

INITIAL/PUBLIC REVIEW DRAFT

**Regulatory Impact Review / Initial Regulatory Flexibility Analysis
for a
Proposed Fishery Management Plan and Regulatory Amendment
to**

Allow the Reapportionment of Chinook Salmon PSC between the Pollock and Non-Pollock Gulf of Alaska Trawl Fisheries

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National Oceanic and Atmospheric Administration

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Abstract: This Regulatory Impact Review/Initial Regulatory Flexibility Analysis analyzes proposed management measures that would allow inseason reapportionment of the Chinook salmon PSC limits designated for use in a particular sector of the GOA groundfish trawl fishery for use in a different sector. This action could provide greater flexibility to reapportion the overall GOA trawl Chinook salmon PSC limit during years of high or unusual Chinook salmon PSC without revisiting the limits that are currently set in regulation. For example, Chinook salmon could be made available for use in the non-pollock catcher vessel sector after NMFS has determined that the pollock trawl fishery's PSC limit is greater than the amount projected to be necessary to harvest the pollock TAC. In the same manner, this action would allow the inseason reapportionment of Chinook salmon PSC from the non-pollock to the pollock sector when excess Chinook salmon PSC is available. Reapportioning Chinook salmon PSC could benefit GOA trawl communities, vessel operators, crew members, processors, and support industries that are dependent on those fisheries, without modifying the overall PSC limits that were established to protect the resource. This analysis also considers whether the action could increase the total amount of Chinook salmon PSC taken across all sectors in a given year, all else equal.

List of Acronyms and Abbreviations

'	feet
AAC	Alaska Administrative Code
ABC	acceptable biological catch
ADF&G	Alaska Department of Fish and Game
AEQ	adult equivalent
AFA	American Fisheries Act
AFSC	Alaska Fisheries Science Center
AGDB	Alaska Groundfish Data Bank
AKFIN	Alaska Fisheries Information Network
ANILCA	Alaska National Interest Lands Conservation Act
BASIS	Bering Sea-Aleutian Salmon International Survey
BEG	biological escapement goal
BOF	Board of Fish
BSAI	Bering Sea and Aleutian Islands
CAS	Catch Accounting System
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
COAR	Commercial Operators Annual Report
Council	North Pacific Fishery Management Council
CP or C/P	catcher/processor
CV	catcher vessel
E	East
E.O.	Executive Order
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	essential fish habitat
EIS	Environmental Impact Statement
ESA	Endangered Species Act
ESU	endangered species unit
FMA	Fisheries Monitoring and Analysis
FMP	fishery management plan
FONSI	Finding of No Significant Impact
FR	<i>Federal Register</i>
FRFA	Final Regulatory Flexibility Analysis
ft.	foot or feet
GHL	guideline harvest level
GOA	Gulf of Alaska
ID	Identification
IRFA	Initial Regulatory Flexibility Analysis
JAM	jeopardy or adverse modification
LAPP	limited access privilege program
lb.(s)	pound(s)
LEI	long-term effect index

LLP	license limitation program
LOA	length overall
M	meter or meters
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
MMPA	Marine Mammal Protection Act
MSST	minimum stock size threshold
Mt	metric ton
NAO	NOAA Administrative Order
NEPA	National Environmental Policy Act
NMFS	National Marine Fishery Service
NOAA	National Oceanographic and Atmospheric Administration
NPAFC	North Pacific Anadromous Fish Commission
NPFMC	North Pacific Fishery Management Council
NPPSD	North Pacific Pelagic Seabird Database
Observer Program	North Pacific Groundfish Observer Program
OEG	optimal escapement goal
OMB	Office of Management and Budget
PBR	potential biological removal
PSC	prohibited species catch
PPA	Preliminary preferred alternative
PRA	Paperwork Reduction Act
PSEIS	Programmatic Supplemental Environmental Impact Statement
PWS	Prince William Sound
RFA	Regulatory Flexibility Act
RFFA	reasonably foreseeable future action
RIR	Regulatory Impact Review
RPA	reasonable and prudent alternative
SAFE	Stock Assessment and Fishery Evaluation
SAR	stock assessment report
SBA	Small Business Act
Secretary	Secretary of Commerce
SRKW	Southern Resident killer whales
SSFP	Sustainable Salmon Fisheries Policy
SW	southwest
TAC	total allowable catch
U.S.	United States
USCG	United States Coast Guard
USFWS	United States Fish and Wildlife Service
VMS	vessel monitoring system
W	West

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Executive Summary

This document is a Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA). An RIR/IRFA provides assessments of the economic benefits and costs of the action alternatives, as well as their distribution (the RIR), and the impacts of the action on directly regulated small entities (the IRFA). The RIR (Section 3) examines potential social and economic impacts on stakeholders in the GOA trawl fisheries and stakeholders in directed Chinook salmon fisheries. The IRFA is included in Section 4.

