

**Draft Environmental Assessment,
Regulatory Impact Review,
and Initial Regulatory Flexibility Analysis
for a Fishing Capacity Reduction Program
in the Southeast Alaska Purse Seine Salmon Fishery**

Abstract: This is an analysis of the environmental, economic, and social effects of implementing a fishing capacity reduction program for the purse seine salmon fishery occurring in Southeast Alaska. The capacity reduction program would be implemented pursuant to authorizing legislation and applicable provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b-e)).

Two alternatives have been considered: (1) no buyback program and (2) an industry funded buyback program. The environmental issues associated include: the biological environment including the water column and substrate; amount of fish removed, environmental impacts of the gear used to fish, and any incidental taking of a marine mammal, seabird, or prohibited species by the Southeast AK purse seine salmon fishery.

Under the buyback program potential impact to the physical and biological environment would not change from the status quo because the amount of fish harvested and gear used to harvest fish would not change. Under the proposed program fewer total vessels would be harvesting fish, however each vessel participating would be using the same gear and would be spending more time at sea so fishing effort would not change.

The economic impact to communities where salmon are landed and processed would be minimal because the harvest levels would not be altered. Fewer vessels in the purse seine fleet may mean that fewer on-shore fleet support services would be required in the coastal communities of Southeast Alaska. The communities would see little change because total landings of salmon would remain at current levels. Some beneficial impacts may occur because this program would provide up to \$23.5 million to successful bidders. Much of this could be reinvested in the various communities which serve as home ports to the vessels and a portion would be recovered through income taxes. Crew employment opportunities will be reduced when vessels are removed from the fishery. However, those vessels remaining in the fishery will likely experience increased fishing opportunities and higher per capita incomes.

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1.0 Introduction

The National Marine Fisheries Service (NMFS) has been directed by Congress to implement a fishing capacity reduction program for the Southeast Alaska purse seine salmon. Congress has provided funding and guidance under the Consolidated Appropriations Act of 2005 (Public Law 108-447) and Consolidated Appropriations Act of 2004 (Public Law 108-199). NMFS will implement this program pursuant to the applicable provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b-e)).

Provisions of the National Environmental Policy Act (NEPA) require the agency to examine the impacts of the proposed action and its alternatives on the human environment and make that information available to public officials and citizens before decisions are made and before actions are taken. For actions not otherwise excluded, the agency generally prepares an Environmental Assessment (EA) to assess whether the proposed action will have significant impacts on the human environment, and if not, uses a finding of no significant impact to conclude the analysis. If significant impacts are present, the agency prepares an Environmental Impact Statement (EIS).

The other planning and environmental review procedures required by law or by agency practice include a Regulatory Impact Review (RIR) to assess the economic and socioeconomic impacts of the proposed action, and its alternatives, on all those with an interest in the resource, including the fishing industry, fishery dependent communities, consumers, and the American public at large. Likewise an Initial Regulatory Flexibility Analysis (IRFA) to assess the impacts of the proposed action, and its alternatives, on small entities, including small businesses, non-profit organizations, and/or government jurisdictions has been prepared, as required by the Regulatory Flexibility Act, and integrated with the requirements of NEPA so that other required planning and environmental review procedures can run concurrently.

This EA/RIR/IRFA therefore contains analysis of the environmental, economic, and social effects of the proposed action and its alternatives. This integrated document provides information about the economic impacts of the proposed action and its alternatives by identifying those affected by the action, the nature and distribution of the effects, a discussion of the benefits and costs of each alternative, and an assessment of the “net benefit to the Nation” attributable to each. It also serves to meet the applicable analytical requirements of other statutes and Executive Orders (E.O.), including, but not limited to, E.O. 12866 – Regulatory Planning and Review.

The purpose and need, and general background information are included in Section 1 of this document. Section 2 describes alternative actions that may be taken including the requisite “no action” alternative, as well as the preferred alternative. In accordance with NEPA requirements, Section 3 contains a description of the physical, biological, and socio-economic characteristics of the affected environment. Section 4 examines the physical, biological, and socio-economic impacts of the alternatives including the preferred alternative. The RIR analysis associated with E.O. 12866 is found in Section 5. Section 6 includes the IRFA as required by the Regulatory Flexibility Act. Section 7 addresses the consistency of the proposed action with other regulatory

considerations such as the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Coastal Zone Management Act (CZMA), Paperwork Reduction Act (PRA), E.O. 12898, E.O. 13132, and E.O. 13175. A list of agencies contacted and a list of preparers is found in Section 8. Section 9 provides a list of references and Section 10 a list of acronyms used in this document. The NEPA conclusions or a Finding of No Significant Impact (FONSI) will be prepared as a separate memorandum after completion of the analysis if it is determined the proposed action will not have a significant effect on the human environment.

