



MAFMC Public Input Webinar on NOAA Fisheries Draft 304(f) Procedural Directive

October 16, 2023

Webinar

The Mid-Atlantic Fishery Management Council's (Council) hosted a public webinar on October 16, 2023, at 2:00 p.m. The purpose of this webinar was to collect public input on NOAA Fisheries' draft procedural directive titled "Guidance on Council Authority for Preparing Fishery Management Plans for Stocks that May Extend across the Geographic Areas of more than one Council, pursuant to MSA §304(f)."

Attendees: Brandi Salmon, Travis Williams, Greg DiDomenico, Katie Almeida, Antionette Clemetson, Marian Macpherson, Meghan Lapp, Doug Gaston, Todd Smith, Fiona Hogan, Amanda Small, Michael Thompson, David Wallace, Joe Myers, Jeffrey Pike, Alexa Galvan, Paul Rago, Melanie Griffin, Morgan Corey, Bonnie Brady, Will Poston, Stephanie Hunt, Travis Williams, Kelly Whitmore. Council Staff: Kiley Dancy, Brandon Muffley, Mary Sabo, Chris Moore, Jose Montanez, Karson Cisneros.

Summary: Council staff opened the webinar with a brief overview of the draft procedural directive and its potential implications for Mid-Atlantic fisheries. Staff noted that although NOAA Fisheries is solely responsible for the development and potential revision of the procedural directive, the Council had decided to conduct supplemental outreach to ensure that all interested individuals are aware of the draft procedural directive and have an opportunity to provide comments. The following is a summary of the comments and questions provided during the webinar.

- The process should include consideration of stock status and/or whether there is a quantitative assessment available. Perhaps stocks should be disqualified from review and potential management changes if they are undergoing overfishing, are overfished, or the stock status is unknown.
- The document proposes using sets of 3-year averages as the baseline for evaluating some of the triggers. If the process results in redesignation of management authority, there is a 2-year transition period where no regulations other than specifications are allowed to be changed. That means there would be virtually no management during that time period. An amendment takes about 3 years to complete. If you can't implement it for two years, then by the next time the next Council can start doing anything, the fishery may be under review again. This could create a perpetual state of non-management.
- The procedural directive is predicated on the idea that stocks are shifting from one place to another and that there is a need to reassign jurisdictional authority for those stocks, but this ignores the fact that at least in the GARFO region there has been overlap for many stocks since all the Council FMPs were established in the beginning. Fluke, scup, black sea bass, and squid, have always been cross jurisdictional. The same is true for some

species managed by the New England Council, such as scallops. That's why we have one regional office.

- The shift of 15% of a proportion of landings as a trigger is very misguided and could create perverse incentives to try to land certain fish in certain places in order to trigger a review.
- How will the value of existing permits be taken into account? New York fishermen have had to purchase permits from other states in order to avoid regulatory discards. Transitioning to a different governing system will devalue these permits that fishermen have invested in. Providing landings flexibility will not address the potential devaluation of these permits that could occur under different management authority/Council regimes.
- Southern New England is at the confluence of the Mid-Atlantic and New England Council jurisdictions. It seems like stocks in this area will be continually in a state of flux. Depending on political influences, we could have a redesignation every 3 years potentially. This creates a lot of uncertainty.
- In Step 1, it says that NMFS will conduct a review using commercial revenue or recreational effort. Some species harvested by New York fishermen, such as summer flounder, are likely to be landed in the Mid-Atlantic region, but species like squid are more likely to be landed in Rhode Island because that's where a lot of the processors are located (New York does not have squid processors). So those squid are attributed to Rhode Island even though they are harvested by New York boats.
- What about divergent indicators – recreational effort and commercial revenue – how will those be treated?
- What exactly does “traditional knowledge” mean? There's no definition in the document. This should be clarified.

Enclosed on the following pages are additional written comments submitted to the Council after the public webinar.

