

Do the Proposed National Standard 1 Guideline Revisions Address Pacific Council Magnuson-Stevens Act Reauthorization Priorities?

This report compares the priorities identified by the Council in 2014 for MSA Reauthorization (Agenda Item I1a, Attachment 2) with the proposed rule implementing changes in the National Standard 1 Guidelines (Informational Report 2).

Comparisons are presented in bold italic font at the bottom of each issue, and reference sections and pages in the proposed NS1G (Informational Report 2)

Rebuilding

- 1. Provide additional consideration to the needs of fishing communities in developing rebuilding plans, without needing to demonstrate “disaster” level impacts before modifying the most stringent conservation alternative.**^{1, 3, 4, 5, 6}

The MSA requirement to rebuild as soon as possible, taking into account the needs of fishing communities, has been subject to Court interpretation as nearly ignoring the needs of fishing communities until such time as they have demonstrated a disastrous state. It has been said that a solution may be as simple as changing the word “possible” to “practical.” At any rate, there is a need for threshold clarity so as to allow Councils to properly take into account important social and economic impacts to communities when reducing catches in a rational stock rebuilding plan.

Not really: The phrase “as short as possible” is still in the NS1G language (600.310(j)(3)(i); Pg 20); however, the proposed NS1G provide more explicit conditions for overfishing to be reduced (as opposed to ended immediately) during development or revision of a rebuilding plan, including severe social and/or economic impacts to a fishery (600.310(j)(4)(ii); Pg 21).

- 2. Revision of rebuilding plans should not be required consequent to minor changes in stock status (executing an extensive revision process due to “statistical noise”).**^{1, 3, 4, 5, 6, 7}

Uncertainty in stock assessments and rebuilding analyses for overfished stocks has created a situation where seemingly small changes to analytical results can lead to expensive revisions in rebuilding plans and unwarranted consequences to fisheries and fishing communities (“chasing noise”). This disruption is especially problematic when analytical results vary by small amounts due to assessment uncertainty, and vary both up and down without changes in true status over time.

Yes: The NS1G now state that revising rebuilding timeframes is not necessary unless adequate progress is not being made (600.310(j)(3)(v); Pg 21), and lack of adequate

progress may be determined based on a significantly changed stock assessment (600.310(j)(3)(iv); Pg 21)

3. Address the discontinuity associated with the ten-year rebuilding requirement.^{5, 6}

The MSA currently requires that rebuilding take as short a time as possible, after due consideration of the effect on fishing communities, with a maximum rebuilding time of 10 years, if biologically possible. Alternatively, for stocks that cannot rebuild in 10 years, rebuilding must occur in the time to rebuild if there were no fishing, plus one generation time. This requirement necessarily leads to large reductions in catch of directed fishery stocks that are being rebuilt, and can restrict mixed-stock fisheries when the rebuilding stock coexists with healthy stocks. However, it is important to note that the purpose of rebuilding programs is to increase stock sizes to provide for biological stability and the attendant future economic benefits to the same fishery-dependent communities negatively impacted by the rebuilding program.⁵

While a strict 10-year rebuilding requirement is appropriate in some situations, focusing on rebuilding in a certain amount of time can also result in overly-restrictive fishery management that is illogically and unnecessarily harmful to fishermen and fishing communities; it is apparent that more flexibility is needed to optimize multiple goals. The 10-year rule, where stock rebuilding must occur within 10 years if possible, can lead to an unsound, discontinuous policy that can grossly disrupt fisheries for little conservation gain. If a stock can rebuild in nine years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g. one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild, and less economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.⁵

No: The 10-year requirement was unchanged in the NS1G because the 10 year requirement frame is in the MSA, so it can't be fixed in the NS1G. There are additional scenarios allowed for calculating T_{max} when T_{min} (600.310(j)(6); Pg 22).

4. Address rebuilding requirements when environmental conditions may be a predominant factor in a stock's decline.^{1, 5, 6}

Rebuilding exemptions should include a category that clearly specifies instances when a rebuilding plan is not required, either because fishing is not the cause of the stock's depletion, and/or because fishing restrictions cannot correct the depleted condition.¹

Not really: An exception is not granted, but the term depleted is introduced (600.310(e)(2)(i)(F); Pg 9). A rebuilding plan must still be developed, but it can identify other (non-fishing) management measures or initiatives as part of the rebuilding strategy (600.310(j)(6); Pg 22).