1.1 Proposed Action

Section 209 of Public Law 108-447 (Section 209) directs the Secretary of Commerce (the Secretary) to implement the fishing capacity reduction program. Subsequently, that Federal law was amended by Section 121 of Public Law 109-479 (the Magnuson-Stevens Reauthorization Act of 2006), reducing the loan amount to no more than a \$25 million 40-year loan (with repayment fees capped at three percent) and clarifying the respective roles of NMFS and the SRA relative to development and implementation of the Program. On December 26, 2007, Public Law 110-161 appropriated \$235,000 for the cost of guaranteeing the loan amount (i.e., loan subsidy cost). Due to a 6 percent rescission to meet Congressional budgetary limits, the original appropriation of \$250,000 was reduced to \$235,000, thus lowering the maximum loan ceiling to \$23.5 million.

The objectives of this program are to achieve a permanent reduction of capacity in the Southeast Alaska purse seine salmon fishery (reduction fishery). This should increase post-reduction harvesters' per vessel productivity and by default increase gross revenues for the remaining vessels. Although cost data are not readily available for this fleet, increased gross revenues without consequent increases in expenses (e.g. fewer vessels catching the same amount of fish) should financially stabilize the fishery. Fewer (and more financially stable) vessels could enable fishery managers to better conserve and manage the fishery. The Southeast Alaska purse seine salmon fishing capacity reduction program (program) is designed to reduce the fishing capacity in the reduction fishery by reducing the number of permits issued.

This program will be implemented under Public Law 108-447 and section 312 (b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). 50 CFR Part 600 Subpart L, which became effective June 18, 2000, contains the framework regulations for fishing capacity reduction programs. Section 312 and 50 CFR Part 600 Subpart L apply only to the extent they are consistent with the specific provisions of Public Law 108-447.

1.2 Background

The Southeast Alaska salmon fisheries are managed by the Alaska Department of Fish and Game (ADF&G), pursuant to Alaska Statutes. Permits are issued by the Alaska Commercial Fisheries Entry Commission (CFEC) to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry of participants and vessels into the commercial fisheries

pursuant to Alaska Statutes Section 16.43. Unlike quota-based or guideline harvest level federal fisheries, Alaska salmon fishery management is subject to in-season changes based on abundance. Harvest of individual species can and does deviate substantially from pre-season projections, increasing economic uncertainty for the fishermen.

Unlike buybacks conducted under federal statutes where permits are permanently revoked, under the Alaska Constitution, the state may reissue permits in the future if the fishery becomes too exclusive. An “optimum number” study by the CFEC would be required before any decision could be made on whether the fishery has become too exclusive. There is no direct management of this fishery by NMFS or any other Federal agency.

The Southeast Alaska salmon fishery is undertaken commercially by multiple gear types, primarily purse seine and troll gear, and to a lesser degree by hook-and-line catcher vessels. This is a fully subscribed fishery. The Southeast purse seine salmon fishery is designated by code S01A. There were 419 originally issued permits of which 40 have been cancelled leaving 379 active permits. Of these, 350 were permanently renewed while 29 were not renewed.

The active permits are distributed nearly equally between Alaska residents and non-residents. There are 187 active resident permits and 192 active non-resident permits. Only 5 permit holders possess multiple permits in this fishery for 2010.

The estimated permit value as of July, 2010 is \$78,500.

The most recent available data from 2009 shows that 256 permits actually fished and generated total revenues of \$40,947,068 with average gross earnings of \$159,949. Average gross earnings for the 1st quartile of fishing permits were \$309,914 and only \$88,479 for the 4th quartile.

