New England Fishery Management Council
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E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

June 19, 2015

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

Re: Comments on Proposed Revisions to the National Standard Guidelines

Dear Dr. Patrick:

The New England Fishery Management Council reviewed the proposed changes to the National Standard Guidelines. The Council welcomes this discussion, as we believe that changes to the guidelines are needed. We thank your staff for discussing the proposed changes with us at our April, 2015 Council meeting.

The proposed changes are an excellent initial step in revising these critical Guidelines. The draft is certain to draw a wide range of responses from diverse interests. It will be very difficult to aggregate those comments and develop a final rule. This daunting task would benefit from a true process of engagement with the range of interested parties. This should include face-to-face discussions that involve technical, policy, and scientific experts on these issues. While it may be difficult to accommodate such an effort within the formal rulemaking process, the benefits of an iterative approach will be a more logical, coherent product.

Please consider our comments on the changes, which are grouped according to the categories used in the presentation to the Council. We are also providing detailed comments on the specific language in the proposed rule (attachment 1).

Overarching Principles

Several broad concepts that underpin are more detailed comments. The National Standard Guidelines (NSGs) describe elaborate processes for managing a very complex ecological/economic/social system. This system uses diverse sources and types of data with varying degrees of information value. This calls for a process engineering approach which optimizes system design in terms of the separation of signal from noise in data, and damps error rather than propagating it. In many cases, the design of the current system tends to amplify noise and exacerbate management problems.

One piece of evidence that a better system design is needed comes from the National Research Council (NRC) review of U.S. rebuilding plans. This report found that the most common reason that stocks are declared rebuilt is that a current assessment finds they were not overfished at the

time they were classified as such. The implication of this finding is that one of the two key criteria used to judge the performance of US fisheries management is almost as likely to reflect noise as signal. There are examples from our region that illustrate this problem can occur in both directions. Subsequent assessments show that on two occasions (2002, 2008) pollock was incorrectly determined to be overfished, and in one instance (2002) plaice was incorrectly determined to not be overfished. In the context of system engineering, thresholds, like the Minimum Stock Size Threshold (MSST) and the Tmax threshold create discontinuities in management that exacerbate the signal to noise ratio problem.

A well-engineered system takes time, and there may not have been enough time for an engineering approach when new Guidelines were needed following the 2007 Reauthorization of the MSA. It is now many years later. The proposed revision continues to ignore important considerations for the design of a complex system based on noisy data. Analytical tools such as Management Strategy Evaluation (MSE) and other forms of simulation testing should be prominent in the engineering of the system so such problems are avoided.

This new design needs to include increased attention to Ecosystem Based Fisheries Management (EBFM), in all its forms. The proposed changes do take several steps in this direction, but there remains much left to be done. The NSGs need to take a more comprehensive approach to the interplay between resources and users. It does not seem appropriate to apply the same conservation and management standards to low-value species (using a broad definition of value that includes ecosystem function) as to high-value species. Doing so means that optimum yield is not likely to be attained.

As part of the need for better EBFM guidance, the Agency should address the management of mixed stock fisheries. The long-standing definition of a fishery as a stock or stock-complex is deleted by the proposed changes but there is little follow through as to how this affects management decisions. This has implications for the eventual implementation of ecosystem based fisheries management, the application of explicit risk policies, and the attainment of optimum yield (OY). Applying the same conservation and management standards to minor, low value, poorly assessed stocks as apply to valuable, well-studied stocks is likely to result in much less than OY. As the National Research Council noted in its study of rebuilding requirements, "The operational feasibility of the mixed-stock exception could be modified to expand the range of situations to which it can be applied, subject to assurances that the less productive species are not driven to unacceptably low abundance."

Our belief is that if more attention is paid to a better system design, improved EBFM guidance, and the difficulties of managing mixed-stock fisheries, the Guidelines will be dramatically improved. This will lead to more catch stability, a worthy goal that is the basis for many of the proposed changes. These concepts underlie our following comments.