5. Stocks later determined never depleted (overfished) should not be held to rebuilding provisions.^{2, 4, 5, 6}

The data and scientific approaches used to determine stock status evolve and improve, and revisions to past stock status are common. The best available science used to declare a stock overfished may later be improved and show that the stock was never overfished. In these cases, continuing to manage the fishery under rebuilding plan

restrictions may no longer be necessary. However, the MSA does not explicitly exempt stocks from rebuilding plans when it is later determined the stock was never overfished.

For example, in 2000, a stock assessment indicated that widow rockfish on the West Coast were below the minimum stock size threshold (MSST) that triggers an overfished status designation. Accordingly, the stock was declared overfished and a rebuilding plan put in place. However, subsequent assessments in 2005 and 2007 estimated that the biomass had never dropped below the MSST and thus the stock had never been overfished. Despite the best available science, uncertainty regarding MSA requirements and the assessment results resulted in the fishery remaining under a restrictive rebuilding plan until 2013. Continuing to manage widow rockfish under a rebuilding plan, even though the stock was never overfished, resulted in negative social and economic impacts to fishing communities and industry. It also represented a significant expenditure of Council resources to construct and maintain a rebuilding plan, and the new catch share program was unnecessarily complicated by the overfished declaration of widow rockfish and its subsequent rebuilding plan.

Yes: a rebuilding plan may be discontinued if the stock was later determined not to be overfished in the year the overfished determination was made and the stock is not currently below MSST (600.310(j)(5); Pg 22).

6. Address social and economic issues, such as changing ‘possible’ to ‘practicable’ in MSA section 304(e)(4)(A)(i).

No: “Possible” was unchanged in the NS1G because the term is in the MSA, so it can’t be fixed in the NS1G.

Data-Poor Species

7. Explore more flexibility for fishery impacts on data-poor species when the current precautionary approach becomes the bottleneck for healthy mixed-stock fisheries. ^{1, 3, 4, 5, 6, 8}

One common management challenge is developing and implementing annual catch limits (ACLs) effectively when the requisite data are lacking, when no data collection program is in place, and/or when major natural fluctuations in stock abundance occur more rapidly than stock assessments can be updated. When less information about a stock is available, or the data are outdated, current requirements call for a Council to set a particularly low ACL compared to the theoretically maximum allowable catch, out of recognition of a higher level of scientific uncertainty. While this is a logical approach in some regards, there is concern it may be overly conservative. It can also lead to severe economic consequences when a rarely-caught stock about which little is known appears occasionally in a healthy mixed-stock fishery, and a new, highly buffered ACL for this rare stock suddenly requires a large reduction in the catch of healthy species, creating a bottleneck species that closes or substantially reduces an otherwise healthy fishery.⁵

The HMSAS favors provisions calling for Councils to identify data-poor species and prioritize them for the U.S. Secretary of Commerce, who will then develop a plan to conduct stock assessments as soon as possible.²

Need additional flexibility to address scientific uncertainty. Need to improve methods to determine ACLs in low data situations, and properly discriminate between poor, good, or medium-quality science; the best available science is not always good enough to set harvest limits.⁸

Yes: There is the flexibility to establish a risk policy for setting ABC and ACL that take into account economic, social, and ecological trade-offs between being more or less risk averse (600.310(f)(2)(i); Pg 14) and (600.310(f)(4)(iv); Pg 16).

NEPA

8. Better align and streamline the National Environmental Policy Act (NEPA) & MSA section 304(i).^{1, 2, 5, 6}

There is a need to more closely align NEPA and MSA requirements and streamline the process, as required in Section 304(i). This is an unfulfilled requirement in the current law. Examples of problems in the Pacific Council process include difficulty in completing biennial groundfish specifications in a timely manner, and the chafing gear regulation clarification.⁸

The current process is inefficient, requiring substantial additional work and process to satisfy duplicative NEPA and MSA mandates. This unnecessarily delays implementation of regulations and burdens management resources that could be used more efficiently.⁵

The language in [MSA reauthorization bill] HR 4742 mirrors the approach outlined in a draft white paper discussed by the Council Coordination Committee at their annual meeting in May 2014, which recommends integrating the policy objectives and key requirements of NEPA directly into the MSA. This recommendation proposes that the MSA be amended by adding a section to the end of Section 303, Contents of Fishery Management Plans. This new section would incorporate the key parts of NEPA into the MSA, including the requirement to prepare “a detailed statement” on “the environmental impact of the proposed action.” It is important to emphasize that the objective is not to “get out of” complying with the intent of NEPA but rather to incorporate the important aspects of NEPA directly into the MSA. This change would enable a substantially more efficient fishery management process while ensuring that the objectives of NEPA are fully met.¹

No.

