North Pacific Fishery Management Council

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Mr. Mark R. Millikin
National Marine Fisheries Service, NOAA
Office of Sustainable Fisheries, Room 13357
1315 East-West Highway, Silver Spring, MD 20910

Dear Mark:

Thank you for the opportunity to comment on the proposed rule on revising the guidelines to National Standard 1 to comply with the new requirements for annual catch limits (ACLs) and accountability measures (AMs).

Overall, the North Pacific Fishery Management Council believes that the proposed guidelines are overly prescriptive, and should be simplified and made more flexible. Despite being modeled on NPFMC practices for groundfish management, the proposed guidelines would require that our FMPs be amended to define new terms, add new layers of catch limits/targets, and require preparation of new analyses. Although our two groundfish FMPs may require only minor modifications, our State/Federal BSAI Crab FMP and State/Federal Alaska Scallop FMP would need to be amended to establish control rules for specifying ABC at levels below OFL. We believe that our Salmon FMP meets the alternative approach described in section (h)(3) on page 32545, and thus should be deemed exempt from ACL and AM requirements. We urge you to retain flexibility for stocks with unusual life history characteristics.

We would emphasize that the NPFMC's Scientific and Statistical Committee (SSC) has always provided our peer review process, and the SSC currently has the authority to establish ABCs lower than maximum permissible values calculated by the control rule to address data uncertainty, stock trends, or other factors. The guidelines must continue to provide the SSC with this discretion.

The attached comments on the proposed rule were developed for the Council by a group of SSC and Plan Team members. The Council endorses these recommendations, and appreciates the agency's consideration of these substantive comments as you develop a final rule.

Sincerely,

Eric A. Olson
Chairman

attachment

cc: Dr. James Balsiger

North Pacific Fishery Management Council
Technical Comments on the ACL Proposed Rule

Prepared by Pat Livingston (NMFS), Anne Hollowed (NMFS), Terry Quinn (UAF),
Bill Clark (IPHC), and Grant Thompson (NMFS).

The proposed guidelines for implementing the provisions of the 2007 MSA language requiring Councils to set annual catch limits (ACLs), annual catch targets (ACTs) and accountability measures (AMs) for all directed fisheries are quite complex. Although these may have been modeled after current practices in the North Pacific Fishery Management Council, the guidelines define these new terms as separate from present management measures such as Total Allowable Catch (TAC), which adds to the complexity. The guidelines call for analyses and studies to be made, some of which would be necessary to include in FMP amendments needed to implement these guidelines. It is highly unlikely that such a complicated system could be put into place by 2011. Here we provide comments on details of these proposed rules that we believe require further clarification or simplification in order to implement.

Simplification of the Guidelines

The most efficient way to facilitate the implementation of these guidelines would be to substantially rewrite them in a more simplified form that reflects the Act's fairly simple intent. One way to rewrite the guidelines would be to:

- retain existing Maximum Fishing Mortality Thresholds (MFMT) and Optimum Yield (OY) specifications
- set Overfishing Level (OFL) equal to the catch corresponding to the MFMT
- set Acceptable Biological Catch (ABC) no higher than OFL, such that if the nominal target was set equal to ABC, the expected catch would be no higher than OFL (using whatever method/criteria the SSC finds to be appropriate, and allowing probabilities to be based on implementation error only)
- set TAC no higher than ABC, such that if the nominal target was set equal to TAC, the expected catch would equal OY (adjusting OY downward if the requirement cannot be met and, again, allowing probabilities to be based on implementation error only).
- Define ACL as the set of terms: OFL, ABC, and TAC
- Specify that AMs are always required, and must be re-evaluated if either catch exceeds OFL in any year or if average catch is significantly different from average OY over the last N years.

Rationale: The Act mentions ACLs only four times (Sec. 302(h)(6), Sec. 303(a)(15), Sec. 305(i)(1)(B)(i), and Sec. 305(i)(1)(C)) and, therein, only briefly. Yet, the proposed rule sets forth an extremely complicated and untested system as the standard for compliance. The Act's provisions pertaining to ACLs are actually fairly simple:

1) Each Council must develop ACLs that may not exceed the fishing level recommendations of its SSC or other allowed peer review process (Sec. 302(h)(6)).
2) Each FMP must establish a mechanism for specifying ACLs at a level such that overfishing does not occur in the fishery (Sec. 303(a)(15)).
3) TAC is a type of ACL (Sec. 305(i)(1)(B)(i) and Sec. 305(i)(1)(C)).

