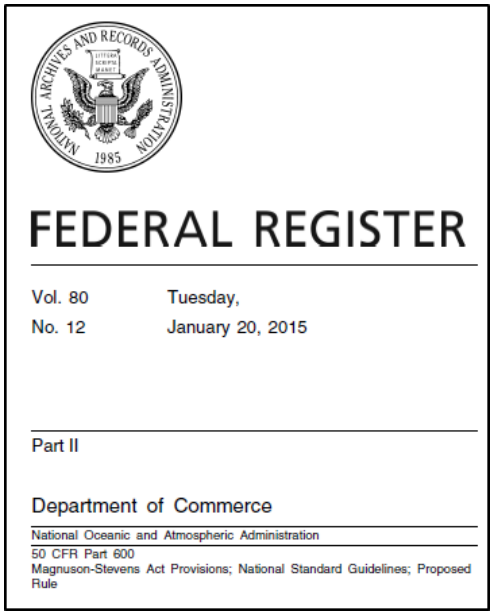
Working Group Comments on Proposed Revisions to the Guidelines for National Standards 1, 3, and 7 of the Magnuson-Stevens Fishery Conservation and Management Act



FEDERAL REGISTER

Vol. 80 Tuesday,
No. 12 January 20, 2015

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 600
Magnuson-Stevens Act Provisions; National Standard Guidelines; Proposed Rule

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March 2015

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Background

In May 2012, NMFS published an Advance Notice of Proposed Rulemaking (ANPR; 77FR26238) to announce the potential for revisions to the National Standard (NS) Guidelines. Eleven topics associated with the guidelines were identified in the ANPR for possible revision and these were presented to the SSC at its June 2012 meeting. The SSC then formed a working group to review the issues, provide specific suggestions, and identify additional issues that could help clarify the NS guidelines. The SSC adopted the working group's comments and provided them to the Council, which sent them on to NMFS along with the Council's own comments in a letter dated October 12, 2012.

In terms of a national response to the ANPR, NMFS received letters from Councils, State Agencies, non-governmental organizations (NGOs), the fishing industry, and the public. The revisions were discussed further at a number of public forums that included Managing Our Nation's Fisheries, and meetings of the National Research Council, Marine Fisheries Advisory Committee Recreational Fishing Group, Commission on Saltwater Recreational Fisheries Management, and the Council Coordination Committee.

On January 20, 2015 NMFS published a proposed rule (80FR2786) for the revisions with a June 30, 2015 comment deadline. According to the proposed rule, NMFS is considering several revisions to National Standards 1, 3, and 7. The revisions are described by NMFS as a product of lessons learned since the implementation of annual catch limits (ACLs) and accountability measures (AMs). NMFS states that the purpose of the proposed changes is to facilitate compliance with requirements of the MSA "without establishing new requirements or requiring Councils or the Secretary to revise their Fishery Management Plans". The objectives of the revisions are "to improve and clarify the guidance within the NS guidelines, address concerns that have been raised during the implementation of [ACLs] and [AMs], and provide flexibility to address fishery management issues."

SSC Action

The SSC will begin to develop comments for the Council on the proposed changes to the NS Guidelines at the April 2015 Council meeting, and the Council will develop its comments at the June 2015 Council meeting.

Document Structure

In anticipation of the action by the SSC, an informal working group was developed to review the proposed revisions and evaluate their responsiveness to previously submitted SSC and Council commentary on the issues. The working group's detailed comments on each enumerated section from the proposed rule are provided below and are arranged according to the following format:

1) Summaries of the revisions are excerpted from the preamble to **the proposed rule** with page reference to the federal register (provided as attachment a)
2) The **affected guidelines section** is identified with page reference to the red-line document (provided as attachment b)
3) **Previous SSC and Council comments** (from the ANPR) are provided

4) The **working group's comments** on the revision are given, including an opinion on its responsiveness to SSC and Council comments, as appropriate

The working group also provides specific editorial improvements to the revised language in the red-line document (attachment b).

Working Group General Comments

The working group notes differences in the topics addressed by the 2012 ANPR and the 2015 proposed rule, and NMFS makes it clear in the proposed rule that extensive public comments contributed to the development of the revisions. As stated above, the ANPR listed eleven issues to be addressed while the revisions described in the proposed rule are summarized under thirteen topics in the preamble (numbered III-XV). Two of the issues in the ANPR are not addressed in the proposed rule, while five topics in the preamble were not in the ANPR. Where an issue/topic does appear in both the ANPR and preamble, the associated revision in the proposed rule may or may not be consistent with, or responsive to, SSC or Council comments. In the working group's opinion, four of the preamble topics reference proposed revisions that are responsive, while the proposed revisions referenced in four other preamble topics are not responsive to the comments made by the SSC, and the remaining five preamble topics are new and therefore not previously addressed by the SSC. A general mapping of the ANPR issues into the preamble topics and SSC comments is provided in Table 1.

The working group is pleased to note that the revisions accomplish several fixes to the guidelines that have needed attention. Most notably, these include:

- Confirmation of the validity of alternative approaches for characterizing /evaluating scientific uncertainty when determining ABC.
- Acknowledgement, albeit with lingering shortcomings, that stocks can be depleted outside of the effects of overfishing.
- Availability of additional options associated with stock rebuilding, especially as regards data-poor stocks.

The working group, however, also notes that the proposed guideline revisions may not accomplish their intended objectives where the new language is particularly vague or open-ended. In order to effectively communicate Secretarial interpretation of the national standards, the guidelines should be adequately specific and direct without being overly prescriptive. The working group appreciates that this is a difficult balance to strike. However, we suggest that the more the preamble or regulatory language is open to interpretation, the more likely it is that this will cause confusion about the adequacy of compliance of existing Council FMPs and management measures. The working group would like to highlight the following sections of the proposed rule where additional clarity is needed:

- The revisions referenced under Topic IV contain criteria for including stocks in FMPs that are very broad. These may limit discretion in determining which stocks should be placed in the FMP, while de-emphasizing consideration of the costs of adding stocks to FMPs.
- The revisions referenced under Topic X leave unclear the adequacy or extent of analysis required for documenting how OY will produce the greatest benefits to the nation.

- The revisions referenced under Topic XIV provide important new guidance concerning flexibility in rebuilding timeframes, but they de-emphasize monitoring the progress of the stock relative to BMSY to such an extent that Councils may feel that the stock's biomass trajectory can be ignored entirely.

Finally, while the proposed rule preamble explains that the intent of the revised guidelines is not to require the Councils to amend their FMPs, many of the new provisions (e.g., expanding the number and types of stocks in the FMP, revisiting FMP objectives, changing how OY is assessed and documented in the FMP) may be interpreted as inconsistent with existing Alaska FMPs. It appears that these revisions would require, or at least strongly encourage, amendments to the FMPs. If that is the case, then this proposed rule would have impacts that are more than technical in nature. These impacts have not been analyzed in the RIR/IRFA prepared for the proposed rule. Before a final rule is prepared, either this analysis should be conducted or the proposed guidelines should be revised so that modifications to FMPs are not required.

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Table 1. Relationship of ANPR Issues to proposed rule preamble topics. SSC Comments and responsiveness of proposed rule to SSC is also provided.

ANPR issue	Preamble topic	SSC comment	Responsive to SSC?
1 Stocks in a fishery	IV. Stocks That Require Conservation and Mgmt	The guidelines should clarify that stocks can and should be protected without being "in" the FMP The guidelines should not ban overfished stocks from inclusion in the ecosystem component	No Yes
2 Overfishing and multi-year impacts	IX. Multi-year Definition of Overfishing	None	N/A
3 ACLs and OY	X. Revising OY Guidance	The guidelines should provide additional guidance on how to account for the social and ecological effects of management actions	No
4 Mixed Stock fisheries and OY	N/A	None	N/A
5 Sci and Mgmt Uncertainty	XI. ABC and ACL Guidance	Additional clarification regarding the concepts of risk and uncertainty should be provided.	Yes
6 Data poor stocks	V. Data-Limited Stocks	The guidelines should clarify that not all data-poor stocks require Federal management	Partial
7 ABC control rules	XI. ABC and ACL Guidance	The guidelines should not require use of P* in setting the buffer between ABC and OFL	Yes !
8 Catch accounting	N/A	The guidelines should clarify what it means to "account" for all fishing mortality	No !
9 AMs	XII. AMs	The guidelines should clarify that not all accountability measures relate to ACLs	No
10 ACL exceptions	XIII. ACL and AM Mechanisms	None	N/A
11 Rebuilding	XIV. Rebuilding	Additional guidance on revising rebuilding plans for stocks with inadequate rebuilding progress should be provided	Yes
N/A	III. Goals and Objectives of FMPs	None	N/A
N/A	VI. Stock Complexes and Indicator Stocks	None	N/A
N/A	VII. Aggregate MSY		
N/A	VIII. Definition for Depleted	None	N/A
N/A	XV. Recreational Fisheries	None	N/A

III. Goals and Objectives of Fishery Management Plans.

Preamble Text (Page 2787):

"To highlight the importance of having well-defined management objectives, and as part of NOAA's effort to carry out the President's directive in Executive Order 13563 to conduct retrospective analysis of existing significant regulations, **NMFS proposes to add a statement to § 600.305(b) to recommend that Councils should reassess the objectives of their fisheries on a regular basis to reflect the changing needs of the fishery over time** (see § 600.305(b)(2) of this proposed action). Similarly, **NMFS proposes to recommend that Councils consider the management objectives of their FMPs and their management framework to determine the relevant factors to determine OY** (see section X of the preamble and § 600.310(e)(3)(iii)(B) of this proposed action). NMFS chose not to proscribe a set time period for ''a regular basis'' in order to provide the Councils the flexibility to determine this time frame themselves; although no time frame is proscribed, Councils should provide notice to the public of their expected schedule for review. Given the scope and complexity of such a task, NMFS does not expect Councils to reassess their FMP objectives every few years; rather, some longer time frame which staggers the review of each FMP may be more appropriate. For example, limited access privilege programs (a type of catch share program) must be formally reviewed 5 years after implementation and at least every 7 years thereafter. See 16 U.S.C. 1853a(c)(1)(G)."

