Agenda
Sustainable Fisheries/Ecosystem Management Committee

Gulf of Mexico Fishery Management Council

Marriott Beachside Hotel
Flagler Ballroom
Key West, Florida

Monday, June 8th 2015
8:30 a.m. – 9:30 a.m.

I. Adoption of Agenda **(Tab E, No. 1)** – Riechers

II. Approval of Minutes **(Tab E, No. 2)** – Riechers

III. Action Guide and Next Steps (**Tab E, No. 3**) – Atran

IV. National Standard 1, 3, and 7 Proposed Revisions (**Tab E, No. 4a,b,c**)
   a. Review of Draft GMFMC comment **(Tab B, No. 4a)** - Atran
   b. Committee recommendations - Riechers

V. Review of Draft CCC NEPA White Paper (**Tab E, No. 5**) – Gregory

VI. Other Business - Riechers

Members:
Robin Riechers, Chair
Leann Bosarge, V. Chair
Roy Crabtree/Steve Branstetter
Harlon Pearce
John Sanchez
Greg Stunz
David Walker
Roy Williams

Staff: Steven Atran

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GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

SUSTAINABLE FISHERIES/ECOSYSTEM MANAGEMENT COMMITTEE

Golden Nugget Casino Hotel Biloxi, Mississippi

March 30, 2015

VOTING MEMBERS

Leann Bosarge.....Mississippi
Roy Crabtree.....NMFS, SERO, St. Petersburg, Florida
Harlon Pearce.....Louisiana
Lance Robinson (designee for Robin Riechers).....Texas
John Sanchez.....Florida
Greg Stunz.....Texas
David Walker.....Alabama
Roy Williams.....FLorida

NON-VOTING MEMBERS

Kevin Anson.....Alabama
Martha Bademan (designee for Nick Wiley).....Florida
Doug Boyd.....Texas
Jason Brand.....USCG
Pamela Dana.....Florida
Dale Diaz (designee for Jamie Miller).....Mississippi
Dave Donaldson.....GSMFC
Myron Fischer (designee for Randy Pausina).....Louisiana
John Greene.....Alabama
Campo Matens.....Louisiana
Corky Perret.....Mississippi

STAFF

Steven Atran.....Senior Fishery Biologist
Assane Diagne.....Economist
John Froeschke.....Fishery Biologist/Statistician
Doug Gregory.....Executive Director
Karen Hoak.....Administrative and Financial Assistant
Morgan Kilgour.....Fishery Biologist
Ava Lasseter.....Anthropologist
Mara Levy.....NOAA General Counsel
Cathy Readinger.....Administrative Officer
Ryan Rindone.....Fishery Biologist/SEDAR Liaison
Bernadine Roy.....Office Manager
Charlotte Schiaffo.....Research & Human Resource Librarian
Bryan Schoonard.....GIS Analyst

OTHER PARTICIPANTS

Pam Anderson.....Panama City, FL
Randy Boggs.....Orange Beach, AL
Steve Branstetter.....NMFS
J.P. Brooker.....Ocean Conservancy, St. Petersburg, FL
Michael Drexler.....Ocean Conservancy, St. Petersburg, FL
Cynthia Fenyk.....NOAA
Martin Fisher.....FL
Chuck Guilford.....FL
Ken Haddad.....American Sportfishing Association, Lloyd, FL
Chad Hanson.....Pew Environmental Trusts
Betty Harder.....FL
Ben Hartig.....SAFMC
Bill Kelly.....FKCFA, FL
Kristin McConnell.....EDF, Austin, TX
Jack McGovern.....NMFS
George Niles.....Summerland Key, FL
Daniel Padron.....Key West, FL
Will Patterson.....GMFMC SSC
Bonnie Ponwith.....SEFSC
Alan Risenhoover.....NOAA Fisheries
Jenny Thompson.....Oceana, Lafayette, LA
Wei Wu.....GMFMC Ecosystem SSC
Bob Zales.....Panama City, FL

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The Sustainable Fisheries/Ecosystem Management Committee of the Gulf of Mexico Fishery Management Council convened at the Golden Nugget Casino Hotel, Biloxi, Mississippi, Monday afternoon, March 30, 2015, and was called to order at 3:00 p.m. by Chairman Leann Bosarge.

ADOPTION OF AGENDA
APPROVAL MINUTES
ACTION GUIDE AND NEXT STEPS

CHAIRMAN LEANN BOSARGE: Let’s go ahead and call to order the Sustainable Fisheries/Ecosystem Management Committee. This committee doesn’t always meet and so let’s remind everybody of who is on the committee.

Robin is the Chair and in his absence, I will try my best to fill his shoes, as Vice Chair. We have Dr. Crabtree, Harlon, John Sanchez, Dr. Stunz, David Walker, and Roy Williams. I believe we have most of the committee here and so we will get started.

Adoption of the Agenda, there will be at least one change to the agenda. We are going to move up the Item Number VI on the agenda which deals with the charter/headboat decals. We will take that as our first item, so that Ryan can get off to Mobile. Are there any other changes to the agenda at this time? Seeing none, can I get a motion to adopt the agenda? It's moved by Roy.

DR. GREG STUNZ: Second.

CHAIRMAN BOSARGE: It's seconded by Dr. Stunz. Any opposition to that? The motion carries. Next is the Approval of Minutes and are there any changes or amendments to the minutes? It's moved to approve by Roy and is there a second? It's seconded and any opposition to the motion? Seeing none, the minutes are approved.

Next, we will move on to the Action Guide and Next Steps, which is Tab E, Number 3. As I said, the first thing that we're going to do is Action Item VI and Ryan is going to give us a review of the proposed action on the charter/headboat decals.

Just to kind of refresh your memory, this was something -- The utility of these decals was reviewed by the council at their June 2014 meeting. We wanted the Law Enforcement AP to take a look at it and they did so in October of 2014 and presented us with their results and so now we have this document in front of us that we're going to discuss a little more. I will turn it over to Ryan.

FINAL ACTION - CATEGORICAL EXCLUSION - CHARTER/HEADBOAT DECALS

MR. RYAN RINDONE: Thank you, Madam Chair. This is a categorical exclusion for NMFS, which, for lack of a better way of putting it forward, means it's like a do it or don't sort of thing. What this is looking at is whether we're going to continue to require the use of the charter boat stickers or we're not.

Currently, for reef fish and coastal migratory pelagics, charter vessels are required to display a vessel decal and a new decal is issued any time that permit changes vessels and so the problem is that vessels can have multiple stickers or the sticker could need to be moved to another vessel and so you have the same permit on two different vessels, because the sticker is very hard to remove.

From a law enforcement standpoint, law enforcement doesn't get a

lot of use out of using the stickers as a way of identifying the charter vessels and so what NMFS would be looking for from the council is the council's affirmation that yes, you do want to see the regulations changed such that the decal is no longer required to be displayed by charter boats and headboats.

MR. JOHN SANCHEZ: I am curious if I could ask I guess Johnny and Pam maybe the same thing. What is your take on the usefulness, the purposefulness, from an industry perspective of these decals on a vessel?

MR. JOHNNY GREENE: When we first were asked about it, I thought, well, that's probably a pretty good idea, because they are kind of small and they tend to peel off a little bit, but it's one of those things, but after talking to Dr. Dana over the last couple of weeks, I think that I have probably changed my mind about this.

It's becoming a bit contentious in my part of the Gulf when you have vessels who remove permits to fish in a particular area and then put them back on to fish in another one and I think what you're starting to see is some of our fishery beginning to police itself. In other words, does he have a permit and is he fishing or is he living up to the code that he should be?

I would almost say that if you can't see the sticker, make it bigger and that's something that I honestly hadn't thought about until Dr. Dana and I had spoke about it and the more conversation she and I had about it, I think that I would be in favor of leaving it as is. I think if you've got as many things as there are going on right now, I think that this is just way to kind of keep it in there.

Now, multiple stickers per year, if there's a cost associated with it, then perhaps individuals should be responsible for that, but I have really -- I have thought a lot about this and I don't know that I support getting rid of it at this time.

DR. ROY CRABTREE: This is the decal that we're talking about and you can see it's very small. The print on it -- I mean you would have to literally read this be within a couple of feet of it. I will pass it around.

Enforcement is using whether you have the permit onboard the vessel or not and they are not using the decal and it doesn't have anything to do with people transferring their permit on or off. They can transfer the permit and they might leave the decal on the boat.

It's just a burdensome expense that we're going through on everyone and I don't think enforcement is getting any value out of it and so I really don't see any use in continuing it, but that's what we're talking about and you can reach your own conclusions about how useful that would be to at-sea enforcement.

MR. KEVIN ANSON: To that point, Dr. Crabtree, that sticker -- The color or nothing changes, but it's the same sticker whether it was issued a year ago and next year it will be the same color and same size and all that, correct?

DR. CRABTREE: I guess the colors change periodically from year to year. One of the problems they have is some vessels have a reef fish and a coastal migratory pelagic and so if they transfer one permit off the vessel, they have still got a sticker on there and it's just a lot of shuffling around of stickers and things, but I guess the color can vary from year to year.

DR. PAMELA DANA: I think we were remiss as a council when we moved forward for a final action on this item in not taking it fully to the public. I myself went to almost every charter and headboat operator in my area to tell them that this was going to a final action and what was their opinion on it and they had not -- They weren't aware of it and they are absolutely opposed to having the decals removed because -- For a number of reasons.

They feel like we have the federally-permitted charter guys that are different than the state guides and they don't have to have the permits and so it's a way to differentiate and, as Johnny said, in federal waters, it's also a way that the charter boats can self-police as to who is supposed to be out there and who isn't supposed to be out there at certain times.

With the various states going different lengths of time to the federal, it's important that we know who is perhaps crossing the federal lines and if they don't have their permits or the decals on the side, then -- Again, it's a way to self-police.

Now, I would like to hear from Jason Brand, being from law enforcement, in a moment, but, again, our guys went so far as to say if the law enforcement can't see the decal because it's too small, make it bigger. Make it twelve-inches-by-twelve-inches, but it's really important to them.

We also have decals that we have to showcase from the State of

Florida and if we have restricted species for commercial, we have to have those decals and so I would just urge the committee to not move on final action.

CHAIRMAN BOSARGE: Jason, do you want to reply to that?

LCDR JASON BRAND: To Dr. Dana's point, I was okay with removing it when we brought it up, but if the industry wants to keep it on, we would be okay with that, too. I don't think it makes too much of a difference from our aspect. Once we get onboard, we're going to check the paperwork to find out what they are, but it is useful to have self-policing to us when we have limited resources out there, if they can report something to us if they see a vessel heading offshore with a permit and they report it. That would be helpful.

MR. CORKY PERRET: I'm not on the committee, but if ain't broke, why are we trying to fix it? Back to the purpose and need. It's proposed to eliminate the requirement for the decal and the need is to alleviate unnecessary permit compliance burdens on fishermen. Is it indeed a compliance burden? From what I am hearing from the fishermen, I don't think it's that much of a compliance burden. Dr. Dana's suggestion is right on target. If the decal is too small, make it larger, as we do in other fisheries.

Burden on law enforcement, I don't see how in the world it's a burden on law enforcement except unless they are old like me and their glasses aren't strong enough and they can't see the decal and make it larger.

Here I suspect Dr. Crabtree is coming in. Administrative burdens and cost on the permit-issuing agency and is it indeed that much of a cost and a burden to issue a decal? I mean, Steve, I guess you're the guy that --

DR. CRABTREE: It is a cost. We have to buy these and we have to print them. It is a cost and we have to print the permits and we have to have a printer for them and we have to order them and print these things and it's a cost for something that doesn't appear to have much value.

MR. PERRET: I am hearing that the people in this particular fishery want to keep it and they feel that it's good and I think the best suggestion I've heard is from Dr. Dana to make the decal larger where enforcement can see it.

DR. CRABTREE: It's not as simple as just saying make it larger.

Then we have to buy a whole new printer and get set up for larger permits and all that stuff costs money. How big do you want it?

MR. DAVID WALKER: I would like to see it larger. I think most printers print eight-and-a-half-by-eleven and that's not exactly twelve-by-twelve, but I think it's a good idea to keep it on and let them enforce it. I mean I was wondering -- Roy, did you say that if they take the permit off that they could leave the decal on? Was that correct?

DR. CRABTREE: Can you repeat the question?

MR. WALKER: Did you not say if they removed the permit, the federal permit, that they could still leave the decal on?

DR. CRABTREE: They probably shouldn't, but they might and I don't think anybody is going to get a ticket because they have left the decal on, but if they switch permits, then they need to get another -- See, the decal like this is Gulf reef fish permit and coastal migratory pelagic.

If a vessel traded one of those permits off, then they should, in theory, get another decal that just says "Gulf reef fish" on it. Now, you would have to be about eight inches from the permit to be able to tell that, but, in theory, you would need to trade decals off.

MR. WALKER: It just seems, to me, with the colors and a little larger that you ought to be able to see it. The color changes every year and just change the color and the size.

DR. STEVE BRANSTETTER: The color thing, at least the way we do it right now, the color changes on January 1 and your permit changes on your birthday and so at any given time, there could be three valid permit colors on the water and so just having a color out there doesn't help.

If we do this, if we keep this, we are going to go to two permits and so we lose this you trade one permit and now you've got an invalid decal onboard. We're going to go to two decals, which doubles the cost and doubles the -- That's a whole new printer system and so that's just FYI.

DR. DANA: Once again, the industry that this affects were by and large unaware that this action was going into the final phase and they are opposed to this, to being exempted or to not have those decals. They want the decals on there.

When this council chose not to support 30B, they set apart the federal charter guys or kept the federal charter guys as separate from all other fishermen and so you've got those who have to have the permits and when you say it doesn't add value, it does add value to the federal charter for-hire that has to have that permit in hand.

That decal has value to them and if that one -- As you said, Dr. Crabtree, if the one decal oversees both the reef permit and the pelagics, then have two decals that addresses that issue. If an angler or if a charter guy gets rid of his permit, then he should have to take that decal off, because if Commander Brand boards that vessel and they have the decal on the side, but yet they don't have the paperwork, that's a problem.

MR. WALKER: It seems like it would be some way, even if it's just black and white and had different colored stickers that went on it. Put it on the top of the boat, big letters on the top, that identify the charter fishing vessel as federally permitted.

CHAIRMAN BOSARGE: I have a technical question. There seems to be a couple different avenues. We thought this was straightforward and we thought we were getting rid of some regulations and everybody was excited about that, but it turns out, as usual, that change is the only constant and we have some other issues to look at here.

Now, in this document that we have before us, there is not an action item where we choose a preferred and it's simply 2.4, management measures contained in this proposed action, which is to eliminate the requirement for vessels to display this decal.

If it turns out that the will of this committee is not to move forward with this, we don't have a status quo option and so where do we go from there if that was the will?

DR. CRABTREE: Look, this is not a big deal. If you're not comfortable getting rid of the decal, don't get rid of it and let's move on.

CHAIRMAN BOSARGE: Having said that, are there any motions for this action item on the agenda?

MR. SANCHEZ: Do we need one to just --

CHAIRMAN BOSARGE: If there are no motions, we will move on the

next agenda item.

MR. SANCHEZ: If you need one, then I will gladly make a motion that we reject 2.4 and not eliminate the requirement for vessels issued a Gulf for-hire permit to display the decal for that fishery and you can have free liberty to word that any way you want if I get a second.

CHAIRMAN BOSARGE: We will wait until we get the motion on the board. We have a motion and do we have a second? It's seconded by David. Mara, do you have some feedback?

MS. MARA LEVY: I am just wondering if it would just be easier -- Because 2.4 refers to something in the document that I assume is saying what we're going to do but we're not going to do. Just to say to stop work on the framework action to eliminate the permit decals for for-hire vessels and just don't do it.

CHAIRMAN BOSARGE: John, are you okay with that amendment?

MR. SANCHEZ: That's my motion.

CHAIRMAN BOSARGE: When we get it up there, David, let us know if you're okay with that as the seconder.

MR. WALKER: I am okay.

CHAIRMAN BOSARGE: We have a motion on the board and is there any further discussion on the motion? **Seeing none, all in favor of the motion say aye; all opposed same sign. The motion carries with one in opposition.**

EXECUTIVE DIRECTOR DOUGLAS GREGORY: May I respectfully suggest we take a break at this point?

CHAIRMAN BOSARGE: Sure.

EXECUTIVE DIRECTOR GREGORY: Thank you and I also wanted to make an announcement. We are having the Chairman's social tonight in Room 665 at about 5:30.

(Whereupon, a brief recess was taken.)

CHAIRMAN BOSARGE: We just finished with Item Number VI on the agenda, if you could make your way back to the table. We are going to move on to Item Number IV on the agenda, the NOAA Climate Change Strategy. I think we're going to let Doug Gregory give us a quick presentation to refresh our memory on

the draft climate change strategy before we go into Dr. Patterson's presentation.

NOAA CLIMATE CHANGE STRATEGY

EXECUTIVE DIRECTOR GREGORY: This presentation was given to the council in January. I think we were the first council to actually get it and we didn't have the strategy document at the time. That came out about a week later. That has been distributed to the council and then the climate presentation was also given to our SSC for their last meeting.

What I want to do is I've got five slides from it, just as an overview. There is basically seven major objectives for this climate science strategy. One is to identify appropriate climate-informed reference points. Reference points are what we manage our fisheries by and so climate information could change the way we look at reference points and the uncertainty about those points and the precautionary nature we might treat these reference points and so it's very important.

Objective 2 is to identify robust management strategies. Again, these are management strategies that might be robust or resilient to changes in the climate or in the environment.

Objective 3 is to implement adaptive decision processes that respond to changing climate conditions. Adaptive management is a mechanism for dealing with issues. I think the council's system inherently incorporates some of those adaptive processes. If something is not work it, you change it and that's basically what it is, but in a more formal manner.

Objective 4 is to identify likely future states to plan for. This is really going to be a challenge for the Science Team and then the next layer -- I am not going to yet, but I will show you the hierarchy of all this.

Objective 5 is to identify mechanisms of climate effects to improve projections and responses. If we can identify what mechanism the climate change is having or using to affect population trends or ecosystem trends, then we can project and predict what might be happening with different attributes.

Objective 6 is to track trends and provide early warnings of changes and so along the same lines as Objective 5. Objective 7 is to strengthen the science infrastructure required.

These are the same objectives, but in a pyramid shape that has

Objective 1 at the top and Objective 7 at the bottom and at first glance, it's a little non-intuitive, because you can't do one without the others beneath it. Objective 7 really is the thing that is going to make this strategy work.

We have got to have the science infrastructure and we've got to have the science to produce and deliver the information that we can act on and that science will indicate what status and trends are, provide us the information on change, which allows us to do the projections and manage the change itself, that results in us avoiding or changing and dealing with reference points.

In the draft letter later, you will see that I have emphasized, as a recommendation for the council, that it's really Number 7 and 6 that we think NMFS should be working on well before they start providing guidance or guidelines for us to modify our reference points or develop multiple or alternative management strategies, because without the science and without the data, it's going to be largely speculation on what to do with the reference points.

In their document, it's urged that reference points and strategies are one of the short-term things to do. For instance, recommended immediate actions from the strategy are to conduct living marine resource climate vulnerability analyses in each region, maintain and develop ecosystem status reports to track and change and provide early warnings. We have incorporated a comment from the SSC on that and Will Patterson will give the SSC overview following this presentation.

Number 3 is to increase the capacity to conduct climate-informed management strategy evaluations. This is a relatively new concept for me, management strategy evaluations. I know we are trying to get one done through the Center on red grouper and that's to look at alternative management approaches to red grouper and see how sensitive or how vulnerable the population is to those different strategies.

The recommended short-term actions are to complete region-level action plans. This would be something done between the Science Center and the Regional Offices with input from the council and other partners.

To strengthen the science-related science capacity nationwide. Again, this is very important. It's the basis for everything else that follows. To increase resources for process-oriented research and to establish climate ready terms of reference for ESA, Magnuson Fisheries Management Act, Marine Mammal Protection

Act, stock assessments, and biological opinions.

This is the one that concerns me, the establishing a climate ready terms of reference, because I think we're years away from understanding what they might be for our specific stocks. That concludes my overview of the strategy.

The full report is online at this website and I don't think it's in our briefing book. The full report is in the briefing book, but I don't think the full slide presentation that Roger Griffis gave us in January is in the briefing book, but I can make it available to you. With that, if there is any specific questions about what I did, we will address those and then we'll move into the SSC report.

CHAIRMAN BOSARGE: Any questions for Doug?

MR. PERRET: Don't laugh, but let's assume whatever the months from now and you're going to go through the intermediate and short term and all that stuff and we're going to see what the issues are, but what can we do or what can you all do or what can the agency do about any changes in the climate? How can we make a difference there? We may know all this stuff, but we can't impact the changes that are going to happen.

EXECUTIVE DIRECTOR GREGORY: Right and there is nothing in this strategy that talks about trying to mitigate climate changes. All this is is a reactive adaptation document to what changes are already occurring and so this is only dealing with adaptation of climate changes relative to marine fisheries or living marine resources. It has nothing to do with mitigation or trying to prevent climate change from getting worse.

MR. PERRET: I guess I keep looking at Bob Zales and he is looking back at me. We've got biological uncertainties and we've got management uncertainties and we've got so darned many uncertainties we worry about in managing a fish today and now we've got the climate coming at us.

You young guys are going to have a lot more uncertainties to deal with and I just want to wish you luck, but we've got to be realistic about this stuff. What can we do, things we can work on to improve, and so on and so forth? I am not saying stick your head in the sand, but I think we've got a hell of a lot more to worry about than what's going to happen naturally with any climate variations, but that's just my two-cents worth.

CHAIRMAN BOSARGE: With that, Dr. Patterson, would you like to

give us your presentation?

EXECUTIVE DIRECTOR GREGORY: Save the world.

SSC COMMENTS

DR. WILL PATTERSON: Well, let's not get carried away. The presentation the council had seen earlier was presented by Dr. Griffis at the last SSC meeting and the question that Corky just asked actually came up and I would like to touch on that real quickly while we're loading the talk.

One of the questions that was asked was about mitigation of effects and not so much monitoring and trying to examine shifts in biological productivity related to those impacts and so one of the questions was there anything in the draft policy that addressed switching to alternative fuels or other green technologies that might make fishing vessels more efficient and Dr. Griffis indicated that was not part of the -- That was not included in the current draft of the policy, but he made a note of it and said perhaps in the future they could touch upon that.

Otherwise, mitigation wasn't really part of the policy or it was not part of the policy or the presentation. Instead, this is a nationally-led approach to look at the potential impacts of climate change on a regional basis.

Basically, in the context of this, Dr. Griffis outlined for us the whys, why is this topical and obviously the growing demands for climate-related information in the face of climate change and its various iterations.

The goal of the policy is to examine or to increase the productivity or production, delivery, and use of climate-related information, to support agency and stakeholder decisions, and obviously in the context of the Gulf Council, that would be in this region. Then, lastly, to ask the councils, and indirectly the SSCs, to provide input on the draft strategy and future regional action plans. That's the reason for the presentation to the council and then the SSC, to examine the regional information and to put together these regional action plans.

Obviously climate change -- There are several different drivers, whether it be temperature, obviously temperature impacts, changes in hydrologic cycles in different regions. They will be affected disproportionately among regions. Then, also, this is being driven by atmospheric greenhouse gases, including CO2, but an increase in CO2 concentration will also drive or is driving

ocean acidification.

As Corky pointed out, these add a lot of uncertainties to the system, some of which with the current technology are basically intractable. However, we have physical and chemical impacts, biological impacts, and social and economic impacts.

Basically, one of the take-homes from this presentation and having this policy, this science strategy in place, is to really start to monitor these different impacts and examine which ones we're seeing in a given region. Here, obviously we're concerned about the Gulf and maybe the South Atlantic and their connectivity.

Obviously Dr. Ponwith's group at the Center is concerned not only with these two regions, but also the Caribbean and HMS and what impacts may be occurring there and so, again, back to Corky's comment and question, it is not so much about mitigation, but just examining the changes that are being observed.

One of the big uncertainties then is how much of a change in production, for example, is actually being driven by climate? One of the approaches and what's being laid out is to produce these regional plans and to have them updated annually or biannually.

That was part of the discussion in this region and really how this is being handled here currently is through the Integrated Ecosystem Assessment Program that's being run through the Southeast Fisheries Science Center and so Shannon Calay, who is the Chief of the Sustainable Fisheries Division for the Gulf and Caribbean, is a member obviously of our SSC and so Dr. Calay basically reiterated, because we had had some presentations with respect to this Integrated Ecosystem Assessment Team, and she indicated that there is basically one person that has an FTE that is devoted to this team and it's only 35 percent of his time, if I remember that number correctly.

Then there are some other folks who are postdoctoral scientists and other members of the team and so one of the concerns we had, before we heard those numbers, was in this region -- I mean we've already had examples this morning or this afternoon, whether it be running annual updates of mackerel ABC/ACL information or doing an update of the red snapper assessment in 2016, given the other items already on the SEDAR schedule, that when you decide to put resources in one place, as Dr. Ponwith pointed out, there are opportunity costs.

You are not going to be able to do something else and so one of the big questions that the SSC had with respect to this policy, this new strategy, was how many new resources would be devoted, on a regional basis, to examining these questions, because clearly they are going to be important in order to at least understand what's happening, even if corrective actions can't be taken.

One thing Dr. Griffis did point out is that in the 2017 and 2018 draft budget information already available is that this is the highest priority or among the highest priorities for the agency, is to address climate change and for as far as fisheries, that there are resources that will be asked for to begin, on a region-by-region basis, to address this and address data needs.

Again, in the Southeast, we have a couple of documents that I have posted here, a recent paper in the *Journal of Global Change*, that Dr. Mandy Karnauskas is the lead author on, but several members of the Southeast Fisheries Science Center scientific team.

