

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 110218147-1199-01]

RIN 0648-BA74

National Standard 10 Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Advance notice of proposed rulemaking; request for comments; notice of a public meeting.

SUMMARY: NMFS issues this advance notice of proposed rulemaking (ANPR) to provide background information and request public comment on potential adjustments to the National Standard 10 Guidelines.

DATES: Written comments regarding the issues in this ANPR must be received by 5 p.m., local time, on [insert date 90 days after publication in the FEDERAL REGISTER]. A public meeting to obtain additional comments on the items discussed in this ANPR will be held at the NOAA Science Center in Silver Spring, MD, on May 19, 2011 from 1 p.m. to 3 p.m. NMFS may hold additional meetings during the comment period and will announce those meetings in the Federal Register.

ADDRESSES: A public meeting will be held on May 19, 2011 from 1 p.m. to 3 p.m. at the NOAA Science Center, 1301 East-West Highway; Silver Spring, MD, 20910.

You may submit comments, identified by “0648-BA74”, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov> ,
- Fax: 301-713-1193, Attn: Debra Lambert.
- Mail: Debra Lambert; National Marine Fisheries Service, NOAA; 1315 East-West Highway, Room 13403; Silver Spring, MD 20910.

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Debra Lambert, National Marine Fisheries Service, 301-713-2341.

SUPPLEMENTARY INFORMATION:

Background

Section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) contains 10 national standards (NS) with which all Fishery Management Plans (FMPs) and their amendments and implementing regulations must be consistent. Section 301(b) of the MSA requires that “the Secretary establish advisory guidelines (which shall not have the force and effect of law), based on the national standards to assist in the development of fishery

management plans.” Conforming to the NS guidelines (50 CFR part 600, subpart D) when preparing an FMP, FMP amendment, and regulations is essential to properly addressing the intentions of Congress when it established and revised the MSA.

The Sustainable Fisheries Act, signed into law in 1996, added National Standard 10 (NS10) to the MSA (15 U.S.C. 1801 et seq.). National Standard 10 states: “Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.” NMFS published final guidelines for NS10 in 1998 (63 FR 24212; May 1, 1998). More recently, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, added section 303(a)(9)(C) to the MSA, which states that fishery impact statements shall address the impact of conservation and management measures and include possible mitigation measures for “the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants to the fishery.”

Need for Revision

Commercial fishing is one of the most dangerous occupations because fishing operations are often conducted under poor weather conditions, high winds, cold temperatures, and on moving platforms that can be slippery or icy; some gear types can be dangerous to operate; a number of structural or mechanical problems can arise on vessels; and the work can be physically straining and lead to fatigue. Recreational fishing, including the for-hire charter and party-boat segments, can also be a dangerous activity with participants facing many of the same risks as commercial participants.

The National Standard 10 Guidelines are the primary source of guidance for the consideration of safety issues in fishery management regulations. The current Guidelines are relatively short and have four main sections with the following elements: 1) a general statement

that fishing is a dangerous occupation and recommendation that Regional Fishery Management Councils (Councils) reduce safety risks when developing management measures; an explanation of the qualifying phrase “to the extent practicable” in NS10; and an explanation that the phrase “safety of human life at sea” refers to both the safety of a fishing vessel and the safety of persons aboard the vessel; 2) a list of safety issues to consider when evaluating management measures; 3) a recommendation that during the preparation of any FMP, FMP amendment, or regulation that might affect safety of human life at sea, the Council should consult with the U.S. Coast Guard and fishing industry as to the nature and extent of any adverse impact; and 4) a list of mitigation measures that could be considered when management measures are developed.

Recent events suggest a need to revise the guidelines for NS10. The current Guidelines are thirteen years old and fisheries management and fishing vessel safety science in general has evolved during that time. NOAA has new fishery management requirements and policies in place, and the implementation of these measures will lead to changes in the way fisheries are managed. Major changes in fisheries management that change the way fishing operations are conducted, including catch share programs, could impact the safety of fishermen at sea, and those impacts should be assessed during the management process.

As mentioned above, section 303(a)(9)(C) to the MSA states that fishery impact statements shall include possible mitigation measures for “the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants to the fishery.” This is a relatively new requirement (added by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006) and NMFS could provide guidance on addressing this requirement in the revised National Standard 10 Guidelines.

There are also external factors that point to the need to focus on safety at sea. The Coast Guard Authorization Act (CGAA) of 2010 was signed by President Obama on October 15, 2010. Section 604 of the CGAA builds on requirements set forth in the Commercial Fishing Industry Vessel Safety Act of 1988, including the following: it authorizes the U.S. Coast Guard to examine at dockside, at least once every 2 years, fishing vessels that operate beyond 3-miles to ensure that they meet safety standards; it authorizes and requires a training program for the operators of fishing vessels that operate beyond 3 miles; and it establishes design and construction standards for all new vessels. Furthermore, the CGAA requires that Alternative Compliance and Safety Agreement programs be developed for certain groups of existing fishing vessels. These new requirements highlight an emphasis on improving fishing vessel safety. NMFS will ensure that revisions to the NS10 Guidelines will complement the new mandates of the CGAA.