Amended Section(s): 600.305(b) - pg 1 in redline document

SSC Comments on the ANPR:

N/A - New in the proposed rule, not addressed in the ANPR

Council Comments on the ANPR:

N/A - New in the proposed rule, not addressed in the ANPR

WG Comments on the Proposed Rule:

600.305(b)(2) - The proposed rule suggests that Councils "should reassess the objectives of the fishery on a regular basis." "Fishery objectives" are not addressed or mandated by the MSA, but the Council routinely reviews the "management objectives" within its groundfish FMPs and is considering doing so for its other FMPs. Within the revised guideline language itself, the added text is vague and open-ended in terms of the expected periodicity of review. We recognize that, because of the wide spectrum of objectives in FMPs, it would be difficult to develop specific criteria to guide the frequency of reassessments. Appropriately developed FMP objectives should not have to be revisited very often. If, however, the intent of this modification is to encourage action from Councils with outdated objectives in their FMPs, then this proposed change could accomplish that.

The term "objectives of the fishery" is different than that used in the preceding paragraph 600.305(b)(1) ("management objectives to be obtained in regulating the fishery") and the following paragraph 600.305(b)(3) relating objectives to the management process and problems of a particular fishery, while proposed 600.310(e)(3)(iii)(B) that says "Councils should consider the management objectives of their FMPs…". It would be more consistent to replace "objectives of the fishery" in paragraph 600.305(b)(2) with "FMP's management objectives."

Editorial improvements are provided in the redline document.

IV. Stocks That Require Conservation and Management

Preamble Text (Page 2788):

"The NS3 guidelines address structuring appropriate management units for stocks and stock complexes and instruct that the choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. 50 CFR 600.320(d)(1). The NS3 guidelines also state that a management unit may contain stocks for which data is not available to specify MSY and OY or to establish management measures, so that data on those stocks may be collected.

"The NS7 guidelines state that MSA requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. 50 CFR 600.340(b)(2). The NS7 Guidelines provide seven criteria for determining whether a fishery needs management through regulations implementing an FMP. *Id.*

"In this action, **NMFS proposes a new section specifically regarding ''stocks that require conservation and management''** (see proposed § 600.305(c)). **Any stocks that are predominately caught in Federal waters and are overfished or subject to overfishing, or likely to become overfished or subject to overfishing, would be considered to require conservation and management and therefore must be included in an FMP** (see proposed § 600.305(c)(1)). See 16 U.S.C.1853(a)(1)(A) (requiring that FMPs contain conservation and management measures that are necessary ''to prevent overfishing and rebuild overfished stocks''). **Proposed sections 600.305(c)(1)(i)–(x) set forth factors to be considered in all other situations when determining a conservation and management need: (1) The stock is an important component of the marine environment. (2) The stock is caught by the fishery. (3) Whether an FMP can improve or maintain the condition of the stocks. (4) The stock is a target of a fishery. (5) The stock is important to commercial, recreational, or subsistence users. (6) The fishery is important to the Nation and to the regional economy. (7) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution. (8) The economic condition of a fishery and whether an FMP can produce more efficient utilization. (9) The needs of a developing fishery, and whether an FMP can foster orderly growth. (10) The extent to which the fishery could be or is already adequately managed by states, by state/Federal programs, by Federal regulations pursuant to other FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Magnuson-Stevens Act.** When considering adding a new stock to an FMP or keeping an existing stock within an FMP, Councils should prepare a thorough analysis of the factors, and any additional considerations that may be relevant to the particular stock. No single factor is dispositive, but Councils should consider weighting the factors as follows. Factors (i–iii) should be considered first, as they address maintaining a fishery resource and the marine environment. *See* section 1802(5)(A). These factors weigh in favor of including a stock in an FMP. Councils should next consider factors (iv–ix), which set forth key economic, social, and other reasons contained within the MSA for an FMP action. *See* 16 U.S.C. 1802(5)(B). Regardless of whether any of the first nine factors indicates a conservation and management need, a Council should consider factor (x) before deciding to include or maintain a stock in an FMP."

Amended Section(s): **600.305(c)** - pg 2**, 600.305(d)** - pg 3**, 600.340(b)** - pg 25

SSC Comments on the ANPR:

"The guidelines should clarify that stocks can and should be protected without being 'in' the FMP."

"The guidelines should not ban overfished stocks from inclusion in the ecosystem component"

Council Comments on the ANPR:

"… the guidelines should be clarified with regard to when a species may be included in the Ecosystem Component (EC) of an FMP; i.e., if a stock is the target of a particular fishery and is managed under the FMP for that fishery, it should be permissible to list that stock in the EC of a different FMP, even if the stock is considered 'overfished'."

"... the Council does not believe it necessary to alter the guidelines to specify an explicit ecosystem standard for species outside of the FMP."

WG Comments on the Proposed Rule:

600.305(c) - This section is entirely new except for items (iii) and (vi)-(x) of the enumerated factors in paragraph (1) and one sentence in paragraph (2) regarding identification of ecosystem component species at either the species or stock level. Subsection (c)(3) is responsive to the Council's/SSC's interest in including stocks as EC in FMPs if they do not require conservation and management, while Subsection (c)(4) allows inclusion of stocks as EC in FMPs that do not directly manage those stocks, even if those stocks are overfished.

600.305(c)(1) - This paragraph includes a (non-exhaustive) list of ten factors that "should be used by a Council when deciding whether stocks require conservation and management," six of which were taken from the existing guidelines for National Standard 7 (existing paragraph 600.340(b)(2)). The first factor in the list reads, "the stock is an important component of the ecosystem." Although paragraph 600.305(c)(2) states that "no single factor is dispositive," the inclusion of ecosystem importance as the first factor listed in paragraph (1) and its identification in paragraph (2) as one of the first three factors to consider may give the impression that all important components of the ecosystem require specification of MSY, OY, ABC, ACL, and status determination criteria (and all other MSA 303(a) required provisions). It is not clear what problem the addition of the list in paragraph (1) is intended to solve. If the goal is to provide the Councils with more flexibility to include stocks not currently managed under FMPs, this can be accomplished without adding a list that might easily be interpreted as requiring <u>all</u> stocks caught to be included in FMPs. Instead of simply providing more flexibility, this list may appear to remove any discretion by the Council to decide that a stock does not require conservation and management, thereby requiring the MSA 303(a) provisions for every stock caught in every Federal fishery. If the list in paragraph (1) is to be retained, item (vii) of the existing list in paragraph 600.340(b)(2), which recognizes the need to consider the costs of including a stock in an FMP, should be added (it is deleted in the proposed rule). Also, consider moving (iv) to the top of the list because this should be the primary factor in determining whether a stock requires conservation and management. This new section could result in FMP amendments to add new stocks to FMPs and establish status determination criteria, and all other 303(a) required provisions, for stocks that meet these new broad criteria.

600.305(c)(2) - This paragraph should be revised to include the possibility of removing a stock from an FMP, to read "(2) When considering whether a stock should be added to or removed from an FMP…." This would make (c)(2) consistent with (c)(5).

600.305(c)(3) - The proposed rule deletes the four existing criteria for determining whether a stock can be included in the EC (must be a non-target, must not be overfished, must not be likely to become overfished, must not be generally retained), thus providing significant new flexibility. To this extent, the proposed rule is responsive to the SSC's comment that the guidelines should allow overfished stocks to be listed in the EC of an FMP if those stocks are managed primarily under another FMP. However, paragraph (4) of the proposed rule suggests that such stocks should be identified as "other managed stocks" rather than being included in the EC. Paragraph (3) is also confusing in that EC species are defined as FMP species not requiring "conservation and management," yet the same paragraph states that they can be the object of "management measures" designed to minimize bycatch, protect their role in the ecosystem, and "other."

The proposed rule is not responsive to the SSC's request for clarification regarding the need to protect species even if they are not "in" an FMP and the Council's ability to do so without adding them to the species that are "in" the FMP.

While most of the existing provisions of the NS7 guidelines at 600.340(b) were moved to proposed 600.305(c), two concepts of the NS7 guidelines were deleted, 600.340(b)(1) and 600.340(b)(2)(vii):

- *600.340(b) Necessity of Federal management—(1) General. The principle that not every fishery needs regulation is implicit in this standard. The Magnuson-Stevens Act requires Councils to prepare FMPs only*

for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs....

- *600.340(b)(2)(vii) The costs associated with an FMP, balanced against the benefits…*

The preamble to the proposed rule does not explain why these concepts were deleted. Unless the goal is to require specification of status determination criteria, EFH, and all MSA 303(a) required provisions, for species such as brittle stars, the Council benefits in having guidance that allows a balance of costs and benefits and consideration of whether management serves some useful purpose. This is particularly important with the addition of proposed 600.305(c)(1)(i) and (ii), which basically encompass everything caught in every fishery.

