

APPENDIX G2: All letters and e-mails from commercial  
fishers and processors

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# AMERICAN ALBACORE FISHING ASSOCIATION

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April 16, 2007

**VIA E-MAIL TO: annual.catch.limitDEIS@noaa.gov**

Attn: NMFS Office of Sustainable Fisheries

**Re: Guidelines on Annual Catch Limits (ACLs), Accountability Measures (AMs), and other provisions of the 2006 Amendments to the Magnuson-Stevens Act**

For Your Respected Consideration:

I am writing on behalf of the American Albacore Fishing Association (AAFA), a nonprofit corporation of over two dozen American commercial fishing vessels that participate in the troll/baitboat (“*pole & troll*”) North Pacific albacore fishery,<sup>1</sup> to submit comments in connection with the requirements of the reauthorization and 2006 Amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

AAFA acknowledges and supports the efforts of the Pacific Fishery Management Council (Council) to effectively implement the 2006 Amendments to the MSA in connection with the measures and mechanisms for meeting the MSA’s new Annual Catch Level requirements (ACLs) with regard to Highly Migratory Species such as albacore.<sup>2</sup>

We echo the Council’s observations stemming from the fact that albacore, as a Highly Migratory Species (HMS), are widely distributed over a large range. The North Pacific albacore fishery harvest by vessels of the West Coast-based troll/baitboat fleet represents just a small fraction of total fishing mortality over the large range of the stock. Accordingly, it is likely that in many cases, unilateral action by the United States may not achieve a desired, significant biological effect on the stock’s status. We encourage the appropriate consideration of this aspect of HMS fisheries when developing and implementing the required ACLs and AMs.

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<sup>1</sup> AAFA is founded upon the belief that, by promoting the environmental benefits of the troll and/or pole & line fisheries and promoting the health benefits of tuna consumption, the economic viability of these traditional troll and/or pole & line fisheries can be sustained.

<sup>2</sup> As set forth in the February 28, 2007 letter of Dr. Donald McIsaac, Executive Director, Pacific Fishery Management Council, to Mr. Alan Risenhoover, Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

Attn: NMFS Office of Sustainable Fisheries

Re: Guidelines on Annual Catch Limits (ACLs) and Accountability Measures (AMs)

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Our collective experience, gained through decades of fishing albacore off the West Coast, has shown us that factors other than mere biomass status of the albacore stock often play a role in the fishery fluctuations. The relative success or productivity of the West Coast albacore fishery from year to year depends upon a number of variables, such as market conditions, fuel costs, weather, gear type, and more.

The reauthorized MSA, at §104(b)(1), directs that Fishery Management Plans shall establish a mechanism for specifying Annual Catch Limits "...*unless otherwise provided for under an international agreement.*". AAFA requests NMFS undertake efforts to interpret such ambiguous clauses, and to determine if such clauses may be applied to provide relief for setting ACLs for international fisheries. Otherwise, U.S. fishermen will find themselves at a disadvantage if they are restricted to the same quota systems as those fishing on domestic stocks. The concept of ACLs may be appropriate for setting limits between U.S. fishermen fishing coastal stocks, but that simple arrangement would be impractical in an international setting.

AAFA questions how such statutory language is to be interpreted. If the principle objective of ACLs is to curb overfishing, are international agreements that undertake to control fishing in ways other than quotas considered sufficient as "*unless otherwise provided for*" in the MSA?

AAFA is wholly supportive of the MSA's National Standards (NSs) directed toward ensuring the long-term sustainability of the North Pacific albacore stock, support for the sustained participation of the fishing communities and their long history of interdependency with the West Coast fleet. Efforts to minimize, and hopefully reverse, the adverse economic impacts experienced by these fishing communities, as directed by NS-8, also has our support.

Similarly, AAFA encourages fishery management efforts to minimize bycatch, or mortality from bycatch, as directed by NS-9. AAFA recognizes and promotes the long standing history and tradition of the troll/baitboat methods of albacore fishing that our members continue today. The troll/baitboat albacore fishery has minimal, or virtually insignificant, bycatch mortality rates.

On behalf of AAFA and its members, I greatly appreciate having the opportunity to comment on these matters. If you have any questions or would like to discuss this matter further, please do not hesitate to contact me at (619) 941-2307.

Sincerely,

*/Jack Webster/*

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Jack Webster, F/V Millie G.  
AAFA president

Mr. Mark Millikin  
National Marine Fisheries Service  
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Via email: [annual.catchlimitDEIS@noaa.gov](mailto:annual.catchlimitDEIS@noaa.gov)

Dear Mr. Millikin:

The following scoping comments on the draft environmental impact statement (DEIS) for annual catch limit and accountability measures (ACL/AM) are submitted on behalf of Associated Fisheries of Maine, Garden State Seafood Association, and West Coast Seafood Processors Association. Collectively, these groups represent thousands of commercial fishermen, seafood processors and workers, dock facilities, and seafood-related businesses in Maine, New Jersey, California, Oregon, Washington, and Alaska. These groups and individuals will be directly affected by the proposed action.

### BACKGROUND

To begin, we must keep in mind that although the requirement to establish ACL/AM is mandatory, the national standard guidelines – which are the subject of the DEIS – do not “have the force and effect of law.” (16 USC 1851(b)). Further, “[i]n developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives.” (50 CFR 600.305(a)(2)). Finally, the national standards themselves, which the guidelines interpret, are “basic objectives for a viable conservation and management program for the Nation’s fishery resources, are designed to assure that management plans and regulations take into account the variability of fish resources, the individuality of fishermen, the needs of consumers, and the obligations to the general public, now and in generations to come [emphasis added].” (Conference Report 94-711, March 24, 1976). In other words, under law and regulatory interpretation by the National Marine Fisheries Service (NMFS), the guidelines themselves merely provide suggested ways for regional fishery management councils (Councils) to carry out their statutory obligations, and those suggestions are intended to be flexible, taking into account the variety of fisheries that are conserved and managed within the U.S. Exclusive Economic Zone.

The existing guidelines for National Standard 1 are a good example of this principle: they provide four alternatives for specifying maximum sustainable yield (MSY) and indicate that other alternatives are viable as long as they are based on the best scientific information available; they provide alternatives to specifying MSY; and they even state that “Councils have a reasonable degree of latitude in determining which estimates to use and how these estimates are to be expressed.” (50 CFR 600.310(c)(2)(ii)).

In fact, some Councils have been complying with the new provisions of law before they were enacted. For example, the Pacific Fishery Management Council has had only 1 documented case of overfishing involving a fully managed species since the statutory recognition of overfishing in 1996. The Council promptly resolved the problem through the use of in-season management measures, a fact noted in the *Federal Register* notice (72 FR 12771; March 19, 2007) that simultaneously declared overfishing had occurred and had been corrected.

Given this background, it is evident that no “one size fits all” prescription can – or even should – be applied to the diverse fisheries subject to U.S. jurisdiction. Rather, NMFS should develop a more general standard that meets the law but under which Regional Councils would have the flexibility to take actions appropriate to their regions and fisheries.

This also raises the issue of the level of management to which the ACL/AM would apply. The requirement for ACL/AM is found in the mandatory measures needed in a fishery management plan (16 USC 1853(a)). Some Regional Councils have single species plans; others have multi-species plans. The statute itself defines “fishery” as “one or more stocks of fish that can be treated as a unit...; and any fishing for such stocks.” Management measures (including data reporting, which will be a cornerstone of any ACL/AM) applied to fishing for a single species or stock may vary greatly depending on what type of fishing is being addressed.

Further, allocations are often made among different fisheries utilizing the same species or stock. Thus, flexibility needs to be provided to establish accountability measures on individual sectors, even if the ACL is applied to a species or stock as a whole. It makes no sense, for example, to apply an accountability measure to a trawl fishery for rockfish if a recreational fishery for that same species/stock consistently harvests more than is intended.

Similar issues exist with species/stocks that are under the authority of more than one management entity. Some stocks, like certain tunas are subject to one or more Council fishery management plans as well as international agreements. For example, establishing ACL/AM for the entire stock of bigeye tuna – of which the U.S. harvests 1 or 2% - makes no sense and is doomed to failure since international management measures will take precedence and the U.S. will have no effective control over fishing conducted by other nations on the high seas or within their own exclusive economic zones.

Other stocks such as Pacific whiting, Pacific halibut, and some Pacific salmon are jointly managed by the U.S. and Canada via treaty and some stocks of Northeast groundfish, Atlantic herring and mackerel are transboundary. Some stocks of West Coast salmon and fish in other regions are managed by both state and federal governments. Other examples of the latter include East Coast summer flounder, black sea bass, and scup.

We also note that in the material provided on NMFS’ web site and at public scoping meetings, the question is raised as to whether other issues related to National Standard 1 guidelines need to be addressed during this process. In our view, the answer is an unequivocal “YES.” On June 22, 2005, NMFS issued a proposed rule to revise National Standard 1 guidelines. The proposal was the product of substantial work by NMFS scientific staff, was reviewed and commented on by the Secretary of Commerce’s Marine Fisheries Advisory Committee and most – if not all – of the Councils and their advisory and scientific bodies, and was subject to extensive public comments. In January, 2006, Dr. William Hogarth, Assistant Administrator for Fisheries, made the following statement which was published on the NMFS web site:

*“Based on the high volume of comments and concerns we received from the public, we’ve decided to issue a notice of intent to prepare an environmental impact statement for the proposed revisions to the guidelines. The notice of intent will include our original proposals and some additional proposals, in light of your comments and other developments, such as recent movement in Congress to*

*reauthorize the Magnuson-Stevens Act. The public will have the opportunity to comment on this new development and submit new ideas for other possible changes to the guidelines. After we publish the notice of intent, we will complete a draft environmental impact statement and hold public hearings.”*

The DEIS for current scoping comments is the only existing DEIS on the subject of National Standard 1 guidelines that has been published since that announcement. Since the initial 2005 proposed rule incorporated advanced scientific thinking in terms of overfishing and rebuilding – subjects that also are being considered in the current DEIS – it is entirely appropriate that the June 22, 2005 proposed rule be included as a sub-option in all of the proposed action alternatives.

Finally, we note that the Council on Environmental Quality’s regulations applicable to preparation of environmental impact statements (40 CFR 1502.14(a)) stipulate that alternatives presented should “rigorously explore and objectively evaluate all reasonable alternatives...” We do not believe that the NMFS Preliminary Alternatives provided in the scoping material meet this test. In fact, it is difficult to distinguish between Alternative 2 and Alternative 3.

#### RECOMMENDATIONS

1. Revise Preliminary Alternative 2 to list examples of performance standards that would have to be met (i.e., would be acceptable to the Secretary of Commerce). These should include such things as requiring a target fishing level (TFL) that does not exceed the overfishing level (including an acceptable proxy such as MFMT, MSST, or natural mortality rate); requiring that management measures be put in place to ensure that harvests do not exceed the TFL; and require that the Council take action if the TFL is nevertheless exceeded, using management tools that are appropriate to the fishery.
2. Due to the general nature of the description of Alternative 3, we are unable to comment on specific performance standards and guidelines at this time. However, we note that performance standards and guidelines should reflect the availability of data to measure success or failure. Therefore, we believe that NMFS needs to revise Preliminary Alternative 3 to more explicitly state what the specific guidelines might be.
3. Both alternatives should also explicitly recognize that Councils do not have to amend existing fishery management plans if they are already complying with the revised National Standard; and both should specify that if a fishery is managed under multiple jurisdictions (federal, state, international) that ACL/AM would only apply to domestic fishing within the exclusive economic zone and only to that portion of the fishery that is under Council jurisdiction.
4. Include under both alternatives the capability for a Council to apply ACL/AM to each individual sector within a fishery, as well as the entire fishery, if those sectors are clearly defined.
5. Include as a sub-option under both alternatives the proposed rule for revision of the National Standard 1 guidelines that was published on June 22, 2005.
6. Specify applicable exclusions for species known to exhibit annual life cycle characteristics, e.g. *Loligo* spp. and *Illex* squids.

7. Delete references to a “pay back” provision and the need to implement “precautionary” management as neither component is a requirement of current law.

8. Given that Councils have already established overfishing definitions and MSY control rules, we see no reason to require the Councils to revise these definitions to specify an overfishing level. In fact, there is no requirement in the Act that a specific overfishing level be established for any fishery.

9. We agree with the concept that fish species do not always segregate in space and time and that harvest often involves the take of several species. We note this is the case regardless of gear type or type of fishery be it commercial, recreational, subsistence, or research. Thus, we recommend specifying that ACL’s may apply to stock complexes, stock assemblages and similar stock groupings.

10. Recommendations for in-season adjustment capability should be confined to stocks where fishery-dependent data are sufficiently accurate/precise and timely enough to justify rapid management action; this capability should be a tool for Councils to use, not a requirement.

11. While ACL’s are specified by law to be set using the best scientific information available and at levels such that overfishing does not occur, the Act still requires that we achieve OY on a continuing basis. Therefore, there are no legitimate legal or scientific reasons to propose or specify a precautionary buffer (or determine its required size) between the ACL and OY. For some fisheries, relatively little is known about stock size, productivity, or other crucial biological parameters. In those cases, the existing National Standard 1 guidelines at 50 CFR 600.310(5)(iii) specify a risk-averse approach to establishing optimum yield (OY). We see no reason to revise this section of the guidelines. Therefore, when an OY is established that is less than the overfishing level and is based on appropriate control rules, rebuilding plans, or established risk-averse approaches, ACL can be set as the OY plus any expected fishing mortality from bycatch, as long as the total mortality does not exceed the overfishing level.

12. NMFS needs to recognize that data available to adequately assess population size of, and establish ACLs on, all stocks may be bountiful or nearly non-existent. Requiring Councils to meet the same standards for every species will not work. We therefore suggest that NMFS consider different tiers of data availability and set ACL rules accordingly. Thus, for a stock with reasonable amounts of data for an assessment, ACL can be set equal to OY. For stocks with insufficient data for an assessment, NMFS should allow Councils to treat them as an assemblage, or use a scientifically accepted precautionary means to set ACL. In the case of assemblages, Councils should be allowed to set an ACL on a core stock that can then be used as a proxy for the assemblage.

13. Accountability measures (AM) are those actions taken by a Council with advice from the SSC designed to prevent overfishing and achieve optimum yield. Accountability measures, like fishery management plans, need to relate to the fisheries being managed. Councils are already operating under specific requirements to ensure accountability. These actions are taken under the existing National Standard 1 guidelines and the requirements of the Act. They include the current process for setting total allowable catch (and the new ACL requirement), MSY control rules, and overfishing targets and thresholds. We believe that there is no reason to establish

additional point-specific AM requirements as the Councils have already adopted AMs and are required now to end overfishing. In the event that an overfishing level is approached or overfishing does occur the Councils have numerous tools at their disposal: effort reductions, days at sea, harvest limits, time / area closures, size limits, bag limits, etc. As long as current Council actions to achieve accountability are based on a sound scientific analysis indicating that they will have the desired outcome, there should be no restrictions on what sort of method a Council might choose to use.

14. We believe that all *fishing* mortality – including bycatch and discard mortality – should be counted when determining whether overfishing is occurring. Estimates of mortality other than landed catch mortality must be based on the best scientific information available; any models used to estimate fishing mortality from other than landed catch should be peer reviewed pursuant to the provisions of 16 USC 1852(g).

However, non-fishing mortality should not be counted. The definition of “overfishing” (16 USC 1802(34)) speaks to “a rate or level of fishing mortality” and not to mortality from non-fishing sources. In particular, mortality due to scientific research cannot be counted as fishing mortality, as the definition of “fishing” (16 USC 1802(16)) specifically excludes “any scientific research activity which is conducted by a scientific research vessel.”

15. When looking at AM, Councils should be allowed to take credit for harvest below ACL and apply that unharvested amount to the succeeding year’s ACL. While not all Councils may choose to do this for every fishery, they should have the flexibility to do so. Not only will this serve as a de facto buffer to temper the effects of unforeseen circumstances, but it also allows Councils to meet the provisions of National Standard 1: “achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.”

16. In some instances such as the Atlantic monkfish fishery, NMFS has utilized effort controls (i.e., days at sea closely linked to a total allowable catch / trip limit combination) to manage the fishery. These sorts of management tools should be reserved for use by the Councils on a case-by-case basis.

We look forward to continue working with NMFS as work proceeds on revising the National Standard 1 guidelines.

Sincerely,

Maggie Raymond, Associated Fisheries of Maine  
Greg DiDomenico, Garden State Seafood Association  
Rod Moore, West Coast Seafood Processors Association

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April 17, 2007

**VIA ELECTRONIC MAIL**

Mr. Mark Millikin  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

**RE: Comments on Notice to Prepare an Environmental Impact Statement  
Regarding Intent to Prepare Guidance on Annual Catch Limits**

Dear Mr. Millikin:

We are submitting these comments on behalf of the Fisheries Survival Fund (“FSF”) in response to the call for comments in the Notice of Intent to prepare an environmental impact statement relating to the Magnuson-Stevens Act National Standard Guidelines for National Standard One. 72 Fed. Reg. 7016 (Feb. 14, 2007). The FSF represents the bulk of the full-time, limited access Atlantic sea scallop fishing fleet from Massachusetts to Virginia. We appreciate this opportunity to present these comments on the Notice of Intent.

As a general comment, FSF supports the National Marine Fisheries Service’s decision to hold scoping sessions at all of the Regional Councils. The implementation of the Magnuson-Stevens Fishery and Conservation Management Act Reauthorization of 2006 (“Reauthorization Act”) requirements to set annual catch limits (“ACL”) and the institution of accountability measures (“AM”) is of critical importance to the fishing industry and worthy of the attention NMFS is providing it.

The FSF must, however, express an overall concern about the restrictive nature of the NMFS proposal, and its tendency to mandate a one-size-fits-all approach. In general, the proposal NMFS has put forth in this Notice of Intent is incredibly restrictive and narrow when compared to the statutory reauthorization of the law on which the purported revisions to the guidelines are purportedly based. In contrast to the NMFS proposal, Congress passed a law that is remarkable in its expansive approach to fisheries management and its allowance for regional differences and flexibility in the use of differing management approaches.

These comments address detailed concerns FSF has with the direction and implications of some of the issues raised in the Notice of Intent. Below, FSF addresses the specific questions raised in the Notice, as well as raising some overarching concerns. Among the greatest problems identified is the notion of creating a “buffer zone” between the ACL and what is to be termed the “overfishing levels,” which runs counter to the command of National Standard One requiring the achievement of optimum yield on a “continuing basis.” 16 U.S.C. § 1851(a)(1). Similarly, the

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Notice appears to suggest that a broader, management-focused role for the Scientific and Statistical Committees (“SSC”) should be considered, such as in suggesting AMs. Nothing in the law, however, provides the SSCs with such authority. Rather, management responsibilities continue to rest squarely with the regional management councils.

The entire ACL provision enacted into law is a broad requirement, lacking the specific mandates NMFS seems inappropriately bent on prescribing. Congress intentionally left ACL provision open so as to ensure management councils could use all of the management tools available to achieve the objective of the provision, which is to set an ACL for each fishery. A flexible mandate without specific requirements is one of the underpinning themes of the Magnuson-Stevens Act (“MSA”). From the inception of the MSA in 1976, Congress realized a one size fits all approach to fisheries management was not in the national interest, which is why the Congress created the regional councils to allow for different regions to manage fisheries in a way that best suited particular regions.

As to the general concerns, a prime example of the overly restrictive approach referred to above is the agency’s the proposal to require a “payback” provision in fishery management plans to account for any overage of the ACL. The “payback” provision was included in the Senate version of the Magnuson-Stevens reauthorization, but it was never included in the House version of the bill. When the House and Senate negotiated and settled on a final bill for passage, the “payback” provision from the Senate bill was not included in final version of the bill that Congress passed into law.

Instead, both Houses of Congress agreed on much broader language. Indeed, even within the Senate, the Commerce Committee rejected language that would have mandated hard total allowable catch limits for every fishery. Rather, the Senate Commerce Committee reported out a bill that allowed regional fishery management councils to set ACL’s using input or output controls, just as the enacted law allows. Thus, NMFS should not mandate hard TACs; equally, it should not establish a system that makes hard TACs the only practicable alternative (such as prescribing buffer zones that would greatly reduce an ACL if a hard TAC were not employed). The guidelines should not take away the flexibility in management approaches Congress sought to maintain, nor preempt successful management strategies such as days-at-sea management for the Atlantic sea scallop fishery.

In summary, FSF fears that NMFS’s specific proposals in the Notice undermine the flexibility in setting and monitoring ACLs which Congress provided. NMFS would instead inappropriately set specific requirements where they are clearly not called for by the Reauthorization Act. FSF respectfully requests NMFS reevaluate its proposals to the better reflect the terms and spirit of the Reauthorization Act. Congress specifically did not require a one-size-fits-all approach to fisheries management and NMFS does not have the authority to unilaterally impose it.

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Within the Notice of Intent, NMFS sets out a series of ideas on which it is seeking comment. What follows is FSF's response to the NMFS solicitation of comments:

**1. NMFS asked for comments on what is the role of the Scientific and Statistical Committees ("SSC") and "other peer review" processes in setting ACLs and AMs.**

The law provides a detailed framework for the roles of the SSC's and the Councils in setting the ACL and AM. 16 U.S.C. § 1852(g) as amended states:

Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

*Id.* 16 U.S.C. § 1852(h), as amended, states the Council shall:

develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g).

*Id.* The law unequivocally bifurcates the roles of the SSC and the Council in setting the ACLs. The law directs the SSC to recommend an overall level of fishing mortality that the Council cannot exceed, but the law only authorizes the Council to set the ACL at or below the recommended level.

As for the AMs, 16 U.S.C. § 1853(a) directs the Council to establish accountability measures. The Act does not authorize the SSC's to make any management decisions or set the AMs. The law only authorizes the SSC's to provide advice and assistance on issues pertaining to the scientific analysis of a fishery and not to the actual management measures. *See* 16 U.S.C. § 1852(g). The Act certainly does not authorize the SSC's to have any role in a decision that would affect allocations of catch, as this would deviate from the SSC's delineated role of providing scientific advice, and detract from their role as impartial advisors.

**2. NMFS asked for comments on the relationship between the ACL and Optimum Yield ("OY").**

The reauthorization of the Magnuson-Stevens Act did not change the existing language that requires conservation and management measures to achieve OY on a continuing basis. 16 U.S.C. § 1851(a)(1). Therefore, the Councils must set an ACL, which is a conservation and management measure, at a level that achieves OY on a continuing basis. This is a critical issue. As Congress did not amend the OY requirements in the Act, NMFS must be careful to continue

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to abide by the preexisting requirements of the MSA as it moves to implement the new complimentary conservation provisions, such as the ACL provision.

**3. NMFS solicited comments on what revisions are necessary to the existing overfishing definition to accommodate the overfishing limit (OFL).**

The agency explains its rationale for creating the OFL as follows:

Under the NS1 guidelines, overfishing of the stock occurs when the maximum fishing mortality threshold (MFMT) is exceeded (50 CFR 600.310(d)(2)(i)). Thus, it is important to clarify the relationship between the ACL and the MFMT. While the MFMT is expressed as a rate of fishing, NMFS may recommend that FMPs be amended so that annual catch levels corresponding to MFMT—an overfishing level (OFL)—are specified along with ACLs in comparable units (e.g., weight or numbers of fish) to ACLs, to facilitate subsequent monitoring against the ACL. The OFL would be the maximum amount of annual catch from all sources (landings and discard mortality from all sectors) which does not result in overfishing.

72 Fed. Reg. at 7018. The rationale above says an OFL is needed because an ACL is presumably measured in an amount while the MFMT is a rate. FSF does not believe the translation of a unit of weight into a fishing rate is a significant hurdle that requires the formulation of a whole new term. Councils routinely set target or hard TACs in amounts and then translate the amount into a rate in order to establish appropriate management measures. The introduction of the concept of OFL will only lead to further confusion in fisheries management and provide little to no benefit from its creation.

FSF would also like to comment on the important assertion contained in the parentheses in the agency rationale quoted above to the effect that all mortality from landings and discards should count against the ACL. The Act is silent on what mortality should count against the ACL and the agency should not assume that landings **and** discards must count against the ACL. Councils may choose to count mortality in this fashion and NMFS may establish it as a preference, but NMFS has not authority under the law to mandate this form of accounting for mortality.

