



SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

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June 30, 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 South Atlantic Fishery Management Council (Council) appreciates the opportunity to review proposed revisions to the National Standard Guidelines. We support agency efforts to improve and clarify the language, which guides fishery management in the US, and offer the following comments on the proposed changes. Our comments are presented here in two sections, the first addressing NS Guidelines changes that the Council supports and the second addressing those which we do not support. Both sections track the order of items in the draft NS Guidelines document distributed for comment. In addition, Section #s are provided to assist in locating the relevant sections.

The Council **supports** the following changes in the National Standard Guidelines:

1. **Direction that Councils reassess FMP objectives.** As the South Atlantic Council regularly evaluates objectives when developing FMP amendments, this language supports our practices. (600.305(b))
2. **Improved and expanded guidance for determining stocks that require conservation and management** (600.305(c)). By managing the South Atlantic Snapper Grouper complex, the Council has first-hand knowledge of the challenges involved in determining whether a stock requires Federal management or if the overall complex-wide management program is better served by moving some stocks to other categories. Proposed revisions will help us to make smart choices that improve the efficiency of our management program. The Council particularly supports the language stating that not every stock requires Federal management, as we recognize there are other agencies and organizations involved in fisheries management in the Southeast. We suggest modifying language in 600.305(c)(1)(vii) to include

“...conflicts among *or within* user groups...” and in (ix) to include “...foster orderly growth and reliable estimation of SDCs.”

3. **Removing language referencing deadlines from years past.**
4. **Simplified language addressing stocks in need of management (600.305(c)), defining complexes and guiding use of indicator stocks (600.310(d)), and flexibility to use proxies for MSY (600.310(e)(2)).** The Council has grappled with all of these topics in developing management responses to requirements of the reauthorized MSA.
5. **Allowance to use multi-year periods to determine overfishing (600.310(e)(2)).** We support the concept behind revision as it recognizes the inherent uncertainty of fisheries data. However, we do not support arbitrarily limiting periods to 3 years. We recommend instated that SSCs be authorized to consider scientific uncertainty and recommend an appropriate period over which to determine an SDC. Such periods could vary based on the variance in landings for catch based SDCs, or the nature of the terminal uncertainty for assessment based SDCs.
6. **Removing language implying Optimum Yield (OY) is an annual value** and an evaluation criteria against which catch can be compared to evaluate stock condition (600.310(e)(3)), as this usage is contradictory to prior language establishing OY as an equilibrium level concept on par with MSY. This distinction is important, since in the equilibrium usage OY provides an indication of the yield expected from a properly managed fishery over the long term as well as the benefit expected from rebuilding an overfished stock.
7. **Clear definitions of management and scientific uncertainty (600.310(f)).**
8. **Allowance for carrying over unused catch (ACL) (600.310(f)(2)).** This provision allows fisheries to fully use available yield in circumstances where closures are applied unnecessarily or prematurely, effort declines, or regulations prove to be overly stringent. The risk comes from allowing carry-over when the underlying cause is actually overestimated stock abundance. While the Council supports the intent and purpose of this change, we find the current language implementing this flexibility somewhat vague. Therefore, it may not provide adequate guidance to allow managers to use the intended flexibility, particularly when considered against the risk of overfishing if there are not bounds on the amount that can be carried over or continued carrying over across multiple years. We offer the following considerations and suggestions toward improving the language and guidance in this section:
 - a. Although not stated, SSC review is implied in the provision that allows the carry-over to result in an increase in ABC, since the SSC is required to recommend ABC. Consider clearly stating that the SSC must review the proposed carry-over request and determine whether a revised ABC is justified and appropriate.
 - b. Guidance should be provided for potential ABC control rule revisions and subsequent SSC evaluations of carry-over to ensure there is consideration of the underlying cause, and to ensure that carry-overs are not applied when the cause is reduced stock abundance.
 - c. The new or ‘resulting’ ABC must prevent overfishing, thereby implying that the allowance for carry-over is limited to the difference between ABC and OFL. However, because the SSC recommends OFL as well as ABC, the lack of a clear statement indicating the carry-

over provision is bound by the original OFL could lead to situations where large carry-overs are allowed by revising both OFL and ABC. Overfishing risks further increase if underages and carry-overs continue for multiple years; the potential stacking of carry-overs through time could result in large differences between actual catch in a year and the original OFL recommendation.

