



Mid-Atlantic Fishery Management Council

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November 17, 2023

Ms. Janet Coit
Assistant Administrator, NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Dear Ms. Coit:

The Mid-Atlantic Fishery Management Council (Mid-Atlantic Council or MAFMC) writes to express our strong concerns about NOAA Fisheries' Draft Procedural Directive (Procedural Directive) regarding the use of Magnuson-Stevens Act (MSA) §304(f) authority for fisheries that extend across the geographic areas of more than one Regional Fishery Management Council (Council). While the Secretarial authority to designate Council responsibility for managed species already exists within the MSA, the Procedural Directive would impose a new process by which NOAA Fisheries could reassign Council management authority for fisheries managed under existing Fishery Management Plans (FMP). As discussed below, we believe the Procedural Directive has serious flaws and should not be implemented in its current form. Instead, we recommend that NOAA Fisheries engage the Councils in the development of a revised process to address these issues in a more appropriate, collaborative, and evidence-based manner. This letter complements the comments previously submitted by the Council Coordination Committee (CCC) on behalf of the eight Councils.¹ Additional comments from the Mid-Atlantic Council's Scientific and Statistical Committee (SSC) are provided as an attachment.

Summary

As one of only two Councils that share both a northern and southern boundary with another Council, the Mid-Atlantic Council is well versed in the management and governance challenges and complications presented by cross-jurisdictional fisheries and shifting stocks. Although the MAFMC appreciates the agency's efforts to develop a process to continue addressing these challenges, the approach detailed in the Procedural Directive is fundamentally misguided. The following is a brief overview of our primary concerns:

1. **The Procedural Directive does not articulate a clear purpose or provide an evidence-based description of the problem.** The MSA provides the Councils with significant flexibility and a variety of tools to manage fisheries across jurisdictional boundaries. The Councils, particularly the three East Coast Councils, have successfully managed stocks across jurisdictional boundaries since the inception of the Council system in 1976 and have continued to adapt their management approaches to address new challenges and changing conditions. NOAA Fisheries has indicated that the Procedural Directive was developed "in anticipation of an increasing number of fish stocks shifting in geographic distribution, new fisheries emerging, and other demographic shifts in fisheries." However, the document does not provide meaningful evidence or reference any

¹ https://www.fisherycouncils.org/s/2023-10-06_CCC-Comments-on-NMFS-304f-Procedural-Directive.pdf

supporting analysis to demonstrate shortcomings in existing management approaches for cross-jurisdictional fisheries. The overall lack of a problem statement and specific objectives makes it impossible to determine the appropriateness of the proposed process.

2. **Contrary to the agency’s stated goal of establishing a more transparent and orderly approach for fishery management, the Procedural Directive proposes a confusing and unnecessarily complicated process.** The document appears to have been developed hastily and with insufficient attention to the complexities of evaluating and responding to changing stock distributions. The proposed process is convoluted and difficult to follow, providing overly specific guidance in some areas while failing to provide any meaningful guidance on some of the most complex aspects of the process. Rather than adding clarity and predictability regarding the use of §304(f), the Procedural Directive introduces additional areas for subjectivity and potential disputes over conflicting interpretations. A national-level directive should be thoroughly reviewed and tested to ensure that any guidance can be applied in a consistent and predictable manner across all regions, fishery management plans, and stocks.
3. **The proposed criteria, metrics, and time frames are overly prescriptive, lack justification, and are inappropriate for evaluating changes in catch location and/or stock distribution.** The Procedural Directive proposes several metrics and thresholds for triggering a review and considering modifications to Council authority. These evaluations rely heavily on commercial landings revenue and recreational fishing effort estimates, both of which are problematic metrics for evaluating shifts in stock distribution or fishing effort. In addition, the suggested time frames for evaluation of these metrics are too short to accurately assess long-term changes. The guidance includes no supporting information or analysis to justify the selection of the proposed metrics and thresholds, nor does it explain how they should be weighed against other considerations identified in the document. The draft also does not acknowledge the complexities of evaluating changes in stock distribution or provide any guidance on what constitutes a “documented shift in distribution.” We are deeply concerned that the use of arbitrary and untested metrics and thresholds, combined with an ill-defined process for evaluating changes in stock distribution, will lead to frequent, unnecessary reviews and unwarranted changes in management responsibility.
4. **Reassignment of management authority would be extremely disruptive and should be exercised as a last resort rather than a first course of action for addressing governance issues.** Transferring management responsibility between Councils or transitioning to joint management would be a complex process with significant impacts on the affected Councils, SSCs, NOAA Fisheries Regional Offices and Science Centers, and stakeholders. The Procedural Directive fails to provide any meaningful guidance on how these impacts will be measured against potential benefits when considering a change in Council management authority. The document also does not include any consideration of less disruptive options for addressing governance challenges that could be considered before pursuing changes under §304(f).
5. **The Procedural Directive does not provide adequate opportunities for Council involvement or public input.** We are extremely concerned that the proposed process only includes one guaranteed opportunity for the relevant Councils to provide input (with one possible additional opportunity at the discretion of NOAA Fisheries). The Councils should have a defined and significant role in all steps of the process given their institutional knowledge and experience. We also note that the proposed time frames are too short to allow for meaningful input from, and

dialogue with, the Councils. We are also concerned that the proposed process described in the Procedural Directive does not include any dedicated opportunities for input from other management partners and the public. Transparency and public participation have been fundamental to successful fisheries management under the MSA, and these attributes should not be abandoned as proposed in the current Procedural Directive.

Overarching Recommendations

Given these concerns, we urge the agency to collaborate with the Councils to develop an alternative process and a revised procedural directive. We strongly recommend that the revised process and guidance incorporate the following principles:

- Any procedural directive regarding the use of MSA §304(f) should be based on a policy directive which defines the agency's overarching policy and establishes clear objectives.
- Reviews of geographic scope and Council authority should only be initiated at the request of a Council or through a formal stakeholder petition process established by NOAA Fisheries.
- Any consideration of changes in management authority should be tied to clear and documented governance issues that have well-established connections to changes in species distribution.
- Guidance should be designed to minimize the frequency of reviews and changes in management authority. When a governance issue has been identified, the responsible Council(s) should be given an adequate opportunity to address the issue *before* changes under MSA §304(f) are considered.
- The guidance should provide reasonable flexibility to account for variations among fisheries and regions. If any specific criteria or thresholds are included in the guidance, they should be scientifically sound, technically robust, and have a well-supported connection to the objectives for evaluation.
- Decisions made pursuant to §304(f) should be supported by a record that documents the rationale for the determination and provides a detailed explanation of the factors considered in the review.
- Guidance regarding the use of §304(f) should establish a robust, collaborative, and transparent process with central roles for both the Councils and NOAA Fisheries. Specifically, the process should:
 - Be conducted by an expert working group composed of individuals with relevant science, management, and policy expertise
 - Provide flexibility to determine appropriate indicators, criteria, thresholds, and data sources for a particular fishery
 - Include a comprehensive review of the available scientific information, methodologies, fishery specific characteristics, and regional knowledge
 - Require levels of analysis, documentation, and public input that are at least on par with the requirements for an FMP amendment
 - Describe and utilize the best available scientific information regarding the fisheries and ecosystems under consideration
 - Characterize and account for uncertainty in the data sources used
 - Assess whether changes in a fishery represent persistent long-term shifts (as opposed to short-term changes or interannual variability)
 - Evaluate costs and impacts of any proposed change in Council management authority relative to the anticipated benefits
 - Provide ample opportunities for public comment

Detailed Comments on the Draft Procedural Directive

1. The Procedural Directive does not articulate a clear purpose or provide an evidence-based description of the problem.

General Comments

NOAA Fisheries has indicated that the Procedural Directive was developed “in anticipation of an increasing number of fish stocks shifting in geographic distribution, new fisheries emerging, and other demographic shifts in fisheries.” While the Mid-Atlantic Council acknowledges the need to prepare for changing conditions, including possible changes to our governance systems, the Procedural Directive does not provide meaningful evidence, or reference any supporting analysis, to demonstrate shortcomings in existing management approaches for cross-jurisdictional fisheries.