General Comments/Definitions

The draft guidelines do not use a consistent definition of the MSST. As a result, this makes it difficult to interpret some of the proposed changes. The definition is revised to be "…the level of biomass below which the capacity of the stock or stocks to be produce maximum sustainable yield (MSY) on a continuing basis has been jeopardized." This implicitly ties MSST to a stock size that leads to the impairment of recruitment, and establishes a scientific criterion for determining MSST. There is no reason to anticipate that this will be at ½ B_{MSY} or any other

currently used value for MSST. Later sections, however, use different considerations to determine MSST. Further, a following paragraph says that "If environmental changes cause a stock or stock complex to fall below its MSST without affecting its long-term reproductive potential…" Since MSST is defined as a level below which the capacity of the stock to produce MSY has been jeopardized, this sentence is internally inconsistent.

One concern that overlaps many sections of the proposed guidelines is the use of the word "practicable" versus the words "possible" or "practical." This term is not addressed in either the definitions or in the discussion on word use. It is not clear what this term means in the context of its use in the guidelines. We suggest that the meaning of this word should be clarified.

The proposed changes interpret the statutory language to mean that OY means "maintains the long-term average biomass near or above B_{MSY}." This is not language in the statute. It is not clear what is meant by "near B_{MSY}." We believe the logical interpretation is that biomass should be kept above the MSST.

Rebuilding Flexibility

Many of the proposed changes are designed to promote flexibility in rebuilding. The Council generally supports these approaches. Our experience is that overly strict interpretations of rebuilding timelines do little to improve stock status and result in excessive costs to the nation. For this reason, we welcome more flexible approaches that focus on fishing mortality rates rather than fixed rebuilding periods. We have repeatedly argued for this approach and note that it is one of the key findings of the NRC study on rebuilding provisions.

We welcome the clarification that while a stock or complex is rebuilding, revisions to the rebuilding time frame or Frebuild are not necessary unless the Secretary determines that adequate progress is not being made (proposed section 600.310(f)(3)(v)). The requirement that the Secretary evaluate rebuilding progress every two years, however, seems unreasonable given the current stock assessment cycle in our region. Merely comparing catches to Annual Catch Limits is not a robust indication of rebuilding progress, such that without an assessment a rebuilding progress evaluation is unreliable. The agency, however, is not able to provide assessments every two years in our region. We recommend that this time period be modified to account for the frequency of assessments.

The proposed change suggests that adequate rebuilding progress is being made if F< Frebuild, or if catches are less than the ACL associated with Frebuild. It is silent on whether improvements in stock size should also be considered. While we support the reduced emphasis on fixed rebuilding periods, we do not believe that determination of adequate rebuilding progress should depend solely on fishing mortality rates. Any such evaluation should consider trends in biomass. Environmental conditions or stock productivity may have changed since the initial determination of Frebuild, such that the original Frebuild and/or biomass target are no longer appropriate. There needs to be discussion that a revised Frebuild may be necessary in order to improve stock status even if the original Frebuild has been achieved and catches have been less than the ACL. As an illustration, if stock productivity dramatically changed since the Frebuild was calculated, it may be set at a level that is targeting an SSB_{MSY} that is no longer an appropriate target. There may be a need to revise Frebuild in such circumstances.

The proposed changes clarify the use of interim measures as described in section 304(e)(6). The changes would restrict the use of interim measures to specific circumstances. Since these limitations are not included in the statutory language, it is not clear what the authority is used to adopt these restrictions. Moreover, it is not clear why the Agency would want to restrict the use of this tool to instances where there has been an unanticipated and significantly changed understanding of the stock. There may be other circumstances that call for the use of interim measures to reduce overfishing while a Council develops a management response. For example, if a Council is modifying a fishery management plan for an overfished fishery, there may be benefit to interim measures until that can be completed. The proposed change would seem to preclude that option, even if requested by the Council, and even if the interim measures would benefit the stock, unless stock status has changed. It does not seem to make sense to restrict the use of what could be an important conservation tool. The reality is that NMFS can frequently adopt interim measures more rapidly than a Council can implement management changes; we should leave that option available with as few limitations as possible. In any case, more specific guidance on when this provision can be used should be provided.

The agency proposes to modify how the maximum time for rebuilding can be calculated. The approaches suggested do not seem to address the problem caused by the earlier definition, which resulted in a so-called "discontinuity" where small differences in assessment results led to large differences in Tmax. There seems little point in adopting new methods that give the same result and do not address the problem. In addition, the conditions under which one method should be selected over another should be clarified.