The proposed action is a minor change to a previously analyzed and approved actions to set Chinook salmon prohibited species catch (PSC) limits in the Gulf of Alaska (GOA) groundfish trawl fisheries. Pursuant changes in regulations would have no effect, individually or cumulatively, on the human environment (as defined in NAO 216-6). The potential effects of this action are economic in nature. In other words, this action would not affect the human environment in any way beyond what was examined in the Environmental Assessment (EA) prepared for the analysis of GOA Groundfish Amendments 93 and 97. As a result, the analysts have preliminarily determined that this action could qualify for a Categorical Exclusion from further review under the National Environmental Policy Act (NEPA). When a Categorical Exclusion is granted, the preparation of an EA is not required.

Purpose and Need

The Council defined the following purpose and need statement at its October 2015 meeting.

Regulations establish a Chinook salmon prohibited species catch (PSC) limits of 32,500 Chinook in the Central and Western Gulf of Alaska (GOA) trawl fisheries. Chinook salmon PSC limits are managed under two separate programs; one that apportions 25,000 Chinook to the catcher vessels in the pollock trawl fishery (Amendment 93 to the GOA FMP), and another that apportions 7,500 Chinook to three sectors in the non-pollock trawl fisheries: the catcher/processor (3,600), Rockfish Program catcher vessel (1,200), and the non-Rockfish Program catcher vessel (2,700) sectors (Amendment 97 to the GOA FMP). Closures could occur under the existing Chinook salmon PSC limits.

The 2,700 Chinook salmon PSC limit on the non-pollock/non-rockfish catcher vessel sector has resulted in a closure in that fishery. Currently, there is no ability for managers to reapportion unused Chinook salmon PSC between the pollock or non-pollock fisheries. Fishery closures could be avoided, or limited, by providing NMFS the authority to use inseason management to reapportion unused Chinook salmon PSC between the GOA pollock and non-pollock fisheries would provide increased management flexibility without exceeding the overall 32,500 Chinook salmon PSC limit, increase the likelihood that groundfish resources are more fully harvested, and minimize the adverse socioeconomic impacts of the fishery closures on harvesters, processors, and communities.

Alternatives

The Council established these alternatives and options for analysis at its October 2015 meeting. If the Council selects Alternative 2, it can modify the main Alternative with one or a combination of the options.

Alternative 1. No action alternative (status quo)

Alternative 2. Allow NMFS to reapportion unused Chinook salmon PSC between the GOA pollock and non-pollock sectors based on criteria established for inseason reapportionments (examples in regulations at §679.20). Existing reapportionment procedures from the Rockfish Program catcher vessel to the non-Rockfish Program catcher vessel sector would not be modified.

Option 1. Only allow reapportionments between the GOA pollock and the non-Rockfish Program catcher vessel sectors (no reapportionment to Rockfish Program catcher vessels).

Option 2. Only allow reapportionments that do not exceed (**Suboptions:** 10%, 20%, or 30%) of any initial apportionment of a Chinook salmon PSC limit during a calendar year.

Option 3. Prohibit the reapportionment of Chinook salmon PSC from catcher vessel sectors to the non-pollock catcher/processor sector.

Option 4. To increase flexibility and options for NMFS Alaska region to manage the different catcher vessel non-pollock Chinook salmon PSC caps, revise the Rockfish Program Chinook salmon PSC reapportionment provision to read as follows:

“If, on October 1 of each year, the Regional Administrator determines that more than 150 Chinook salmon are available in the Rockfish Program catcher vessel sector Chinook salmon PSC limit, the Regional Administrator may reapportion Chinook salmon PSC available to the Rockfish Program catcher vessel sector except for 150 Chinook salmon to the non-Rockfish Program catcher vessel sector Chinook salmon PSC limit.”

