	22,046	10	22,046
Set-aside	2	4,409	2	4,409	2	4,409	1	2,205	0.5	1,102
Fishery HG	8	17,637	8	17,637	8	17,637	9	19,842	9.5	20,944
ACT	6	13,228	X		NA	NA	NA	NA	NA	NA
Non-trawl Allocation (64%)	3.8	8,466	64% of the ACT		5.1	11,288	5.8	12,699	6.1	13,404
Trawl Allocation (36%)	2.2	4,762	36% of the ACT		2.9	6,349	3.2	7,143	3.4	7,540
Annual Vessel limit (17.7%)	0.4	843	17.7% of Twl. Alloc.		0.5	1,124	0.6	1,264	0.6	1,335
Increase in vessel limit (lbs)		0				281		421		492
Increase in vessel limit (%)		0%				33%		50%		58%

Table 4. Summary of the effects of the alternatives for cowcod south of 40°10' N. lat.

Effect	No Action	Alternative 1	Alternative 2
Risk of Early 2020 Fishery Closure to Affected Trawl Participants	Highest risk of early fishery closure for LE trawl participants approaching the annual vessel limit	Moderate risk of early fishery closure for LE trawl participants approaching the annual vessel limit	Lowest risk of early fishery closure for LE trawl participants approaching the annual vessel limit. Risk is lessened the more the set-aside is reduced.
Economic Impacts to Fishing Communities in central CA (Pt. Conception to 40°10' N. lat.)	Highest negative impact to trawl ports	Moderate negative impact to trawl ports	Lowest negative impact to trawl ports
Potential Attainment of LE Trawl Allocations and Quotas	Lowest	Moderate	Highest

Table 5. Summary of the features and effects of the alternatives for shortbelly rockfish.

Feature/Effect	No Action	Alternative 1	Alternative 2
2020 ACL (mt)	500	X	5,789
Risk of Early 2020 Fishery Closure of Fisheries that Take Shortbelly Rockfish (primarily LE MW trawl fisheries)	Highest risk of early fishery closure	Moderate risk of early fishery closure	Lowest risk of early fishery closure
Economic Impacts to Fishing Communities (primarily trawl ports north of 40°10' N. lat.)	Highest negative impact	Moderate negative impact	Positive impact
Potential Attainment of Sector (primarily LE trawl) Allocations and Quotas	Lowest	Moderate	Highest

2.4 Alternatives Considered but not Analyzed Further

This section will be provided after the range of alternatives is decided by the Council at its September 2019 meeting.

3 Regulatory Impact Review

This Regulatory Impact Review (RIR)² examines the benefits and costs of two proposed regulatory amendments: 1) to increase or eliminate the 2020 ACT for cowcod south of 40°10' N. lat. and 2) to increase the 2020 ACL for shortbelly rockfish.

The preparation of an RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following Statement from the E.O.:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and Benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is one that is likely to:

- 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, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

3.1 Statutory Authority

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*), the United States has exclusive fishery management authority over all marine fishery resources found within the Exclusive Economic Zone (EEZ). The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in the regional

² The proposed action has no potential to affect the human environment, individually or cumulatively. The only effects of the action are economic, as analyzed in this RIR/IRFA. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

fishery management councils. In the West Coast Region, the Council has the responsibility for preparing FMPs and FMP amendments for the marine fisheries that require conservation and management, and for submitting its recommendations to the Secretary. Upon approval by the Secretary, NMFS is charged with carrying out the Federal mandates of the Department of Commerce with regard to marine and anadromous fish.

The commercial groundfish fishery in the EEZ off Washington, Oregon, and California is managed under the PCGFMP. The proposed action under consideration would amend Federal regulations at 50 CFR 660. Actions taken to amend FMPs or implement other regulations governing these fisheries must meet the requirements of Federal law and regulations.

3.2 Purpose and Need for Action

The purpose and need for the proposed action is described in Section 1.1.

3.3 Alternatives

The range of alternatives is described in Chapter 2.

