



Marine Conservation Alliance

promoting sustainable fisheries to feed the world

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Adak Community Development Corporation

Alaska Bering Sea Crabbers

Alaska Longline Co.

Alaska Whitefish Trawlers Association

Alaska Groundfish Data Bank
*International Seafoods of Alaska
North Pacific Seafoods
Trident Seafoods
Western Alaska Fisheries*

Alaska Scallop Association

Aleutian Pribilof Island Community Development Association

Akutlan, Atka, False Pass, Nelson Lagoon, Nikolski, St. George

Arctic Storm Management Group

Bristol Bay Economic Development Corporation

Akiaknagik, Clark's Point, Dillingham, Egegik, Ekwok, Ekwook, King Salmon, Levelock, Manokotak, Naknek, Pika Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, Ugashik

Central Bering Sea Fishermen's Association

St. Paul

City of Unalaska

Glacier Fish Company

Groundfish Forum
Fishermen's Finest, Iquique US, Ocean Peace, O'Hara Corporation, United States Seafoods

High Seas Catchers

Ocean Harvester, Sea Storm, Neakahnle

Icicle Seafoods

Norton Sound Economic Development Corporation

Brevig Mission, Diomedes, Elm, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, White Mountain

Pacific Seafood

Pacific Seafood Processors Association

*Alaska General Seafoods
Alyeska Seafoods
Golden Alaska Seafoods
North Pacific Seafoods
Peter Pan Seafoods
Phoenix Processor Limited Partnership
Trident Seafoods
UniSea
Westward Seafoods*

United Catcher Boats

*Akutlan Catcher Vessel Association
Mothership Fleet Cooperative
Northern Victor Fleet Cooperative
Peter Pan Fleet Cooperative
Unalaska Fleet Cooperative
Unisea Fleet Cooperative
Westward Fleet Cooperative*

June 30th 2015

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

RE: Proposed Rule to Modify MSA National Standard 1, 3, and 7 Guidelines

Dear Mr. Patrick

On behalf of the members of the Marine Conservation Alliance (MCA) I want to thank you for your efforts and for allowing us the opportunity to comment on the proposed rule to modify the National Standard 1, 3, and 7 Guidelines. National Standard 1 is perhaps the single most important standard in the Magnuson-Stevens Act (MSA). Your efforts at helping to clarify the delicate balance that must be struck between preventing overfishing and attaining Optimum Yield (OY) are very much appreciated.

The Marine Conservation Alliance is comprised of harvesters, processors, and western Alaska Community Development Quota (CDQ) groups with interests in North Pacific groundfish and shellfish fisheries. Together our members handle the majority of seafood caught in Federal waters off Alaska. MCA supports science-based policies and the rational use of the precautionary principle in order to support the sustainable use of fisheries resources for current and future generations.

The bullets below summarize our general recommendations. We have provided additional explanation in the sections that follow.

- Reevaluation of FMP objectives. We agree that a Council should consciously reevaluate the appropriateness of FMP objectives; however, it is not clear what would be asked of a Council to meet this new requirement. Recommendations in this regard should be kept to a minimum to avoid unnecessary use of resources.
- Stocks in need of conservation and management. We appreciate the addition of this section to the proposed rule; however the question of whether stocks are in need of conservation and management should involve more than a “yes” or “no” question. It should also entail a question as to “why” a stock may be in need of management. Answering this question guides policy makers toward important questions about “how” to manage a given stock. Further consideration and expansion of this section would greatly improve the PR.