Data Limited Stocks

It is perhaps a misnomer to refer to data limited stocks. The issue is not just about the quantity of data, but is about the information that the data provide. The problem of managing fisheries with limited or missing information is well known. Yet the NSGs seem to be designed for some of the most information rich fisheries that exist anywhere. The needs for information include assessment of stock size and fishing mortality rate, projection of future stock size, estimation of MSY and status determination criteria, amount of catch and estimation of discards, and the quantification of uncertainty in all of these quantities. The list expands exponentially when ecological, economic and social considerations are addressed. Important information is lacking for even information rich stocks and fisheries and is severely limiting for perhaps half (or even more) of the stocks subject to management.

The problem of limited information not only applies to relatively minor stocks for which there is limited data. It applies to some of the most extensively studied (data rich) stocks including several New England stocks (e.g., cod). For these data rich stocks, the information problem results primarily from model uncertainty rather than sampling error. Model uncertainty occurs when there are multiple almost equally plausible or scientifically defensible ways of modeling important aspects of population dynamics (e.g., form of a spawner-recruit function). While the models may be almost equally plausible, the fishery management implications of the model choice may be large. Alternative approaches for responding to retrospective patterns in several New England fisheries is another type of model uncertainty. Quantifying model uncertainty is more difficult (and often subjective) than quantifying uncertainty resulting from sampling error. Management Strategy Evaluation is a promising approach for addressing model uncertainty, but the need far exceeds the available scientific resources.

The proposed revised NSGs acknowledge the problem of limited information. They point to methods designed for so called "data poor stocks" including recent studies involving Agency scientists. The guidelines do not seem to recognize the limitations of these methods. The methods often depend on unverifiable assumptions, subjective judgments, intuition or little more than a guess. There seems to be a presumption that there is always enough information for a scientifically defensible Annual Catch Limit (ACL), estimate of catch including discards, and to apply an Accountability Measure (AM) if the catch exceeds the ACL. There does not seem to be consideration of alternative approaches that might be more feasible in the face of limited information.

The changes should highlight the performance analysis of different methods (see Carruthers et al 2011) as a basis for the section between alternative approaches.

Stocks That Require Conservation and Management

The proposed rule eliminates the concept of “stocks in the fishery”. It replaces it with stocks that require conservation and management. This is a logical approach, but the proposed rule needs additional clarification. Different regions take different approaches for determining which stocks need management; clarification could move towards national standardization on this issue. There are a few places where the proposed text seems internally inconsistent (see attached section by section analysis for details). In addition, during our review of this section it became clear that the changes are creating confusion about ecosystem component species. Some interpret the changes to remove any criteria that must be met before designating a stock as an ecosystem component species (or, using the new terms, a “stock not in need of conservation and management”); others believe that criteria exist but are too vague to provide meaningful guidance or limitations on how this category can be used. We encourage NMFS to elaborate on the use of this designation.

Related to this section, the changes propose to remove use of the term *stock* or *stock complex* as a synonym for *fishery*. Throughout the NSGs, however, the term fishery is still used. The context is not clear. The statutory definition is that fishery can be used in one of two senses: as one or more stocks which can be treated as a unit for the purposes of conservation and management, or any fishing for such stocks. Is this change to the guidelines intended to allow for a more flexible interpretation of the term fishery as it applies to criteria such as MSY and Optimum Yield (OY)?

Climate change is causing measurable shifts in species distributions, which is moving some stocks out of one jurisdiction and into another. The guidelines should clarify the conditions under which joint management should be implemented, or when management should change from one jurisdiction to another.

Ecosystem Approaches to Management

The proposed revisions of the Guidelines clearly recognize that ecosystems change and that the changes affect MSY and status determination criteria. The NSGs continue to be clear that estimates of MSY (and therefore status determination criteria) are based on prevailing conditions, but there is no guidance on what prevailing means. The determination should be science based, but there should be a consistent approach based on experience, theory and case studies. However, the decision on prevailing conditions (e.g., should long term average recruitment or recent average recruitment be used to estimate Bmsy) seems to be ad hoc. This opens the door for abuses (i.e., assertion that there is no need to rebuild because conditions

changed) and false expectations (that a short term loss resulting from a cut in fishing mortality will be worth it). The abuse problem is particularly troubling when potential yield is wasted for decades. The false expectation problem is particularly wasteful (in terms of greatest overall benefits to the Nation) for minor choke stock stocks with highly uncertain assessments and status determination criteria. The NSGs should include more discussion of how the term "prevailing" is to be interpreted.

