



Gulf of Mexico Fishery Management Council

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

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February 12, 2016

Mr. Alan Risenhoover
Director, Office of Sustainable Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
1315 East-West Highway, Room 14743
Silver Spring, MD 20910

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Dear Mr. Risenhoover:

During its January 25-29, 2016, meeting in Orange Beach, AL, the Gulf of Mexico Fishery Management Council (Council) received a NMFS presentation on the draft guidance for conducting reviews of catch share programs (CSP). The Council appreciates the opportunity to provide comments.

The Council is committed to improving the performance of catch share programs established in the Gulf of Mexico. The Council has already completed the initial review of its red snapper individual fishing quota (IFQ) program and has begun its initial review of the grouper and tilefish IFQ program. The Council welcomes the release of the draft guidance and appreciates the development of a set of guiding principles to assist in streamlining the review process and improving the review documents. However, the Council would like to express its reservations relative to several aspects of the proposed guidance. In general, the Council finds the draft guidance to be too broad in its scope, too prescriptive in some of its guidelines, and burdensome on current staff resources and budgets. Specifically, the Council offers the following comments:

1. The guidance indicates that the review team should be created when the program is being developed, and maintained thereafter to the extent possible. Given the time interval between the development of the program and the initial review, it would be challenging to meet this recommendation. Instead, we suggest that the review team be assembled during the planning phase of the review.

The guidance also notes that the review team should have representation from the Council, Regional Office, Science Center, and Office of Law Enforcement. The guidance further indicates that Regional Office staff should ensure, in consultation with NOAA General Counsel that the review complies with all legal requirements and policy guidance. We suggest that a

NOAA GC representative be on the review team which would ensure a more efficient review process.

2. Generating annual or bi-annual interim reports containing all the elements listed in the guidance could be time-consuming. We feel the annual reports developed by the Southeast Regional Office are sufficient for our needs.

3. The guidance notes that drafts of the program review should be made available to stakeholders and advisory panels in a manner comparable to the process used for providing comments on and reviewing draft NEPA/Amendment documents. The guidance further recommends that opportunity to provide feedback on interim reports be provided. We feel the guidance document should recognize that review documents are not NEPA documents and, therefore, should not be subjected to similar public comment requirements. In addition, interim reports, which should be considered as annual reports providing summary information on the program, should not necessarily be subject to comments except as warranted by a particular Council.

4. The guidance suggests that the Council, Regional Office, Science Center, Office of Law Enforcement, and NOAA GC should sign off on or otherwise approve the review before it is considered final. Although the Council has developed past reviews in collaboration with the parties mentioned in the guidance and will continue to seek their input, the final decision on the review of a Council catch share plan rests and should continue to rest with the Council. We feel a review should be considered final once the Council approves it.

5. Because Council and NMFS are familiar with creating NEPA/Amendment documents, the guidance recommends that the CSP review document adopt a similar structure. The structure of the review documents should be determined by the review team set up by the Council because review documents are not NEPA documents.

6. The guidance suggests reviews use a baseline period of three years prior to the CSP implementation for comparing and analyzing the effects on the fishery since a program's implementation. With ever changing conditions in several fisheries, e.g., changes in stock status, annual catch limits, and other management measures implemented by the Council, the review team should determine the baseline it deems appropriate for a given review.

7. The guidance suggests that the review only look at the effects of the CSP that was actually implemented and not the various alternative CSPs that were considered but not implemented. However, the guidance further indicates that net benefits to the Nation should be maximized under the program relative to any alternative CSPs or variants of the existing program. The Council notes the contradiction between these two statements. In addition, it would be unfeasible to evaluate net benefits for any alternative CSPs or variants of the existing program.

8. Although the performance indicators developed at a national level can be useful, we feel the review team set up by the Council should determine the performance indicators that are deemed suitable for the review of a particular CSP program.

The Council suggests that the draft guidance for conducting reviews of CSPs be simplified and that the scope of the guidance be narrowed. The Council also recommends that the guidance makes clear to the reader that a review is mainly intended to evaluate whether the goals and objectives of a particular CSP have been met. The guidance could also make distinctions between minimum elements that should be included in reviews and those that are suggested or optional.

The Council is looking forward to continued discussions to improve the guidance on conducting reviews of catch share programs. Thank you for the opportunity to submit comments on this important issue.

Sincerely,

Carri M. Simmons for:

Kevin Anson
Chair

cc: Gulf Council
Council Staff
Regional Fishery Management Council Executive Directors
Kelly Denit
Jessica Stephen
Mike Travis



Mid-Atlantic Fishery Management Council #2b.

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January 19, 2016

Mr. Alan Risenhoover
Director, Office of Sustainable Fisheries
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
NOAA/NMFS
1315 East-West Highway, Room 14743
Silver Spring, MD 20910

Dear Mr. Risenhoover: *Alan*

Please accept the following comments on the "Draft Guidance for Conducting Reviews of Catch Share Programs."

1. The scope of this guidance should be substantially narrowed.

The draft guidance is overly prescriptive and includes onerous and unnecessary review steps. The Councils need the flexibility to develop these reviews in a manner that is consistent with both the available social and economic information and the amount of staff and analytical resources in each region.

2. The draft guidance proposes a catch share review process that is ongoing.

In addition to establishing a review team to conduct periodic (5/7 year) reviews, the guidance indicates that review teams should also provide interim (annual) reports. It suggests that SAFE reports may be an acceptable alternative, but is ambiguous as to whether they will be acceptable. If the expectation is that annual reports will be produced, why expend the resources to produce periodic reviews? The annual report requirement is excessive, not necessary, and not feasible given available staff resources.

3. The review process could be substantially simplified by acknowledging that the catch share review document is a Council document.

The draft guidance suggests there should be additional steps to "review the review." Based on the draft guidance, staff from the Regional Office, Office of Law Enforcement (OLE), and General Council (GC), would be required to provide a review of the final review report and "signoff" on the review (i.e., considered final, requirements met, best available data used, and concur with conclusions). In addition, it is also noted that the Science Center should "certify analyses" within or used to inform the review. This "review the review" process could be substantially simplified. This is a Council review of its catch share program; therefore, the review report could be considered a Council document. Based on a Council process, the Council would be presented with the review report and the Regional Administrator could then concur that the report met the relevant requirements. The Regional Administrator would consult with whomever is needed in advance to make that determination, including GC.

4. Each Council/Region should have the flexibility to determine the composition of the review team.

The guidance is prescriptive in suggesting that Council staff, Science Center staff, and OLE staff should all be represented on the review team. However, OLE staff may not need to participate and could instead play a consultative role by providing information on enforcement and safety at sea issues as necessary. In addition, other types of experts may be needed to populate the review team and there may be instances where the Council uses contractors to develop components of the review. We suggest that each Council have the flexibility to determine the composition of its review team, including any Council and NOAA Fisheries staff that are familiar with any review requirements.

5. The Councils should determine if and what role their advisory groups will have in review of any analyses and reports.

The guidance states that the Scientific and Statistical Committee (SSC) and Advisory Panels (APs) should review the draft catch share review report in a way that is "comparable to the process used for providing comment on and reviewing draft NEPA/Amendment documents." However, we recommend that the role of the SSC and AP in reviewing Council documents varies by region and should be left to the discretion of each Council.

