

Northeast Seafood Coalition's Comments on Draft Proposed Changes to National Standard 1 Guidelines

The following Northeast Seafood Coalition (NSC) comments are presented in the order of issues raised in the National Standard 1 Working Group (NS1WG) Report, and make references to the proposed changes to the specific codified text (Code of Federal Regulations (CFR) as appropriate. Please be advised that these comments do not encompass the entirety of all issues of concern to NSC and that NSC intends to make further comments when the proposed changes to the NS1 Guidelines are set forth in a Proposed Rule.

Stocks, Fisheries and Species Assemblages

NSC concurs with the recommendation of the NS1WG to allow each fishery management plan (FMP) to classify stocks into the two categories of “core” and “assemblage” stocks. Further, NSC strongly supports the maintenance in the NS1 Guidelines of a mixed stock exception for core stocks. However, NSC notes that the third condition for applying the mixed stock exception for core stocks is proposed for significant revision. This revision would substantially raise the threshold below which a stock subject to the mixed stock exception would not be allowed to fall (applying a 50% probability).

NSC does not disagree with this proposed change in concept. Raising the minimum biomass threshold for such a stock above what is effectively the endangered species status is appropriate. The new proposed threshold is minimum stock size thresholds (MSST) or, as referred to in the proposed changes to the CFR, biomass limit (Blim). However, Blim has as its proxy, $\frac{1}{2}$ Bmsy. In other words, the proposal would raise the minimum biomass threshold for a stock subject to the mixed stock exception from endangered species status to $\frac{1}{2}$ Bmsy. This represents a very large increase in the threshold that may not be necessary or desirable.

NSC wishes to reinforce the notion implied in the proposed revisions to the CFR in section 600.310 (d)(2)(ii), that in a real life application of the mixed stock exception, using the Blim proxy of $\frac{1}{2}$ Bmsy may not be practical or permit achievement of the objective of the mixed stock exception-- which is to achieve the Optimum Yield (OY) for other stocks in a mixed fishery.

In fact, Blim (MSST) may have to be significantly below the proxy of $\frac{1}{2}$ Bmsy in order for this exception to work in the real world application of a mixed stock management plan. Again, section 600.310(d)(2)(ii) sets forth various reasons for why Blim could be set below the proxy value, but it fails to make the direct linkage to the scenario of when the mixed stock exception is being applied.

NSC suggests that 600.310(d)(2)(ii) include a specific provision that would enable Blim to be set at a value that is lower than the proxy of $\frac{1}{2}$ Bmsy if it is necessary to realize the objective of the mixed stock exception to achieve OY for other stocks in a mixed stock fishery. For example, a stock subject to the mixed stock exception could be managed to sustainable yield on average 25% of Bmsy ($\frac{1}{4}$ Bmsy) without any threat to the species. Explicit flexibility should be provided to the scientists and managers to determine what this threshold should be on a fishery-by-fishery basis.

Fishing Mortality Thresholds

Note: the concepts embodied in the comments below also apply with respect to the NS1WG Report sections on Stock Size Thresholds and Optimum Yield (OY)/Maximum Sustainable Yield (MSY) Control Rules.

(1) NSC generally concurs with the recommendation of the working group to increase the emphasis on controlling fishing mortality through the utilization of a minimum fishing mortality threshold (MFMT) and to reduce (but not eliminate) the emphasis on the use of a minimum stock size threshold (MSST). However, our preference would be to eliminate the need for a MSST altogether and rely upon a strict fishing mortality rate based management system since fishing at or below Fmsy will achieve on average over the long term a stock biomass consistent with producing MSY/OY.

(2) The NS1WG and proposed revisions to the CFR appears to establish a new standard for OY that it is *always* less than MSY—rather than that it *may* be less than MSY in order to reflect some relevant social, economic or ecological factor—meaning that sometimes it may be equal to MSY. This has the effect of requiring that Flim be a value that is always less than Fmsy. The NS1WG Report suggests that this is necessary to increase long-term yields and ensure that overfishing will be *prevented*. This appears to transcend the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) as amended by the Sustainable Fisheries Act (SFA) and NSC questions why this is needed. Section 600.310(b)(2)(iv) suggests that the goal of the guidelines is to ensure that the resulting long-term average biomass of fishery management is now something greater than Bmsy. Again, this appears to exceed and conflict with the statutory mandate and definition of Optimum Yield. NSC questions whether this guideline would provide the greatest overall benefit to the nation.