Proposed changes would allow aggregate MSY level estimates as a basis for specifying OY in a fishery. However, it is unclear what this means in practice. Can the Overfishing Limit (OFL), Acceptable Biological Catch (ABC), and ACL be set for the aggregation of species covered by the MSY estimate or are stock specific status determination criteria, ACLs, etc. required? Can the rebuilding target of a species within the complex be set lower than would be the case for a single species estimate of Bmsy for a species within the aggregate because this will produce a higher yield for the aggregation? Or conversely, should it be set higher because a high yield than the singles species MSY can be achieved by a multispecies fishing strategy? These are not easy questions, and depending on how an aggregate level of MSY is used in management there could be abuse (chronic overfishing to avoid the short term pain that results in long term benefits). However, as the proposed revision of the NSGs are written, they open a Pandora's box full of intriguing possibilities and temptations with no guidance on how to be scientifically rigorous and responsible as managers. The box should be open, but the Agency needs to offer more leadership on this important topic. It is not clear if the change in the proposed Guidelines allowing aggregate level MSY to be the basis for OY is a signal that the Agency wants Councils to shift from stock by stock ACLs and status determinations to management of energy based ecosystem components, or it is a meaningless response to calls for ecosystem based management, or something in between.

Catch Limit Stability

We support the proposed change that would allow multi-year overfishing definitions. We believe that allowing use of this approach may, in some circumstances, allow for less frequent disruptions caused more by uncertainty than real changes in stock status. We also support the opportunity to phase-in an ABC control rule, but it is not clear how the requirement that the control rule prevents overfishing will interact with a multi-year overfishing definition.

If a multi-year overfishing definition is adopted, can it be used to allow catches to exceed the catch associated with F_{MSY} for a brief period? As a simple example, if the overfishing definition is based on a three-year average F, mortality could exceed F_{MSY} in some years as long as it was below $F_{MSY\ in}$ other years. Can OFLs and ABCs be based on this relationship such that in some years the OFL and/or ABC might exceed the catch associated with F_{MSY}? This would appear to be allowed, since the overfishing definition is not based on any single year. This may provide additional flexibility to address the needs of fishing communities.

While perhaps not directly related to catch limit stability, the relationship; between OFL, ABC, and ACL and Annual Catch Target (ACT) would benefit from a more thorough discussion of the need to balance the risk of overfishing with the goal of OY. The only guidance the proposed revision of the Guidelines gives on the size of the buffers is that OFL, ABC, and ACL should not be equal, and that the ACL should not be exceeded more than once in four years. This means the probability of overfishing will be less than 25%, and potentially much less depending on the buffers between OFL and ABC and between ABC and ACL. The probability of actually

overfishing the stock (which is different from the probability of a "legal" determination that overfishing is occurring) also depends on estimates of MSY based status determination criteria, selection of proxies, estimation of catch including discards, and how uncertainty is either implicitly or explicitly treated in estimation procedures and stock assessment models.

The bottom line is that the amount of the reduction in fishing mortality from F_{MSY} that will result from applying the scheme for dealing with uncertainty described by the NSGs is unknown, and there is no guidance on how much risk of overfishing is prudent (in terms of OY which achieves the greatest overall benefits to the Nation) or legal. While there are numerous analyses that indicate that there is relatively little sacrifice in long term average yield for a modest reduction in fishing mortality below F_{MSY} (i.e., 0.75-0.90 F_{MSY}), these analyses do not mean that more reduction in F to reduce the risk of overfishing is always better.

It should also be recognized that a modest to moderate degree of overfishing (particularly in the short term) sacrifices relatively little long term average yield and it does not jeopardize sustainability of a fishery. Given the uncertainty in assessments and the need to avoid chasing the noise in the system, we should prevent over-reactions to occasional, short-term, temporary instances of overfishing. The guidelines should emphasize that it is chronic overfishing that needs to be avoided. Brief excursions should trigger a more measured response than long-term overfishing.

The Agency needs to provide more practical guidance on risk and buffers than is in the current or proposed revised Guidelines. The guidance should be based on analyses that consider the tradeoffs between risk and optimum yield. The NEFMC's risk policy highlights the importance of such analyses taking account of the cumulative effect of risk decisions made at all levels of the fishery management system and the importance of management strategy evaluation as an analysis tool.

