SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

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April 30, 2018
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The Honorable Tim Scott
717 Hart Senate Office Building
Washington, DC 20510

Dear Senator Scott:

Thank you for requesting the South Atlantic Council's thoughts on Senator Wicker's bill, S. 1520, Modernizing Recreational Fisheries Management Act of 2017 (email from Emily Lavery dated 4/26/18 to Capt. Mark Brown). The South Atlantic Council developed position statements on a range of key issues being considered as part of the Magnuson-Stevens Act (MSA) reauthorization process. The full position statements are contained in the Council Coordinating Committee (CCC) Working Paper, under regional perspectives (**Attachment 1**). This and other materials related to MSA reauthorization are available from the U.S. Regional Fishery Management Councils' website (http://www.fisherycouncils.org/msa-reauthorization/).

Our comments on each section of S1520 are as follows:

1. **Section 101. Process for allocation review for South Atlantic and Gulf of Mexico mixed-use fisheries.** The South Atlantic Council does not believe a National Academy of Sciences study of allocations is necessary because we have adequate guidance/procedures and it would be an unnecessary expenditure of limited National Marine Fisheries Service (NMFS) funding (estimated cost is about $1M). The CCC worked with NMFS to define a process for looking at triggers that could be used to reevaluate allocations, and the CCC approved the criteria for initiating fishery allocation reviews at their May 2016 meeting. The recommendation from the CCC was that all Councils establish, within three years or as soon as practicable, the triggers that they are going to be using for allocation review. The South Atlantic Council will be working on this during 2018. The South Atlantic Council does not feel a legislated timeframe for review of allocations is necessary. The triggers identified will determine when a review is needed, and the Council concluded this was sufficient. Adequate guidance is contained in the following three documents developed by the CCC and NMFS: The Criteria for Initiating Fisheries Allocation Reviews – Council Coordinating Committee Allocation Workgroup Guidance Document (**Attachment 2**) and Recommended Practices and Factors to Consider When Reviewing and Making Allocation Decisions (**Attachment 3**) were finalized in July 2016. More recently, these two directives were revised in a new Fisheries Allocation Review Policy (February 2017) (**Attachment 4**).

2. **Section 102. Alternative Fishery Management.** The provisions in this section would provide greater flexibility for the South Atlantic Council to manage the recreational sector without in-season closures. Management using annual catch limits (ACL) poses a special

challenge for recreational fisheries in the southeast because the management paradigm and the data collection systems are mismatched. In general, when recreational fisheries are catching a lot of fish, it is due to a high abundance and/or availability of fish in the water. Unfortunately, with the resource challenges (funding and personnel) in the Southeast, many of our assessments cannot be updated in a timely enough fashion to allow for an increase in abundance to be translated into an increase in the ACL. As a result, when a big year class enters a fishery (a good thing) the current management paradigm forces the South Atlantic Council to react as if something bad happened, penalizing the fishery with an in-season closure or a reduction in the following year's fishing season. This is an artifact of managing with ACLs that could be addressed by allowing flexibility in how ACLs are applied on an annual basis. There is a fundamental disconnect between the types of information we have available to manage our recreational fisheries and the way the Regional Fishery Management Councils (RFMCs) are required to apply accountability measures (AMs), such as in-season closures. The process would work much better if the RFMCs had greater flexibility in applying ACLs and AMs, particularly in the recreational sector.

Requiring a report from the Secretary of Commerce six months after implementation does not allow the RFMCs sufficient time to develop and provide amendments to NMFS for review and implementation. The MSA process is public and participatory, which requires about 6 months to one year to complete a major amendment. NMFS then requires another 6-18 months to review and implement a major amendment. Requiring a report two years after implementation would be more reasonable.

3. **Section 103. Study of Limited Access Privilege Programs for Mixed-Use Fisheries.** The South Atlantic Council does not believe a National Academy of Sciences study of limited access privilege programs is necessary because we have adequate guidance/procedures (e.g., NOAA Catch Share Guiding Principles, NOAA Catch Share Policy, and the Magnuson-Stevens Act) and it would be an unnecessary expenditure of limited NMFS funding (estimated cost is about $1M). The South Atlantic Council and CCC believe that RFMCs should maintain the maximum flexibility possible to develop effective management tools, including catch share programs. Adding excessive and detailed requirements for conducting a referendum is likely to increase the administrative burden for the RFMCs and may reduce the RFMCs' ability to implement the appropriate management program for their fisheries that could include modification of existing catch share measures or new catch share measures. Catch shares is a management tool that should be available to the RFMCs, but the design, timing, and development should be left to individual Councils if they choose to use this tool for a specific fishery. The South Atlantic Council's only Individual Fishing Quota (IFQ) program, wreckfish, was established in 1992. This IFQ program has been good for South Carolina as a number of the shareholders and a majority of the landings are from South Carolina. The South Atlantic Council is currently conducting a review as required by the Magnuson-Stevens Act (MSA). The MSA mandates that the RFMCs review any limited access privilege program every 5-7 years. Since establishing the wreckfish ITQ program, the Council has considered but not pursued the use of catch shares in the snapper grouper mixed-use fishery and the golden crab fishery. While the South Atlantic Council is not currently considering additional catch share programs, the topic is controversial in the South Atlantic.

Therefore, it is important that the South Atlantic Council maintain maximum flexibility in applying referenda to any potential, future catch share program.

4. **Section 104. Rebuilding Overfished Fisheries.** Under the requirements of Magnuson-Stevens, the Regional Fishery Management Councils develop rebuilding plans for overfished stocks. The law requires rebuilding plans to end overfishing within two years and attempt to rebuild stocks within 10 years, if biologically possible. These arbitrary deadlines can be unnecessarily disruptive to fishing communities and local economies. In some cases, if longer timeframes were allowed, fisheries could be rebuilt, or overfishing could be eliminated without devastating the economic livelihood of fishermen and negatively affecting fishing communities. The South Atlantic Council believes that the rebuilding time requirement should be simplified, by eliminating the current arbitrary 10-year requirement and using the biologically-based rebuilding period alternative of one generation time for all situations. The 10-year limit does not treat all stocks with varying life histories fairly and adequately. Short-lived stocks can experience several generations in that time, while long-lived stocks may only experience a fraction of a generation.

   In the experience of the South Atlantic Council, the major impacts occur with the requirement to end overfishing immediately. While the impacts from ending overfishing immediately (which requires an immediate and large reduction in the ACL) have been severe and long lasting, the impacts from rebuilding timeframes have not been as major an issue because the initial impact is due to the ACL reduction and because we adjust the annual ACLs (which usually increase over time) based on the rebuilding projections.

   A three-year phase-in of catch reductions reduces negative social and economic impacts that would occur if overfishing was ended immediately. The South Atlantic Council has proven success with three-year phase-in reductions to end overfishing for black sea bass and snowy grouper. Black sea bass was completely rebuilt within the rebuilding schedule. Overfishing ended for snowy grouper and, while still overfished, it was 10 years ahead in its rebuilding schedule according to the most recent assessment. The South Atlantic Council believes this strong evidence supports the consideration of longer timeframes to end overfishing.

   In summary, the South Atlantic Council feels removing the arbitrary 10-year requirement would be beneficial and more attention should be given to the impacts of ending overfishing immediately, which is where the big reductions occur.

5. **Section 105. Modifications to the Annual Catch Limit Requirement.** The South Atlantic Council and the CCC believes that further consideration of exemptions or alternatives to the existing ACL requirements for data-limited species could improve the RFMCs' ability to provide stability in setting harvest limits. The ad hoc methods sometimes used to establish ACLs for data-limited species often result in quotas that are less predictable, resulting in a loss of stability and yield in some of our most important fisheries. While ACLs and AMs have been effective management tools for many fisheries, they may not be the best tools for managing incidental or small-scale, data-limited fisheries. In these situations, RFMCs should have discretion to determine alternative control mechanisms, such as ecosystem-based fishery management approaches, for data-limited stocks.

Multiple species can be managed together as a complex, as is often the case in mixed-stock fisheries. The abundance of any individual species' stock within that complex will vary in abundance over time, and it is unlikely that all species will be at high abundances at the same time. Therefore, mixed-stock fisheries cannot be adequately managed by applying single-stock principles. Desirable fishery yield should be specified for overall complexes, while allowing individual stocks to experience normal variability.

The South Atlantic Council believes the conditions for exemption from ACL requirements should be expanded to include species like spiny lobster and dolphin because other management tools may provide greater biological benefit and can promote sustainable harvest. Species with short life cycles or unique life histories should be exempt from ACL requirements and associated AMs when these management systems provide no or minimal biological benefit to the sustainability of these stocks. The ACL and AM system has immense value in management and sustainable harvest of most fishery stocks under federal fishery management plans (FMPs), but this does not hold true for all species. For example, the southeastern U.S. spiny lobster stock should be exempt from ACL requirements and associated AMs because it is unique among all federally-managed species in regard to its life cycle and stock dynamics. Recruitment to the southeastern U.S. spiny lobster stock is not linked to local production or stock size and more than 50% of the recruitment comes from external sources. Based on these characteristics, ACLs and AMs provide no biological or conservation benefit to the southeastern U.S. spiny lobster stock. Dolphin exhibit one of the fastest individual growth rates of any recreationally or commercially targeted species, reach sexual maturity within six months of age, are protracted batch spawners, and most (>96%) individuals live less than two years with a maximum age of four years. Given these life history characteristics, dolphin could be compared to an annual crop. Thus, establishing an ACL for this species may not be appropriate.

In addition, the South Atlantic Council believes that acceptable biological catches (ABCs) should not be required for unassessed stocks or for assessed species that have not been re-assessed in 5 years. This would allow the South Atlantic Council to use their informed judgment to set an interim ACL until an ABC was provided. Basing ABCs for unassessed stocks on a quantitative portion of historical landings in the context of the precautionary principle will result in ABCs with no scientific basis that may be open to challenge. Such ABCs could be artificially low, decreasing fishery yield, or too high, posing risk to the stock. The simple fact is that, without a legitimate assessment, neither scientists nor managers can make biomass-based recommendations for ABCs because historical landings are uninformative for estimating stock abundance. This is particularly true for mixed-stock fisheries, such as the South Atlantic snapper grouper fishery, with a long history of missing, obscured, and inaccurate landings at the species level.

More frequent stock assessments would assist the South Atlantic Council in meeting its obligation of sustainably managing fisheries and would provide more benefits/jobs to the fishing communities.

6. **Section 106. Exempted Fishing Permits.** The existing exempted fishing permit (EFP) procedures provide a sufficient framework for the expedited, uniform, yet regionally-based

process envisioned to test solutions and collect data to address specific management issues. EFPs have been used in the South Atlantic to advance and support fisheries management. The South Atlantic Council and NMFS Southeast Regional Office recently launched development of a review process for EFPs that will provide both the South Atlantic Council and the public an opportunity to provide NMFS comments on EFP applications. Thus, some of the proposed legislative changes to current EFP regulations may be unnecessary and overly prescriptive and may unintentionally constrain the RFMCs' ability to address specific management issues in an expedited fashion. Additionally, restricting EFPs to one year may limit their utility as some projects cannot be completed within that time. Furthermore, a multi-layer review process could impact the ability to address a management need in a timely fashion and unnecessarily deter applicants.

7. **Section 201. Cooperative Data Collection.** Cooperative data collection can benefit the RFMC process and decision-making. Fisheries management can be improved by incorporating additional data, analyses, stock assessments, and surveys from state agencies and non-governmental sources; increasing public involvement and transparency regarding scientific data; and prioritizing improvements to data collection and stock assessment in the southeast. Formation of a federal-state partnership program to improve data collection for recreational anglers would be beneficial. While the South Atlantic Council supports collaborative efforts to improve incorporation and collection of data, we are concerned that some of the proposed legislative changes would be overly prescriptive.

   The South Atlantic Council's commitment to improving stakeholder involvement by supplementing existing data collection efforts in the region is exhibited through its Citizen Science Program (Program). Initiated in 2017, the Program aims to advance fisheries management through collaborative science with fishermen, scientists, and managers. The Program will ultimately support citizen science projects to address critical data gaps and improve stock assessments and management decisions.

8. **Section 202. Recreational Data Collection.** The South Atlantic Council and the CCC believe the Marine Recreational Information Program (MRIP) was not designed to provide data for in-season ACL management. The current MRIP methodology cannot be modified nor can sufficient funding be provided such that in-season ACL management will work. We believe alternative methods (e.g., state electronic logbook programs, federal for-hire electronic logbook programs, and electronic logbook programs for private recreational anglers) should be fully implemented where they are available and developed, then evaluated where they do not yet exist. Once evaluated, MRIP should work to quickly certify these alternative methods for use in monitoring recreational catches.

   There does not appear to be a plan for the systematic collection of the necessary biological data from recreational fisheries for use in stock assessments (size, age, and reproductive data). Stock assessment data would be greatly improved, as would the assessment results, if NMFS would immediately prepare a written plan for each region and coordinate across regions to address species as they move from one region to another due to changes in the environment. The South Atlantic Council and the CCC believe additional funding is required for successful implementation of such a data collection program.

The South Atlantic Council and the CCC believe more timely and accurate catch estimates that will be accepted by the recreational community (since they are providing the data) will go a long way to improve stock assessments, improve voluntary compliance, and improve accountability within the recreational fishing community.

The Council is concerned that moving current funding from the Saltonstall-Kennedy Grant Program to fund State grant programs would negatively impact ongoing research efforts.

The following efforts by the South Atlantic Council address providing more timely and accurate recreational catch data:

A. **For-hire vessel electronic reporting will greatly improve the timeliness and accuracy of for-hire catch data.** The South Atlantic Council sent its for-hire amendment for formal review on March 3, 2017 and requested mandatory for-hire electronic reporting become effective January 1, 2018.

B. **Electronic reporting and federal permitting for private recreational anglers may improve recreational harvest and effort estimates.** The South Atlantic Council requested that NMFS work with the South Atlantic Council to explore the utility, feasibility, and value of federal permits and mandatory reporting for private recreational anglers. The South Atlantic Council is currently working with the Atlantic Coastal Cooperative Statistics Program (ACCSP), state, and private partners on a NMFS-funded project to develop and test an app-based permitting and reporting system for these anglers.

As you can see, the topics covered in S. 1520 are exceptionally important to the Council. Full discussion on many of these issues along with examples are provided within the CCC Working Paper's regional perspectives (**Attachment 1**). We appreciate your consideration of our views as you work on MSA reauthorization, and we are ready to work with you in any way possible.

Thank you for your time and consideration.

Still digging,

Charlie Phillips, Chair
South Atlantic Fishery Management Council

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Regional Fishery Management Council Positions on Magnuson-Stevens Act Reauthorization Issues

Council Coordinating Committee (CCC) Working Paper

November 14, 2017

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ACRONYMS

ABC	Acceptable Biological Catch
ACCSP	Atlantic Coastal Cooperative Statistics Program
ACL	Annual Catch Limits
ACLIM	Alaska Climate Integrated Modeling Project
AM	Accountability Measures
B_{MSY}	The stock biomass expected to exist under equilibrium conditions when fishing at F_{MSY}
BSIA	Best Scientific Information Available
CCC	Council Coordination Committee
CCE	California Current Ecosystem
CPS	Coastal Pelagic Species
DBSRA	Depletion-Based Stock Reduction Analysis
DCAC	Depletion-Corrected Average Catch Analysis
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EFP	Exempted or Experimental Fishing Permit
EIS	Environmental Impact Statement
ESA	Endangered Species Act
F	Fishing Mortality Rate
FEP	Fishery Ecosystem Plan
FMP	Fishery Management Plan
F_{MSY}	The rate of fishing mortality expected to achieve MSY under equilibrium conditions and a corresponding biomass of B_{MSY}
GC	General Consul
HMS	Highly Migratory Species
IFQ	Individual Fishing Quota
ITQ	Individual Transferrable Quota
LMRs	Living Marine Resources
MARMAP	Marine Resources Monitoring, Assessment, and Prediction

MMPA	Marine Mammal Protection Act
MRFSS	Marine Recreational Fisheries Statistics Survey
MRIP	Marine Recreational Information Program
MSA or MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
MSY	Maximum Sustainable Yield
NEFSC	Northeast Fishery Science Center
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NPFMC	North Pacific Fishery Management Council
NS1	National Standard 1
OFL	Overfishing Limit
OY	Optimum Yield
PSMFC	Pacific States Marine Fishery Commission
RFMC	Regional Fishery Management Council
ROA	Regional Operating Agreement
SAFE	Stock Assessment and Fishery Evaluation
SAFMC	South Atlantic Fishery Management Council
SEAMAP	Southeast Area Monitoring and Assessment Program
SEDAR	Southeast Data Assessment and Review
SEFSC	Southeast Fishery Science Center
SERFS	Southeast Reef Fish Survey
SERO	Southeast Regional Office
SOPPs	Statement of Organization, Practices, and Procedures
SSC	Scientific and Statistical Committee
TAC	Total Allowable Quota
T_{max}	Maximum Rebuilding Timeframe
WPSAR	Western Pacific Stock Assessment Review

INTRODUCTION

Purpose

The purpose of this working paper is to describe consensus positions and the range of Regional Fishery Management Council perspectives on key issues being considered as part of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) reauthorization process. Development of this paper was initiated at the May 2014 meeting of the Council Coordination Committee (CCC). During this meeting, the CCC, which is composed of leaders from each of the eight regional fishery management Councils, developed consensus statements on a number of issues that had been identified for potential revision in the reauthorized MSA. In addition, the CCC proposed to develop a working paper to further explore several issues in greater detail. This effort resulted in a Working Paper: Regional Fishery Management Council Positions on Magnuson-Stevens Act Reauthorization Issues dated January 2015.

The CCC established a Legislative Workgroup at the May 2016 meeting with the dual purpose of preparing draft reauthorization comments for CCC review/approval and updating the working paper in preparation for review and approval by the CCC at the May 16-18, 2017 meeting.

Background

Since 2012, the regional fishery management Councils ("Councils") of the United States have been engaged in discussions about the reauthorization of the MSA. A wide range of issues have been identified for potential consideration in the revised Act by fishery managers, law makers, fishing groups, environmental organizations, and others. While some proposed changes would primarily affect specific regions, others would have a broad impact on fisheries management across the United States. Congress has sought input from the Councils on numerous occasions. Council leadership has provided written and oral testimonies at Congressional hearings, and most of the Councils have provided feedback on draft legislation circulated by House and Senate Committees. Copies of past letters and other materials are contained on the Regional Council website on the MSA Reauthorization page: http://www.fisherycouncils.org/msa-reauthorization/.

At the May 2014 CCC meeting, the eight Councils worked to draft consensus positions on many of the issues being considered as part of MSA reauthorization. The committee developed consensus positions on a portion of the issues considered. These positions were outlined in a subsequent letter to the Chairmen of the Congressional Committees involved in reauthorization. The CCC did not develop a consensus position on a number of issues that were discussed. As a result, the committee agreed to develop a working paper to further explore the following topics:

- Stock Rebuilding (Specifically, delayed implementation of rebuilding plans)
- Ending overfishing
- Annual Catch Limit (ACL) Requirements and Exemptions

This working paper synthesizes many additional perspectives that have been shared thus far and is intended to serve as a resource throughout the duration of the MSA reauthorization process. As such, it was designed to be modified and updated as positions change and new issues come to light.

The Legislative Workgroup met in January 2017 to begin work on drafting consensus positions for review and approval by the CCC in February 2017. More recently, three bills have been introduced:

(1) **H.R. 200** - The "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act"; Sponsor – Congressman Young (R-Alaska); Introduced on January 3, 2017; Referred to the House Natural Resources Committee

(2) **H.R. 2023** - The "Modern Fishing Act of 2017"; Sponsor – Congressman Graves (R-Louisiana); Introduced on April 6, 2017; Referred to the House Natural Resources Committee

(3) **S. 1520** - The "Modernizing Recreational Fisheries Management Act of 2017"; Sponsor – Senator Wicker (R-Mississippi); Introduced on July 10, 2017; Referred to the Senate Commerce, Science, and Transportation Committee

Current Positions

At the February 2017 CCC meeting, the CCC approved general comments on MSA reauthorization. The CCC reviewed these positions at their May 2017 meeting and made some slight modifications. These positions have been further modified and approved by the CCC in November 2017 via email.

Management Flexibility

Rebuilding Requirements

In general, the CCC believes that the addition of measures that would increase flexibility with respect to stock rebuilding for certain types of fisheries would improve the ability of Councils to achieve management objectives. We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but we believe that targeted changes to the law would enable the development of rebuilding plans that more effectively address the biological imperative to rebuild overfished stocks while mitigating the social and economic impacts.

Exceptions to Rebuilding Requirements

We agree that exceptions to rebuilding requirements should be limited in scope and carefully defined. Ideally, such exceptions would be codified in the MSA along with guidance regarding applicable circumstances in National Standard guidelines.

Management of Mixed Stocks

Some of the Act's more prescriptive management requirements pose particular challenges for the management of mixed stock fisheries and may not integrate well with ecosystem approaches. While the current National Standard guidelines allow for a mixed-stock exception to the "overfished" definition, the statutory basis for this is unclear and would benefit from clarification in the reauthorized Act.

Transboundary Stocks

The CCC believes that the addition of language that would allow the Councils to develop annual and in-season quota trading programs for international and national transboundary stocks will improve the ability of the Councils to achieve harvest and management objectives. The CCC also recognizes the potential for increased enforcement from recommendations of the Presidential Task Force Combating Illegal, Unreported, and Unregulated (IUU) Fishing; however, we are awaiting implementation of regulations to determine their effectiveness.

Data Limited Fisheries

The CCC believes that further consideration of exemptions, or alternatives to, the existing ACL requirements for data-limited species could improve the Councils' ability to provide stability in setting

harvest limits. The ad hoc methods sometimes used to establish ACLs for data-limited species often result in quotas that are less predictable, resulting in a loss of stability and yield in some of our most important fisheries. Collecting the necessary data is critical to moving from such ad hoc methods to more traditional assessment methods. While ACLs and AMs have been effective management tools for many fisheries, they may not be the best tools for managing incidental or small-scale, data-limited fisheries. In these situations, Councils should have discretion to determine alternative control mechanisms or utilize ecosystem-based fishery management approaches (e.g., seasons, area-based management) for data-limited stocks.

Definition of "Overfished"

The CCC believes that an alternative term could be useful for describing fisheries that are depleted as a result of non-fishing factors, unknown reasons, or a combination of fishing and other factors. The current MSY-based definition can be problematic when applied to data-limited fisheries or mixed-stock complexes. Furthermore, the term "overfished" can unfairly implicate fishermen for depleted conditions resulting from pollution, coastal development, offshore activities, natural ecosystem fluctuations, and other factors. Not all of the Councils agree that "depleted" is an appropriate term to replace "overfished" with. Some have noted that "depleted" has specific meanings in a number of other statutes, including the Endangered Species Act and the Marine Mammal Protection Act, and that care should be taken to avoid conflict or ambiguity if a change in terminology is implemented.

Ending Overfishing

The CCC believes that some flexibility is needed in the requirement to end overfishing immediately to account for unusual circumstances, such as when the status of a stock changes dramatically due to a new assessment and/or inclusion of new data into an assessment.

Annual Catch Limit Requirements

The CCC believes that further consideration of exemptions or alternatives to the existing ACL requirements for data-limited species could improve the Councils' ability to provide stability in setting harvest limits. The ad hoc methods sometimes used to establish ACLs for data-limited species often result in quotas that are less predictable, resulting in a loss of stability and yield in some of our most important fisheries. Collecting the necessary data is critical to moving from such ad hoc methods to more traditional assessment methods. While ACLs and AMs have been effective management tools for many fisheries, they may not be the best tools for managing incidental or small-scale, data-limited fisheries. In these situations, Councils should have discretion to determine alternative control mechanisms such as ecosystem-based fishery management approaches for data-limited stocks.

Resources Available for Additional Mandates

The CCC remains concerned that important policy directives issued by NMFS (e.g., forage fish, allocation review, and ecosystem-based fisheries management) frequently do not take into consideration the need for additional staffing and resources that Councils may need to implement them. The demands on Councils to fulfill existing regulatory and management requirements are significant, and these should be met before any new mandates are required.

Baseline funding for sustainable management: At-sea surveys of fish populations are the 'bread and butter' of sustainable management that is the hallmark of U.S. fisheries under the MSA. Reducing stock assessment funds will reduce harvests by U.S. fishermen, which will increase imports of foreign seafood. Increasing stock assessment funding is the best investment an administration can make in U.S. fisheries.

Transparency Requirements

The CCC believes that a transparent public process is critical to maintaining public trust, so that decisions of the Council and the SSC are clearly documented. This need can be met in a variety of ways, such as by webcasting meetings, audio recording of meetings, or detailed minutes of meeting discussions. However, budget problems are very real, and written transcripts are costly. Video recordings of large meetings may not add substantive content, as they will not capture presentations and motions, which are the most critical visual aspects of meetings. Streaming video may also degrade the quality of webcast audio. While the technology for webcasts is rapidly evolving, live broadcasts generally require strong Internet connections to be effective. In the context of Council meetings, which are often held in remote locations near fishing ports, the Councils have little ability to predict or control the quality and cost of the Internet connection. Consequently, requiring the use of webcasts "to the extent practicable" will allow Councils to achieve greater transparency within budget and operational constraints.

Additional approaches to improve on the transparent public process described in MSA are described in each Councils' Statement of Organization, Practices, and Procedures (SOPPs), Handbook, and/or their Operating Procedures.

Climate Change & Regional Action Plans for Climate Science

The CCC believes that climate change demands a response that is commensurate with the magnitude of the threat. The sustainability and performance of our fisheries are at stake, and while fishery managers are unable to address the underlying causes of climate change, they are nonetheless tasked with meeting our conservation and management mandates in a changing environment. Climate change will impact entire marine ecosystems, and a single-species management approach will likely not be sufficient to understand and account for these changes. Addressing climate change will require establishing the support to enable fishery managers to develop creative solutions to new challenges.

Fishery managers will also need a strong scientific foundation to support climate-ready fisheries management. Managing climate-ready fisheries is a long-term endeavor that will require investing in the information needed to support informed decision-making, along with a commensurate shift in resources and attention. Successful management already depends on the availability of timely and accurate information at all points in the decision-making process, and in a changing environment, this will become even more critical.

Forage Fish

The CCC believes it is appropriate to proactively protect unmanaged, unfished forage fish of the U.S. Exclusive Economic Zone (EEZ) in recognition of the importance of these forage fish to the species managed under the Councils' FMPs and to the larger ecosystems functions. This approach is not intended to supersede tribal or state fishery management for these species, and coordination would still occur through the existing Council processes.

Catch Share Programs

The CCC believes that Councils should maintain the maximum flexibility possible to develop effective management tools, including catch share programs. Adding excessive requirements for conducting a referendum is likely to increase the administrative burden for the Councils and may reduce the Councils' ability to implement the appropriate management program for their fisheries that could include modification of existing catch share measures or new catch share measures.

Catch shares is a management tool that should be available to the Councils, but the design, timing, and development should be left to individual Councils if they choose to use this tool for a specific fishery.

NEPA Compliance

Fishery management involves fairly rapid cycles of adaptive management in which information about changing conditions is addressed through adjustments to the management program and regulations. The necessity for National Environmental Policy Act (NEPA) analysis of these actions results in requirements that duplicate those in the Magnuson-Stevens Act (MSA) and other applicable law, including additional comment periods that delay implementation of these actions, which were developed through the open and transparent MSA process. Ensuring NEPA compliance for marine fishery management actions has been costly and time-consuming for Council and NMFS staff and has limited the Councils' abilities to pursue other regulatory activities. In addition, the CCC notes that there have been instances where compliance with NEPA has hindered adequate compliance with MSA in terms of providing comprehensive analysis to Councils prior to their taking final action due to the difficulty and time required to complete NEPA analyses. Although the 2007 MSA reauthorization attempted to align the requirements of the two laws more closely through the addition of Section 304(i), the CCC does not believe what has been called for in the Act has been accomplished.

Other Federal Statutes

The CCC believes that all federal fishery regulations should be promulgated under the Council or Secretarial process established under MSA section 302 to ensure rational management of our fishery resources throughout their range. Under the MSA, the Councils are charged with managing, conserving, and utilizing the Nation's fishery resources as well as protecting essential fishery habitat, minimizing bycatch, and protecting listed species within the United States Exclusive Economic Zone. This is done through a transparent public process that requires decisions to be based on the best scientific information available. This time-tested approach has made U.S. fisheries management highly successful and admired throughout the world.

If changes to Council-managed fisheries (for example changes to the level, timing, method, allowable gear, or areas for harvesting management unit species) are required under other statutory authorities such as the Antiquities Act of 1906, the Endangered Species Act of 1973, the Marine Mammal Protection Act of 1972, or the National Marine Sanctuaries Act of 1972 (NMSA), such restrictions or modifications to those fisheries should be debated and developed under the existing MSA process, unless a Council cedes this responsibility to another process. In addition, all actions by the Councils are currently subject to review by the Secretary of Commerce to determine consistency with MSA and all other applicable laws. This current review ensures that Council actions – including those that could be made as a result of requirements of other statutes – will continue to be consistent with all relevant laws. Making modifications to fisheries through the MSA process would ensure a transparent, public, and science-based process. When fishery restrictions are put in place through other statutes, the fishing industry and stakeholders are often not consulted, analyses of impacts to fishery-dependent communities are not considered, and regulations are either duplicative, unenforceable, or contradictory.

Collection and Use of Fishery Data

In general, the CCC believes that Councils should be granted a reasonable degree of flexibility in the development and implementation of monitoring programs (electronic and otherwise) so that those programs may be tailored appropriately for each fishery and the needs of each region.

Electronic Monitoring

Our ability to manage fisheries effectively depends on having access to timely and accurate data. The CCC believes the development of electronic monitoring technologies and the utilization of other emerging technologies could be beneficial to U.S. fisheries – in terms of data collection, and in terms of the potential to reduce the cost to fishermen and governmental entities. New technologies may be an additional method of collecting and analyzing timely fisheries data at a reduced cost. However, introducing additional national-level regulations to govern the use of electronic monitoring beyond the current constraints of the Act (e.g., the National Standards) may be counterproductive due to a number of factors, including funding and resource constraints, variability among fisheries, and the rapid evolution of technology. In addition, the costs of new technologies should be taken into account when implementing new programs or technologies.

