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Procedures to Determine Stock Status and Rebuilding Progress

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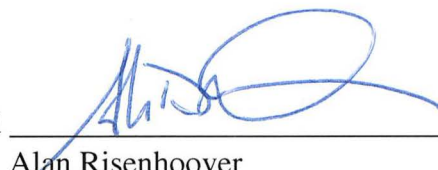
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Alan Risenhoover

Director, Office of Sustainable Fisheries

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I. Introduction

This document provides the administrative procedures for stock status and rebuilding progress decisions under section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). It applies whenever a stock status or adequate rebuilding progress decision memo is required, developed, and submitted.

II. Objective

This procedure describes the following:

1. Situations that require a stock status determination decision memo (DM).
2. Process for developing a stock status DM.
3. Notification process to the Regional Fishery Management Councils (Councils) whenever a stock status DM is submitted.
4. Procedures for reviewing adequate rebuilding progress for stocks in rebuilding plans.
5. Process for developing a DM when stocks are not making adequate rebuilding progress.
6. Notification process to the Councils whenever a determination is made that a stock is not making adequate rebuilding progress.

III. Authorities and Responsibilities

This policy establishes the following authorities and responsibilities:

1. The Office of Sustainable Fisheries drafts stock status DMs for Assistant Administrator (AA) signature.
2. Regional Offices and the Atlantic Highly Migratory Species Division draft rebuilding progress DMs for AA signature.
3. Regional Administrators notify their respective Council whenever a stock status or rebuilding progress DM is signed by the AA.

IV. Guidance

The specific guidance outlining the administrative procedures for stock status and rebuilding progress decisions under section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) begins on page 4 of this document.

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Procedures to Determine Stock Status and Rebuilding Progress

1.0 Procedures to Determine Stock Status

1.1 Introduction

Pursuant to section 304 (e)(1)-(2) of the MSA, the Assistant Administrator (AA) for NOAA Fisheries – through delegated authority – makes stock status determinations. *See* 16 U.S.C. § 1854(e)(1)-(2). *See also* National Standard 1 (NS1) guidelines, 50 C.F.R. § 600.310(j). Stock Status Decision Memos (DM) are used for AA determinations whenever stock status changes, or when a negative status (e.g., overfished, subject to overfishing) continues.

1.2 Situations that Utilize a Stock Status Decision Memo

Stock Status DMs are used when new information indicates that a stock is:

1. Subject to overfishing, or remains subject to overfishing.
2. Overfished, or remains overfished.
3. Approaching an overfished condition.
4. No longer subject to overfishing.
5. No longer overfished.
6. No longer approaching an overfished condition.
7. Rebuilt.
8. Now known status (where status was previously unknown).
9. Now unknown status (where status was previously known).
10. Change to a stock's management unit.

A stock status DM is not needed for continuation of “not subject to overfishing” or “not overfished” status.

1.3 Process for Developing Decision Memos and Related Documents for Stock Status

To facilitate timely stock status determinations, it is important to make stock status determinations as soon as possible after the best scientific information is available¹ or data are

¹ NOAA Fisheries is currently developing guidance related to stock assessments and “best scientific information available.” When this guidance is finalized, a reference will be provided here.

available in conformance with the Information Quality Act (IQA). Below are the steps in the process²:

1. The regional office informs the Office of Sustainable Fisheries (OSF) of stock status determinations that will require a DM (see section 1.2).
2. OSF works with regional staff to compile information supporting current and proposed status determinations (Appendix A).
3. Based on the supporting information, OSF drafts a Stock Status DM from the Director of OSF to the AA (Appendix B) and provides the draft DM to the region for Regional Administrator (RA) review and approval (including clearance from Regional Section General Counsel).
4. After the RA approves the content of the DM, OSF initiates headquarters review of the DM and sends it to the OSF Regulatory Services Branch for transmittal to the AA.
5. The AA determines the stock's status based on the OSF Director's recommendation contained in the Stock Status DM.
6. After the AA signs the DM determining the stock status:
 - a. OSF Regulatory Services Branch will provide a signed copy of the DM to the regional office.
 - b. Regional office immediately sends the Fishery Management Council (Council) a notification letter with a cc to OSF (see section 1.4 for further information on letter).
 - c. Regional office enters status determination records in the Species Information System (SIS).
 - d. OSF publishes a quarterly notice in the *Federal Register* for stocks found to be subject to overfishing, overfished, approaching an overfished condition, continued to be subject to overfishing, or continued to be overfished using information contained in the DM.