- Ecosystem-based approaches to management and ecosystem component (EC) species. The PR omits a substantial amount of meaningful text regarding how to undertake ecosystem approaches to management. Ecosystem considerations may necessitate approaches that are different from those used to prevent overfishing. The Ecosystem Component category in the existing guidelines is helpful in this regard. We recommend that guidance on EC species be retained and clarified.
- NS 7 guidance on benefits and costs of management. The PR removes plain language from the NS 7 guidelines which speaks to the need to weigh the benefits and costs of management. This language should be retained. Management resources are limited and therefore must be prioritized. Existing guidance in NS 7 to this effect is an important consideration for our fishery management activities.
- Use of the term “Depleted”. We appreciate the proposed use of the term “depleted” rather than “overfished” to describe stocks that are at a depressed population level due to factors other than fishing. Use of this term is unlikely to change management approaches to stocks below the minimum stock size threshold; however terminology greatly influences the public’s perception of our Nation’s fisheries and this can have economic implications to the seafood industry. Appropriate use of the term “depleted” can help in this regard.
- Data poor stocks and stock complexes. We welcome the effort at outlining the important role of stock complexes and to clarify how they can be appropriately constructed with indicator stocks. We believe that other considerations play a part in determining when to use stock complex management, such as considerations related to the benefits and costs of management.
- Phase-in of ABC control rules. As written the PR would appear to lead readers to conclude that more flexibility is allowed than is the case. The approach in the PR essentially makes the phase-in a discussion of how quickly to phase-in the buffer between OFL and ABC. This has been lost on many readers. A dramatic change in an OFL may lead to large social and economic impacts regardless of whether the buffer between the OFL and ABC can be phased-in. The PR should be clear in articulating that OFLs are not subject to a phase-in, but buffers between ABCs and OFLs are. In addition, the PR should be clear that phase-in can apply when catch targets increase as well as decline.
- Accountability Measures. In general we support the use of accountability measures and feel that the approach in the current guidelines works reasonably well. We believe that Councils should be given a substantial amount of deference in deciding how to implement certain AM provisions.
- Management flexibility. The introduction of flexibility in the management system is welcome; however there is little guidance given as to what sort of approaches would be deemed acceptable. We recommend that the PR include a couple of different examples as to how a Council could invoke the flexibility described in the PR without running afoul of the MSA.

In the sections below we have expanded upon our recommendations and rationale. We greatly appreciate the opportunity to provide these comments and we hope you find them useful.

1. Evaluation of FMP objectives

The Regional Fisheries Management Council system is an adaptive management process. One important aspect of adaptive management is the reevaluation of goals and objectives. It is a laudable recommendation to ask RFMCs to consistently evaluate the appropriateness of the objectives that have been specified within their FMPs. However, it is also important to recognize that well-specified objectives may not need to be modified frequently at all. It is therefore important that revised NS 1 guidance not imply that such objectives ought to be changed on a frequent basis, only that they be revisited every so often.

2. Stocks in need of conservation and management

The proposed rule introduces a new section describing stocks that are in need of conservation and management. In general, we agree that managers should ask which stocks are in need of conservation and management before embarking on the development of regulatory measures for those species. Implementing management measures requires resources to do so. Management also introduces complexity and regulation that impacts user groups dependent on fishery resources. Therefore, it is important to consider when and where management is necessary. This issue relates to both National Standard 1 and National Standard 7.

Identifying whether stocks are in need of conservation and management is more than a simple binary question. We suggest that the manner in which a Council should go about identifying which stocks are in need of conservation and management is to answer the questions of: A) whether a stock is in need of conservation and management, B) why that stock may be in need of conservation and management, and C) how that stock should be best managed (if at all). There are a variety of reasons for managing a stock, including: the risk of overfishing, ecosystem considerations, and social and economic considerations, among others. Below we have attempted to identify reasons for managing a stock and how to manage that stock.

- Stock at risk of experiencing overfishing in absence of management: If a stock is at risk of experiencing overfishing in the absence of management, the first appropriate response is to establish an Annual Catch Limit (ACL) which is designed to prevent overfishing while attaining optimum yield. The general approach in the existing guidelines is reasonable; however we would suggest a couple of modifications to the existing ACL framework when it comes to overfishing considerations. First, we believe the ACL approach should consider the risk that overfishing will occur and specify the type of ACL appropriate for that risk. For instance, a stock at a high risk of overfishing in the absence of management should have its own ACL, whereas a stock with a moderate risk of experiencing overfishing may not need the same level of management scrutiny. In this case, being managed in a complex with other stocks may be an appropriate level of management scrutiny to prevent that stock from experiencing overfishing. Stocks at a low risk of overfishing may not need any management at all, unless there are other considerations such as those related to ecosystem function or social and economic functions.
- Stocks which play an important role in the ecosystem and which are impacted by fishing: The PR mentions the role that stocks play in the ecosystem as one reason for managing a species. While we support ecosystem-based approaches, we believe this rationale falls a bit short. Management is considering the effect of fishing. Therefore, the question is not

about whether a species plays an important role in the ecosystem; the question is whether a species plays an important role in the ecosystem *that is potentially affected by fishing*. In other words, many species play an important role in the ecosystem, but if that role is unaffected by fishing then it is not worth managing that species. In cases where species do play an important role in the ecosystem, that role is affected by fishing in some way, and the stock is not at risk of experiencing overfishing, then we see the need for an additional set of considerations for management of that species.

