



**Mid-Atlantic Fishery Management Council**  
800 North State Street, Suite 201, Dover, DE 19901  
Phone: 302-674-2331 | FAX: 302-674-5399 | www.mafmc.org  
Michael P. Luisi, Chairman | P. Weston Townsend, Vice Chairman  
Christopher M. Moore, Ph.D., Executive Director

## MEMORANDUM

**Date:** August 2, 2023  
**To:** Council  
**From:** Brandon Muffley, Council staff  
**Subject:** Draft Comments on NMFS Advanced Notice of Public Rulemaking for National Standard 4, 8, and 9

### Background

On May 15, 2023, the National Marine Fisheries Service (NMFS) published an Advanced Notice of Proposed Rulemaking (ANPR) seeking comment on potential future updates to the guidelines for National Standard (NS) 4 (allocation), 8 (communities), and 9 (bycatch). It's been 25 years since the guidelines for the NS4 were last revised and 15 years for NS8 and 9 guidelines. Given the amount of time since the last revisions and an increasing number of management challenges, NMFS is seeking comment on those areas that may benefit from further review and/or update with a focus on climate-related impacts, including changes in stock distribution, and equity and environmental justice (EEJ) considerations. NMFS provided an [overview](#) of the ANPR to the Council at the June meeting.

Under the Magnuson-Stevens Act (MSA), NS4 states allocation decisions should not discriminate and will be fair and equitable to all fishermen, shall promote conservation, and no one individual/entity shall acquire excessive shares. As part of the climate-change considerations associated with NS4, NMFS is seeking input on the following specific areas: (1) allocation approaches that consider stock distribution changes and access for historical, marginalized, excluded, and new users, (2) revisions to reinforce [NMFS' Allocation Policy](#) to conduct allocation reviews, and (3) types of analyses and approaches to apply when making allocation decisions. For EEJ considerations as under NS4, NMFS is seeking input on potential approaches to improve considerations of underserved communities, previously excluded and new entrants in allocation decisions; and information and analyses that should be considered to ensure allocation decisions are fair and equitable.

NS8 states that proposed regulations and fishery management plans (FMPs) should consider the importance of fishery resources to fishing communities, shall provide for sustained community participation and, to the extent practicable, minimize adverse impacts to fishing communities. In seeking comments related to climate effects on NS8 considerations, NMFS is looking for input on opportunities to better account for environmental change, particularly changes in stock

distribution and abundance, and provide for increased adaptability of fishing communities to these changes. For EEJ considerations within NS8, NMFS is seeking input on potential revisions to the definition of fishing community, and suggestions to balance “sustained participation” in a fishery with the need to consider underserved communities, excluded and new entrants, and socially vulnerable communities.

NS9 states that proposed regulations should minimize bycatch and, if unavoidable, bycatch mortality, to the extent practicable. The ANPR states that as climate change continues to affect the distribution of target stocks, non-target stocks, and protected resources and create bycatch and management challenges. NMFS is seeking input on how NS9 guidelines could be revised to account for these changes. For EEJ considerations under NS9, NMFS is seeking comment on how bycatch can be minimized in a manner that is equitable across fisheries and gear types; and how to balance the needs of target and bycatch species equitably across fisheries and gear types, particularly fisheries for underserved communities.

### *Outcomes for August Council meeting*

During the August meeting, the Council will review draft comments and provide any additional feedback and information to be included in a comment letter. Council staff will utilize the draft comments and feedback from the Council during the August meeting and develop a comment letter for NMFS consideration to be submitted by the comment period deadline of September 12, 2023.

## **Draft Comments**

Below for Council consideration are draft comments identified by Council during their June Council meeting and those developed by Council staff. Comments are binned under overall comments that apply to all three NSs being considered and are provided for each of the three NSs and categorized as general comments or those specific to each priority issue (i.e., Climate Change and Equity and Environmental Justice) that NMFS has identified as comment areas of focus.

### **Overall Comments**

- A more clearly specified definition of “underserved communities” as it relates to fisheries, with examples by region, would be helpful in order to understand how NMFS and the Councils might evaluate management actions to ensure these groups/communities/entities have fair and equitable access to fisheries resources.
  - NMFS should evaluate these national standards and EEJ considerations in relation to a shrinking, ageing, and heavily regulated commercial industry. The ANPR should take a broader look at the issues facing the commercial industry and their ability to provide seafood for all Americans.
- If pursued, future rulemaking should identify what deficiencies in the fishery management process any potential revised guidelines are seeking to address and correct. In addition, NMFS should provide examples on how potential revised guidelines might affect current fishery management plan (FMP) considerations and future development.
- While some clarity to existing definition(s) or minor guidance adjustments to NS4, 8, and 9 could be helpful, the existing guidelines provide the Council with sufficient direction to

address current management challenges, including those challenges as a result of climate change, and include enough flexibility to consider future issues and priorities and, as such, should remain largely unchanged.