There is already a great deal of precaution built into the process of data collection and analysis that produces estimates of MSY and fishing mortality rate (Fmsy), etc. that are typically very conservative from a resource conservation perspective. Requiring fishing mortality limit (Flim or MFMT) to always be below Fmsy seems to add an additional and excessive amount of precaution into an already very precautionary system. Specifically, the NS1WG Report suggests that in the medium and long time, it is better for both fish stocks and fishing communities if the F-rate is “somewhat below the MFMT”. It is not clear to NSC what “somewhat below” means and it is less likely that the fishery managers at the Regional Council level will have a clear idea either. This is likely to add a level of confusion and the disparate application of this concept by different Councils

and to different fisheries. NSC strongly suggests that the NS1 Guidelines allow OY to equal MSY and for Flim to equal Fmsy.

Similarly, NSC notes the discussion in section 600.310(b)(2)(v) which adds a new “operational response” to uncertainty in the estimates of management limits such as Flim and biomass limit (Blim). This response is apparently to reduce OY below MSY *and* to reduce the target rebuilding timeframe to less than the maximum allowable time to rebuild those stocks. Again, this appears to inject an excessive, duplicative layering of the precautionary approach that is not reflected in the statute.

Uncertainty is inherent in all population dynamics. Therefore, the proposed “operational response” to uncertainty would seem to apply to virtually every fishery and every management plan or action. In other words, OY would *always* be reduced from MSY and the rebuilding timeframes would *never* be as long as is otherwise allowed by the statute. Failure by the Regional Councils and NMFS to adhere to this proposed “operational response” to uncertainty would undoubtedly lead to even more counterproductive litigation. NSC seriously questions the advisability of the “operational response” in section 600.310(b)(2)(v).

(3) NSC notes with appreciation that both the NS1WG Report and the proposed changes to the CFR specifically provide for a phase-in period to end overfishing, ie. achieving the Flim. However, the proposed revisions to the CFR set forth two conditions that must be met for a phase-in period to be allowed. The second condition set forth in section 600.310 (e)(4)(i)(B) is problematic in that it requires the F-rate to be reduced by a “substantial and measurable amount each year”. In contrast, the NS1WG Report qualifies the word “substantial” with the example of it meaning “measurable”.

Use of the term “substantial” in the codified text implies that a “large” reduction would be necessary each and every year during a phase-in period. This may not be desirable or necessary in real world management application. For example, managers may wish to have the flexibility to apply relatively small but measurable reductions of the fishing mortality rate in the early years of a phase-in period while accelerating the reductions in the later years, or vice versa, rather than apply a constant “substantial” reduction in each year of the phase-in. In either case, the reductions could achieve the same overall F-rate and rebuilding objectives in the same time frame. Requiring such reductions to be “substantial” (large) in each and every year appears unnecessarily inflexible and arbitrary, especially when it is necessary to otherwise mitigate adverse social and economic impacts on fishing communities.. NSC suggests the word “substantial” be eliminated entirely from section 600.310(e)(4)(i)(B) leaving just the standard of “measurable”.

Stock Size Thresholds

NSC reiterates the concepts embodied in many of the comments set forth above, which relate to both fishing mortality and stock size thresholds.

Rebuilding Time Horizons

(1) For the record, NSC reiterates its position that the Magnuson-Stevens Act should be amended to eliminate altogether the arbitrary 10-year rebuilding timeframe provisions and replace them with a fishing mortality rate strategy for rebuilding based on F_{msy} which will both prevent overfishing and rebuilding depleted stocks to B_{msy} on average over the long-term while providing fishery managers with the greatest degree of flexibility for developing input and output management measures for achieving F_{msy} .

