



# SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

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November 16, 2023

Ms. Marian Macpherson  
National Marine Fisheries Service, NOAA  
1315 East-West Highway  
Silver Spring, MD 20910

Dear Ms. Macpherson,

Thank you for the opportunity to comment on the draft 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)*” (Directive). The South Atlantic Fishery Management Council (SAFMC) appreciates the extended timeline for considering this Directive and the multiple discussions held through the Council Coordination Committee (CCC). Ensuring governance aligns with stocks is important, as is providing information to councils on how the National Marine Fisheries Service (NMFS) will evaluate the geographic area of stocks and make governance decisions. The SAFMC also agrees that it is important to retain stability in governance decisions and to provide guidance and clarity on this important topic. As these comments will detail, the draft Directive as currently provided does not provide adequate guidance on a number of critical issues and may not provide the necessary stability in governance.

## General Comments

The SAFMC supports the prior comments of the CCC on the Directive. In particular, NMFS is encouraged to support the motion from the October 2023 CCC meeting to engage all of the Regional Fishery Management Councils (Councils) and the CCC to develop a revised Directive addressing the many concerns raised by the CCC, Councils, and Council advisors. A cooperative effort between those developing the Directive (NMFS) and those subject to the Directive (the Councils) offers a transparent and efficient approach to resolve the many concerns raised by the CCC and Councils and to provide needed clarity for the governance decision process. Engaging the Councils in developing details is more likely to result in a process that works for all parties, inclusive of the Councils, constituents, and NMFS.

One reason for the ongoing dissatisfaction with the Directive is that it was developed and provided to the CCC for consideration without any prior discussion or indication of problems

and deficiencies in the approach for assigning council governance. Put simply, what problem is the Directive attempting to solve? The Directive starts by stating NMFS has identified a need for guidance but then fails to share any details on how the current process was evaluated nor what is lacking in the existing process. Councils were not asked in advance about past governance issues or developing climate related concerns. Governance is now assigned for several hundred stocks nationwide in ways that predominantly work for both the agency and Councils, and NMFS has not indicated why the process used previously is now considered inadequate. First identifying a problem with the existing approach, including asking Councils if there are governance issues that prohibit their meeting Magnuson-Stevens Act (MSA) requirements, would clarify the the need for the Directive.

Another general concern with the Directive is a lack of clarity on the intent and purpose of the document – is it a policy directive or procedural guidance? There is a difference according to the NMFS Policy Directive System: “Policies state NOAA Fisheries directions and objectives and explain why they exist”, and “Procedures provide guidance for how to apply the direction and objectives stated in policies. They are written as instructions or manuals.” It is unclear as to which of these needs the Directive addresses as evidenced by the concurrent references during CCC discussions to both policy and procedural guidance. The document refers to itself as a policy in the introduction, but the title suggests it is a procedural directive. Prior discussion at the CCC highlighted the lack of detail and specificity in the technical guidance components of the document, indicating that the current Directive does meet the instruction manual ideal of a procedural guidance. This lack of detail adds to the difficulties in adequately evaluating the draft Directive and in providing clear suggestions on how to resolve concerns.

Developing a procedural guidance document that will serve as an effective instruction manual to evaluate shifting stocks and fisheries will undeniably require considerable effort. The effort is necessary and worthwhile to ensure that Councils know how decisions will be made and what information they will be based on, and to ensure that governance changes are not made in response to short term trends, cyclical changes, and incomplete data. Identifying and then addressing true shifts in stock distributions will be challenging and require consideration of many data sources as indicated. Differences in both fishery dependent and fishery independent data collection systems across NMFS regions will add to the difficulties, as will differences in data collection across fishery sectors. Without consistent data collection it may be impossible to determine if changes in the chosen metrics are due to actual stock and fishery shifts or to different data collection approaches. Such data differences are already causing assessment issues in stocks such as Cobia and Spanish Mackerel in the South Atlantic. The NMFS DisMAP project, designed to illustrate stock distributions and shifts, is unable to illustrate shifts between the Southeast and Northeast regions because of differences in survey methods. Additional

consultation with technical experts on both stock identification and species movements, as well as with data program managers who know what is available for each region, is required to address long-standing regional differences and provide the additional technical details that are needed to apply the policy and elevate the directive to an effective instruction manual.