**4. NMFS solicited comments on concerns over the variability in data currently available for each stock.**

In this regard, FSF would like bring to NMFS's attention that upon the retirement of the *Albatross IV* there is no plan in place to conduct the Atlantic sea scallop survey. FSF is extremely concerned about the long term health of the sea scallop stock and the viability of the rotational management plan, currently in use, if there is no sea scallop survey. One of the most

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profitable fisheries in the world is dependent upon the execution of an accurate yearly survey of the sea scallop stock.

**5. NMFS solicited comments on what should be done about the variability in management approaches in reaching target fishing mortality levels.**

FSF is concerned the Agency is soliciting comments on a topic that is not within the scope of its mandate under the MSA reauthorization. The Congress through the reauthorization of the Act specifically did not allow or disallow any particular sort of management tool. On the contrary, the Congress, unlike in past reauthorizations, did not prohibit the Councils from using any specific management tool. Indeed, early version of the Reauthorization Act included requirements for all fisheries to be managed by hard TACs, yet this specific language was never passed by a Congressional committee, let alone either house of the legislature. Congress debated the merits of prescribing a specific management tool and rejected the language. As a result, all management tools and conservation measures are at the disposal of the Councils. Every management tool has pros and cons, which the Council must weigh when it deliberates a FMP. However, it is not appropriate for NMFS to pre-select any specific management tool as there is no authorization under the Act to do so.

**6. NMFS has solicited comments on setting a buffer between the ACL and the OFL and how large the buffer needs to be.**

FSF is extremely concerned about the position NMFS has put forward in the scoping document. NMFS' stated rationale for the requirement of a buffer is:

**NMFS believes that the extent of future management success using ACLs will depend largely upon ACLs being set sufficiently below the OFL for a fish stock, i.e., the size of the buffer needed between the OFL and ACL, to reduce the chance of exceeding the OFL.**

72 Fed. Reg. at 7018 (emphasis added). This is an extremely problematic approach that is apparently based upon the precautionary principle, which is not a requirement of the Magnuson-Stevens Act. The fact is the proposed buffer between the ACL and the OFL is illegal under the MSA. As FSF stated above, the MSA still requires conservation and management measures to achieve OY on a continuing basis. To achieve OY on a continuing basis, the Councils must set the ACL at OY. If NMFS requires a buffer zone that artificially lowers ACL below OY, then it is requiring the Councils to set a conservation and management measure in a manner inconsistent with National Standard One by not setting management measures at a level to achieve OY on a continuing basis. Any requirement that is not consistent with the national standards set forth in the Act is a *prima facie* violation of the MSA.

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Nor should NMFS use buffer zone measures as a means to force Councils to apply particular management regimes, such as hard TACs, or face the required imposition of major and crippling buffer zones for their ACLs. The presentations to the fishery management councils in this regard were particularly troubling.

As the Reauthorization Act as plainly states, Councils must establish ACLs that do not allow overfishing and FMPs must include measures to ensure accountability. 16 U.S.C. § 1853. The Act's language is purposely vague and open-ended in order to allow the Councils the maximum amount of flexibility in tailoring individual FMPs. NMFS is attempting to single handedly, and without any authorization, remove the flexibility placed within the law by Congress. FSF strenuously opposes this proposal to mandate buffer zones as it is impermissible under the law and contrary to Congressional intent.

**7. NMFS has solicited comments on what is the appropriate probability that the ACL will prevent overfishing.**

The Act is silent on what level of certainty is required for setting the ACL. In the absence of any statutory guidance judicial precedent is appropriate. Courts have consistently stated in opinions that a plan must have a 50 percent chance of success. NMFS does not have any authority to arbitrarily increase the judicial standard of 50 percent. The FSF strongly encourages the agency to adopt the judicial standard in the guidelines.

**8. NMFS has asked for comments on limiting the extent of overfishing should it occur.**

16 U.S.C. § 1853 requires Councils to set an ACL at a level that does not allow overfishing, including measures to ensure accountability. The intent of the Reauthorization Act is for the accountability measures to prevent overfishing. What NMFS is apparently proposing in this solicitation is an additional requirement, not required by law, to limit overfishing should it occur. FSF believes, as supported by the law, that any limit on the amount of overfishing is an issue for the Councils to individually decide on, taking into account all of the national standards and weighing the viability of all the available accountability measures. It is improper for NMFS to mandate or require limits when none are called for under the Act.

Parenthetically, FSF is troubled by the statement: "With regard to 'measures of accountability' ... required by MSRA section 104(a)(10), NMFS' initial interpretation is that they are part of the ACL mechanism and FMPs should contain AMs for each stock." 72 Fed. Reg. at 7018. Even though the Magnuson-Stevens Act defines a "stock of fish" as "species, subspecies, geographical grouping, or other category of fish capable of management as a unit," 16 U.S.C. § 1802(37), and the Notice itself ties the use of the term "stock" or "stock complex" to the MSA's definition of a

Mr. Mark Millikin  
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fishery,<sup>1</sup> 72 Fed. Reg at 7018 (quoting 50 C.F.R. § 600.305(c)(12)), the context suggest that NMFS is viewing stocks at essentially a species or subspecies level. The proper term in this context should be “fishery” as that is the unit of management to which all of the requirements of the MSA apply.

This nomenclature is significant. In the Reauthorization Act, Congress did not change the definition of a fishery, nor in any way attempted to restrict the ability of Councils to manage assemblages of species as a unit for purposes of the law. This flexibility, which is inherent in the definition of a fishery as functional unit that can be defined, among others, in economic terms, is the basis for what has erroneously been termed the “mixed stock exception.” Rather than the exception, it is the rule, and the National Standard One guidelines should not subvert the law by essentially requiring management at the species or subspecies level.

In application, Councils retain flexibility under the MSA as amended to treat an assemblage of species caught in a mixed catch fishery as a single “fishery” and manage it according to the law. With respect to ACLs and AMs, this means that reference points can be set for the aggregated stock and these measures are applied to fishery as a whole, not to the individual species within the fishery. The National Standard One guidelines should be absolutely clear in this regard.

**9. NMFS is seeking comments on establishing corrective actions to ensure accountability in a subsequent year for an overage of the OFL of a stock for the previous year.**

The FSF is struck by the similarity of this agency proposal to the “payback” language in the Senate passed version of the Reauthorization Act. The Senate passed language required the Council to reduce the ensuing year’s ACL by the same amount of any overage of the prior year’s ACL. As NMFS is aware, the payback provision fell out of the bill during the negotiations between the House and Senate and was not passed into law. What ended up in the Act was the unspecific language in 16 U.S.C. § 1853 stating the Council shall take “measures to ensure accountability.”

Therefore, the Reauthorization Act authorizes a Council and NMFS to institute a payback provision if the ACL is exceeded. What the Act does not do is require a payback. It is solely up to the Council to decide whether or not to instate a payback provision as part of its accountability measures in a particular FMP. Generally speaking, however, it is inappropriate to use “payback” provisions in fisheries which are managed through hard TACs or other mechanisms, such as days-at-sea (“DAS”) designed to achieve a target fishing mortality level, when those measures

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<sup>1</sup> Which is defined as “one or more stocks of fish that can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics; and any fishing for such stocks.” *Id.* §1802(13).

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are specified on an annual or multi-year basis. In such instances, the only reason target fishing levels are exceeded is due to the fact that the estimate of the TAC or number of DAS was incorrect. SSCs and the Councils will consider the actual fishing mortality rate achieved in the prior year or years when developing subsequent specifications for the fishery. Arbitrarily reducing ACLs by the amount of "overages" in such cases amounts to a capricious decision to fish at less than OY, which, as explained above, is a *prima facie* violation of National Standard One.

###

This scoping process is the first in a series of important steps in the implementation of the Magnuson Stevens Reauthorization Act. FSF appreciates this opportunity to comment on the Notice of Intent to prepare an environmental impact statement and are hopeful these comments will guide the agency in implementing the Act. Please do not hesitate to contact us if you require any further information.

Sincerely,



David E. Frulla  
Shaun M. Gehan  
Andrew Minkiewicz

Attorneys for the Fisheries Survival Fund

From [Mark Millikin <Mark.Millikin@noaa.gov>](mailto:Mark.Millikin@noaa.gov) ▶

Sent Friday, June 1, 2007 11:17 am

To [annual\\_catch\\_limitDEIS <annual\\_catch\\_limitDEIS@noaa.gov>](mailto:annual_catch_limitDEIS@noaa.gov)

Cc

Bcc

Subject [Fwd: Comments on Annual Catch Limits]

Attachments [FSF Comments on Notice of Intent.pdf](#)

566K

From Sean McKeon, April 18, 2007.

----- Original Message -----

**Subject:** Comments on Annual Catch Limits

**Date:** Wed, 18 Apr 2007 13:32:36 -0400

**From:** Sean McKeon <[srm@ncfish.org](mailto:srm@ncfish.org)>

**To:** [Mark.Millikin@noaa.gov](mailto:Mark.Millikin@noaa.gov)

Dear Mark,

I realize the date for comments was yesterday, but I am at the MAFMC meeting in MD and just had a chance to get this off to you.

The North Carolina Fisheries Association fully supports the comments attached above, which were sent to you last night by the Fishery Survival Fund representatives.

We would like to concur with the FSF's comments and submit them here as representing our thoughts, comments and concerns about the NMFS proposal.

I hope you allow these comments to be considered even though they come a few hours late.

Thank you for your consideration of this request.

Sincerely,

Sean McKeon

President

NCFA

New Bern, NC

252-633-2288

**KELLEY DRYE**  
**COLLIER SHANNON**

David E. Frulla  
Partner  
Direct dial 202.342.8648  
DFrulla@kelleydrye.com

April 17, 2007

**VIA ELECTRONIC MAIL**

Mr. Mark Millikin  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

**RE: Comments on Notice to Prepare an Environmental Impact Statement  
Regarding Intent to Prepare Guidance on Annual Catch Limits**

Dear Mr. Millikin:

We are submitting these comments on behalf of the Fisheries Survival Fund (“FSF”) in response to the call for comments in the Notice of Intent to prepare an environmental impact statement relating to the Magnuson-Stevens Act National Standard Guidelines for National Standard One. 72 Fed. Reg. 7016 (Feb. 14, 2007). The FSF represents the bulk of the full-time, limited access Atlantic sea scallop fishing fleet from Massachusetts to Virginia. We appreciate this opportunity to present these comments on the Notice of Intent.

As a general comment, FSF supports the National Marine Fisheries Service’s decision to hold scoping sessions at all of the Regional Councils. The implementation of the Magnuson-Stevens Fishery and Conservation Management Act Reauthorization of 2006 (“Reauthorization Act”) requirements to set annual catch limits (“ACL”) and the institution of accountability measures (“AM”) is of critical importance to the fishing industry and worthy of the attention NMFS is providing it.

The FSF must, however, express an overall concern about the restrictive nature of the NMFS proposal, and its tendency to mandate a one-size-fits-all approach. In general, the proposal NMFS has put forth in this Notice of Intent is incredibly restrictive and narrow when compared to the statutory reauthorization of the law on which the purported revisions to the guidelines are purportedly based. In contrast to the NMFS proposal, Congress passed a law that is remarkable in its expansive approach to fisheries management and its allowance for regional differences and flexibility in the use of differing management approaches.

These comments address detailed concerns FSF has with the direction and implications of some of the issues raised in the Notice of Intent. Below, FSF addresses the specific questions raised in the Notice, as well as raising some overarching concerns. Among the greatest problems identified is the notion of creating a “buffer zone” between the ACL and what is to be termed the “overfishing levels,” which runs counter to the command of National Standard One requiring the achievement of optimum yield on a “continuing basis.” 16 U.S.C. § 1851(a)(1). Similarly, the

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Notice appears to suggest that a broader, management-focused role for the Scientific and Statistical Committees (“SSC”) should be considered, such as in suggesting AMs. Nothing in the law, however, provides the SSCs with such authority. Rather, management responsibilities continue to rest squarely with the regional management councils.

The entire ACL provision enacted into law is a broad requirement, lacking the specific mandates NMFS seems inappropriately bent on prescribing. Congress intentionally left ACL provision open so as to ensure management councils could use all of the management tools available to achieve the objective of the provision, which is to set an ACL for each fishery. A flexible mandate without specific requirements is one of the underpinning themes of the Magnuson-Stevens Act (“MSA”). From the inception of the MSA in 1976, Congress realized a one size fits all approach to fisheries management was not in the national interest, which is why the Congress created the regional councils to allow for different regions to manage fisheries in a way that best suited particular regions.

As to the general concerns, a prime example of the overly restrictive approach referred to above is the agency’s the proposal to require a “payback” provision in fishery management plans to account for any overage of the ACL. The “payback” provision was included in the Senate version of the Magnuson-Stevens reauthorization, but it was never included in the House version of the bill. When the House and Senate negotiated and settled on a final bill for passage, the “payback” provision from the Senate bill was not included in final version of the bill that Congress passed into law.

Instead, both Houses of Congress agreed on much broader language. Indeed, even within the Senate, the Commerce Committee rejected language that would have mandated hard total allowable catch limits for every fishery. Rather, the Senate Commerce Committee reported out a bill that allowed regional fishery management councils to set ACL’s using input or output controls, just as the enacted law allows. Thus, NMFS should not mandate hard TACs; equally, it should not establish a system that makes hard TACs the only practicable alternative (such as prescribing buffer zones that would greatly reduce an ACL if a hard TAC were not employed). The guidelines should not take away the flexibility in management approaches Congress sought to maintain, nor preempt successful management strategies such as days-at-sea management for the Atlantic sea scallop fishery.

In summary, FSF fears that NMFS’s specific proposals in the Notice undermine the flexibility in setting and monitoring ACLs which Congress provided. NMFS would instead inappropriately set specific requirements where they are clearly not called for by the Reauthorization Act. FSF respectfully requests NMFS reevaluate its proposals to the better reflect the terms and spirit of the Reauthorization Act. Congress specifically did not require a one-size-fits-all approach to fisheries management and NMFS does not have the authority to unilaterally impose it.

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Within the Notice of Intent, NMFS sets out a series of ideas on which it is seeking comment. What follows is FSF's response to the NMFS solicitation of comments:

**1. NMFS asked for comments on what is the role of the Scientific and Statistical Committees ("SSC") and "other peer review" processes in setting ACLs and AMs.**

The law provides a detailed framework for the roles of the SSC's and the Councils in setting the ACL and AM. 16 U.S.C. § 1852(g) as amended states:

Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

*Id.* 16 U.S.C. § 1852(h), as amended, states the Council shall:

develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g).

*Id.* The law unequivocally bifurcates the roles of the SSC and the Council in setting the ACLs. The law directs the SSC to recommend an overall level of fishing mortality that the Council cannot exceed, but the law only authorizes the Council to set the ACL at or below the recommended level.

As for the AMs, 16 U.S.C. § 1853(a) directs the Council to establish accountability measures. The Act does not authorize the SSC's to make any management decisions or set the AMs. The law only authorizes the SSC's to provide advice and assistance on issues pertaining to the scientific analysis of a fishery and not to the actual management measures. *See* 16 U.S.C. § 1852(g). The Act certainly does not authorize the SSC's to have any role in a decision that would affect allocations of catch, as this would deviate from the SSC's delineated role of providing scientific advice, and detract from their role as impartial advisors.

**2. NMFS asked for comments on the relationship between the ACL and Optimum Yield ("OY").**

The reauthorization of the Magnuson-Stevens Act did not change the existing language that requires conservation and management measures to achieve OY on a continuing basis. 16 U.S.C. § 1851(a)(1). Therefore, the Councils must set an ACL, which is a conservation and management measure, at a level that achieves OY on a continuing basis. This is a critical issue. As Congress did not amend the OY requirements in the Act, NMFS must be careful to continue

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to abide by the preexisting requirements of the MSA as it moves to implement the new complimentary conservation provisions, such as the ACL provision.

**3. NMFS solicited comments on what revisions are necessary to the existing overfishing definition to accommodate the overfishing limit (OFL).**

The agency explains its rationale for creating the OFL as follows:

Under the NS1 guidelines, overfishing of the stock occurs when the maximum fishing mortality threshold (MFMT) is exceeded (50 CFR 600.310(d)(2)(i)). Thus, it is important to clarify the relationship between the ACL and the MFMT. While the MFMT is expressed as a rate of fishing, NMFS may recommend that FMPs be amended so that annual catch levels corresponding to MFMT—an overfishing level (OFL)—are specified along with ACLs in comparable units (e.g., weight or numbers of fish) to ACLs, to facilitate subsequent monitoring against the ACL. The OFL would be the maximum amount of annual catch from all sources (landings and discard mortality from all sectors) which does not result in overfishing.

72 Fed. Reg. at 7018. The rationale above says an OFL is needed because an ACL is presumably measured in an amount while the MFMT is a rate. FSF does not believe the translation of a unit of weight into a fishing rate is a significant hurdle that requires the formulation of a whole new term. Councils routinely set target or hard TACs in amounts and then translate the amount into a rate in order to establish appropriate management measures. The introduction of the concept of OFL will only lead to further confusion in fisheries management and provide little to no benefit from its creation.

FSF would also like to comment on the important assertion contained in the parentheses in the agency rationale quoted above to the effect that all mortality from landings and discards should count against the ACL. The Act is silent on what mortality should count against the ACL and the agency should not assume that landings **and** discards must count against the ACL. Councils may choose to count mortality in this fashion and NMFS may establish it as a preference, but NMFS has not authority under the law to mandate this form of accounting for mortality.

**4. NMFS solicited comments on concerns over the variability in data currently available for each stock.**

In this regard, FSF would like bring to NMFS's attention that upon the retirement of the *Albatross IV* there is no plan in place to conduct the Atlantic sea scallop survey. FSF is extremely concerned about the long term health of the sea scallop stock and the viability of the rotational management plan, currently in use, if there is no sea scallop survey. One of the most

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profitable fisheries in the world is dependent upon the execution of an accurate yearly survey of the sea scallop stock.

**5. NMFS solicited comments on what should be done about the variability in management approaches in reaching target fishing mortality levels.**

FSF is concerned the Agency is soliciting comments on a topic that is not within the scope of its mandate under the MSA reauthorization. The Congress through the reauthorization of the Act specifically did not allow or disallow any particular sort of management tool. On the contrary, the Congress, unlike in past reauthorizations, did not prohibit the Councils from using any specific management tool. Indeed, early version of the Reauthorization Act included requirements for all fisheries to be managed by hard TACs, yet this specific language was never passed by a Congressional committee, let alone either house of the legislature. Congress debated the merits of prescribing a specific management tool and rejected the language. As a result, all management tools and conservation measures are at the disposal of the Councils. Every management tool has pros and cons, which the Council must weigh when it deliberates a FMP. However, it is not appropriate for NMFS to pre-select any specific management tool as there is no authorization under the Act to do so.

**6. NMFS has solicited comments on setting a buffer between the ACL and the OFL and how large the buffer needs to be.**

FSF is extremely concerned about the position NMFS has put forward in the scoping document. NMFS' stated rationale for the requirement of a buffer is:

**NMFS believes that the extent of future management success using ACLs will depend largely upon ACLs being set sufficiently below the OFL for a fish stock, i.e., the size of the buffer needed between the OFL and ACL, to reduce the chance of exceeding the OFL.**

72 Fed. Reg. at 7018 (emphasis added). This is an extremely problematic approach that is apparently based upon the precautionary principle, which is not a requirement of the Magnuson-Stevens Act. The fact is the proposed buffer between the ACL and the OFL is illegal under the MSA. As FSF stated above, the MSA still requires conservation and management measures to achieve OY on a continuing basis. To achieve OY on a continuing basis, the Councils must set the ACL at OY. If NMFS requires a buffer zone that artificially lowers ACL below OY, then it is requiring the Councils to set a conservation and management measure in a manner inconsistent with National Standard One by not setting management measures at a level to achieve OY on a continuing basis. Any requirement that is not consistent with the national standards set forth in the Act is a *prima facie* violation of the MSA.

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Nor should NMFS use buffer zone measures as a means to force Councils to apply particular management regimes, such as hard TACs, or face the required imposition of major and crippling buffer zones for their ACLs. The presentations to the fishery management councils in this regard were particularly troubling.

As the Reauthorization Act as plainly states, Councils must establish ACLs that do not allow overfishing and FMPs must include measures to ensure accountability. 16 U.S.C. § 1853. The Act's language is purposely vague and open-ended in order to allow the Councils the maximum amount of flexibility in tailoring individual FMPs. NMFS is attempting to single handedly, and without any authorization, remove the flexibility placed within the law by Congress. FSF strenuously opposes this proposal to mandate buffer zones as it is impermissible under the law and contrary to Congressional intent.

**7. NMFS has solicited comments on what is the appropriate probability that the ACL will prevent overfishing.**

The Act is silent on what level of certainty is required for setting the ACL. In the absence of any statutory guidance judicial precedent is appropriate. Courts have consistently stated in opinions that a plan must have a 50 percent chance of success. NMFS does not have any authority to arbitrarily increase the judicial standard of 50 percent. The FSF strongly encourages the agency to adopt the judicial standard in the guidelines.

**8. NMFS has asked for comments on limiting the extent of overfishing should it occur.**

16 U.S.C. § 1853 requires Councils to set an ACL at a level that does not allow overfishing, including measures to ensure accountability. The intent of the Reauthorization Act is for the accountability measures to prevent overfishing. What NMFS is apparently proposing in this solicitation is an additional requirement, not required by law, to limit overfishing should it occur. FSF believes, as supported by the law, that any limit on the amount of overfishing is an issue for the Councils to individually decide on, taking into account all of the national standards and weighing the viability of all the available accountability measures. It is improper for NMFS to mandate or require limits when none are called for under the Act.

Parenthetically, FSF is troubled by the statement: "With regard to 'measures of accountability' ... required by MSRA section 104(a)(10), NMFS' initial interpretation is that they are part of the ACL mechanism and FMPs should contain AMs for each stock." 72 Fed. Reg. at 7018. Even though the Magnuson-Stevens Act defines a "stock of fish" as "species, subspecies, geographical grouping, or other category of fish capable of management as a unit," 16 U.S.C. § 1802(37), and the Notice itself ties the use of the term "stock" or "stock complex" to the MSA's definition of a

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fishery,<sup>1</sup> 72 Fed. Reg at 7018 (quoting 50 C.F.R. § 600.305(c)(12)), the context suggest that NMFS is viewing stocks at essentially a species or subspecies level. The proper term in this context should be “fishery” as that is the unit of management to which all of the requirements of the MSA apply.

This nomenclature is significant. In the Reauthorization Act, Congress did not change the definition of a fishery, nor in any way attempted to restrict the ability of Councils to manage assemblages of species as a unit for purposes of the law. This flexibility, which is inherent in the definition of a fishery as functional unit that can be defined, among others, in economic terms, is the basis for what has erroneously been termed the “mixed stock exception.” Rather than the exception, it is the rule, and the National Standard One guidelines should not subvert the law by essentially requiring management at the species or subspecies level.

In application, Councils retain flexibility under the MSA as amended to treat an assemblage of species caught in a mixed catch fishery as a single “fishery” and manage it according to the law. With respect to ACLs and AMs, this means that reference points can be set for the aggregated stock and these measures are applied to fishery as a whole, not to the individual species within the fishery. The National Standard One guidelines should be absolutely clear in this regard.

**9. NMFS is seeking comments on establishing corrective actions to ensure accountability in a subsequent year for an overage of the OFL of a stock for the previous year.**

The FSF is struck by the similarity of this agency proposal to the “payback” language in the Senate passed version of the Reauthorization Act. The Senate passed language required the Council to reduce the ensuing year’s ACL by the same amount of any overage of the prior year’s ACL. As NMFS is aware, the payback provision fell out of the bill during the negotiations between the House and Senate and was not passed into law. What ended up in the Act was the unspecific language in 16 U.S.C. § 1853 stating the Council shall take “measures to ensure accountability.”

