NOAA FISHERIES

Summary of Comments received on the Advance Notice of Proposed Rulemaking on potential adjustments to the National Standard 1 guidelines (77 FR 26238; May 3, 2012)

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Abbreviations and Acronyms

ABC .....acceptable biological catch
ACL .....annual catch limit
ACT .....annual catch target
AM .....accountability measure
ANPR.....Advance Notice of Proposed Rulemaking
B_0.....unfished biomass
B_{MSY} .....long-term average biomass that would be achieved if fishing at a constant fishing mortality rate equal to F_{MSY}
BSAI .....Bering Sea and Aleutian Islands
CFR .....Code of Federal Regulations
Councils .....Regional Fishery Management Councils
EC .....Ecosystem Component
EFP.....exempted fishing permit
F_{MSY} .....fishing mortality rate that produces the maximum sustainable yield
$F_{rebuild}$.....fishing mortality rate in the rebuilding plan
FMP .....fishery management plan
FR .....*Federal Register*
HMS .....highly migratory species
MFMT .....maximum fishing mortality threshold
MSA.....Magnuson-Stevens Fishery Conservation and Management Act
MSE .....mixed-stock exception
MSY .....maximum sustainable yield
NGO.....non-governmental organization
NOAA Fisheries.....National Oceanic and Atmospheric Administration's National Marine Fisheries Service
NS1 .....National Standard 1
OFL .....overfishing limit
OY .....optimum yield
SDC.....status determination criteria
SSC .....Scientific and Statistical Committee
TAC .....total allowable catch
T_{max} .....maximum time allowable to rebuild a stock
T_{min}.....minimum time to rebuild a stock
T_{target}.....target time to rebuild a stock

1.0 Introduction

This report provides a summary of the comments that the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) received from its May 3, 2012, Advance Notice of Proposed Rulemaking (ANPR) regarding the National Standard 1 (NS1) Guidelines (77 FR 26238). Overall, NOAA Fisheries received 76 comment letters from a variety of stakeholders, including: fishing industry groups, Regional Fishery Management Councils (Councils), state agencies, environmental organizations, other non-governmental organizations (NGOs), restauranteurs, and the public. We also received:

- 1,502 postcards through the PEW Environment Group.
- 16,900 campaign letters through the PEW Action Alert Program.
- 9,583 campaign letters through the Natural Resources Defense Council.
- One letter with 18,170 printed names from Oceana.

The comments are summarized below in Section 3.0 and are grouped under the topic/issue areas identified in the ANPR. To view the original comments in their entirety, please visit www.regulations.gov and enter "NOAA-NMFS-2012-0059" in the keyword search.

2.0 Background

Section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) contains 10 national standards for fishery conservation and management. Any fishery management plan (FMP) prepared under the MSA, and any regulation promulgated pursuant to the MSA to implement any such plan, must be consistent with these national standards. National Standard 1 of the MSA states that 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.

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. Guidelines for NS1 are codified in 50 CFR 600.310. NOAA Fisheries last revised the NS1 Guidelines on January 16, 2009 (74 FR 3178), to reflect the requirements enacted by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 for annual catch limits (ACLs) and accountability measures (AMs) to end and prevent overfishing.

From 2007 to 2012, the 46 federal FMPs have been amended to implement ACLs and AMs to end and prevent overfishing. This has been a transformative process for federal fisheries, and during the course of implementation a number of issues have been identified that may warrant revision of the NS1 guidelines.

NOAA Fisheries published an ANPR on May 3, 2012, to request public comment on potential adjustments to the NS1 guidelines (77 FR 26238). The public comment period was originally scheduled to end on August 1, 2012. On July 3, 2012, NOAA Fisheries published a *Federal Register* notice extending the public comment period to September 15, 2012 (77 FR 39459). On September 19, 2012, NMFS published another *Federal Register* notice reopening

the public comment period and established a comment period end date of October 12, 2012 (77 FR 58086). The ANPR identified 11 issues related to NS1 that NMFS is considering addressing:

1. Stocks in a fishery.
2. Overfishing and multi-year impacts.
3. Annual catch limits and optimum yield.
4. Mixed-stock fisheries and optimum yield.
5. Scientific and management uncertainty.
6. Data-poor stocks (i.e., unassessed stocks).
7. Acceptable biological catch control rules.
8. Catch accounting.
9. Accountability measures.
10. ACL exceptions.
11. Rebuilding progress and revising rebuilding plans.

3.0 Summary of Comments

The public comments have been summarized and grouped according to the 11 issues identified in the ANPR. Because these issues are highly inter-related, specific comments may be summarized under more than one issue.

3.1 Stocks in a Fishery

- Several Councils suggested that it would be beneficial to have additional guidance for classifying stocks as ecosystem component (EC) species and for determining which stocks require "conservation and management." Some comments/questions that arose include:
    - It would be helpful to know the potential benefits and tradeoffs of designating EC species.
    - Guidance is needed on how EC species should be monitored or assessed.
    - Concept and role of EC species needs to be clarified.
    - Do EC species require acceptable biological catch (ABC) estimates?[1]
    - Can EC species be subject to fishing regulations (bag limits, prohibition, etc.)?[2]
    - How do the other National Standards apply to EC species?
    - Do EC species require a description of essential fish habitat (EFH)?[3]
    - What evidence should be provided to justify conservation and management is needed for a particular stock?
    - How will a stock be impacted if it is classified as an EC species as opposed to being dropped from a Fishery Management Unit?

[1] The NS1 guidelines state that EC species do not require specification of reference points (50 CFR 600.310 (d)(5)(iii)).
[2] The NS1 guidelines do indicate that regulations can apply to EC species [see 50 CFR 600.310 (d)(5)(iii) and the response to comment 22 in the 2009 final rule (74 FR 3178; 1/16/2009)].
[3] In a "Frequently Asked Questions" document, NOAA Fisheries clarified that EC species do not require EFH designations (http://www.nmfs.noaa.gov/msa2007/docs/acl_faq_may27_2011.pdf).