6. The Councils should determine how program participants and public input on the draft reports is solicited and used.

Each Council should establish a mechanism for public input. However, this process should not be prescriptive in the guidance and should be left to the discretion of each Council.

7. The proposed final report document should not be described as following NEPA in the guidance.

Although the descriptions of the review document sections are reasonable in the guidance, it should be clear that these are not National Environmental Protection Act (NEPA) documents. Strict NEPA standards do not apply; therefore, the term NEPA should be dropped from the guidance and the proposed document content/structure of the review document.

8. It should be made clear which aspects of this guidance document are advisory and which aspects describe existing requirements.

As written, this document blends descriptions of requirements and aspects of the catch share reviews that are advisory/guidance. The difference should be clear throughout the document.

9. The review process proposed is onerous and will be impossible to address with existing staff and Science Center resources.

The scope of a catch share review, based on this guidance, is vast. It is written as if unlimited time, funding, and staff resources were available to conduct these reviews. For example, to address many of the described elements, new data collection systems would be required. The Councils and NOAA Fisheries do not have the resources to address all the proposed requirements. Alternatively, the

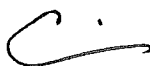
Council/Region, with the advice of the review team, should have the ability to determine what metrics and data are available to support a review, what analyses are reasonable and feasible, and execute a catch share review to address any general requirements.

10. We recommend a simplified approach to evaluate catch share programs.

We recommend that each review team conduct a review that is appropriate for each fishery based on a general framework for performance indicators and the information available on that fishery. Clay et al. (2010)¹ provided a framework for identifying social and economic performance indicators for evaluating and monitoring the impacts of catch share systems. We recommend that a catch share review evaluate performance metrics relative to this framework and include: 1) financial viability, 2) distributional outcomes, 3) stewardship, 4) governance, and 5) well-being. Each review team could then determine what data are available to conduct the analyses needed to evaluate the catch share program relative to these 5 criteria.

We appreciate the extension of the deadline to provide comments! Please contact me if you have any questions.

Sincerely,



Christopher M. Moore
Executive Director

cc: R. Robins, L. Anderson, M. Luisi, J. Coakley, J. Montañez

¹ Clay, Patricia M., Patricia Pinto da Silva, and Andrew Kitts. 2010. Defining Social and Economic Performance Measures for Catch Share Systems in the Northeast U.S. IIFET 2010 Montpellier Proceedings. Available at: <http://nefsc.noaa.gov/read/socialsci/pdf/publications/IIFET2010-PMC-PPDS-AK-revised%20gfish%20list.pdf>



New England Fishery Management Council

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E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

January 29, 2016

Mr. Alan Risenhoover
Director, Office of Sustainable Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
1315 East-West Highway, Room 14743
Silver Spring, MD 20910

Dear Mr. Risenhoover:

Thank you for the opportunity to comment on the draft guidance for the review of catch share programs provided to the Council Coordinating Committee on October 1, 2015. The New England Fishery Management Council encourages the evaluation of fishery management programs to ensure their effectiveness in meeting program goals and promoting sustainable fisheries. As evidence of this commitment, we completed a review of our General Category Limited Access Individual Fishing Quota program after three years, before it was required. Unfortunately, we have serious concerns with the draft guidance. We believe it describes a process that is unmanageable with current data and resources.

As described, a review would be almost impossible to complete in a manner consistent with the guidance. Any attempt to accomplish a review as proposed would likely take multiple years to complete and would limit the ability of the Council to address other issues. Overall, the draft guidance should be simplified and made more concise, providing the latitude for Councils to tailor reviews to each unique catch share program and focus on evaluating what is relevant. The statutory requirements for Limited Access Privilege Program reviews should be clearly distinguished from recommendations for best practices.

Attached are more detailed comments approved by the Council. Please contact me if you have any additional questions. Thank you for your attention to our comments.

Sincerely,

Thomas A. Nies
Executive Director

enclosure

**NEW ENGLAND FISHERY MANAGEMENT COUNCIL
INPUT ON
NMFS DRAFT GUIDANCE FOR
CONDUCTING CATCH SHARE PROGRAM REVIEWS**

This document contains input from the New England Fishery Management Council (NEFMC) on: “Draft Guidance for Conducting Reviews of Catch Share Programs” (CSPs) distributed by the National Marine Fisheries Service (NMFS) to the Regional Councils on October 1, 2015.

KEY COMMENTS

1. The review scope is too extensive, including some analyses that may not be directly related to the goals of a CSP and require a vast amount of data that may not be possible to gather in any reasonable amount of time. Rather, the guidance should focus on aspects applicable to all CSPs, and delegate the determination of specific content to each review team. Reviews would be most effective if they could be tailored to each unique CSP.
2. The legal requirements for Limited Access Privilege Program reviews should be clarified and separated in the guidance from other recommendations. i.e., the possible degree of latitude Councils would have in conducting reviews.
3. CSP reviews should be led by Councils and review reports should be considered Council documents.
4. The description of review team participants is too prescriptive, and Councils should have the latitude to include, for example, external expertise on a team and/or contract support.
5. Interim reports are unnecessary and unfeasible given current resources and staff commitments.

EXPLANATION OF KEY COMMENTS

1. Tailor and Narrow Review Scope

The scope of a CSP review, if all the identified components are required or even strongly recommended, would be extensive and will consume a greater amount of time and resources than necessary. The draft guidance references over two dozen reports, policies or other documents and suggests these should be used and modeled. Any important aspects or instructions should be included in the guidance itself to avoid misunderstandings. This would aid national consistency of reviews.

In addition to the standard measures of performance included in most catch share reviews to date,¹ the guidance would also require highly technical analyses of CSP impacts including multi-product productivity changes since CSP implementation, cost benefit analyses to estimate the changes in net benefits to the Nation, impacts of accumulation limits/caps on technical efficiency of vessels, an RFA-like analysis of whether small entities have been disproportionately affected relative to large entities, analysis of effects on other fisheries (or fishery components), impacts on former fishery participants, changes at regional, state and community levels (e.g., vulnerability, resiliency and dependency of communities), and so on. While these analyses could

¹ <http://www.st.nmfs.noaa.gov/economics/fisheries/commercial/catch-share-program/indicators-definition/>

provide valuable and interesting insights about CSPs and other aspects of the management measures affecting those fisheries, some may not directly link to the CSP goals and would be more appropriate as separate studies, rather than performed as a part of the CSP review.

The review scope is so vast that gathering the necessary data would be daunting. It is not clear that Councils could develop, and NOAA could implement, data collection systems when the CSP is adopted that could provide the level of data detail required by the guidance. Providing a review every five years (plus annual interim reviews) may take as much if not more time than it took to develop the CSP originally. According to the guidance, the review would describe other components of a fishery or other fisheries the vessels in the CSP participate in and discuss impacts. The review of the Scallop Limited Access General Category Individual Fishing Quota (LAGC IFQ) program, for example, would include effects of the CSP on LA vessels, other fisheries that those vessels have permits on, and historical participants that did not get IFQ permits. Identifying impacts on these three groups is a huge amount of work, much larger in scope than focusing on the direct participants/qualifiers. Analyzing the impacts on those not covered by the specific CSP should not be required.

