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April 2, 2015

Dorothy M. Lowman, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220

**Re: Comments on Proposed Changes to the Guidelines for National Standards 1, 3, and 7 -
(Council agenda item F.2.)**

Dear Chair Lowman and Members of the Council:

The Pew Charitable Trusts would like to share the following concerns regarding the proposed revisions to guidelines for National Standards 1, 3, and 7.¹

We are encouraged to see that U.S. fish populations are on the rebound. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the current National Standard 1 guidelines, 37 depleted populations have been rebuilt since 2000.² The number of populations subject to overfishing has declined by nearly two-thirds over the same period.³ U.S. commercial fishing revenues have risen 43 percent since 2006.⁴ This is good news because robust, well-managed fish populations are important to the overall health of ocean ecosystems and the sustainability of commercial, recreational, and subsistence fishing in the U.S.

On January 20, the National Oceanic and Atmospheric Administration's Fisheries Service (NOAA Fisheries) released proposed revisions to the National Standard 1 guidelines. These guidelines are fundamental to ensuring the long-term health of ocean fish by preventing overfishing and rebuilding depleted populations. The United States could not be a global leader in scientifically-based fisheries management without them.

The proposed rule contains some positive improvements – notably, the ability to terminate a rebuilding plan for stocks where a more accurate scientific understanding has shown the stock was never

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

² NOAA Fisheries. Status of Stocks updates from the fourth quarter of 2014. Available online at http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/status_updates.html

³ NOAA Fisheries. Status of Stocks update, 4th quarter 2014. Also the 2000 Status of Fisheries Report to Congress, available at http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/archive/1997-2002/status_of_fisheries_report_congress_2000.pdf

⁴ NOAA Fisheries. Commercial Fisheries Statistics from 2007 and 2013. Available online at <http://www.st.nmfs.noaa.gov/st1/publications.html>

overfished in the first place, and a clearer requirement to reassess the objectives of fishery management on a regular basis.

However, we are concerned that several of the proposed changes to National Standard 1 threaten to roll back this substantial progress we as a Nation have made by increasing the risk of overfishing, delaying rebuilding, and avoiding federal management of some potentially imperiled ocean fish populations.

In particular, we are concerned the proposal would:

- ***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.***⁵ The proposed phase-in of acceptable biological catch (ABC) control rules fails to fully account for scientific and management uncertainties by allowing ABCs to be set right at the overfishing limit (OFL) during a three year phase-in of necessary reductions stemming from new stock assessments. This is particularly risky in situations where these uncertainties would result in the stock being in worse shape than is understood. The proposal also contains troubling changes that appear to weaken the role of SSCs in setting sustainable catch limits.
- ***Change proven practices for determining whether overfishing is occurring, further increasing the risk of fishing above sustainable levels.***⁶ The use of a 3 year average to determine whether overfishing is occurring in a fishery could allow overfishing to occur in individual years.
- ***Undermine scientifically-set fishing limits by failing to account for uncertainties in fishery management and diminishing the measures that ensure the accountability of resources users.***⁷ The proposal to allow carryover of uncaught quota fails to account for scientific and management uncertainties. By allowing ABCs to be reset using uncaught quota from the previous year without thorough scientific review, the likelihood of exceeding the OFL is increased. The risk is increased in fisheries with low monitoring levels, as the catch data in these fisheries is more uncertain.
- ***Allow deficient rebuilding plans to continue unchanged indefinitely when overfished stocks fail to rebuild as anticipated, thereby undermining the legal requirement for a rebuilding timeline to be “as short as possible.”***⁸ The proposed definition of “adequate progress” in rebuilding is insufficient, and would allow rebuilding plans that are failing to meet statutory rebuilding requirements to continue without making any necessary changes to improve the chances of rebuilding success.
- ***Weaken the criteria for including species in a management plan by allowing political and economic considerations to weigh against biological considerations.***⁹ This could result in a failure to apply conservation requirements to potentially imperiled stocks that need management in federal waters.

Our oceans face significant threats, including habitat destruction, changing ocean conditions, and expanded exploitation of marine resources. Revisions to the National Standard 1 guidelines must tackle

⁵ 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

⁶ Proposed rule at 50 C.F.R. § 600.310(e)(2)(ii)(A)(3).

⁷ Proposed rule at 50 C.F.R. § 600.310(f)(2)(ii)(B).

⁸ Proposed rule at 50 C.F.R. § 600.310(j)(3)(iv).

⁹ Proposed rule at 50 C.F.R. § 600.305(c).

these looming uncertainties and ensure we are managing fisheries well. Instead of increasing the riskiness of management, NOAA Fisheries should incorporate a more comprehensive fishery management approach 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 Pacific Fishery Management Council is a leader in science-based decision making and has adopted a more comprehensive approach to management that protects the forage base and promotes the use of fisheries ecosystem planning. We hope you will consider our comments and look for opportunities to promote your ecosystem-based fishery management approach nationally as you review the proposed guidelines and formulate comments.