3.4 Methodology for analysis of impacts

The evaluation of impacts in this analysis is designed to meet the requirement of E.O. 12866, which dictates that an RIR evaluate the costs and benefits of the alternatives, to include both quantifiable and qualitative considerations. Additionally, the analysis should provide information for decision-makers “to maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.” The costs and benefits of this action with respect to these attributes are described in the sections that follow, comparing the No Action Alternative 1 with the action alternatives. The analyst then provides a qualitative assessment of the net benefit to the Nation of each alternative, compared to no action.

This analysis was prepared using data from the Pacific Fishery Information Network (PacFIN), the Recreational Fishery Information Network (RecFIN), and the NMFS West Coast Groundfish Observer Program (WCGOP). These sources provide the best available data on fishery participation and vessel characteristics. The analysis provided in this draft RIR/IRFA was provided by members of the GMT and Council staff.

3.5 Description of the West Coast Groundfish Longline Fishery

3.5.1 Management Pursuant to the Pacific Coast Groundfish FMP

The Magnuson-Stevens Act and the PCGFMP are founded on two principle mandates: 1) the need to conserve fish stocks, marine resources, and marine ecosystems; and 2) the need to provide net economic benefits to the nation through sustainable management of fisheries. The conservation mandate is addressed in the PCGFMP through its harvest management framework, among other elements of the FMP. Overfishing is prevented by establishing an overfishing limit (OFL) based on the best scientific information available with mechanisms established to prevent total mortality from exceeding the OFL. Harvest limits are buffered by accounting for scientific uncertainty in

estimating the OFL by specifying an ABC lower than the OFL with increasingly larger buffers when scientific uncertainty is higher. The Council will often decide a more precautionary harvest limit by specifying an ACL lower than the ABC in cases when there is greater management uncertainty and/or a greater conservation concern. The default HCR for a stock below its biomass management target is a formulaic reduction of the ACL relative to the ABC that is progressively greater when estimated depletion is lower (i.e., the 40-10 and 25-5 rules). Rebuilding plans tend to have even greater ACL buffers to accomplish rebuilding objectives. A further buffer is considered when management and catch monitoring uncertainty are particularly high, as in the case of cowcod south of 40°10' N. lat., by specifying an ACT lower than the ACL. Management measures are designed to stay within an ACT when one is specified.

The economic mandate is addressed by managing for optimum yield (OY, the harvest level that provides the greatest long-term economic benefits to the nation) and is operationally implemented by deciding management measures that are estimated to attain but not exceed ACLs. Further objectives in the PCGFMP that address the economic mandate are deciding management measures and allocations that are fair and equitable to all fishery participants and fishing-reliant communities on the U.S. West Coast.

3.5.2 Number of Vessels Affected by the Proposed Action

Cowcod South of 40°10' N. lat.

There are a limited number of vessels in the LE trawl sector affected by the proposed action. Most of the coastwide trawl fleets operate north of 40°10' N. lat. and only vessels actively fishing bottom trawl gear south of 40°10' N. lat. approaching the annual cowcod vessel limit are directly affected. Increasing or eliminating the 2020 cowcod ACT will not impact vessels fishing non-trawl gear. Only the bottom trawl fishery between 34°27' N. lat. and 40°10' N. lat. (bottom trawl gear is not deployed in the high relief habitats south of Pt. Conception) and the recreational fishery south of 34°27' N. lat. tend to incidentally catch cowcod (Table 1). Raising or eliminating the 2020 ACT will increase all sector allocations. The direct effect contemplated by the proposed action increases the annual vessel limit in the LE trawl fishery by 17.7 percent of whatever increase in the trawl sector's allocation (36 percent) of the ACT or ACL under strawman Alternative 2.

The Council recently completed a formal review of the trawl catch share program (the West Coast Groundfish Trawl Catch Share Program Five-year Review document is available [here](#)). It was acknowledged the consequence of exceeding an annual vessel limit for a low quota stock like cowcod south of 40°10' N. lat. “may force that vessel out of the groundfish fishery for many years”. In the five-year review of the trawl catch share program, it was estimated there were six vessels that attained or exceeded the annual vessel limit for cowcod south of 40°10' N. lat. through the first five years of the program (Table 6). Given the increased incidental bycatch in the LE trawl fishery in recent years (Table 1 and Figure 1), the number of vessels with high attainment of the annual cowcod vessel limit has likely increased.