(2) NSC is concerned with the language set forth in section 600.310(e)(4)(ii)(B)(1), which sets the starting time for a rebuilding period to be “the first year after a stock is determined to be depleted.” There are many reasons why this might not be desirable including that the rebuilding targets have been significantly revised during a rebuilding period (which would warrant a “restart the clock” scenario) or, because rebuilding plans are unlikely to be developed and implemented by the Councils or Secretary in the same year a stock is determined to be depleted. A rebuilding plan for a stock may take years of Council and NMFS development and not be ready for implementation until well after the stock was determined to be depleted. It would not make sense to begin the implementation of a formal rebuilding plan in one year and apply a start date for the rebuilding period that is some number of years prior. NSC suggests that the codified text be modified to require the starting time for a rebuilding period be tied to the timing of the implementation of the rebuilding plan itself. The text should also formally recognize the need to ‘restart the clock’ on rebuilding periods when there is a significant change to the rebuilding targets or some other parameter that would warrant such action.

(3) NSC appreciates the new, additional flexibility proposed for determining the maximum allowable time period for rebuilding certain stocks whose minimum time for rebuilding (T_{min}) plus one mean generation time exceeds 10 years, as set forth in section 600.310(e)(4)(ii)(B)(3) of the codified text.

Rebuilding Targets

NSC appreciates the attention given to the fact that conditions extrinsic to fishing mortality may have a profound affect on the productivity of a stock over the long term. Such long-term factors such as major environmental regime shifts may have a large effect on determining whether a stock is overfished and if a rebuilding plan is required. The discussion regarding status determination criteria and OY/MSY control rules as they relate to environmental change set forth in section 600.310 (d)(4) of the codified text is particularly helpful in this respect.

However, NSC notes that there is a glaring inconsistency between that discussion (section 600.310(d)(4)) and that which appears in the definition of “overfished” set forth in section 600.310(d)(1)(iii), which states that “*Rebuilding is necessary, whatever the cause.*”

In fact, as explained specifically in section 600.310(d)(4), once status determination criteria have been respecified to reflect the scenario in which environmental changes affect the long-term productive capacity of a core stock (see section 600.310(d)(4)(ii)), then fishing mortality may or may not have to be changed, depending on the status of the core stock or stock assemblage with respect to the new criteria. In other words, the question of whether rebuilding is necessary is based on this respecification. It cannot be prejudged. Under a new and long-term environmental change, it may be not only impossible to rebuild a stock to the previously identified target biomass, it may not be necessary or possible to increase the stock biomass at all above its current level through changes in fishing mortality rates.

The sentence “*Rebuilding is necessary, whatever the cause.*” should be deleted from section 600.310(d)(1)(iii) of the codified text.

Revision of Rebuilding Plans

(1) NSC reiterates its concerns that the proposed revisions to the NS1 guidelines apply excessive layers of precaution. Specifically, while section 600.310(e)(5)(i) of the codified text correctly suggests that rebuilding plans need not be adjusted in response to each minor stock assessment, it further notes that the basis for this is “because initial rebuilding plans should have target times to rebuild that are sooner than the maximum permissible...”. NSC does not agree that rebuilding periods should have target times that are sooner than the maximum permissible. The reason that rebuilding plans need not be adjusted in response to minor stock assessment is because the OY control rules already apply substantial precaution.

(2) Section 600.310(e)(5)(ii)(A) of the codified text should be modified to allow changes to the rebuilding plan including increasing the fishing mortality rate and/or extending the rebuilding period to the maximum allowable in the circumstance when rebuilding is occurring faster than the rebuilding plan anticipated. This should be done to accommodate the need to minimize adverse social and economic impacts. Any rebuilding plan that rebuilds a stock faster than expected undoubtedly causes more negative social and economic impacts than were necessary to satisfy the statutory requirements for rebuilding. The guidelines should not take the position that if 10 years is good, 5 years would be better if that is the way a rebuilding plan accidentally turns out. Flexibility should be provided for making adjustments to mitigate such adverse impacts while still achieving rebuilding according to the time periods permissible under the statute and set forth under the definition of minimum time for rebuilding in section 600.310(e)(4)(ii)(B) of the draft codified text.

(3) As is self-evident, section 600.310(e)(5)(iii)(B) should be modified by deleting “a combination of” so that the final phrase reads “, *then the rebuilding plan must be revised by reducing the rebuilding fishing mortality targets and/or lengthening the rebuilding time horizon.*”