November 9, 2023

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Ms. Janet Coit
Assistant Administrator, NOAA Fisheries
1315 East-West Highway
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Comments Re: Procedural Directive: Guidance on Council Authority for Preparing Fishery Management Plans for Stocks that May Extend across the Geographic Areas of more than one Council, pursuant to MSA §304(f)

Dear Administrator Coit,

NOAA Fisheries' Draft Procedural Directive, or "Climate Governance Policy", presents various challenging concerns for stakeholders and leaves much speculation as to how the agency's potential future use of the policy could impact both our vessels' fisheries and our company's long-term investments in these fisheries. Particularly when combined with NOAA's recent Advanced Notice of Proposed Rulemaking for the MSA National Standard 4,8 and 9 Guidelines, there appears to be a concerted agency effort to reallocate fishery access to "new entrants" or "previously excluded entrants" as well as corresponding management authority to new Council jurisdictions.¹ As the agency has been unclear as to any particular desired outcome of these actions, but has been clear that the administration's deadline for these initiatives is 2024, we continue to have concerns over what the implementation of these combined efforts could mean in the future for our captains, crew, shoreside facilities, and overall business.

The speed and lack of process for undertaking this Draft Procedural Directive, which has precluded any meaningful Council or public participation, is unsettling given the potential for such far reaching consequences of related decisions. The document describes various criteria, considerations, and data for designation of Council authority-some of which may actually be conflicting- but does not give clear indication of how many of these factors would be prioritized, balanced or weighed against each other in decision making, other than the will of the executive at the time pursuant to MSA 304(f)(1).²

From a practical perspective, the document raises various issues. For example, it states that "to prevent frequent transitions of management authority between Councils, NOAA Fisheries will use multi-year averages of the metrics described below", then proceeds to compare two sets of 3 year averages.³

¹ See our comments on the proposed revisions to the National Standard 4, 8, and 9 Guidelines here: <https://www.regulations.gov/comment/NOAA-HQ-2023-0060-0013>.

² As noted in page 2 of the Draft.

³ See page 3.

Later in the document, the agency states the “existing FMP and regulations should remain in place until superseded or amended by the responsible Council(s)” and “there is a presumption that, during the 2 year period following the revised designations, any modifications to allocations or permitting requirements”.⁴ This belies the fact that Council Amendments can take 3 years to complete. Theoretically, especially in areas where fisheries already exist across jurisdictional boundaries, there could be changes to management jurisdiction every 3 years, followed by a freeze on regulation for 2 years following the redesignation, and meaningful management could essentially be precluded for a fishery or a stock.

Another example is the greater than 15% shift in recreational effort identified by NOAA in the Draft Directive as one of the indicators affecting Council jurisdiction. After recently revising its MRIP numbers just a few years ago and taking significant management actions even affecting baseline allocations as a result,⁵ the agency announced in August 2023 that its new MRIP methodology for calculating recreational effort was actually 30-40% lower than the originally revised estimates, creating enormous uncertainty in the new agency numbers.⁶ In reality, it could be higher or lower, as the agency has no real benchmark for determining actual recreational effort. That 30-40% difference alone renders a 15% change in recreational effort undeterminable. Should it be used as “the best available science” at the time to justify a reallocation of management jurisdiction, the most likely result is further instability.

The document seems to overlook the fact that many commercial landings are driven primarily by regulation and not by stock distribution. For example, multiple commercial fisheries that used to exist in the Northeast Canyons Marine National Monument no longer exist in that area due to (1) Council and ASMFC/state by state regulations, and now (2) a commercial fishing ban enacted by Executive Order. Neither of these had to do with climate or stock distribution. The document ignores this reality. Furthermore, potential future offshore wind development as planned on the East Coast would cause many more geographic effort shifts would occur unrelated to climate, as various fisheries no longer able to safely operate in a wind farm would be forced to concentrate effort in the areas left, if able to do so given existing and/or future regulations. This is also ignored.

