

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON FISHERY
MANAGEMENT PLAN (FMP) AMENDMENTS TO IMPLEMENT
ANNUAL CATCH LIMIT (ACL) REQUIREMENTS

The Highly Migratory Species Management Team (HMSMT) discussed the final National Standard 1 (NS1) guidelines (Agenda Item D.3.a, Attachment 1) and identified a general approach the Council could use to develop the necessary HMS fishery management plan (FMP) amendment. The HMSMT's discussion focused on three basic steps for producing a range of alternatives and preliminary analysis:

1. Review the species in the FMP and reclassify them into the suggested framework identified in the NS1 guidelines.
2. Identify criteria for applying the international exception to the annual catch limit (ACL) requirements and the set of stocks that may be eligible for the exception.
3. Provide guidance for setting ACLs and other required reference points.

Completing these three steps would likely involve work by Council staff, the HMSMT, the Science & Statistical Committee (SSC), and others from the National Marine Fisheries Service (NMFS) Southwest Fisheries Science Center. The HMSMT would also recommend some form of coordination with the Western Pacific Fishery Management Council and amendment of its Pelagics FMP.

Under the draft schedule for Council action, the initial range of alternatives and preliminary analysis would be prepared for Council review at the November meeting (Agenda Item D.3.a, Attachment 5).

1. Classifying stocks in the FMP

The FMP currently includes 13 management unit species, more than 50 monitored species, and 9 prohibited species. The management unit species are the major target and non-target stocks in west coast HMS fisheries and are subject to active management by the Council. Monitored species are those species that had a record of being caught in an HMS fishery and were not covered by another FMP or state management regime or were of special concern (e.g., life history makes them vulnerable to overfishing) at the time the plan was developed. The Council applied these criteria broadly with the purpose of "evaluat[ing] the impact of HMS fisheries on incidental and bycatch species . . . , and to track the effectiveness of bycatch reduction methods."¹ Prohibited species are species with special status that require additional rules for encounters (e.g., Pacific halibut).

In brief, reclassifying the FMP species into the new suggested framework will involve reviewing the FMP and determining:

¹ See section 3.0 of the FMP.

- (A) which species are “in the fishery,” and then for the remaining species, deciding whether
- (B) to designate them as ecosystem component species, or
- (C) to not include the species in the FMP.

The guidelines state that, as a default, all stocks in an FMP are considered to be “in the fishery” unless they are identified as ecosystem component species through an FMP process.²

A. Stocks “in the fishery”

Stocks “in the fishery” are those target and non-target stocks that the Council, in its discretion, determines to be in need of conservation and management measures.³ This category would likely include most, if not all, of the current management unit species, some monitored species, and possibly some of the prohibited species not covered by any other FMP (e.g., great white shark).

B. Ecosystem Component Species

The NS1 guidelines make the designation of ecosystem component species optional. In essence, ecosystem component species are non-target species for which overfishing is not a concern. The guidelines identify the following reasons why the Council may wish to designate ecosystem component species in the FMP:

For data collection purposes; for ecosystem considerations related to specification of optimum yield for the associated fishery; as considerations in the development of conservation and management measures for the associated fishery; and/or to address other ecosystem issues.⁴

These purposes are consistent with the original rationale for including the monitored species in the FMP. Analysis of information gained since implementation of the FMP could inform the Council’s decision of whether to designate individual monitored species as ecosystem components, to move them to the “in the fishery” category, or to leave them out of either category.

² 50 C.F.R. 600.310(d)(5).

³ See section IV(A) in the Final Rule’s “Supplementary Information” section, (Agenda Item D.3.a, Attachment 1, p. 3179).

⁴ § 600.310(d)(5)(D)(iii).

C. Other Reclassification Options

Again, the Council could potentially decide to take a species currently listed as a monitored species out of the FMP if new information and analysis shows the species is not in need of conservation and management or that there is little utility of including it as an ecosystem component species.