The MSA provides significant flexibility and a variety of tools to facilitate management of fisheries across jurisdictional boundaries, and the Councils have been successfully managing stocks across jurisdictional boundaries since the inception of the Council system in 1976. Cross jurisdictional coordination has always been a particularly important aspect of fisheries management in the Greater Atlantic region. Southern New England states have a substantial interest in some fisheries managed by the Mid-Atlantic Council, and conversely, the Mid-Atlantic states have a substantial interest in a number of fisheries managed by the New England Council. The Mid-Atlantic and New England Councils manage two fisheries under joint FMPs and cooperate on the management of several other fisheries that overlap the geographic areas of both Councils. The Mid-Atlantic also jointly manages several FMPs with the Atlantic States Marine Fisheries Commission (ASMFC), whose membership includes representatives from all East coast states. In addition to formal coordination via joint management plans, the Mid-Atlantic and several other Councils utilize cross-Council liaisons to facilitate sharing of information and perspectives across regions. The Mid-Atlantic Council frequently holds public hearings outside of the Mid-Atlantic region to ensure that all relevant stakeholders have opportunities to comment on Council actions. The Mid-Atlantic Council, in coordination with other East coast management organizations, has recently been exploring possible changes to Committee membership and enhanced use of liaisons to further enhance coordination across regions.

Against this backdrop of relatively successful cross-jurisdictional coordination, NOAA Fisheries has failed to explain what problem the Procedural Directive is intended to address or how the guidance would benefit fisheries or stakeholders. It is also not clear to what extent the guidance is intended specifically to address climate-related changes. Although the agency has frequently referred to the Procedural Directive as a “Climate Governance Policy,” the word “climate” does not appear anywhere in the document.

MSA National Standard 6 already requires FMPs to be flexible enough to account for variations and contingencies in fisheries, including climatic conditions. According to the National Standard Guidelines at §600.335(d), unpredictable events, including climatic conditions, “are best handled by establishing a flexible management regime that contains a range of management options through which it is possible to act quickly without amending the FMP or even its regulations.” We believe resources would be better put toward continued development of more flexible management programs to increase the Councils’ adaptive capacity to respond to climate change and governance challenges, rather than creating an additional process to consider much more rigid structural changes.

Another area of concern relates to the use of a procedural directive as the vehicle for this guidance. Typically, a *policy directive* that outlines the underlying science and/or management issue would be developed and approved first, followed by a *procedural directive* that outlines the process to address the

policy. However, this Procedural Directive contains no reference to a corresponding policy directive. Optimally, the specific objectives defined in a policy directive would be used to define the appropriate metrics by which the need for management intervention would be identified. In this case, the absence of specific objectives makes it impossible to meaningfully interpret and assess the appropriateness of the proposed process.

Recommendations

The Procedural Directive should include a description of its purpose and objectives, and it should clearly define the problem using relevant data and/or examples. This description should explain any connection to an existing policy directive, if applicable, and if such a policy directive does not exist, one should be developed. Consideration of changes in management authority should be tied to clear and documented governance issues that have well-established connections to changes in species distribution. The Procedural Directive should establish guidelines to assess whether a governance problem truly exists with individual species or FMPs that may come under review.

2. The Procedural Directive proposes a confusing and unnecessarily complicated process.

General Comments

A national-level directive should be carefully designed and tested to ensure that any guidance can be applied in a consistent and predictable manner across all regions, FMPs, and stocks. This Procedural Directive appears to have been developed hastily, with insufficient attention to the complexities of the Council process and associated governance issues. Rather than adding clarity and predictability regarding the use of §304(f), the Procedural Directive introduces additional areas for interpretive questions and subjectivity. We are concerned that this will invite disputes over conflicting interpretations of the guidance. We agree with the statement in the CCC comment letter that the proposed guidance “could be used to justify vastly different outcomes depending on the data used, making it very difficult to see how the [Procedural Directive] would accomplish its goal of establishing ‘a more transparent, orderly, and responsive approach for fishery management.’”

In general, we find the proposed process to be convoluted and difficult to follow. For example, the relationships between Steps 1, 2, and 3 appear muddled, with many of the same sources of information considered in each step. As drafted, the relationship between the outcomes under Step 2 and determinations under Step 3 is confusing. Similarly, the relationship between the sub-components of some of the steps are unclear, such as for Step 1 where the sources of data to be considered (Step 1c) seem broader than the criteria that would be evaluated to indicate need for a review (Step 1b).

We also note that there is considerable ambiguity in the language used throughout the document. For example, variations of the phrase “including but not limited to” are used at several points when introducing lists of potential criteria, indicators, and sources of data that *may* be used. We question the value of including those lists at all if they are meant to be non-limiting and when no further guidance is provided on how the specific criteria, indicators, or data sources will be selected or prioritized. Similarly, a statement like “Determining the geographic location of a fishery involves consideration of legal, policy, and scientific issues and includes a certain amount of flexibility” adds little clarity to the document when no further insight is offered with respect to the legal, policy, or scientific issues that should be considered. Below we identify several specific questions and areas of ambiguity that require further clarification.

Initial Determinations

Clarification is needed on the assertion that “for most currently managed fisheries, initial determinations of geographic scope and designations of Council authority for preparing fishery plans have already been completed.” Is this referring to the initial determinations made during development of each original FMP, or has NOAA Fisheries recently conducted this type of review for “most” managed fisheries? In either case, it is not clear for which fisheries this review would not have been completed and why.

Multispecies FMPs

The Procedural Directive does not specify whether the review process is intended to apply to individual species or entire FMPs. This is an important distinction, as some species are managed together under a single FMP due to similarities in fishing operations and/or life history characteristics. Four of the Mid-Atlantic Council’s FMPs include more than one species, with varying degrees of similarity among the species included in the FMP. There are challenges associated with each approach (application at the species or FMP level) that need to be further explored and clarified within the Procedural Directive, as there are important implications for aspects of the process such as data evaluation and, complexity of management transition. If the guidance is intended to be applied at the FMP level, additional guidance would be needed on how to consider divergent trends in the metrics for different species within a multispecies FMP.

New Fisheries

While most of our comments focus on the implications of this Procedural Directive for fisheries managed under existing FMPs, the guidance is also intended to apply to new (previously unmanaged) fisheries. We note that the management, data, and fishery challenges are very different for new fisheries compared to those associated with existing FMPs, and a one-size-fits-all approach may not be appropriate. Commingling these processes is confusing, particularly considering that the Councils have typically been responsible for developing proposals to initiate management of a new species. The National Standard general guidelines state that “In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives” (50 CFR 600.305). However, the proposed process for reviewing the geographic scope of a new fishery, which begins at Step 2, suggests that a portion of this responsibility would shift to NOAA Fisheries. Further clarification is needed if this is not the agency’s intent. While we question the need for this guidance to address new fisheries, we believe the document would benefit from a more detailed explanation regarding how the proposed process would align with the existing process for establishing management of new fisheries.