Overall, the proposed rule misplaces the emphasis on "stocks" requiring conservation and management, whereas the Act is explicit that a "fishery" is to be the subject of conservation and management. The following text describes an alternative approach to this issue that is simple, sensible, fully protective of both target and non-target stocks, and explicitly consistent with the language of the Act (note that this is intended as a description of an overall approach rather than as substitute text for a particular section of the proposed rule; adoption of this approach would probably require an extensive rewrite of several parts of the proposed rule):

"A management plan must be developed for a fishery if, absent Federal management, the fishery is not expected to be prosecuted in a manner that results in achievement of optimum yield, prevention of overfishing of the target stocks, and protection of the marine ecosystem (or results that are reasonably equivalent to these). All stocks targeted by the fishery must be identified in the FMP, with the understanding that references to 'stocks' in MSA 303(a) apply to those stocks only. References to 'fishery' in MSA 303(a) may be interpreted as applying to individual stocks or groups of stocks within the set of target stocks, or to any fishing for such stocks, to the extent that the context allows. In addition to containing all items required by MSA 303(a), the FMP must contain conservation and management measures sufficient to protect the marine ecosystem from the effects of the managed fishery. The 'marine ecosystem' is understood to consist of all non-target species impacted directly or indirectly by the fishery as well as all physical features of the marine environment impacted directly or indirectly by the fishery. While protection of the marine ecosystem is mandatory, Councils have flexibility in determining how to accomplish this goal. For example, in providing protection to non-target species, reference points based on MSY may or may not be relevant or necessary. Listing a particular non-target species in the FMP is not a prerequisite for providing protection to that species; neither does failing to list non-target species exempt a Council from its obligation to protect them. Moreover, listing a non-target species in the FMP does not thereby create a requirement to include all MSA 303(a) items for that stock."

Editorial improvements are provided in the redline document.

V. Data Limited Stocks

Preamble Text (Page 2790):

"MSA section 303(a)(3) requires that FMPs assess and specify MSY. NMFS acknowledges that it may not be possible, based on the best scientific information available, to estimate MSY (as defined in the NS1 guidelines at § 600.310(e)(1)(i)) or MSY based proxies for some stocks. In such instances, proposed § 600.310(e)(2)(ii) provides that when data are not available to specify status determination criteria (SDCs) based on MSY or MSY proxies, alternative types of SDCs that promote sustainability of the stock or stock complex can be used."

"**NMFS proposes adding to the examples provided for circumstances that may not fit the standard approaches for establishing reference points pursuant to the NS1 guidelines to address situations where data are not available to either set reference points based on MSY or MSY proxies, or manage to reference points based on MSY or MSY proxies** (see § 600.310(h)(2) of this proposed action). However, note that § 600.310(h)(2) does not provide an exemption from any statutory requirements, including the requirement to establish ACLs; rather, it provides flexibility in the application of the NS1 guidelines. NMFS notes that existing § 600.310(h)(3) describes that one of the limited circumstances that may not fit the standard approaches to specification of reference points is harvests from aquaculture operations (*e.g.,* Gulf of Mexico Aquaculture FMP)."

Amended Section(s): 600.310(e)(2)(ii) - pg 9**, 600.310(h)(2)** - pg 18-19

SSC Comments on the ANPR:

"The guidelines should clarify that not all data-poor stocks require Federal management"

Council Comments on the ANPR:

"... the guidelines should be revised to clarify that not all data poor stocks require Federal management, and should not be required to be categorized as 'in the fishery' in the FMP, or, in some cases, in the FMP at all."

WG Comments on the Proposed Rule:

600.310(e)(2)(ii) - The proposed rule includes new options for proxies that can be used in place of the standard status determination criteria in cases where data are especially sparse or uninformative. The insertions represent improvements, as they acknowledge the reality that certain currently required reference points simply cannot be estimated in data-poor situations, and they identify achievable alternatives. Although these changes are not directly responsive to the SSC and Council comments, other language in the proposed rule does suggest that not all stocks require conservation and management.

Editorial improvements are provided in the redline document.

VI. Stock Complexes and Indicator Stocks

Preamble Text (Page 2790):

"In 2009, the NS1 guidelines defined stock complexes to mean a group of stocks that are sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery such that the impact of management actions on the stocks is similar. 50 CFR 600.310(d)(8). However, this definition potentially limits the applicability of stock complexes in many of the circumstances in which they may be most useful, such as situations where stocks in a multispecies fishery cannot be targeted independent of one another, or when it is not feasible for fishermen to distinguish individual stocks among their catch. Under these circumstances, stock complexes may not have similar life histories and vulnerabilities. To resolve this issue, **NMFS is proposing to define stock complex more generally as a tool to manage groups of stocks within a FMP** (see § 600.310(d)(2) of this proposed action) **with consideration of geographic distribution, life history characteristics, and vulnerabilities to fishing pressure such that the impact of management actions on the stocks is similar** (see § 600.310(d)(2)(i) of this proposed action)."

"Stock complexes are often created when there is not enough information to set reference points at the individual stock level. Therefore, the status of individual stocks within a complex is generally unknown. The current NS1 guidelines note that stock complexes can be comprised of many different combinations of indicator stocks and other stocks. In practice, few stock complexes are managed with indicator stocks. One reason for the dearth of indicator stocks is that, once a stock within a complex is assessed, it is often taken out of the complex and managed separately, rather than serving as the indicator for the complex. The current NS1 guidelines, while endorsing the use of indicator stocks, may be inadvertently contributing to the removal of assessed stocks from complexes by stating that MSY should be estimated on a stock-by-stock basis, whenever possible. §§ 600.310(d)(8) and (e)(1)(iii). To encourage the use of indicator stocks in stock complexes, **NMFS is proposing to delete the aforementioned text in §§ 600.310(d)(8) and (e)(1)(iii). The proposed NS1 guidelines state that, where practicable, stock complexes should be comprised of one or more indicator stocks, each of which has SDC and ACLs** (see § 600.310(d)(2)(ii)(B) of the proposed rule). These revisions are intended to reduce the practice of removing a stock from a complex once it has been assessed, so that the assessed stock can be used as an indicator for the complex, if it is practicable to do so. The revisions also help alleviate some of the discontinuities in how data-limited stock complexes are managed compared to data-rich multi-species fisheries. In mixed-stock fisheries, biological reference points are often specified for several of the stocks within the fishery and management measures are developed to prevent overfishing of each stock. Management measures for stocks that have lower productivities will restrict fishing effort for the overall mixed-stock fishery to some extent. However, in stock complex management the status of stocks within a complex is generally unknown and complexes often lack indicator species. Therefore, it possible that stocks that have lower productivities in the complex may experience occasional overfishing, since the status of these stocks are unknown.

Encouraging the use of indicator species will likely reduce the probability that stocks within the complex could experience overfishing or become overfished. This is because the use of an indicator enhances the ability to discern the status of the complex, especially if the complex is of similar geographic distribution, life history, and vulnerabilities to the fishery such that the impact of management actions on the stocks is similar."

Amended Section(s): 600.310(d)(2) - pg 5-6, 600.310(e)(1)(iii)- pg 7-8

SSC Comments on the ANPR:

N/A - New in the proposed rule, not addressed in the ANPR

Council Comments on the ANPR:

N/A - New in the proposed rule, not addressed in the ANPR

WG Comments on the Proposed Rule:

600.310(d)(2)(i) - The current definition of "stock complex" is, "a group of stocks that are sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery such that the impact of management actions on the stocks is similar." The proposed rule retains this definition (with some non-substantive modifications), but prefaces it with the phrase, "Where practicable." While providing somewhat greater flexibility, the addition still implies that the current definition should normally apply, which seems a bit contrary to the argument used to modify the current definition in the first place (viz., that the methods used to identify stock complexes in practice often differ from the current definition; see preamble text above).

600.310(e)(1)(iii) - The existing suggestion that MSY for a stock complex "should" be estimated on a stock-by-stock basis is proposed to be replaced by a suggestion that it be estimated for one or more indicator stocks or the complex as a whole. This is an improvement, given that non-indicator stocks are often data-poor, making estimation of MSY difficult if not impossible.

VII. Aggregate Maximum Sustainable Yield (MSY) Estimates

Preamble Text (Page 2790):

"In this action, **NMFS would revise § 600.310(e)(1) to state that MSY may be specified for the fishery as a whole. Proposed § 600.310(e)(1)(iv) further provides that estimating aggregate level MSY for a group of stocks can be done using models that account for multispecies interactions, composite properties for a group of similar species, common biomass (energy) flow and production patterns, or other relevant factors. In addition, NMFS proposes adding a paragraph to the OY section of the NS1 guidelines to note that aggregate level MSY estimates can be used as a basis for specifying OY for a fishery** (see § 600.310(e)(3)(iv)(C) of this proposed action). When aggregate level MSY is estimated, single stock MSY estimates can be used to inform single stock management. For example, OY could be specified for a fishery, while other reference points are specified for individual stocks in order to prevent overfishing on each stock within the fishery. Lastly, NMFS proposes to encourage the incorporation of environmental information into stock assessments by noting that environmental information (*e.g.*, salinity, temperature), in addition to ecological information (*e.g.*, predator-prey interactions), should be taken into account, to the extent practicable, when assessing stocks and specifying MSY (see § 600.310(e)(1)(v)(C) of this proposed action)."