1.3 Purpose and Need for Action

Under the Magnuson-Stevens Act, the Secretary may conduct a fishery capacity reduction program if, among other things, the Secretary finds that the program “is necessary to prevent or end overfishing, rebuild stocks, or achieve measurable and significant improvements in the conservation and management of the fishery.” Reducing capacity has been a major desire of both the industry and fishery managers.

The purpose and need for action is to implement a fishing capacity reduction program according to Congressional intent.

2.0 Description of Alternatives

Two alternatives have been considered: (1) no buyback program and (2) an industry funded buyback program.

2.1 No Buyback Program (Alternative 1 – the ‘No Action’ Alternative)

Under this alternative there will be no buyback program undertaken for the Southeast Alaska purse seine salmon fishery and the fishery would continue to operate under the status quo management measures, which do not include a fishing capacity reduction program. The purse seine sector of the Southeast Alaska salmon fishery would remain overcapitalized.

Overcapitalization reduces the potential net value that could be derived from the salmon resource, by dissipating rents, driving up variable operating costs, and imposing economic externalities on fishermen, processors, and shore side businesses. At the same time, excess capacity and effort diminish the effectiveness of current fishery management measures.

Overcapitalization has diminished the economic viability of members of the fleet and increased the economic and social burden on fishery dependent communities. This alternative does not meet the legal mandates discussed above.

2.2 Industry Funded Buyback Program (Alternative 2 - Proposed Action)

Under this alternative, a fishing capacity reduction program would be implemented in the Southeast Alaska purse seine salmon fishery, which would be funded by the industry through the Southeast Revitalization Association (SRA). The program would be financed through a 40-year reduction loan made under sections 1111 and 1112 of Title XI of the Merchant Marine Act of 1936. A recent assessment indicates that the industry can afford to repay a \$23.5 million loan (McDowell, 2009). This loan is authorized by Section of Public Law 108-199 which provided a \$235,000 appropriation to fund the Federal Credit Reform Act cost of a reduction loan which will partially finance the program's cost.

This program seeks to obtain the maximum sustained reduction in fishing capacity at the least cost, by giving permit holders the opportunity to relinquish their permits for a price they specify, subject to the SRA's review and approval and subsequently to the Secretary's review and approval. Each program bidder must offer to relinquish a Southeast Alaska purse seine salmon permit designated to fish in area S01A.

Participating permit holders must adhere to the terms and conditions of the program set forth in the Bid Agreement and, if their bid is accepted, the Relinquishment Contract (the Contract) with the SRA and the CFEC. The aggregate of all Bid Agreements and Contracts signed by permit holders whose bids are accepted, along with supporting rationale will constitute the Reduction Plan (the Plan) submitted to the Secretary for approval. Permit holders participating in the program will receive up to \$23.5 million in exchange for relinquishing their permits.

The SRA will use a reverse auction to rank and determine which bids to accept. If bids are accepted, the SRA will accept the bid with the lowest dollar amount and successively accept each additional bid with the next lowest dollar amount until it either elects not to accept a bid, there are no more bids to accept, or acceptance of a bid with the next lowest dollar amount would cause the total cost to exceed \$23.5 million.

Following SRA submission of the Plan and approval by the Secretary, NMFS will conduct a referendum to determine the willingness of the permit holders to repay a fishing capacity reduction loan to finance the Plan. A successful referendum by a majority of the Permit Holders in the Reduction Fishery would bind all parties and complete the reduction process.

NMFS will mail, by U.S. certified mail, return receipt requested, a ballot and voting instructions to each eligible voter. The ballot will contain a 5-digit number assigned to each voter, a summary of the referendum's purpose, a place for the permit holder to vote for or against the industry fee system, a place for his/her signature, and will specify the date NMFS must receive the ballot for it to be counted. A postage-paid, addressed envelope will also be enclosed to return the ballot to NMFS.

Each person who is the holder of a S01A permit will be entitled to one vote per permit. NMFS will mail each person a separate referendum ballot for each permit.

NMFS will tally all responsive votes then notify, by U.S. mail, all eligible voters of: the number of potential voters; the number of actual voters; the number of qualified returned ballots; the number of votes for and against the industry fee system; and whether the referendum passed or failed.

The Reduction Loan shall be repaid by fees collected from the remaining southeast Alaska purse seine salmon harvestors. Fees must be assessed and collected on all harvested salmon by a southeast Alaska purse seine permit. By Statute, the fee could be up to 3 percent of the ex-vessel production value of all post-reduction southeast Alaska purse seine salmon. The fee will be less than 3 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 40-year term.