Therefore, the Reauthorization Act authorizes a Council and NMFS to institute a payback provision if the ACL is exceeded. What the Act does not do is require a payback. It is solely up to the Council to decide whether or not to instate a payback provision as part of its accountability measures in a particular FMP. Generally speaking, however, it is inappropriate to use “payback” provisions in fisheries which are managed through hard TACs or other mechanisms, such as days-at-sea (“DAS”) designed to achieve a target fishing mortality level, when those measures

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<sup>1</sup> Which is defined as “one or more stocks of fish that can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics; and any fishing for such stocks.” *Id.* §1802(13).

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are specified on an annual or multi-year basis. In such instances, the only reason target fishing levels are exceeded is due to the fact that the estimate of the TAC or number of DAS was incorrect. SSCs and the Councils will consider the actual fishing mortality rate achieved in the prior year or years when developing subsequent specifications for the fishery. Arbitrarily reducing ACLs by the amount of "overages" in such cases amounts to a capricious decision to fish at less than OY, which, as explained above, is a *prima facie* violation of National Standard One.

###

This scoping process is the first in a series of important steps in the implementation of the Magnuson Stevens Reauthorization Act. FSF appreciates this opportunity to comment on the Notice of Intent to prepare an environmental impact statement and are hopeful these comments will guide the agency in implementing the Act. Please do not hesitate to contact us if you require any further information.

Sincerely,



David E. Frulla  
Shaun M. Gehan  
Andrew Minkiewicz

Attorneys for the Fisheries Survival Fund

# NORTHEAST SEAFOOD COALITION

April 17, 2007

Mark R. Milliken  
Office of Sustainable Fisheries  
National Marine Fisheries Service  
Silver Spring, MD 20910

Dear Mr. Milliken:

The Northeast Seafood Coalition submits the following comments in response to the request for the solicitation in Federal Register / Vol. 72, No. 30 on Wednesday, February 14, 2007:

## **National Standard 1 Guidelines: Notice of Intent to Prepare Environmental Impact Statement**

Founded in January 2002, Northeast Seafood Coalition (NSC) represents over 300 fishermen participating in all the predominant groundfish gear sectors including trawl, gillnet and hook gear, and 60 shore-side businesses from Maine to Long Island, New York. The mission of the NSC is to promote a healthy and sustainable commercial fishing and seafood industry comprised of family-owned business and viable ports. NSC encourages, and inherently supports, reasonable and rational fishery management measures that are based on good science and legislation.

NSC greatly appreciates the opportunity to provide comments pertaining to National Standard 1.

Sincerely,

Jackie Odell  
Executive Director

April 17, 2007

**TO: Mark Millikin**  
**National Marine Fisheries Service / NOAA**  
**1315 East West Highway**  
**Silver Spring, MD 20910**

**RE: Scoping Comments on Annual Catch Limit DEIS**

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The Northeast Seafood Coalition (NSC) is pleased to provide the following scoping comments on the 'Notice of Intent' (NOI) regarding implementation of the Magnuson-Stevens Reauthorization Act (MSRA) and associated revisions to the National Standard 1 guidelines published in the Federal Register on February 14, 2007. NSC also presented oral comments at the scoping meetings in Silver Spring, MD on March 9, 2007, and at the New England Fishery Management Council (NEFMC) meeting on April 9, 2007. NSC's comments are presented primarily in the context of the Northeast Multispecies (groundfish) Fishery Management Plan (FMP). They address most of the "key issues" bullets identified in the NOI as well as several additional issues.

## 1) Prepare an EIS

- The NOI states: "After considering comments received during the scoping process, NMFS will either develop a draft environmental impact statement (DEIS) and proposed rule or an environmental assessment (EA) and proposed rule."
- NSC strongly urges the Agency to prepare a full EIS because this action represents a major federal action with significant impacts.
- Under CEQ's NEPA regulations (40 CFR 1508.27), and NOAA guidance for NEPA compliance, the determination of a significant impact is a function of both context (scope) and intensity. The impacts associated with the proposed action cover the full range of context; from local to 'society as a whole'. A review of the 10 specific considerations for evaluating the intensity of the impacts of the proposed action also strongly suggests they are significant.
- Preparation of an EIS would be constructive to the overall objective of developing the most effective NS1 guidelines that achieve the confidence of affected interests. A comprehensive EIS analysis would enhance the ability of the Councils and affected interests to understand and evaluate the proposed changes to the NS1 guidelines in terms of the unique fisheries in each region.

## 2) **Groundfish Data Collection and Analysis Capabilities**

- The NE Multispecies FMP covers 19 stocks and soon may be expanded to more than 20. It is a diverse fishery in a highly dynamic ecosystem. It presents significant scientific and management challenges.
- Although improvements could definitely be made, the current effort-based (days at sea) ‘input control’ data collection and management system for this fishery has proven to be a poor predictor of actual catch/fishing mortality, has generated unacceptable levels of regulatory discard mortality and waste, and has left as much of the Optimum Yield (OY) of valuable stocks in the water as it has put on the dock. Large segments of the fishery and many fishery dependent communities are experiencing severe adverse economic impacts as a consequence of extreme fishery restrictions.
- NSC and many in NE groundfish community are very eager to develop a catch-based management system that will correct these deficiencies and achieve the new MSRA requirements. The NEFMC has initiated Amendment 16 to the Plan and solicited proposals for ‘output control’ (catch-based) management systems to replace the current system.
- NSC has submitted and the Council is presently developing and evaluating a catch-based “Points System” for managing NE groundfish for this purpose. One of the accountability measures this system would utilize is an ‘in-season management measure’ system to achieve annual catch limits and optimum yield.
- In-season management measures are one of the two primary tools identified in the NOI to satisfy new MSRA requirements for Accountability Measures (AM) to achieve Annual Catch Limits (ACL). The technological and analytical capabilities needed to conduct timely monitoring of landings, and to use such data for the implementation of in-season management measures, are a prerequisite to the implementation of an effective catch-based management system.
- NMFS has made clear it does not have the technological or analytical capabilities to conduct timely monitoring of landings or implement in-season management for the NE Multispecies fishery. In other words, NMFS does not have the capability to implement a catch-based ‘output control’ management system for NE groundfish. NMFS must allocate new and existing assets to develop these critical capabilities in order to meet the new MSRA requirements.

- This point is also directly relevant to the consideration of how to establish AMs for multiple sectors where the ACL is subdivided for a stock. NSC believes each sector should be held individually accountable (through either in-season measures or through the subsequent pay-back of ACL overages) for its portion of the ACL. In-season AMs need to be tailored to the unique realities of each sector fishery including the quality and timeliness of the data monitoring system. Any sector ACL payback should be in proportion to the biological impact of the overage. Sectors that have achieved their respective ACLs should never be penalized through in-season or post-season (payback) measures because of ACL overages in another sector. The ACL payback mechanism provides the means to achieve the necessary biological accountability for a non-compliant sector while insulating compliant sectors from being held accountable for overages in the other sector. However, in any case, NMFS presently does not have the monitoring or analytical capabilities necessary to manage and hold accountable multiple sectors in the NE groundfish fishery. This point was also made by the NEFMC Executive Director at the April 9, 2007, scoping hearing in Mystic, CT.
- NSC has submitted an appropriations request to Congress to allocate to NMFS \$3 million in FY08 to initiate the development of the necessary monitoring and analytical capabilities to effectively implement a catch-based management system for NE groundfish that can meet the new MSRA requirements. NMFS should recognize its current limitations and actively support this request.

### **3) Scientific and Statistical Committees (SSCs)**

- NSC believes that a greater role for the SSCs in the Council process presents an opportunity to substantially improve upon the PDT process now in use in the NE region. NSC has found that the lack of transparency and accessibility of the PDT process is not conducive to the development of much needed innovation and improvement in NE groundfish management. NSC hopes that the SSC process will substantially improve this situation.
- Nevertheless, NSC does not believe that Congress intended for the SSCs to dictate ACLs and AMs to the Councils. Instead, SSCs should be tasked with presenting alternatives to the Councils accompanied by biological risk evaluations whenever possible, as well as their recommendations. The SSC should be advisory in its role.
- Councils should retain the discretion and authority they have held since enactment of the Magnuson-Stevens Act (MSA) to set such management parameters as ACLs and AMs (and any buffer). If the Council fails to submit measures that are consistent with

the MSRA and MSA requirements, then the Secretary should disapprove such measures under the authority of MSA section 304.

#### 4) **Buffer Between OFL and ACL**

- There does not appear to be any statutory mandate for establishing a ‘buffer’ where the ACL must always be set below the Overfishing Limit (OFL). NSC does not believe the NS1 Guidelines should fundamentally alter or add to the relevant statutory requirements or Congressional intent. In fact, the OFL concept is a NMFS initiative that was not specified by Congress in the MSRA or underlying MSA.
  - There are existing layers of precaution built into the process of specifying stock status determination criteria and setting control rules. NSC questions whether an additional layer of precaution should be mandated for setting the ACL below the OFL.
  - A higher priority objective for NSC is to have the Agency invest the resources necessary to improve scientific precision in monitoring and managing on a timely basis the output performance of the NE groundfish fishery rather than ‘planning for failure’ by mandating more even more precaution through a buffer. We need a long term solution rather than another patch (buffer) for the hole in the boat!
  - Nevertheless, NSC fully appreciates the need to provide a mechanism and guidance for managers to consider, at their discretion, the need for additional precaution in setting ACLs. Councils should consider if there is a need to incorporate a buffer as a means to anticipate and account for uncertainty in the science and ecosystem dynamics on a stock by stock basis. Again, this should remain entirely at the discretion of the Council process and not be a requirement in the guidelines. This is analogous to the underlying discretion to set OY at or below MSY.
- To the point of the relationship between the ACL and OY, NSC suggests the ACL is the annual expression of OY. If the Council chooses to set OY equal to MSY, then the ACL should be equal to the OFL. To the extent a Council chooses to set OY below MSY (based on “any relevant economic, social or ecological factor”), the ACL would be proportionately lower than the OFL (the catch value equivalent to  $F_{msy}$ ). Again, the ‘buffer’ between ACL and OFL is analogous to the difference between OY and MSY. NSC feels very strongly that in no case should any of the new MSRA requirements for ACLs and ending overfishing supercede or subvert the fundamental

MSA mandate to achieve OY on a continuing basis. NMFS should reflect this in the guidelines as well as an explicit reflection of the policy embodied in the MSA definition of OY.

- Further, in evaluating the degree of ‘uncertainty’ and, therefore, the size (if any) of a buffer between the ACL and OFL, the Councils should consider more than just the quality or variability in the data, or the historical performance of the fishery/management measures in achieving a specific OFL. The Councils should also consider the potential ‘down-side’ consequences (biological relevance) of exceeding an OFL relative to the biological status of the stock in question. If an OFL is exceeded by 10% for a stock that is at or above Bmsy, the consequences (biological risk) are likely to be small. Conversely, the same level of ‘overfishing’ may present much greater consequences (risk) for a stock at or below 50% Bmsy. This consideration should be reflected in the guidelines.
- Finally, as to the respective roles of the SSCs and the Councils, NSC believes that the Councils should retain the authority and discretion whether or not to establish a buffer (where the ACL is below the OFL). As previously stated, the SSCs should be advisory and tasked with providing the Council with risk-assessed alternatives and recommendations to be considered by the Council in setting ACLs, OFLs and AMs.

## 5) Accountability

- The NMFS Discussion Documents for the scoping hearings state that an ACL is an “annual numerical target catch level” that is “an annual value set in weight or numbers of fish”.
- NSC supports this interpretation in the sense that the performance of a management system/fishery should be held accountable to the ACL measured as a quantity of catch—not a fishing mortality rate target. ACLs measured in this way should be the benchmark for management success.
- This is particularly relevant to the NE Multispecies fishery because the current management system uses fishing mortality rate targets from which target Total Allowable Catches (TACs) are computed. However, the performance of the fishery is ultimately evaluated in terms of whether the fishery met stock specific fishing mortality rate targets set forth in Amendment 13 to the Plan.
- It is a fact that in recent years the NE Multispecies fishery (management measures) has rarely exceeded the target TACs established for each stock, and in nearly all cases

has consistently and substantially under-yielded the TACs (OY). However, subsequent retrospective scientific analyses have produced very large downward revisions of the target TAC for certain stocks. These after-the-fact revisions have generated draconian management responses, extreme economic hardship, wasted yield, and the incorrect perception by Congress and the public that NE fishermen and fishery managers were acting irresponsibly.

- Finally, to the issue of circumstances where a numerical ACL cannot be set, NMFS should include guidance for establishing a proxy for an ACL that provides a biologically relevant measure of fishing mortality relative to the overfishing threshold. This approach may be necessary for those ‘data poor’ stocks that comprise a portion of the NE Multispecies complex.

## 6) **Administrative Procedures Act (APA)**

- The NOI identifies ‘in-season management measures’ as one of two ‘Accountability Measure’ tools to ensure ACLs are respected.
- As in other fisheries, catch trajectories for NE groundfish stocks can be steep relative to the TACs (ACLs). Therefore, very timely in-season management responses will be needed in order to implement an effective catch-based management system now under development by the NEFMC.
- NSC is very concerned that the APA may present a significant barrier to the effective use of timely in-season management measures. The time required to satisfy APA requirements may substantially exceed the response time needed to implement effective in-season management measures in response to timely catch data.
- NSC urges the agency to evaluate what it can do to facilitate the use of in-season management measures in the APA context. Should the agency provide specific guidance for minimizing potential APA delays/barriers to the implementation of timely in-season management measures? Are there any waivers or other procedures that could be useful?

## 7) **MSRA and Amendment 16 Implementation Schedules**

- MSRA subsections 104(a) and (b) require the Councils to “**establish a mechanism** for specifying annual catch limits”... “**in fishing year** 2010” for fisheries subject to overfishing (emphasis added).

- NSC’s interpretation of this provision is that for, fisheries subject to overfishing, the Councils need to have a mechanism in place no later than the end of fishing year 2009 (for effect in 2010) that will specify annual catch limits either immediately or at some time in the future. Indeed, those annual catch limits when implemented must not allow overfishing to occur—but the provision does not require immediate implementation of the annual catch limit (or ending overfishing) in or by fishing year 2010. The operative term is “mechanism”.
- In the NE Multispecies FMP context, fishing year 2010 begins on May 1, 2010, and ends on April 30, 2011. Therefore, in order to comply with this provision, Amendment 16 would have to be implemented (and include a mechanism to specify annual catch limits) no later than April 30, 2010. Given the 6 month period for NMFS to approve and implement an Amendment (stated in the NOI), the NEFMC would need to submit Amendment 16 to the Secretary for approval no later than November 1, 2009, in order to comply with MSRA.
- The NEFMC’s current implementation schedule for Amendment 16 is to submit to the Secretary for approval in September 2008, more than 1 year in advance of the MSRA subsection 104(a) and (b) requirements. Amendment 16 is the NEFMC’s vehicle for implementing MSRA for NE groundfish.
- It should be noted—and NMFS should reflect this in their guidance –that Amendment 16 would not necessarily have to implement annual catch limits that prevent overfishing in fishing year 2010—but it would have to include a mechanism for specifying such annual catch limits at some point (in FY2010 or thereafter).
- Beginning on July 12, 2009, (30 months after enactment), MSRA subsections 104(c) and (d) provide Councils/NMFS with two years to implement management measures that will end overfishing immediately for stocks where overfishing is occurring.
  - NSC’s interpretation of these provisions is that the Councils/NMFS have until July 12, 2011, to implement measures that will end overfishing immediately.
  - Given the 6 month period for NMFS to approve and implement an Amendment (as stated in the NOI), the NEFMC would need to submit Amendment 16 to the Secretary for approval no later than January 12, 2011, to comply with these MSRA requirements. NSC recognizes that the timing requirements of

subsections (a) and (b) might supercede (trump) the timing of subsections (c) and (d), depending on the circumstances.

- In any case, there is a major problem with the NEFMC's current Amendment 16 implementation schedule (target date for submission = September 2008). This will require the Council to fully develop and issue for public comment its preferred management alternatives well before receiving the results of the NEFSC 2008 benchmark stock assessment in late August/early September of 2008, on which such management measures are supposed to be based. It is widely anticipated that this benchmark assessment will include major changes in the status of some or many stocks—but no one can possibly predict the size or scope of these changes in advance—at least not with sufficient certainty to develop effective management measures. It will also require the Council to take final action within one month of receiving the benchmark assessment. This is unnecessarily inconsistent with the MSRA implementation schedule, and it is certainly inconsistent with at least the spirit of the National Standard 2 requirement to utilize the best scientific information available.
- Again, the most conservative interpretation of the MSRA implementation schedule would require NEFMC submission of Amendment 16 no later than November 1, 2009. The Agency should provide guidance to all Councils and, specifically, to the NEFMC to clarify the MSRA implementation schedule requirements. NMFS should discuss this with NEFMC (soon !), and consider if it would be possible and desirable to conform the A16 implementation schedule to the MSRA schedule and avoid this major problem.



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Mark Millikin  
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Re: Scoping comments on annual catch limit DEIS

Dear Mr. Millikin,

Thank you for the opportunity to address the scope of the forthcoming DEIS regarding revisions to the National Standard 1 Guidelines, both to implement the newly passed Magnuson-Stevens Act amendments, and to conform more closely with the current state of scientific understanding of marine ecosystems. Pacific Marine Conservation Council (PMCC) is a West Coast non-profit organization that works with commercial and recreational fishermen, marine scientists, environmentalists, and coastal community leaders to promote ecosystem-based management that fosters sustainable fishing communities.

PMCC is a member of the Marine Fish Conservation Network (MFCN), and we concur with the scoping comments submitted by MFCN. The purpose of this letter and attachment is to highlight the need to improve guidance regarding assessing overfishing on finer spatial scales.

National Marine Fisheries Service should help the Regional Management Councils understand the need to avoid localized depletion and fragmentation of the structure of many fish populations. If assessments focus on too gross a geographic range, area management measures may need to be employed to mitigate the potential for overfishing distinct portions of a stock.

Our expertise is in West Coast ocean fisheries, so our discussion will focus on West Coast groundfish. We are also attaching a scientific consensus statement that deals primarily with the West Coast. However, much of this material can apply to other fisheries.

West coast groundfish are social-ecological systems (Gunderson and Pritchard 2002), integrated concepts of humans in nature. They are seldom linear and predictive. The issue of scale – in particular the match between spatial and temporal scales at which institutional, ecosystem and associated human community processes occur - becomes central to effective policy (Berkes 2004).

There is clear evidence of spatial structure in marine ecosystems along the West Coast of North America (Gunderson and Vetter 2006, Allen et al. 2006, Blanchette et al. in prep). This is manifested in regional differences in the structural and functional aspects of both physical and biological components of marine ecosystems. Consequently, nearshore ecosystems exhibit marked regional differences in species composition, dynamics and productivity (Bennett et al.

2004). In particular, offshore ecosystems over the continental slope exhibit abrupt changes in the vicinity of the major capes (Blanco, Mendocino and Conception) (Tolimieri and Levin 2006).

However, this spatial structure is not fixed in time (Berkeley et al. 2004, Jay 1996, Levin et al. 2006). Much is defined by geomorphologic (e.g., bottom type, depth and topography) and oceanic (e.g., currents, upwelling) aspects of the physical environment, whereas the temporal variability is largely driven by climate-ocean processes (e.g., interannual variability, El Niño-Southern Oscillation (ENSO), Pacific Decadal Oscillation (PDO)). And these structuring processes are continually changing. In the face of increasing uncertainty and variability in the marine environment (e.g., climate change, dead zones), managing stocks on a finer scale should provide flexibility and increase the resilience of stocks and ecosystems. For example, Berkeley et al. (2004) suggest that the geographic source of successful recruits to west coast groundfish populations may differ from year to year. As a result, “management should strive to preserve a minimal spawning biomass throughout the geographic range of the stock.” Spatial management thus becomes proactive.

As elsewhere in the world, human communities along the West Coast of North America also exhibit marked spatial structure in size, composition and the socioeconomic processes that affect them. Like their marine ecological counterparts, this spatial structure reflects geographic variation in the physical (e.g., geomorphologic, hydrologic, climatic) and biological (vegetation and associated agricultural and forestry practices) attributes of the environment. This regional variation determines the relative role of fisheries in the socioeconomic and cultural composition of local communities. Highly populated regions around major ports facilitate large-scale, industrialized offshore fisheries, whereas small, remote communities support coastal family-based fisheries. In turn, the relative importance of subsistence, recreational and commercial fisheries varies regionally. Moreover, human impacts on the marine environment vary regionally in relation to the distribution and size of human populations and the magnitude and kinds of human activities (e.g., waste discharges, nutrient influx, cooling water intakes of power plants, likelihood of oil spills, altered riverine and estuarine structure and functions).

The scientific community and fishing industry have long recognized that spatial management congruent with the spatial and temporal scales of marine ecosystems and human communities is necessary for healthy marine ecosystems and sustainable fisheries (Gunderson and Vetter 2006, Jentoft 2000, Perry and Ommer 2003). Unfortunately, the existing coast-wide scale of institutional structures for the management of west coast groundfish does not correspond to the spatial and temporal structure of ecological and socioeconomic systems. As a consequence, this scale of management does not adequately protect against local area depletion of stocks, provides disincentives for stewardship, and fails to safeguard the biological structure of fish populations and the ecosystems that support them.

For example, as a result of this coast-wide management approach, over-harvest in one area has shut down fishing over large areas of the coast, resulting in prohibited access to historic resources by coastal fishing communities. The inability to account for spatial structure can lead to uncertainty in the status of stocks and the effects of local ecosystems on stock productivity and resilience. Generalizations of the status of a stock from one portion of a species range across its entire range can give misleading inferences regarding stock status over vast portions of a stock. Coast-wide fisheries management lacks the flexibility to accommodate and does not account for regional variation of multiple stressors (i.e. non-fishing impacts described above in combination with fishing impacts) to marine ecosystems and fished populations. Thus, one fundamental solution to the current management dilemma is a regionally-based management structure which recognizes that fish populations and community uses are not evenly distributed along the coast.

In conclusion, as NMFS prepares the DEIS considerable attention should focus on the need for finer scale assessments and area-based approaches. Especially needed is guidance on how to take a precautionary approach when there are enough data to indicate the existence of multiple sub-populations of a stock assessed on a broader geographic scale, but the resolution of the assessment is inadequate to fully inform management

on a finer scale. These are difficult but important issues that need attention, if we are truly going to end overfishing.

If you have questions regarding these scoping comments, please contact Jennifer Bloeser, science director ([jennifer@pmcc.org](mailto:jennifer@pmcc.org)) or Peter Huhtala, senior policy director ([peter@pmcc.org](mailto:peter@pmcc.org)).



Respectfully submitted,  
Matt Van Ess  
Executive Director

Attachment: "Consensus Statement on Spatial Management of West Coast Fisheries"

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PACIFIC MARINE  
CONSERVATION COUNCIL

## Consensus Statement on Spatial Management of West Coast Fisheries

In August 2006, a group of scientists, fishermen, and fisheries-policy experts were convened by Pacific Marine Conservation Council (PMCC) for the ‘Cape to Cape Meeting’, to explore the issue of spatial (area-based) management of west coast groundfish. This group was first tasked with reviewing existing information on three scales of spatial structure: population (genetic, metapopulation, population dynamic/stock assessment, life history), ecological community (assemblage and ecosystem scales), and human community. They were then tasked with evaluating the merits of some form of spatial management of west coast groundfish, and generating specific recommendations for its implementation.

As a starting point for this process, PMCC made the following straw proposal: a practical first step might be to increase the spatial resolution of current management measures by using the three major capes in the region: Blanco, Mendocino and Conception. The capes are well-known biogeographic boundaries of fish communities [1, 2, 3] and form the basis for existing International North Pacific Fisheries Commission (INPFC) statistical areas.

### **The following statement is a consensus of the Cape to Cape working group:**

*The Cape to Cape group feels that successful management of west coast fisheries depends in great measure on matching the spatial scales of interest for coastal communities with those scales naturally found within marine ecosystems. As such, the group supports management of west coast groundfish fisheries at regional scales that recognize the unique relationships between local stocks and the fishing communities that depend on them.*

### **Review of existing concepts and information**

As is the case with all fisheries, those for west coast groundfish are social-ecological systems [4], integrated concepts of humans in nature. They are seldom linear and predictive, and the issue of scale – in particular the match between spatial and temporal scales at which institutional, ecosystem, and associated human community processes occur - becomes central to effective policy [5].