Similarly, it is not clear why the impacts on other fisheries beyond the jurisdiction of a specific CSP should be analyzed. It is difficult to justify this requirement, especially if the CSP did not include any measures regulating the interdependencies between fisheries, have any specific goals relating the activities of vessels in other fisheries, or have any control over the management measures in those fisheries. There could be some situations when a full-fledged analysis of all the fisheries that a particular set of vessels participate in is warranted, but the relevance of such an analysis should be addressed by the review team. An analysis of those impacts could be quite complicated, due to the difficulty of separating the impacts of the CSP from the impacts of the management measures that are implemented in those programs, as well as other factors such as the changes in the biomass of those fish stocks. For example, the LAGC IFQ program was designed for the scallop fishery only and has no measures regulating the catch of these IFQ vessels in other fisheries. However, IFQ vessels operating in multispecies fisheries, for example, are subject to the regulations implemented by that FMP. Since those two fisheries are independently regulated, how can the impacts of the LAGC IFQ program be separated from those impacts of the multispecies regulations? The guidance should address these concerns and clarify the intent and scope of examining impacts on other fisheries.

The CSP review should focus on evaluating the CSP goals and objectives, and all content decisions should be delegated to the Council. Several analyses in the guidance would be useful, doable and should be included in the review. They include analyzing changes in revenues, costs, quota use, the number of entities and vessels, employment, vessel productivity, profits, rents, vessel safety, crew earnings, distributional analyses (e.g., GINI index), market concentration and power (e.g., HHI index), quota prices, share accumulations and caps, and cost recovery.

2. Requirements vs. Recommendations

The draft document does not differentiate between reviews required by statute and reviews that are encouraged as a matter of policy. It should be made clear that only reviews of Limited Access Privilege Programs (LAPPs) are required by the Magnuson Stevens Act. Thus, the legal

requirements for LAPP reviews should be clarified and separated in the guidance from other recommendations. However, the overall tone of the draft guidance is compulsory. Without this clarity, the reader must peruse the multitude of references to determine what analyses are actually required. Additionally, it is unclear why the fishery, species, and gear type would not be required components of a review (Section VI, p. 9). It is also unclear how a determination would be made that this guidance is being interpreted and acted upon appropriately.

3. Review Leadership

Since CSPs have been generated by the Councils, reviews should be led by the Councils, and a CSP report should be considered a Council document. As such, the respective Council would lead review planning, and determine the appropriate focus and review team. Council leadership would help ensure sufficient public involvement throughout the process.

4. Review Team

Having a review team include staff from NMFS and the Council is good, but Councils should have the latitude to include external/contracted expertise or stakeholders. There may be cases where the expertise to review particular program components lies outside existing NMFS or Council staff resources. Review teams should be augmented with academicians, consultants or others as necessary. Also, it might be best if different partners take the lead on different parts/aspects of the review. For example, organizing the data should be the responsibility of the agency that monitors the fishery (e.g., tracks the leasing and transfer activity, ensures landings do not exceed the quota). Council staff knowledgeable about the specific programs could take the lead and collaborate with the Science Center in completing some specific parts of the review (e.g., economic and social performance).

5. Interim Reports

The draft guidance is confusing on the purpose of interim reports. Are they simply to update the review plan and identify data gaps or are analyses intended? If so, what components would be evaluated? Interim reports, beyond review plan updates, are unnecessary and would not be an efficient use of limited human resources. Section IV.C (p. 4) states that a Stock Assessment and Fishery Evaluation Report (SAFE) could serve as an interim report. Due to time and resource constraints, the Affected Environment (AE) of a management action document serves as the SAFE report for some fisheries (e.g., Northeast multispecies). It is thus assumed that the AE could serve as the interim report, but this could be clarified. It would be simpler to have a review plan update not be a separate document from a SAFE report or AE.

OTHER COMMENTS

Review Plan

Section IV.A (p. 3) indicates that a general review plan should be developed and updated for each CSP, ideally at the creation of the CSP. Is this a requirement or a suggestion? Developing a review plan that must be completed a full year prior to initiating a review would involve resources that may be more efficiently directed to conducting the review itself and unnecessarily delay the actual review. Also, even if the guidance says that final sign off does not necessarily

mean agreement with all items in the report (Section IV.E (p. 4)), it is unclear who ultimately decides the report content. This should be clear in the planning stage.

Timing of Review

Councils should have the latitude to conduct reviews when five years of fishery data is available, rather than be required to initiate a review within five years. NMFS does not finalize catch data for some Northeast fisheries until over a year after the end of a fishing year. Realistically, a review that starts within five years would only include data from no more than the first three years, which may preclude meaningful evaluation. Additionally, inconsistencies should be resolved between the guidance and the Magnuson-Stevens Act, which states that a review be conducted five years after program implementation (303A(c)(1)(G)).

Review Content

Baseline Determination

The decision on the appropriate baseline years should be delegated to the review team rather than be designated in the guidance (i.e., “at least three years is preferable” (Section V.A (p. 5)). A baseline period of three years before the program’s implementation could be a reasonable way to analyze the changes that took place, in terms of the number of participants, active vessels and owners based on the availability of data. However, in a fishery which has been subject to significant changes in biomass, overall Annual Catch Limit (ACL), prices and fishing costs, comparing current level of landings, revenues, profits, and employment etc. with the average of levels from three years prior to the implementation of the period may not be a good measure of CSP performance. Again, using the example of the LAGC IFQ program, there have been major changes in the scallop prices (\$8 in the 2007-2009, over \$12 recently), in stock biomass and proportion of the ACL this fishery has received. Furthermore, LAGC landings varied greatly during those years. While in 2009, the LAGC fishery was limited to 10% of the ACL, Amendment 11 reduced this share to 5% in 2010. In addition, there have been changes in the possession limit from 400 lb. in 2010 to 600 lb. afterwards. Even using methods such as multi-factor productivity analyses would not be sufficient to separate the impacts of CS from other measures for this CSP. Comparing what happened since the first year of implementation (2010), and also with the overall trends in the scallop fishery, would make more sense.

In fact, the guidance is internally inconsistent on this matter. According to the economic guidelines referred to, the baseline would not be the three years before CSP implementation, rather “what is likely to occur in the absence of any of the proposed actions.”² This implies benefits should be estimated relative to what would happen if no CSP were in place (which is very difficult, if not impossible, to determine). The same comment is relevant regarding the analysis of ‘disproportional impacts on small entities.’ Should the analysis provide a comparison of what would have happened if a CSP is not instituted allowing all the entities that were active in the prior three years of the program to continue fishing? An extensive RFA and cost benefit

² Guidelines for Economic Reviews of National Marine Fisheries Service Regulatory Actions, March 2007, http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf , p.12

analyses should not be part of the CSP review, especially since the actions that developed the CSP addressed these issues.

