



Gulf of Mexico Fishery Management Council

Managing Fishery Resources in the U.S. Federal Waters of the Gulf of Mexico

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Wes Patrick
National Marine Fisheries Service
Office of Sustainable Fisheries
1315 East-West Highway, Room 13357
Silver Spring, MD 20910

Dear Dr. Patrick,

NOAA-NMFS-2012-0059

The Gulf of Mexico Fishery Management Council (Council), at its March 30-April 2, 2015 meeting in Biloxi, Mississippi, received a presentation from Alan Risenhoover on the proposed revisions to the guidelines for National Standards 1, 3, and 7. In addition, our Standing and Special Reef Fish Scientific and Statistical Committee (SSC) reviewed the proposed revisions at its March 11-12, 2015 meeting. The Council appreciates NMFS' initiative to provide additional clarity and potential flexibility to implementing the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) mandates. After reviewing the presentation and the red-line version of the proposed revisions available from the National Standard 1 Revisions website¹, we would like to provide the following comments on the proposed revisions which include comments from our SSC. Page numbers refer to the page on the red-line version available from the National Standard 1 Revisions website¹.

[page 1] **§600.305(b) Fishery management objectives:** The Gulf Council supports the addition of Section (2) to encourage the RFMCs to reassess fishery objectives on a regular basis.

[page 2] **§600.305(c) Stocks that require conservation and management:** The Gulf Council applauds the efforts to expand the criteria for consideration where determining whether a stock requires conservation and management but the criteria in places seem contradictory (i.e., “caught in a fishery” vs. “whether an FMP can improve or maintain the condition of the fishery.” This section does not provide sufficient flexibility to allow a RFMC to determine that an incidentally caught data limited species with historically low landings should not require conservation and management. Despite the development of ad hoc methods for estimating status determination criteria for data limited incidentally caught species, oftentimes these methods are not suitable and status determination criteria are based on nothing more that some arbitrary limit within a range of historical landings. The issue is compounded in a fishery like the Gulf reef fish fishery where up to 10 such incidental species can be harvested and ad hoc methods carry a high risk of forcing directed fishery closures based on just random variability in harvest levels of incidental species. For such incidentally harvested species, under criteria (i) through (iii), the only known criteria is that the stock is caught in a fishery because the role of such stocks in the marine ecosystem and whether an FMP can improve its condition is for all intent and purpose, unknowable.

¹ http://www.nmfs.noaa.gov/sfa/laws_policies/national_standards/ns1_revisions.html

The Gulf Council recommends NMFS provides the flexibility in the Guidelines to allow inclusion of incidentally and occasionally caught data limited species with historically low landings to be classified as ecosystem species and exempt from ACL, other reference points, and accountability requirements. The Council feels there is often no scientific basis for setting ACLs for these stocks, because they are not considered to be in danger of overfishing and are not in need of conservation and management. When some stocks were originally added to the FMPs, they were classified as species in the fishery but not in the management unit and were intended to be included for data collection only. It is more prudent to classify such incidentally caught species as ecosystem species to encourage continued data collection than to remove these species from the FMP altogether.

[page 6] **§600.310(d)(2) Stock Complex:** The Council supports the revisions to the definition of “stock complex” and revised proposed language on indicator stocks.

[page 9] **§600.310(e)(2)(i)(F) Features of MSY, SDC, and OY –Definition of Depleted:** The proposed definition of “depleted” appears to be unduly complex. We recommend a more comprehensive definition that mirrors the language in the proposed revisions to the Magnuson-Stevens Act. The Council understands this term is intended to apply to stocks that are in an overfished state or are not responding to rebuilding plans due primarily to environmental conditions rather than overfishing but the use of a time period equal to two generations is arbitrary, and waiting until a rebuilding period is completed is probably too long a time to wait to develop appropriate action for a stock that is not responding to a rebuilding program. We propose the following definition: “A stock is considered depleted if the biomass level drops below MSST due primarily (but not necessarily solely) to reasons other than fishing mortality.”

[page 9] **§600.310(e)(2)(i)(G) Features of MSY, SDC, and OY – Definition of minimum stock size threshold (MSST):** The proposed new definition of MSST is too restrictive and unworkable because, by definition, any stock biomass level below B_{MSY} is not capable of producing MSY on a continuing basis. However, there needs to be some guidance on how far the stock biomass level can drop before it is declared overfished and in need of a rebuilding plan. Therefore the Council proposes the following definition: MSST is a level of biomass below which the stock biomass is unable (or unlikely) to return to its B_{MSY} level in the absence of a rebuilding plan.

[page 9] **§600.310(e)(2)(ii) Features of MSY, SDC, and OY – Specification of SDC and overfishing and overfished determinations:** The Council supports the proposed revision to allow alternative types of status determination criteria (SDC) to be used when data are not available to specify SDCs based on MSY or MSY proxies. This provides the Councils with greater flexibility for data-limited species. We particularly support the allowance in **Section (A)** that allows for a 3-year mortality reference point to determine overfishing status.

[page 14] **§600.310(f)(1) Acceptable biological catch and annual catch limits – Definitions –** The Council supports the proposed definitions on “management uncertainty” and “scientific uncertainty” The proposed definitions help to clarify what was previously a somewhat ambiguous differentiation.