- Some Councils commented that the EC criteria in the guidelines are too strict, and suggested that the guidelines be more flexible so that additional species could be classified as EC species. Some felt the "not generally be retained for sale or personal use" criterion prohibits them from using the EC species category. Others felt that the current processes allow them to detect changes in stock status that may necessitate a move from EC species to "in the fishery."
- Some members of the public and fishing industry did not approve of the EC species criteria. One member of the public felt that criteria B and C (50 CFR 600.310 (d)(5)(B)&(C)) should be removed from the EC species definition. Some felt criterion B ["not be determined to be subject to overfishing, approaching overfished, or overfished"] is difficult to meet because some stocks are data-poor. Others felt that criterion D [(50 CFR 600.310 (d)(5)(D)); "not generally retained for sale or personal use"] should be removed. Some felt that EC species should be removed entirely from the guidelines.
- Some fishing industry groups and NGOs expressed that the EC species category should be retained in the guidelines and not changed.
- Some NGOs expressed that the guidelines should include criteria for classifying which stocks should be in an FMP. Comments included:
    - Criteria should include economic and ecological factors, and the guidelines should require that all stocks caught in the fishery, and all species that interact with caught species, should be evaluated against the criteria.
    - The criteria described in National Standards 3 and 7 should be considered when determining what stocks need management.
    - The NS1 Guidelines should require that Councils establish a periodic review, with the help of their Scientific and Statistical Committees (SSCs), of the stocks in the fishery.
    - The criteria for removing stocks from an FMP should be more rigorous.
    - The MSA defines "conservation and management." The factors in that definition should be evaluated when determining whether stocks should be included in an FMP.
    - Strong criteria for EC species should be maintained.
- One NGO commented that the guidelines should require that EC species be included in FMPs and give specific guidance regarding monitoring of these species.
- Several comments addressed issues that arose from the recent litigation on the Atlantic Herring FMP.[4]
    - One Council suggested that the NS1 guidelines should clearly state that Councils should not be required to set ACLs for "stocks in the fishery" that are primarily under the jurisdiction of other management authorities such as NOAA Fisheries, the state marine fishery commissions, or individual states.
    - One NGO expressed that the guidelines should be updated to reflect the *Flaherty v. Bryson* decision.
    - Representatives from the fishing industry expressed that: non-target stocks should be managed as bycatch under National Standard 9; the guidelines should give the Councils discretion to determine if an unmanaged stock is in need of management; the guidelines should explicitly state that fisheries primarily occurring in state waters

[4] *Flaherty v. Bryson*, 850 F Supp. 2d 38 (D.D.C. 2012). This decision reflects a challenge to implementing management measures in Amendment 4 to the Atlantic Herring Fishery Management Plan.

or under the management of state commissions are not under the authority of Councils; and the guidelines should state that only target species should be considered "in the fishery" and non-targets do not need ACLs.

- Some Councils and fishing industry representatives felt that data-poor, minor stocks (e.g., those that are encountered infrequently) should not be required be categorized as "in the fishery" and therefore should not be required to have ACLs, because ACLs of minor stocks could prevent fisheries from obtaining the ACL of other stocks.
- One Council suggested that the guidelines should explicitly allow a stock that is managed as a target under one FMP, to be allowed to be listed as an EC species in another FMP, even if that stock is considered to be overfished. For example, this is currently the case for two crab species in the North Pacific, which are listed as EC species in the Bering Sea/Aleutian Islands (BSAI) Groundfish FMP, even though they are determined to be "overfished" under their primary FMP (BSAI King and Tanner Crab FMP). It should be permissible to list a salmon stock as an EC species in the Groundfish BSAI FMP, even if it is listed as overfished in the Alaska Salmon FMP.
- One SSC suggested that the guidelines should clarify that stocks can and should be protected without being "in" an FMP.[5] One Council agreed with this point, but suggested that the guidelines do not need to be altered.
- One member of the public provided the following specific wording changes to paragraph 50 CFR 600.310(d) of the guidelines.
    - Replace the term "fishers" with "fishermen" in paragraph (d)(3).
    - Remove references to economic and regulatory discards in the definition of target and non-target stocks because the catch of target species and non-target species can be retained or become either economic or regulatory discards.

3.2 Overfishing and Multi-year Impacts

- *Overfishing limit (OFL) as a target or a limit:* Two fishing groups and one Council stated that, by establishing OFLs on an annual basis and setting precautionary harvest limits so it is seldom exceeded over the long term, catch will default to a level well below the OFL. This means that catch cannot approach maximum sustainable yield (MSY) or optimum yield (OY) over the long term. They expressed that defining overfishing on an annual level limits their ability to achieve OY.
- *In favor of multi-year plans:* Commenters from the fishing industry and Councils were supportive of the concept of developing and using multi-year averages for defining overfishing. In general, they felt that the NS1 guidelines should allow the Councils the option to establish multi-year harvest plans. Commenters stated that:
    - NOAA Fisheries lacks the budget or ability to conduct stock assessments on an annual basis and therefore it makes sense to base the overfishing definitions on a multi-year average.
    - Catch data are often unreliable in-season and using them to close a fishery is inappropriate; multi-year averages would limit closures based on unreliable catch data.

[5] National Standard 9 (minimize bycatch) would apply to stocks that are not in an FMP.

    - A multi-year average overfishing definition would also better accommodate the natural variability of fish stocks and ecosystems, and would create more stability in the fishery.
    - Several fishing groups noted that multi-year catch targets provide greater stability for the industry and allow for better planning and forecasting.
- *Not in favor of multi-year plans:* Comments from NGOs were not supportive of changes in the NS1 guidelines to allow for multi-year average overfishing definitions. The following comments were received:
    - Having overfishing determinations based on a multi-year average would effectively make the OFL into a target, rather than a limit, which is contrary to the plain language interpretation of the statute, "conservation and management measures shall prevent overfishing." This approach is also contrary to the statutory concept of incorporating scientific uncertainty in setting catch limits.
    - If a Council were to use a multi-year average, it should be set lower than the product of the annual OFL and the number of years because uncertainty increases with time.
    - A multi-year average overfishing definition would allow Councils to accept multiple years of overfishing before taking corrective action.
    - If stability in catch levels is the goal, Councils should set ACLs and annual catch targets (ACTs) low enough so that they can remain unchanged for several years at a time even in light of new information, rather than modifying the Guidelines to allow overfishing in some years.
    - Multi-year averages can be detrimental to the fishery if a large overage is allowed in a single year of a multi-year plan, because that means the fishery will need to suffer with lower catches in subsequent years.
- *Incorporating environmental conditions into overfishing determinations:* Two commenters specifically stated that overfishing definitions should include provisions that account for environmental and climatic variations (e.g. El Niño, decadal, and climate change/global warming) and should be tailored to the biology and fisheries of the individual species. They expressed that the definition of overfishing for long-lived fish stocks may be best described in terms of biomass, while shorter-lived stocks may be best described by exploitation rates. For species with a lifetime of one year or less, overfishing may best be described by time and area closures or egg escapement rates.
- *Catch smoothing:* Two commenters encouraged NOAA Fisheries to evaluate the efficacy of incorporating a catch smoothing strategy for setting ACLs that reflects a moderated response to increases or decreases in the catch levels suggested by stock assessments. These strategies include specifying a limit (in percent) on inter-annual variation of biological reference points or landing limits. The commenters felt that this approach would lead to greater stability for the fishing industry.
- *Basing overfishing definition based on effects:* Two commenters made the specific point that the definition for overfishing in the guidelines should be based on the expected impact of overfishing. They believe that overfishing definitions should be based on whether the overfishing is expected to have a negative impact on the benefits to the nation or reduce the biomass of the stock to an overfished condition.
- *Overfished multi-year averaging:* One commenter proposed the idea of using a multi-year average for overfished determinations. They stated that the current guidelines trigger a

"knife-edged" management response to a determination that a stock was overfished in a single year, which is to establish a rebuilding plan to rebuild the stock to B_{MSY} over some period of time. Therefore the overfished definition should be based on a multi-year average to prevent cases when one bad year leads to an overfished determination and forces the Council to implement a rebuilding plan.