Amended Section(s): 600.310(e)(1) - pg 7, 600.310(e)(3) - pg 10

SSC Comments on the ANPR:

N/A - New in the proposed rule, *not addressed in the ANPR*

Council Comments on the ANPR:

N/A - New in the proposed rule, *not addressed in the ANPR*

WG Comments on the Proposed Rule:

600.310(e)(1) - The proposed rule retains the requirement that each FMP include an estimate of MSY for the stocks and stock complexes that require conservation and management, and adds that MSY "may also" be specified for the fishery as a whole. "Also" implies that specification of MSY at the fishery level is in addition to, rather than a substitute for, specification at the stock/complex level. This goes beyond the requirement of the Act, which states simply that MSY must be assessed and specified for the fishery.

VIII. Developing a Definition for ''Depleted''

Preamble Text (Page 2791):

"**NMFS proposes adding the term ''depleted'' to the NS1 guidelines to describe those stocks whose biomass has declined as a result of habitat and other environmental conditions, as opposed to fishing pressure. The proposed revision to the guidelines state that an overfished stock or stock complex is considered depleted when it has not experienced overfishing at any point over a period of two generation times of the stock and its biomass has declined below MSST, or when a rebuilding stock or stock complex has reached its targeted time to rebuild and the stock's biomass has shown no significant signs of growth despite being fished at or below catch levels that are consistent with the rebuilding plan throughout that period** (see § 600.310(e)(2)(i)(F) of this proposed action). The time periods chosen (*i.e.*, two generation times and targeted time to rebuild) were chosen because: (1) They will scale with the productivity of the stock rather than being a fixed time period that is applied to all stocks, and (2) they are of a sufficient time period to allow fisheries scientists to easily separate out the impacts of environmental change from the impacts of fishing on a stock, given the requirements of not overfishing or exceeding catch levels that are consistent with the rebuilding plan during those time periods. Rebuilding plans would still be required for depleted stocks and Councils could consider additional measures for these stocks such as a re-evaluation of their SDCs to determine if they are representative of the current environmental conditions, restoration of habitat, identification of research priorities, or partnerships with other agencies to address non-fishing related impacts (see § 600.310(j)(6) of this proposed action)."

"**Additionally, NMFS proposes minor revisions to the definitions of ''overfished'' and ''MSST'' to improve clarity and reduce redundancy, and to clearly show that the MSST is a reference point used to determine if a stock is overfished** (see § 600.310(e)(2)(i)(G) of this proposed action). These revisions together will not result in any change to how the terms 'overfished' and 'MSST' are used; the revisions are proposed only to improve clarity in the definitions."

Amended Section(s): 600.310(e)(2)(i) - pg 8**, 600.310(e)(2)(ii)** - pg 9

SSC Comments on the ANPR:

N/A - New in the proposed rule, not addressed in the ANPR

Council Comments on the ANPR:

New in the proposed rule, not addressed in the ANPR, but Council supported need for addition of concept for "depleted" stocks in Apr 3, 2014 letter to Rep. Hastings, re: MSA reauth.

WG Comments on the Proposed Rule:

600.310(e)(2)(i)(F) - The proposed rule defines a new category, "depleted," as follows: "An overfished stock or stock complex is considered depleted when it has not experienced overfishing at any point over a period of two generation times of the stock and its biomass has declined below MSST…." NMFS' stated purpose in introducing this concept is to address the concern that "the term 'overfished' implies that fishing is the sole cause for a decline in stock biomass, when other factors such as environmental conditions may be the leading cause for the stocks biomass decline….." However, the proposed revision does not accomplish the purpose, because it says that only an overfished stock or stock complex can be considered depleted under the proposed rule. It would be better to add an

option for a stock that has declined below MSST for reasons other than overfishing. It does not make sense to say that a stock is overfished when it has never been subjected to overfishing.

600.310(e)(2)(ii) - The proposed rule changes the definition of MSST by eliminating the requirement for rebuilding to BMSY within 10 years and instead adding this to a list of several new factors that "could" be considered when specifying MSST: life history of the stock, long-term natural fluctuations expected when fishing at MFMT, socio-economic impacts associated with rebuilding to BMSY, international agreements, and "other" factors. While these changes would not necessitate revising the MSST specifications currently contained in the NPFMC's FMPs, they would provide additional flexibility should the Council wish to revisit those specifications.

IX. Developing an Alternative Definition of Overfishing To Include a Multi-Year Approach

Preamble Text (Page 2792):

"**NMFS is proposing to give Councils the option to use a method for determining the overfishing status of a stock that is based on a multi-year approach (that may not exceed 3 years) that examines whether a stock's ability to produce MSY over the long term has been jeopardized** (see § 600.310(e)(2)(ii)(A) of the proposed action). The proposed revisions to the NS1 guidelines would still allow Councils to have overfishing SDCs that are based on single year comparisons of F to MFMT or catch to OFL. A Council may develop overfishing SDCs that use a multi-year approach, so long as it provides a comprehensive analysis based on the best scientific information available that supports that the approach will not jeopardize the capacity of the fishery to produce the MSY on a continuing basis. The rationale for choosing 3 years as a maximum, versus some shorter or longer time period, was based on the fact that many stocks (57 percent) are assessed every 1, 2, or 3 years. Thus it is NMFS's assumption that using a 2- or 3-year time period will be sufficiently long as to capture the recent impacts of fishing on a stock and help smooth out retrospective bias in our understanding of stock status. Additionally, using a 2- or 3-year time period will dampen the effects of outliers within the data and help provide a more consistent determination of when the capacity of the stock to produce MSY on a continuing basis has been jeopardized. A single year's data point may not reflect the overall status of the stock. Were Councils to use a longer time period, there could be a longer delay between exceeding limit reference points and a subsequent management response, which could jeopardize the stocks ability to produce MSY on a continuing basis."

Amended Section(s): 600.310(e)(2)(ii)(A) - pg 9

SSC Comments on the ANPR:

"No comments" expressed in response to this issue in the ANPR

Council Comments on the ANPR:

"No comments" expressed in response to this issue in the ANPR

WG Comments on the Proposed Rule:

Editorial improvements are provided in the redline document.

X. Revising Optimum Yield (OY) Guidance

Preamble Text (Page 2793):

"**NMFS proposes to remove current § 600.310(e)(3)(v)(C) (which states that all catch must be counted against OY, including that resulting from bycatch, scientific research, and all fishing activities) and instead incorporate the concept within § 600.310(e)(2)(ii)(C) of the proposed action by stating that where practicable, all sources of mortality should be accounted for in the evaluation of stock status. The current language implies that catch accounting occurs at the level of OY, while in practice it typically occurs at the level of the ACL. However, the concept of accounting for all sources of mortality is critical to fisheries management; therefore NMFS proposes to retain the concept but incorporate it within the guidance on SDCs. NMFS uses the term ''where practicable'' because it recognizes that data on scientific research catch may not always be available.** To the extent that data is available on scientific research catch, it should be accounted for within the system of reference points. For example, it could be accounted for within stock assessments, as a set-aside within the ACL framework, or by other methods."

"NMFS is also proposing minor revisions and consolidations of redundant guidance. **To remove repetition and improve clarity, NMFS proposes merging the guidance on determining the greatest benefits to the Nation and the considerations for economic, ecological, and social (EES) factors (currently contained in § 600.310(e)(3)(ii)–(iv)) together into a paragraph on assessing OY (see § 600.310(e)(3)(iii)(A) and (B) of the proposed action).** Both are important for assessing OY. Additionally, **NMFS proposes minor revisions to the guidance on the total allowable level of foreign fishing and domestic annual harvest at § 600.310(e)(3)(v)(D) and (H) to improve clarity and consolidate it with the rest of the guidance on foreign fishing (see § 600.310(e)(3)(v)(A) and (B) of this proposed action). NMFS also proposes removing § 600.310(e)(3)(v)(G) (stating that there should be a mechanism in the FMP for periodic reassessment of OY), and instead explain in proposed § 600.310(e)(3)(iii) that, consistent with MSA section 302(h)(5), the assessment and specification of OY should be reviewed on a continuing basis, so that it is responsive to the changing circumstances in the fishery. Lastly, NMFS proposes that for internationally managed stocks, fishing levels that are agreed upon by the U.S. at the international level are consistent with achieving OY** (see § 600.310(e)(3)(iv)(D) of this proposed action)."

Amended Section(s): 600.310(e)(3) - pg 10-13

SSC Comments on the ANPR:

"The guidelines should provide additional guidance on how to account for the social and ecological effects of management actions"

Council Comments on the ANPR:

"... a critical component of the current guidelines is the allowance for an overall OY (as in our multi-species groundfish FMPs). Any requirement for species-specific OY determinations would be extremely difficult to implement, and detrimental to our overall FMP approach."

WG Comments on the Proposed Rule:

600.310(e)(3) - The proposed rule says that OY may be specified at the stock, stock complex, or fishery level . The phrase "FMP level" should be added to this list, since many FMPs cover multiple fisheries. A similar change should also be made in other sections (e.g., MSY) where appropriate.

600.310(e)(3)(iii)(B) - The potential factors listed in (B)(1)-(B)(3) are too loosely defined to provide and operational guidance on what factors to consider. Item (B) is list of factors to consider when determining (A), hence is more appropriately nested under (A).

