

SUMMARY OF NMFS STANDARDIZED BYCATCH REPORTING METHODOLOGY FINAL RULE AND CRITERIA FOR CONSISTENCY REVIEW

NOAA Fisheries filed a final rule to implement a provision of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (Agenda Item C.3, Attachment 2, November 2020). This provision requires that all fishery management plans establish a standardized reporting methodology to assess the amount and type of bycatch occurring in a fishery. The final rule establishes requirements and provides guidance to regional fishery management councils and the Secretary of Commerce regarding the development, documentation, and review of such methodologies, commonly referred to as standardized bycatch reporting methodologies (SBRMs).

This document summarizes NMFS final rule to assist the Council, its advisory bodies and the public in the consistency review of the Pacific Council's FMPs established under the MSA. Emphasis is added to the text throughout the document to highlight requirements and review criteria as well as things to consider during the review. Council staff also provided excerpts from certain sections for each FMP for the SBRM consistency review (see Agenda Item C.3, Attachments 3-6, November 2020). The Council's FMPs that are subject to this review are:

- 1) Coastal Pelagic Species (Attachment 3);
- 2) Pacific Coast Groundfish (Attachment 4);
- 3) Highly Migratory Species (Attachment 5); and
- 4) Pacific Coast Salmon (Attachment 6).

Section 600.1610(b) states that all FMPs must be consistent with this rule within 5 years of its effective date (February 21, 2022). To verify consistency with this rule, the Council, in coordination with NMFS, must conduct a review of its existing SBRMs. The review should provide information sufficient for NMFS to determine whether an FMP needs to be amended. The review should be documented but does not need to be contained in an FMP.

Based on information in the final rule, if the Council finds a need to adjust or establish SBRMs for any FMP, it should give guidance to NMFS on how to do so to be consistent with the FMP.

Purpose of an SBRM

Establishing an SBRM is a requirement of the MSA. Therefore, the rule is based on the MSA's definition of "bycatch," which includes fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program, including prohibited species.

In addition, the MSA definition for fishery means - (A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and (B) any fishing for such stocks."

Based on the statutory language of section 303(a)(11) of the MSA, the final rule clarifies in section 600.1600 that the purpose of an SBRM is to collect, record, and report bycatch data in a fishery that, in conjunction with other information, are used to assess the amount and type of bycatch occurring in the fishery and inform the development of conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality. Consistent with this purpose, section 600.1605(a) defines “standardized reporting methodology” with reference to procedures used to collect, record, and report bycatch data in a fishery.

Section 600.1605(a) clarifies that bycatch assessment procedures are not part of an SBRM, and thus do not need to be described as part of the methodology in an FMP. A Council may include such a description if it so chooses and could provide this description by incorporating by reference information from a Stock Assessment and Fishery Evaluation (SAFE) report or other documents.

Meaning of “Standardized”

The requirement to establish a standardized reporting methodology applies to each FMP with respect to any fishery managed under it. Consistent with the statutory language, this rule defines “standardized reporting methodology” as an established, consistent procedure or procedures used to collect, record, and report bycatch data in a fishery, which may vary from one fishery to another.

The definition of “standardized reporting methodology” envisions that a Council may include more than one data collection, recording, and reporting procedure in its SBRM. A Council could decide that a combination of procedures is appropriate for a fishery. In such a case, the FMP must still identify what the established, consistent procedures are for the fishery.

Development of an SBRM

Fishery-Specific Analysis

MSA section 303(a)(11) requires that FMPs establish SBRMs, but beyond the fact that an SBRM must meet its statutory purpose, section 303(a)(11) provides no other guidance on the considerations that should go into developing an SBRM. Therefore, NMFS has discretion to interpret section 303(a)(11) and establish reasonable considerations and requirements. Based on NMFS’ experience with implementing section 303(a)(11), and taking into consideration public comment on the proposed rule, the final rule requires that all Councils conduct a fishery-specific analysis that addresses the following when establishing or reviewing an SBRM:

- The characteristics of the bycatch occurring in the fishery.
- The feasibility of the methodology from cost, technical and operational perspectives.
- The uncertainty of the data resulting from the methodology.
- How the data resulting from the methodology will be used to assess the amount and type of bycatch occurring in the fishery.

The Council must examine the existing FMPs to ensure these requirements were considered when it developed SBRMS. If not, the Council must consider them when modifying the FMP or establishing new SBRMs for a fishery. Below are additional details for each requirement based on NMFS final rule.

FMP Contents

Section 600.1610(a)(1) requires every FMP to identify the required procedure or procedures that constitute the SBRM for the fishery. Such procedures may include, but are not limited to, observer programs, electronic monitoring and reporting technologies, and self-reported mechanisms.

Section 600.1610(a)(1) also requires Councils to explain in an FMP, or a fishery research plan authorized under 16 U.S.C. 1862, how the SBRM meets the purpose described in § 600.1600, based on an analysis of requirements (set forth in § 600.1610(a)(2)). The FMP, or fishery research plan under 16 U.S.C. 1862, may reference analyses and information in other FMPs, FMP amendments, SAFE reports, or other documents. In addition to proposing regulations necessary to implement the standardized reporting methodology, a Council should provide in an FMP, or a fishery research plan authorized under 16 U.S.C. 1862, guidance to NMFS on how to adjust implementation of the methodology consistent with the FMP.

Characteristics of Bycatch in the Fishery

Section 600.1610(a)(2)(i) provides that a Council must address information about the characteristics of bycatch in the fishery when available, including, but not limited to, the amount of bycatch occurring in the fishery, the importance of bycatch in estimating the fishing mortality of fish stocks, and the effect of bycatch on ecosystems. Section 600.1610(a)(2)(i) recognizes that the amount and type of bycatch occurring in the fishery may vary based on different fishing activities and operations.

