

GROUND FISH MANAGEMENT TEAM REPORT ON MULTI-YEAR AVERAGE CATCH POLICY

After discussions with Council staff and the National Marine Fisheries Service (NMFS) General Counsel, the Groundfish Management Team (GMT) believes that the proposed policy as outlined in [Agenda Item F.5, Situation Summary, June 2017](#), may not meet the intent of the National Standard (NS) Guidelines, and may not be legal as currently described.

It is the GMT's understanding that there are two parts to the NS-1 Guidelines that would provide some flexibility with regard to exceeding harvest specifications: 1) determining if a stock was subject to overfishing and 2) providing flexibility for inseason management if an ACL is projected to be/is exceeded.

Did Overfishing Occur?

NMFS' NS-1 guidelines¹ states that:

“Small amounts of excess effort or catch in a single year may not jeopardize a stock's ability to produce [maximum sustainable yield] MSY over the long term, thus an overfishing stock status determination based on that single year's reference point may not be the most appropriate characterization of stock status. To address this issue, the proposed revisions introduced a multi-year approach (that may not exceed 3 years) to allow Councils to examine whether the extent to which a stock has surpassed its overfishing threshold actually jeopardizes the stock's ability to produce MSY on a continuing basis. See § 600.310(e)(2)(ii)(A)(3) of the proposed action. Using a multi-year approach to determine overfishing stock status is best used when managers believe the most recent year's data point may not reflect the overall status of the stock.”

Therefore, the GMT understands that this provision of the NS-1 guidelines provides flexibility in determining retroactively whether a stock was subject to overfishing (i.e., mortality exceeding the overfishing limit (OFL)). As an example, after total mortality was rectified in 2015, it was determined that California scorpionfish exceeded its OFL in 2014. However, based on the new provision in NS-1 guidelines, and based on the three year catch average, California scorpionfish was under the 2014 OFL (as shown in Figure 1), and was not jeopardizing the stock's ability to produce MSY.

In cases such as this, there would be justification to consider using less stringent accountability measures in future years. In contrast, if consistent overfishing occurs, then more stringent accountability measures would be justified in future years. In short, this new guidance could provide greater flexibility for evaluation before action based on a better representation of longer term conservation implications.

¹ http://www.pcouncil.org/wp-content/uploads/2016/10/C2a_NMFS_Rpt1_2016-NS1-FinalRule_NOV2016BB.pdf