The current NS10 Guidelines do not contain any guidance on analytical methods to evaluate safety. Recent work by the National Institute for Occupational Safety and Health and the U.S. Coast Guard has shown that the fishery management process can more explicitly address safety at sea by analyzing fatalities and calculating fatality rates for the fishery and understanding the overall trend in fatality rates. This information can be used in risk assessments to identify major hazards within a fishery. NMFS could include guidance on the analytical approaches for addressing safety considerations in the revised NS10 Guidelines.

For the above reasons, NMFS believes it is appropriate and timely to revise NS10 Guidelines and is accepting public comments on potential revisions to the Guidelines. Through the revision of the NS10 Guidelines, NMFS intends to enhance consideration of safety issues in fisheries management.

Public Comments

To help determine the scope of issues to be addressed and to identify significant issues related to this action, NMFS is soliciting written comments on this ANPR and will hold a public meeting at the NOAA Science Center in Silver Spring, MD, on May 19, 2011 from 1 p.m. to 3 p.m. NMFS may hold additional public meetings during the comment period and will announce those meetings in the Federal Register. The public is encouraged to submit comments related to the specific ideas mentioned in this ANPR. NMFS is also seeking additional ideas and solutions to improve safety at sea and the NS10 Guidelines. All written comments received by the due date will be considered in drafting proposed revisions to the NS10 Guidelines.

Issues Under Consideration

In considering potential revisions to the NS10 Guidelines, NMFS has identified the following list of issues related to safety of human life at sea. NMFS seeks public comment on the scope of this ANPR generally and the potential for guidance on the following fisheries safety issues.

1. Assembling Fatality, Injury, and Vessel Loss Information: Establishing guidance on how to assemble and analyze data on fatalities and injuries for each Federal fishery using information from NMFS's National Observer Program, U.S. Coast Guard investigations, U.S. Coast Guard's Marine Information and Safety and Law Enforcement database system, and National Institute for Occupational Safety and Health data.
2. Developing Fatality, Injury, and Vessel Loss Rates: Establishing guidance on how to estimate workforce for each Federal fishery in order to calculate fatality and injury rates. By combining fatality and non-fatal injury information with workforce estimates, injury, fatality, and vessel loss rates can be calculated to identify trends over time.

3. Evaluating Risks: Establishing general guidance on how to conduct fishery specific risk assessments, which can help identify major safety hazards within a fishery. The frequency for conducting such assessments will also be explored.
4. Safety Considerations and Mitigation Measures: Risk assessments may identify that fishery conservation and management measures are needed and appropriate to improve safety at sea. The current NS10 Guidelines contain three safety considerations (operating environment, gear and vessel loading requirements, and limited season and area fisheries) and eight mitigation measures to consider when developing management measures (see 50 CFR 600.355 paragraphs (c) and (d)). NMFS seeks comments on these sections and, if appropriate, additional safety considerations and mitigation measures that could be added to the Guidelines. For example, NMFS could consider how fishery management measures can better complement and reinforce U.S. Coast Guard safety regulations. In addition, where regulations currently restrict vessel upgrades or replacement, mitigation measures could include allowing for vessel replacement in a fleet so that older vessels can be replaced with newer and safer vessels. Other potential mitigation measures could include eliminating or reducing penalties for cutting fishing trips short due to weather or other conditions and extending fishing seasons to allow for quotas to be reached.
5. Recreational Fisheries: NMFS welcomes information about safety issues in both the private recreational and the recreational for-hire components of recreational fisheries and suggestions on how to address them.
6. Establishing a Safety Committee: The current NS10 Guidelines (50 CFR 600.355 paragraph (d)) recommend that Councils consult with the U.S. Coast Guard and the fishing industry during the development of management measures that might affect the

safety of human life at sea. NMFS welcomes comments on this guidance and if improvements to the consultation process are necessary. For example, NMFS could recommend that Councils and the Secretary of Commerce (Secretary), as appropriate, establish a Safety Committee or Safety Advisory Panel that regularly reports on ongoing activities to reduce injuries, fatalities, and vessel losses within their jurisdiction. U.S. Coast Guard personnel, NMFS National Observer Program personnel, and state enforcement officers would be encouraged to participate on such committees and/or panels.

7. Stock Assessment and Fishery Evaluation Reports: Establishing guidance for the type of safety information to include in Stock Assessment and Fishery Evaluation (SAFE) reports. The National Standard 2 Guidelines state that safety information should be summarized in SAFE reports. SAFE reports provide Councils and the Secretary with important scientific information needed for management purposes and different types of safety information could be added to these reports to better inform the Councils and the Secretary.
8. Fishery Impact Statements: Establishing guidance for addressing safety issues in fishery impact statements, as required by the MSA. Fishery impact statements are supposed to address the impact of conservation and management measures and include possible mitigation measures for “the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants to the fishery” (MSA section 303(a)(9)(C)).

Special Accommodations

The public meeting to be held at the NOAA Science Center on May 19, 2011 from 1 p.m. to 3 p.m. will be accessible to people with physical disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Debra Lambert (301-713-2341), by May 5, 2011.

Authority: 16 U.S.C. 1801 et seq.

Dated: April 15, 2011

Samuel D. Rauch III,
Deputy Assistant Administrator
For Regulatory Programs,
National Marine Fisheries Service.

[FR Doc. 2011-9718 Filed 04/20/2011 at 8:45 am; Publication Date: 04/21/2011]