3.3 Annual Catch Limits and Optimum Yield

- Several commenters expressed that the NS1 guidance needs to clarify how OY and OY considerations relate to ACL and the OFL-ABC-ACL-ACT framework.
- Several commenters stated that more guidance is needed to better address the economic, social, and ecological considerations in OY. One commenter stated that the NS1 guidelines do not identify where reductions for ecological, economic, and social factors should be applied in the OFL-ABC-ACL-ACT framework. Alternatively, one Council commented that the guidelines should not be altered to require explicit quantification and consideration of non-consumptive (i.e., social and ecological) uses in setting ACLs.
- Three NGOs commented that NOAA Fisheries and the Councils are not adequately addressing the requirement to derive and specify OY, and recommended that NOAA Fisheries should clarify that Councils, in their FMPs and in catch specification decisions, must: clearly state OY; thoroughly evaluate economic, social, and ecological factors; outline the derivation of OY; and provide detailed justifications for OY.
- One Council commented that the criteria for setting OY should include allocation, economic efficiency, and fair and equitable access. They expressed that OY is more than just a number, and is qualitative in nature.
- Two NGOs commented that OY should be set below ACL, and that outdated OY definitions should be revised to be consistent with a new ACL system. They expressed that the final catch level should contain not only buffers for scientific and management uncertainty, but also include reductions to account for OY factors. They felt that the way NOAA Fisheries described the relationship between OY and OFL-ABC-ACL-ACT in the 2008 proposed rule to revise the NS1 guidelines (73 FR 32526; 6/9/2008) was appropriate.
- One NGO commented that the OY for recreational fisheries may be very different from OY for commercial fisheries, and that the OY for lower trophic level species (e.g., forage species) needs to be set with their role as prey species in mind.
- One representative from the fishing industry commented that SSCs should provide their best estimate of MSY as the harvest level under the law that a Council may not exceed, and advise Council members on issues of scientific uncertainty in arriving at those numbers. The Council should then set ABC[6] and ACL for a stock based on the consideration of scientific and management uncertainty, taking into account economic, social, and ecological considerations in establishing OY.
- One SSC commented that the focus on “maximum economic yield” or profit maximization should not inappropriately overshadow social and ecological considerations in the specification of total allowable catches (TACs) and OY.

[6] The MSA states that the SSCs recommend the ABC to their respective Councils (U.S.C. § 1852(g)(1)(B)).

- One commenter expressed that there is a need for increased collection of economic and social data so that trade-offs between catch levels could be better analyzed.
- One representative from the recreational fishing community expressed that the way ACLs are set in recreational fisheries is inconsistent with the goal of achieving OY.
- One commenter expressed that the description of "greatest benefits to the Nation" in the NS1 guidelines fails to recognize the value of the production of bait from fishery resources.

3.4 Mixed-Stock Fisheries and Optimum Yield

Management of mixed-stock fisheries

- Several commenters acknowledged that managing mixed-stock fisheries is challenging, and expressed that setting numerous single-species ACLs in a mixed-stock fishery can lead to the situation where obtaining the ACL of the less abundant stock may lead to fishery closures and prevent the fishery from obtaining the full ACL (and OY) of the more abundant stocks. Several commenters stated that MSY could not be achieved for all stocks at the same time. Several suggestions were made to address this issue:
    - Some commenters suggested that ACLs and OY should be set for stock complexes as a whole. Some further suggested that sub-ACLs could be set for the more vulnerable species, but essentially suggested that AMs should not apply to those stocks. One Council asked for clarification about what constitutes a mixed-stock fishery and if it is permissible to establish a single ACL for several species of fish.[7]
    - One commenter stated that a critical component of the current guidelines is that it allows for an overall OY to be set for a fishery (as it is done in the groundfish fisheries in Alaska), and felt that any requirement for single species OY determinations would be difficult to implement. On the other hand, another commenter felt that a fishery level OY has resulted in negative consequences in the BSAI groundfish fishery and that OY could never be achieved. Further, one NGO recommended that OY should be specified annually on a stock-specific basis.
    - One commenter suggested that non-target species should be categorized as EC species, so that they would not require ACLs and therefore would not impact healthier stocks.
    - An NGO stated that the use of indicator stocks for mixed-stock fisheries should be discouraged. The NS1 guidelines should recommend that mixed-stock fisheries be managed with an overall MSY cap that cannot be exceeded, and will in most cases be lower than the sum of individual species MSYs.
    - Several NGOs stated that it is possible to protect stocks that are in low abundance while allowing access to robust stocks, and pointed to the Pacific groundfish fishery as an example of how management approaches have helped to avoid mortality of depleted stocks while maximizing catch of healthier stocks.

[7] The NS1 guidelines do allow for stock complexes to have a single ACL (50 CFR § 600.310(d)(8)).

    - Several commenters suggested that there should be less restrictive timelines for rebuilding and ending overfishing, especially in mixed-stock fisheries, so that managers can obtain the ACL or OY of the healthier stocks.[8] Others suggested that rebuilding plans should have constant harvest rate strategies, rather than constant catch strategies.
    - One commenter suggested that NOAA Fisheries and the fishing industry need to develop strategies to improve species-selective gear.
    - Some commenters suggested that, given the complexity of mixed-stock fisheries, more guidance is needed to address economic, social, and ecological considerations in establishment of OY. Some suggested that the guidelines should clarify how OY should be specified and how it should provide for rebuilding. Some felt that bio-economic models, which incorporate economic contributions of stocks, should be used.
- Several comments were received about the "mixed-stock exception" (MSE).
    - Some fishing industry representatives felt that the agency should allow for the MSE to be used.
    - NGOs expressed that the MSE should be removed from the guidelines.
- One commenter expressed that Council efforts to address uncertainty and risk are redundant, which reduces the Council's ability to achieve OY.
- One commenter pointed out that marine mammals and fisheries often compete for the same species, possibly affecting marine mammal foraging success, condition, reproduction, and survival. They believe that stock assessments rarely model consumption of a target fish by fishery competitors such as marine mammals, and that predation-related mortality by marine mammals is an important factor to consider when generating biological reference points. The commenter recommended that the NS1 guidelines should consider the competition between fisheries and other ecosystem consumers (including marine mammals) by requiring:
    - An assessment for each fished stock regarding the extent and significance of competition between the fishery and ecosystem consumers,
    - Monitoring and assessment to resolve uncertainties about the ecological effects of such competition, and
    - The continued development of multi-species models.
- Two commenters recommended that fine-scale TACs (i.e., localized or spatial ACLs) could be used to address ecological concerns such as localized depletion, predator-prey interactions, and concern over the stock being prey for another species.