Historical Participants

Analyzing the impacts on the historical participants that were not eligible for the CSP (Section V.C.) would require a substantial data collection effort. It would be very hard to track these participants using the permit numbers, since many of them may not have the same vessel today or may have left the fishing business altogether. Given that CSPs do not generally include specific measures or goals regarding the activities of the historical participants, such extensive analyses seem to be, at least implicitly, beyond the scope of a performance review.

Comparison to Alternative CSPs

Consideration of alternative approaches is more appropriate through a management action rather than a CSP review, and the draft guidance is currently contradictory on this matter. Section V (p. 5), states that:

“...since the review only looks at the effects of the CSP that was actually implemented, rather than various alternative CSPs that may have been implemented, these reviews should be less burdensome than the original NEPA/Amendment document.”

However, Section IV.A (p. 10), states:

“...net benefits to the Nation should be maximized under the program relative to any alternative CSPs or variants of the existing program. If the analysis concludes otherwise, such conclusions may serve as the basis for recommending changes to the program, including its potential elimination.”

The later statement and others indicate the review should analyze the impacts of the CSP relative to alternative management approaches. If so, how would the list of alternatives be generated for comparison? Would the review team develop alternatives without Council input, contrary to normal Council process? Also, hypothetical retrospective analyses would probably be unfeasible and their utility in a review is questionable, because Councils are unlikely to completely change management systems based on them. These comparisons should not be part of a CSP review.

Allocation Review

Setting allocations is very controversial and often takes five years to develop. These should not be reviewed every five years. However, Section IV.B (p. 10) states that the five year review should evaluate “whether the existing allocations are those that maximize net benefits to the Nation, consistent with National Standard 1 and EO 12866” and “This assessment should be consistent with the Economic Guidelines for conducting cost-benefit analyses.”

As stated earlier, the draft guidance is unclear what kind of baseline should be used to evaluate if the existing allocations maximize the net benefits to the Nation. According to the economic guidelines referred to, the baseline would not be the three years before the action, but it would be “what is likely to occur in the absence of any of the proposed actions.”³ This means benefits should be estimated relative to what would happen if no CSP is in place. The similar comment is

³ Guidelines for Economic Reviews of National Marine Fisheries Service Regulatory Actions, March 2007, http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf, p.12.

relevant regarding the analysis of ‘disproportional impacts on small entities’. Again, these types of hypothetical retrospective analyses would probably be unfeasible.

Latitude in Content

Latitude should be provided to analyze other fishery aspects not outlined in the guidance. For example, the impacts on active entities that lease quota relative to lease-only participants (e.g., several active LAGC IFQ owners indicated that the interest payments on bank loans they obtained to lease shares are becoming a major cost factor). Perhaps a separate study could be conducted by outside experts to examine those impacts as a part of the CSP review.

Attributing Causality

To the extent possible, reviews should distinguish the impacts of catch shares from other fishery measures, but it is very difficult to do so. For the two CSPs in New England, catch limits have changed annually and dramatically since CSP implementation (driven by changes in exploitable biomass). Landed price has also varied dramatically, having large impacts on revenues, but had essentially nothing to do with the CSPs themselves. Input measures (e.g., bycatch caps, possession limits, closed areas) can also effect fishery performance.

Role of Public Input

Section IV.D (p. 4) states that the public should provide input on review drafts, yet it is unclear how this input is to be incorporated. Section IV.F (p. 5) implies that public input should be explicitly included, yet in listing the appropriate content of the report (Section V.A. p. 5), public input is not included. Public input on interim reports should be made through formalized public comment, not handled informally (Section IV.D, p. 4). Additionally, the role of public input in determining review conclusions should be clarified.

Report Format

If review reports must resemble the format of NEPA documents, the guidance should be clarified that the reports are not NEPA documents. It should be clear that the strict NEPA standards should not apply to the development or content of these reports.

Report Approval

Section IV.D (p. 4) states that the Science and Statistical Committee (SSC) should review a draft CSP review report “comparable to the process used for providing comment on and reviewing draft NEPA/Amendment documents.” In New England, the SSC does not routinely review NEPA documents. The role of the SSC should be clarified.

Formal approval of a CSP review report by the Regional Office, Science Center, NOAA General Counsel (GC), the Office of Law Enforcement, and Council is unnecessary, and associated delays may hamper the utility of the review. Also, that is not standard practice for similar reports. GC should not be given sign-off authority; it is not identified as part of the review team, nor should it be, as GC has little to offer regarding catch share program performance. Since the review is a Council report, it is not clear what purpose it serves to have sign-off by multiple NMFS offices. The Regional Administrator should be the sole reviewer, and that review should be the determination that the report complies with any applicable legal requirements.

North Pacific Fishery Management Council

#2c

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January 22, 2016

Mr. Alan Risenhoover, NOAA Fisheries
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Silver Spring, MD 20910

Dear Mr. Risenhoover:

In October, 2015 your office released the document “Draft Guidance for Reviews of Catch Share Programs (CSPs)”, and requested comments by November 20. Based upon requests from the regional fishery management Councils, you agreed to extend that deadline in order to accommodate discussion of the draft guidance at our upcoming meeting of the Council Coordination Committee (CCC), occurring in late February 2016, and you requested us to provide initial comments to you by January 29, 2016. The Council meets in early February 2016, so additional comments may be forthcoming prior to our CCC meeting. Please consider these our initial comments on the draft guidance. While we appreciate the desire for some national consistency in how limited access privilege program (LAPP) and CSP reviews are conducted, the guidance as drafted goes far beyond the letter, or apparent intent, of any MSA requirements for LAPP program review, and appears to also go far beyond anything necessary to comply with NOAA’s own catch share policy. I have attempted to articulate our concerns within the following major categories:

Statutory/regulatory requirements for program reviews: Necessary provisions for development of LAPPs are specifically contained within the Magnuson-Stevens Act (MSA), including a statutory requirement for review of such programs (section 303A). The specific MSA language refers to program review “by the Council and Secretary”, so it is somewhat unclear whose responsibility it ultimately is to conduct these reviews. In any case, and to our knowledge, there are no statutory or regulatory requirements for review of non-LAPP CSPs. While a Council may choose to periodically review non-LAPP CSPs, there is no requirement to do so. LAPPs are a specific form of CSP, but CSPs most often are not LAPPs, and are typically far simpler management tools than LAPPs, and should not automatically be subject to the same level of review as LAPPs.

One-size fits all approach: While some national consistency is desirable for such program reviews, there is significant variation across programs nationally, and even significant variation of LAPPs or CSPs within regions. For example, LAPPs (or CSPs) in the North Pacific vary widely in their program design across different fisheries, and the type and quality of data available for analysis. Therefore, there must be considerable flexibility in how these programs reviews are conducted. A number of the recommendations in the guidance document are indeed appropriate for major LAPPs, but are far beyond what is necessary for an informed review of a relatively simple allocation of a target species among gear types, for example.