Sincerely,

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Paul Shively
Project Director
U.S. Oceans – Pacific
The Pew Charitable Trusts

A handwritten signature in cursive script, appearing to read "Ted Morton".

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

April 2, 2015

Dorothy M. Lowman, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220

RE: Comments on Proposed Changes to National Standard Guidelines 1, 3, and 7 (Agenda Item F.2.)

Dear Ms. Lowman and Members of the Council:

Ocean Conservancy¹ is writing to express our concerns with certain aspects of the National Marine Fisheries Service's (NMFS) proposed changes to National Standard Guidelines 1, 3, and 7 that will adversely impact management of marine fisheries on the U.S. west coast.² The existing National Standard 1 Guidelines have been integral to reducing overfishing, rebuilding depleted fish stocks, and making the United States a global leader in scientifically-based fisheries management. While some aspects of NMFS's proposed rule are commendable, other aspects would open loopholes that could remove the valuable management safety net for a number of managed fish and threaten the success achieved in managing fish species in the Pacific.

The Pacific Fishery Management Council (PFMC) has a proven tradition of adopting best practices, including development of a Fishery Ecosystem Plan and a record of science-based decision making. As NMFS seeks feedback from the Regional Fishery Management Councils regarding these important Guideline revisions, we urge the PFMC to take a close look at the proposed changes to the National Standard Guidelines. The PFMC should use this critical opportunity to ensure this proposed rule will not undermine the regional framework for managing fisheries on the U.S. west coast and further its role as a leader in ecosystem-based fishery management approaches.

I. Concerns with the Proposed Rule

In addition to the issues discussed in more detail below, the proposed changes would:

- Result in fewer federally-managed stocks by weakening the criteria for determining whether a stock should be conserved, thereby removing the management safety net.³

¹ Ocean Conservancy, a non-profit organization with offices in California, Oregon, Alaska, Florida, Louisiana, Texas, and Washington, D.C., educates and empowers citizens to take action on behalf of the ocean. From the Arctic to the Gulf of Mexico to the halls of Congress, Ocean Conservancy brings people together to find solutions for our water planet. Informed by science, our work guides policy and engages people in protecting the ocean and its wildlife for future generations.

² Proposed Rule, 80 Fed. Reg. 2786 (Jan. 20, 2015).

³ 80 Fed. Reg. at 2788-89; proposed rule at 50 C.F.R. § 600.305(c).

- Reduce the usefulness of the ecosystem component species (EC) category by deleting existing guidance language on EC species designation.⁴
- Undermine current successful fishery management approaches by allowing three year averages for overfishing determinations, potentially allowing overfishing to occur in individual years which would be contrary to the law.⁵
- Weaken the necessary response to new data on fish population health by allowing a three year phase-in of control rules.⁶ Drawing out the timeline and process of setting sustainable catch levels based on new scientific information would be particularly problematic in situations where uncertainties in the data lead to the stock being in worse shape than is conclusively understood.
- Significantly undermine scientifically set fishing limits by allowing catch carry-over without appropriate scientific review, resulting in greater likelihood of exceeding overfishing limits (OFLs).⁷ The risk increases in fisheries with low monitoring levels.
- Allows the continuation of deficient rebuilding plans and extending rebuilding indefinitely.⁸

Rather than allowing flexibility as intended, many of the proposed changes will lead to confusion over what is permissible under the law and could lead to an unwanted increase in costly and time consuming litigation.

On the other hand, some of the proposed changes are warranted. For example, as identified by the PFMC’s Legislative Committee,⁹ the proposed rule would allow managers to discontinue a rebuilding plan when a stock is found to not have been overfished when the plan was initiated and is not currently below the minimum stock size threshold (MSST).¹⁰ This change fixes an unintended result under the current Guidelines—a problem that was discussed in a 2013 report by the National Research Council.¹¹

II. Obscures the Role of the Scientific and Statistical Committee

The proposed changes would create a significant deficiency, both legally and functionally, in regards to the role of the scientific and statistical committee (SSC) in setting acceptable biological catches (ABCs) and annual catch limits (ACLs), and in the treatment of scientific and management uncertainty. As written, the proposed rule omits the importance of the SSC’s role in catch setting, which was a major

⁴ Proposed rule at 50 C.F.R. § 600.310(c), (d).

⁵ 80 Fed. Reg. at 2791-92.

⁶ 80 Fed. Reg. at 2794; proposed rule at 50 C.F.R. § 600.310(f)(2)(A).