Under the existing framework regulations, the fee is due and payable at the time fish are offloaded from the harvesting vessel. Each fish buyer shall collect the fee at the time of delivery by deducting the fee from the delivery value before paying the net delivery value. Each fish seller will be deemed to have paid the fee at the time of fish delivery by receiving the net delivery value from the buyer. NMFS will publish a Federal Register notice at least 30 days before the effective date of any fee or any fee rate change.

Each fish buyer required to collect a fee must maintain a separate account at a Federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing it to NMFS. Within two days of a fee collection, each fish buyer shall deposit all fee revenue. On the last business day of the month, the fish buyer must disburse the full amount of deposit principal then in the account, along with a settlement sheet to NMFS.

NMFS will also send notice of fee rates, by U.S. mail, to each affected processor of Southeast Alaska purse seine salmon. Late charges of 1.5 percent per month for the total amount of the fee not paid, collected, deposited into Pay.gov or the lockbox, and/or disbursed to NMFS would be assessed. NMFS may take appropriate action against each fish seller and/or buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement.

When the reduction loan is repaid, NMFS would publish a Federal Register notice that the fee is no longer in effect and send notification by U.S. mail to each affected fish seller and buyer.

2.3 Alternatives Considered and Eliminated From Detailed Consideration

There are many possible ways to structure and implement a fishing capacity reduction program including different mechanisms for accepting, sorting and selecting among offers. However, the authorizing legislation provides discretion to the SRA to develop a buyback program. NMFS involvement in the process only begins when industry submits the plan as outlined in section 2.2 above. Thus the consideration of other alternatives is restricted by the authorizing legislation.

3.0 Affected Environment

The environment of the area(s) to be affected or created by the alternatives under consideration include the physical and biological environment of waters off the coast of Alaska and, social, and economic environments of fishing industry participants in the southeast Alaska purse seine salmon fishery. The species of fish harvested in the Southeast Alaska purse seine salmon fishery include king, coho, sockeye, chum, and pink salmon.

3.1 Purse Seine Fishery

The purse seine fishery has accounted for approximately 80% of the total commercial salmon harvest in Southeast Alaska from the time of statehood (1960) to the present. Pink salmon is the primary species targeted by the purse seine fleet and represents about 75% of the long-term catch composition by weight. Other species harvested and their respective long-term catch averages are: Chinook under 1%, sockeye 3%, coho 2%, and chum 20%. The season begins June 1 and lasts until September.

3.2 Description of the Processing Sector

Approximately 20 processors currently purchase fish from the Southeast Alaska purse seine fleet. However, six of these processors account for most (an estimated 80%) of the seine harvest purchases. They are located throughout Southeast Alaska with larger facilities in Excursion Inlet, Ketchikan, Petersburg, and Sitka.

3.3 Salmon Products

Traditionally, processors have canned most of the pink salmon harvest. More recent trends have accelerated the product-form shift to frozen pink salmon which has improved prices for both canned and frozen pink salmon. This change allows processors to transport frozen pink salmon overseas for secondary processing in cheaper labor markets such as China. This cost-effective solution to high U.S. secondary processing cost has helped increase demand for frozen Alaskan pink salmon. The ongoing shift to frozen production has helped reduce the supply of raw pink salmon available for production thus easing the chronic oversupply situation for canned pink salmon.

The second largest species harvested in the purse seine fishery is chum. Chum salmon skin and flesh color deteriorates rapidly upon exposure to fresh water in or near terminal areas where most harvests occur. As a result, the fish is not well-suited for high-end products that must have good color to achieve the desired price point. Chum salmon products consist mostly of roe and value-added products in which skin and flesh color are not a high priority.

The traditional high-value salmon species (Chinook, sockeye, and coho) make up only 5 percent of Southeast purse seine harvest value. These species are targeted and harvested by gillnet and troll gear fleets much larger than the purse seine fleet.

