



Marine Conservation Alliance

promoting sustainable fisheries to feed the world

431 N. Franklin St. Ste 305
Juneau, AK 99801
(907) 523-0731
(206) 260-3639 fax

Adak Fisheries, LLC
Alyeska Seafoods
Alaska Crab Coalition
Alaska Draggers Association
Alaska Groundfish Data Bank
Alaska Pacific Seafoods
Aleutian Islands Brown Crab Coalition
Aleutian Pribilof Island Community Development Association
Akutun, Atka, False Pass, Nelson Lagoon, Nikolski, St. George
At-Sea Processors Association
Bristol Bay Economic Development Corp.
Aleknagik, Clark's Point, Dillingham, Egegik, Ekwok, Ekwok, King Salmon, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, Ugashik
Central Bering Sea Fishermen's Association
St. Paul
City of Unalaska
Coastal Villages Region Fund
Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Makoryuk, Napaskiak, Napaskiak, Newtok, Nighthuts, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tututuliak, Tununak
Groundfish Forum
High Seas Catchers Cooperative
Icicle Seafoods
Mid-Water Trawlers Cooperative
Mothership Group
PV Excellence
PV Ocean Phoenix
PV Golden Alaska
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 Processors Association
Alaska General Seafoods
Alyeska Seafoods, Inc.
Golden Alaska Seafoods, Inc.
Peter Pan Seafoods, Inc.
Premier Pacific Seafoods, Inc.
Supreme Alaska Seafoods, Inc.
UniSea Inc.
Wards Cove Packing Company
Western Alaska Fisheries, Inc.
Westward Seafoods, Inc.
Prowler Fisheries
Trident Seafoods Corp.
United Catcher Boats
Akutun Catcher Vessel Assoc.
Arctic Enterprise Assoc.
Mothership Fleet Cooperative
Northern Victor Fleet
Peter Pan Fleet Cooperative
Unalaska Co-op
Unisea Fleet Cooperative
Westward Fleet Cooperative
U.S. Seafoods
Waterfront Associates
Western Alaska Fisheries, Inc.
Yukon Delta Fisheries Development Association
Alakanuk, Enimonak, Grayling, Kotlik, Mountain Village, Nunam Iqaa

September 22, 2008

Mr. Mark R. Milliken
National Marine Fisheries Service
Offices of Sustainable State Fisheries
1315 East-West Highway
Room 13357
Silver Spring, MD 20910

Dear Mr. Milliken:

Re: RIN 0648-AV60

On behalf of the Marine Conversation Alliance (“MCA”), I am pleased to submit comments on the proposed revisions to the guidelines for National Standard 1 (NS 1) of the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) set forth at 73 Fed. Reg. 32526 (June 9, 2008) (“Proposed Rule”).

MCA was established in 2001 by fishing associations, communities, Community Development Quota groups, harvesters, processors, and support sector businesses to promote the sustainable use of North Pacific marine resources by present and future generations. MCA promotes marine resource policies based on sound science, prudent management, and a transparent, open public process. MCA supports research and education about the fishery resources of the North Pacific, and seeks practical solutions to resource issues to protect the marine environment and to minimize adverse impacts on the North Pacific fishing community.

Overview and Need for Simplification

MCA remains very supportive of the amendments to the MSA that establish the statutory basis for the Proposed Rule. However, we are concerned that the Proposed Rule presents an unfortunate alphabet soup of overlapping and duplicative terms. For example, the Proposed Rule introduces the term overfishing limit (“OFL”) but then proceeds to define that term as corresponding to the maximum fishing mortality threshold (“MFMT”). 50 C.F.R. § 600.310(e)(2)(i)(D). The immediate question is why there is a need to have two terms meaning essentially the same thing. Similarly, the Proposed Rule introduces the new term annual catch target (“ACT”). 50 C.F.R. § 600.310(f)(2)(v). It is unclear what this new terms adds to existing management processes. Further, the preamble to the Proposed Rule states that the current National Standard 1 Guidelines include maximum sustainable yield (“MSY”) control rules which are “limit” control rules and optimum yield (“OY”) control

rules which are “target” control rules. 73 Fed. Reg. 32534. However, the Preamble then states that NMFS is proposing that the MSY control rules be replaced by Acceptable Biological Catch (ABC) control rules and that the OY control rules be replaced by ACT control rules. It is unclear why there is a need to establish new control rules. The Proposed Rule then appears to establish the annual catch limit (“ACL”) as yet another new type of management measure. 50 C.F.R. § 600.310(f). However, nowhere does the MSA provide that ACLs are to be a new type of management measure. ACLs are mentioned at four points in the MSA. *See* 16 U.S.C. § 1852(h)(6), 16 U.S.C. § 1853(a)(15), 16 U.S.C. § 1855(i)(1)(B)(i), and 16 U.S.C. § 1855(i)(1)(C). These provisions require each Regional Fishery Management Council (“Council”) to develop ACLs that do not exceed recommendations of the scientific and statistical committee and to provide a mechanism in each fishery management plan (“FMP”) for setting ACLs such that overfishing does not occur. However, nowhere does the MSA establish ACLs as a totally new type of management measure. Indeed, the MSA specifically provides that the total allowable catch (“TAC”) is one type of ACL. *See* 16 U.S.C. § 1855(i).

