FINAL

ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW/
FINAL REGULATORY FLEXIBILITY ANALYSIS

INSHORE/OFFSHORE-3
(Amendments 51/51)

Prepared by
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National Marine Fisheries Service
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8.4.7 Final Regulatory Flexibility Analysis (FRFA)

When an agency issues any final rule, it must either prepare an FRFA or certify that the rule will not have a significant economic impact on a substantial number of small entities. The FRFA must discuss the comments received, the alternatives considered and the rationale for the final rule. Each FRFA must contain:

- A succinct statement of the need for, and objectives of, the rule;
- A summary of significant issues raised by the public comments in response to the IRFA, the agency's response to those comments, and a statement of any changes made to the rule as a result of the comments;
- A description and estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
- A description of the reporting, recordkeeping, or other compliance requirements of the rule; and
- A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

The need for and objectives of Amendments 51/51 as proposed by the Council are described in section 1.1 of this document. On October 21, 1998, the President signed the American Fisheries Act (AFA) into law (Public Law 105-277). The AFA, among other things, allocated the BSAI pollock TAC differently than the Council had proposed. The Council held a special meeting November 10-13, 1998, in part to discuss the effects of AFA on its inshore-offshore proposal and other management programs. The Council, in light of AFA, acted at that meeting to recommend to NMFS specific changes to its Amendment 51/51 proposal. The agency, however, has authority under the Magnuson-Stevens Act (section 304), only to approve, disapprove, or partially approve a FMP or amendment; NMFS can not change a proposal once it has been submitted for review, even if requested to do so by the Council that submitted it. A disapproval or partial approval decision by NMFS must be based on inconsistencies between the disapproved parts and the Magnuson-Stevens Act or other applicable law. On December 15, 1998, the Alaska Region Administrator, NMFS, partially approved BSAI Amendment 51 and fully approved GOA Amendment 51, and notified the Council of this decision. The parts of BSAI Amendment 51 that were disapproved reflected the Council’s intent as expressed at its meeting in November 1998. The final rule implements the approved portions of Amendments 51 and 51.

The public comment period on Amendments 51/51 ended on November 16, 1998, as announced in
the Notice of availability published September 16, 1998 (63 FR 49540). The comment period on the proposed rules to implement the amendments ended on December 14, 1998, as announced in the proposed rule notice published on October 29, 1998 (63 FR 57996). All comments received on the amendments and the proposed rule are summarized and responded to below. A total of 71 letters of comment were received. Of the total, 65 letters essentially made the same comment and are summarized under comment 1. One letter responded with no comment and one letter asked for an extension of the comment period which was denied. None of the comments raised significant IRFA issues. All comments received are summarized and responded to in the preamble to the final rule published [insert date and FR citation of final rule notice]. Most of the issues raised are made moot by the passage of the AFA; especially those concerns about the economic and employment effects of decreasing the pollock TAC allocation to the offshore component. Although the allocations mandated by the AFA may have even more pronounced economic impacts than those anticipated for the proposed action in the IRFA, the agency has no discretion the Congressionally-mandated allocations.

A description and estimate of the number of small entities to which the final rule applies is provided in this analysis at sections 2.4.3 and 8.4.5.

No change in existing reporting, recordkeeping, or other compliance requirements is made by the final rule.

This analyses indicated that Amendments 51/51, as proposed, could have a significant economic impact on a substantial number of small entities under the RFA. Many of these potential impacts could have resulted from the disapproved portions of Amendments 51/51. Only the approved portion of the CVOA and all of GOA Amendment 51 are implemented under this rule. The potential economic impacts of these measures on small entities likely will be positive because most of the affected small entities are part of the inshore component which is most benefitted by the CVOA and GOA provisions. Therefore, NMFS has taken no steps to minimize these potentially beneficial impacts. The changing economic and regulatory climate in which the pollock fishery will be operating over the next several years under this rule, however, introduces uncertainty sufficient to obviate a definite certification that the rule will not have significant impacts on a substantial number of small entities. NMFS is unable to take steps to minimize these currently unknown economic impacts.