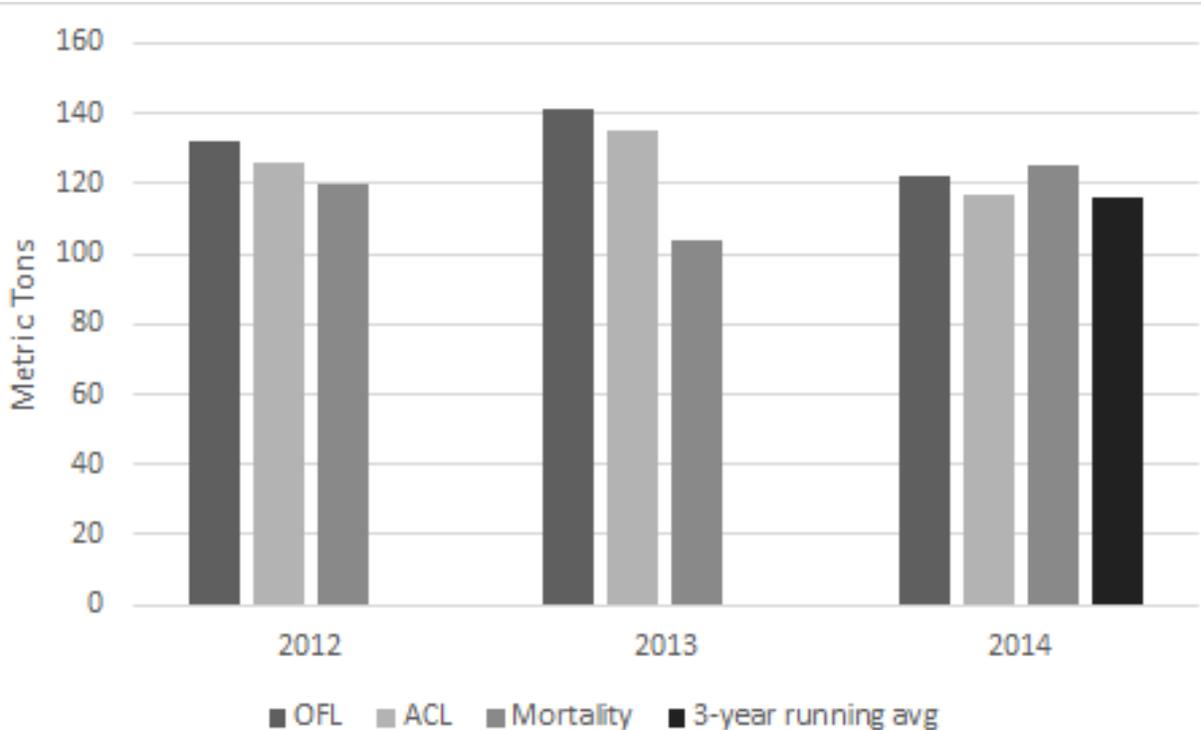


Figure 1: California Scorpionfish OFL, ACL, and Mortality, 2012-2014.

Flexibility in Management Response to Exceeding an ACL

In addition, [Performance Standard 7 in the Final Rule for the Revisions to Guidance for NS 1, 3, and 7 of the Magnuson Stevens Fishery Conservation and Management Act](#), provides some inseason management flexibility for a stock that is projected to exceed an ACL:

If catch exceeds the ACL for a given stock or stock complex more than once in the last four years, the system of ACLs and AMs should be reevaluated, and modified if necessary, to improve its performance and effectiveness. If AMs are based on multi-year average data, the performance standard is based on a comparison of the average catch to the average ACL. A Council could choose a higher performance standard (*e.g.*, a stock's catch should not exceed its ACL more often than once every five or six years) for a stock that is particularly vulnerable to the effects of overfishing, if the vulnerability of the stock has not already been accounted for in the ABC control rule.

The GMT therefore suggests that the proposed policy under this action be renamed as “Flexibility in Management Response to Exceeding an ACL” to make the action consistent with the NS guidelines and applicable law.

It is the GMT’s understanding that the NS-1 guidelines provide the Council with flexibility in the management response to address an ACL that is projected to be exceeded inseason without completely disrupting the fishery (*e.g.*, shutdown of the fishery). However, the mechanism cannot be used to establish management measures that would plan for the exceedance of a stock’s ACL

and cannot be used as a tool to adjust future ACLs that would result in overfishing. For example, measures proposed for a biennium should be expected to keep total mortality at or below an ACL. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) still requires - and the NS-1 guidelines reiterate - that ACLs must be set to prevent overfishing each year.

For instance, in 2014, the ACL for California scorpionfish was exceeded, emergency management measures were implemented to close both the commercial and recreational fisheries, and additional accountability measures were implemented in 2015, causing a disruption to the fisheries. However, as shown in Figure 2, total attainment of the ACL was 95.2 percent in 2012, 77 percent in 2013, and 106.8 percent in 2014. Therefore, if there was a policy in place that allowed managers to consider the attainment over a specific number of years, there may not have been a need at that time to close the fishery and implement stringent management measures in subsequent years. It is the GMT's understanding that had this policy been in place, instead of closing both fisheries, the Council could have assessed the situation inseason and potentially implemented accountability measures because attainment had been low in the previous years. In addition, there would not have been any biological risk to the stock or effects on MSY, as explained in the above section.

