

APPENDIX B

Regulatory Impact Review/Regulatory Flexibility Analysis
For the Second Amendment to the Pacific Coast
Groundfish Fishery Management Plan

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REGULATORY IMPACT REVIEW/REGULATORY FLEXIBILITY ANALYSIS
FOR THE SECOND AMENDMENT TO THE PACIFIC COAST
GROUNDFISH FISHERY MANAGEMENT PLAN

Introduction

In compliance with Executive Order 12291, DOC and NOAA require the preparation of a RIR and RFA for all regulatory actions which either implement a new FMP, or significantly amend an existing FMP, or may be significant in that they effect important DOC/NOAA policy concerns and are the object of public interest.

The RIR/RFA is part of the process in developing and reviewing FMPs and is prepared by the Regional Fishery Management Council with the assistance of NMFS, as necessary. The RIR provides a comprehensive review of the level and incidence of impact associated with the proposed or final regulatory actions. The purpose of the analysis is to ensure that the regulatory agency or Council systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way. To ensure full compliance with the regulatory requirements (1) the RIR/RFA has been prepared for the Pacific coast groundfish FMP to evaluate the costs and benefits of alternative management actions consistent with Executive Order 12291; (2) an evaluation of the positive or negative economic impacts on small business has been made consistent with P.L. 96-354; and (3) any paperwork and reporting burdens have been identified to ensure that regulations are cost effective, consistent with P.L. 96-511.

Issues in the FMP Amendment

The problems giving rise to the three issues are described below.

Issue 1 - Delete the Sablefish OY (Quota) in the Monterey Bay Subarea

The FMP established regulations for sablefish which include a coastwide OY (quota) and an OY for the Monterey Bay subarea. The coastwide OY includes the Monterey Bay subarea. At the time of FMP adoption (1982), it was believed that a separate stock of sablefish existed in the Monterey Bay subarea. However, additional evidence from tagging studies completed since 1982 has led to a reassessment of this premise. This reassessment indicated that there is substantial movement of sablefish from other areas along the coast into the Monterey Bay subarea. Consequently, it has been concluded that there is no scientific basis, at this time, for a separate quota on the Monterey Bay subarea.

Elimination of the Monterey Bay subarea OY would not affect fishing practices or catch in the Monterey Bay subarea unless conditions change substantially from what they have been since the FMP has been in place. The largest recorded annual landings of sablefish from the Monterey Bay subarea since 1982 have been 975 mt, far below the OY of 2,500 mt. There is no reason to believe that landings in this area will increase sufficiently in the future to cause the 2,500 mt quota to constrain the fishery.

This amendment issue responds to the need for clarity and simplicity in the fishing regulations.

Issue 2 - Gear Regulations Flexibility

Experience in managing the groundfish fisheries under the FMP has shown that, due to changing technology, changing markets, and improving biological assessments, gear restrictions for groundfish need to be adjusted from time to time. The FMP provides two avenues for making substantive changes in gear restrictions. First, there is the possibility of FMP amendment, a process which is completely flexible, but which is costly and slow. Second, under the "Point of Concern" mechanism (50 CFR 663.22[a]) a wide range of changes in gear restrictions may be accomplished in a much shorter time and with less expense than would be required for FMP amendment. However, action under the "Point of Concern" mechanism requires a determination of biological stress be made for at least one of the fish stocks being managed and the actions taken be for the purpose of relieving that stress.

The problem which gives rise to this amendment is the necessity of using the FMP amendment process in order to change the gear restrictions for reasons other than to prevent biological stress. Sound reasons for changing gear restrictions which are not related to biological stress of a fish stock have been encountered in managing groundfish under the FMP. For example, it was necessary to amend the FMP to require marking of some fixed gear in order to prevent conflict and to ease the retrieval of lost gear. Other reasons for changing gear requirements unrelated to biological stress include the reduction of regulatory burden on fishermen, increasing the yield per recruit, increasing the value of the catch through gear selectivity, and reducing administrative and enforcement costs.