There is progress being made in the region to examine these impacts and to try to track and model what information is -- To provide estimates based on currently available information as well as to generate ideas about what information will be needed to go forward, but at the beginning of this process, the biggest concern from the SSC was if you put this in place but don't devote resources to actually make it functional, then it's not going to be meaningful to our region and basically that was the bulk of our discussion.

Yes, of course this is important and it's a substantial topic and it needs to be explored and it's being explored, but one of the biggest things that we face here is just a lack of resources to examine this, given other operational tasks that are already perhaps stressed to their limit.

CHAIRMAN BOSARGE: Thank you, Dr. Patterson. Any questions? All right. Then we're going to move back to Doug Gregory and he is going to go over his letter on the Draft Climate Change Policy. If you are following along, this is Tab E, Number 7(b), Draft Climate Change Comment Letter.

DRAFT CLIMATE CHANGE COMMENT LETTER

EXECUTIVE DIRECTOR GREGORY: Thank you. Yes, we incorporated the SSC's concerns in this and I will read this quickly, just to

get it on the record.

The Gulf of Mexico Fishery Management Council reviewed the NOAA Fisheries Draft Climate Science Strategy on three occasions. The council was briefed by Roger Griffis at the January council and March SSC meetings and the council's Sustainable Fisheries/Ecosystem Management Committee reviewed the strategy in more detail during the March council meeting.

The council applauds NOAA Fisheries for producing such a comprehensive strategy for building a framework to address potential climate impacts on our living marine resources and is eager to participate in the development of the southeast regional implementation plan.

The challenges posed in the Climate Science Strategy are great and best exemplified by difficulties encountered by the scientific community to develop ecosystem models to inform management, but, as the proposed strategy clearly explains, the need to address climate impacts is imperative if fishery managers are to accurately ascribe population changes to underlying effects and make robust and appropriate management decisions.

While the council understands the need to use the best available science, the science never seems as well developed as needed. The council's main concern with the proposed strategy is that NOAA Fisheries not rush too quickly into establishing guidelines to develop climate-smart management reference points, which is Objective 1, and management strategies, Objective 2, before there is an adequate science infrastructure in place to properly inform such changes. To me, that's the main point.

The Climate Science Strategy identifies the need for partners and clearly the councils are one of those partners. Surprisingly, however, the Gulf Council saw no mention in the strategy of partnering with National Sea Grant to assist with either the educational components or with the various offices within NOS.

The council encourages that the full capabilities of the NOAA family, including the Southeast Fisheries Science Center's Integrated Ecosystem Assessment Group that is developing processes for ecosystem assessments, be coordinated to assist in the monumental effort that will be required to address future management challenges in a proactive manner. The council also urges NOAA Fisheries to work with the various Landscape Conservation Cooperatives that are working on similar issues.

That is from the SSC.

The draft Climate Change Strategy suggests that ecosystem status reports be generated annually or biennially. The council's SSC feels that this is too infrequent and has recommended reporting as frequently as quarterly, in order to detect ecosystem changes at an early stage.

There was little mention in the draft strategy of funding and staffing needs. There needs to be a high priority to providing funding to hire staff and conduct the necessary data collection and research activities to support the strategy. Increasing capacities of the Science Centers to conduct climate-informed management strategy evaluations would likely require that each Science Center hire an MSE specialist. Again, this is coming from the SSC directly.

Diverting existing staff and funding from other critical activities such as stock assessments will only hurt the overall mission of National Marine Fisheries Service.

There are some areas where the council believes additional clarification could be useful. In particular, would a specific adaptive process be defined in a set of guidelines or is the existing council process considered adaptive? A clearly defined adaptive approach would be useful. Also, the term "harvest control rule" should be clearly defined, especially if the implication is something other than a refinement of our existing ABC Control Rule.

The Gulf Council also would like to see an emphasis on maintaining current monitoring facilities that have long time series associated with them. Thank you for allowing the Gulf Council to provide input into the Draft Climate Science Strategy. Sincerely, Kevin Anson. That is a draft and I would welcome any editorial changes or suggestions.

CHAIRMAN BOSARGE: Thank you, Doug. This Climate Strategy Policy is still in its early stages of development and I think you and Kevin have done an excellent job of capturing some of the concerns that that SSC and we as a council may have on making sure that we implement this in the most efficient manner and get what we need from this to be proactive about it. Did the committee have any feedback on the letter? Was there anything that you all would like to see added or amended or do you like what's presented before us? Hearing nothing, I assume we like the letter.

EXECUTIVE DIRECTOR GREGORY: Okay. We will proof it and wordsmith it a bit more. There's a couple of hiccups in there.

CHAIRMAN BOSARGE: Would you like a motion to give you editorial license that we approve the letter to forward it on and give you editorial license?

EXECUTIVE DIRECTOR GREGORY: Yes, please.

CHAIRMAN BOSARGE: Would anybody on the committee like to make that motion?

MR. HARLON PEARCE: So moved.

CHAIRMAN BOSARGE: Harlon has made the motion. Do we have a second for that? It's seconded by Lance. The motion is on the board. The committee gives staff editorial license and approves the letter, and we may want to say "draft letter", on Climate Change Strategy. The committee gives staff editorial license and approves the draft letter on Climate Change Strategy for submission. We have a motion on the board and is there any discussion on the motion? **Seeing none, any opposition to the motion? The motion carries.**

Next on our agenda, we are going to move on to National Standard 1, 3, and 7 Proposed Revisions and I believe the first thing we're going to do under this agenda item is the review of these revisions, which is Tab E, Number 4. Is Alan Risenhoover with us? Would you like to come up, sir?

NATIONAL STANDARD 1, 3, AND 7 PROPOSED REVISIONS
REVIEW OF REVISIONS

MR. ALAN RISENHOOVER: Thanks and if we can have that presentation.

EXECUTIVE DIRECTOR GREGORY: Alan, we greatly appreciate you taking the time to come down here. I know you didn't come just because of the weather.

MR. RISENHOOVER: Okay, but it was close. I do appreciate the opportunity to get out of D.C., as they say, to do a little bit with the council. Thank you, Madam Chair. I have a full presentation that we included in the briefing book of thirty-some slides. In the interests of time, we have cut that down to a dozen or so that I am still going to run through fairly quickly.

As you know, we published a proposed rule in January and the one important point I want to leave with you, if nothing else, is that we would like your comments or those of your stakeholders and constituents by June 30.

I am going to run through this very quickly. This is just a subset of the slides that are in the briefing book and so the full presentation will be there if you want to review it. Additionally, I think I have Dr. Wes Patrick on the phone and so if the end, if there are easy questions, I will answer them and if they are tough, he will answer them.

Let's go to the next slide for a little bit of background here. As you know, National Standard 1 deals with optimum yield and preventing overfishing and so that's our goal. In 2009, we issued regulations following the reauthorization of the Magnuson Act at the time and since that time, the agency and the councils, in partnership, have worked really hard and we have implemented the annual catch limit provisions of that Act.

Thinking back to that and over the last few years of implementing that, we thought it may be time to look at those measures and see if there needs to be a revision. We have learned a lot over those years and I think revising and reviewing and updating is appropriate and we want to hear from you all on that.

Again, on the need and basis, the 2009 regulations seem to have been very successful. At present, there are fewer stocks subject to overfishing and fewer overfished stocks around the country than there ever has been before, since we started reporting that data in about 2000. Those guidelines have worked and, as I mentioned, we think it's time to look at reviewing these.

We have had a number of comments from constituents and councils in a variety of forums and some of them are listed here, including the Managing our Nation's Fisheries of a couple of years ago, the Rec Fishing Summit that occurred just last year, and a variety of others.

Before I get started on some of the individual provisions and, again, I am going to go through them very quickly, I want to start by telling what this proposed rule does not do. What it does not do is establish any new requirements or require the councils to go back and revise their FMPs or to take new actions.

What we are simply trying to is highlight some additional flexibilities and tools that the councils can use in moving forward in the future and so I will try and point that out as we go forward. It also does not alleviate any of the needs of the Magnuson Act and so we can't change the statute and so annual catch limits that prevent overfishing are still required.

It may address some of the topics that Congress is talking about in reauthorization, but, again, all of these provisions stay within the sideboard of the Act. Then, finally, it doesn't alleviate any of the National Standard 2 best scientific information requirements. You still need to use those as you go forward.

Today, I am going to talk about seven major elements and I am going to talk about them quickly, in the interests of time, but if you look at these in general, we have tried to have a theme of, again, increasing flexibility, providing more tools, trying to stabilize fisheries. What I mean by stabilize is that the quotas don't jump up and down as much as perhaps they did in the past.

Most of the things I will talk about today are being used by councils around the country right now and hopefully this proposed rule will highlight those as we go through.

The first area is increasing flexibility in rebuilding programs and so generally, as you know, the NS-1 Guidelines and the Act require that if a stock can be rebuilt within ten years, that would be the maximum rebuilding period. If it takes more than ten years, we have offered, in the past, the use of Tmin, which is the minimum time to rebuild a stock absent fishing, plus one mean generation time.

What we have proposed in this rule are two new provisions that would allow the councils, depending on the information available on the stock that they're looking at, another way to do the rebuilding period.

The first one is simply two times Tmin and so two times the time period it would take the stock to rebuild absent any fishing. It's very simple and straightforward. Most people have a definition of Tmin for their stocks and this has been used around the world, particularly in New Zealand.

A second way, and it's reflected in our current guidelines, is to rebuild at 75 percent of the maximum fishing mortality threshold and so depending on the information that's available

to the council, they would have three ways to set a rebuilding period for stocks when the rebuilding time is greater than ten years.

Again, I just want to emphasize this doesn't mean that we're asking the councils to go back and rebuild all of their rebuilding programs. We see this as a prospective thing of rebuilding programs in the future. Whereas you're revising rebuilding programs, perhaps you would look at this other information to see if that fits your stocks better.

The one question we always get is what's the difference? Does it add time or does it subtract time? We have taken some idealized stocks and ran the three calculations here and you will see that time is on the Y-axis there and the productivity of the stock is along the horizontal axis.

Something that would rebuild quickly, with high productivity, is on the right side of the chart and on the left side would be slower rebuilding stocks and you can see that there are some differences, but, in general, this isn't going to change rebuilding time periods a lot. However, it may give you more certainty in setting those time periods, because it's based on the biology of the stock or the information that you may have on it.

The next one down is adequate progress in determining whether a rebuilding program is making adequate progress and so we define the negative of that, which is the term in the Act of the Secretary is to determine every two years whether inadequate progress is being made and that would be if catch is continually exceeding your F rebuild, that is your fishing mortality rate for rebuilding, your associated ACL, or that your AMs are not working to control that catch and keep that stock not subject to overfishing and that your rebuilding expectations may change due to new information.

Perhaps some of the climate information or you get a new stock assessment that says your rebuilding program perhaps is not based on the best available information and you would look at that.

The third item here is interim measures, which is related a little bit to this rebuilding progress. In between discovering that a fishery needs a rebuilding program, there is two years and you need to end overfishing within that. What this provision would do is allow, during that period, in very limited circumstances, and we have only done this twice that I know of,

one in New England and I believe the other one was the Mid-Atlantic tilefish, is to reduce, but necessarily end, overfishing during that first year under three strict conditions.

Stock status must have significantly changed and so, for example, a severe drop in the stock from the last stock assessment that was unpredicted. Ending overfishing immediately would have severe economic or social impacts and during this interim period, while these interim measures are in place, the biomass cannot decrease and so perhaps you wouldn't have to go as far during that first year, but another year you would have to do that.

Another one would be extending the timeline for rebuilding programs. We had a National Research Council report that showed perhaps upwards of 30 percent of stocks that were in rebuilding programs were not overfished when they went into those rebuilding programs. The status now is that we would just continue rebuilding those, which is fine and it would rebuild those stocks to a higher level.

Instead, the report noted that what we want to do is, more than looking at the biomass at any point during that rebuilding program, looking at your F rebuild. Are you controlling fishing mortality below your rebuilding threshold and, if so, don't worry so much about the biomass. Again, the biomass may vary from year to year depending on environmental or other conditions and so a little help on rebuilding timelines.

The final one would be on discontinuing a rebuilding program and what you do if you get to the end of your rebuilding program. Again, the proposed rule notes that a rebuilding plan may be discontinued if the Secretary determines that the stock was not overfished and currently not overfished. Again, these have been done around the country, but we're just trying to clarify that in this proposed rule.

The second major element of the proposed rule is how do we better manage data-limited stocks? I think in the Gulf and elsewhere that you have a series of stocks where you don't have a lot of data and are taking different kinds of actions to deal with that and so what we've tried to do in the proposed rule is recognize those, that there are other ways of setting overfishing and overfished thresholds, perhaps when you can't determine what MSY is.

Again, the councils would need to be very clear on why they are

using those that they are and what those status determinations would look like for those when you can't determine what the maximum sustainable yield is. I believe here in the Gulf that you use some construct of the Restrepo sustainable average catch and so obviously that fits within it, if that's not exactly what you've named it here.

A third major element of the rule is looking at what stocks require conservation and management. This has been an issue in some locations and so we thought that clarifying what stocks are in need of conservation and management and inclusion in the fishery management plan is important.

We did move parts of National Standard 3 and National Standard 7 forward. They included information on how councils should determine whether a stock is in need of conservation and management and we felt like it would be good if all of that was in one place instead of being split between National Standard 1, 3, and 7.

There is no real substantive changes to Standards 3 and 7 other than to move those forward and so we have proposed in the rule that we clarify that stocks that are definitely in need of conservation and management are those that meet two criteria. It's predominantly caught in federal waters and the stock is overfished, undergoing overfishing, or likely to become so.

Additionally, those are not the only criteria for a council to include a stock in their fishery management plan. We have a rather extensive list, again pulling from National Standards 3 and 7, those guidelines, of ten other factors that the councils can use to determine whether their stocks are in need of conservation and management. Again, there is nothing that the council needs to do to revise what stocks it currently has under conservation and management.

In sum, we would end up with three types or classes of stocks. Stocks that would require conservation and management that would be in your plans, stocks not in need of conservation and management, but may be in your plans. These would be things like ecosystem component species you may have now or other stocks that you are monitoring or trying to manage bycatch of and then other managed stocks, which we would envision as stocks that may in other fishery management plans, just to make it clear those three classes of stocks.

Fourth, we tried to include some ecosystem approaches in the national guidelines, since many of the councils are trying to

move toward ecosystem management. We thought it would be good to outline some of the ways that they could do that.

The first is that they could use an aggregate maximum sustainable yield. Instead of doing an MSY on an individual stock basis, they could do it on a fishery or an ecosystem basis to manage their stocks.

The proposed rule also clarifies that the annualized expression of OY is equivalent to the annual catch limit. That was something we left out of the 2009 guidelines and folks were concerned or wondering how does OY relate to ACL and so if you look at the proposed rule, we have some language in there to try and clarify that as well. Finally, we emphasize that if you don't have quantitative estimates of OY or things to calculate your OY, you may use qualitative estimates as well.

The fifth category is trying to provide for more stable fisheries and that is that we don't chase the last data point. Perhaps your stock biomass is down and you end up with kind of a seesaw or a rolling sort of quota over the years. Again, it's trying to provide the fishermen and the fishery stability over several years to do that.

The reason for that is often the last data point in the series, either your stock assessment or your catch estimates, may be the most uncertain, whereas over time the other ones should become more certain. We found, in looking at some of the stocks around the country, about a 20 percent variance from year to year anyway and so trying to manage that.

One way to do that would be to establish some multiyear overfishing criteria, where you would take no more than three years of whatever your catch is and average that and compare that to your overfishing level and so if you had two years, for example, that were less than your overfishing limit and one year above, it doesn't automatically make it subject to overfishing. You would take a three-year running average to try and smooth that out and keep the fishery a little bit more stable.

There is an example in the fuller set of slides of snowy grouper from the South Atlantic, where in fact they are using a multiyear average that they had a stock that in just one year snuck above their overfishing limit, but they didn't require it to be designated as overfishing because of this average. Again, many of these things are currently in use around the country.

Another one that I will give an example for is a phase-in

approach to your ABC rule. As you get new stock assessment information, sometimes that would show that perhaps you need to lower your catch significantly and we would propose, much like the overfishing definition, that you would do that over a three-year period and phase in, for example, that lower, or perhaps even higher, ABC.

Again, instead of making the adjustment in one year. That would be limited to three years and I think I have an example of that here. Again, it's just kind of a hypothesized one, where you can see that the red line on the top there is your OFL and the other line is the ABC and you will see from 2014 to 2015 that the reduction in your ABC is about 500 metric tons, because you reduced the amount that the ABC was reduced as well.

Under this rule, we could add a new line that phases that reduction in over three years. The important thing to note in this is that line in the middle there that keeps it under the overfished level the whole time. Now, it depends on the buffer between your ABC and OFL on how effective this would be, but, again, it's something that the councils could look at and, again, try to smooth out that management instead of having these sharp declines and increases in the stock.

The final one on this is carryover provisions and I heard that from some of the comments that the folks on Mackerel were making about carryover and we have had instances where we do have carryover in fisheries. We have other instances where we tried to authorize carryover in fisheries and we were sued on that and lost and so we're trying to resolve that here.

If you do have carryover, that's fine and the council can authorize that, such that harvest in the subsequent year does not exceed your ABC or OFL. In some cases, that may require the council's SSC to say, okay, we under harvested by 20 or 25 percent and what's the natural mortality of that and how does that raise our ABC in the subsequent year?

We could then add that carryover to the ACL in the next year and, again, the key is not to exceed that ABC level as shown in this slide.

One thing we have heard consistently over time is the use of the term "overfished" seems to connotate that it's always the fishermen's fault and we know that that's not true and there are environmental conditions as well that may result in that.

What we have tried to do in this proposed rule is add a

definition of “depleted”, so that if a stock isn’t rebuilding and it has not been subject to overfishing within two generation times and you have reached the end of your rebuilding and nothing is rebuilding that stock, we would determine that that stock would be depleted then, since you have been controlling the fishery for a number of years, likely.

Based on that determination, the depleted stock would still need to be managed and you couldn’t overfish or have a depleted stock subject to overfishing, but, again, it does show that environmental conditions in some places may be impacting the stocks as well.

The final one here is improving the routine review of FMPs. That’s something I think all the councils are doing and I know this council is doing that and working through it, but the proposed rule would offer that councils should reassess the objectives of their fisheries on a regular basis to reflect the changing needs of the fishery over time for such things as allocation.

This council in particular I know is doing that right now and on a continuing basis. What this would do is it would suggest that the councils give the public, the fishing industry, some sort of notice that they intend to look at those types of things every three years, five years, seven years. We don’t specify a time, but just that they would have some routine review of their actions.

With that, Madam Chairman, I am going to wrap up and just remind folks that we have tried to draft this so it improves management and it does not require the councils to invest in new analyses and look at what they have already done and I would remind folks that on the NOAA Fisheries website that we have a number of materials and background materials related to this proposed rule, as well as a red-line version, so people can read the rule and text and see the changes we’ve provided. With that, thank you and I will answer any questions.

CHAIRMAN BOSARGE: Thank you very much. Any questions for Alan? I would like to thank you for coming. I thought it was an excellent presentation and management is typically enhanced with greater flexibility and your presentation highlighted a focus in that direction. We appreciate all the work behind the scenes that brings that flexibility to fruition for us and so thank you.

MR. RISENHOOVER: Thank you and we look forward to you all’s

comments.

CHAIRMAN BOSARGE: Ben, did you have a question?

MR. HARTIG: I appreciate it and it looks like you took a whole lot of things that came up in the congressional testimony over the years and plus where you've heard it from a number of other places and put it altogether.

The only thing I would ask is why it has taken so long to do what you're doing now. I mean if we go back to Mr. Gregory, I mean he was the one who convinced me early on that it was NOAA that could actually go into the guidelines and change a lot of the things that were really giving us heartburn in the ACL problems in the beginning.

I can see, to some extent, how it's taken some time to get to the succinct points that you want to change, but it just seems to me that some of this could have been done quite a while ago and really, you have relieved some of the problems that the councils have faced since ACLs were implemented.

MR. RISENHOOVER: Yes and I wish I could explain why some things take so long, because I would have a much better job. Again, we had a very methodical process here. Coming out of the 2006 amendments, it took us two years, basically, to get the first set of the guidelines out and that gave the councils two or three years to get those ACLs in place.

We made that by 2011 and so in 2012, we took the deep breath and put it out and we got a couple hundred thousand comments to go through when we first put this out as an advance notice of proposed rulemaking. We then decided we wanted to do that Managing our Nation's Fisheries and we worked with our MAFAC Committee and the last thing we did was that rec summit about a year ago and then really tried to get on with and get this rule out. Lots of work in trying to move quickly.

MR. HARTIG: I will echo Leann's sentiments as well. I mean thank you. This is, like I said, a long time coming, but it's very needed and you have addressed almost everything that we've asked for and so I appreciate you doing that.

MR. PEARCE: Real quick. Alan, thanks for the presentation. The one constant in life and in fisheries is change and I think that staying ahead of those changes is very, very important, because it's constantly changing.

Every day, something else is happening and so the more you do things like this to enhance our ability to do our job as a council, the better off the fishery and the individuals in the fishery are going to be, rather than hard and fast rules that just sit there and don't move. I appreciate all the hard work you put into it and thank you.

CHAIRMAN BOSARGE: Thank you, sir. Next on the agenda, we're going to have Dr. Will Patterson back at the microphone to give us the SSC's comments on these proposed revisions and, Doug Gregory, what are we shooting for here, 4:30? How are we doing on time?

EXECUTIVE DIRECTOR GREGORY: Yes, 4:30 is the end. The SSC report is next.

MR. STEVEN ATRAN: While Will is getting set up, I just wanted to let the committee know that the comment period for the National Standard 1 proposed revisions runs through June and so what staff was planning to do was take any comments that the council may have, along with the comments that the SSC has and anything that we come up with, and draft a letter for you to review at the June council meeting. If you approve that, we will submit that as the comments to Mr. Risenhoover.

SSC COMMENTS

DR. PATTERSON: The SSC, as part of its meeting in March, Steven Atran had the document that portions were just presented of revised guidance for those three National Standards. Steven had already walked through the document and had put questions for some of the text that was used, some of the language, asking for clarification.

Basically the way we approached this is we walked through the document and looked at his proposed or suggested changes and proposed clarifications and then we commented. Basically, we were very much in agreement with what Steven had proposed and so rather than go item-by-item through that entire document -- You will note in the report that level of detail is not present either.

We did note, as was just discussed, the greater flexibility that the proposed change in the guidance will provide councils, including this one. The bulk of our discussion actually centered on the statements in this first bullet, the first of which was actually just covered, and that's that the annualized expression of OY is equal to ACL and the second of which is an

annual OY cannot exceed the ACL.

We actually commented that we thought that should be reversed and instead saying the ACL cannot exceed the annual OY, but, regardless, the sentiment remains and so we really picked up on this, because it highlights an issue that we've brought before this council in the past, in that in the Act itself there is language about OY being the target for the nation's fisheries, but in the guidance, the previous guidance, there is no mention of targets.

We have limits and we have the threshold of OFL and then we have ways to estimate buffers or buffers that are presented and the ABC and then ACT from ACL and that actually only appears in the guidance and not in the Act.

We have these buffers and we are buffering and buffering away from the limit, but there is no real discussion of the target and one of the things that was of interest to me at the National SSC Meeting that was held in Honolulu last month was that in all the presentations from all the various councils in the U.S., the word "target" was never used, although Michael Hadden from Australia was there and he was talking about their general control rule.

It was very much in the John Caddy realm of limits and thresholds, much like the rationale or almost implementation after the Sustainable Fisheries Act and something that we talked quite a bit about in trying to work with the council to revise our ABC control rule because of our inability to effectively, in our scientific opinion, fully estimate what scientific uncertainty is.

We really picked up on this comment in the revised guidelines about the annual expression of OY is equal to ACL and so if OY is in fact the target, this is in fact the closest in the revised Act or in its guidance that we've actually come to talking about a target for management.

In this next paragraph, it may be difficult for you to read on the screen, but this comes straight from the SSC report. It says several SSC members felt that management should move away from being driven by buffers to stay away from limits, MSY, and really, we should have put OFL there, to being target, for example, OY based.

One SSC member suggested that this could be accomplished by setting ACT equal to OY. In fact, in one of the proposed

revisions to the ABC control rule, the council has allowed to move forward or blessed among the two potential revisions to move forward that the Southeast Fisheries Science Center scientific staff is examining the implications of that and it is in fact this scenario. Excuse me. Instead of ACT in that scenario, it would be ACL.

That scenario would be ACL, where we set the ACL as equal to 75 percent of the yield at 75 percent of the MFMT, the maximum fishing mortality threshold.

In this case, we're actually moving one step away from that and instead, you would set -- If you set the ACT equal to OY, then that's your true management target and then you set a buffer between and so the ABC is equal to ACL and somewhere between OFL and the ACT, which then allows you to set accountability, so that you never get to the overfishing threshold.

We are not quite sure, and probably it's unlikely that the guidance allows for this much flexibility, but there was quite a bit of discussion and even if there's not this much flexibility afforded to the council, we do believe that the proposal to have ACL be set as equal to 75 percent of the yield -- The yield at 75 percent of MFMT is consistent with this new guidance and so we wanted to highlight that, because it's something that we brought before the council last fall and the numbers are being crunched now to see what implications that would have for fisheries under management.

We think it's an approach that would be quite useful in our region, given the diversity of assessments that are produced here with different modeling platforms, different amounts of data available, and this would be a very clean and simple approach that we believe that the revised guidance would allow for and that's basically what I wanted to touch on as far as what we discussed and really, this was the bulk. We spent quite a bit of time discussing this one topic.

CHAIRMAN BOSARGE: Any questions for Dr. Patterson or any comments? It looks like you all spent a good bit of time on this and I like what you had to say. It's a very positive outlook on it, rather than sometimes we have a more negative outlook with the way we do things right now.

With that, Steven Atran has said that they are going to craft a letter on these proposed revisions that will incorporate the SSC's feedback on it. I think they have done a good job of looking through it.