Nowhere does the Act state that ACLs are to be a totally new type of management measure. In fact, the Act goes out of its way to state that TAC, an existing management measure in many FMPs, is a type of ACL, as stated in (3) above. The Act merely requires that each Council establish some system of reference levels in units of catch and that these cannot exceed the corresponding recommendations of its SSC. The SSC's recommendations, in turn, are listed as those pertaining to "acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets" (Sec. 302(g)(1)(B)).

The alternative described above would require extensive revision of the proposed rule, but would result in a much simpler and more flexible set of guidelines that are still fully compliant with the requirements of the Act. In particular, this alternative sets ACLs (with AMs) such that overfishing does not occur and sets TACs such that optimum yield is achieved. If a Council wished to structure its FMPs according to the much more complicated system described in the proposed rule, it could still do so (with some minor nomenclatural changes). However, it seems undesirable to require substantial revision of all FMPs to adopt the complicated structure of the proposed rule, if the requirements of the Act can be fully met more simply and flexibly. Obviously, the description of the alternative system provided above is very concise, and would need to be elaborated upon, if it were adopted. Modification of all FMPs to conform to the proposed rule could be exceedingly costly, both in terms of Council and Agency staff resources and time. This suggests that other Council/Agency priorities will be delayed or simply foregone, absent an infusion of supplemental resources.

Peer review process and the role of the SSC

The proposed rule allows, but does not require, the adoption of a peer review process for the ABC determination. However, it does say that the ACLs for each of its managed fisheries may not exceed the fishing level recommendations of its SSC or peer review process (600.310(b)(2)(v)(C&D)). If a process is adopted, this language implies that the peer review body is to be treated as coequal with the SSC, in that, if the two disagree, the Council must set ABC at the lower of the levels recommended by the two groups. This would certainly be undesirable and perhaps unworkable in the North Pacific Council. Given that the whole peer review process is optional, it would make more sense to allow the Councils to define the role and powers of the peer review body.

Similarly, the calculation of ABC is described in the guidelines (600.310 (f)(3)) as a mechanical process, once an ABC control rule has been adopted. It seems that the role of the SSC is simply to sign off on the calculation (or not), but there appears to be no leeway for recommending an ABC different from the result of the control rule calculation. This would be a major change for the North Pacific Council, where assessment authors, plan teams, and the SSC have all treated the control rule ABC as a reference point, but have been free to recommend a different number given sufficient reason on a case-by-case basis. For this SSC, this has in practice meant recommending an ABC lower than the control rule value. There is some potential for abuse in this exercise of discretion, but it has allowed the SSC to provide sensible and prudent ABC recommendations in a number of cases where there was substantial uncertainty or concern relating to the control rule ABC. In view of the reliance being placed on the SSC in the proposed rule, it seems only reasonable to allow SSCs to continue to exercise some discretion.

The ABC control rule language is overly specific (600.310(f)(4)). This language could create real problems for our SSC, in that the adjustment process for reduction in ABC from its maximum permissible level would have to be "clearly articulated." If a generic statement will suffice, such as "ABC may be reduced due to data uncertainty, recruitment variability, unwelcome trends in population variables, and other factors", then it will not be a problem. But if the mechanism for adjustment must be specified, then the SSC role will be reduced to that of a formula-checker.

The SSC role in providing recommendations with respect to rebuilding targets is unclear (600.310(j)(3)(i)). This paragraph implies a possibly new role for SSCs: "shall provide recommendations for achieving rebuilding targets". What is not clear is whether this occurs in the development of a rebuilding plan or is a new annual responsibility (as one might assume in dealing with the subject of setting annual catch limits).

Classifying stocks in an FMP

This new designation of an ecosystem component species may need some clarification or modification (600.310(d)(2&5)). The North Pacific Council currently manages members of the forage fish group as ecosystem component species, where catch is limited using a catch disincentive (no more than 2% of the landed catch). If forage fish are caught, the NPFMC does not require that they be discarded at sea. Therefore, it is likely that the small amount caught would be delivered to plants where they would be marketed as fish meal. The delivery of small amounts of fish to plants would not be consistent with the definition that EC species are "generally not retained;" nor would it comply with the requirement that the species is not sold.

