Initial Regulatory Flexibility Analysis

For any rule subject to notice and comment rulemaking, the Regulatory Flexibility Act (RFA) requires Federal agencies to prepare, and make available for public comment, both an initial and final regulatory flexibility analysis, unless the agency can certify that the proposed and/or final rule would not have a "significant economic impact on a substantial number of small entities". These analyses describe the impact on small businesses, non-profit enterprises, local governments, and other small entities as defined by the RFA (5 U.S.C. § 603). This analysis is to inform the agency and the public of the expected economic effects of the alternatives, and aid the agency in considering any significant regulatory alternatives that would accomplish the applicable objectives and minimize the economic impact on affected small entities. The RFA does not require the alternative with the least cost or with the least adverse effect on small entities be chosen as the preferred alternative.

The IRFA must only address the effects of a proposed rule on entities subject to the regulation (i.e., entities to which the rule will directly apply) rather than all entities affected by the regulation, which would include entities to which the rule will indirectly apply.

Part 121 of Title 13, Code of Federal Regulations (CFR), sets forth, by North American Industry Classification System (NAICS) categories, the maximum number of employees or average annual gross receipts a business may have to be considered a small entity for RFAA purposes. See 13 C.F.R. § 121.201. Under this provision, the U.S. Small Business Administration established criteria for businesses in the fishery sector to qualify as small entities. Standards are expressed either in number of employees, or annual receipts in millions of dollars. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small (13 C.F.R. § 121.201).

- A fish and seafood merchant wholesaler (NAICS 424460) primarily engaged in 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.
- A business primarily engaged in Seafood Product Preparation and Packaging (NAICS 311710) is a small business if it employs 750 or fewer persons on a full time, part time, temporary, or other basis (13 CFR § 121.106), at all its affiliated operations.

In addition to small businesses, the RFA recognizes and defines two other kinds of small entities: small governmental jurisdictions and small organizations. A small governmental jurisdiction is any government or district with a population of less than 50,000 persons. A small organization is any not-for-profit enterprise that is independently owned and operated and not dominant in its field, while. (5 U.S.C. § 601). There is no available guidance beyond this statutory language regarding how to determine if non-profit organizations are "small" for RFA purposes. The Small Business Administration (SBA) does have provisions for determining whether a business is "small" for RFA purposes and whether it is "dominant in its field," and those provisions can inform how NMFS classifies non-profit organizations for the purposes of RFA analyses in rulemaking. After consultation with the SBA, NOAA Fisheries has decided to use SBA's size standards for non-profit organizations to determine whether a non-profit organization is "small" and, in turn, whether it is "dominant in its field," to apply the statutory definition of a "small organization" in practice:

A nonprofit organization is determined to be "not dominant in its field" if it is considered "small" under SBA size standards:

- Environmental, conservation, or professional organizations (NAICS 813312, 813920): Combined annual receipts of $15 million or less.

- Other organizations (NAICS 813319, 813410, 813910, 813930, 813940, 813990): Combined annual receipts of $7.5 million or less.

Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (80 FR 81194, December 29, 2015). This standard is only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA.

NMFS' small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing is $11 million in annual gross receipts. This standard applies to all businesses classified under 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. (50 C.F.R. § 200.2; 13 C.F.R. § 121.201).

4.1 Description of why action by the agency is being considered

The reasons why agency action is being considered are explained in the "Problem Statement" Section 1.1 above.

4.2 Statement of the objectives of, and legal basis for, the proposed rule

The statement of the objectives of the proposed rule are explained in the "Problem Statement" Section 1.1 above.

Under the Northern Pacific Halibut Act of 1982 (Halibut Act) (16 U.S. Code § 773), the Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted by the International Pacific Halibut Commission (IPHC).

The non-Tribal directed commercial halibut (DC halibut) fishery in Area 2A is managed under regulations promulgated in accordance with the Northern Pacific Halibut Act of 1982 (Halibut Act). The Pacific Salmon fishery in the EEZ off the West Coast is managed under the Salmon Fishery Management Plan (FMP). The proposed actions under consideration would amend Federal regulations at 50 CFR Part 300 Subpart E and 50 CFR 660.404. Actions taken to implement regulations governing these fisheries must meet the requirements of applicable Federal laws, regulations, and Executive Orders.

4.3 A description and, where feasible, estimate of the number of small entities to which the proposed rule will apply; and a description and estimate of economic effects on entities, by entity size and industry.

A detailed description of the fishery and affected entities are available in Section 1.3 and Section 3.3.

Action 1 (Vessel Monitoring Systems (VMS)) and Action 2 (Seabird Avoidance Measures) would affect participants in the DC halibut fishery that only retain halibut. Potentially affected vessels were identified as active participants from 2020 through 2024 who did not also retain groundfish in any previous year. The DC halibut fishery is an open access fishery - the number of participants is not capped and may vary from one year to the next. Furthermore, more individuals apply for and obtain a DC halibut fishery permit than participate in any given year. This leads to a level of uncertainty in the number of affected entities however it is likely that the estimates provided are representative of the potentially affected vessels.

Potentially affected vessels are defined based on data from the PacFIN database who did not retain groundfish in a previous year and therefore would have already been subject to groundfish requirements (VMS and seabird avoidance measure requirements). From 2020 – 2024, 42 distinct vessels retained only halibut during the DC fishery with an annual participation of between 9 to 16 vessels. The majority of vessels participating in the DC fishery also retain groundfish and are therefore not considered as the population of vessels subject to the action. Of the 42 vessels that landed only halibut, 16 of these vessels had no groundfish landings during any of the halibut season meaning that 26 vessels of the 42 retained groundfish in another DC season and would have been subject to any groundfish requirements. Six of the 16 DC halibut vessels that retained no groundfish participated in multiple years. Ten of these 16 vessels had a previous history (anytime since 2020) of participating in a fishery with VMS requirements (i.e. fishing groundfish outside of the DC season), leaving six vessels with no history of participating in a fishery with any VMS or seabird requirement. On average, nearly 98 percent of DC halibut landings are made via bottom longline gear, so for the purposes of this analysis all vessels were assumed to be using bottom longline gear. That leaves an estimated-six vessels (and any new entrants not previously engaged in federal groundfish) that would be subject to Action 1 and 2.