In an ideal case, one would be able to specify ecosystem-based management reference points for important ecosystem species and manage to those through an ecosystem-based management framework. However, given the state of scientific information today it is unreasonable to think that establishment of ecosystem reference points could be achieved for many ecologically important species. It would be unfortunate to be able to A) identify a species as playing an important ecological role, but B) be unable to identify reference points, and therefore C) avoid taking an ecosystem-based approach to management of that species. We believe that Councils should be able to specify approaches that differ (more precautionary) from the prevention-of-overfishing framework when it comes to managing species important to the ecosystem. Doing so can help facilitate our progress toward ecosystem approaches to management.

The existing guidelines include provisions for “ecosystem component species” and offer guidance on how to categorize a stock as an “ecosystem component” stock. The PR proposes to remove this language, though the PR notes that the ecosystem component concept can still be used. It would be unfortunate to lose this guidance as the idea is still somewhat new to our nation’s Fishery Management Councils and to stakeholders. In reality, we believe that dropping the guidance on how to use the ecosystem component category would cause managers and stakeholders to step back from this concept. Instead of removing this text, we believe the PR should further refine the EC guidance based on what has been learned to date by its implementation. The recent actions taken by the NPFMC on classifying grenadiers as EC species is a good example to draw from in order to refine guidance on EC species. For example, the best available scientific information shows that grenadiers in the North Pacific are not at risk of experiencing overfishing even though removals can be substantial, targeting activity is rare, and the species appears to play an important role as a predator along the continental slope. These factors argue for an approach to management that is cognizant of the role that species plays in the ecosystem and the possible effect that fishing is having. Establishing limited regulations and prioritizing monitoring activity is a first step toward better accounting for the effects of fishing on this species and the ecosystem.

- Stocks which play an important social and economic role: It is possible that a stock could be important economically and/or socially and not be at risk of experiencing overfishing and not be an important component of the ecosystem. In such cases it may be desirable to manage fishing of these species for a variety of reasons. For instance, it may be desirable to attain certain social or economic objectives (i.e. a year round fishery, provide opportunities for certain gear types or provide opportunities for certain ports or regions). In such cases, certain levels of management may be desirable to achieve social and economic goals.

The question of whether stocks are in need of conservation and management is a difficult question with many considerations. The PR is right to ask this question; however we think it falls a bit short in terms of A) factors which Councils should consider in identifying whether a stock should be managed, B) the type of management that is appropriate given the reason for managing it in the first place, and C) to what degree this type of management should be applied.

3. NS 7 guidance on benefits and costs of management

The PR has correctly identified synergy between NS 1 and NS 7. We believe that, ideally, NS 1 and 7 would work together to develop a management system that prioritizes available resources and applies them in a way where regulations are necessary for conservation and utilization goals, but not overly burdensome for resource users.

The PR would remove a substantial amount of plain language from the NS 7 guidelines (titled “Necessity of Federal Management”) which we believe is helpful in ensuring that the benefits of management outweigh the costs of doing so. In particular, the plain language in the existing guidelines is helpful in stating that management is not always necessary, and that policy makers should clearly weigh the benefits of management against the cost of doing so. Removing this plain language risks burying the overarching concept that this National Standard is attempting to achieve. We believe that would be a mistake. The new guidelines should retain the general guidance beginning at 600.340(b) for implementing NS 7.

4. Use of the term “depleted”

The PR proposes to introduce a new word, “depleted”, to describe stocks which have fallen below the minimum stock size threshold (MSST) due to factors other than fishing. Describing stocks as depleted would not change the requirement that Councils implement measures for depleted stocks which “rebuild as quickly as possible while taking into account the needs of fishing communities....” This means that the practical effect upon the fisheries management process may be little more than a changing of words. However, differentiating those stocks that are below the MSST due to fishing from those stocks that are there for other factors can play an important role in educating the public and in focusing attention on research and data needs. For instance, use of the term “overfished” implies that fishing is the cause of a stock’s status. This can reflect poorly on fishery managers and on the industry. In cases where environmental conditions have led to a stock being below the MSST, use of the term “depleted” can provide a valuable education function by differentiating causes of a stock’s decline. We support the use of “depleted”.

5. Data poor stocks and complexes

We appreciate the attempt that is given at clarifying the important role that stock complex management has in our Federal fishery management system. Stock complex management plays a variety of important roles, many of which were identified in the PR. We believe that stock complex management plays a particularly important role in addressing NS 7. For instance, the weighing of the benefits and costs of management is not so much a binary question of whether to manage something or not. Rather, it is more a matter of whether to manage a stock, and *to what degree management is necessary* so that management benefits outweigh the costs of doing so. In addition, management resources are finite and therefore must be prioritized in a manner that addresses the most important conservation and management priorities first.