Table 6. The number of LE trawl vessels that attained or exceeded 90 percent of the annual vessel limit of cowcod south of 40°10' N. lat., 2011-2015 from Table 7 in the [West Coast Groundfish Trawl Catch Share Program Five-year Review document](#).

2011	2012	2013	2014	2015
1	2	0	1	2

Shortbelly Rockfish

The proposed action will primarily affect LE trawl vessels, especially midwater trawl vessels targeting Pacific whiting and semi-pelagic rockfish (i.e., non-whiting) north of 40°10' N. lat. given the sectors and gear experiencing the highest bycatch of shortbelly rockfish in recent years (Table 2 and Figure 2). The Council recently completed a formal review of the trawl catch share program (the West Coast Groundfish Trawl Catch Share Program Five-year Review document is available [here](#)). There were 26-31 catcher vessels targeting whiting annually and 71-82 catcher vessels targeting non-whiting groundfish species annually during 2011-2015 (Table 7).

Table 7. The number of LE trawl catcher vessels and their activities north of 40°10' N. lat., 2011-2015 (from Table 3 in the [West Coast Groundfish Trawl Catch Share Program Five-year Review document](#)).

Group Activity	2011	2012	2013	2014	2015
Whiting Vessels					
At-sea whiting only	5	4	5	5	4
Shoreside whiting only	3	6	5	4	6
At-sea whiting and shoreside whiting	10	11	11	13	8
At-sea and/or shoreside whiting and non-whiting trawl	12	6	8	8	8
At-sea whiting, shoreside whiting and FG	0	1	0	0	0
Total Whiting vessels	31	28	29	30	26
Non-whiting Vessels					
Non-whiting trawl only	57	57	61	54	53
FG only	22	21	18	19	17
Non-whiting trawl and FG	3	4	1	2	1
Total Non-whiting vessels	82	82	80	75	71

3.5.3 Fishery Participation and Revenue

To be completed

3.5.4 Vessel Engagement and Dependency

To be completed

3.5.5 Communities

3.6 Impacts of Alternatives on Cowcod South of 40°10' N. lat.

Impacts of the cowcod alternatives are assessed by analyzing the economic effects of revising the annual vessel limit specified for LE bottom trawl participants south of 40°10' N. lat.

The features and effects of the alternatives for cowcod south of 40°10' N. lat. are summarized in Table 3 and Table 4, respectively.

3.6.1 Impacts of the No Action Alternative

Under No Action regulations, the 2020 ACT for cowcod south of 40°10' N. lat. remains unchanged at 6 mt. The total pounds of cowcod allocated to the 2020 Shorebased IFQ program would be 4,850 pounds, of which 17.7 percent or 858 pounds would be the annual cowcod vessel limit.

3.6.2 Impacts of Cowcod Alternative 1

To be completed after Alternative 1 is specified by the Council in September 2019.

3.6.3 Impacts of Cowcod Alternative 2

Under Alternative 2 for cowcod south of 40°10' N. lat., the trawl allocation of cowcod is based on the specified trawl allocation (36 percent) applied to a revised fishery HG calculated by deducting the yield set-aside from the ACL. The annual cowcod vessel limit increases to 1,124 lbs (a 33 percent increase from No Action) if the yield set-aside is not adjusted to 1,335 lbs (a 58 percent increase from No Action) if the set-aside is reduced from 2 mt to 0.5 mt (Table 3).