3.4 Landings History

The annual value of purse seine salmon in Southeast Alaska landings from 2000 to 2010:

<u>Year</u>	<u>Lbs.(K)</u>	<u>\$(K).</u>
2001	298,130	\$61,120
2002	219,923	\$28,709
2003	264,376	\$36,024
2004	257,021	\$38,031
2005	264,198	\$41,979
2006	171,834	\$51,731
2007	238,534	\$63,968
2008	136,713	\$75,997
2009	191,639	\$75,118
2010	181,540	\$87,474
Average	222,391	\$56,015

4.0 Environmental Consequences

Council on Environmental Quality regulations for implementing the procedural provisions of NEPA require the agency to examine the impacts of the proposed action (industry funded buyback) and its alternatives on the human environment. Accordingly this EA discusses this action and its alternatives by examining the factors contained in Section 6.01 of NOAA Administrative Order 216-6 and the environmental provisions of the ESA. If the action is determined not to have a significant impact on the human environment based on an analysis of relevant considerations, the EA and resulting FONSI are sufficient to meet NEPA requirements.

The environmental issues associated with this capacity reduction proposal include: the biological environment including the water column and substrate; amount of fish removed, gear used to fish, and any incidental taking of a marine mammal, seabird, or prohibited species by the longline fishery.

4.1 Alternative 1 Impacts

The purse seine salmon fishery would continue to fish in the Southeast Alaska under defined seasons and without a fishing capacity reduction program. The impacts to the biological and physical environment include harvest of fish using gear that has some contact with the substrate and occasional incidental interaction with marine mammal, seabird, and prohibited species. These environmental impacts were analyzed in the Essential Fish Habitat EIS (NMFS 2005) and Alaska Groundfish Programmatic EIS (NMFS 2004). This alternative does not meet the legal mandates imposed by Section 209 and discussed under Alternative 2.

4.2 Alternative 2 Impacts

The proposed program, Alternative 2, is an industry funded buyback program.

Under the proposed alternative the potential impacts to the physical and biological environment are the same as the impacts under alternative 1 because the amount of fish harvested and gear used to harvest fish would not be affected by this proposed program. Although fewer total vessels would be harvesting fish, each vessel participating would be using the same gear and would be spending more time at sea, therefore, across the fishery the fishing effort and fishing methods would remain the same, and the environmental impacts of the proposed alternative are the same as the No Action alternative (i.e. Alternative 1).

The proposed fishing capacity reduction program would affect shore side processors. Compared to the 'no action' Alternative 1, total harvest and revenue will not decrease and total revenue may increase.

Vessel crew members will see a loss in job opportunities. Some crew positions will be eliminated on vessels that are removed as a result of this program. Although there may be a loss in the number of crew positions, those remaining may receive higher wages and income as average revenues per vessel are expected to increase and crew share increase proportionally. As a potential mitigating measure for those crew members who become unemployed, there are existing State and Federal programs where crew members can be retrained to enter other occupations. This impact is expected to be minimized by the reduction of currently inactive permits, which would not directly affect current fishermen.

The proposed action's impact would be positive for both those whose offers NMFS accepts and post-reduction fishermen whose landing fees repay the reduction loan because the Offerors and remaining fishermen, collectively, would have voluntarily assumed the impact:

1. Offerors would have volunteered to make offers at dollar amounts of their own choice. Presumably, no Offeror would volunteer to make an offer with an amount that is inconsistent with the Offeror's interest; and

2. Reduction loan repayment landing fees would be authorized, and NMFS could complete the Reduction Program, only if at least a majority of S01A permit holders voted in favor of the Reduction Plan. Presumably, permit holders who are not Selected Offerors would not vote in favor of the reduction plan unless they concluded that the program's prospective capacity reduction was sufficient to enable them to increase their post-reduction revenues enough to justify the fee.

NMFS believes that this proposed action would affect neither salmon harvest levels nor harvesting practices.

4.3 Impacts Upon Communities

Fishing communities, as defined in the Magnuson-Stevens Act, include not only the people who actually catch the fish, but also those who share a common dependency on directly related fisheries-dependent services and industries. Many of the coastal communities participate in the southeast Alaska purse seine salmon fishery in one way or another, whether it be processing, support businesses, port facilities, or as home to fishermen and processing workers.

National Standard 8 of the Magnuson-Stevens Act mandates that conservation and management shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and the rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities.