Option 5. Only allow a sector to receive a reapportionment that does not exceed (Suboptions: 10% to 50%) of the sector’s initial Chinook salmon PSC limit during a calendar year.

Regulatory Impact Review

This proposed action will directly regulate the approximately 69 catcher vessels and 4 catcher/processors that use trawl gear to harvest groundfish from the Federal and parallel fisheries in the GOA. The purpose of the proposed action is to provide the NMFS Alaska Regional Administrator with the authority to reapportion Chinook salmon PSC limits that were established under Amendment 93 (Western and Central GOA inshore pollock fishery Chinook salmon PSC apportionments) and Amendment 97 (catcher vessel and catcher/processor Chinook salmon apportionments in the GOA non-pollock fisheries) to the GOA Groundfish Fishery Management Plan. This action would not change the overall Chinook salmon PSC limit of 32,500 Chinook salmon established for the Western and Central management areas of the GOA.

The authority to reapportion the existing Chinook salmon trawl PSC limits is expected to provide the Regional Administrator, via NMFS Inseason Management staff, greater flexibility to address trawl

groundfish closures that result from reaching a Chinook salmon PSC limit. Currently the Regional Administrator only has the authority to reapportion Chinook salmon PSC from the Rockfish Program catcher vessels to the non-pollock/non-Rockfish Program catcher vessel sector on October 1 or November 15 of each year. On May 3, 2015 a variety of factors resulted in the non-pollock/non-Rockfish Program CV sector reaching its Chinook salmon PSC limit. All groundfish fisheries for the non-pollock/non-Rockfish Program CV Sector were then closed for the remainder of 2015. The North Pacific Fishery Management Council requested that NOAA Fisheries implement an Emergency Rule to provide an additional 1,600 Chinook salmon PSC allowance because the early closure of the non-pollock/non-Rockfish Program CV sector's groundfish fisheries would have caused significant adverse economic effects on harvesters, processors and the community of Kodiak. The emergency rule was effective August 10, 2015 and remains in place until December 31, 2015, or until the new PSC limit of 1,600 Chinook salmon is reached by the Non-Rockfish Program CV Sector. To date, only four of those 1,600 Chinook salmon PSC have been used in that sector. Because the potential for closures in the non-pollock/non-Rockfish Program CV sector would not be unanticipated in the future, the use of an Emergency Rule to increase the amount of PSC available to that sector will not likely be an option.

The Emergency Rule estimated that the early trawl groundfish closure in the non-pollock/non-Rockfish Program CV sector would have resulted lost revenues of approximately \$4.6 million in ex-vessel value and \$11.3 million in first wholesale value. Harvesters and crew members that fish on trawl vessels operating the Central GOA, Kodiak shoreside processors, and the community of Kodiak would have been disproportionately affected by this closure because GOA groundfish harvested by the non-pollock/non-Rockfish Program CV Sector after May is almost exclusively delivered to shoreside processors operating in Kodiak.

It is anticipated that the fleet will learn from conditions that existed during the early 2015 fishing year that resulted in the Chinook salmon PSC limit being taken. These conditions include the magnitude of Chinook salmon use by the sector in 2015 as compared to the sector's average Chinook salmon use, the impact of the restructured observer program on estimated Chinook salmon catch, and the fleet's emphasis on implementing measures to avoid PSC to the extent practicable.

This action will not create conservation issues with regard to Chinook salmon. Both the Council's and NMFS's goal is to avoid exceeding Chinook salmon PSC use of 40,000 Chinook salmon in the GOA trawl groundfish fisheries, and to minimize bycatch of Chinook salmon to the extent practicable.

A summary of the alternatives, options, and the major impacts of those program elements are presented in Table ES-1. The information presented assumes that the magnitude of forgone revenue could again approach the amount estimated in the Emergency Rule, but that the members of the fleet may adjust their behavior to reduce the likelihood of closures of this magnitude on an annual basis. The ability to reapportion Chinook salmon between sectors will also be beneficial to stakeholders by providing the Regional Administrator with the flexibility to address reapportionment needs inseason. The ability to reapportion Chinook salmon PSC limits should not negatively impact other GOA trawl groundfish sectors because Chinook salmon will only be reapportioned when the Regional Administrator determines that a sector is projected not to need those fish. The Regional Administrator will also have the authority to reapportion Chinook salmon PSC back to the sector from which it was reapportioned later in the year.