Recreational Data

The CCC believes MRIP was not designed to provide data for in-season ACL management. The current MRIP methodology cannot be modified nor can sufficient funding be provided such that in-season ACL management will work. The CCC believes alternative methods (e.g., state electronic logbook programs, federal for-hire electronic logbook programs, and electronic logbook programs for private recreational anglers) should be fully implemented where they are available and developed, then evaluated where they do not yet exist. Once evaluated, MRIP should work to quickly certify these alternative methods for use in monitoring recreational catches.

There does not appear to be a plan for the systematic collection of the necessary biological data from recreational fisheries for use in stock assessments (size, age, and reproductive data). Stock assessment data would be greatly improved, as would the assessment results, if NMFS would immediately prepare a written plan for each region and coordinate across regions to address species as they move from one region to another due to changes in the environment. The CCC believes additional funding is required for successful implementation of such a data collection program.

The CCC believes more timely and accurate catch estimates that will be accepted by the recreational community (since they are providing the data) will go a long way to improve stock assessments, improve voluntary compliance, and improve accountability within the recreational fishing community.

Commercial Data

The CCC believes that the management of commercial fisheries could be improved by streamlining the fishery monitoring and reporting process to produce more timely catch data. In most regions, commercial dealer data are not available as quickly as needed for quota tracking, and commercial logbook data from fishermen are not available as quickly as needed for verification of dealer data. In some areas, commercial fishermen cannot upload electronic logbook data or use E-logbook systems due to the lack of a federal system to receive the data. The lack of timely commercial data requires fishery managers to make projections about when an ACL will be met, which can results in closing a fishery too early or too late.

In most regions, there does not appear to be a plan for the systematic collection of the necessary biological data from commercial fisheries for use in stock assessments (size, age, and reproductive data). Stock assessment data would be greatly improved, as would the assessment results, if NMFS would immediately prepare a written plan for each region and coordinate across regions to address species as they move from one region to another due to changes in the environment. The CCC believes additional funding is required for successful implementation of such a data collection program.

Exempted Fishing Permits

The CCC believes that exempted fishing permits (EFPs) are an extremely important and useful mechanism to conduct scientific research. For example, EFPs have been used in different regions of the U.S. to conduct surveys, test monitoring devices under field conditions, investigate invasive species, and develop fishing gear that reduces bycatch and reduces impacts on habitat and protected species. These studies are frequently done by the fishing community at no cost to the public and have provided enormous benefits to the conservation and management of marine resources and habitats.

The CCC believes that the existing regulations already provide a good framework for developing regional processes for issuing and reviewing EFPs. The EFP applications undergo a regional scientific peer review and are evaluated through a public process by the respective regional Councils. The public and affected states have opportunities to comment to NMFS and the Councils during this process. Any new requirements for the EFP process, such as additional social and economic analysis or further consultation with the state governors, would greatly reduce the ability to get EFPs developed and approved in a timely manner.

In addition, the CCC believes that multi-year EFPs provide the necessary flexibility to scientifically test gear across different years and seasons. New regulations that limit EFPs to a 12-month period will restrict the type and quality of research that can be done, thus limiting the usefulness of the data collected.

Data to be used in Stock assessments

Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the CCC believes that it would be beneficial for the MSA to include a requirement for the Secretary to develop a comprehensive plan and schedule to address stock assessment needs on a national basis. Increasing stock assessment frequencies and improving stock assessment methods to reduce the uncertainty in setting harvest limits and achieving management objectives will also improve the ability of Councils to establish scientifically-based ACLs, including for those fisheries that are currently considered data limited.

In addition, there has been some discussion of establishing guidelines to facilitate incorporation of data from non-governmental sources in fishery management decisions. There are existing legal requirements that govern data collection and quality (e.g., Data Quality Act) that dictate what NMFS is required to use for stock assessments. Data from fishermen, the states, and universities are already considered and evaluated for inclusion in stock assessment, as appropriate for the methodology and use of the data collected. These data sources are reviewed by the assessment analysts and through the peer review process that usually includes the Councils' scientific and statistical committees. The CCC believes prescriptive requirements for use of any data source are not appropriate. The implementing guidelines for when such information should be utilized will be critical to its veracity and usefulness to assessment authors and managers.

A cost comparison report on monitoring programs (for example, human observers versus electronic monitoring) would be extremely beneficial to development of such monitoring programs.

Deeming/Transmittal Process

The CCC believes that extensive delays in approving Council plans/amendments and implementing regulations can result in confusion and direct economic losses to our recreational and commercial constituents. The MSA is rightfully so a measured and participatory process whereby the public get to see and participate in the development of plans/amendments/regulations. After this thorough process,

the review and implementation process should conform to the timelines specified in the MSA. The CCC recognizes that resources are limited and that this often results in delays during the NMFS/NOAA GC review process; however, such delays should be minimized for the public's sake and to preserve the integrity of the process.

General Comments

The following general tenets that should be considered relative to any change in the MSA, in order for the Councils to fulfill their responsibilities:

- Avoid across the board mandates that could negatively affect one region to address a problem in another region. In addition, modifications to the Act should be national in scope with reasonable flexibility to address region-specific issues. Modifications to the Act which are specific to one region or one Council undermine the national scope of the Act and should be carefully considered especially with respect to how these modifications might affect operations in other regions.
- Legislation should allow for flexibility in achieving conservation objectives, but be specific enough to avoid lengthy, complex implementing regulations or "guidelines".
- Legislation should be in the form of intended outcomes, rather than prescriptive management or scientific parameters.
- Legislation should avoid unrealistic/expensive analytical mandates relative to implementing fishery management actions.
- Legislation should avoid constraints that limit the flexibility of Councils and NMFS to respond to changing climates and shifting ecosystems.
- Avoid unfunded mandates, and/or ensure that Councils and NMFS have the resources to respond to provisions of legislation.
- Preservation and enhancement of stock assessments and surveys should be among the highest priorities when considering any changes to the Act.

The CCC intends to continue using the working paper as a source document when the CCC is responding to a request for comments. The lead Council will draft a response for review by the other Councils. The working paper can also be attached to a comment letter to provide more details. The regional perspectives and examples are an excellent way to describe how requirements could affect Councils differentially. New topics will be added as they are identified. The working paper will be updated as needed and will be used to inform individuals new to the Council process. Individual Councils are responsible for their regional perspective and should provide updates to the lead Council in any year; the lead Council will be responsible for updating the Working Paper. Lead Councils by year are New England (2017), North Pacific (2018), South Atlantic (2019), Western Pacific (2020), Mid-Atlantic (2021), and Gulf of Mexico (2022).

Topic 1:

STOCK REBUILDING

Several modifications to the MSA have been proposed relative to the law's rebuilding requirements. Three of the primary issues that have been discussed are:

- Rebuilding timeline requirements (i.e., the duration of time allowed to achieve stock rebuilding)
- Exceptions to rebuilding requirements
- Overfished definition

Major provisions have been proposed to include modifying the rebuilding timeframe requirement, replacing the term "possible" with "practicable"; replacing 10-year requirement with timeframe reflecting life history, plus one mean generation, with exceptions; allowing consideration of environmental conditions and use of alternative rebuilding strategies; requiring Councils to specify schedules for reviewing rebuilding targets; and allowing Councils to terminate rebuilding if determination was found to be in error.

Rebuilding Requirements

The MSA currently mandates that the time to rebuild depleted fish populations must be "as short as possible," but no more than 10 years (with exceptions for biology, etc.). Some have argued that this time requirement results in inconsistent management approaches depending on the life history of the stock. For example, a stock that is expected to rebuild in slightly less than 10 years in the absence of fishing mortality could require much more restrictive management than a stock that is expected to rebuild in slightly more than ten years. This results from the fact that the maximum rebuilding timeframe (T_{MAX}) for a stock that cannot be rebuilt within 10 years is the minimum time that it would take to rebuild the stock in the absence of fishing plus one mean generation time.

In addition, Councils and stakeholders have expressed concern that the 10-year rebuilding timeframe precludes the Councils from adequately considering the social and economic needs of fishing communities.

CONSENSUS POSITION

The CCC developed the following consensus position on rebuilding timeframes:

> *"In general, the CCC believes the addition of measures that would increase flexibility with respect to stock rebuilding for certain types of fisheries would improve the ability of Councils to achieve management objectives.*
>
> *We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but we believe that targeted changes to the law would enable the development of rebuilding plans that more effectively address the biological imperative to rebuild overfished stocks while mitigating the social and economic impacts."*

REGIONAL PERSPECTIVES

NEW ENGLAND:

The New England Council believes the Magnuson-Stevens Act (MSA) should be amended to allow more rebuilding flexibility. The current emphasis on a fixed rebuilding time period assumes a level of stock assessment certainty that does not exist. We have little ability to predict, and no ability to

control, the environmental changes that are key drivers in rebuilding progress. We think management should focus on ending overfishing and not arbitrary rebuilding time frames.

The requirement to define a fixed rebuilding period assumes that we know current stock size, stock size targets and rebuilding trajectories to a degree of certainty that is rarely met.

The New England Council also believes that if rebuilding timelines are retained, they should be designed in a way that avoids a discontinuity at the end of the targeted rebuilding period. This was not accomplished by recent changes to the NS1 Guidelines.

MID-ATLANTIC:
The Mid-Atlantic Council believes the ten-year rebuilding time limit should be replaced with a more biologically-derived time requirement, provided that such a requirement has a reasonable chance of resulting in successful stock rebuilding.

Over the long term, statutory deadlines and rebuilding requirements have benefitted mid-Atlantic stocks, as well as many of the communities that rely on those fisheries for jobs, income, subsistence, and recreation. While these successes have often come at significant social and economic costs, we recognize that some adverse impacts are unavoidable during rebuilding periods. However, we feel that the 10-year rebuilding requirement has often exacerbated adverse impacts by limiting the Council's ability to fully incorporate social, economic, biological, ecological considerations into the development of rebuilding plans.

SOUTH ATLANTIC:
Under the requirements of Magnuson-Stevens, the regional management Councils develop rebuilding plans for overfished stocks. The law requires rebuilding plans to end overfishing within two years and attempt to rebuild stocks within 10 years, if biologically possible. These arbitrary deadlines can be unnecessarily disruptive to fishing communities and local economies. In some cases, if longer timeframes were allowed, fisheries could be rebuilt or overfishing could be eliminated without devastating the economic livelihood of fishermen and negatively effecting fishing communities.

The South Atlantic Council believes that the rebuilding time requirement should be simplified, by eliminating the arbitrary 10 year requirement and using the current biologically-based rebuilding period alternative of Fishing Mortality (F)=0 + 1 generation time for all situations. The 10-year limit does not treat all stocks with varying life histories fairly and adequately. Short-lived stocks can experience several generations in that time, while long-lived stocks may only experience a small portion of a generation.

In the experience of the South Atlantic Council, the major impacts occur with the requirement to end overfishing immediately. While the impacts from this requirement have been severe and long lasting, the impacts from rebuilding timeframes have not been a major issue because we adjust the annual ACLs based on the rebuilding projections.

In summary, the South Atlantic Council feels removing the arbitrary 10-year requirement would be beneficial and more attention should be given to the impacts of ending overfishing immediately, which is where the big reductions occur.

GULF OF MEXICO:
The Gulf Council agrees increased flexibility in stock rebuilding times creates a better balance between the biology of the fish and the socio-economic needs of fishermen. The Councils need greater flexibility to design rebuilding plans and respond to ending overfishing that are more appropriate for the life history of a particular stock. Greater flexibility would allow a Council to reduce severe social and economic impacts without jeopardizing the ability of a stock to rebuild to maximum sustainable yield (MSY). Congress can still provide appropriate guidance by requiring overfished stocks to be rebuilt to MSY or optimum yield (OY) as quickly as practicable, and in a manner that protects an overfished stock from further decline.

NORTH PACIFIC:
Regarding potential changes and increased flexibility for stock rebuilding plans, our Council believes that further flexibility, particularly in cases where the 10 year rule does not make sense due to the particular aspects of the stock in question, allows for more appropriate management measures to be developed. In some cases the somewhat arbitrary 10-year requirement can result in overly restrictive management measures, with unnecessary, negative economic impacts, with little or no conservation gain. Allowing for rebuilding to occur in as short a time as "practicable", as opposed to as short a time as "possible", may be an appropriate mechanism for additional flexibility.

PACIFIC:
The Council believes replacing the 10-year rebuilding requirement with a timeframe reflecting life history, plus one mean generation would result in more consistent application of rebuilding timeframes and better balance between conservation and economic objectives of rebuilding strategies. While a strict 10-year rebuilding requirement may be appropriate in some situations, focusing on rebuilding in a certain amount of time can also result in overly-restrictive fishery management that is unnecessarily harmful to fishermen and fishing communities; it is apparent that more flexibility is needed to optimize multiple goals. The 10-year rule, where stock rebuilding must occur within 10 years if possible, can lead to a discontinuous policy that can grossly disrupt fisheries for little conservation gain. For example, if a stock can rebuild in 9 years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g. one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild (11 years plus the length of one generation of the species), with obviously less economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.

The MSA requirement to rebuild as soon as possible, taking into account the needs of the fishery communities, has been subject to Court interpretation as nearly ignoring the needs of fishing communities until such time as they have demonstrated a disastrous state. Current administration of this requirement necessarily leads to large reductions in catch of directed fishery stocks that are being rebuilt, and can restrict mixed-stock fisheries when the rebuilding stock coexists with healthy stocks. It has been said that a solution may be as simple as changing the word "possible" to "practical." At any rate, there is a need for threshold clarity so as to allow Councils to properly take into account important social and economic impacts to communities when reducing catches in a rational stock rebuilding plan. It is important to note the purpose that rebuilding programs are designed for is to increase stock sizes to provide for biological stability and the attendant future economic benefits to the same fishery-dependent communities negatively impacted (and may even be required to endure a disaster) by the rebuilding program.

WESTERN PACIFIC:
Overall, the Council believes providing flexibility in rebuilding fish stocks would be beneficial. In particular, allowing for a phased-in approach over a three-year period is practical and takes into consideration impacts to affected communities. However, further guidance is needed in defining "highly dynamic fishery" as it applies to the use of this phased-in approach.

Exceptions to Rebuilding Requirements

A number of exceptions to the MSA's rebuilding requirements have been proposed for certain categories of stocks, including data-limited stocks, internationally-managed stocks, multi-stock complexes, and terminating rebuilding plans if an overfished determination was found to be in error.

CONSENSUS POSITION

The CCC developed the following consensus position on exceptions to rebuilding requirements:

"We agree that exceptions to rebuilding requirements should be limited in scope and carefully defined. Ideally, such exceptions would be codified in the MSA along with guidance regarding applicable circumstances in National Standard guidelines."

REGIONAL PERSPECTIVES

MID-ATLANTIC:
The Mid-Atlantic Council acknowledges that exemptions to the rebuilding requirement could be appropriate for certain fisheries and circumstances. We believe an improved mixed stock exception would be beneficial, but we feel that the exception should be crafted in a manner that ensures adequate protection for weak stocks within a mixed stock fishery, to ensure their long-term sustainability. Any exemptions from rebuilding requirements should be clearly defined so as to limit their potential for misuse.

We believe that a Council should be able to terminate a rebuilding plan if a stock's status changes to not overfished and that peer-reviewed stock assessments should be the basis for all status determinations and subsequent termination of rebuilding plans.

SOUTH ATLANTIC:
Single stock moratoriums in multi-stock complexes are impractical, unrealistic, and result in unnecessary impacts on healthy stocks in the complex.

In the past, the Council spent considerable time developing an ABC/ACL for rock shrimp, a species that lives approximately 18 months. Such species cannot be assessed, and the Council cannot respond with management action, before all the assessed individuals are no longer alive. Similarly, dolphin (mahi) have not been assessed, as their life cycle of approximately three years would render traditional assessment outputs useless. Species with a life history of less than 3 years should be exempt from the rebuilding requirement. The Council can take independent action, similar to the Council's Penaeid Shrimp FMP (1991), to provide conditions supportive of a short-lived stock rebuilding after low abundance in any one year.

PACIFIC:
The Pacific Council agrees with exceptions due to changing environmental conditions, depletion due to international fisheries outside U.S. control, and a mixed stock exception that would rarely be instituted. Stocks later determined never to have been overfished should not be held to rebuilding provisions. The data and scientific approaches used to determine stock status evolve and improve,

and revisions to past stock statuses are common. The best available science used to declare a stock overfished may later be improved and show that the stock was never overfished. In these cases, continuing to manage the fishery under rebuilding plan restrictions may no longer be necessary. However, the MSA does not explicitly exempt stocks from rebuilding plans when it is later determined the stock was never overfished.

The Pacific Council does not believe broad exceptions that might be exercised frequently or that might weaken incentives to conserve stocks for long-term sustainability would be consistent with the intent of the MSA.

Definition of Overfished

It has been suggested that the term "overfished" should be replaced with the term "depleted" or that a separate term should be added to the MSA to identify stocks that are depleted as a result of factors other than fishing, such as pollution or habitat loss/degradation.

CONSENSUS POSITION

The CCC developed the following consensus position on the MSA's definition of "overfished":

"The CCC believes that an alternative term could be useful for describing fisheries that are depleted as a result of non-fishing factors, unknown reasons, or a combination of fishing and other factors. The current MSY-based definition can be problematic when applied to data-limited fisheries or mixed-stock complexes. Furthermore, the term "overfished" can unfairly implicate fishermen for depleted conditions resulting from pollution, coastal development, offshore activities, natural ecosystem fluctuations, and other factors. Not all of the Councils agree that "depleted" is an appropriate term to replace "overfished" with. Some have noted that "depleted" has specific meanings in a number of other statutes, including the Endangered Species Act and the Marine Mammal Protection Act, and that care should be taken to avoid conflict or ambiguity if a change in terminology is implemented."

REGIONAL PERSPECTIVES

MID-ATLANTIC:

The Mid-Atlantic Council believes that replacing the term overfished with the term depleted would be beneficial. Several members have noted that although they prefer the use of the word depleted instead of overfished, they don't think this should affect the requirement to rebuild the fishery to sustainable levels. We also believe any measures that allow for distinction between causes of depletion would be beneficial, provided that this distinction does not affect the requirement to rebuild the fisheries in question.

SOUTH ATLANTIC:

The Council believes another term to separate stock declines from fishing (overfishing) and non-fishing reasons would be beneficial. However, the Council is concerned about using "depleted" as this has specific meaning under the MMPA and ESA.

GULF OF MEXICO:

We believe a change to clearly define "overfishing" and "overfished" as separate criteria for excessive fishing rate and poor stock health, respectively, would be beneficial. As currently defined in the Magnuson-Stevens Act, the two criteria are treated the same. Overfishing can occur on both a healthy and an overfished stock and is a transient condition (i.e., a rate) that can be corrected in a relatively short period of time. However, an overfished stock is the result of years of overfishing or

environmental changes that typically can only be corrected gradually. The Magnuson-Stevens Act requirement to end overfishing immediately has likely contributed to the greatest undue economic hardships in the Gulf of Mexico. Temporary or short-term overfishing on a healthy non-overfished stock does not jeopardize the ability of a stock to achieve MSY or OY on a continuing basis.

NORTH PACIFIC:
Associated with the rebuilding issue is the definition of overfished. The Pribilof Island Blue King Crab example highlights the need to differentiate stocks for which an "overfished" status has no relation to fishing activities. Replacing the term "overfished" with the term "depleted" or another term that denotes that stock status is not necessarily related to fishing activities may be an effective way to address this problem, noting however that the term "overfished" has definitive metrics associated with it. While more appropriate, any new term will need to be explicitly defined in order to be a measurable metric, and in order to avoid diluting the conservation goals associated with stock rebuilding. Allowing for an exemption from the rebuilding requirements, for any stock, which is depleted with no relation to fishing activities, may be an appropriate addition to this section.

PACIFIC*:*
The Pacific Council believes replacing the term "overfished" with "depleted" is appropriate because fishing may not be the primary factor resulting in a status change for a stock. The Council also recommends the definition of depleted and the definition currently used for "overfished" in the National Standard 1 guidelines should be consistent.

WESTERN PACIFIC:
The MSA should distinguish between fisheries that are depleted as a result of fishing and those that are depleted as a result of factors other than fishing. The Council believes redefining "overfished" to help distinguish between fisheries that are depleted as a result of fishing versus "depleted" as a result of factors other than fishing would be beneficial. This issue has been a point of contention for our Advisory Panel and fishing communities for many years, as numerous fisheries have been impacted by changes in habitat resulting from coastal development and other non-fishing activities. In particular, the Council looks forward to the NMFS reporting on the status of stocks as a result of this change.

Topic 2:

ENDING OVERFISHING

Consensus Position

"The CCC believes that some flexibility is needed in the requirement to end overfishing immediately to account for unusual circumstances, such as when the status of a stock changes dramatically due to a new assessment and/or inclusion of new data into an assessment."

Regional Perspectives

NEW ENGLAND:

The requirement to end overfishing immediately would benefit from a narrowly-defined exception when there is a dramatic change in the perception of stock status. This is the result of our recent experience with a cod stock, where two successive assessments presented a dramatically different view of stock size that was not due to fishing activity. A more flexible approach would allow a management reaction that would be responsive to the National Standard 8 requirement to consider the needs of fishing communities.

MID-ATLANTIC:

The Mid-Atlantic Council believes that it would be beneficial to extend the duration of emergency measures from 180 days to 1 year, with the possibility of an additional 1-year extension. The current emergency action schedule was established in original act, and an extension of this schedule is appropriate given the additional process requirements that have been added since then.

SOUTH ATLANTIC:

Problems in fisheries result from excess fishing, environmental changes, and a multitude of other factors that tend to develop over many years. Attempts to solve long-standing problems in a single year, especially in multi-species fish complexes, generally result in severe restrictions (with disastrous social, economic, and data collection consequences). Implementing measures to immediately end overfishing on a single component stock of a complex may unnecessarily adversely impact other species in the complex.

The South Atlantic Council has used the approach of phasing in reductions necessary to end overfishing over a three-year period for two of our important species, black sea bass and snowy grouper. Both species were assessed in 2013. Black sea bass was completely rebuilt within the rebuilding schedule and the ABC was doubled; for snowy grouper, overfishing was no longer occurring and while still overfished, it was 10 years ahead of its rebuilding schedule. The phasing in of catch restrictions allowed fishermen time to adjust their business plans to the catch reductions reducing the social and economic impacts that occur with the current situation of ending overfishing immediately. The South Atlantic Council believes that this is strong evidence to support the consideration of longer timeframes to end overfishing. Unfortunately, the recently issued modifications to the National Standard 1 guidelines that allow for a "phase-in" approach do not provide this flexibility, as they still require ACLs to be reduced to at least the OFL level immediately.

For red porgy, and more recently red snapper, the Council closed the fishery to end overfishing. This results in significant negative impacts to recreational and commercial fishermen and fishing communities. It also disrupts our fishery-dependent data collection, which inhibits our ability to monitor stock rebuilding. The Council recently completed an amendment that sets very restrictive regulations on hogfish to end overfishing based on limited data (greater than 60% reduction).

There are multiple definitions of overfishing. For example, recruitment and growth overfishing are basic measures that can be readily estimated for most stocks. Of these, recruitment overfishing is the most damaging to sustainability, as exceeding this level jeopardizes the ability of a stock to replace itself. At the other extreme is growth overfishing, where there is no risk to sustainability but a loss of potential harvest to the users. If the ultimate goal is to ensure long-term viability of a species, then recruitment overfishing should be the limit of exploitation (the OFL). This will allow managers to balance forgone yield (growth overfishing) against social, economic, and ecosystem concerns when establishing exploitation targets. Basing OFL on recruitment overfishing will provide a more meaningful standard to apply if overfishing must be eliminated immediately. The fishing public can understand the need to fish at or below a rate that allows a population to replace itself. Problems arise, however, when they are forced to endure the very low exploitation rates that are often necessary to achieve MSY on long-lived, slow growing stocks.

GULF OF MEXICO:

In the Gulf of Mexico the greatest economic hardship has resulted from the requirement to end overfishing immediately. Temporary or short-term overfishing on a healthy stock does not jeopardize the ability of a stock to achieve MSY or OY on a continuing basis. For overfished stocks, the ability to end overfishing over a period of time provides the flexibility to implement a rebuilding plan with the least negative economic impacts. There are four species that are currently declared overfished in the Gulf of Mexico. Three of these species (i.e., gag, greater amberjack, and gray triggerfish) are under a 10-year rebuilding plan. Red snapper is under a much longer rebuilding time period. The primary concern is not the rebuilding timeline itself, but the requirement that Councils end overfishing immediately.

Topic 3:

ANNUAL CATCH LIMIT REQUIREMENTS AND EXCEPTIONS

Background

Issue 1: Role of the SSC

Under the current version of the MSA, Councils are required to set catch limits at or below the Acceptable Biological Catch (ABC) limit set by the Scientific and Statistical Committee (SSC) for each stock. A previous discussion draft released by the House Natural Resource Committee included language that would constrain catch limits to the *overfishing limit (OFL)* instead of the ABC. This change would significantly modify the role of the SSCs in the quota-setting process.

There were differing views on this issue and mixed support for the proposed change. Opposition to the proposed change centered on concern that fishing at or above the OFL would drive the stock into an overfished status. Conversely, support for the change was focused on the fact that the OFL is based on some distribution, and there is "buffering/potential double-buffering" between this OFL distribution and ABC (which incorporates scientific uncertainty). The CCC did not develop a consensus position on the role of the SSC in quota setting.

Individual Councils have worked with their SSCs to develop ABC Control Rules that address uncertainty and level of risk. Councils are required to set Annual Catch Limits (ACLs) less than or equal to the ABCs recommended by their SSCs. While this does present a limit to the Councils, if a Council concludes that this is overly restrictive, they can work with their SSC to modify the ABC Control Rule to address unusual situations.

Issue 2: Incorporating Updated Stock Information

The Act requires Councils to base management decisions on the best scientific information available (BSIA). In some instances, such as Widow rockfish, managed by the Pacific Fishery Management Council, the Councils have been required to continue rebuilding to a biomass target after new stock assessments indicate that the stock was never overfished. Recent revisions to the National Standard 1 guidelines state that rebuilding plans can be discontinued based on new assessments that show the stock is no longer overfished or was never in an overfished status.

Additional flexibility to incorporate new information to inform or revise ABC recommendations in between stock assessments is also necessary. Assessment schedules do not always allow for timely incorporation of new information that may result in revised ABC recommendations, and existing ABC control rules may not be constructed to accommodate such situations.

Issue 3: ACL Exemptions

The MSA currently requires Councils to establish ACLs and Accountability Measures (AMs) for all managed stocks. For many data-limited species, setting ACLs requires the use of ad-hoc methods that have spurious outcomes and can result in inadvertently lost yield. A number of modifications to the MSA have been proposed that would either exempt certain stocks from ACL requirements or create alternative requirements for those stocks.

Stock Complexes and multiyear ACLs are new to some of the proposed legislation; ACLs for stock complexes are allowed under NS1 Guidelines. Multiyear ACLs are allowed by NS1 Guidelines; however, a three-year limit is not specified. If this is important, absent revising the NS1 Guidelines, the MSA would

be an appropriate place for this but we may want to be cautious with prescriptive provisions (e.g., 10 year rebuilding).

Consensus Position

The CCC developed the following consensus position:

> *"The CCC believes that further consideration of exemptions or alternatives to the existing ACL requirements for data-limited species could improve the Councils' ability to provide stability in setting harvest limits. The ad hoc methods sometimes used to establish ACLs for data-limited species often result in quotas that are less predictable, resulting in a loss of stability and yield in some of our most important fisheries. While ACLs and AMs have been effective management tools for many fisheries, they may not be the best tools for managing incidental or small-scale, data-limited fisheries. In these situations, Councils should have discretion to determine alternative control mechanisms, such as ecosystem-based fishery management approaches, for data-limited stocks."*

Regional Perspectives

NEW ENGLAND:

The requirement for annual catch limits assumes that we can accurately identify the catch that will give us the biological and economic results that we want, yet there are numerous examples that demonstrate that this is often not the case.

MID-ATLANTIC:

Allowing the Allowable Biological Catch (ABC) limit to be set up to the Overfishing Limit (OFL) would significantly undermine our current process which accounts for scientific uncertainty and establishes a clear connection between ABC and OFL in assessed stocks based on a harvest control rule.

SOUTH ATLANTIC:

Stocks in a complex will vary in abundance over time, and it is unlikely that all will be at high abundances at the same time. Therefore, mixed-species fisheries cannot be adequately managed by applying single-stock principles. Desirable fishery yield should be specified for overall complexes, while allowing individual stocks to experience normal variability.

The South Atlantic Council believes that spiny lobster should be exempt from requirement for an ACL and associated AMs because the spiny lobster stock is unique among all federally managed species in regards to its life cycle: (a) recruitment has been stable over many years but is not linked to production or local stock size; (b) recruits arrive over protracted periods from throughout the Caribbean; (c) 50% of larvae are lost to the north Atlantic, and more than 50% of the recruitment comes from external sources; (d) spiny lobster do not fit the standard pattern of how species behave and how population dynamics work; and (e) spiny lobster have the longest larval duration of any oceanic marine animal. The ACL and AM system has immense value in management and sustainable harvest of most fishing stocks under federal FMPs. Although spiny lobster does not meet the current requirements for exemption (international management or short life cycle), the species is unique in its life cycle and management system and would benefit from an exemption.

In addition, the South Atlantic Council believes that ABCs should not be required for unassessed stocks or for assessed species that have not been re-assessed in 5 years. This would allow the Council to use their informed judgment to set an interim ACL until an ABC was provided. Basing ABCs for unassessed stocks on a quantitative portion of historical landings in the context of the precautionary principle will result in ABCs with no scientific basis that may be open to challenge. Such ABCs could

be artificially low, decreasing fishery yield, or too high, posing risk to the stock. The simple fact is that, without a legitimate assessment, neither scientists nor managers can make biomass-based recommendations for ABCs, because historical landings are uninformative for estimating stock abundance. This is particularly true for mixed-stock fisheries, such as the South Atlantic Snapper Grouper Complex, with a long history of missing and inaccurate landings at the species level. The attempt to use a "one size fits all" approach will not work.