- d. Language indicating that carry-overs resulting in an ACL remaining below the original ABC may not require ABC to be re-specified is unnecessary, and should be deleted since this is the current situation. Managers are free to set ACL at any level up to ABC without further SSC consideration.
 - e. Consideration should be given to whether the SDC in a year in which ABC or ACL is revised due to carry-over is based on the revised or original values, particularly for evaluating potential carry-over into the following year. If the catch in the second year equaled the original ACL, but fell below a revised ACL due to prior carry-over, is further carry-over justified?
 - f. Consideration should be given to restricting carry-over provisions to ABC and ACLs based on stock assessments. The risk of misspecification of ABC and ACL relative to true stock productivity is much greater when those values are derived from data limited and catch based scenarios than when derived from approved stock assessment analyses.
 - g. Given the concerns with adequate rebuilding progress expressed in 600.310(j)(3)(iv), it seems inappropriate to allow carry-over for stocks under rebuilding plans.
 - h. Fisheries primarily prosecuted through recreational effort may present additional challenges for carry-over, as they often respond quickly to changes in available abundance, such as occurs with either good or poor year classes. An allowance to exceed the ACL without consequence may be more valuable, and less risky, to these fisheries than proposed provisions allowing carry-over, since overages are likely to occur during high abundance and underages during low abundance.
 - i. Despite the risk of adding confusion with more acronyms and vocabulary, revised ABCs or ACLs created by carry-over should be clearly labeled to distinguish them from the original recommendations. Such identifiers are necessary to ensure that any future evaluations of management programs or precautionary tendencies do not misconstrue the true, original application of precautionary buffers.
9. **Simplified treatment of ACT control rules** (600.310(f) and 600.310(g)). Indicating the ACT is the target annual catch and that it should account for management uncertainty clarifies what is intended. This should make specifying ACT more useful in the future.
 10. **Additional definitions for T_{min}** (600.310(j)(3)). While ‘generation time’ sounds appropriately biological, the existing guidelines do not provide a calculation method and its value may change over time as reproductive characteristics change. Changing generation times are a particular concern due to the many hermaphroditic stocks under the Council’s jurisdictions, since reproductive traits of such stocks can respond rapidly to changes in abundance and mortality.
 11. **Allowance to discontinue rebuilding plan if they are shown to be unnecessary** (600.310(j)(5)).

12. **Clarification that revising rebuilding plan parameters is not necessary during rebuilding**, and actions to take in the event a rebuilding timeline is not met (600.310(j)(3)).

The Council **does not support** the following language and changes:

1. **Phase-in of ABC control rules** (600.310(f)(2)). We agree with the statement that large changes in catch limits can be devastating. Our opposition to the current revisions is based on our perception that this provision does little to provide real flexibility that is adequate to address the legitimate concern it proposes to resolve. Since this provision carries the caveat that any phase-in must ensure overfishing is prevented, in practice the phase-in can only apply to the difference between OFL and ABC. In our experience, the greatest difficulty usually lies in getting from current landings to OFL; the marginal difference in moving from OFL to ABC hardly seems worth the challenges and confusion this provision poses to many other requirements in these guidelines. The following are a few questions on interpretation of other sections raised by this provision: Could the proposed carry over be applied to the higher catch level imposed during a phase-in? How does phase-in relate to the emergency rule provisions allowing measures that reduce, but do not end, overfishing? Could a 3-year phase-in be added to a 2-year plan development period, thereby delaying achievement of catches below ABC for 5 years? How might using this provision in a rebuilding situation affect potential evaluation of “adequate progress”?

Our recommendation is based on considering other provisions that provide deadlines on taking specific actions, such as the two-year period allotted for developing actions to address an overfished situation. Since overfished stocks are in worse shape than overfishing stocks, extending the same flexibility they have to the overfishing stocks should not add unacceptable risk. To provide reasonable and effective flexibility to deal with severe social and economic consequences, we recommend requiring that action be taken within one year of an overfished or overfishing determination to reduce the catch level to at least one-half of the difference between current landings and OFL, then to OFL within two years, and then to ABC within 3 years. This recommendation is actually more conservative than the existing guidelines, which has no requirement that managers take immediate action during the 2 year time spent developing and implementing an FMP or amendment to address an overfished situation, nor to take any action during the unlimited time that may be spent developing a response to an overfishing situation.