We heard a lot of things from Mr. Alan Risenhoover and I know it's hard to get through all your documentation for these meetings, but does anybody have any feedback on it right now, as to what they may want to see added to that letter?

If not, I would encourage everybody, if you get a chance, this is our chance to add greater flexibility in our management options and if you get a chance to go back through that presentation that Alan gave us and the proposed revisions between now and full council, please feel free to give us any feedback you may have. We want to make sure we have the most flexibility we can and, Doug, where do you want us to go from here? It's 4:37. We have one more agenda item.

EXECUTIVE DIRECTOR GREGORY: Let's go ahead and finish that and we will consider later whether to finish Spiny Lobster. I was talking with Vice Chair Williams and we may put Lobster off until Full Council, depending on the time.

CHAIRMAN BOSARGE: All right. The next agenda item is the Ecosystem SSC Report and I am going to turn it over to Steven Atran to give us the working group report.

ECOSYSTEM SSC REPORT
EBFM WORKING GROUP REPORT

MR. ATRAN: In the interest of time, because what's really important for the council is the Ecosystem SSC Report, the working group report was a report to the Ecosystem SSC to answer a couple of questions to address two charges, one to develop a set of suggested goals and objectives and, number two, to develop approaches by identifying and prioritizing ecosystem and socioeconomic information needs for fisheries managed by the council.

The working group went through what was currently available as far as data and what the data needs are and they identified a list of data needs and data that can be used in an ecosystem-based approach.

They are recommending that a step-wise approach to including ecosystem-based fishery management be used, based upon a paper that was published in 2011 by Hobday et al. They also stated that in developing ecosystem modeling approaches they would need to get the council's guidance on what their objectives are.

For example, does the council put a priority on being able to

provide higher bag limits or in extending the fishing season? Would they put a priority on providing open access versus limiting catch per unit of effort?

Overall, the working group made some recommendations on data needs and noted that they or the Ecosystem SSC would need guidance on exactly what the objectives are and produced a report that was submitted to the Ecosystem SSC. Like I said, in the interests of time, I am not going to go into detail on the working group report and I think unless you have any questions on it, we could move straight into Dr. Wu's presentation on the Ecosystem SSC Summary.

CHAIRMAN BOSARGE: Any questions? All right. Is Dr. Wu -- Here she comes.

ECOSYSTEM SSC REPORT

DR. WEI WU: Thank you, everyone, for sticking around and I will make it short and sweet. I am going to report on the summary of the meeting, the Ecosystem SSC meeting, which was held on February 25, 2015.

These are the people who were present. Our Chair, Jim Simons, he was not there and so our Vice Chair, Cameron Ainsworth, was actually the Chairman of the meeting. Mr. Roy Williams from the council was there also.

Our Ecosystem SSC was presented information on the shelf-edge fishing reserves in the Southeastern U.S. from 2003 to 2009. I am just going to share some of the highlights of the presentations we were given.

This is a presentation we were given by Dr. Koenig and Dr. Coleman from Florida State University and they talked about the reserves, the two reserves, in the Southeast U.S. and to see their impact on the fishery.

These are the two reserves the data come from and this is the bathymetry of one of the reserves and this is another one. This is actually the Madison-Swanson Reserve and this is Steamboat Lumps.

The study talks about why this area is important for the gag spawning and where this problem comes from. The problem is because of the low percentage of the males for the gag and considerable declines over time for the gag males and we can -- Because of the non-fishing zones, it gives us the benefits of

the different benefits and that's why they started this.

We can see some of the results directly. You can see the age structures of the different species, including gag, red grouper, red snapper, and scamp. You can see actually the age within the dark colored bars represents the mean age within the reserve and the light bar represents the age outside the reserve and so you can see the age within the reserve is actually significantly higher than outside the reserve except for scamp, scamp in the last one. The other three species is the gag and red grouper and red snapper.

You can also see the size structures inside the reserve is actually the light purple and the outside of the reserve is actually the reddish color and you can see the size structure is quite different, significantly different, within the reserve and outside of the reserve.

The catch per effort abundance in the Madison-Swanson, within the Madison-Swanson Reserve, compared to the outside, you can see the significant differences too.

You can also see the distance, the mean number of gag per side. The change of the mean number if you move away from the reserve, this is from the Madison-Swanson Marine Reserve and if you move away, the longer the distance, the lower the mean number of the gag per side. The same is for the red snapper.

For the Steamboat Lumps Reserve, the gag is not of concern, because they don't use that habitat, but the red grouper is actually the one which is studied, but this reserve is actually threatened by the lionfish invasion.

The main results from that research is the shelf-edge reserves -- - The shelf-edge reserve can protect threatened reef fish species and fishery production. They provide the benefits for threatened and critically endangered species and they have the benefits for shallow-water species and they have the benefits to the fishermen and they also provide benefits to scientific research and management.

The second study we were provided is by Andrew David talking about the -- Also talking about the marine reserves. In addition to the two sites mentioned in the first study, the second study also talks about the third site, which was added in 2009, called the Edges.

The second study actually used a stratified sampling methodology

and they used cameras to actually record all the activities of the fishes and this is the bathymetry data and this is the species most frequently observed between 2001 and 2014.

This is the gag distribution along the Western Florida Shelf and you can see different sites actually have different numbers of gags observed by the camera and the light numbers represent the lower -- The green is zero and the yellow is one and the red is actually larger numbers. This is the distribution, the gag distribution, within the Madison-Swanson between 2000 and 2010.

This is within the Twin Ridges and so here is the main reason for the second study, the significant testing for the length and it shows the gag are actually larger in the marine protected areas. The less than 0.05 just means they are significantly different. The red grouper are larger in the marine protected areas, significantly larger in the marine protected areas. The same applies to the red snapper.

The length, in terms of the length, the gag are larger in Madison-Swanson and the red grouper are larger within the marine protected areas too, but the red snapper are no different within the marine protected areas.

In terms of length within all the marine protected areas, gag are not different between and it just compares the gags within all the marine protected areas and they are not significantly different from each other and the red grouper actually are larger in the Madison-Swanson than Steamboat Lumps and red snapper are not different among all the marine protected areas.

The performance of the marine protected areas, we actually have the indices of abundance have a higher variance over time. The changes actually are difficult to detect, which we couldn't really see a significant difference over time once the marine protected area had been established. However, the average abundance for the gag appears to be higher in Madison-Swanson than the others areas, but it is not significant. Similarly, red grouper abundance appears higher in Steamboat Lumps than other areas, but it is not significant. Red snapper showed greater internal variability.

The gag, red grouper, and red snapper were larger within the marine protected areas compared to the eastern Gulf. Within the marine protected areas, gag and red snapper length was similar. However, red grouper were larger in Madison-Swanson than Steamboat Lumps. All show apparent gradual increases during the survey period.

This study also shares the comparison of the fishing regulations and it has varied along the level of the enforcement. The VMS data for the commercial vessels was instituted in 2008 and so providing us the more data we can analyze.

Based on this research, the Ecosystem SSC has made five recommendations and the first recommendation is to have the council have the Law Enforcement Committee look at options for improving enforcement, including looking at the tables of penalties for fishing in Marine Protected Areas and at problems associated with building viable cases for prosecution. This motion carried without opposition.

Recommendation 2 is to have the council have the Outreach & Education Committee review mechanisms for public outreach with respect to benefits of marine protected areas and compliance with marine protected area regulations. This motion carried with no opposition.

The third recommendation is on the basis of the encouraging news the SSC heard from two scientific studies on reef fish stock recoveries in Madison-Swanson and Steamboat Lumps marine protected areas, the Ecosystem SSC recommends that the council consider other opportunities to establish MPAs. The motion carried with no opposition.

The fourth recommendation is the Ecosystem SSC recommends that the council establish year-round closures for all species in the Madison-Swanson, Steamboat Lumps, and the Edges Reserves. At the time being, it's only probably half a year closure and not the whole year closure.

The Recommendation 5 is that the Ecosystem SSC recommends that the council recommend to the HMS Management Division that they close the following Reserves, including Madison-Swanson, Steamboat Lumps, and the Edges, to fishing year round. This has been carried by consensus.

We were also provided a different research by Dr. William Heyman about reinventing fisheries management in the Western Central Atlantic. He presented research on Central America and the Central Atlantic and he put forth the vision of cooperative monitoring program for the Western Central Atlantic spawning aggregations to catalyze development of a network involving the fishermen.

EXECUTIVE DIRECTOR GREGORY: Excuse me, Dr. Wu, but could you

just address the recommendations at this point, because we're like twenty or twenty-five minutes over our schedule.

DR. WU: Yes, I am almost there. I just wanted to point out the network involving the fishermen and so I have the recommendations and the sixth recommendation is borrowing from a powerful approach to identifying and protecting spawning aggregations of reef fish and other associated species already implemented in Belize and elsewhere in the Caribbean and underway in the South Atlantic, the Ecosystem SSC recommends that the council form an MPA Working Group made up of scientists, fishermen, people from different disciplines, including the scientists, fishermen, law enforcement, managers and other stakeholders to work together, each using their best tools and knowledge, to make recommendations for the creation of an effective MPA network in the Gulf of Mexico. This motion has been approved by consensus.

We have the last recommendation which is that the Ecosystem-Based Fishery Management Working Group continue working on developing a set of suggested goals and objectives of an ecosystem based fisheries management plan that considers measurable targets. This motion carried with no opposition.

We also have other presentations borrowed from Jim Simonds to talk about the progress over the years by the Ecosystem SSC and some of the failures, but I guess with the time, I will just stop here and I am happy to take any questions you have.

CHAIRMAN BOSARGE: Thank you, Dr. Wu. Any questions? We appreciate your report. It looks like with some of those larger fish being seeing in the MPAs that maybe there is some success there from those zones. We definitely don't want to see this effort -- We don't want to drop the ball on it and so what we would like to do, and maybe Mr. Gregory can comment some more on this, is take this report and send it back to our new and improved SSC, with all the meetings of the minds present now after we have revamped the way that that is set up, now that we have them all together, and let them guide us on where to go from here. Is there any opposition to having the new and improved SSC take a look at it again? Seeing none, all right. Do we have any other business before this committee? Seeing none, this committee is adjourned.

(Whereupon, the meeting adjourned at 5:00 p.m., March 30, 2015.)

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Sustainable Fisheries/Ecosystem Committee: Action Schedule for Tab E

Agenda Item IV: Review of Draft Letter on National Standard 1 Proposed Revisions

Timeline Status: Review for approval to submit to NMFS

Council Input and Next Steps:

Council staff will review a draft letter providing comments on the proposed revisions to National Standards 1, 3, and 7. The Committee may modify the draft comments as appropriate and should recommend whether to submit the comments to NMFS. The comment period on the proposed revisions ends on June 30.

Agenda Item V: Review of Draft CCC NEPA White Paper: NEPA Procedures

Timeline Status: Draft

Council Input and Next Steps:

Council staff will review the draft white paper on NEPA procedures. The paper is a response to NFMS' efforts to improve integration of NEPA and Magnuson-Stevens Act requirements. The paper includes a proposal that would revise the Magnuson-Stevens Act to incorporate NEPA requirements into the fishery impact statement, thereby streamlining the amendment development process. The Committee is encouraged to provide comments, including feedback on the proposal to revise the Magnuson-Stevens Act. The revised white paper will be presented to the CCC at the June meeting in Key West.

Gulf of Mexico Fishery Management Council
Managing Fishery Resources in the U.S. Federal Waters of the Gulf of Mexico

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June 15, 2015

Wes Patrick
National Marine Fisheries Service
Office of Sustainable Fisheries
1315 East-West Highway, Room 13357
Silver Spring, MD 20910

Dear Dr. Patrick, NOAA-NMFS-2012-0059

The Gulf of Mexico Fishery Management Council (Council), at its March 30-April 2, 2015 meeting in Biloxi, Mississippi, received a presentation from Alan Risenhoover on the proposed revisions to the guidelines for National Standards 1, 3, and 7. In addition, our Standing and Special Reef Fish Scientific and Statistical Committee (SSC) reviewed the proposed revisions at its March 11-12, 2015 meeting. The Council appreciates NMFS' initiative to provide additional clarity and potential flexibility to implementing the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) mandates. After reviewing the presentation and the red-line version of the proposed revisions available from the National Standard 1 Revisions website[1], we would like to provide the following comments on the proposed revisions which include comments from our SSC. Page numbers refer to the page on the red-line version available from the National Standard 1 Revisions website[1].

[page 1] **§600.305(b) Fishery management objectives:** The Gulf Council supports the addition of Section (2) to encourage the RFMCs to reassess fishery objectives on a regular basis.

[page 2] **§600.305(c) Stocks that require conservation and management:** The Gulf Council applauds the efforts to expand the criteria for consideration where determining whether a stock requires conservation and management but the criteria in places seem contradictory (i.e., "caught in a fishery" vs. "whether an FMP can improve or maintain the condition of the fishery." This section does not provide sufficient flexibility to allow a RFMC to determine that an incidentally caught data limited species with historically low landings should not require conservation and management. Despite the development of ad hoc methods for estimating status determination criteria for data limited incidentally caught species, oftentimes these methods are not suitable and status determination criteria are based on nothing more that some arbitrary limit within a range of historical landings. The issue is compounded in a fishery like the Gulf reef fish fishery where up to 10 such incidental species can be harvested and ad hoc methods carry a high risk of forcing directed fishery closures based on just random variability in harvest levels of incidental species. For such incidentally harvested species, under criteria (i) through (iii), the only known criteria is that the stock is caught in a fishery because the role of such stocks in the marine ecosystem and whether an FMP can improve its condition is for all intent and purpose, unknowable.

[1] http://www.nmfs.noaa.gov/sfa/laws_policies/national_standards/ns1_revisions.html

The Gulf Council recommends NMFS provides the flexibility in the Guidelines to allow inclusion of incidentally and occasionally caught data limited species with historically low landings to be classified as ecosystem species and exempt from ACL, other reference points, and accountability requirements. The Council feels there is often no scientific basis for setting ACLs for these stocks, because they are not considered to be in danger of overfishing and are not in need of conservation and management. When some stocks were originally added to the FMPs, they were classified as species in the fishery but not in the management unit and were intended to be included for data collection only. It is more prudent to classify such incidentally caught species as ecosystem species to encourage continued data collection than to remove these species from the FMP altogether.

[page 6] **§600.310(d)(2) Stock Complex:** The Council supports the revisions to the definition of "stock complex" and revised proposed language on indictor stocks.

[page 9] **§600.310(e)(2)(i)(F) Features of MSY, SDC, and OY –Definition of Depleted:** The proposed definition of "depleted" appears to be unduly complex. We recommend a more comprehensive definition that mirrors the language in the proposed revisions to the Magnuson-Stevens Act. The Council understands this term is intended to apply to stocks that are in an overfished state or are not responding to rebuilding plans due primarily to environmental conditions rather than overfishing but the use of a time period equal to two generations is arbitrary, and waiting until a rebuilding period is completed is probably too long a time to wait to develop appropriate action for a stock that is not responding to a rebuilding program. We propose the following definition: "A stock is considered depleted if the biomass level drops below MSST due primarily (but not necessarily solely) to reasons other than fishing mortality."

[page 9] **§600.310(e)(2)(i)(G) Features of MSY, SDC, and OY – Definition of minimum stock size threshold (MSST):** The proposed new definition of MSST is too restrictive and unworkable because, by definition, any stock biomass level below B_{MSY} is not capable of producing MSY on a continuing basis. However, there needs to be some guidance on how far the stock biomass level can drop before it is declared overfished and in need of a rebuilding plan. Therefore the Council proposes the following definition: MSST is a level of biomass below which the stock biomass is unable (or unlikely) to return to its B_{MSY} level in the absence of a rebuilding plan.

[page 9] **§600.310(e)(2)(ii) Features of MSY, SDC, and OY – Specification of SDC and overfishing and overfished determinations:** The Council supports the proposed revision to allow alternative types of status determination criteria (SDC) to be used when data are not available to specify SDCs based on MSY or MSY proxies. This provides the Councils with greater flexibility for data-limited species. We particularly support the allowance in **Section (A)** that allows for a 3-year mortality reference point to determine overfishing status.

[page 14] **§600.310(f)(1) Acceptable biological catch and annual catch limits – Definitions –** The Council supports the proposed definitions on "management uncertainty" and "scientific uncertainty" The proposed definitions help to clarify what was previously a somewhat ambiguous differentiation.

[page 15] **§600.310(f)(2)(ii)(A) Acceptable biological catch and annual catch limits - ABC control rule - Phase in ABC control rules:** The Council understands that the proposed revision

recognizes the negative short-term effects on fishing communities that can result from large short-term changes in catch limits, and it proposes allowing a control rule that phases in changes to ABC over a period of time, not to exceed three years, as long as overfishing is prevented. However, it is the requirement to immediately end overfishing that frequently drives these large reductions in harvests, creating severe short-term socio-economic impacts. This revision will do little to alleviate these negative impacts unless it is modified to concurrently allow overfishing to end over a 3-year period. The proposed revisions to **§600.310(j)(4) Emergency Actions and Interim Measures** allows interim measures to reduce but not necessarily end overfishing if "Ending overfishing immediately is expected to result in severe social and/or economic impacts to a fishery". For consistency with the proposed emergency actions and interim measures section, we suggest that the Phase-in ABC control rule section be modified to state that the phase-in may occur over a period of time, not to exceed 3 years, as long as overfishing is prevented **by the end of the phase-in period**.

Also, under ABC Control Rule, our SSC members felt that clarification was needed as to what was meant by a "comprehensive analysis."~~.~~

[page 15] **§600.310(f)(2)(ii)(B) Acceptable biological catch and annual catch limits - ABC control rule - Carry-over ABC control rules:** The Council supports the proposed language to carry-over any unused proportion of the ACL from one year to increase the ABC for the next year. However, under Carry-over ABC control rules, the proposed revision only states that the resulting ABC must consider scientific uncertainty. There is no mention of uncertainty in the estimation of catches, which should be a consideration when deciding whether to carry over the estimated unused catch. Our SSC suggests that the revision include consideration of uncertainty in the catch estimates as well as scientific uncertainty.

[page 16] **§600.310(f)(4)(iv) Acceptable biological catch and annual catch limits - Setting the annual catch limit - Relationship between OY and the ACL framework:** The proposed revision includes the statement, "An annual OY cannot exceed the ACL." This differs from the presentation given to the Council, which states that the annualized expression of OY = ACL, similar to MSY = OFL. The use of both an annual OY and a long-term or continuing OY is confusing. The Council feels that the use of annual OY should be discouraged, and that OY should refer only to the long-term equilibrium level. The guidance could then state that annual ACL cannot exceed the long-term OY. This would be consistent with the Magnuson-Stevens Act objective to achieve optimum yield on a continuing basis.

[page 20] **§600.310(j)(3)(i) Council actions to address overfishing and rebuilding for stocks and stock complexes - Overfished fishery:** The current guidance mandates a maximum 10-year rebuilding time except in cases where the biology of the stock of fish, **other environmental conditions**, or management measures under an international agreement in which the United States participates dictate otherwise. However, the guidance also states that the rebuilding time shall take into account the needs of fishing communities. Under NEPA, there are social and economic environments as well as biological and ecological environments. In order to take into account the needs of fishing communities, we suggest modifying this section to clarify that environmental conditions means biological, social, or economic environmental conditions.

[page 20] **§600.310(j)(3) (i)(B) Council actions to address overfishing and rebuilding for stocks and stock complexes - Overfished fishery - The maximum time for rebuilding a stock**

or stock complex to its Bmsy(Tmax): The Council supports the addition of multiple options for establishing a rebuilding time for stocks that take more than 10 years to rebuild in the absence of fishing mortality. However, a stock that can theoretically rebuild in 10 years in the absence of fishing mortality cannot actually achieve that target because F=0 is impossible to attain. There will always be some incidental bycatch and discard mortality even in the absence of directed fishing. We suggest from a practical standpoint that sub-paragraphs (1) and (2) be reworded so that a stock that takes less than 10 years (rather than 10 years or less) be subject to the 10-year rebuilding time, and a stock that takes 10 years or more (rather than exceeds 10 years) be subject to the alternate rebuilding times.

[page 21] **§600.310(j)(3)(iv) Council actions to address overfishing and rebuilding for stocks and stock complexes - Overfished fishery - Adequate progress:** The Council suggests that the Secretary review schedule be every three years for stocks under a 10-year or less rebuilding schedule, and five years for stocks under a rebuilding schedule that exceeds 10 years. The 3-year interval could also apply to stocks that have reached the end of their rebuilding period but have not yet rebuilt. The Council feels the two year intervals may not provide sufficient time to evaluate rebuilding plans and will be unnecessarily burdensome. Such reviews will typically require at least an update assessment from the Southeast Fisheries Science Center that could result in delays due to potential workload issues.

[page 21] **§600.310(j)(4) Council actions to address overfishing and rebuilding for stocks and stock complexes – Emergency Actions and Interim Measures:** The Council supports the provision that allows interim measures to reduce, but not necessarily end, overfishing under certain conditions including the condition that ending overfishing immediately is expected to result in severe social and/or economic impacts to a fishery. The requirement to end overfishing immediately is one of the most disruptive requirements under the current guidelines, and the ability to phase out overfishing under certain conditions will provide for a more rational management that takes into account the short-term impacts on both the resource and the resource user.

In addition to the above comments, the Council concurs with the proposed revisions on National Standard 3 and 7.

Once again, we appreciate the opportunity to comment on the proposed revisions, and we look forward to publication of the revised guidelines.

Sincerely

Kevin Anson
Council Chairman

cc: Gulf Council
A. Risenhoover, Dir., Sustainable Fisheries
R. Crabtree, SERO
B. Ponwith, SEFSC
RFMC Executive Directors

NOAA FISHERIES

Proposed Changes to the National Standard Guidelines

On January 20, 2015, NOAA Fisheries published a proposed rule to revise the general section of the National Standard guidelines, and the guidelines for National Standard 1, 3, and 7 (80 FR 2786). This document was prepared to show the proposed changes in a track-change format so that the public can more easily see the proposed changes to the guidelines. Any discrepancies between this document and the proposed rule will be resolved in favor of the *Federal Register*.

Key
Black text = current language
Red text = proposed new language
~~Red text~~ = current language that NOAA Fisheries is proposing to remove from the guidelines.
~~Green text~~ and Green text = current language that NOAA Fisheries is proposing to move from one paragraph to another paragraph in the guidelines.

§ 600.305 General.

(a) *Purpose*.

(1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Magnuson-Stevens Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been, and will be, applied under these principles. The guidelines are intended as aids to decision-making; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are in substantial compliance with the guidelines, the Magnuson-Stevens Act, and other applicable law must be approved.

(b) *Fishery management objectives*.

(1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish (i.e., the management objectives to be attained in regulating the fishery under consideration). In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them.

(2) To reflect the changing needs of the fishery over time, Councils should reassess the objectives of the fishery on a regular basis.

(3) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the

context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

(c) Stocks that require conservation and management.

(1) Magnuson-Stevens Act section 302(h)(1) requires a Council to prepare an FMP for each fishery under its authority that requires (or in other words, is in need of) conservation and management. Not every fishery requires Federal management. Any stocks that are predominately caught in Federal waters and are overfished or subject to overfishing, or likely to become overfished or subject to overfishing, are considered to require conservation and management. In addition, the following non-exhaustive list of factors should be used by a Council when deciding whether stocks require conservation and management: (i) The stock is an important component of the marine environment.

(ii) The stock is caught by the fishery.

(iii) Whether an FMP can improve or maintain the condition of the stocks.

(iv) The stock is a target of a fishery.

(v) The stock is important to commercial, recreational, or subsistence users.

(vi) The fishery is important to the Nation and to the regional economy.

(vii) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

(viii) The economic condition of a fishery and whether an FMP can produce more efficient utilization.

(ix) The needs of a developing fishery, and whether an FMP can foster orderly growth. (x) The extent to which the fishery could be or is already adequately managed by states, by state/Federal programs, by Federal regulations pursuant to other FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Magnuson-Stevens Act.

(2) When considering adding a new stock to an FMP or keeping an existing stock within an FMP, Councils should prepare a thorough analysis of the factors, and any additional considerations that may be relevant to the particular stock. No single factor is dispositive, but Councils should consider weighting the factors as follows. Factors (c)(1)(i)-(iii) of this section should be considered first, as they address maintaining a fishery resource and the marine environment. *See* § 1802(5)(A). These factors weigh in favor of including a stock in an FMP. Councils should next consider factors (c)(1)(iv)-(ix) of this section, which set forth key economic, social, and other reasons contained within the MSA for an FMP action. *See* 16 U.S.C.
§1802(5)(B). Regardless of whether any of the first nine factors indicates a conservation and management need, a Council should consider factor (c)(1)(x) of this section before deciding to include or maintain a stock in an FMP. In many circumstances, adequate management of a fishery by states, state/Federal programs, or another Federal FMP would weigh heavily against a Federal FMP action. *See*, *e.g.*, 16 U.S.C. § 1851(a)(7); 1856(a)(3). In evaluating the above criteria, a Council should consider the specific circumstances of a fishery, based on the best scientific information available; to determine whether there are biological, economic, social and/or operational concerns that can be addressed by Federal management.

(3) Councils may choose to identify stocks within their FMPs as ecosystem component (EC) species (see 50 CFR 600.310(d)(1)) if they do not require conservation and management. EC species may be identified at the species or stock level, and may be grouped into complexes. Consistent with National Standard 9, MSA section 303(b)(12), and other applicable MSA sections, management measures can be adopted in order to, for example, collect data on the EC species, minimize bycatch or bycatch mortality of EC species, protect the associated role of EC species in the ecosystem, or for other reasons.

(4) A stock or stock complex may be identified in more than one FMP. In this situation, the relevant Councils should choose which FMP will be the primary FMP in which reference points for the stock or stock complex are established. In other FMPs, the stock or stock complex may be identified as "other managed stocks" and management measures that are consistent with the objectives of the primary FMP can be established.