3.7 Impacts of Alternatives on Shortbelly Rockfish

Any prediction of future incidental bycatch of shortbelly rockfish in trawl fisheries north of 40°10' N. lat. is highly uncertain given the unprecedented amount of bycatch observed since 2017. Whether the magnitude of recent bycatch is the “new normal”, whether one can expect an increasing trend in bycatch rates, or whether bycatch will return to pre-2017 levels is a matter of speculation. This will make it very difficult to decide the risk of exceeding any of the alternative 2020 shortbelly ACLs. Regardless of the ACL decided within the 500-5,789 mt ACL range, there is no anticipation a higher level of allowable harvest will induce targeting of shortbelly given the lack of a market. Additionally, it is not anticipated that an increase in fishing mortality of shortbelly would negatively affect its role as forage in the ecosystem given the scientific conclusion that environmental drivers rather than fishing mortality will influence future shortbelly recruitment and abundance (Field et al. 2008). The only anticipated effects of the proposed action to increase the 2020 shortbelly ACL are economic. The objective is to avoid negative economic impacts from early fishery closure to 2020 midwater trawl fisheries targeting Pacific whiting and semi-pelagic rockfish north of 40°10' N. lat.

It is posited the order of magnitude increase in shortbelly bycatch since 2017 was due to a climate change-driven northerly distributional shift potentially accompanied by exceptionally large recruitment. It is interesting the pink shrimp trawl bycatch in 2017 increased by nearly an order

of magnitude relative to the average bycatch in the previous 15 years before returning to an average level in 2018 (Table 2 and Figure 2). Incidental rockfish caught in recent year pink shrimp fisheries tend to be very small young-of-the-year (YOY) fish given the fish excluder grates mandated in pink shrimp trawls. The 2017 spike in shortbelly bycatch in the pink shrimp fishery could be indicative of a large recruitment.

The features and effects of the shortbelly rockfish ACL alternatives are summarized in Table 5.

3.7.1 Impacts of the No Action Alternative

Under No Action regulations the 2020 ACL remains unchanged at 500 mt. If the ACL is again exceeded, there could be early closures of coastwide fisheries, especially midwater trawl fisheries that take shortbelly rockfish.

3.7.2 Impacts of Shortbelly Alternative 1

To be completed after Alternative 1 is specified by the Council in September 2019.

3.8 Impacts of Shortbelly Alternative 2

The 2020 ACL for shortbelly rockfish is increased to the ABC or 5,789 mt under Alternative 2. This level of harvest provides the lowest risk of early fishery closures possible given the best scientific information currently available for shortbelly rockfish. It is anticipated the higher ACL will not induce targeting of shortbelly given the lack of a market.

3.9 Management and Enforcement Considerations

There are no major management or enforcement considerations associated with the proposed actions. There is an extra rulemaking that will need to be done should the Council select an action alternative. However, there should be less industry demand for inseason adjustments or emergency actions next year to provide relief from unavoidable bycatch of cowcod south of 40°10' N. lat. or for shortbelly rockfish coastwide with these proposed actions.

3.10 Summation of the Alternatives with Respect to Net Benefit to the Nation

Early closure of midwater trawl fisheries in 2020 would represent a significant negative impact to West Coast trawl fishery participants and communities reliant on those fisheries. The midwater trawl fisheries targeting Pacific whiting are the most valuable groundfish fisheries on the West Coast with an average net revenue of \$X during 20XX-2018. The higher the 2020 ACL, the less the risk of fishery closures due to exceedance of the shortbelly rockfish ACL. The negative economic impacts are associated with unused quota of target species due to early fishery closure. The earlier a fishery closure and the more quota left unharvested due to an early closure, the greater the negative economic impact.

4 Initial Regulatory Flexibility Analysis

4.1 Introduction

This Initial Regulatory Flexibility Analysis (IRFA) addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612). This IRFA evaluates the potential adverse economic impacts on small entities directly regulated by the proposed action.

The RFA, first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are 1) to increase agency awareness and understanding of the impact of their regulations on small business, 2) to require that agencies communicate and explain their findings to the public, and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse economic impacts on small entities as a group distinct from other entities, and on the consideration of alternatives that may minimize adverse economic impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either ‘certify’ that the action will not have a significant adverse economic impact on a substantial number of small entities, and support that certification with the ‘factual basis’ upon which the decision is based; or it must prepare and make available for public review an IRFA. When an agency publishes a final rule, it must prepare a Final Regulatory Flexibility Analysis, unless, based on public comment, it chooses to certify the action.