Transition Process

Some elements of the proposed transition process (Step 4) are of concern, including the provision that during the minimum 2-year phase in period, “existing FMP and regulations should remain in place.” It is unclear if this refers to all FMP elements and regulations, including routine specifications of annual management measures. Transition to revised management authority will be a complex process and may take much longer than two years. It is unrealistic to expect all regulations to remain unchanged over this time frame while still meeting the objectives of the FMP and “remain[ing] compliant with the MSA and other applicable law.” The description of the transition period also does not address the East Coast Scenario Planning Summit recommendation to use joint management as a transition mechanism where possible and appropriate.² Step 4 states that NOAA Fisheries and the Councils should provide for a

² East Coast Climate Change Scenario Planning Summit Report, https://www.mafmc.org/s/ECSP-Summit-Report_April-2023.pdf

“transition plan that addresses permitting and allocation issues.” It is not clear what is meant by this, especially given that the guidance also states that the existing FMP and regulations should remain in place until superseded by the new responsible Council(s).

Recommendations

As we noted in the introduction, our central recommendation is that NOAA Fisheries engage the Councils on development of a more appropriate, collaborative, and evidence-based approach for addressing management of stocks that extend across more than one Council jurisdiction. We recommend that the process be redesigned as a robust, collaborative endeavor consisting of a joint effort between the relevant Councils, NOAA Fisheries, and other management partners and stakeholders. A revised process should be thoroughly tested with a wide range of example cases to improve the draft process and guidelines. While we recognize that the authority for determining Council management responsibility ultimately lies with the Secretary of Commerce, we believe that the success of any potential reviews or transitions of management authority hinge on the degree of collaboration and transparency of the process, both of which are lacking in the current Procedural Directive. Listed below are several recommendations that relate to specific aspects of the process as described in the Procedural Directive.

Step 1: The Council strongly believes that reviews of geographic scope and Council management authority should only be conducted on an as-needed basis when there is a clearly defined governance problem. We recommend establishing a formal process through which a review could be requested by the relevant Council(s) or their stakeholders. We envision a process similar to the one used for National Marine Sanctuary nominations. Guidelines could be established for these groups to submit petitions for review by NOAA Fisheries, including requiring a preliminary description of any documented changes in the geographic scope of a fishery as well as a clear demonstration of an ongoing governance problem. Councils and their stakeholders are well positioned to track and identify changes in their managed fisheries, including resulting representation and governance concerns.

Steps 2-3: For fisheries where NOAA Fisheries determines that a review is needed, we recommend combining steps 2-3 into a single process for evaluating changes in the geographic scope of the fishery and determining the appropriate Council authority. Both components of such an evaluation should be conducted by an expert working group, including science and policy experts who can facilitate thorough consideration of the best available scientific information, methodologies, fishery specific characteristics, and regional knowledge of the relevant fisheries. This evaluation process could result in a recommendation to the Secretary of Commerce supported by levels of analysis, documentation, and public input that are at least on par with the requirements for an FMP amendment. Peer review processes should be conducted where necessary. The process should provide a clear role for the relevant Councils, the ASMFC (or individual state management partners where appropriate), and other fishery stakeholders.

Step 4: While we recognize that guidance on transitioning management authority will likely be needed, in our view it is not necessary to include this as a step in this proposed process, which should be focused primarily on reaching a decision about management responsibility. We recommend separating guidance on management authority transitions into a separate Procedural Directive to allow for additional development of the proposed transition process.

New Fisheries: We recommend narrowing the scope of the Procedural Directive to apply only to fisheries under existing Council FMPs. If NOAA Fisheries maintains its position that §304(f) guidance is needed for new, previously unmanaged fisheries, we recommend addressing this through a separate

procedural directive which fully explains how the proposed process will intersect with the existing Council-led process for initiating management of a new species.

3. The proposed criteria, metrics, and thresholds are overly prescriptive, lack justification, and are inappropriate for evaluating changes in catch location and/or stock distribution.

General Comments

Criteria, metrics, and thresholds for the determination of management authority should be carefully selected to reflect the underlying policy objectives of this type of guidance, which, as noted in Section 1, are not clearly explained in the current draft. Although the purported intent of this guidance is to address shifts in the geographic scope of fisheries, several of the proposed metrics are not reliable indicators of stock distribution or fishing effort. We are concerned that the use of these inappropriate metrics and arbitrary thresholds is likely to result in frequent reviews, even where no governance problems are evident. This would divert agency and Council resources away from other critical projects, including actions or initiatives to increase the climate resilience of managed fisheries. In the extreme, inappropriate metrics could result in unnecessary and costly reassignment of management authority.

Commercial Revenue and Recreational Effort as Metrics

The Procedural Directive proposes to use commercial revenue and recreational effort as possible metrics for determining if a review is needed and designating the appropriate Council management authority. The guidance does not prohibit the use of other metrics or data sources; however, the emphasis on commercial revenue and recreational effort seems to signal the agency's belief that these metrics are appropriate proxies for stock distribution and/or location of fishing effort. We strongly disagree. While commercial and recreational landings and effort are worthy of consideration as part of a comprehensive review of multiple data sources, we do not believe they are appropriate for use as stand-alone or even primary indicators of a fishery's geographic scope.

When evaluating commercial landings or revenue data, it is important to consider differences between the location of *landing* and the location of *catch*. NOAA Fisheries states on its own commercial landings query page "Landings data do not indicate the physical location of harvest but the location at which the landings either first crossed the dock or were reported from."³ This distinction does not seem to have been thoughtfully incorporated into the draft Procedural Directive beyond noting that reviews should account for "any regulatory requirements that may be affecting where fish are landed as opposed to where they are caught." However, it is not clear how this would be done, calling into question whether commercial revenue is the appropriate metric if the intent is to assess catch location. There are many confounding factors influencing where commercial landings occur, including variable local market conditions, availability of shoreside infrastructure, and management factors such as rotational management programs and allocations. In our view, this makes commercial landings revenue an inappropriate metric for assessing long term trends in catch location or species availability.

To illustrate our concerns with using commercial revenue to evaluate the geographic scope of a fishery, consider the following example: According to NOAA Fisheries commercial landings data, 76% of total revenue from the longfin squid fishery was attributed to New England states in 2022 (Figure 1a). Under the "presumptions pertaining to designations" listed under Step 3, this data could be used to support a decision to reassign management authority to the New England Council. However, based on catch

³ NOAA Fisheries Office of Science and Technology, Commercial Landings Query, Metadata and Caveats <https://www.fisheries.noaa.gov/foss/f?p=215:240:5888370331505>

statistical area data (primarily from Vessel Trip Reports (VTRs)), the majority of longfin squid revenue was generated from harvest that occurred in the Mid-Atlantic Council’s jurisdiction (Figure 1b; Figure 2). Over half of landings revenue was attributed to statistical areas fully within the Mid-Atlantic Council’s jurisdiction, and an additional 41% was from statistical areas 537, 539, and 611, which straddle the New England and Mid-Atlantic boundary (note that these statistical areas are considered to be part of the Mid-Atlantic Ecological Production Unit, as defined by the NOAA Fisheries Northeast Fisheries Science Center). Only 8% of revenue came from statistical areas fully within the New England Council’s jurisdiction. In this example, using commercial revenue based on the landings location would create an inaccurate and incomplete understanding of the fishery’s true geographic scope.