There is clear evidence of spatial structure in marine ecosystems along the West Coast of North America [6, 7, 8]. This is manifested in regional differences in the structural and functional aspects of both physical and biological components of marine ecosystems. Consequently, nearshore ecosystems exhibit marked regional differences in species composition, dynamics and productivity [9]. Offshore ecosystems, in particular over the continental slope, exhibit abrupt changes in the vicinity of the aforementioned capes (Blanco, Mendocino and Conception) [10].

However, this spatial structure is not fixed in time [2, 3, 11]. Much is defined by geomorphologic (e.g., bottom type, depth and topography) and oceanic (e.g., currents, upwelling) aspects of the physical environment, whereas the temporal variability is largely driven by climate-ocean processes (e.g., interannual variability, El Niño-Southern Oscillation (ENSO), Pacific Decadal Oscillation (PDO), climate change.) And these dynamic structuring processes are continually changing. In the face of increasing uncertainty and variability in the marine environment (e.g., climate change, dead zones), managing stocks on a finer scale should provide flexibility and increase the resilience of stocks and ecosystems. For example, Berkeley et al. (2004) [11] suggest that the geographic source of successful recruits to west coast groundfish populations may differ from year to year. As a result, “management should strive to preserve a minimal spawning biomass throughout the geographic range of the stock.” Spatial management thus becomes proactive.

As elsewhere in the world, human communities along the West Coast of North America also exhibit marked spatial structure in size, composition and the socioeconomic processes that affect them. Like their ecological counterparts in the marine environment, this spatial structure reflects geographic variation in the physical (e.g., geomorphologic, hydrologic, climatic) and biological (vegetation and associated agricultural and forestry practices) attributes of the environment. This regional variation determines the relative role of fisheries in the socioeconomic and cultural composition of local communities. Highly populated regions around major ports facilitate large-scale, industrialized offshore fisheries, whereas small, remote communities support coastal family-based fisheries. In turn, the relative importance of subsistence, recreational and commercial fisheries varies regionally. Moreover, human impacts on the marine environment vary regionally in relation to the distribution and size of human populations and the magnitude and kinds of human activities (e.g., waste discharges, nutrient influx, cooling water intakes of power plants, likelihood of oil spills, altered riverine and estuarine structure and functions.)

The scientific community and fishing industry have long recognized that spatial management congruent with the spatial and temporal scales of marine ecosystems and human communities is necessary for healthy marine ecosystems and sustainable fisheries [6, 12, 13]. Unfortunately, the existing coast-wide scale of institutional structures for the management of west coast groundfish does not correspond to the spatial and temporal structure of ecological and socioeconomic systems. As a consequence, this scale of management does not adequately protect against local area depletion of stocks, provides disincentives for stewardship, and fails to safeguard the biological structure of fish populations and the ecosystems that support them.

For example, as a result of this coast-wide management approach, over-harvest in one area has shut down fishing over large areas of the coast, resulting in prohibited access to historic resources by coastal fishing communities. The inability to account for spatial structure can lead to uncertainty in the status of stocks and the effects of local ecosystems on stock productivity and resilience. Generalizations of the status of a stock from one portion of a species range across its entire range can give misleading inferences regarding stock status over vast portions of a stock. Coast-wide fisheries management lacks the flexibility to accommodate and does not account for regional variation of multiple stressors (i.e. non-fishing impacts described above in combination with fishing impacts) to marine ecosystems and fished populations. Thus, one fundamental solution to the current management dilemma is a regionally-based management structure which recognizes that fish populations and community uses are not evenly distributed along the coast.

## Conclusions

- A major factor of variability in the species composition of west coast marine fishes, invertebrates and algae assemblages occurs in an inshore/offshore direction [1, 2, 3, 7].
- There is a distinct similarity between the spatial homogeneity of the biological and human communities as one moves from the nearshore to the offshore groundfish fisheries. As one moves offshore, both the ecosystems and their associated fishing economies become more spatially homogeneous.
- It seems reasonable that offshore groundfish management might focus on the fish and associated harvest levels designed to sustain biological structure (i.e. an ecosystem-based approach.) This would likely be a scaled down version of management per status quo to one that is area-based and perhaps delineated by major capes. Providing incentives to reduce bycatch of overfished species could be a priority for spatial management offshore.
- In contrast, nearshore management might focus on human communities and access to nearshore resources. Nearshore management would likely be structured at a finer spatial scale than offshore, and more oriented toward coastal community or nearshore allocations based on gear-type.

## Recommendations

- The spatial pattern of groundfish management should be different between offshore and nearshore fisheries.
  - Offshore management would have larger geographic areas (e.g., regions with boundaries defined by capes), be top-down (Federal fishery councils), and be more traditionally species-based and model-driven, applied within an ecosystem-based management context. In essence this would be a scaling down of current assessment and management protocol to the Cape to Cape areas. The focus of offshore management would be on maintaining healthy offshore ecosystems utilizing an ecosystem-based management approach, with a spatial scale larger than that applied for nearshore fisheries management.
  - Nearshore management would have smaller areas defined by the interfacing of coastal communities with nearshore reefs and fishing grounds, be more bottom-up (States, local communities), and require more innovative approaches linking fishing communities with ecosystems. The focus of nearshore management would be on maintaining healthy interactions between coastal communities and nearshore ecosystems, with coast-wide coordination and information transfer across a network of local management entities.
- No new information or assessments are needed to initiate Cape to Cape management right now.

- Spatial management can be justified on both a biological basis (e.g., discrete population structure, spatially distinct species assemblages) and a social one (e.g., conservation incentives to keep fishing.)
  - This concept could be applied within the current structure of west coast groundfish management authority, stock assessment and survey methodologies.
  - Even if new stock assessments cannot be done at a newly (smaller) defined spatial scale right now, quotas can still be rationally and scientifically determined on a spatial grid (i.e. Cape to Cape). Most of the major species are quantitatively surveyed each year on a much smaller spatial grid than that which is currently used for management.
  - As a possible approach, coast-wide quotas could be pro-rated based on relative survey abundance by area.
- In order to initiate the spatial management process, and provide conservation incentives that will reduce the bycatch of overfished species while still maintaining harvest opportunities, we recommend that spatial quotas first be implemented for all overfished species.

Finally, the Cape to Cape working group supports the following three recommendations for spatial west coast groundfish research and management made by Golden (2006) [14] to the Pacific Fishery Management Council's (Council) Trawl Individual Quota Committee:

- The Council should continue to support research into spatial sampling and modeling approaches for stock assessments. The degree of localized overfishing is unknown; fishery and survey data and habitat information should be analyzed on a finer spatial scale to develop a better understanding of fishing effort and fish distribution patterns.
- Recent studies of population and age structure and recruitment dynamics raise serious biological concerns with current and proposed management. Current management measures (Rockfish Conservation Areas (RCAs), selective gears, etc.) alongside new tools (finer area allocation, Marine Protected Areas (MPAs), etc.) should be considered to enhance proper spatial management, safeguard against localized overfishing as a precautionary measure, and to conserve population and age structure needed to increase the likelihood of successful recruitment events.
- Area allocation of Optimum Yield (OY) for west coast groundfish should be employed as a hedge against unpredictable spawning success. Available information on species characteristics (genetic structure, age structure, reproduction, and larval dispersal) should be used as a guide to establish boundaries and OYs for sub-areas within the West Coast.

## Summary

The Cape to Cape working group strongly supports spatial management of west coast groundfish fisheries. This system will benefit both the resource and the fishing industry. Information is

currently available to allow its immediate implementation. A white paper now in preparation will document and elaborate on the points made in this statement. Subsequently, PMCC will host meetings with members of the fishery science, fishery management and fishing communities to further outline an implementation strategy. The Cape to Cape working group recognizes that spatial management will take time to implement and looks forward to continued collaboration on this issue.

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**Members of the Cape to Cape working group who endorsed this statement:**

Jennifer Bloeser, *Science Director*, Pacific Marine Conservation Council, Port Townsend, WA  
Mark Carr, *Associate Professor*, University of California at Santa Cruz, Santa Cruz, CA  
Leesa Cobb, *Communication Coordinator*, Port Orford Ocean Resources Team, Port Orford, OR  
Jason Cope, *Ph.D. candidate*, University of Washington, Seattle, WA  
John Field\*, *Groundfish Analysis Team*, NOAA Fisheries/SWFSC, Santa Cruz, CA  
Robert Francis, *Professor Emeritus*, University of Washington, Seattle, WA  
Caroline Gibson, *Communications Director*, Pacific Marine Conservation Council, Port Townsend, WA  
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\* *Support for this document represents personal scientific view, and does not imply endorsement by NOAA Fisheries Service.*



# Southern Shrimp Alliance, Inc

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[John@Shrimpalliance.com](mailto:John@Shrimpalliance.com)

**April 17, 2007**

**TO: Mark Millikin  
National Marine Fisheries Service / NOAA  
1315 East West Highway  
Silver Spring, MD 20910**

**RE: Scoping comments on annual catch limit DEIS**

---

The Southern Shrimp Alliance (SSA) is pleased to provide the following scoping comments on the 'Notice of Intent' (NOI) regarding implementation of the Magnuson-Stevens Reauthorization Act (MSRA) and revisions to the National Standard 1 guidelines published in the Federal Register on February 14, 2007. SSA also presented oral comments at the scoping meetings in Silver Spring on March 9, 2007. SSA's members include wild domestic shrimp producers (harvesters and processors) throughout the Gulf and South Atlantic region.

## **(1) Annual Species Exception**

Section 104 (a)(10) of the MSRA adds a new provision to section 303 (a) of the Magnuson-Stevens Act (MSA) that requires any Fishery Management Plan (FMP) to establish a mechanism for specifying annual catch limits for managed species/stocks. Section 104(b)(3) of the MSRA provides an exception to this requirement for "a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species".

The NOI states that this exception applies to "possibly some shrimp or squid species". SSA worked very closely with Congressional Majority and Minority Committee staff to ensure that this exception specifically applies to penaeid and rock shrimp species in the Gulf and South Atlantic shrimp fisheries. The language in the NOI suggests that there may be some question as to Congressional intent and the meaning of this exception as it applies to these shrimp species. SSA urges NMFS to confirm the correct application of this exception to penaeid and rock shrimp species and include a clear explanation in the guidelines.

## **(2) Annual Catch Limits (ACL) for Shrimp Species Subject to Overfishing**

Language was added to the end of the MSRA section 104(b)(2) exception for annual species that would require an ACL to be set for shrimp species when “the Secretary has determined the fishery is subject to overfishing of that species”. NMFS needs to very carefully consider the many practical implications of this provision for warm-water shrimp species and provide very clear and specific guidance. As explained below, it is not at all clear how this specific provision can be implemented in a logical way.

First, even when a shrimp population is found to be at an historically low level in a given fishing year, great care must be taken to evaluate whether there is a relationship between the current stock status and fishing mortality. In other words, can NMFS ever determine with sufficient confidence that “the fishery is subject to overfishing for that species”?

In the vast preponderance if not all of cases, the status of a warm-water shrimp species is highly likely to be a direct consequence of the peculiar environmental (weather) and ecological conditions in that particular fishing year. These conditions are not static, of course, and it is extremely difficult (questionable) to isolate the effects of fishing mortality when compared to extremely high natural mortality in these species. Consequently, there is often no basis for implementing a fishery management response when such circumstances occur.

In those rare (non-existent?) cases where a fishery management response might be determined to be justified, it should be well understood that setting an Annual Catch Limit (ACL) for warm-water shrimp species that exhibit “a life cycle of approximately 1 year” would be impossible to implement (as NMFS proposed to define ACL) and would be of limited, if any, biological utility.

The NOI identifies two principal Accountability Measures (AMs) for ensuring ACLs are respected; 1) in-season management measures; and 2) a post-fishing year payback of an ACL overage.

In the first case, the timeliness of NMFS shrimp catch monitoring capabilities does not support the implementation of an ACL through an in-season management measure. It is not possible to achieve a measure of total annual shrimp catch until months after the end of the fishing year, and there is no basis to anticipate this reality will change.

Further, it does not make any biological sense to apply a post-fishing year AM for shrimp, such as an ACL overage ‘payback’, because the ACL overage in the previous year is from a different shrimp population than the current year shrimp population. Deducting from the current fishing year an ACL overage that occurred in a previous year is not relevant to the ‘overfishing’ that may have occurred. The shrimp population that was subject to overfishing would already be dead in the subsequent fishing year.

The NMFS Scoping Hearing Discussion Documents define ACLs in terms of a “numerical annual value set in weight or numbers of fish” (shrimp). In other words, a quota or Total

Allowable Catch (TAC) for shrimp. NMFS should reconsider this definition for warm-water shrimp species that exhibit “a life cycle of approximately 1 year”. As explained above, setting an ACL in terms of a specific quantity of shrimp (eg. a TAC) cannot be implemented and, in the case of a post-season payback, is biologically irrelevant and illogical.

Perhaps NMFS should instead include additional guidance for establishing alternative proxies for ACLs and AMs for these unique species if such measures are to be required. Proxies might include adjustments to seasons and areas and/or the management of shrimp fishing effort which have proven to be successful tools in managing the shrimp fisheries. The primary concern of shrimp population management is to ensure that there is sufficient escapement (recruitment) from the inshore nursery areas to the offshore adult spawning areas, and it takes a very small amount of such escapement to achieve full production in the subsequent year.

However, SSA reiterates that even if a meaningful proxy for an ACL could be developed for a shrimp fishery it would appear to have limited, if any, biological relevance/utility in addressing a situation of overfishing. As explained above, just like an ACL, a proxy for an ACL also could not be implemented as an in-season management measure during the year that such overfishing occurred because, in reality, the fact that overfishing was occurring would not be known until well after that fishing year ended.

Also as explained above, deducting the amount of shrimp catch or mortality ‘overage’ in one year from the harvest/mortality in a subsequent year has no real biological relevance to the overfishing that occurred. This is because the population of shrimp on which overfishing occurred would already be dead through natural mortality before the subsequent fishing year. Again, NMFS needs to very carefully consider what guidance it can provide to implement the annual species provision and particularly the requirement to specify an ACL when a shrimp fishery is subject to overfishing.

SSA also calls attention to the specific language at the end of the MSRA “annual species” provision: “...unless the Secretary has determined the fishery is subject to overfishing of that species”. (emphasis added). NMFS should include clarification in the guidelines that this was specifically intended by Congress to limit the Secretary’s overfishing determination to the relevant shrimp species and not to any species of bycatch in the shrimp fisheries. In other words, NMFS should clarify that it would not be correct to use this provision as a basis for specifying an ACL for a shrimp fishery in order to address overfishing of a bycatch species such as red snapper.

Generally speaking, the issues discussed above should indicate that there has been inadequate treatment in the MSA/MSRA of fisheries “for species that have a life cycle of approximately 1 year”. The same could be said of the current NMFS guidelines as well as the revisions NMFS proposed in 2005. The biological realities of these species simply do not fit well into the conventional understanding of concepts like “overfished”, “overfishing”, Maximum Sustainable Yield, Optimum Yield, and how the new ACL and AM requirements can be

appropriately implemented. SSA reiterates its request for NMFS to very carefully consider and develop specific guidelines for these species that reflect these unique realities. To that point, SSA strongly recommends NMFS convene a special working group of warm-water shrimp biologists and managers (and perhaps industry experts) to consider their unique biological, ecological and fishery characteristics for the purpose of developing a distinct subset of guidelines for these and other species that have “a life cycle of approximately 1 year”.

### **3) Guidance for Bycatch Sectors of a Fishery**

National Standard 1 requires FMPs to prevent overfishing but also to achieve on a continuing basis the Optimum Yield from a fishery. MSA section 304(e)(4) requires overfishing restrictions and recovery benefits to be allocated fairly and equitably among sectors of the fishery. A closely related provision is section 303(a)(14) which also requires any harvest restrictions or recovery benefits to be fairly and equitably allocated among the commercial, recreational, and charter fishing sectors in the fishery.

Reconciling these mandates in even the most conventional circumstances involving sectors of a directed fishery is a major challenge. What may be far more difficult but also greatly needed is for NMFS to provide thoughtful guidance on how to put these MSA mandates into the context of when there are competing interests between the directed and bycatch sectors of a fishery. A specific ongoing example is the bycatch of red snapper in the Gulf shrimp fisheries, but it is not difficult to imagine examples in other fisheries.

For example, SSA suggests the following interpretations of these provisions;

- 1) The National Standard 1 mandate to achieve OY in the shrimp fishery cannot be subverted to the mandate to end overfishing of red snapper, or any other mandates relevant to the management of red snapper – or vice versa.
- 2) As required by sections 303(a)(14) and 304(e)(4), there must be fairness and equity in allocating both red snapper harvest restrictions and the benefits of red snapper rebuilding to the directed and bycatch (shrimp) sectors of the red snapper fishery.

Clearly, Congress intended for FMPs to achieve a clear sense of balance between these competing interests. NMFS needs to provide guidance on how to achieve this balance.

There is also the question of whether bycatch in one fishery always constitutes a ‘sector’ of the overall fishery for that species—or is the fishery in which the bycatch occurs always a separate fishery altogether? The interrelated MSA definitions of “fishery” and “fishing” certainly suggest an interpretation that bycatch should be, at least in some cases, considered a sector of a fishery in the context of the MSA ‘fairness and equity’ provisions.

This is especially true when, in the case of red snapper and shrimp, management is being implemented through joint FMP Amendments. Treating the shrimp fishery as a ‘bycatch sector’ of the red snapper fishery for the purposes of allocating harvest restrictions necessary to end overfishing and rebuild the red snapper stock while in the same management action denying the shrimp fishery the same treatment for enjoying the benefits of red snapper recovery would be grossly inconsistent with sections 303(e)(14) and 304(a)(4).

SSA strongly urges NMFS to very carefully consider these issues and provide clear guidance on how to achieve these critical MSA mandates simultaneously for directed and bycatch sectors of a fishery. SSA believes these are directly relevant to the guidelines being developed under this NOI.

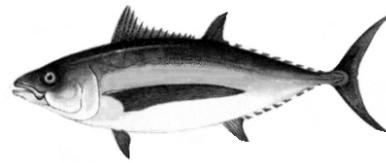
#### **4) Prepare an EIS**

The NOI states: “After considering comments received during the scoping process, NMFS will either develop a draft environmental impact statement (DEIS) and proposed rule or an environmental assessment (EA) and proposed rule.” SSA strongly urges the Agency to prepare a full EIS because this action represents a major federal action with significant impacts.

Under CEQ’s NEPA regulations (40 CFR 1508.27), and NOAA guidance for NEPA compliance, the determination of a significant impact is a function of both context (scope) and intensity. The impacts associated with the proposed action cover the full range of context; from local to ‘society as a whole’. A review of the 10 specific considerations for evaluating the intensity of the impacts of the proposed action also strongly suggests they are significant.

Preparation of an EIS would be constructive to the overall objective of developing the most effective NS1 guidelines that achieve the confidence of affected interests. A comprehensive EIS analysis would enhance the ability of the Councils and affected interests to understand and evaluate the proposed changes to the NS1 guidelines in terms of the unique fisheries in each region.

# WESTERN FISHBOAT OWNERS ASSOCIATION<sup>©</sup>



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Mr. Mark Millikin  
National Marine Fisheries Service  
NOAA1315 East-West Highway  
Silver Spring, MD 20910  
Via e-mail: [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

April 13, 2007

Re: National Standard One Concerning Annual Catch Limits (ACL) and Accountability Measures (AM)

Dear Mr. Millikin:

Western Fishboat Owners Association (WFOA) which represents more than 400 west coast albacore tuna hook and line vessels would like to express our concerns over the Annual Catch Limits (ACL) and related issues.

WFOA's concern is the manner in which NOAA-Fisheries apparently intends to apply the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), particularly sections 103(b)(1) and (c)(3), 104(a)(10), (b), and c). The Notice of Intent filed at 72 Fed. Reg. 7016 (Feb. 14, 2007) seeks to obtain comments to identify significant issues under the application of these sections. Section 16 USC 1851(a)(1) and NS 1 provide, in summary, that conservation and management measures shall prevent overfishing while achieving optimum yield in each fishery for the U.S. fishing industry. Because you are focusing on the "overfishing" provisions of the MSRA you believe it is important to approve new guidance on the NS 1 standards which seek to guide the Councils in their formulation of Fishery Management Plans. For the purpose of these comments we will assume this is a correct approach.

MSRA Section 104(a)(10) - ACLs and Ams:

This section of the MSRA amends Section 303(a) of the Magnuson Stevens Act (MSA) and indicates that any FMP shall establish a mechanism for establishing annual catch limits, regulations to implement these annual catch limits and specifications (it is not clear to me if this is where NOAA Fisheries finds the requirement for AMs which are not mentioned in the statute?) at a level such that "overfishing does not occur in the fishery." Species which live a year or less are exempted.

This provision would also not apply if "otherwise [annual catch limits are?] provided for under an international agreement in which the United States participates." The Inter-American Tropical Tuna Convention would seem to qualify as an "international agreement in which the United States participates." The IATTC has set "annual catch limits" for certain species and gear types, however,

so far its primary focus to end overfishing, if indeed it is occurring is to limit the cubic meter well space of purse seine vessels to a stated maximum for each nation party.

It seems to WFOA that the intent of Congress was to avoid the Councils from having to set ACLs and AMs for internationally managed fisheries is clear from this provision and others in the MSRA. Congress finally recognized that HMS are to be managed differently than groundfish.

Similarly, when the U.S. is involved in an HMS fishery where there is a Regional Fisheries Management Organization (RFMO), and that organization is managing the species in question, that the U.S. fishery, including provisions of the FMP relating to that species should follow what has been agreed to on an international level. This is particularly true since in every HMS fishery in which U.S. vessels participate today they account for a small percentage of the catch – sometimes only 5% depending upon the species and the area. To require an ACL and AM for such a fishery which would only apply to U.S. vessels is a useless act which would have no effect upon conservation or management of the resource. Congress doesn't usually ask the executive branch to perform useless acts. I believe it is obvious that to set an ACL and AM at a global level for the entire international fishery, would also be a useless act unless it were agreed to under an RFMO.

Setting an ACL and AM for an international fishery would be a useless act. However, setting such an ACL and AM for the U.S. fleet, possibly preventing it from staying at the same effort level, while their international competitors, (which by the way sell to the U.S. over 70% of the fish Americans consume at a time when fish consumption is increasing) is not only merit less and useless, but actually harmful. In sum, the statement in the Notice of Intent that "the ACL/AM requirements may be applicable for some species managed under international agreements", is in our view absolutely incorrect.

The problem of setting an ACL for an international HMS fishery is further evidenced by the definition the Notice of Intent gives to ACL, i.e., "a specified amount of a fish stock for a fishing year that is a target amount of annual total catch that takes into account projected estimates for landings and discard mortality from all user groups and sectors." The information upon which such an estimate could be made depends upon information collected by, for example in the Pacific, two or more RFMOs. Not only is this data collected at different times in different forms, but it often runs 2 years or more behind. In addition, HMS fisheries are notorious for their wide swings in catch data, catch per unit of effort, effort, and other information which must be taken into consideration. Again, in relation to the Pacific, I do not believe the IATTC nor the Western and Central Pacific Fisheries Commission (WCPFC) even collect information on discards for all species. Neither organization keeps track of recreational of any species.

Sincerely,

*Wayne Heikkila*

Wayne Heikkila  
Executive Director

From [Paavo Carroll <paavoc@hotmail.com>](mailto:paavoc@hotmail.com)



Sent Wednesday, April 4, 2007 0:14 am

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject

It seems clear that we are entering a phase of rapid and unprecedented change in the climate and thus fisheries. So as we try to figure out how to "end overfishing" I just want to emphasize the importance of not regulating the commercial fisherman out of existence. Nature is going the move faster than the fisher in terms of what is available and not available to catch, and regulatory agencies tend to move the slowest of the three. Speed is going to be more and more of the essence, not just in protecting marine creatures that need it, but also utilizing those that can be utilized. So I would just say there is no point in not allowing people to make a living off fishing while they can, as any true mass extinctions and regime shifts are going to occur with or without a robust commercial fishing culture.

Paavo Carroll, F/V Titan.