CCC Workgroup on allocation reviews: Beginning in 2013, the CCC established a Workgroup to coordinate with NOAA Fisheries in the development of ‘guidance’ documents for review of all ‘allocations’ established by the Council. The CCC questioned the necessity (as well as the legal obligation) for the agency to require explicit review of all allocations established through the Councils, but agreed to work with the agency to develop a process for such reviews, including specific elements of such reviews. These were finalized and adopted at our June 2015 CCC meeting. While we understand that ‘allocations’ are typically only one aspect (albeit a major aspect) of LAPPs, and must be reviewed in some context per the requirements of section 303A, it is unclear how the product developed by the CCC Workgroup juxtaposes with the proposed requirements in the draft guidance developed by NOAA. This is a particularly significant concern, given that your draft guidance purports to apply to both LAPP and non-LAPP programs which, again, is beyond any explicit or implicit requirements of the MSA. The relationships between LAPPs, CSPs, and ‘allocations’ should be more clearly defined, and any guidance for review of these programs should be tailored to the relative complexity of such programs, with consideration of the actual legal requirements for such program reviews.

Reasonableness test: You will recall that the CCC allocation Workgroup was established specifically because of our concerns that the allocation review process would result in an unnecessarily complex level of analysis, as opposed to a reasonable level of analysis based on the specific program under review. Your draft guidance suggests a level of analytical complexity that is not only far beyond any requirements which apply to the original development of the programs for which a review would be conducted (i.e., far beyond any EIS or other analysis prepared for the original program), but which is practically impossible. A number of LAPP programs in the North Pacific were developed by the Council with program review elements specifically identified. While some of the recommendations in the draft guidance are consistent with those basic review elements, many of them go far beyond what is necessary, or even useful, for a program review. The design elements of the specific program in question typically lead to the identification of the most appropriate and relevant review elements.

Applying this practical perspective, the North Pacific Council has successfully developed reviews for a number of major LAPP programs, including Bering Sea and Aleutian Islands Crab Rationalization; Amendment 80 Allocations and Cooperatives; Gulf of Alaska Rockfish Trawl program; and, a report to Congress on the implementation of the American Fisheries Act (AFA). With this same practical approach, as informed by ongoing constituent input and in coordination with our NMFS Regional Office, the Council has been able to develop workplans for additional program reviews being conducted in 2016, which focus on the issues and questions most appropriate to the program review. Reviews being developed in 2016 include AFA program review; sablefish/halibut IFQ program review; BSAI crab rationalization (second review); and, American Fisheries Act program review.

The draft guidance recommends that the review documents adopt a similar structure as with creating NEPA documents/plan amendments, and therefore contain all of the statutory and regulatory requirements for such. However, these program reviews are not NEPA documents, are not subject to review under NEPA, and are not subject to review per the requirements of various other applicable laws such as the Regulatory Flexibility Act, EO 12866, the Endangered Species Act, National Standards, etc. These reviews are not actions to be submitted for Secretarial review and approval and should not be conveniently subjected to the same analytical requirements.

Regarding the scope of the review, the draft guidance contains potentially conflicting statements. While recognizing that the review should only look at the effects of the (CSP) that was implemented, rather than various alternative CSPs, the draft guidance goes on to imply a much broader analysis of components or sectors of the fishery not covered by the program (page 6), and the statement (on page 10) that “...*net benefits to the Nation should be maximized under the program relative to any alternative CSPs or variants to the existing program*”. This statement implies that any review must look at any and all possible program

permutations, and therefore represents a completely open-ended (and impossible) scope of work for any program review. Net benefits to the Nation are extremely difficult to quantify for a clearly specified program design, much less for a hypothetical comparison of infinitely possible, undefined program designs.

The draft guidance goes on to specify a number of standardized approaches, metrics, and performance indicators that should be utilized by the analysts conducting the review. While some of these may be useful and appropriate to the fishery in question, it should remain up to the analytical team to determine the best information and methods to conduct the program review, based on the specifics of the fishery, with input from affected stakeholders, and with the guidance and input of the Council's Scientific and Statistical Committee (SSC).

Regarding socio-economic aspects of the review, the draft guidance “*strongly recommends that the review assess the effects on historical participants who were previously but are no longer involved in the fishery....an analysis of why (they) no longer participate in the fishery.....and a ‘satisfaction survey’ to assess current and historical participants’ satisfaction with the program...*”. On page 14 a similar suggestion is made for an additional ‘customer satisfaction survey’ to discern participants’ views on reporting requirements. Such a recommendation may well represent an interesting academic exercise, but is well beyond anything practicably possible, and unlikely to be marginally informative in any case. NMFS researchers and independent academic experts have conducted several surveys that attempt to assess perspectives on various aspects of North Pacific LAPPs (or CSPs), and all have struggled with methodological challenges of proper survey design and potential bias in responses. Our SSC continues to raise concerns about these survey instruments and their potential applicability for policy making.

Language on page 11 of the draft guidance recognizes the analytical complexity associated with review of allocations, and suggests that, because it will require considerable time and resources, these kind of detailed analyses be conducted separately from the other components of the review, and incorporated by reference. On page 12 and 13 a similar suggestion is made with reference to analyzing changes in market power from use or ownership caps (likely a PhD dissertation in itself). These suggestions represent a distinction without a difference, as the same overall staff resources would be necessary to complete the review, but they do clearly underscore the overall time and resources which would be required to perform a review consistent with the draft guidance.

Review Teams: The draft guidance speaks to the formation and composition of a ‘review team’, suggesting that such team be composed of persons who were involved in the original development of the program. This makes sense to the extent possible, but given the timelines associated with the review requirements (i.e., 5 to 7 years after implementation), this may be practically challenging. The Council works very closely with our NMFS Regional Office, and all of our major management programs (LAPPs and otherwise) are the result of analytical teams consisting of the appropriate mix of Council and NMFS staff (including Enforcement, Science Center, and General Counsel representation on the ‘Action Planning Teams’), per the elements of our Regional Operating Agreements (ROAs). Likewise, the personnel identified for a particular program review are best identified through the existing working relationships between the Council and NMFS Regional office, again based on the elements of our ROAs.

Timing and interim reviews: Building on the comments above, the draft guidance not only proposes an unnecessarily complex and detailed standard for review, it also would require ‘annual or biennial’ reports, in addition to the statutorily required program reviews. This is neither necessary nor particularly useful, is certainly in excess of any legal requirements, and the net effect would be a state of continuous analytical review. There are at least half a dozen programs in the North Pacific which would qualify as either LAPPs or CSPs, and the continuous review efforts suggested by the draft guidance would have a crippling effect on the Council and NMFS’s collective ability to address other, critical management issues in the North

Pacific. We would literally have to devote virtually all available staff time to program reviews which appear to go far beyond anything intended by Congress in section 303A of the MSA.

Barring any review requirements contained within section 303A, and barring any requirements implied by the draft guidance, the Council process is in and of itself a form of continuous program review. Our adaptive management approach is continuously monitoring, evaluating, and amending its programs. Most of our LAPPs (or CSPs) are the subject of ongoing review, analysis, and adjustment through the process of external input from program participants or others with a vested interest in program performance. Many of these adjustments (amendments) are focused on specific program elements, but often include analysis of broader program components. This allows the Council to focus on specific, appropriate program adjustments without devoting limited staff resources to unnecessary analytical exercises.

