



September 12, 2023

Dr. Wendy Morrison

National Marine Fisheries Service

1315 East-West Highway, Room 13436

Silver Spring, MD 20910

Dear Dr. Morrison,

In an ever changing marine and human environment, it is important to review and update the National Standards guidelines and utilize the opportunity to bring in additional information and lessons learned from decades of fisheries management under the Magnuson-Stevens Act. The Marine Fish Conservation Network applauds NOAA for its review of the standards and guidelines through the lens of climate change and equity and environmental justice to support equitable fisheries management. We appreciate the opportunity to provide insight on behalf of our members. Below you will find the Network's comments to National Standards 4, 8, and 9 for your review and consideration:

National Standard 4 Comments

Climate change has already affected U.S. ocean fisheries in significant ways. Warming waters are causing several fish stocks to significantly decline and experience record-low recruitment. Many stocks are shifting poleward to find more tolerable temperatures, and, in turn, the geographic distribution of many stocks is rapidly shifting from species' historical ranges to new regions. These shifts necessitate guidance on how to fairly and equitably allocate fishing privileges between historic participants and those who have recently acquired access to a fishery resource because of a range shift. Any allocation measure must promote conservation, and in the case of shifting stocks, guidance should emphasize the

vulnerability of leading and trailing edges of a shifting population and encourage spatial allocation strategies that ensure these edges are afforded adequate protection.¹

Natural disasters, such as hurricanes, ocean heat waves, and disease outbreaks, occur more frequently and with greater intensity with climate change, and in turn, affect the historical balance of ecosystems, creating a cascading effect of consequences in natural systems. Fisheries managers must consider such uncontrollable events when adopting management measures, such as annual catch limits, and seasons' lengths, and be prepared to move quickly in-season adjustments. Precautionary measures must be taken for species experiencing climate-related declines, including equitable measures to minimize the impacts of bycatch mortality of species under strain. When a directed target fishery is closed or substantially reduced, bycatch users of the same fishery must have reduction measures built into the fisheries management plan which are responsive to the status of the stock. If a directed fishery for any species suffers significant negative impacts due to bycatch of the relevant species in another fishery, the regional fishery management council with management authority over the bycatch fishery should set an annual cap on such bycatch, such that, when such cap is exceeded, the bycatch fishery is shut down for the remainder of the fishing year; any such bycatch cap shall be reset on an annual basis, and bear a direct relationship to the annual catch limit for the bycatch species. Allocation decisions should favor fishing gear and practices that result in lower bycatch and minimize habitat impacts, particularly impacts to species or habitat important to depleted or overfished stocks or known to be sensitive to disturbance.

We must also develop mechanisms that will provide coastal communities and fisheries-dependent businesses the means to better estimate economic losses attributable to climate-related environmental changes and acute and unanticipated environmental events, and we must design management systems that enhance coastal community resilience. Adapting fisheries management to climate change is no longer optional; it is inevitable. We need a proactive approach that can quickly adapt to the reality of our changing oceans and fisheries while buffering impacts to fishery dependent communities.

Recommendations and Actions for NS 4:

The Network recommends requiring the regional fishery management councils to consider changing marine ecosystems – including changes or shifts in fishery abundance and distribution – and the

¹ The East Coast Climate Change Scenario Planning Potential Action Menu recognizes that leading and trailing edges of a shifting stock warrant conservative management strategies. “As stocks shift their distribution, there may be advantages to managing the leading and trailing edge of a stock differently. For example, if stock genetic diversity is high at one of the edges, more conservative management may make sense. Similarly, if an ecological niche has been recently vacated in an ecosystem, then management may want to minimize fishing on a replacement species to ensure the replacement species is able to form a viable population in the new area. See <https://www.mafmc.org/s/ECSP-Potential-Action-Menu>, p. 28.

subsequent economic, social, and ecological impacts of these changes, in fisheries management decisions. NOAA should establish a process that, at the request of a regional council, allows the Secretary of Commerce to determine if a fishery extends beyond the jurisdiction of the council currently managing it and, in coordination with the relevant councils, determine the best council or councils to prepare a new or joint fishery management plan.

The NS4 allocation issues extend far beyond shifting stock considerations. NOAA guidelines for NS 4 should also incorporate NOAA's equity and environmental justice standards to ensure equitable allocations, clearly establishing the relationship between NS 4 and other national standards with particular attention to NS 8 and 9. NOAA's equity definition should be included in the "general provisions" section of the guidelines. Allocations can have substantial effects on bycatch ecosystems, and fishery dependent communities. Analysis of these impacts should be conducted in the context of NS8 and 9 objectives.

