



Southern Shrimp Alliance

P.O. Box 1577 Tarpon Springs, FL 34688
955 E. MLK Dr. Suite D Tarpon Springs, FL 34689
727-934-5090 Fax 727-934-5362

September 11, 2023

Wendy Morrison
National Marine Fisheries Service, NOAA
1315 East-West Highway, Room 13436
Silver Spring, MD. 20910

Dear Ms. Morrison:

The Southern Shrimp Alliance appreciates the opportunity to provide comments on the Advanced Notice of Proposed Rulemaking (ANPR) to potentially revise the Guidelines for implementing National Standards 4, 8, and 9 of the Magnuson-Stevens Fisheries Conservation and Management Act (MSA). Founded in 2002, SSA's membership is comprised of many small, family-owned shrimp fishing businesses and associated shoreside enterprises that are at the core of the economies and cultures of coastal communities in all eight warm-water shrimp producing states from North Carolina to Texas.

National Standard 4:

The ANPR notes that *"Environmental changes are affecting, and will continue to affect, stock distributions and abundances, and have the potential to change the applicability of historical information and current regulations."*

The ANPR further notes that it is *"important to help participants maintain access to resources they have been dependent upon, and to document compliance with statutory requirements"* but that in the face of shifting stock distributions, it is also *"important to consider the needs of other users, such as new fishermen who would like to enter a fishery, fishermen displaced from other fisheries, and/or existing fishermen who are catching new species in their historical fishing grounds."*

With this in mind, the ANPR seeks input on the following:

“(a) Approaches, consistent with other statutory requirements, for balancing consideration of anticipated or realized changes in stock distributions and/or overall fishery access for historical users, marginalized individuals who may have been inequitably excluded from historical allocations, and new users in such allocation decisions;”

“(b) Whether revisions to the NS4 guidelines are needed to reinforce NMFS' Allocation Policy's requirement to complete periodic reviews of allocations; “

Being defined as fisheries for “annual species”, the Gulf and South Atlantic shrimp fisheries are explicitly exempt from the MSA section 303(a)(15) requirement for the setting of Annual Catch Limits and, therefore, catch or effort allocation policies associated with National Standard 4 have limited applicability. That said, SSA urges the agency to exercise significant caution in making any revisions to the policies reflected in National Standard 4, the National Standard 4 Guidelines, or the NMFS Allocation Policy. Pursuant to those extant policies, the Regional Councils do have authority and flexibility to consider such shifts in stock distributions due to changes in environmental conditions in making allocation decisions consistent with the stated goals and objectives of each Fishery Management Plan. Whether the Councils actually apply that authority and flexibility correctly is another question. To the extent they fail to recommend measures to the agency that are not consistent with these policies, the agency has and must use its authority under MSA section 304 to disapprove the Council’s recommended measures.

SSA notes that for any Council to achieve the objectives of National Standard 4 to treat all fishermen fairly and equitably in making allocations among different fisheries as well as in developing any measures under the MSA, Congress saw the clear need for the membership of each Council to reflect a “*fair and balanced apportionment*” of commercial and recreational fishing interests as articulated in MSA section 302(b)(2)(B). We must point out that at this time, the composition of the Gulf Council is clearly not in alignment with this statutory directive. This puts the ability of the Gulf Council to comply with the National Standard 4 mandate at risk and so the recommendations of this Council in this and other contexts are something the agency should closely scrutinize for consistency with the law.

Further, and more broadly, we do not believe that the scientific understanding of climate change and its physical and biological effects on the ocean, our fish stocks, or our fisheries is sufficiently developed at this time to make definitive policy changes in response. Much of what is presented in this ANPR are potential, unproven solutions to problems that have not yet been fully understood and defined.

We note further that Congress has the authority and may choose to change the geographic scope of and representation on each Council set forth at MSA section 302(a) if it deems necessary such as to reflect the effects of climate change on fish stock distributions, but even that change would not necessarily drive a need to change the basic policies and principles set forth in National Standard 4, the National Standard 4 Guidelines, or the NMFS Allocation Policy.

