



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116

Eric Reid, *Chair* | Cate O'Keefe, PhD, *Executive Director*

November 6, 2023

Ms. Marian Macpherson
National Marine Fisheries Service, NOAA
1315 East-West Highway
Silver Spring, MD 20910

Dear Ms. Macpherson:

On behalf of the New England Fishery Management Council (Council), this letter provides comments on NOAA's "*Procedural Directive: Guidance on Council Authority for Preparing Fishery Management Plans for Stocks that May Extend across the Geographic Areas of more than one Council, pursuant to MSA §304(f)*". The Council encourages greater transparency in the potential application of the provisions described in § 304(f) and appreciates the opportunity to review NOAA's draft guidance. Climate change is having a serious impact on the New England ecosystem, affecting the region's fishery resources and fishing industry, and the Council recognizes the need for climate-resilient fisheries management. The Council feels that establishing a national policy to provide guidance on when and how to consider modifications to regional governance could be useful to ensure success of climate-ready management measures, as well as equitability across communities and user groups. The Council notes that several of the proposed criteria and metrics to trigger a review, as well as proposed approaches to shift Council authority outlined in the draft procedural directive, require more in-depth analyses, and would benefit from a more inclusive process in coordination with the Councils. Here, we provide specific feedback on the proposed measures in the draft Procedural Directive.

Section I – Introduction

The Council recognizes the Procedural Directive is intended to provide guidance in a concise, structured manner, but notes that section "I. Introduction" does not provide clear rationale for the current need for the policy guidance, nor does it state the objective for the policy beyond increased transparency. This caused confusion for the Council about whether this policy is intended to address future stock and fishery shifts stemming from climate change or focus on existing equity among stakeholders. The Council suggests that the Introduction should be expanded with more background information about the need for the policy, specifically the need to address governance issues with ongoing climate change. Further explanation about new and increasing challenges associated with shifting distributions of fish stocks and expectations among stakeholders to manage fisheries more holistically would provide needed context for the new policy. Additionally, stated objectives for the new policy could clarify the selected criteria outlined in the proposed approach. For example, an objective related to ensuring timely responses to conservation concerns (e.g., increased unregulated discards) would provide context for the predetermined thresholds, triggers, and timelines proposed in the policy. Similarly, an objective related

to ensuring adequate resources to support climate-resilient management would clarify the proposed criteria for review of geographic scope and authority.

NOAA's Technical Memorandum NMFS-OSF-10, "*Governance Case Studies on Marine Fisheries that Cross Jurisdictional Boundaries in the United States*" (<https://repository.library.noaa.gov/view/noaa/32347>), which is referenced as a footnote in the Introduction, provides useful background information with specific examples of cross-jurisdictional management. The Memo includes descriptions of management with adjacent Councils, as well as states, which is not mentioned in the draft guidance. We recommend integration of information from the Technical Memorandum directly in the Procedural Directive.

Section III – Determining the Geographic Scope of a Fishery and Council Authority

STEP 1: Consider Whether to Review Geographic Scope and/or Council Authority

The draft guidance indicates that NOAA Fisheries will conduct a review of geographic scope and Council authority if either of the following conditions occur:

- i. Predetermined criteria indicate that a fishery may be experiencing geographic shift
- ii. Upon request from a Council with rationale and supporting data.

It is not clear from the guidance how the first condition would be identified, specifically who would review the predetermined criteria to trigger the review, and when these reviews would occur (e.g., would there be a schedule for each region, would such a review be associated with a stock assessment or management action, etc.).

