

## **Magnuson-Stevens Act National Standard Guidelines**

This document provides a snapshot of sections from the National Standard Guidelines related to the Council process and fisheries management principles. Sections that describe the content of fishery management documents and regulations are not included in this document. For more information on each National Standard, click the link at the end of each section for the full regulatory text in the Code of Federal Regulations. **For the general guidelines as well as NS1 & NS2, it is recommended that review panel members read all sections.**

### **National Standards – General Guidelines**

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Magnuson-Stevens Act (MSA), and other applicable law. The Secretary has an obligation under section 301(b) of the MSA to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been, and will be, applied under these principles. The guidelines are intended as aids to decision-making; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are not formulated according to the guidelines may not be approved by the Secretary if the FMP or FMP amendment is inconsistent with the MSA or other applicable law (16 U.S.C. 1854(a)(3)).

*It is recommended that the review panel members read the entirety of the General Guidelines as they relate to key Council operations throughout the development of fishery management actions and regulations.*

FMI: [CFR Reg Text](#)

### **National Standard 1 – Optimum Yield**

*Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.*

*It is recommended that the review panel members read the entirety of the NS1 guidance, provided that the guidelines describe all the fishery management approaches to meet the objectives of NS1. These also include recent (2016) revisions.*

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### **National Standard 2 – Scientific Information**

*Conservation and management measures shall be based upon the best scientific information available.*

**Relevant Sections:** (1) Fishery conservation and management require high quality and timely biological, ecological, environmental, economic, and sociological scientific information to effectively conserve and manage living marine resources. Successful fishery management depends, in part, on the thorough analysis of this information, and the extent to which the information is applied for:

- (i) Evaluating the potential impact that conservation and management measures will have on living marine resources, essential fish habitat (EFH), marine ecosystems, fisheries participants, fishing communities, and the nation; and
- (ii) Identifying areas where additional management measures are needed.

(iv) *Transparency and openness.* (A) The Magnuson-Stevens Act provides broad public and stakeholder access to the fishery conservation and management process, including access to the scientific information upon which the process and management measures are based. Public comment should be solicited at appropriate times during the review of scientific information. Communication with the public should be structured to foster understanding of the scientific process.

(v) *Timeliness.* Mandatory management actions should not be delayed due to limitations in the scientific information or the promise of future data collection or analysis. In some cases, due to time constraints, results of important studies or monitoring programs may be considered for use before they are fully complete. Uncertainties and risks that arise from an incomplete study should be acknowledged, but interim results may be better than no results to help inform a management decision. Sufficient time should be allotted to audit and analyze recently acquired information to ensure its reliability. Data collection methods are expected to be subjected to appropriate review before providing data used to inform management decisions.

(vi) *Verification and validation.* Methods used to produce scientific information should be verified and validated to the extent possible.

(b) *Peer review process.* The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise about the conservation and management of the fishery. 16 U.S.C. 1852(g)(1)(E). A peer review process is not a substitute for an SSC and should work in conjunction with the SSC (see §600.310(b)(2)(v)(C)). This section provides guidance and standards that should be followed in order to establish a peer review process per Magnuson-Stevens Act section 302(g)(1)(E).

- Also read subsections 1-4 of the Peer Review section for information on the timing, scope of work, peer reviewer selection, expertise and balance, conflict of interest, independence, transparency, and publication.

(c) *SSC scientific evaluation and advice to the Council.* Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. 16 U.S.C. 1852(g)(1)(B).

- Also read subsections 1-6 of the SSC section.

(d) *SAFE Report.* The term SAFE (Stock Assessment and Fishery Evaluation) report, as used in this section, refers to a public document or a set of related public documents, that provides the Secretary and the Councils with a summary of scientific information concerning the most recent biological condition of stocks, stock complexes, and marine ecosystems in the fishery management unit (FMU), essential fish habitat (EFH), and the social and economic condition of the recreational and commercial fishing interests, fishing communities, and the fish processing industries. Each SAFE report must be scientifically based with appropriate citations of data sources and information. Each SAFE report summarizes, on a periodic basis, the best scientific information available concerning the past, present, and possible future condition of the stocks, EFH, marine ecosystems, and fisheries being managed under Federal regulation.