Overall, the economic impact to communities where salmon is landed and processed would be minimal because the harvest levels and allocations would not be altered with the implementation of this program. Fewer vessels in the catcher vessel fleet may mean that fewer on-shore support services for the fleet would be required in Ketchikan, Petersburg, and Sitka. The communities would most likely see very little change because total landings of salmon would remain at current levels. Some beneficial impacts may occur because this program would provide up to \$23.5 million to successful bidders. Much of this could be reinvested in the various communities which serve as home ports to the vessels and a portion would be recovered by the Government through income taxes or increased local revenues. Employment opportunities for crew members will be reduced when vessels are removed from the fishery. However, those vessels remaining in the fishery will likely experience increased fishing opportunities and higher per capita incomes.

4.4 Essential Fish Habitat

None of these alternatives is expected to have an adverse impact on essential fish habitat (EFH) because the alternatives do not result in any change between fishing operations and impacts to essential fish habitat for any species in southeast Alaska. Specifically, none of the alternatives are expected to result in a change in amount of fish harvested, fishing methodology, gear usage,

or fishing area. Consequently, neither EFH consultation nor further consideration of potential impacts on EFH is necessary for this action.

4.5 Cumulative Effects

Cumulative effects must be considered when evaluating the alternatives. Cumulative impacts are those combined effects on the quality of the human environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what Federal or non-Federal agency or person undertakes such other actions.

The area that would be affected by implementing the industry sponsored buyback is the marine area associated with the southeast Alaska purse seine fishery. The potential direct and indirect effects of Alternative 2 are discussed above.

Of the past, proposed, and foreseeable future actions that could affect these same waters and fishermen, the most notable action is a possible reduction in fishing permits which may also result in reduced fishing efforts and reduced environmental impacts.

Implementation of the industry funded buyback would not have a negative effect on the southeast Alaska purse seine salmon fishery and may have a positive effect. Reducing the number of vessels may allow for the adoption of less restrictive (i.e., less costly) management measures that yield equivalent or increased conservation benefits compared with the status quo.

Implementing the industry funded buyback would have potential long-term economic and socio-economic effects. Some harvesters would immediately leave the fishery, although with financial compensation. Those remaining in the southeast Alaska purse seine salmon fishery would be responsible for repaying the industry loan over a 40-year period. However, those remaining in the fishery would directly benefit by being able to access a greater portion of the available quotas, at lower costs, and therefore may realize higher per capita incomes.

Compared to the status quo, total harvest and revenue will not decrease and net revenue may increase. Therefore, the total amount of income that flows to Alaska fishing communities should not decrease and may increase. Some fishing communities may benefit from the sudden cash infusion to the local economy generated by the subsequent expenditures by the accepted bidders in the program. Shore-based processors would not be affected.

Implementation of the Proposed Action (industry funded buyback) would not have a negative effect on foreseeable State management actions and may, for many of the same reasons discussed immediately above, have a potential positive effect. Should the state of Alaska participate in the fee-collection aspects of the proposal, the costs incurred would be minor and incremental to existing state fee collection activities.

5.0 Regulatory Impact Review

E. O. 12866, signed in October of 1993, requires Federal agencies, including NMFS, to assess all costs and benefits of available regulatory alternatives, including both quantitative and qualitative measures. Such economic and social impacts should include the identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the trade-offs between qualitative and quantitative benefits and costs. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits, unless a statute requires another regulatory approach.

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

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

A regulatory program is “significant” if it is likely to result in any of the effects described above. The RIR is designed to provide information to determine whether the proposed action is likely to be “economically significant”. The Office of Management and Budget has not yet made a determination of “significance” under E.O. 12866 for this program.

This program will provide up to \$23.5 million to reduce fishing capacity in the Southeast Alaska purse seine salmon fishery. The discussion of the impacts in Section 4 serves as a qualitative review of the benefits and costs of the program.

6.0 Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (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 impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the 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 impact on a substantial number of small entities, and support that certification with the “factual basis” for the decision; or it must prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities. When an agency publishes a final rule, it must prepare a Final Regulatory Flexibility Analysis (FRFA). Analytical requirements for the IRFA are described below in more detail.