In addition, there are several stocks in the HMS FMP—including management unit, monitored, and prohibited species—that are also managed under one of the Council’s other FMPs (e.g., groundfish) or in the Western Pacific Council’s Pelagic FMP. The NS1 guidelines state that “[I]f a stock is identified in more than one fishery, Councils should choose which FMP will be the primary FMP in which management objectives,... the stock’s overall ACL and other reference points for the stock are established.”⁵ However, while the ACL may be designated in another FMP, the HMS FMP could or should contain “conservation and management measures consistent with the primary FMP’s management objectives for the stock.”⁶

2. The Exception for Stocks “Subject to” International Management

The Magnuson-Stevens Reauthorization Act (MSRA) “international exception” to the ACL requirement has inspired lengthy discussions at all levels as to its possible scope and meaning. The final NS1 guidelines interpreted the exception to apply “to stocks or stock complexes subject to management under an international agreement.”⁷ There are several stocks in the HMS FMP that are potentially eligible for this exception because of their association with a regional fishery management organization (RFMO) or international agreement.

The HMSMT’s discussion focused on the meaning of the phrase “subject to management.” The most informative explanation of this phrase is found in the in the Final Rule’s “Supplementary Information” section, in the response to Comment 78 (Attachment 1, p. 3198). This response states that the drafters of the guidelines looked to the MSRA’s other provisions on international overfishing and concluded that:

the intent of MSRA is to not unfairly penalize U.S. fishermen for overfishing which is occurring predominantly at the international level [and that there are many cases where] applying ACL requirements to U.S. fishermen on just the U.S. portion of the catch or quota, while other nations fished without such additional measures, would not lead to ending overfishing and could disadvantage U.S. fishermen.

In other words, there are instances where an ACL on U.S. fisheries may impact U.S. fishing industry with little or no corresponding benefit to the stock. This NS1 guideline interpretation is intended to permit the Council “to continue managing the U.S. portion of stocks under international agreements, while the U.S. delegation works with RFMOs to end overfishing through international cooperation.” At the same time, the response to Comment 78 also states that:

⁵ 50 C.F.R. § 600.310(d)(7).

⁶ Id.

⁷ 50 C.F.R. § 600.310(h)(2)(ii). Section 3(24) of the MSA defines an “international fishery agreement” as “any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.”

The guidelines do not preclude Councils or NMFS from applying ACLs or other catch limits to stocks under international agreements, if such action was deemed to be appropriate and consistent with MSA and other statutory mandates.

The HMSMT would suggest that the preliminary analysis identify factors the Council could use to aid its decision on whether to apply the international exception to the numerous species in the FMP that are under the jurisdiction of RFMO or part of some form of international agreement. These factors would be designed to help identify those circumstances where an ACL may be “appropriate and consistent with the MSA and other statutory mandates.” Potential factors to look at include the “relative impact” of U.S. vessels to the stock (i.e., the potential effectiveness of an ACL at preventing overfishing) and the nature of international management (e.g., whether there are active management measures in place, the quality of monitoring, available information on stock status and vulnerability to overfishing).

3. Considerations for setting ACLs

Once stocks in the FMP are reclassified, the guidelines then spell out the set of reference points, ACLs, and other measures required for the stocks in each category. In short, ACLs will be needed for those species “in the fishery” that do not qualify for the international exception. The FMP will not need to specify ACLs for species that qualify for the international exception; however, it will still need to identify status determination criteria (SDC) and maximum sustainable yield (MSY). The HMSMT understands that the SSC will speak to the process of determining ACLs in their statement on this agenda item.

HMSMT Recommendations

- Provide feedback on a process, the HMSMT’s role, and a schedule for identifying a reasonable range of alternatives for preliminary analysis.
- Provide specific guidance on how the international exception should be analyzed.
- Consider identifying a process for coordination with the Western Pacific Council.

PFMC
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