---

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From [viking fishing fleet <vikingfleet@hotmail.com>](mailto:vikingfishingfleet@hotmail.com)

Sent Monday, March 26, 2007 1:39 pm

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject Roy Crabtree/Gulf Council

March 23, 2007

National Oceanic & Atmospheric Administration  
 Dr. William Hogarth, Director NOAA Fisheries  
 1315 East West Highway  
 Silver Spring, MD 20910

Dear Dr. Bill Hogarth,

This letter is being written with complete outrage that Dr. Roy Crabtree has not been removed from his position as the Southeast Regional Director NMFS; as well as the rest of the NMFS Gulf Council. It is clear that Dr. Crabtree along with the NMFS Gulf Council has been lying to the entire Recreational/Commercial fishing community for years. This letter serves as a request for their resignations.

The Recreational and Commercial fishing communities have been lied to for years by the NMFS that Red Grouper have been over fished. We are now being told by the same body that this is indeed not the case at all and that in actuality it is the Gag Grouper that have been over fished; the end result being a closed season for both. This is inexcusable.

During the Gulf of Mexico Grouper Forum 2007, held on February 27, 28 of this year, we were informed that the findings regarding the Red Grouper population being over fished are grossly inaccurate; this species has not been over fished since at least the year 1999. If the best available science is truly being instituted in these decisions, how can we possibly have such contradicting information in the space of only one year and be expected to believe it? It is clear that the Gulf Council, as well as those at the NMFS have their own agendas without regard to the economic impact on the livelihoods of all involved in the fishing community.

It is a fact that the NMFS is required by law to take the economical impact of any regulations into consideration, this has not been done. Dr. Roy Crabtree and other Gulf Council members need to be held accountable for the unnecessary economical hardships endured by businesses, loss of jobs, and bankruptcies in the fishing and related industries. The fact is that **BILLIONS OF DOLLARS** in the state of Florida have been lost due to the incompetence of Dr. Roy Crabtree and the Gulf Council.

We are hereby calling for the immediate removal of Dr. Roy Crabtree and the NMFS Gulf Council; they **MUST** be held accountable for their actions!

We request that they be replaced with competent people ASAP. In addition, recreational bag limits should be increased to where they were in July 2005; and the one month Grouper season closure for Recreational and Commercial fishermen be removed.

With Respect,

**Capt. Paul G. Forsberg**

Owner/Operator Viking Fleet  
 Member of the Board of Directors, United Boatmen of New York  
 Current holder of two large multi-passenger party boat licenses in the Gulf of Mexico  
 Current holder of two commercial reef fishing permits

**Capt. Richard J. Castellano**

Owner/Operator Gulf Star Ventures, LLC.  
 Owner/Operator Fishbone Fishing Consultants

**Capt. George Lontakos**

Captain/Tackle Engineer, Vikings of Tarpon Springs

**Capt. Arlen Leiner**

Current holder of gulf reef permit  
 Charter Boat Owner

CC: Mr. Samuel D. Rauch, NOAA  
 Dr. Steven Murawski, NOAA  
 Dr. James Balsiger, NOAA  
 Mr. Alan Risenhoover, NOAA  
 Mr. Alex Chester, NOAA  
 Dr. Roy Crabtree, NOAA  
 NOAA Fisheries Service Southeast Reg. Office  
 Mr. William Daughdrill, Gulf Council  
 Mr. Robert Gill, Gulf Council  
 Ms. Julie Morris, Gulf Council  
 Mr. Robert Shipp, Gulf Council  
 Ms. Bobbi Walker, Gulf Council  
 Mr. Philip Horn, Gulf Council  
 Mr. Thomas McIlwain, Gulf Council  
 Mr. Harlon Pearce, Gulf Council  
 Ms. Susan Villere, Gulf Council  
 Mr. Degraaf Adams, Gulf Council  
 Mr. Joseph Hendrix, Jr., Gulf Council  
 Mr. William Teehan, Gulf Council, FWC  
 Mr. R. Vernon Minton, Gulf Council, Alabama Dept. of Conservation & Natural

## Resources

Mr. Corky Perret, Gulf Council, Dept. of Marine Resources, Biloxi MS  
Ms. Karen Foote, Gulf Council, Louisiana Dept. of Wildlife & Fisheries  
Robin Riechers, Gulf Council, Texas Parks & Wildlife Dept.  
Mayor Beverly Billiris, Tarpon Springs, FL  
Senator Bill Nelson, Washington DC  
Senator Mel Martinez, Washington DC  
Congressman Bilirakis, Washington DC  
FL State Representative Peter Nehr, Washington DC  
Governor Charlie Crist, Tallahassee, FL  
Lt. Governor Jeff Kottkamp, Tallahassee, FL  
St. Petersburg Times, Editor  
Tampa Tribune, Editor  
Miami Herald, Editor  
Florida Press Association  
Orlando Sentinel, Editor  
Local Angler Magazine, Seminole, FL  
Saltwater Angler Magazine, Tampa, FL  
Onshore ? Offshore Magazine, St. Petersburg, FL  
Florida Sportsman Magazine, Stewart, FL  
National Fisherman, Portland, ME

From "[Hawtin, Bob](mailto:HawtinB@TheLeeCo.com)" <[HawtinB@TheLeeCo.com](mailto:HawtinB@TheLeeCo.com)>



Sent Friday, February 23, 2007 7:45 am

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject

As an East Coast fisherman and boat owner plus the occasional trip on a cod fishing charter I am for any regulations that will control the over fishing of all stocks. I would like you to pay particular emphasis to reducing by-product catches, limiting the number of commercially available licenses, and totally closing any fishing grounds that need to replenish their stocks. The successes we enjoy today from the Stripe Bass program are a testament to proper fishery management and those lessons learned should be employed to the rest of the fishery. I would also be in favor of a national recreational licensing program IF it can be guaranteed those monies would be used exclusively for Fisheries Management and not let politicians use it for their own projects. Thank You.

Robert Hawtin  
5 Marks Drive  
West Haven, CT. 06516

From "[Capt. Tim Myers](mailto:stamas27@hotmail.com)" <[stamas27@hotmail.com](mailto:stamas27@hotmail.com)>

Sent Thursday, March 1, 2007 1:41 am

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject Over fishing

Capt. Tim Myers  
P.O. Box 689  
Newberry, Fl. 32669  
352-256-6468

I am Tim Myers and I have been fishing and diving in the Gulf of Mexico from Tampa to Keaton Beach for about fifteen years. I also fish commercial and charter as well.

With regard to some of the over fishing of the gag grouper in the Gulf. It seems that the commercial annual poundage quota has not increased in past years, so what is going on? If I am not mistaken, in the last several years the harvest of gag grouper has closed when the red grouper harvest has been reached. The red grouper harvest is closing early because the deep water grouper quota has been reached early. Then the deep water boats come and fish for the shallow water grouper closing the harvest earlier each year. The domino affect.

So the recent decline in gag grouper can't be blamed on commercial fishing because we cannot continue fishing when the harvest is closed. I propose a possible reason for the decline of gag grouper. Due to better technology, fish finders and GPS and the deep water trolling lures such as the Mann's Stretch 18, 30, 50, the recreational fishing for many years has been unchecked. Ten years ago when the recreational quota for gags was 10 or 15 per person and fishing the old fashioned way with hook and line, fishermen were lucky to pull up 2-5 legal grouper each from the rocks. When the deep water trolling lures were introduced the fishermen's catch increased and suddenly the coolers were full in no time and most recreational fishermen got their quota. I was one of them. Now multiply all of the fishing in the gulf per day times the increase in the catch and it's evident that the reduction in numbers is attributed to the unchecked recreational fishing. As a diver, I have seen a big decline in the number of gags from the 25 to 65 feet depths. Now a boat can cover more ground trolling and bring up bigger fish because the fish will come up away from the rocks to strike the lure and they can't get back down to the rocks. Almost every strike will hook the gag, I've seen it from the bottom. **They have become a striking fish instead of a bottom fish!** A Stretch 30 with several hundred feet of line, especially braided line, at 6-9 knots will easily dive 55 or 60 feet bringing up some big gags that with hook and line would not be in the cooler. Millions of pounds of fish each day.

So the solution is not to limit the number of fish, but limit how they are caught. As a recreational charter captain I almost always have to troll for grouper because of their decline. Furthermore, with such a low recreational fishing quota, hardly any one wants to pay 500 bucks to catch only a couple of fish, not to mention the cost of fuel. I would gladly have a client talk about "the one that got away", with hook and line, than continue depleting the near shore stocks.

I propose: **that in the Gulf of Mexico- THERE SHOULD NOT BE ANY DEEP WATER LURES.** However the use of a down rigger or deep diving rig not attached to the lure itself should be allowed. Or better yet, **a fishermen can only fish for bottom fish with hook and line.**

I realize that there would be some enforcement issues, but I believe that a restrictive measure on how the fish are caught, not a limit, would be the best way to bring back our near shore stocks in the shortest period of time! I believe that the charter fishing industry would benefit as well as

the stocks return. **PLEASE CONSIDER A HOW BOTTOM FISH ARE CAUGHT RESOLUTION.**

Thank You for your consideration!

APPENDIX G3: All letters and e-mails from recreational  
fishers and recreational charter fishers

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Coastal Conservation Association  
6919 Portwest, Suite 100  
Houston, TX 77024

April 16, 2007

Mark Millikin  
National Marine Fisheries Service  
NOAA  
1315 East-West Highway  
Silver Spring, MD 20910

Dear Mr. Millikin,

Enclosed please find the comments of the Coastal Conservation Association on alternatives for guidance regarding Annual Catch Limits (ACL) and Accountability Measures (AM) and other overfishing provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA).

The Coastal Conservation Association is a private, not for profit, fishery conservation organization with over 90,000 members in 15 state chapters from Texas to Maine. While composed primarily of recreational fishers, we believe the proper conservation and management of the marine fishery resource benefits all users. We sincerely appreciate the opportunity to provide information on this important topic

## **Issues Under Consideration**

**In considering potential guidance related to MSRA's overfishing provisions, NMFS has identified the following list of issues related to ACLs, AMs, and overfishing. NMFS seeks public comment on the scope of this NOI generally and the list of issues and potential alternatives for this action set forth below.**

CCA believes all fishery sectors should be managed to prevent overfishing. If overfishing is occurring harvest restrictions should be put into place as soon as practicable, and in no event later than the deadline.

CCA questions NMFS' position that ACL must be enumerated as a measure of either the weight or the numbers of fish, particularly as MFMT, perhaps the most critical calculation, is provided as a level of fishing mortality ("F"). We ask that NMFS reconsider its position on the issue, in recognition of the fact that there are essential differences between the commercial and recreational fisheries. An ACL for stocks harvested primarily by the commercial sector that is enumerated in pounds or numbers of fish is probably appropriate, as commercial fisheries are generally comprised of relatively few participants and managers can calculate the actual harvest in near real-time by some combination of sector quotas, trip limits and/or in-season closures. However, no calculation, whether in pounds or numbers of fish, can provide the precise level of

recreational harvest. Commercial fishers are relatively few in number, but each harvests relatively large quantities of fish. Recreational fishers, on the other hand, number in the millions, but each angler's harvest is relatively small. Due to the size of the recreational community, its harvest can only be estimated, based on a survey that necessarily and admittedly includes some level of imprecision. In the case of species that are not often encountered, or which are frequently released and thus not physically available to survey personnel, such imprecision can be significant. Even the best data cannot be accurately compiled until weeks, if not months, after it is gathered. Since harvest cannot be effectively calculated in real time, management of anglers is very different from management of commercial fishers, in that managers can only hope to control harvest indirectly, by managing angler behavior rather than their catch. Thus, in fisheries that are predominantly recreational in nature, the goal should be to constrain harvest to a specified fishing mortality level, rather than a hard quota expressed in pounds or numbers of fish.

With both fisheries there should be a maximum fishing mortality rate (MFMT or  $F_{\text{Threshold}}$ ), which is the proverbial "line in the sand" that should never be exceeded, and a reduced  $F_{\text{Target}}$ , which is far enough below MFMT to be statistically measurable; in commercially-dominated fisheries such MFMT may be expressed in pounds or numbers of fish as an appropriate OFL. Both fisheries should be managed to fish around the lower target in order to not exceed the MFMT and thus engage in overfishing.

Due to the variation in harvest estimates for recreational fisheries, the annual catch rates will vary around the established target. The commercial fishery should be kept at or below the target fishing level.

In the case of data rich stocks, the catch limits or target can be set much more precisely and closer to MFMT, in the case of data poor stocks the catch limits or target must necessarily be more conservative and further removed from the threshold.

Finally, CCA believes that forage fish management is often neglected, but essential to the health of most piscivorous fish stocks. Management, in establishing OY, should take into account the forage function of such stocks when setting catch limits, set  $F_{\text{target}}$  with the forage species' role in the ecosystem in mind, and thus manage more conservatively than would be necessary merely to avoid exceeding MFMT. In forage stocks that are assessed and already have a fishery, we would suggest a cap low enough to assure that predator species have ready access to the stock. On stocks that are not undergoing harvest we would suggest a moratorium on harvest until the issues around harvesting forage species are better resolved.

## **Issues for Developing Guidance for ACLs and AMs**

### **The role of the SSC and other peer review processes in setting ACLs and AMs**

The Science and Statistical Committees should have the predominant role in setting ACLs or Target Fs whether when there are peer reviewed stock assessments available to make a scientific judgment about the health of the stock or when little data is available. The judgment of the SSC is probably more valuable for determining harvest rates for data poor species.

## **The relationship between ACL and OY**

Optimum Yield: The yield from a fishery which provides the greatest overall benefit to the nation with particular reference to food production, recreational opportunities and conservation. It is based on maximum sustainable yield as reduced by economic, social or ecological factors

The ACL should never exceed OY. Again, while the ACL could be expressed as poundage or number of fish, it is better expressed as a fishing rate sufficiently below the MFMT to be statistically different, and would be synonymous with  $F_{\text{target}}$ .

## **Revision of existing overfishing definitions to include OFL**

Such conversion is merely a mathematical exercise converting the fishing mortality rate established as MFMT to poundage, which can be avoided if ACL is also expressed in terms of a fishing mortality rate rather than as pounds or numbers of fish.

## **Variability in data currently available for each stock (e.g., data rich, data poor, and stocks with data quality falling between data rich and data poor)**

There will always be variability in both the quantity and quality of the data available for various stocks. One would not expect the data for tomtoate to be as rich as the data for summer flounder. Management Councils must prioritize species in order to spend limited assets on those that are the most important to the region.

## **Setting ACLs for stocks with unknown status**

The logical option would be to cap the harvest at current levels until data is available to support an assessment. Current harvest levels should be capped in the case of species currently supporting a harvest. A moratorium on harvest for those for which no fishery currently exists, to prevent a fishery from starting up, is advisable.

## **Circumstances in which a numerical ACL can not be set for a stock, and in such situations, recommendations for adequate and appropriate alternatives to setting a numerical ACL (e.g., prohibitions)**

Data poor stocks often use Spawning Potential Ratio (SPR) or escapement as a proxy for fishing mortality in setting harvest limits.

## **Setting ACLs for stock complexes, stock assemblages, and similar stock groupings**

Each SSC should be the primary judge of the desirability of combining stocks for management purposes. However, such an approach should be used with caution. When setting acceptable levels of fishing mortality for a mixed stock, such level must be determined by reference to the weakest individual component to assure that it is not overfished. Such an approach can easily result in several healthy stocks being fished at a rate far below OY in order to protect a single

depressed stock, an undesirable outcome that can be avoided through the use of species-specific ACLs. However, in the case of a mixed stock fishery that is exploited through the use of non-selective gear that produces high levels of discard mortality, establishing an ACL for such stock complex or assemblage may be the only viable approach.

### **Variability in the accuracy of management approaches in achieving target fishing levels.**

Past experience has demonstrated that not all management approaches are equally successful in constraining harvest within target fishing levels. For example, the New England Fishery Management Council's attempts to regulate effort by instituting trip limits and limiting days at sea have met with little success in halting overfishing and rebuilding the stocks of New England groundfish. Such limited success can be compared with the Mid-Atlantic Fishery Management Council's approach of pairing trip limits with hard quotas for commercial fisheries, an approach which has effectively constrained harvest of nearly every stock managed by such Council, and led to real progress in rebuilding such stocks. Clearly, managers should be encouraged to adopt approaches with a successful track record, and abandon those with a historical record of failure.

### **Setting a buffer between ACL and OFL to prevent overfishing, and how to determine the size of the buffer needed**

We believe that the establishment of a meaningful buffer between ACL and OFL should be a core principle of marine fisheries management when the appropriate data is available. ACL must be set sufficiently below MFMT to be statistically meaningful. The size of the buffer between the two would depend on the precision of the estimates of current biomass, recruitment, fishing mortality, natural mortality and biomass at maximum sustainable yield. In stocks with very precise estimates of those variables, ACL and MFMT could be relatively close together, as long as the confidence intervals surround the 2 estimates do not overlap. In the case of data poor stocks, the point estimates are much less certain, and would have to be set farther apart to assure that the estimates of ACL and MFMT do not overlap. A larger buffer is also advisable in the case of severely depressed stocks, when even a single year of overfishing will have a significant impact on the recovery, or in the case of species that mature slowly and are minimally fecund, such as most sharks, and would have great difficulty recovering from an overfished condition.

### **Establishing the appropriate probability that an ACL will prevent overfishing for a stock**

Although widely used by some regional fishery management councils, the court-established standard requiring management measures to have at least a 50% probability of achieving their goals is not adequate, for a 50% probability of success also necessarily implies a 50% probability of failure. This has recently been illustrated by the problems with the recovery of the summer flounder population. In the case of data-rich stocks, a number closer to the court-mandated threshold of 50% may be practicable; in the case of data-poor stocks, a much larger probability (>75%) is advisable.

### **Establishing recommendations for in-season management authority and methods to be used as AMs to prevent overfishing**

Where data is appropriate in-season closures are a useful tool when the ACL is reached. As a rule, that limits the use of in-season closures to commercial fisheries, which report harvest in near real-time. However, such closures are not an appropriate way to manage recreational fisheries, both because there is no way to compile accurate harvest efforts in a timely fashion and because such an approach would do significant harm to the recreational fishing industry, most particularly the for-hire sector. While the commercial industry arguably benefits from a compressed season, in which the entire quota can be taken on relatively few trips, minimizing fuel and other expenses (with the caveat that the market must be able to accept all of the fish caught without a material fall in prices), the recreational industry makes its money not by the fish or by the pound, but by the trip, and books such trips over the entire anticipated season. Thus, an early season closure has a direct, proportional effect on such industry's income. However, in recreational fisheries in which in-season estimates can be made with some attempt at accuracy, an in-season decrease in bag limits or increase in size limits, made to avoid overfishing, may on occasion be a viable option. Such an approach is currently used, with a limited degree of success, in the Angling-category Atlantic bluefin tuna fishery.

In addition, a recreational closure will likely not have the conservation benefit required. Often it takes time for anglers to realize that substantive changes have been made. Regular annual and expected changes work best.

### **Limiting the extent of overfishing, should it occur**

Overfishing should never knowingly be permitted. Due to the realities of the current data collection system, harvest levels can only be timely estimated for the commercial sector. However, should estimates of harvest in any of those sectors suggest that overfishing is likely to occur, appropriate action, as described in the previous response, should be taken to prevent or limit such overfishing.

### **Establishing corrective actions to ensure accountability in a subsequent year for an overage of the OFL for a stock in a previous year**

Corrective actions must be both effective and appropriate to the sector subject to such actions. "Effective" should be read in two contexts—the AM should both remediate any harm done by the overfishing and should deter the affected sector from overfishing in a succeeding year. In the case of commercial fisheries, in which the participants are, often due to limited entry, a known universe of persons, paybacks in subsequent years probably constitutes the most effective AM, as the individuals who benefited from the overharvest will be the same persons who will feel the effects of sanctions in the subsequent year (note that, to better correlate "fault" with AM, the AM's might best be applied on a quarter by quarter basis, so that the fishing activity that is subject to the AM is more likely the same activity that caused the overage). In the case of the recreational fishery, a payback is impractical, as in most fisheries the extent, and perhaps not even the fact, of the overage will be known for certain until the following fishing year is well under way. Also, the universe of recreational fishers is fluid, both as to their actual identity and to their participation in a particular fishery. Many anglers fish for whatever is most abundant (or, perhaps, more "catchable" or "keepable") at the time, and an AM that involves a payback of harvest in a subsequent year will merely shift effort from one species to another, and create the

same problem the AM was designed to prevent with another species. Finally, because regulations governing angling harvest are, as noted above, really constraints on angler behavior, any recreational overage is probably not due to the anglers' "fault", defined as their knowingly exceeding their allocation, but by anglers obeying bag limits, size limits and seasons judged acceptable by fisheries managers, and only found inadequate after the fact. Under such circumstances, sanctioning anglers would not be viewed as an equitable measure. Instead, the proper AM would involve changing the regulatory scheme in a manner designed to reduce recreational harvest and, perhaps, also increasing the size of the buffer between ACL and MFMT to make overfishing less likely.

**Establishing AMs for various sectors of a stock, if an ACL is subdivided for a stock, and the need to still prevent exceeding the overall OFL for the stock**

Because of the essential differences between recreational and commercial fisheries, there is significant merit to the concept of subdividing the overall ACL for a stock into sector-specific ACLs, and crafting AMs for each sector in a manner appropriate to such sector's particular characteristics.

Thank you again for the opportunity to comment on these important proposed changes in marine fisheries management.

Sincerely,

Richen M. Brame  
Atlantic States Fisheries Director

From [Dan Wolford <danwolford@earthlink.net>](mailto:danwolford@earthlink.net)

Sent Thursday, April 12, 2007 4:39 pm

To [Marty Golden <Marty.Golden@noaa.gov>](mailto:Marty.Golden@noaa.gov) , [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc [Chris Hall <chall@intecsolutions.com>](mailto:chall@intecsolutions.com) , [Ben Sleeter <bsleeter@gmail.com>](mailto:bsleeter@gmail.com)

Bcc

Subject RE: Important Deadline to Comment on how Catch Limits are Set

Marty - thanks for the reminder.

The Coastside Fishing Club supports the analysis conducted by the Pacific Fisheries Management Council, as it was reviewed at its April 2007 meeting. Council commentary can be found in the following link.

