



1.0 REGULATORY FLEXIBILITY ACT ANALYSIS

***Administrative Record-Keeping Note:**

Section 604(a)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. On January 26, 2016, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries, effective February 26, 2016 (81 FR 4469). The rule increased the size standard for Seafood Product Preparation and Packaging (NAIC code 311710) from 500 to 750 employees. Furthermore, on December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only. See 80 FR 81194, December 29, 2015. The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. See 80 FR 81194, December 29, 2015.

NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standards discussed above and has determined that the new size standards do not affect analyses prepared for this regulatory action. Further, because the guidelines do not directly regulate any entities, any new size standard will not directly alter the behavior of any entities operating in federally managed fisheries, and thus no direct economic effects on commercial harvesting businesses, marinas, seafood dealers/wholesalers, or seafood processors are expected to result from this action. Thus, no small entities will be directly affected by this action and a reduction in profits for a substantial number of small entities is not expected.

Therefore, the Chief Counsel for Regulation of the Department of Commerce hereby reaffirms that the rule will not have a significant economic impact on a substantial number of small entities. Thus, NMFS has determined that the certification established during the proposed rule stage is still appropriate for this final action and a final regulatory flexibility analysis has not been prepared for this final action.

1.1 Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure such proposals are given serious consideration. The RFA does not contain any decision criteria; instead the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of various alternatives contained in the regulatory action and to ensure the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the applicable statutes (e.g., the Magnuson-Stevens Fishery Conservation and Management Act (MSA)).

With certain exceptions, the RFA requires agencies to conduct an initial regulatory flexibility analysis (IRFA) for each proposed rule. The IRFA is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. An IRFA is primarily conducted to determine whether the proposed action would have a "significant economic impact on a substantial number of small entities." In addition to analyses conducted for the RIR, the IRFA provides: 1) a description of the reasons why action by the agency is being considered; 2) a succinct statement of the objectives of, and legal basis for, the proposed rule; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; 4) 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 which will be subject to the requirements of the report or record; 5) an identification, to the extent practicable, of all relevant federal rules, which may duplicate, overlap, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

In addition to the information provided in this section, additional information on the expected economic effects of the proposed action is included in the RIR.

1.2 Statement of the need for, objectives of, and legal basis for the rule

A discussion of the reasons why action by the agency is being considered is provided in Sections 1.2 and 1.3 of the RIR. In summary, the purpose of this action is to facilitate compliance with requirements of the MSA to end and prevent overfishing, rebuild overfished stocks, and achieve optimum yield (OY) without establishing new requirements or requiring Councils or the Secretary to revise their Fishery Management Plans (FMPs). The objectives of this proposed rule are to improve and clarify the guidance within the guidelines, address concerns that have been raised during the implementation of annual catch limits (ACLs) and accountability measures (AMs), and provide flexibility to address fishery management issues. Pursuant to MSA section 301(b), the NS guidelines are advisory in nature and do not have the force and effect of law. The MSA serves as the legal basis for the proposed rule.

1.3 Description and estimate of the number of small entities to which the proposed action would apply

Small entities include “small businesses,” “small organizations,” and “small governmental jurisdictions.” The Small Business Administration (SBA) has established size standards for all major industry sectors in the U.S. including commercial finfish harvesters (NAICS code 114111), commercial shellfish harvesters (NAICS code 114112), other commercial marine harvesters (NAICS code 114119), for-hire businesses (NAICS code 487210), marinas (NAICS code 713930), seafood dealers/wholesalers (NAICS code 424460), and seafood processors (NAICS code 311710). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million for all its affiliated operations worldwide. For commercial shellfish harvesters, the other qualifiers apply and the receipts threshold is \$5.5 million. For other commercial marine harvesters, for-hire businesses, and marinas, the other qualifiers apply and the receipts threshold is \$7.5 million. A business primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment not in excess of 750 employees for all its affiliated operations worldwide. For seafood dealers/wholesalers, the other qualifiers apply and the employment threshold is 100 employees. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000.

As stated in the RIR, the actions in this rule make technical changes to the Guidelines for National Standards 1, 3, and 7. Specifically, this rule would: 1) revise the general section of the NS guidelines regarding the importance of identifying fishery management objectives within an FMP, 2) consolidate guidance on identifying whether stocks need conservation and management, 3) revise the guidelines to provide flexibility in managing data limited stocks, 4) revise the guidance on stock complexes to encourage the use of complexes and indicator stocks, 5) revise the guidelines to promote the use of aggregate MSY estimates, 6) revise the guidelines by adding a definition for a depleted stock, 7) revise the guidelines to allow multi-year overfishing determinations, methods to phase-in adjustments to ABC, and methods to carry-over of all or some of an unused portion of the ACL, 8) revise guidance on OY to improve clarity and describe the role of OY under the ACL framework, 9) revise the acceptable biological catch (ABC) guidance, 10) revise guidance on AMs, 11) revise guidance on establishing ACL and AM mechanisms, and 12) provide flexibility in rebuilding stocks.

Because the proposed changes to the guidelines do not create new requirements and are thus technical in nature, this rule would allow but does not require the Councils or the Secretary to make changes to their FMPs. Further, because the guidelines do not directly regulate any entities, the proposed changes will not directly alter the behavior of any entities operating in federally managed fisheries, and thus no direct economic effects on commercial harvesting businesses, for-hire businesses, marinas, seafood dealers/wholesalers, or seafood processors are expected to result from this action. Therefore, no small entities would be directly affected by this rule.

1.4 Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records

This proposed action would not establish any new reporting, record-keeping, or other compliance requirements.

1.5 Identification of all relevant federal rules, which may duplicate, overlap or conflict with the proposed rule

No duplicative, overlapping, or conflicting federal rules have been identified.

1.6 Significance of economic impacts on small entities

Substantial number criterion

Because no small entities are expected to be directly affected by this proposed rule, the issue of whether a substantial number of small entities would be affected is irrelevant.

Significant economic impacts

The outcome of “significant economic impact” can be ascertained by examining two factors: disproportionality and profitability.

Disproportionality: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?

Because no small entities are expected to be directly affected by this proposed rule, the issue of disproportionality does not arise in the present case.

Profitability: Do the regulations significantly reduce profits for a substantial number of small entities?

Because no small entities are expected to be directly affected by this proposed rule, the issue of whether the proposed regulations significantly reduce profits for a substantial number of small entities does not arise in the present case.

1.7 Description of significant alternatives to the proposed action and discussion of how the alternatives attempt to minimize economic impacts on small entities

This proposed action, if implemented, would not be expected to have a significant direct adverse economic effect on the profits of a substantial number of small entities. As a result, the issue of significant alternatives is not relevant.