Issue 3 - Marking Requirements for Setnets and Commercial Vertical Hook-and-Line Gear

The FMP and the first amendment to the FMP recognize that fixed gear need to be well marked in order to avoid gear conflicts and to facilitate retrieval of lost gear. Gear marking requirements for groundfish pots and longlines were established in the FMP and modified in the first amendment to the FMP. However, in the three years since the first amendment was initiated, groundfish setnets and commercial vertical hook-and-line gear (Portuguese longline) have become a significant factor in the fishery. Accordingly, this amendment would extend to setnet and vertical hook-and-line gear marking requirements similar to those already in place for pots and longlines.

Methods

An analysis for the economic impacts of the alternative options is considered for each issue in the "Comparative Analysis of Issues" section. The impacts will be evaluated with respect to changes in the harvesting, processing, and marketing sectors by departing from the status quo situation. That is, all benefits and costs are treated as increments or decrements relative to the baseline of maintaining the status quo. The analysis presented here relies on the results of data analysis presented in the amendment. For a full discussion of the source of estimated impacts, refer to the pages in the amendment indicated in the text below.

Under each issue, the benefits of each option are described and quantified, as far as possible, in the "Comparison of Gross Benefits" section. The costs are similarly quantified in the "Comparison of Costs" section. These are followed by a section entitled "Comparison of Net Benefits," which compares the net benefits (benefits less costs) of the options. In most instances there is limited quantitative information with which to derive or estimate benefits and costs. Some costs have been reasonably estimated, such as gear and supply purchases. However, estimates of changes in catch, effort, revenue, prices, sales, and market conditions for harvesters and processors are difficult to make given the dynamic nature of the groundfish fishery. Thus, much of the analysis will be a qualitative discussion for benefits and costs of proposed actions compared to current regulations.

To satisfy the requirements of Executive Order 12291, the Regulatory Flexibility Act (P.L. 96-354), and the Paperwork Reduction Act (P.L. 96-511); the comparative impacts of options will be judged in terms of changes in the following variables:

1. competition, employment, investment, productivity, exports, imports, and cost of goods and services
2. level and incidence of compliance costs and reporting requirements incurred by small business, if any
3. additional information collecting costs incurred by the federal government to implement alternatives
4. monitoring and enforcement costs incurred by government agencies to ensure compliance with regulations

In the section entitled "Impacts of Management Regime on Specific Areas of Concern," changes in the variables listed in Number 1 above will be used to determine whether proposed options are major or nonmajor rules, as defined by Executive Order 12291. A proposed regulation is a "major" action if the annual effect on the national economy is \$100 million or more and/or there are significant adverse effects on the variables listed in Number 1. For the purpose of evaluating cumulative regulatory impacts on the above variables, two major alternatives are identified: (1) no action or maintaining the status quo option under each issue and (2) implementation of the most extreme option under each issue.

The section entitled "Regulatory Impact on Small Business" presents an analysis for the impacts of proposed options on small business entities, as required by the Regulatory Flexibility Act. An evaluation of the additional paperwork burdens imposed on industry or the government is found in "Additional Recordkeeping, Reporting, Paperwork, and Rulemaking Costs Relevant to the Paperwork Reduction Act," as required by the Paperwork Reduction Act. Changes in monitoring or enforcement costs are identified in "Monitoring and Enforcement Costs to Federal Government."

Comparative Analysis of Issues

Issue 1 - Delete the Sablefish OY (Quota) in the Monterey Bay Subarea

Background information for this issue is presented in the amendment on pages 3 through 4.

Option 1

Status Quo - an OY in the Monterey Bay subarea which is included in an overall coastwide OY for sablefish is specified.

Option 2

Delete the separate OY for sablefish in the Monterey Bay subarea.

Comparison of Benefits

There is no significant difference between the benefits generated under the two options. Option 2 could allow a larger catch of sablefish in the remote chance that the fishery in the Monterey Bay subarea were to land 2,500 mt before the end of the year. However, the probability of this happening on a regular basis is so low that this potential benefit is insignificant.