The ANPR also seeks input on the following with respect to the National Standard 4 requirement for allocations to be “fair and equitable”.

“(a) Approaches to improve consideration of underserved communities, previously excluded entrants, and new entrants in allocation decisions;”

Further, the ANPR includes the following statement in that respect: *“For purposes of this document, consistent with E.O. 13985, “underserved communities” refers to “populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civil life.”*

It is not clear at all to SSA if the agency intends to propose this or some other definition for “underserved communities” as well as a definition of “marginalized” communities to be included in the National Standard Guidelines. It seems to us that, given the potential broad scale implications of how those terms might be defined and applied in fishery management, and how wide-ranging the circumstances may be in each of the eight regions Nationwide, such definitions and associated policies must instead be considered by Congress in the context of the underlying statute and not by the implementing agency through policy guidelines. Again, we urge the agency to exercise great caution in revising these policies within this specific context of underserved or marginalized communities and, in any case, we generally do not support any policy that would favor such marginalized and underserved communities, whatever those are, to the direct detriment of historical participants and communities.

Finally, stepping outside of the immediate context of fishery management and MSA National Standard 4, SSA would be remiss if we did not reiterate, as noted in many of its comments addressing offshore wind energy development in the Gulf, that the Gulf shrimp fishery has been substantially marginalized by the oil and gas energy policies of this Nation for many decades. On January 27, 2021, President Biden issued Executive Order 14008 on “Tackling the Climate Crisis at Home and Abroad”. Section 201 of this Executive Order (EO) includes the following Policy statement: *“We must deliver environmental justice in communities all across America.”* We look forward to that justice being delivered to the many shrimp fishing communities throughout the Gulf Coast as part of this Administration’s wind energy development policies.

National Standard 8

On the one hand, the ANPR states that *“NMFS does not believe that the existing NS8 guidelines limit NMFS’ or the Councils’ ability to implement regulations and policies that address inequities or barriers to access for underserved communities.”* SSA agrees.

Yet, on the other hand, the ANPR goes on to state that *“NMFS is considering removing language in the NS8 guidelines 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” and that “This text may be unnecessary and confusing”.*

SSA is unaware of an instance in which the National Standard 8 Guidelines and this specific text has caused any confusion or, as NMFS states, has limited the ability of NMFS or the Councils to address concerns regarding underserved communities – although we are still not sure what the agency envisions those underserved (and marginalized) communities to be. In addition to that, what may cause confusion is how the Guidelines should be reconsidered with that text removed given there is not a demonstrated problem in practice. SSA urges the agency to exercise great caution in considering any revisions to this policy.

Further, the ANPR proposes to redefine “fishing community” by “*removing or revisiting the requirement for members to reside in a specific location*”. Taken to the full extent of how such a change might someday be interpreted, there would seem to be no end to how such a community could be defined if it has no basis in location and this would likely lead to costly litigation. SSA does not support this proposed change to the definition of “fishing community” and fears it could be used to substantially undermine the Congressional statutory intent underlying what is a very important National Standard to protecting the interests of the fishing communities in the Gulf and South Atlantic regions.

Still further, the ANPR states that NMFS is “*considering adjusting how the “fishing community” definition under the NS8 guidelines balances between dependency and engagement. As stocks decrease in abundance or shift distributions, communities will likely need to adapt. One option could be for a community to increase their resilience by decreasing their dependence on one or more particular stocks or fisheries (i.e., diversifying the fisheries that can be accessed). Thus, NMFS is considering revising the definition to shift from focusing on “dependence” to focusing on “engagement,” as both are included within the MSA definition.*”

First, SSA must state emphatically that the specific characteristics of the Gulf and South Atlantic shrimp fisheries do not at all make it likely that they could easily adapt to shifts in shrimp stock abundance or distribution by decreasing their dependence on shrimp and increasing their engagement in fishing for other stocks. Such diversification is simply not a likely reality for our shrimp fisheries.