Additionally, the Directive document seems to conflate the idea of “fishery”, defined per the MSA as “(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and (B) any fishing for such stocks” with solely where associated landings occur. For example, the document identifies “A shift of greater than 15% in the proportion of a fishery’s landings” as a significant change worthy of redesignation, regardless of if the distribution of the stock itself or fishery footprint has changed. Therefore, a purely economic decision by a single entity could result in redesignation management authority regardless of stock biology or location of fishing effort.⁷

⁴ See page 8.

⁵ See [Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment — Mid-Atlantic Fishery Management Council \(mafmc.org\)](#).

⁶ See [NOAA+Presents+Key+Findings+of+Recreational+Fishing+Effort+Study.pdf \(squarespace.com\)](#) and [August 2023 Council Meeting — Mid-Atlantic Fishery Management Council \(mafmc.org\)](#).

⁷ This has in fact happened in the past. A single economic decision resulted in the port of New Bedford having 0% of U.S. illex landings prior to 2016, (see Table 14, page 63 at [Illex-EA-DRAFT-2022-04-12.pdf \(squarespace.com\)](#)) to that port receiving 30% of landings in 2019 (see Table 1, page 7 at [c 2020 Illex AP Info Doc.pdf \(squarespace.com\)](#)).

There is no acknowledgement of or provision to prevent this type of situation. This is particularly concerning when taken into consideration with the National Standard Guideline revision focus on “new entrants” and “previously excluded entrants”, which could allow speculative investments by new fishery entrants to shift management jurisdiction. Economic decisions should not be rebranded as climate driven stock shifts.

The conflation of purely landings or landings revenue with the MSA definition of “fishery” is repeated throughout the document. For example, under the heading “presumptions pertaining to designations”, the Draft states, “If between 40% and 75% of a fishery’s landings revenue accrues to.... another Council’s jurisdiction, there is a presumption that NOAA Fisheries will either assign joint management authority to the two Councils or assign multiple Councils to develop multiple FMPs.” These criteria alone would automatically result in changes of management authority for both squids and butterfish. Seafreeze vessels alone are responsible for the vast majority of U.S. butterfish landings and were responsible for 40% of all illex landings in the U.S. over nearly a 20-year period, with individual years up to over 80% of illex landings,⁸ all of which are landed in New England. Yet the fisheries themselves are managed by the Mid Atlantic Fishery Management Council and take place both in New England and Mid Atlantic waters, as does the longfin squid fishery. This is not a new phenomenon but has been the operation of the fisheries themselves, per the MSA definition, for decades. That is not climate driven stock shifts, as is supposedly the impetus for the Draft. While we would be supportive of Rhode Island representation on the Mid Atlantic Council for these species, a situation that has existed for decades should not automatically result in redesignation of Council jurisdiction under the “climate” moniker. Additionally, if the agency were to require multiple Councils to develop multiple FMPs for the same stock/fishery, as noted in the Draft, this would contravene the MSA requirement that an individual stock “be managed as a unit throughout its range” and would seem to be illegal.

The premise of the document does not account for the reality that many stocks already historically have crossed jurisdictional boundaries, not just within the United States but including beyond our borders, even prior to U.S. federal fisheries management. For example, the commercial illex squid fishery has existed off the East Coasts of both the U.S. and Canada since the 1970s, both prior to and following the establishment of fisheries management by both countries in 1977.⁹ The footprint of the U.S. fishery can extend from the southern Mid Atlantic to the New England U.S./Canadian border, as evidenced by NOAA Fisheries’ illex mesh exemption area,¹⁰ with the Canadian fishery off of Newfoundland monitored by Canada’s DFO.¹¹ Despite the illex squid fishery extending both historically and currently into Canada, the Mid Atlantic Fishery Management Council has managed the U.S. illex fishery since 1978.¹² The footprint of the fishery and resource itself has not changed over time, and our vessels have engaged in this fishery for nearly forty years. The mackerel fishery has also always spanned

⁸ See our comment letter on page 42 out of 49 at [Tab04 Illex-Amendment 2019-10.pdf \(squarespace.com\)](#).