One recommendation is to delete the phrase, "and non-target stocks that are not retained for sale or personal use and that are either determined to be subject to overfishing, approaching overfished, or overfished, or could become so, according to the best available information, without conservation and management measures." *Rationale:* Non-target stocks that are not retained for sale or personal use are, by the definition of "bycatch" given in Sec. 3(2) of the Act, pure bycatch stocks. There are at least three reasons why it is inappropriate to require pure bycatch stocks to be included in the fishery:

1) Such a requirement would go far beyond the requirements of the Act. The Act clearly *does* require that the marine ecosystem, including pure bycatch stocks, be protected. However, the overfishing definitions relate to *maximizing sustainable yield* and do not necessarily correspond to any natural limit pertaining to the overall health of the stock or its associated ecosystem. So long as a pure bycatch stock and its associated ecosystem are healthy, the fact that the bycatch fishing mortality rate exceeds the fishing mortality rate that would maximize sustainable yield is irrelevant to the purposes of the Act.
2) Sec. 304(e)(1) of the Act states that *the overfishing definitions are to be applied to the fisheries managed under the respective plan*. If a stock is not part of such a fishery, the overfishing definitions simply do not apply to it, so it is inappropriate to apply those criteria to determine if the stock should be part of the fishery.
3) Such a requirement would result in an unwieldy system in which a single stock could ostensibly be "managed" under multiple FMPs. Because the various FMPs might well use very different status determination criteria, this could result in the same stock being determined to be simultaneously "overfished" and "not overfished."

The proposed rule indicates that EC species should be monitored on a regular basis to assess their status and vulnerability. However, it is not clear whether there is any regulatory action required, if the stock status declines and vulnerability increases. Perhaps the document should indicate that each Council should identify criteria for when an EC species should be reclassified as a target or non-target species.

The proposed rule indicates that species or species complexes may be classified as EC species for ecosystem considerations related to specification of OY for the associated fishery. The word "may" indicates that the NPFMC has discretion on what species should be monitored under the ecosystem consideration. However, the revisions to the FMP will need to specify some kind of criterion for inclusion of EC species in their FMPs. An associated problem with this approach is that some EC and non-target stocks that are not retained for sale or personal use might appear in more than one of the NPFMC's FMPs (groundfish, crab, scallop, salmon). This could lead to redundant review and, potentially, conflicting status determination criteria of EC and non-target species vulnerability by the different plan teams.

ACT procedures, management uncertainty, and accountability measures

In the Pacific and North Pacific Councils, a lot of time and effort has been spent over the years in educating the industry and the public about ABC, OFL, and TAC. By now, these quantities are generally understood and quite useful. Layering ACT on top of ACL will probably cause a lot of confusion, not just

about ACT itself, but also about ABC and ACL (600.310(f)(6)). This is not to say that setting an ACT is a bad idea; just that it will carry a real cost in the functioning of the public process in (at least) these two Councils. The question is whether the benefit outweighs the cost, or whether an allowance can be made for management uncertainty (600.310(f)(6)(i)) in some other, simpler way. As currently proposed, the language suggests that Councils will need to perform analyses of management uncertainty, which could be labor-intensive and time-consuming.

It is unclear who, within the Council, will be responsible for the ACT control rule (600.310(c)(5)). Normally it has been the Council that sets a TAC. Will the Council be responsible for specifying exactly how much they will reduce the ACT below ACL ahead of time or does it suffice to specify that ACL is an upper limit for ACT and ACT is an upper limit for TAC? The reasons for having an ACT (from page 32544, item (6)) seem to relate to imperfect in-season management or multi-year AMs, which hardly seems important enough for a new control rule. Why couldn't management imperfections like this be a part of an ACL control rule?

Accountability measures (600.310(g)), as defined in the proposed rule, also present difficulties. As defined, these will require a lot of attention by the Council, in that analyses will have to be done on past performance and also the rules for the specific measures used (single versus multiple year evaluation, correction for overages) will have to be approved at all levels of the Council process.