ACL management poses a special challenge for recreational fisheries in the southeast, due to the fact that the management paradigm and recreational fisheries are simply mismatched. Current ACL management shuts down or penalizes a recreational fishery when catches are high. However, in reality, high recreational catches are often reflective of high abundance of a species, which is a good thing. The current management paradigm forces the Council to react as if something bad happened, when in fact something really good happened in the fishery. The Council often sets ACLs for five years at a time, or longer, and they are not updated until new stock assessments become available. (Note: the limited availability of stock assessments is addressed in Topic 14). The static ACLs cannot and do not react to real-time changes in stock abundance. Flexibility in setting and revising ACLs would allow the Council to respond to natural variability in stock abundance and address the fundamental out-of-sync artifact of managing with ACLs that needs to be addressed.

The management regime has to be brought in line with the science that can be funded, and that's fundamentally one of our problems now. It's why the Council hears from fishermen, quite often, that your management doesn't match what I'm seeing on the water, and that's because, a lot of times, the Council reacts to really good things as if they were bad things. For example, red snapper is probably on the most rapid increase in stock size of anything we've seen in the South Atlantic; however, the fishery remains under very limited harvest levels. There is a fundamental disconnect between the types of information that we have to manage our recreational fisheries and how we are required to apply accountability measures to address ACLs. The process would work much better if the Council had greater flexibility in applying ACLs/AMs, particularly in the recreational sector.

GULF OF MEXICO:
The biggest ACL-related challenge encountered by the Gulf Council is establishing ACLs for its reef fish species that constitute incidental catches within the grouper and snapper targeted fisheries. For multi-species targeted fisheries, the mandate to establish ACLs for incidental species can lead to closures that cause unnecessary economic losses relative to the harvest of the targeted species and with minimal biological gain for either the targeted or incidental species. However, we recognize that in some instances, it may be very important to control incidental fishing mortality on a stock in a mixed fishery. The Councils should have the ability to determine the appropriate measure to use depending on the particular characteristics of a fishery in order to achieve their management objectives. Undesirable closures of target fisheries due to ACLs established for incidental species usually result in unnecessary economic losses relative to the harvest of the targeted species and minimal biological benefits.

NORTH PACIFIC:
ACLs have been used in the North Pacific for over 30 years, and we believe that such limits are a cornerstone of sustainable fisheries management. We also believe there are situations where some flexibility in the establishment of ACLs is warranted, particularly in the case of data-limited stocks. I can cite the North Pacific example two years ago where we were compelled to set an artificially low ACL for Pacific octopus based upon very limited historical information, rather than a robust stock assessment, and this artificially low ACL resulted in closures of fisheries that take octopus

incidentally. This example underscores the need for robust stock surveys and assessments, which we believe should be a priority focus of any MSA reauthorization.

Consideration of the economic needs of fishing communities is critical in the ACL setting process, and while the current MSA allows for such consideration, we recognize the desire for a more explicit allowance for these considerations. We must be careful however, not to jeopardize long-term fisheries sustainability, and associated community vitality, for the sake of short-term job creation. Accounting for uncertainty, articulating policies for acceptable risk, and establishing the necessary precautionary buffers, is an explicit outcome of the ACL process, and we believe that the Councils' Scientific and Statistical Committees (SSCs) are the appropriate gatekeepers to establish the upper limits of "safe" fishing mortality (i.e., ABC).

PACIFIC:

The Pacific Council believes specifying that a carryover exception allowing annual catch limits to be exceeded in order to carry over surplus and deficit harvest from one year to the next would be beneficial, provided there is a finding from the Scientific and Statistical Committee (SSC) that such a carryover provision will have negligible biological impacts.

As part of their business planning, fishermen in catch share programs need to know whether they may carry over surplus harvest from one year to the next; deficits are now routinely paid back the next year. In the past, there has not been a consistent policy application on this matter. If the SSC finds that carryover will not adversely affect a fish stock, then it should be explicitly allowed.

One common management challenge is developing and implementing annual catch limits (ACLs) effectively when the requisite data are lacking, when no data collection program is in place, and/or when major natural fluctuations in stock abundance occur more rapidly than stock assessments can be updated. When less information about a stock is available, or the data are outdated, current requirements call for a Council to set a particularly low ACL compared to the theoretically maximum allowable catch, out of recognition of a higher level of scientific uncertainty. While this is a logical approach in some regards, there is concern it may be overly conservative in some situations. It can lead to severe economic consequences when a rarely-caught stock about which little is known appears occasionally in a healthy mixed-stock fishery, and a new, highly buffered ACL for this rare stock suddenly requires a large reduction in the catch of healthy species; this situation essentially creates a bottleneck species that closes or substantially reduces an otherwise healthy fishery.

There are times when the best available science is not sound enough for active fishery management decision-making; the current approach for data-limited species may occasionally fall into this situation. Further, the current approach may limit obtaining scientific information on stock performance under higher catch rates.

WESTERN PACIFIC:

The Western Pacific Regional Fishery Management Council believes that it would be beneficial if the next revision of the MSA allows exemptions from the ACL requirement, provides more flexibility in evaluating fisheries that require an ACL, and offers incentives for cooperative ACL management between the federal and state governments.

The MSA should have exemptions from the ACL requirement for data-limited stocks and add provisions for a time frame for which reliable fishery information needs to be obtained in order to remove the stock from a data-limited situation.

The Western Pacific Region has more than 1,000 insular management unit species. The fisheries that harvest these species are small-scale with multiple gears and multiple landing sites. Scarce biological and demographic information limit conducting stock assessments to determine the status of the species. Without stock assessments for majority of these species, overfishing limits cannot be determined and thus annual catch limits (ACLs) are based on catch-only methods, which are also data limited. Because of the strict mandate for ACLs in the MSA, the Council is forced to comply and develop ACLs that may not meet the intent of the MSA.

More flexibility should be given in the situation where data-limited stocks exist. National Standard 1 is too stringent given the data-limited nature of the Western Pacific fisheries. Majority of the data limited stocks can be managed through non-ACL approach and better managed through ecosystem-based fishery management. Additionally, ACLs for transboundary stocks should not be mandatory but rather utilized on a case by case basis taking into account international management regimes, biological connectivity of stocks, and relative impact of U.S. fisheries on transboundary stocks.

Some if the proposed legislative changes for setting Annual Catch Limits (ACLs) address many of the problems faced in implementing ACLs in the Western Pacific Region. Providing the Council the authority and opportunity to consider ecosystem and economic needs of the fishing community in implementing ACLs is a beneficial change to the current MSA text. The Western Pacific Council provides for similar considerations through an analysis that considers social, economic, ecological, and management uncertainty. Consideration should be given to include social and management elements in this section as ecosystem and economic variations are already accounted for. Given the overall underutilized status of fisheries in the Western Pacific Region, this language could be revised to: "In evaluating the need to establish annual catch limits, a Council may consider changes in an ecosystem and the economic needs of the fishing community". This provides the Council flexibility in having to apply ACLs for in fisheries where it may not be appropriate.

Topic 4:

RESOURCES AVAILABLE FOR ADDITIONAL MANDATES

Consensus Position

The CCC developed the following consensus position:

"The CCC remains concerned that important policy directives issued by NMFS (e.g., forage fish, allocation review, and ecosystem-based fisheries management) frequently do not take into consideration the need for additional staffing and resources that Councils may need to implement them. The demands on Councils to fulfill existing regulatory and management requirements are significant, and these should be met before any new mandates are required.

Baseline funding for sustainable management: At-sea surveys of fish populations are the 'bread and butter' of sustainable management that is the hallmark of U.S. fisheries under the MSA. Reducing stock assessment funds will reduce harvests by U.S. fishermen, which will increase imports of foreign seafood. Increasing stock assessment funding is the best investment an administration can make in U.S. fisheries."

Regional Perspectives

MID-ATLANTIC:
New unfunded mandates would be a burden on the Mid-Atlantic Council, and sufficient funds should be available for the Council to meet the existing requirements of the Act. Continued investment in stock assessment capacity is of paramount concern in this reauthorization process.

South Atlantic:
The South Atlantic Council has concerns regarding the resources available (for both the Council and the agency) to meet additional mandates when there are basic data needs in the region that have gone unmet for years. NMFS has produced several policy directives over the past 18 months related to climate science, ecosystem-based fisheries management, and bycatch reduction as well as catch share program review guidance and stock assessment prioritization tools, all of which include a significant number of tasks for Council staff and NMFS staff. While the Council understands that these efforts are intended to prioritize and coordinate the agency's science products and management endeavors, we believe that the success of such initiatives is dependent on data that are either incomplete or do not exist in our region. Lack of resources at both the Science Center and Regional Office for such basic needs as collection and processing of biological samples, economic information, and data management ensures that the sophisticated approaches outlined in the above policy directives will be out of the Council's reach. Currently, the Council does not receive SAFE reports for our managed species due to these very same resource concerns. While the Council believes strongly that many of these approaches are necessary, we do not believe that they are achievable within the proposed timeframe given current resource constraints now and in the foreseeable future.

GULF OF MEXICO:
We concur with the issues identified above by the South Atlantic Fishery Management Council.

NORTH PACIFIC:
We think this is, or should be covered, under our general principles section, as we think we all agree that no additional mandates should be imposed, without additional resources.

PACIFIC:
The Pacific Council agrees with the above consensus statement with an additional following sentence. When new policy initiatives are considered, provided funding should be commensurate with the associated Council workload.

WESTERN PACIFIC:
The SAFE report requirements were not met in the Western Pacific region until 2015 when the Council led the restructuring of its existing Fishery Ecosystem Plan (FEP) Annual Reports to incorporate required SAFE report elements under the National Standard 2 Guidelines. The Council continues to lead the coordination of the annual update of the SAFE reports in the region, as NMFS has not dedicated staff and resources to oversee the production of these reports which are critical for monitoring fishery performance.

Topic 5:

TRANSPARENCY REQUIREMENTS

Consensus Position

The CCC developed the following consensus position:

"The CCC believes that a transparent public process is critical to maintaining public trust, so that decisions of the Council and the SSC are clearly documented. This need can be met in a variety of ways, such as by webcasting meetings, audio recording of meetings, or detailed minutes of meeting discussions. However, budget problems are very real, and written transcripts are costly. Video recordings of large meetings may not add substantive content, as they will not capture presentations and motions, which are the most critical visual aspects of meetings. Streaming video may also degrade the quality of webcast audio. While the technology for webcasts is rapidly evolving, live broadcasts generally require strong Internet connections to be effective. In the context of Council meetings, which are often held in remote locations near fishing ports, the Councils have little ability to predict or control the quality and cost of the Internet connection. Consequently, requiring the use of webcasts "to the extent practicable" will allow Councils to achieve greater transparency within budget and operational constraints."

Regional Perspectives

NEW ENGLAND:

The Council supports a transparent public process. As such, all Council meetings are currently webcast and recordings of all Council and Scientific and Statistical Committee (SSC) meetings are readily available. Transcripts of Council meetings are not currently prepared due to the cost, but could be prepared with adequate funding. Video recordings of Council and SSC meetings seem unnecessary and expensive and would create issues related to storage of large data files, and collection of video release forms.

MID-ATLANTIC:

Providing a transparent and open public process is of utmost importance to the Mid-Atlantic Council. We are constantly striving to improve the ways we communicate with stakeholders, as evidenced by the continued development of our communication and outreach program. We encourage a review of the methods already being employed by each Council and consider both the need for, and feasibility of, any new requirements. For example, our experience has shown that broadcasting live video from Council meetings does not significantly increase remote users' access to meetings and can often degrade the audio quality significantly. We have had much greater success with our current method of streaming webinars that display presentations and Council motions together with live audio. These webinars are available to the public for the entirety of the meeting, and the recordings are posted on our website for later viewing. We make briefing materials and presentations available prior to the meeting and post detailed meeting summaries, meeting motions, and additional follow-up items promptly after the meeting.

SSC meetings are also open to the public, and audio recordings from the meetings are available upon request. Briefing documents are available online prior to SSC meetings, and detailed meeting summaries are posted afterward. We are currently exploring the feasibility of providing webinar access to SSC meetings.

We specifically suggest considering the following requirements to enhance and ensure public access and transparency in Council and SSC meetings: live webinar broadcasts, online briefing materials, online meeting summaries, and online audio archives. The live broadcast requirement should be subject to a venue's technical capacity, to ensure that communities are not disqualified as potential meeting venues due to bandwidth or technical limitations.

SOUTH ATLANTIC:
The South Atlantic Council strongly believes that transparency in the public process is paramount to accountability and good decision-making. The Council currently webcasts all Council meetings, SSC meetings, and advisory panel meetings to provide additional access to the public and stakeholders unable to attend these meetings in person. Verbatim minutes of all Council meetings (which includes Council committees, as well as public comment sessions), SSC meetings, and advisory panel meetings are currently transcribed, while audio recordings of all such meetings are available to the public upon request. While searchable audio files are available immediately after the conclusion of all meetings, written transcriptions are contracted externally. Although generally available within 30 days of the conclusion of a meeting, some may take additional time due simply to the length of the meeting and other commitments by the transcriptionist. Because audio files are directly recorded and maintained by Council staff, making these available within 30 days does not pose an additional burden on the Council. Requiring written transcriptions within 30 days could significantly increase costs due to competing availability of transcriptionist's time, which is outside the Council's direct control.

GULF OF MEXICO:
We currently conduct audio recordings of our meetings and provide on our public access server both the audio recordings and a written transcription of our Council meetings. We also provide the recordings of our advisory panel and Scientific and Statistical Committee (SSC) for public access, along with a staff produced summary report. We also webcast all our meetings for the public to see and hear what is being discussed. We do not video stream the meetings and see no added utility in doing so since it would cost substantially more to purchase video equipment and to hire more staff or contractors to handle the video equipment.

NORTH PACIFIC:
All decisions made by the Council and its advisory bodies are done through a transparent, open public process. Meeting materials, agenda and schedule, and public comment letters are all posted in advance of the meeting on a "live agenda" on the Council website. During the meeting, this "live agenda" is continuously updated with minutes that are drafted by the SSC, AP, and Committees, motions on which the Council has acted, and new material that is pertinent to the agenda items. Requirements for webcasting and providing accessible, audio transcripts for Council meetings are already being met. Requiring similar webcasting and/or audio transcripts for SSC meetings would impose unnecessary additional cost, given the public nature of SSC meetings and the detailed nature of SSC meeting minutes.

PACIFIC:
The Pacific Council already provides a live webcast of its meetings, and recordings are available online. The Council does not support adding additional broadcast requirements, especially prescriptive timelines (we have two Council meetings less than 30 days apart, and producing an official meeting record in that time would detract from higher priority activities). The Council is particularly concerned about the workload associated with the SSC requirement. The SSC provisions seem unnecessary since the SSC is an advisory body to the Council, while the Council makes the final

decisions. In addition, minutes of SSC meetings are included as part of the Council's administrative record and are available online. No further administrative record should be necessary.

WESTERN PACIFIC:
Requirements for archiving audio, video or written transcripts of the Council and SSC meetings on the Council website would add significant costs in technology services, equipment, transcription and staff time. No other federal advisory bodies (i.e. Sanctuary Advisory Council, MAFAC, U.S. Coral Reef Task Force, etc.) have these requirements. Federal Reserve Board does not provide original transcripts, rather they lightly edit the speakers' words to facilitate the reader's understanding. Under section (H) of H.R. 200, the requirement for the Secretary to maintain the records is duplicative of the Council's requirement in (G).

Topic 6:

CLIMATE CHANGE & REGIONAL ACTION PLANS FOR CLIMATE SCIENCE

Consensus Position

The CCC developed the following consensus position:

"The CCC believes that climate change demands a response that is commensurate with the magnitude of the threat. The sustainability and performance of our fisheries are at stake, and while fishery managers are unable to address the underlying causes of climate change, they are nonetheless tasked with meeting our conservation and management mandates in a changing environment. Climate change will impact entire marine ecosystems, and a single-species management approach will likely not be sufficient to understand and account for these changes. Addressing climate change will require establishing the support to enable fishery managers to develop creative solutions to new challenges.

Fishery managers will also need a strong scientific foundation to support climate-ready fisheries management. Managing climate-ready fisheries is a long-term endeavor that will require investing in the information needed to support informed decision-making, along with a commensurate shift in resources and attention. Successful management already depends on the availability of timely and accurate information at all points in the decision-making process, and in a changing environment, this will become even more critical."

Regional Perspectives

MID-ATLANTIC:

Fishermen and fishery managers have already observed climate-related changes in some East Coast fisheries. As the marine environment becomes warmer and more acidic, some species have shifted north, moved offshore, or exhibited changes in productivity and recruitment. For the Mid-Atlantic Council, "climate readiness" has involved an explicit and strategic focusing of attention on coordination with East Coast fishery management partners. In 2014 the Council hosted two climate workshops – the first focused on the current state of climate science and the potential impacts of climate change on marine ecosystems, and the second addressed the management and governance implications of climate change. The outcomes of these workshops were incorporated into the Council's Ecosystem Approaches to Fisheries Management Guidance Document.

The Mid-Atlantic Council supports NMFS' climate science strategy and has committed to continue working with NMFS on the implementation of this strategy in the Greater Atlantic region. The Council also supports the use of regional action plans to increase the production, delivery, and use of region-specific climate-related information. However, it is imperative that the implementation of these plans does not compromise existing fishery data collection programs.

SOUTH ATLANTIC:

Data collected by the SEAMAP, MARMAP, and SERFS programs are critical for detecting trends and changes in abundance and distributions of managed species as they relate to environmental and climate changes in the South Atlantic. These programs provide baseline data and represent the foundation for our understanding of species distribution, use of habitat, productivity, and effects of

environmental and climate variability on the assessment and understanding of species distribution and availability to recreational and commercial fisheries in the region.

The Council appreciates NMFS' support of and contribution to the developing SAFMC Citizen Science program. This program will address critical data needs in the South Atlantic, and the statement included in the South Atlantic Regional Action Plan highlights this opportunity: "boosting partnerships with stakeholders in the region could lead to hypotheses by hearing from fishermen who have observed changes over their careers or new data by implementing a Citizen Science program."

The South Atlantic Council believes that the regional action plans are an important and far-reaching initiative, given the potential impacts of ocean acidification and warming waters on future managed-species distributions. However, as noted above, we are concerned about the potential for negative impacts to the existing basic data collection programs in the region that are already underfunded. The Council believes that the priorities identified in the South Atlantic regional action plan are appropriate, but that there are opportunities to leverage ongoing work or existing guidance documents by current partners in the region to complete some of the proposed tasks. A better understanding of oceanographic characteristics in the region, in combination with additional resources for our current data-collection programs noted above and continued support of efforts such as the Council's Citizen Science Program, will be critical to the success of those priorities.

Finally, catches of a number of species (e.g., king mackerel, Spanish mackerel, cobia, blueline tilefish) are increasing in the Mid-Atlantic and New England Councils' area. The South Atlantic Council extended the management unit for Coastal Migratory Pelagics in 1997 to include the Mid-Atlantic Council in anticipation of potentially shifting distributions of these migratory species. The South Atlantic Council also provides two voting seats for Mid-Atlantic Council representatives on the Mackerel/Cobia Committee and one voting seat on the Snapper Grouper Committee. Several years ago, the South Atlantic Council considered extending the snapper grouper management unit to include the Mid-Atlantic but decided not to proceed based on advice from the SERO and NOAA GC about permit complications. The South Atlantic Council is working with the Mid-Atlantic Council and NMFS (Northeast and Southeast) to have a SEDAR stock assessment completed for blueline tilefish. We see more instances for this sort of joint work on managing species as they continue to move northwards.

GULF OF MEXICO:
Climate change impacts will greatly hamper the Council's efforts to maintain stable fisheries. Temperature driven changes to migration patterns and life stage distributions may be the most noticeable initial effects but the longer term more negative impacts may come from ocean acidification which will impact the life histories and abundance of the plankton which all our fish larval species prey upon. Acidification could also first affect the fish larvae themselves in this critically sensitive life stage. The Council fully supports any effort to address climate change mitigation and research. NOAA needs greatly increased resources to address climate change.

NORTH PACIFIC:
The North Pacific Council has been actively involved in regional action plans for climate change, and establishing a process to prepare for, and address ecosystem changes as they occur. The Council has received presentations on and hosted an evening workshop on the Alaska Climate Integrated Modeling Project (ACLIM), which is a collaboration of diverse researchers aimed at giving decision makers critical information regarding the far-reaching impacts of environmental changes in the

Bering Sea. Council members and staff also participated in a Resilience and Adaptive Capacity of Arctic marine systems under a changing climate stakeholder meeting, which is an international Arctic collaboration synthesizing stakeholder perspectives and scientific studies. At the same time, the Council is developing its own Bering Sea Fishery Ecosystem Plan, which is being designed to help the Council with proactive planning for the impacts of climate change. In conjunction with the FEP, the Council is planning an ecosystem research workshop for October 2017, to stay current with the most recent ecosystem and climate change research.

PACIFIC:
The Pacific Council supports the NMFS Climate Science Strategy and the list of priority actions described in Chapter 3 of the document. The Pacific Council encourages NMFS to identify and obtain new funding and resources to implement the Strategy that does not impinge on funding to continue current levels of data collection, analyses, and stock assessments.

The Strategy is particularly relevant to the Pacific Council because of our Fishery Ecosystem Plan (FEP), which was finalized in 2013. The FEP identifies a range of initiatives to facilitate ecosystem-based fishery management by the Council. Under the Cross-FMP Effects of Climate Shift Initiative the Council would assess and articulate its questions about the longer-term effects of climate change on its managed species, so as to better direct public and private efforts to provide management-relevant science. Whereas individual fisheries management plans will likely examine the potential impacts of climate change on particular species, the focus of this initiative would be on the combined, long-term effects of such changes on multiple species across all management plans. The Council concluded that the intent of this initiative is aligned with the NMFS Climate Science Strategy and directed its Ecosystem Working Group to revise the description of this initiative to make it better-align with the objectives described in the Strategy document.

The NMFS Northwest Fisheries Science Center Integrated Ecosystem Assessment Team annually prepares a State of the California Current Ecosystem (CCE) Report for the Council. This Report contains a variety of indicators chosen to provide an update-to-date and synoptic view of ecosystem status. The Council has directed its advisory bodies to begin work on a new initiative to refine and improve the indicators included in the State of the CCE Report so that they better-support the Council's ecosystem-based management policies (Completed in 2016, incorporated into report for 2017).

This initiative aligns with Strategy Objective 6, Track trends in ecosystems, living marine resources (LMRs), and LMR-dependent human communities, and provides early warning of change. The State of the CCE Report could evolve over time to include reference points to incorporate ecosystem considerations into management decision-making as described in Strategy Objective 1, Identify appropriate, climate-informed reference points for managing LMRs.

As discussed in the Strategy, the climate and oceans are changing, and managers will require the information necessary to address our marine resource stewardship mission under these changing conditions. The Pacific Council strongly agrees with the Strategy as one element supporting this mission.

WESTERN PACIFIC:
Regional Action Plans provide an opportunity for NMFS science centers and regional offices to meet with the Councils to address the impacts of a changing climate on fisheries. It is imperative that the Councils are represented on the Regional Action Plan working groups and that the group meets at

least annually to facilitate communication and coordination. It is especially important for the Councils to be fairly represented on these working groups to ensure that sustainable fisheries are provided their due weight balancing out the NMFS concerns with protected species and habitat. The Council also believes that the Action Plans should address the stocks that are of economic, social and cultural importance.

Topic 7:

FORAGE FISH

Consensus Position

The CCC developed the following consensus position:

> *"The CCC believes it is appropriate to proactively protect unmanaged, unfished forage fish of the U.S. Exclusive Economic Zone (EEZ) in recognition of the importance of these forage fish to the species managed under the Councils' FMPs and to the larger ecosystems functions. This approach is not intended to supersede tribal or state fishery management for these species, and coordination would still occur through the existing Council processes."*

Regional Perspectives

NEW ENGLAND:

The New England Council is considering an ABC control rule for Atlantic herring that will take into account its role as a key forage fish. In addition, since the mid-1980s the management measures for the Gulf of Maine and Georges Bank have prevented the development of a small-mesh fishery to target forage fish without seeking Council approval. The Council also adopted bycatch caps for river herring and shad that were implemented through its Atlantic herring FMP.

MID-ATLANTIC:

Forage fish stocks play an important role in the structure and function of marine ecosystems. The Mid-Atlantic Council and its constituent stakeholder groups have expressed strong interest in the development of a policy/approach for managing forage fishes. Adequate consideration of the importance of forage stocks within regional ecosystems is an important consideration in the implementation of ecosystem principles in fisheries management and should be included in the Act.

The Council's Ecosystem Approaches to Fisheries Management Guidance Document (2016) establishes the following policies regarding forage fish:

- *It shall be the policy of the Council to support the maintenance of an adequate forage base in the Mid-Atlantic to ensure ecosystem productivity, structure, and function and to support sustainable fishing communities.*
- *The Council, in conjunction with its SSC and the NEFSC, shall promote the timely collection of data and development of analyses to support the biological, economic, and social evaluation of ecosystem level tradeoffs including those required to establish an optimal forage fish harvest policy.*

In 2016 the Council approved an Unmanaged Forage Omnibus Amendment. This action prohibits the development of new and expansion of existing directed commercial fisheries on certain unmanaged forage species in Mid-Atlantic Federal waters until the Council has had an adequate opportunity to assess the scientific information relating to any new or expanded directed fisheries and consider potential impacts to existing fisheries, fishing communities, and the marine ecosystem. The purposes of this action are to (1) advance an ecosystem approach to fisheries management in the Mid-Atlantic through consideration of management alternatives that would afford protection to currently unmanaged forage species through regulation of landings and/or possession of those species; (2) consider management alternatives that address data collection and reporting of landings of

currently unmanaged forage species; and (3) consider measures to establish a process for new fisheries for such species to develop or existing fisheries to expand.

Additional information about the role of forage species in Mid-Atlantic ecosystems and potential considerations for their management is available in the Council's Forage Fish White Paper (http://www.mafmc.org/eafm/).

SOUTH ATLANTIC:
As part of its Fishery Ecosystem Plan (FEP) II revision, the Council is working with a variety of partners in the region to expand upon previous modeling efforts to help us better understand the relationships between predator and prey species in the region. The importance of these relationships is highlighted in a chapter specifically focused on food web dynamics in the FEP II. It is the Council's intent to use these tools to more appropriately manage the species within our jurisdiction.

The Council intends to address forage fish as needed through the Fishery Ecosystem Plan. The Council has some concern that the consensus statement is not as fully reflective of the South Atlantic Council's position as it could be.

If the Council had adequate information (e.g., gut content analyses, modeling results, etc.) it could set the ACL below the ABC to account for predator/prey interactions. This can be done under the current MSA once we have adequate data.

GULF OF MEXICO:
At this time we think forage fish that are not harvested should be in sufficient abundance naturally (between maximum sustainable yield (MSY) and virgin levels) for predator species, especially if the predator species are being harvested. Forage fish in the Gulf, with the exception of peneaid shrimp, are managed by the states. If both predator and prey species are managed at MSY population levels, it is hard to imagine that forage fish would be under threat. However, since most forage fish are short-lived, they could be more vulnerable to environmental perturbations.

NORTH PACIFIC:
In 1997, the North Pacific Council took action to protect forage fish by prohibiting a directed fishery and the sale and barter of small forage fish. The regulations reduce waste by allowing retention (up to a maximum retainable bycatch amount of 2%) and processing (into fishmeal) those forage fish caught incidentally in groundfish fisheries. Bycatch estimates of forage fish in all fisheries are calculated by observer sampling of catch through the North Pacific Groundfish and Halibut Observer Program. The forage fish species category includes all species of fish in defined families that includes smelts, lanternfish, sandlance, gunnels, pricklebacks, other small fish species, as well as euphausiids (krill). Although most (if not all) larger fish species are important prey at juvenile stages, they support important commercial fisheries, and as such, are appropriately regulated through FMPs (e.g., pollock) or through State of Alaska fishing regulations (e.g., herring).

PACIFIC:
The Pacific Council has amended its four FMPs (Coastal Pelagic Species, Groundfish, Highly Migratory Species, and Salmon to provide adequate protection for forage fish. The amendments prohibit the development of new directed fisheries on forage species that are not currently managed by the Council, or the States, until the Council has had an adequate opportunity to assess the science relating to any proposed fishery and any potential impacts to our existing fisheries and communities. This is not a permanent moratorium on fishing for forage fish. Instead, the Council adopted a review process for any proposed fishery.

The Pacific Council's Coastal Pelagic Species (CPS) FMP includes stocks that are important forage species, such as sardine, anchovy, and squid. One of the stated objectives of the plan is to provide adequate forage for dependent species. To achieve this objective, the CPS harvest control rules for actively managed species are more conservative than MSY-based management strategies, because the focus for CPS is oriented primarily towards stock biomass levels at least as high as the MSY stock size while reducing harvest as biomass levels approach overfished levels. The primary focus is on biomass, rather than catch, because most CPS (Pacific sardine, northern anchovy, and market squid) are very important in the ecosystem for forage. The CPS FMP also includes a complete ban on commercial fishing for all species of krill in West Coast federal waters and makes no provisions for future fisheries. This broad prohibition applies to all vessels in Council-managed waters, and was intended to ensure that, to the extent practicable, fisheries will not develop that could put at risk krill stocks and the other living marine resources that depend on krill.

WESTERN PACIFIC

Forage fish species are included in the Western Pacific Council's Fishery Ecosystem Plans. ACLs have been specified for species such as big eye scads, mackerel scads, and deep water shrimp. The Council is also working with its partners in developing ecosystem models for the near-shore ecosystem that consider the biomass and productivity of the forage fish species as drivers for the ecosystem model.

Topic 8:

CATCH SHARE PROGRAMS

Consensus Position

The CCC developed the following consensus position:

"The CCC believes that Councils should maintain the maximum flexibility possible to develop effective management tools, including catch share programs. Adding excessive requirements for conducting a referendum is likely to increase the administrative burden for the Councils and may reduce the Councils' ability to implement the appropriate management program for their fisheries that could include modification of existing catch share measures or new catch share measures.