When an assessment fails to provide adequate information for management advice (such as determining catch levels or rebuilding projections), but there are adequate data to support a status determination, the steps in section 1.3 should still be followed.

1.4 Notification Letters to the Council

After the DM is signed determining that a stock is subject to overfishing, is overfished, or is approaching an overfished condition, the RA notifies the Council through a letter³. If the stock is

² The process outlined in section 1.3 is also applicable to stocks managed by the Atlantic Highly Migratory Species (HMS) Management Division, but given HMS Management Division's location within OSF and the lack of an associated Council, their procedures are slightly different and thus outlined separately in Appendix F.

³ If a stock continues to be subject to overfishing or overfished, but Council action is not necessary to correct the problem, Regions can use their discretion whether to include these

overfished, the letter requests that action be taken to rebuild the stock. *See* 50 C.F.R. § 600.310(j)(2)(ii). For stocks that are subject to overfishing, the letter reminds the Council of their obligations to set annual catch limits to end and prevent overfishing immediately and implement measures that ensure accountability. *See* 50 C.F.R. § 600.310(j)(2)(i).

Following notification of an overfished stock, a Council shall prepare a Fishery Management Plan (FMP), FMP amendment, or proposed regulations to rebuild affected stocks of fish, so that NOAA Fisheries is able to implement such FMP, amendment, or proposed regulations within 2 years of the date on the Council notification letter. *See* 16 U.S.C. § 1854(e)(3)(A). Per the National Standard 1 Guidelines, Council actions should be submitted to NOAA Fisheries within 15 months of the Council notification letter to ensure sufficient time for the Secretary to implement the measures. *See* 50 C.F.R. § 600.310(j)(2)(ii). A continued overfished determination does not trigger the 2-year time period to prepare and implement an FMP, FMP amendment, or proposed regulations to rebuild affected stocks of fish because presumably the stock is already in a rebuilding plan. While a Council has two years to prepare and implement an FMP, FMP amendment, or proposed regulations to rebuild an overfished stock, if overfishing is still occurring for that stock, the Council should immediately take appropriate steps to end overfishing. *See* 50 C.F.R. § 600.310(j)(2)(i).

As outlined in section 2.0 of this guidance, NOAA Fisheries must also notify the appropriate Council when an FMP, FMP amendment, or regulations have not resulted in adequate progress toward rebuilding affected fish stocks. *See* 16 U.S.C. § 1854(e)(7). If appropriate, this notification can occur within the same letter as the stock status notification, but decisions about adequate rebuilding progress should be documented in a separate DM. Rebuilding progress information should not be included in the stock status DM.

2.0 Procedures to Determine that Adequate Rebuilding Progress is not being made

2.1 Introduction

Pursuant to section 304(e)(7) of the MSA, the AA – through delegated authority – makes determinations that adequate rebuilding progress is not being made. *See* 16 U.S.C. § 1854(e)(7). *See also* National Standard 1 (NS1) guidelines, 50 C.F.R. § 600.310(j)(3)(iv). Rebuilding Progress DMs are used for AA determinations whenever FMPs, FMP amendments, or regulations have not resulted in adequate progress toward rebuilding affected fish stocks.

Fishery Management Plans, FMP amendments, or regulations for stocks in rebuilding plans should be reviewed for adequate rebuilding progress at routine intervals not to exceed two years. *See* 6 U.S.C. § 1854(e)(3). Rebuilding Progress DMs are used to:

stocks in the Council notification letter. These stocks will be included in the stock status DM and the *Federal Register* notification of stock status.

- a. Determine when a stock is not making adequate rebuilding progress; and
- b. Recommend actions for the affected stock to achieve adequate rebuilding progress.

2.2 Criteria for Evaluating Rebuilding Progress

Regions should evaluate rebuilding adequacy using the criteria contained in the NS1 guidelines. See 50 C.F.R. § 600.310(j)(3)(iv). The NS1 guidelines advise that the Secretary may find that adequate rebuilding progress is not being made if:

1. F_{rebuild} or the annual catch limit (ACL) associated with F_{rebuild} is being exceeded, and accountability measures (AMs) are not effective at correcting for the overages, nor addressing any biological consequences to the stock or stock complex resulting from the overage when it is known.
2. The rebuilding expectations of the stock or stock complex have significantly changed due to new and unexpected information about the status of the stock.