For example, the Council specifically developed a series of reviews for the BSAI crab rationalization program at 18 month, 36 month, and five year intervals when the program was originally designed. The Council designed these reviews based on the perceived need for specific reviews, prior to the 2007 MSA requirements for LAPP reviews. Since our groundfish license limitation program was implemented in 2000, the Council has submitted 12 amendments to refine and modify that program. All of these amendments have included a general review of the program with a more refined assessment of the policy and regulatory issues for the proposed change, and consideration of possible alternatives. These types of regular program adjustments, coupled with the formal review every 5/7 years, should be more than adequate for the purposes intended by Congress.

Review and ‘approval’ process: The draft guidance proposes a ‘sign-off’ process, whereby the Council, Regional Office, Science Center, Enforcement, and General Counsel would all have to ‘approve’ the program review before it is considered final, similar to the process for review and approval of management actions submitted for Secretarial review and approval. As noted above, these program reviews are not ‘NEPA documents’, nor do they constitute actions to be submitted by the Council for Secretarial review and approval. It is therefore inappropriate to require a sign-off process for program reviews. Although a possible response to this concern is that this is “only a guidance document”, our experience is that “guidelines” are often treated by NOAA Fisheries and NOAA GC as having the force of law. If this sign-off process remains in the guidance we have little doubt it will be made to occur.

We question the necessity, and the legal basis, for such an onerous review and approval process of program reviews. Further, the guidance refers to “recommendations” contained within the review. It is unlikely that full agreement could be found on such recommendations within the review team (presumably, recommendations for program changes), and it is questionable whether a review should include such recommendations; i.e., a review should inform program managers and the decision-making body of the Council as to potential program adjustments.

In summary, our initial reaction is that this draft guidance goes far beyond what is necessary for a robust program review, has several provisions which would be practically impossible to achieve (thereby setting us up for failure), and would be unnecessarily crippling to the Council and NMFS Regions’ collective ability to address numerous other, high priority management issues. Again, based on the provisions of the draft guidance, we would very likely have all available resources devoted to review of previously adopted management programs and would have little or no resources available to proactively address numerous management issues which are of extreme importance to both the Council and NOAA Fisheries. A few examples include: comprehensive observer program and EM development; bycatch of prohibited species like halibut, salmon, and crab; further development of overall Ecosystem-Based Fisheries Management (EBFM); development of a Fishery Ecosystem Plan for the Bering Sea; involvement in developing Arctic issues; initiatives to coordinate halibut management with the IPHC; and, development of a catch share program (CSP) to manage bycatch and rationalize Gulf of Alaska trawl fisheries, to name a few.

We strongly suggest that this draft guidance be thoroughly discussed at the CCC level before going any further, and hopefully we can work cooperatively with the agency to develop guidance that is reasonable and appropriate. It may also be appropriate to engage input from the Scientific and Statistical Committees of the eight regional Councils prior to finalizing any program review guidance, in order to further groundtruth both the necessary level of analysis for informed program review, and the practicality of the analytical approaches recommended in the guidance.

Sincerely,

A handwritten signature in blue ink that reads "Chris Oliver". The signature is fluid and cursive, with the first name "Chris" being more prominent than the last name "Oliver".

Chris Oliver
Executive Director

CC: Kelly Denit
Mike Travis
Eileen Sobeck
Jim Balsiger
Glenn Merrill
Regional Fishery Management Councils

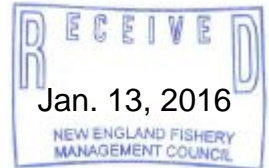


Pacific Fishery Management Council

#2

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Dorothy M. Lowman, Chair | Donald O. McIsaac, Executive Director

January 12, 2016



Mr. Alan Risenhoover
Director
Office of Sustainable Fisheries
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
NOAA/NMFS
1315 East-West Highway, Room 14743
Silver Spring, MD 20910

Re: Comments on "Draft Guidance for Conducting Reviews of Catch Share Programs" and request for an extension of comment deadline through March 21, 2016

Dear Mr. ^{Alan} Risenhoover:

We appreciate the extension of the comment period from the originally announced November 20, 2015 deadline to January 29, 2016 and offer the following as staff comments on the "Draft Guidance for Conducting Reviews of Catch Share Programs." The solicitation for comments from Regional Fishery Management Councils came too late for it to be included on our November Council meeting agenda, and the extension to January 29 fails to capture our next Council meeting in mid-March 2016. Thus, these comments reflect the Council staff perception of the will of the Pacific Council given past Council actions and limited tangential discussions during the November 2015 Council meeting. Because formal public process has yet to be conducted on this important matter, we request the extension deadline be modified to March 21, 2016.

The perennial challenge in drafting guidelines is doing so outside the context of a specific situation. With respect to a program review, those specifics include the policies to be analyzed, the areas of concern which have developed in the context of their application, and the governmental resource constraints and important competing demands for those resources that will occur at the time of the review. When drafting guidelines outside of the constraining context, care must be taken not to set up expectations which cannot be practically met in the ultimate context in which they are applied, thereby generating the impression of failure—in this case, the impression that a review was inadequately conducted. A way forward is needed that takes into account the pragmatics of limited resources while at the same time providing useful guidance—a bridging between the ideal and the real world of limited capacities. To that end, we offer some general comments and have attached a list of more specific comments.

First, the guidelines should remain general, and adopted regional operating agreements should be relied on to specify the process by which National Marine Fisheries Service (NMFS) and the Council will work together to conduct a review. For the Pacific Council, given sufficient resources, we would expect that as with other Magnuson-Stevens Act (MSA) actions the review would be coordinated in the Council forum where: NMFS participates cooperatively side-by-side with state, tribal, and Council staff; appropriate review team composition is determined; scientific information is reviewed by the Scientific and Statistical Committee; and NMFS is represented in decision authority by a single voice. Once the Council review process is completed, then the Secretary would make a determination as to whether or not the review meets the requirements of the MSA. In contrast, the guidelines specify that a lead should be designated without identifying who will be responsible for designating the lead, do not mention state and tribal partners, specify that the plan review team should be the original plan development team, specify that the science centers should review the scientific information, and specify that the Council and four separate divisions of NMFS/National Oceanic and Atmospheric Administration (NOAA) would each sign off on the review. In addition to these differences between the typical Pacific Council process and these guidelines, we note that the guidelines do not take into account that in situations of high controversy it might be most appropriate that the original plan development team *not* be the team that reviews the plan. Further, requiring four independent NMFS sign-offs as part of a Council process could lead to confusion regarding NMFS positions, and create an inefficient, lengthy loop as to when version adjustments are reviewed by the Council or any of the four NMFS/NOAA divisions. The regional processes and project managers should be trusted to most efficiently organize and allocate the project resources within the contexts present at the time of the review and as guided by regional operating agreements. A Secretarial review process on an end-document coming from the Council forum can be used to provide the opportunities for any and all internal NMFS sign-offs.