Stock complexes play an important role in this regard as they apply some level of management, but do so at a level that is less precise and more flexible than management at the individual species level. Stocks where the risk of overfishing is not high but where some management may be warranted are an ideal candidate for stock complex management. Other examples exist as well, such as those contained in the PR.

A major question of stock complex management is monitoring of catch and monitoring of stock status as often times stock complexes are comprised of species where little is known and/or where assessments are not done regularly. The PR articulates a process of using indicator stocks to serve as a proxy for overall health of a complex. We appreciate and agree with this recommendation. The existing guidelines appear to have led management toward a scenario where a stock assessment leads to a species-specific ACL (which may mean breaking a stock out of a complex). Often times this is not necessary and may in fact be compromising our ability to appropriately manage species within a complex.

6. Phase-in of ABC control rules

We appreciate the attempt at allowing for a phase-in of ABC implementation. Dramatic changes in allowable fishing levels due to changes in modeling assumptions, new understanding of a stock, or other matters which change the way we *perceive* the status of a stock rather than changing the *actual* status of a stock do not mean that a conservation issue has suddenly arrived. For these reasons, in addition to others, it is reasonable to consider a phase-in of new catch limits so long as a conservation issue has not been identified which would be exacerbated by the phase-in.

What is not so clear in the PR's description of phase-in of ABCs is that OFLs may not be phased-in. In other words, when harvest specifications and allowable catch levels are specified for a fishery, the question of phasing-in an ABC becomes one of how quickly to phase-in the buffer between the OFL and ABC. While we appreciate this proposed addition, a phase-in process that merely contemplates how quickly to implement an ABC buffer will not likely do much in the way of softening the blow of a change in allowable catch levels. A dramatic change in the OFL will still need to be implemented and this may cause economic strain on a fishery. Phasing in the size of the ABC buffer will certainly help, but will not address the main economic issue.

The PR's text on ABC phase-in concepts focuses on cases where OFLs and ABCs are in decline, and rightly so. In some cases a phase-in may be warranted when a stock is increasing as well. While such a scenario may often be more a matter of how to structure and implement a Council's risk policy (while a phase-in is a discussion of how quickly to implement that policy), we believe that the PR should take greater care to articulate that phase-ins can occur when a stock is in decline or increasing.

We believe that the best available science must be used and that overfishing must be prevented. Therefore, we agree with the need to quickly re-specify OFLs when new science says they must be changed. We appreciate the agency's willingness to explore and recommend ways to soften the blow of new scientific information; however we are concerned that the PR may lead readers to conclude that an ABC phase-in will do more than it actually does, especially in cases where

stocks are declining. The PR should clearly articulate that OFLs are not subject to phase-in, and that the phase-in is only a discussion about how quickly to implement the ABC buffer.

7. Accountability Measures

The PR proposes to consolidate and clarify aspects of the guidelines related to accountability measures (AM). In general we support the current guidelines and the way in which AM provisions have been implemented. We also appreciate the clarity that is proposed in the PR; however we recommend that the guidelines continue to give Councils a substantial amount of deference in determining how to implement AMs. One example concerns text in the preamble which states “if sector-ACLs are used, sector AMs should also be specified”. While we appreciate the intention of this type of language, we recommend that the text be modified in a way that *encourages* Councils to use this approach but does not require it. For example, there is no common definition of “sector” that exists across the nation. In some regions a sector may be akin to the term “fishery” while in other regions it is more akin to the term “cooperative”. These types of definitional differences can lead to large differences in the way in which AMs are implemented and the impact thereof. Therefore, it is important that Councils be given deference in determining how to apply AMs to fisheries in their region.

8. Management Flexibility

The PR introduces concepts which are intended to add flexibility to our fishery management system. These concepts are related to rebuilding and preventing overfishing. We appreciate the agency’s willingness to explore ways in which flexibility could be introduced into our system; however given the importance of making sure we get it right, we recommend that the agency provide additional guidance on how Councils could introduce flexibility into their systems without going afoul of the MSA. We envision the guidelines containing a special section with Management Strategy Evaluation case studies which illustrate the use of flexibility tools. These case studies would identify a handful of species with varying life histories and/or stock status to show how approaches could be used to introduce flexibility while meeting MSA mandates. The explanation as currently written in the PR appears to provide too little in the way of explanation and could be abused or lead to poor decisions.

Thank you once again for the opportunity to comment on this very important issue. Please let us know if we can be of assistance as you move forward.

Sincerely,

Merrick Burden
Executive Director