Catch shares is a management tool that should be available to the Councils, but the design, timing, and development should be left to individual Councils if they choose to use this tool for a specific fishery."

Regional Perspectives

NEW ENGLAND:

Councils need the flexibility to consider and use all of the fishery management tools that are available. Provisions that require a referendum before implementing a catch share program make it more difficult to address management problems. While the New England Council would prefer this requirement be removed, reducing the requirement for referendum approval to a majority of permit holders (rather than 2/3) does provide a measure of relief, and the New England Council believes this would be a positive change. If the statute defines voting rights for a catch share referendum, the text should clearly state which permit holders can participate in the referendum and if crew members can vote. Since fisheries differ, it may be better if these voting provisions are determined by each Council rather than defined by the statute.

MID-ATLANTIC:

The Mid-Atlantic Council does not have a position on the potential requirement that new catch share programs be approved by a majority of eligible permit holders in a referendum. However, if this requirement is included in the final reauthorization, we feel that the Councils should be given significant control to determine how the referendum program is developed and implemented.

SOUTH ATLANTIC:

The South Atlantic Council has one long-standing IFQ program in the region (wreckfish) that was established in 1992. Since that time, the Council has considered the use of catch shares in the snapper grouper mixed-use fishery (2007-2008) and the golden crab fishery (100% commercial) (2012), but did not move forward with programs for either fishery. The topic of catch shares has lately been controversial in the South Atlantic and the Council is not currently considering additional catch share programs. The Council does have concerns regarding the recent agency guidance for review of catch share programs with respect to the resources needed to conduct such a review, and the potential impacts on the existing wreckfish ITQ program. This program experienced significant changes because of the 2007 MSA reauthorization that were very destabilizing to the fishery.

Prior to the requirement for ACLs, the Council managed the wreckfish fishery with a Total Allowable Catch (TAC) of 2 million pounds under an ITQ program. The fishery was landing considerably less than 2 million pounds, around 250,000 pounds, and if the Council reduced the TAC, individuals would

have to purchase/lease additional shares to continue harvesting at existing levels. The Council concluded the management program in place was adequately protecting the wreckfish resource, and there was no need to reduce the TAC and cause unnecessary economic impacts to the participants. Landings were low due to market conditions given that it was more profitable to target other species, and that resulted in fewer fishermen targeting wreckfish.

With the requirement to establish ABC Control Rules and ABC/ACL for all species, the Council requested NMFS provide an updated stock assessment for wreckfish. NMFS responded that they could not provide an updated assessment and suggested the Council work with its SSC to develop a catch-based ABC. The following material is taken directly from the Council's Comprehensive ACL Amendment dated October 2011: "The South Atlantic Council's SSC met in April 2010 to discuss ABC Control Rules for unassessed species. After extensive discussion of wreckfish issues, the SSC established that ABC was unknown and the South Atlantic Council should consider an ACL that did not exceed 200,000 lbs. One of the issues discussed was whether the management system of individual quotas tied to portions of the allowable harvest level potentially alters the relation between the recommended harvest and the realized harvest. Effort is reduced in the fishery, to the extent that recent landings are confidential because fewer than 3 harvesters have been in operation in recent years. Landings are reduced and recent trends in landings, even if such landings could be publicly disseminated, are possibly not representative of fishery productivity.

The SSC discussed setting an ABC for wreckfish during their August 2010 meeting. The SSC stated that the 2001 assessment (Vaughan et al. 2001) indicated depletion at higher historical levels of effort and that the catch reductions appeared to have come mainly from gear restrictions, spawning season closure, and individual transferable quota (ITQ) implementation. Since stock size cannot be projected, an estimate of overfishing limit from the 2001 assessment could not be produced. A Depletion-Based Stock Reduction Analysis (DBSRA) or Depletion-Corrected Average Catch DCAC estimate could be calculated, but recent landings are confidential, therefore the SSC was not able to perform the calculations to produce these estimates. The SSC agreed the 2001 assessment was dated and did not apply to current landings and conditions. The SSC concluded that a control rule based on catch-only data should be used even though a stock assessment exists for wreckfish.

At the Second National SSC Meeting, Dr. Rick Methot (NMFS/SFD) presented a framework for dealing with data-poor stocks. Under this framework, a stock is categorized based on the status of the stock relative to its fishery. The framework includes a category that labels a catch as "moderate." In these cases, it is possible that any increase in catch could result in overfishing.

In the absence of a current assessment and using a catch-only scenario at "moderate" historical catch, the SSC reached consensus that it was inappropriate to use an old assessment applied to new catch data for catches coming from potentially different fishing conditions than at the time of the assessment. Although an estimate of FMSY exists, it cannot be applied to current stock biomass. A recent estimate of F is close to F_{MSY}, so increasing F could lead to overfishing if there were increases in catch. Even though BMSY is unknown, fishing at FMSY on a stock that is below B_{MSY} is acceptable for a stock that is not overfished and this will allow rebuilding. Therefore, in September 2010, the SSC recommended setting the ABC at the average historical catch (1997-recent) of 250,000 lbs whole weight. Due to confidentially of data, a more precise level could not be set. This level of harvest would cap fishery where it is, consistent with the —moderate level of historical catch in Methot's table for catch-only scenarios. The SSC also recommended conducting DCAC or DBSRA analysis in the next year to compare with the current catch-only recommendation."

Reducing the quota from 2 million pounds to 250,000 pounds whole weight imposed significant costs on participants and destabilized the fishery. Since then, industry funded a third-party stock assessment that was reviewed and approved by the SSC in 2014, with a resulting ABC determination of just over 400,000 pounds. This sequence of events has had a negative impact on stakeholder interest in IFQ programs. As noted previously, participants continue to have difficulty obtaining sufficient shares to meet current business needs. The South Atlantic Council would like to maintain the maximum flexibility in applying a referendum if the Council considers catch share programs or changes thereto.

GULF OF MEXICO:
Requiring referenda for initial catch share programs was a reasonable approach when they were first being introduced to U.S. fisheries. The Council should now be allowed the flexibility to utilize a catch share program no differently that other management tools. Elimination of all catch share referenda would make the Council's work more effective.

NORTH PACIFIC:
The North Pacific Council has several Catch Share and IFQ programs. Programs for some fisheries were mandated by Congress (American Fisheries Act pollock cooperatives, BSAI Crab fisheries cooperatives) and others were developed and implemented by the Council (Halibut and Sablefish IFQ program, Gulf of Alaska Rockfish Cooperative Program, BSAI Amendment 80 groundfish trawl cooperative program). These programs were aimed at eliminating the race for fish and minimizing the associated negative impacts to fisheries resources, as well as to the social and economic well being of the industry and fishing communities. Full program performance reviews for all catch share and IFQ programs are conducted on a regular periodic basis. The Council also annually reviews the performance of the cooperatives, and provides adjustments to the programs as needed to better meet program objectives. The objectives established for all catch share and IFQ programs are largely being met (reduced bycatch and waste, extended the fishing seasons, increased efficiency, increased utilization, improved safety at sea, etc.). As catch share programs mature and the original social and economic contexts change, full performance reviews and annual cooperative reports provide the Council with the information and evaluation needed to address new problems and challenges that may not have been initially anticipated, as well as, improve our understanding of how additional catch share programs might be structured.

PACIFIC:
The Pacific Council has two catch share programs, the first is a groundfish fixed gear sablefish program using tier limits. The Second is a groundfish trawl rationalization program using IFQs for the shoreside fishery and co-ops for the whiting mothership and catcher-processor sectors. The Pacific Council is not considering any additional catch share programs at this time. We have completed the first periodic review of the sablefish program and are currently engaged in the first periodic review of the trawl program. The Council did not conduct referendums for either program.

WESTERN PACIFIC:
The Council continues to explore the potential application of catch share programs to limited access fisheries in the Western Pacific region through workshops and database projects, but has not implemented it as a management tool at this time. The Council believes that it is important to maintain flexibility so that each Council may decide whether and how to implement catch share programs in their region where appropriate.

Topic 9:

NEPA

Consensus Position

The CCC developed the following consensus position:

"The CCC notes that fishery management involves fairly rapid cycles of adaptive management in which information about changing conditions is addressed through adjustments to the management program and regulations. The necessity for National Environmental Policy Act (NEPA) analysis of these actions results in requirements that duplicate those in the Magnuson-Stevens Act (MSA) and other applicable law, including additional comment periods that delay implementation of these actions, which were developed through the open and transparent MSA process. Ensuring NEPA compliance for marine fishery management actions has been costly and time-consuming for Council and NMFS staff and has limited the Councils' abilities to pursue other regulatory activities. In addition, the CCC notes that there have been instances where compliance with NEPA has hindered adequate compliance with MSA in terms of providing comprehensive analysis to Councils prior to their taking final action due to the difficulty and time required to complete NEPA analyses. Although the 2007 MSA reauthorization attempted to align the requirements of the two laws more closely through the addition of Section 304(i), the CCC does not believe what has been called for in the Act has been accomplished."

Regional Perspectives

NEW ENGLAND:

The Council supports streamlining the M-S Act and National Environmental Policy Act (NEPA) processes. The goal of NEPA is to provide the information needed for decision makers and the public to evaluate policy choices, but unfortunately this goal has been subsumed by a rigid adherence to bureaucratic requirements in order to withstand any potential legal challenge. The proposed language in Section 7 of HR 200 that substitutes the use of Fishery Impact Statements for required NEPA documents would streamline the fishery management process while still ensuring that decisions are based on careful analyses.

MID-ATLANTIC:

The Mid-Atlantic Council has long been a vocal advocate for streamlining the implementation of NEPA in the fishery management process, but we concluded that the proposed language that would essentially eliminate, or significantly reduce, the role of NEPA in the fishery management process would not be beneficial. We feel that there are many opportunities to streamline the fishery management process and enhance coordination between MSA, NEPA, and other statutes without eliminating or reducing the role of NEPA.

SOUTH ATLANTIC:

The Council believes that if the analyses and process required by MSA are followed, the intent of NEPA would be met. In the past, the Council has experienced delays in amendment development when an initial EA determination was later changed to an EIS with a longer public comment period and document approval process. More recently, the Council has worked closely with the NMFS and NOAA GC to prepare consolidated documents that meet both MSA and NEPA requirements. The EA/EIS determination is made early in the process to avoid any delays. We have adapted to work within the current requirements.

The Council recently completed a regulatory amendment allowing harvest of black sea bass with pot gear for the 32 permitted fishermen, with a maximum number of 35 pots per permitted fisherman, a requirement to tend the pots, and a requirement to bring the pots back to shore at the end of a trip. The way NEPA was applied resulted in a delay in development, review, and implementation. This resulted in fishermen losing income from the 2-month delay in the start of the season.

GULF OF MEXICO:
Status Quo NEPA application to Council actions is working but it would be less burdensome to have the entire process integrated within the Magnuson-Stevens Act.

NORTH PACIFIC:
Incorporating NEPA requirements into the Magnuson-Stevens Act, and realizing a single guiding statute for fishery management actions, is consistent with long-standing intent of the NPFMC and the CCC generally. The provisions of HR200 accomplish that intent, and represent a unique opportunity to streamline our regulatory process. However, we are concerned that the ultimate result will be contingent upon implementing regulations, and the realized benefit could be marginal relative to creation of new complexities and challenges. These new complexities and challenges include the development of potentially complex and contentious regulations, and creation of a new body of litigation relative to fishery management actions.

PACIFIC:
The Pacific Council believes integrating the policy objectives and key requirements of National Environmental Policy Act (NEPA) directly into the MSA, including the requirement to prepare "a detailed statement" on "the environmental impact of the proposed action." could streamline and expedite the regulatory process. The Council developed proposed procedures as an approach to address the requirements in the existing MSA section 304(i)(1)(B) ENVIRONMENTAL REVIEW PROCESS; the Council does not believe what has been called for in the MSA has been accomplished. The Council believes the objective of these changes is not to circumvent the intent of NEPA, but to incorporate important aspects of the NEPA analysis and process directly into the MSA.

Developing compliance procedures for ensuring a Fishery Impact Statement meets the intent of the MSA provision will require substantial effort from Council and NOAA staff, and will likely result in FIS that are similar in scope and content to NEPA analyses and documents. The primary benefit to this process would be to reduce or eliminate National Marine Fisheries Service (NMFS) review of NEPA documents after a Council takes final action and before the regulations are transmitted to NMFS, thus starting the MSA review period. However, a similar lengthy review period for the FIS could also occur unless there was an explicit time limit for transmittal after Council final action. Otherwise there is no guarantee that the intended benefits of this provision would be realized. Shortening the review period would also benefit the Council process by encouraging earlier Secretarial review of the "substantially complete" FIS provided to the Council prior to final action. A substantially complete FIS would provide an opportunity for more informed public comment and Council decision-making. This language could result in a more efficient fishery regulatory process, while ensuring that the NEPA objectives of informed decision-making and public comment opportunity are fully met.

Example 1: The Council took final action in March 2016 on a relatively simple gear regulation affecting only the recreational groundfish fishery in one state. Thirteen months later, NMFS has yet to request transmittal of the regulations, which starts the MSA clock and dictates an implementation date. Part of this particular situation is a staff shortage, but part is also due to review or preparation of the NEPA documents prior to initiating the rule making process.

Example 2. The Council used to take final action on groundfish annual management measures in early November to ensure implementation by January 1. Now, because of lengthy internal NEPA review and public comment periods after Council final action, the Council takes final action in June, and NMFS wasn't able to implement the regulations until January 7, which necessitated some emergency action, further delaying the process for other regulatory activities. The problem is largely because of the time spent by NMFS and NOAA GC on NEPA preparation/review before drafting the rules for deeming, delaying Council transmittal.

WESTERN PACIFIC:

The Council believes that the provision deeming that a fishery impact statement would fulfill NEPA requirements will be beneficial. Existing MSA requirements to prepare analyses for public review are largely duplicative of NEPA, but the new provisions would ensure that all NEPA requirements would be included in the new fishery impact statement process. The proposed MSA provisions would avoid analytical duplication and streamline public review processes.

Topic 10:

OTHER FEDERAL STATUTES

Background

Changes have been proposed to the MSA to ensure consistent fisheries management under certain federal laws. The proposals specifically address consistency with the National Marine Sanctuaries Act, Antiquities Act and actions necessary to implement recovery plans under the Endangered Species Act. Federal fishing regulations may also be promulgated under other federal laws such as the Marine Mammal Protection Act and through means under the MSA that circumvents the transparent and public Council process. Additionally, restrictions on fisheries may also be deemed necessary to implement requirements under the Endangered Species Act beyond species recovery plans, such as implementing Reasonable and Prudent Alternatives resulting from Section 7 consultation Biological Opinions.

Consensus Position

The CCC developed the following consensus position:

> *"The CCC believes that all federal fishery regulations should be promulgated under the Council or Secretarial process established under MSA section 302 to ensure rational management of our fishery resources throughout their range. Under the MSA, the Councils are charged with managing, conserving, and utilizing the Nation's fishery resources as well as protecting essential fishery habitat, minimizing bycatch, and protecting listed species within the United States Exclusive Economic Zone. This is done through a transparent public process that requires decisions to be based on the best scientific information available. This time-tested approach has made U.S. fisheries management highly successful and admired throughout the world.*
>
> *If changes to Council-managed fisheries (for example changes to the level, timing, method, allowable gear, or areas for harvesting management unit species) are required under other statutory authorities such as the Antiquities Act of 1906, the Endangered Species Act of 1973, the Marine Mammal Protection Act of 1972, or the National Marine Sanctuaries Act of 1972 (NMSA), such restrictions or modifications to those fisheries should be debated and developed under the existing MSA process, unless a Council cedes this responsibility to another process. In addition, all actions by the Councils are currently subject to review by the Secretary of Commerce to determine consistency with MSA and all other applicable laws. This current review ensures that Council actions – including those that could be made as a result of requirements of other statutes – will continue to be consistent with all relevant laws. Making modifications to fisheries through the MSA process would ensure a transparent, public, and science-based process. When fishery restrictions are put in place through other statutes, the fishing industry and stakeholders are often not consulted, analyses of impacts to fishery-dependent communities are not considered, and regulations are either duplicative, unenforceable, or contradictory."*

Regional Perspectives

NEW ENGLAND:

Management measures were adopted through the Antiquities Act that affect fishing in a recently adopted National Marine Monument.

SOUTH ATLANTIC:
In the past, the Council has experienced delays in amendment development when a reasonable management alternative was identified by Protected Resources staff after the public hearing process. More recently, the Council has worked closely with the NMFS and NOAA GC to identify any alternatives that should be considered early in the process. We prepare consolidated documents that meet both MSA and ESA requirements. At times the Southeast Protected Resources interpretation of potential impacts to species has been much more restrictive than other region's determinations. This has caused significant delays and additional analyses with little to no data (e.g., black sea bass pot fishery). A clear independent and transparent peer review process for Protected Resource assessments, analyses, and determinations would be extremely beneficial to the Councils, the affected fishermen, and the public.

The Council recently completed a regulatory amendment allowing harvest of black sea bass with pot gear for the 32 permitted fishermen, with a maximum number of 35 pots per permitted fisherman, a requirement to tend the pots, and a requirement to bring the pots back to shore at the end of a trip. The way ESA/MMPA was applied resulted in a delay in development, review, and implementation. This resulted in fishermen unnecessarily losing income from the 2-month delay in the start of the season.

GULF OF MEXICO:
The Council has encountered at least two potential conflicts with other statutes. With regard to the National Marine Sanctuaries Act, the Council would like to have final say on fishery regulations to ensure such regulations comply with Magnuson Act requirements. With regard to the Endangered Species Act, the Council would like to be involved in development of biological opinions and management recommendations that affect fisheries managed under the Magnuson Act to ensure such recommendations are reasonable and effective.

PACIFIC:
The Regional Fishery Management Council (RFMC) process was created by the MSA in 1976 to provide transparent, public, regional management of fisheries resources. All meetings of the Pacific Council and its advisory bodies are open to the public, and all materials used to make management decisions are publicly available and posted to our website. In addition, the Pacific Council process adheres to the provisions of the National Environmental Policy Act, the Marine Mammal Protection Act, the Endangered Species Act, the Federal Advisory Committee Act, and other applicable laws. In June 2016, the RFMC's Council Coordination Committee unanimously adopted a resolution recommending that fishery management actions in the U.S. Exclusive Economic Zone should continue to be developed, analyzed, and implemented via the RFMC process, rather than being addressed by authorities such as the Antiquities Act of 1906.

The Pacific Council's transparent system provides all stakeholders an opportunity to express their opinions, share their knowledge, and be involved in the fishery management process, thereby improving Pacific Council decision-making and natural resource management. The Pacific Council believes that informed decision-making should involve an open process where impacts to the natural and human environment are disclosed and diverse viewpoints can be considered.

WESTERN PACIFIC:
The Council believes that it is important to recognize the MMPA as one of the statutes that affect federal fisheries management in addition to the other federal statutes identified in H.R. 200. Measures to implement the MMPA False Killer Whale Take Reduction Plan modified gear

requirements and fishing areas for a fishery that is otherwise managed under the MSA. Importantly, modification of the longline exclusion zone originally established under the Council process was modified through MSA section 305(d) (pertaining to responsibility of the Secretary), circumventing the process established under MSA section 302. The Council believes that developing federal fishery regulations to meet requirements of other federal statutes such as MMPA and ESA under the MSA section 302 process will ensure greater consistency and transparency in fisheries management as well as full consideration of impacts to fishing communities.

Topic 11:

RECREATIONAL DATA

Background

The Marine Recreational Information Program (MRIP) is inadequate to track the recreational catch for monitoring a number of recreational ACLs and was not designed to provide data for in-season ACL management. In addition, the current MRIP survey is not providing useful estimates for many EEZ-caught species due to the low number of trips being intercepted.

Proposed changes would create Federal-state partnerships to improve implementation of state data collection programs, require biennial reports from the Secretary to Congress on these programs, create Federal grants to states, and require the National Academy of Science to evaluate these programs after one year.

Consensus Position

The CCC developed the following consensus position:

> *"The CCC believes MRIP was not designed to provide data for in-season ACL management. The current MRIP methodology cannot be modified nor can sufficient funding be provided such that in-season ACL management will work. The CCC believes alternative methods (e.g., state electronic logbook programs, federal for-hire electronic logbook programs, and electronic logbook programs for private recreational anglers) should be fully implemented where they are available and developed, then evaluated where they do not yet exist. Once evaluated, MRIP should work to quickly certify these alternative methods for use in monitoring recreational catches.*
>
> *There does not appear to be a plan for the systematic collection of the necessary biological data from recreational fisheries for use in stock assessments (size, age, and reproductive data). Stock assessment data would be greatly improved, as would the assessment results, if NMFS would immediately prepare a written plan for each region and coordinate across regions to address species as they move from one region to another due to changes in the environment. The CCC believes additional funding is required for successful implementation of such a data collection program.*
>
> *The CCC believes more timely and accurate catch estimates that will be accepted by the recreational community (since they are providing the data) will go a long way to improve stock assessments, improve voluntary compliance, and improve accountability within the recreational fishing community."*

Regional Perspectives

MID-ATLANTIC:

The 2006 reauthorization of the MSA introduced a new requirement for the Councils to develop accountability measures (AMs) for all federally managed fisheries. While AMs have been effective management tools for some fisheries, they must be developed appropriately for recreational fisheries, relative to the available catch data. Councils need the ability to develop recreational AMs that are consistent with the precision, accuracy, and timeliness of the catch estimates, in order to manage recreational fisheries effectively. Councils should not be required to manage their recreational fisheries beyond the limitations of their available catch data, and the Act should support recreational AMs that are reasonable relative to the data. In recreational fisheries monitored by

NMFS' Marine Recreational Information Program (MRIP), the Councils should be able to consider confidence intervals about the catch estimates when developing triggers for AMs.

SOUTH ATLANTIC:
Recreational fishing is incredibly important to the South Atlantic. Nearly 17 million recreational fishing trips are reported by MRIP for the South Atlantic in 2016, representing 30% of the trips measured by the program. Over 1.6 million of these trips were taken in the EEZ in 2016, representing nearly one-third of all EEZ trips reported by MRIP. These values for 2016 are by no means anomalous; the South Atlantic has accounted for 28% of all trips, and 34% of EEZ trips, reported by MRIP during 1981-2016. Nor do these values represent the full importance of recreational fishing in the South Atlantic, as trips taken on headboats are not included in these values because they are estimated through a separate program, and all trips taken in Monroe County, Florida, are attributed to the Gulf region in the default MRIP queries. Charter vessels and headboats are only two components of the larger issue of a multi-faceted recreational catch accounting system that is suitable for the ACL management required by the MSA; private recreational anglers catch the most fish and are the most difficult to sample.

Requirements to manage fisheries with specific Annual Catch Limits (ACLs) under the Reauthorized Magnuson-Stevens Act have significantly increased the importance of recreational catch estimates provided by the Marine Recreational Information Program (MRIP). This has led to closer scrutiny of MRIP methods, which has in turn led to a number of changes in those methods over the last few years. While many knowledgeable experts and scientific reviewers agree that these changes have reduced bias and improved the statistical properties of the estimates, there remains considerable skepticism among the fishing public, state managers, and Council members that the MRIP program accurately reflects recreational catch and effort. This skepticism is particularly acute among those who fish in the Exclusive Economic Zone (EEZ) in the South Atlantic and pursue species managed by the South Atlantic Fishery Management Council (SAFMC), as many of these species fall into the category of "rare events", exhibiting catch estimates that are prone to outliers and high uncertainty. One success from increased efforts to promote awareness and understanding of MRIP is a more knowledgeable fishing public. The flip side of this success is that same public now becoming more aware of shortcomings and challenges, and more prone to let their dissatisfaction be heard, particularly when estimates that seem "wrong" to them lead to closures of favored fisheries.

Prior to requirements to manage by ACLs, large increases or "spikes" in MRIP estimates did not exert much effect on the management program, as the "MRFSS" program (as it was then called) was widely accepted as meeting its stated goal of providing accurate information on overall trends of recreational fishing, with less accuracy and precision expected of individual estimates. That is no longer the case, as management programs must now prevent landings from exceeding the ACL. Within the South Atlantic Region, a number of recent, high-profile, unexpected spikes have led to recreational fishery closures that, to many observers, are simply the result of outlier values within the MRIP estimation process, and not indicative of actual landings or fishery trends.

In 2015, NOAA Fisheries closed the ***recreational hogfish fishery*** *in the South Atlantic on August 24 due to landings exceeding the ACL. This was triggered by an estimate for Wave 2 (March and April) of 228,494 pounds, a value that was 3.8 times the entire annual ACL of 85,355 pounds. Given that average annual hogfish landings reported by MRIP from 1986 to 2014 were only 75,126 pounds, and landings exceeded 100,000 pounds in only 4 of those years, the 2015 Wave 2 seems an outlier – far out of line with the normal and expected values. Moreover, in most recent years landings are highest*

in Waves 3 and 4. Nonetheless, the fishery was closed. Hogfish are primarily harvested by spearing and the spearfishing sector is not sampled well by MRIP.

In 2015, NOAA Fisheries closed the ***recreational blueline tilefish fishery*** *on April 7 due to landings exceeding the ACL. MRIP reported 162,483 pounds of blueline tilefish landed in 2016, with 155,293 pounds (96%) taken in Wave 4. Total annual landings exceeded this single wave estimate in only 3 of the prior 20 years of estimates, and the 2015 landings for Wave 3 was only 373 pounds. Blueline tilefish appears particularly resistant to MRIP sampling efforts. No values are reported for 1986-1992, 1994, 1998-1999, and estimates are only reported in 1 or 2 waves for the 10 years from 1993 through 2005 that provide any estimate.*

The ***red snapper fishery*** *has been closed from to 2010 to 2017 except for mini-seasons in 2012, 2013, and 2014, which had a total of 17 open days in the recreational fishery and 101 open days in the commercial fishery. Uncertainty around private recreational catch and discard estimates (accounts for >70% of the total removals) prevented the NMFS from providing updated projections for use during 2017. The stock assessment and continued monitoring (using trap indices) shows continued rebuilding. Since the last stock assessment (data through 2014), which indicated the stock was overfished and overfishing was occurring, monitoring has indicated that the stock has doubled in population size and expanded in range. The current condition based on recent changes in population size is unknown. Fishermen are describing this increase in red snapper abundance as the best example of recovery in the snapper grouper fishery yet they still cannot have a fishery due to ABC/ACL management. With the current measures in place, the estimates of dead discards will prevent the fishery from reopening. In fact, 2016 red snapper removals due to dead discards in the private recreational fishery exceeded the total removals ABC in wave 6 alone (November to December). The Council is exploring alternative methods to set an ACL and allow some access by fishermen. During the open season, much needed fishery-dependent data would be collected to inform future stock assessments.*

Impacts and consequences of abnormal and outlier catch estimates extend beyond the immediate effects of annual fishery closures, because such estimates become part of the databases that provide Best Scientific Information. Management action evaluations required for Council FMPs rely upon these data, for example, to determine if an ACL has been exceeded and accountability measures (AMs) have been triggered. Despite the considerable uncertainty in many of these estimates in the form of high Percent Standard Errors (PSEs), only the point estimates are used by the agency in evaluating whether an AM is to be applied. This has potentially significant consequences under the MSA National Standard Guidelines, whereby exceeding an ACL and triggering AMs more than once in four years requires reevaluation of the system of ACLs and AMS. A separate, but related issue is that such outliers are an increasingly common source of frustration for the assessment scientists in our region. Nearly all Southeast Data, Assessment, and Review (SEDAR) workshops devote considerable effort to evaluating outlier MRIP values. Even more importantly, the lack of public confidence in such values undermines confidence in the entire assessment product and management outcomes.

The Council recognizes that fishing effort in the EEZ is not a large component of the overall effort surveyed by MRIP, only representing about 8% of the trips observed in recent years in the South Atlantic Region. Given that total EEZ trips includes effort directed at common South Atlantic targets such as dolphin, billfish, tuna, and mackerels, the number of observed trips interacting, much less directing on, the species in our snapper grouper complex will be even lower. As a result, most, if not all, of the species in our snapper grouper complex can likely be considered 'rare events' when it comes to the MRIP sampling effort. The Council further recognizes that no generalized survey, such

as MRIP, is likely capable of providing accurate, robust estimates of rare events in a cost effective manner. Unfortunately, there is nothing in the Magnuson Act that relaxes the requirements for management by ACLs when the only accepted monitoring program is simply incapable of providing estimates that meet the accuracy standards demanded for management by ACLs.

As one means to address these important data issues, the Council began working in 2017 with the NMFS SERO, the Snook and Gamefish Foundation, state partners, and ACCSP on a project to pilot an electronic permit and logbook for the private recreational fishery. The Council will work closely with MRIP and the NMFS SEFSC during this project to ensure proper design, methods, and verification/validation. Validation would be greatly improved if the MRIP interviewers would ask if the person being interviewed has the electronic permit and record the electronic permit number. The Council is also working on another project with the NMFS SERO, SEFSC, state partners, and Harbor Light Software, Inc. to conduct outreach for electronic reporting in the charter and headboat fisheries. This should significantly increase the reliability of reporting in for-hire fisheries. However, these projects address only two components of the larger issue of a multi-faceted recreational catch accounting system that is suitable for the ACL management required by the MSA.

The South Atlantic Council has worked to improve catch reporting. For a system to be effective, there needs to be extensive coordination between management and law enforcement. This will require additional resources for improved law enforcement. The Council is working with the CCC to explore ways to require NOAA GC or some other body, as appropriate, to address and increase the severity of penalties for non-reporting by those entities required to report, both nationally and in the Southeast. The Council currently requires headboat reporting; charter vessel reporting is expected to be mandatory beginning January 1, 2018. The Council is exploring use of an electronic permit and electronic logbook reporting in the private recreational sector.

The Council would like to see a system developed whereby individuals are automatically notified via email if their reports are late. The primary method to improve reporting timing and compliance should be communication and outreach with the affected sectors/individuals. Penalties should be a back-up measure and would only be applied after communication and outreach were used.