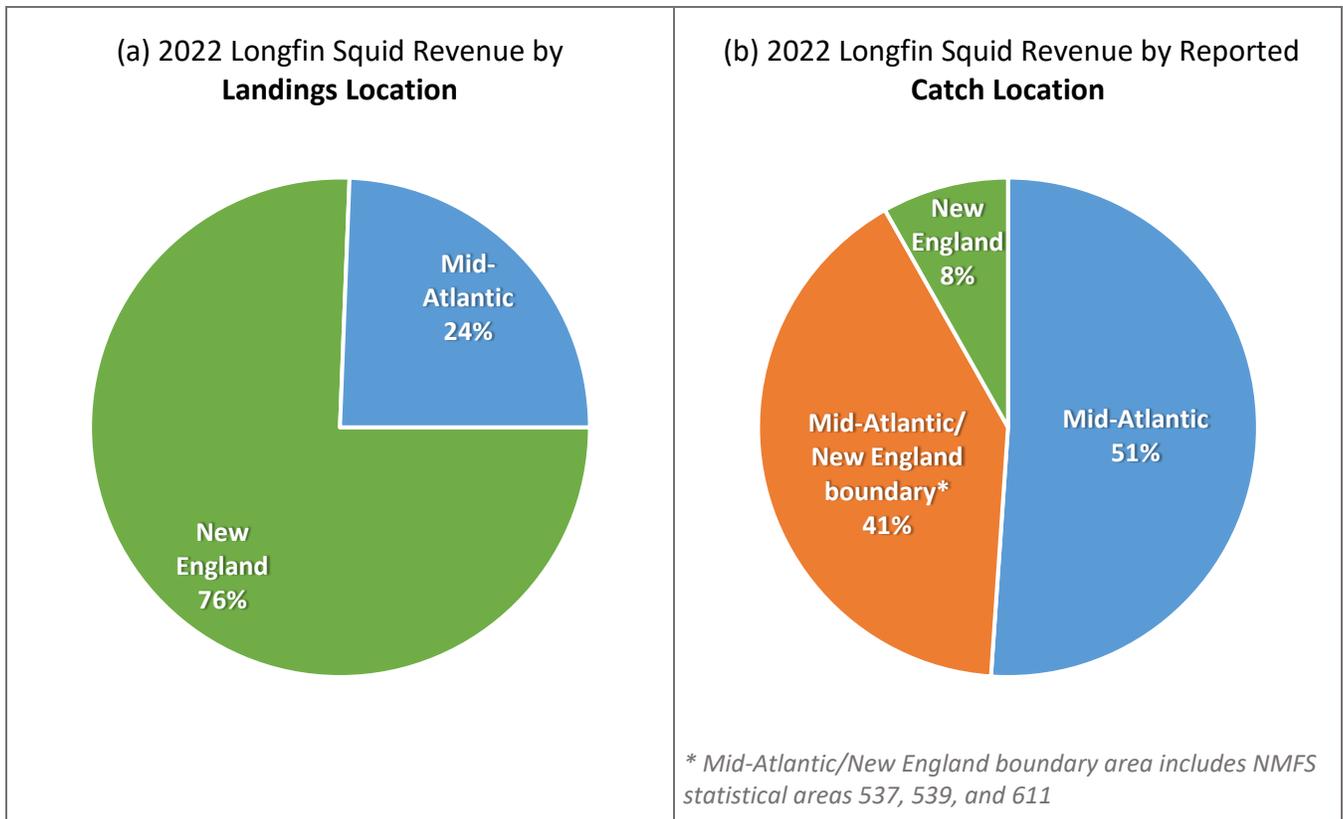


Figure 1: (a) Percentage of longfin squid revenue from each Council region in 2022 based on the location at which the landings either first crossed the dock or were reported from. Source: NOAA Fisheries Annual Landings Statistics. (b) Percentage of longfin squid revenue from each Council region in 2022, based on statistical area of reported catch. The orange segment represents revenue from statistical areas that straddle the jurisdictional boundary between the Mid-Atlantic and New England Councils (537, 539, and 611). Source: NMFS Catch Accounting and Monitoring System (CAMS) data as of October 2023.

2022 Longfin Squid Revenue by Statistical Area

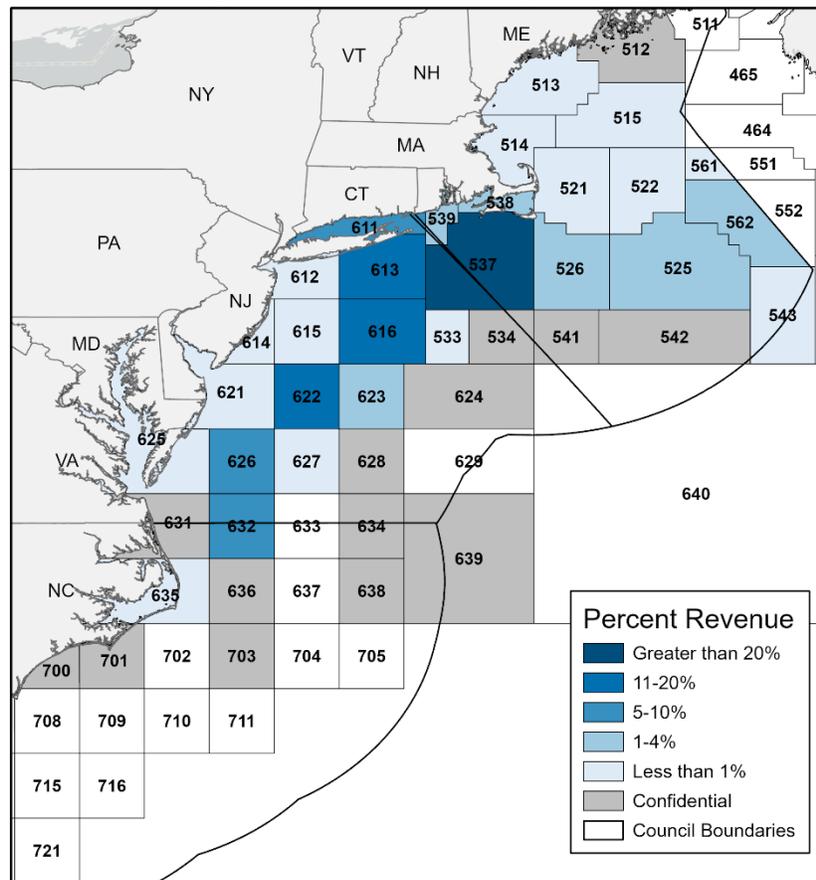


Figure 2: 2022 longfin squid revenue by NMFS statistical area. Source: NMFS Catch Accounting and Monitoring System (CAMS) data as of October 2023.

We have similar concerns about the use of recreational effort as a primary indicator or metric for identifying shifts in the geographic scope of a fishery. Recreational catch and effort estimates may have high uncertainty (i.e., high PSEs), and the precision of these estimates generally decreases as they are broken down into smaller spatial units. Recreational effort for a given species is influenced by many factors other than the geographic distribution of the stock, including regulations, regional trends in weather, economic factors, availability of other target species, coastal population and tourism trends, and access to shoreside fishing sites or marinas. In addition, spatial information as to where catch occurred is limited and typically extremely coarse (e.g., state waters or federal waters). Collectively, these factors make it very challenging to draw meaningful conclusions about the geographic scope of a fishery from recreational effort data.

It is also important to note that the MRIP fishing effort survey and catch estimation methodologies have undergone a number of significant changes in recent years, resulting in substantial revisions to the time series of estimates. Recently, a pilot study indicated that there may be a need to once again revise the effort survey design and estimates. The impacts of such large changes in effort estimates are not uniform across all states and regions, which could create complications for comparing recreational effort by region. The instability in recreational effort methodologies and estimates make it extremely challenging and highly uncertain to use recreational effort as a metric to assess changes in the geographic scope of a

fishery. The calibrations currently needed to align historical recreational data collected under different methodologies with current methodologies also create additional uncertainties in interpreting long-term trends that span the different eras of recreational data collection methods.

Thresholds

In Step 1, the guidance proposes that a 15% shift in either commercial revenue or recreational effort may indicate a need for a review. Depending on the fishery and the years evaluated, a 15% change in these metrics could be well within the range of typical variability, and, as such, is too low a threshold for identifying significant and persistent changes in the location of a fishery. In Step 3, the guidance uses the relative proportions of commercial revenue or recreational effort across Council jurisdictions as the basis for several “presumptions pertaining to designations.” The thresholds described in both steps are presented with no explanation or analysis to justify their selection and thus appear arbitrary.