600.310(e)(3)(iv)(A) - The proposed rule strikes the existing sentence, "All catch must be counted against OY, including that resulting from bycatch, scientific research, and all fishing activities," but this is inconsistent with the proposed rule's new language requiring that all these sources of mortality be taken into account when making status determinations, (600.310(e)(2)(ii)(C)). It should also be noted that the issue of how to account for all sources of anthropogenic mortality, which was highlighted in the ANPR, is not addressed in the proposed rule. Because the overall issue remains unresolved, the specific sub-issues identified in the SSC's associated ANPR comment are shown below:

"The guidelines state that all sources of fishing mortality must be accounted for. However, a number of points remain ambiguous, particularly with respect to removals from sources other than the directed fishery (hereinafter referred to as 'other' catches). Specifically, the guidelines should clarify each of the following points:

- *When considering use of 'other' catches in assessment and management, it will be necessary to distinguish between:*
    1. *listing those catches but not using them for determination of catch limits,*
    2. *using those catches to estimate reference fishing mortality rates (F35%, etc.),*
    3. *using those catches to estimate reference harvest amounts (maxABC, OFL, etc.) given the reference fishing mortality rates, and*

4. *including those catches in the total against which harvest specifications are compared.*

- *It will also be necessary to determine whether the use of 'other' catches should differ depending on the source of the removals (e.g., should research catches be treated differently from catches taken in non-directed commercial fisheries?).*
- *In the event that 'other' catches will be used to estimate either reference fishing mortality rates or reference harvest amounts, methods will need to be devised for doing so (e.g., does the calculation of F35%, etc., assume that 'other' catches are zero, that they are equal to the long-term average, or something else?).*
- *What to do about years for which 'other' catches were known to have occurred, but for which no direct estimate of magnitude is available (e.g., years in which surveys occurred but from which data no longer exist).*
- *What to do about sources for which 'other' catches were known to have occurred, but for which no direct estimate of magnitude is available (e.g., catches taken in recreational fisheries).*
- *Can Councils preempt scientific research by allocating the entire ACL to the commercial fishery?"*

The proposed rule does not respond to the SSC's request for additional guidance on accounting for social and ecological effects. However, the existing text does include two fairly lengthy paragraphs on the types of social and ecological factors that might be appropriate to consider in the OY specification.

600.310(e)(iii) - The first sentence of the existing text reads as follows: "An FMP must contain an assessment and specification of OY, including a summary of information utilized in making such specification, consistent with requirements of section 303(a)(3) of the Magnuson-Stevens Act." The proposed rule would add a requirement that each FMP "documents how the OY will produce the greatest benefits to the nation and prevent overfishing." The working group was in agreement that this would require amendments to most, if not all, of the NPFMC's FMPs because they do not document how the OY will produce the greatest benefits to the nation and prevent overfishing. The working group was also in agreement that documenting how the OY will prevent overfishing seems contrary to NS1, which says "conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery..." and inconsistent with the proposed guidelines at 600.310(f)(4)(iv) on the relationship between OY and the ACL framework. However, the working group was unable to reach consensus regarding some other possible implications of this new requirement, and so offers the following two alternative sets of comments, in no particular order:

A) The MSA defines OY, in part, as the yield that "will provide the greatest overall benefit to the Nation" (section 3(33)), and the MSY requires each FMP to "assess and specify" OY (section 303(a)(3)). Given this, it seems reasonable to assume that some sort of documentation would exist describing how the specified OY will provide the greatest benefit to the Nation. Thus, in an abstract sense at least, the proposed new requirement should not prove particularly burdensome. However, from a practical standpoint, it is problematic for two reasons:

1. As with the assessment and specification of MSY (which is likewise required by MSA section 303(a)(3)), determining the catch that will provide the greatest benefit to the Nation is an extremely ambitious task even under hypothetically "ideal" conditions. Invariably, at least some of the necessary data will be unavailable, and all of the data that are available will be subject to measurement error. Therefore, like the specification of MSY, any specification of OY in practice will necessarily be an estimate, and use of proxy values will often be required. Unfortunately, the proposed new language draws added attention to the existing statutory requirements without providing any help as to how those requirements might be satisfied in practice. If the proposed language is to be retained in the final rule, it is essential that this be accompanied by other language, either in the final rule itself or in a technical guidance document, describing in precise and pragmatic terms how the statutory definition of OY may be satisfied in practice.

2. Requiring that such documentation always be provided within the FMP itself is unnecessarily cumbersome. If the methods used to assess and specify OY (subject to the practical guidance provided by NMFS in response to #1 above) are sufficiently simple in a given instance, it is conceivable that such documentation might reasonably fit within the FMP. However, it is easily conceivable that the methods used to assess and specify OY might be highly technical and span a great many pages, in which case it would be awkward to include full

documentation within the FMP itself. Therefore, the language in the proposed rule should be amended to allow documentation either in the FMP itself or in other documents such as environmental assessments or regulatory impact reviews.

B) The operative changes in the proposed rule are an additional requirement for documenting "how the OY will produce the greatest benefits to the nation" and removal of the text "A Council must identify" (that the Council should determine the relevant factors is now in the subordinate item 600.310(iii)(B)). The changes are subtle yet they give rise to some concerns. The first is that the proposed text could be interpreted as broadening the positive (practical) determination of OY to include factors for which we currently have no practical means of defensibly estimating, thereby creating statutory burden that is untenable. The proposed language does not give adequate deference to the fact that we are not able to tenably estimate the level of yield that optimizes a definition of "benefits to the nation" that includes all but a minority of the factors listed in the revised NS1 guidelines 600.310 (iii)(A)(1)-(3) (See the discussion below). Furthermore, the language "the OY that will produce the greatest benefits to the nation" could be construed as asserting the existence of a global optimum, a high bar. Second, by requiring that the FMPs must document, as opposed to summarize (as prescribed in MSA), is creates a regulatory burden that may not be appropriate for all FMPs. Third, it's critical that we continue to incorporate previously unaccounted economic values into OY but doing so without a clear, defensible methodology for many of the factors may "put the cart before the horse" and potentially undermine this objective. The proposed text goes beyond what may have been its intent, i.e., more comprehensive documentation on the how OY is determined so that we might determine if an alternative yields could produce greater "benefits to the nation". In doing so the new language (unless loosely interpreted to be equivalent to the existing text) requires changes to the FMPs that could be both significant and operationally infeasible. It would be much more practical to retain the existing text and for NMFS to provide technical guidance on how to go about producing OY specifications that are in accord with the spirit of the statutory definition than requiring Councils to prove that their OY specifications truly maximize benefits.

Practical considerations in calculating the benefits to the nation: First, ex-ante economic analyses of alternative yields are rarely considered and the metrics which we would expect one to consider in searching for an optimum (e.g., marginal benefits and marginal costs) are seldom calculated. Instead, the emphasis has been on ex-post calculations of total revenues and total costs at the observed yield. Hypothetically, these could be used to determine welfare improvements of a particular action, but this does not determine the optimum benefit. Second, currently neither the data nor the means exist to calculate most of the benefits or costs listed in items (iii)(A)(1) - (iii)(A)(3). Nationally, the most complete and comprehensive data concern the ex-vessel production/commercial benefits. For every other benefit or cost there are major data deficiencies in some, if not many, regions or fisheries. For many fisheries cost data are not even collected for the commercial sector. In Alaska, for example, with a few exceptions, no cost data are collected. The commercial sector is the sector for which the best data are available. The ability to calculate benefits or costs is substantially more difficult for other sectors or types of value. For example, regarding consumer level benefits, data are generally not available to trace the seafood back to its source (e.g., to differentiate between Russian or Alaska-caught pollock that is consumed in the US). Regarding recreational benefits, (iii)(A)(2), estimates of the economic value typically require extensive surveys to collect data. Items (iii)(A)(2) and (3) broadly outline a host of indirect and non-market values for which there are currently no economic valuations available. Even among economists there can be theoretical or practical differences on how to calculate many indirect or non-market values which can result in huge differences in the estimated values. Even if accurate calculations could be made for all of the commercial, consumptive, recreational and non-market values, weighing competing interests (i.e., create a social welfare function) to determine the optimum yield that produces the greatest benefit to the nation would be a political nightmare. Furthermore, attempting to do so would likely incite litigation. Put more succinctly, it is not currently possible to arrive at a comprehensive and defensible estimate of how a given level of yield contributes to the benefits to the nation.

XI. Acceptable Biological Catch and Annual Catch Limit Guidance

Preamble Text (Page 2793):

In general, **NMFS proposes revisions to the guidance regarding ABC in section § 600.310(f) to minimize redundancy and improve clarity.** For example, the ABC control rule (§ 600.310(f)(4)) was moved forward in the guidelines (see § 600.310(f)(2) of this proposed action) so that the guidance on ABC control rules is provided before the guidance on specifying ABC, and statements about providing a proxy for the uncertainty in estimate of MSY (§ 600.310(e)(1)(v)) was moved to the ABC control

rule section of the guidelines to consolidate guidance on accounting for uncertainty (see § 600.310(f)(2)(ii) of this proposed action). More substantial revisions to the ABC guidance are listed below.