## **National Standard 4**

### *General Comments*

- Careful consideration will be required for any potential revisions to the guidance that considers opportunities for new entrants into a fishery, particularly for limited access IFQ/ITQ fisheries. Over the last few decades, a significant focus of fisheries management has been to reduce overcapitalization in many fisheries in order to help promote stock rebuilding. In many long-standing limited access fisheries, there are different barriers and limited ability to allow for new entrants without affecting existing participants.
- Although it may be beneficial to reference NMFS's Allocation Policy in the guidance, the need to modify the guidance in order to reinforce the policy doesn't seem necessary. Each Council has an approved fishery allocation review policy that requires the Council to periodically review allocations and consider the potential impacts of climate/environmental change and affected communities to determine if allocation changes are necessary.

### *Climate Change Related Comments*

- Past allocation decisions have been deemed as fair and equitable and the ANPR fails to describe how these allocations may now be unfair. Is NMFS considering some retroactive application of allocation decisions to account for climate change? Additional clarity on the perceived shortcomings of allocation decisions and how past and future allocation decisions should consider climate driven effects is needed.
- The current NS4 guidelines already allow for allocation decisions that analyze and account for shifting stocks. The Council has been considering, and already implemented, allocation decisions that consider climate driven distribution changes. Developing more prescriptive guidelines that would still allow for regional differences in biological and socioeconomic effects due to changes in stock distribution would make analyses and comparisons more difficult.
  - Changes in stock distributions should be taken into account, but that should not be the only consideration for access and allocation.
- The ANPR notes changing environmental conditions affecting stock distributions and abundances "have the potential to change the applicability of historical information and current regulations." It's likely true that these factors will change in their degree of applicability or relevance, but it should not be implied that these factors may become totally irrelevant, since historical information (e.g., landings) and the regulatory framework that was/is in place have a major influence in shaping the evolution of fisheries and communities.
- The ANPR discusses that existing/future allocations relying in part on "documented catch or landings during specific time periods" and the importance of this to "help participants maintain access to resources they have been dependent upon, and to document compliance with statutory requirements." For allocations with a spatial component, it may be helpful for the guidelines to more clearly differentiate between various "location" elements. For example, historic and current locations of catch vs. locations of effort vs. locations of landings are all important considerations with potentially different outcomes for allocation decisions.

## *Equity and Environmental Justice Comments*

- The ANPR does not articulate how EEJ considerations would promote conservation. The ANPR also fails to demonstrate how underserved communities have been excluded in the current process for making allocation decisions.
  - Similarly, more information and clarity on what is meant by “marginalized individuals who may have been inequitably excluded”. Are there existing problems with identified groups? Greater clarity and examples would help in developing comments on what analyses and approaches could be considered and evaluated.
- The essence of NS4 and existing guidelines are already aligned with EEJ goals. More prescriptive guidelines would likely result in noncompliance based on lack of economic data collection.
- Instead of revisiting all allocations decisions and changing the NS4 guidelines to address underserved and under-represented communities, NMFS should consider addressing these needs through outreach and engagement in the management process and increased representation on management bodies (e.g., Council members).

## **National Standard 8**

### *General Comments*

- The ANPR is considering removing language that states that NS8 “does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.” It’s unclear what the potential implications might be if this language is removed and additional clarity and information on why this suggested change is needed would be helpful.

### *Climate Change Related Comments*

- Current NS8 guidelines are sufficient to evaluate, consider, and address the effects of climate change on communities dependent on affected fisheries resources.

### *Equity and Environmental Justice Related Comments*

- General support for making some updates and improvement to the definition of “fishing community”, but caution against changes that make the guidance unclear and nebulous which could lead to decreased flexibility and adaptability to account for and address future challenges and changes within our fishing communities.
  - The MSA definition of fishing community includes both “dependence” and “engagement” and the guidelines should continue to consider and balance both as both components are important considerations in understanding the potential implications of a management action on the affected communities.
  - If the guidelines do shift to a focus on “engagement” over “dependence”, the language included needs to be clear as to what engagement means and how it will be measured to ensure the appropriate analysis and considerations can be evaluated.
- There is probably a lot of overlap between groups that would be considered under “sustained participation” and communities with high social/climate vulnerability. Is the ANPR proposing that

the revised guidelines might encourage special considerations for highly vulnerable communities?  
Additional clarification is needed.

## **National Standard 9**

### *General Comments*

- Without creating financial incentives, it's unclear how revised guidelines would provide anything meaningful to incentivize bycatch uses. Participants in a fishery can currently find other uses for bycatch, but markets will generally determine opportunities and business decisions.
- Where bycatch cannot be eliminated or reduced substantially, reducing waste should be a priority and NS9 revisions could also include guidelines on ways to do that.
- Additional clarity on the intent of "increasing provisions to document bycatch avoidance" is needed.

### *Climate Change Related Comments*

- Revised guidelines should include additional flexibility and approaches to deal with choke species, as well as ecosystem-based management approaches to reducing bycatch at a multispecies level.
- As climate-related impacts are likely to continue, the need to increase industry's flexibility to switch between species or retain species that may not have been their initial target (within conservation constraints) should be considered. Revisions to the NS9 guidelines could include elements that promote this flexibility in order to minimize regulatory discards.