The Council is also committed to improving stakeholder involvement and supplementing data collection efforts in the region through the new SAFMC Citizen Science Program. Initiated in early 2017, the program aims to improve fisheries management through collaborative science with fishermen, scientists, and managers. The Council is working with a broad cross-section of fishery stakeholders (including fishermen from all sectors, researchers, state/federal managers, data managers, outreach specialists, and NGOs) to develop policies, standards, and operations for the Program. The Program will ultimately support citizen science projects that will address critical data gaps for use in stock assessments and management decisions. Projects focused on collecting recreational data to supplement existing fishery-dependent data collection programs will be a high priority for the Program.

The Council is concerned that there does not appear to be a plan for the systematic collection of the necessary biological data from recreational fisheries for use in stock assessments (size, age, and reproductive data). Stock assessment data would be greatly improved, as would the assessment results, if NMFS would immediately prepare a written plan for each region and coordinate across regions to address species as they move from one region to another due to changes in the environment.

GULF OF MEXICO:

The MRIP was not designed for in-season ACL monitoring and nothing short of a complete overhaul would make it effective for in-season monitoring. The inability of MRIP to monitor ACLs in a timely manner has forced the Councils and NMFS to set advance season dates that oftentimes either result in an underharvest or overharvest. Thus, post-season accountability measures have been developed to manage the recreational fisheries. The current process is inefficient and fraught with uncertainty. One could say the problem is not necessarily MRIP but rather, the requirement by Congress to manage all our fisheries by ACLs. In addition, recent changes in the MRIP data collection methodologies have made monitoring ACLs problematic and past estimates of fishery population size unreliable. Granted, improvements in data collection are always welcome but lately the methodological changes to MRIP have been too frequent and have created greater uncertainty in our management process.

PACIFIC:

The Pacific Council already partners with NMFS and Pacific States Marine Fisheries Commission on state data collection programs. We are concerned about both the funding and workload impacts of this section on NMFS, especially given that NMFS' funding and staffing already constrain Council functions.

WESTERN PACIFIC

The WPRFMC prefers to use the term "non-commercial" instead of "recreational" as non-commercial encompasses fishing for sport or pleasure (as defined in the MSA) as well as other motivations for fishing including subsistence, sustenance, cultural, traditional, and customary exchange. The region's fisheries were historically "catch and consume" and only more recently transitioned into a "catch and release."

There are no licensing requirements for non-commercial fisheries in the Western Pacific and only a limited data set for Hawaii through the Hawaii Marine Recreational Fishing Survey (via MRIP) but it is widely known that non-commercial catch is at least equal to, if not greater than, the commercial catch for most species (particularly nearshore species). Currently, any non-commercial fishery data collected in the region (via MRIP) is not used in stock assessment development or for management.

Existing data collection programs in the region, which were not designed for stock assessments or ACLs, do not provide adequate coverage for the broad spectrum of fishing methods in the region. Existing barriers to mandatory licensing and reporting of non-commercial fisheries is being looked at, including Hawaii state constitutionality of licenses. NOAA's existing effort for a saltwater angler registry is only required in Hawaii and due to the lack of enforcement, cost, and for Federal fishing, participation is low.

The lack of the inclusion of the territories in a potential "States Grant Program" ignores the U.S. territories, which are the most data poor. Any program developed to collect recreational/non-commercial fishery data should include the territories.

Topic 12:

COMMERCIAL DATA

Background

Commercial data are not always available in a timely manner for monitoring commercial ACLs. Late reports continue to be a problem and this is an enforcement issue. Confidentiality concerns about fine scale catch data need to be discussed.

In some regions, data for landings or catch delivered to commercial dealers or processors are reported electronically and available to NMFS in a timely manner. In these regions, fisheries managers are able to track individual fishing quota use and fishery wide harvests in order to accurately project when ACLs and ABCs will be met, and announce fishery closures so as to avoid exceeding these limits.

In some regions, fishery observers who monitor catch, catch composition, and discards of species on vessels are also tasked with taking biological samples according to well defined data needs and protocols. These data are critically important for stock assessments.

Along the east coast, the Atlantic Coastal Cooperative Statistics Program (ACCSP) develops a target sampling matrix for target species. Obtaining the target sample number can be hampered by regulatory restraints. There is not a plan to achieve the target sampling level in most regions.

Consensus Position

The CCC developed the following consensus position:

> *"The CCC believes that the management of commercial fisheries could be improved by streamlining the fishery monitoring and reporting process to produce more timely catch data. In most regions, commercial dealer data are not available as quickly as needed for quota tracking, and commercial logbook data from fishermen are not available as quickly as needed for verification of dealer data. In some areas, commercial fishermen cannot upload electronic logbook data or use E-logbook systems due to the lack of a federal system to receive the data. The lack of timely commercial data requires fishery managers to make projections about when an ACL will be met, which can results in closing a fishery too early or too late.*
>
> *In most regions, there does not appear to be a plan for the systematic collection of the necessary biological data from commercial fisheries for use in stock assessments (size, age, and reproductive data). Stock assessment data would be greatly improved, as would the assessment results, if NMFS would immediately prepare a written plan for each region and coordinate across regions to address species as they move from one region to another due to changes in the environment. The CCC believes additional funding is required for successful implementation of such a data collection program."*

Regional Perspectives

NEW ENGLAND:

Commercial dealer data is not available as quickly as needed for quota tracking. In addition, we are increasingly prevented from sharing relevant information with decision makers because of overly stringent interpretation of data confidentiality rules.

There is a need for more flexibility in the design of industry-funded monitoring programs. All Councils should have the discretionary authority to fund industry-funded monitoring programs using mechanisms similar to those granted to the North Pacific Council by MSA Section 3133(b)(2).

SOUTH ATLANTIC:

There have been considerable improvements in tracking the landings from dealers since implementation of the Generic Dealer Reporting Amendment that requires weekly electronic reporting. Some problems remain in a few commercial fisheries with a high rate of landings that affect the projection methodology that may result in premature closures and the resulting closure data to prevent exceeding the ACL. The Council remains concerned about the lack of law enforcement on delinquent dealers and commercial logbooks. Commercial fishermen are still allowed to not provide any reports during a fishing year and to then provide their logbook data at the time of permit renewal. The Council has repeatedly stated that it wants this practice to stop. If commercial logbooks are not provided during the fishing year, that permit should not be eligible for renewal.

The South Atlantic Council has worked to improve catch reporting. For a system to be effective, there needs to be extensive coordination between management and law enforcement. This will require additional resources for improved law enforcement. The Council is working with the CCC to explore ways to require NOAA GC or some other body, as appropriate, to address and increase the severity of penalties for non-reporting by those entities required to report, both nationally and in the Southeast. The Council currently requires dealers and commercial fishermen to report.

The Council would like to see a system developed whereby individuals are automatically notified via email if their reports are late. The primary method to improve reporting timing and compliance should be communication and outreach with the affected sectors/individuals. Penalties should be a back-up measure and would only be applied after communication and outreach were used.

As stated previously, the Council is also committed to improving stakeholder involvement and supplementing data collection efforts in the region through the new SAFMC Citizen Science Program. Initiated in early 2017, the program aims to improve fisheries management through collaborative science with fishermen, scientists, and managers. The Council is working with a broad cross-section of fishery stakeholders (including fishermen from all sectors, researchers, state/federal managers, data managers, outreach specialists, and NGOs) to develop policies, standards, and operations for the Program. The Program will ultimately support citizen science projects that will address critical data gaps for use in stock assessments and management decisions. Projects focused on collecting commercial data, including social and economic data, to supplement existing fishery-dependent data collection programs will be a high priority for the Program.

GULF OF MEXICO:

Commercial data collection in the Southeast has a long history of requiring fishermen to complete paper logbooks. Recently, the Southeast Fisheries Science Center completed a pilot electronic logbook project. Electronic logbooks for the commercial fisheries need to be implemented as soon as possible. It is imperative that any electronic logbook system include only critically needed data to keep the system simple and minimize the time burden for data entry.

NORTH PACIFIC:

In the North Pacific, catch and landings data from catcher vessels delivering to shoreside processors and catch that is processed at sea are reported electronically and available to NMFS in a timely manner. These reporting systems have been in place for many years and continue to be improved

through the coordinated efforts of NMFS, the State of Alaska, the Pacific States Marine Fisheries Commission, and the International Pacific Halibut Commission. Fisheries managers are able to track individual fishing quota use, and monitor fishery wide harvests in order to accurately project when annual and seasonal catch and bycatch limits will be met, and announce fishery closures so as to avoid exceeding these limits.

In the North Pacific Groundfish and Halibut Observer Program, fishery observers who monitor catch, catch composition, and discards of species on vessels are also tasked with taking biological samples according to well defined data needs and protocols developed by the Alaska Fisheries Science Center. These data are critically important for stock assessments.

PACIFIC:
The Pacific Council supports the development of electronic fish tickets as a means of expediting catch accounting in commercial fisheries.

Electronic fish tickets are a software program or web based application to populate data files meeting data export specifications approved by NMFS that are used to send landing data to the Pacific States Marine Fisheries Commission (PSMFC). Electronic fish tickets are used to collect information similar to the information required in state fish receiving tickets or landing receipts, but do not replace or change any state requirements. The electronic fish ticket system was designed and is managed by the PSMFC, with funding from NMFS.

The electronic fish ticket system has been used for the Pacific whiting shoreside fishery since 2007. In 2011, the electronic fish ticket system was expanded to include all shoreside groundfish deliveries by vessels participating in the shoreside IFQ program Trawl Rationalization Program. In 2017, the program was expanded to the fixed gear sablefish fishery.

The existing electronic fish tickets varies slightly by state and tribal agency such that each form records the information necessary for compliance with state/tribal landings regulations. The form also provides unique reporting functions, such as preparation of tax information that may be beneficial to first receivers.

The Pacific Council identifies development of electronic fish tickets for remaining commercial fisheries (remaining groundfish sectors, Highly Migratory Species (HMS), Coastal Pelagic Species (CPS), and salmon troll fisheries) as a near-term priority in its Regional Electronic Technology Implementation Plan. Washington, Oregon, and California and some tribal agencies are moving toward EFT requirements for these other fisheries.

WESTERN PACIFIC
The Western Pacific has had some success in working with the State of Hawaii in near real-time monitoring and reporting for the bottomfish fishery in the Main Hawaiian Islands. To conduct the outreach, follow-up, and data processing for any of the other managed fisheries similar to the bottomfish fishery would require an enormous amount of resources. Differences in fisheries may not allow for a similar management approach, but committed support and resources would allow the discussions on more timely reporting for ACL management.

Commercial fishery data is voluntarily provided in the territories and commonwealth in the region. If those areas were to mandate commercial fishery data licensing and reporting, they would also need to be provided the resources to institute and manage such a program. Current mandated ACLs do not allow for proper and efficient management due to the lack of data collection programs that can

a) provide dependable data for stock assessments, b) provide timely reports and data synthesis, and c) provide for projections of catch for potential closures of the fishery.

Topic 13:

EXEMPTED FISHING PERMIT (EFP) AUTHORITY

Background

Legislative proposals would impose significant changes in the review process currently used by Councils to approve and issue permits under the Exempted Fishing Permit authority. In addition, proposed changes would limit the duration of permits. Both changes could undermine the effective use of EFPs by many Councils.

Proposed changes to the EFP process would require the Secretary of Commerce to follow new procedures before approving exempted fishing permits (EFPs), including peer review and certain determinations and a requirement for EFPs to expire after 1 year.

The proposed new procedures would include the requirement for a joint peer review of the proposed EFP by the appropriate regional fisheries science center and the appropriate State marine fisheries commission and a requirement that the Secretary certify that the regional fishery management Council or Federal agency with jurisdiction over the affected fishery has determined that: the fishing activity to be conducted under the proposed EFP would be consistent with any conservation and management objectives under the existing fishery management plan or amendments; the social and economic impacts (in both dollar amounts and the loss of fishing opportunities on all participants in each sector of the fishery) expected to occur as a result of the proposed EFP; the information collected though the fishing activities conducted under the proposed EFP will have a positive and direct impact on the conservation, assessment or management of the fishery; and the Governor of each of the States – of which any part of that State is within 100 nautical miles of the proposed activity under the proposed EFP – has been consulted on the proposed EFP.

The proposed language would require that any EFP shall expire at the end of the 12-month period beginning on the date that the permit was issued and that any EFP that is renewed be consistent with the new requirements listed above.

In addition, it is not clear if this provision will apply only to new EFPs or whether existing EFPs will also expire in 12-months and need to meet the new requirements in order to be renewed.

Consensus Position

The CCC developed the following consensus position:

> *"The CCC believes that exempted fishing permits (EFPs) are an extremely important and useful mechanism to conduct scientific research. For example, EFPs have been used in different regions of the U.S. to conduct surveys, test monitoring devices under field conditions, investigate invasive species, and develop fishing gear that reduces bycatch and reduces impacts on habitat and protected species. These studies are frequently done by the fishing community at no cost to the public and have provided enormous benefits to the conservation and management of marine resources and habitats.*
>
> *The CCC believes that the existing regulations already provide a good framework for developing regional processes for issuing and reviewing EFPs. The EFP applications undergo a regional scientific peer review and are evaluated through a public process by the respective regional Councils. The public and affected states have opportunities to comment to NMFS and the Councils during this process. Any new requirements for the EFP process, such as additional social and economic analysis*

or further consultation with the state governors, would greatly reduce the ability to get EFPs developed and approved in a timely manner.

In addition, the CCC believes that multi-year EFPs provide the necessary flexibility to scientifically test gear across different years and seasons. New regulations that limit EFPs to a 12-month period will restrict the type and quality of research that can be done, thus limiting the usefulness of the data collected."

Regional Perspectives

NEW ENGLAND

The New England Council has had great success with collaborative research programs. We currently use Research Set Aside programs to fund research that is critical to the management of several of our species. For example, the Scallop RSA program provides $10-15 million per year that is used to survey the scallop resource, investigate bycatch, and develop gear solutions to minimize interactions with endangered turtles. All of these activities require EFPs before they can be conducted. The changes to the EFP process that are proposed in HR 2023 will make it much more difficult to conduct the necessary research in a timely fashion. We are moving to multi-year awards, which will be hampered by the HR 2023 requirement that EFPs be renewed annually. We are also confused why the proposed language provides the states increased oversight of EFPs in federal waters through the review requirements. In our region, most fishing in federal waters is the purview of the Council.

SOUTH ATLANTIC:

The South Atlantic Council believes that the existing EFP regulations provide a sufficient framework for the expedited, uniform, yet regionally-based process envisioned to test solutions and collect data to address specific management issues. EFPs have been used in the South Atlantic to collect data regarding proposed depth-based area closures, to test gear configurations for bycatch reduction, and to address invasive species issues. Because the Council has received an increased number of EFPs with varying degrees of detail in recent years, it recently directed staff to develop a review process for inclusion in the Handbook/SOPPs. The intent is to provide clarity to both the NMFS Southeast Regional Office, as well as to potential EFP applicants, the Council's expectations regarding completion of necessary EFP materials prior to Council review. In addition to a determination from the NMFS that the EFP is complete as per the Council's guidance, the process will include a presentation of the EFP to the appropriate Council Committee prior to the public comment session at the Council meeting where it is being reviewed.

Some of the proposed legislative changes to current EFP regulations may be overly prescriptive and have the unintended consequence of inhibiting the Councils' ability to address specific management issues in an expedited fashion. EFPs that are limited to only 1 year will probably severely limit the usefulness of the data received as often the first year fishermen are just getting adjusted to trying the new process. It often takes a second year to work out the bugs just like many of the fishery grants are extended year after year to get a baseline that has meaning. The higher the bar is set for reviews and such, the fewer the applicants you will have; often it is the small players that come up with good innovative ideas.

GULF OF MEXICO:

This would add a number of new requirements to the review process of EFPs and would be expected to slow the process of approving EFPs and possibly reduce the number of approved EFPs. Reviews would be required by the regional science center and state marine fisheries commission, in addition to the existing review process. Additional analyses would be required supplemental to those already

required (e.g., NEPA, EFH, ESA, and MMPA), which would likely add a burden to NMFS staff time. It is already a requirement for approval that an EFP constitute scientific research and not fishing. Requiring the Governor of each state within the respective Councils' jurisdiction to be consulted about the EFP would not have much impact, as a letter would satisfy the requirement.

It is not clear if the renewal of an EFP for a second year requires the new requirements for review and analysis to be conducted again, or simply to be reviewed and updated, as appropriate. Further guidance would be useful. Timeframes associated with EFP duration should be determined by the underlying information needs and/or science being conducted.

NORTH PACIFIC:
Our fisheries management program has greatly benefited from the use of EFPs, including multi-year EFPs, to test (under field conditions) solutions to management problems. In recent years, for example, fishermen have successfully tested different trawl gear configurations to allow escapement of salmon in the pollock fishery, tested and quantified reductions in mortality of halibut sorted on deck and discarded alive from vessels trawling for flatfish, and tested the efficiency and effectiveness of different electronic monitoring devices on longline vessels. Each EFP proposal undergoes scientific peer review by the Alaska Fisheries Science Center and the Council's SSC to ensure that it is scientifically sound, and each proposal is also evaluated by the Council prior to approval by NMFS. A multi-year EFP allows testing across seasons to evaluate inter- and intra-annual impacts. A NEPA Categorical Exclusion may be issued in cases where no additional catches are requested. The Council is concerned that language requiring EFP applications to provide information on the economic effects of the EFP "in dollars" and in terms of lost fishing opportunities for all sectors would elevate the analysis to a full Environmental Analysis just to examine the effects on all sectors. This would greatly reduce the industry's ability to get EFPs developed and approved in a timely manner. The Council also believes that multi-year EFPs can be critical to testing some solutions to fishery management problems.

The current EFP process is working well for the NPFMC, with a minimum of paperwork and process requirements, and the Council does not see a need for changes or new requirements. If there are problems with the current EFP process in particular regions of the country, then proposed legislation should be applicable only to those regions.

PACIFIC:
The Pacific Council agrees with the comments from the North Pacific Council. In addition, both our groundfish and highly migratory species processes relies on a biennial period for specifications and management measures, including analysis and approval of EFPs for the entire biennial period, if appropriate. Limiting the EFP period to one year would add workload to the Council's and NMFS's approval process.

Topic 14:

DATA TO BE USED IN STOCK ASSESSMENTS

Background

States and fishermen have collected and provided data for stock assessments. There is some dissatisfaction with how or whether the data were used in a stock assessment. Proposed revisions include: defining the term "stock assessment"; requiring the Secretary to develop a plan and schedule for stock assessments for all FMP species within two years; requiring the development of guidelines for incorporation of stock assessment information from a wide variety of nongovernmental sources; requiring such information to be considered "best information available," based upon meeting the guidelines; and requiring the Secretary to develop a "cost reduction report," to assess and compare costs of monitoring and enforcement programs for each fishery (for example, human observers vs. EM).

Consensus Position

The CCC developed the following consensus position:

> *"Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the CCC believes that it would be beneficial for the MSA to include a requirement for the Secretary to develop a comprehensive plan and schedule to address stock assessment needs on a national basis. Increasing stock assessment frequencies and improving stock assessment methods to reduce the uncertainty in setting harvest limits and achieving management objectives will also improve the ability of Councils to establish scientifically-based ACLs, including for those fisheries that are currently considered data limited.*
>
> *In addition, there has been some discussion of establishing guidelines to facilitate incorporation of data from non-governmental sources in fishery management decisions. There are existing legal requirements that govern data collection and quality (e.g., Data Quality Act) that dictate what NMFS is required to use for stock assessments. Data from fishermen, the states, and universities are already considered and evaluated for inclusion in stock assessment, as appropriate for the methodology and use of the data collected. These data sources are reviewed by the assessment analysts and through the peer review process that usually includes the Councils' scientific and statistical committees. The CCC believes prescriptive requirements for use of any data source are not appropriate. The implementing guidelines for when such information should be utilized will be critical to its veracity and usefulness to assessment authors and managers.*
>
> *A cost comparison report on monitoring programs (for example, human observers versus electronic monitoring) would be extremely beneficial to development of such monitoring programs."*

Regional Perspectives

MID-ATLANTIC:

Analytical stock assessments form the foundation for the proper specification of ACLs and ultimately determine the success or failure of our federal fishery conservation and management system. Setting appropriate ACLs and AMs is challenging, if not impossible, without adequate data, yet many federally managed fisheries continue to be defined as "data-poor." Improvement of stock assessments, particularly for data-poor stocks, should be the highest research priority of the National Marine Fisheries Service in both the Northeast and throughout the U.S.

ACL/AM requirements have placed a major burden on the NEFSC to provide the data and analysis needed to set appropriate catch levels and track the performance of fisheries through time as required under MSRA. In the Northeast region, the demands for stock assessments have exceeded the NEFSC's ability to provide high-quality stock assessments at the frequency needed to manage our fisheries as required under the current mandates of the Magnuson-Stevens Act.

The Mid-Atlantic Council's risk policy with respect to the implementation of its Acceptable Biological Catch (ABC) control rules provides a probabilistic framework to set ABC levels, and ultimately ACLs, relative to both the status of the stock and the level of scientific uncertainty associated with an assessment. Under this policy, the Council adopts more conservative harvest levels if stock levels decline and/or if scientific uncertainty increases. Allowable harvest levels—and hence, benefits to society—could be set at higher levels if the stocks we manage were assessed with a higher degree of frequency and certainty. Unfortunately, the information and assessment levels of roughly half of the stocks are insufficient for management under this probabilistic framework, meaning that the SSC and Council must use ad hoc methods of setting ABCs for those species, which is likely resulting in lost yield. Quotas set under these ad hoc methods for data-poor stocks are also less predictable and have resulted in a loss of stability and yield in some of our most important fisheries. Major improvements in the assessment of Mid-Atlantic stocks could be accomplished through increased funding for data collection and analysis to support better and more frequent stock assessments by the NEFSC.

SOUTH ATLANTIC:
The South Atlantic Council is concerned that some of the proposed legislative provisions would be extremely time-consuming and burdensome for both the Scientific and Statistical Committee (SSC) and staff, and appear to duplicate existing avenues of review for information from non-governmental sources. For example, the existing Southeast Data, Assessment, and Review (SEDAR) process already allows for any entity – governmental or otherwise – to submit data via working papers for review during the data and assessment workshop components of the process. Likewise, scientific analyses and conclusions produced by non-governmental entities that have already undergone an external peer-review process (e.g., independent scientific journals) are routinely used during the SEDAR assessments. The Council's SSC has also established a process for conduct of third party (e.g., academics, private consultants) stock assessments, and regularly reviews scientific information for use in management that has been collected by academic scientists independently or in cooperation with fishermen. However, the Council believes that data used in management decisions should be collected in accordance with standards appropriate to the type of information collected and its intended use, and that are designed to minimize associated uncertainty.

GULF OF MEXICO:
Currently, data from fishermen, the states, and universities are already considered for inclusion in stock assessments, if they are provided. Some researchers refrain from sharing data until after publication in a peer-review journal. It is best to let the existing scientific processes determine what constitutes best available science for stock assessments and management decisions.

NORTH PACIFIC:
Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the Council believes the requirements for the Secretary to develop plans and schedules for stock assessment will enhance fisheries management nationally. However, we have some serious concerns with the provision to incorporate information from a wide variety of non-governmental sources, and potentially require that information to be considered 'best information available'. In the North Pacific, the public has opportunity to provide input into the

science and scientific peer review of all issues through testimony and discussions at the SSC and Plan Team meetings, and these bodies regularly hear the views of stakeholder groups, oftentimes in detailed data-based presentations. And we are working to incorporate traditional knowledge into our understanding of the ecosystem. We are concerned that complying with this provision will increase burdens on our staff and our Scientific and Statistical Committee, and invite potential litigation. This makes it especially difficult for the Council to fulfill its responsibilities under MSA. The implementing guidelines for when such information would be utilized will be critical to its veracity and usefulness to managers.

PACIFIC:
The Council is concerned that [provisions described above] would necessitate more staff time and funding, require use of particular sources of data a priori, establish time-consuming--and in some cases duplicative—reporting requirements on what and how data are or are not used, and decrease flexibility of individual Councils. For example, stock assessments would be required for every stock of fish that has not already been assessed, subject to appropriations. The MSA already requires the use of the best scientific information available, and the prescriptive nature of proposed legislation seem to duplicate existing Council processes and could divert staff efforts from other productive work.

WESTERN PACIFIC:
The Council does not believe that all available information would necessarily constitute the Best Scientific Information Available (BSIA). Available information (ranging from anecdotal evidence, to unpublished data, to gray literature, and to peer-reviewed articles) from various sources are at different levels of credibility. Published information from non-government sources may be considered credible but should be considered in the process of generating the stock assessments and incorporated in the analysis for evaluating management recommendation. The incorporation of such information from non-government sources should be done by the science provider generating the stock assessments rather than burdening the SSC with the responsibility of determining whether each piece of information constitutes Best Scientific Information Available. The Western Pacific region developed its regional peer-review process called the Western Pacific Stock Assessment Review (WPSAR). This process guides the review of stock assessment-based and non-stock assessment scientific information used for fishery management. The regional peer-review process is a very tedious and involved process. Additional requirements to review information that is readily available will reduce the efficiency of the WPSAR process. While the Council supports the concept of improving the effectiveness of fisheries management, adding this layer on the National Standard 2 definition of Best Scientific Information Available is problematic.

NORTH PACIFIC:
Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the NPFMC believes the requirements for the Secretary to develop plans and schedules for stock assessment will enhance fisheries management nationally. However, we have some serious concerns with the provision to incorporate information from a wide variety of non-governmental sources, and potentially require that information to be considered 'best information available'. We are concerned that complying with this provision will increase burdens on our staff and our Scientific and Statistical Committee, and invite potential litigation. The implementing guidelines for when such information would be utilized will be critical to its veracity and usefulness to managers. A cost comparison report on monitoring programs (for example, human observers versus electronic monitoring) would be extremely beneficial to development of such monitoring programs.

Topic 15:

DEEMING/TRANSMITTAL PROCESS

Background

The Councils/Regions use different processes to complete an FMP/Amendment and handle the transmittal process from the Council to NMFS for formal review. The MSA provides the following language:

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS (16 U.S.C. 1853)
(c) PROPOSED REGULATIONS. —Proposed regulations which the Council deems necessary or appropriate for the purposes of—
(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and
(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

SEC. 304. ACTION BY THE SECRETARY 16 U.S.C. 1854 (portions related to timing included below)
104-297
(a) REVIEW OF PLANS.—
(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and
(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;
(B) the nature of such inconsistencies; and
(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law. If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

(5) For purposes of this subsection and subsection (b), the term "immediately" means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

Consensus Position

The CCC developed the following consensus position:

> *"The CCC believes that extensive delays in approving Council plans/amendments and implementing regulations can result in confusion and direct economic losses to our recreational and commercial*

constituents. The MSA is rightfully so a measured and participatory process whereby the public get to see and participate in the development of plans/amendments/regulations. After this thorough process, the review and implementation process should conform to the timelines specified in the MSA. The CCC recognizes that resources are limited and that this often results in delays during the NMFS/NOAA GC review process; however, such delays should be minimized for the public's sake and to preserve the integrity of the process."

Regional Perspectives

NEW ENGLAND:

Drafting regulatory text is a complex art that often requires legal advice. For that reason, in New England the initial drafting of regulations is the responsibility of the Regional Office. Council staff assists in the effort prior to the Council deeming the regulations consistent with Council intent. In addition, after the Council takes action on an amendment or framework, we work closely with the Regional Office to make sure that the document is complete before it is formally transmitted to the Secretary. While this can take time, we believe this is worthwhile in order to prepare the best possible document for the Secretary's review. While we always would like our documents to be implemented more quickly, we believe delays can best be addressed through regional coordination rather than a legislative fix.

SOUTH ATLANTIC:

The Regional Office staff draft the codified text for the regulations for review by the Committee and Council to ensure they track the Council's intent. In general, the Council approves all actions at one Council meeting and then Council staff finalizes the document for pre-review by the Regional Office staff and NOAA GC. At the next Council meeting, the pre-reviewed document is presented to the Council for final review and approval for formal review by the Secretary. The Council also approves the codified text for the proposed rule and gives the Council chair authority to approve editorial changes to the final document and codified text. Council staff, Regional Office staff, and NOAA GC give the document and codified text one additional pre-review after the Council's final approval. The Council's goal is to send a document with the codified text to the Secretary of Commerce/NMFS prior to the following Council meeting. The goal of the extensive pre-review opportunities is that once a document is received for formal review, the process can begin immediately. Timely implementation is critical to meeting the need to take action and for the public to see the results of their input to the Council.

The MSA specifies a statutory deadline for reviewing plans/amendments: immediately commence review and immediately publish a Notice of Availability with a 60-day comment period from the day published. The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period. Total time equals 90 days. The MSA defines "immediately" - means on or before the 5th day after the day on which a Council transmits to the Secretary a FMP, Amendment, or proposed regulation.

For Regulations - immediately initiate an evaluation to determine if they are consistent with the FMP, amendment, MSA, and other applicable law within 15 days:

If yes publish for 15-60 day comment period.
If no, notify Council in writing of inconsistencies and provide recommendations to fix.
Final regulations published within 30 days after the end of the comment period.

There is no statutory deadline for review of Regulatory Amendments; however, the statutory deadline for regulations above applies.

Example 1)

- ***Snowy Grouper:*** *Snapper Grouper Regulatory Amendment 20 implemented fishing levels based on SEDAR 36 that showed snowy grouper was no longer undergoing overfishing and catches could be increased. The commercial annual catch limit (ACL) went from 82,900 lbs gutted weight (gw) to 115,451 pounds gutted weight (lbs gw) and the recreational ACL went from 523 fish to 4,152 fish. The commercial trip limit was increased from 100 lbs gw to 200 lbs gw. Additionally, a recreational fishing season was established for snowy grouper from May through August of each year. Snapper Grouper Regulatory Amendment 20 was sent to NMFS on December 2, 2014, and the proposed rule implementing the amendment was published on April 8, 2015 with public comments due by May 8, 2015. The final rule was published on July 21, 2015 and became effective on August 20, 2015. It took 261 days from the date the document was sent to NMFS for the regulations to be implemented.*

Commercial harvest of snowy grouper closed on June 30, 2015 and recreational harvest of snowy grouper closed on July 6, 2015 due to projections indicating that the sector ACLs would be met. Commercial harvest reopened on August 20, 2015 with the implementation of the amendment and the sector was able to fully utilize the increased ACL. Recreational harvest re-opened on August 20, 2015 as well but closed on September 1, 2015, per the new annual recreational season established in the amendment. As a result, the recreational sector was not able to fully utilize its increased ACL. Had Amendment 20 been in place earlier in the year, the recreational sector would have potentially been able to remain open for a longer period of time and more fully utilized the remainder of its uncaught ACL in 2015 of 2,531 fish[1] which had an estimated economic value of approximately $264,000[2] (2015 dollars). Based on recreational landings the following year, it is likely that this increase in catch and value would have been fully realized if the mid-summer closure could have been minimized or avoided.

