

North Pacific Fishery Management Council

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1315 East-West Highway
Silver Spring, MD 20910

Dear Bill:

Thank you for the opportunity to comment on the proposed rule to revise National Standard 2 (NS2) guidelines regarding the use of best scientific information available. The North Pacific Fishery Management Council (Council) provided comments on the advanced notice of proposed rulemaking in December of 2008, and that comment letter is attached for reference. Regarding the current proposed rule, the Council is pleased that the proposed guidelines largely follow the advice of a report of the National Research Council published in 2004. In general, the proposed rule appears to provide a reasonable interpretation of Congressional intent regarding the use of scientific information, and the role of Council Scientific and Statistical Committees (SSCs), **with one critical exception**, as described below.

We are very concerned that the proposed rule contains confusing and conflicting guidance on the role of the SSC per the provisions of section 302(g)(1)(E) of the Magnuson-Stevens Act (MSA). Section 302(g)(1)(E) was specifically crafted to allow the Councils' SSCs to function as the primary peer review panel in order to satisfy requirements of the Information Quality Act. That provision of the MSA makes it clear that the Secretary and Council may use existing committees (i.e., our SSC) to satisfy that peer review requirement, and it allows discretion for the Secretary and Council to establish additional peer review processes when appropriate. **We believe strongly that the final rule needs to clarify that existing SSCs indeed may function as the primary peer review process, as they have successfully done for decades in the North Pacific and other areas.** We offer the following, more specific comments to improve the clarity and function of the guidelines, based primarily on recommendations from our own SSC which reviewed the proposed rule at our recent February 2010 Council meeting:

- Optional peer review process. P. 65725 (right, top). The reference to 302(g)(1)(E) should be clarified to indicate that this section allows Councils to use SSCs for peer review but also provides for an optional peer review process to be used at the discretion of the Councils. Likewise, on p. 65729 (left, para. (b)), this section should be titled "Optional peer review process" instead of "Peer review process". In this section, the text should again clarify that section 302(g)(1)(E) allows the Councils to use their SSCs for peer review and also provides for an optional peer review process by the Councils at their discretion. The paragraph should clarify that it goes on to describe this optional peer review process. This clarification is necessary to avoid subsequent confusion. For instance, if it is not clarified that it is the optional peer review process being described, then the last sentence in the right column of p. 65729 ("reviewers should not be employed by the Council or entity that produces the product for management decisions") would be misinterpreted to indicate that NMFS and state fishery agency scientists could not serve as SSC members to review documents produced by those agencies. The guidelines should more clearly articulate that the SSC suffices as a peer review body and that additional reviews are optional, as necessary or desired.

