

2016 NS1 Guidelines and H.R. 200 – Key Provisions

Summary of relationship between the 2016 NS1 guidelines and H.R. 200:

On January 3, 2017, Representative Don Young (R-AK) introduced H.R. 200 – the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act. H.R. 200 and the 2016 NS1 guidelines contain provisions on a number of the same issues, summarized below:

- Clarifications regarding the definition of ecosystem component (EC) species and which stocks require federal management under the ACL framework;
- Modifications to the reference point requirements for international/transboundary stocks;
- Provisions to increase the responsiveness/adaptability of the ACL framework;
- Provisions to increase flexibility when designing rebuilding plans; and
- Clarifications regarding the circumstances under which a rebuilding plan may be discontinued.

Topic	2016 NS1 Guidelines	H.R. 200
<i>Stocks that Require Federal Management and Ecosystem Component (EC) Species Definition</i>	The guidelines put forth a streamlined framework for determining which stocks require “conservation and management” and thus, federal fishery management plans (FMPs) under MSA section 302(h)(1). The guidelines clarify that Councils may choose to identify stocks within their FMPs as EC species if they do not require conservation and management.	MSA section 302(h)(1), which requires FMPs for stocks that require conservation and management, is not modified. EC species are defined as a stock of fish that is a nontarget, incidentally harvested stock of fish in a fishery, or a nontarget, incidentally harvested stock of fish that a Council or the Secretary has determined is not subject to overfishing, approaching a depleted condition or depleted; and is not likely to become so in the absence of conservation and management measures.
<i>Definition of a “depleted” stock</i>	The proposed rule to revise the NS1 guidelines contained a definition for “depleted.” However, the proposed definition was removed from the final guidelines based on concerns raised by public commenters that the definition may not adequately distinguish between stocks in decline due to environmental factors and stocks in decline due to fishing pressure.	“Depleted” means the stock has a biomass that has declined below a level that jeopardizes the capacity of the stock to produce maximum sustainable yield on a continuing basis. Changes the term “overfished” to “depleted” in all cases where “overfished” occurs in the MSA and requires that the Status of the Stocks report should differentiate stocks that are depleted due to overfishing versus those depleted as a result of other factors.
<i>Modifications to ACL Framework</i>	The guidelines maintain the requirement that stocks in need of conservation and management must have ACLs. However, the new guidelines include provisions that will allow managers to: <ul style="list-style-type: none"> a) use alternative approaches to set MSY/ABC/ACL thresholds for data limited stocks; b) carry over a portion of an ACL underharvest into a subsequent year; and c) phase in changes to the stock’s catch limits (e.g., ABC/ACL). 	Modifications to the ACL framework include: 1) Councils may consider changes in an ecosystem and the economic needs of the fishing community when setting ACLs; 2) Provides an exception to the ACL requirement for stocks that are: <ul style="list-style-type: none"> a) designated as EC species; b) known to have a life cycle of ~1 year, unless the Secretary has determined the fishery is subject to overfishing; or

		<p>c) a stock for which more than half of a single-year class will complete their life cycle in less than 18 months, and fishing mortality will have little impact on the stock. *Note: Exceptions (a) and (b) are included in the NS1 guidelines.</p> <p>3) Authorization for multiyear annual catch limits and ACLs for multispecies complexes.</p>
<i>Modifications to ACL Framework for International/Transboundary Stocks</i>	The guidelines clarify that, in the case of internationally-managed stocks, the Council may decide to use the status determination criteria and associated reference points (MSY/ABC/ACL) defined by the relevant international body.	Establishes that ACLs can take into account management measures under international agreements. When developing ACLs for transboundary stocks: 1) Requires Councils to take into account “fishing for the species outside the EEZ and the life history characteristics of the species that are not subject to the jurisdiction of the Council” and 2) Provides an exception to the ACL requirement for stocks where fishery management activities outside the EEZ by another country hinder the conservation efforts of US fishermen and for which there is no informal transboundary agreement. If an ACL is developed for such stocks anyway, the ACL must account for fishing outside the EEZ.
<i>Modifications to rebuilding plan requirements</i>	For stocks requiring more than 10 years to rebuild, the new guidelines provide two additional methods to calculate a stock’s maximum time to rebuild. Additional calculation methods allow Councils and their Scientific and Statistical Committees (SSCs) to select a calculation method that best suits the data available for the stock. The three calculation methods are: a) $T_{min} + 1$ generation time (status quo); b) $2 * T_{min}$; and c) Time needed to rebuild to B_{msy} when fished at 75% of MFMT (F_{msy}).	<p>Modifications to rebuilding plan requirements include: 1) Replacing the required time frame for rebuilding from “as short as possible” to “as short as practicable”; 2) An option to use alternative rebuilding strategies, including harvest control rules and fishing mortality-rate targets to the extent they are in compliance with the requirements of the Act; and deletion of the 10 year rebuilding requirement. The 10 year rebuilding requirement is replaced with $T_{min} + 1$ generation time. Provides 5 exceptions to using $T_{min} + 1$ generation time:</p> <ul style="list-style-type: none"> i) the biology of the stock, other environmental conditions, or international management measures dictate otherwise; ii) the Secretary determines that the cause of the stock being depleted is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities; iii) the Secretary determines that one or more components of a mixed-stock fishery is depleted but cannot be rebuilt within that time frame without significant economic harm to the fishery, or cannot be rebuilt without causing another component of the mixed-stock fishery to approach a depleted status; iv) the Secretary determines that the life history of the stock is affected by informal transboundary agreements, and;

		v) the Secretary determines that the stock has been affected by unusual events that make rebuilding within the specified time period improbable without significant economic harm.
<i>Discontinuing a rebuilding plan</i>	The new guidelines establish that a rebuilding plan can be discontinued if the Secretary determines that the stock was not overfished in the year that the overfished determination was based on and has never been overfished in any subsequent year including the current year.	A Council may terminate a rebuilding plan if the Council's SSC determines, and the Secretary concurs, that the original determination that the fishery was depleted was erroneous either within the first two years of being notified of depleted status or within 90 days after the completion of the next stock assessment after such determination.