National Standard 8 Comments:

Fishing communities are intricately linked to the marine ecosystems on which they rely, and thus play a critical role in fisheries management. They support a suite of community-based, fishing-related activities (i.e., commercial, charter/for-hire, recreational, cultural and subsistence) and sustain the intergenerational fishing culture that forms the economic and social fabric of the coastal United States. Fishing communities must make significant and long-term investments in working waterfront infrastructure to provide for the sustained participation of the fishing community in adjacent fisheries while also adapting to the changes in fisheries and the environment. These fishing activities and investments support industries and infrastructure, chefs, eateries, seafood retailers, tackle shops, educational institutions such as aquaria and research laboratories, as well as generate an economic multiplier effect when revenue stays within a community.

The Network recommends National Standard 8 (NS 8) guidance be comprehensively updated to modernize councils' and the agency's approach to supporting fishing community resilience to climate change. Since last updated, coastal communities and working waterfronts across the country have significantly deteriorated, reducing their capacity to respond to climate change impacts and maintain viable fishing fleets. More robust climate and social impact analysis is needed to understand impacts and support actions that build coastal resilience and provide fishing communities with sustained access.

NOAA has added significant socioeconomic staffing capacity at its science centers, enabling the agency to approach community-based fishery issues in recreational and commercial sectors with far more sophistication than in the past. NS 8 guidance should also be updated to require councils to establish clear measures to assess and minimize any adverse socioeconomic impacts to fishing communities in fishery management plans (FMPs) while achieving conservation goals, and to adopt FMP amendments and take other regulatory actions that secure sustainable community participation in adjacent fisheries.

NS 8 currently requires conservation and management measures to provide for the sustained participation of fishing communities and to minimize adverse economic impacts on such communities. This standard should be strengthened to include clear measures that will minimize adverse economic impacts while achieving conservation goals, and secure sustainable participation in adjacent fisheries.

Specifically, the Network recommends strengthening National Standard 8 by requiring a fishing community plan that details how small fishing businesses will be accommodated and what strategy will be implemented to provide for the sustained participation of fishing communities. These plans could include any number of approaches that anchor access in communities such as caps on quotas, area and quota set-asides for community-based boats, permit banks, or fishery trusts. The plans would be designed by regional councils with the engagement of stakeholders to promote viable community-based fishing operations and healthy fishing communities for specific regions and fisheries under their jurisdiction, and to ensure that the communities are, in fact, granted sustained and meaningful access to adjacent fisheries over time.

Recommendations and Actions for NS 8:

Within the geographic location of a fishing community, this standard should also include measures to promote equity, environmental justice, and meaningful involvement of populations of underserved community members. Underserved fishing community members must have the opportunity to participate in, and inform the decision-making process, to improve representation by those marginalized in the fishery management process. The Network strongly recommends strengthening NS 8 to provide for the sustained participation of and protections for community-based fishermen and fishery dependent communities by revising the following language:

Suggested Language: (b) *General.*

(1) This standard requires that an FMP consider 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. When two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities in adjacent fisheries and minimizes the adverse economic impacts on such communities would be the preferred alternative.

NEW LANGUAGE: (2) Councils should adopt preferred alternatives that do not negatively affect the sustained participation of fishing communities in adjacent fisheries and should avoid alternatives that would result in the excessive allocation of fishing privileges to groups or entities that are not based in fishing communities. To determine whether such allocations are excessive, a Council should consider whether alternative allocation schemes would result in more equitable outcomes or reduce adverse social and economic impacts on fishing communities. The FMP should discuss the rationale for any adverse economic impacts to fishing communities.

We strongly recommend striking this sentence at b (2): This standard 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. This sentence contradicts the goals of NS8 and should be struck.

Require a fishing community plan. In addition to requiring development of a fishing community plan, this provision must detail how commercial fishing businesses and recreational fishing interests will be accommodated and what strategies will be implemented to provide for the sustained participation of fishing communities in adjacent fisheries.

The Network also believes **allocations should track changes in both fish abundance and in demographics**. For example, if the center of abundance of a stock shift significantly, ports closer to such a center of abundance should receive a greater portion of the catch, while ports farther away should see their allocations decline. This will benefit marginalized communities, which are less likely to have the long-range vessels needed to pursue retreating stocks but are dependent on readily accessible fish populations.