"Definitions NMFS proposes to modify the definition of the annual catch limit (ACL) to improve clarity. The ACL is currently defined as the level of annual catch of a stock or stock complex that serves as a basis for invoking AMs. ACL cannot exceed the ABC, but may be divided into sector-ACLs. 50 CFR 600.310(f)(2)(iv). This definition, while accurate, failed to include reference to the fact that an ACL is a limit on the total annual catch for a stock or stock complex. **NMFS proposes clarifying that an ACL is a limit on the total annual catch for a stock or stock complex, which cannot exceed the ABC, that serves as the basis for invoking AMs. An ACL may be divided into sector-ACLs (see § 600.310(f)(1)(iii) of this proposed action). NMFS also proposes adding three new definitions for the following terms: control rule, management uncertainty, and scientific uncertainty** (see § 600.310(f)(1)(iv)–(vi) of this proposed action). These terms are currently used throughout the guidelines, but were never separately defined. To reduce redundancy, **NMFS proposes deleting the ABC control rule and ACT control rule definitions, since these definitions were very similar to the definitions of ABC and ACT, and there is a more general definition of control rule provided. Lastly, NMFS is proposing to move the definition of ''ACT'' to § 600.310 (g)(4) of this proposed rule, because ACTs are a type of AM, and thus better suited in the AMs section of the guidelines.**"

"Acceptable Biological Catch (ABC) Risk Policy When the NS1 provisions began to be implemented in 2009, Councils were interested in using alternative methods to specify ABC, which were not based on ''the probability that an actual catch equal to the stock's ABC would result in overfishing'' even though such an approach could be calculated. In particular, in their comment to the NS1 ANPR, the North Pacific Council expressed interest in using a decision theoretic approach, which is similar in concept but is not the same as the probabilistic approach (Thompson 2011). Thompson (2011) suggests that the use of a decision theoretic approach may actually be more effective at accounting for scientific uncertainty than the recommended probabilistic approach. To address the above issues, **NMFS is proposing revisions to existing guidance on ABC control rules to state that the Council's risk policy could be based, on an acceptable probability (at least 50 percent) that catch equal to the stock's ABC will not result in overfishing, but other appropriate methods can be used.** When determining the risk policy, Councils could consider the economic, social, and ecological trade-offs between being more or less risk averse. (See § 600.310(f)(2)(i) of this proposed action.) References to the Council's risk policy were also included in the definition of ABC (see § 600.310(f)(1)(ii))."

"Phase-In ABC Control Rules **NMFS proposes revising the NS1 guidelines to allow Councils to develop an ABC control rule that would phase in changes to the ABC over a period of time not to exceed 3 years, so long as overfishing is prevented** (see § 600.310 (f)(2)(ii)(A) of this action). The rationale for choosing 3 years is similar to that described in Section IX of this preamble. For example, choosing a shorter time frame may not be that helpful in stabilizing catches, while a longer time frame that spans multiple stock assessments does not seem logical or transparent. To ensure that phase-in ABC control rules do not lead to overfishing, NMFS also proposes that Councils must provide a comprehensive analysis of the control rules and articulate within an FMP or FMP amendment when a phase in ABC control rule can and cannot be used and demonstrate how the control rule prevents overfishing (see § 600.310 (f)(2)(ii) of this action)."

"Carry-Over ABC Control Rules The NS1 guidelines currently do not provide any guidance regarding carry-over. In *Conservation Law Foundation* v. *Pritzker,* the U.S. District Court for the District of Columbia found that Framework 50 of the Northeast Multispecies FMP violated the MSA by allowing sectors to carry over unused catch in an amount that would exceed the SSC's recommendation of ABC for several stocks. The court held that MSA section 302(h)(6) requires that carryover plus ACLs cannot exceed a stock's specified ABC. Consistent with this court decision, **NMFS proposes revising the NS1 guidelines at proposed § 600.310(f)(2)(ii)(B) to state that an ABC control rule may include provisions for carry-over of some of the unused portion of the ACL from one year to increase the ABC for the next year, based on increased stock abundance resulting from the fishery harvesting less than the full ACL. The resulting ABC recommended by the SSC must prevent overfishing and consider scientific uncertainty consistent with the Council's risk policy. In cases where an ACL has been reduced from the ABC, carry-over provisions may not require the ABC to be re-specified if the ACL can be adjusted upward so that it is equal to or below the existing ABC. Like phase-in control rules, to ensure that carry-over ABC control rules do not lead to overfishing, NMFS proposes that Councils must provide a comprehensive analysis and articulate within an FMP or FMP amendment when a carry-over ABC control rule can and cannot be used and demonstrate how the control rule prevents overfishing** (see § 600.310(f)(2)(ii) of this proposed action)."

Amended Section(s): 600.310(f) - pg 13-17

SSC Comments on the ANPR:

"Additional clarification regarding the concepts of risk and uncertainty should be provided."

"The guidelines [i.e., 600.310(f)(4)] should not require use of P in setting the buffer between ABC and OFL. Such a restriction is not required by the MSA and precludes approaches, such as those based on decision theory, that result in statistically optimal yields."*

Council Comments on the ANPR:

"No comments at this time"

WG Comments on the Proposed Rule:

600.310(f)(1) - The proposed rule adds two new sub-paragraphs (v and vi) defining management uncertainty and scientific uncertainty. These additions are responsive to the first of the SSC's two comments on the corresponding issue in the ANPR.

600.310(f)(2)(i) - The proposed rule removes the requirement that ABC control rules be based on the P approach and explicitly allows for use of "other appropriate methods." The preamble to the proposed rule goes so far as to mention decision theory as an acceptable alternative to the P* approach, and even cites a discussion paper on the subject that was prepared for the NPFMC SSC. This change is completely responsive to the SSC's comments on the ANPR, and constitutes total victory in a struggle that has spanned the last 8 years.*

600.310(f)(4)(i) - See comment under Topic XII below.

600.310(f)(4)(iv) - Clarification is needed in terms of conflicting characterizations of ABC in the second and sixth sentences of this paragraph. The second sentence implies that the only purpose of ABC is to prevent overfishing, while the sixth lists several other considerations that may go into determining the risk policy for an ABC control rule. The latter is more appropriate. If the only purpose of ABC is to prevent overfishing, this could be accomplished most simply by setting ABC equal to zero.

XII. Accountability Measures

Preamble Text (Page 2794):

"**NMFS proposes minor revisions to consolidate and clarify the guidance on accountability measures** (see § 600.310(g) of this proposed action). **NMFS proposes moving the guidance on ACT and ACT control rules from current paragraph (f) into the section of the guidelines that provides guidance on accountability measures** (see § 600.310(g)(4) of this proposed action), **as ACTs and ACT control rules are types of accountability measures**. **NMFS is also proposing to simplify the guidance on ACT control rules, as they are an optional tool that managers can use.** A**dditionally, NMFS is moving the description of management uncertainty out of the description of the ACT control rule and other sections of the guidelines** (§ 600.310(f)(1) and (f)(6)(i)) **into a definition of management uncertainty** (see § 600.310(f)(1)(v) of this proposed action). Consistent with the current NS1 guidelines, some Councils have chosen to account for management uncertainty when setting ACLs. NMFS acknowledges and encourages this practice by **adding a sentence in proposed** § 600.310(f)(4) **stating that if ACT is not used, management uncertainty should be accounted for in the ACL**."

"Additionally, **NMFS proposes moving the guidance on AMs that is currently contained in § 600.310(h)(1) into paragraphs (f) and (g) of the NS1 guidelines. Specifically, NMFS proposes adding ''if sector-ACLs are used, sector- AMs should also be specified'' to § 600.310(f)(4)(ii) of this proposed action.** This concept is currently in § 600.310(h)(1)(iv) and was moved into the discussion of sector-ACLs to improve clarity. **NMFS also proposes to add ''the FMP should identify what sources of data will be used to implement AMs (*e.g.*, inseason data, annual catch compared to the ACL, or multi-year averaging approach)'' into the introductory paragraph on AMs** (see § 600.310(g)(1) of this proposed action). This concept is currently in § 600.310(h)(1)(iii) and was moved into the discussion on AMs to consolidate the guidance on AMs."

"**NMFS also proposes to consolidate the guidance regarding the ACL performance standard from current §§ 600.310(g)(3) and (g)(4) into one section** (see § 600.310(g)(7) of this proposed action). However, the guidance regarding the performance standard remains the same; if catch exceeds the ACL for a given stock or stock complex more than once in the last four years, the system of ACLs and AMs should be reevaluated, and modified if necessary to improve its performance and effectiveness. **NMFS also proposes to clarify in the guidance for AMs when ACL is exceeded that the type of AM chosen by a Council will likely vary depending on the sector of the fishery, status of the stock, the degree of the overage, recruitment patterns of the stock, or other pertinent information** (see § 600.310(g)(3) of this proposed action). For example, some stocks have highly variable recruitment and when environmental conditions are favorable, the catches may exceed the ACL

because the abundance of the stock is higher than anticipated. When deciding on the appropriate AM, Councils could consider if higher than expected recruitment played a role in catches exceeding the ACL. Another example of how the type of AM may vary is that a Council may choose to use a more stringent AM as the biomass of the stock declines."

"Lastly, within the guidance on AMs for when the ACL is exceeded, **NMFS proposes that, if an ACL is set equal to zero and the AM for the fishery is a closure that prohibits fishing for a stock, additional AMs are not required if (1) only small amounts of catch or bycatch occur, and (2) that catch or bycatch is unlikely to result in overfishing** (see § 600.310(g)(3) of this proposed action). Under these circumstances, NMFS believes that a closure that prohibits fishing for a stock is an adequate AM for a fishery, and in some cases, it may be the only option available for a Council."

Amended Section(s): 600.310(f) - pg 13-17, 600.310(g) - pg 17-18

SSC Comments on the ANPR:

"The guidelines should clarify that not all accountability measures relate to ACLs"

Council Comments on the ANPR:

"No comments at this time"

WG Comments on the Proposed Rule:

600.310(f)(4)(i) and 600.310(g)(4) - Paragraph 600.310(f)(4)(i) of the proposed rule adds new language suggesting that "management uncertainty should be accounted for in the ACL" whenever the (optional) concept of annual catch target (ACT) is not used. This is a significant change that may warrant revisiting the ABC control rules currently specified in the Crab and BSAI and GOA Groundfish FMPs or, alternatively, formally adopting use of ACT terminology in the NPFMC's FMPs. When the NPFMC's FMPs were amended to bring them into compliance with the Magnuson-Stevens Reauthorization Act of 2006, TACs were not equated with ACTs, in part because the current guidelines require use of an ACT control rule whenever the concept of ACT is used, and this would be inconsistent with the Council's current procedure for setting groundfish TACs. However, paragraph 600.310(g)(4) of the proposed rule relaxes the requirement for use of an ACT control rule, stating instead that such control rules "can" be used. Given that the NPFMC's groundfish FMPs use TAC as a functional equivalent of ACT, it would be helpful if the proposed rule used the phrase "ACT, or functional equivalent," in places such as the second sentence of 600.310(f)(4)(i): "If an annual catch target (ACT), or functional equivalent, is not used, management uncertainty should be accounted for in the ACL."