2. **Adding an allowance for OY to be treated as an annual value** (600.310(f)(4)(iv)). Supporting this provision would contradict and undermine the earlier support expressed for clearly defining OY as an equilibrium value. There is no indication that the proposed ‘annual OY’ differs from ACL in anything but name, and therefore it only adds confusion.
3. **Linking AMs solely to ACLs** (600.310(g)(1)). Under the system created in these guidelines, overfishing occurs at OFL, and multiple reductions can be applied in response to uncertainty to provide an ABC, ACL, and ACT. AMs, however, are defined as preventing ACLs from being exceeded, which creates the impression that the stock must face negative consequences if ACL is exceeded. This is untrue; negative consequences are not expected until landings actually exceed OFL, two tiers of uncertainty adjustment above ACL.
 - a. We believe that the overall system would perform much better if AMs were more flexible and could be applied with increasing severity as the overages approached OFL. For example, an AM for exceeding ACL could be simply monitoring the fishery or

- evaluating CPUE or lowering a trip limit to a bycatch level. An AM for exceeding ABC could be in-season closure. An AM for exceeding OFL could be paying back in the following year. All could be implemented, as all apply to different stages of developing issues, and they work in concert to reduce catches without encouraging waste and ultimately applying the most severe consequences, payback, when overfishing actually occurs.
- b. Such a system could have the added benefit of encouraging ACLs that are below ABC, since the consequences can be tailored to the severity of overage. If an AM is closure, managers will not want to invoke that prematurely and forego yield, thus they will likely set ACL close to ABC, knowing they still have a buffer before OFL and overfishing.
4. **Evaluating AMs when ACL is exceeded** (600.310(g)(3)). The Council should be informed by the agency if an ACL was exceeded, since it is the agency that gathers fishing reports and monitors catch. A specific deadline should be specified for determining overages, rather than ‘as soon as possible’, since such open ended language is essentially meaningless. It is not unusual for us to receive reports including preliminary data as late as June of the following year, which gives the council very little time to make meaningful operational change to address potential overages. We suggest that this section be modified to require the agency to provide final landings for use in ACL monitoring within 60 days of the end of the fishing year.
 5. **The lack of a timeline for submitting plans and setting ABC to end overfishing** (600.310(j)(2)), when such timelines exist, for both overfished and approaching overfished stocks. Any stock experiencing overfishing is, by definition, ‘approaching overfished’. How near must the overfished condition be for an overfishing stock to be considered officially ‘approaching overfished’ and thus subject to a 2 year, rather than unlimited, deadline for action? Furthermore, in our experience, establishing rebuilding plans are far more difficult than developing regulations to end the mild overfishing implied for stocks not ‘approaching overfished’, thus meeting a 2 year deadline in such circumstance is not unreasonable. Therefore, we recommend that the 2-year deadline be applied to all notifications, regardless of stock status. This is simple, fair, and practical.
 6. **Retaining the definition of T_{min} with a breakpoint at 10 years** (600.310(j)(3)). The Council has repeatedly questioned the logic of this provision, as it rewards stocks that are allowed to become worse off before an overfished determination is made, and creates a situation where a total moratorium could be required to rebuild a stock.
 - a. The issue of rewarding the worse stock is illustrated by a simple example, assuming a stock assessed at 2 different points in time. If at the first point the stock is found to be overfished and capable of rebuilding in 10 years in the absence of fishing, a total moratorium will be required for the rebuilding plan. Consider instead that the stock is assessed at the second point in time, a year later, and it is assumed all other factors are held equal. The stock will be in worse shape at this later point due to experiencing an additional year of overfishing. Rebuilding time must therefore be something greater than 10 years. This avoids the moratorium requirement and opens up a much longer rebuilding time which obviously will result in less stringent regulations.