Forage fish and ecosystem-based management

- Several commenters suggested that NOAA Fisheries should provide additional guidance (either through NS1 guidelines, technical guidance, or policy directives) regarding forage fish conservation and management. Recommendations included:
    - Specify how much higher forage fish abundance should be compared to other stocks.

[8] The MSA requires that the rebuilding time for a stock shall be as short as possible and not exceed 10 years (with few exceptions) (16 U.S.C. § 1854(e)(4)).

    - Require the adoption of precautionary management strategies for any forage fish fishery.
    - Specify risk-averse guidelines, biological reference points, and yield quotas for forage fish.
    - Consider the contribution of each forage species to diets of key predators.
    - Identify oceanographic features that correlate with high relative densities of forage stocks and predators.
    - Consider the results of modeling analyses to identify the potential ecological effects of alternative catch strategies.
    - When considering the value of forage fish, economic considerations should include the relative economic value of forage species as food for commercially and recreationally important marine species.
- One commenter encouraged NOAA Fisheries to work with the Councils to create OY specifications that explicitly incorporate ecosystem considerations, such as the importance of forage species in the food web, the needs of apex predators, and the ecological services provided by fish to the ecosystem.
- One commenter urged NOAA Fisheries to provide the Councils and their SSCs with guidance, in the form of a technical report or policy directive, on implementing the NS1 guidelines with respect to incorporating ecological considerations in the management of forage fish.
- One commenter from the fishing industry expressed that the guidance related to forage fish in the NS1 guidelines is inconsistent with the MSA and should be removed, and another expressed that efforts to protect forage fish are duplicative and overly precautionary.
- Several commenters expressed the general sentiment that NOAA Fisheries should improve how it considers the value of healthy ecosystems and place greater emphasis on ecosystem-based management.
- One commenter suggested that NOAA Fisheries should revise the NS1 guidelines to include a more complete range of ecosystem-based fishery management principles in the development of fishery management plans and the determination of optimum yield for each stock being managed. They expressed that special attention should be given to: (1) the risk of management options not only to each stock, but also to the ecosystem, (2) the trade-off between yield and ecosystem impacts at different levels of stock depletion, (3) the depletion of top predators and keystone species, and (4) competitive interactions among fisheries and other species such as marine mammals.
- One commenter suggested that managers should consider how climate change may impact the range of a stock.
- One commenter recommended that NOAA Fisheries should explicitly allow reduction in catch limits to increase resilience of fisheries to threats from fishing pressure, pollution, and climate change.
- One commenter expressed that artificial reef programs in the Gulf of Mexico have greatly benefited red snapper and should be considered as essential fish habitat.

3.5 Scientific and Management Uncertainty

- One public commenter, one state agency, and several fishing industry groups noted that they believe that the ACL and OY in many fisheries is overly precautious because in many cases they believe the original estimate of MSY is based on a risk-averse model, and that additional reductions for scientific and management uncertainty result in severely reduced levels of catch. As a result, ACL and related OY are reduced too much. To resolve this issue, they believe that NOAA Fisheries should develop a policy that improves the transparency of stock assessments and ensures risk-neutral estimates of MSY and OFL are recommended.
- One fishing industry group recommended that, since ACT is not a reference point named in the MSA, this and the discussion on management uncertainty should be removed from the guidelines. Several NGOs noted the opposite, citing that scientific and management uncertainty are two distinct forms of uncertainty that should be accounted for (if not already required) at different steps in the ACL setting process to prevent overfishing.
- Two public commenters believed that NOAA Fisheries should re-prioritize or obtain additional funding to reduce the uncertainty in managing fisheries, for example by developing more robust stock assessments, better data collection programs, etc.
- Several fishing industry groups expressed that they believe that Congress' intent for managing fisheries was to manage them using the best available scientific information, which would result in risk-neutral management decisions as opposed to risk-averse management. They recognized, however, that being risk-averse is a policy choice that a Council can choose to make, but it is not mandated by the MSA.
- Several NGOs, two Councils, two state agencies, and one fishing industry group noted that further guidance and communication are needed to show why accounting for scientific and management uncertainty are important steps in preventing overfishing, and suggested clarification on how management uncertainty should be quantified and accounted for when setting the ACL or ACT.
- One fishing industry group asked that guidance be provided to address how scientific uncertainty should be addressed when the latest stock assessment is rejected.
- One fishing industry group felt that accounting for management uncertainty is not a useful concept, because if catch does exceed the ACL, there is the feedback loop of AMs to correct for the overage of the ACL. Furthermore, they felt it was unlikely that overage of the ACL would result in overfishing, given that the ABC and ACL are already reduced from the OFL.

3.6 Data-Poor Stocks (i.e., Unassessed Stocks)

- Most stakeholders are in agreement that further guidance (e.g., best practices) is needed regarding the setting of ACLs for data-poor stocks, whether through revisions to the NS1 Guidelines or other action.
- Some fishing industry groups and most NGOs agree that data-poor methods should undergo a robust evaluation and peer review demonstrating their efficacy at estimating MSY and related reference points.
- Some fishing industry groups and most NGOs agreed that data-poor assessments should undergo a formal process of identifying and evaluating available data that could be used

to set ACLs and have the analyses peer-reviewed, similar to existing stock assessment processes (e.g., Southeast Data Assessment and Review, Stock Assessment Workshop/Stock Assessment Review Committee, and Stock Assessment Reviews). For example, all catch data—not just the landed portion of catch—should be considered, including natural mortality, effort, age/length/weight characteristics, area distribution, species vulnerability, and other life history characteristics.

- Several fishing industry groups, Councils, and state agencies noted that data-poor stocks should not have ACLs established until they can be fully assessed, or that ACL requirements for data-poor stocks should be made more flexible. They suggested the following alternatives to setting ACLs:
    - More general limits on landings/discards where this information is known.
    - More flexibility when the ACLs on data-poor stocks are exceeded if they affect landings of stocks with more data.
    - Evaluations on a case-by-case basis using objectives (such as maintaining a status quo fishery) that are appropriate for the particular species and availability of data, and not based upon unknown inapplicable objectives such as "preventing overfishing."
    - Clarification in the FMP on how to acquire data to manage data-poor stocks, or how to handle the lack of data through an alternative method. If additional data cannot be acquired, the Guidelines should require the Councils to analyze existing data within a set time limit (e.g., 5 years).
- Many fishing industry groups, NGOs, Councils, and state agencies noted that the use of stock complexes and indicator species to manage data-poor stocks could be useful, if the complexes are binned appropriately based on the life history characteristics of stocks and their susceptibility to the fishery. However, at least one NGO noted that the use of stock complexes should be discouraged because they believed such a method often leads to overfishing.
- One fishing industry group recommended a tiered approach to setting ACLs for data-poor stocks, depending on the risk of overfishing/overfished. Data-poor stocks with low levels of risk could be specified as ecosystem component species, stocks with moderate levels of risk could be monitored using stock complexes and indicator species, and only those stocks with high levels of risk should have stock-specific ACLs set.