The proposed rule does not address the SSC's comment on the corresponding issue in the ANPR.

XIII. Establishing Annual Catch Limit (ACL) and Accountability Measure (AM) Mechanisms

Preamble Text (Page 2795):

"NMFS is proposing minor revisions to reduce redundancy and improve clarity within § 600.310(h). **NMFS proposes to remove the guidance on stock complexes and indicator stocks within current paragraph (h) because it is redundant; similar guidance is contained in § 600.310(d)(2)(ii) of the proposed action.**"

"**NMFS proposes to remove current §§ 600.310(h)(1)(i) and (h)(1)(ii), because they are redundant with the guidance in §§ 600.310(f)(4)(i) and (f)(4)(ii), respectively, of this proposed action.** As described above in preamble section XII, **NMFS proposes to remove the guidance on AMs in current §§ 600.310(h)(1)(iii) and (iv), and consolidate it into §§ 600.310(g)(1) and (f)(4)(ii), respectively, of this proposed action to improve clarity."**

"The MSA provides a statutory exception to the requirements for ACLs and AMs for ''a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species.'' 16 U.S.C. 1853. Section 600.310(h)(2) of the current NS1 guidelines further explains that the life cycle exception applies to ''a stock for which the average length of time it takes for an individual to produce a reproductively active offspring is approximately 1 year and that individual has only one breeding season in its lifetime.'' NMFS believes that the current guidance is confusing and that the requirement to only have one breeding season in a lifetime is overly restrictive. Some short lived species have multiple breeding cycles in a lifetime. **NMFS proposes to revise this exception to apply to ''a stock for which the average age of**

spawners in the population is approximately 1 year or less'' (see § 600.310(h)(1)(i) of the proposed action). NMFS believes that this is a more scientifically correct description of a species that has a life cycle of approximately 1 year."

"Lastly, as described above in preamble section V, **NMFS proposes amending the ''Flexibility in application of NS1 guidelines'' provision of the guidelines by adding two additional examples of circumstances that may not fit the standard approaches to specification of reference points as those described in the NS1 guidelines** (see § 600.310(h)(2) of this proposed action)."

Amended Section(s): 600.310(h) - pg 18-19

SSC Comments on the ANPR:

"No comments"

Council Comments on the ANPR:

"While [the Council] ultimately addressed this issue through the 'alternative approach' mechanism allowed in the NSI guidelines (justifying the State's escapement-based management approach [for salmon] as a legitimate alternative to ACLs), a more straightforward exemption would have been a much more appropriate mechanism. The guidelines should be revised to recognize these unique situations and allow for greater flexibility (including exemptions) in addressing them."

WG Comments on the Proposed Rule:

600.310(h)(2) - The proposed rule mischaracterizes the spawning potential of Pacific salmon ("the spawning potential is concentrated in one year"). This could be fixed by inserting the phrase "of each run" after "potential," or by retaining the current language ("the spawning potential for a stock is spread over a multi-year period"). The proposed rule's addition of data-limited cases to the set of circumstances under which "alternative approaches" is helpful, and simply acknowledges the reality that some things cannot be estimated without data.

Regarding the Council's comment on the corresponding issue in the ANPR, the proposed rule does not provide a more straightforward exemption for salmon, although the exemption in the current guidelines is already explicit.

600.310(h)(2) "Flexibility in application of NS1 guidelines" is nested under (h) "Establishing ACL mechanisms and AMs in FMPs." It would be more appropriately elevated to full paragraph status as 600.310(i), which would require renumbering subsequent paragraphs, or added as new paragraph 600.310(n). This change would make it clear that the Councils have flexibility under the complete set of NS1 guidelines, not just flexibility under (h).

XIV. Adding Flexibility in Rebuilding

Preamble Text (Page 2795):

"Calculating T_{max} When the biomass of a stock has declined below a level that jeopardizes the capacity of the stock to produce MSY on a continuing basis, the stock is considered overfished. Section 304(e)(4) of the MSA requires Councils to specify a time period for rebuilding overfished stocks within 10 years, except in cases where the biology of the stock, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise. 16 U.S.C. 1854(e)(4). Currently, the NS1 guidelines provide guidance on determining the minimum (T_{min}), maximum (T_{max}), and target (T_{target}) time to rebuild a stock to a level that supports MSY (B_{msy}). T_{min} is defined as the amount of time the stock or stock complex is expected to take to rebuild to B_{msy} in the absence of any fishing mortality. If T_{min} for the stock or stock complex is 10 years or less, then T_{max} for that stock is 10 years. Otherwise, T_{max} is calculated as T_{min} plus the length of time associated with one generation time for that stock or stock complex. ''Generation time'' is defined in the proposed NS1 guidelines at § 600.310(j)(3)(i)(B)(*2*)(*i*) as the average length of time between when an individual is born and the birth of its offspring."

"In the past, Councils have had difficulties calculating T_{max} (*i.e.,* T_{min} + 1 generation time), because it requires life history information on the natural mortality, age at maturity, fecundity, and maximum age of the stock (Restrepo, *et al.* 1998). As a result, several Councils have had to rely on proxies of generation time, which can sometimes lead to either overly conservative or exaggerated estimates of T_{max}. To address the data requirement issues of calculating generation time, **NMFS is proposing to add two additional ways of calculating T_{max} (see § 600.310(j)(3)(i)(B) of the proposed rule). Thus, Councils will have three**

options for calculating T_{max}: (1) T_{min} plus one generation time; (2) the amount of time the stock is expected to take to rebuild to its MSY biomass level if fished at 75 percent of MFMT; and (3) T_{min} multiplied by two. These alternative methods of calculating T_{max} rely on different life history parameters, and provide similar timelines for rebuilding when compared to T_{min} plus one generation time. The 75 percent of MFMT approach is potentially advantageous in that MFMT is highly correlated with the productivity of a stock, meaning there is a reduced probability of calculating less conservative or exaggerated estimates of T_{max}. Whereas, T_{min} multiple by two, is the most simplistic method of calculating T_{max}, and it is has been applied elsewhere in the world. For example, the New Zealand's Ministry of Primary Industries uses this method to calculate T_{max} for their overfished stocks. When selecting a method for determining T_{max}, a Council must provide a rationale for its decision based on the best scientific information available."

"NMFS does not expect that drastically different estimates of T_{max} will result from one option to another. Rather, NMFS expects the method selected will largely depend on the best scientific information available for calculating T_{max}. It is also important to note, that an overfished stock is expected to have a T_{target} that is less than T_{max}, which rebuilds the stock in as short a time as possible (see § 600.310(j)(3)(i)(C) of this proposed rule)."

"*Adequate Progress and Extending Rebuilding Timelines* MSA section 304(e)(7) requires the Secretary to review rebuilding plans to ensure that adequate progress toward ending overfishing and rebuilding affected fish stocks is being made. 16 U.S.C. 1854(e)(7). The current NS1 guidelines do not provide any guidance on this provision, and NMFS received several comments in response to the ANPR requesting additional guidance on this provision. **NMFS proposes adding guidance to clarify that the review of rebuilding progress could include the review of recent stock assessments, comparisons of catches to the ACL, or other appropriate performance measures.**"

"**NMFS also proposes that the Secretary may find that adequate progress in rebuilding is not being made if: $F_{rebuild}$ or the ACL associated with $F_{rebuild}$ are being exceeded and AMs are not effective at correcting for the overages; or when the rebuilding expectations of the stock or stock complex have significantly changed due to new and unexpected information about the status of the stock (see § 600.310(f)(3)(iv) of this proposed action). NMFS also proposes clarifying that, while a stock or stock complex is rebuilding, revising rebuilding timeframes (*i.e.,* T_{target} and T_{max}) or $F_{rebuild}$ is not necessary, unless the Secretary finds that adequate progress is not being made** (see § 600.310(f)(3)(v) of this proposed action). As highlighted in the NRC (2013) report on rebuilding, the primary objective of a rebuilding plan should be to maintain fishing mortality at or below $F_{rebuild}$. By doing so, managers can avoid issues with updating timelines that are based on biomass milestones, which are subject to uncertainty (see § 600.310(j)(3)(i)(A)) and changing environmental conditions that are outside the control of fishery managers."

