



2005 Market Street, Suite 1700 215.575.9050 Phone
Philadelphia, PA 19103-7077 215.575.4939 Fax

901 E Street NW, 10th Floor 202.552.2000 Phone
Washington, DC 20004 202.552.2299 Fax
www.pewtrusts.org

June 3, 2015

Chairman Kevin Anson
Gulf of Mexico Fishery Management Council
2205 North Lois Avenue, Suite 1100
Tampa, FL 33607

Chairman Ben Hartig
South Atlantic Fishery Management Council
4055 Faber Place Drive, Suite 201
North Charleston, South Carolina 29405

Re: Comments on Proposed Changes to the Guidelines for National Standards 1, 3, and 7

Dear Chairman Anson & Chairman Hartig,

On January 20, 2015, the National Oceanic and Atmospheric Administration's Fisheries Service (NOAA Fisheries) released proposed revisions (hereafter, PR) to the guidelines for National Standards 1, 3 and 7 (NS1, NS3 and NS7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).¹ Both the Gulf and South Atlantic Councils have indicated their intention to submit a letter to NOAA Fisheries on the PR, and the Gulf Council is scheduled to review a draft at their June 2015 meetings. With this in mind, The Pew Charitable Trusts (Pew) offers the following input, which we hope will be helpful.

Although several of the suggested changes to the NS1 guidelines have merit, there are others that are cause for serious concern, as they threaten to undermine fundamental principles that have, after many decades, finally put America's fish populations on the road to recovery. It is critical that any changes to the National Standard guidelines do not compromise the science-based tools that have yielded strong results and are helping to secure the U.S.'s reputation as a global leader in fisheries management. Specifically, our biggest concerns are that the PR would:

- 1) Weaken criteria in the PR for which species must be included in a management plan, potentially putting the Councils into perpetual crisis-management mode.
- 2) Allow the use of multi-year averaging (up to three years) to determine whether overfishing is occurring without adequate safeguards, thereby increasing the risk of fishing above sustainable levels.
- 3) Undermine scientifically-based fishing limits by allowing carryover of unused quota, absent sufficient guidance to prevent overfishing.
- 4) Allow deficient rebuilding plans to continue unchanged when overfished populations fail to rebuild, thereby undermining the legal requirement for a rebuilding timeline to be "as short as possible".

¹ NOAA Fisheries. Magnuson-Stevens Act Provisions; National Standard Guidelines. Proposed Rule, Request for Comments. 80 FR 2786. Jan 20, 2015.

- 5) Increase the risk of overfishing by delaying the implementation of sustainable catch limits in cases where new information suggests the health of the fish population has changed.

The current guidelines, issued in 2009, focus on providing guidance for preventing overfishing, rebuilding vulnerable fish populations, and implementing annual catch limits (ACLs) and accountability measures (AMs).² This approach has been largely successful. For example, in the first quarter of 2008, the combined regions of the Gulf of Mexico and South Atlantic had 15 stocks or stock complexes subject to overfishing.³ At the end of 2014, there were only 7, a dramatic improvement.⁴ Nationally, U.S. commercial fishing revenues have risen 43 percent since 2006.⁵ In 2012, approximately 11 million recreational anglers contributed \$58 billion in sales impacts and supported over 381,000 jobs, with the vast majority of those benefits occurring along the Southeast coasts.⁶

The PR also includes several proposed changes to the guidelines which Pew views as positive. Most notably, these include:

- 1) The ability to terminate a rebuilding plan for stocks where new information has shown the stock was never overfished in the first place.
- 2) Another constructive recommendation is that the Councils reassess the objectives of fishery management plans on a regular basis, which will provide managers and stakeholders opportunities to ensure current plans are achieving social, economic, and ecological goals.
- 3) The PR also clarifies the relationship between optimum yield (OY) and ACLs, and while we feel more could still be done in this area, overall this is a positive step.
- 4) Additionally, the PR expands the suite of data-limited methodologies available for stocks with low levels of information, which is a positive change so long as conservation requirements are still met and the robust data-limited methods developed in the last several years are still used when appropriate.

Nevertheless, we are concerned that much of the PR threatens to roll back the substantial progress made since the last NSI revisions by increasing the risk of overfishing, delaying rebuilding, and avoiding federal management of some potentially imperiled ocean fish populations. We detail our concerns below.

Weakened criteria in the PR for which species must be included in a management plan could put Councils into perpetual crisis-management mode.⁷

The PR would replace the existing system for determining which stocks are considered “in a fishery” - including the current definitions of non-target stocks and ecosystem component

² 74 FR 3178

³ NOAA Fisheries. Status of Stocks, 1st Quarter 2008.

