

Subject: Re: Consultation on the Plan Team Recommendation re adding and removing MUS
From: Kristen Johns - NOAA Federal <kristen.johns@noaa.gov>
Date: 3/16/2020, 3:42 PM
To: Marlowe Sabater <marlowe.sabater@noaa.gov>
CC: "Tucher, Mr. Fred" <Frederick.Tucher@noaa.gov>, Kitty Simonds <Kitty.Simonds@noaa.gov>

Hi Marlowe, hope you had a restful weekend to recover from last week. Regarding your question, I don't know of any rule saying you cannot revise your MUS while the stock is overfished. If the only reason for the revision is to get you out of an overfished determination, then yes that would likely be held arbitrary and capricious. But if you have sound scientific reasons for revising the MUS, then I don't think you would be barred from doing so simply because you're in an overfished condition.

NS1 Guidelines contemplate that stock complexes may be *reorganized* based on evolving information. See 50 CFR 600.310(d)(2)(i), stating that complexes may be "reorganized," and (ii), stating that councils, when establishing and managing stock complexes, "should review the available quantitative or qualitative information (e.g., catch trends, changes in vulnerability, fish health indices, etc.) of stock within a complex on a regular basis to determine if they are being sustainably managed."

So, what would be the reason for the reorganization?

Now, I do want to emphasize that there is a difference between *reorganizing* your complex (i.e., dividing existing complex into smaller groups, or bringing out individual species to be evaluated and managed on an individual basis) and *removing* species from your FEP. Your options paper on this item presented the Council with options to either amend the existing FEPs to account for potential reclassification of MUS species or work with existing FEPs given potential reclassifications. I don't believe the options paper mentioned *removing* any species from the relevant FEPs, and I don't know if Council discussed this during plenary.

If we are talking about removing MUS, we'd need to look carefully at 50 CFR 600.305(c)(4) (on removing stocks from an FMP) and the factors in 50 CFR 600.305(c)(1) (listing factors to consider when determining whether a stock is in need of federal conservation and management). Also, wouldn't we have already looked at these factors during our ecosystem-component action? In other words, when deciding whether to reclassify certain MUS as ecosystem component species, we decided that certain species should remain MUS -- i.e., that they require conservation and management. If we are now considering removing those same MUS from the FEP, what has changed?

Happy to discuss more at your convenience. Fred and Elena, please feel free to jump in with any further thoughts.

Thanks,
Kristen

On Mon, Mar 16, 2020 at 10:00 AM Marlowe Sabater <marlowe.sabater@noaa.gov> wrote:

Hi Kristen,

I am working on the recommendations from the 181st meeting. "9. Directed staff to work with NMFS and Territory agencies to review the BMUS list and to discuss the available options and the

regulatory consequences of add and removing species from the list". Basically the question is since AS is OF'd and OF'ing and Guam is OF'd is the Council allowed to add or remove the species from the current MUS. This came from the Intersessional Plan Team meeting. My first reaction is that we are not allowed to change the MUS list until the stock status is at a sustainable status. Otherwise this is viewed as trying to get out of the bad stock status and would set a precedence that every time the stock status is below sustainable, the complex will be changed. Now in the case of CNMI, even if they are ok but since they are under one FEP they too cannot change their MUS list. I am not sure if Tosatto is correct that Guam and CNMI have a separate list. If that is correct then CNMI can then change their MUS list at any time independent of Guam.

Your advice is much appreciated.

Marlowe

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Marlowe G. Sabater
Island Fisheries Ecosystem Scientist
Western Pacific Regional Fishery Management Council
1164 Bishop St., Suite 1400
Honolulu, Hawaii 96813

Phone: 808-5228143
Fax: 808-5228226

"To find out what happens to a system when you interfere with it,
you have to interfere with it (not just passively observe it)"

--- George E.P. Box. 1966 Use and Abuse of Regression

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Kristen Johns
Attorney-Advisor, Pacific Islands Section
NOAA Office of General Counsel
U.S. Department of Commerce
Daniel K. Inouye Regional Center
1845 Wasp Blvd., Building 176
Honolulu, HI 96818
Tel. No. [\(808\) 725-5203](tel:8087255203)
Fax No. [\(808\) 725-5216](tel:8087255216)

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