Previous users should not be closed out of a fishery but should not dominate allocations if fish are no longer readily available off such ports. The Network proposes the agency consider balancing shifting stocks with continued participation by granting the greater part of the quota to ports/states adjacent to the managed stocks and reducing quotas to ports/states no longer adjacent to such stocks; such approach would benefit new entrants into the fishery, who have lost their previous fisheries to climate change and cannot economically follow them north. One such example is the New England groundfish abandoning the upper mid-Atlantic and parts of southern New England; fishermen in New York and southern New

England, in many cases, can no longer profitably prosecute groundfish, but lack the quota needed to switch to species such as black sea bass that have shifted into their region. From an environmental justice perspective, underserved and less well funded fisheries will benefit most from that approach because they do not have the big trawlers that can travel hundreds of miles for fish. Dayboats are limited to the fisheries close to home and thus should be prioritized over vessels that are capable of traveling extended distances and stay at sea for a week or more.

National Standard 9 Comments:

Bycatch continues to be a persistent problem in fisheries across the United States. It is more than just waste—bycatch can have significant ecological, social, and economic consequences as well. In its revision of National Standard 9 (NS 9), NOAA should consider adding concrete steps to reduce bycatch and to prioritize and promote directed fisheries over bycatch uses. The Network’s position asserts that bycatch reductions should promote ecosystem health, protect historic directed fisheries for species otherwise caught as bycatch, and provide socioeconomic opportunities for fishery dependent and underserved communities. The Network is particularly concerned about bycatch and strongly recommends that the agency invest more work and attention to curb its harmful impacts.

In federal fisheries, bycatch often comprises species that fall outside of regional fishery management councils’ management plans or authority. Forage fish and marine protected species (e.g., marine mammals, seabirds, and sea turtles) are often bycatch. In many cases, bycatch in one fishery is a target species in another. In these instances, bycatch can directly limit harvest opportunities for another directed fishery and destabilize communities that depend on fishing, many of which are also historically underserved communities. Bycatch is typically a problem created by large, industrialized fisheries (e.g., midwater trawls for Atlantic herring and walleye pollock), which can incidentally kill more fish of a particular species than were traditionally caught in artisanal/underserved fisheries. For example, the walleye pollock fishery has been allowed a significant salmon bycatch allowance while Alaska Native subsistence salmon fisheries are completely shut down.

The Network notes that in some regions bycatch fisheries have been prioritized over traditional directed fisheries in management and decision-making. This has led to a decline in those traditional fisheries and the communities that depend on them, reducing their resilience to climate change as they are less able to pursue fisheries in more distant waters. Many of the community-based directed fisheries that are subject to bycatch, including anadromous and groundfish species, are also being rapidly impacted by climate

change. Addressing and elevating these concerns in the revision of NS 9 would better balance the needs of bycatch and target fisheries utilized by underserved communities.

The Network believes that a conscious effort must be made to stop and reverse these trends and to maintain coastal communities that are vital and diverse by reducing bycatch and depletion of the stocks. Currently, NS 9 requires that managers “reduce bycatch to the extent practicable.” The qualifying language for this requirement is broad, leaving a high degree of discretion and subjectivity in reducing bycatch. The Network recommends amending NS 9 to require greater reductions of bycatch in fisheries management and clarifying NOAA’s interpretation of the phrase “reduce bycatch to the extent practicable,” to remove opportunities for councils to circumvent bycatch provisions in FMPs and other policy directives, and thereby, improve stocks and traditional directed fishing opportunities.

For example, the North Pacific Fishery Management Council (NPFMC) struggled with determining the “practicability” of deep cuts to halibut bycatch, ultimately choosing smaller reductions than those offered by Alaskan officials and requested by coastal residents. The NPFMC reasoned that only small reductions of bycatch were practicable because anything greater would go beyond historic levels of bycatch and would cause economic harm to the groundfish fishery. In doing so, the NPFMC effectively allowed the groundfish fishery to define “practicable” by what it considered to be economically convenient.

Bycatch (and mortality) rates are often determined by the gear fishermen use and how they use it. Lower bycatch rates can be achieved with gear and fishing techniques that better discriminate between target and non-target species, or release bycatch with low levels of mortality. Fisheries using indiscriminate gear have higher rates of bycatch and mortality, thereby producing significant ecological and management costs compared to more selective ways of fishing. The Network recognizes that fishermen are often reluctant to switch gear or fishing techniques, because of the associated cost and effort, among other factors, and recommends NOAA work with the fishing industry to incentivize selective gear and facilitate gear conversion to transition to gear and practices that reduce bycatch.