Time Frames

The suggested time frames for review (e.g., two sets of 3-year averages) seem too short to capture meaningful long-term shifts in stock distribution and fishing effort. This is particularly true when multiple short time frames are compared with little or no separation in time between the two periods. These comparisons are much more likely to capture shorter-term changes that may be unrelated to climate change including natural variability, temporary changes in fishing effort, changes in stock dispersal, changes in fishing regulations, etc.

Selecting an appropriate time frame should also take into consideration other factors such as major changes in data availability or quality, or stock-specific population and effort dynamics that may inform the validity of evaluation results. This is another area where the advice from a broad group of science and policy experts would be critical to establishing an appropriate evaluation time frame specific to a given fishery.

Documented Shift in Stock Distribution

In addition to the commercial and recreational metrics described above, the Procedural Directive lists “documented shift in stock distribution” as a potential review trigger. However, the guidance does not further define this criterion, nor does it acknowledge the complexities of evaluating such distribution changes. As noted by our Council’s SSC, this is a very complex issue, and different conclusions may be reached with different data sources or methods. The data sources identified in the Procedural Directive can be highly variable, uncertain, and may show conflicting interpretations of stock distributional change. A clearly specified and operational definition of what characterizes a change in stock distribution, using guidance from scientific literature, is needed to develop the appropriate criteria and metrics to evaluate these potential changes. Additionally, guidance on standardization of methodologies and prioritization of data sources would be helpful. Given the significant consequences associated with changing management authority, it is concerning that the document does not provide any useful guidance on this complex and challenging aspect of the proposed process.

Certain Council Actions

The Procedural Directive includes “Certain Council actions, such as allocation revisions or changes to permit requirements that have cross-jurisdictional implications” as a proposed trigger that may indicate a need for review. If the agency’s intent is to establish criteria for identifying fisheries that may be experiencing geographic shift, as is indicated in Step 1(a)(i), it is not clear why Council actions would be included in this list. Many Council actions have “cross-jurisdictional implications,” particularly on the East Coast, and these actions must demonstrate compliance with the MSA, including the National

Standard 3 requirement to manage stocks as units throughout their ranges, the National Standard 4 requirement to make fair and equitable allocations, and the National Standard 8 requirement to provide for the sustained participation of all fishing communities. In cases where the agency determines that a Council action warrants a review of a fishery's geographic scope, it is not clear how that review process would intersect with the Council's amendment development process. Would the review commence after the Council has taken final action or at the point when the Council initiates development of an amendment? Initiating a review after a Council has taken final action may create unwarranted controversy for completed actions that have been developed through the Council's rigorous public process, which includes extensive analysis and documentation of compliance with all relevant federal laws. Conversely, if the review process begins when the Council initiates development of an amendment, it could slow the process or even disincentivize a Council from initiating or continuing development of an action.

Unclear Considerations and Criteria

There are several considerations listed in the Procedural Directive that are not clear in their connection to the corresponding step, or even defined. For example, in Step 2, it is not clear how management goals/objectives and management efficiency are relevant to identifying the geographic scope of a fishery. Similarly, in Step 3, it is not clear how some of the general considerations would be evaluated and considered (e.g., efficiency/responsiveness/adaptability of management, locations of "future" processing facilities). While the "need for cross-jurisdictional coordination" could be appropriate to consider, it is not clear what is meant by "e.g., potential for effort shifts if management measures are different under multiple FMPs." Another consideration is "existing permits," but it is not specified whether that includes permit activity or just the existence of permits and their theoretical capacity.

The combined list of metrics and additional considerations in each step is broad, and there is no explanation of how each element should be evaluated or weighted relative to the others. There is also no guidance on how divergent indicators would be reconciled (e.g., recreational fishery appears to be shifting whereas commercial does not).

"Presumptions Pertaining to Designation" and General Considerations

Step 3 describes both "presumptions pertaining to designations" and general considerations that may be used in a determination of appropriate Council authority. The details within each category, and the intended relationship between them, are confusing and concerning. Because the presumptions pertaining to designations are specific and prescriptive (based only on commercial revenue, recreational effort, and/or stock distribution data), it is unclear to what extent the general considerations are meant to factor into a designation decision. A transition of management authority is a major, disruptive change and should not be undertaken based on metrics that do not adequately describe the dynamics of a changing fishery.

Recommendations

As described in our recommendations under Section 2, an expert working group should determine the appropriate data sources and methodologies to use for characterizing changes in both location of fishing effort and in stock distribution. This approach would allow for a more robust evaluation of each fishery's unique trends and characteristics, including identification of the best available data and methodologies for that fishery and any species- or region-specific factors influencing observed trends. Reviews should consider multiple factors including, but not limited to, stock distribution, fishing locations, shoreside infrastructure, fishing communities, and unique fishery characteristics. At a

minimum, the guidance should clarify that evaluations of this nature should meet the standards of the best scientific information available and include a peer review component.

Considering this proposal and the Mid-Atlantic Council's concerns related to the specific criteria and thresholds in the current draft, we recommend removing any specific parameters for evaluation (e.g., specific time frames and percentage thresholds) from the Procedural Directive. The Procedural Directive could instead provide broad, general guidance (e.g., use of multi-year averages to smooth out inter-annual variability) on what could be considered during that review/evaluation process. If NOAA Fisheries determines that any specific criteria or metrics should be included in the Procedural Directive and used in any evaluation and determination, they should be technically robust and have well-supported connections to clearly defined objectives for evaluation.

4. Reassignment of management authority would be extremely disruptive and should be exercised as a last resort rather than a first course of action for addressing governance issues.

General Comments

Transitioning management responsibility from one Council to another, or transitioning to joint management, will be a disruptive and resource intensive process. Institutional knowledge and experience are not easily transferred, and time and resources dedicated to the transition would leave less for development of management actions, conducting stakeholder outreach, or addressing other issues such as habitat and protected resources. Disruption to the management system is also contrary to the views expressed by commercial and recreational fishermen who have often highlighted the need for consistency and stability in management. The Procedural Directive fails to acknowledge these impacts or provide any meaningful guidance on how they will be evaluated and weighed against the potential benefits when considering potential changes in Council management authority.

Science Implications

As noted by the Mid-Atlantic Council's SSC, changing management authority will also have significant implications for data and sampling infrastructure, stock assessment responsibilities, and Science Center workloads. While the Northeast and Southeast Fisheries Science Centers have begun to identify areas of increased coordination in data sharing and survey modifications to account for changing stock distributions, transitioning to a new governance structure will exacerbate the issues associated with these coordination demands. New data streams and survey protocols may need to be developed, including catch accounting and quota monitoring systems, and modifications will likely be needed to the stock assessment and peer review process to account for regional differences in data, timing needs, and assessment and peer review capacity. To support these changes, a significant investment in resources will be needed. However, the Procedural Directive appears to minimize these costs and implications and only suggests mitigating "disruptions to the degree practicable." In addition, for those stocks where NOAA Fisheries changes management authority to a multiple Council/multiple FMP designation, the ability for SSCs and Councils to appropriately specify catch limits within different Council jurisdictions will be challenging given that most stock assessments in the region are not spatially explicit and do not provide spatially explicit fishing mortality or biomass estimates.