The draft guidance lists criteria that may indicate a need for review of determinations and designations, including "a shift of greater than 15% in the proportion of a fishery's landings revenue that accrues to another Council's jurisdiction" and "a shift of greater than 15% in the proportion of a fishery's recreational fishing effort occurs in another Council's jurisdiction". There is no information associated with the 15% threshold value, and it seems an arbitrary trigger. The Council does not provide an alternative value, but instead recommends analysis to evaluate this threshold and a broader range of possible triggers with simulation testing. The Council noted that recreational components of fisheries may show different trends than commercial components, but the guidance does not provide information on how to weigh separate fishery components. The Council questions why the commercial criteria are focused solely on landings revenue while the recreational criteria are focused solely on effort. The guidance indicates that NOAA Fisheries will use multi-year averages of the metrics but does not provide information on how those multi-year timeframes would be determined. The Council suggested that the guidance needs to consider expanding and contracting stocks in addition to "shifting" stocks. Again, the Council recommends analysis of the performance of a range of baseline timeframes, which may vary across individual stocks or Fishery Management Plans. The Council recognizes potential value in having predetermined thresholds and triggers but has concerns about the one-size-fits-all approach in the draft guidance.

The guidance indicates that "certain Council actions, such as allocation revisions or changes to permit requirements that have cross-jurisdictional implications" may also trigger a review. The Council considers this a critically important topic and recommends that the draft guidance include more context, provide examples, and develop methods for how allocation revisions and permit requirements should be considered in cross-jurisdictional governance. The Council requests inclusion of examples of shifting

fishery reviews that have previously been conducted in the US with details of how management authority was addressed.

The guidance includes a list of data sources that could be used when determining if a review is needed and notes that this list is not exhaustive. However, the Council notes that no socioeconomic data sources are included, which seems a glaring omission as the criteria for review include shifts in revenue. The guidance lacks details around the issue of fishery distribution compared to landing locations and how this should be considered in determining management authority now and in the future. The Council highlights Atlantic sea scallops, squid, black sea bass, and mackerel as examples that could be affected by the proposed Procedural Directive but asks questions about the intent of the guidance in considering existing management structures. The Council notes that the need for a shared governance policy may extend beyond just climate-related changes and emphasizes the need for clear objectives in the Procedural Directive.

STEP 2: Determine the geographic scope of a fishery

The guidance acknowledges that “determining the geographic location of a fishery involves consideration of legal, policy, and scientific issues and includes a certain amount of flexibility”, and notes that there are multiple factors that are important to characterizing the geographic scope. However, the Council notes that the “Additional Considerations” listed are vague and not connected to any stated objectives. For example, “Management efficiency” is not defined and could be interpreted in many ways, including the efficiency of maintaining existing management structure. Similar to the listed data sources in Step 1, there is no mention of socioeconomic considerations. The guidance does not include any reference to NOAA’s ability to support revisions to jurisdictional governance at the regional level. There should be analyses of the available scientific and regulatory support systems when determining the scope of a fishery. Additionally, the guidance does not clearly describe how the policy would be applied specific to existing versus “new and expanded” fisheries. The Council recommends that the policy should clearly distinguish between the process for new/emerging fisheries and fisheries managed under existing Fishery Management Plans.

The guidance indicates that NOAA Fisheries may give relevant Councils a “specific period of time *of up to 6 months* from the date of notification in which to recommend how the fishery/ies should be identified...” (emphasis added). The Council considers this an unreasonable timeframe that is not aligned with Council processes. On an annual basis, the Council defines work priorities in accordance with available resources. Developing recommendations for revised jurisdictional governance would require significant reassignment of resources that would impact the Council’s ability to meet annual MSA requirements. The Council recommends that the timeframe for responding to NOAA Fisheries notification should be aligned with available resources among all involved Councils, with consideration of the notification date to ensure all affected Councils have ample opportunity to coordinate and respond.

The text in the “Determination” section could be clarified by including what is intended under each of the three “Outcomes”. For example, it is not clear if Outcomes 1 and 2 imply that no action is needed, whereas Outcome 3 indicates that this determination requires moving on to Step 3. The Council suggests adding text to clearly describe what steps are needed for each Outcome.

STEP 3: Designation of a Council or Councils under MSA § 304(f)

The formatting in the draft Procedural Directive should be corrected to list sub-headings a, b, and c. The guidance suggests that Councils may submit information describing how they would accommodate changed designations, including descriptions of challenges. The Council highlights that there is no mention in the guidance of the Council's current funding process. The regional Councils are funded through grants from NOAA Fisheries. There is a current sharing agreement that outlines the percentage of the total budget that each Council receives, which was developed with consideration of the geographic scope of fisheries. If NOAA determines that a revision to the designated authority is warranted, how will funding allocations be revised?