### Comments on Specific Sections

*Step 1 of Section III* indicates in *Part a* that the agency will conduct a review if various criteria specified in *Part b* are met. This inherently implies there will be monitoring of the criteria. The SAFMC is concerned that the significant additional work required to monitor fisheries and fish stocks to determine if distribution shifts are occurring will further erode NMFS' ability to meet basic monitoring demands. The Directive provides no details on which branch of NMFS will conduct this monitoring nor how often the criteria will be evaluated. Concerns regarding the additional workload this process entails are based on ongoing difficulties meeting analytical and data needs. When discussing both assessment and fisheries management priorities, the SAFMC is regularly informed by the Southeast Fisheries Science Center and Southeast Regional Office that personnel resources are inadequate to meet current demands. The SAFMC has also been regularly warned in recent years that increased agency resources in the future are unlikely and to therefore expect cuts in monitoring programs, data delivery for assessments and FMP analyses, support for FMP analyses, and assessment productivity. To address this reality, the SAFMC has been advised to consider simplifying and reducing assessment demands by accepting greater use of interim or simplified assessment models, and to develop ways of streamlining management procedures to deal with inadequate resources and capabilities. These warnings of future inadequacies are added to chronically inadequate information. A few examples of current inadequacies include the following: nearly 75% of stocks managed by the SAFMC are unassessed; NMFS' inability to provide SAFE reports as required by the MSA; survey values and estimates of discard losses are only provided when stocks are assessed (far too infrequently); and progress on critical climate documents such as Climate Vulnerability Analyses and Ecosystem Status Reports lags other regions. The SAFMC cannot help but wonder where, in an already overtaxed system, the additional capacity exists to regularly monitor a broad range of metrics across fisheries and stocks and regions.

*Part b of Section III Step 1* of the Directive addresses the specific criteria to use to indicate the need for a governance review. The SAFMC strongly agrees with the need to avoid frequent transitions in governance and is concerned that the indicators provided and data available to evaluate those indicators are not adequate to meet that important goal. Any evaluation of landings, revenue, effort, or stock abundance across Council jurisdictions, and thus NMFS regions in the case of the SAFMC, will suffer from considerable data issues that plague the Southeast Region. Simplistic approaches applied as a rule of thumb across all stocks, such as

percentage triggers and multi-year averages, are not adequate to address the challenge of identifying a significant shift in something as complicated as a stock's distribution. In practice, considerable effort is required to identify a stock's range for use in stock assessments, involving extensive analysis of genetics, life history, and fishery data sources.

There is no justification for selecting 3-year averages or 15% as an indicator of significant change. Using adjacent time periods used to evaluate changes in a stock's geographic scope is unlikely to provide adequate contrast and resolution to overcome the inherent noise of the available data, and time periods should be separated by enough years to avoid introducing bias from short term events and climate cycles such as El Niño. Some data collection programs, such as the Marine Recreational Information Program (MRIP), are not capable of providing resolution to evaluate changes on the order 50%, much less to evaluate a change of 15%. This program, in fact, struggles to provide certainties greater than 50% for catch estimates of many stocks managed by the SAFMC. In CCC discussions on the proposed averages and percent change values, NMFS indicated these values were added as examples and other values could be used when applying the process. There is risk in this approach if the Directive is presented in the future as a Procedural Guidance, given such document's stated intent to serve as a manual or handbook, because those applying the guidance can be reasonably expected to follow the directions given rather than read between the lines to infer how the directions should be followed.

*Part c of Section III* Step 1 lists various data sources that could be considered for evaluating fishery shifts. While providing an extensive list is useful, many of the datasets lack the spatial resolution that will be required to evaluate shifting stocks and fisheries, particularly across NMFS regions. The lack of spatial resolution is an issue the SAFMC has noted in prior comments on climate related topics as limiting its ability to develop an adequate climate baseline from which to identify stock and fishery shifts. Concerns with the reliability of recreational estimates provided by MRIP increase when the data are analyzed at smaller spatial scales. Moreover, while NMFS and the Councils are rightly concerned about stocks shifting into different jurisdictions, the data available to evaluate these shifts are not consistent across NMFS regional boundaries. Both fishery dependent and fishery independent data collection systems administered by NMFS are regionally designed and implemented. As a result, they vary considerably in their compatibility for comparing trends across regions. Several of the data sources that are likely informative for stock shifts, such as fishery independent surveys, observers, and VMS, do not exist in the Southeast Region for many species managed by the Council. As noted above, the DisMAP portal, while appreciated for the effort made to address shifting stocks, is unable to address stocks that shift across NMFS' own regional jurisdictions.