⁴ NOAA Fisheries. Status of Stocks, Dec 2014.

⁵ NOAA Fisheries. Commercial Fisheries Statistics from 2007 and 2013. <http://www.st.nmfs.noaa.gov/st1/publications.html>

⁶ NOAA Fisheries. Fisheries Economics of the United States, 2012.

<http://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/FEUS2012.pdf>

⁷ Proposed rule at 50 C.F.R. § 600.305(c).

species - with new criteria for determining if a stock is “in need of conservation and management.” There are numerous problems with this proposal. First, **it assumes that the only species definitely in need of conservation and management measures are stocks that are overfished, experiencing overfishing, or likely to become subject to either.** All others are to be evaluated against a list of criteria that include non-biological factors. A strict application of the proposed criteria could mean that the only species under Council management would be populations that are either dwindling or already depleted, forcing the Council into perpetual crisis management mode. Species that are removed from management plans would no longer be subject to stock assessments, creating a real risk that currently healthy populations could decline for some time with no system in place to recognize the problem and respond appropriately.

The existence of another management regime, even if it is not MSA compliant, is indicated to weigh heavily against the need for federal management. For instance, it is possible that an industry targeting a particular species (or suite of species) could develop a system of voluntary self-regulation, and that may qualify as an alternative management regime under the PR. Should this fail, and the target population becomes overfished, it would then be incumbent upon the fishery management council to fix the problem. Waiting for a crisis to act is poor stewardship, and often results in much harsher regulations and more economic disruption than pro-actively managing for a healthy fishery, via science-based catch limits and accountability measures.

An additional concern is that NOAA Fisheries has highlighted these changes in the PR as a potential path by which recreational species might no longer need management. But there are very few species caught in federal waters in the Southeast regions that are only caught recreationally. Creating separate management situations where commercial fisheries have conservation and management measures but there is no data or accountability for the recreational catch will only make the council process more complicated and contentious, and could jeopardize the health of the resource.

Under this new system, it is easy to imagine political pressures preventing councils from applying conservation and management to potentially imperiled stocks in federal waters. Even under the current guidelines several species (*e.g.*, white grunt, black sea bass, and red porgy) were removed from federal management in the Gulf of Mexico, and their status is uncertain. Instead, we strongly urge the Councils to request that NOAA Fisheries eliminate this proposed change in the PR, and clarify the definition for ecosystem component species. The guidelines should encourage Councils to retain species that occur within their jurisdiction under federal management, as this is a vitally important component of the move towards ecosystem-based fisheries management.

The PR changes proven practices for determining whether overfishing is occurring, thereby increasing the risk that it occurs.⁸

The PR would allow the use of multi-year averaging (up to three years) to determine whether overfishing is occurring, instead of using the most recent year of data or an assessment. We are concerned that this would allow overfishing to occur in individual years and in some cases, for a prolonged period of time without any requirement that the Councils address potentially

⁸ Proposed rule at 50 C.F.R. § 600.310(e)(2)(ii)(A)(3).

unsustainable levels of fishing. It is often much more economically disruptive when drastic action is needed to address the consequences of continued overfishing, rather than taking action as soon as fishing levels exceed the sustainable limits recommended by the Council's Science and Statistical Committee (SSC).

Recent application in the Southeast of the multi-year averaging approach to determine whether or not overfishing is occurring illustrates why, at a minimum, additional clarification is needed on when this is appropriate. In addition, safeguards should be included to ensure this does not jeopardize the health of populations on the decline by allowing fishing levels that are already, or are likely to be, unsustainable. In the case of snowy grouper in the South Atlantic, a three-year average of data from the most recent assessment was used to find overfishing was *not* occurring, even though the terminal year of data (2012) indicated that overfishing *is* occurring.⁹ But when a three-year average was applied to South Atlantic gag grouper, and resulted in a finding that overfishing is occurring,¹⁰ NOAA Fisheries elected not to follow the SSC recommendation. Instead, the agency based its 2014 overfishing determination solely on the terminal year in the time series (2012), which indicated that overfishing was *not* occurring in that year. These are prime examples highlighting our concern about how this flexibility might be exploited, to the detriment of the resource.

Clearer guidance must be provided to ensure that if this methodology is allowed under the revised NS1 guidelines, its use does not result in overfishing going unaddressed. There must be sufficient conditions on how this approach will be applied, which should be prescribed prior to its use. In particular, this approach should not be used in situations with high uncertainty or small buffers, and only in fisheries with strong and effective AMs.