In determining the scope, or ‘universe’, of the entities to be considered in an IRFA, NMFS generally includes only those entities that are directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis.

4.2 IRFA Requirements

Until the Council makes a final decision on a preferred alternative, a definitive assessment of the proposed management alternatives cannot be conducted. In order to allow the agency to make a certification decision, or to satisfy the requirements of an IRFA of the preferred alternative, this section addresses the requirements for an IRFA. Under 5 U.S.C., section 603(b) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);

- 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;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
 1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
 3. The use of performance rather than design standards;
 4. An exemption from coverage of the rule, or any part thereof, for such small entities.

In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed action (and alternatives to the proposed action), or more general descriptive statements, if quantification is not practicable or reliable.

4.3 Definition of a Small Entity

The RFA recognizes and defines three kinds of small entities: 1) small businesses, 2) small non-profit organizations, and 3) small government jurisdictions.

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 (SBA). ‘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.”

Section 601(3) of the RFA provides that an agency, after consultation with SBA’s Office of Advocacy and after an opportunity for public comment, may establish one or more definitions of “small business” which are appropriate to the activities of the agency. In accordance with this provision, NMFS has established a small business size standard for all businesses in the commercial fishing industry, for the purpose of compliance with the Regulatory Flexibility Act only. A business is considered to be a small business if it is independently owned and operated

and not dominant in its field of operation (including its affiliates) and if it has combined annual gross receipts not in excess of \$11.0 million for all its affiliated operations worldwide. The \$11.0 million standard applies to all businesses classified under the North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses.

For fish processing businesses, the agency relies on the SBA size criteria. A seafood processor (NAICS 311710) is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business that both harvests and processes fish (i.e., a catcher/processor) is a small business if it meets the criteria for the applicable fish harvesting operation (i.e., the \$11.0 million standard described above). A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), 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 and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such

relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated, and is not dominant in its field.

Small governmental jurisdictions. The RFA defines “small governmental jurisdictions” as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

4.4 Reason for Considering the Proposed Action

The reason for the propose action is described in Section 1.1, Purpose and Need.

4.5 Objectives of Proposed Action and its Legal Basis

Under the authority of the Magnuson-Stevens Act, the Secretary of Commerce (NMFS West Coast Regional Office) and the Council have the responsibility to prepare fishery management plans and associated regulations for the marine resources found to require conservation and management. NMFS is charged with carrying out the Federal mandates of the Department of Commerce with regard to marine fish, including the publication of Federal regulations. The West Coast Regional Office of NMFS, and Northwest Fisheries Science Center, research, draft, and support the groundfish management actions recommended by the Council. Commercial groundfish long fisheries are managed under the PCGFMP. The proposed action represents an amendment, as required, to the fishery management plan, as well as amendments to associated Federal regulations.

The principal objective of the proposed action for cowcod is to reduce the risk of an early fishery closure for LE trawl participants south of 40°10' N. lat. that might exceed their annual vessel limit. The principal objective of the proposed action for shortbelly rockfish is to reduce risk of early fishery closures for participants of the West Coast groundfish fishery, especially midwater trawl fishery participants north of 40°10' N. lat., due to exceeding the 2020 shortbelly ACL.

4.6 Number and Description of Directly Regulated Small Entities

This section to be developed after the range of alternatives and the preliminary preferred alternatives are decided by the Council in September 2019.

4.7 Recordkeeping, Reporting, and Other Compliance Requirements

No additional reporting or recordkeeping is required of the regulated entities under the proposed actions.

4.8 Federal Rules that may Duplicate, Overlap, or Conflict with Proposed Action

An IRFA is required to identify whether relevant Federal rules have been identified that would duplicate or overlap with the proposed action. There are no Federal rules that duplicate the proposed regulations under this action.

4.9 Description of Significant Alternatives to the Proposed Action that Minimize Economic Impacts on Small Entities

An IRFA also requires a description of any significant alternatives to the proposed action(s) that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities.

To be completed after the Council decides a range of alternatives including a preliminary preferred alternative at their September 2019 meeting.