(5) Councils should periodically review their FMPs and the best scientific information available and determine if the stocks are appropriately identified. As appropriate, stocks should be reclassified within a FMP, added to or removed from an existing FMP, or added to a new FMP, through a FMP amendment that documents the rationale for the decision.

(de) Word usage. within the National Standard Guidelines. The word usage refers to all regulations in this subpart.

(1) *Must* is used, instead of "shall", to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson-Stevens Act, the logical extension thereof, or of other applicable law.

(2) *Shall* is used only when quoting statutory language directly, to avoid confusion with the future tense.

(3) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens Act, and is a factor reviewers will look for in evaluating a SOPP or FMP.

(4) *May* is used in a permissive sense.

(5) ~~*May not* is proscriptive; it has the same force as "must not."~~

(~~6~~5) *Will* is used descriptively, as distinguished from denoting an obligation to act or the future tense.

(~~7~~6) *Could* is used when giving examples, in a hypothetical, permissive sense.

(~~8~~7) *Can* is used to mean "is able to," as distinguished from "may."

(~~9~~8) *Examples* are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

(~~10~~9) *Analysis,* as a paragraph heading, signals more detailed guidance as to the type of discussion and examination an FMP should contain to demonstrate compliance with the standard in question.

(~~11~~10) *Council* includes the Secretary, as applicable, when preparing FMPs or amendments under section 304(c) and (g) of the Magnuson-Stevens Act.

~~(12) *Stock or stock complex* is used as a synonym for "fishery" in the sense of the Magnuson-Stevens Act's first definition of the term; that is, as "one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics," as distinguished from the Magnuson-Stevens Act's second definition of fishery as "any fishing for such stocks."~~

(11) *Target stocks* are stocks or stock complexes that fishers seek to catch for sale or personal use, including "economic discards" as defined under Magnuson-Stevens Act section 3(9).

§ 600.310 National Standard 1—Optimum Yield.

(a) *Standard 1*. Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the U.S. fishing industry.

(b) *General*.

(1) The guidelines set forth in this section describe fishery management approaches to meet the objectives of National Standard 1 (NS1), and include guidance on:

(i) Specifying maximum sustainable yield (MSY) and OY;

(ii) Specifying status determination criteria (SDC) so that overfishing and overfished determinations can be made for stocks and stock complexes that ~~are part of a fishery~~require, or are in need of, conservation and management;

(iii) Preventing overfishing and achieving OY, incorporation of scientific and management uncertainty in control rules, and adaptive management using annual catch limits (ACL) and measures to ensure accountability (~~AM);~~i.e., accountability measures (AMs)); and (iv) Rebuilding stocks and stock complexes.

(2) *Overview of Magnuson-Stevens Act concepts and provisions related to NS1*—

(i) *MSY*. The Magnuson-Stevens Act establishes MSY as the basis for fishery management and requires that: The fishing mortality rate ~~does~~must not jeopardize the capacity of a stock or stock complex to produce MSY; the abundance of an overfished stock or stock complex must be rebuilt to a level that is capable of producing MSY; and OY must not exceed MSY.

(ii) *OY*. The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's conservation and management objectives, achieving a fishery management plan's (FMP) objectives, and balancing the various interests that comprise the greatest overall benefits to the Nation. OY is based on MSY as reduced under paragraphs (e)(3)(iii)(A) and (~~iv~~B) of this section. The most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing.

(iii) *ACLs and AMs*. Any FMP ~~which is prepared by any Council~~ shall establish a mechanism for specifying ACLs in the FMP (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability (Magnuson-Stevens Act section 303(a)(15)). ~~Subject to certain exceptions and circumstances described in paragraph (h) of this section, this requirement takes effect in fishing year 2010, for fisheries determined subject to overfishing, and in fishing year 2011, for all other fisheries (Magnuson-Stevens Act section 303 note). "Council" includes the Regional Fishery Management Councils and the Secretary of Commerce, as appropriate (*see* § 600.305(c)(11)).~~ (iv) *Reference points*. SDC, MSY, OY, acceptable biological catch (ABC), and ACL, which are described further in paragraphs (e) and (f) of this section, are collectively referred to as "reference points."

(v) *Scientific advice*. The Magnuson-Stevens Act has requirements regarding scientific and statistical committees (SSC) of the Regional Fishery Management Councils, including but not limited to, the following provisions~~:~~ (paragraphs (b)(2)(v)(A)-(D) of this section). See the National Standard 2 guidelines for further guidance on SSCs and the peer review process (§ 600.315).

(A) Each Regional Fishery Management Council shall establish an SSC as described in section 302(g)(1)(A) of the Magnuson-Stevens Act.

(B) Each SSC shall provide its Regional Fishery Management Council recommendations for ABC as well as other scientific advice, as described in Magnuson-Stevens Act section 302(g)(1)(B).

(C) The Secretary and each Regional Fishery Management Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of a fishery (see Magnuson-Stevens Act section 302(g)(1)(E)). If a peer review process is established, it should investigate the technical merits of stock assessments and other scientific information to be used by the SSC or agency or international scientists, as appropriate. For Regional Fishery Management Councils, the peer review process is not a substitute for the SSC and should work in conjunction with the SSC. For the Secretary, which does not have an SSC, the peer review process should provide the scientific information necessary.

(D) Each Council shall develop ACLs for each of its managed fisheries that may not exceed the "fishing level recommendations" of its SSC or peer review process (Magnuson-Stevens Act section 302(h)(6)). The SSC recommendation that is the most relevant to ACLs is ABC, as both ACL and ABC are levels of annual catch.

(3) *Approach for setting limits and accountability measures, including targets, for consistency with NS1*. ~~In general, when~~ When specifying limits and accountability measures ~~intended to avoid overfishing and achieve sustainable fisheries~~, Councils must take an approach that considers uncertainty in scientific information and management control of the fishery. These guidelines describe how ~~to~~the Councils could address uncertainty such that there is a low risk that limits are exceeded as described in paragraphs (f)(~~4~~2) and (~~f~~)(~~6~~g)(4) of this section.

(~~4~~10) *Vulnerability*. A stock's vulnerability to fishing pressure is a combination of its productivity, which depends upon its life history characteristics, and its susceptibility to the fishery. Productivity refers to the capacity of the stock to produce MSY and to recover if the population is depleted or overfished, and susceptibility is the potential for the stock to be impacted by the fishery, which includes direct captures, as well as indirect impacts to the fishery (e.g., loss of habitat quality).

(c) *Summary of items to include in FMPs related to NS1*. This section provides a summary of items that Councils must include in their FMPs and FMP amendments in order to address ACL, AM, and other aspects of the NS1 guidelines. ~~As described in further detail in paragraph (d) of this section, Councils may review their FMPs to decide if all stocks are "in the fishery" or whether some fit the category of "ecosystem component species."~~ Councils must ~~also~~ describe fisheries data for the stocks~~,~~ and stock complexes~~, and ecosystem component species~~ in their FMPs, or associated public documents such as Stock Assessment and Fishery Evaluation (SAFE) Reports. For all stocks and stock complexes that ~~are "in the fishery" (see paragraph (d)(2) of this section),~~require conservation and management (see § 600.305(c)), the Councils must evaluate and describe the following items in their FMPs and amend the FMPs, if necessary, to align their management objectives to end or prevent overfishing and to achieve OY:

(1) MSY and SDC (see paragraphs (e)(1) and (2) of this section).

(2) OY at the stock, stock complex, or fishery level and provide the OY specification analysis (see paragraph (e)(3) of this section).

(3) ABC control rule (see paragraph (f)(~~4~~2) of this section).

(4) Mechanisms for specifying ACLs ~~and possible sector-specific ACLs in relationship to the ABC~~ (see paragraph~~s~~ (f)(~~5) and (h~~4) of this section).

(5) AMs (see paragraph~~s~~ (g) ~~and (h)(1)~~ of this section).

(6) Stocks and stock complexes that have statutory exceptions from ACLs and AMs (see paragraph (h)(~~2~~1) of this section) or which fall under limited circumstances which require different approaches to meet the ~~ACL~~Magnuson-Stevens Act requirements (see paragraph (h)(~~3~~2) of this section).

(d) ~~*Classifying stocks in an FMP*~~ *Stocks and stock complexes—*

(1) *Introduction*. As described in § 600.305(c), Councils should identify in their FMPs the stocks that require conservation and management. Such stocks must have ACLs, other reference points, and accountability measures. Other stocks that are identified in an FMP (i.e., ecosystem component species or stocks that the fishery interacts with but are managed primarily under another FMP, see § 600.305(c)(3)(4)) do not require ACLs, other reference points, and accountability measures.

~~(1) *Introduction*. Magnuson-Stevens Act section 303(a)(2) requires that an FMP contain, among other things, a description of the species of fish involved in the fishery. The relevant Council determines which specific target stocks and/or non-target stocks to include in a fishery. This section provides that a Council may, but is not required to, use an "ecosystem component (EC)" species classification. As a default, all stocks in an FMP are considered to be "in the fishery," unless they are identified as EC species (see § 600.310(d)(5)) through an FMP amendment process.~~

~~(2) *Stocks in a fishery*. Stocks in a fishery may be grouped into stock complexes, as appropriate. Requirements for reference points and management measures for these stocks are described throughout these guidelines.~~

~~(3) "Target stocks" are stocks that fishers seek to catch for sale or personal use, including "economic discards" as defined under Magnuson-Stevens Act section 3(9).~~

~~(4) "Non-target species" and "non-target stocks" are fish caught incidentally during the pursuit of target stocks in a fishery, including "regulatory discards" as defined under Magnuson-Stevens Act section~~

3(38). They may or may not be retained for sale or personal use. Non-target species may be included in a fishery and, if so, they should be identified at the stock level. Some non-target species may be identified in an FMP as ecosystem component (EC) species or stocks.

(5) *Ecosystem component (EC) species.*

(i) To be considered for possible classification as an EC species, the species should:

(A) Be a non-target species or non-target stock;

(B) Not be determined to be subject to overfishing, approaching overfished, or overfished;

(C) Not be likely to become subject to overfishing or overfished, according to the best available information, in the absence of conservation and management measures; and

(D) Not generally be retained for sale or personal use.

(ii) Occasional retention of the species would not, in and of itself, preclude consideration of the species under the EC classification. In addition to the general factors noted in paragraphs (d)(5)(i)(A) (D) of this section, it is important to consider whether use of the EC species classification in a given instance is consistent with MSA conservation and management requirements.

(iii) EC species may be identified at the species or stock level, and may be grouped into complexes. EC species may, but are not required to, be included in an FMP or FMP amendment for any of the following reasons: For data collection purposes; for ecosystem considerations related to specification of OY for the associated fishery; as considerations in the development of conservation and management measures for the associated fishery; and/or to address other ecosystem issues. While EC species are not considered to be "in the fishery," a Council should consider measures for the fishery to minimize bycatch and bycatch mortality of EC species consistent with National Standard 9, and to protect their associated role in the ecosystem. EC species do not require specification of reference points but should be monitored to the extent that any new pertinent scientific information becomes available (e.g., catch trends, vulnerability, etc.) to determine changes in their status or their vulnerability to the fishery. If necessary, they should be reclassified as "in the fishery."

(6) *Reclassification.* A Council should monitor the catch resulting from a fishery on a regular basis to determine if the stocks and species are appropriately classified in the FMP. If the criteria previously used to classify a stock or species is no longer valid, the Council should reclassify it through an FMP amendment, which documents rationale for the decision.

(7) *Stocks or species identified in more than one FMP.* If a stock is identified in more than one fishery, Councils should choose which FMP will be the primary FMP in which management objectives, SDC, the stock's overall ACL and other reference points for the stock are established. Conservation and management measures in other FMPs in which the stock is identified as part of a fishery should be consistent with the primary FMP's management objectives for the stock.

(8) *Stock complex.* "Stock complex" means a group of stocks that are sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery such that the impact of management actions on the stocks is similar.

(2) *Stock complex.* Stocks that require conservation and management can be grouped into stock complexes. A "stock complex" is a tool to manage a group of stocks within a FMP.

(i) At the time a stock complex is established, the FMP should provide, to the extent practicable, a full and explicit description of the proportional composition of each stock in the stock complex, to the extent possible.. Stocks may be grouped into complexes for various reasons, including where stocks in a multispecies fishery cannot be targeted independent of one another and MSY cannot be defined on a stock-by-stock basis (*see* paragraph (e)(1)(iii) of this section);; where there is insufficient data to measure theira stock's status relative to SDC; or when it is not feasible for fishermen to distinguish individual stocks among their catch. Where practicable, the group of stocks should have a similar geographic distribution, life history characteristics, and vulnerabilities to fishing pressure such that the impact of management actions on the stocks is similar. The vulnerability of individual stocks to the fishery should be evaluatedconsidered when determining if a particular stock complex should be established or reorganized, or if a particular stock should be included in a complex. Stock complexes may be comprised of: one or more

~~indicator stocks, each of which has SDC and ACLs, and several other stocks; several stocks without an indicator stock, with SDC and an ACL for the complex as a whole; or one of more indicator stocks, each of which has SDC and management objectives, with an ACL for the complex as a whole (this situation might be applicable to some salmon species).~~

(9) ii) *Indicator stocks.*

(A) An indicator stock is a stock with measurable and objective SDC that can be used to help manage and evaluate more poorly known stocks that are in a stock complex.

(B) Where practicable, stock complexes should include one or more indicator stocks (each of which has SDC and ACLs). Otherwise, stock complexes may be comprised of: several stocks without an indicator stock (with SDC and an ACL for the complex as a whole), or one or more indicator stocks (each of which has SDC and management objectives) with an ACL for the complex as a whole (this situation might be applicable to some salmon species). Councils should review the available quantitative or qualitative information (e.g., catch trends, changes in vulnerability, fish health indices, etc.) of stocks within a complex on a regular basis to determine if they are being sustainably managed.

(C) If an indicator stock is used to evaluate the status of a complex, it should be representative of the typical ~~status~~vulnerability of ~~each stock~~stocks within the complex~~, due to similarity in vulnerability.~~. If the stocks within a stock complex have a wide range of vulnerability, they should be reorganized into different stock complexes that have similar vulnerabilities; otherwise the indicator stock should be chosen to represent the more vulnerable stocks within the complex. In instances where an indicator stock is less vulnerable than other members of the complex, management measures ~~need to~~should be more conservative so that the more vulnerable members of the complex are not at risk from the fishery.

(D) More than one indicator stock can be selected to provide more information about the status of the complex. ~~When indicator stock(s) are used, periodic re-evaluation of available quantitative or qualitative information (e.g., catch trends, changes~~ in ~~vulnerability, fish health indices, etc.) is needed to determine whether a stock is subject to overfishing, or is approaching (or in) an overfished condition.~~

(E) When indicator stocks are used, the stock complex's MSY could be listed as "unknown," while noting that the complex is managed on the basis of one or more indicator stocks that do have known stock-specific MSYs, or suitable proxies, as described in paragraph (e)(1)(iv) of this section.

(10) ~~*Vulnerability.* A stock's vulnerability is a combination of its productivity, which depends upon its life history characteristics, and its susceptibility to the fishery. Productivity refers to the capacity of the stock to produce MSY and to recover if the population is depleted, and susceptibility is the potential for the stock to be impacted by the fishery, which includes direct captures, as well as indirect impacts to the fishery (e.g., loss of habitat quality). Councils in consultation with their SSCs, should analyze the vulnerability of stocks in stock complexes where possible.~~

(e) *Features of MSY, SDC, and OY—*

(1) *MSY.* Each FMP must include an estimate of MSY for the stocks and stock complexes ~~in~~that require conservation and management. MSY may also be specified for the fishery~~,~~ as ~~described in paragraph (d)(2) of this section).~~a whole.

(i) *Definitions.*

(A) *MSY* is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (e.g., gear selectivity), and the distribution of catch among fleets.

(B) *MSY fishing mortality rate* (F_{msy}) is the fishing mortality rate that, if applied over the long term, would result in MSY.

(C) *MSY stock size* (B_{msy}) means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate measure of the

stock's reproductive potential that would be achieved by fishing at Fmsy. (ii) *MSY for stocks*. MSY should be estimated for each stock based on the best scientific information available (see § 600.315).

(iii) *MSY for stock complexes.* When stock complexes are used, MSY should be estimated ~~on a stock-by-stock basis whenever possible. However, where MSY cannot be estimated for each stock in a stock complex, then MSY may be estimated~~ for one or more indicator stocks ~~for the complex~~ or for the complex as a whole (see paragraph (d)(2)(ii)). ~~When indicator stocks are used, the stock complex's MSY could be listed as "unknown," while noting that the complex is managed on~~

~~the basis of one or more indicator stocks that do have known stock-specific MSYs, or suitable proxies, as described in paragraph (e)(1)(iv) of this section.~~ ~~When indicator stocks are not used, MSY, or a suitable proxy, should be calculated for the stock complex as a whole.~~ (iv) *Methods of estimating MSY for an aggregate group of stocks*. Estimating MSY for an aggregate group of stocks (including stock complexes and the fishery as a whole) can be done using models that account for multi-species interactions, composite properties for a group of similar species, common biomass (energy) flow and production patterns, or other relevant factors (see paragraph (e)(3)(iv)(C) of this section).

(iv) v) *Specifying MSY.*

(A) Because MSY is a long-term average, it need not be estimated annually, ~~but it must be based on the best scientific information available (*see* § 600.315),~~ and should be reestimated as required by changes in long-term environmental or ecological conditions, fishery technological characteristics, or new scientific information.

(B) When data are insufficient to estimate MSY directly, Councils should adopt other measures of reproductive potential~~, based on the best scientific information available,~~ that can serve as reasonable proxies for MSY, F_{msy}, and B_{msy}~~, to the extent possible.~~. (C) The MSY for a stock or stock complex is influenced by its interactions with other stocks in its ecosystem and these interactions may shift as multiple stocks in an ecosystem are fished. ~~These ecological conditions~~Ecological and environmental information should be taken into account, to the extent ~~possible~~practicable, when assessing stocks and specifying MSY. Ecological ~~conditions~~and environmental information that is not directly accounted for in the specification of MSY can be among the ecological factors considered when setting OY below MSY.

(D) As MSY values are estimates or are based on proxies, they will have some level of uncertainty associated with them. The degree of uncertainty in the estimates should be identified, when ~~possible~~practicable, through the stock assessment process and peer review (see § ~~600.335),~~ 600.335), and should be taken into account when specifying the ABC Control rule (see paragraph (f)(2) of this section). ~~Where uncertainty cannot be directly calculated, such as when proxies are used, then a proxy for the uncertainty itself should be established based on the best scientific information, including comparison to other stocks.~~

(2) *Status determination criteria*— (i) *Definitions.*

(A) *Status determination criteria* (*SDC*) mean the ~~quantifiable~~measurable and objective factors, MFMT, OFL, and MSST, or their proxies, that are used to determine if overfishing has occurred, or if the stock or stock complex is overfished. MagnusonStevens Act (section 3(34)) defines both "overfishing" and "overfished" to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the MSY on a continuing basis. To avoid confusion, this section clarifies that "overfished" relates to biomass of a stock or stock complex, and "overfishing" pertains to a rate or level of removal of fish from a stock or stock complex.

(B) *Overfishing* ~~(to overfish)~~ occurs whenever a stock or stock complex is subjected to a level of fishing mortality or ~~annual~~ total catch that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(C) *Maximum fishing mortality threshold* (*MFMT*) means the level of fishing mortality (F)~~, on an annual basis,~~ above which overfishing is occurring. The MFMT or reasonable proxy may be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential. (D) *Overfishing limit* (*OFL*) means the annual amount of catch that corresponds to the estimate of MFMT applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish. ~~The OFL is an estimate of the catch level above which overfishing is occurring.~~

(E) *Overfished.* A stock or stock complex is considered "overfished" when its biomass has declined below MSST.~~a level that jeopardizes the capacity of the stock or stock complex to produce MSY on a continuing basis.~~

(F) *Depleted*. An overfished stock or stock complex is considered depleted when it has not experienced overfishing at any point over a period of two generation times of the stock and its biomass has declined below MSST, or when a rebuilding stock or stock complex has reached its targeted time to rebuild and the stock's biomass has shown no significant signs of growth despite being fished at or below catch levels that are consistent with the rebuilding plan throughout that period (see paragraphs (j)(3)(i)(B)(2)(i) and (j)(6) of this section).

(~~F~~G) *Minimum stock size threshold* (*MSST*) means the level of biomass below which the capacity of the stock or stock complex ~~is considered~~ to ~~be overfished~~produce MSY on a continuing basis has been jeopardized.

(G) H) *Approaching an overfished condition.* A stock or stock complex is approaching an overfished condition when it is projected that there is more than a 50 percent chance that the biomass of the stock or stock complex will decline below the MSST within two years.

(ii) *Specification of SDC and overfishing and overfished determinations.* Each FMP must describe how objective and measurable SDCs will be specified, as described in paragraphs (e)(2)(ii)(A) and (B) of this section. To be measurable and objective, SDC must be expressed in a way that enables the Council to monitor the status of each stock or stock complex in the FMP~~, and determine annually, if possible, whether~~. Applying the SDC set forth in the FMP, the Secretary determines if overfishing is occurring and whether the stock or stock complex is overfished~~.~~ (Magnuson-Stevens Act section 304(e)). SDCs are often based on fishing rates or biomass levels associated with MSY or MSY based proxies. When data are not available to specify SDCs based on MSY or MSY proxies, alternative types of SDCs that promote sustainability of the stock or stock complex can be used. For example, SDC could be based on recent average catch, fish densities derived from visual census surveys, length/weight frequencies or other methods. In specifying SDC, a Council must provide an analysis of how the SDC were chosen and how they relate to reproductive potential~~. Each FMP must specify, to the extent possible, objective and measurable SDC as follows (*see* paragraphs (e)(2)(ii)(A) and (B) of this section):~~ of stocks of fish within the fishery. If alternative types of SDCs are used, the Council should explain how the approach will promote sustainability of the stock or stock complex on a long term basis. A Council should consider a process that allows SDCs to be quickly updated to reflect the best scientific information available. In the case of internationally-managed stocks, the Council may decide to use the SDCs defined by the relevant international body. In this instance, the SDCs should allow the Council to monitor the status of a stock or stock complex, recognizing that the SDCs may not be defined in such a way that a Council could monitor the MFMT, OFL, or MSST as would be done with a domestically managed stock or stock complex.

(A) *SDC to D~~d~~etermine O~~o~~verfishing S~~s~~tatus*. ~~Each FMP must describe which of the following two methods will be used for each stock or stock complex to determine an overfishing status.~~ Each FMP must describe the method used to determine the overfishing status for each stock or stock complex. For domestically-managed stocks or stocks complexes, one of the following methods should be used:

(1) Fishing M~~m~~ortality R~~r~~ate E~~e~~xceeds MFMT. Exceeding the MFMT for a period of 1 year or ~~more~~exceeding a multi-year mortality reference point constitutes overfishing. ~~The MFMT or reasonable proxy may be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential.~~

(2) Catch E~~e~~xceeds the OFL. ~~Should the annual catch exceed~~Exceeding the annual OFL for 1 year or ~~more, the stock or stock complex is considered subject to~~exceeding a multi-year catch reference point constitutes overfishing.

(3) Use of Multi-Year Periods to Determine Overfishing Status. A multi-year period may not exceed three years. A Council may develop overfishing

SDCs that use a multi-year approach, so long as it provides a comprehensive analysis based on the best scientific information available that supports that the approach will not jeopardize the capacity of the fishery to produce MSY on a continuing basis. A Council should identify in its FMP or FMP amendment circumstances in which the multi-year approach should not be used (e.g., because the capacity of the stock to produce MSY over the longer term could be jeopardized). (B) *SDC to determine overfished status.* The MSST or reasonable proxy must be expressed in terms of spawning biomass or other measure of reproductive potential. ~~To the extent possible, the MSST should equal whichever of the following is greater: Onehalf the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years, if the stock or stock complex were exploited at the MFMT specified under paragraph (e)(2)(ii)(A)(1) of this section. Should the estimated size of the stock or stock complex in a given year fall below this threshold, the stock or stock complex is considered overfished.~~ MSST should be between ½ B_{msy} and B_{msy}, and could be informed by the life history of the stock, the natural fluctuations in biomass associated with fishing at MFMT over the long-term, the time needed to rebuild to B_{msy} and associated social and/or economic impacts on the fishery, the requirements of internationally-managed stocks, or other considerations.

(C) Where practicable, all sources of mortality including that resulting from bycatch, scientific research catch, and all fishing activities should be accounted for in the evaluation of stock status with respect to reference points.

(iii) *Relationship of SDC to environmental and habitat change*. Some short-term environmental changes can alter the size of a stock or stock complex without affecting its long-term reproductive potential. Long-term environmental changes affect both the short-term size of the stock or stock complex and the long-term reproductive potential of the stock or stock complex.

(A) If environmental changes cause a stock or stock complex to fall below its MSST without affecting its long-term reproductive potential, fishing mortality must be constrained sufficiently to allow rebuilding within an acceptable time frame (see also ~~see~~ paragraph (j)(3)(~~ii~~i) of this section). SDC should not be respecified.

(B) If environmental, ecosystem, or habitat changes affect the long-term reproductive potential of the stock or stock complex, one or more components of the SDC must be respecified. Once SDC have been respecified, fishing mortality may or may not have to be reduced, depending on the status of the stock or stock complex with respect to the new criteria.

(C) If manmade environmental changes are partially responsible for a stock or stock complex's biomass being ~~in an overfished condition~~below MSST, in addition to controlling fishing mortality, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible (see also the guidelines issued pursuant to section 305(b) of the Magnuson-Stevens Act for Council actions concerning essential fish habitat).

(iv) *Secretarial approval of SDC*. Secretarial approval or disapproval of proposed SDC will be based on consideration of whether the proposal:

(A) ~~Has sufficient~~ Is based on the best scientific ~~merit~~information available;

(B) Contains the elements described in paragraph (e)(2)(ii) of this section; (C) Provides a basis for objective measurement of the status of the stock or stock complex against the criteria; and (D) ~~is~~Is operationally feasible.