Comparison of Costs

The existence of a separate OY for the Monterey Bay subarea when it is not justified by current scientific knowledge is misleading to anyone not familiar with the management history of this fishery. In addition, there is a small chance that the landings in the Monterey Bay subarea could at some future date approach the OY of 2,500 mt. If this were to happen, then administrative costs would be incurred for increased monitoring of the landings, and, if the OY is reached, for closing the fishery in that subarea (page 5).

Comparison of Net Benefits

Option 2 would reduce confusion and potentially save a small amount of administrative costs. Since Option 2 also has a small but positive probability of allowing higher fleet revenue, the net benefit of Option 2 is small but positive.

Issue 2 - Gear Regulations Flexibility

The background information on this issue is presented on pages 7 and 8 of the amendment.

Option 1

Status quo - except under the "Point of Concern" mechanism, only minor changes in gear regulations can be made without FMP amendment.

Option 2

Changes in gear regulations may be made through the framework process for other than conservative reasons (see pages 8 and 9).

Comparison of Benefits

In analyzing the effects of these options, it is assumed that the management measures invoked will be the same for either option, but different administrative requirements will affect the timeliness and administrative costs of the measures. Delays in taking appropriate action could reduce the revenue to the fishing industry. The minimum time required for an amendment to become effective from the point at which the Council recommends the amendment is seven months. The minimum delay for a substantial change recommended under the framework process of Option 2 could be no more than two months unless there is reason to delay implementation to reduce cost to the industry. Thus, Option 2 could reduce the time it takes to implement gear changes by at least five months. Since the FMP was adopted in 1982, three gear changes have been made through the amendment process and a fourth is proposed in the second amendment under review. Presumably, the benefits from these changes would have been greater had they been enacted sooner. However, inasmuch as the benefits in each case were unquantifiable, it is not possible to quantify the cost of any delays.

Comparison of Costs

The administrative cost of implementing an amendment is estimated to be \$30,000 to \$50,000 more than it would cost to implement a gear change under Option 2. However, the two amendments to the groundfish FMP have involved a number of issues most of which have not been related to changes in gear regulations. Consequently, it is not known whether or not Option 2 would reduce the frequency and hence the cost of FMP amendments.

Comparison of Net Benefits

The greater benefit from Option 2 due to the increased timeliness of management changes, combined with administrative costs which are at least as low as for Option 1 indicate that the net economic benefits of Option 2 exceed those of Option 1.

Issue 3 - Marking Requirements for Setnets and Commercial Vertical Hook-and-Line Gear

The background information on this issue is presented in the amendment on page 11.

Option 1

Status Quo - no federal marking requirements for setnets and commercial vertical hook-and-line gear.

Option 2

Commercial vertical hook-and-line gear must be marked at the surface with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

Setnets must be marked at the surface at each terminal end with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

Comparison of Benefits

The gross benefits under each option will be determined by the value of fish landed by the entire groundfish fleet. Since neither option is likely to affect the amount or value of fish caught by the groundfish fleet, the benefits are expected to be approximately the same under either option.

Comparison of Costs

The incremental cost of adopting Option 2 is determined by two contrary factors. On the one hand, compliance costs for the fleet will be higher since additional gear marking equipment is called for. On the other hand, costs due to gear loss, damage, and lost time should decrease to the extent that additional gear markings reduce gear interactions.

The costs of compliance to the setnet and vertical hook-and-line vessels may be divided into initial costs and maintenance costs. The initial cost of marking one end of a setnet according to the requirements of Option 2 has been estimated in the amendment to be \$234 (Table 2). Since the setnet would be marked under Option 1 by at least a line, buoy, pole, and flag, the incremental cost for Option 2 would be \$106 (for the additional light and radar reflector). Assuming that current practice is for setnet fishermen to have at least a line and buoy at each end of the setnet, in addition to the flag and pole at one end, the initial incremental cost of Option 2 for a setnet would be \$230. The incremental cost of Option 2 for vertical hook-and-line gear would be \$106.