<http://www.pcouncil.org/bb/2007/0407/C2.pdf>

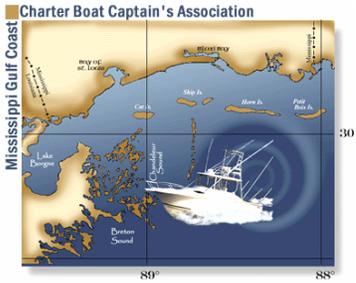
Dan Wolford, Science Director  
Coastside Fishing Club

> [Original Message]

> From: Marty Golden <Marty.Golden@noaa.gov>

> To: Bob Hoffman <Bob.Hoffman@noaa.gov>; Craig Heberer <Craig.Heberer@noaa.gov>; Deanna Pinkard <Deanna.Pinkard@noaa.gov>; John Butler <John.Butler@noaa.gov>; Marty Golden <Marty.Golden@noaa.gov>; Monica DeAngelis <Monica.DeAngelis@noaa.gov>; Don Masters <Don.Masters@noaa.gov>; Stephen Stohs <Stephen.Stohs@noaa.gov>; Suzanne Kohin <Suzanne.Kohin@noaa.gov>; Charles Wahle <Charles.Wahle@noaa.gov>; Chris Mobley <Chris.Mobley@noaa.gov>; Culver, C <c\_culver@lifesci.ucsb.edu>; David Witting <David.Witting@noaa.gov>; Fisher, R <Randy\_Fisher@psmfc.org>; Hansen, D <donna@danawharfssportfishing.com>; Porter, R <Russell\_Porter@psmfc.org>; <Karen.Reyna@noaa.gov>; Wilson, C <cwilson@dfg.ca.gov>; Roberts, E <eroberts@dfg.ca.gov>; Lisa Wooninck <Lisa.Wooninck@noaa.gov>; Stone, C <emvlsport@aol.com>; Dupuis, S <Suedupuis@aol.com>; Bacon, D <captain@wavewalker.com>; Beuttler, J <jbeuttler@aol.com>; Bartley, R <stripperred@sbcglobal.net>; Farrior, M <mfarrior@aol.com>; Fletcher, B <dart@sacemup.org>; Fukumoto, G <Glenn\_glenn@sbcglobal.net>; Grant, B <boyd.grant@upsac.org>; Hall, C <chall@intecsolutions.com>; Konzal, J <rkonzal@aol.com>; Martin, Jim <flatland@mcn.org>; Mattusch, T. <TomMattusch@comcast.net>; Morris, M <mmorris999@cox.net>; Okefield, L <Luc@AnglersChoiceTackle.com>; Stasukevich, A <alstaz@yahoo.com>; Strickland, B <bstrickland@unitedanglers.org>; Wolford, D <danwolford@earthlink.net>; Working, P <pablotrabajando@hotmail.com>; Fukuto, S <steve@wfbradio.com>; Greenberg, J <RFACer@ix.netcom.com>; Vallone, S <bobsandsfishing@SBCglobal.net>; Raftican, T <Tom@unitedanglers.com>; Osborn B <Bob@unitedanglers.com>; Jones, K <KenJones@pierfishing.com>; Brad Gentner <Brad.Gentner@noaa.gov>; Carli Bertrand <Carli.Bertrand@noaa.gov>; Forbes Darby <Forbes.Darby@noaa.gov>; Jim D Murray <Jim.D.Murray@noaa.gov>; Margo Schulze-Haugen <Margo.Schulze-Haugen@noaa.gov>; Michael Bailey <Michael.Bailey@noaa.gov>; Michael Kelly <Michael.Kelly@noaa.gov>; Michael T Murphy <Michael.T.Murphy@noaa.gov>; Nicole Bartlett <Nicole.Bartlett@noaa.gov>; Paul Perra <Paul.Perra@noaa.gov>; Terry Smith <Terry.Smith@noaa.gov>; Jay Ginter <Jay.Ginter@noaa.gov>; Cedergreen, M

<mcedergreen@olynet.com>; Martin, Jim <jtmartin@purefishing.com>; Hamilton, E <NSIALiz@aol.com>; Green, J <hjgreen@jeffnet.org>; Bethers, M <bigfish@ptialaska.net>; Donofrio, J. <Jimdrfa@aol.com>  
> Date: 4/12/2007 1:06:09 PM  
> Subject: Important Deadline to Comment on how Catch Limits are Set  
>  
> Deadline for submitting comments on Annual Catch Limits is next Tuesday,  
> April 17.  
>  
> My understanding is that \_NMFS has not received comments from any of the  
> sportfishing organizations yet\_. The community should definitely be  
> paying attention to how these annual limits get set, esp. given our  
> current data system and what happens the following year if those limits  
> are exceeded. Materials related to ACLs can be found here:  
> <http://www.nmfs.noaa.gov/msa2007/opportunities.htm>.  
>  
> Once this comment period ends, NMFS will be drafting a proposed rule for  
> additional public comment - probably in July. But this an opportunity to  
> let NMFS know about any issues and ideas up front.  
>  
> --  
> Marty Golden  
> Pacific Recreational Fisheries Coordinator  
> Partnerships & Communications Division (SF-8)  
> Recreational Fisheries Services Team  
> NOAA National Marine Fisheries Service  
> 501 W. Ocean Blvd., Suite 4200  
> Long Beach, California 90802-4213  
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> Recreational Fisheries web Site: <http://www.nmfs.noaa.gov/ocs/recfish/>  
> Phone: (562) 980-4004; Fax (562) 980-4047  
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## *Mississippi Charter Boat Captains Association*

*21030 B. J. Pittman Road*

*Saucier, MS 39574*

*228-385-2910*

*<http://www.mscharterboats.org>*

*Via email: [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)*

*Via fax: 301-713-1193*

April 17, 2007

Mark Millikin  
NOAA/NMFS  
1315 East-West Highway  
Silver Spring, MD 20910

### **Re: ACL comments and recommendations for overfishing definitions**

To Whom It May Concern:

We appreciate the opportunity to comment on the new MSA Annual Catch Limits and to recommend changes to the National Standard 1 Guidelines regarding overfishing.

Establishing ACL's for the recreational sector will be impossible under the current recreational data collection program of MRFSS. Recreational bag limits are the only way to currently manage recreational ACL's.

More real world impacts to the species and the humans who utilize the resource need to be considered when setting overfishing goals. Overfishing guidelines should be established that allow for the continued rebuilding of stocks without extremely restrictive requirements to end overfishing immediately. Each species should have its standard that allows the fishery to move forward toward the rebuilding target while allowing a reasonable harvest rate that affects the social and economic conditions of local fishing communities to the minimum amount possible. More real world impacts to the species and the humans who utilize the resource need to be considered when setting overfishing goals.

We appreciate your consideration of our comments.

Sincerely,

Capt. Thomas J. Becker, President  
MS Charter Boat Captains Association



# National Association of Charterboat Operators

P.O. Box 2990 Orange Beach, AL 36561  
Phone (251-981-5136) Fax (251-981-8191)  
info@nacocharTERS.org www.nacocharTERS.org

**Bobbi M. Walker**  
Executive Director

**Bob Zales, II**  
Panama City Boatman Assn.  
President

**Ed O'Brien**  
Maryland Charter Boat Assn.  
First Vice-President

**Tom Becker**  
Mississippi Charter Boat Captains  
Second Vice-President

**Chuck Schumacher**  
Chicago Sportfishing Assn.  
Secretary

**Ron Maglio**  
Michigan City Charterboat Assn.  
Treasurer

## Member Associations :

Alaska Charter Association  
Beach Haven Charter Fishing Assn.  
Black River Charter Guides Assn  
Cape Cod Charter Boat Assn  
Cape May County Party & Charter Boat  
Captree Boatman Open & Charter Boats  
Charterboat Assn. Of Puget Sound  
Chicago Sportfishing Assn.  
Deep Creek Charterboat Assn.  
Destin Charterboat Assn  
Eastern Lake Erie CharterBoat Assn.  
Florida Guides Association, Inc.  
Genesee Charterboat Assn, Inc.  
Golden Gate Fishermen's Assn.  
Homer Charter Assn.  
Ilwaco Charter Assn.  
Indiana's North Coast Charter Assn.  
Kenosha Charterboat Assn.  
Key West Charter Boatmen's Assn.  
Lake Michigan Sportfishing Assn.  
Marathon Guides Association  
Marco Island Charter Captain's Assn.  
Maryland Charterboat Assn.  
Michigan Charterboat Assn.  
Michigan City Charterboat Assn.  
Mississippi Charterboat Captain's Assn.  
Orange Beach Fishing Assn.  
Panama City Boatmen Assn  
Pennsylvania Lake Erie Charter Captain  
Pensacola Charterboat Assn.  
Petersburg Charterboat Assn.  
Port Aransas Boatmen Inc.  
Prince William Sound Charter Boat Assn  
Seward Charterboat Assn.  
Sitka Charter Boat Operators Assn.  
Sportfishing Association of California  
Steinhatchee Charterboat Assn  
Thumb Area Charter Captains Assn.  
Virginia Charter Boat Assn.  
Westport Charterboat Association

*Via email: [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)*

*Via fax: 301-713-1193*

April 16, 2007

Mark Millikin  
NOAA/NMFS  
1315 East-West Highway  
Silver Spring, MD 20910

## Re: ACL comments and recommendations for overfishing definitions

To Whom It May Concern:

We appreciate the opportunity to comment on the new MSA Annual Catch Limits and to recommend changes to the National Standard 1 Guidelines regarding overfishing. However, we are extremely disappointed with the procedure you have established to do so. Annual Catch Limits and overfishing definitions are very complicated and difficult for the average person to understand. Your procedure of going to the public and requesting information certainly satisfies any perceived outreach effort but also is a very poor way to gather information on such complicated issues which few people outside your scientific staff understand. You should have better described the MSA requirements and the scientific issues and provided several possible scenarios for our consideration.

ACL's should be established according to how each fishery has been historically prosecuted and managed. It will be difficult to set ACL's for fisheries currently managed under a FMP and almost impossible to do for species that you have little or no information at all. Each sector, recreational and commercial, should be responsible for their harvest and discard mortality that can be fully verified. If one sector exceeds any recommended ACL, that overage should not carry over to the other sector or impact their allowed harvest.

Establishing ACL's for the recreational sector will be impossible under the current recreational data collection program of MRFSS. The NMFS cannot currently properly assess species with a large recreational component by using this data set, so trying to set and manage ACL's in recreational fisheries that have no assessment information will be next to impossible. Recreational bag limits are the only way to currently manage recreational ACL's.

Overfishing guidelines should be established that allow for the continued rebuilding of stocks without extremely restrictive requirements to end overfishing immediately. Each species should have its standard that allows the fishery to move forward toward the rebuilding target while allowing a reasonable harvest rate that affects the social and economic conditions of local fishing communities to the minimum amount possible. More real world impacts to the species and the humans who

utilize the resource need to be considered when setting overfishing goals. The accuracy of fishery assessment models is extremely limited and predicting any stock status into the future cannot be precisely done. The variability of the model predictions is largely based on assumptions made by the modelers and one variable plus or minus can severely affect the predicted result.

Extreme caution needs to be used when attempting to revise the overfishing requirements and when trying to establish ACL's for the various species. National Standard 8 was placed within the National Standards for a reason and we would argue that it was to attempt to rebuild and maintain stocks while also trying to maintain the social and economic conditions of our local fishing communities.

Sincerely,

Robert F. Zales, II  
President



# Orange Beach Fishing Association

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Via email: [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)  
Via fax: 301-713-1193

April 17, 2007

Mark Millikin  
NOAA/NMFS  
1315 East-West Highway  
Silver Spring, MD 20910

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We appreciate your consideration of our comments.

Sincerely,

Bobbi M. Walker  
President

# PANAMA CITY BOATMEN ASSOCIATION

P.O. Box 4151  
Panama City, Florida 32401

April 17, 2007

Mark Millikin  
NOAA/NMFS  
1315 East-West Highway  
Silver Spring, MD 20910

via email: [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Re: ACL comments and recommendations for overfishing definitions

To Whom It May Concern:

On behalf of the members of the Panama City Boatmen Association, I appreciate the opportunity to comment on the new MSA Annual Catch Limits and to recommend changes to the National Standard 1 Guidelines regarding overfishing. However, we are extremely disappointed with the procedure you have established to do so. Annual Catch Limits and overfishing definitions are very complicated and difficult for the average person to understand. Few recreational anglers and fewer members of the public have any clue as to how the fishery management process works. Your procedure of going to the public and requesting information certainly satisfies any perceived outreach effort but also is a very poor way to gather information on such complicated issues which few people outside your scientific staff understand. You should have better described the MSA requirements and the scientific issues and provided several possible scenarios for our consideration.

ACLs should be established according to how each fishery has been historically prosecuted and managed. It will be difficult to set ACLs for fisheries currently managed under a FMP and almost impossible to do for species that you have little or no information at all. Each sector, recreational and commercial, should be responsible for their harvest and discard mortality that can be fully verified. If one sector exceeds any recommended ACL that overage should not carry over to the other sector or impact their allowed harvest.

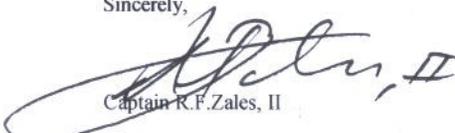
Establishing ACLs for the recreational sector will be impossible under the current recreational data collection program of MRFSS. The NMFS cannot currently properly assess species with a large recreational component by using this data set so trying to set and manage ACLs in recreational fisheries that have no assessment information and little recreational catch data will be next to impossible. Recreational bag limits and an accurate and reliable data system are the only way to currently manage recreational ACLs.

Overfishing guidelines should be established that allow for the continued rebuilding of stocks without extremely restrictive requirements to end overfishing immediately. Each species should have its standard that allows the fishery to move forward toward the rebuilding target while allowing a reasonable harvest rate that affects the social and economic conditions of local fishing communities to the minimum amount possible. More real world impacts to the species and the humans who utilize the resource need to be considered when setting overfishing goals. The accuracy of fishery assessment models is extremely limited and predicting any stock status into the future cannot be precisely done. The variability of the model predictions is largely based on assumptions made by the modelers and one variable plus or minus can severely affect the predicted result. Attempting to predict stock condition more than 2 or 3 years in the future just cannot be done with any reasonable certainty. In almost every assessment on species from the Gulf of Mexico over the last 20 years, every predicted stock status has never come close to the resulting status years later. Each stock status was far better than predicted regardless of any perceived harmful fishing activity.

Extreme caution needs to be used when attempting to revise the overfishing requirements and when trying to establish ACLs for the various species. National Standard 8 was placed within the National Standards for a reason and we would argue that it was to attempt to rebuild and maintain stocks while also trying to maintain the social and economic conditions of our local fishing communities.

Should you have any questions please contact me.

Sincerely,



Captain R.F. Zales, II

Cc: Secretary Carlos Gutierrez  
U.S. Department of Commerce  
1401 Constitution Ave, NW  
Washington, DC 20230

file

*"Dedicated to the conservation and enhancement of our natural marine resources"*



April 17, 2007

Mark Millikin  
National Marine Fisheries Service, NOAA  
1315 East-West Highway  
Silver Spring, MD 20910

**RE: Scoping Comments on Annual Catch Limits DEIS**

Dear Mr. Millikin:

The following comments are submitted by the Recreational Fishing Alliance (RFA)<sup>1</sup> on the National Standard 1 guidelines (Sec. 1(a)(1) and the requirements of the 2006 amendments to the Magnuson-Stevens Act (MSA). Of the 10 National Standards (NS) introduced in the 1996 Sustainable Fisheries Act, NS 1 can be recognized as carrying the most statutory weight during litigation and rebuilding of our domestic fisheries. Its revision, promoted by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) stands to have profound implications for the future of our industry and sport.

During discussions leading up Magnuson's passage and signing in to law, the RFA was deliberate in pointing out that some of the proposed provisions in MSRA would not promote efficient management of the recreational fishing sector. Some measures of the newly reauthorized law have the potential to create negative long-term impacts on the recreational fishing sector without any conservation benefit or real improvement to our domestic fisheries in return. This is particularly worrisome with the issue of annual catch limits (ACL) and accounting measures (AM) contained within MSRA. Consistent with our position in the final discussion of MSRA, we believe these management tools, though easily applied to commercial fisheries, are inappropriate for the recreational sector. However, the concepts of limiting mortality to ensure maintenance and rebuilding through quota managing mechanism are already in place in most recreational fisheries. While we understand this notice of intent comment period does not provide a mechanism to change this language, we stress the importance that the interpretation of MSRA mandates will have on the recreational fishing community.

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<sup>1</sup> The Recreational Fishing Alliance (RFA) is a national, 501(c)(4) non-profit grassroots political action organization that has been representing individual sport fishermen and the sport fishing industry since 1996. The RFA Mission is to safeguard the rights of saltwater anglers, protect marine, boat and tackle industry jobs and ensure the long-term sustainability of U.S. saltwater fisheries. RFA members include individual anglers, boat builders, fishing tackle manufacturers, party and charter boat businesses, bait and tackle retailers, marinas, and many other businesses in saltwater fishing communities.

The RFA offers the following comments on select issues on ACL and AM and their application to National Standard 1.

**The role of science and statistical committee (SSC) and other peer review processes in setting ACL and AM.**

The RFA encourages the increased use of outside peer reviewers in not only setting ACLs and AMs but biological reference points and other important biological benchmarks as well. Most SSC are currently composed of federal and state employed fisheries biologists who are exceedingly qualified and experienced. We do not question their qualifications, but point out that their intimate work with marine fisheries through governmental agencies narrows their perception only to mortality sources manageable under the bounds of the law; mainly fishing activity and habitat protection. The value of including outside scientists is that they bring a point of view that is not constrained specifically to fishing activity and variables under traditional fisheries management. This type of approach can be viewed as more holistic and consistent with the policy of moving toward ecosystem management.

**The relationship between ACL and optimum yield**

The definition of optimum yield (Sec. 104-297(28)(A)-(C)) is ambiguous and difficult to apply in a legal manner to fisheries management. Specific to (A), it is clear the phrase ‘greatest overall benefit to the Nation’ is highly subjective. However, the language contained within this section secures the consideration of food production and recreational opportunities in management decisions. This precedence sets through an extensive legal record that the commercial and recreational fisheries, and their respective industries, are placed on a lower priority than rebuilding fish stocks. This has limited the term ‘optimum yield’ mostly to allocation decisions. The RFA believes optimum yield is a term that should not be restricted to allocation decisions but included when setting ACL. Under the current council system, the SSC will develop an ACL based on the biological information available to them. This preliminary ACL is then considered by the appropriate regional fishery management council for final approval based not solely on biological information, but all the guidance offered under the 10 National Standards; optimum yield included. RFA firmly believes that the consideration of optimum yield must be included when setting ACLs.

**Revision of existing overfishing definitions to include overfishing level.**

The current definition of overfishing (Sec. 104-297)(29) refers to a specific level or rate of fishing mortality that fails to produce maximum sustainable yield on a continuing basis. There are a lot of uncertainties in marine fisheries science which are manifested in unknown sources of mortality that ultimately lower the performance of a stock. In addition, the legal authority of the Secretary to address mortality on marine fish under MSA and MSRA is limited. Unknown or unmanageable mortality has the effect of artificially increasing fishing mortality rates during stock assessments. There are many fisheries where fishing activity is not the primary source of mortality or the factor driving a stock’s decline. Yet fishing activity is the only variable that can be managed under the law. Overfishing levels must incorporate all sources of stress that impact marine fish.

Similar to ACL and AM, overfishing levels will not be effective if they are set in the same context for the commercial and recreational fisheries. Commercial landings and discards are relatively accurate estimates based on real landings figures and reasonable projections of discards produced from vessel trip reports (VTR) and observer data. These figures, similar to their total allowable catch (TAC) or total allowable landings (TAL), are in pounds. Recreational anglers are constrained to their TAC or TAL through minimum size limits, seasons and bag limits. Estimates of their landings are produced from the number of fish they land. While this estimate has a level of error associated with it, it is the most accurate estimate produced for the sector because anglers do not deal with weights of fish. During the conversion of numbers of fish to pounds, the error value can increase over 150%. The primary effort control for commercial fishermen is the trip limit which is in pounds. Conversely, the primary effort control for recreational fishermen is a bag limit which is in numbers of fish. Yet, fisheries managers continue to manage recreational, in terms of quota monitoring, in pounds.

Managing the recreational fishery through TACs and TALs based on pounds is a system destined to fail. There are numerous recreational fisheries that are experiencing this failure but can be most clearly illustrated in the summer flounder fishery. The recreational summer harvest for the past 5 years have been approximately 22% below the 15 year average, and, since 1999, recreational landings have averaged around 4.3 million fish annually. On the contrary, the recreational summer flounder harvest in pounds over the same 5 years is, on average, 12% above the 15 year average. This increase in poundage is not a function of landing more fish but a product of increasing the minimum size limit and requiring that recreational anglers harvest larger, heavier fish. By requiring that larger fish be landed, and managing the recreational fishery through a TAL based on pounds, recreational summer flounder harvest in pounds is doomed to increase even with stable effort. This is a serious flaw not unique to summer flounder but in the management of all the recreational fisheries and will only be exaggerated if overfishing levels are developed or implemented using pounds of fish. RFA strongly suggests that ACL, AM and overfishing levels not be set for the recreational fisheries until National Marine Fisheries Service (NMFS) and the regional fishery management councils can formally adopt a policy that strictly manages this sector in numbers of fish.

### **Variability in the accuracy of management approaches in achieving target fishing levels.**

Recreational fishing data collection programs are inadequate to produce landings and effort estimates on the same level of accuracy of the commercial fisheries. There are over 9 million marine recreational anglers and monitoring every one is impossible. For this reason, sub-sampling and expansion is used to create recreational fishing estimates. Due to the inherent nature of survey and statistical design, error is associated with recreational estimates. In some fisheries, this error can be highly volatile due to the size or distribution of the fishery and the sampling method's inability to capture representative samples of the fishery. Even the most popular recreational fisheries, such as summer flounder, red snapper and striped bass, have questionable landing estimates. For this

reason, the RFA suggests that recreational fishing target levels be established on a multi-year basis to absorb this error. In fact, NMFS data collection personnel have habitually stated that the recreational data collection programs were designed to show trends in fishing activity and that their error increases dramatically when using smaller spatial and temporal scales. By going to a multi-year approach, accuracy of the estimates will increase, foster stability in the recreational fishing industry, and increase the overall efficiency of fisheries management.

**Setting a buffer between ACL and overfishing level to prevent overfishing, and how to determine the size of the buffer.**

RFA suggests allowing the regional fishing management councils to set buffers between ACL and overfishing levels. The councils have proven that they recognize the concept behind the need for setting the buffers. In the past, the councils have set buffers and used precaution even when not prompted by federal law. Furthermore, with revisions to the procedure to set the ACL mandated by MSRA, there is enough precaution already in an ACL. It should be up to the discretion of the regional fishery management councils to determine if an additional buffer is warranted.

**Establishing the appropriate probability that an ACL will prevent overfishing for a stock.**

There is no question among stakeholders and fisheries managers that fisheries science is riddled with unknowns. Since the vast volume of the ocean prohibits us from counting every fish, and the sheer number of recreational anglers prevents us from contacting every angler, stock assessments and landings estimates contain a level of uncertainty. This uncertainty is a variable and usually decreases as more information about a year class or fishing season becomes available. Because of these characteristics, estimates for the terminal year always contain the highest level of uncertainty and reflect the probability that an ACL will prevent overfishing. The RFA has serious concerns about setting absolute probabilities for ACLs based on the most inaccurate data available at the time and suggests using probability strictly as a tool to be utilized by fisheries managers in determining the appropriate level of precaution.

**Establishing recommendations for in-season management authority and methods to be used as AMs to prevent overfishing.**

As it has been pointed out early, current recreational data collection programs have limitations in their role in management. They are not at a level of accuracy or timeliness to allow them to be used in real-time monitoring of the recreational fishing sector. In-season adjustment would require monitoring tools operating at a level that is unachievable with current programs. Biases, in both directions, could have severe impacts on the recreational fishing industry if a fishing season is prematurely closed short based on a false projection. Likewise, if a fishing season is extended and an overage occurs, severe impacts could be felt in the subsequent season. Inseason management is

just not a possibility in the recreational sector at this time, but we encourage NMFS to improve recreational data collection to a level where this type of management is possible.

**Establishing corrective action to ensure accountability in a subsequent year for an overage of the overfishing level.**

There was considerable debate leading up to the passage of MSRA regarding the establishment of accountability mechanisms and a misconception that blatant overages were persistently occurring. In any given fishery, if a target harvest limit is set and then exceeded by either sector, the overage is included and considered when setting the following year's harvest limit. If an overage occurs and causes an impact on the rebuilding of a stock, then adjustments are made in subsequent years to keep rebuilding on schedule. Overage currently can not go unaccounted for if they are slowing rebuilding. RFA affirms that accountability, either through the stock assessment workshop, SSC, or monitoring committee processes, is apparent in most all fishery management plans. We suggest that NMFS direct the regional fishery management councils to prepare reports on each of their FMPs and their process for setting annual harvest limits to determine if the performance of the previous fishing seasons is considered in setting future fishing limits.

The RFA has other concerns with the use of corrective action for overages. All recreational harvest estimates are presented with a percent standard error (PSE). The PSE is a value given to describe the confidence in a given estimate. For example, in 2006, just over 25,000 great amberjack were estimated to be harvested by recreational anglers<sup>2</sup>. The error associated with that estimate is 15 which illustrates that the estimate can vary 3,750 above or below the original estimate. If this fishery was limited to a 24,000 fish annual landing limit, there would be serious debate with the implementation of corrective action. Our confidence in recreational landing estimates is not, at this time, high enough to employ additional corrective actions beyond what is currently in place.

In addition, recreational fisheries must be managed using number of fish as opposed to pounds of fish. Most fishery management plans require anglers to land larger fish thus increasing their harvest in pounds. This results in the recreational sector having a higher probability of exceeding their harvest target despite having stable landings in numbers of fish. Fisheries managers must manage the recreational sector in numbers of fish before any corrective action taken.