"*Emergency Actions and Interim Measures* The NS1 guidelines provide guidance on emergency actions and interim measures to reduce overfishing that can be taken under sections 304(e)(6) and 305(c) of the MSA. NMFS is proposing to delete §§ 600.310(j)(4)(i) and (ii) because: (1) The guidance simply repeats the language in the MSA; (2) NMFS has separately published a policy on implementing the provisions of MSA 305(c) (NMFS Policy Directive 01–101– 07, Policy Guidelines on the Use of Emergency Rules, 62 FR 44421 (Aug. 21, 1997)); and (3) NS1 guidance should only provide guidance on the 304(e)(6) provisions of the MSA, because it pertains to rebuilding stocks. **NMFS proposes to clarify in § 600.310(j)(4) of this proposed action that the Secretary's ability to implement interim measures to reduce, but not necessarily end, overfishing should rarely be used and require that the following three criteria be met before the interim measure can be used: (1) The interim measure is needed to address an unanticipated and significantly changed understanding of the stock's status; (2) ending overfishing immediately is expected to result in severe social and/or economic impacts to a fishery; and (3) the interim measures will at least ensure that the stock will increase its current biomass through the duration of the interim measure.**"

"*Discontinuing a Rebuilding Plan Based on New Information* Due to scientific uncertainty in the biomass estimate of fish stocks, occasionally a stock is identified as overfished, but is later determined to have never been overfished. The recent NRC (2013) study on rebuilding estimated that approximately 30 percent of rebuilding stocks are later discovered to have never been overfished. In the past, it has been NMFS' policy that once a rebuilding plan has been implemented, the rebuilding plan cannot be discontinued until the stock has rebuilt to B_{msy}, regardless of new information about the status of the stock when it was originally declared overfished. This policy was in place because a future stock assessment could find that the stock actually had been overfished, and rebuilding to B_{msy} is consistent with the MSA's objective that fisheries produce MSY on a continuing basis."

"However, NMFS realizes that rebuilding stocks are sometimes restricted to relatively low $F_{rebuilds}$, which can have negative impacts on fishery participants due to the reduced landings of the overfished stock, as well as reduced catch of other stocks in mixed-stock fisheries. Therefore, **NMFS is proposing to allow a Council to discontinue a rebuilding plan before it reaches B_{msy} so long as the stock meets the following criteria: (1) The Secretary determines that the stock was not overfished in the year that the MSA section 304(e)(3) overfished determination was based on; and (2) the biomass of the stock is not currently below the MSST (see § 600.310(j)(5) of this proposed action).** This proposed revision is based on the rationale that the terminal year of a stock assessment (*i.e.,* the most recent year) is often the most uncertain, while subsequent reviews of that same year by stock assessments conducted several years later are often more accurate (NRC 1998). Thus, if a subsequent

assessment shows that the stock was not overfished in the year that the overfished determination was based on, it is more likely that the stock was never overfished. However, in such a situation, a Council may always opt to continue following the rebuilding plan to further the conservation and management needs of a stock or stock complex that remains below B_{msy}."

"*Other Revisions* In § 600.310(j)(2), **NMFS proposes deleting text that referred to the 2010 and 2011 implementation dates for ACLs and AMs, given that these deadlines have passed and all 46 FMPs have implemented ACLs and AMs** (see §§ 600.310(j)(2)(i) and (ii) of this proposed action). **NMFS also proposes adding guidance to clarify that, when a Council is notified that a stock or stock complex is undergoing overfishing, it should work with its SSC to ensure that the ABC is set appropriately to end overfishing. Councils should evaluate the cause of the overfishing, address the issue that caused overfishing, and re-evaluate their ACLs and AM to make sure they are adequate** (see § 600.310(j)(2)(i) of this proposed action)."

Amended Section(s): 600.310(j) - pg 19-22

SSC Comments on the ANPR:

"Additional guidance on revising rebuilding plans for stocks with inadequate rebuilding progress should be provided"

"The guidelines should also address data-poor situations where information is lacking to inform rebuilding progress. Qualitative analysis (e.g., SWOT analysis, scenario planning) may be considered as an alternative tool to develop the rebuilding plan when quantitative rebuilding models are limited by available data."

Council Comments on the ANPR:

"We believe there is considerable room in this category for improvements to the existing guidelines, including greater flexibility, on a fishery by fishery basis, rather than strict time lines and strict requirements for rebuilding in cases where fishing does not appear to be a factor in rebuilding."

"It makes more sense to allow an existing FMP (rebuilding plan) to be extended in cases where fishing mortality can be demonstrated to be de minimus."

WG Comments on the Proposed Rule:

600.310(j)(3)(i)(A) - The proposed rule identifies the starting date for calculating Tmin as the first year that the rebuilding plan is expected to be implemented, which is a helpful clarification.

600.310(j)(3)(i)(B) - The proposed rule retains the existing discontinuity in the formula for Tmax, wherein Tmax can be no greater than 10 years if Tmin is slightly below or equal to 10 years, but Tmax can be substantially greater than 10 years if Tmin is even slightly above 10 years. Although the discontinuity is difficult to rationalize, it is also difficult to see how the Act can be interpreted otherwise. For stocks with Tmin greater than 10 years, the proposed rule adds two new alternative methods for calculating Tmax, which provides helpful flexibility, particularly in cases where estimates of generation time are unavailable or unreliable.

600.310(j)(3)(iv) and 600.310(j)(3)(v) - Paragraph 600.310(j)(3)(iv) of the proposed rule provides significant new text on determination of "adequate progress" under a rebuilding plan, which is an issue that the current guidelines do not address; thus the proposed rule is responsive to the SSC's first comment on this issue. However, the new text does not address data-poor cases separately from the general case, so is not responsive to the SSC's second comment.

The proposed rule emphasizes keeping catch below the level associated with the specified fishing mortality rate under the rebuilding plan ("Frebuild"). This is helpful in that it places the focus on something that managers can actually control, but it may also de-emphasize the progress of the stock biomass toward BMSY (which managers can at best control indirectly, and sometimes not at all), thereby resulting in insufficient scrutiny of the Frebuild estimates. For example, paragraph 600.310(j)(3)(v) states that revision of Frebuild is not necessary unless adequate progress is not being made, which implies that, if Frebuild is initially overestimated and catches stay

below the level associated with the (overestimated) Frebuild, there may be no incentive to revisit Frebuild even if biomass makes no progress toward BMSY. A possible remedy might be found in the proposed rule's option wherein progress "may also" be found to be inadequate if "rebuilding expectations of a stock or stock complex are significantly changed due to new and unexpected information about the status of the stock." For example, if the unexpected information consists of a finding that biomass is not increasing as rapidly as expected under Frebuild, this clause could allow for a determination of inadequate progress, thereby necessitating a re-evaluation of Frebuild. However, it is not clear that such an interpretation is consistent with NMFS' understanding that "the primary objective of a rebuilding plan should be to maintain fishing mortality at or below Frebuild."

The proposed rule includes the following text at 600.310(j)(3)(iv): "The Secretary may find that adequate progress is not being made if Frebuild or the ACL associated with Frebuild are exceeded, and AMs are not correcting the operational issue that caused the overage and addressing any biological consequences to the stock or stock complex resulting from the overage when it is known (see paragraph (g)(3) of this section). A lack of adequate progress may also be found when the rebuilding expectations of a stock or stock complex are significantly changed due to new and unexpected information about the status of the stock." These sentences should be modified by changing "may" to "will" in the first sentence, and replacing the second sentence with the following: "Each rebuilding plan should identify a reasonable level of statistical significance that will be used to evaluate progress of the stock toward BMSY. The Secretary will also find that adequate progress is not being made if the status of the stock relative to BMSY is significantly different from that projected in the rebuilding plan."

600.310(j)(3)(vi) is not clear. Consider revising to read:"(vi) If a stock or stock complex has not rebuilt by Tmax or the Secretary finds that adequate progress is not being made then the fishing mortality rate should be maintained at Frebuild or 75 percent of the MFMT, whichever is less, until the stock or stock complex is rebuilt."

Editorial improvements are provided in the redline document.

XV. Recreational Fisheries

Note that all revisions proposed in this section reference revisions proposed in preceding sections (sections III, V, and XII)

Preamble Text (Page 2797):

"Because the needs and objectives of a fishery change over time, **NMFS is proposing that Councils reassess the objectives of the fishery on a regular basis** (see § 600.305(b)(2) of this proposed action). Recreational fishermen should work with their Councils to advance their sector specific objectives, such as increasing the opportunity to catch larger fish." (**Topic III**)

"**NMFS** encourages the use of conditional AMs and **proposes clarifying that the type of AM chosen by a Council will likely vary depending on the sector of the fishery, the status of the stock, degree of overage, recruitment patterns of the stock, and other pertinent information** (see § 600.310(g)(3) of this proposed action)." (**Topic XII**)

"As noted above in section V of the preamble, **NMFS is proposing to revise the NS1 guidelines to make clear that, when data are not available to specify MSY or MSY proxies, alternative types of SDCs that promote sustainability of the stock or stock complex can be used** (see § 600.310(e)(2)(ii) of this proposed action)." (**Topic V**)

"**NMFS also proposes to allow alternative approaches to satisfying the NS1 requirements for stocks for which data are not available to either set MSY or MSY based reference points or manage to MSY or MSY based reference points** (see § 600.310(h)(2) of this proposed action)." (**Topic V**)

SSC Comments on the ANPR:

N/A - New in the proposed rule, not addressed in the ANPR

Council Comments on the ANPR:

N/A - New in the proposed rule, not addressed in the ANPR

WG Comments on the Proposed Rule:

Comments provided above on Sections III, V, XII. No comments specific to recreational fisheries

National Standard 3

600.320(e) - The proposed rule leaves this paragraph, which deals with analysis of management units, largely as it appears in the current guidelines. Although the NPFMC's FMPs do not address the items enumerated in this paragraph, most of them are addressed in the analytical documents that support the FMP (EAs, RIRs, etc.). It is not clear why this analysis would belong in an FMP, and it could create excessively long FMPs. Consider changing the beginning of the first paragraph from "An FMP should include discussion of the following:" to "The supporting analyses for FMPs should demonstrate:" This change would make the analysis paragraph for NS3 consistent with the analysis paragraph for NS7 (proposed 600.340(c)).