Consideration of stakeholder information is encouraging and such sources are emerging as useful indicators of climate change. The challenge lies in incorporating such information into fisheries decisions while complying with standing mandates such as the use Best Scientific Information Available (BSIA). Life history and genetic data should be added to the list to be considered, as these data sources are regularly considered when stock assessments look to define stock ranges. Data concerns highlighted in this section of the Directive apply broadly, including the data used as described here for *Section III Step 1* to determine if an evaluation is warranted, as well as the data used in *Section III Step 2* to conduct the evaluation and support a governance decision.

*Step 2 of Section III* addresses the process for determining a fishery's geographic scope. *Part a*, "Roles", reiterates some of the authority language addressed in *Section II*, but offers little else to define the roles played by the various entities involved. Notably lacking in this section are details on which components of NMFS will be involved and what roles they will play, how the Councils and their advisors will be involved, the role of states and their agencies, and where in the process constituents can provide input.

The SAFMC agrees that governance should align with fisheries and fish stocks to the extent practical. Up until *Part c of Section III, Step 2*, the focus on fisheries, stocks and where they occur has been consistent with this concept. Any factors that are important to determining the geographic scope of a fishery should be included in the prior listings of information to consider. A greater concern is that the additional criteria listed in this section are not clearly relevant to the question of where a fishery occurs in space, thus considering such criteria in the decision making process could lead to overstepping on the question of geographic scope. For example, if NMFS objects to the goals of a Fishery Management Plan (FMP), it should address that with the relevant Council through the MSA process, not by changing governance to a Council having goals it prefers. The caveat of "if any" relative to FMP goals and objectives is concerning, as NMFS should probably not approve an FMP that lacks at least a goal and objective. The need for conservation and management is critical to deciding if a stock needs to be in an FMP and should be determined prior to and separate from decisions about governance. Its relevance to which Council is responsible for that FMP is not evident. In fact, whether there is a need for conservation and management should be the first decision made as there is no need to pursue anything else in this Directive if the answer is "no". Management efficiency is neither defined nor described in the Directive, however, it should be defined to provide clarity on how it is measured and how it is applicable to the question of a fishery's geographic scope. The efficiency with which a given council can interact with the constituents in a fishery could be relevant to governance. However, considerations of one Council having a more efficient process than another are not appropriate for governance decisions, particularly given the influence of NMFS itself, through Regional Offices and General Counsel, on Council practices. Additional fishery

traits that should be included in standard lists of items to consider in *Steps 1* and *2* include infrastructure and genetics.

In *Section III, Step 2, Part d*, allowing the Councils to review the governance decision and supporting justification and provide a recommendation should be a requirement, not an option NMFS “may choose.” Additionally, allotting “up to 6 months” for Councils to provide a fishery identification recommendation is wholly inadequate. If Councils existed in a perfect world, with efficient and equal access to reliable, straightforward information that was consistently collected and managed across regions with acceptable levels of precision; if Councils were not already resource limited and forced to make hard decisions about priorities and workloads; and if this world was not governed by specific meeting noticing requirements and an expectation for consulting advisors and providing constituent involvement in fisheries decision making, then perhaps 6 months would be adequate. Councils will need to evaluate the data provided by NMFS, develop recommendations with the involvement of their technical advisors (i.e., Scientific and Statistical Committees), include their fishery advisors who will be directly impacted by these governance decisions, and have time to review input from these groups and the public. Considering the importance of governance decisions, the simultaneous complexity and paucity of the available data and associated analyses, and the intent to avoid frequent governance changes, Councils should be allowed at least 12 months to develop a recommendation. Further, if governance outcome changes are significant, such as wholly shifting responsibility from one Council to another for an entire stock or FMP, greater time should be allowed for all affected Councils to fully participate and vet the recommendation.

Direction and guidance should be added to the Directive to address BSIA and peer review requirements. As indicated in both the Directive and these comments, defining the geographic scope of a fishery is a potentially complex question that can involve many sources of information considered across both time and space. Multiple Councils and NMFS offices are likely to be involved in the analysis and decision and ultimately impacted by the outcome. This decision will involve defining the biological stock to determine the unit of fish that needs to be managed, defining the fishery to determine the sectors and constituents that interact with the stock, and finally determining whether either have shifted their geographic scope over time. Despite this considerable complexity, the Directive makes no mention of addressing the principles of BSIA or providing for peer review as required in NS2.