[page 15] **§600.310(f)(2)(ii)(A) Acceptable biological catch and annual catch limits - ABC control rule - Phase in ABC control rules:** The Council understands that the proposed revision

recognizes the negative short-term effects on fishing communities that can result from large short-term changes in catch limits, and it proposes allowing a control rule that phases in changes to ABC over a period of time, not to exceed three years, as long as overfishing is prevented. However, it is the requirement to immediately end overfishing that frequently drives these large reductions in harvests, creating severe short-term socio-economic impacts. This revision will do little to alleviate these negative impacts unless it is modified to concurrently allow overfishing to end over a 3-year period. The proposed revisions to **§600.310(j)(4) Emergency Actions and Interim Measures** allows interim measures to reduce but not necessarily end overfishing if “Ending overfishing immediately is expected to result in severe social and/or economic impacts to a fishery”. For consistency with the proposed emergency actions and interim measures section, we suggest that the Phase-in ABC control rule section be modified to state that the phase-in may occur over a period of time, not to exceed 3 years, as long as overfishing is prevented **by the end of the phase-in period.**

Also, under ABC Control Rule, our SSC members felt that clarification was needed as to what was meant by a “comprehensive analysis.”-

[page 15] **§600.310(f)(2)(ii)(B) Acceptable biological catch and annual catch limits - ABC control rule - Carry-over ABC control rules:** The Council supports the proposed language to carry-over any unused proportion of the ACL from one year to increase the ABC for the next year. However, under Carry-over ABC control rules, the proposed revision only states that the resulting ABC must consider scientific uncertainty. There is no mention of uncertainty in the estimation of catches, which should be a consideration when deciding whether to carry over the estimated unused catch. Our SSC suggests that the revision include consideration of uncertainty in the catch estimates as well as scientific uncertainty.

[page 16] **§600.310(f)(4)(iv) Acceptable biological catch and annual catch limits - Setting the annual catch limit - Relationship between OY and the ACL framework:** The proposed revision includes the statement, “An annual OY cannot exceed the ACL.” This differs from the presentation given to the Council, which states that the annualized expression of $OY = ACL$, similar to $MSY = OFL$. The use of both an annual OY and a long-term or continuing OY is confusing. The Council feels that the use of annual OY should be discouraged, and that OY should refer only to the long-term equilibrium level. The guidance could then state that annual ACL cannot exceed the long-term OY. This would be consistent with the Magnuson-Stevens Act objective to achieve optimum yield on a continuing basis.

[page 20] **§600.310(j)(3)(i) Council actions to address overfishing and rebuilding for stocks and stock complexes - Overfished fishery:** The current guidance mandates a maximum 10-year rebuilding time except in cases where the biology of the stock of fish, **other environmental conditions**, or management measures under an international agreement in which the United States participates dictate otherwise. However, the guidance also states that the rebuilding time shall take into account the needs of fishing communities. Under NEPA, there are social and economic environments as well as biological and ecological environments. In order to take into account the needs of fishing communities, we suggest modifying this section to clarify that environmental conditions means biological, social, or economic environmental conditions.

[page 20] **§600.310(j)(3) (i)(B) Council actions to address overfishing and rebuilding for stocks and stock complexes - Overfished fishery - The maximum time for rebuilding a stock**

or stock complex to its Bmsy(Tmax): The Council supports the addition of multiple options for establishing a rebuilding time for stocks that take more than 10 years to rebuild in the absence of fishing mortality. However, a stock that can theoretically rebuild in 10 years in the absence of fishing mortality cannot actually achieve that target because $F=0$ is impossible to attain. There will always be some incidental bycatch and discard mortality even in the absence of directed fishing. We suggest from a practical standpoint that sub-paragraphs (1) and (2) be reworded so that a stock that takes less than 10 years (rather than 10 years or less) be subject to the 10-year rebuilding time, and a stock that takes 10 years or more (rather than exceeds 10 years) be subject to the alternate rebuilding times.

[page 21] **§600.310(j)(3)(iv) Council actions to address overfishing and rebuilding for stocks and stock complexes - Overfished fishery - Adequate progress:** The Council suggests that the Secretary review schedule be every three years for stocks under a 10-year or less rebuilding schedule, and five years for stocks under a rebuilding schedule that exceeds 10 years. The 3-year interval could also apply to stocks that have reached the end of their rebuilding period but have not yet rebuilt. The Council feels the two year intervals may not provide sufficient time to evaluate rebuilding plans and will be unnecessarily burdensome. Such reviews will typically require at least an update assessment from the Southeast Fisheries Science Center that could result in delays due to potential workload issues.

[page 21] **§600.310(j)(4) Council actions to address overfishing and rebuilding for stocks and stock complexes – Emergency Actions and Interim Measures:** The Council supports the provision that allows interim measures to reduce, but not necessarily end, overfishing under certain conditions including the condition that ending overfishing immediately is expected to result in severe social and/or economic impacts to a fishery. The requirement to end overfishing immediately is one of the most disruptive requirements under the current guidelines, and the ability to phase out overfishing under certain conditions will provide for a more rational management that takes into account the short-term impacts on both the resource and the resource user.

In addition to the above comments, the Council concurs with the proposed revisions on National Standard 3 and 7.

Once again, we appreciate the opportunity to comment on the proposed revisions, and we look forward to publication of the revised guidelines.

Sincerely

Kevin Anson
Council Chairman

cc: Gulf Council
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R. Crabtree, SERO
B. Ponwith, SEFSC
RFMC Executive Directors