⁹ See Hendrickson and Showell, “ 2019 Assessment of Northern Shortfin Squid (*Illex illecebrosus*) in Subareas 3+4”, NAFO document Serial No. N6973 SCR Doc. 19/042.

¹⁰ See [Illex Fishery Mesh Exemption Area | NOAA Fisheries](#).

¹¹ See [nf.21.261 Opening of the Squid Fishery in 2GHJ, 3KL, 3Ps, 4R3Pn - 2021 Orders \(dfo-mpo.gc.ca\)](#) and [2021 Volume of provincial landings \(dfo-mpo.gc.ca\)](#) and [Landings and Landed Value by Species \(dfo-mpo.gc.ca\)](#) and [Regional Statistics - Fish Landings and Landed Values \(dfo-mpo.gc.ca\)](#).

¹² See [SMB Squid Original Plan.pdf \(squarespace.com\)](#) and [Mackerel, Squid, Butterfish — Mid-Atlantic Fishery Management Council \(mafmc.org\)](#).

the U.S./Canadian border, and U.S. fishery management must account for Canadian landings while setting U.S. catch limits.¹³

The same is true for Council “boundaries”. The document seems to ignore the fact that stocks and fisheries, particularly in the Southern New England region, have always crossed between the boundaries of the Mid Atlantic and New England Fishery Management Councils. To our knowledge, not one managed species of either Council remains entirely within the boundaries of the Council assigned management authority, with the exception of certain groundfish. This is why the NOAA Fisheries office designated to deal with both Councils and associated fisheries permits is the Greater Atlantic Regional Fisheries Office, which authority spans both Council jurisdictions. Most vessels operating in the region possess permits for fisheries managed by both Councils. Landings are often split between both jurisdictions as well. This is not a new phenomenon. Yet the Draft Directive document automatically assumes review of all of these fisheries. For example, “Outcome 3: There is one fishery that extends into areas of authority for more than one Council. NOAA Fisheries may designate a Council or Councils to be responsible for developing the FMP.” This Outcome 3 is essentially applicable to every fishery in the GARFO region and would automatically trigger review. This is not appropriate. The document goes on to say that if the Councils “fail to act within a reasonable time, NOAA Fisheries may take action” under MSA Section 304(f). What constitutes a reasonable amount of time for fisheries that have always crossed Council jurisdictional boundaries, for which an entire agency office was intentionally designed to accommodate? This effectively appears to indicate that whatever fishery in the GARFO Region that the agency wishes to reassign, it could do at any time, based on whichever factors listed in the document it wished to use. This could highly politicize fisheries in the region going forward, depending on various interests and political positions at any given moment. While Council coordination on various stocks may be beneficial, frequent use of executive authority would not be.

The document also belies the complexities of management on the East Coast and the implications of what it would mandate. For example, in the “Presumptions pertaining to designations” the Draft Directive dictates that if more than 75% of a fishery’s landings revenue accrues to another Council’s jurisdiction, that NOAA Fisheries will assign management authority to another Council.¹⁴ If this were to be the case, take River Herring, which is jointly managed by the ASMFC and the Mid Atlantic Fishery Management Council. The only robust commercial fishery for River Herring approved under the ASMFC is for the state of Maine.¹⁵ This would require the Council oversight of River Herring to be transferred to the New England Fishery Management Council under the Draft Directive. But should that happen, how would that impact Mid Atlantic Fishery Management Council membership, as the state of Pennsylvania, which has no marine coastline, holds multiple seats on that Council specifically due to anadromous species such as River Herring? Would Pennsylvania no longer hold a seat on that Council?