In *Part a, Step3, Section III*, Councils are again allowed 6 months to develop an important recommendation. This allowance is inadequate for a single Council to fully evaluate a proposed governance, much less involve stakeholders and develop a recommendation. It is a wholly inadequate time allowance to develop a coordinated, multi-council response as suggested. Councils should be allowed at least 12 months to develop a response, with additional time if the

NMFS recommendation involves shared governance by multiple Councils. Finally, establishing a one-size-fits-all allowance of this type *a priori* ignores the vast range of situations that can arise in assigning governance responsibility. Governance for a new fishery falling under “Outcome 1” may be resolved in 12 months. The situation will be much more complex and require more time if a fishery that existed before the MSA and has been managed by a single Council since the MSA was implemented is newly subject to an “Outcome 2” or “Outcome 3” determination. Because each situation has the potential to vary widely, Councils should be allowed to develop a plan of work to review the basis of the governance recommendation, consult with stakeholders and other councils if necessary, and develop a designation recommendation. The time this takes should be determined by the complexity of the situation and the level of management disruption expected from the governance change, not by arbitrary timelines apparently chosen to compel a rapid solution to a long-developing problem.

There is confusing overlap in Section III, *Step 3*. First, it is not clear how the “Designations” of *Step 3* (also listed as a “Part a”) differ substantially from the “Outcomes” of *Step 2*. The “Designations” bring in the idea of an FMP, but otherwise the result is the same for each numbered possibility. The issue may be that the *Step 2* “Outcomes” address the fishery’s geographic scope as well as Council authority, leaving little else necessary to define in a “Designation” under *Step 3*. Given that the FMP development process is thoroughly addressed elsewhere, (i.e., MSA, National Standards, and Policy documents) there appears to be little need for the “Designation” statements that simply add FMP wording to the decisions made as “Outcomes.”

Second, the unclear lack of purpose for “Designations” carries over into the list of things NMFS will consider in Section III, *Step 3*. No information is provided to justify why different things are considered in *Step 3* than in *Step 2*, when *Step 2*, through its “Outcomes”, already states how authority will be designated to Councils. This is the most exhaustive list so far in a document of multiple lists. It should probably be the first list of things to consider, as the information used to make decisions should not vary through the process and all of the things stated to consider at this stage of the process should be considered from the very start of the process. As stated above, the first decision to make is whether the stock requires conservation and management, because if it does not there is no need to go any further. Information available on these metrics should be compiled in the beginning of the process and made available to all affected parties. Doing so could reduce the time required to develop the requested Council recommendations on fishery scope and governance. The reliability, uncertainty, and risk associated with each of these items should be evaluated up front to determine which sources of information are useful and relevant to determining a fishery’s geographic scope. The extensive list of items to consider provides further support that 6 months is not adequate for Councils to respond to a governance

designation. Simply compiling this vast trove of information and ensuring it meets BSIA and NS requirements could take years unless dedicated resources are assigned the task. Further, as already stated, many of these items may be available for only one of the Councils or regions potentially impacted by a stock shift and governance change. Significant coordination and cooperation, requiring significant time, will be needed for all those involved to reach a mutually agreeable conclusion.

The SAFMC supports preventing frequent transitions as indicated *in Section III, Step 3, Part b, subsection ii. Presumptions*. However, the SAFMC is concerned here, as expressed elsewhere, with the Directive's simplistic, one-size-fits-all approach to a complex situation and an extensive suite of information. The Council is not convinced that using multi-year averages is an adequate solution to manage the risk of frequent transitions. More sophisticated approaches and statistically valid techniques will likely be needed to evaluate stock and fishery shifts. Attempting to establish specific values that will be used to indicate change will likely prove problematic in practice. How much of a change in various stock and fishery parameters is required to trigger a governance change will vary, and likely depend on many of the factors already identified as important to the final decision. Decisions need to be based on appropriate and reliable information and analyses that meet BSIA and NS guidelines and undergo appropriate peer review.

Metrics of fishery revenue and recreational effort are anything but straightforward. Revenue will accrue when a fish is sold, but the sale location may not be the same as the harvest location. Fishing trips regularly cross geographic boundaries and are reported using systems that lack the resolution to show what fish were caught in what area, although that knowledge may be critically important to the governance question. Recreational effort is notoriously difficult to measure, and the available estimates are highly uncertain and, as is becoming apparent, regularly subject to change throughout the entire timeseries. There will likely be another re-estimation of recreational catch and effort values in 2025 due to a bias recently identified in the effort estimation process. According to a presentation to the Atlantic States Marine Fisheries Commission in October 2023 on this issue, it is unlikely that this is the final such re-estimation occurrence, as the survey is continually evaluated and adapted to the fishery. This is important to the governance issue because determining how a fishery is changing over time could be impossible if the data used to describe that fishery are also changing. Recreational effort is also difficult to assign by fishery or stock. Recreational effort is evaluated overall, not fishery by fishery. The majority of recreational fisheries lack the fishery-defined permits and reporting systems that are typical of commercial fisheries. This is not to say that the MRIP program provides no useful information to determine a fishery's geographic scope, but rather to point out that focusing on effort may not be the best approach, or even a scientifically valid approach to the questions at hand.