Comparison of Alternatives for Decision-making

Table ES-1 Summary of alternatives and major impacts

Alternative/Option	Differences in Alternatives	Foreseeable Impacts
Alternative 1 (no action)	Chinook salmon may only be reapportioned from the Rockfish Program CV sector to the non-pollock/non-Rockfish Program sector; those reapportionments may only occur on October 1 and November 15.	The non-pollock/non-Rockfish Program CV sector will remain most vulnerable to early closures. It is not anticipated that NMFS will have the option of using an Emergency Rule to reopen the fishery by increasing its Chinook salmon limit.
Alternative 2	Increase NMFS's flexibility to reapportion Chinook salmon PSC to and from the pollock and non-pollock fisheries in the GOA. The Regional Administrator would determine the appropriate amount to be reapportioned, and the timing of any reapportionment.	<ul style="list-style-type: none"> • In most recent years, the Inshore pollock sector would have had sufficient Chinook salmon PSC to keep the non-pollock sector(s) open in the case of a closure similar to the one experienced in 2015, had reapportionments been permitted. • Unused Chinook salmon PSC is less likely to be available in the non-pollock CV and CP sectors. Data from recent years show that both sectors are likely to approach their limit during years of high Chinook salmon PSC. • Providing NMFS the authority to reapportion Chinook salmon PSC may increase the total number of Chinook salmon taken in the groundfish trawl fisheries relative to the status quo. Based on limited information, less than 20% of those fish originate from Alaska river systems. The impact on directed Alaska salmon fisheries is expected to be small. Greater impacts would be realized on the West Coast of the U.S. and Canada. These impacts, while important to the various user groups and the stocks, are expected to be small. • Allowing reapportionments of Chinook salmon PSC will allow GOA trawl sectors to better achieve OY, benefiting stakeholders who rely on GOA trawl-caught groundfish. • Will slightly increase the workload on NMFS Inseason management staff to calculate and implement reapportionments. In some years, it may be necessary to make several small reapportionments between sectors.
Alternative 2: Option 1	Would not allow Chinook salmon to be reapportioned from the pollock and non-pollock/non-Rockfish Program sectors to the Rockfish Program CV sector.	The Rockfish Program CVs operate under a LAPP that enables cooperatives to better manage their PSC usage through information sharing and a slower paced fishery. Based on the time series of data available for that program, RP CVs appear less likely to reach their PSC limit than do the GOA limited access trawl sectors.

Alternative/Option	Differences in Alternatives	Foreseeable Impacts
Alternative 2: Option 2	NMFS's reapportionment authority would be limited to no more than 10%, 20%, or 30% of any sector's initial apportionment.	<ul style="list-style-type: none"> • Will reduce NMFS's flexibility to reapportion Chinook salmon. This may be most constraining in sectors that have a relatively small annual apportionment. • The Council could consider whether it is appropriate to select different percentage limits for different fisheries. • PSC limits defined for an FMP area in the pollock fishery would lose that designation when reapportioned to the Non-Pollock Sectors.
Alternative 2: Option 3	NMFS's reapportionment authority would be limited by prohibiting the reapportionment of Chinook salmon PSC to the non-pollock catcher/processor sector.	In years when the non-pollock CP sector's Chinook salmon PSC limit of 3,600 fish is constraining, NMFS would not have the authority to reapportion additional Chinook salmon to that sector. This would most likely impact CPs that remain in the GOA and fish flatfish and rockfish after September.
Alternative 2: Option 4	October 1 rollover of Chinook salmon PSC from the Rockfish Program CV sector to the Non-Rockfish Program CV sector would be made at the discretion of the NMFS Regional Administrator, and not prescribed by regulation.	NMFS would be better able to respond to increased PSC demand in either the Rockfish Program CV sector or the non-pollock/non-Rockfish Program CV sector, and would be able to make decisions about reapportionment from the Rockfish Program CV sector based on the best available information about remaining effort, TAC, and anticipated PSC rates in that fishery. If PSC demand in the Rockfish Program CV sector is anticipated to be low, NMFS might be able to provide the non-pollock/non-Rockfish Program CV sector with a reapportionment prior to October 1.
Alternative 2: Option 5	Limit the size of the reapportionment that any eligible sector could receive to 10% - 50% of that sector's initial annual Chinook PSC limit.	No sector would fish under an effective PSC limit that greatly exceeds the limit that was set for it under Amendments 93 or 97. Non-pollock sectors would not view the GOA pollock fishery as a ready source of additional Chinook salmon PSC that could cover any PSC overage in years of low PSC levels in the pollock fishery.