(3) *Optimum yield*—For stocks that require conservation and management, OY may be established at the stock, ~~or~~ stock complex, ~~level, or~~ ~~at the~~ fishery level.

(i) *Definitions*—

(A) *Optimum yield (OY).* Magnuson-Stevens Act section (3)(33) defines "optimum," with respect to the yield from a fishery, as the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food

production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery. ~~OY may be established at the stock or stock complex level, or at the fishery level.~~

(B) In NS1, use of the phrase "achieving, on a continuing basis, the optimum yield from each fishery" means: producing, from each stock, stock complex, or fishery~~: a long-term~~

~~series~~, an amount of ~~catches such~~catch that ~~the~~is, on average ~~catch is~~, equal to the Council's specified OY~~,~~; prevents overfishing ~~is prevented,~~; maintains the long term average biomass ~~is~~ near or above Bmsy~~,~~; and rebuilds overfished stocks and stock complexes ~~are rebuilt~~ consistent with timing and other requirements of section 304(e)(4) of the Magnuson-Stevens Act and paragraph (j) of this section.

(ii) *General*. OY is a long-term average amount of desired yield from a stock, stock complex, or fishery. An FMP must contain conservation and management measures, including ACLs and AMs, to achieve OY on a continuing basis, and provisions for information collection that are designed to determine the degree to which OY is achieved. These measures should allow for practical and effective implementation and enforcement of the management regime. ~~The Secretary has an obligation to implement and enforce the FMP.~~ If management measures prove unenforceable—or too restrictive, or not rigorous enough to prevent overfishing while achieving on a continuing basis OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification to ensure that the dual requirements of NS1 are met (preventing overfishing while achieving, on a continuing basis, OY). ~~Exceeding OY does not necessarily constitute overfishing. However, even if no overfishing resulted from exceeding OY, continual harvest at a level above OY would violate NS1, because OY was not achieved on a continuing basis.~~

(iii) *Assessing OY.* An FMP must contain an assessment and specification of OY, ~~including~~which documents how the OY will produce the greatest benefits to the nation and prevent overfishing. The assessment should include a summary of information utilized in making such specification, consistent with requirements of section 303(a)(3) of the Magnuson-Stevens Act~~. A Council must identify those~~ and consideration of the economic, social, and ecological factors relevant to management of a particular stock, stock complex, or fishery~~, and then evaluate them to determine the~~. Consistent with Magnuson-Stevens Act section 302(h)(5), the assessment and specification of OY~~. The choice of a particular OY must~~ should be ~~carefully documented to show~~reviewed on a continuing basis, so that ~~the OY selected will produce~~it is responsive to changing circumstances in the ~~greatest benefit to the Nation and prevent overfishing~~fishery.

(~~iii)~~ A) *Determining the greatest benefit to the Nation.* In determining the greatest benefit to the Nation, the values that should be weighed and receive serious attention when considering the economic, social, or ecological factors used in reducing MSY, or its proxy, to obtain OY are:

(~~A)~~ *1)* The benefits of food production ~~are~~ derived from providing seafood to consumers; maintaining an economically viable fishery together with its attendant contributions to the national, regional, and local economies; and utilizing the capacity of the Nation's fishery resources to meet nutritional needs.

(~~B)~~ *2)* The benefits of recreational opportunities reflect the quality of both the recreational fishing experience and non-consumptive fishery uses such as ecotourism, fish watching, and recreational diving. Benefits also include the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(~~C)~~ 3) The benefits of protection afforded to marine ecosystems are those resulting from maintaining viable populations (including those of unexploited species), maintaining adequate forage for all components of the ecosystem, maintaining evolutionary and ecological processes (e.g., disturbance regimes, hydrological processes, nutrient cycles), maintaining productive habitat, maintaining the evolutionary potential of species and ecosystems, and accommodating human use.

(iv) B) *Economic, Ecological, and Social Factors*. ~~Factors to consider in OY specification.~~ Councils should consider the management objectives of their FMPs and their management framework to determine the relevant social, economic, and ecological factors used to determine OY. There will be inherent trade-offs when determining the objectives of the fishery.

~~Because fisheries have limited capacities, any attempt to maximize the measures of benefits described in paragraph (e)(3)(iii) of this section will inevitably encounter~~

~~practical constraints. OY cannot exceed MSY in any circumstance, and must take into account the need to prevent overfishing and rebuild overfished stocks and stock complexes. OY is prescribed on the basis of MSY as reduced by social, economic, and ecological factors. To the extent possible, the relevant social, economic, and ecological factors used to establish OY for a stock, stock complex, or fishery should be quantified and reviewed in historical, short-term, and long-term contexts. Even where quantification of social, economic, and ecological factors is not possible, the FMP still must address them in its OY specification.~~ The following is a non-exhaustive list of potential considerations for ~~each factor. An FMP must address each factor but not necessarily each example.~~social, economic, and ecological factors.

(A) *1) Social factors*. Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery (e.g., involvement in fisheries and ability to adapt to change). Consideration may be given to fishery-related indicators (e.g., number of fishery permits, number of commercial fishing vessels, number of party and charter trips, landings, ex-vessel revenues etc.) and non-fishery related indicators (e.g., unemployment rates, percent of population below the poverty level, population density, etc.)~~.~~, and preference for a particular type of fishery (e.g., size of the fishing fleet, type of vessels in the fleet, permissible gear types). Other factors that may be considered include the effects that past harvest levels have had on fishing communities, the cultural place of subsistence fishing, obligations under Indian treaties, proportions of affected minority and low-income groups, and worldwide nutritional needs.

(B) *2) Economic factors*. Examples are prudent consideration of the risk of overharvesting when a stock's size or reproductive potential is uncertain (see § 600.335(c)(2)(i)), satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S. harvested fish. Other factors that may be considered include: the value of fisheries, the level of capitalization, the decrease in cost per unit of catch afforded by an increase in stock size, the attendant increase in catch per unit of effort, alternate employment opportunities, and economic contribution to fishing communities, coastal areas, affected states, and the nation.

(C) *3) Ecological factors.* Examples include impacts on ecosystem component species, forage fish stocks, other fisheries, predator-prey or competitive interactions, marine mammals, threatened or endangered species, and birds. Species interactions that have not been explicitly taken into account when calculating MSY should be considered as relevant factors for setting OY below MSY. In addition, consideration should be given to managing forage stocks for higher biomass than Bmsy to enhance and protect the marine ecosystem. Also important are ecological or environmental conditions that stress marine organisms or their habitat, such as natural and manmade changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks. ~~(v) *Specification of OY.*~~ (iv) *Specifying OY.* ~~The specification of OY must be consistent with paragraphs (e)(3)(i)-(iv) of this section.~~ If the estimates of MFMT and current biomass are known with a high level of certainty and management controls can accurately limit catch, then OY could be set very close to MSY, assuming no other reductions are necessary for social, economic, or ecological factors. To the degree that such MSY estimates and management controls are lacking or unavailable, OY should be set farther from MSY. ~~If management measures cannot adequately control fishing mortality so that the specified OY can be achieved without overfishing, the Council should reevaluate the management measures and specification of OY so that the dual requirements of NS1 (preventing overfishing while achieving, on a continuing~~

basis, OY) are met.~~ (A) The ~~amount of fish that constitutes the~~ OY ~~should~~can be expressed in terms of numbers or weight of fish~~.~~

~~(B) Either a range or~~, and either as a single value or a range. When it is not possible to specify OY quantitatively, OY may be ~~specified for OY.~~described qualitatively.

~~(C) All catch must be counted against OY, including that resulting from bycatch, scientific research, and all fishing activities.~~

~~(D) The OY specification should be translatable into an annual numerical estimate for the purposes of establishing any total allowable level of foreign fishing (TALFF) and analyzing impacts of the management regime.~~

~~(E)~~ (B) The determination of OY is based on MSY, directly or through proxy. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or where the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size diminish the meaningfulness of the MSY concept, OY must still be established based on the best scientific information available.

~~(F)~~ C) An OY established at a fishery level may not exceed the sum of the MSY values for each of the stocks or stock complexes within the fishery. Aggregate level MSY estimates could be used as a basis for specifying OY for the fishery (see paragraph (e)(1)(iv) of this section). When aggregate level MSY is estimated, single stock MSY estimates can also be used to inform single stock management. For example, OY could be specified for a fishery, while other reference points are specified for individual stocks in order to prevent overfishing on each stock within the fishery.

~~(G) There should be a mechanism in the FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.~~

~~(H) Part of the OY may be held as a reserve to allow for factors such as uncertainties in estimates of stock size and domestic annual harvest (DAH). If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.~~

(D) For internationally-managed stocks, fishing levels that are agreed upon by the U.S. at the international level are consistent with achieving OY.

(v~~i~~) *OY and foreign fishing*. Section 201(d) of the Magnuson-Stevens Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States. The FMP must include an assessment to address the following, as required by section 303(a)(4) of the Magnuson-Stevens Act:

(A) The OY specification is the basis for establishing any total allowable level of foreign fishing (TALFF).

(B) Part of the OY may be held as a reserve to allow for ~~factors such as uncertainties in estimates of stock size and~~ domestic annual harvest (DAH). If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(~~A~~C) *DAH*. Councils and/or the Secretary must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus. (~~B)~~ D) *Domestic annual processing (DAP)*. Each FMP must assess the capacity of U.S. processors. It must also assess the amount of DAP, which is the sum of two estimates: The estimated amount of U.S. harvest that domestic processors will process, which may be based on historical performance or on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and the estimated amount of fish that will be harvested by domestic vessels, but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(C) E) *Joint venture processing (JVP)*. When DAH exceeds DAP, the surplus is available for JVP.

(f) *Acceptable biological catch*~~,~~ *and annual catch limits*~~, and annual catch targets~~. ~~The following features (see paragraphs (f)(1) through (f)(5) of this section) of acceptable biological catch and annual catch limits apply to stocks and stock complexes in the fishery (see paragraph (d)(2) of this section).~~

~~(1) *Introduction.* A control rule is a policy for establishing a limit or target fishing level that is based on the best available scientific information and is established by fishery managers in consultation with fisheries scientists. Control rules should be designed so that management actions become more conservative as biomass estimates, or other proxies, for a stock or stock complex decline and as science and management~~

~~uncertainty increases. Examples of scientific uncertainty include uncertainty in the estimates of MFMT and biomass. Management uncertainty may include late catch reporting, misreporting, and underreporting of catches and is affected by a fishery's ability to control actual catch. For example, a fishery that has inseason catch data available and inseason closure authority has better management control and precision than a fishery that does not have these features.~~

(1)~~(2)~~*Definitions.*

(i) *Catch* is the total quantity of fish, measured in weight or numbers of fish, taken in commercial, recreational, subsistence, tribal, and other fisheries. Catch includes fish that are retained for any purpose, as well as mortality of fish that are discarded.

(ii) *Acceptable biological catch (ABC)* is a level of a stock or stock complex's annual catch, which is based on an ABC control rule that accounts for the scientific uncertainty in the estimate of OFL ~~and~~, any other scientific uncertainty ~~(see paragraph (f)(3) of this section), and should be specified based on the ABC control rule~~, and the Council's risk policy.

(iii) ~~*ABC control rule* means a specified approach to setting the ABC for a stock or stock complex as a function of the scientific uncertainty in the estimate of OFL and any other scientific uncertainty (*see* paragraph (f)(4) of this section).~~

(ii~~i~~) *Annual catch limit (ACL)* is a limit on the ~~level of~~total annual catch of a stock or stock complex, which cannot exceed the ABC, that serves as the basis for invoking AMs. ~~ACL cannot exceed the ABC, but~~ An ACL may be divided into sector-ACLs (see paragraph (f)(~~5~~4) of this section).

~~(v) *Annual catch target (ACT)* is an amount of annual catch of a stock or stock complex that is the management target of a fishery, and accounts for management uncertainty in controlling the actual catch at or below the ACL. ACTs are recommended in the system of accountability measures so that ACL is not exceeded.~~

~~(vi) *ACT control rule* means a specified approach to setting the ACT for a stock or stock complex such that the risk of exceeding the ACL due to management uncertainty is at an acceptably low level.~~

(iv) *Control rule* is a policy for establishing a limit or target catch level that is based on the best scientific information available and is established by the Council in consultation with its SSC.

(v) *Management uncertainty* refers to uncertainty in the ability of managers to constrain catch so that the ACL is not exceeded, and the uncertainty in quantifying the true catch amounts (i.e., estimation errors). The sources of management uncertainty could include: late catch reporting; misreporting; underreporting of catches; lack of sufficient inseason management, including inseason closure authority; or other factors.

(vi) *Scientific uncertainty* refers to uncertainty in the information about a stock and its reference points. Sources of scientific uncertainty could include: uncertainty in stock assessment results; uncertainty in the estimates of MFMT, MSST, the biomass of the stock, and OFL; time lags in updating assessments; the degree of retrospective revision of assessment results; uncertainty in projections; uncertainties due to the choice of assessment model; longer-term uncertainties due to potential ecosystem and environmental effects; or other factors.

(2) *ABC control rule.—*

(i) For stocks and stock complexes required to have an ABC, each Council must establish an ABC control rule that accounts for scientific uncertainty in the OFL and the Council's risk policy. The Council's risk policy could be based, on an acceptable probability (at least 50 percent) that catch equal to the stock's ABC will not result in overfishing, but other appropriate methods can be used. When determining the risk policy, Councils could consider the economic, social, and ecological trade-offs between being more or less risk averse. The Council's choice of a risk policy cannot result in an ABC that exceeds the OFL. The process of establishing an ABC control rule may~~could also~~ involve science advisors or the peer review process established under MagnusonStevens Act section 302(g)(1)(E).

(ii) The ABC control rule must articulate how ABC will be set compared to the OFL based on the scientific knowledge about the stock or stock complex and taking into account scientific uncertainty (see paragraph (f)(1)(vi) of this section).

The ABC control rule should consider reducing fishing mortality as stock size declines below B_{msy} and as scientific uncertainty increases, and may establish a stock abundance level below which directed fishing would not be allowed. When~~re~~ scientific uncertainty cannot be directly calculated, such as when proxies are used, then a proxy for the uncertainty itself should be established based on the best scientific information, including comparison to other stocks. The control rule may be used in a tiered approach to address different levels of scientific uncertainty. Councils can develop ABC control rules that allow for changes in catch limits to be phased-in over time or to account for the carry-over of some of the unused portion of the ACL from one year to the next; in which case, the Council must provide a comprehensive analysis and articulate within their FMP when the control rule can and cannot be used and how the control rule prevents overfishing.

(A) *Phase-in ABC control rules*. Large changes in catch limits due to new scientific information about the status of the stock can have negative short-term effects on a fishing industry. To help stabilize catch levels as stock assessments are updated, a Council may choose to develop a control rule that phases in changes to ABC over a period of time, not to exceed 3 years, as long as overfishing is prevented.

(B) *Carry-over ABC control rules*. An ABC control rule may include provisions for carry-over of some of the unused portion of the ACL from one year to increase the ABC for the next year, based on the increased stock abundance resulting from the fishery harvesting less than the full ACL. The resulting ABC recommended by the SSC must prevent overfishing and consider scientific uncertainty consistent with the Council's risk policy. In cases where an ACL has been reduced from the ABC, carry-over provisions may not require the ABC to be re-specified if the ACL can be adjusted upwards so that it is equal to or below the existing ABC.

(3) *Specification of ABC*. ABC may not exceed OFL (see paragraph (e)(2)(i)(D) of this section). Councils and their SSC should develop a process ~~for receiving~~by which the SSC can access the best scientific information ~~and advice used to establish ABC. This process should: Identify the body that will apply~~available regarding implementation of the ABC control rule ~~(*i.e.*, calculates the ABC), and identify the review process that will evaluate the resulting ABC. The SSC must recommend the ABC to the Council.~~ An SSC may recommend an ABC that differs from the result of the ABC control rule calculation, based on factors such as data uncertainty, recruitment variability, declining trends in population variables, and other factors, but must ~~explain why.~~provide an explanation for the deviation. For Secretarial FMPs or ~~FMP~~ amendments, agency scientists or a peer review process would provide the scientific advice to establish ABC. For internationally-assessed stocks, an ABC as defined in these guidelines is not required if ~~they meet~~stocks fall under the international exception (see paragraph (h)(~~2~~1)(ii)~~).~~ of this section). While the ABC is allowed to equal OFL, NMFS expects that in most cases ABC will be reduced from OFL to reduce the probability that overfishing might occur in a year. ~~Also, *see* paragraph (f)(5) of this section for cases where a Council recommends that ACL is equal to ABC, and ABC is equal to OFL.~~ (i) *Expression of ABC*. ABC should be expressed in terms of catch, but may be expressed in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC.

(ii) *ABC for overfished stocks*. For overfished stocks and stock complexes, a rebuilding ABC must be set to reflect the annual catch that is consistent with the schedule of fishing mortality rates

(i) e., $F_{rebuild}$) in the rebuilding plan.

~~(4) *ABC control rule*. For stocks and stock complexes required to have an ABC, each Council must establish an ABC control rule based on scientific advice from its SSC. The determination of ABC should be based, when possible, on the probability that an actual catch equal to the stock's ABC would result in overfishing. This probability that overfishing will occur cannot exceed~~ 50 percent and should be a lower ~~value. The ABC control rule should consider reducing fishing mortality as stock size declines and may establish a stock abundance level below which fishing would not be allowed. The process of establishing an ABC control rule could also involve science advisors or the peer review process established under Magnuson-Stevens Act section 302(g)(1)(E). The ABC control rule must articulate how ABC will be set~~ compared to the OFL based on the scientific knowledge about the stock or stock complex and the scientific ~~uncertainty in the estimate of OFL and any other scientific~~

uncertainty. The ABC control rule should consider uncertainty in factors such as stock assessment results, time lags in updating assessments, the degree of retrospective revision of assessment results, and projections. The control rule may be used in a tiered approach to address different levels of scientific uncertainty.

(45) Setting the annual catch limit—

(i) *General*. ACL cannot exceed the ABC and may be set annually or on a multiyear plan basis. ACLs in coordination with AMs must prevent overfishing (see MSA section 303(a)(15)). If an annual catch target (ACT) is not used, management uncertainty should be accounted for in the ACL. If a Council recommends an ACL which equals ABC, and the ABC is equal to OFL, the Secretary may presume that the proposal would not prevent overfishing, in the absence of sufficient analysis and justification for the approach. A "multiyear plan" as referenced in section 303(a)(15) of the Magnuson-Stevens Act is a plan that establishes harvest specifications or harvest guidelines for each year of a time period greater than 1 year. A multiyear plan must include a mechanism for specifying ACLs for each year with appropriate AMs to prevent overfishing and maintain an appropriate rate of rebuilding if the stock or stock complex is in a rebuilding plan. A multiyear plan must provide that, if an ACL is exceeded for a year, then AMs are triggeredimplemented for the next year consistent with paragraph (g)(3) of this section. (ii) *Sector-ACLs*. A Council may, but is not required to, divide an ACL into sector-ACLs. If sector-ACLs are used, sector-AMs should also be specified. "Sector," for purposes of this section, means a distinct user group to which separate management strategies and separate catch quotas apply. Examples of sectors include the commercial sector, recreational sector, or various gear groups within a fishery. If the management measures for different sectors differ in the degree of management uncertainty, then sector--ACLs may be necessary so that appropriate AMs can be developed for each sector. If a Council chooses to use sector--ACLs, the sum of sector--ACLs must not exceed the stock or stock complex level ACL. The system of ACLs and AMs designed must be effective in protecting the stock or stock complex as a whole. Even if sector-ACLs and AMs are established, additional AMs at the stock or stock complex level may be necessary. (iii) *ACLs for State-Federal Fisheries*. For stocks or stock complexes that have harvest in state or territorial waters, FMPs and FMP amendments should include an ACL for the overall stock that may be further divided. For example, the overall ACL could be divided into a Federal-ACL and state-ACL. However, NMFS recognizes that Federal management is limited to the portion of the fishery under Federal authority (*see* paragraph (g)(5) of this section). See 16 U.S.C. 1856. When stocks are co-managed by Federal, state, tribal, and/or territorial fishery managers, the goal should be to develop collaborative conservation and management strategies, and scientific capacity to support such strategies (including AMs for state or territorial and Federal waters), to prevent overfishing of shared stocks and ensure their sustainability.

(iv) *Relationship between OY and the ACL framework*. The dual goals of NS1 are to prevent overfishing and achieve on a continuing basis OY. The ABC is an upper limit on catch and is designed to prevent overfishing. As described in paragraph (e)(3) of this section, ecological, economic, and social factors, as well as values associated with determining the greatest benefit to the Nation, are important considerations in specifying OY. These OY considerations can also be considered in the ACL framework. For example, an ACL (or ACT) could be set lower than the ABC to account for OY considerations (e.g., needs of forage fish, promoting stability, addressing market conditions, etc.). Additionally, economic, social, or ecological trade-offs could be evaluated when determining the risk policy for an ABC control rule (see paragraph (f)(2) of this section). While OY is a long-term average amount of desired yield, there is, for each year, an amount of fish that is consistent with achieving the long-term OY. A Council can choose to express OY on an annual basis, in which case the FMP or FMP amendment should indicate that the OY is an "annual OY." An annual OY cannot exceed the ACL.

(6) *ACT control rule*. If ACT is specified as part of the AMs for a fishery, an ACT control rule is utilized for setting the ACT. The ACT control rule should clearly articulate how management uncertainty in the amount of catch in the fishery is accounted for in setting ACT. The objective for establishing the ACT and related AMs is that the ACL not be exceeded.

(i) *Determining management uncertainty.* Two sources of management uncertainty should be accounted for in establishing the AMs for a fishery, including the ACT control rule if utilized: Uncertainty in the ability of managers to constrain catch so the ACL is not exceeded, and uncertainty in quantifying the true catch amounts (*i.e.*, estimation errors). To determine the level of management uncertainty in controlling catch, analyses need to consider past management performance in the fishery and factors such as time lags in reported catch. Such analyses must be based on the best available scientific information from an SSC, agency scientists, or peer review process as appropriate.

~~(ii) *Establishing tiers and corresponding ACT control rules.* Tiers can be established based on levels of management uncertainty associated with the fishery, frequency and accuracy of catch monitoring data available, and risks of exceeding the limit. An ACT control rule could be established for each tier and have, as appropriate, different formulas and standards used to establish the ACT.~~

~~(7) A Council may choose to use a single control rule that combines both scientific and management uncertainty and supports the ABC recommendation and establishment of ACL and if used ACT.~~ (g) *Accountability measures (AMs).* ~~The following features (see paragraphs (g)(1) through (5) of this section) of accountability measures apply to those stocks and stock complexes in the fishery.~~

(1) *Introduction*. AMs are management controls to prevent ACLs, including sector-ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur. AMs should address and minimize both the frequency and magnitude of overages and correct the problems that caused the overage in as short a time as possible. NMFS identifies two categories of AMs, inseason AMs and AMs for when the ACL is exceeded. The FMP should identify what sources of data will be used to implement AMs (e.g., inseason data, annual catch compared to the ACL, or multi-year averaging approach).

(2) *Inseason AMs*. Whenever possible, FMPs should include inseason monitoring and management measures to prevent catch from exceeding ACLs. Inseason AMs could include, but are not limited to: ~~ACT;~~an annual catch target (see paragraph (g)(4) of this section); closure of a fishery; closure of specific areas; changes in gear; changes in trip size or bag limits; reductions in effort; or other appropriate management controls for the fishery. If final data or data components of catch are delayed, Councils should make appropriate use of preliminary data, such as landed catch, in implementing inseason AMs. FMPs should contain inseason closure authority giving NMFS the ability to close fisheries if it determines, based on data that it deems sufficiently reliable, that an ACL has been exceeded or is projected to be reached, and that closure of the fishery is necessary to prevent overfishing. For fisheries without inseason management control to prevent the ACL from being exceeded, AMs should utilize ACTs that are set below ACLs so that catches do not exceed the ACL.

(3) *AMs for when the ACL is exceeded*. On an annual basis, the Council must determine as soon as possible after the fishing year if an ACL was exceeded. If an ACL was exceeded, AMs must be ~~triggered and~~ implemented as soon as possible to correct the operational issue that caused the ACL overage, as well as any biological consequences to the stock or stock complex resulting from the overage when it is known. These AMs could include, among other things, modifications of inseason AMs, the use or modification of ACTs, or overage adjustments. The type of AM chosen by a Council will likely vary depending on the sector of the fishery, status of the stock, the degree of the overage, recruitment patterns of the stock, or other pertinent information. If an ACL is set equal to zero and the AM for the fishery is a closure that prohibits fishing for a stock, additional AMs are not required if only small amounts of catch or bycatch occur, and the catch or bycatch is unlikely to result in overfishing. For stocks and stock complexes in rebuilding plans, the AMs should include overage adjustments that reduce the ACLs in the next fishing year by the full amount of the overage~~s~~, unless the best scientific information available shows that a reduced overage adjustment, or no adjustment, is needed to mitigate the effects of the overage~~s~~. ~~If catch exceeds the ACL for a given stock or stock complex more than once in the last four years, the system of ACLs and AMs should be re-evaluated, and modified if necessary, to improve its performance and effectiveness. A Council could choose a higher performance standard (e.g., a stock's catch should not exceed its ACL more often than once every five or six years) for a stock that is particularly vulnerable to the effects of overfishing, if the vulnerability of the stock has not already been accounted for in the ABC control rule.~~

(4) *Annual Catch Target (ACT) and ACT control rule*. ACTs are recommended in the system of AMs~~accountability measures~~ so that ACL is not exceeded. An ACT is an amount of annual catch of a stock or stock complex that is the management target of a fishery, and accounts for management uncertainty in controlling the ~~actual~~ catch at or below the ACL. ACT control rules can be used to articulate how management uncertainty is accounted for in setting the ACT. ACT control rules can be developed by the Council, in coordination with the SSC, to help the Council account for management uncertainty.

