



## Mid-Atlantic Fishery Management Council

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Wendy Morrison, Ph.D.  
Fisheries Policy Analyst  
National Marine Fisheries Service  
1315 East-West Highway, Room 13436  
Silver Spring, MD 20910

Dear Dr. Morrison,

On behalf of the Mid-Atlantic Fishery Management Council (Council), thank you for the opportunity to submit comments on the Advanced Notice of Public Rulemaking (ANPR) for potential future revisions to the guidelines for National Standard (NS) 4, 8, and 9. I would also like to thank Dr. Tara Scott for taking the time to present and provide an overview of the ANPR and the National Marine Fisheries Service (NMFS) comment areas of interest to the Council at our June 6-8, 2023 meeting. The comments offered in this letter reflect the discussion and input from the Council during their June and August 2023 meetings.

### *Overarching comments*

In general, although some clarity to existing definition(s) or minor guidance adjustments to NS4, 8, and 9 could be helpful, the Council believes the existing guidelines provide sufficient direction and enough flexibility to address current and future management challenges, including those associated with climate change, and, as such, should remain largely unchanged.

If rulemaking is pursued, NMFS should identify the deficiencies in the fishery management process that revised guidelines would seek to address. Specifically, any revisions to the guidelines should identify how revised national standards, as well as equity and environmental justice (EEJ) considerations, address the many issues facing our commercial and recreational fishing industries and that maintain flexibility and fishing opportunities. In addition, NMFS should provide examples on how potential revised guidelines might affect current fishery management plan (FMP) and future modifications to such plans. The Council also urges NMFS to provide a clearly specified definition of “underserved communities” as it relates to fisheries, with examples by region, in order to understand how NMFS and the Councils might evaluate future management actions to ensure these groups, communities, and individual entities have fair and equitable access to fisheries resources.

### *Comments specific to National Standard 4*

Over the last few decades, a significant focus of fisheries management has been to reduce overcapitalization in many fisheries in order to help promote stock rebuilding. The Council believes

that any potential revisions to NS4 guidance should carefully consider the implications of new entrants into a fishery, particularly for limited access IFQ/ITQ fisheries.

Also, although it may be beneficial to reference NMFS's Allocation Policy in the NS4 guidance, the Council does not believe modifications to the guidance are needed to reinforce the policy. Each Council has an approved fishery allocation review policy that requires periodic allocation reviews that sufficiently consider the potential impacts of climate/environmental change and affected communities to determine if allocation changes are necessary.

Relative to climate change related considerations, the ANPR notes changing environmental conditions affecting stock distributions and abundances "have the potential to change the applicability of historical information and current regulations." The Council notes that it's likely true that these factors will change in their degree of applicability or relevance, but it should not be implied that these factors may become totally irrelevant, since historical information (e.g., landings) and the regulatory framework that was/is in place have had a major influence in shaping the evolution of fisheries and communities. In addition, for allocations with a spatial component, it may be helpful for the guidelines to more clearly differentiate between various "location" elements. For example, historic and current locations of catch, locations of landings, and locations of effort are all important considerations with potentially different outcomes for allocation decisions.

The Council requests additional clarity on the perceived shortcomings of past allocation decisions as they relate to climate-driven effects. Past allocation decisions have been deemed as fair and equitable, and the ANPR fails to describe how these allocations may now be unfair. In addition, the current NS4 guidelines already allow for allocation decisions that analyze and account for shifting stocks. The Council has been considering, and already implemented, allocation decisions that consider climate driven distribution changes. Although changes in stock distribution should be considered during fishery access and allocation decisions, they should not be the only factor.

In addition, the Council believes the existing guidelines are already aligned with EEJ goals. We are concerned that it would be difficult to demonstrate compliance with more prescriptive guidelines given the lack of social and economic data in many regions. The ANPR also does not indicate how EEJ considerations would promote conservation or specify how underserved communities may have been excluded in the current process for making allocation decisions. Similarly, more information and clarity on what is meant by "marginalized individuals who may have been inequitably excluded" would help identify potential analyses and approaches that could be considered in the future. Instead of changing the NS4 guidelines to address underserved and under-represented communities, NMFS should consider addressing these needs by supporting increased outreach and engagement in the management process by those individuals in those communities.

#### *Comments specific to National Standard 8*

Similar to the previous comments, the Council believes the current NS8 guidelines provide sufficient guidance and flexibility to evaluate, consider, and address the effects of climate change on communities dependent on affected fisheries resources. If NMFS does proceed with updates to the NS8 guidelines, the Council supports making some updates and improvements to the definition of "fishing community" but cautions against changes that make the guidance unclear which could lead to both decreased flexibility and adaptability to account for and address future challenges and changes

within our fishing communities. The Council does not support shifting the focus from “dependence” to “engagement” in any revisions to the guidelines for the definition of “fishing community”. The Magnuson-Stevens Act (MSA) definition of fishing community includes both “dependence” and “engagement” and the guidelines should continue to consider and balance both as important components in understanding the potential implications of a management action on the affected communities. If the guidelines do shift to a focus on “engagement”, the Council suggests that any revised language needs to clearly define what engagement means and how it will be measured to ensure the appropriate analysis and considerations are evaluated.

The ANPR is considering removing language that states that NS8 “does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.” It’s unclear as to what the potential implications might be if this language is removed, and the Council suggests that any potential future rulemaking should provide additional information on the rationale for this potential change. The Council also notes there is probably significant overlap between groups that would be considered under “sustained participation” and those communities with high social and climate vulnerability. Given this overlap, it’s not clear if the ANPR is proposing that revised guidelines encourage special considerations for highly vulnerable communities.

*Comments specific to National Standard 9 and Other Relevant Management Challenges*

The Council does support changes to NS9 guidelines that would provide the Councils and industry increased flexibility to minimize regulatory discards. For example, increased flexibility and alternative approaches to deal with choke species, incorporation of ecosystem-based management approaches that might reduce bycatch at a multispecies level, and creative opportunities for industry (within conservation constraints) to potentially switch between species or retain species that may not have been their initial target should all be considered. In addition, the Council believes that without creating financial incentives, it’s unclear how revised NS9 guidelines would provide anything meaningful to incentivize the use of bycatch. Participants in a fishery can currently find markets for bycatch, but those markets will generally determine those opportunities and business decisions. Any revisions intended to reduce waste by increasing the use of bycatch should be carefully crafted to avoid incentivizing the catch of bycatch species. Where bycatch cannot be eliminated or reduced substantially, the Council supports additional NS9 guidance and prioritization on identifying opportunities and mechanisms to reduce economic and regulatory waste. Finally, the Council urges NMFS to remove any reference to the phrase “unobserved bycatch mortality” within the NS9 guidelines. Unobserved mortality due to interactions with fishing gear is not bycatch and is not part of the definition of bycatch under MSA, which specifies fish need to be caught in order to be considered bycatch.

Thank you again for the opportunity for the Council to provide comments on the ANPR. Please contact me if you have any questions.

Sincerely,



Christopher M. Moore, Ph.D.

Executive Director  
Mid-Atlantic Fishery Management Council

cc: W. Townsend, M. Luisi, S. Rauch, K. Denit