As a case in point, when this Directive was discussed by the SAFMC in September 2023 and concerns arose with using recreational effort to indicate fishery shifts, Dr. Richard Cody of the MRIP program pointed out that MRIP provided other ways to evaluate stock shifts. The Access Point Angler Intercept Survey includes observed fishery creel data that could be used to track shifts in the species composition of observed catches across regions without adding the uncertainty and bias associated with the Fishing Effort Survey and total effort estimation. Insights of this type, from those who manage the various data collection programs, are needed to resolve the technical concerns Council's have raised with the Directive and provide useful guidance to the Councils.

*Section III, Step 4*, addressing the authority transition from one council to another, sets up potential pitfalls in the management system by requiring a pause in management actions. The MSA requires management by annual catch limits, resulting in annual specification processes for many fisheries. This means that regulatory actions could be in preparation or even pending approval when a governance change is imposed, leading to confusion in what is considered the "existing" regulations. Additional changes may be required, or even specified in an FMP, in later years to comply with MSA and prevent overfishing. Simply pausing regulations could cause more harm than good. Developing and obtaining approval for an entirely new FMP may take longer than 2 years, especially if governance is transferring to a different NMFS Regional Office and Science Center. The challenge created by governance decisions for stocks that straddle NMFS regions is a considerable concern for the SAFMC, given that stocks are generally moving northward, the South Atlantic Council sits at the Northern bound of the Southeast Region, and thus any governance changes impacting the South Atlantic Council are likely to involve a different region. The Directive identifies challenges, such as the need to transfer knowledge, but provides little useful guidance on how such challenges can be resolved. Some items, such as the need to develop adequate data management plans and data collection programs, need to be compatible across Council jurisdictions and NMFS regions now, to support the evaluations and decisions envisioned elsewhere in the Directive. They also need to be addressed by NMFS, not the Councils. Shared data access is a current critical need that NMFS should prioritize the resolution of to address existing challenges, such as those experienced with the recent Spanish Mackerel assessment and the upcoming Atlantic Cobia assessment.

### Conclusion and Final Recommendations

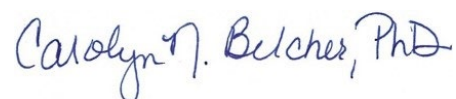
The SAFMC recognizes the need to adapt governance responsibilities to shifting stocks and agrees that guidance and direction are needed on how fishery shifts will be evaluated and addressed. It is the SAFMC's opinion that the Directive, in its current form, does not provide that needed guidance. In some instances it is overly prescriptive, while in others it is vague. The general approach to the available information appears to assume a level of availability,

reliability, and regional compatibility that does not exist along the Atlantic Coast. Analyzing fishery and stock shifts is likely to be far more complex and time consuming than the Directive implies, and the answers obtained far less clear than desired. Governance changes could be disruptive to constituents, Councils, and NMFS regions and therefore should be a last resort, imposed after other solutions have proven inappropriate. Experience with joint FMPs shows that governance by multiple Councils through multiple FMP's across multiple NMFS Regions will be slow and tedious, and therefore counter to the desire to be efficient and timely in responding to climate related issues. Governance changes should be justified with robust, scientifically sound, peer reviewed analyses, including adequate time to resolve logistical challenges and gather constituent input. The Directive does not define a process to meet these many demands. The Directive should be extensively revised by working in cooperation with the Councils as suggested at the October 2023 CCC meeting.

The first few pages of the Directive should be recast as a Policy Directive, enhanced with an evaluation of the current governance decision process, discussion of problems with the current governance decision process, and a clear statement as to why additional guidance is needed at this time. Once the policy guidance is available and the problem defined, an expert working group should be convened to evaluate the available data and identify robust indicators of shifting fisheries and stocks that are feasible given available data. The group's findings could be documented through a Technical Memorandum to provide a foundation for a Procedural Guidance document that serves as a handbook for evaluating fishery shifts and governance responses. Finally, a working group of Council and NMFS representatives could develop a revised Procedural Guidance document, prepared as an instruction manual and addressing the details requested by both NMFS and the Councils.

Thank you for the opportunity to provide these comments on the draft Procedural Directive. Please contact John Carmichael at the South Atlantic Council if you have any questions about these comments.

Sincerely,



Dr. Carolyn Belcher  
Chair

LN#: 202347

CC: Council Members and Staff