The IRFA must 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, recordkeeping 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 Magnuson-Stevens Act and any other 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 determining the scope, or ‘universe’, of the entities to be considered in an IRFA, NMFS includes only those entities, both large and small, 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. NOAA currently interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

6.1 Definition of a small entity

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 U.S., and which operates primarily within the U.S. 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 form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the U.S. including fish harvesting and fish processing businesses. A business involved in fish harvesting is 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 receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. Finally, 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 size standards applicable to RFA analyses increased from \$3.5 million to \$4.0 million on January 5, 2006, to adjust for inflation (70 FR 72577, 12/6/05).

6.2 Description of Reasons for Action and Statement of Objective and Legal Basis

A description of why the agency is considering this action as well as a statement of objectives and legal basis is included in section 1.1.

6.3 Number and description of affected small entities

For purposes of the IRFA, all small businesses with annual receipts of less than \$4.0 million can be considered small businesses. The IRFA uses the most recent year of data available to conduct this analysis (2008). Little is known about the ownership structure of the vessels in the fleet, so it is possible that the IRFA overestimates the number of small entities. In the SE AK purse seine salmon fleet virtually all of the fishing vessels meet the threshold for small entities.

6.4 Description of Small Entities to Which the Rule Applies

The Small Business Administration (SBA) has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of \$4 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned and cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. According to the SBA's definition of a small entity, most of the vessels would be considered small entities. However, there are no disproportionate impacts between large and small entities.

6.5 Description of Recordkeeping and Compliance Costs

Implementation of the buyback program would not change the overall reporting structure and recordkeeping requirements of the vessels in the fishery. This action contains collection of information requirements subject to the Paperwork Reduction Act and which have been approved by OMB under control number 0648-0376.

6.6 Duplication or Conflict with Other Federal Rules

This rule does not duplicate or conflict with any Federal rules of which NMFS is aware.

6.7 Measures taken to reduce impacts on small entities

Most firms operating in the fishery regulated by the proposed action have expected annual gross revenues of less than \$4.0 million; this analysis estimates that most of the 212 vessels that participated in 2008 are considered small entities. Moreover, participation in this program is voluntary. The ownership characteristics of vessels operating in the fishery are not available and therefore it is not possible to determine with certainty, if they are independently owned and operated, or affiliated in one way or another with a larger parent company. Furthermore, because analysts cannot quantify the exact number of small entities that may be directly regulated by this action, a definitive finding of non-significance for the proposed action under the RFA is not possible. However, because the proposed action would not result in changes to allocation percentages, net effects would be expected to be minimal relative to the status quo.

7.0 Consistency With Other Applicable Laws

7.1 Endangered Species Act Considerations

The ESA provides for the conservation of endangered and threatened species of fish, wildlife, and plants. Consultations under Section 7 of the ESA are administered by the NMFS for most marine mammal species, marine and anadromous fish species, and marine plant species and by the U.S. Fish & Wildlife Service (FWS) for some marine mammals, all bird species, and terrestrial and freshwater wildlife and plant species. This action will continue existing fishery management regulation of salmon. No adverse impacts to ESA-listed endangered or threatened species are anticipated as a result of implementing the alternatives under consideration.

7.2 Marine Mammal Protection Act Considerations

Fisheries that interact with species listed as depleted, threatened, or endangered may be subject to management restrictions under the MMPA and ESA. NMFS publishes an annual list of fisheries in the Federal Register separating commercial fisheries into one of three categories, based on the level of serious injury and mortality of marine mammals occurring incidentally in that fishery. The categorization of a fishery in the list of fisheries determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. This proposed action will not alter State of Alaska management and regulation of the fishery. No adverse impacts to marine mammals are anticipated as a result of implementing the alternatives under consideration.

7.3 Coastal Zone Management Act Considerations

Implementation of any of the alternatives would be conducted in a manner consistent with the Alaska Coastal Zone Management Program in accordance with Section 307(c)(1) of the CZMA of 1972 and its implementing regulations. A letter to this effect was sent to the State of Alaska for comment.

7.4 Executive Order 13132 Federalism

Any Federalism implications arising from this action are highly unlikely, however consultation with the State of Alaska is ongoing.

7.5 Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

E.O. 13175 is intended to ensure regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen

the U.S. government to government relationships with Indian tribes, and to reduce the imposition of unfunded mandates on Indian tribes. This proposed program would not have substantial direct effects on Indian tribes and is therefore not applicable.