The majority of cases where rebuilding stocks are not making adequate progress are expected to fit under the criteria listed in the NS1 guidelines. However, the NS1 guidelines do not limit adequate progress determinations to cases that meet one or both of the two criteria. The Secretary may also determine that adequate progress in rebuilding is not being made based on other factors and/or a logical interpretation of the facts of the case. DMs that support a determination of adequate rebuilding progress not being made should clearly describe the evidence used to support such a determination.

2.3 Sources for Reviewing Rebuilding Progress

Information to conduct a rebuilding progress review may include:

1. Stock assessment (may include comparison of $F_{\text{current}}/F_{\text{rebuild}}$ or current stock size to expected stock size).
2. Catch to total ACL comparison associated with F_{rebuild} .
3. Rebuilding analysis⁴.
4. Other appropriate performance measures.

2.4 Process for Developing Rebuilding Progress Decision Memo⁵

1. After reviewing information under section 2.3 and identifying stocks that are not making

⁴ Rebuilding analysis refers to a process used for Pacific coast groundfish stocks, which undergo such analyses between stock assessments (usually every two years).

⁵ The process outlined in section 2.4 is also applicable to stocks managed by the HMS Management Division, but given HMS Management Division's location within OSF and the lack of an associated Fishery Management Council, their procedures are slightly different and thus outlined separately in Appendix F.

- adequate rebuilding progress, the regional office drafts a Rebuilding Progress DM from the RA to the AA and sends to OSF for review (Appendix C).
2. After OSF and the region have agreed on the content of the Rebuilding Progress DM, the RA submits a regionally-reviewed (including clearance from Regional Section General Counsel) DM to the OSF Regulatory Services Branch.
 3. The AA determines if the stock is not making adequate rebuilding progress and recommends actions to rebuild the affected stock based on the RA's recommendation contained in the Rebuilding Progress DM.
 4. After the AA signs the Rebuilding Progress DM:
 - a. OSF Regulatory Services Branch will provide a signed copy of the DM to the regional office.
 - b. Regional office immediately sends the Council a notification letter with a cc to OSF (see section 2.5 for further information on letter).

2.5 Notification Letters to the Council

Whenever NOAA Fisheries determines that a stock is not making adequate rebuilding progress, the RA notifies the Council through a letter. *See* 16 U.S.C. § 1854(e)(7)(B). This notification must recommend further conservation and management measures, which the Council should consider to achieve adequate rebuilding progress. Following notification of adequate rebuilding progress not being made, a Council shall prepare an FMP, FMP amendment, or proposed regulations to rebuild affected fish stocks so that NOAA Fisheries is able to implement such FMP, amendment, or proposed regulations within 2 years of the date on the Council notification letter. *Id.* § 1854(e)(3)(A). Council actions should be submitted to NOAA Fisheries within 15 months of the Council notification letter to ensure sufficient time for the Secretary to implement the measures. For stocks that are subject to overfishing, the Council should immediately take appropriate steps to end overfishing. *See* 50 C.F.R. § 600.310(j)(2)(i).

As outlined in section 1.0 of this guidance, NOAA Fisheries also notifies the Council when it determines that overfishing is occurring, a stock is in an overfished condition, or a stock is approaching an overfished condition. If appropriate, this notification can occur within the same letter as the rebuilding progress notification, but official decisions about stock status should be documented in a separate DM.