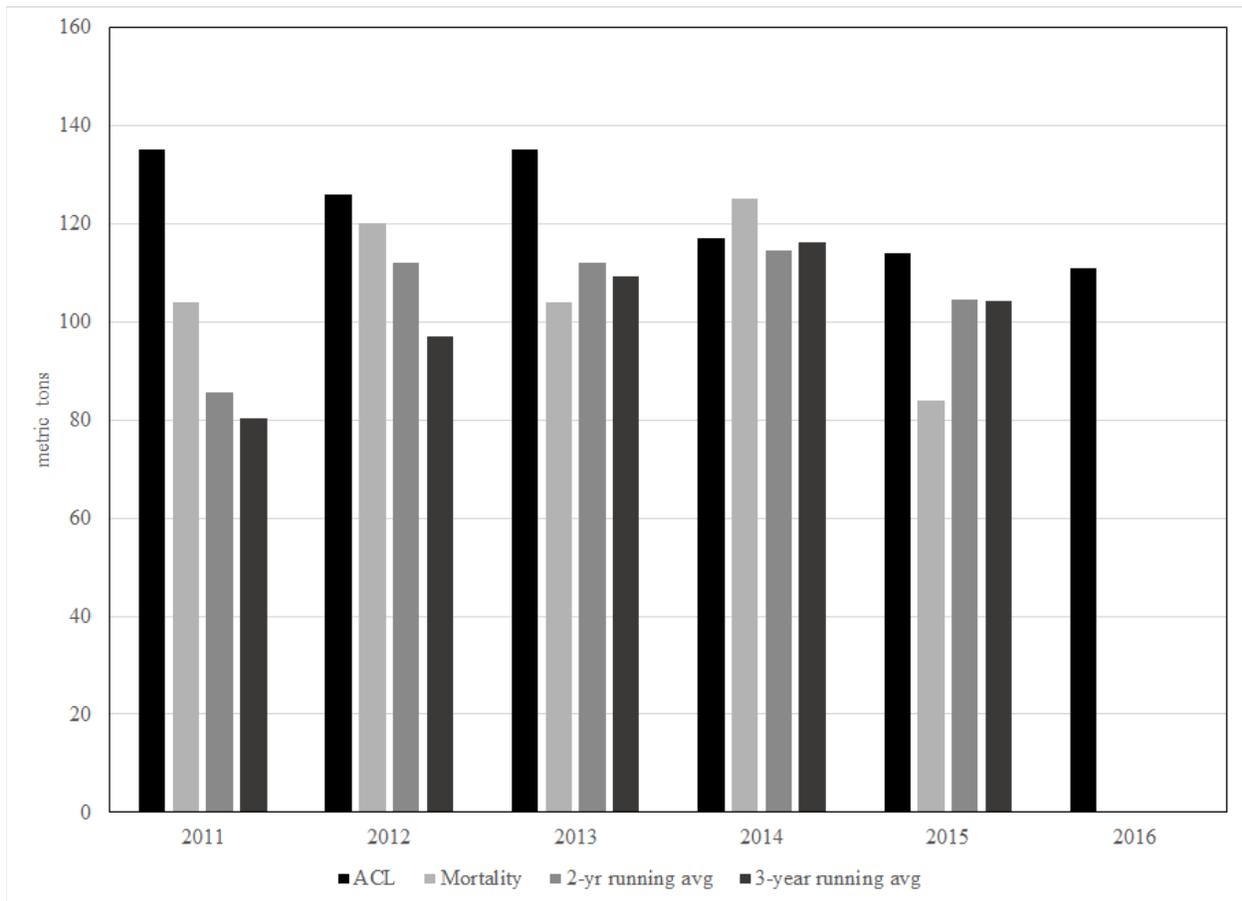


Figure 2. California scorpionfish ACL, annual mortality, and 2- and 3- year running averages.

The GMT is uncertain whether the Council can implement these guidelines currently without an amendment to the groundfish Fishery Management Plan (FMP) and the Federal Groundfish regulations. **Therefore, the GMT recommends that the Council direct Council staff and NMFS staff to scope the extent of needed changes for both policies.**

The new carryover provision and our interpretation of the NS-1 guidelines discussed above have similar themes relating to flexibility. The GMT believes considering these items together would provide for a more robust evaluation of the pros and cons of each, help clarify how both policies will improve flexibility, and will allow the Council to prioritize how, or even if, to move forward with these measures accordingly. Therefore, if the Council chooses to move forward with this measure, **the GMT recommends bringing both of these items back in September for consideration as a single item.** The GMT notes that carryover is already tentatively scheduled for September.