- Also read subsections 1-5 of the SAFE Report section

(e) *FMP development.* (1) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again, unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

- Also read subsections 1-6 of the FMP Development section

Also see other sections around relevance (i) inclusiveness (ii), objectivity (iii) of scientific data.

*It is recommend that review panel members read this entire guidance document as it contains pertinent information on multiple Council processes.*

FMI: [CFR Reg Text](#)

### **National Standard 3 – Management Units**

*To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.*

**Relevant Sections:** (b) *General.* The purpose of this standard is to induce a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks(s) of fish, and not be overly constrained by political boundaries.

(c) *Unity of management.* Cooperation and understanding among entities concerned with the fishery (*e.g.*, Councils, states, Federal Government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred.

(d) *Management unit.* The term “management unit” means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

(1) *Basis.* The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives.

(3) Management activities and habitat programs of adjacent states and their effects on the FMP's objectives and management measures. Where state action is necessary to implement measures within state waters to achieve FMP objectives, the FMP should identify what state action is necessary, discuss the consequences of state inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on state management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. International boundaries may be dealt with in several ways.

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#### **National Standard 4 – Allocations<sup>i</sup>**

*Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (a) fair and equitable to all such fishermen; (b) reasonably calculated to promote conservation; and (c) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privilege.*

**Relevant Sections:** (2) *Analysis of allocations.* Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered, but rejected by the Council, should be included in the discussion. The analysis should relate the recommended allocations to the FMP's

objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) *Factors in making allocations.* An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3)(i) through (c)(3)(iii) of this section.

(iv) *Other factors.* In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

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### **National Standard 5 – Efficiency**

*Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.*

Relevant Sections: (b) *Efficiency in the utilization of resources—(1) General.* The term “utilization” encompasses harvesting, processing, marketing, and non-consumptive uses of the resource, since management decisions affect all sectors of the industry. In considering efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

*There are other relevant sections, but they focus on the content in the FMP and analysis rather than the process.*

### **National Standard 6 – Variations and Contingencies**

*Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches*

Relevant Sections: (b) *Conservation and management.* Each fishery exhibits unique uncertainties. The phrase “conservation and management” implies the wise use of fishery resources through a management regime that includes some protection against these uncertainties. The particular regime chosen must be flexible enough to allow timely response to resource, industry, and other national and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial

buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies.

(c) *Variations*. (1) In fishery management terms, variations arise from biological, social, and economic occurrences, as well as from fishing practices...

(2) Every effort should be made to develop FMPs that discuss and take into account these vicissitudes. To the extent practicable, FMPs should provide a suitable buffer in favor of conservation.

(d) *Contingencies*. Unpredictable events—such as unexpected resource surges or failures, fishing effort greater than anticipated, disruptive gear conflicts, climatic conditions, or environmental catastrophes—are best handled by establishing a flexible management regime that contains a range of management options through which it is possible to act quickly without amending the FMP or even its regulations.

(1) The FMP should describe the management options and their consequences in the necessary detail to guide the Secretary in responding to changed circumstances, so that the Council preserves its role as policy-setter for the fishery. The description should enable the public to understand what may happen under the flexible regime, and to comment on the options.

(2) FMPs should include criteria for the selection of management measures, directions for their application, and mechanisms for timely adjustment of management measures comprising the regime. For example, an FMP could include criteria that allow the Secretary to open and close seasons, close fishing grounds, or make other adjustments in management measures.

(3) Amendment of a flexible FMP would be necessary when circumstances in the fishery change substantially, or when a Council adopts a different management philosophy and objectives.

FMI: [CFR Reg Text](#)

### **National Standard 7 – Costs and Benefits**

*Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.*

Relevant Sections: (b) *Alternative management measures*. Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, state, or local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(c) *Analysis*. The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated.