Example 2)

- ***Dolphin:*** *Amendment 8 to the Dolphin Wahoo Fishery Management Plan adjusted sector allocations of the total ACL in the dolphin fishery to provide a larger portion of the ACL to the commercial sector. The commercial allocation changed from 7.54% to 10% of the total ACL which equated to an increase in the sector ACL from 1,157,001 pounds whole weight (lbs ww) to 1,534,485 lbs ww. Amendment 8 was sent to NMFS on February 25, 2015, the Notice of Availability published on July 15, 2015, the amendment was approved on October 14, 2015, and the proposed rule implementing the amendment was published on September 29, 2015 with public comments due by October 29, 2015. The final rule was published on January 22, 2016 and became effective on February 22, 2016. It took 362 days from the date the document was sent to NMFS for the regulations to be implemented.*

In the meantime, the commercial dolphin fishery experienced above average landings in 2015 and commercial harvest was closed in all Atlantic waters when the commercial ACL was projected to be

[1] Difference between recreational landings and the recreational ACL as provided on the SERO ACL Monitoring Website accessed on July 28, 2016. http://sero.nmfs.noaa.gov/sustainable_fisheries/acl_monitoring/recreational_historical/sa_recreational_historical

[2] Based on a willingness to pay of $102 (2013 dollars) per grouper as provided in the EIS for Snapper Grouper Regulatory Amendment 20 and adjusted for inflation.

met on June 30th, 2015. This commercial harvest closure remained in effect through the end of the year. Traditionally, the longline gear sector lands the majority of their catch between late April and early July. The hook-and-line gear sector typically continues to land dolphin throughout the year. In 2015, the hook-and-line gear sector was not able to fish as they had historically. If the regulatory changes in Amendment 8 had been in place, the commercial sector, particularly the hook-and-line gear sector, would have been able to harvest dolphin over a longer period of time and likely would not have experienced a harvest closure. Also, the commercial sector could have harvested up to an additional 377,484 lbs ww of dolphin that year with an estimated dockside value of approximately $1.1 million[3] (2015 dollars), although the increase in observed harvest may not have fully reached this level based on historic commercial landings.

Example 3)

- ***Black Sea Bass:*** *Snapper Grouper Regulatory Amendment 16 adjusted the seasonal prohibition on the use of black sea bass pots annually from November 1 through April 30. The amendment retained the November 1 through April 30 prohibition on the use of pots but reduced the size of the prohibited area and added enhanced gear marking requirements, with the goal being to minimize adverse socio-economic impacts to black sea bass pot endorsement holders while maintaining protection to whales listed under the Endangered Species Act in the South Atlantic Region.*

Snapper Grouper Regulatory Amendment 16 was sent to NMFS on March 4, 2016, the NOA of the draft EIS was published on October 23, 2015, and the NOA of the final EIS was published on July 1, 2016. The proposed rule implementing the amendment was published on August 11, 2016 with public comments due by September 12, 2016. The final rule was published on December 29, 2016 and became effective on the same date. The 32 vessels in the South Atlantic region with black sea bass pot endorsements were not allowed to fish pots in November and December 2016 because Regulatory Amendment 16 was not yet implemented. Based on the economic analysis in the amendment, not allowing the fishing of black sea bass pots over these two months may have led to forgone economic benefits of approximately $14,700 to $15,700[4] (2016 dollars) in dockside value due to decreased commercial landings. It took 300 days from the date the document was sent to NMFS for the regulations to be implemented.

GULF OF MEXICO:

It is important that past delays in implementation of transmitted actions not continue as delays can have substantial impacts on the fishing public. For instance, a delay in implementation of a king mackerel quota increase prevented the commercial fishery from harvesting available quota for an upcoming fishing year.

PACIFIC:

From the Pacific Council's Operating Procedure 1:

FISHERY REGULATION DEEMING PROCESS
[Procedure for Implementing MSA Section 303(c)]

[3] Based on the average annual dockside price per pound (whole weight) for dolphin in 2015 of $2.79 (2015 dollars) as provided by the Atlantic Coast Cooperative Statistics Program dataset.

[4] Based on the range of economic benefits provided in the EIS for Snapper Grouper Regulatory Amendment 16 converted into a monthly rate over the time period (November through April) and adjusted for inflation ($7,257 to $7,759 per month in 2014 dollars).

In taking final action on Pacific Fishery Management Council (Council) recommendations to adopt a fishery management plan (FMP) or FMP amendment, or to revise regulations implementing an FMP, the Council is deeming that regulations implementing the recommendations are necessary or appropriate in accordance with Section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). In so doing, the Council implicitly requests the appropriate National Marine Fisheries Service (NMFS) Region complete regulatory language to implement the Council's final action. Unless otherwise explicitly directed by the Council, after NMFS has prepared the regulatory language, the Council authorizes the Executive Director to review the regulations to verify that they are consistent with the Council action before submitting them, along with his determination, to the Secretary on behalf of the Council.

The Executive Director is authorized to withhold submission of the Council action and/or proposed regulations and take the action back to the Council if, in his determination, the proposed regulations are not consistent with the Council action. [1]

[1] *In cases where the consistency is in question, the Executive Director is expected to work with NMFS to resolve the issues. Returning the regulations to the Council would be a last resort when questions cannot be resolved without involving the whole Council.*

From the Operating Agreement Among the Pacific Fishery Management Council; NOAA Fisheries Service West Coast Regional Office; NOAA Fisheries Service Northwest Fisheries Science Center; NOAA Fisheries Service Southwest Fisheries Science Center; NOAA Fisheries Service Office of Law Enforcement, West Coast Division; NOAA General Counsel, Northwest Section; and NOAA General Counsel, Southwest Section:

Pacific Council staff will be responsible for reviewing proposed implementing regulations for Pacific Council-developed actions, and for making a recommendation to the Executive Director (and if appropriate, the Pacific Council) that regulations are deemed consistent with Pacific Council intent before transmitting the deeming decision and associated materials to NMFS.

WCR will assist the Pacific Council in the development of fishery management actions, by:

- *Providing advice, guidance, and information on fishery management policy issues and requirements as appropriate, including considerations of administrative costs and complexity, enforceability, timing of the development and implementation of an action, potential obstacles to the approvability of an action in advance of the Secretarial review phase, and regulatory simplification (i.e., how to keep measures and regulations as simple and clear as possible).*

- *Drafting proposed and final rules to implement approved measures, with the accompanying regulatory language, consistent with the Pacific Council's action and intent; providing such rules and regulations to Pacific Council staff in a timely manner to allow for the Pacific Council's regulatory deeming process.*

- *Notification to Pacific Council staff concerning the timing for formal transmittal of Pacific Council action and associated documentation for FMP amendments and other major actions of the Pacific Council.*

WESTERN PACIFIC:
The WPRFMC uses a Regional Operating Agreement (ROA) with NMFS to develop and transmit a FEP/Amendment prior to formal review to hopefully address concerns prior to transmittal.

RESOURCES & DOCUMENTS

Copies of past letters and other materials are available on the Regional Council website on the MSA Reauthorization page: http://www.fisherycouncils.org/msa-reauthorization/.

Comment Letters

- Pacific Council Comments on HR 200, April 2017
- New England Council Comments on HR 200, September 2017
- North Pacific Council Comments on HR 1335, April 2015
- Pacific Council Comments on HR 1335, March 2015
- CCC Comments on MSA Reauthorization, June 2014
- Mid-Atlantic Council Leadership Comments on Senate Staff Discussion Draft, May 2014
- Mid-Atlantic Council Comments on House Discussion Draft, May 2014
- North Pacific Council Comments on House Discussion Draft, April 2014
- Pacific Council Comments on House Discussion Draft, March 2014
- New England Council Comments on House Discussion Draft, February 2014
- Western Pacific Council Comments on House Discussion Draft, January 2014
- Council Coordination Committee Statement, November 2013

Congressional Hearings

Click on the links below for additional information about each hearing, including background documents, complete witness lists, written testimonies, and archived video webcasts.

Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: Fisheries Science, October 24, 2017
U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

Legislative Hearing on 4 Fishery Bills, September 26, 2017
U.S. House of Representatives, Natural Resources Committee, Subcommittee on Water, Power and Oceans

Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: Oversight of Fisheries Management Successes and Challenges, September 12, 2017
U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: Oversight of Fisheries Management Successes and Challenges, August 23, 2017
U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

- Testimony of Mr. Dan Hull, Chairman of the North Pacific Fishery Management Council

Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: NOAA and Council Perspectives, August 1, 2017

U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

- Testimony of Dr. John Quinn, Chairman of the New England Fishery Management Council

Oversight Hearing "Exploring the Successes and Challenges of the Magnuson-Stevens Act", July 19, 2017
U.S. House of Representatives, Natural Resources Committee, Subcommittee on Water, Power and Oceans

Oversight Hearing on Examining the Creation and Management of Marine Monuments and Sanctuaries, March 15, 2017
U.S. House of Representatives, Natural Resources Committee, Subcommittee on Water, Power and Oceans

Magnuson-Stevens Act at 40: Successes, Challenges and the Path Forward, February 23, 2016
U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

Improvements and Innovations in Fishery Management and Data Collection, May 20, 2015
Senate Commerce Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

North Pacific Perspectives on Magnuson-Stevens Act Reauthorization, February 27, 2014
U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

- Statement of Mr. Chris Oliver, Executive Director of the North Pacific Fishery Management Council

Legislative Hearing on H.R. ____ (Hastings of WA), "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act" , February 4 and February 28, 2014
U.S. House of Representatives, Natural Resources Committee

- Testimony of Mr. Richard B. Robins, Jr., Chairman, Mid-Atlantic Fishery Management Council
- Testimony of Ms. Dorothy Lowman, Chairman, Pacific Fishery Management Council

West Coast and Western Pacific Perspectives on Magnuson-Stevens Act Reauthorization, January 30, 2014
U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

- Testimony of Dr. Donald McIssac, Executive Director, Pacific Fishery Management Council
- Testimony of Mr. Arnold Palacios, Chairman, Western Pacific Fishery Management Council

Senate Hearing on Southeast Regional Perspectives on MSA Reauthorization, November 14, 2013
U.S. Senate Committee on Commerce, Science and Transportation

- Testimony of Mr. Douglass W. Boyd, Chairman, Gulf of Mexico Fishery Management Council
- Testimony of Mr. Ben C. Hartig, Chairman, South Atlantic Fishery Management Council
- Testimony of Mr. Carlos Farchette, Chairman, Caribbean Fishery Management Council

Oversight Hearing on "Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act", Sep 11, 2013
U.S. House of Representatives, Natural Resources Committee

- Testimony of Mr. Richard B. Robins, Jr., Chairman, Mid-Atlantic Fishery Management Council

Senate Hearing on Magnuson-Stevens Act – Northeast and Mid-Atlantic Regional Perspectives, July 23, 2013
U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

- Testimony of Mr. Richard B. Robins, Chairman, Mid-Atlantic Fishery Management Council
- Testimony of Mr. John Boreman, Scientific and Statistical Committee Chairman, Mid-Atlantic Fishery Management Council
- Testimony of Mr. C.M. "Rip" Cunningham Jr., Chairman, New England Fishery Management Council

Oversight Hearing on "The Management of Red Snapper in the Gulf of Mexico under the Magnuson-Stevens Fishery Conservation and Management Act", July 27, 2013
U.S. House of Representatives, Natural Resources Committee

- Testimony of Mr. Kevin Anson, Vice-Chairman, Gulf of Mexico Fishery Management Council

Oversight Hearing on "Data collection issues in relation to the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act", May 21, 2013
U.S. House of Representatives, Natural Resources Committee. Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs

Oversight Hearing on "The reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act", March 13, 2013
U.S. House of Representatives, Natural Resources Committee

Oversight Field Hearing on "Fishing = Jobs: How Strengthening America's Fisheries Strengthens Our Economy", August 25, 2012
U.S. House of Representatives, Natural Resources Committee

Oversight Hearing on "Empty Hooks: The National Ocean Policy is the Latest Threat to Access for Recreational and Commercial Fishermen", March 22, 2012
U.S. House of Representatives, Natural Resources Committee, Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs

Legislative Hearing on H.R. 594, H.R. 1013, H.R. 1646, H.R. 2304, H.R. 2610, H.R. 2753, H.R. 2772, and H.R. 3061, December 1, 2011
U.S. House of Representatives, Natural Resources Committee

Oversight Hearing on "NOAA's Fishery Science: Is the Lack of Basic Science Costing Jobs?", July 26, 2011
U.S. House of Representatives, Natural Resources Committee, Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs

Department of Commerce * National Oceanic & Atmospheric Administration * National Marine Fisheries Service

NATIONAL MARINE FISHERIES SERVICE PROCEDURAL DIRECTIVE 01-119-01

July 27, 2016

Fisheries Management

Criteria for Initiating Fisheries Allocation Reviews. Council Coordinating Committee Allocation Workgroup Guidance Document.

NOTICE: This publication is available at: http://www.nmfs.noaa.gov/op/pds/index.html

OPR: F/SF (CCC Allocation Workgroup) **Certified by: F/SF (A. Risenhoover)**

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SUMMARY OF REVISIONS:

Signed _____

Alan Risenhoover

Director, Office of Sustainable Fisheries

Criteria for Initiating Fisheries Allocation Reviews Council Coordinating Committee Allocation Workgroup Guidance Document Approved by the CCC June 24, 2015

Introductory Comments

Fishery allocations can occur at a variety of levels: among countries, communities, sectors within a fishery, gear types within a sector, across seasons, and among individual participants. While allocations between commercial and recreational sectors often figure prominently in fisheries allocations, this guidance document is intended to apply to any type of allocation review Regional Fishery Management Councils (councils) may consider. This Council Coordination Committee (CCC) working group report explores several potential mechanisms for allocation reviews, including criteria based on fishery indicators, time, or public interest. Although the alternatives are not mutually exclusive, the effective implementation of one alternative may ameliorate the need for others.

U.S. marine fisheries and the human interactions with those fisheries are dynamic. Populations in U.S. coastal shoreline counties increased by 34.8 million from 1970 through 2010 (stateofthecoast.noaa.gov). Despite the dynamic nature of these interactions, fisheries allocations are difficult to review and amend.

At the same time, demands for fishery allocation reviews have been increasing. Consider that the ten highest priority recommended actions to improve saltwater recreational fisheries management at the 2014 NMFS Recreational Fisheries Summit included two council-related priorities relevant to the review of allocations: 1) Achieving more equitable council representation and 2) Readjust recreational and commercial allocations.

A number of factors contribute to the challenges in allocation review. Allocation reviews are demanding with respect to the technical work necessary to analyze complex social and economic tradeoffs associated with existing or prospective allocations. In addition, while fishery resources are public trust resources, allocation discussions are inherently politically challenging since they are viewed in zero-sum terms by stakeholders. Despite these challenges, careful consideration of allocation decisions is necessary to meet the mandates of the Magnuson Stevens Fishery Conservation and Management Act (MSA).

The MSA defines optimum yield as "the amount of fish which—
"(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities,..." Allocation is immediately relevant to achieving optimum yield.

Allocation review mechanisms should provide transparent processes for adequate reviews of allocations to ensure that U.S. fisheries are managed to achieve National Standard 1. While the demographic composition of some regional councils closely mirrors that of the commercial and recreational fisheries within a specific region, some councils do not have significant recreational representation among their political appointees. Asymmetrical council compositions further underscore the need for well-defined and transparent processes to ensure fairness and responsiveness to the issue of allocation.

Regardless of the mechanism ultimately used to trigger an allocation review, councils may benefit from developing and maintaining a prioritized schedule for review of allocation issues. Such an effort could provide for a more orderly consideration of this topic and help manage expectations among stakeholders and managers.

In order to address the above issues the CCC Allocation Working Group proposes a protocol based on adaptive management consisting of three separate steps: (a) Triggering an allocation review; (b) the allocation review; (c) and if deemed necessary by the review, a reallocation action to amend the FMP. Critical aspects are the decision threshold for initiating an allocation review and the subsequent reallocation action. The focus of the CCC working group's exploration is the first of those steps – triggering an allocation review. Therefore, the remainder of this document is organized as follows:

A. Adaptive Management
    1. Introduction
    2. Goals and objectives of the allocation decision as criteria for triggering allocation review

3. Defining the management action for potential review
4. Monitoring the achievement of management goals and objectives and the effects of the allocation
5. Evaluating the achievement of management goals and objectives and the impacts of the allocation
6. Adapting in response to evaluation and learning
7. Reconsidering management goals and objectives

B. Definitions
1. Statement of Purpose
2. What are the steps involved in adaptive management of allocation decisions?
3. What is an allocation review?
4. What is a reallocation action?

C. Three approaches to triggering allocation reviews
1. Public interest-based criteria
   a. Ongoing public input on fishery performance
   b. Solicitation of public input on fishery performance
   c. Formal petitions
2. Time-based criteria
3. Indicator-based criteria
   a. Economic criteria
   b. Social criteria
   c. Ecological criteria

Adaptive Management

Introduction

The concept of adaptive management –evaluating successful attainment of management objectives and adjusting strategies in response – has been thoroughly explored in natural resource management literature. While the discussion of requiring a review of allocation decisions by councils has emerged more recently, it is one that contemplates an adaptive approach to one of the most challenging and controversial aspects of federal fisheries management. This section characterizes important considerations in identifying the need to review allocation decisions in the context of adaptive management and its process components.

The working group notes the importance of a common understanding regarding what is meant by “review.” To this end, the working group clarifies that “review” is the evaluation described in the preceding paragraph that leads to the decision of whether or not the development and analysis of new alternatives is warranted, and is not, in and of itself, an implicit trigger to consider new alternatives. Instead, the identification of purpose and need for an action and the development of action alternatives (re-allocation) should occur in response to allocation review findings that a re-allocation is warranted.

Establishment of management goals and objectives

The foundation of the active adaptive management process described in this section is the articulation of management goals and objectives upon which management measures

are based, monitoring is designed and implemented, and analysis is focused. This assumes, however, that the goals and objectives on which the original allocation decision was based remain relevant and that ecological, social, and economic conditions do not indicate consideration of different goals and objectives.

A council should consider the contemporary relevance of previously stated goals and objectives and revise its goals and objectives for the fishery and the allocation as appropriate. New goals and objectives or significant revisions to existing ones may necessitate an allocation review, even if those identified at the time of the original action have been met.

It should be made very clear that updating and maintaining contemporary fishery management plan objectives is essential and will likely require considerable effort. The selection of the proper management objectives is critical because they are the "indicators" that are to be used when ascertaining that the current allocation is appropriate. This is important for two reasons. First, it will ensure that the proper criteria are used to judge success and it will narrow the range of inquiry that staff will have to focus on to support the decision. To be specific, the material in both the CCC document and the NMFS document on possible indicators to consider will be very useful in framing the discussion on the selection of management objectives but they should not be viewed as a mandatory list of needed research. The research should focus on the indicators relevant to the selected fishery including its management objectives.

Goals and objectives of the allocation decision as criteria for triggering allocation review

Clearly articulated goals and objectives for an allocation action as informed by broader FMP goals and objectives are the foundation upon which to base allocation decisions and serve as essential criteria for evaluating whether or not a review of such decisions is warranted. The original record of a council decision should therefore be closely examined and thoroughly understood by a council considering an allocation review, as should any expression of expected outcomes (improvements or changes in the social, economic, and ecological performance of the fishery) resulting from the allocation. To the extent that the original record does not include a description of expected outcomes of the allocation decision, the council should consider identifying potential outcomes that logically flow from the action for use as criteria in reviewing the need for an allocation review.

It is important to note that a council's goals and objectives associated with an allocation decision may reach beyond the simple intent to make an orderly division of access to the resource and could reflect or reinforce broader management objectives as detailed in an FMP. Management objectives could include issues such as achievement of optimum yield, maintaining equity among states, providing for the sustained participation of coastal communities, etc. that can be addressed through allocation.

Defining the management action for potential review

When considering the need for allocation review it is important to clearly identify the action or actions that represent the "allocation decision." In some cases this may be straightforward, as with an action that allocates percentages of a resource to two or more long-established fishery sectors.

More often it is the case that allocation actions include multiple decision points —rather than a single, well-defined action – such as identifying and defining specific fishery users or sectors, limiting access to other fisheries by allocation recipients, managing effects of incidental bycatch on other sectors or fisheries, and other measures intended to support implementation of the allocation and mitigate unintended impacts. In these instances, councils should carefully consider the scope of decision elements that comprise the "allocation" for which a review is being considered. A failure to address the appropriate scope of management components and to ensure that the set of included decision elements represent "the allocation" could result in misguided conclusions regarding the need to review an allocation.

Impacts and outcomes of allocation decisions can be observed at a variety of levels within the fishery, from individual participants, to subsets of participants and stakeholders, to sectors, communities, states, etc. For purposes of establishing indicator and public interest-based criteria for allocation review, careful attention should be given to the scope of consideration or standing; triggering review of an entire allocation decision in response to an isolated or small-scale challenge may prove destabilizing to a fishery at large.

Many management actions have, indirectly, some allocative impacts and effects. Closure of near shore fishing grounds to protect habitat may, for example, constrain access to a fishery by small vessels while favoring access by larger vessels capable of fishing further from shore. While such outcomes should come under review by councils and may warrant a management response, these indirect effects are not the focus of this document.

Monitoring the achievement of management goals and objectives and the effects of the allocation

Active adaptive management requires the design and use of monitoring systems that will collect data useful for evaluating the outcomes of management decisions. The quantity and quality of data available for analysis to inform the review of an allocation decision should be carefully assessed and is an important criterion for triggering an allocation review; it is challenging at best to evaluate the achievement of management goals and objectives without reliable data from the fishery and communities. To the extent that existing data collection programs are not contributing to the monitoring of allocation decision outcomes and impacts, efforts should be made to design and implement an effective monitoring system.

Evaluating the achievement of management goals and objectives and the impacts of the allocation

In the multi-step process described in this document, this evaluation is achieved through the consideration of indicators to trigger an allocation review and, if indicated, the allocation review itself. Evaluating the extent to which allocation and broader FMP goals and objectives have been met through an allocation's implementation and ecological, social, and economic impacts associated with the action is the critical component of an adaptive approach to management and of any consideration of the need for allocation review. It is the process through which a council might identify the need to initiate a formal review of an allocation decision or find that implementation of an allocation was successful in meeting its goals and did not result in unanticipated negative impacts.

Adapting in response to evaluation and learning

This component of active adaptive management would be the potential result of an allocation review and would therefore occur only if previous analytical steps indicated the need for such a review. It represents the consideration of reallocation alternatives when indicated by an allocation review.

It is important to note that the recommendations contained herein are based on the assumption that a council's management goals and objectives as related to an FMP, specific management actions, or otherwise, are subject to periodic review and adaptation and are relevant and/or contemporary at the time of consideration for triggering an allocation review, of conducting an allocation review, and of taking a reallocation action.

Definitions

Statement of purpose:

In order to keep to keep allocation policy and decisions responsive to social, economic, and ecological change it is necessary to consider those polices and decisions from time to time.

What are the steps involved in adaptive management of allocation decisions?

Adaptive management of allocation decisions is a sequence of up to three steps consisting of (a) triggering an allocation review according to time-based, public interest-based, or indicator-based criteria; (b) an allocation review; and (c) if the results of the review so indicate, an reallocation action. The working group addressed (a), the criteria for triggering an allocation review.

What is an allocation review?

An allocation review is a structured review of current allocations based on adaptive management (i.e., evaluating successful attainment of management objectives) to determine if further action is required. The purpose is to determine if current management objectives are being achieved through the existing allocation, with the caveat that management objectives are up to date and address the relevant operational, economic, social and ecological aspects of the fishery, including new and expected changes in such things as climate, demography, technology, etc. If it is determined that minimum threshold criteria for meeting management objectives are not being achieved under the existing allocation, then a Reallocation Action should be initiated and new allocation alternatives identified. Otherwise, no further action is required until an allocation review is triggered once again.

What is a reallocation action?

A reallocation action is a formal procedure to amend a FMP to allow for a reallocation of access to fishery resources that follows normal amendment procedures such as scoping, developing a statement of purpose and need for action, developing alternatives (one of which is a no action alternative), assessing the effects of implementing different alternatives, and selecting a preferred alternative.

Three approaches to triggering allocation reviews

This document identifies considerations associated with the design and application of three types of allocation review triggers: 1) public interest-based triggers; 2) time-based triggers; and 3) indicator-based triggers. It is important to note that while this document offers guidance on what aspects of fishery indicators might be considered in triggering an allocation review, monitoring, evaluating, and responding to fishery performance is foundational to adaptive management and the council process. Use of public interest or time-based criteria for triggering allocation review is not mutually exclusive to ongoing formal and informal evaluation of fishery performance and outcomes. This points out as well some inter-relatedness among review trigger criteria options. For example, some forms of public interest criteria are driven and informed by the public's perception of fishery performance.

It is unlikely that one type of criterion serves as the best allocation review trigger for all fisheries. Councils should carefully consider the attributes, dynamics, and relationships of and among various trigger criteria and choose approaches that best fit a specific fishery. Councils may choose to establish different criteria at the species, fishery, or FMP level. This includes species that are managed internationally, but for which a council may have authority for a domestic quota allocation. When applying time-based criteria to a number of fisheries, intervals between reviews of specific allocations may reflect prioritization for review based on specific fishery attributes where the size, variability, or inter-sector dynamics of a fishery may indicate more or less frequent review.

It should be noted that in some instances review trigger criteria are complementary. This is a particularly important dynamic when considering the use of some public interest-based trigger criteria. When considering the use of ongoing or council initiated public comment, the elements identified in the indicator-based criteria may be useful in the council's determination of need of an allocation review.

Within three years of the issuance of this guidance, or as soon as practicable, it is recommended that councils establish transparent criteria for triggering allocation review for all fisheries that have allocations between sectors (e.g. commercial, recreational, for-hire, gear-specific, international, etc.) In the case of fisheries managed under catch shares, councils may choose not to review allocations made to individual fishery participants, but rather consider review of allocations between sectors.

In addition to determining the trigger or triggers that a council will use for initiating review of specific allocations, councils should also develop a structured and transparent process by which allocation reviews will be conducted, including consideration of current council priorities, other actions under deliberation, and available resources.

Trigger basis		Timing	Decision Criteria	Outcome	Source of Guidance	Comments
Step 1: What triggers an allocation review?						
Public interest	Ongoing public input on fishery performance	Ongoing – decision to initiate review may occur at any time	See indicators – is review indicated?	If indicated, allocation review initiated. If not, continue Step 1.	CCC Working Group Paper	From a timing standpoint, this approach is similar to status quo.
	Solicitation of public comment regarding allocation review	Ongoing – decision to solicit public comment may occur at any time	See indicators – is review indicated?	If indicated, allocation review initiated. If not, continue Step 1.	CCC Working Group Paper	Public comment regarding the need for allocation review may be triggered by early indicators that FMP or management objectives are not being met.
	Public interest: Formal petitions	Ongoing – public may submit petition at any time	Does public petition have standing?	Public petition with standing may trigger review.	CCC Working Group Paper	This approach requires an allocation review without consideration of timing or indicators.
Time		Specific time intervals (7 -10 years)	None – response to scheduled review non-discretionary	Allocation review automatically triggered	CCC Working Group Paper	This approach requires an allocation review without consideration of indicators.
Indicators		Ongoing – Indicators may be evaluated at any time	Is review indicated per social, economic, or ecological criteria?	If indicated, allocation review triggered. If not, continue Step 1.	CCC Working Group Paper	From an evaluation standpoint, this approach is similar to status quo.
Step 2: Allocation Review: Is consideration of new allocation alternatives justified?						
See above		See above	Are the FMP and allocation objectives still relevant? Are they being met? What's changed?	If objectives not being met, then a reallocation is initiated	NMFS Working Group Paper	It is assumed that that a council's management goals and objectives are current at the time of consideration for triggering an allocation review, of conducting an allocation review, and of taking a reallocation action.
				If objectives are relevant and are being achieved, then no further action. Continue Step 1.		
Step 3: Initiating consideration of new allocation alternatives: should there be a reallocation and what needs to be considered?						
Conclusion through allocation review that reallocation is warranted		See above	What alternatives will meet FMP and allocation objectives?	Selection of a preferred alternative	NMFS Working Group Paper	

Public interest-based criteria

If a council develops effective indicator or time-based allocation review mechanisms, then a public-interest review trigger mechanism may not be necessary. However, if those review mechanisms are not established, or if they are not responsive to changing conditions within a fishery, then a public-interest review mechanism could be used to trigger an allocation review.

The U.S. regional fishery management council system is transparent and open to public input throughout the process. Councils implement extensive work plans throughout the year, and manage some regulatory initiatives, including plan amendments, over the span of several years. Managing to meet the councils' statutory requirements and other competing priorities requires effective planning, which typically includes an annual priority-setting process. Ideally, public input on the need to review a specific fishery allocation would feed into this process to enable an orderly consideration of the question, in the context of competing priorities and organizational resources.

This guidance addresses the solicitation or consideration of statements of public interest at three different levels within the regional fishery management council process:

1. Ongoing public input on fishery performance
2. Solicitation of public comment regarding allocation review
3. Formal initiatives

Ongoing public input on fishery performance

As noted above, the council process is open, transparent, and offers frequent opportunities for public comment and input. This dynamic establishes a feedback loop between the council and the public in regard to both the specific issues under the council's consideration and broader indicators of fishery performance. Given the extent to which the impacts of allocation decisions are associated by the public (both through direct observation and perception) with fishery performance, public interest in allocation review is likely to be expressed at many points within the council process and in reference to a variety of fisheries management issues.