The carry-over provisions should take into account not just the portion of the ACL that is not caught, but the growth in the stock that may occur over the course of the year. Provision should also be made for consideration that a portion of the ACL is not caught because the ACL was over-estimated.

Depleted Stocks

The Proposed Rule would establish a definition for a depleted stock – one that is in poor condition due to circumstance other than fishing. While we welcome this change, the criteria used for this definition is overly restrictive because it requires that overfishing not have taken place for two mean generation times. For some species, this could approach 50 years or more and this determination cannot be reliably made. In other cases, if overfishing occurred for only a short period – say one or two years – that apparently precludes use of this term to describe the stock. Rather than a formulaic approach, we suggest the NSGs describe the types of information that should be considered before applying this term. For example, the trend in fishing mortality (including whether or not overfishing has occurred recently), evidence that other environmental factors are affecting the stock status, etc.

The management measures that are necessary if a stock is identified as “depleted” are unclear. Rebuilding plans are still required, but the guidelines are silent on whether all of the requirements for overfished stocks apply to depleted stocks. In addition, the rebuilding plans

described in the guidelines focus on removals by fishing but if a stock is defined as depleted, it is clear that control of harvest is inadequate for rebuilding success. The other measures that can be considered by a Council are vague. It is not clear, for example, how a Council - with no authority to commit federal resources, and no ability to implement regulatory changes without NMFS approval – can partner with federal and state agencies to address non-fishing related causes of stock depletion.

Finally, the concept of a depleted stock needs to be reconciled with the definition of MSY. A depleted stock is one that has declined below its MSST even though it has not experienced overfishing for over two generations. Since MSY is based on prevailing conditions, than under these circumstances it seems that B_{MSY} and the MSST should be recalculated. This suggests that under a recalculated MSST the stock will no longer be depleted. This circular situation needs to be resolved.

Routine Review of Management Plans

While on the surface these provisions are sensible, if they lead to increased mandated requirements they may prevent the Council from dealing with more pressing issues. Councils should be allowed flexibility to determine how frequently management plans will be reviewed.

Thank you for the opportunity to comment. While changes to the NSGs are welcome, these do not have the effect of law and our support for these changes should not be interpreted as obviating the need for statutory changes that are supported by the Council. Please contact our Executive Director, Thomas Nies, if you have questions.

Sincerely,

Terry Stockwell
Chairman

Attachment: (1) Section-by-section analysis

Literature referenced:

Caruthers, Thomas R., Andre Punt, Carl Walters, Alec MacCall, Murdoch K. McAllister, Edward J. Dick, Jason Cope. 2011. Evaluating methods for setting catch limits in data-limited fisheries. Fisheries Research, 153: 48-68

Parma, Ana M., Patrick J. Sullivan, Jeremy Collie, Troy W. Hartley, William Heyman, Robert Johnston, Andre E. Punt, Kenneth A. Rose, James Sanchirico, Michael P. Sissenwine, George Sugihara. 2013. Evaluating the Effectiveness of stock rebuilding plans of the 2006 Fishery Conservation and Management reauthorization Act. National Research Council of the National Academies. (cited as “NRC report”)

Attachment (1): Section-by-Section Analysis

Section	Subject/Text	Comment
600.305(c)(1)	"Any stocks that are predominantly 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."	This language seems to imply federal management is required for these stocks, even if currently managed by another entity. Sub-paragraph (x) that follows, however, implies that this is not a foregone conclusion. Sub-paragraph 600.305(c)(2) further says that adequate management by another entity argues against federal management. The language should be made consistent.
600.305(c)(3)	Ecosystem component (EC) species	EC species can only be designated as such if they do not have a need for conservation and management. This seems overly restrictive.
600.305(d)(11)	"Target stocks are stocks or stock complexes that fisheries seek to catch for sale or personal use, including "economic discards" as defined under Magnuson-Stevens Act section 3(9)."	This definition is not internally consistent. Economic discards do not provide any sale or personal use benefits; therefore, it makes no sense to list them as "target stocks", because it does not make sense for a fisherman to target them. Suggest rewording: "Target stocks are stocks or stock complexes that fisheries seek to catch for sale or personal use, or are "economic discards" as defined under Magnuson-Stevens Act section 3(9)."
600.310(c)	Items to include in FMPs: "Councils must describe fisheries data for the stocks and stock complexes…"	This appears to be a new requirement that is not one of the required elements of an FMP in MSA section 303. While the statue requires Councils to specify the data that will be submitted by fishermen and processors, this goes far beyond that requirement to require Councils to describe all data, apparently including fishery