In addition, some language may need modification (600.310(g)(3)) to be more clear about performance. We recommend adding the phrase "for a given stock or stock complex" after the phrase, "If catch exceeds the ACL" in the last sentence of this section, to make it clear that system performance would be best judged at this level of detail. For example, if a single management system is applied to 25 stocks, and the catch for stock A exceeds the ACL for stock A in year 1, and the catch for stock B exceeds the ACL for stock B in year 4, the wording of the current PR could give the impression that the system is behaving poorly, even though there were only 2 overages out of a possible 100 (= 25 stocks x 4 years).

We also recommend deleting the phrase "to improve its performance and effectiveness" at the end of the same sentence. *Rationale:* There are, at least, three reasons to strike this phrase:

1) If OY is being achieved and overfishing is being avoided, it is inappropriate to imply that the system's performance is in need of improvement.
2) Use of this phrase here is inconsistent with a similar sentence in ¶(4) of the same subsection, where the same requirement is expressed, but this phrase does not appear.
3) The phrase does not make sense in this context, because simply *re-evaluating* a system cannot improve its performance or effectiveness (only *changing* a system can do so).

Accountability measures for State-Federal fisheries (600.310(g)(5)) could use further elaboration. It would be useful for the language in this section to be expanded to include fisheries where management had been delegated to the State. This would relieve the NPFMC from the responsibility, for example, of estimating AMs for BSAI crab stocks.

<u>FMP Implementation Issues</u>

Features of Maximum Sustainable Yield (MSY), Status Determination Criteria (SDC), and OY that should be identified in FMPs need revision. In section 600.310(e)(2)(i)(D), we recommend either striking the last sentence or changing it to read, "If MFMT is set equal to a constant FMSY, MSY is the long-term average catch that would result from fishing at the MFMT." We make this recommendation because the current wording in the proposed rule states that MSY is the long-term average of the OFLs. This creates problems, because it precludes any form of the MFMT other than a "constant F" form. This restriction is not required by the Act, and is inconsistent with the present guidelines, as well as with other parts of the proposed rule. For example, section 600.310(e)(2)(ii)(A)(1) states, "The MFMT or reasonable proxy may

be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential." Furthermore, the restriction would require needless changes in many existing FMPs. For example, it precludes a "constant escapement" control rule of the type that is used to manage some salmon fisheries, and it precludes the inflected type of control rule used in management of North Pacific groundfish. Furthermore, even when the MFMT is of the "constant F" form, the sentence in the proposed rule is incorrect, because MSY will equal the long-term average of the OFLs only if the stock is actually fished at the MFMT.

Similarly, in section 600.310(e)(2)(ii)(A)(1), we recommend that the last sentence be deleted. Requiring that MFMT never exceed FMSY, regardless of stock size, is inconsistent with the current guidelines, and would needlessly preclude many control rules that have proven useful; for example, this sentence would preclude use of "constant escapement" control rules for salmon fisheries.

The definition of ABC is overly restrictive (600.310(f)(2)(ii)). We recommend removing the phrase "in the estimate of OFL" from this section. Scientific uncertainty should not be restricted to uncertainty in the estimation of OFL. Such a restriction would make it more difficult to implement other approaches to the incorporation of scientific uncertainty, such as decision-theoretic approaches or any approach that considers scientific uncertainty in other quantities, such as the distribution of long-term yield.

Some sections specify information on data collection methods and sources of fishing mortality to be contained in the FMPs (600.310(i)). There needs to be some clarification about the role of the SAFE Reports in providing this type of information, given the fact that data collection methods and sources of mortality are likely to change over time.

Establishing ACL and AM mechanisms in FMPs (600.310(h)) are identified as being located in the FMP. This would mean a multi-year process to change any measure. Councils should have the ability to framework the mechanisms and establish an annual or multi-year process for making adjustments. The current description is too inflexible.

Specification of OY (600.310(e)(v))

The term scientific uncertainty in this section requires further definition. In addition, the North Pacific Council sets an OY range on the groundfish complex that limits the sum of the TACs across species. This section needs further clarification as to whether this will be permitted or whether the Council would have to define OY for each species or complex.

Finally, we recommend replacing the word "achievement" with the word "specification" in the last sentence of section 600.310(f)(7)(ii) on the relationship of ACT to OY. ACT is supposed to be the nominal target, rather than the actual target, because it is adjusted to account for any systematic management bias. For example, if catches are typically 25% higher than the nominal target, the ACT would have to be set at 80% of OY in order to achieve OY on average.