The PR allows carryover of unused quota without sufficient guidance to prevent overfishing.¹¹

The PR would allow carryover of uncaught quota from one fishing season to the next by allowing ABCs to be revised. Although the PR has language that states that any carryover cannot exceed the OFL and should consider scientific uncertainty, and suggests that a comprehensive analysis should be done to ensure that overfishing is prevented, revising the ABC – rather than the ACL – increases the risk of overfishing. To address this, we recommend that any quota carryover provision be specific to the ACL and not the ABC, and scientific review should be required, and it should explicitly include an examination of key inputs such as recruitment, biomass, and fishing mortality rate. Without this sort of analysis, it is impossible to know whether an underage occurred because of a lack of fishing effort or because there are fewer fish available than predicted.

For instance, it would be highly inappropriate to carry over “unused” quota when there is an episodic environmental or mortality event, such as red tide, cold kills or an oil spill – all of which have occurred in the Southeast in recent years. In these cases, an underage could signal trouble in the fish population(s), and ratcheting up catch limits would be a risky action to take. For example, in the Gulf last year, the recreational sector caught only about 50% of its gag quota,

⁹ SEDAR 36, at: <http://sedarweb.org/sedar-36>.

¹⁰ The 3-year average F was 23% > Fmsy (i.e., F2010-2012/Fmsy = 1.23).

¹¹ Proposed rule at 50 C.F.R. § 600.310(f)(2)(ii)(B).

while the commercial sector only caught about 70%. As drafted, the PR would allow all of the underage to be rolled over since it includes no limit on the carryover. This could be very problematic as there are strong indications, including fishermen testimony, that the gag population is not as healthy as deemed in the most recent assessment.

It is also highly risky to allow this approach in fisheries with low monitoring levels or infrequent assessments, as the data in these fisheries is less certain and thus the likelihood of unknowingly allowing overfishing is dramatically increased. In the Southeast, annual stock assessment updates are not generally available for most fisheries, and catch limits are often simply based on historical landings, which are typically highly uncertain. For example, in the case of South Atlantic scamp, there is no formal stock assessment, and commercial and recreational landings have been far below the ACL in recent years. At least one Council member, who is also a fisherman, has expressed concern that scamp abundance is low and the stock may be at high risk of overfishing or becoming overfished. This led the South Atlantic Council to provide a more conservative catch limit than used for other species.¹²

In general, the carry-over of unused quota from one year to the next should only be allowed in fisheries that have an effective catch monitoring program in place, strong accountability measures exist, and if the fishery has very low management and scientific uncertainty.

The PR would allow deficient rebuilding plans to continue indefinitely when overfished populations fail to rebuild as anticipated, thereby undermining the legal requirement for a rebuilding timeline to be “as short as possible.”¹³

The proposed definition of “adequate progress” towards rebuilding is insufficient, and would allow rebuilding plans to continue without revision past their T_{max} , so long as any fishing above $F_{rebuild}$ ¹⁴ is controlled with AMs. This assumes that the $F_{rebuild}$ is sufficiently low to allow rebuilding, which is certainly not guaranteed as rebuilding plans only need to have a 50% probability that the species will be rebuilt by T_{max} . When rebuilding plans fail to meet their targets, this should trigger a reexamination of the plan and serious consideration of greater reductions in fishing mortality, not a continuation of the same, unsuccessful management measures. But, that would not be the case under the proposed definition.

In the Gulf, the greater amberjack rebuilding plan expired in 2012, and the population has failed to recover. However, a new rebuilding plan, with a revised deadline for restoring this species, has not been developed. While the Council has taken significant action recently that reduces fishing mortality and gives the stock a better chance of rebuilding, it still lacks a rebuilding plan. Had the Council been required to take action once the rebuilding plan expired and the population remained overfished, the fishery could have stabilized earlier, and could perhaps be yielding higher quotas today.

In addition, the PR includes alternate calculations for T_{max} , the maximum amount of time needed to rebuild an overfished population, which we are still reviewing. However, the PR does not

¹² South Atlantic Fishery Management Council. Snapper-Grouper Amendment 29, proposed rule. 79 FR at p. 72568 (Dec. 8, 2014) Available at http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2014/am29/index.html

¹³ Proposed rule at 50 C.F.R. § 600.310(j)(3)(iv).

¹⁴ The fishing mortality rate associated with achieving the rebuilding target.

provide guidance to the Councils on how to proceed if more than one of the formulas can be used. We encourage Councils to ask for additional clarification for these situations. If the additional formulas yield similar results and it is clear how to apply them, this change could help Councils address situations where data limitations make the current T_{\max} calculation challenging.