Section	Subject/Text	Comment
		independent data collected by NMFS. This section should be clarified to avoid an overly broad interpretation of this requirement.
600.310(c)	Requirement to define MSY, OY, etc. in FMPs.	The NSGs need to address the very real circumstances when these items cannot be determined.
600.310(e)(1)(iv)	MSY for aggregate stocks should consider "common biomass (energy) flow…"	In what sense is the term "common" used?
600.310(e)(2)(i)(F)	Definition of depleted	The definition seems overly stringent, requiring that overfishing not have occurred for two mean generation times. For some stocks this is a longer time scale than some of the environmental changes being observed.
600.310(e)(2)(ii)(A)(1)	SDC to determine overfishing: exceeding a multi-year reference point	It is not clear if the intent is that a multi-year reference point would be different than the MFMT, or could be the same as the MFMT. This is not explained in sub-paragraph A(3).
600.310(e)(2)(ii)(A)(2)	Exceeding the OFL or a multi-year catch reference point constitutes overfishing.	(1) Similar to the previous comment, it is not clear if the multi-year catch reference point can be the same as an annual OFL. If the expectation is that multi-year catch reference points will be lower than an annual OFL – because of additional uncertainties – this should be made clear. (2) This language assumes the OFL is always an accurate marker for the amount of catch that will result in overfishing. The NSGs should acknowledge that if an actual estimate of fishing mortality is available, overfishing may not occur if the OFL is exceeded, or it may occur even if the OFL is not exceeded.
600.310(e)(2)(ii)(A)(3)	Use of multi-year periods to determine	It should be made clear if the intent is that a

Section	Subject/Text	Comment
	overfishing status.	multi-year period means that the overfishing criteria will be different than a single year criterion.
600.310(e)(2)(ii)(C)	Mortality to be considered for evaluation of stock status.	Stating that sources of mortality should be accounted for "where practicable" seems to weaken catch accounting. In addition, this section seems to conflict with the definition of catch, which does not include scientific research.
600.310(e)(3)(i)(B)	Explanation of what "achieving OY" means	(1) Some of this language seems problematic. This section implies that producing OY means an amount of catch that, on average, equals OY. A later section says that there is an annual catch consistent with producing OY, and it should be the same as the ACL. At some point, if average catch is to meet OY, an annual catch may need to be larger than OY. (2) ABC and ACL include only biological and management uncertainty factors so it is not clear why the ACL necessarily equals the annual OY when OY also explicitly includes social and economic considerations. (3) This introduces a new concept- that achieving OY means maintaining stock size near or **above** B_{MSY}. As long as "near" means from the MSST and up, this is OK. If it means something different, it could be problematic.
600.310(e)(3)(ii)(B)(3)	Treatment of forage fish	The discussion about managing forage stocks for higher biomass than B_{MSY} seems misplaced in this OY section.

Section	Subject/Text	Comment
600.310(e)(3)(iv)(A)	Specification of OY	It is not clear how a qualitative definition of OY can be developed. Further guidance is needed.
600.310(f)(1)(i)	Definition of catch	The definition of catch does not include catch taken for scientific research, yet other sections say that all removals count against OY/ABC and to evaluate stock status with respect to reference points.
600.310(f)(2)(ii)(A)	Phase-in ABC control rules	This section allows a control rule to be phased-in over three years as long as overfishing does not occur. It should be explicitly stated if this overfishing determination can be based on the extended period authorized in section 600.310(e)(2)(ii)(A)(3).
600.310(f)(3)	SSC deviations from control rule when setting ABCs	All of the examples in this text imply the SSC can set a lower ABC than that developed from a control rule. It should be made clear whether or not an SSC can recommend an ABC that exceeds the catch that results from application of the control rule.
600.310(f)(4)(i)	AMs for multi-year plans	This section says AMs must be implemented the year after an ACL is exceeded if a multi-year plan is used. In some cases, catch data are not available in time to make this practical. The text should be revised to say the AM must be implemented as soon as possible.
600.310(f)(4)(iv)	Relationship of OY and ACL	If a Council establishes an annual OY that cannot exceed the ACL, then to achieve the overall OY – which is a long-term average – there must be times when the annual OY exceeds the long-term average OY. Can the annual OY exceed MSY?