Appendix A. Stock Assessment and Stock Status Information

Table 1. Information from Previous Assessment

Year assessment was finalized	
Last data year	
Overfishing determination	
Overfished determination	
Overfishing criteria in FMP	
Year and amendment that implemented overfishing criteria	
Overfished criteria in FMP	
Year and amendment that implemented overfished criteria	
Model used	
F_{MSY} or proxy	
$F_{current}$ estimate	
B_{MSY} or proxy	
Minimum stock size threshold	
$B_{current}$ estimate	

Table 2. Information from Current Assessment

Date assessment was finalized	
Last data year	
Recommended overfishing determination	
Recommended overfished determination	
Overfishing criteria in FMP	
Year and amendment that implemented overfishing criteria	

Overfished criteria in FMP	
Year and amendment that implemented overfished criteria	
Model used	
F_{MSY} or proxy	
$F_{current}$ estimate	
B_{MSY} or proxy	
Minimum stock size threshold	
$B_{current}$ estimate	
Identify peer review and final acceptance process, if applicable	
Date review was finalized, if applicable	

Appendix B –Template: Decision Memorandum for Stock Status Recommendations

MEMORANDUM FOR: [Name]
Assistant Administrator for Fisheries

CLEARED THROUGH:⁶ [Name]
Regional Administrator on [Date]

FROM: [Name]
Director, Office of Sustainable Fisheries

SUBJECT: Recommended Stock Status Determination for [insert stock name] –
DECISION MEMORANDUM

For the [insert stock name] I recommend: If recommending more than one stock, list all stocks if the recommendation for overfishing and overfished status determinations is the same. If recommendation is different for multiple stocks in the same fishery management plan (FMP), list stocks and recommendations separately in bullets below:

- *Changing the overfishing/overfished status from [insert current status] to [proposed status]; and*
- *Maintaining the current overfishing/overfished status of [insert current status]. This is only included if this status was evaluated.*

If only overfishing or overfished status determination was reviewed, include a sentence that makes this clear: *The [overfishing or overfished] status was not evaluated at this time and remains [insert current status].*

Please indicate below if you concur with this recommendation.

BACKGROUND

Brief description of stock, FMP, and any other relevant information.

⁶ Not applicable to DMs from the HMS Management Division.

INFORMATION BASIS FOR CURRENT STATUS

Include the following in this section:

- Describe the overfishing and overfished status determination criteria and year they were implemented. Example: *Criteria for determining the stock's overfished status were implemented in Amendment 16 in 2005. A stock is overfished if the stock size is less than the minimum stock size threshold (MSST), where $MSST = \max(0.5, 1-M) * SSB_{MSY}$ and M is the natural mortality rate. A stock is subject to overfishing if the fishing mortality rate is greater than the maximum fishing mortality threshold (MFMT), which is equal to F_{MSY} , where $F_{MSY} = F_{30\%SPR}$.*
- Provide the year the previous assessment was finalized, the last data year used in the previous assessment, and what the overfishing and overfished determinations were that were supported by the previous assessment, stated as, *"The previous assessment was finalized in [year], using data through [year], which supported a determination that the stock was...."* Indicate model used in the assessment.
- State the numerical estimates for fishing mortality and stock size (or their proxies) and how they compare to the overfishing and overfished reference points, and B_{MSY} (or proxy). Example: *The stock is not subject to overfishing because the fishing mortality rate ($F_{2008}=0.24$) is less than the MFMT ($MFMT=0.32$), and is not overfished because the stock size ($B_{2008}=53,450$ mt) is greater than the MSST ($MSST=22,500$ mt); the stock size is also greater than B_{MSY} ($B_{MSY}=45,000$ mt).*

INFORMATION BASIS FOR RECOMMENDED STATUS

Include the following in this section (if applicable):

- Describe the status determination criteria used in the most recent assessment (if they are the same as in previous assessment, this can be stated).
- Indicate the year the current assessment was finalized, the last data year used in the assessment, and provide the overfishing and overfished status determinations that would be supported by the current assessment, stated as, *"The current assessment was finalized in [year], using data through [year], which supports a determination that...."* Indicate model used in the assessment and if there are any significant issues, such as a retrospective pattern.
- State the overfishing and overfished determinations that are supported by comparison of the current estimate of fishing mortality and stock size (or their proxies) to the overfishing and overfished reference points, and B_{MSY} (or proxy). Example: *The assessment supports a finding of subject to overfishing because the fishing mortality rate ($F_{2008}=0.34$) is greater than MFMT ($MFMT=0.32$), and overfished because stock size ($B_{2008}=3,450$ mt) is less than MSST ($MSST=22,500$ mt); the stock is less than B_{MSY} ($B_{MSY}=45,000$ mt).*

- Identify final acceptance process (e.g., Scientific and Statistical Committee), peer review, if applicable (e.g., Center for Independent Experts), and when these were completed.
- Provide statement that the assessment represents the best scientific information available.
- If stock is declared overfished for the first time, describe the specific action that NMFS will recommend to the Council in response to acceptance of this recommended status change, such as developing a rebuilding plan.

