

## **NEFMC STAFF INPUT ON NMFS GUIDANCE ON CATCH SHARE PROGRAM REVIEWS**

This document contains input from the New England Fishery Management Council (NEFMC) staff on: ðDraft Guidance for Conducting Reviews of Catch Share Programsö (CSPs) distributed by the National Marine Fisheries Service (NMFS) to the Regional Councils on October 1, 2014. The deadline for comment by the Councils is January 29, 2016.

### **Key Comments**

1. It is unclear to what degree the guidance is intended to convey Catch Share Program review requirements vs. recommendations, i.e., the possible degree of latitude regions would have in conducting reviews.
2. 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.
3. The description of review team participants is too prescriptive, and regions should have the latitude to include, for example, external expertise on a team and/or contract support.
4. Interim reports are unnecessary and unfeasible given current resources and staff commitments.
5. Regions should have the latitude to conduct reviews when five years of fishery data is available, rather than be required to initiate the review within five years.

### **Explanation of Key Comments**

#### *1. Requirements vs. Recommendations*

The tone of the draft guidance is not suggestive, rather compulsory. It should be clarified which analyses are necessary and which are just suggestions. Without this clarity, the reader must peruse the multitude of references to determine what type of analyses could potentially be conducted. Additionally, it is unclear how a determination would be made that this guidance is being interpreted and acted upon appropriately. There are some instances where reviews are required by the Magnuson-Stevens Act, and others where reviews are encouraged by NOAA policy. The draft guidance does not clearly differentiate between those situations. It should be made clear that there is no legal requirement for review of a CSP that is not a Limited Access Privilege Program.

#### *2. Tailor and Narrow Review Scope*

The scope of a CSP review, if all the draft components are required or even strongly recommended, would be extensive and may 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 after. 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,<sup>1</sup> 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 (incl., vulnerability, resiliency and dependency of communities), and so on. While these analyses could 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 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.

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

The CSP review should focus on evaluating the CSP goals and objectives, and most content decisions should be delegated to the region. 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.

### 3. Review Team

Having a review team include staff from NMFS and the Council is good, but regions should have the latitude to include external/contracted expertise. 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 other external contractors as necessary. Also, it might be best if different entities 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).

### 4. 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 reviewed? 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 the 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 be a separate document from a SAFE report or AE.

### 5. Timing of Review

Regions 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 precludes 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)).

## **Other Comments**

### 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.

### 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, which should be clear in the planning stage.

### 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 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 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 is received. Furthermore, LAGC landings varied greatly during those years. While in 2009, the LAGC fishery was limited to 10% of the ACT, 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."<sup>2</sup> 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 analyses should not be part of the CSP review, especially since the actions that developed the CSP addressed these issues.

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<sup>2</sup> Guidelines for Economic Reviews of National Marine Fisheries Service Regulatory Actions, March 2007, [http://www.nmfs.noaa.gov/sfa/domes\\_fish/EconomicGuidelines.pdf](http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf), p.12

### *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, and many have left the fishing business altogether. Furthermore, given that CSPs do not generally include specific measures or goals regarding the activities of the historical participants who are no longer involved in the program, 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 in the guidelines 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.

### *Impacts of Leasing*

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. For example, 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.

### *Allocation Review*

Management actions that set allocations are very controversial and often take 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.”<sup>3</sup> This means benefits should be estimated relative to what would happen if no CSP is in place. The similar comment is relevant regarding the analysis of “disproportional impacts on small entities.” Again, these types of hypothetical retrospective analyses would probably be unfeasible.

#### *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. This should be clarified, as should the role of public input in determining review conclusions.

#### *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 should not be necessary 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.

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<sup>3</sup> Guidelines for Economic Reviews of National Marine Fisheries Service Regulatory Actions, March 2007, [http://www.nmfs.noaa.gov/sfa/domes\\_fish/EconomicGuidelines.pdf](http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf), p.12.