Bycatch can be affected by several aspects of a fishery, including gear types used, how gear is deployed, gear selectivity, fishing effort, fishing locations, and existing management measures. A Council may consider these operational aspects when selecting the collection, monitoring, and reporting procedures that constitute the SBRM for a fishery.

Feasibility of the Methodology

Section 600.1610(a)(2)(ii) requires that the implementation of an SBRM be feasible from cost, technical, and operational perspectives. Data collection, reporting, and recording procedures can be expensive, logistically challenging to design and implement, involve new and cutting-edge technologies, and necessitate the consideration of the safety of human life at sea. It is reasonable and appropriate for a Council to analyze issues of feasibility when establishing or reviewing an SBRM and to ultimately choose a methodology that is in fact feasible (*i.e.*, capable of being implemented) from cost, technical, and operational perspectives. If a Council chooses to establish an SBRM that may be adjusted in response to changes in costs or funding, the Council should provide guidance to NMFS on how to adjust the implementation of the SBRM consistent with the FMP.

Data Uncertainty

Section 600.1610(a)(2)(iii) requires Councils to address the uncertainty of the data resulting from the SBRM. This section also requires that an SBRM be designed so that the uncertainty associated with the resulting bycatch data can be described, quantitatively or qualitatively. Eliminating data

uncertainty is not an end in itself, but the rule recognizes that Councils should seek to minimize uncertainty in the resulting data, recognizing that different degrees of uncertainty may be appropriate for different fisheries. NMFS does not believe it is appropriate to establish accuracy, precision, or reliability standards for bycatch data or estimates to be applied across all fisheries.

Data Use

Section 600.1610(a)(2)(iv) requires a Council to address how the data resulting from an SBRM are used to assess the amount and type of bycatch occurring in the fishery. Section 600.1605(a) clarifies that, although bycatch assessment is not part of the SBRM, bycatch assessment must be considered as described in this provision. Council must consult with its SSC and/or the regional NMFS science center on reporting methodology design considerations such as data elements, sampling designs, sample sizes, and reporting frequency.

While recognizing the distinction between data collection and bycatch assessment, NMFS requires a Council to address how the data resulting from an SBRM are used to assess the amount and type of bycatch in the fishery and to consult with its Science and Statistical Committee (SSC) and/or regional NMFS science centers on SBRM design considerations (e.g., data elements, sampling designs, sample sizes, and reporting frequency). NMFS also cross-references this requirement in § 600.1600. See section I. E. 4. *Data Use* of this preamble for further explanation.

Councils must consider the scientific methods and techniques available to collect, record, and report bycatch data that could improve the quality of bycatch estimates. As bycatch data collection technologies improve, NMFS anticipates that a Council will consider those technological advances when establishing and reviewing SBRMs in accordance with the review timeline specified in 600.1610(b). See response to comment 47.

Outcomes of the Review

FMPs may describe procedures or activities that comprise an SBRM, but do not explain them in a manner consistent with the rule. In such cases, changes to an FMP, or a fisheries research plan, may be warranted. NMFS could determine that there are FMPs with existing SBRMs that are consistent with this rule or may describe SBRMs more expansively than the definition in this final rule. Therefore, FMP amendments would not be necessary. Table 1 provides a checklist for review of each FMP and their fisheries for consistency with the final rule. The draft list of FMPs/fisheries are represented in the list as an example. Therefore, the list may be modified, as necessary. It is suggested that each advisory body examine their respective FMPS and identify the fishery or fisheries that are subject to this review. Then mark ‘yes’ where the FMP meets each requirement and provide reference to section number in FMP. Mark ‘no’ if info is not found or incomplete and provide section number of FMP, if possible. If the FMP identifies that an SBRM is used for multiple fisheries, then those fisheries could be combined onto one line of the table.

Each header in Table 1 represent review criteria. They are provided as questions to the reviewers:

Standardized reporting methodology: Does the FMP describe an established, consistent procedure or procedures used to collect, record, and report bycatch data in a fishery.

Purpose: Does the SBRM meet the purpose? The purpose of an SBRM is to collect, record, and report bycatch data in a fishery that, in conjunction with other information, are used to assess the amount and type of bycatch occurring in the fishery.

Characteristics of bycatch: Does the FMP address information about the characteristics of bycatch in the fishery when available, including, but not limited to, the amount of bycatch occurring in the fishery, the importance of bycatch in estimating the fishing mortality of fish stocks, and the effect of bycatch on ecosystems?

Feasibility: Is implementation of the SBRM feasible from cost, technical, and operational perspectives?

Data Uncertainty: Does the FMP address the uncertainty of the data resulting from the SBRM? This section also requires that an SBRM be designed so that the uncertainty associated with the resulting bycatch data can be described, quantitatively or qualitatively.

Data Use: Does the FMP address how the data resulting from an SBRM are used to assess the amount and type of bycatch occurring in the fishery?

Table 1. Example of Criteria and Checklist for Each FMP.

FMP/Fishery	Contain SBRM?	Meet the Purpose?	Consider characteristics of bycatch?	Feasibility check?	Address data uncertainty?	Address data use?
CPS/Sardine						
HMS/Swordfish/DGN)						
Salmon/Troll						
Salmon/Recreational						
Groundfish/Trawl Sector						
Groundfish/Sablefish Tier						
Groundfish/Open Access						
Groundfish/Recreational						

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