Joint Management Considerations

Step 3 indicates that there would be a presumption of joint management or separate Council FMPs if 40-75% of a fishery's landings revenue or recreational effort occurs in another Council's jurisdiction. This seems likely to increase the number of jointly managed species. As noted in the CCC comment letter, joint management with multiple bodies is challenging and can increase workloads exponentially. For a

fishery like bluefish, which could hypothetically involve all three East coast Councils plus the ASMFC, the management process could become quite slow and cumbersome. How would this align with the National Standard 6 guidelines, which state that management regimes “must be flexible enough to allow timely response to resource, industry, and other national and regional needs,” or the National Standard 7 requirement to minimize cost and avoid unnecessary duplication? NOAA Fisheries acknowledged these very issues in its recent disapproval of the Council’s recommendation to add black sea bass allocations to the Mid-Atlantic Council FMP, stating that “Duplicating these allocations in the Federal FMP and regulations would make the management of this stock less adaptable to future changes in the distribution of both the resource and the fisheries that rely on it because future changes to the allocations would require a Council action in addition to the Commission [ASMFC] action.”⁴ It is troubling that the Procedural Directive does not acknowledge the additional costs, challenges, or complexities associated with joint management.

Recommendations

A revised Procedural Directive should emphasize that management transition should only take place either with the support of all relevant management parties, or as a last resort after other approaches have failed to resolve governance conflicts resulting from changes in stock distribution. Although major changes in management responsibility may be warranted in some circumstances, we believe less disruptive approaches should always be pursued first. At a minimum, we recommend that any guidance pertaining to the application of §304(f) should aim to build on the outcomes of relevant Council-led initiatives such as the East Coast Climate Change Scenario Planning Initiative. The scenario planning process identified and prioritized a number of potential actions that could be taken to address cross-jurisdictional governance issues, such as reviewing and potentially revising committee and advisory panel membership, enhancing the role of committees in decision making, improving the efficiency of joint management arrangements, and increasing coordination across NOAA offices and regions. NOAA Fisheries should first invest resources into helping those actions succeed instead of taking a prescriptive approach to the application of MSA §304(f) as a solution.

We also recommend that the document include a more detailed description of the costs and disruptions that may result from modifying management responsibility. The revised guidance should also require an analysis of the anticipated costs and benefits associated with a potential reassignment of management authority, including consideration of potential impacts on the staff and budget resources of the relevant organizations as well as their management partnerships. Consideration should be given to the National Standard 7 requirement to minimize costs and avoid unnecessary duplication.

5. The Procedural Directive does not provide adequate opportunities for Council involvement or public input.

General Comments

The proposed process includes very limited opportunities for involvement or comment by the relevant Councils. In Step 2 (determination of geographic scope), the document states that NOAA Fisheries “may choose to give the relevant Council(s) a specified period of time of up to 6 months from the date of notification in which to recommend how the fishery/ies should be identified.” We are concerned by this wording, which suggests that consultation with the Councils is not required and that the actual time frame could be much shorter than six months. In Step 3, the document states that NOAA Fisheries “will consult with the relevant Councils, and provide 6 months (unless a different schedule is necessary to

⁴ <https://www.mafmc.org/s/20230802-Pentony-to-Luisi-re-BSB-A23-0648-BL45-Decision.pdf>

comply with MSA requirements), in which to recommend a designation.” This proposed time frame is much too short to allow for input from, and dialogue with, the Councils, and it would not allow for adequate time for meaningful collection and consideration of feedback from Council stakeholders. We also note that clarification is needed regarding the types of circumstances that would require a “different schedule” to comply with MSA requirements. It is not clear why that would be necessary, particularly if any transition in management authority has a phase-in period.

Among the long list of considerations for determining designation of Council responsibility, information or comments from the Councils are not listed. This raises the question of how (if at all) Council comments will be factored into the decision-making process.

It does not appear that NOAA Fisheries intends to provide any dedicated opportunities for the public to provide input on potential changes in management, and it is unclear whether and to what extent any of the process would be documented and made available to the public (e.g., would National Environmental Policy Act requirements apply?). There is also no mention of how or where the ASMFC and state partner input would be considered for those stocks managed under joint FMPs. The ASMFC and state partners play a critical role in the joint management process and their fisheries and stakeholders will be significantly impacted by any governance change. Transparency and public participation are fundamental aspects of the fisheries management process under the MSA, and stakeholders should be given meaningful opportunities to provide comments whenever major changes are being considered.

Recommendations

The Councils should have a defined and significant role in all steps of the process given their institutional knowledge and experience. Other management partners and stakeholders should also be included in a much more meaningful and deliberative way to ensure their guidance and input are provided throughout. We believe these concerns could be addressed by adopting our recommendation to overhaul the process as outlined in Sections #2 and #3 above. This collaborative, evidence-based approach should follow a similar process currently used for FMP development, providing the opportunity for all management partners to identify governance issues, support and guide the evaluation process, and provide direction on potential outcomes. It would also provide a clearly specified and transparent process for public engagement.

Conclusion

For the reasons described above, we believe the Procedural Directive needs significant revisions, and we urge NOAA Fisheries to work closely with the Councils on the development of a revised process. Please contact me if you have any questions. Thank you for your consideration of our comments.

Sincerely,



Christopher M. Moore, Ph.D.
Executive Director, Mid-Atlantic Fishery Management Council

Cc: M. Macpherson, S. Rauch, K. Denit, W. Townsend, M. Luisi



Mid-Atlantic Fishery Management Council Scientific and Statistical Committee Meeting

July 12, 2023

Terms of Reference

In May 2023, the NMFS released the draft Fisheries Climate Governance Policy. This policy is intended to provide guidance on Council authority for stocks that may extend across the geographic area of more than one Council, pursuant to §304(f) of the Magnuson Stevens Act (MSA). The Mid-Atlantic Council intends to submit comments to NMFS and has requested that the SSC review and comment on the draft policy. Upon review of the draft policy, the SSC will provide a written report that addresses the following:

- 1) *Comment on the overall proposed process to review the geographic scope and/or Council authority as described in the draft Fisheries Climate Governance Policy developed by the NMFS.*

(Note: Given the overlap and interconnection between the draft policy and different Terms of Reference, similar comments/responses may be found under multiple Terms of Reference)

- The SSC recognizes that stocks and fisheries are shifting as a result of climate change and other drivers, and that this may result in an increasing disconnect between the location of fisheries and the Council(s) with their primary jurisdiction. The draft Fisheries Climate Governance Policy is an attempt to proactively define an adaptive procedure to address the likely consequences of such shifts. The SSC broadly agrees with the need for transparency and forward thinking in addressing the challenges that might be posed by shifting stocks.
- The objectives of this policy should be more clearly and specifically defined. Councils have successfully managed stocks with overlapping boundaries and have taken numerous management actions to address the impacts of climate change without the need for changes to the current NMFS process or designating a new lead Council authority. What is the specific problem the draft policy is trying to address? What are the anticipated benefits and what are the expected costs associated with a change in lead Council designation? How would these costs and benefits be measured and evaluated relative to National Standard 7?
 - NOAA Directives do not have the force and effect of law and are not meant to bind the public. Given this discretion, what is the purpose/utility of such guidance if it is not binding?
 - Optimally, the specific objectives of a policy would be used to define the appropriate metrics by which the need for management intervention would be identified. The lack