Second, the guidelines include new annual or biannual interim reporting requirements not required by the MSA. Further, it is anticipated that such interim reports go through a draft and finalization process with opportunity for public comment. While it is suggested that the feedback process “can be handled informally,” it is not clear what such informality means in the Council process and how such informality would be provided while maintaining an open, transparent public process. Such new requirements should not be taken lightly in that they inevitably displace or degrade the quality of work in an overburdened process. Such displacements and degradations then compound inefficiencies when the consequences of such inadequacies are encountered and must be dealt with in the future. Overall performance of the fishery will be monitored in the Stock Assessment and Fisheries Evaluation document, and critical failures will become apparent as part of the ongoing management activities. Most likely, new catch share programs will result in the generation of some new tables and data summaries for annual and biannual management processes, but the local managers should be trusted rather than indiscriminately prioritizing the generation of interim processes and reports over other regional management needs.

Third, the draft guidelines statement that “if a particular component of a program is the subject of a current management action, that component does not need to be addressed in a detailed manner within the review” is somewhat confusing. Generally, catch share programs function as an integrated whole, and it is sometimes difficult to draw lines between particular components or the effects of those components. The guidelines recommend that the review follow a National

Environmental Policy Act-type structure. In such a structure, cumulative effects sections address past, present, and reasonably foreseeable future actions. We suggest that any program component under revision at the time of the review be handled in a comparable section rather than not addressing the component “in a detailed manner.”

Fourth, the recommendation that the source of all recommendations should be tracked and summarized, cross-referencing to note commonalities and differences, is unnecessarily burdensome and fails to recognize the nature of a collaborative process. Public comment will certainly be kept for the administrative record, but if the collaborative process results in a set of recommendations that are collectively endorsed, the origin of the recommendation is not relevant to the result. Further, in such a dialogical process it is often not possible to identify the source of an idea for a recommendation. Finally, where a particular partner entity strongly disagrees with a recommendation, an opportunity is often provided for a minority report, so all voices have the opportunity to be represented.

Fifth, the guidelines cite several studies as those which should be used or referenced during the review (e.g. Section V.C, page 7-8). In order to maintain the relevance of the guidelines across time it might be more efficient to list such documents in a separate technical resources document which could be updated as new information and studies become available. Additionally, the language recommending these studies should be modified to acknowledge that, depending on the particular circumstances and concerns being addressed, there may be better alternative sources.

Sixth, there are some areas where the guidelines get into unnecessary detail and seem to be making unstated and inapplicable assumptions about the particular configuration of the catch share program being reviewed. For example, with respect to the reconsideration of intersector allocations, this statement is made:

...any recommendations to change those allocations should consider the potential for entities to exceed the existing caps/limits on QS and QP under an alternative allocation and, in turn, the possibility they would be forced to divest under a different allocation or the existing caps/limits need to be reconsidered. (p. 11)

This statement is inapplicable to programs in which limits are expressed as a percent. At the same time, there are comparable considerations that would have to be taken into account (e.g., effect on total quota pounds (QP) available to an individual). This guidance on the effects of reallocation on caps is one among many details that will have to be considered, only a few of which are called out in the guidelines. This leads to unevenness in the level at which the guidelines address the program review. These details of analysis should be left for regional efforts to develop. Additionally, we recommend that, except where there is a clear legal mandate, NMFS consider replacing the word *should include* (or words with that sense) with *should consider including* (or words with that sense). This will make the advisory nature of the guidelines clearer for those following them and members of the public who might compare a particular review to the NMFS review guidance.

As a final note, we would like to emphasize the tremendous workload that is potentially embodied in the guidelines as currently specified. In addition to the catch share program review, not only is a detailed review of the underlying allocations indicated, but also a review and cost

assessment of the data system with respect to the potential for substitution of electronic technologies. Such assessments are no small matter and in aggregate might equate to a workload associated with more than two major environmental impact statements. Programs with as broad of a sweep as many catch share systems touch in important ways on many different subsystems, including stock assessment methodologies, which, like intersector allocations, also impact the total amount of fish available for the catch share program. However, as a practical matter, not every system can be included in a review of the catch share program. Further, the guidelines suggest that where adjacent catch share programs have interactions that they be reviewed together. For the Pacific Council, this might require expanding the trawl catch share program review to include the recently reviewed sablefish tier limit program. We would encourage resistance to the temptation to take the opportunity of the catch share program review to accomplish reviews of related subsystems.

Thank you for the opportunity to comment, and we hope you will have a favorable response to our request to be provided more time so that the Pacific Council can fully engage in this review.

Sincerely,



D. O. McIsaac, Ph.D.
Executive Director

JLS:kma

Cc: Council Members
Regional Fishery Management Council Executive Directors
Ms. Kelly Denit
Dr. Mike Travis

Attachment: Other Detailed Comment

Page 1

Sablefish permit stacking program. The guidelines list the Pacific sablefish permit stacking program as a review that is underway. That review was completed in June 2014, the date cited in footnote 11.

Page 2

January 12, 2007. Paragraph II.A states that the MSA requires “‘formal detailed’ review of all LAPPs established after January 12, 2007.” The January 12, 2007 date is cited numerous times in the document. As we understand it, on the one hand, the MSA provides a general exemption from the requirements of 303A “Limited Access Privilege Programs” for any program in place within 6 months after the date of enactment of the MSA reauthorization of 2006 (this would be six months after January 12, 2007). On the other hand, there is an exception to this exemption (303A(i) TRANSITION RULES) for the section of the MSA which requires periodic reviews (303A(C)(1)(g)). Section 303A(i) of the MSA states that programs implemented prior to six months after MSA reauthorization “shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation.” However, the draft policy goes on to state

For CSPs established prior to January 12, 2007, the requirement to initiate the first review within 5 years after establishment does not apply. As such the first review of these CSPs should be initiated no later than 7 years after the CS Policy went into effect (i.e. no later than the end of calendar year 2017)...

To provide clarity, additional explanation should be provided on the relationship between the dates in the guidelines and those in the MSA.

Review within 5 years. Paragraph II.A states “For CSPs established after January 12, 2007, the initial review must commence no later than 5 years after the program was established...” Later in the paragraph the deadline is restated as “the requirement to initiate the first review within 5 years after...” The draft guidelines appear to contradict the MSA requirement to conduct an initial “formal and detailed review 5 years *after* the implementation of the program” (303A(c)(1)(G)) (emphasis added). Five years *after* is not the same as “*within* 5 years after.”

Page 3

Limit on the frequency of reviews. The last sentence of Section II states that: “The Councils and NMFS ... should not conduct reviews more frequently than every 3 years for the purpose of complying with the MSA requirement or CS Policy.” The basis for this restriction is not apparent. While the Pacific Council does not anticipate doing reviews more frequently than once every 3 years, if the Council and NMFS determine that such a review is the best use of regional resources, it is not clear why the guidelines would preclude the occurrence of a more frequent

review. If such a review were conducted, it should reset the clock on the next 7-year review period.

Presumption of NMFS lead in developing the general plan for review. In the second paragraph of IV.A, the statement that “For CSPs established by the Councils, it is recommended the appropriate Council(s) review a draft of the plan [general plan for the review] before it is finalized and significant work begins,” implies a presumed NMFS lead in the development of a plan rather than NMFS as a partner participating in a collective forum. This runs counter to the Pacific Council model.