3.7 Acceptable Biological Catch Control Rules

Risk policy

- Several NGOs, one public commenter, and one Council requested that NOAA Fisheries clarify the responsibilities of Councils and SSCs in setting ABCs and related risk policies, and to have the Councils show in FMPs and FMP amendments in a more clear and transparent fashion how their risk policy was determined (e.g., consider vulnerability of the stock, trade-offs in risk of overfishing versus yield over the short and long term, scientific uncertainty, how forage fish biomass affects population dynamics, etc.). This guidance should possibly be revised in the NS1 guidelines or more likely through technical guidance. One Council also noted that they felt that the SSC should develop

the ABC risk policy on scientific uncertainty, and that it is the Councils' responsibility to consider management uncertainty.

- One NGO requested stricter guidance to prevent Councils from setting ABCs equal to the OFL, because court decisions have found that fishery management actions must have a relatively high probability of success. At least one fishing industry group noted that setting the OFL at or below 50% probability of overfishing is overly restrictive because, by the time scientific and management uncertainty is accounted for, the resulting ACL or ACT is much more risk-averse than 50% and does not maximize yield.
- One NGO noted that the NS1 guidelines need to properly distinguish between the terms "risk" and "probability."
- One NGO noted that many regions that use probability-based ABC control rules only account for the uncertainty in recruitment variability. However, there are several other sources of uncertainty that need to be accounted for, such as uncertainty around the estimate of terminal biomass.
- One Council noted that they believed the guidelines required the use of P* (probability of overfishing) when setting a buffer between ABC and OFL. This is based on the NS1 guideline text that states that the probability of overfishing cannot exceed 50% (50 CFR 600.310(f)(4)). The Council asked that the guidelines on ABCs be more flexible regarding the use of probabilities and requirements.

ABC control rules

- Several NGOs believed a review and evaluation of ABC control rules should be undertaken, in the form of a management strategy evaluation, to determine whether the control rules are likely to prevent overfishing, and to use the results of this national analysis to foster best practices across the country.
- One NGO recommended the use of proxy values to account for the uncertainty in ABC and ACL projections, because future projections are usually highly variable and such uncertainty often is not captured in the ABC control rule. They recommended that NOAA Fisheries should provide guidance on the values of such proxies in separate technical guidance.
- Two NGOs noted that the importance of forage fish to the marine ecosystem should be evaluated and recommended that risk-averse ABC control rules or more protective status determination criteria (SDCs) should be designated for forage fish. They noted their request is supported by the *Flaherty v. Bryson* decision regarding Amendment 4 to the Atlantic Herring FMP, where the U.S. District Court for the District of Columbia held that, among other things, NOAA Fisheries failed to consider the environmental impacts of a reasonable range of alternatives for the ABC control rule, AMs, and measures for minimizing bycatch. In general, the commenters believe that fishing rates for forage stocks should be lower than those for other stocks: half of traditional F_{MSY}; B_{MSY} not less than 75% to 80% of unfished biomass (B_0); and fishing should be stopped if spawning stock biomass SSB reaches 40% of B_0.
- One NGO requested that NOAA Fisheries make it clear that ABC control rules apply to all managed species—not simply those species for which there must be ACLs and AMs. The NGO commented further that while some species are exempt from ACLs and AMs, this does not mean that ABC control rules are not required. A fishing industry group

expressed that trying to set an ABC for an annual life cycle stock (that is exempt from ACLs) is not worthwhile because the mortality is largely driven by environmental factors.

- One NGO recommended that a working group be convened to develop specific harvest control rules for highly variable fish stocks, and to possibly consider approaches similar to West Coast salmon fisheries where escapement up river systems is the management goal and populations above those escapement levels are viewed as yield.

Management procedure

- One NGO noted that in some fisheries, new biomass estimates or related data are available each year but this information is not considered until the next stock assessment is performed several years later. Therefore, they suggested that such information should be considered by managers as soon as possible to prevent overfishing.

Carry-over provisions

- One public commenter and one fishing industry group noted that carry-over provisions must be considered on a fishery-by-fishery basis. For example, in fisheries that have short-lived species, carry-over allocations may be inappropriate, whereas in fisheries that have biomass levels equal to or much greater than B_{MSY}, the use of carry-over provisions is less risky.
- Two fishing industry groups, several Councils, and one state agency noted that carry-over provisions would be useful management tools to improve the next year's yield and incentivize fishermen to not exceed the current year's ACL, assuming that the stock is well-managed and healthy. However, at least one Council expressed that carry-over provisions are better addressed under ACL and ACT control rules, as opposed to ABC control rules.
- Several NGOs noted that the use of carry-over provisions could be misused by Councils in certain scenarios and that care should be taken when developing such provisions. In general, they believed that carry-over provisions are too risky and should not be allowed, especially in cases where fisheries are rebuilding.
- One NGO noted that use of carry-over provisions implies the level of uncertainty in estimating the OFL is low and that catch estimates and fisheries monitoring are precise, which is not the case in most instances. Thus, the use of carry-over provisions increases the probability that overfishing will occur, and if used should make necessary adjustments for uncertainty in catch, effort, mortality, the way in which OFL is estimated, and any new biological data that provides insight on the status of the stock. Carry-over provisions should be further described in the NS1 guidelines, and a Council's SSC should be responsible for choosing the carry-over provision.
- Two fishing industry groups and one Council noted that the use of carry-over provisions that allow next year's ACL to be exceeded is not allowed under the MSA, and guidance needs to be provided on how to resolve this issue. The commenters asked if a multi-year evaluation of overfishing provides a more solid basis for accommodating a carry-over provision.