- of objectives in this proposed policy makes interpreting and assessing the appropriateness of the proposed indicators and thresholds impossible.
- Major changes to management, like changing the primary Council, should be a last resort after other potential options have been deemed insufficient.
 - The implications of this policy are potentially large for many different stakeholders. A meaningful stakeholder comment process will be important. These stakeholders should include the interstate fisheries commissions (e.g., ASMFC). Changes in Council management could be more disruptive for jointly managed fisheries.
 - Range shifts are not monotonic - they shift in multiple directions over time. How will this policy address species that shift northward for a few years and then back to their earlier distribution? Will the management structure revert as well?
 - Many components of the decision points are not operationally defined. Thus, they will not lead to predictable and scientifically defensible decisions. This limits the benefit of transparency that is one of the stated goals of this directive.
 - The policy does not provide clear operational definitions of the criteria used to evaluate potential fishery/jurisdiction changes. For example, apparent shifts in stock distribution differ depending on factors such as which survey(s) is used to define the distribution of fish, and how boundary lines are drawn in federal waters (see Palacios-Abrantes et al. 2023, <https://doi.org/10.1371/journal.pone.0279025>). Thus, identifying a specific percentage of fish inside or outside the region is problematic.
 - Similarly, other aspects of the decision points are defined very specifically (e.g., a 15% threshold) with no evaluation presented to justify these choices or their implications. The descriptions about calculating averages over time are vague, with only examples that describe a three-year moving average.
 - Only four Councils have contiguous boundaries: New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico. A national directive would then seem to apply only to the east and Gulf coasts.
 - Many Fishery Management Plans (FMPs) are intended for more than one species. The directive does not clarify how the process would apply to multiple species under a single FMP. It seems this would require even more work to possibly move one or more species out of the group covered by the FMP.
 - There is also no process specified for independent scientific peer review of these determinations/designations. This may lead to many transitory disturbances in the fishery. The absence of a well-defined scientific review process could lead to poorly justified and expensive changes to the *status quo* without compelling scientific evidence.
 - Processes other than climate change may cause the proposed metrics to change. For example, offshore wind farms could change available habitat or areas that can be fished. Management (e.g., changes to state or sector allocations, changes to closed areas) could also cause metrics to change.
 - How would this process interact with other NMFS guidance related to management under climate change, including National Standard 3 and the [agency-wide EBFM policy](#) and [EBFM Road Map](#)? This should be clarified. Are the procedures outlined here intended to help implement these policies? If so, how?

2) *Provide feedback on the application and potential implications of the proposed review criteria, metrics, and data sources described in Section III, Step 1 (Review Considerations), Step 2 (Geographic Scope of Fishery), and Step 3 (Council Designation). For Steps 1 to 3 consider appropriateness of the criteria and metrics, their feasibility of application, and the ability of current data streams to support decision making. Propose alternative criteria, metrics, and data sources where appropriate.*

- Some consideration should be given to the purported permanence of the change in these factors. Much of this document relies on the principle that such changes are irreversible and are caused by climate change instead of other factors like management.
- The bases (i.e., “criteria indicators”) for change may not be the same ones that were used to establish jurisdictions originally. Scallops and Monkfish might be good case studies. Blueline Tilefish would be another.
- Documenting a change in a stock’s distribution will not be easy to define. The variable definitions used in the literature will need to be tightened considerably before such changes can be used for decision making.
 - Methodologies will need to be sufficiently standardized to define relevant threshold criteria and how the uncertainty should be estimated. The document does not prioritize data sources or indicators used in defining or documenting a shift in stock distribution. Some hierarchy or prioritization of data sources/indicators would improve operational use and reduce instances of conflicting interpretations of distributional change. Data sources and criteria used to make decisions may be prioritized based on data quality and to avoid potential social-economic consequences of the decision, but details are lacking.
 - What is the basis for a 15% shift as a trigger of interest? What constitutes a “documented” shift in stock distribution? What statistical criteria would apply? How will interannual shifts in distributions be separated from longer-term and more permanent trends? This needs more technical specificity and is probably more suited for longer-term research.
 - A first step would be a review of historical changes in these metrics. Concepts from statistical control theory would be useful to distinguish signal from noise.
 - Criteria will often conflict (some indicating change, others no change or change in other directions). This can even be true within a single indicator (e.g., spring vs. fall trawl survey). How will divergent indicators be reconciled (e.g., recreational fishery appears to be shifting whereas commercial does not)?
 - The period for this shift (i.e., shift of greater than 15% in the proportion of a fishery’s landings revenue) is not specified. For small or non-target fisheries, spikes in catches or revenue might be fairly common. Moreover, alternative economic metrics should be considered - for example, net revenue might be more appropriate than landings revenue. Identifying the appropriate metric will depend on exactly what is intended to be captured (e.g., economic impacts vs welfare, etc.).

- Data sources have inherently different levels of quality and uncertainty. For example, defining such a metric from the MRIP data will be difficult (i.e., shift of greater than 15% in the proportion of a fishery’s recreational fishing effort: does the 15% refer to the point estimate?) because the MRIP estimates are often highly uncertain at small spatial scales (e.g., states). Therefore, determining changes in stock distributions may require greater precision than MRIP is currently able to provide at the state level.
- The problems in determining the fraction of catch in an area becomes especially critical as catches are restricted because it takes a smaller amount of fish or effort to make a big change percentage-wise.
- The SSC supports using multi-year information to mitigate against outliers; however, the ambiguity of geographic boundaries will impede any specific application of this recommendation.
 - Presumptive multi-year metrics - what happens to stocks with 25-40% change in landings revenue?
- The criteria currently seem to conflate footprint of the biological stock and footprint of the fishery. According to MSA (§3(13)), the definition of a “fishery” has two components: “(13) The term "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** [emphasis added] (B) any fishing for such stocks.” Thus, is it accurate to assume that distribution of both components must change significantly?
- How would a significant change in stock distribution be determined? What is the time period over which that change is observed? Three years, as proposed, is likely too short to differentiate a range shift from interannual variability, and is less than a generation for many managed species.
 - As well, any multi-year average should be longer than the timetable for evaluation and implementation of governance changes (12 months for Council feedback on geographic scope and designations and a two-year transition evaluation, after which an updated three-year average could trigger reinitiation of the process). The latter includes a tradeoff between the risk of frequently changing management authority (too short a time period) vs risk of insensitivity to trends in changing distribution (too long a time period). These periods may also differ depending on individual stock and effort dynamics – distributions of some stocks and associated effort may be inherently more variable over time.
 - Changes may emerge through a suite of drivers: climate change, ocean acidification, wind energy areas (potentially affecting distribution of both stocks and effort). We currently do not have adequate infrastructure to monitor changes in stock distributions as wind energy areas expand.
- The draft policy ignores the data uncertainty in the “Sources of Data” section and therefore makes the proposed policy risk-prone, not risk-averse - i.e., how will uncertainty be evaluated and accounted for in the decision process?

3) *Comment on any social and economic implications and considerations the draft policy could have on Mid-Atlantic fisheries and communities.*

- The changes in management contemplated in this policy could be extremely disruptive for fishing because of different practices followed by each Council. These potential changes could introduce management uncertainty that influences capitalized values of quota, permits/licenses (and associated vessels), and/or long-term business planning. For example, the Councils use different approaches to set OFLs, ABCs, and ACLs. The potential to change which Council is in charge of management may create substantial uncertainty in future management.
- Six months to evaluate candidate changes in Council leads does not allow for multiple Council meetings, coordination with states and Interstate Commissions, and full public participation, no less proper compliance with NEPA and other applicable laws. There appears to be no opportunity in the process to get input on the potential implications from stakeholders on the potential change in management.
- The draft policy has a blind spot in its underlying assumptions and subsequent policy analyses regarding social and economic behaviors, relying on currently inadequate data collection programs. Scientific approaches largely do not exist to monitor and predict changes in markets, entry and exit, changes in home port, profitability, scalability, and business and financial health and flexibility. So the consequences of changes in lead Council, and under whose jurisdiction a user would actually fall under, are uncertain based solely on readily available information like permit address.
- The draft policy may create perverse incentives, including: (1) a disincentive for collaboration among Councils; (2) a response in which a proliferation of defined stocks occurs, increasing management complexity and costs (i.e., multiple FMPs across Councils for the same species); (3) relatively minor changes in real or reported landing locations to cause/prevent a jurisdiction shift. Ambiguities in definitions, delineations, and timelines identified above could also increase the number of court challenges.
- The policy should recognize that there is a difference between a fishing business and a fishing vessel. A business could have vessels fishing from multiple ports, but a headquarters at a specific location. It seems that the current draft directive should anticipate and address this type of integrated business in its design.
- As defined under step 4, a freeze on modifications to allocation or permits during the phase-in period could have serious consequences for business planning, which would be exacerbated by possible court challenges.

