

I have spent time analyzing the proposed changes and summarized the important takeaways from the revisions to the NS-1. (page numbers refer to the [redline document](#) provided by NMFS)

1. Clarification is needed with respect to the agency’s use of “possible” vs. “practicable”.

The revised guidelines have several instances where “possible” has been replaced with “practicable”. Neither is defined in the word usage section (§ 600.305(d)), so it is unclear how the Councils should interpret this distinction.

2. The new Status Determination Criteria (SDC) definition of ‘depleted’ (§ 600.310 (e)(2)(i)(F) – page 9)

“An overfished stock or stock complex is considered depleted when [1] it has not experienced overfishing at any point over a period of two generation times of the stock and its biomass has declined below MSST, or [2] when a rebuilding stock or stock complex *has reached its targeted time to rebuild and the stock’s biomass has shown no significant signs of growth despite being fished at or below catch levels that are consistent with the rebuilding plan throughout that period*” emphasis added by italics.

Several points:

- a) The Federal Register Notice (FRN) states that “rebuilding plans will still be required for depleted stocks”, but doesn’t specify if ‘depleted’ stocks will be subject to all the same rebuilding requirements as ‘overfished’ stocks.
- b) The FRN also states that “Councils could consider additional measures for these stocks such as a re-evaluation of their SDCs to determine if they are representative of the current environmental conditions.” I assume this means that once a stock is designated as ‘depleted’ rather than overfished, the Council can then reevaluate whether the MFMT, OFL, and MSST are representative and adjust as they see fit. The Pribilof blue king crab example from Alaska is probably a reason why this provision may be necessary (the stock has failed to meet its rebuilding targets after a nearly 20 year moratorium on fishing, so there is some debate about whether those targets are realistic).
 - a. The way I interpret this, the proposed definitions of ‘depleted’ may allow for a stock like Gulf of Maine cod to be reclassified as ‘depleted’ when it may have failed to rebuild because the rebuilding plan had a low (risky) probability of success and/or overfishing was actually occurring but not detected because of weak accountability measures. It appears the proposed clause would give the Council the option to reduce the MSST.
- c) There is a paragraph on “management measures for depleted stocks” (page 22, Sec. (i)(6)) but the language is both vague and weak (e.g. the Council “may” identify additional management measures or initiatives that could improve the stock).

- d) NMFS removed the phrase “If a stock or stock complex reached the end of its rebuilding plan period and has not yet been determined to be rebuild, then **the rebuilding F should not be increased until the stock or stock complex has been demonstrated to be rebuilt**” under the requirements for an overfished fishery (Pg 20, Sec (3)(ii)). Curiously NMFS does not specify this in the definition/requirements for a ‘depleted’ stock.

3. Definition of “acceptable probability” of success for rebuilding plans.

The guidelines retain 50% as the “acceptable probability” that a rebuilding plan is successful, but the agency does have the authority to raise this value (to say 55-60%?) to ensure that any new rebuilding plans have at least a slightly better chance of succeeding than failing. I think this is an important issue to raise given that NMFS intends to allow stocks that fail to rebuild to be re-designated as ‘depleted’.

4. On page 12, sec (iv)(A) “When it is not possible to specify OY quantitatively, OY may be described qualitatively.”

I have no idea how an SSC might ‘qualitatively’ describe OY. This is very vague and wide open to Council interpretation.

5. On page 13, Sec (iv)(C) – NMFS changed the phrase “All catch must be counted against OY, including that resulting from bycatch, scientific research, and all fishing activities” to “Where practicable, all sources of mortality including that resulting from bycatch, scientific research catch, and all fishing activities should be accounted for in the evaluation of stock status with respect to reference points” (moved to page 10, Sec 2(ii)(C))

This could be a step backwards on catch accounting.

6. On page 15, Section (B) Carry-over ABC control rules – Allows “some of the unused portion of the ACL from one year to increase the ABC for the next year, based on the increased stock abundance resulting from the fishery harvesting less than the full ACL”.

Some concerns:

- a) Doesn’t account for a situation where the fishery comes up short of the ACL due to low stock abundance (re; Mackerel)
- b) There is no cap on how much carry over is allowed

7. On page 17, Section (g)(3) “If an ACL is set equal to zero and the AM for the fishery is a closure that prohibits fishing for a stock, additional AMs are not required if only

small amounts of catch or bycatch occur, and the catch or bycatch is unlikely to result in overfishing.”

This is vague and seems like a recipe for disaster in the hands of the wrong council. At the very least they should give some qualification of ‘small’ – i.e. less than 5% of the historical catch.

8. On page 20, Sec (3)(ii) – They removed the phrase “If a stock or stock complex reached the end of its rebuilding plan period and has not yet been determined to be rebuild, then the rebuilding F should not be increased until the stock or stock complex has been demonstrated to be rebuilt”

Obviously NMFS re-defined this situation as “depleted”, but again, the new language doesn’t specify that the F for a ‘depleted’ stock should not be increased until the stock is rebuilt

9. On page 21, Sec (4) Emergency Actions and Interim Measures

The new language would allow Councils to further delay ending overfishing and clearly addresses the recent emergency measures taken for GOM cod. It’s particularly problematic that Councils would not be required to end overfishing in existing rebuilding plans that have already failed to make adequate progress.

10. On page 22, Sec (5) Discontinuing a rebuilding plan based on new scientific information

I’m not sure which stocks, if any, this would apply to, but the criteria given seems unnecessarily risky.