3.8 Catch Accounting

- One NGO stated that NOAA Fisheries' response to comment 35 in the final rule for NS1 Guidance (74 FR 3178; 1/16/2009) regarding how to define "catch" and account for all sources of fishing mortality, follows Congress' clear intent. The response states in part: "catch includes fish that are retained for any purposes, mortality of fish that have been discarded, allocations for scientific research, and mortality from any other fishing activity." The NGO referenced the Senate Report on the 2006 amendments to the MSA, from the Committee on Commerce, Science, and Transportation, which stated that "[c]atch of all species, whether targeted or taken as bycatch, whether retained or discarded, count toward annual catch limits, and fisheries are closed when these limits are reached."
- One Council opposed subtracting catch from exempted fishing permits directly from ACLs. They expressed that small amounts of fish are typically necessary each year to support Exempted Fishing Permits (EFPs) for cooperative research projects, often on short timelines and most often for critical research activities such as bycatch reduction projects. Per their approved FMPs and associated ACL provisions, these amounts of fish are not deducted from the TAC, but instead are accounted for in the subsequent year's annual stock assessment process. While NOAA Fisheries has asserted that the Council should be setting aside a specific portion of the TAC for EFPs, this could result in fish being left uncaught in the commercial fisheries if the EFPs are not fully used.
- One Council commented that, when considering removals of fish from sources other than a directed fishery (i.e., "other catches"), the NS1 guidelines need further clarification for various issues. When considering use of "other" catches in assessment and management, it will be necessary to distinguish between: (1) listing those catches but not using them for determination of catch limits, (2) using those catches to estimate reference mortality rates, (3) using those catches to estimate reference harvest amounts (ABC, OFL, etc.) given the reference fishing mortality rates, and (4) including those catches in the total against which harvest specifications are compared.
- One NGO cautioned that, for unassessed stocks, ABCs are typically based just on the landings portion of the catch from the directed fisheries, and other sources of fishing mortality [which are often poorly understood] are not included in ABCs, ACLs, or the monitoring of these fisheries.
- Two fishery associations stated that non-fishing-related mortality should not be attributed to an overfishing designation. In particular, scientific research should not be counted as fishing mortality, as the MSA definition of "fishing" in section 3(34) specifically excludes "any scientific research activity which is conducted by a scientific research vessel."
- One recreational fishing group commented that catch accounting in the recreational sector is poor when viewed on small geographic scales (state by state) and from year to year.
- One fishing industry representative stated that accounting for incidental catch, research, and mortality from exempted fishing permits before setting ACLs is administratively simpler and minimizes adverse economic burdens on the fishing industry. It is both inefficient and legally unnecessary to allocate incidental catch allowances among all

fisheries with some *de minimus* level of bycatch. Sub-ACLs should be reserved for fisheries with a very substantial level of incidental catch.

- One NGO asked for clarification regarding the inclusion of fishing mortality from scientific research in consideration of OY (and catch limits). For example, the guidelines are not clear regarding whether all independent, academic, and/or cooperative research should be submitting catch records to the agency so they can be counted against the ACLs, and whether such catch should be counted against commercial, recreational, or some other category (e.g., commercial cooperative research). They suggested a better scenario would be for NOAA Fisheries regional offices and the Councils to establish research "set asides" that count against ABC recommendations (i.e., proportioned out of ABCs) in conjunction with a system to track and include those data.
- One NGO agreed with the NOAA Fisheries response to comment 35 in the NS1 final rule (74 FR 3178; 1/16/2009) that states: "NMFS, however, disagrees that, when bycatch data is lacking, managers could ignore this known source of fishing mortality. Ignoring a known source of fishing mortality, because data are lacking, leads to underestimating catch. Unless this is factored in—for instance, as increased uncertainty leading to more conservative ABC and appropriate AMs (including ACT control rules)—overfishing would occur."
- One NGO strongly recommended that the NS1 guidelines clarify and strengthen the language regarding inclusion of all sources of fishing mortality in setting ACLs, particularly mortality from discards, bycatch, and scientific research. Specific guidance and requirements should enable managers to more accurately account for and monitor all fishing mortality. Better accounting and monitoring of bycatch, perhaps through the use of separate bycatch ACLs and research set asides, are imperative to effectively implement catch limits and AMs, and to meet the intent and requirements of the MSA.
- One NGO stated that SSCs have set ABCs based on landings-only methods and unobserved mortality is essentially ignored. This is a significant concern because many of these species are caught in multispecies fisheries and discard mortality may constitute a significant portion of overall mortality. They expressed that the NS1 guidelines should require Councils and NOAA Fisheries to assess the ability of their current standardized bycatch reporting methodologies to assess and monitor discard rates for all managed species.

3.9 Accountability Measures

In-season AMs

- One NGO commented that, in fisheries where there is high management uncertainty (i.e., high probability of not being able to maintain catch to the prescribed level and long delay in data availability), using ACLs as the trigger for an in-season AM to monitor and close the fishery will likely lead to overages. On the other hand, setting management measures (e.g., season length, bag limits) to achieve the ACT and applying the in-season AMs at the ACT level provides some buffer in the event catch monitoring is imprecise. They expressed that NOAA Fisheries should clarify in the NS1 guidance that ACTs should be

used as the in-season AM to prevent overages in the face of high and known management uncertainty.

- One NGO commented that in-season AMs should be mandatory, rather than optional. In particular, several types of in-season measures should be required, including: (1) in-season monitoring, (2) use of preliminary catch data to track landed catch against ACL, (3) mortality reductions as catch approaches the ACL, using measures that have a high probability of success, and (4) closure of the fishery on or before the date when the ACL for a stock or stock complex is projected to be reached.

Reactive AMs

- One Council commented that, if ACLs have been exceeded but the ABC has not been exceeded and scientific information shows that overfishing did not occur, Councils should have the option of requesting that reactive AMs not be automatically implemented. One Council and representatives from the fishing industry expressed that the purpose of ACLs is to prevent exceeding ABC. Imposition of reactive AMs simply on the breach of the ACL when overfishing has not, or most likely has not, occurred is counter to the MSA's chief purpose.
- One NGO commented that language should be included in the NS1 guidance to advise Councils on a catch specification and AM implementation process when large lag times exist in data collection and reporting programs, catch estimation procedures, and data availability. For example, post-season AMs could be based on preliminary catch estimates and projections, or by making adjustments later in a fishing year when final data are available.
- One NGO commented that overage reductions should be applied to ACLs for all stocks the year after an ACL is exceeded, not just for rebuilding stocks.

AMs when small overages occur

- One Council expressed that some catch above an ACL should be allowed before stringent AMs become effective. For example, if the typical uncertainty around landings estimates is 20%, and a fishery lands 105% of its ACL, the landings estimate is within the error bounds of the target and therefore is not likely to pose a risk to the stock. Triggering AMs that cost fishermen landings should not be required unless landings exceed the overfishing level, but current guidance requires AMs to be triggered by ACLs. One NGO recommended that NOAA Fisheries consider including a small overage allowance (i.e., 1% overage allowance) where AMs are not triggered for non-overfished species. This could be used as a means to balance underage adjustments with conservation needs.