NOTE: A table can be inserted here in lieu of providing some of the information above and is recommended if multiple stocks are included in the DM.

Example 1 (for status determinations):

Stock	Most Recent Assessment Year	Most Recent Data Year	Subject to Overfishing?	Overfished?
Blue rockfish	2014	2013	Yes	No
Yellow tang	2014	2013	No	No
Red tilefish	2014	2013	No	Yes

Example 2 (for stock assessment estimates)

Stock	F	F _{MSY}	B	MSST	B _{MSY}
Blue rockfish	0.3	0.2	3,000 mt	2,500 mt	5,000 mt
Yellow tang	0.2	0.3	6,000 mt	5,500 mt	11,000 mt
Red tilefish	0.3	0.4	9,000 mt	12,000 mt	24,000 mt

Example 3 (for catch data)

Stock	Catch	OFL	Catch/OFL
Blue rockfish	500 mt	400 mt	125%
Yellow tang	1,500 mt	1,800 mt	83%
Red tilefish	3,000mt	4,000 mt	75%

RECOMMENDATION

I recommend that you:

- *Determine that the [insert stock] is now [insert status here for stocks that have a change in status].*
- *Determine that the [insert stock] remains [insert status here for stocks that continue to be subject to overfishing or overfished].*

1. I concur. _____.

Date

2. I do not concur. _____.

Date

Appendix C –Template: Decision Memorandum for Rebuilding Progress

MEMORANDUM FOR: [Name]
Assistant Administrator for Fisheries

FROM: [Name]
Regional Administrator OR Director of Office of Sustainable Fisheries
(for Atlantic HMS Fisheries)

SUBJECT: Determination of adequate rebuilding progress not being made for [insert stock name] – DECISION MEMORANDUM

I recommend: If recommending more than one stock, list all stocks:

- *Making a determination that [insert stock] is not making adequate rebuilding progress.*
- *NOAA Fisheries recommends to the [insert name] Council the conservation and management measures described below to achieve adequate rebuilding progress for [insert stock]⁷.*

Please indicate below if you concur with this recommendation.

BACKGROUND

Brief description of stocks that were evaluated for rebuilding progress, criteria that were used to evaluate progress, and any other relevant information.

REBUILDING PROGRESS REVIEW [do for each stock]

- Cite source used to evaluate rebuilding plan progress (i.e., stock assessment).
- Discuss how rebuilding progress was evaluated under § 600.310(j)(3)(iv) and any other criteria.
- Specify what criteria support a determination that adequate progress is not being made.

⁷ For the HMS Management Division this bullet should read: *NOAA Fisheries develops the conservation and management measures described below to achieve adequate rebuilding progress for [insert stock].*

- Describe what conservation and management actions will be recommended to the Council to achieve adequate rebuilding progress⁸.

RECOMMENDATION

- *I recommend a determination that [insert stock] is not making adequate rebuilding progress.*
- *I also recommend to the [insert name] Council the following conservation and management measures to achieve adequate rebuilding progress⁹:*
 - For each stock, briefly describe conservation and management recommendation.

1. I concur. _____.
Date

2. I do not concur. _____.
Date

⁸ For the HMS Management Division, describe the conservation and management actions that will be considered to achieve adequate rebuilding progress.

⁹ For the HMS Management Division this bullet should read: *I also recommend that NOAA Fisheries develop the following conservation and management measures to achieve adequate rebuilding progress.*

Appendix D – Sample Letter to the Council for Stock Status Notification

Name of Council Chair

Address

Dear [Council Chair],

On [insert date], the NOAA Assistant Administrator for Fisheries determined [insert stock name] is [insert stock status], based on the best available scientific information.

- Indicate the criteria used to make the determination.
- Specify stock assessment or other basis (i.e., catch/OFL) used to make the determination.
- If stock is newly declared overfished, inform the Council that, within two years after the date of this notification letter, the Council must prepare and implement a rebuilding plan pursuant to the requirements of MSA section 304(e). In order to meet this deadline, Council actions should be submitted to NOAA Fisheries within 15 months of notification to ensure sufficient time for the Secretary to implement the measures, if approved.
- If stock is newly subject to overfishing or continues to be subject to overfishing, inform the Council of their obligations to set annual catch limits to end and prevent overfishing immediately and implement measures that ensure accountability.
- If stock continues to be overfished, inform the Council that it should ensure that progress in rebuilding continues¹⁰.