- b. Another inconsistency arises when the 10-year provision is considered across stocks of various life cycles. Ten years could be several generations to a species, which lives to be 3 years of age, while it is virtually nothing to a species that lives to 60.
 - c. The Council opposes moratorium regulations because they are highly impractical, largely ineffective, devastating to primary data sources, and extremely wasteful when applied to multi-species, heavily hook and line, and recreationally exploited fisheries such as our snapper grouper complex.
 - d. The solution the Council recommends is simple: remove the requirement to rebuild in 10 years, and treat all stocks equally, using the T_{min} options currently provided for stocks which cannot rebuild in 10 years.
7. **Provisions relating to ‘adequate progress’** (600.310(j)(3)(iv)), based on the proposal, seem unnecessary and likely ineffective.
- a. This is considered unnecessary due to the system of ABC, ACL, ACT, and AMs designed to prevent overfishing from occurring, and already including annual evaluations and consequences. No justification is provided for the underlying presumption that a stock under a rebuilding plan needs additional evaluations to ensure overfishing is not occurring.
 - b. Considering the maximum interval of 2 years between such evaluations within the restrictions of realistic timelines in which ACL evaluations and AM applications can lag as much as 6 months into a following year, it seems likely that a single year of catches exceeding an ACL could trigger a determination of inadequate progress before any consideration of whether triggered AMs were effective can even be possible.
 - c. Judging rebuilding progress by comparing landings to ACL is ineffective and inappropriate, since neither references the proper metric, biomass, targeted in rebuilding plans. It is also contradictory to earlier provisions indicating comparing landings to ACL is the method of evaluating overfishing outside of stock assessments. The only way to evaluate rebuilding is through a stock assessment or perhaps analysis of a representative survey that provides a measure of stock abundance. Given that, the timeline becomes hopelessly optimistic for the South Atlantic where the time between subsequent assessments regularly exceeds 5 years.
 - d. The Council recommends removing all the language in subsection (iv) pertaining to adequate progress, and adding language stating that “A council may revise rebuilding timeframes and Frebuild for a stock or complex under a rebuilding plan if rebuilding expectations change significantly due to new and unexpected information about the status of the stock or its reproductive or yield potential.”
8. **Changes to emergency action and interim measures guidance** (600.310(j)(4)). These changes appear to allow emergency measures only for rebuilding plan development. Similar to comments offered regarding the time to develop plans, we prefer that all situations be treated equally. Therefore, these provisions for emergency action should apply when developing plans to address overfishing, approaching overfished, or overfished conditions. The language as proposed creates another situation where a stock in poorer condition can be managed with less precaution than one in better condition. Regulations proposed during plan development for a stock experiencing overfishing will need to end that overfishing, while the overfished stock, of poorer condition, can receive regulations that allow overfishing to continue.

9. **It is not clear why the language addressing the duration of emergency rules is struck.**

The duration of emergency rules should be extended to 2 years, to align with the time allowed for creating rebuilding plans, and suggested by us for developing all plans. This will avoid situations where Councils hesitate to request emergency actions early in development to avoid a lapse in regulations between the end of the emergency period and implementation of the new plan. It is difficult to understand why interim and emergency measure only extend 1 year when the guidelines clearly indicate 2 years are typically necessary for plan development.

The overarching desires of the Council are for all stocks to be treated equally with regard to timing and flexibility and to ensure that the hard-fought-for flexibility is adequate to provide real benefits to constituents and is not simply a paper exercise. In circumstances where it is not practical or appropriate to treat all stocks alike, our desire is that the more severe restrictions and timelines apply to stocks which are in lower condition relative to SDCs, not to the stock in better condition as required under current rules. This is why we recommend replacing requirements such as the fixed 10-year rebuilding definition for some stocks with a single rebuilding definition that applies to all stocks and incorporates measures of stock productivity. This is also why we recommend developing a simple phase-in approach for moving from current landings to OLF to ABC that can be applied to all stocks and is coordinated with existing deadlines on plan development.

Thanks for the opportunity to comment, and if you have any questions, please do not hesitate to contact Bob Mahood, John Carmichael, or me.

Sincerely,



Ben Hartig
Chairman

cc: Council Members and Staff
Executive Directors
Monica Smit-Brunello
Jack McGovern and Rick DeVactor
Bonnie Ponwith, Theo Brainerd and Tom Jamir