**Preliminary ACL and AM alternatives.**

At this time, the RFA supports no action for ACL and AM alternatives. Under the statutory requirements of MSRA, the regional fishery management councils are required to comply with ACT and AM in their FMPs. We encourage the Councils to review their existing fishery management plans and provide a status review for each plan specific to annual catch limits and accounting measures. These reports can form the plan

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<sup>2</sup> National Marine Fishery Service. 2007. *Personal communication*. Marine Recreational Fishing Statistical Survey.

of action to bring their plans up to speed with MRSA. The RFA agrees that it is appropriate for NMFS to provide guidance in implementing MRSA's overfishing provisions and their application to National Standard 1, but believes that the regional councils should be allowed to review and submit reports on their FMPs in reference to their compliance with the new law.

Thank for the opportunity to comment on this issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jim", with a long horizontal line extending to the right.

James A. Donofrio  
Executive Director

cc Dr. William T. Hogarth

From [Mark Millikin <Mark.Millikin@noaa.gov>](mailto:Mark.Millikin@noaa.gov)

Sent Friday, June 1, 2007 11:20 am

To [annual catch limitDEIS <annual.catch.limitDEIS@noaa.gov>](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject [Fwd: question on annual catch limit DEIS]

From Kent Hall, March 1, 2007.

----- Original Message -----

Subject: question on annual catch limit DEIS

Date: Thu, 01 Mar 2007 23:19:46 +0000

From: kent hall <bevandkent@hotmail.com>

To: Mark.Millikin@noaa.gov

Dear Mr. Millikin,

I am writing for the Sitka Charter Boat Operators Association, in Sitka, Alaska, and trying to determine how applicable the proposed ACL and AM changes will be to us.

I noticed no scoping meetings will be held in Alaska, and I'm thinking that perhaps this issue pertains more to commercial fishing operations on the east and west coasts.

If you believe our opinions are critical, please attach a link where I can find out more details of what's proposed. Hope to hear from you soon.

Thanks,  
Kent Hall  
Secretary/Treasurer  
Sitka Charter Boat Operators Association  
Sitka Alaska

April 13, 2007

SF3

SF

04-17-07 P12:12 IN

Dr. Robert Hogarth, Director  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910



Dear Dr. Hogarth:

The Texas Black Bass Unlimited organization appreciates your leadership in ensuring that our ocean ecosystems are protected as well as the fish management improvement and the rules for the reauthorized Magnuson-Stevens Fishery Conservation and Management Act are being looked into. We would like to submit comments on the Notice of Intent recently issued by your department regarding possible changes to National Standard 1 on Fishing.

- ✓ Science, not special interest groups should set fishing limits. All decisions and appointments to the Science and Statistical Committee need to be tracked carefully by your department to ensure competence and independence.
- ✓ Accountability for over-fishing that keeps stocks out of trouble. We need clear, equitable, consistent accountability measures in place for annual catch limits.
- ✓ Timely catch data. Require fishermen to report their catch levels in an accurate, timely fashion.
- ✓ Stop over-fishing by maintaining the 10-year rebuilding requirement for recovering depleted fish stocks.

It is the responsibility of everyone – including congress – to protect the future of sport and food fish for future generations and we want to work with you to make this happen.

Thank you,

Ed Parten  
President, T.B.B.U.

**Anderson Pier, Inc.**  
**d/b/a Capt. Anderson's Marina**  
**5550 N. Lagoon Drive / Panama City Beach, FL 32408**  
**(850) 234-3435 or (800) 874-2415 Fax: (850) 234-0260**  
**[www.captandersonsmarina.com](http://www.captandersonsmarina.com) Email: [captanders@aol.com](mailto:captanders@aol.com)**

April 17, 2007

Mark Millikin  
NOAA/NMFS  
1315 East-West Highway  
Silver Spring, MD 20910

Re: ACL comments and recommendations for over-fishing definitions

To Whom It May Concern:

We appreciate the opportunity to comment on the new MSA Annual Catch Limits and to be able to recommend changes to the National Standard One Guidelines in regard to over-fishing. While we realize this effort satisfies the requirement for public input, we, the public, do not have enough data that is understandable to make valid decisions, decisions that affect our future.

We believe the manner in which you collect data needs to be improved drastically before you or we can make effective decisions on these matters. Recreational bag limits are the only way to manage ACLs under the new rules but have been proven inaccurate due to the way they are implemented.

In order to eliminate the excess 'dead discards' which are counted in the TAC, on Red Snapper, for instance, fishermen should catch and keep their first 4 fish and stop fishing. In the For-Hire fishery, given the alternatives you have proposed, the industry will be happy to comply. There will be some that are not going to comply with any of your regulations. Punish them, not the entire industry.

While the NMFS has been mandated by the Re-enactment of the Magnuson-Stevens Act to stop the over-fishing in a limited time period, the law is very clear that they make their decisions 'fairly and equitably' while taking into consideration the negative economic impact on the fishery. This is not happening. On the document dated March 2007, "Annual Catch Limits (ACLs) and Accountability Measures (AMs): Requirements of the 2006 Amendments to the Magnuson-Stevens Act (MSA)", page 3's list does not include any mention of the economic impact being an issue to consider while deciding the ACLs and AMs.

The estimate given in the NMFS documentation of the economic impact on the fishing industry is wrong. The estimate predicts a loss of 2 trips per charter boat and an overall loss of \$43,000.00 for the entire industry across the Gulf Coast.

As of this writing, the For-Hire businesses at Capt. Anderson's Marina have losses of more than \$42,000.00 in the first two months of the season and all are reporting losses already of more than 2 charter trips each. This does not take into account the related businesses for suppliers of bait & tackle, motels, and restaurants, etc.

The fishery is recovering and will continue to recover if no new regulations are added; it just needs to take a little longer. Like one of the fishermen has said, "It would be like the difference between taking an elevator or taking the stairs. You get to the same place, it just takes a little longer by stairs, but you still get there." The Gulf Coast recreational fishing industry is suffering and will suffer more under the most recent and the proposed regulations imposed by the National Marine Fishery Service (NMFS).

Our industry is not only our 'bread and butter' but is a major player in Florida's tourism industry. The latest regulations are going to devastate the industry, and thus impose an unwanted negative economic impact on the tourism industry.

For the recreational fishery, we have suggested and are still saying that we should be required to have logbooks to calculate the catches of each trip. We are told the reason they do not require that is that the statistics would be falsified. It is a matter of trust. We are a trustworthy group of business people. Just as there are 'bad apples' in every bunch, there will be some that report inaccurately. But not most of us. We want you to know what we are really catching because we know the estimates are exaggerated. The charter boat sector has been pushing for logbooks for several years to no avail.

There is another way to collect more accurate data. The catches of the private fishermen that hold licenses are being estimated. In other words, it is a guess. We are told it is impossible to collect their catch data. We say there are ways to get a lot closer. Congress has just put into place a requirement for a national registry which, if enough samples are taken, it should make it more accurate.

One way is for every license holder to submit the catches when they go fishing. They may not always be accurate, but they will be much closer than a total guess. You've heard this before but have not acted on it.

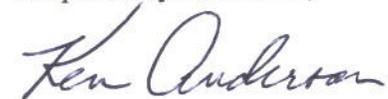
Another way to help you in enforcement is to charge a fee for a decal to the fishermen who use a private boat. That fee would be used strictly for enforcement. Each boat out there that has a decal can be checked, on a rotating basis from one area to another, for illegal catches and for properly accounting for their legal catch. Those who have fishing poles on their boats and no decal can be checked for fish. If they have fish, they are fined. If they do not have fish, they are warned of the need for the decal.

This would not be a fee for the already licensed vessels such as charterboats and headboats. It would be the private sector. And being afraid of dissension on their part...well, I think if they are told it is to help eliminate these excess regulations, they would welcome it. The decal would just be for those who want to fish from their boats.

The guessing will be over. The illegal fishermen will be put on notice that they will be prosecuted. You will have the funding to check for the illegal fishermen and the illegal catches.

The problem is major for the fishing industry and needs immediate attention. In the meantime, we would ask that the deficiencies that you know are there be corrected before any more damaging regulations are imposed.

Respectfully submitted,



Ken Anderson, Owner/Operator  
Capt. Anderson Fishing and Cruising

From [Bigtrig42@aol.com](mailto:Bigtrig42@aol.com)

Sent Tuesday, April 17, 2007 4:15 pm

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject annual.catch.limitDEIS

April 16, 2007

Mark Millikin

NOAA/NMFS

1315 East-West Highway

Silver Spring, MD 20910

via email: [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Re: ACL comments and recommendations for overfishing definitions

To Whom It May Concern:

I appreciate the opportunity to comment on the new MSA Annual Catch Limits and to recommend changes to the National Standard 1 Guidelines regarding overfishing. However, we are extremely disappointed with the procedure you have established to do so. Annual Catch Limits and overfishing definitions are very complicated and difficult for the average person to understand. Your procedure of going to the public and requesting information certainly satisfies any perceived outreach effort but also is a very poor way to gather information on such complicated issues which few people outside your scientific staff understand. You should have better described the MSA requirements and the scientific issues and provided several possible scenarios for our consideration.

ACLs should be established according to how each fishery has been historically prosecuted and managed. It will be difficult to set ACLs for fisheries currently managed under a FMP and almost impossible to do for species that you have little or no information at all. Each sector, recreational and commercial, should be responsible for their harvest and discard mortality that can be fully verified. If one sector exceeds any recommended ACL that overage should not carry over to the other sector or impact their allowed harvest.

Establishing ACLs for the recreational sector will be impossible under the current recreational data collection program of MRFSS. The NMFS cannot currently properly assess species with a large recreational component by using this data set so trying to set and manage ACLs in recreational fisheries that have no assessment information will be next to impossible. Recreational bag limits are the only way to currently manage recreational ACLs.

Overfishing guidelines should be established that allow for the continued rebuilding of stocks without extremely restrictive requirements to end overfishing immediately. Each species should have its standard that allows the fishery to move forward toward the rebuilding target while allowing a reasonable harvest rate that affects the social and economic conditions of local fishing communities to the minimum amount possible. More real world impacts to the species and the humans who utilize the resource need to be considered when setting overfishing goals. The accuracy of fishery assessment models is extremely limited and predicting any stock status into the future cannot be precisely done. The variability of the model predictions is largely based on assumptions made by the modelers and one variable plus or minus can severely affect the predicted result.

Extreme caution needs to be used when attempting to revise the overfishing requirements and when trying to establish ACLs for the various species. National Standard 8 was placed within the National Standards for a reason and we would argue that it was to attempt to rebuild and maintain stocks while also trying to maintain the social and economic conditions of our local fishing communities.

Sincerely,

Capt. Bill Archer

From [sea flight sportfishing charters <seaflite@xyz.net>](mailto:seaflight_sportfishing_charters@xyz.net) 

Sent Tuesday, March 6, 2007 1:45 pm

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject marine stewardship responsibility scoping mtgs

A good method of controlling overfishing is to control commercial bycatch. I personally know of hundreds of rockfish floating dead after the work of a commercial fishing boat in my area that was not, obviously, targeting rockfish. This is one of less documented examples of a well documented national problem - a problem better solved in Canada than in our country, oh by the way. I urge you to follow Canada's lead in reducing commercial bycatch, and thusly saving **millions** of pounds of the resource.

Leah W. Jenkin  
POBox 2347  
4850 Adams Drive  
Homer AK 99603

From [Rex Murphy <rvmurphy@ptialaska.net>](mailto:rvmurphy@ptialaska.net) 

Sent Monday, February 19, 2007 4:45 pm

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc [Forbes Darby <Forbes.Darby@noaa.gov>](mailto:Forbes.Darby@noaa.gov) , [William T Hogarth <Bill.Hogarth@noaa.gov>](mailto:William.T.Hogarth@noaa.gov) , ["David S. Whaley" <Dave.Whaley@mail.house.gov>](mailto:David.S.Whaley@mail.house.gov) , [Kevin Allexon <Kevin.Allexon@noaa.gov>](mailto:Kevin.Allexon@noaa.gov)

Bcc

Subject Overfished Stocks Catch Limits and Accountability Suggestions

Attachments [NOAAFCFSModel.doc](#)

23K

Greetings,

Enclosed please find a simple fisheries management algorithm and accountability plan that answers the needs of limiting recreational harvest in any over fished fishery.

Please feel free to contact me if you have any questions, comments or suggestions to further refine this proposal.

Regards,

Rex Murphy  
Winter King Charters  
P.O. Box 3309  
Homer, AK 99603  
907-235-9113  
[rvmurphy@ptialaska.net](mailto:rvmurphy@ptialaska.net)  
[www.winterking.com](http://www.winterking.com)

### The Problems:

1. How can we easily manage the recreational fishing sector within a fixed allocation required in the case of an over fished fishery?
2. How can we collect more timely and accurate harvest data?

### A Simple Solution:

1. Each year the recreational allocation (in fish) is determined using the best science and the allocation model in place for the particular fishery.
2. A number of Harvest Tickets (corresponding to the allocation in fish) are made available to the fishing public on a first come, first served basis. A ticket is good for one limit of fish for one person on any day of the fishing season. When all tickets have been dispensed, the allocation is fully pre-reserved.
3. Harvest Tickets are non-transferable to prevent scalping. Ticket can be used on any day of the regular season. A limit on the number of tickets available to any single angler should be considered.
4. A Harvest Record is incorporated into the Harvest Ticket. It could be used to collect data such as length of fish harvested, date harvested, location caught. This information would be valuable for year end harvest count, average fish size calculations and for enforcement purposes. The Harvest Record should be machine readable to facilitate entry into a harvest database. If a returned Harvest Record indicates a harvest that is less than the daily limit, additional Harvest Tickets could be issued corresponding to the number of reported uncaught fish.

### Comments:

A first come, first served management scheme should be readily accepted by the public, since this model is the basis for dispensing the vast majority of goods and services that have limited availability. Examples include airline tickets, charter boat and hotel reservations, and virtually everything we as consumers buy in stores. This model is already widely used in other wildlife management programs.

This model manages harvest to a level guaranteed not to exceed the allocation in fish, *without the need for in-season closures* or any end of season management action other than setting the following year's recreational allocation and bag limits. The single operating premise of this model is that ticket dispensing stops when there are no more available tickets.

This model collects accurate data on all fish caught, and provides the information to the fisheries managers in time for use in decision making for the following year.

From [jim and maureen panzer <jmpanzer@bbc.net>](mailto:jmpanzer@bbc.net) 

Sent Wednesday, February 21, 2007 3:26 pm

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc [Butch <wildmancharters@gci.net>](mailto:Butch <wildmancharters@gci.net>)

Bcc

Subject annual limit

Sirs,

Why are you considering annual limits for sportsmen who catch 10% of the fish(halibut). The commercial take has increased while you consider this restriction. If the state of Alaska wants more bang for the buck they should give 50% of the halibut to sportsmen to be shared by individual and chartered fishermen.

How much and how long I fish will be determined by your actions. Tuna fishing has been excellent.

Sincerely,

James Panzer,M.D.

Gordon Nebraska

From [Capthierry@aol.com](mailto:Capthierry@aol.com)

Sent Thursday, April 19, 2007 10:16 pm

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc [chancyw@gulftel.com](mailto:chancyw@gulftel.com) , [bobzales@att.net](mailto:bobzales@att.net)

Bcc

Subject comments and recommendations for overfishing

To whom it may concern,

This is in regard to comments to MSA annual comments and recommend to the National Standard One Guide Lines regarding overfishing.

I have found annual catch limits and overfishing definitions were very complicated and very hard to understand. I wish it could have been better described and possibly given different alternatives to look at.

I feel that (Annual Catch Limits) ACLs, should be established according to the greatest benefit to the nation. The most people that use the resource feel strongly that if one sector exceeds their ACL, that this overage does not carry over to the other sector or affect their harvest.

I feel that establishing ACLs for recreational fisheries will be very difficult, especially with fisheries that have no assessment information and lack of adequate data on most fisheries.

I think that if a fishery is showing positive signs of rebuilding, we should use less restrictive requirements to end overfishing so quickly. Let's stretch it out over time so as to lessen the socio-economic impact on fishermen and communities that depend greatly on these fisheries.

From my perspective, more emphasis needs to be placed on the fishermen, as we are the ones that are over-regulated while the fish stocks are recovering.

NMFS has set goals for rebuilding that are unreasonable and unreachable.

These goals can still be met with stocks rebuilding and fishermen and communities less impacted with just a little more time.

As it is now, these restrictive measures are already causing undue hardships, socio-economic impacts on our communities.

*Save the fish AND the fishermen!*

Thank you for your consideration to this matter.

Sincerely,

CAPTAIN MIKE THIERRY  
P.O. BOX 502  
DAUPHIN ISLAND, AL 36528  
251 861 5302  
[www.captainmikeonline.com](http://www.captainmikeonline.com)

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April 17, 2007

P.O.Box 4335  
Panama City, FL 32401

Mark Millikin  
NOAA/NMFS  
1315 East-West Highway  
Silver Spring, MD 20910

via email: [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Re: ACL comments and recommendations for overfishing definitions

To Whom It May Concern:

I appreciate the opportunity to comment on the new MSA Annual Catch Limits and to recommend changes to the National Standard 1 Guidelines regarding overfishing. However, I am extremely disappointed with the procedure you have established to do so. Annual Catch Limits and overfishing definitions are very complicated and difficult for the average person to understand. Your procedure of going to the public and requesting information certainly satisfies any perceived outreach effort but also is a very poor way to gather information on such complicated issues which few people outside your scientific staff understand. You should have better described the MSA requirements and the scientific issues and provided several possible scenarios for our consideration.

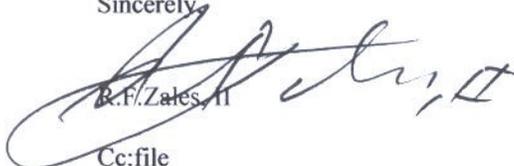
ACLs should be established according to how each fishery has been historically prosecuted and managed. It will be difficult to set ACLs for fisheries currently managed under a FMP and almost impossible to do for species that you have little or no information at all. Each sector, recreational and commercial, should be responsible for their harvest and discard mortality that can be fully verified. If one sector exceeds any recommended ACL that overage should not carry over to the other sector or impact their allowed harvest.

Establishing ACLs for the recreational sector will be impossible under the current recreational data collection program of MRFSS. The NMFS cannot currently properly assess species with a large recreational component by using this data set so trying to set and manage ACLs in recreational fisheries that have no assessment information will be next to impossible. Currently there is little if any recreational data on species that do not have a FMP so how can a reasonable person even begin to think you can properly manage such a species. Recreational bag limits are the only way to currently manage recreational ACLs and due to the complete lack of recreational data attempting to do so will be impossible.

Overfishing guidelines should be established that allow for the continued rebuilding of stocks without extremely restrictive requirements to end overfishing immediately. Each species should have its standard that allows the fishery to move forward toward the rebuilding target while allowing a reasonable harvest rate that affects the social and economic conditions of local fishing communities to the minimum amount possible. More real world impacts to the species and the humans who utilize the resource need to be considered when setting overfishing goals. The accuracy of fishery assessment models is extremely limited and predicting any stock status into the future cannot be precisely done. The variability of the model predictions is largely based on assumptions made by the modelers and one variable plus or minus can severely affect the predicted result. Current interim rules and proposed regulations are causing severe social and economic damage to local fishing communities because of the lack of social and economic data, and in some cases using false statements about the projected impact to the communities.

Extreme caution needs to be used when attempting to revise the overfishing requirements and when trying to establish ACLs for the various species. National Standard 8 was placed within the National Standards for a reason and we would argue that it was to attempt to rebuild and maintain stocks while also trying to maintain the social and economic conditions of our local fishing communities. More information needs to be gathered from the communities and the people who live and work in those communities on the REAL impact of proposed regulations. Providing a paper trail with words that cannot be substantiated to satisfy NEPA and the NMFS argument for extremely restrictive regulations should be addressed and corrected.

Sincerely,



R.F. Zales, II

Cc:file

From [mike zaleski <mez3830@hotmail.com>](mailto:mez3830@hotmail.com)

Sent Friday, February 23, 2007 9:21 am

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject overfishing reply

To whom it may concern;

I am simply amazed that your agency insists there is overfishing..... especially by recreational fisherman. I have never in my 50 years seen such an abundance of fish in the ocean off of New Jersey. I fish the man made reefs off of Long Beach Island, Little Egg, Garden State North & South, as well as several other off shore areas.

I have noticed that every year in the last ten years the oceans have come alive with an abundance of every species. The flounder, sea bass, blue fish, striper, dolphin, menhaden, false albacore and not to mention the spiny dogfish and other sharks.

It is time for someone in your agency to start doing their job and not speculate on what might be happening in our oceans. Your agency should start using sound scientific methods to get an accurate count of the actual fish that are being caught. I have never seen or heard of someone being asked about how many fish they have caught on any given day....in 43 years of fishing. I have been fishing or around water my entire life as well as my father, who has passed on. We have never been approached by a researcher. My friends who fish from marinas located all along the coast of New Jersey, Delaware and Maryland have never seen a person asking about the days catch or heard of someone being asked. If that is the case, who is asking and who are they asking..... or is your agency guessing and basing their guesstimates on anti-fishing studies???

I think this is a question that is being asked over and over again by your every day recreational fisherman and it should be publicized for everyone to see.

Sincerely;

Mike Zaleski

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May 4, 2007

Dr. Robert Hogarth, Director  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Re: Comments on National Fishing Standard 1

Dear Dr. Hogarth:

05-10-07A07:26 RCVD

I am an avid fisherman, conservationist, environmentalist, and outdoorsman. Through my volunteer position as Vice President of Education for the Virginia Council of Trout Unlimited, I'm very aware of the issues we face in protecting the vitality of our watersheds, oceans and marine ecosystems. As such, I am writing to submit comments to the National Marine Fisheries Service on possible changes to National Standard 1 on Fishing.

This is a critical time for the health of our oceans, and your leadership is vital for ensuring that our ocean ecosystems are protected and that ocean fish management is improved as your agency moves forward to issue rules for the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSA), the law governing fishing in U.S. ocean waters.

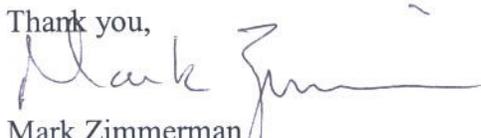
A strong and effective MSA is crucial for the sake of healthy oceans and the communities that depend on them. We believe that the revised National Standard 1 guidance should make the following changes in the way that your agency and regional councils conduct business:

- **Let science, not special interests, set fishing limits.** Every regional council must have a strong, independent, technically proficient Science and Statistical Committee (SSC) that has the resources and data to make conservative, science-based decisions. Appointments to these councils should be tracked carefully by NMFS to ensure competence and independence. These committees should set science-based annual catch limits (ACL's) that incorporate a precautionary approach or buffers to keep fish stocks healthy or recovering from depletion with a high level of certainty.
- **Set fishing limits with precautionary buffers so that overfishing does not occur.** In order to prevent overfishing managers must set catch limits with precautionary buffers to take into account uncertainty in fish stock data, population models, and fluctuating ocean conditions. Using appropriate buffers keeps catch limits consistently and appropriately below the level of overfishing which will ensure with a high percentage of certainty that overfished stocks recover, healthy stocks do not drop into overfishing territory, and enough forage fish are left in the ocean to support prey species.

- **Create accountability for overfishing.** Managers should create clear, equitable, consistent, and concrete accountability measures that keep stocks out of trouble if annual catch limits are exceeded.
- **Require fishermen to report their catch levels in an accurate, timely fashion.** Without accurate, timely catch data, it's impossible to determine if a fish has been overfished. With this information, we can take the necessary steps to ensure that overfishing in our oceans is less likely to occur. To that end, data from each fishery should be collected online soon after landing the fish.
- **Stop overfishing as quickly as possible.** NMFS should maintain the 10-year rebuilding requirement for recovering depleted fish stocks. Congress clearly considered and rejected changes to this requirement in the MSA reauthorization process.

In sum, we are very pleased with the proposals that NMFS has considered so far. We hope to see as many of these good ideas embedded in the final regulations and guidance as possible. We have a unique opportunity to make a quantum jump in the way we manage our fisheries to protect our oceans and our fish.