Another issue is how bycatch is characterized in high-volume fisheries, typically as a percentage of the overall catch. While the Pacific pollock trawl fishery might only have a bycatch rate of two percent, and the bycatch rate of the Atlantic menhaden reduction fishery is smaller than that, two percent of two or three billion pounds of fish becomes a significant number and can constitute a large percentage of the overall catch of a given species.

Recommendations and Actions for NS 9:

In its revision, NOAA should consider adding concrete steps to reduce bycatch and to prioritize and promote directed fisheries over bycatch uses and low bycatch fishing gear over indiscriminate high impact fishing gear. The Network recommends NOAA revise NS 9 to consider the following:

Address the ambiguity associated with the phrase “to the extent practicable” in NS 9 by specifying that the standard is meant to drive improvements in current fishing practices that result in bycatch reductions *beyond levels that have been achieved in the past or levels that will cause little or no economic harm, and to value ecological, social, and cultural importance more appropriately.*

Revise the first sentence of subsection (b). In its current form, this sentence states that NS 9 “requires Councils to consider the bycatch effects of” management measures. The Network does not consider this language to be strong enough and recommends the sentence be amended to minimize bycatch. Instead, the sentence would read “This national standard requires Councils to minimize bycatch in existing and planned conservation and management measures.”

Standardize the definition of bycatch to read “fish which are harvested in a fishery, but which are not sold or kept for personal use, and which includes fish historically allocated to another fishery, economic discards, and regulatory discards.” 50 C.F.R. 600.350(c)(2)(ii) already excludes “Fish released alive under a recreational catch-and-release management program” from the definition of bycatch, and states that such management program “is one in which the retention of a particular species is prohibited.” Pursuant to such section, the release of a fish that could legally be retained by an angler, but which the angler voluntarily releases, is considered bycatch, even if the angler intended to engage in catch-and-release fishing when setting out onto the water. The distinction between a released fish that could not be legally retained—and is, in effect, a regulatory discard—and a fish that could be legally retained, but was voluntarily released, seems arbitrary, and does not support deeming voluntary releases to be bycatch.

Issue guidance and develop programs to reduce bycatch impacts directly, including programs that incentivize bycatch avoidance.

Require (and provide institutional support for) consistent improvements to monitoring and reporting systems to better quantify bycatch and provide guidance to encourage councils to establish full retention requirements for species with high catch mortality rates.

Prioritize and promote historic directed fisheries over bycatch uses.

Direct regional fishery management councils to **improve retention requirements for species with high catch mortality rates** and work with the regional councils and stakeholders to **establish community-based solutions, such as quota banks, to reduce bycatch.**

Work with councils and the USDA to **establish effective, workable seafood traceability requirements** that incentivize bycatch reductions.

Standardize accounting and reporting guidelines to ensure bycatch is accurately reported.

Accountability and reporting guidelines for bycatch vary from fishery to fishery, and many fisheries suffer from unobserved bycatch rates and poor bycatch data, which leads to significant uncertainty in stock assessments.

Allocate to and incentivize selective gear and facilitate gear conversion.

Establish effective seafood traceability requirements in all fishery management plans.

Characterize bycatch in absolute values (i.e., the pounds of fish incidentally taken), rather than as a percentage of a fishery's total catch.

NS 9 guidelines should be revised to **dis-incentivize the incidental catch of overfished, depleted, or low productivity stocks.** For example, the agency should consider requiring participants in a bycatch fishery for species included in a limited access privilege program to purchase quota to cover their incidental catch, even when retention is prohibited. We see such requirements currently being used in both the New England multispecies fishery and in for bluefin tuna bycatch in the pelagic longline fishery for swordfish and other tunas in the Atlantic, where vessels are prohibited from fishing if they do not hold sufficient quota to cover their bycatch.

In addition, the Network supports the following changes to NS 9 that would further incentivize reduction of waste:

Close fisheries during periods when bycatch is particularly high.


Favor low bycatch fisheries through allocation and regulation.

Favor fisheries that produce fish for domestic consumption, rather than for export or bait/industrial use (based on the definition of optimum yield, which prioritizes “food production” as a priority).

Conclusion:

The Marine Fish Conservation Network appreciates the opportunity to provide insight on behalf of our members and applauds NOAA for its review of the standards and guidelines and asks that the agency consider our comments to support equitable fisheries management.

Sincerely

A handwritten signature in blue ink, reading "Robert C. Vandermark". The signature is written in a cursive style with a large, sweeping initial "R".

Robert C. Vandermark
Executive Director