(5~~4~~) *AMs based on multi-year average data*. Some fisheries have highly variable annual catches and lack reliable inseason or annual data on which to base AMs. If there are insufficient data upon which to compare catch to ACL, ~~either inseason or on an annual basis,~~ AMs could be based on comparisons of

average catch to average ACL over a three-year moving average period or, if supported by analysis, some other appropriate multi-year period. Councils should explain why basing AMs on a multi-year period is appropriate. Evaluation of the moving average catch to the average ACL must be conducted annually, and ~~AMs should be implemented~~ if the average catch exceeds the average ACL, appropriate AMs should be implemented consistent with paragraph (g)(3) of this section. ~~As a performance standard, if the average catch exceeds the average ACL for a stock or stock complex more than once in the last four years, then the system of ACLs and AMs should be re-evaluated and modified if necessary to improve its performance and effectiveness. The initial ACL and management measures may incorporate information from previous years so that AMs based on average ACLs can be applied from the first year. Alternatively, a Council could use a stepped approach where in year 1, catch is compared to the ACL for year 1; in year 2 the average catch for the past 2 years is compared to the average ACL; then in year 3 and beyond, the most recent 3 years of catch are compared to the corresponding ACLs for those years.~~

(~~6~~5) *AMs for State-Federal Fisheries*. For stocks or stock complexes that have harvest in state or territorial waters, FMPs and FMP amendments must, at a minimum, have AMs for the portion of the fishery under Federal authority. Such AMs could include closing the EEZ when the Federal portion of the ACL is reached, or the overall stock's ACL is reached, or other measures.

(7) *Performance Standard*. If catch exceeds the ACL for a given stock or stock complex more than once in the last four years, the system of ACLs and AMs should be re-evaluated, and modified if necessary, to improve its performance and effectiveness. If AMs are based on multi-year average data, the performance standard is based on a comparison of the average catch to the average ACL. A Council could choose a higher performance standard (e.g., a stock's catch should not exceed its ACL more often than once every five or six years) for a stock that is particularly vulnerable to the effects of overfishing, if the vulnerability of the stock has not already been accounted for in the ABC control rule.

(h) *Establishing ACL mechanisms and AMs in FMPs*. FMPs or FMP amendments must establish ACL mechanisms and AMs for all stocks and stock complexes ~~in the fishery,~~that require conservation and management (see § 600.305(c)), unless paragraph (h)(~~2~~1) of this section is applicable. These mechanisms should describe the annual or multiyear process by which ~~specific~~ ACLs, AMs, and other reference points such as OFL, and ABC will be established. ~~If a complex has multiple indicator stocks, each indicator stock must have its own ACL; an additional ACL for the stock complex as a whole is optional. In cases where fisheries (e.g., Pacific salmon) harvest multiple indicator stocks of a single species that cannot be distinguished at the time of capture, separate ACLs for the indicator stocks are not required and the ACL can be established for the complex as a whole.~~

~~(1) In establishing ACL mechanisms and AMs, FMPs should describe:~~

(i) ~~Timeframes for setting ACLs (e.g., annually or multi-year periods);~~

~~(ii) Sector ACLs, if any (including set-asides for research or bycatch);~~

~~(iii) AMs and how AMs are triggered and what sources of data will be used (e.g., inseason data, annual catch compared to the ACL, or multi-year averaging approach); and~~ ~~(iv) Sector AMs, if there are sector ACLs.~~

(~~1~~2) Exceptions from ACL and AM requirements—

(i) *Life cycle*. Section 303(a)(15) of the Magnuson-Stevens Act "shall not apply to a fishery for species that has a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species" (as described in Magnuson-Stevens Act section 303 note). This exception applies to a stock for which the average ~~length~~age of ~~time it takes for an individual to produce a reproductively active offspring~~spawners in the population is approximately 1 year ~~and that the individual has only one breeding season in its lifetime.~~or less. While exempt from the ACL and AM requirements, FMPs or FMP amendments for these stocks must have SDC, MSY, OY, ABC, and an ABC control rule.

(ii) *International fishery agreements*. Section 303(a)(15) of the Magnuson-Stevens Act applies "unless otherwise provided for under an international agreement in which the United States participates" (Magnuson-Stevens Act section 303 note). This exception applies to stocks or stock complexes subject to management under an international agreement, which is defined as "any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to

which the United States is a party" (see Magnuson-Stevens Act section 3(24)). These stocks would still need to have SDC, MSY, and ~~MSY~~OY.

(2~~3~~) *Flexibility in application of NS1 guidelines*. There are limited circumstances that may not fit the standard approaches to specification of reference points and management measures set forth in these guidelines. These include, among other things, conservation and management of Endangered Species Act listed species, harvests from aquaculture operations, ~~and~~ stocks with unusual life history characteristics (e.g., Pacific salmon, where the spawning potential ~~for a stock~~ is ~~spread over a multi~~ concentrated in one year ~~period).~~), and stocks for which data are not available either to set reference points based on MSY or MSY proxies, or manage to reference points based on MSY or MSY proxies. In these circumstances, Councils may propose alternative approaches for satisfying ~~the NS1~~ requirements of the Magnuson-Stevens Act other than those set forth in these guidelines. Councils must document their rationale for any alternative approaches ~~for these limited circumstances~~ in an FMP or FMP amendment, which will be reviewed for consistency with the Magnuson-Stevens Act.

(i) *Fisheries data*. In their FMPs, or associated public documents such as SAFE reports as appropriate, Councils must describe general data collection methods, as well as any specific data collection methods used for all stocks ~~in the fishery,~~ and ~~EC species~~stock complexes in their FMPs, including:

(1) Sources of fishing mortality (both landed and discarded), including commercial and recreational catch and bycatch in other fisheries;

(2) Description of the data collection and estimation methods used to quantify total catch mortality in each fishery, including information on the management tools used (i.e., logbooks, vessel monitoring systems, observer programs, landings reports, fish tickets, processor reports, dealer reports, recreational angler surveys, or other methods); the frequency with which data are collected and updated; and the scope of sampling coverage for each fishery; and

(3) Description of the methods used to compile catch data from various catch data collection methods and how those data are used to determine the relationship between total catch at a given point in time and the ACL for stocks and stock complexes that ~~are part of a fishery~~require conservation and management.

(j) *Council actions to address overfishing and rebuilding for stocks and stock complexes ~~in the fishery~~*

(1) *Notification*. The Secretary will immediately notify in writing a Regional Fishery Management Council whenever it is determined that:

(i) Overfishing is occurring;

(ii) A stock or stock complex is overfished;

(iii) A stock or stock complex is approaching an overfished condition; or

(iv) Existing remedial action taken for the purpose of ending previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress.

(2) *Timing of actions*—

(i) *If a stock or stock complex is undergoing overfishing*. Upon notification that a stock or stock complex is undergoing overfishing, a Council should immediately begin working with its SSC (or agency scientists or peer review processes in the case of Secretarially-managed fisheries) to ensure that the ABC is set appropriately to end overfishing. Councils should evaluate the cause of overfishing, address the issue that caused overfishing, and reevaluate their ACLs and AMs to make sure they are adequate. ~~FMPs or FMP amendments must establish ACL and AM mechanisms in 2010, for stocks and stock complexes determined to be subject to overfishing, and in 2011, for all other stocks and stock complexes (*see* paragraph (b)(2)(iii) of this section). To address practical implementation aspects of the FMP and FMP amendment process, paragraphs (j)(2)(i)(A) through (C) of this section clarifies the expected timing of actions. (A) In addition to establishing ACL and AM mechanisms, the ACLs and AMs themselves must be specified in FMPs, FMP amendments, implementing regulations, or annual specifications beginning in 2010 or 2011, as appropriate.~~

~~(B) For stocks and stock complexes still determined to be subject to overfishing at the end of 2008, ACL and AM mechanisms and the ACLs and AMs themselves must be effective in fishing year 2010.~~

~~(C) For stocks and stock complexes determined to be subject to overfishing during 2009, ACL and AM mechanisms and ACLs and AMs themselves should be effective in fishing year 2010, if possible, or in fishing year 2011, at the latest.~~

(ii) *If a stock or stock complex is overfished or approaching an overfished condition*. ~~(A) For notifications~~ Upon notification that a stock or stock complex is overfished or approaching an overfished condition~~ made before July 12, 2009, a Council must prepare an FMP, FMP amendment, or proposed regulations within one year of notification. If the stock or stock complex is overfished, the purpose of the action is to specify a time period for ending overfishing and rebuilding the stock or stock complex that will be as short as possible as described under section 304(e)(4) of the Magnuson-Stevens Act. If the stock or stock complex is approaching an overfished condition, the purpose of the action is to prevent the biomass from declining below the~~

~~MSST.(B) For notifications that a stock or stock complex is overfished or approaching an overfished condition made after July 12, 2009~~, a Council must prepare and implement an FMP, FMP amendment, or proposed regulations within two years of notification, consistent with the requirements of section 304(e)(3) of the Magnuson-Stevens Act. Council actions should be submitted to NMFS within 15 months of notification to ensure sufficient time for the Secretary to implement the measures, if approved. ~~If the stock or stock complex is overfished and overfishing is occurring, the rebuilding plan must end overfishing immediately and be consistent with ACL and AM requirements of the Magnuson-Stevens Act.~~

(3) *Overfished fishery*.—

(i) Where a stock or stock complex is overfished, a Council must specify a time period for rebuilding the stock or stock complex based on factors specified in Magnuson-Stevens Act section 304(e)(4). This target time for rebuilding (T_{target}) shall be as short as possible, taking into account: ~~The~~the status and biology of any overfished stock, the needs of fishing communities, recommendations by international organizations in which the U.S. participates, and interaction of the stock within the marine ecosystem. In addition, the time period shall not exceed 10 years, except where biology of the stock, other environmental conditions, or management measures under an international agreement to which the U.S. participates, dictate otherwise. SSCs (or agency scientists or peer review processes in the case of Secretarial actions) shall provide recommendations for achieving rebuilding targets (see Magnuson-Stevens Act section 302(g)(1)(B)). The above factors enter into the specification of Ttarget as follows:

(A) *The ~~"~~minimum time for rebuilding a stock~~"~~ (Tmin).* T_{min} means the amount of time the stock or stock complex is expected to take to rebuild to its MSY biomass level in the absence of any fishing mortality. In this context, the term "expected" means to have at least a 50 percent probability of attaining the Bmsy~~.~~, where such probabilities can be calculated. The starting year for the T_{min} calculation should be the first year that the rebuilding plan is expected to be implemented.

(B) ~~For scenarios under paragraph (j)(2)(ii)(A) of this section, the starting year for the T_{min} calculation is the first year that a rebuilding plan is implemented. For scenarios under paragraph (j)(2)(ii)(B) of this section, the starting year for the T_{min} calculation is 2 years after notification that a stock or stock complex is overfished or the first year that a rebuilding plan is implemented, whichever is sooner.~~

(B) *The maximum time for rebuilding a stock or stock complex to its B_{msy} (T_{max}).* (*1~~C~~*) If T_{min} for the stock or stock complex is 10 years or less, then ~~the maximum time allowable for rebuilding (T_{max}) that stock to its B_{msy}~~ is 10 years.

(*2~~D~~*) If T_{min} for the stock or stock complex exceeds 10 years, then ~~the maximum time allowable for rebuilding a stock or stock complex~~one of the following methods can be used to ~~its B_{msy} is~~determine T_{max}:

(i) T_{min} plus the length of time associated with one generation time for that stock or stock complex. "Generation time" is the average length of time between when an individual is born and the birth of its offspring~~.~~.

(ii) The amount of time the stock or stock complex is expected to take to rebuild to B_{msy} if fished at 75 percent of MFMT, or

(iii) T_{min} multiplied by two.

(3) When selecting a method for determining T_{max}, a Council must provide a rationale for its decision based on the best scientific information available. ~~(E) T_{target} shall not exceed T_{max}, and should be calculated based on the factors described in paragraph (j)(3).~~

(C) Target time to rebuilding a stock or stock complex (T_{target}). T_{target} is the specified time period for rebuilding a stock that is considered to be in as short a time as possible, while taking into account the factors described in paragraph (j)(3)(i) of this section. T_{target} shall not exceed T_{max}, and the fishing mortality associated with achieving T_{target} is referred to as

$F_{rebuild}$.

(ii) ~~If a stock or stock complex reached the end of its rebuilding plan period and has not yet been determined to be rebuilt, then the rebuilding F should not be increased until the stock or stock complex has been demonstrated to be rebuilt. If the rebuilding plan was based on a T_{target} that was less than T_{max}, and the stock or stock complex is not rebuilt by T_{target}, rebuilding measures should be revised, if necessary, such that the stock or stock complex will be rebuilt by T_{max}. If the~~ stock or ~~stock complex has not rebuilt by T_{max}, then the fishing mortality rate should be maintained at $F_{rebuild}$ or 75 percent of the MFMT, whichever is less.~~

(iii) Council action addressing an overfished fishery must allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery.

(ii~~i~~) For fisheries managed under an international agreement, Council action addressing an overfished fishery must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(iv) *Adequate Progress*. The Secretary shall review rebuilding plans at routine intervals that may not exceed two years to determine whether the plans have resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks (MSA section 304(e)(7)). Such reviews could include the review of recent stock assessments, comparisons of catches to the ACL, or other appropriate performance measures. The Secretary may find that adequate progress is not being made if $F_{rebuild}$ or the ACL associated with $F_{rebuild}$ are exceeded, and AMs are not correcting the operational issue that caused the overage and addressing any biological consequences to the stock or stock complex resulting from the overage when it is known (see paragraph (g)(3) of this section). A lack of adequate progress may also be found when the rebuilding expectations of a stock or stock complex are significantly changed due to new and unexpected information about the status of the stock. If a determination is made under this provision, the Secretary will notify the appropriate Council and recommend further conservation and management measures, and the Council must develop and implement a new or revised rebuilding plan within two years (see MSA sections 304(e)(3) and (e)(7)(B)). For Secretarially-managed fisheries, the Secretary would take immediate action necessary to achieve adequate progress toward ending overfishing and rebuilding.

(v) While a stock or stock complex is rebuilding, revising rebuilding timeframes (i.e., T_{target} and T_{max}) or $F_{rebuild}$ is not necessary, unless the Secretary finds that adequate progress is not being made.

(vi) If a~~the~~ stock or stock complex has not rebuilt by T_{max}, then the fishing mortality rate should be maintained at its current $F_{rebuild}$ or 75 percent of the MFMT, whichever is less, until the stock or stock complex is rebuilt or the Secretary finds that adequate progress in not being made.

(4) *Emergency actions and interim measures*. ~~The Secretary, on his/her own initiative or in response to a Council request, may implement interim measures to reduce overfishing or promulgate regulations to address an emergency (Magnuson-Stevens Act section 304(e)(6) or 305(c)). In considering a Council request for action, the Secretary would consider, among other things, the need for and urgency of the action and public interest considerations, such as benefits to the stock or stock complex and impacts on participants in the fishery.~~ If a Council is developing a rebuilding plan or revising an existing rebuilding plan due to a lack of adequate progress (see MSA section 304(e)(7)), the Secretary may, in response to a Council request, implement interim measures that reduce, but do not necessarily end, overfishing (see MSA section 304(e)(6)) if all of the following criteria are met:

(i) The interim measures are needed to address an unanticipated and significantly changed understanding of the status of the stock or stock complex;

(ii) Ending overfishing immediately is expected to result in severe social and/or economic impacts to a fishery; and

(iii) The interim measures will ensure that the stock or stock complex will increase its current biomass through the duration of the interim measures.

~~(i) These measures may remain in effect for not more than 180 days, but may be extended for an additional 186 days if the public has had an opportunity to comment on the measures and, in the case of Council-recommended measures, the Council is actively preparing an FMP, FMP amendment, or proposed regulations to address the emergency or overfishing on a permanent basis.~~

~~(ii) Often, these measures need to be implemented without prior notice and an opportunity for public comment, as it would be impracticable to provide for such processes given the need to act quickly and also contrary to the public interest to delay action. However, emergency regulations and interim measures that do not qualify for waivers or exceptions under the Administrative Procedure Act would need to follow proposed notice and comment rulemaking procedures.~~

(5) *Discontinuing a rebuilding plan based on new scientific information*. A Council may discontinue a rebuilding plan for a stock or stock complex before it reaches B_{msy}, if all of the following criteria are met: (i) The Secretary determines that the stock was not overfished in the year that the overfished determination (see MSA section 304(e)(3)) was based on; and
(ii) The biomass of the stock is not currently below the MSST.

(6) *Management measures for depleted stocks*. In cases where an overfished stock or stock complex is considered to be "depleted" (see paragraph (e)(2)(i)(F)), a Council may identify in its rebuilding plan additional management measures or initiatives that could improve the status of the stock, such as: reevaluating SDCs to determine if they are representative of current environmental conditions, recommending the restoration of habitat and other ameliorative programs, identifying research priorities to improve the Councils understanding of the impediments to rebuilding, or partnering with Federal and state agencies to address non-fishing related impacts.

(k) *International overfishing*. If the Secretary determines that a fishery is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures (or no effective measures) to end overfishing under an international agreement to which the United States is a party, then the Secretary and/or the appropriate Council shall take certain actions as provided under Magnuson-Stevens Act section 304(i). The Secretary, in cooperation with the Secretary of State, must immediately take appropriate action at the international level to end the overfishing. In addition, within one year after the determination, the Secretary and/or appropriate Council shall:

(1) Develop recommendations for domestic regulations to address the relative impact of the U.S. fishing vessels on the stock. Council recommendations should be submitted to the Secretary.

(2) Develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock. Councils should, in consultation with the Secretary, develop recommendations that take into consideration relevant provisions of the Magnuson-Stevens Act and NS1 guidelines, including section 304(e) of the MagnusonStevens Act and paragraph (j)(3)(~~iv~~iii) of this section, and other applicable laws. For highly migratory species in the Pacific, recommendations from the Western Pacific, North Pacific, or Pacific Councils must be developed and submitted consistent with Magnuson-Stevens Reauthorization Act section 503(f), as appropriate.

(3) *Considerations for assessing "relative impact."* "Relative impact" under paragraphs (k)(1) and (2) of this section may include consideration of factors that include, but are not limited to: Domestic and international management measures already in place, management history of a given nation, estimates of a nation's landings or catch (including bycatch) in a given fishery, and estimates of a nation's mortality contributions in a given fishery. Information used to determine relative impact must be based upon the best available scientific information.

(l) *Relationship of National Standard 1 to other national standards— General*. National Standards 2 through 10 provide further requirements for conservation and management measures in FMPs~~, but do not alter the requirement of NS1 to prevent overfishing and rebuild overfished stocks~~ (see MSA section 301(a)), and guidelines for these standards are provided in §§ 600.315 – 600.355. Below is a description of how some of the other National Standards intersect with National Standard 1.

(1) *National Standard 2* (see § 600.315). Management measures and reference points to implement NS1 must be based on the best scientific information available. When data are insufficient to estimate reference points directly, Councils should develop reasonable proxies to the extent possible (also ~~*see*paragraph~~see paragraph (e)(1)(~~iv~~v)(B) of this section). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data. SSCs should advise their Councils regarding the best scientific information available for fishery management decisions.

(2) *National Standard 3* (see § 600.320). Reference points should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (also see ~~paragraph (e)(1)(iii) of this section). Also, scientific assessments must be based on the best information about the total range of the stock and potential biological structuring of the stock into biological sub-units, which may differ from the geographic units on which management is feasible.~~paragraphs (e)(1)(ii) and (iii) of this section).

(3) *National Standard 6* (see § 600.335). Councils must build into the reference points and control rules appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors.

(4) *National Standard 8* (see § 600.345). National Standard 8 ~~directs the Councils to apply~~addresses economic and social ~~factors towards sustained participation of fishing communities~~considerations and minimizing to the extent practicable~~, minimize~~ adverse economic impacts on ~~such~~fishing communities within the context of preventing overfishing and rebuilding overfished stocks as required under National Standard 1. ~~Therefore, calculation~~ Calculation of OY as reduced from MSY ~~should include~~also includes consideration of economic and social factors, but the combination of management measures chosen to achieve the OY must principally be designed to prevent overfishing and rebuild overfished stocks.

(5) *National Standard 9* (see § 600.350). Evaluation of stock status with respect to reference points must take into account mortality caused by bycatch. In addition, the estimation of catch should include the mortality of fish that are discarded.

(m) *Exceptions to requirements to prevent overfishing*. Exceptions to the requirement to prevent overfishing could apply under certain limited circumstances. Harvesting one stock at its optimum level may result in overfishing of another stock when the two stocks tend to be caught together (This can occur when the two stocks are part of the same fishery or if one is bycatch in the other's fishery). Before a Council may decide to allow this type of overfishing, an analysis must be performed and the analysis must contain a justification in terms of overall benefits, including a comparison of benefits under alternative management measures, and an analysis of the risk of any stock or stock complex falling below its MSST. The Council may decide to allow this type of overfishing if the fishery is not overfished and the analysis demonstrates that all of the following conditions are satisfied:

(1) Such action will result in long-term net benefits to the Nation;

(2) Mitigating measures have been considered and it has been demonstrated that a similar level of longterm net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur; and

(3) The resulting rate of fishing mortality will not cause any stock or stock complex to fall below its MSST more than 50 percent of the time in the long term, although it is recognized that persistent overfishing is expected to cause the affected stock to fall below its Bmsy more than 50 percent of the time in the long term.

§ 600.320 National Standard 3—Management Units.

(a) *Standard 3*. To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(b) *General*. The purpose of this standard is to induce a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks(s) of fish, and not be overly constrained by political boundaries. Wherever practicable, an FMP should seek to manage interrelated stocks of fish.

(c) *Unity of management*. Cooperation and understanding among entities concerned with the fishery (e.g., Councils, states, Federal Government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred. The Secretary designates which Council(s) will prepare the FMP~~, under~~ (see section 304(f) of the MagnusonStevens Act~~.~~).

(d) *Management unit*. The term "management unit" means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives. Stocks in the fishery management unit are considered to be in need of conservation and management (see § 600.305(c)).

(1) *Basis*. The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. ~~For example:~~

~~(i) *Biological*—could be based on a stock(s) throughout its range.~~

~~(ii) *Geographic*—could be an area.~~

~~(iii) *Economic*—could be based on a fishery supplying specific product forms.~~

~~(iv) *Technical*—could be based on a fishery utilizing a specific gear type or similar fishing practices.~~

~~(v) *Social*—could be based on fishermen as the unifying element, such as when the fishermen pursue different species in a regular pattern throughout the year.~~

~~(vi) *Ecological*—could be based on species that are associated in the ecosystem or are dependent on a particular habitat.~~

(2) *Conservation and management measures*. FMPs should include conservation and management measures for that part of the management unit within U.S. waters, although the Secretary can ordinarily implement them only within the EEZ. The measures need not be identical for each geographic area within the management unit, if the FMP justifies the differences. A management unit may contain~~, in addition to regulated species,~~ stocks of fish for which there is not enough information available to specify MSY and OY or ~~to establish management measures, so that data on these species may be collected under the FMP.~~their proxies.

(e) *Analysis*. ~~To document that an~~An FMP ~~is as comprehensive as practicable, it~~ should include ~~discussions~~discussion of the following:

(1) The range and distribution of the stocks, as well as the patterns of fishing effort and harvest.

(2) Alternative management units and reasons for selecting a particular one. A less-than-comprehensive management unit may be justified if, for example, complementary management ~~exits~~exists or is planned for a separate geographic area or for a distinct use of the stocks, or if the unmanaged portion of the resource is immaterial to proper management.

(3) Management activities and habitat programs of adjacent states and their effects on the FMP's objectives and management measures. Where state action is necessary to implement measures within state waters to achieve FMP objectives, the FMP should identify what state action is necessary, discuss the consequences of state inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on state management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. International boundaries may be dealt with in several ways. For example:

~~(i)~~ By limiting the management unit's scope to that portion of the stock found in U.S. waters; (ii) By estimating MSY for the entire stock and then basing the determination of OY for the U.S.

fishery on the portion of the stock within U.S. waters;
or (iii) By referring to treaties or cooperative agreements.

§ 600.340 National Standard 7—Costs and Benefits.

(a) *Standard 7*. Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) ~~*Necessity of Federal management.*~~

~~(1) *General*. The principle that not every fishery needs regulation is implicit in this standard. The Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. For example, the need to collect data about a fishery is not, by itself, adequate justification for preparation of an FMP, since there are less costly ways to gather the data (see § 600.320(d)(2). In some cases, the FMP preparation process itself, even if it does not culminate in a document approved by the Secretary, can be useful in supplying a basis for management by one or more coastal states.~~

~~(2) *Criteria*. In deciding whether a fishery needs management through regulations implementing an FMP, the following general factors should be considered, among others:~~

~~(i) The importance of the fishery to the Nation and to the regional economy.~~

~~(ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.~~

~~(iii) The extent to which the fishery could be or is already adequately managed by states, by state/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Magnuson-Stevens Act.~~

~~(iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.~~

~~(v)The economic condition of a fishery and whether an FMP can produce more efficient utilization.~~

~~(vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.~~ ~~(vii) The costs associated with an FMP, balanced against the benefits (see paragraph (d) of this section as a guide).~~

(b~~c~~) *Alternative management measures*. Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, state, or local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative. (c~~d~~) *Analysis*. The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives, including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens*. Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resources and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: Capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers. Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector. Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains*. The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains

produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

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Dorothy M. Lowman, Chair | Donald O. McIsaac, Executive Director

May 18, 2015

Dr. Wes Patrick
National Marine Fisheries Service
Acting Branch Chief - Fisheries Policy
1315 East West Highway
Silver Spring MD 20910

Dear Dr. Patrick:

The Pacific Fishery Management Council (Pacific Council) met April 10-16, 2015 in Rohnert Park, California, and reviewed proposed rule to revise the general section of the National Standard guidelines, and the guidelines for National Standard 1, 3, and 7. This letter formally transmits the Council's comments on that proposed rule.