Performance metric

- One NGO commented that, in some cases (e.g., Gulf of Mexico red snapper and greater amberjack), a stock's ACL has been exceeded more than once in the past four years, so NOAA Fisheries needs to work with the Council to re-evaluate its system of ACLs and AMs for those stocks. Another commented that re-evaluation of the ACL and AM system, when a stock's ACL is exceeded more than once in four years, should result in management that is more, rather than less, precautionary.

AMs for recreational fisheries

- One commenter suggested that AMs should not be used in the recreational sector until data collection programs are in place that estimate recreational catch with sufficient accuracy.
- On the other hand, one NGO commented that robust AMs are particularly important for recreational fisheries where ineffective management has contributed to overfishing of many recreationally important species, including gag grouper and red snapper in the Gulf of Mexico and black sea bass and red snapper in the South Atlantic. Maintaining the recreational fishery within the prescribed catch levels can be complicated and difficult, due to: (1) a larger and broadly defined universe of participants, (2) a higher degree of difficulty monitoring recreational fisheries and estimating catch, (3) higher management uncertainty in general, and (4) lag times in catch tracking, estimation, and availability of data for management decisions.

3.10 ACL Exceptions

One-year life cycle exception

- One fishing industry group noted that species with sub-annual life cycles, which produce multiple cohorts within their one-year life span, should also be exempt from other NS1 requirements.
- Several fishing industry groups and a Council requested that one-year life cycle species should not be required to have SDCs, which rely on biomass estimates. This is based on their view that there is no scientific way to quantity the biomass of one-year life cycle species reliably on an annual or long-term basis given the role that environmental factors play regarding these species.
- One fishing industry group noted that, when one-year life cycle stocks are overfished and are required to have ACLs, it is unlikely that a reliable ACL could be set given the variability in abundance, and that AMs for such stocks could not be triggered until four months after the end of the fishing year. This means that in-season AMs do not appear to be possible and post-season management would be applying measures to a cohort that is already deceased.
- One fishing industry group noted that additional guidance should be provided that expands the one-year life cycle exception to include species with brief life cycles (e.g., one- to two-year life spans). Similarly, two Councils requested that additional guidance be provided under paragraph 50 CFR 600.310(h)(3) of the NS1 guidelines for unique species to address such issues. Additionally, one fishing industry group requested that species whose biomass is largely impacted by factors outside the jurisdiction of the MSA should be exempt from ACLs.
- One NGO requested that NOAA Fisheries resist efforts to expand the one-year life cycle definition, because extending it to any longer-lived species was never intended under the MSA. Fisheries that are age- or size-truncated should be restored so that the stocks are less vulnerable to overexploitation, and the shorter life cycle should not be used as a reason to exempt it from ACLs and AMs.

- One commenter suggested that an expert working group should be convened—consisting of government and non-government scientists, managers, and industry representatives—to develop and recommend a separate set of guidelines that properly reflect the unique biology and population dynamics of annual species. This separate set of guidelines should define and specify the application of those concepts that have direct relevance and utility to the successful management of annual species, and specifically exclude those that do not.

International stock exception

- One Council and one fishery association requested that the ACL "exception for stocks subject to any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party" be broadened to cover stocks managed under less formal international understandings such as has been done through separate legislation exemption stocks included under the U.S./Canada Resource Sharing Understanding in the Northeast.
- One Council, two fishery associations, and one individual supported the continued exception of ACLs for stocks subject to "any bilateral treaty, convention, or agreement which relates to fishing and which the United States is a party."
- Stakeholders in a large letter-writing campaign asserted that migratory fish such as bluefin tuna are some of the most threatened in the oceans. They asserted these species deserve protection from overfishing through catch limits, regardless of other nations' policies.
- Two NGOs believe that NOAA Fisheries misinterpreted an MSA section 303 note, when it provided in its NS1 guidelines in section 50 CFR 600.310(h)(2) that stocks or stock complexes managed under an international agreement do not need ACLs and AMs. They believe the MSA effective date language [MSA section 303 note] simply means the start date for the ACL requirements varies depending on overfishing status [2010 for stocks undergoing overfishing vs. 2011 for stocks not undergoing overfishing] and international agreements, and ACLs do not need to be set for species that have a life cycle of approximately one year. They believe it is not a reasonable interpretation to view the effective date note as creating an ACL exception for all stocks managed under an international agreement.

3.11 Rebuilding Progress and Revising Rebuilding Plans

Overfished status determination criteria

- One commenter recommended that when a stock assessment determines that a stock previously determined to be overfished was actually never overfished, NOAA Fisheries should change the status determination based on the best available science, the rebuilding plan should be ended, and the stock should not be required to rebuild to B_{MSY}.
- One commenter proposed the idea of using a multi-year average for overfished determinations. They stated that the current guidelines trigger a "knife edged" management response to a determination that a stock was overfished in a single year, which is to establish a plan to rebuild to B_{MSY} over some period of time. Therefore, the

overfished definition should be based on a multi-year average of biomass to prevent cases when one bad year leads to an overfished determination and forces the Council to implement a rebuilding plan.

10-year rebuilding time frame

- Many commenters stated that the current MSA requirement that rebuilding take place within 10 years[9] if possible is arbitrary. There is concern that this rule will create a situation where a fishery (or fisheries) will be completely closed by a rebuilding plan and create an economic disaster. There was general support for removing this provision and basing the rebuilding standard on the biology of the species, such as: the minimum amount of time to rebuild a stock in the absence of fishing (T_{min}) + 1 generation time. Others believe that, as long as overfishing has ended and the stock is making progress toward rebuilding, no timeline should be imposed. Several commenters emphasized the particular importance of having more flexible rebuilding time frames in mixed stock fisheries, due to the potential for limiting the harvest of more abundant stocks.
- A fishing industry group commented that the rebuilding clock should be reset any time new information arises, such as a new assessment showing a retrospective pattern.

Inadequate progress in rebuilding and changing SDCs during the rebuilding period

- One commenter expressed that, if a stock is found to be making inadequate progress in rebuilding even though fishing has been successfully constrained to help rebuild it, the guidelines should allow the Council to reconsider the balance originally struck between speed of rebuilding and the needs of communities. They believe it is inappropriate to fault the Council and negatively impact a fishing community for "inadequate rebuilding progress" when the community has successfully managed the fishery based upon the science originally provided by the rebuilding plan. In cases where fishing has been adequately controlled to *de minimus* levels and the stock is still not rebuilding, the Councils should be allowed to continue the rebuilding plan rather than spending resources on revising the plan. One fishing group also suggested that estimates of relevant biological reference points should be produced during the rebuilding plan to decrease the chance of reaching the end of a rebuilding plan and finding that rebuilding cannot be achieved by the maximum time allowable for rebuilding (T_{max}).
- One NGO commented that continuing with status quo management is not acceptable in the case of a failed or failing rebuilding plan. If inadequate progress is caused by failing to limit fishing mortality, action must be taken to decrease mortality by increasing uncertainty buffers used to calculate the ABC, ACL, and ACT.
- In addition, one NGO suggested there needs to be additional guidance for determining "inadequate progress." They expressed the need for some "safe harbor" in which no changes to the rebuilding plan would be required.