That said, while such adaptation through diversification may very well be achievable by other fisheries, the ANPR correctly notes that MSA section 3(17) defines a “fishing community” as “a community which is **substantially dependent on or substantially engaged** in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such communities.” (emphasis added). Indeed, as the ANPR notes, both dependence and engagement are explicitly contemplated in this definition.

Yet the agency appears to be expressing a concern that a “fishing community” may somehow cease to be considered as such if its level of relative dependence or simply engagement in a fishery has changed. It has been the experience of many multispecies fishing communities nationwide that their relative dependence on or engagement with a particular fish stock or fishery at any given time has changed and will continue to do so depending on factors ranging widely from stock abundance to market dynamics, and, of course, climate change, among many other external factors. That defines their reality, but it doesn’t ever change the fact that these

are “fishing communities” as Congress contemplated in National Standard 8. We fear that whatever revisions to the National Standard 8 the agency is contemplating would only serve to confuse the fishery management process at the Council, State, and agency levels. SSA opposes this proposed change from both a shrimp fishery-specific and a national perspective.

Finally, the ANPR states: *“NMFS welcomes suggestions on how to appropriately balance the requirement under NS8 for “sustained participation” of fishing communities and the need to improve consideration of (1) underserved communities currently or historically engaged with fisheries, (2) previously excluded entrants, (3) new entrants, and (4) communities with high levels of social or climate vulnerability. NMFS also welcomes input on appropriate measures of social and climate vulnerability for fishing communities.”*

SSA believes that the intent of Congress to provide for the “sustained participation” of fishing communities as they are defined in the Act and Guidelines could not be more clear, if not emphatic. Furthermore, as addressed previously in these comments, the current National Standard 8 Guidelines provide the Councils with sufficient authority and flexibility to consider each of those four groups – authority they regularly utilize. It is unclear what the agency means by “appropriately balance” the interests of fishing communities with those four groups, but any such revision cannot translate to undermining the sustained participation of fishing communities many of which in our regions date back many decades.

National Standard 9

SSA finds much of the ANPR discussion of National Standard 9 to be vague and difficult to understand what specifically the agency is contemplating. Some U.S. fisheries do indeed face situations wherein its target species are bycatch in other fisheries, and these situations must be addressed to ensure first and foremost that the stock is not overfished or subject to overfishing as a consequence. It has been our experience in the shrimp fishery that current suite of MSA authorities including National Standard 9 have proved sufficient and effective in addressing such conflicts such as in the case of red snapper bycatch in the Gulf shrimp fishery wherein such bycatch mortality is fully incorporated into the stock rebuilding plan. Further, Congress has not provided any specific policy basis within National Standard 9 for addressing such target/bycatch species conflicts in the Guidelines and so we question whether the agency has the authority to create policy where none exists in statute. SSA would need to review a much more developed proposal on this important matter before it can provide more in-depth input.

On a related matter, SSA does note that there have been legislative proposals in Congress to remove the phrase *“to the extent practicable”* from National Standard 9 which would have the incredibly adverse effect of creating a race to eliminate bycatch altogether leaving many fisheries with only the ‘no-fishing’ option to achieve that standard. That is clearly not what Congress intended when National Standard 9 was first enacted. Thus, SSA is pleased the agency itself asserts in the ANPR that *“the discussion of practicability within the existing NS9 guidelines appropriately balances the various complexities of federal fisheries management.”* This is indeed an essential element to the effective implementation of this National Standard.

Finally, the ANPR suggests that perhaps adding provisions to the National Standard 9 Guidelines to address bycatch on an ecosystem level and to address the needs to underserved communities in the context of bycatch. It is very difficult to contemplate how these objectives could be met given how our shrimp fisheries are managed. Again, SSA would need to review a much more developed proposal with respect to these vague and perhaps overly ambitious objectives.

Again, SSA appreciates the opportunity to provide comments on these important issues and appreciates the agency's consideration thereof.

Sincerely,

A handwritten signature in black ink, appearing to read "John Williams". The signature is fluid and cursive, written in a professional style.

John Williams,
Executive Director

cc: Andy Strelcheck, NMFS, Southeast regional Administrator
Kevin Anson, Chair, Gulf of Mexico Fishery Management Council