Planning for needed resources. The last two sentences of the second paragraph of IV.A should be modified to account for Council/agency resource limitations (insertions indicated): “Whenever possible, a final plan should be completed no later than one year prior to initiating the review, as this will ensure adequate time is available to conduct any necessary supplementary/specialized data collections and acquire the resources needed to conduct the review. The timeline for conducting analyses associated with the review should take into account the availability of data, available resources, and the length of time necessary to complete those analyses.

Page 5-6

List of contents for the review. The third paragraph of Section V.A provides a list of contents for the review. That list should be augmented to include “a summary of any unexpected effects (positive or negative) which do not fall under the program’s goals or objectives.”

Page 7

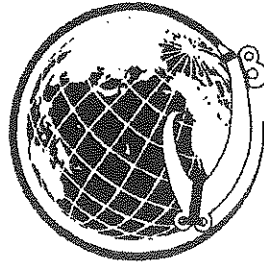
Use of “possible.” In Section V.C (and perhaps elsewhere) the word “possible” (a word which does not take into account limited agency and Council resources) sets too high a bar for the recommended actions. Occurrences of possible should be replaced with more precise language. For example:

- “...make use of standardized performance indicators or metrics developed at the national level, to the extent ~~possible~~ that those indicators adequately describe the effects to be analyzed.”
- “To the extent ~~possible~~ that it is efficient and useful, reviews should...”
- “...make use of the NMFS Office of Science and Technology’s (S/T) economic and social performance indicators to the extent ~~possible~~ that it is efficient and useful.”

Page 9

“measurable (at least qualitatively).” The meaning of qualitative measurement is not clear.

Reference to “maximize net benefits.” To be clear that non-pecuniary benefits are included in the assessment of net benefits, add a parenthetical identical to that in EO 12866: “(including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).” That “net benefits are not exclusively economic in nature” is identified in Section V “General Approach, Scope of Review, and Use of Standardized Approaches,” however, it would be good to repeat this caveat in Section VI “Describing and Analyzing Program Performance.”



**Western
Pacific
Regional
Fishery
Management
Council**

#2a.

November 23, 2015

Alan Risenhoover
Director
NMFS Office of Sustainable Fisheries
NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Re: DRAFT GUIDANCE FOR CONDUCTING REVIEWS OF CATCH SHARE PROGRAMS

Dear Mr. Risenhoover:

The Western Pacific Regional Fishery Management Council appreciates the opportunity to comment on the draft NMFS guidance regarding catch share program (CSP) evaluation. The Council's Scientific and Statistical Committee convened a working group of SSC members and Council staff at its 122nd meeting (Honolulu, HI; October 13-14, 2015) to examine the draft guidance, and this group reviewed the draft document over the course of the following several weeks. Most important in the guidance is the recommendation for managers to incorporate a review plan, assessment, and necessary data collection into the design of new or modified CSPs. Councils and NMFS will need to be given the resources to do this adequately.

The Council notes there are currently no federal fishery CSPs in the Western Pacific Region and the only fishery that has the prerequisite conditions for a CSP is the Hawaii pelagic longline fishery. Both the Council and NMFS have recently engaged this fishery on the pros and cons of CSPs, as well as investigated fishermen's knowledge and attitudes towards such a program. However, it is too soon to know whether the fleet is interested in taking steps towards a CSP. The Council further notes that Western Pacific region has distinct and unique sociocultural attributes that challenge western notions of allocation. The draft seems to provide the necessary flexibility for reviews in this regard (e.g., encourages longitudinal comparability in the same fishery, but not necessarily across regions and fisheries) and acknowledges that socioeconomic, bio-resource allocation, and administrative conditions change over time.

General Comments

1. Like the Caribbean and perhaps elsewhere, NMFS has not historically provided adequate funding and resources to gather the socioeconomic and cultural data required for CSP evaluation in the western Pacific. Much of the information required to construct indicators of economic and social performance, as suggested in the various citations found in the draft guidance, either does not exist in the Western Pacific Region or is proprietary in nature. Access to proprietary information, enhanced reporting requirements

and periodic surveys will have to be designed into the CSP. This could have initial and ongoing costs.

2. An appropriate “analysis of the program’s biological, ecological/environmental, economic, social, and administrative effects” will entail collection and analysis of confidential government and private data, which will require nondisclosure agreements and reduced public scrutiny.
3. The draft policy is relatively silent on the issue and importance of a developed baseline. Without a baseline, what can the initial CSP review results be compared to?
4. The draft policy should strongly encourage independent and multidisciplinary evaluation teams that conduct the review in an integrated, interdisciplinary manner. The current draft lacks this specificity. Independence is important in program evaluation and could be partially achieved by specifying outside social and economic scientist members.
5. It is generally true that “less uncertainty exists in a retrospective analysis relative to a prospective analysis.” However, CSP reviews will almost certainly make use of subjective survey data or “ex-post proxy data.” Measures of uncertainty may be required, since such data sources reflect, rather than measure directly, socioeconomic and environmental impacts.
6. The Council appreciates that the draft guidance directs review teams to consider the important issue of displacement, where fishery participants that might have provided useful information have, for one reason or another, left the fishery. However, the draft treats displacement quite generally. Perhaps the final guidance can provide more specificity on dealing with displacement?
7. The document states the NEPA/amendment framework is the best template for a CSP evaluation document, primarily because Council and NMFS staff are familiar with it. The Council does not necessarily agree that familiarity is the best rationale for selecting a template and suggests examining the program evaluation literature for the most appropriate and effective evaluative template.
8. Please consider providing a process example that illustrates how feedback from participants is to be gathered and considered in the review.
9. The Council agrees that “net benefits to the nation” are not simply economic and that other benefits should be considered. We recommend more concrete guidance be provided to evaluation planners regarding consideration of such “non-economic benefits.”

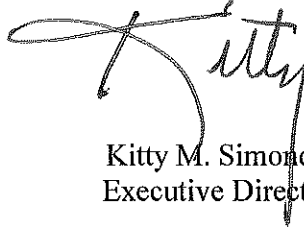
Specific Comments

1. The draft directs that pre-2007 CSP reviews should be initiated no later than year seven. Please clarify the rationale and justification for this time frame.
2. The document is confusing as to the five year review requirement. On page 2 it states that an earlier review can occur but in the next sentence seems to say it cannot.
3. Per the draft guidance, it appears that a second CSP review would be mandated just one year after the initial 5 year review if a Council conducts an FMP review in year 6. Please clarify.
4. A table would improve understanding of the timeline items and issues.
5. The draft guidance implies that NMFS is to take the lead to develop the review plan, but this should be clarified in the text.

6. The Council recommends a term other than “Interim Report” (4C), since the content and purpose of this report appear to differ from the “5/7 year review report.” As such, it is not really an “interim” report. It is more a tracking update.

Again, thank you for the opportunity to comment on the draft NMFS guidance regarding catch share program evaluation. The Council reiterates its encouragement to managers to review and evaluate programs such as catch shares in order to understand whether such programs are effectively addressing the issues that underpinned their adoption. We hope our input improves the draft document.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kitty', with a large, sweeping flourish extending to the left.

Kitty M. Simonds
Executive Director

cc: Michael Seki, Director, NMFS Pacific Islands Fisheries Science Center
Charles Daxboeck, Chair, WPRFMC Scientific and Statistical Committee
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