A simpler and more effective system would be to retain the existing MFMT and OY specifications; set the OFL equal to the MFMT; set ABC no higher than OFL; set TAC no higher than ABC; define ACL as comprising OFL, ABC, and TAC; and specify that accountability measures (“AMs”) are always required and must be reevaluated if catch exceeds OFL in any year or if average catch is significantly different from average OY over the selected reference period. This system, which would require significant revision of the Proposed Rule, will provide a simpler and more effective management program for the nation’s fisheries.

Stocks in a Fishery

Given that the National Standard 1 Guidelines will apply to each fishery, that portion of the Proposed Rule defining the stocks in a fishery takes on particular importance. Section 600.310(d)(2) of the Proposed Rule provides that the stocks in a fishery include (a) target stocks, (b) non-target stocks that are retained for sale or personal use, and (c) non-target stocks that are not so retained and that are determined to be subject to overfishing, are approaching being overfished, or are overfished. This section appears to provide that all such stocks must be included in the managed fishery. However, § 600.310(d)(4) provides that non-target species “may” be included in the fishery. Thus, the Proposed Rule appears in one subsection to require that certain non-target species be designated as stocks in a fishery while another subsection appears to leave this discretionary with the appropriate Council. Section 600.310(d)(7) adds to the confusion by providing that if a stock is identified in more than one fishery, the Council should choose which FMP will be the primary FMP for management purposes.

The importance of resolving what are the stocks in a fishery becomes all too clear after reviewing the preamble of the Proposed Rule. There, NMFS explains quite clearly that for every stock in a fishery the Council must specify quantitative status determination criteria (“SDC”), maximum sustainable yield (“MSY”), ABC, ACL, and ACT. 73 Fed Reg. 32529. This system, if adopted, could require multiple specifications and reference points for the same species if those stocks are designated as stocks in the fishery for different FMPs. This could create significant management complications. The Proposed Rule should be clarified to ensure that

each Council has full discretion to determine which species are designated as a stock in the fishery in order to provide for proper fisheries management.

This problem is further exacerbated by § 600.310(e)(3) of the Proposed Rule which provides that for each stock in the fishery, the Council shall specify the OY. By requiring that non-target species be included as a stock in the fishery, NMFS may well be requiring that the OY for a target species or fishery be balanced against the OY for another species or fishery, or a bycatch species. Such a requirement would almost surely put the Councils in a no-win situation, unnecessarily complicating management. It could result in the OY for the bycatch species driving and controlling the OY for the target species irrespective of the relative health or biological status of either species. The complications and problems associated with such a management program are potentially enormous.

The need for clarification and correction is also demonstrated if one considers that the National Standard 1 Guidelines as now proposed could be interpreted to effectively amend the MSA, a power reserved to the Congress. Specifically, National Standard 9 requires that conservation and management measures included in an FMP shall “to the extent practicable” minimize bycatch. If non-target species are required at all times to be included within the definition of “stocks in a fishery” and if, pursuant to National Standard 1, Councils are required to set an ACL and ACT (*see* §600.310(f)) for the non-target stock, has National Standard 9’s “to the extent practicable” language been amended and replaced with a mandate? NMFS should very carefully consider this issue, be very clear that the decision regarding which stocks or species are “in a fishery” is left to the respective Council, and ensure that bycatch reduction measures are governed by those provisions of the MSA specifically intended and designed to address those issues.

A related issue is the treatment of “ecosystem component species”. The preamble to the proposed rule requests comments from the public on criteria for classification of EC species, and seems to open the door for inclusion of EC species under provisions of this rule requiring targets and controls. MCA believes that inclusion of EC species is inappropriate under provisions of NS 1 relating to the development of MSY, ACL, or ACT rules, and should only be identified in this rule as discretionary considerations that a Council may incorporate into OY determinations. Further, MCA believes that measures to control or reduce bycatch of such species must be developed pursuant to National Standard 9. As such, determinations regarding what species are considered as EC species for a given FMP, and any measures designed to address the conservation of such species, should be left to the individual Councils and not required under NS 1.