- Role of SSCs and optional peer review process. P. 65726 (right, top) and 65730 (middle, bottom). See: “The SSC should not repeat the peer review process by conducting a subsequent detailed review.” Our concern is that this may be misinterpreted to infer that SSC input is not warranted if a peer review is conducted. To correct such a misunderstanding, we recommend adding: “but this provision is not intended to thwart or constrain the scope or depth of SSC comments.” A similar follow-up statement occurs on p. 65726 (middle) on “optional peer review process” where it says: “However, NMFS believes that section 302(h)(6) should not be interpreted so as to displace the SSC’s role in providing advice and recommendations to the Council.”
- Inclusion of EFH information in the SAFE report. P. 65727 (left, top), 65730 (right, middle), 65731 (middle, para. (v)). We recommend clarifying that EFH information may be included by reference and contained in stand-alone separate documents rather than physically merged into the annual SAFE report. The North Pacific Fishery Management Council (NPFMC) prepares annual SAFE reports for the annual specification process, whereas EFH information is prepared less frequently and for different purposes. The guidelines indicate that the SAFE report can exist as a collection of documents, so we recommend minor clarification that some documents (e.g., EFH) can be included in the SAFE by reference.
- Use of Local and Traditional Knowledge (LTK). P. 65728 (middle, para. (C)). While we recognize and appreciate the value of LTK, the SSC notes that it can be very difficult to assess the objectivity or to verify and validate some LTK information. Also, as written, the last sentence on p. 65728 (middle, para. (C)) can be misconstrued to mean that scientific information needs to be reconciled to conform with LTK information. **Therefore, we recommend revising this sentence to read: “To the extent possible, an effort should be made to consider both scientific information and local and traditional knowledge, recognizing it can be difficult to fully verify and validate some LTK information.”** When the Council reviewed the SSC comments, there was discussion about the expectation of LTK to be ‘verified’ or ‘validated’ by what was described as ‘western science’. There was concern raised by some Council members regarding the appropriateness of setting up a hierarchy between the two forms of scientific information. The Council recognized the issues raised with LTK by the SSC and generally agreed with them; however, the sentiment of some members was that LTK should not be required to be ‘validated’ by another form of science in order to be incorporated or factored into decision making. Flaws or issues with any information can be recognized and dealt with appropriately on a case-by-case basis.
- Use of results from incomplete studies. P. 65728 (right, para. (B)). Because not all incomplete results should be brought forward, we recommend changing “must be brought forward” to “may be brought forward”.
- Accuracy and precision. P. 65729 (top, para. (B)). We recommend changing “the precision of the estimates is adequate, model estimates are unbiased” to “the accuracy and precision of the estimates are adequate”. We recommend this change as the parameter estimates in many nonlinear models have some bias that is tolerable.
- Clarification of text. P. 65729 (left, (viii), 1st sentence). Insert “evaluation of” before “substantial”. It is the evaluation that is peer reviewed, not the alternatives themselves.
- Timing of peer review. P. 65729 (middle, (ii)). This section inadvertently indicates that the peer review is needed only at the start of the process. We recommend that it be revised to indicate that peer review is needed at all stages of the process, but that it should commence early on so as to avoid major criticisms at the end of the process.

- Early disclosure of reviewers' identities. P. 65730 (left, para. (3), last sentence). This sentence says that "Names and organizational affiliations of reviewers also should be publicly available prior to review." We do not fully agree with this mandate. If the peer review is conducted by the SSC or a panel during a public meeting, then names and affiliations are public information. However, it may be desirable to conduct some peer reviews by independent reviewers. Publication of the names of these independent reviewers prior to the review could open the door to meddling in the review process by individuals or organizations wishing to bias the outcomes. Moreover, it could open the door to political interference in the selection of independent reviewers. Therefore, we recommend that the guidelines allow for the option that an independent set of reviewers are selected who remain anonymous until the reviews are completed.
- Editorial comment. P. 65731 (left, para. (3)). We recommend inserting "To the extent possible" at the start of this sentence, because the items to be included in SAFE documents cannot be calculated for all stocks (e.g., minimum stock size threshold cannot be calculated for a data-poor stock with incomplete catch records).
- Stock Rebuilding. P. 65731 (left, para. (B)). We do not believe that the SAFE report is the appropriate place to develop a rebuilding plan. Rather, we believe that development of a rebuilding plan and analysis of alternatives should be developed in a separate document, such as a plan amendment. The SAFE document should be used to report progress toward stock rebuilding.
- Assessing the success of state fishery management. P. 65731 (left, top). This paragraph appears to require that SAFE reports include an assessment of the "relative success of existing state and federal fishery management programs." We note that a number of state fishery management programs address non-federally managed species. Therefore, we recommend revising this statement to read: "relative success of existing federal and relevant state fishery management plans."

Once again, thank you for the opportunity to provide comments. To reiterate our primary concern, the final rule should be clarified to reflect the intent of section 302(g)(1)(E) of the MSA, that existing SSCs may function as the vehicle for the primary review process, but that does not preclude the development of additional review processes at the discretion of the Secretary or Council. If you have any additional questions, please contact myself or David Witherell at the Council offices ((907) 271-2809.

Sincerely,



Chris Oliver
Executive Director

CC: Dr. Steve Murawski
Mr. Eric Schwaab

ATTACHMENT