The PR may increase the risk of overfishing by delaying the implementation of sustainable catch limits in cases where new information suggests the health of the fish population has changed.¹⁵

The PR would allow Councils to delay responses to new stock assessments by phasing-in increases or decreases in catch over a three-year period. In some cases, phasing-in allowable biological catch (ABC) through the Councils' control rules may be possible without jeopardizing the health of fish populations. However, the PR does not adequately address situations in which a phase-in would be particularly risky due to highly uncertain catch information or infrequent assessment updates. Without additional safeguards that account for the high levels of uncertainty associated with many Southeast fish stocks, efforts to end overfishing could be compromised.

Phasing-in needed changes to catch limits can increase the risk of overfishing, particularly in fisheries in which ACLs are set equal to ABCs or in situations where an ABC phase-in would result in a reduced buffer (or no buffer at all) between the overfishing limit (OFL) and ABC. In many cases, buffers produced by the ABC control rules are already relatively small. Without advice about acceptable rates of phase-in, Councils will be vulnerable to political pressure forcing two possibilities: front-loading high catch levels in the first year when increases are appropriate; or, delaying a full two years without taking any real action to lower the ABC when decreases are necessary. These actions make phase-in very risky and defeat the overall purpose of the NS1 guidelines and the MSA: to prevent overfishing. A slow phase-in of needed reductions could undermine or delay the recovery of stocks that are already overfished or at risk of becoming overfished.

For instance, the Gulf Council took immediate action in 2010 on gag when an assessment showed the population was overfished and overfishing was occurring.¹⁶ By taking the necessary action immediately, fishing mortality was significantly reduced during a time of increased recruitment, so the stock recovered quickly, as indicated by the most recent stock assessment.¹⁷ Had the Council slowly phased-in the ABC reductions instead, that opportunity may have been lost, and gag could still be under a rebuilding plan.

Similarly, in the South Atlantic, the 2013 blueline tilefish assessment indicated that the then-current ABC was nearly three times higher than the revised MSY estimate from the new stock assessment, requiring the implementation of emergency measures in April 2014 to reduce the

¹⁵ Proposed rule at 50 C.F.R. § 600.310(f)(2)(ii)(A). The redline of the proposed rule is available at http://www.nmfs.noaa.gov/sfa/laws_policies/national_standards/documents/redline_ns-1-3-7_1.9.2015_final.pdf

¹⁶ SEDAR 10 Update Assessment. 2009. Stock Assessment of Gag in the Gulf of Mexico. Report of Assessment Workshop, Miami, Florida, March 30-April 2, 2009. 171 pp. <http://sedarweb.org/sedar-10>

¹⁷ SEDAR 33. 2014. Stock assessment report Gulf of Mexico gag. Southeast Data, Assessment, and Review. North Charleston, South Carolina. <http://sedarweb.org/sedar-33>

ABC and ACL sharply in order to prevent severe overfishing.¹⁸ Phasing-in the new ABC for bluefin tilefish would have increased the risk of continued overfishing and could have caused more severe depletion of the stock.

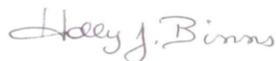
A phase-in may be appropriate in situations where there is low uncertainty in catch levels and biomass assessments, but only if adequate uncertainty buffers between OFL, ABC and ACL are maintained, and if accountability measures (AMs) prevent and address any ACL overages that may occur. Phase-in at the ACL level instead of the ABC level would greatly reduce the increased risk of overfishing in the PR.

Conclusion

Our oceans face significant threats, including changing ocean conditions, episodic environmental or mortality events, habitat destruction, and expanded exploitation of marine resources. Revisions to the National Standard guidelines must preserve the foundation of sustainable single-species management, while setting the stage to tackle these looming uncertainties and ensure we are managing fisheries well. Instead of increasing the likelihood of a return to rampant overfishing and depletion of the U.S.'s fishery resources through untested and highly risky management approaches, NOAA Fisheries should incorporate reforms that will advance a more comprehensive fishery management system that considers the impacts of fishing on the wider ocean ecosystem and how changes in the environment impact fishing. Doing so will lead to more informed, integrated decision-making.

Thank you for the opportunity to share our concerns with you. The Southeast Councils have numerous challenges, including balancing the needs of diverse fishery participants with highly uncertain data and stocks. We appreciate your hard work over the last decade to put the regions' fisheries on the road to recovery. Now is not the time to reverse course. We look forward to working with the Councils to employ a more comprehensive, ecosystem-based approach to fisheries management that does not backtrack on the advances made in the single species regime.

Sincerely,



Holly Binns
Director
U.S. Oceans – Southeast
The Pew Charitable Trusts



Ted Morton
Director
U.S. Oceans - Federal
The Pew Charitable Trusts

¹⁸ SEDAR 32. 2013, Stock Assessment Report for South Atlantic Bluefin Tilefish. North Charleston, South Carolina. <http://sedarweb.org/sedar-32>.