All individuals identified as potentially affected by Action 1 and Action 2 are assumed to be small entities with ex-vessel revenues ($2024) for all landings from 2020 to 2024 ranging from $31,578 in 2023 to $179,746 in 2020. The overall vessel-year average is $105,343.

Action 3 (Catch Reporting) would affect dealers (defined here to mean the individual filling out a fish receiving ticket) recording landings of halibut from vessels participating in the DC halibut fishery and only landing halibut and incidental landings of halibut from salmon troll vessels in California. From 2020-2024, 9-11 dealers filled out fish tickets for landings of halibut from vessels participating in the DC halibut fishery and only landing halibut. There were no records of halibut being landed incidentally with in the salmon troll fishery in California from 2020-2024. Looking more broadly at potentially impacted dealers if future conditions change and halibut is landed with Chinook in California, between 2020 and 2022, there were between 180-195 dealers that submitted salmon troll tickets for Chinook landings. There was no salmon troll fishery in California in 2023 and 2024. Therefore, assuming there is a salmon season in future years off of California, up to 180-195 dealers may be impacted by the reporting requirement; however, since there were no halibut landings in the 2020-2022 period, the actual number of impacted entities is likely significantly less (or none depending on the conditions).

All individuals identified as potentially affected by Action 3 are assumed to be small entities.

4.4 An explanation of the criteria used to evaluate whether the rule would impose "significant" economic effects.

The criteria used to evaluate this rule is profitability. Given that all potentially impacted individuals by this action are small entities, an evaluation of disproportionality (disproportionate impacts on small entities compared to large entities) is not applicable to this action.

Action 1 (VMS) may result in significant profit (net revenue) loss in the first year due to the initial costs associated with purchasing and installing a VMS unit. Purchasing, installing, and operating a VMS unit, regardless of ping rate and operational requirements may exceed or be close to the annual revenue for vessels in classes A (<26 feet length overall (LOA)), B (vessels 26 to 30 feet LOA), and C (vessels 31-35 feet LOA) in the year when the VMS unit is purchased. Costs in subsequent years would be associated with operating and maintaining the VMS unit, which would vary on an annual basis depending on the operational requirements (ping rate and status (on/off) requirements), but on average vary from $50-$100 per month the VMS unit is turned on.

Action 2 (Seabird Avoidance Measures) may result in a one-time profit loss, but impacts are not expected to be significant. Individual streamer lines, as of July 2024, cost $207.95 per line. The average price-per-pound (2020-2023) for halibut across vessel classes B-H was around $6 per pound. Vessels in Class A are <25 feet LOA and therefore would not be required to deploy streamer lines.

Action 3 (Catch Reporting) may result in an ongoing profit loss associated with the additional time spent counting individual halibut during DC halibut and salmon troll fishery offloads. Impacts to dealers recording larger DC halibut or incidental halibut offloads would be higher due to the greater number of fish required to be counted. However, total profit losses due to a loss of time are not expected to be significant, as halibut offloads have been noted to not take a significant amount of time (an hour or less) and the trip limit for halibut caught incidentally in the salmon troll fishery since 2019 has been 35 halibut.

4.5 An explanation of the criteria used to evaluate whether the rule would impose effects on "a substantial number" of small entities.

Given that this action would apply to participants in the DC halibut fishery that only retain halibut and dealers recording landings of halibut from DC halibut and salmon troll participants and that all of these are considered small entities, this rule is expected to have an impact on a substantial number of small entities.

4.6 A description of, and an explanation of the basis for, assumptions used.

Section 4.3 describes the data sources and methods used to determine the population of potential affected entities and those that would classify as small entities. Overall, fishing participation levels can change over time, particularly in an open access fishery, leading to uncertainty in the number of affected entities. However, it is likely that the estimates provided are representative of the potential affected individuals.

4.7 Reporting and recordkeeping requirements

Action 1 (VMS) would impact an estimated six small entities (plus any new entrants). Burden time is estimated based on the 2021 extension of current information collection for the Pacific Coast Groundfish Fishery Management Plan Vessel Monitoring Program[1]. Estimated burden time is 5 hours to install and activate a VMS unit; 1 hour per year to maintain a VMS; 0 seconds for an automated position report; 5 minutes to complete and fax a check-in report or to complete an exemption report; 4 minutes for a declaration report.

There are no reporting and recordkeeping requirements associated with Action 2 (Seabird Avoidance Measures).

Action 3 (Catch Reporting) could impact an estimated 180-195 small entities if conditions change and halibut is landed with Chinook in California, but in recent years when the Chinook fishery has been open in California there have been zero potentially impacted individuals so the number is likely less or none.

[1] 86 FR 1947

Action 3 would increase the time to fill out fish tickets for offloads of halibut from DC halibut vessels and salmon troll vessels in California incidentally landing halibut.

4.8 Relevant Federal rules that may duplicate, overlap or conflict with the proposed rule:

There are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

4.9 A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities

To be completed after final action.

4.10 Certification statement by the head of the agency [as applicable, check with regional economist].

A decision will be determined by the agency after the selection of a final preferred alternative.