First, let me thank you for coming out to Rohnert Park and briefing our advisory bodies and the Council on the proposed rule. We also appreciate having the comment period encompass a Council meeting and having the proposed rule available in time for our advance briefing materials, which provided time for review and development of comments in advance of your briefing. Most of the proposed changes appear to provide additional flexibility in management to allow for creative solutions as long as the rationale, sufficient record, and justification are given for the chosen course of action. Based on the Council discussion and statements from its Groundfish Management Team and Enforcement Consultants (enclosed), the Council offers the following specific observations and comments:

Calculating T_{max}

The proposed new National Standard 1 (NS1) Guidelines contain two new options for how to calculate T_{max} when a stock is declared overfished, and a new rebuilding plan is being developed. Currently, the only method is $T_{max} = T_{min}$ + one mean generation time. The two new options are $T_{max} = 2*T_{min}$ and T_{max} = time to rebuild to B_{msy} when fished at 75 percent of maximum fishing mortality threshold (MFMT; i.e. approximation of F_{msy}). However, the ratio of T_{max} to productivity (i.e., intrinsic rate of growth coefficient) is very similar under all three options. While allowing alternate means of calculating T_{max} may provide some flexibility, it may also mean more options for analysis, and therefore increase resources and workload needed in the rebuilding analyses. The Council supports including the new options for calculating T_{max} in the NS1 Guidelines.

Surplus Carryover

The proposed guidelines contain new guidance regarding carryover, which would allow raising the acceptable biological catch (ABC) in year 2 if the entire annual catch limit (ACL) is not caught

in year 1. This guidance may promote development of long-term solutions for surplus carryover, particularly for species where the ACL=ABC. The Council supports the proposed additional guidance for authorizing surplus carryover in the NS1 Guidelines.

Rebuilding Progress

Some of the new guidance is very similar to what we already use (e.g., comparing catch to the ACL). However, the focus on maintaining $F<F_{rebuild}$ is new and may reduce the number of revisions to rebuilding plans necessary in the future. The Council supports the proposed additional guidance for monitoring rebuilding progress in the NS1 Guidelines.

Overfishing Determinations

The proposed guidelines would allow for multi-year overfishing determinations. The most recent year of catch above the overfishing level (OFL) may not meet the definition of "overfishing," as it may not jeopardize the stock to produce maximum sustainable yield (MSY) over the long term. Use of the geometric mean of the last three years compared to OFL to determine whether overfishing is occurring would be most useful for species where catch is quite variable and circumstances exist where catch may occasionally exceed the OFL despite management controls. However, this flexibility, appropriately, does not allow for choosing which method (e.g., one-year or three-year comparison) to apply in order to prevent a determination of overfishing. Some additional analyses could be done in the future to identify stocks where the use of a three-year average may be appropriate. The Council supports the proposed addition of using a multi-year determination of overfishing in the NS1 Guidelines.

Discontinuing Rebuilding Plans

There is a proposed new provision for discontinuing rebuilding plans for stocks later determined to never have been overfished (but not yet above B_{MSY}). Discontinuing rebuilding plans while the stock status is still in the precautionary zone may allow more or less catch compared to a rebuilding plan, depending on the myriad of situational policy considerations before a particular Council. The Council supports the proposed addition of criteria for determining when rebuilding plans may be discontinued in the NS1 Guidelines.

Phase-In ABC Control Rules

The proposed new guidance for phase-in of ABC Control Rules allows for slower implementation of either increases or decreases as long as other criteria are met to ensure that overfishing is not occurring. In addition to the 3-year limit, National Marine Fisheries Service (NMFS) may also want to consider criteria based on life history. The Council supports the proposed addition of allowing a multi-year phase-in approach for implementing changes in control rules in the NS1 Guidelines.

"Depleted"

The proposed NS1 guidelines also add a new term: "depleted." This term, used to describe a stock that is overfished, is proposed for: 1) when available information does not indicate that fishing is the primary cause of the stock status falling below the overfished threshold, or 2) when available information indicates that curtailing fishing pressure has not resulted in improvements to stock status. The proposed guidelines indicate the use of this term would be appropriate to be used if the

stock has not experienced overfishing at any point during a period of two generation times. However, for long-lived species, estimating F and F_{MSY} back two generation times could be problematic, and the term "depleted" may be rendered useless. While the term "depleted" likely provides little benefit for management of stocks where habitat needs, or when factors other than fishing, are driving stock dynamics are not known, management of other stocks (e.g., salmon) would benefit from the distinction this term provides. The Council approves of including the term depleted in the NS1 Guidelines, but recommends replacing the criterion of no overfishing in two generation times with a requirement to assess the effects of any past overfishing on the status of the stock.

FMP Review and Updates

The proposed new guidance states that all fishery management plans (FMPs) should be reassessed regularly to ensure that fishery objectives reflect the needs of the fishery. The proposed guidelines have no definition of the term "regularly," and as such the Council requests the guidelines provide clarity, including the flexibility for Councils to adopt a process to identify appropriate criteria for reassessment on an as-needed basis, in addition to or as opposed to, a numerical period. Review of fishery objectives, particularly if allocation objectives are included in FMPs, could be a long process with low likelihood of achieving agreement on any assessment of whether the needs of "the fishery" are being met, let alone any revisions to the objectives. Because of the impact such processes could have on other workload priorities, Councils should have the flexibility to determine which fishery objectives are in need of reassessment, when, and how often reassessment should occur. For example, many objectives (including allocation) may be routinely reassessed during the annual or biennial specification and management measure process; however, some allocation objectives are the result of many years of negotiations, intended to be in place for the long term, and not appropriate for a mandated periodic review.

Thus, the Council recommends not defining the term "regularly," with the implicit understanding that this be left to the individual Councils to determine on a need and resource availability basis.

National Standard 7

The Council also requests NMFS consider adding language to the NS7 Guidelines to note the value of actively engaging with enforcement agencies to solicit feedback when considering an action's impacts under NS7. Enforcement agencies, such as state enforcement and the U.S. Coast Guard, expend significant at-sea and shoreside resources to enforce regulations resulting from various management measures adopted by Councils and enacted by NMFS. Adding this concept to the guidelines acknowledges that enforcement agencies are well-positioned to provide valuable information relative to operating costs associated with enforcement, as well as the costs of industry compliance with these regulations, and to offer considerations regarding potential management strategies to minimize those costs.

The Council appreciates that the proposed revisions to the guidelines have addressed some Council priorities identified as needed revisions to the Magnuson-Stevens Act; however, the NS guidelines do not have the force of law, and there are some priorities that cannot be addressed in the guidelines (see enclosure). Therefore, the Council supports, where appropriate, legislative solutions to some of those issues.

Thank you for your consideration of these comments and recommendations. Should your staff have any questions on this matter, please contact Mr. Chuck Tracy at the Council office.

Sincerely,

D. O. McIsaac, Ph.D.
Executive Director

CAT:kma

Enclosures:
Agenda Item F.2.b, Supplemental GMT Report, April 2015
Agenda Item F.2.b, Supplemental EC Report, April 2015
Agenda Item C.3.b, Supplemental FINAL Legislative Committee Report, June 2014

c: Pacific Council Members
RFMC Executive Directors
Pacific Council Staff Officers
Dr. Alan Risenhoover

GROUNDFISH MANAGEMENT TEAM REPORT ON COMMENTS ON PROPOSED CHANGES TO NATIONAL STANDARD GUIDELINES 1, 3, & 7

The Groundfish Management Team (GMT) received a presentation from Dr. Wes Patrick of the National Marine Fisheries Service (NMFS) on the proposed change to National Standards (NS) 1, 3, and 7 Guidelines. We note that most of the proposed changes appear beneficial for providing additional flexibility in management. A recurring message throughout the presentation was that the intent of this flexibility was to allow for creative solutions as long as the rationale, sufficient record, and justification are given for the chosen course of action. For some of the specific new provisions, the GMT offers the following comments to the Council. Bolded statements indicate recommended comments to forward to NMFS and Dr. Patrick.

Ecosystem Component Species

Relative to "in the fishery" and "ecosystem component (EC) species," would be replaced with the 10 proposed factors to consider when determining if "conservation and management" is needed. These proposed factors are not functionally different from how the Council considers whether to actively manage stocks now. The 10 factors are similar in scope and meaning, with additions to point out other relevant considerations.

Calculating T_{max}

The proposed new NS1 guidelines contain two new options for how to calculate T_{max} when a stock is declared overfished, and a new rebuilding plan is being developed. Currently, the only method is $T_{max} = T_{min}$ + mean generation time. The two new options are $T_{max} = 2*T_{min}$ and T_{max} = time to rebuild to B_{msy} when fished at 75 percent of maximum fishing mortality threshold (MFMT; i.e. approximation of F_{msy}). However, the ratio of T_{max} to productivity (i.e. intrinsic rate of growth coefficient) is very similar under all three options. The GMT notes that while allowing alternate means of calculating T_{max} may provide some flexibility, it may also mean more options for analysis, and therefore resources and workload, in the rebuilding analyses. The Council may choose to explore that for future biennial cycles.

Surplus Carryover

The proposed NS1 guidelines contain new guidance regarding carryover. In very plain terms, it would allow the Council to consider raising the acceptable biological catch (ABC) in year 2 (by a level deemed appropriate by the Scientific and Statistical Committee, SSC) if the entire annual catch limit (ACL) is not caught in year 1. It is possible that this guidance would promote the Council's desire to develop a long-term solution for surplus carryover, particularly for species where the ACL=ABC.

For example, formulas may be developed and endorsed by the SSC. Then, for species where the ACL=ABC but catch was less than the ACL in year 1, a calculation would be made based on the established formula(s), and the amount by which to raise the ABC in year 2 could be presented to and endorsed by the SSC. It may be possible to set up ways to implement the ABC increases either through routine inseason action or automatic action by NMFS.

The GMT appreciates the thought put into this proposed guideline and the flexibility it allows. The Council may want to include this proposed concept as an option when developing improvements to the surplus carryover process. Various other options could be considered for species where attainment is very low (e.g. setting the ACL<ABC for English sole to allow carryover of some amount) or for species with very high attainment (e.g. for petrale sole it may not make sense to lower the ACL for the sole purpose to allow surplus carryover).

Rebuilding Progress

There is also new guidance for determining adequate rebuilding progress. Some of the considerations are very similar to those we already use (e.g. comparing catch to the ACL). **However, we note that the focus on maintaining $F<F_{rebuild}$ is new and may reduce the number of revisions to rebuilding plans necessary in the future.** Currently in our groundfish fishery management plan (FMP), adequate progress toward rebuilding is judged against the probability of achieving T_{target} (i.e. probability of less than 50 percent requires revision). The new guidelines suggest that rebuilding plans should focus on F rates rather than T_{target}, T_{max}, etc.

The GMT is currently working with Chantel Wetzel on a rebuilding management strategy evaluation (MSE) to explore the most robust methods for determining progress toward rebuilding. It is our understanding that Chantel is now exploring varying Fs as part of that MSE, which compares what we are doing now to other possible methods (including focusing rebuilding on keeping $F<F_{rebuild}$). This analysis should provide the basis for Council decision-making on the best method for determining progress toward rebuilding.

Overfishing Determinations

The guidelines also would allow for multi-year overfishing determinations. The most recent one year of catch above the overfishing level (OFL) may meet the definition of "overfishing," as it may not jeopardize the stock to produce maximum sustainable yield (MSY) over the long term. Therefore, the Council could consider using the geometric mean of the last three years compared to OFL to determine whether overfishing is occurring. **This approach would be most useful for species where catch is quite variable and circumstances exist where catch may occasionally exceed the OFL despite management controls.** However, this flexibility does not allow for choosing which method (e.g. one-year or three-year comparison) to apply in order to prevent a determination of overfishing. Some additional analyses could be done in the future to identify stocks where the use of a three-year average may be appropriate.

Discontinuing Rebuilding Plans

There is also a new provision for discontinuing rebuilding plans for stocks later determined to never have been overfished (but not yet above B_{MSY}). **The GMT notes that discontinuing rebuilding plans while the stock status is still in the precautionary zone would likely mean managing to the 40-10 adjustment (i.e., the default harvest control rule in the FMP for stocks in the precautionary zone).** Harvest specifications set using the 40-10 adjustment may allow more or less catch compared to the rebuilding plan, depending on the level of depletion and the biology of the stock.

Phase-In ABC Control Rules

The new guidance for phase-in of ABC Control Rules allows for slower implementation of either increases or decreases as long as other criteria are met to ensure that overfishing is not occurring. This is similar in philosophy to what we did for yelloweye rockfish in the "ramp-down" in 2007-

2008. **It is our understanding that NMFS is seeking feedback on the 3-year limit on such phase-ins, and why it does or does not make sense (i.e. would something based on life history make more sense).**

"Depleted"

The proposed NS1 guidelines also add a new term; "depleted." It is the GMTs interpretation that this term, used to describe a stock that is overfished, would be appropriate to use: 1) when available information does not indicate that fishing is the primary cause of the stock status falling below the overfished threshold, or 2) when available information indicates that curtailing fishing pressure has not resulted in improvements to stock status. The proposed guidelines indicate the use of this term would be appropriate to be used if the stock has not experienced overfishing at any point during a period of two generation times. **For long-lived species, estimating F and F_{MSY} back two generation times could be problematic, and the term "depleted" may be rendered useless.** Additionally, the term "depleted" likely provides very little benefit for groundfish management as we usually do not know habitat needs or what other factors are driving stock dynamics other than fishing (i.e. other than changes to fishing pressure, we do not have tools to control mortality).

Indicator Stocks in Complexes

Proposed NS1 revisions would allow for use of data-rich stocks as indicators within complexes. The GMT notes that there are no "pure" groundfish complexes where all stocks are of similar biology, population dynamics, vulnerability to the fishery, etc. Additional analyses would be needed to understand how we might incorporate this concept into any of our existing complexes, but this could be considered as we continue restructuring complexes to be more in line with NS1. Dr. Patrick indicated that there is currently an MSE underway for managing stock complexes and further pointed out that there may be ways to use closely related stocks as indicators, even if they are not within a complex.

FMP Review and Updates

The new guidance says that all FMPs should be reassessed regularly to ensure that fishery objectives reflect the needs of the fishery. The GMT suggests that this can be incorporated as part of the regular biennial process with little additional workload.

The revisions to NS guidelines are not intended to require changes to FMPs. The GMT notes that it may be prudent, at an appropriate time, to update a variety of sections of the groundfish FMP to improve consistency with the new guidelines once they are finalized. There is language in the groundfish FMP that directly stems from NS guideline language that is proposed to be revised. For example, sections 4.2 and 4.4.4 of the groundfish FMP use terms and descriptions regarding ecosystem component species that are proposed to be deleted or superseded with more flexible guidelines. It is the GMT's understanding that, given that the intent of the proposed changes as stated by NMFS, antiquated language in the FMP maintains the same spirit as the proposed NS guidelines, and would not necessarily limit the Council's actions, as long as those actions are well-justified and explained.

PFMC
04/13/15

Agenda Item F.2.b
Supplemental EC Report
April 2015

ENFORCEMENT CONSULTANTS REPORT ON PREPARE COMMENTS ON PROPOSED CHANGES TO THE NATIONAL STANDARD GUIDELINES 1, 3, AND 7

The Enforcement Consultants (EC) have reviewed Agenda Item F.2, Comments on Proposed Changes to National Standard Guidelines (NS) 1, 3, and 7 and have the following comments, specifically pertaining to NS-7.

As discussed in Agenda Item F.2, Attachment 1, the Magnuson-Stevens Fishery Conservation and Management Act states, *Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.* The EC requests NMFS consider adding language to the guidelines to note the value of actively engaging with enforcement agencies to solicit feedback when considering an action's impacts under NS7. As the Council recognizes, enforcement agencies, such as state enforcement and the U.S. Coast Guard, expend significant at-sea and shoreside resources to enforce regulations resulting from various management measures adopted by the Pacific Council and enacted by NMFS. The EC believes adding this concept to the guidelines acknowledges that enforcement agencies are well positioned to provide valuable information relative to operating costs associated with enforcement, as well as the costs of industry compliance with these regulations, and to offer considerations regarding potential management strategies to minimize those costs.

Recommendation: The EC recommends the Council consider inclusion of the above in any comments prepared in advance of the June 23-25 Council Coordination Committee meeting.

NOAA representatives to the EC abstained from commenting on this EC report.

PFMC
04/12/15

LEGISLATIVE COMMITTEE REPORT ON MAGNUSON-STEVENS ACT REAUTHORIZATION PRIORITIES AND OTHER LEGISLATIVE MATTERS

The Legislative Committee (LC) met via webinar on Wednesday, June 11,[1] and in person on Thursday, June 19.[2] During the webinar, the LC discussed H.R. 4742 (Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act), the House Magnuson-Stevens Act (MSA) reauthorization bill, and the Senate's discussion draft of an MSA reauthorization bill. At that time, the LC tasked Council staff with drafting a report with points to be made in a joint letter to House and Senate principals. This draft was circulated at the onset of this Council meeting to assist other advisory bodies in preparing their statements to the Council. During the June 19 meeting, the LC considered the draft report on MSA reauthorization before discussing other Federal legislation.

The LC recommends the following points and recommendations to the Council.

Council Letter on MSA Reauthorization Issues

The LC recommends the Council task the Executive Director with sending a letter to Representative Doc Hastings and Senator Mark Begich with recommendations on MSA reauthorization. While the comment period for the Senate Staff Discussion Draft closed June 2, 2014, and there are elements in the Senate Staff Discussion Draft that are not included in HR 4742, it is felt the principals in both houses of Congress should be aware of the Council perspective on these matters as the legislative process on MSA reauthorization progresses.

HR 4742

1. With regard to the section describing consistency under federal laws[3], the LC recommends the Council express support for the language mandating that the MSA control when there is any conflict with the National Marine Sanctuaries Act or the Antiquities Act. Regarding language about the intersection between the MSA and the Endangered Species Act (ESA), the LC noted it is unclear whether the bill intends to have the Councils select the appropriate incidental catch rate for ESA-listed fish (such as some salmon stocks) caught under MSA authority, or whether current ESA processes

[1] The webinar was attended by committee members Dr. David Hanson, Mr. David Crabbe, Ms. Dorothy Lowman, and Mr. Dan Wolford; Council Executive Director Dr. Donald McIsaac, and Pacific Council staff Ms. Jennifer Gilden. Several other people attended: Susan Chambers (GAP), Miako Ushio (NOAA), Jamie Goen (NOAA), Jessi Doerpinghaus (WDFW), Peter Flournoy (International Law Offices of San Diego), Theresa Labriola (Wild Oceans), Tara Brock (Pew Charitable Trusts), Marci Yaremko (CDFW), Jennifer Quan (WDFW), Gway Kirchner (ODFW), Michele Culver (WDFW), John Cross (Pew Charitable Trusts), Yvonne deReynier (NMFS), Rod Moore (WSPA), Steve Bodnar (Coos Bay Trawlers Assoc.), Corey Niles (WDFW), and Troy Buell (ODFW).

[2] The June 19 meeting was attended by Dr. David Hanson, Mr. David Crabbe, Ms. Dorothy Lowman, Mr. Dan Wolford, Mr. Buzz Brizendine, and Mr. Dale Myer; Council Executive Director Dr. Donald McIsaac; Pacific Council staff Ms. Jennifer Gilden; and Mr. Rod Moore, Mr. Corey Niles, and Ms. Jessi Doerpinghaus.

[3] Sec. 5 in MSA as revised by HR 4742; page 15 of annotated copy (Agenda Item C.3.a, Attachment 3)

would determine the incidental take rate, , and Councils would then adopt conforming regulations; Council staff has yet to be able to determine Congressional intent. The Council previously adopted a position on this matter advocates for an open and transparent process for the selection of ESA-related fishery impact rates with Council involvement, such as occurred in the case of Lower Columbia River Tule Fall Chinook. The LC recommends the Council support the section on Fishery Impact Statements as a solution to the current problems associated with National Environmental Policy Act implementation.[4]

2. While the LC does not recommend the Council object to overarching standards for the implementation of electronic monitoring programs, it believes there should be some exemption for programs that already exist or that are nearly ready to be implemented.[5]
3. The LC recommends that rebuilding time adjustments or exemptions include the category of instances when a rebuilding plan would otherwise be required, but is not either because fishing is not the cause of the stock's depletion, and/or because fishing restrictions cannot correct the depleted condition.[6]
4. The LC supports the change in HR 4742 (as compared to the earlier discussion draft) that allows use of electronic monitoring for enforcement purposes.[7]
5. The LC supports the use of the asset forfeiture fund for use in the areas in which the fines were collected.[8]
6. The LC reaffirms its support for the REFI Act (HR 2646), which has been incorporated into HR 4742, and encourages Congress to pass this legislation expeditiously, either as part of MSA reauthorization or separately.
7. The LC supports the newly-added language that allows the use of data for marine spatial planning in order to ensure access to fishing grounds and for national security purposes.[9]
8. The LC believes the newly-added language that requires the Secretary to publish the estimated cost of recovery from a fishery resource disaster with 30 days of the disaster determination is impractical.[10]
9. State jurisdiction over Dungeness crab should be extended, as done in the Senate discussion draft.[11]

Senate Discussion Draft

1. The Senate discussion draft includes requirements for a great deal of new science and reporting that would require more staff and funding, and could decrease flexibility of individual Councils. For example, under Section 404(e), the draft would require stock assessments for every stock of fish that has not already been assessed, subject to appropriations; and under Section 303(a)(14), would require annual catch limits (ACLs) for forage fish fisheries to take into account "the feeding requirements of dependent fish

[4] Sec. 303(d) in MSA as revised (page 65 of annotated copy)
[5] MSA as revised (page 152 of annotated copy)
[6] MSA Sec. 304(e)(4)(ii) as revised (page 81 of annotated copy)
[7] MSA as revised (page 152-153 of annotated copy)
[8] MSA Sec. 404(3) as revised (page 135 of annotated copy)
[9] Sec. 402(b)(5) as revised and amended by Del. Bordallo (page 132).
[10] Sec. 312(a)(1)(B) as revised and amended by Rep. Runyan (page 112)
[11] Sec. 306(i), page 101.

throughout [their] range." A substantial amount of new science would be required for both of these provisions, given that the Pacific Council manages 119 stocks of fish.
2. The definition of "subsistence fisheries" needs to be made more specific. As it currently stands, it could apply to recreational fishers who bring fish home for consumption.[12]
3. The section on fishery ecosystem plans should be reconsidered. As currently written, the high standards included in that section could have a chilling effect on the development of Fishery Ecosystem Plans.[13]
4. The LC feels the wording to streamline the National Environmental Policy Act/MSA process is insufficient, and instead supports the solution in HR 4742.[14]
5. The electronic monitoring section in the discussion draft contains an excessive amount of detail regarding requirements and timelines, and should be made more flexible.[15]

The LC recommends the Council highlight support for the Senate illegal, unreported, and unregulated definition (including the importance of unreported catches), which contains elements critical to achieving a level playing field for U.S. fisheries in the international arena.

Other issues

The LC recognizes that proposed legislation addresses several Council priorities, but notes that there are several issues important to the Pacific Council that remain unaddressed by both the House and Senate and would like to see them incorporated into a bill reauthorizing the MSA. Relevant topics include not requiring revision of rebuilding plans when there are minor changes in stock status (the "noise vs. signal" issue), better allowing Councils to consider the needs of fishing communities in developing rebuilding plans, exploring flexibility for fishery impacts on data-poor species when the precautionary approach becomes a bottleneck for healthy mixed-stock fisheries, and several issues related to highly migratory species fisheries. The LC recommends the Council continue to draw attention to these concerns.

Highly migratory species issues include designating one Commissioner seat on Inter-American Tropical Tuna Commission for the Pacific Council; expanding state enforcement authority to all vessels that fish directly offshore of the territorial sea within the state-given boundaries; enhancing enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity; changing "vessels" to "vessel" in the IUU certification section; and providing flexibility in observer requirements.
It would be useful to clarify in Section 302(i)(A)(3) that Council discussion of international negotiations, such as proposals and counter proposals in the recent the US-Canada Albacore Treaty negotiations, are clearly an eligible topic for discussion during closed sessions of Council meetings. It would also be useful to include a carryover exception to allow ACLs to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided the SSC finds that such a carryover will have negligible biological impacts, as well as clarifying current MSA language about the SSC recommending true biological overfishing limits (OFLs), and not policy decision-dependent annual catch limits related to social, economic, or risk factors.

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[12] Sec. 3(42A), page 13.
[13] Sec. 303B, page 74-76.
[14] Refers to Sec. 304(i) of the MSA; page 157 of annotated MSA; see also page 84
[15] Page 158-159 of annotated MSA.

Other Federal Legislation

The LC discussed S. 2094, the Vessel Incidental Discharge Act. While the Council has not been asked to comment on S. 2094, the LC is in unanimous support of Section 7(a), which provides for the current exemption for commercial fishing vessels (including recreational charterboats) to be made permanent. The LC recommends the Council support making this exemption permanent by any legislative vehicle possible, in the event the Council is asked for comment after the June Council meeting.

The LC also discussed S. 2198 and H.R. 4039, which both deal with drought relief issues in California and southern Oregon. The LC is very concerned that these bills, and several companion bills, are dangerous to healthy salmon production. The LC endorses the points made in opposition to these bills as expressed in the letter from the Golden Gate Salmon Association (Agenda Item C.3, Attachment 9). The LC recommends the Council authorize the expression of opposition to drought relief bills that are deleterious to salmon populations, in the event that the Council is asked for comment after the June Council meeting.

The Council is on record for supporting the Revitalizing the Economy of Fisheries in the Pacific Act (S. 1275). The LC notes that similar refinancing relief has been proposed in an MSA reauthorization bill and a Coast Guard authorization bill. The LC recommends the Council endorse support for the refinancing provisions in S. 1275, if the Council is asked to comment on other related bills after the June Council meeting.