Section	Subject/Text	Comment
600.310(g)(1)	Accountability measures	This description of AMs suggests that they are designed to prevent ACLs from being exceeded. The MSA language, however, suggest that the purpose of measures to ensure accountability are needed to prevent overfishing. The text should be revised to say that AMs are designed to prevent overfishing.
600.310(g)(2)	In-season AMs	The direction to Councils that FMPs should contain in-season closure authority exceeds the purpose of the guidelines. The fact that the term ”should” means it is “strongly recommended to fulfill the Secretary’s interpretation of the MSA…” places undue emphasis on this management approach.
600.310(g)(3)	Council responsibility for determining if an ACL is exceeded.	This section says it is a Council’s responsibility to determine if an ACL is exceeded. This does not comport with normal practice. Regional Offices monitor catches and implement AMs if necessary, not Councils. Councils are not responsible for in-season management.
600.310(g)(3)	Overage adjustments	The purpose of AMs is to ensure accountability and prevent overfishing. This section expands the purpose of AMs to be punishment for overages. There is no need to automatically reduce ACLs as a result of an overage if AMs are appropriately designed. Exceeding an ACL may not mean an ABC has been exceeded and may not mean overfishing has occurred. Further, the section creates and exception for stocks in rebuilding plans – but what about stocks that are not in rebuilding plans?
600.310(g)(3)	“If an ACL is set equal to zero and the AM	This provision appears to conflict with a

Section	Subject/Text	Comment
	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."	decision of the U.S. District Court, Washington DC, in the case of Oceana v. Locke (Civil Action No. 10-744, dated December 20, 2011). That opinion ruled that a ban on possession was an insufficient AM for a portion of the fishery that had a sub-ACL of 0.
600.310(g)(6)	AMs for state-federal fisheries	This section says that the minimum AM requirement for fisheries that have harvest in non-federal waters is to have an AM that applies for the federal portion of the ACL. But this conflicts with section 600.310(g)(1) that says AMs must prevent the ACL (overall) from being exceeded.
600.310(i)	Fisheries data	This section places an unnecessary burden on Councils to describe general data collection methods, most of which are under the control of NMFS. This should be removed to the extent permissible, recognizing that MSA requirements for standardized bycatch reporting methodology may require some of this information to be in Council FMPs.
600.301(j)(2)	Timing of actions May not need this comment, see next paragraph in FR	This section appears to be an attempt to remove the flexibility allowed under sections 304(e)(3) and 304(e)(7). These sections allow a Council two years from notification that overfishing is occurring to end and prevent overfishing. This section should be made consistent with the statute.
600.301(j)(3)(i)(C)	Fishing mortality associated with achieving Ttarget is Frebuild	This section implies Frebuild is a constant value but that need not be the case. Recommend it be revised to read "the fishing mortality schedule that will achieve Ttarget is

Section	Subject/Text	Comment
		referred to as Frebuild."
600.301(j)(3)(iv)	Secretarial determination of adequate rebuilding progress	This section is vague, and leaves it unclear how this determination will be made, particularly in those cases where ACLs may not be exceeded but rebuilding is not proceeding as expected.
600.301(j)(4)	Use of interim measures	It is not clear if this section restricts the use of interim action to the situation described. If so, this section unnecessarily restricts the use of interim measures to circumstances where there is an unexpected change in the understanding of stock status. Interim action may be an effective way to reduce fishing mortality on a stock while the administrative process of the Council is followed to make more permanent management changes. It does not seem wise to limit this ability to only specific circumstances. It is not clear of this section constrains the use of interim measures authorized under section 305(c) of the MSA. This section is silent on the use of emergency actions; recommend the title delete this term.
600.301(j)(6)	Management measures for depleted stocks	Some of this section seems pointless. It is not clear how a Council's rebuilding plan can effectively describe and analyze activities that are beyond the control of the Council to implement. A Council cannot "partner" with other organizations, as it has no authority to commit to federal actions.
600.301(m)	Exceptions to requirements to prevent overfishing	This provision can only be applied if a stock is not overfished. It is not clear what happens if a

Section	Subject/Text	Comment
		stock is found to be overfished after overfishing is allowed under this provision. Does that mean the exception no longer applies, overfishing must be ended immediately, and a formal rebuilding plan must be adopted?