This feedback loop of ongoing public comment is a valuable opportunity for the public to express interest in allocation review, and for the council to gauge how effectively allocation objectives are being met. It also serves as an opportunity for the council to understand and evaluate the extent to which allocation lies at the root of fisheries management challenges, and the need to initiate allocation review may be indicated through this process.

Solicitation of public comment regarding allocation review

Councils may choose to engage in allocation review "scoping discussions" with stakeholders and other interested parties. Unlike the collection of feedback through ongoing public comment described above, this process is deliberate and specifically

targets public input on the need for allocation review. Councils rely on outreach and information-gathering mechanisms to achieve public input including the solicitation of written comments, scoping discussion at council meetings, and port meetings and other community engagement strategies.

One of the benefits of this approach to consideration of triggering allocation review is that it is focused directly on the allocation and the necessity for potential review rather than on the secondary and tertiary impacts of the allocation. An additional benefit to this strategy is the council's ability to dictate a schedule. While more demanding of time and resources than identification of allocation review triggers in the course of ongoing public comment, the process for soliciting, receiving, and considering public input can be designed by the council and scheduled in a manner that does not conflict with other council initiatives and priorities.

When considering the solicitation of public input regarding allocation review, councils should be aware of, and sensitive to, the expectations among stakeholders that could develop as a result of the council indicating interest. The council should carefully consider its ability (resources and capacity) and willingness to follow through with an allocation review if warranted before reaching out to the community for focused input.

Formal petition mechanism

The first two approaches to gathering, evaluating, and responding to public input are already possible within the current regional fishery management council system. In both cases, the decision to initiate the review would rest with the council. A stronger public-interest review mechanism could include a provision for a stakeholder request or petition requesting review, together with a requirement for a Council to initiate an allocation review within a reasonable period of time. Such a provision would have more potential to impose a cost on a council's established work plan and priorities but would provide another mechanism to ensure that allocations receive due consideration in response to public concern. If such a mechanism is established, it may be appropriate to incorporate indicator-based criteria to establish a minimum threshold for initiating review.

Any petition-based review process should establish requirements that identify specific conditions or outcomes upon which such requests may be based. In addition, councils should include establishment of guidelines for petitions. While a council has discretion to determine whether or not to move forward with an allocation review as per the requirements it establishes under a petition-based process, it should at least respond to the *request* for a review under this process. This response could be a simple as a letter to the petitioner(s), explaining the council's rationale for its decision (e.g., petition did not meet conditions for consideration, lack of standing by petitioners, etc).

Time-based criteria

Establishment of a time-based trigger has figured prominently in recent discussions regarding allocation review, including provisions for periodic allocation review in

several MSA re-authorization drafts. In several respects periodic allocation review on a set schedule is the most simple and straightforward criterion for triggering an allocation review; the approach is unambiguous and less vulnerable to political and council dynamics. That said, the attributes of simplicity and the mandate of a strict schedule render time-based criteria less sensitive to other council priorities and the availability of time and resources to conduct an allocation review.

Time-based triggers for initiating allocation review might be most suitable for those fisheries or FMPs where the conflict among sectors or stakeholder groups make the decision to simply initiate a review so contentious that use of alternative criteria is infeasible. In such a situation, a fixed schedule ensures that periodic reviews occur regardless of political dynamics or specific fishery outcomes. Given the inflexible nature of time-based triggers, however, it is recommended that they be used only in those situations where the benefit of certainty outweighs the costs of inflexibility.

The inflexible nature of time-based triggers can impact both the work and effectiveness of the council as well as the outcomes of the allocation process itself. As noted above, fixed, time-based triggers for review may conflict with other council priorities. To the extent that those priorities include consideration of actions to mitigate significant social, economic, or conservation concerns, adherence to a fixed review schedule may prevent a council from achieving significant and beneficial management outcomes while achieving at best marginal improvements through allocation review. Given the fact that there is potentially no relationship between the pace at which fishery performance evolves and a fixed schedule for allocation review, use of such a trigger creates the potential of a significant expenditure of council time and resources with little need for review or likely improvement in fishery performance.

Time-based triggers for review may impede stability in subject fisheries. To the extent that reviews are conducted on a regularly scheduled basis, there is an incentive for sectors receiving allocations to continuously employ operational and political tactics to improve their allocation at the next review. The assurance of a “new” allocation review may as well encourage speculative entry into subject fisheries. When considering the adoption of a time-based review trigger, care should be taken to identify if and to what extent the process is likely to be manipulated or “gamed”, and measures to minimize that activity should be considered.

The selection of review intervals using time-based triggers should be informed by fishery characteristics, data availability, and council resources. Newly developed or rapidly changing fisheries may warrant more frequent review, while established fisheries with stable participation and performance can likely be reviewed less frequently. Whether following an initial allocation or a re-allocation, the timing of further review should accommodate the collection and analysis of a data series from which meaningful and accurate review and analysis can be achieved. The five-year initial review and subsequent reviews every (up to) seven years of limited access privilege programs (LAPPs) as required under Section 303A of the MSA may indicate a desirable minimum interval between reviews. Similarly, the 10-year durability of LAPP permits may suggest a maximum interval for time-based review triggers.

Indicator-based criteria

The MSA requires that fisheries be managed for Optimum Yield (OY), which is Maximum Sustainable Yield (MSY) as reduced by relevant social, economic and ecological factors. In defining OY, the NS1 guidance provides that these factors should be "quantified and reviewed in historical, short term and long term contexts." Furthermore, it recommends that each FMP should contain a mechanism for periodic review of the OY specification, in order to respond to changing conditions in the fishery. In establishing indicator-based metrics for review of allocations – whether among sectors (e.g., commercial, recreational, for-hire, gear, international, etc.), within a sector (e.g., among catch share recipients), or for purposes such as bycatch accounting –it is logical to apply similar parameters to an allocation review as to an OY review, particularly if the goals and objectives of an FMP specifically address these items. In support of such an approach, the NS4 guidance states that allocation decisions should be "rationally" linked to attaining OY, and/or to the objectives of an FMP. It follows that selection of indicator-based criteria to trigger an allocation review should inherently be linked to those same objectives. In the interest of public transparency and clarity, councils may even consider establishing an objective that is specific to allocation within an FMP.

A time component is inherent in any indicator-based criteria for review of allocations, whether explicitly included (e.g., achieving a desired economic efficiency within XX years) or not. Evaluating a criterion used in establishing an allocation, particularly if it requires the addition of ensuing years of data to a quantitative analysis, indirectly applies a timeframe for review.
There are several categories of indicator-based criteria to consider as triggers for initiating review of allocations, all stemming from the definition of OY: social, economic and ecological. Ideally, the rationale for an initial allocation decision would consider a mix of criteria from all categories, although data limitations may preclude quantitative consideration. This could impact the ability to set an objective, specific review trigger for a particular criterion.

It follows that use of several criteria, either singly or in combination, and across multiple categories, may be optimal when using indicator-based criteria as a trigger for an allocation review. For example, a council may select one social, one ecological and one economic criterion as indicators, and define the "trigger" for review as any two of the three criteria meeting predetermined limits. This clearly defines the minimum threshold to trigger an allocation review. Taking this example to Step 2 (as per Table 1), consideration of allocation alternatives may occur if the selected indicators meet established limits within a particular timeframe, effectively combining indicator- and time-based triggers in order to ensure an adaptive management approach. As noted above, it may be difficult to set measurable values as triggers for indicator-based criteria, and use of quantitative thresholds is likely to be more the exception than the norm. In such cases, qualitative triggers should be considered to ensure that FMP goals and objectives are addressed.

In selecting indicator-based criteria, it is important to recognize there are factors that are not in and of themselves measurable metrics for a particular criterion or set of criteria; however, they may impact selected criteria and thus influence the "triggering" of a review. These factors may include acquisition of new data, natural disasters, etc. that are not necessarily measurable on their own, but can impact measurable criteria from any of the three categories.

Finally, while there is overlap in the discussion of indicator-based criteria in this document with the NMFS guidance document, the purpose of the two documents is different. The latter document refers to the indicators below as "factors" (in addition to many others) to be considered by councils in the context of establishing initial allocations, or if a re-allocation action is undertaken. The CCC document discusses their use as one of three possible types of triggers for an allocation review. While some overlap is inevitable, the context in which that overlap occurs is important.

Economic Criteria

While the quality and quantity of fisheries economic information has improved over the years, there may be instances in which a disparity exists in the available data for one or more industry sectors, user groups or communities impacted by an allocation decision. This should be explicitly noted and accounted for should quantitative economic criteria be selected by councils as a trigger for allocation review. Because economic outcomes are often closely tied to social outcomes, links between economic and social triggers should also be acknowledged (Jepson and Colburn 2013).

The NS5 regulations prohibit the establishment of allocations for economic purposes alone, however, economic efficiency "shall" be considered where practicable. Multiple economic tools are available to assist in establishing indicator-based triggers for review: cost-benefit analysis, economic impact analysis, and economic efficiency (Edwards 1990; Plummer et al. 2012). However, public understanding of the differences between and proper use of these tools is often limited[1]. Whatever the economic triggers for allocation review, it will be of utmost important to explain the tool(s) used in plain language that stakeholders can understand. Although not all sectors of the public may agree with the criteria or trigger value, public understanding of the tool is critical to its acceptance as a means of informing both an initial allocation decision and its subsequent review. Failure to achieve a desired economic efficiency within a particular timeframe, and unanticipated or greater than anticipated/analyzed costs (e.g., outside of a certain error level) are examples of triggers for initiating a review of allocation decisions.

[1] For example, constituents often cite the results of economic impact analyses as justification for allocation of resources to a particular user group. However, the peer-reviewed economic literature clearly states that cost-benefit analyses, not economic impact analysis, are the appropriate tool for informing allocation decisions.

Social Criteria

As noted above, social and economic impacts are often linked, and changes in social criteria may lead to changes in economic criteria and vice versa. National Standard 8 requires that management measures account for social and economic impacts to communities, as well as provide for "sustained participation." This is defined in the NS8 guidelines as "continued access" to the resource, depending on resource condition.

A number of studies and technical memoranda have been published detailing the development and measurement of social metrics such as community resilience, vulnerability and well-being. Jepson and Colburn (2013) describe categories of indices -- social, gentrification, fishing dependence-- that can be used to estimate social impacts of management decisions at the community level. Councils may choose to select several indices among the above categories or an entire category of indices as indicator-based criteria to trigger an allocation review. The methods used in Jepson and Colburn provide a quantifiable means of tracking the potential social impacts of an allocation decision. As alluded to earlier, setting a minimum threshold (e.g., a 0.5 standard deviation change in a social index score, etc.) or a timeframe (e.g., every three or five years) for undertaking a review of selected criteria will ensure that a fishery is not in a constant state of "allocation flux," again illustrating the inter-relationship of the various criteria discussed in this document. While councils may lack a quantitative means of developing social criteria, use of public-interest based criteria may provide a means for doing so (e.g., public input regarding loss of processing capacity or tackle shops in a community), or for establishing qualitative criteria.

Finally, for many communities, social change can be closely linked to ecological change (i.e. a sudden harvest moratorium as a result of a stock assessment; Jepson and Colburn 2013). While ecological criteria for allocation review are addressed in the following section, this relationship is worth noting as it further demonstrates that the categories of indicator-based criteria do not exist independent of one another.

Ecological Criteria

Ecological criteria may be considered some of the most self-evident criteria for triggering an allocation review. Changes in fishery status resulting from a stock assessment, undocumented sources of mortality (fishing or otherwise), increases in discards, changes in species distribution and food web dynamics are all examples of factors that may influence an allocation review. However, as noted previously, not all of these factors are necessarily measurable, indicator-based metrics that the councils have any control over. Measureable criteria that could be considered are failure to end overfishing within a specified timeframe, failure to achieve or rebuild to a certain level of abundance, a significant increase in discard mortality from a particular sector, significant changes in landings (e.g., an increase/decrease greater than one to two standard deviations within a three-year timeframe, etc.). As with social metrics, public-interest based criteria may at least provide a means of establish qualitative ecological criteria (e.g., anecdotal evidence of changes in distribution, discards, size of fish, etc.).

References

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Fisheries Management
Fisheries Allocation Review Policy

RECOMMENDED PRACTICES AND FACTORS TO CONSIDER WHEN REVIEWING AND MAKING ALLOCATIONDECISIONS

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Signed _____
Alan Risenhoover
Director, Office of Sustainable Fisheries

Recommended practices and factors to consider when reviewing[1] and making allocation decisions

Background

An allocation (or assignment) of fishing privileges is defined by the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) as "a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals" 50 CFR 600.325(c)(1)[2]. The Magnuson-Stevens Fishery Conservation and Management Act (MSA)[3] as well as other guidance or policy documents written by NOAA or NMFS include provisions, guidance, or information relevant to allocation decisions (see Appendix A for details). The guidance provided here does not modify or supersede any guidance associated with the National Standards, other provisions of the MSA or other applicable laws; rather, it is intended to help the Councils and NOAA review and update allocations under the MSA. Allocation can be across jurisdictions (e.g., state, regional), across sectors (e.g., commercial, for-hire, private anglers, tribal, research), and within sectors (e.g., individual fishermen, gear types). Allocation of fishery resources is a complex issue facing

[1] For the purposes of this document "review" is the evaluation that leads to the decision of whether or not the development and analysis of alternative allocations is warranted, and is not, in and of itself, an implicit trigger to consider alternative allocation.
[2] www.nmfs.noaa.gov/sfa/laws_policies/national_standards/documents/national_standard_4_cfr.pdf
[3] www.nmfs.noaa.gov/sfa/laws_policies/msa/documents/msa_amended_2007.pdf

fishery managers because of the history and tradition of access to fishery resources, the perceptions of equity that arise with allocation decisions, and differences in the economic and social values competing user groups place on those resources. In addition, fisheries management is not static and should be adaptable as environmental, ecological, social, and economic influences change. Therefore, allocation decisions need to be considered in the context of adaptive management.[4]

In 2011, NMFS issued a contract for an outside entity to interview stakeholders about allocation issues. The report (Lapointe, 2012)[5] is the first comprehensive compilation of fisheries allocation issues. NMFS commissioned the report to facilitate a productive discussion about allocation decisions and socio-economic objectives for fisheries management. It summarizes input from discussions with a wide range of stakeholders and suggests five steps NMFS can take to address allocation issues: 1) increase stakeholder engagement in allocation decisions, 2) increase biological and social science research and data, 3) periodically review allocation decisions, 4) compile a list of past allocation decisions, and 5) create a list of factors to guide allocation decisions.

This document addresses the fifth recommendation by providing a summary of recommended practices and guidance on allocation factors that a Regional Fishery Management Council (Council)[6] should consider when making allocation (initial or reallocation) decisions. The factors are drawn from, or are relevant to, MSA provisions and other legal mandates and thus should already be considered in the fisheries management process. The recommended practices are ideas that could improve the allocation process by increasing transparency and minimizing conflict. The Council Coordinating Committee created a companion document[7] that describes triggers that can be used to determine when to review allocation decisions, addressing the Lapointe report's third recommendation. For the other three recommendations, NMFS has published two technical memorandums that contain a list of past allocation decisions[8, 9] and is continuing to work to increase stakeholder engagement and biological and social science research.

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[4] We describe adaptive management as the on-going process of evaluating if management objectives have been met and adjusting management strategies in response. We do not include large scale scientific manipulations aimed at answering scientific questions.

[5] Lapointe, GD. 2012. Marine Fisheries Allocation Issues: Findings, Discussions and Options. George Lapointe Consulting LLC.58 pgs. External Assessment Completed for NMFS (December 2012). Available: www.nmfs.noaa.gov/stories/2013/01/docs/lapointe_allocation_report_final.pdf

[6] Throughout this document, guidance for Fishery Management Councils also pertains to Atlantic High Migratory Species Secretarial actions.

[7] NMFS Procedural Directive 01-119-01, Criteria for Initiating Fisheries Allocation Reviews, Council Coordinating Committee Allocation Working Group Document. http://www.nmfs.noaa.gov/op/pds/documents/01/119/01-119-01.pdf

[8] Morrison, W.E., T.L. Scott. 2014. Review of Laws, Guidance, Technical Memorandums and Case Studies Related to Fisheries Allocation Decisions. U.S. Dept. of Commerce. NOAA Technical Memorandum NMFS-F/SPO-148, 32 p. www.nmfs.noaa.gov/sfa/laws_policies/national_standards/documents/morrison_scott_nmfs_f_spo_148.pdf

[9] Plummer, M.L., Morrison, W., and E. Steiner. 2012. The Allocation of Fishery Harvests under the Magnuson-Stevens Fishery Conservation and Management Act: Principles and Practice. U.S. Department of Commerce, NOAA Tech. Memo NMFS-NWFSC-115, 84 p. www.nmfs.noaa.gov/sfa/laws_policies/national_standards/documents/plummer_allocationfishharvests_tm115_web_final.pdf

Recommended Practices When Reviewing and Making Allocation Decisions

Several recommended practices would improve the allocation process by increasing transparency and minimizing conflict. A list of recommended practices is below, although it should not be considered comprehensive and may not be applicable to all circumstances.

a. **Evaluate and Update Council and Fishery Management Plan (FMP) Objectives.** Council fishery management decisions often involve trade-offs (e.g., between management objectives within a fishery, or between two fisheries under the Council's jurisdiction). For example, maintaining employment may be in conflict with improving economic efficiency. Similarly, long-term goals related to rebuilding stocks may also be in conflict with short-term goals of minimizing impacts on fishery-dependent communities. Updated and measurable objectives help clarify decisions about these trade-offs within and between FMPs. If FMP objectives are not current, clear, or measurable, a Council should re-assess the FMP objectives prior to or concurrent to initiating the allocation discussion.[10] In addition, the Council should use a transparent process for analyzing and determining trade-offs between FMP objectives and/or FMPs.

b. **Identify User Needs**.
The specific needs and interests of the different types of fishery participants or sectors within a fishery may vary. For example, recreational fishermen may be more interested in stable fishing opportunities than absolute numbers of fish retained. Therefore, articulating the needs of each type or sector should be completed near the beginning of the allocation discussion to facilitate identification of alternatives, which may reduce conflict. Once user needs are identified through a public process, those needs should be communicated and publicly available.

c. **Minimize Speculative Behavior.**
To limit situations which may lead to speculative behavior or practices[11] whenever allocations are being considered, the Council should consider announcing a control date for a given fishery, by sector as appropriate, which is published by NMFS as an advance notice of proposed rulemaking. The control date provides notice that, if an allocation decision is made in an FMP or FMP amendment, there is no assurance that any entrance or increased effort into a fishery beyond said date will be used to determine allocations. Announcing a control date is common practice when creating limited access and catch share programs, but could also be used for allocation decisions between gear types, sectors, or groups.

d. **Plan for Future Conditions.**
To plan for future conditions, Councils may consider adopting in an FMP or FMP amendment mechanisms for implementing actions in an expedited manner, where

[10] For general information on FMP objectives in the National Standard Guidelines, *see* 50 C.F.R. § 600.305(b): http://www.fisheries.noaa.gov/sfa/laws_policies/national_standards/documents/national_standards_general_cfr.pdf.
[11] For example, if fishermen expect future allocations to be based on catch history, they may decide to increase catch in order to improve their catch history, etc.

appropriate and as consistent with the MSA, Administrative Procedure Act, National Environmental Policy Act, Executive Order 13653, and other applicable law. [12] For example, the Bering Sea and Aleutian Islands FMP includes pre-arranged "if/then" allocations for yellowfin sole between two sectors depending on the total allowable catch (TAC). If the TAC for the two sectors is greater than 125,000 metric tons (mt), then the first sector is allocated 60 percent; if the TAC for the two sectors is less than 125,000 mt, then the first sector receives an increasing apportionment.[13] The Mid-Atlantic bluefish FMP provides an example of a mechanism that incorporates more discretion than the example provided above. The Mid-Atlantic bluefish allocation is currently set as 83% recreational and 17% commercial.[14] However, the FMP states that if the recreational sector is not projected to land its harvest limit for the upcoming year, then the commercial catch limit may be increased for that year as long as the combination of the projected recreational landings and the commercial quota does not exceed the total allowable landings.

A pre-arranged management response may be one option for allocating catch of a species that is expected to rebuild or shift distribution due to climate change, for example. Identifying, upfront, specific conditions that may result in changes in allocations could decrease controversy. We note that not all circumstances may be amenable to pre-arranged responses. For example, if external factors change significantly, the original analysis of impacts may no longer be considered adequate because the analysis would not capture the complete range of potential impacts or outcomes.

[12] Some of these types of mechanisms are referred to by regions as "frameworks". *See* Appendix 3 of the NMFS Operational Guidelines at p. 3 at http://www.fisheries.noaa.gov/sfa/management/councils/operational_guidelines/og_append.pdf. As the Guidelines explain, frameworking is not intended to circumvent standard FMP/amendment and rulemaking procedures, and must be done consistent with the MSA and other applicable law. To the extent that MSA and other statutory requirements can be addressed up front when establishing such a mechanism, this may result in less analysis and process being needed when individual actions are executed under that mechanism. What analysis and process (including public comment) is required for each individual action will depend on the specific facts and circumstances of that action. *Id.*

[13] Northern Economics, Inc. *Five-Year Review of the Effects of Amendment 80 to the Bering Sea and Aleutian Islands Groundfish Fishery Management Plan.* Prepared for North Pacific Fishery Management Council. April 2014.

[14] Amendment 1 to the FMP for the Atlantic Bluefish Fishery, 65 FR 45844 (January 26, 2000).

Factors to Consider When Reviewing and Making Allocation Decisions

Typically allocation decisions are closely aligned with historical use of the resource because the government[15] is hesitant to limit historically established privileges and access (Rolph, 1983).[16] While historical use may (or in some instances, shall) be taken into consideration when reviewing and making an allocation decision,[17] the MSA requires achieving on a continuing basis the optimum yield (OY) from each fishery, which encompasses a broader range of considerations.[18] Recognizing this, below is a list of different factors to consider when reviewing and making an allocation decision.

The list of factors is not all-inclusive, as there may be other appropriate factors to consider. The factors do not prescribe any particular outcome with respect to allocations, but rather, are intended to provide a framework for the allocation analysis. Factors should be compared between groups for which an allocation decision is relevant. The priority and weight afforded each factor will vary depending on the time horizon of the decision,[19] the objectives of the allocation decision, the objectives of the FMP, and the overarching Council[20] goals. If a factor is determined not applicable or unimportant for the allocation decision in question, the Council should clearly document its rationale for the determination for the record. Such documentation is necessary to produce a strong record demonstrating that the factor has been considered. Analysis of an allocation decision under these factors is not a substitute for documenting compliance with MSA mandates, although there may be overlap between certain factors and MSA mandates. Of particular note, National Standard 4, discussed under Social Factors below, has explicit requirements pertaining to allocations of fishing privileges.

1. **Ecological Factors**
   Weakened or damaged marine ecosystems support a lower abundance and diversity of fish species, and may have a harder time adjusting to acute (e.g., hurricane) or long-term (e.g., climate change[21]) impacts than healthy ecosystems. Because different fishing practices

[15] Rolph includes a wide range of resources in his analysis (forests, air waves, etc.). However, in most marine fisheries, Councils and Commissions in coordination with federal and state governments make the allocation decisions.

[16] Rolph, E.S. 1983. Government allocation of property rights: Who gets what? Journal of Policy Analysis and Management 3:45-61.

[17] For example, for limited access privilege programs, historical harvests and historical participation of fishing communities are among the required considerations for establishing procedures for allocations. 16 U.S.C. § 1853a(c)(5)(A).

[18] 16 U.S.C. § 1851(a)(1) (National Standard 1). "'[O]ptimum', with respect to the yield from a fishery, means the amount of fish which— (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and (C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery". 16 U.S.C. § 1802(33).

[19] For example, factors may be weighed differently when considering in-season allocation changes versus longer term changes such as decisions that last years.

[20] Whenever Fishery Management Councils are mentioned, this guidance also pertains to Atlantic High Migratory Species Secretarial actions.

[21] Climate change impacts could be positive or negative for individual species or systems.

(locations fished, gear types used, etc.) can have varied impacts on the marine ecosystem, decisions that determine the allocation between different sectors or groups should take into consideration the potential ecological impacts of allocation alternatives. When making allocation decisions, relevant ecological questions could include, but are not limited to:

a. What are expected ecological impacts on target species?

Sectors can differ in their impacts on the target species. For example, sectors may target different stocks, sizes, or age classes, which could impact the productivity, distribution, yield, and/or recovery potential of the species.

b. What are the expected ecological impacts on other fisheries? What is the status of non-target species[22]? What are the expected impacts on bycatch and bycatch mortality of both non-target species and protected species?

Ecological impacts can overlap among fisheries.[23] Some ways ecological interactions occur are through bycatch, habitat, predator-prey dynamics, etc. For example, target species in one fishery can be incidental catch or bycatch in another. In addition, if the allocation of one species decreases, fishermen may increasingly target another species. Managers should assess the potential ecological impacts of a change in allocation to other fisheries when making allocation decisions. For example, if reducing bycatch is a priority then lowering allocations to sectors or gear types that have high bycatch could be considered.

c. What are the impacts on the marine ecosystem?[24] What are the impacts on habitat? What are the impacts on the ecological community (e.g., relevant predator, prey, or competitive dynamics)?

Fishing can change an ecosystem through both direct and indirect effects. Direct effects include mortality of target and non-target stocks, interactions with marine mammals or other protected species, and disturbance of marine habitat. Indirect impacts to the ecosystem include removal of predators, prey, competitors, or structure that could result in shifts in the ecological community. Managers should consider the direct and indirect impacts of different allocation alternatives to the ecosystem when making allocation decisions. For example, decreasing allocations to gears that have high impacts on biotic hard-bottom habitats could be considered.

2. Economic Factors

Allocation of a fishery resource has economic consequences for affected user groups that should be considered. Councils should be very specific in articulating what economic questions they want to consider when making allocation decisions. When making allocation decisions, relevant economic questions could include, but are not limited to:

a. Can economic efficiency be improved?

Councils should consider if the current or preferred allocation results in the most economically efficient[25] use of resources. Cost-benefit analyses should be used to

[22] For the purpose of this document, non-target species are the species that were retained but were not the primary target species.

[23] *See* 16 U.S.C. §§ 1853(a)(7) (requiring that FMP measures minimize, to the extent practicable, adverse effects on essential fish habitat caused by fishing) and (9) (requiring fishery impact statement) and 1851(a)(9) (requiring under National Standard 9 that FMP measures minimize to the extent practicable bycatch and bycatch mortality).

[24] *See supra* note 22.

estimate how a proposed allocation would change consumer and producer surplus (i.e., net economic benefits). From an economic analysis perspective, economic efficiency refers to how well resources are utilized in production and consumption[26]; economic efficiency is achieved when all resources are allocated to their most productive use.[27] Analyses that estimate the monetary value individuals or sectors place on the marginal value of their share of the harvest (i.e., "willingness to pay") can inform how allocation changes could improve economic efficiency. However, if use within each sector is not allocated according to those who value the resource most, then information about access to the resource in each sector may also be necessary to determine the efficient allocation among sectors (Holzer and McConnell, 2014)[28]. Methods for estimating the economic efficiency of an allocation decision are being continually improved.[29]

b. What are the economic impacts of potential changes in allocation?

Changes to sales, income, and employment levels as measured by economic impact analyses (i.e., input-output models) should only be used to understand the potential short-term distributive effects of allocation decisions on the affected communities[30], states, or regions (see social impacts below). Analyses should be completed at the finest scale possible, given available data and models. Unlike economic efficiency, economic impact – from an economic analysis perspective – does not measure social welfare. An allocation that maximizes economic impacts could reward the highest spender or highest cost producer, and thereby promote inefficient practices and processes and reduce economic efficiency relative to alternative allocations. Additionally, those affected by a change in allocation will likely adjust their behavior in response to a different allocation. For example, when recreational fishermen spend money on other recreational alternatives under a reduced allocation, it is difficult to determine whether the economic impacts of an alternative allocation on the economy will be positive or negative after those behavioral adjustments have occurred.

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[25] *See* 16 U.S.C. § 1851 (a)(5) (requiring under National Standard 5 that FMP measures "shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose."). According to the National Standard 5 Guidelines, "[t]his standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose." 50 C.F.R. § 600.330(e). "Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable." 50 C.F.R. § 600.330(b)(1).

[26] *Op. Cit.* Plummer et al. 2012.

[27] The National Standard 5 Guidelines explain: "In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where 'conservation' constitutes wise use of all resources involved in the fishery, not just fish stocks." 50 C.F.R. § 600.330(b)(2). The Guidelines further explain that "[a]n FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency." 50 C.F.R. § 600.330(b)(2)(i).

[28] Holzer, Jorge, and Kenneth McConnell. 2014. "Harvest Allocation without Property Rights." *Journal of the Association of Environmental and Resource Economists* 1: 209-232

[29] NMFS is developing technical guidance on best practices that will clarify emerging issues and the appropriate implementation and use of economic impact and economic efficiency analyses.

[30] *See* 16 U.S.C. §§ 1851(a)(8) (requiring under National Standard 8 that FMP measures take into account the importance of fishery resources to fishing communities and, to the extent practicable, minimize adverse economic impacts on such communities) and 1853 (a)(9) (requiring fishery impact statement).

3. Social Factors

Allocation of a fishery resource can have social consequences on individuals and communities. For example, updating geographically-based allocations could impact the surrounding community by changing the demand for processing facilities, boats, and supplies such as bait and ice. When making allocation decisions, relevant questions on social factors could include, but are not limited to:

a. Is an allocation fair and equitable?

Equity is an important issue in fisheries management. National Standard 4 requires, in relevant part, that if an allocation is made "among various United States fishermen, such allocation shall be…fair and equitable to all such fishermen…"[31] Methods exist to gather information on the impacts of an allocation alternative, though assigning labels of "fairness" will remain subjective and the perception of "fair and equitable" will vary among individuals and sectors.[32] Social impact analyses can point to potential disproportionate impacts of allocation decisions. Relevant sectors and sub-groups may include, among others, vessels of different size categories, target species, or gear; communities of different sizes and different levels of social vulnerability and fisheries dependence; large versus small businesses[33]; or groups of fishermen from different states.