7.6 Executive Order 12898

Executive Order (E.O.) 12898 focuses on environmental justice in relation to minority populations and low-income populations. The EPA defines environmental justice as the: "fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws, regulations, and policies." This executive order was spurred by the growing need to address the impacts of environmental pollution on particular segments of our society. E.O. 12898 requires each Federal agency to achieve environmental justice by addressing "disproportionately high and adverse human health and environmental effects on minority and low-income populations." The EPA responded by developing an Environmental Justice Strategy which focuses the agency's efforts to implement E.O. 12898.

In order to determine whether environmental justice concerns exist, the demographics of the affected area should be examined to determine whether minority populations and low-income populations are present, and if so, a determination must be made as to whether implementation of the alternatives may cause disproportionately high and adverse human health or environmental effects on these populations. Environmental justice concerns typically embody pollution and other environmental health issues, but the EPA has stated that addressing environmental justice concerns is consistent with NEPA and thus all Federal agencies are required to identify and address these issues.

Overall, the population structures in Southeast Alaska vary considerably, but there are areas with substantial Alaska Native and other minority populations.

The effects of the action under consideration are discussed in Section 5.0 (RIR) and Section 6.0 (IRFA). It is assumed that current participants would continue to harvest relative historical share of the fishery. In addition, because the action would reflect historical harvests, it is not expected that this action would significantly affect historical delivery patterns by vessels delivering to shoreside processing plants.

It has been determined that the proposed actions would have no adverse environmental impacts and would not have any adverse cumulative environmental or human health effects. Thus, no distinct human population, minority or otherwise, would be affected in this regard.

8.0 List of Agencies Consulted in Formulating the Notice

Other agencies consulted in formulating the rule and this EA/RIR/IRFA include:

Alaska Department of Fish and Game
Alaska Commercial Fisheries Entry Commission
Alaska Department of Revenue

NMFS – Alaska Regional Office
NMFS – Alaska Fishery Science Center
NMFS – Office of Sustainable Fisheries, Domestic Fisheries Division
NMFS – Office of Sustainable Fisheries, Regulatory Services Division
NMFS – Office of Management and Budget, Financial Services Division
NOAA – Office of General Counsel
North Pacific Fishery Management Council

8.1 List of Preparers

This EA/RIR/IRFA was prepared by staff from the National Marine Fisheries Service:

Michael A. Sturtevant, Office of Management and Budget, Financial Services Division

9.0 References

ADF&G, Annual Management Report of the 2008 Southeast Alaska Commercial Purse Seine and Drift Gillnet Fisheries, December, 2008

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act 40 CFR Parts 1500-1508.

Council on Environmental Quality, Washington, D.C. Environmental Justice, Guidance Under the National Environmental Policy Act. December 10, 1997.

NMFS, Office of Sustainable Fisheries, Silver Spring, MD. Guidelines for Economic Analysis of Fishery Management Actions. August 16, 2000.

NMFS, Final EIS for Essential Fish Habitat Identification and Conservation in Alaska, April 29, 2005

NOAA, Silver Spring, MD. Environmental Review Procedures for Implementing the National Environmental Policy Act. (NOAA Administrative Order 216-6) May 20, 1999.

10.0 List of Abbreviations and Acronyms

ADFG - Alaska Department of Fish and Game
BSAI - Bering Sea and Aleutian Islands
CFEC – Commercial Fisheries Entry Commission
CFR - Code of Federal Regulations
CZMA - Coastal Zone Management Act
EA - Environmental Assessment
EEZ - Exclusive Economic Zone
EFH - Essential Fish Habitat
EIS - Environmental Impact Statement

E.O. - Executive Order
ESA - Endangered Species Act
FONSI - Finding of No Significant Impact
FWS - U.S. Fish & Wildlife Service
IRFA – Initial Regulatory Flexibility Analysis
Magnuson-Stevens Act – Magnuson-Stevens Fishery Conservation and Management Act
MMPA - Marine Mammal Protection Act
NEPA - National Environmental Policy Act
NMFS - National Marine Fisheries Service
NOAA - National Oceanic and Atmospheric Administration
OMB - Office of Management and Budget
RFA - Regulatory Flexibility Act
PRA – Paperwork Reduction Act
RIR - Regulatory Impact Review
Secretary – Secretary of Commerce
SBA - Small Business Administration