⁷ 80 Fed. Reg. at 2794; proposed rule at 50 C.F.R. § 600.310(f)(2)(B).

⁸ 80 Fed. Reg. at 2796. The proposed definition for adequate progress in rebuilding is insufficient. It would allow managers to avoid implementing necessary measures to address management deficiencies and is likely contrary to the statutory requirements of MSA § 304(e).

⁹ PFMC Legislative Committee Report, “Do the Proposed National Standard 1 Guideline Revisions Address Pacific Council Magnuson-Stevens Act Reauthorization Priorities?,” March 2015 Agenda Item 1.1.a, Supplemental Attachment 4.

¹⁰ Proposed rule at 50 C.F.R. § 600.310(j)(5).

¹¹ National Research Council, Ocean Studies Board, *Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States* (2013).

legislative change by Congress in the 2006 Reauthorization.¹² The minimization of the critical importance of the SSC is in contravention to the requirements of the law.

Per MSA § 302(h)(6), the Council develops the ACL but it “may not exceed the fishing level recommendations of its scientific and statistical committee.” However, as written in the proposed rule, the SSC appears to have limited involvement in setting ABCs and ABC control rules, which leads to setting ACLs. The proposed rule states that control rules are “established by the Council *in consultation* with its SSC.”¹³ But the proposed rule deletes the existing language requiring the ABC control rule to be “based on scientific advice from its SSC.” (NMFS Redline at the bottom of page 15.¹⁴) In that same paragraph, it also deletes the reference to uncertainty (“The ABC control rule should consider uncertainty in factors such as stock assessment results, time lags in updating assessments, the degree of retrospective revision of assessment results, and projections.”), a critical consideration for fishery control rules that should be highlighted and encouraged instead of diminished, as is proposed by removal from the existing rule.

This minimization of the SSC in the proposed rule is an impermissible attempt to weaken the MSA’s requirement that Regional Councils cannot set fishing levels that exceed the SSC’s fishing level recommendation. Contrary to the proposed rule, this legal mandate is more than a mere “consultation.” Ocean Conservancy recommends that rather than deleting portions of the guidance that explain the critical role of the SSC, the proposed rule should dedicate a significant portion of the Guideline to delineating the SSC’s important role in developing science-based policies and decisions. The NS1 Guidelines should illuminate rather than obscure the SSC/Council mandate at MSA § 302(h)(6).

III. Deletes Useful, Plain-Language Guidance

The proposed rule would delete a great deal of plain-language guidance found in the existing Guidelines. Fishery management is a technical and complicated field. Given our nation’s long but increasingly successful struggle to end overfishing and rebuild overfished fish populations in the years following the 2006 Reauthorization, the deletion of clear, plain-language guidance would do a disservice to fishery stakeholders and managers. NMFS’s redline contains numerous unnecessary plain-language deletions

¹² 16 U.S.C. § 1852(g)(1)(B) (“Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.”); 16 U.S.C. § 1852(h)(6) (“Each Council shall, in accordance with the provisions of this Act— develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g)”).

¹³ 80 Fed. Reg. at 2806; proposed rule at 50 C.F.R. § 600.310 (f)(1)(iv) (emphasis added).

¹⁴ NOAA Fisheries National Standard 1, Ongoing Revisions, “Red-line document,” available at http://www.nmfs.noaa.gov/sfa/laws_policies/national_standards/documents/redline_ns-1-3-7_1.9.2015_final.pdf.

that will confuse rather than clarify, resulting in less guidance to managers and greater uncertainty in an already complicated management area.

For example, the proposed rule would delete an important sentence at 50 C.F.R. § 600.310(j)(2)(ii)(B) which clearly states the combined mandate of the MSA to immediately end overfishing and rebuild overfished stocks. (“If the stock or stock complex is overfished and overfishing is occurring, the rebuilding plan must end overfishing immediately and be consistent with ACL and AM requirements of the Magnuson-Stevens Act.” See page 20 of the NMFS Redline.) While such a deletion does not alter the MSA’s fundamental mandates, the proposed deletion would remove clear and reliable guidance—the exact role the agency’s Guidelines are meant to fulfill.

In conclusion, our ocean faces significant threats, including habitat destruction, changing ocean conditions, and expanded use of marine resources by numerous sectors. Revisions to the National Standard 1 Guidelines are needed and must tackle these looming uncertainties, not bend to pressures from failing fisheries outside of the Pacific region and encourage a race to the bottom. Ocean Conservancy urges the PFMC to take a close look at the proposed changes to the National Standard Guidelines. The PFMC should use this critical opportunity to further its role as a leader in ecosystem-based fisheries management approaches.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ivy 2', with a long horizontal flourish extending to the right.

Ivy N. Fredrickson
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