The final, and real, issue is the question of what problem exactly is the agency trying to solve by such a sweeping document focused, essentially, on executive authority rather than on interagency or Council cooperation. As noted by the October 6, 2023 Council Coordination Committee letter to NOAA Fisheries regarding the Directive: “Although major changes in management responsibility may be warranted in some circumstances, the CCC believes such changes should only be considered when there is a well-defined governance problem that the Councils have been unable to resolve with a less

¹³ See [Mack staff memo 2023.pdf \(squarespace.com\)](#).

¹⁴ See page 7.

¹⁵ See [species - Atlantic States Marine Fisheries Commission \(asmfc.org\)](#).

disruptive approach.” As the agency has not identified any specific current instance or issue as an example of necessitating the processes outlined in the Draft Directive- which as noted earlier can be vague and conflicting insofar as which sets of information will take precedence or dictate authoritative action, other than the focus on 304(f)(1) authority- and as the agency has not allowed for meaningful levels of Council or public input, it is difficult to offer directed comment on agency intent of future application. From a stakeholder perspective, some applications might be beneficial, some applications might be disastrous, and the lack of specificity or account for realities of fisheries management and problematic issues we have identified in some of the examples given in the document leave us in significant uncertainty as to what the future holds for our vessels, our facilities, and our investments should the agency adopt this Directive. Unintended consequences are often more impactful than direct intent, and neither seem to have been seriously examined during the quick development of this document.

Therefore, we respectfully request that the agency extend its timeline for this action, conducting detailed economic analysis on direct and indirect fisheries impacts should the Draft Directive be moved forward, analysis on the procedural and administrative impacts on the Council processes as could arise from frequent changes of jurisdiction, provide concrete examples of what the agency is attempting to achieve, and narrow the document focus accordingly. A narrower and more defined rationale and problem statement, with associated examples, would enable better comment. We also request that the agency address the scientific and procedural issues raised by the MAFMC SSC review of the policy,¹⁶ as well as any issues raised by other regional SSCs and Councils. Working through concerning issues and resolving those issues in a comprehensive manner is more important than finalizing a policy for the sake of expediency. We request that if this is not possible, that the agency suspend development of the action. If the agency intends to make sweeping changes to U.S. fishery management, MSA reauthorization is a more appropriate tool than an internal agency Procedural Directive.

Thank you for the opportunity to comment.

Sincerely,

Meghan Lapp
Fisheries Liaison, Seafreeze Shoreside and Seafreeze Ltd.

¹⁶ See [2_Final+SSC+response_Climate+Gov+Policy+TORs_July+12_+2023.pdf \(squarespace.com\)](#).

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Comments: Please accept these comments on behalf of Sea Watch International, Ltd. regarding the Draft Guidance on Preparing Fishery Management Plans for Stocks that May Extend Across Multiple Geographic Areas. Comments will also be sent directly to the NOAA Office of Sustainable Fisheries.

Three-year averaging is an exceedingly short amount of time to make a management determination for surf clam and ocean quahogs. Global warming induced shifts and possibly resurges in fishable concentrations surf clam happen over time scales longer than three years. Ocean quahogs are an extremely long-lived species. Ocean quahogs have always existed in fishable concentrations throughout the entirety of the MAFMC and NEFMC. The most recent assessment cycle for surf clams is currently four years. The assessment cycle for ocean quahogs is most recently six years. Even a six-year average would only capture at least one assessment. It is likely that multiple assessment cycles would be required to even begin to consider reassignment of management responsibility to another FMC.

Splitting oversight of species historically managed under one FMP could be peculiarly disruptive, given the extended history and expertise of stakeholders and managers under a single FMP, shared harvesting and processing infrastructure, and interactivity of these products in the market. This is a possible scenario if the draft guidance is applied as drafted.