The LC also discussed the Senate Resolution honoring Billy Frank, Jr. and his many contributions to contemporary salmon recovery and management. The LC would like to draw the Council's attention to this resolution, which is included in full in Agenda Item C.3.a, Attachment 5, to acknowledge his contributions in the Pacific Council arena and elsewhere.

Finally, the LC discussed recent reports in the media about the President's intent to take new actions to protect and preserve the ocean. This includes a large marine protected area in the South Pacific, and efforts to combat illegal fishing, address seafood fraud, and prevent illegally caught fish from entering the marketplace. It is expected that there will be an open comment period that will be a precursor to an Executive Order, and, if so, the LC can add this matter to a future agenda.

Future Meeting Planning

The LC recommends meeting at the onset of the September Council meeting in Spokane, and via webinar in advance if there are significant legislative developments over the course of the summer.

PFMC
06/25/14

Back to Agenda

INTEGRATING

NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE

INTO A

REAUTHORIZED MAGNUSON-STEVENS ACT

A Council Coordination Committee Concept White Paper

February 2015

With GMFMC staff comments

Introduction

Fishery management involves fairly rapid cycles of adaptive management in which information about changing conditions is addressed through adjustments to the management program. In this setting, there has long been criticism that meeting the requirements of the National Environmental Policy Act (NEPA) has caused delays and introduces requirements that duplicate those in the Magnuson-Stevens Act (MSA) and other applicable law. Current rules, guidelines, and directives to comply with NEPA for marine fishery management actions has been overly expensive in terms of workload to both Council and National Marine Fisheries Service (NMFS) staff resources, with negative opportunity costs on other regulatory activities. There have been instances where current compliance with NEPA has hindered adequate compliance with MSA in terms of providing comprehensive analysis to Councils prior to their taking final action; there also have been instances of alternatives to possible action on a particular fishery issue being added or refined in the NEPA analysis document after final Council action, that are taken into consideration in the Secretarial review process executed under the MSA. **((Provide more specifics or examples of the indicated problems above.))** The Council Coordination Committee (CCC) recommends integrating the policy objectives and key requirements of NEPA into the MSA, aligned in a timely manner, as a way to address these problems.

The delays in implementing fishery management actions as a result of current NEPA compliance protocols can be significant. Figure 1 shows contemporary timelines for accomplishing the current guidelines and procedures for NEPA, MSA, **((Process for GMFMC is different, we cannot take final action before the DEIS comment period has ended, except in rare occurrences, like a non-controversial action.))** and the Administrative Procedure Act (APA), assuming the preparation of an environmental impact statement (EIS).[1] This figure is intended to illustrate the prolongation of the Secretarial review process after final Council action is taken under the current MSA process, and thus delay in implementation of any fishery management action. It can be seen that all three statutes require separate public comment periods, which is duplicative and contributes to lengthening the process from Council final action to implementation, in total, there are at least 8 public comment periods if one assumes a regulatory action that encompasses four Council meetings and the existing procedures after final Council action taken under each statue: 4 leading to and including final Council action and 4 subsequent to final Council action. Attachment 1, describing the Pacific Council Groundfish Fishery Biennial Specifications setting process for 2009-10 is a contemporary example of a problematic NEPA compliance process dealing with the implementation delay problem; it shows 632 days between the initiation of the process at the first Council meeting and the first day the resulting regulations were implemented.

A discussion of effort and process duplication problems between the NEPA and MSA requirements can quickly become a discussion of NEPA protocols, since the current procedures have moved to using NEPA documents to satisfy the analytical requirements of MSA. Thus, the lengthier, more complex, and more staff-expensive NEPA process has essentially subsumed the MSA analytical requirements. **[The Regional Councils are a product of MSA, but the IPT must fit the Council's deliberative process into the NEPA procedural requirements, instead of having the NEPA requirements adapted to the Council process.]** While it can be argued that the existing MSA requirements may not be in themselves fully sufficient for a comprehensive review of environmental impacts, the current NEPA compliance protocols include review processes that duplicate what has been, or can be, much more efficiently accomplished in the Council process**. It would be more efficient to incorporate NEPA protocols into the Council's process for complying with MSA, rather than trying to rationalize the Council's actions into a NEPA deliberative process.**

[1] For an environmental assessment the 45-day public comment period is not required; however, there has been an increasing trend to mandating an EIS, even for routine fishery specification regulations, such as quotas for particular fisheries**((not true for GMFMC))** that respond to new scientific information on fish stock abundance.

In addition to the increase in time necessary to accomplish a fishery management action under current NEPA compliance protocols, there is a significant increase in staff workload and process compared to what is required under the MSA. This increase has been overly expensive in terms of workload to both Council and NMFS staff resources, with negative opportunity costs on other regulatory activities. Attachment 2, describing the process yielding the 6,000[2] page 2004 Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement document is an example of this problem of enormous document volume and associated huge workload. While there is no accounting of the total number of FTE staff hours spent preparing this document to its final stage, it is commonly accepted that it is excessive compared to original NEPA statutory direction and it came with the cost of addressing many other important, urgent fishery management concerns that were apparent at that time. **[some specifics as to why it was some NEPA coordinator's determination that such a document was warranted, could help this paragraph, because I cannot comprehend development of such a document in the Gulf.]**

There have also been instances where current compliance with NEPA has fallen short of adequate compliance with MSA in terms of providing comprehensive analysis, or even a full description of alternatives, to Councils prior to their taking final action**((not true for Gulf)).** The MSA process clearly calls for all information to be available to the Councils at the time of a final decision on a recommendation to the Secretary and that the Secretary is to review the Council recommendation on the merits of the administrative record of the Council process. Current protocols using a NEPA document to satisfy MSA analytical requirements can create a problem insuring Council members make a fully informed final decision, in that the NEPA document is formally an agency document that can be modified after Council final action has taken place. There have been instances of additional analysis being added to the NEPA document, alternatives being added, or alternatives previously rejected being refined and used, prior to the Record of Decision stage in the NEPA process—well after Council final action. Taking such information into consideration in the Secretarial review process executed under the MSA represents a serious shortcoming in an efficient process designed to provide Councils the same full spectrum of information at the time of final decision making that is used in approving, disapproving, or partially approving a final Council recommendation. It also represents a serious shortcoming in the spirit of NEPA to provide for comprehensive analysis prior to decision making, as applied to Council decision making. Attachment 3, describing the sequence of events in 2012 -2013 around the New England Fishery Management Council's Framework Adjustment 50 to the Northeast Multispecies FMP is an example illustrating this particular problem.

MSA Section 304(i) (see Attachment 4), included as part of the 2007 Magnuson-Stevens Reauthorized Act, was intended to more closely align the requirements of the MSA and NEPA within NMFS's NEPA procedures (required by 40 CFR Part 1505). This section directs the agency to promulgate final procedures within 12 months of enactment. In December 2008 NMFS issued a proposed rule for this purpose, which was later withdrawn. NOAA's Office of Planning and Policy Integration has been revising NOAA Administrative Order 216-6, Environmental Review Procedures, but to date this task has not been completed. In 2013 NMFS issued a policy directive "specifically to address the unique timing and procedural requirements of the MSA." However, the CCC does not believe the current approach has made the alignment of NEPA and MSA more timely (quicker), a reduction in extraneous paperwork (smaller documents), nor more concise (less process or workload efficient), as called for in Section 304(i). In the opinion of the CCC, the 2013 policy directive effectively describes the current institutional status quo.

[2] Many have heard about a NEPA document of about 7,000 pages for this matter. The draft SEIS was approximately 7,000 pages in length.

Proposal

The CCC proposes that the MSA be amended to address the aforementioned problems by adding a section to the end of Section 303, Contents of Fishery Management Plans that achieves more efficient integration of NEPA intent. This new section would incorporate the key parts of NEPA verbatim, which requires Federal agencies to prepare "a detailed statement" on "the environmental impact of the proposed action" into the MSA. Currently, MSA Section 303(a)(9) requires preparation of a "fishery impact statement" as part of any FMP or FMP amendment. The proposal is to move and expand this section so that it incorporates the critical essence of NEPA including a full analysis of environmental impacts and consideration of alternatives. In addition, some important concepts in the Council on Environmental Quality implementing regulations such as the analysis of cumulative impacts and specifying opportunities for public comment would be been added. Importantly, the elements of a fishery impact statement currently outlined in MSA Section 303(a)(9) would be retained in the new section. This new section also makes clear that compliance with these requirements would fulfill the requirements of NEPA. Section 304, Actions by the Secretary, is proposed to be amended to clarify how the review of plans, plan amendments, and proposed regulations would take into account the fishery impact statement. Also, a joint Councils-Secretary process is proposed that will provide detailed guidelines and procedures on achieving the statutory intent of both NEPA and the MSA.

Conceptually, this proposed approach is similar to how the intent and essential components of the Federal Advisory Committee Act (FACA) was incorporated into the MSA. The FACA calls for several requirements to be satisfied prior to a committee providing formal advice to the federal government, including such things as public access to meetings, timely advance notice of meetings, record keeping, balanced membership, and structured procedures; it also has a lengthy process for legitimatizing committees, committee meetings, and committee recommendations. The key features of FACA were incorporated as requirements in the MSA, together with Section 302(i)(1) which states that FACA shall not apply to the Councils, CCC, Scientific and Statistical Committees, or related advisory bodies. Absent this "FACA exemption", process requirements, delays, and other problems would render the Council role in active marine fishery actions functionally unworkable.

It is important to emphasize that this proposal is not to "get out of" complying with the intent of NEPA, not to avoid a complete and robust analysis of the full spectrum of environment effects of a fishery management proposal, to shortcut a thorough process by which the input of the public and relevant government entities is considered prior to a final decision, or to prohibit any entity from seeking legal relief if they do not believe a full review of environment effects has not occurred. On the contrary, the intent is to mandate that all the important aspects of NEPA compliance are included in a comprehensive and detailed process, that the functional equivalent of full compliance with NEPA statutory language is accomplished, and that these important functions are achieved in a more efficient way than currently administered. **((Consider rewriting as the purpose or goal of this proposal and listed as such at the start of the document.))**

In summary, the intent of this proposal is to

- Incorporate exact or near exact key NEPA language into MSA Section 303, including
  - A reasonable range of alternatives
  - Full analysis of environmental impacts
  - An analysis of cumulative impacts
- Consolidate public comment guidelines currently adopted for NEPA implementation with those in MSA
  - Figure 2 shows a generic timeline for the proposed new process.
- Retain the conservation and fishery participant impact analysis requirements of the current MSA
- Adjust the language in Section 304 regarding Secretarial review of Council actions to include review of analytical documents for completeness of the new requirements

- Insert language making it clear that if the above requirements are accomplished, then compliance with NEPA has been achieved.
- Insert language describing a joint Council and Secretarial process establishing guidelines and regulations to codify the requirements of this new process.

The specific proposal is as follows. Yellow highlight has been added where the language is identical to the language in the NEPA. Gray highlight has been added where the language is identical to the language in the current MSA.

SEC. 303 CONTENTS OF FISHERY MANAGEMENT PLANS

Delete Sec. 303(a)(9)[3] and create new Sec. 303(d)

(d) FISHERY IMPACT STATEMENT – Any fishery management plan (or fishery management plan amendment) prepared by any Council or by the Secretary pursuant to Sec. 303(a) or (b), or proposed regulations deemed necessary pursuant to Sec. 303(c), shall include a Fishery Impact Statement which shall assess, specify and analyze the likely effects and impact of the proposed action on the quality of the human environment.

(1) The fishery impact statement shall describe—

(A) a purpose of the proposed action;

(B) the environmental impact of the proposed action[4];

(C) any adverse environmental effects which cannot be avoided should the proposed action be implemented[2];

(D) a reasonable range of alternatives to the proposed action[2];

(E) the relationship between short-term use of fishery resources and the enhancement of long-term productivity[2];

(F) the cumulative conservation and management effects,

(G) economic, and social impacts of the proposed action[2] on—

(i) participants in the fisheries and fishing communities affected by the proposed action;

(ii) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(iii) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery[5]

(2) A substantially complete Fishery Impact Statement, which may be in draft form, shall be available not less than 14 days **((too rigid?))** before the beginning of the meeting at which a Council makes its final decision on the proposal (for plans, plan amendments, or proposed regulations prepared by a Council pursuant to Sec.
303(a) or Sec. 303(c)). Availability of this Fishery Impact Statement will be announced by the methods used by the Council to disseminate public information and the public and relevant government agencies will be invited to comment on the Fishery Impact Statement.

[3] Page 75 of the MSA "Blue Book"
[4] See 42 U.S.C. 4332, Sec. C
[5] See MSA 303(a)(9)

(3) The completed Fishery Impact Statement shall accompany the transmittal of a fishery management plan or plan amendment as specified in Sec. 304(a), as well as the transmittal of proposed regulations as specified in Sec. 304(b).

(4) The Councils shall, subject to approval by the Secretary, establish criteria to determine actions or classes of action of minor significance regarding Section 303(d) (A), (B), (D), (E), and (F), for which preparation of a Fishery Impact Statement is unnecessary and categorically excluded from the requirements of this section, and the documentation required to establish the exclusion.

(5) The Councils shall, subject to approval by the Secretary, prepare procedures for compliance with this section that provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork and effectively involve the public, including—

(A) using Council meetings to determine the scope of issues to be addressed and identifying significant issues related to the proposed action;

(B) integration of the Fishery Impact Statement development process with preliminary and final Council decision making in a manner that provides opportunity for comment from the public and relevant government agencies prior to these decision points;

(C) providing scientific, technical, and legal advice at an early stage of the development of the Fishery Impact Statement to ensure timely transmittal and Secretarial review of the proposed fishery management plan, plan amendment, or regulations to the Secretary.

(6) Actions taken in accordance with Sec. 303 procedures shall constitute fulfillment of the requirements the National Environmental Policy Act of 1970 as amended 42 U.S.C. 4371 *et seq.*) and all related implementing regulations.

Sec. 304(a) amended as follows:

(a) REVIEW OF PLANS.—

(1) …

(2) In undertaking the review required under paragraph (1), the Secretary shall—

…[strike "and" from the end of B and at the end of C replace period with "; and"]

(D) evaluate the adequacy of the accompanying Fishery Impact Statement as basis for fully considering the environmental impacts of implementing the fishery management plan or plan amendment.

Sec. 304(b) amended as follows:

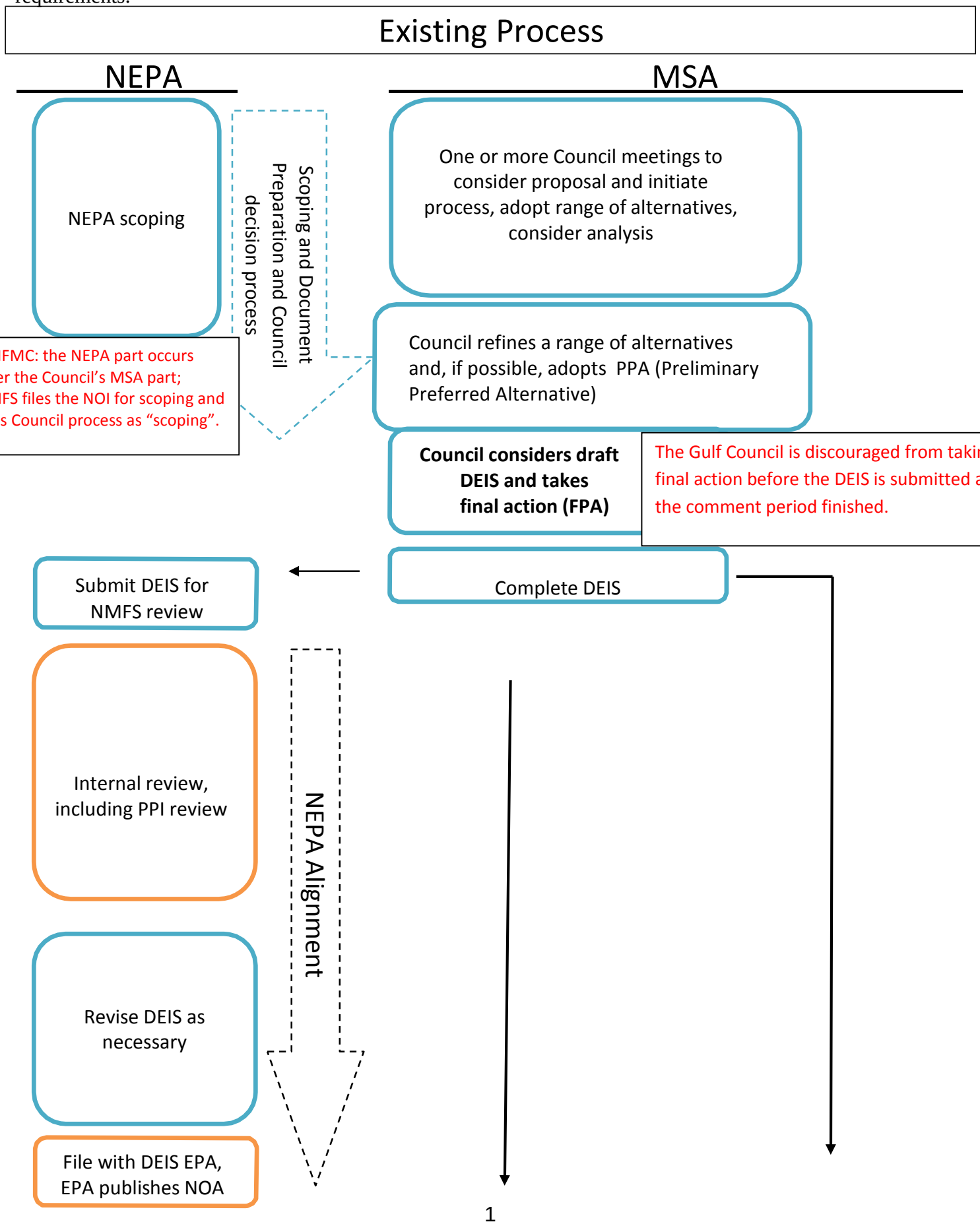
(b) REVIEW OF REGULATIONS.—

(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. The Secretary shall also immediately initiate an evaluation of the accompanying Fishery Impact Statement as a basis for fully considering the environmental impacts of implementing the proposed regulations. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

…

Figures

Figure 1. Timelines and key process steps in the existing process of aligning NEPA and MSA compliance requirements.



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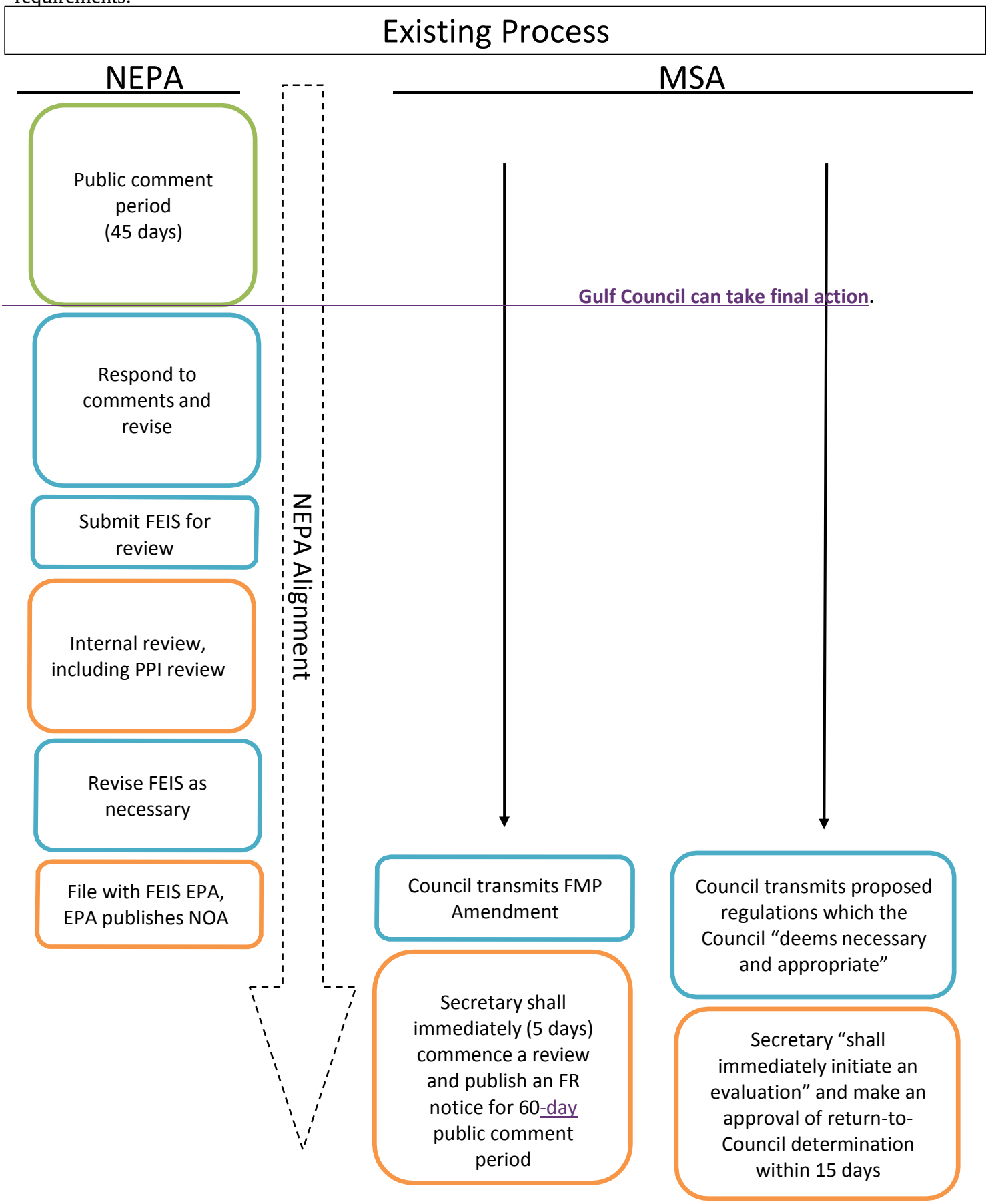

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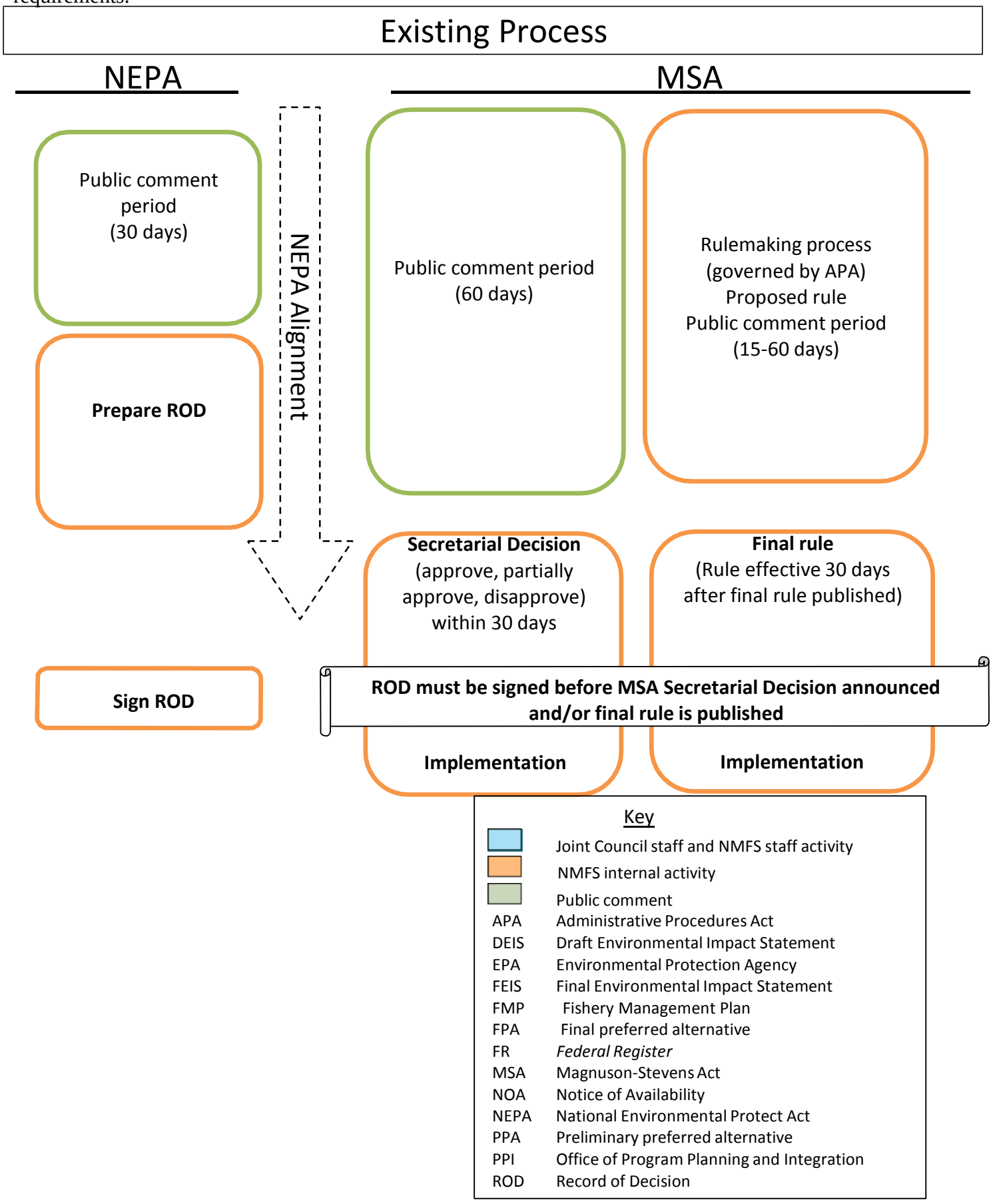

Figure 2. Timelines and key process steps in the proposed process of achieving NEPA compliance in revised MSA procedures.