4) *Comment on the potential science and stock assessment implications of this policy (including development and timing of scientific advice to inform the management process).*

- Data responsibilities and workload consideration across Science Centers will be particularly important to understand because changing the Council in charge of the FMP may change the Science Center that provides advice.
 - Who conducts the standardized analysis of distribution shifts is yet to be determined.
 - How will the distribution shift analyses be conducted? Will one or multiple independent committees conduct the distribution shift analyses to meet the needs of steps 1 and 2? If so, how will the committees be formed? The data and the probable

- methods/approaches used are likely the same, although the objectives of steps 1 and 2 are different.
- How will data be shared across regions, Science Centers, Councils, and other agencies? Sometimes different data are collected in different regions.
 - Will a change in Council be associated with a change in the NMFS Science Center responsible for assessment and, if so, how will resources be shifted to accommodate this change?
 - Will data and sampling infrastructure be improved and standardized across regions? If resources can be made available for this, it would be highly beneficial to science and assessment across all regions.
- A transition to a new Council governance structure will likely require development of new data streams and/or integration of existing streams within and between NOAA Fisheries Regional Offices and Science Centers. This will require new resources, but the policy only advises mitigation “to the degree practicable.”
 - Many current data collection programs are region-specific, so recognizing shifts is complicated by differences among collection programs.
 - Current assessment science teams and stock assessment peer review processes are region-specific (e.g., SARC/SAW vs SEDAR) and may require modification under new Council management.
 - Data collection protocols designed for larger scale assessments may not support smaller management areas separated across Councils.
 - Increasing spatial resolution in assessments may require additional resources for both development and review of assessments.
 - Management Strategy Evaluation (MSE) is increasingly being used to guide development of approaches for setting ABCs. However, current MSEs don’t consider potential changes in management procedures associated with changing the Council (e.g., changing the OFL to ABC policy). Thus, guidance derived from MSEs may no longer be relevant once jurisdiction changes.
 - Transition would also erode the substantial institutional knowledge that resides within each Council and Science Center staff, which would be difficult to replicate in the transition period defined.
- 5) *Provide guidance and/or recommendations for Council consideration and possible inclusion in the Council's comments on the draft policy.*
- A Policy Directive that outlines the underlying science and/or management issue should have been developed and approved before making a Procedural Directive (i.e., the Climate Governance Policy). Then a procedural directive follows that would outline the process to address the policy. The current draft policy contains no information on the foundation as to what this policy is based on, and no science was presented to demonstrate issues exist. Particularly important is a review of how Councils have been responding to stocks shifting their distributions to date.
 - A policy directive should clarify what the primary concern regarding representation might be. In the current situation, all stakeholders have an opportunity to comment irrespective of council jurisdiction. If the primary concern is the absence of a voting

- member on the Council, modification of council membership might be simpler than spawning multiple FMPs.
- The policy directive should also include a review of previous Council efforts to manage stocks with shifting ranges. While challenges remain, these efforts appear to be effective without the need for many of the approaches described in the procedural directive.
 - It is unclear how this directive intersects with the [East Coast Scenario Planning](#) process and [possible outcomes](#).
 - It would be helpful to have a list of species and associated Councils with management authority that might be driving the need for this directive.
- Fishery Designation options 1-3 – some information on the current status of designation of stocks in categories 2 and 3 would be helpful. Spiny Dogfish and Monkfish fall in Designation 2. Golden Tilefish and Blueline Tilefish are in Designation 3.
 - All of these Fishery Designation options imply either *status quo* or expansion of management council involvement. What about contraction of jointly managed stocks to only being managed by a single Council? For example, might scallops be transferred from New England to the Mid-Atlantic?
 - Designation 3 (multiple councils, multiple FMPs) will require stock assessments that would likely occur at smaller spatial scales than is currently done. In general, there has not been sufficient advancement in the science and, as important, the data to support such estimates.
 - Who supports the research to develop improved techniques and approaches to support this policy?
 - The section of the policy that describes transitioning to revised council authority (step 4) specifies no permitting or allocation decisions by the lead council should be taken during the transition period. This implies a freeze on management actions, which could be problematic for species experiencing overfishing or other aspects of management.
 - Perhaps an "ombudsman" seat on the Council could address specific concerns of a state without a seat at the table. For example, a RI ombudsman could be part of the Mid-Atlantic process for squid issues. This might be more efficient than completely changing management authority.
 - The amount of change that would need to happen to trigger a change in management should be extremely large. Otherwise, there is the risk of the stock flickering back and forth over the threshold. Major changes to FMPs with changes in Councils would likely be very disruptive to stakeholders and management partners.
 - NOAA should test these rules through different case studies on a wide range of species (e.g., life history, management history) to see how their rules might be applied and understand when a change in management is truly needed. These case studies should envelop the entire process: define the problem and objectives, identify metrics to support objectives, and test any proposed approaches. The formation of a national working group, similar to those formed to review National Standard guidance, to provide technical advice on best practices should be considered to evaluate and determine significant changes in stock and fishing distribution, with worked examples when possible. Care should be taken in this process to avoid giving the impression to stakeholders that these case-study tests represent policies that are likely to be implemented. Rather these should only be paper exercises to make sure potential rules appear to work as intended.

- The base period and the time period used for comparison should be considered based on the species' life history, the uncertainty of the population dynamics, and the specific ecosystem characteristics (warming trend versus oscillation).
- There is no consideration or discussion of costs (besides mentioning the word) associated with these changes in responsibilities. How will NMFS address the modification of Council budgets to reflect the additional burdens, in particular on science, management and administration?
- There is another set of issues that is left undescribed. The draft directive policy fails to acknowledge the close intersection and integration of MSFCMA management with state partnerships in science and management that need to be considered in evaluating lead Council changes. For example, if a lead Council shift occurs that moves responsibilities to a new Region and Science Center, existing Cooperative Agreements, Research Set Asides, etc., with states for state data collection, research, and enforcement of FMPs and JEAs may have to be renegotiated under a potentially new management and administrative regime - is a two-year transition sufficient and will the state partners be willing participants? It will be hard to say because the policy is not being shared with them in advance for review, which is a major oversight and may strain relationships with key management and science partners. Greater public input on policy with a focus on other management partners (i.e., regional fisheries commissions) is recommended.

Attachment 1

MAFMC Scientific and Statistical Committee

July 12, 2023

Meeting Attendance via Webinar

Name

Affiliation

SSC members in attendance:

Tom Miller	University of Maryland – CBL
Ed Houde	University of Maryland – CBL (emeritus)
John Boreman	NOAA Fisheries (retired)
Jorge Holzer	University of Maryland
Yan Jiao	Virginia Tech University
Sarah Gaichas	NOAA Fisheries NEFSC
Wendy Gabriel	NOAA Fisheries (retired)
Mike Wilberg (Vice-Chairman)	University of Maryland – CBL
Cynthia Jones	Old Dominion University
Gavin Fay	U. Massachusetts Dartmouth
Alexei Sharov	Maryland Dept. of Natural Resources
Geret DePiper	NOAA Fisheries NEFSC
Andrew Scheld	Virginia Institute of Marine Sciences
Mark Holliday	NOAA Fisheries (retired)
Rob Latour	Virginia Institute of Marine Science
Olaf Jensen	University of Wisconsin-Madison

Others in attendance:

M. Sabo	K. Dancy
G. DiDomenico	C. Moore
H. Hart	J. Fletcher
M. Lapp	B. Muffley
J. Beaty	B. Brady
A. Bianchi	J. Hornstein
M. Seeley	M. Duval