Actions to take when T_{max} is reached

- Two NGO comments support the NS1 guidelines approach for dealing with stocks that have reached T_{max} without reaching B_{MSY} [continue with the fishing mortality rate in the

[9] Referring to 16 U.S.C. § 1854(e)(4).

rebuilding plan ($F_{rebuild}$) or 75% of the maximum fishing mortality threshold (MFMT), whichever is less; 50 CFR 600.310(j)(3)(ii)]. They believe this approach should also apply to any stock that has reached or exceeded the target time to rebuild (T_{target}). They also believe that if a rebuilding plan is revised, under no circumstances should the $F_{rebuild}$ be increased under the new rebuilding plan.

- This approach was also supported by one industry group. In addition, they suggested NOAA Fisheries provide guidance that allows Councils to continue with the rebuilding plan if analysis shows that rebuilding will occur within one to three years of T_{max}. This is important to prevent large changes in the last few years of a rebuilding plan.
- However, this approach was rejected by a Council that commented that the concept of $F_{rebuild}$ should be dropped once the rebuilding deadline has passed. They expressed that fishing at 75% MFMT is arbitrary and may be less conservative than ordinary fishing rates. After T_{max} has been reached, the stock should be at a level that, as long as the fishing mortality rate remains below F_{MSY}, the stock should eventually rebuild, given enough time.

Environmental factors that affect rebuilding progress

- Several fishing industry groups and Councils suggested that the NS1 guidelines be revised to provide additional flexibility in stock rebuilding when factors such as environmental conditions are thought to be creating a negative effect on the rebuilding schedule established by a Council. The commenters expressed that, when prevailing environmental conditions are believed to be the cause of inadequate progress, Councils should not be faulted, but they should be asked to revise their rebuilding plans based on new scientific information. These changes may show the need to extend the rebuilding timeline based on the new conditions.
- One NGO was also in favor of modifying T_{max} when it is believed that the inadequate progress is being caused by environmental factors, as long as the changes are tied to changes to the biological reference points, as well as other measures such as area closures, habitat and forage protections, or improvements in bycatch reduction.
- One commenter noted that the term "overfished" should not be used to describe fish stocks that are depleted due to non-fishing activities. For example, stocks that are commonly exempt from ACL provisions often have highly variable swings in biomass due to environmental conditions. Such stocks should be referred to as "depressed" rather than overfished so as not to blame the fishing industry for their decline.

The socio-economic impacts of rebuilding plans

- One commenter suggested that, for certain stocks that have extremely long rebuilding periods, the economic benefit of rebuilding the stock does not exist and these stocks should be handled differently.
- Similarly, another commenter suggested that the current guidelines do not adequately emphasize the use of socio-economic information when developing rebuilding plans.
- An additional commenter asked NOAA Fisheries to convene an expert panel to discuss current rebuilding policies and approaches while discussing socio-economic tradeoffs.

3.12 Other Issues Identified by the Public

NS1 Guideline revision

- Several commenters expressed that NOAA Fisheries should strengthen, not weaken the NS1 guidelines.
- One commenter expressed that the ACL and AM strategy in the guidelines is sound and, rather than revisit the guidelines for NS1, NOAA Fisheries should strengthen the guidelines for National Standards 4 and 8.
- One commenter expressed that, although the NS1 guidelines are not perfect, the agency should be focused on implementing them as effectively as possible.
- One Council urged NOAA Fisheries to thoroughly vet the NS1 issues though workshops and conferences before developing a final proposed rule and commented that the Councils should be fully involved in the development of NS1 guidelines. Two Councils commented that issues raised in the ANPR will be discussed at the Managing Our Nations Fisheries III conference, and that it would be premature to have significant decision-making before that conference.
- Several commenters suggested that NOAA Fisheries should provide additional guidance through technical guidance. They felt that, if NOAA Fisheries does undertake a rulemaking to revise the guidelines, they should conduct a formal review of the impacts of the existing NS1 guidelines.
- Three commenters expressed support for agency review of the NS1 guidelines. Two of them expressed their belief that the NS1 guidelines have become a one-size-fits-all strategy, and that the guidelines should be made more general. Another expressed that National Standards 4, 6, and 8 should receive more attention in the context of NS1.
- One commenter felt it was appropriate to review the guidelines, but urged NOAA Fisheries not to undertake a wholesale rewriting of the guidelines.
- Two commenters expressed that the NS1 guidelines are very strict and overly complex and could be improved.
- One Council commented on the appropriateness and utility of technical guidance and policy directives. They expressed that, although policy directives may be created more quickly and may provide greater flexibility, they may be seen as circumventing the public process.

Fisheries data

- Paragraph 50 CFR 600.310(i) of the NS1 guidelines states that FMPs should contain a description of the general data collection methods used for the fishery. One commenter expressed that this paragraph should include references to economic and social data, in addition to biological data.

Allocation

- One commenter expressed that the National Standard Guidelines do not adequately address how the Councils should approach the topic of allocation. They expressed that an allocation methodology must be established before any discussions take place on the implementation of new tools such as catch shares or sector separations.

Recreational ACLs

- Two commenters expressed that ACLs in recreational fisheries should be based on fishing mortality rates instead of pounds. They felt that ACLs based on pounds were problematic due to the time lags and variability in catch data. They expressed that MSY-based management is inappropriate for recreational fisheries, which emphasize encounters over yield.

Hatchery stocks and ACL requirements

- One commenter noted that hatchery stocks (e.g., Pacific salmon) are somewhat different than wild stocks and setting ACLs for hatchery stocks may not make sense in all cases.

Highly migratory species (HMS) management and Advisory Panel duties

- One commenter asked why the NOAA Fisheries HMS Management Division does not have an SSC like the Councils. They expressed that the HMS Advisory Panel should have voting members like the Councils. They commented that these problems and others need to be addressed by Congress and the U.S. Secretary of Commerce.

4.0 Next Steps

The comments received reflect the diversity of U.S. fisheries and the need for flexibility in any guidelines developed. NOAA Fisheries is currently reviewing the comments and considering various approaches to address some of the issues raised. It is anticipated that some issues could be addressed through revisions to the NS1 guidelines, whereas others could be addressed through technical guidance or policy directives. Any revisions to the NS1 guidelines will be made through a long-term rulemaking process. The focus of this effort is on improving the guidelines, as opposed to adding new requirements. NOAA Fisheries is looking for additional opportunities to engage the Councils and public before publishing a proposed rule.

5.0 Contacts

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