Management and Enforcement Considerations

Subdividing PSC limits and apportioning smaller amounts to a small subset of participants can sometimes increase the likelihood of a fishery closure, all else equal. Moreover, while one sector's PSC limit is reached, another's might not be fully used. In some cases, NMFS inseason managers are able to provide economic benefits by reapportioning unused PSC to different user groups toward the end of each fishing year. However, existing Federal regulations do not include provisions for reallocating GOA Chinook salmon PSC among the CP and CV trawl gear sectors.

In the GOA, the trawl CP sector may use its Chinook salmon PSC limit for any of its target fisheries. The CP sector does have a seasonal limit prior to June 1; the Council recommended that seasonal limit in order to reserve at least some Chinook salmon PSC to support the CPs' Rockfish Program fisheries, through Amendment 97. The CP PSC limit for the period prior to June 1 is not a seasonal allocation, meaning PSC that is not used during that period is still available to the sector after June 1.

By contrast, the trawl CV sector has four separate Chinook salmon PSC limits: (1) Western GOA pollock directed fishery, (2) Central GOA pollock directed fishery, (3) Rockfish Program CV sector, and (4) non-pollock Non-Rockfish Program CV sector. The only reapportionment currently available for the trawl CV sector is from the Rockfish Program to the non-pollock Non-Rockfish Program CV sector. Allowing reapportionments to and from all trawl CV sectors and from the trawl CP sector to the trawl CV sector would provide management with more flexibility than is currently available, and may prevent a fishery closure or allow a closed fishery to reopen.

When reallocating groundfish TACs or reapportioning PSC limits, NMFS is careful not to negatively impact the sector from which a harvest opportunity was reapportioned. In some cases the decision is easy because there is little to no effort remaining in the sector that is the source of the reapportionment. In most cases NMFS reapportions groundfish and PSC limits near the end of the year, when effort is low. NMFS goes through several steps when deciding to reallocate a PSC limit from one sector to another; the process takes up to one week to complete:

1. NMFS determines that a sector's PSC limit has been reached or is projected to be reached;
2. If sufficient PSC is not available for reapportionment from another sector, close the sector;
3. If PSC limit is available from another sector, proceed with reapportionment (Step #4);
4. Review current effort (# of vessels, rate of PSC, amount of groundfish in the sector that reached its PSC limit ("limited sector");
5. Project future effort in the limited sector based on and on discussions with the fleet;
6. Review current effort (# of vessels, rate of PSC, amount of groundfish TAC remaining in the sector with projected excess PSC ("reapportion sector");
7. Project future effort in the reapportion sector based on both historical effort and discussions with the fleet;
8. Issue a reapportionment by writing and processing an Inseason Action.

NMFS inseason decision to reapportion GOA Chinook salmon PSC limits may be more difficult than the currently permitted PSC limit reapportionments for the following reasons:

1. Chinook PSC has been highly variable by fisheries and year, so it is difficult to project future PSC rates based on rates in current or prior year;
2. The GOA trawl CV sector participates in various fisheries with many different rates (nine non-pelagic trawl gear target fisheries and six pelagic trawl gear target fisheries);
3. Trawl CVs vary in their dependence upon different target fisheries, and may not uniformly favor reapportionments;
4. TAC levels may increase or decrease from year to year, which can change the amount of PSC that is necessary to harvest the available TAC;

5. The GOA limited access trawl fleet may be limited in its ability to organize to avoid or limit the use of Chinook salmon PSC after a reapportionment has occurred, thus limiting NMFS confidence in PSC rate projections.

NMFS considers its ability to reapportion harvest opportunities and PSC limits to be an important function. The agency works closely with each sector before issuing reapportionments to understand the need for PSC during the period remaining in the year. NMFS anticipates that most reapportionments would be of small amounts, and several sequential reapportionments may be required during a season.