Observers

9. Provide flexibility in requirements and qualifications for NMFS-certified observers to ensure that a sufficient pool of observers is available.^{2, 3, 4, 5, 6}

Current requirements and qualifications for NMFS-certified observers may be too restrictive regarding formal education and full independence provisions. There have been difficulties in providing a sufficient pool of observers that should be addressed.⁵

No.

Carryover

- 10. Specify that a carryover exception allow ACLs to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided there is a finding from the SSC that such a carryover provision will have negligible biological impacts.** ^{1, 2, 3, 4, 5, 6}

As part of their business planning, fishermen in catch share programs need to know whether they may carry over surplus harvest from one year to the next; deficits are now routinely paid back the next year. In the past there has not been a consistent policy application on this matter. If the SSC finds that carryover will not adversely affect a fish stock, then it should be explicitly allowed.⁵

Yes: There is the flexibility to allow carryover of unused ACL into the next year's ABC, provided an appropriate analysis is conducted (600.310(f)(2)(ii); Pg 15).

State Authority

- 11. Extend state management authority for the Dungeness crab fishery off the West coast.** ^{1, 4}

No.

- 12. Expand state enforcement authority to all non-tribal vessels that fish directly offshore of the territorial sea within the state given boundaries.** ^{1, 3, 4}

No.

Overfished, Depleted, Depletion

13. **Replace the term “overfished” with “depleted” to account for non-fishing causes of stock size below minimum stock size threshold.**^{5, 6}

Yes: The term depleted is introduced, which applies to overfished stocks that have not experienced overfishing in two generations and are not below MSST, or when a rebuilding stock has reached T_{Target} while maintaining $F_{Rebuild}$ but without significant biomass increase (600.310(e)(2)(i)(B, E); Pg 9).

14. **Make a distinction between “overfishing” (a measure of fishing rate) and “overfished” (a measure of abundance).**^{5, 6}

Not really: The NS1G both current and proposed, make this distinction (600.310(e)(2)(i)(B,E); Pg 8), but the ambiguity still exists in the MSA.

Highly Migratory Species

15. **Designate one Commissioner seat on IATTC Commission for the Pacific Council.**^{1, 3, 5, 6}

No.

16. **Enhance enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and provide assistance to developing countries in their enforcement capacity.**^{1, 3, 4, 5}

No.

17. **Change “vessels” to “vessel” in the IUU certification section.**^{1, 3, 4, 5, 6}

No.

Confidential Information

18. **Improve access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis.**^{4, 5, 6, 8}

No.

Mixed Stock Exception

19. **Include a viable mixed-stock exception.**^{5, 6}

The Groundfish Advisory Subpanel (GAP) notes that National Standard 1 guidelines are not explicit in allowing a [mixed-stock] exception. The GAP suggests that if it is referenced and available to use, a clear allowance should be included in the MSA.²

No. This section was unchanged in the proposed NS1G; however, the argument could be made that the exception is already explicit in the NS1G, but not in the MSA.

Habitat

20. Add a national standard for habitat to minimize adverse impacts on essential fish habitat to the extent practicable.^{4, 5, 6, 7}

No.

Seafood Labeling

21. Implement stricter imported seafood labeling requirements in the US market^{6, 7}

No.

Sources

1. June 30, 2014 letter to Rep. Hastings & Senator Begich. This letter commented on the Hastings & Begich drafts of the MSA and discussed Council priorities.
2. Summary of June 2014 AB comments on MSA reauthorization
3. June 2014 LC report
4. March 2014 letter to Rep. Doc Hastings
5. Nov 2013 letter to Senator Begich and Rep. Hastings (listed high and low priorities for MSA reauthorization).
6. Sept 2013 blog post reporting on Council action (17 priorities)
(<http://www.pcouncil.org/2013/09/27233/council-discusses-priorities-for-msa-reauthorization/>)
7. Sept. 2013 LC report. This included the original matrix of priorities that was discussed by the Council.
8. April 2013 LC report. Early version of priorities before Council discussion.