5 Magnuson-Stevens Act

5.1 Magnuson-Stevens Act National Standards

Below are the 10 National Standards as contained in the Magnuson-Stevens Act, and a brief discussion of how each alternative is consistent with the National Standards, where applicable. In recommending a preferred alternative, the Council must consider how to balance the national standards.

National Standard 1 — Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

The PCGFMP determines how overfishing and OY are determined for all Pacific Coast groundfish stocks and provides measures by which the fisheries are managed in order to prevent overfishing and achieve OY. The proposed actions do not increase the risk of overfishing cowcod south of 40°10' N. lat., shortbelly rockfish, nor any other actively-managed stock or stock complex. The fundamental objective of the proposed actions is to remove regulatory barriers to better achieve OY.

National Standard 2 — Conservation and management measures shall be based upon the best scientific information available.

The proposed actions analyzed in this document utilizes the best scientific information available on stock assessments of cowcod south of 40°10' N. lat. and shortbelly rockfish, as well as fishery operation off the West Coast.

National Standard 3 — To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The PCGFMP manages stocks as a unit and utilizes stock complex designations and measures in order to manage interrelated stocks of fish as a unit. The proposed actions do not affect the management of the stocks of PCGFMP management unit species.

National Standard 4 — Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be; (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed actions would apply to any commercial groundfish vessel authorized to fish in the West Coast EEZ. The proposed actions would not allocate or assign fishing privileges.

National Standard 5 — Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

This proposed actions would provide relief and increase efficient resource utilization by reducing the risk of an early fishery closure to affected fishery participants vulnerable to the bycatch of cowcod south of 40°10' N. lat. or shortbelly rockfish coastwide.

National Standard 6 — Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

The proposed actions adapt to two emerging issues affecting the 2020 West Coast groundfish fishery: 1) increased encounters with cowcod south of 40°10' N. lat. as they rebuild, and 2) the apparent northerly distribution shift of shortbelly rockfish that has increased the incidental bycatch of shortbelly in large midwater trawl fisheries north of 40°10' N. lat.

National Standard 7 — Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The proposed actions do not create unnecessary duplication.

National Standard 8 — Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of National Standard 2, in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The proposed action to revise the 2020 ACT for cowcod south of 40°10' N. lat. does not contemplate a change to the ACL, which implements the rebuilding strategy specified in the rebuilding plan. The proposed action is intended to make the LE trawl fishery south of 40°10' N. lat. more efficient by increasing the annual vessel limit of cowcod on LE trawl vessels approaching the status quo vessel limit. This action should allow the fishery to be more economically efficient at attaining their allocated quotas of target species.

The proposed action to revise the 2020 ACL for shortbelly rockfish will not induce targeting. The stock will still be managed conservatively as a forage species in the California Current ecosystem. The action is proposed to reduce the risk of shutting down 2020 fisheries due to exceeding the shortbelly ACL should they again aggregate in northern waters where midwater trawl fisheries are conducted. The considerations for this action are solely economic given the importance of the high value midwater trawl fisheries to dependent communities north of 40°10' N. lat.

National Standard 9 — Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

The proposed action to revise the 2020 ACT for cowcod south of 40°10' N. lat. does not contemplate a change to the ACL. The objective is provide a higher annual vessel limit to

participants in the LE trawl fishery south of 40°10' N. lat. approaching their vessel limit. This only changes the limit of cowcod QP a vessel can use in 2020 to allow continued fishing opportunity to attain their quota of target species. This action should not significantly affect the amount of incidental bycatch of cowcod in the LE trawl fishery.

Increasing the 2020 shortbelly rockfish ACL will not induce targeting of the species. Bycatch of shortbelly will likely depend on unpredictable environmental conditions that influence their distribution. To the extent shortbelly continue to aggregate in waters north of 40°10' N. lat. and are incidentally caught in midwater trawl fisheries, the at-sea whiting fleets have demonstrated the ability to minimize bycatch by self-reporting of high bycatch events and moving from areas of aggregation.

National Standard 10 — Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The proposed actions will not affect the safety of human life at sea.

6 Preparers and Persons Consulted

Preparers

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Contributors

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Persons (and Agencies) Consulted

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