As a final matter, the Proposed Rule should provide the Councils with the ability to develop FMPs for species or geographic regions where there is a paucity of scientific information and the Council wishes to close fishing until such data are available. In the North Pacific, the Council is pursuing development of an FMP for the Arctic that will close areas of the US Arctic to fishing until such time as scientific information is available to make determinations of MSY, ACL, ACT etc. There is confusion as to whether the Council can adopt an FMP to close these waters without also specifying these biological parameters, including overfishing limits, even though the FMP would prohibit fishing and thus no overfishing could occur. This rule should clarify that such an FMP could be developed and adopted as a precautionary step.

Buffers

Figure 2 of the Proposed Rule, 73 Fed. Reg. at 32534, demonstrates the intent of the textural provisions of the Rule set forth in § 600.310(f) regarding the establishment of buffers between the OFL and the ABC as well as between the ACL and the ACT. The intent is to account for scientific and management uncertainty by establishing buffers in various situations. Although the text of the Rule provides that the ACT “should usually be less” than the ACL, the preamble implies that in the presence of any data and management uncertainty, the ACT should always be less than the ACL. Moreover, § 600.310(f)(1) provides that setting the OFL, ABC, ACL, and ACT should be done so as to “ensure” a low risk of overfishing while achieving OY on a continuing basis. The apparent requirement for these buffers combined with the use of the word “ensure” significantly diminish the management authority vested in the Councils and their scientific committees to make conservation and management decisions based on the best scientific information available. Notwithstanding the alleged flexibility with respect to ACL and ACT, the reality is that the Proposed Rule is constructed in such a way as to remove any flexibility for the Councils and to require in virtually every circumstance that a buffer exist. The language of the Proposed Rule, including the preamble, suggest that absent 100% certainty regarding the scientific data and management program, the Council has no discretion but to establish buffers of some description. While buffers may be appropriate in certain circumstances, they may prevent the achievement of OY in some circumstances. The Proposed Rule should be clarified to allow Council discretion to determine if buffers are appropriate based on the best scientific advice and, if so, the size of such differentials.

MSY and OFL

The Proposed Rule states that MSY is the long term average of the OFLs. 50 C.F.R. § 600.310(e)(2)(i)(D). This definition precludes MFMT being anything other than a constant F. Not only is this restriction not required by the MSA, but it is inconsistent with the present National Standard 1 Guidelines as well as with other components of the Proposed Rule. For example, 50 C.F.R. § 600.310(e)(2)(ii)(A)(1) provides: “The MFMT or a reasonable proxy may be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential.” Moreover, the restrictions in the Proposed Rule would preclude a constant escapement control rule such as that which is currently used to manage certain salmon fisheries. In that regard, § 600.310(e)(2)(ii)(A)(1) of the Proposed Rule provides in the last sentence that MFMT must not exceed F_{msy} . Providing that MFMT never exceed F_{msy} regardless of stock size precludes, for example, the use of constant escapement control rules for salmon fisheries and thus results in further unnecessary complications in the management process. This is particularly troubling in an instance such as Alaska salmon where the State of Alaska has assumed management of the directed salmon fisheries under the FMP, and manages these fisheries to meet specific biologically based escapement objectives.

ABC Definition

The definition of ABC in the Proposed Rule provides that ABC is a level of annual catch “that accounts for scientific uncertainty in the estimate of OFL” and is specified based on the ABC

control rule. 50 C.F.R. § 600.310(f)(2)(ii). Scientific uncertainty is not and should not be limited to the estimate of OFL. That restriction would make it more difficult to implement other appropriate methods of incorporating scientific uncertainty including methods that consider scientific uncertainty in other quantities such as the distribution of long term yield.

Performance Measurement

Section 600.310(g)(2) of the Proposed Rule provides in the last sentence that, if catch exceeds the ACL more than once every four years, the system of ACLs, ACTs, and AMs should be reevaluated for performance and effectiveness. This section would be improved by providing that this measurement is for a specific stock or stock complex to make certain that system performance is measured at the stock level. For example, there could be a single FMP applicable to 25 stocks. Assume further that the catch for one stock exceeds the ACL in the first of the four year measurement period and the catch for a second stock exceeds the ACL in the third year. Under the Proposed Rule, a reevaluation of the entire system would be required based on the premise that it is behaving poorly notwithstanding the fact that there are only two overages out of a possible 100 (based on 25 stocks multiplied by 4 years). Moreover, if OY is being achieved and overfishing is not occurring, it is simply unfair and inappropriate to imply that the system's performance has failed and needs modification and improvement.

MCA appreciates the opportunity to comment on the Proposed Rule revising the National Standard 1 Guidelines. MCA looks forward to working with NMFS and other interested parties to address the issues raised by MCA in order to improve the Proposed Rule.

Sincerely,



David Benton
Executive Director