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### **National Standard 8 – Communities**

*Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirement of paragraph (2) [i.e., National Standard 2], in order to (a) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize adverse economic impacts on such communities.*

**Relevant Sections:** (b) *General.* (1) This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is within the context of the conservation requirements of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.

c) *Analysis.* (1) FMPs must examine the social and economic importance of fisheries to communities potentially affected by management measures...  
(2) An appropriate vehicle for the analyses under this standard is the fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act...

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### **National Standard 9 – Bycatch**

*Conservation and management measures shall, to the extent practicable, (a) minimize bycatch and (b) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.*

**Relevant Sections:** (b) *General.* This national standard requires Councils to consider the bycatch effects of existing and planned conservation and management measures. Bycatch can, in two ways, impede efforts to protect marine ecosystems and achieve sustainable fisheries and the full benefits they can provide to the Nation. First, bycatch can increase substantially the uncertainty concerning total fishing-related mortality, which makes it more difficult to assess the status of stocks, to set the appropriate OY and define overfishing levels, and to ensure that OYs are attained and overfishing levels are not exceeded. Second, bycatch may also preclude other more productive uses of fishery resources.

(d) *Minimizing bycatch and bycatch mortality.* The priority under this standard is first to avoid catching bycatch species where practicable. Fish that are bycatch and cannot be avoided must, to the extent practicable, be returned to the sea alive. Any proposed conservation and management measure that does not give priority to avoiding the capture of bycatch species must be supported by appropriate analyses. In their evaluation, the Councils must consider the net benefits to the Nation, which include, but are not limited to: Negative impacts on affected stocks; incomes accruing to participants in directed fisheries in both the short and long term; incomes accruing to participants in fisheries that target the bycatch species; environmental consequences; non-market values of bycatch species, which include non-consumptive uses of bycatch species and existence values, as well as recreational values; and impacts on other marine organisms. To evaluate conservation and management measures relative to this and other national standards, as well as to evaluate total fishing mortality, Councils must—

(1) *Promote development of a database on bycatch and bycatch mortality in the fishery to the extent practicable...*

(2) *For each management measure, assess the effects on the amount and type of bycatch and bycatch mortality in the fishery...* Information on the amount and type of bycatch should be summarized in the SAFE reports.

(3) *Select measures that, to the extent practicable, will minimize bycatch and bycatch mortality...*

(ii) The Councils should adhere to the precautionary approach found in the Food and Agricultural Organization of the United Nations (FAO) Code of Conduct for Responsible Fisheries (Article 6.5)

(e) *Other considerations.* Other applicable laws, such as the MMPA, ESA, and the Migratory Bird Treaty Act, require that Councils consider the impact of conservation and management measures on living marine resources other than fish.

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### **National Standard 10 – Safety of Life at Sea**

*Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.*

Relevant Sections: (b) *General.* (1) Fishing is an inherently dangerous occupation where not all hazardous situations can be foreseen or avoided. The standard directs Councils to reduce that risk in crafting their management measures, so long as they can meet the other national standards and the legal and practical requirements of conservation and management.

(d) *Consultation.* During preparation of any FMP, FMP amendment, or regulation that might affect safety of human life at sea, the Council should consult with the USCG and the fishing industry as to the nature and extent of any adverse impacts. This consultation may be done through a Council advisory panel, committee, or other review of the FMP, FMP amendment, or regulations. Mitigation, to the extent

practicable, and other safety considerations identified in paragraph (c) of this section should be included in the FMP.

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<sup>i</sup> Other resources for NS4- Allocations:

- **Review of Laws, Guidance, Technical Memorandums and Case Studies Related to Fisheries Allocation** (Morrison & Scott, 2014)
- **Marine Fishery Allocation Issues Report** (Lapoint, 2012)
- **Allocation of Fishery Harvests under the Magnuson-Stevens Fishery Conservation and Management Act – Principles and Practice** (Plummer et al., 2012)