Section a.i. of Step 3 (Fishery/ies Designations and Considerations) includes a list of topics that NOAA Fisheries will consider in designating management authority. The Council requests further explanation on how these topics will be considered by NOAA Fisheries, who from NOAA Fisheries will consider them, and how NOAA Fisheries will engage the Councils.

Section a.ii. of Step 3 seems to be in direct contradiction of the guidance in Section a.i. While the guidance indicates that NOAA will consider a broad range of information (listed on pages 6-7 of the draft guidance) when making a designation, the descriptions of the "presumptions pertaining to designations" include only percentages of landings accruals and recreational effort. There is a complete disconnect between the listed considerations and the presumption that "if more than 75% of a fishery's landings revenue accrues to, or recreational fishing effort occurs in, another Council's jurisdiction" NOAA Fisheries will reassign management authority to the other Council". The presumptions suggest that no analyses beyond landings accruals and recreational effort are needed or will be conducted. Additionally, similar to Step 1, there is no information about predetermined threshold values of 15%, 40%, and 75%. These thresholds appear arbitrary and lack any supporting information in the guidance. This is most evident in the presumption around data from non-fishery dependent sources where the guidance is incomplete. Additionally, there is no context for considering only landings revenues for commercial fisheries and effort for recreational fisheries. The Council recommends that NOAA remove the presumptions from the guidance and conduct the detailed analyses associated with the listed topics in coordination with affected Councils.

STEP 4: Transitioning to Revised Council Authority

The Council reiterates extreme concern about proposed timeframes. Developing a new Fishery Management Plan or amending an existing plan requires coordination across multiple federal statutes and processes, including NEPA, ESA, MMPA, Paperwork Reduction Act, etc. Transition to revised management authority will be difficult and complex and may require a longer timeframe than two years.

The guidance includes a list of recommended provisions and considerations for the transition period but does not provide the needed details on how the Councils should mitigate disruptions during a transition period. For example, the document includes a bullet for "Transition plan that addresses permitting and allocation issues". This topic alone will require substantial resources and time to adequately address. The Council process is purposefully slow resulting from the mandated transparent, public approach. Considerations of allocation and permit changes will require multiple stakeholder meetings across multiple jurisdictions, transfer of information between Councils and NOAA offices, and extensive impact analyses under NEPA, among other things. The Council recommends that NOAA include more

detailed guidance in the procedural directive and consider developing a roadmap for transition in coordination with the Councils.

General Comments

We support increased transparency in the interpretation of MSA § 304(f) and feel that a national policy focused on approaches to consider jurisdictional authority in the face of climate-driven resource changes could be useful. The Council recommends that the guidance include clear objectives for the policy to clarify if this is intended to be reactive or proactive with recognition that fisheries are changing. The Council strongly recommends that any approach for setting predetermined thresholds and triggers should be scientifically informed and evaluated, and further recommends against a one-size-fits-all approach. The Council raises several questions about specific provisions in the draft guidance and suggests additional clarifications be included in the Procedural Directive, including examples and references to supporting documentation. The Council emphasizes the disconnect between the listed considerations for making jurisdictional authority designations with the presumptions pertaining to designations. We recommend that the overall process should be conducted in coordination with Councils, not solely by NOAA Fisheries, to ensure adequate timeframes, resources, and regional-specific issues are incorporated. Importantly, the Council requests that the Procedural Directive include provisions for Councils that have conducted Climate Change Scenario Planning efforts to ensure that these processes are not overlooked or superseded by NOAA Fisheries. On the Atlantic coast, scenario planning efforts are intended to serve as a springboard for evaluation of joint management plans and efforts to standardize governance approaches, among other initiatives. The Council is willing to work with NOAA to develop both a more holistic national policy for determining jurisdictional authority, as well as a region-specific roadmap for implementing management revisions.

Thank you again for considering the Council's comments. Please let me know if you have any questions.

Sincerely,



Eric Reid
Chair