These costs would be born by each of the approximately 200 setnet vessels and 20 vertical hook-and-line vessels now in the groundfish fleet (page 12). Assuming that each setnet vessel fishes two nets while each vertical hook-and-line vessels fishes five to six lines, the initial incremental compliance cost of Option 2 for the entire fleet would be approximately \$103,000 to \$105,000.

Incremental annual maintenance costs for a vessel under Option 2 would equal the initial cost divided by the average lifetime of the marking gear in the absence of a loss due to gear interactions. Since this average lifetime is unknown, the annual maintenance cost per vessel is undetermined.

The cost of gear replacement and lost fishing time to the various fleet components involved in gear interactions affected by Option 2 cannot be determined due to lack of data on the frequency of such interactions and the individual cost of each incident. It is assumed that this cost would be lower under Option 2 than under Option 1.

Any future change in the size of the setnet or vertical hook-and-line fleet would change these costs proportionally. No prediction can be made at this time for any increase or decrease in fleet size.

Since the cost saving under Option 2 due to reduced gear conflict cannot be quantified, it cannot be determined with certainty whether total costs under Option 2 will be higher or lower than under Option 1.

Comparison of Net Benefits

Benefits are predicted to be the same under each option while the relative costs are undetermined. Therefore, the incremental net benefits of choosing Option 2 over Option 1 are undetermined.

Impacts of Management Regime on Specific Areas of Concern

This section is intended to show the potential impact of proposed management changes on specific areas of concern, as called for in Executive Order 12291. Since the three issues in the amendment have only one option each, other than the status quo, the discussion of these issues will focus on the alternative to the status quo.

Competition

None of the options considered under any of the issues will change the competitive structure of the west coast groundfish fishery or restrict entry into the fishery.

Employment

None of the options in the three amendment issues under consideration will affect employment levels in fishing or processing.

Investment

None of the issues will have any effect on investment, except Issue 3, where Option 2 could cause setnet and vertical hook-and-line fishermen to invest in additional marking gear estimated at an initial cost of \$103,000 to \$105,000. The annual investment required to comply with these marking requirements is unknown.

Productivity

Option 2 of Issue 3 may have a slight positive effect on productivity. No other options will have any impact on productivity.

Costs of Goods and Services

No options considered in the amendment would have any significant tendency to increase the cost of goods and services.

Exports

None of the options considered in the amendment will result in an increase of fish from the U.S.

Imports

None of the options considered in the amendment will cause an increase of fish imports into the U.S.

Regulatory Impacts on Small Business

Issues 1 and 2 will have no impact on small business or small government entities. The elimination of the OY for sablefish in the Monterey Bay subarea (Issue 1) is merely removing a regulation which has never been invoked. Establishing a framework mechanism for gear regulation changes (Issue 2) reduces administrative costs to the federal government, but does not alter the management regulations to which fishery vessels will be subject.

Issue 3 involves significant compliance costs for the small vessels fishing setnets or vertical hook-and-line for groundfish. The estimated initial cost per vessel for approximately 200 setnets is \$460. The estimated cost per vessel for approximately 20 vertical hook-and-line is \$530 to \$636. Some of these costs will be recovered in decreased gear loss due to the gear being more visible.

Additional Recordkeeping, Reporting, Paperwork, and Rulemaking Costs Relevant to the Paperwork Reduction Act

A choice of Option 2 for Issue 1 would slightly reduce recordkeeping requirements for government agencies since it would no longer be necessary to monitor the sablefish catch in the Monterey Bay subarea. However, there is no change in recordkeeping requirements for the public resulting from any issue in this amendment.

Monitoring and Enforcement Costs to Federal Government

None of the management options considered in the amendment involve extra enforcement or monitoring costs for the federal government. Some small savings in monitoring costs will be realized if the separate OY for sablefish in the Monterey Bay subarea is eliminated by selecting Option 2 of Issue 1.