Sincerely,

Regional Administrator

¹⁰ If a continued status of overfishing or overfished does not trigger additional action by the Council because they are currently taking adequate action, it is at the discretion of the RA to notify the Council in this letter. These stocks will be included in the FR notice.

Appendix E – Sample Letter to the Council for Rebuilding Progress Determination

Name of Council Chair

Address

Dear [Council Chair],

On [insert date], the NOAA Assistant Administrator for Fisheries determined [insert stock name] is not making adequate progress towards rebuilding.

- Provide criteria that were evaluated under § 600.310(j)(3)(iv) to support a determination that adequate progress was not being made.
- Provide recommendations for further conservation and management measures to achieve adequate rebuilding progress.
- Inform the Council that, within two years after the date of this notification letter, they must prepare and implement a fishery management plan, plan amendment, or regulations to achieve adequate rebuilding progress pursuant to the requirements of MSA section 304(e). In order to meet this deadline, Council actions should be submitted to NOAA Fisheries within 15 months of notification to ensure sufficient time for the Secretary to implement the measures, if approved.

Sincerely,

Regional Administrator

Appendix F – Atlantic Highly Migratory Species (HMS) Management Division Procedures Process for Developing Decision Memos and Related Documents for Stock Status

1. As soon as best scientific information is available or data are available in conformance with the Information Quality Act, the HMS Division informs the OSF Domestic Fisheries Division of stock status determinations that will require a DM.
2. HMS Division drafts and sends to Domestic Fisheries Division for review a draft Stock Status DM from the Director of OSF to the AA (Appendix B).
3. HMS Division provides the draft DM to the Office of the General Counsel, Fisheries and Protected Resources Section for clearance.
4. HMS Division sends final DM to the OSF Regulatory Services Branch for OSF Director signature and transmittal to the AA.
5. The AA determines the stock's status based on the OSF Director's recommendation contained in the Stock Status DM.
6. After the AA signs the DM determining the stock status:
 - a. OSF Regulatory Services Branch will provide a signed copy of the DM to the HMS Division.
 - b. HMS Division enters status determination records in SIS.
 - c. OSF publishes a notice in the *Federal Register* for stocks found to be subject to overfishing, overfished, approaching an overfished condition, continued to be subject to overfishing, or continued to be overfished using information contained in the DM¹¹.
 - d. Within two years of the date of notification of an overfished stock in the *Federal Register*, the HMS Division shall prepare an FMP, FMP amendment, or proposed regulations to rebuild affected stocks of fish, in such time that NOAA Fisheries is able to implement such FMP, amendment, or proposed regulations. For stocks subject to overfishing, the HMS Division should immediately take appropriate steps to end overfishing.

Process for Developing Rebuilding Progress Decision Memo

1. After reviewing information under Section 2.3 and identifying stocks that are not making adequate rebuilding progress, HMS Division drafts and sends to Domestic Fisheries Division for review a draft Rebuilding Progress DM from the Director of OSF to the AA (Appendix C).
2. HMS Division provides the draft DM to the Office of the General Counsel, Fisheries and Protected Resources Section for clearance.
3. HMS Division sends final DM to the OSF Regulatory Services Branch for OSF Director signature and transmittal to the AA.

¹¹ In some cases, due to the timing of the HMS actions, the HMS Division will publish a separate *Federal Register* notice in advance of this OSF notice. In these cases, Domestic Fisheries Division will coordinate with the HMS Division so the notice appropriately references the prior stock status notifications by the HMS Division.

4. The AA determines if the stock is not making adequate rebuilding progress and actions necessary to rebuild the affected stock based on OSF Director's recommendation contained in the Rebuilding Progress DM.
5. After the AA signs the Rebuilding Progress DM:
 - a. OSF Regulatory Services Branch will provide a signed copy of the DM to the HMS Division.
 - b. HMS Division may publish a notice in the *Federal Register* for stocks not making adequate rebuilding progress using information contained in the DM.