Life histories of surf clam and ocean quahogs both influence management strategies and are influenced by the impacts of climate change. Many decades of regionally based knowledge and infrastructure are built around a single FMP under the management of the MAFMC. Considering these points, we support Council oversight as it currently exists because this existing management scenario has produced a sustainable outcome for the surf clam and ocean quahog fishery. Applied as proposed, managers and stakeholders may be spending an inordinate amount of time in a regular state of jurisdictional transition, which would detract from the responsibility of managing and prosecuting the fishery. We strongly encourage consideration of any changes to existing management strategies for the surf clam and ocean quahog fishery be made with an exceedingly long-term perspective in mind.



November 17, 2023

Ms. Janet Coit
Assistant Administrator, NOAA Fisheries
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Silver Spring, MD 20910

Procedural Directive: Guidance on Council Authority for Preparing Fishery Management Plans for Stocks that May Extend across the Geographic Areas of more than one Council, pursuant to MSA §304(f)

Dear Ms. Coit:

On behalf of our family-owned, vertically-integrated seafood harvesting and processing company, our 200 plant and vessel employees, and the independent fishermen who work with us in producing sustainable seafood from the Atlantic Ocean, from Cape May, NJ, we thank you for the opportunity to comment on the proposed Procedural Directive.

We request that the Agency suspend development of this Procedural Directive. The changes proposed in this action are so extensive, including serious economic, biological, and social impacts, that the only proper course would be to consider these issues via MSA reauthorization and the transparent, deliberative process provided with Congressional action.

We are truly disappointed with how poorly this action has been developed. It lacks concise examples of what the Agency would like to accomplish; barely acknowledges the many procedural and administrative impacts that would follow; and fails to recognize the potential for serious scientific conflicts. In fact, numerous criticisms came directly from the MAFMC SSC review that identified serious scientific and procedural issues with the Directive.

The draft Directive is careless and void of oversight. The absence of meaningful Council or public participation is obvious, despite the seriousness of the topic. The draft policy allows for the discretion of a future NOAA executive or Secretary of Commerce to implement it using various future criteria, which can't be identified today, and leading to some potential re-designation of Council authority in the NW Atlantic region. This is outrageous with the potential for political decisions that would follow being, simply, unacceptable.

The Draft Procedural Directive relies upon two premises for its justification; those being “boundaries” and “landings”. However, the draft policy does not account for the reality that many stocks already, historically, have crossed jurisdictional boundaries, not just within the United States but including beyond our borders, even prior to the time before U.S. federal fisheries management was implemented.

The Directive ignores the fact that stocks and fisheries, particularly in the Southern New England region, have always crossed between the boundaries of the Mid Atlantic and New England Fishery Management Councils, which is why Council members from both regions sit on each of the Council’s species management committees today.

In the case of “landings”, with so many influences on where commercial landings occur, including variable local market conditions, availability of shoreside infrastructure, management, and allocations, how does the Agency think this is a reliable metric to use in constructing a new future? In our opinion, this makes commercial landings revenue an inappropriate metric for assessing long term trends in catch location or species availability. Furthermore, when evaluating commercial landings, it is important to consider differences between the location of landings and the location of catch. For example, most of our fishing vessels hold permits from a variety of Atlantic coastal states and continue to catch in one place and land in another, in taking the opportunity those permits provide to us. This is common knowledge and yet the Agency, by not clearly articulating this weakness in this proposed action seems to ignore these facts, currently being fully addressed by the existing makeup of, and the collaboration between, the MAFMC and NEFMC that we have witnessed for decades.

Lund’s Fisheries has made major investments in U.S. fisheries, with our company celebrating its 70th year in business in 2024. We have participated in the state, federal and interstate regulatory process, and supported the cooperative fisheries science process, for decades, as our company grew and remained resilient to the always changing landscape. Lund’s has adjusted to difficult agency policy decision through planning, hard work and significant investments on behalf of our employees and fishermen and women throughout that time. **We feel strongly that this Procedural Directive jeopardizes our business, dilutes our investment, and threatens our employees’ future as seafood producers.**

Thank you for your attention to and your consideration of our concerns. Please do not hesitate to contact me for additional information, at any time.

With best regards,

Wayne Reichle

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