"Well-being" can also inform equity. Two broad principles of equity may be considered: vertical equity and horizontal equity. The former refers to different treatment of entities that are not alike while the latter refers to equal treatment among equal entities. Horizontal equity means that the distribution of well-being before and after a change in allocation is preserved. This might be the case for allocations that are primarily based on historical landings records. Vertical equity means that the distribution of well-being before and after a change in allocation has changed. Creating set-asides for entities that may have been disadvantaged by history-based allocations is an example of a measure that would affect vertical equity. In this case, vertical equity would become more even as a result of the set-aside.

b. Are there disproportionate adverse effects on low income and/or minority groups?

Consistent with Executive Order 12898 and guidance from the Council on Environmental Quality[34], NEPA analyses should continue to assess proposed actions for disproportionate and adverse effects on low-income and/or minority groups, including federally recognized tribes. Environmental justice assessments should include a review

[31] 16 U.S.C. § 1851(a)(4). *See* National Standard 4 Guidelines, 50 C.F.R. § 600.325(c) (addressing analysis of allocations and factors to be used in making allocations, including fairness and equity).
[32] *Op. cit.* Lapointe 2012.
[33] *See* 5 U.S.C. §§ 601 et seq. (requiring agency to review impacts of proposed regulations on small businesses and entities) and Executive Order 13272 (setting forth requirements for agencies when considering impacts on small businesses and entities).
[34] *See* Council on Environmental Quality, Environmental Justice Guidance Under the NEPA (Dec. 10, 1997): http://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-EJGuidance.pdf (providing guidance to Federal agencies on considering environmental justice in the NEPA process).

of impacts on both directly and indirectly affected entities[35] (e.g., minority processing workers whose jobs might change due to fisheries allocation decisions that impact the amount and/or timing of fish processing).

c. What is the importance of fishery resources to fishing communities?

National Standard 8 requires that "[c]onservation and management measures shall, consistent with the conservation requirements of this Act…, take into account the importance of fishery resources to fishing communities…in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities".[36] When making allocation decisions, relevant fishing community questions could include, but are not limited to:

i. What is the individual, local, and regional dependence and engagement in each sector[37, 38]?

What is the current dependence and engagement and how are these expected to change in the future (both under the status quo and under the allocation alternatives being considered)? Fishing dependence and engagement analyses should include potential impacts to commercial, for-hire, private angler, and subsistence fishing, as well as shoreside support industries, and should consider impacts at the local level (and could expand to regional/national level) if data are available. For example, dependence and engagement may decrease locally based on decreased opportunities in a particular fishery, but increase on a regional level based on greater opportunities in a different fishery. In addition, the importance of a given species or fishing activity to a culture should be considered when making allocation decisions.

ii. What is the community's vulnerability and adaptive capacity?

Some communities may be more negatively impacted by changes to fishing production or fishery access than others. Social indicators have been developed that describe the vulnerability of a fishing community to "disruptive events" (Jepson and Colburn 2013)[39], such as a change to a group or sector's access to a fishing resource. For example, a community's current and historical dependence on a fishery can suggest a community's vulnerability and possible response to a change in commercial or recreational fishing access.[40] Similarly, understanding a community's ability to adapt to changes may be useful (e.g., the adaptive capacity metric developed by Mathis et al. 2014[41]).

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[35] *Op.cit.* Council on Environmental Quality, Environmental Justice Guidance Under the NEPA, page 8; *see also* 40 C.F.R. § 1508.8 (defining "effects" under NEPA to include direct and indirect effects).

[36] 16 U.S.C. § 1851(a)(8). *See also id.* § 1802(17) (defining "fishing community") and 50 C.F.R. § 600.345 (setting forth requirements for analyses under National Standard 8 Guidelines).

[37] NMFS, Guidance for Social Impact Assessment: www.nmfs.noaa.gov/sfa/laws_policies/economic_social/index.html

[38] Sepez, J., K. Norman and R. Felthoven. 2007. A quantitative model for ranking and selecting communities most involved in commercial fisheries. *NAPA Bulletin* 28, 43-56. 160.

[39] Jepson, M., and L. L. Colburn 2013. Development of Social Indicators of Fishing Community Vulnerability and Resilience in the U.S. Southeast and Northeast Regions. U.S. Department of Commerce, NOAA Tech. Memo NMFS-F/SPO-129, 64p, available at spo.nmfs.noaa.gov/tm/TM129.pdf.

[40] *Ibid*.

[41] Mathis, J. T., S. R. Cooley, N. Lucey, S. Colt, J. Ekstrom, T. Hurst, C. Hauri, W. Evans, J. N. Cross, R.A Feely. 2014. Ocean acidification risk assessment for Alaska's fishery sector. Progress in Oceanography.

iii. Are there other social impacts?

Changes to how fisheries are managed can have other social impacts. For example, reducing an allocation may decrease safety if access to a fishery is restricted to a limited number of days (e.g., shortened season) and fishermen must decide whether to fish despite unsafe conditions or miss the year's landings of that fishery (referred to as "derby" fishing).[42] Another example is potential impacts to non-consumptive uses of the resource, such as tourism or the intrinsic beauty of the ecosystem. Will other groups (e.g., beach goers, whale watchers, birders) be negatively impacted by a change in allocation?

4. Indicators of Performance and Change

Councils should assess the current conditions of a fishery and document changes to the fishery that may indicate the need for updated allocations. When making allocation decisions, questions on performance and change could include, but are not limited to:

a. What are the trends in catch/landings?

Historical and current catch and landings data[43] can provide important information about demand, after accounting for changes in annual catch limits and quotas. Past overages or underages should not be used to penalize or reward a group or sector; however, short-term, in-season adjustments based on expected underages could be used to ensure full utilization of resources. Paybacks (reducing a catch limit in a subsequent year to account for an overage in the previous year) have been instituted as a mechanism to account for the biological impacts of overages; however, similar to in-season adjustments, they represent short-term fixes and not long-term changes to the allocations specified in fishery management plans. If there is a perpetual need for paybacks, this could indicate the need to reassess and change allocation, recognizing that there could also be monitoring or other management changes that need to be addressed. Caution should be exercised to avoid creating a perverse incentive system in the fishery and in its management. It is important to consider the reasons behind the overages or underages, such as lag time between catch and reporting, poor prediction of catch, ineffective effort controls, misreporting by fishermen, or intentional underages (e.g., for the purpose of maintaining higher catch rates).

b. What is the status of fishery resources?

A Council should consider the status of a stock (e.g., stock is undergoing overfishing, not undergoing overfishing, overfished, approaching an overfished condition, rebuilding, or rebuilt)[44] when determining allocations. The MSA clarifies that harvest restrictions and recovery benefits must be allocated "fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery"[45]; therefore, the costs and benefits

[42] *See* 16 U.S.C. § 1851(a)(10) (requiring under National Standard 10 that FMP measures shall, to the extent practicable, promote the safety of human life at sea) and 50 C.F.R. § 600.355 (National Standard 10 Guidelines).
[43] *See* 16 U.S.C. § 1853 (a)(13) (requiring that FMP describe sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery).
[44] *See* 16 U.S.C. § 1853 (a)(10) (requiring that FMP specify objective and measurable criteria for identifying when fishery is overfished) and 50 C.F.R. § 600.310(e)(2) (providing under National Standard 1 Guidelines for specification of criteria for determining overfishing and overfished status of stock or stock complex).
[45] 16 U.S.C. § 1853 (a)(14).

to individuals and/or sectors should be considered when updates to stock status result in increases or decreases in allocations.

c. Has the distribution of the species changed?

The distributions of species alter over time for reasons such as climate change (Nye et al., 2009)[46] or natural fluctuations in abundance (Bell et al., 2014)[47], among others. This may create jurisdictional disputes when the distribution crosses international, state, or council boundaries. Where the spatial distribution of the species does not match the spatial distribution of the allocation or geographic location of the fishermen, the allocation may need to be updated, recognizing that there could also be other management changes that need to be addressed.[48] If a stock moves and it is financially viable for fishermen to follow the stock/species, then there can be conflict because fishermen in an area who are historically dependent on the stock will catch fish as well as fishermen new to the area, creating potential for overfishing and reducing the sustainability of the stock. Conversely, if a stock moves and it is not financially viable to follow the stock, there may be less potential for conflict if allocations can be updated to match the new distribution. For stocks expected to change geographic distribution, determining pre-arranged management responses is recommended (see above, "Recommended Practices When Reviewing and Making Allocation Decisions," Section d – Planning for Future Conditions).

d. What is the quality of information available for each sector or group?

In order to properly manage a fishery, scientists need information on stock specific catch rates, abundance, and biology (age, growth, mortality, etc.), as well as data on social and economic aspects of the fishery[49]. Information can be compiled through fishery-dependent and fishery-independent data sources. Fishery dependent data may be collected through use of dockside monitors, at-sea observers, logbooks, electronic monitoring and reporting systems, telephone surveys, and vessel-monitoring surveys. Fishery-dependent data collected varies between sectors. Improvements in the data collected through a fishery can result in a better understanding of the species and the appropriate management actions.[50]

Councils should consider the quality and availability of fishery dependent data collected through each sector when making allocation decisions. Lack of detailed data should not be used to penalize a sector or a group; however, increased allocations could be

[46] Nye, J. A., Link, J. S., Hare, J. A., and Overholtz, W. J. 2009. Changing spatial distribution of fish stocks in relation to climate and population size on the Northeast United States continental shelf. Marine Ecology Progress Series 393: 111-129.

[47] Bell, R.J, J.A. Hare, J.P. Manderson, and D. E. Richardson. 2014. Externally Driven Changes in the Abundance of Summer and Winter Flounder. ICES Journal of Marine Science. doi: 10.1093/icesjms/fsu069.

[48] Changes in stock distribution implicate other MSA mandates, such as National Standards 1 (preventing overfishing and achieving optimum yield) and 3 (management of stocks as a unit, to extent practicable). For example, reference points and catch targets may need to be updated if stock productivity changes with the shifting distribution.

[49] *See* 16 U.S.C. § 1853(a)(5) (requiring that FMP specify pertinent data to be submitted to agency with respect to commercial, recreational, charter fishing, and fishing processing in the fishery).

[50] For example, due to scientific uncertainty, data poor stocks are often managed more conservatively than data rich stocks. Increasing an allocation to a group or sector that provides better biological information may allow for higher retainable catch (due to less of a buffer for uncertainty) in the future.

considered as an incentive to improving data quality. Where appropriate, allocation decisions which incentivize cooperative research or improvements in self-reported data could also be considered in data poor situations, consistent with relevant MSA requirements.

Summary

Allocation of fishery resources is a complex issue facing fishery managers. Because fisheries management, and the conditions surrounding fisheries, are not static, allocation decisions need to be considered in the context of adaptive management. This document provides recommended practices and guidance on allocation factors that a regional fishery management council should consider when making allocation decisions. The Council Coordinating Committee created a companion document that describes triggers that can be used to determine when to review allocation decisions. NMFS is committed to working with the Councils to assist them in their allocation decisions.

Appendix A: Existing National Policy

1. Magnuson-Stevens Fishery Conservation and Management Act (MSA)[51]

Language relevant to allocation decisions is found throughout the MSA, most significantly in National Standards 1, 4, 5, 8, and 9 concerning optimum yield, allocation, economic efficiency, communities, and bycatch, respectively. MSA sections 303A(c)(3) and (c)(5) specify requirements for determining initial allocations and fishing community allocations for Limited Access Privilege Programs (LAPPs)[52]. MSA sections 303(a)(14), 303(b)(6), 303(b)(11), and 304(e)(4)(b) also detail considerations for allocation decision making.[53]

- **a. National Standard 1[54]:** "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry."
- **b. National Standard 4[55]:** "Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be
  (A) fair and equitable to all such fishermen;
  (B) reasonably calculated to promote conservation; and
  (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges."
- **c. National Standard 5[56]:** "Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose."
- **d. National Standard 8[57]: "**Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of [National Standard 2], in order to
  (A) provide for the sustained participation of such communities, and
  (B) to the extent practicable, minimize adverse economic impacts on such communities."
- **e. National Standard 9[58]: "**Conservation and management measures shall, to the extent practicable,
  (A) minimize bycatch and
  (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch."
- **f. LAPP: Eligibility of fishing communities to participate in a LAPP[59]: "**To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

[51] www.nmfs.noaa.gov/sfa/laws_policies/msa/documents/msa_amended_2007.pdf
[52] 16 U.S.C. § 1853a. Limited Access Privilege Programs are a subset of Catch Share Programs.
[53] 16 U.S.C. §§ 1853(a)(14), (b)(6), (b)(11); 16 U.S.C. § 1854(e)(4)(b).
[54] MSA 301(a)(1) [16 U.S.C. § 1851(a)(1)].
[55] MSA 301(a)(4) [16 U.S.C. § 1851(a)(4)].
[56] MSA 301(a)(5) [16 U.S.C. § 1851(a)(5)].
[57] MSA 301(a)(8) [16 U.S.C. § 1851(a)(8)].
[58] MSA 301(a)(9) [16 U.S.C. § 1851(a)(9)].

(I) be located within the management area of the relevant Council;

(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and

(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register."

g. LAPP: Requirements for allocation[60]: "In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of— (i) current and historical harvests; (ii) employment in the harvesting and processing sectors; (iii) investments in, and dependence upon, the fishery; and (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through— (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—(i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council."

h. LAPP: Authorization of the use of Auctions[61]: "In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

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[59] MSA 303A(c)(3)(A)(i) [16 U.S.C. § 1853a(c)(3)(A)(i)].
[60] MSA 303A(c)(5) [16 U.S.C. § 1853a(c)(5)]; for programs established after the 2007 MSA reauthorization.
[61] MSA 303A(d) [16 U.S.C. § 1853a(d)].

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations."

i. Other Applicable Sections:

MSA 303(a)(14)[62] stipulates that, when harvest reductions are required, the harvest restrictions and recovery benefits must be allocated "fairly and equitably among the commercial, recreational and charter fishing sectors."

MSA 303(b)(6)[63] provides that a Council may establish a "limited access system" provided that it takes into account present and historical participation in the fishery, dependence on the fishery, the economics of the fishery, the capability of the vessels to engage in other fisheries, the cultural and social framework relevant to the fishery, the fair and equitable distribution of access privileges, and any other relevant considerations.

MSA 303(b)(11)[64] authorizes setting aside a portion of the total quota "for use in scientific research."

MSA 304(e)(4)(B)[65] provides that rebuilding programs must allocate "overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery."

2. Select Relevant NMFS Documents. For additional documents, see Morrison and Scott (2014).[66]

a. National Standard Guidelines.[67]

NMFS provides official guidance on what the National Standards mean for fisheries management. Guidance for NS4 and NS5 were revised in 1998, NS8 and NS9 were revised in 2008, and NS1 were revised in 2009 and proposed to be revised again in 2015.

b. NOAA Catch Share Policy.[68]

The NOAA Catch Share Policy provides guidance on making initial allocation decisions for catch share[69] programs. In addition, the policy states that all allocation decisions should be revisited on a regular basis under a catch share program or other management approach.

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[62] 16 U.S.C. § 1853(a)(14).
[63] 16 U.S.C. § 1853(b)(6).
[64] 16 U.S.C. § 1853(b)(11).
[65] 16 U.S.C. § 1854(e)(4)(B).
[66] Morrison, W.E., T.L. Scott. 2014. Review of Laws, Guidance, Technical Memorandums and Case Studies Related to Fisheries Allocation Decisions. U.S. Dept. of Commerce. NOAA Technical Memorandum NMFS-F/SPO-148, 32 p.www.nmfs.noaa.gov/sfa/laws_policies/national_standards/documents/morrison_scott_nmfs_f_spo_148.pdf.
[67] www.nmfs.noaa.gov/sfa/laws_policies/national_standards/index.html
[68] www.nmfs.noaa.gov/sfa/management/catch_shares/about/documents/noaa_cs_policy.pdf
[69] "Catch share" is a general term for several fishery management strategies that allocate specific portions of a fishery's total allowable catch to individuals, cooperatives, communities, or other entities. Each recipient of a catch share is directly accountable to stop fishing when its exclusive allocation is reached. The term includes specific programs defined in law such as "limited access privilege" (LAP) and "individual fishing quota" (IFQ) programs, and other exclusive allocative measures such as Territorial Use Rights Fisheries (TURFs) that grant an exclusive privilege to fish in a geographically-designated fishing ground.

c. NMFS Economic and Social Impact Assessment Guidance.[70]
NMFS has created guidance for completing economic and social impact analyses for fishery regulations. These documents provide guidance on completing these analyses for any fishery management decision, including allocation decisions.

d. NOAA Fisheries National Saltwater Recreational Fisheries Policy.[71]
As explained in the policy, "this policy identifies goals and guiding principles to be integrated into NMFS' planning, budgeting, decision-making, and activities, and includes examples of implementation concepts and strategies supported by NMFS." The policy establishes six guiding principles, and under the second principle, one example of an implementation strategy is the "recurring evaluation of fishery allocations to facilitate equitable distribution of fishing opportunities as fisheries develop and evolve."

e. NOAA Fisheries Climate Science Strategy.[72]
The strategy is part of a proactive approach to increase the production, delivery, and use of climate-related information in fulfilling NMFS mandates. The Strategy identifies seven objectives which will provide decision-makers with the information they need to reduce impacts and increase resilience in a changing climate. It is designed to be customized and implemented through Regional Action Plans that focus on building regional capacity, partners, products and services to address the seven objectives.

[70] www.nmfs.noaa.gov/sfa/laws_policies/economic_social/index.html
[71] www.nmfs.noaa.gov/sfa/management/recreational/documents/noaa_recfish_policy.pdf
[72] www.st.nmfs.noaa.gov/Assets/ecosystems/climate/documents/NCSS_Final.pdf

NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE 01-119 February 23, 2017
Fisheries Management
FISHERIES ALLOCATION REVIEW POLICY
NOTICE: This publication is available at: http://www.nmfs.noaa.gov/op/pds/index.html
Author name: F/SF (W. Morrison) **Office:** Sustainable Fisheries **Type of Issuance:** Revision **Certified by:** F/SF (Acting Director, Emily Menashes) **Office:** Sustainable Fisheries
SUMMARY OF REVISIONS: This revises the initial 01-119 directive (July 2016).

1. Introduction

The National Marine Fisheries Service (NMFS) and the Council Coordination Committee (CCC) have discussed what type and/or level of guidance is needed for fisheries allocation decision-making as well as what factors should be considered. In May 2014, the CCC voted to split the tasks of writing the guidance into two sections. The CCC tasked a subcommittee (the CCC allocation working group) with drafting guidance on *when* to make fisheries allocation decisions and NMFS was asked to draft guidance on *what factors* should be considered when making fisheries allocation decisions. Both groups agreed that answers to these questions should be based on the concept of adaptive management and thus should be tied to fishery management plan (FMP) and fisheries allocation objectives. In June 2015, the CCC agreed that NMFS would create a policy on fisheries allocation (this document) that would explain how the CCC trigger document (Procedural Directive 01-119-01) and the NMFS fisheries allocation factors document (Procedural Directive 01-119-02) complement each other. These guidance documents do not modify or supersede any guidance associated with the National Standards, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) or other applicable laws; rather, they are intended to help the Councils and NOAA review and update allocations under the MSA.

2. Objective

The objective of this policy is to briefly describe the fisheries allocation review process collaboratively developed by the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) Office of Sustainable Fisheries and the

CCC (see Figure 1). This policy will provide a mechanism to ensure fisheries allocations are periodically evaluated to remain relevant to current conditions. In addition, it will improve transparency and minimize conflict for a process that is often controversial.

Use of adaptive management - The allocation of fishing access should follow an adaptive management process. Adaptive Management is the on-going process of evaluating if management objectives have been met and adjusting management strategies in response. This process includes periodic re-evaluation and updating of the management goals and objectives to ensure they are relevant to current conditions and needs.

3. Authorities and Responsibilities

This policy directive establishes the following authorities and responsibilities. Regional Fishery Management Councils (Councils)[1] will be responsible for determining what triggers are applicable for each of their fishery management plans (FMPs) that contain a fisheries allocation, including allocations across jurisdictions (e.g., state, regional), across sectors (e.g., commercial, recreational, tribal, research), and within sectors (e.g., individual fishermen, gear types)[2]. These triggers should be identified within three years (or as soon as practicable) from the finalization of this policy. When identifying triggers, if the trigger is indicator-based, councils must also clarify their process for periodically determining if a trigger has been met. The process could be part of already existing analysis which resides in annual or periodic reports (i.e., 5/7 year catch share reviews, stock assessments, economics of the US). Councils will determine the appropriate method to identify triggers, such as a policy document or an FMP amendment.

NMFS Regional Administrators and Science Center Directors will be responsible for engaging with the Councils to support the development of triggers and thresholds for each FMP. If a trigger or threshold is hit, NMFS Regional Administrators and Science Center Directors will support the Councils' review of the relevant fisheries allocation decision.

The recommended three step process is briefly described below and diagramed in Figure 1.

***Step One*:** A trigger is met. There are three main categories of triggers: public input, time, or indicator-based. For example, a significant change in landings (e.g., an increase/decrease greater than one to two standard deviations within a three-year timeframe, etc.) may be identified as an indicator-based trigger for initiating a review of an allocation decision. Triggers are discussed in more detail in the CCC trigger document (Procedural Directive 01-119-01). If the trigger is indicator-based, or time-based, then proceed immediately to step 2: fisheries allocation review. If the trigger is based on public input to the Councils, then a check for changes in social, ecological, or economic criteria is required (step 1a in Figure 1) to ensure assessment of the fisheries allocation is an appropriate use of Council resources. At this stage, in depth analyses are not required.

[1] Includes Atlantic High Migratory Species Secretarial actions.
[2] See CCC trigger document (Procedural Directive 01-119-01) for a detailed description of triggers.

Step Two: Fisheries Allocation Review. Councils should complete a review of the fisheries allocation in question. This review will assist the Councils in determining whether or not the development and evaluation of allocation options is warranted, and is not, in and of itself, a trigger to initiate an FMP amendment (or framework adjustment, if appropriate) to consider alternative allocations. This step is discussed in more detail in the CCC triggers document (Procedural Directive 01-119-01) and overlaps with the NMFS fisheries allocation factors document (Procedural Directive 01-119-02). The review should consider the FMP objectives[3] along with other relevant factors that have changed and may be important to the fisheries allocation. Relevant factors are described in the NMFS fisheries allocation factors document (Procedural Directive 01-119-02). At this stage, in depth analyses are not required; however, to ensure transparency, a clear articulation of how the objectives are or are not being met, and a clear rationale on relevant factors considered should be included in the record. This fisheries allocation review informs whether or not a consideration of new allocation alternatives is warranted.

Step Three: Evaluation of Fisheries Allocation Options for an FMP amendment[4]. Based on step two, if a Council decides that development of allocation options is warranted, a Council will proceed with formal analyses, and follow its amendment process for identifying alternatives, soliciting public input, etc. If the Council determines that the FMP objectives are not up-to-date, then the Council should discuss, evaluate, and if necessary, revise the objectives[5]. During the identification of alternatives, Councils should consider the factors in the Procedural Directive 01-119-02. All of the factors do not need to be analyzed for each fisheries allocation decision. If a factor is not relevant for a given decision, no formal analysis for that factor is needed; however, the record should clearly document the rationale for that determination.

4. Definitions

Adaptive Management is the on-going process of evaluating if management objectives have been met and adjusting management strategies in response.

Fisheries Allocation (or "allocation" or "assignment" of fishing privileges) is defined by NMFS as a "direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals." 50 CFR 600.10; *see also* National Standard 4 Guidelines, 50 CFR 600.325(c)(1) (further describing the scope of this definition and providing examples of allocations of fishing privileges under National Standard 4)[6]. The scope of allocations covered by this Policy is narrower than the scope of allocations under the National Standard 4 guidelines. This Policy covers only allocations that distribute specific quantities to identifiable, discrete user groups or individuals. This is true regardless of how the discrete user groups or individuals are managed under the FMP.

[3] As noted in the CCC triggers document (PD 01-119-01): "recommendations… are based on the assumption that a Council's management goals and objectives … are relevant and/or contemporary at the time of consideration for triggering an allocation review, of conducting an allocation review, and of taking a reallocation action."
[4] A framework adjustment, if appropriate, could also be used.
[5] Councils can choose to update FMP objectives at the same time they are evaluating fishery allocation options.
[6] www.nmfs.noaa.gov/sfa/laws_policies/national_standards/documents/national_standard_4_cfr.pdf

Fisheries Allocation Review is the evaluation that leads to the decision of whether or not the development and evaluation of allocation options is warranted, but is not, in and of itself, an implicit trigger to consider alternative allocations.

Evaluation of Fisheries Allocation Options for an FMP amendment – if the allocation review determines a reallocation may be warranted then the full analysis and evaluation of allocation options should be initiated. The goal will be an FMP amendment (or framework adjustment) that either updates the allocation or retains the status quo.

5. **Measuring Effectiveness**
Three years after the publication of this policy, NMFS will work with the Councils to determine whether or not trigger mechanisms have been established for FMPs that contain a fisheries allocation. For those fisheries without a trigger, NMFS will work with the Councils to identify as soon as practicable the appropriate trigger(s). Once a Council confirms a trigger has been met, NMFS will work with the Council to support and advance the review and analysis.

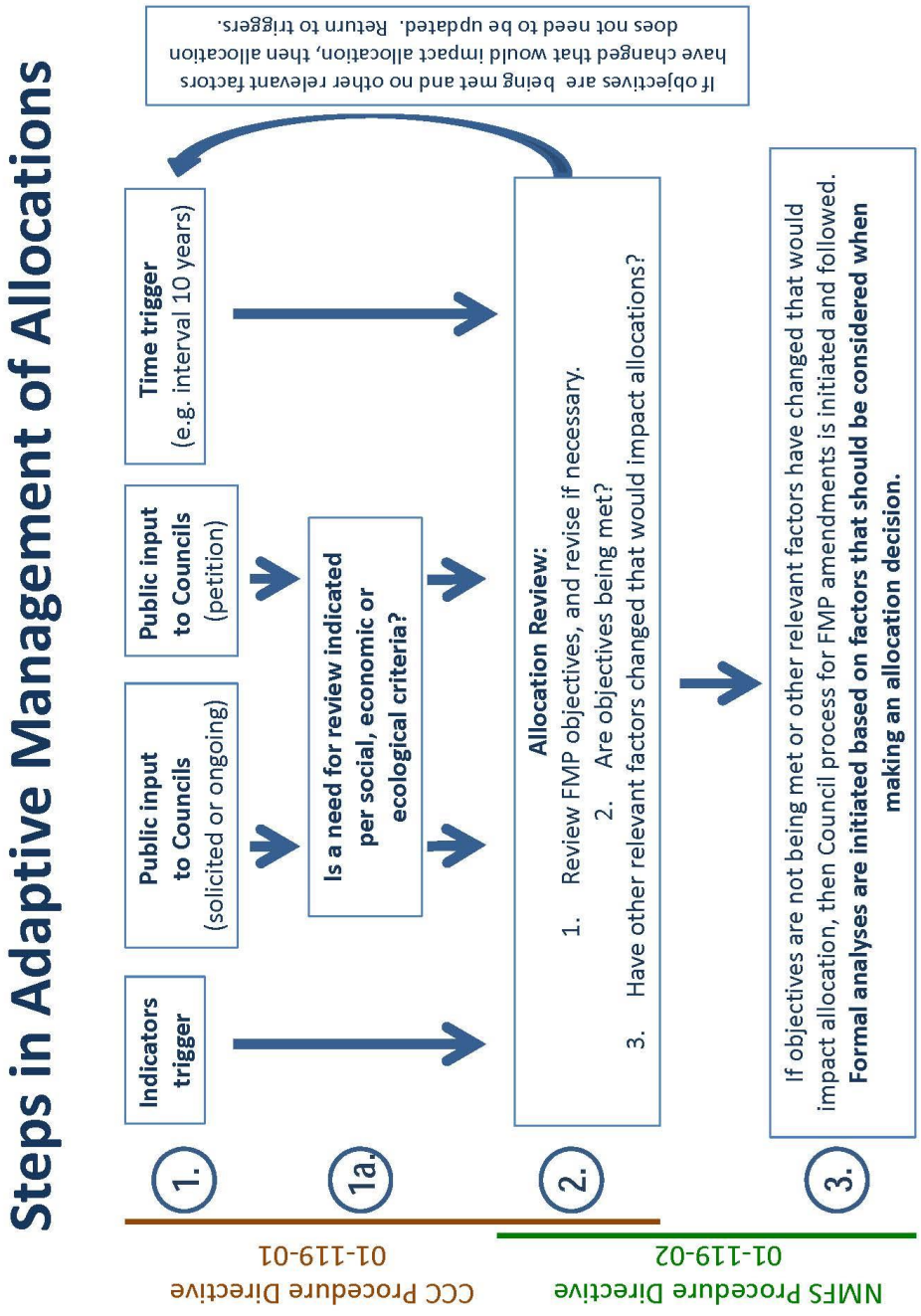
6. **References**
Two Procedural directives will be issued and revised as needed to implement this policy.

2/27/17

Sam Rauch
Acting Assistant Administrator of NOAA Fisheries

Date

Figure 1.


Steps in Adaptive Management of Allocations
Indicators trigger
Public input to Councils (solicited or ongoing)
Public input to Councils (petition)
Time trigger (e.g. interval 10 years)
Is a need for review indicated per social, economic or ecological criteria?
Allocation Review:
1. Review FMP objectives, and revise if necessary.
2. Are objectives being met?
3. Have other relevant factors changed that would impact allocations?
If objectives are not being met or other relevant factors have changed that would impact allocation, then Council process for FMP amendments is initiated and followed. Formal analyses are initiated based on factors that should be considered when making an allocation decision.
If objectives are being met and no other relevant factors have changed that would impact allocation, then allocation does not need to be updated. Return to triggers.
1.
1a.
2.
3.
CCC Procedure Directive 01-119-01
NMFS Procedure Directive 01-119-02