Thank you,



Mark Zimmerman  
Winchester, Virginia

cc. Mark Milikin, National Marine Fisheries Service

APPENDIX G4: All letters and e-mails from Regional Fishery  
Management Councils

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From [Mark Millikin <Mark.Millikin@noaa.gov>](mailto:Mark.Millikin@noaa.gov)  
 Sent Friday, June 1, 2007 11:16 am  
 To [annual catch limitDEIS <annual.catch.limitDEIS@noaa.gov>](mailto:annual.catch.limitDEIS@noaa.gov)  
 Cc  
 Bcc  
 Subject [Fwd: Scoping Comments Regarding ACLs and AMs]

From Dan Furlong, April 20, 2007.

----- Original Message -----

**Subject:** Scoping Comments Regarding ACLs and AMs

**Date:** Fri, 20 Apr 2007 16:28:32 -0400

**From:** "Furlong, Daniel T." <dfurlong@mafmc.org>

**To:** Mark Millikin <Mark.Millikin@noaa.gov>, Galen Tromble <Galen.Tromble@noaa.gov>

**CC:** "Jensen, Pete" <wpjensen@aol.com>, "Kray, Eugene" <sigma58@aol.com>, "Armstrong, James L." <jarmstrong@mafmc.org>, "Coakley, Jessica" <jcoakley@mafmc.org>, "Didden, Jason T." <jdidden@mafmc.org>, "Heaton, Clayton E." <cheaton@mafmc.org>, "Hoff, Thomas B." <thoff@mafmc.org>, "Montanez, Jose L." <jmontanez@mafmc.org>, "Seagraves, Richard J." <rseagraves@mafmc.org>

Following are Mid-Atlantic Fishery Management Council staff comments, and / or concerns, regarding the "Annual Catch Limits (ACL) and Accountability Measures (AM)" provisions of the recently signed MSA Reauthorization Act of 2006.

- Owing to National Standard 1 (Section 301, (a), (1)), there is a potential for a difference to exist between achievement of OY (optimum yield) and specification of ACL. We believe that a Council can stop overfishing, achieve optimum yield, and do so while exceeding an ACL recommendation. The Act is very clear at Section 302, (h), (6), i.e., Each Council shall - ". . . develop annual catch limits that **may** not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process . . ." Our interpretation of "may" is that it is not "must", it is not "shall", it is not "will". Rather, it is "may", as in there may be occasions when one can exceed the recommendation so long as overfishing is not occurring and so long as OY is being achieved.

- Section 302, (h) states that "Each Council shall, in accordance with the provisions of this Act?(6) develop ACLs?that may not exceed the fishing level recommendations of its SSC or the peer review process?" Missing from this language is an implementation time frame. Does the 2010/2011 timeframe related to ACL establishment at Section 303, (a), (15) apply to Section 302, (h), (6)? Or must Section 302, (h), (6) be implemented immediately? We believe that ACLs and related AMs should be implemented as quickly as possible. And, for fisheries experiencing overfishing, such measures must be in place by no later than 2010, and for all others by 2011. In other words, we have some flexibility between now and when the statutory deadlines are imposed.

- In cases where state fisheries continue to be prosecuted following a federal closure, what additional measures or mechanisms will be required to ensure accountability? The Secretary has authority under Section 306, (b), (1), (B) of the Act to supersede state jurisdiction when a state adversely affects a federal FMP, but he has yet to demonstrate the political will to do so. If state landings/mortality occur after federal closure of a fishery, will deductions from future ACLs as part of the new AM requirement be applied to all

participants (particularly a non-complying state) or components of the fishery?

- In terms of the frequency of overfishing that would be tolerated, regulatory stability should be a factor taken into consideration. If the fishery does not exceed the ACL for several years and has had stable operating regulations, then it may not be appropriate to adjust those regulations immediately following a year in which an overage occurs (if the amount of overage is small). Such a reaction could result in drastic changes to fishery operations which are wholly unwarranted as offending year may be a minor perturbation that does not represent the true pattern of performance in that fishery.

- The Mid-Atlantic Fishery Management Council was the first Council to implement an ITQ (Individual Quota Transfer) Fishery Management Plan (FMP), i.e., the Surfclam and Ocean Quahog FMP. We believe that such ITQ programs inherently satisfy the new requirements for accountability measures, and would hope that NMFS does as well.

- What criteria are most important when establishing the marginal difference between ACL and OFL?

- If an OFL and an ACL are established for a stock, and the OFL is not regularly exceeded, are AM measures required for each sector?

- Given the uncertainty of the data used to assess compliance with ACL (especially in data poor fisheries, e.g., scup), we agree that a "tiered" approach with respect to AMs is an appropriate course of action.

- Does the current management system for recreationally prosecuted species under our Council's FMPs, i.e., summer flounder, scup, black sea bass, and bluefish meet the accountability measures contemplated under the new Act? Currently, when such overages occur, the subsequent fishing year's recreational regulations (size, season, possession limits) are generally more restrictive owing to the prior year's overages. However, there are exceptions to this scenario when the targeted fishery's stock has increased due to strong recruitment or other environmental factors that would allow an increase in allocation despite the prior year's overage.

- Do references to the "charter" sector include all "for hire" fisheries (i.e., head and/or party boat)?

- Multiplicative gradient due to the timing of the management response cycle and the management information would be appropriate in determining how frequent review of performance should be conducted. For example, two times the management response cycle and two times the management information. So, if the managers can respond within one year and data are available annually, perhaps a four year review is appropriate. However, if a stock assessment is only available every 3 years, but managers can respond within 1 year, then an 8 year review might be appropriate.

Mark & GALEN:

4/17/07

Re: Buffers -

You might want to consider  
linking magnitude of buffer  
to status of the stock . . . .

e.g. closer the stock is to  
fully rebuilt, smaller the  
buffer.



Vince D'Shea

Oceanfront at 91st Street ■ Ocean City, MD 21842 ■ (410) 524-7777



# North Pacific Fishery Management Council

Stephanie Madsen, Chair  
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306  
Anchorage, AK 99501-2252

Telephone (907) 271-2809

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Visit our website: <http://www.fakr.noaa.gov/npfmc>

April 5, 2007

William Hogarth, Ph.D.  
Assistant Administrator for Fisheries  
NOAA Fisheries  
1315 East West Highway  
Silver Spring, Maryland 20910

Dear Dr. Hogarth:

Thank you for the opportunity to comment on the notice of intent for new requirements to end and prevent overfishing as set forth by the recently reauthorized Magnuson-Stevens Fishery Conservation and Management Act.

At its March meeting, the North Pacific Fishery Management Council received a presentation from Mr. Galen Tromble (NMFS) regarding public scoping for guidance on Annual Catch Limits (ACLs) and Accountability Measures (AMs). The Council and its Scientific and Statistical Committee (SSC) discussed these potential new requirements for the North Pacific FMPs, and we offer the following comments.

As you know, the North Pacific Council's management program using scientifically based annual catch limits was used as a model for the MSA reauthorization language. We sincerely hope that the guidance being developed by NMFS will not inadvertently impact our successful program.

Our primary concern is that the proposed ACLs not conflict with the existing catch limit reference points established in the North Pacific. Specifically, the proposed guidance would establish two reference points: an OFL and an ACL. Yet three reference points are used for management of groundfish fisheries in the North Pacific: OFL, Acceptable Biological Catch (ABC), and Total Allowable Catch (TAC). The SSC sets the OFL and ABC limits, and the Council sets the TAC levels within these constraints. Our regulations define the relationship of these catch levels such that  $TAC \leq ABC < OFL$ . Although fisheries are managed in-season to achieve the TACs without going over these levels, there are instances when the TAC is exceeded. Based on Galen's presentation, it appears that our TAC reference point may be equivalent to ACL, but not necessarily so, depending on how the regulations are written. Additionally, it is unclear how an ABC reference point would be accommodated in the regulations.

The ABC reference point is very important to our management program. It has both biological and management significance. It defines the catch level that if exceeded, could negatively affect recruitment of that species or stock in the short term. The ABC provides an important trigger point that defines the level at which more restrictive measures are implemented to ensure the OFL is not exceeded. Further, it provides a buffer which allows NMFS to issue exempted fishing permits in-season, and still constrain annual catches within the OFL catch limit. NMFS may wish to consider the use of ABCs at part of the national program to end overfishing, or at the very least, should provide allowance for other reference levels not specified by regulations.

Dr. Hogarth  
April 2, 2007  
Page 2

We are also concerned about any requirements for ACLs for fisheries jointly managed with the State. The Bering Sea/Aleutian Islands Crab FMP and Alaska Scallop FMP largely delegate management authority to the State of Alaska. For these FMPs, OFLs are established by NMFS and reviewed annually by the SSC and Council, whereas TACs are established solely by the State. It is unclear whether or not ACLs will be an additional federal requirement for these FMPs.

The SSC noted that preparing realistic overfishing definitions for stocks in Tier 6 has been and continues to be a serious problem. These are mostly non-target stocks for which fishing mortality is almost certainly very low, but abundance or catch is not estimable with available data and probably will remain so. The SSC encourages NMFS to consider an alternative method of guarding against overfishing for these cases when drawing up the guidelines. Increased observer sampling or shoreside observer sampling may be needed to more accurately estimate catch of some species currently managed in the 'other species' complex. Detailed suggestions regarding annual catch limit reference points and overfishing definitions were previously provided in our comments on the National Standard 1 Guidelines (see letters dated 8/27/04 and 10/13/05).

We believe that Alternative 3 may be overly and unnecessarily prescriptive, particularly in the context of our fisheries in the North Pacific, and given that we have both ACL and AM measures firmly in place. Alternative 2 seems a more appropriate course of action, though we also believe that serious consideration should be given to Alternative 1 as outlined in the scoping document. We understand that a national level team may be organized to advise NMFS on further development of ACLs and AMs, and we would be very interested in having a member of our staff participate on that team. Once again, thank you for the opportunity to comment on these issues.

Sincerely,



Chris Oliver  
Executive Director

CC: Sue Salveson  
Galen Tromble



## Pacific Fishery Management Council

7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384  
Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | [www.pccouncil.org](http://www.pccouncil.org)

April 17, 2007

Mr. Mark Millikin  
National Marine Fisheries Service, NOAA  
1315 East-West Highway  
Silver Spring, MD 20910

Re: Pacific Fishery Management Council Comments on Environmental Review Procedures and National Marine Fisheries Service's Notice of Intent to Prepare an Environmental Impact Statement Analyzing Alternatives for Guidance on Annual Catch Limits, Accountability Measures, and Other Overfishing Provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

Dear Mr. Millikin:

The Pacific Fishery Management Council (Pacific Council) appreciates the opportunity to provide comments to the National Marine Fisheries Service (NMFS) on the proposed range of alternatives for guidance on annual catch limits (ACL) and accountability measures (AM) designed to end overfishing. The Pacific Council remains committed to preventing overfishing and protecting and rebuilding depleted stocks and strongly supports timely and effective implementation of the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006* (MSRA).

At the March 2007 meeting, the Pacific Council reviewed all of the new provisions in the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSA) and prioritized efforts to help implement any new requirements by the legislatively-mandated implementation schedules. At its April 2007 meeting, the Pacific Council focused attention on three new provisions: 1) guidance on annual catch limits and accountability measures designed to end overfishing, 2) consideration of proposals for a new environmental review process for fishery management actions; and 3) implementation of Western Central Pacific Fisheries Commission provisions. The first two issues were the subject of a NMFS sponsored public scoping session and this letter and the enclosed materials are intended to be included as the Pacific Council's scoping comments on these two important matters. The Pacific Council appreciated the efforts of Dr. Rick Methot and Ms. Marian Macpherson and their help in hosting the session and in presenting the scoping issues and responding to questions by the Pacific Council and the public.

### ANNUAL CATCH LIMITS AND ACCOUNTABILITY MEASURES

The Pacific Council currently prevents overfishing by implementing science-based precautionary approaches to both the preseason setting of harvest levels and active fishery monitoring and inseason management mechanisms for many key species within our four fishery management

plans (FMPs). The Pacific Council believes its good record of avoiding overfishing events while rebuilding and protecting critical stocks speaks to the strength of the Pacific Council's current management mechanisms. Therefore, the Pacific Council recommends that the range of alternative performance standards and guidance on annual catch limits and accountability measures analyzed in the draft Environmental Impact Statement include an alternative under which the Pacific Council's current system can operate efficiently and effectively to meet the differing management capabilities and needs of our diverse fisheries. At this early stage of development, the Pacific Council has identified Alternative 2 as presented by Dr. Methot as the alternative that may best meet the requirements of the MSRA while maintaining the necessary flexibility for regional and species-specific implementation.

Prior to the passage of the MSRA, the Pacific Council was actively engaged in revision of National Standard 1 guidelines to help make them an understandable, applicable, and efficient set of requirements for ending overfishing practices and rebuilding depleted stocks while assuring measurable success through regional management flexibility in their implementation. As illustrated in this letter and the enclosed statements from the Pacific Council advisory bodies, a set of very specific performance standards and guidelines will not likely work when strictly applied to the wide range of federally managed fisheries and stocks. This "one size fits all strategy" could be problematic under several of the Pacific Council's FMPs as summarized below and detailed in the enclosed documents.

#### SALMON FISHERY MANAGEMENT PLAN

The Pacific Council's Salmon Technical Team (STT) documented several potential issues with developing ACLs and AMs for salmon. Many salmon stocks managed under the Pacific Council's salmon FMP have spawning escapement objectives rather than catch limits. To achieve conservation objectives the Pacific Council and NMFS manage salmon fisheries through the use of both catch limits or quotas as well as effort limiting measures such as season structure and daily or weekly landing limits. The application and definition of annual catch limits should remain broad enough to include the use of effort controls in addition to catch limits. Because salmon stock origin cannot be determined visually, the impacts of a given fishery, whether limited by catch or effort levels, cannot currently be known inseason. Measuring salmon spawning escapement is a more direct measure of management success and stock-specific sustainability.

Klamath River fall Chinook (KRFC) management is an excellent example of how fishery effort controls and measured spawning escapement provide both catch limitations and accountability measures. Recent KRFC escapements have fallen below conservation objectives for the stock. The Pacific Council has responded with review and revision of fishery modeling methods and precautionary fishery opportunities to quickly end overfishing and meet spawning escapement objectives. The Pacific Council recommends this type of mechanism, with its measurable objectives and subsequent management accountability, should be analyzed as a potential mechanism under the proposed guidelines.

Additionally, due to their migratory nature, many stocks in the FMP experience fishery mortality in ocean and freshwater fisheries outside the Pacific Council's jurisdiction. The Pacific Council

considers these other sources of mortality when establishing annual management measures, but the Pacific Council is not accountable for those fisheries.

Many salmon stocks are exempted from the Pacific Council's FMP because they are of hatchery origin, they are impacted very little in Pacific Council managed fisheries, or they are listed under the Endangered Species Act. The Pacific Council recommends that these exemptions continue under any new ACL and AM provisions, particularly for salmon stocks with catch and accountability measures established by international fishery agreements such as the Pacific Salmon Treaty. Finally, coho and pink salmon stocks are only vulnerable to Pacific Council fisheries for one year of their life cycles and Chinook salmon are predominantly vulnerable during one year. Therefore, salmon life cycles do not lend themselves to catch accountability restrictions the following year and should be considered for exemption.

#### GROUND FISH FISHERY MANAGEMENT PLAN

The Pacific Council's FMP for groundfish management perhaps best fits the proposed model for ACLs and AMs. Under this FMP, the Pacific Council establishes numeric optimum yield (OY) and allowable biological catch (ABC) harvest limits with varying degrees of precautionary approaches as warranted by a stock's status. OYs for species determined to be overfished are very conservative and set to achieve a science-based rebuilding schedule. The harvest control rule for species in a precautionary status (assessed between 25% and 40% of virgin biomass) scales down allowable harvest until the stock reaches optimal sustainable levels. For healthy groundfish stocks, OY is often set at the ABC or overfishing level.

The Pacific Council and NMFS closely monitor groundfish fishery mortality through the active monitoring of inseason landings and expanded observer coverage. Due in part to an intensive inseason management process, overfishing has occurred very rarely since the 1996 reauthorization of MSA. In one instance in 2005, overfishing was occurring on petrale sole, a condition that was remedied with dramatic fishery closures as soon as the problem was identified and inseason regulatory changes could be implemented. Ultimately, the ABC was only exceeded by 0.14 percent or 4 metric tons. As an additional AM, future fishery modeling of petrale sole impacts was refined to deter any reoccurrence.

Of the over 90 groundfish species managed under the FMP, ABC values have been established for only about 25. The remaining species are primarily incidentally landed and usually are not listed separately on fish landing receipts. Information from fishery independent surveys are often lacking for these stocks, because of their low abundance or they are not vulnerable to survey sampling gear. Until sufficient at-sea observer program data are available or surveys of other fish habitats are conducted, it is unlikely that there will be sufficient data to upgrade the assessment capabilities or to evaluate the overfishing potential of these stocks. Therefore, the Pacific Council manages many of these data-poor species as stock complexes and applies precautionary management approaches when setting OYs for the complex. The Pacific Council recommends this approach continue under the new guidelines until such a time as more information on these species becomes available.

The Pacific Council is currently working to rationalize the West Coast groundfish trawl fishery and establish long term fixed species allocations for each sector of the fishery. In the enclosed draft white paper "Managing Yield in a Groundfish Management Regime of Individual Fishing

Quotas, Intersector Allocations, and Stringent Rebuilding Requirements,” Pacific Council staff proposes the setting of multi-year OYs, with carryover provisions under which annual catch underages or overages could be adjusted in subsequent years of a multi-year management period. This management tool has many potential advantages in the management of a limited access privilege program. The Pacific Council strongly recommends that the provisions proposed in the staff white paper and supported by the Groundfish Management Team be included in the analysis for alternative guidelines on ACLs and AMs.

#### HIGHLY MIGRATORY SPECIES FISHERY MANAGEMENT PLAN

The Pacific Council’s FMP for highly migratory species includes two categories, actively managed species and monitored species. All of the actively managed species have a trans-boundary distribution and are the subject of international fishing agreements through Regional Fishery Management Organizations (RFMOs). For most of the species in the HMS FMP numerical harvest limits (harvest guidelines or quotas) have not been established. Furthermore, Pacific RFMOs have by and large not established catch quotas. Like some salmon stocks, catch by domestic fisheries managed under the HMS FMP generally comprises a small portion of the total catch. The Pacific Council recommends that the analysis of alternative guidelines include clear criteria and procedures for determining if international RFMO ACL and AM provisions are adequate for exemption under the MSA. Restricting domestic fisheries to near zero annual catch limits to address overfishing concerns would have almost no impact in ending overfishing on the stock as a whole but could severely disadvantage local fisherman. Additionally, the Western Pacific Fishery Management Council also manages HMS fisheries. Development of ACLs would need to be coordinated with that Council.

The monitored species category of the HMS FMP consists of over 40 species that are usually caught incidentally and are included in the FMP, in part, to track the effectiveness of bycatch reduction strategies. Establishing ACLs and AMs for these relatively data-poor species will be problematic and are of questionable value given how rarely some of the species are encountered and that many of them are non-target species.

#### COASTAL PELAGIC SPECIES FISHERY MANAGEMENT PLAN

The Pacific Council’s FMP for coastal pelagic species (CPS) contains actively managed species, and monitored species and was recently amended to include all species of krill as prohibited harvest species. The FMPs harvest control rules for actively managed species (Pacific mackerel and Pacific sardine) removes a fixed portion of the assessed biomass of these species from harvest consideration to minimize the potential for overfishing and to help ensure a sustainable spawning biomass. Therefore, the definition of an overfished stock is explicit in the harvest control rules as harvestable biomass automatically declines as the stock approaches an overfished state.

Per the CPS FMP, the Council must take action to prevent overfishing if exploitation rates are projected to exceed overfishing levels within two years. Under the CPS FMP, the Council can and does set a harvest guidelines or catch limits below the overfishing level. Often this precautionary approach is intended to prevent overfishing by reserving a portion of the harvestable biomass as an incidental landing allowance for CPS fisheries targeting other species.

Like the HMS FMP, the CPS FMP also contains monitored species. Monitored species are either exploited at very low levels or are under State jurisdiction, or both. It is presumed that market squid, a monitored species, would be exempt from ACL and AM provisions due to its short life cycle. Much like monitored species in the HMS FMP and data-poor stocks in the groundfish FMP, assessing ACLs and AMs for monitored stocks could be problematic.

#### SCIENTIFIC AND STATISTICAL COMMITTEE

The Pacific Council and its Scientific and Statistical Committee (SSC) have developed an active and effective relationship that provides detailed and independent review of the best available science within the Pacific Council process. The Pacific Council and its SSC have raised several questions regarding the SSC's role in establishing annual catch limits under the reauthorized MSA. These concerns are well documented in the enclosed SSC statements. Additionally, like other Pacific Council advisory bodies, the SSC has expressed many of concerns about determining catch accounting control rules for data-poor species or for salmon stocks which are generally managed for escapement.

#### **REVISED ENVIRONMENTAL REVIEW PROCEDURES**

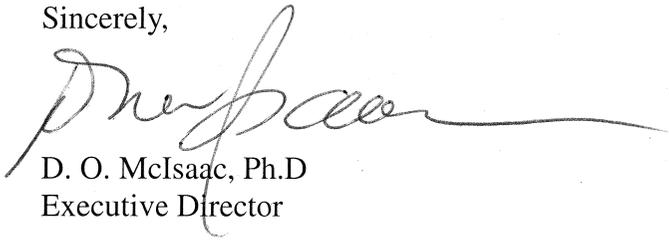
The Pacific Council is supportive of integrating applicable environmental analytical procedures of the National Environmental Policy Act (NEPA) with the procedures for preparation or amendment of FMPs under the MSA with the goal of aligning timelines more closely with FMP processes and reducing paperwork while providing clear and concise analyses for decision makers and maintaining effective public involvement. The Pacific Council reviewed the Council Coordination Committee's (CCC) enclosed February 28, 2007 proposed revised procedure and endorsed this document for use as general initial guidance to NMFS on the matter. The Pacific Council Chairman and Executive Director will provide additional comments and recommendations at the May 2007 CCC meeting in New Orleans, Louisiana. The Pacific Council will continue to work with NMFS and the CCC throughout the development, review, and adoption of revised environmental review procedures.

#### **CONCLUSIONS**

The Pacific Council appreciates the opportunity to comment on the development of these important guidelines. Please consider the comments of this letter as well as the written and oral record from the April 2007 Council meeting and NMFS scoping session as initial Pacific Council recommendations for the development and analysis of alternative guidelines for implementation of ACLs and AMs. The Pacific Council looks forward to further coordination with NMFS as National Standard 1 guidelines and ACL and AM alternatives are further developed and analyzed.

If you or your staff has any questions regarding this letter, please contact me or Mr. Mike Burner, the lead Staff Officer on this matter at 503-820-2280.

Sincerely,



D. O. McIsaac, Ph.D  
Executive Director

MDB:rdd

Enclosures:

1. Relevant Briefing Book Materials, Advisory Body Statements, and full meeting recordings from the April 2007 Council Meeting.

c: (without enclosures)

Council Members

Regional Fishery Management Council Executive Directors

Mr. Samuel D. Rauch, Deputy Assistant Administrator for Regulatory Programs

Mr. Alan Risenhoover, Deputy Director, Office of Sustainable Fisheries

Mr. Adam Issenberg, Deputy Assistant General Counsel for Sustainable Fisheries

Mr. Robert Lohn, NMFS, Northwest Regional Administrator

Mr. Rod McInnis, NMFS, Southwest Regional Administrator

Dr. Usha Varanasi, Science Director, Northwest Fisheries Science Center

Dr. William Fox, Science Director, Southwest Fisheries Science Center

Ms. Eileen Cooney

Dr. John Coon

Mr. Jim Seger

Mr. John DeVore

Ms. Laura Bozzi

Dr. Kit Dahl

Mr. Chuck Tracy

Ms. Jennifer Gilden

## MAGNUSON-STEVENS ACT REAUTHORIZATION IMPLEMENTATION

At its March 2007 meeting, the Council reviewed the Magnuson-Stevens Act (MSA) as amended by the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006*. Implementation of the provisions in the new MSA will involve considerable coordination between the National Marine Fisheries Service and the eight regional councils. The Council directed Council staff to continue working to meet timelines for implementing the new provisions and scheduled three specific items for Council action at the April 2007 Council meeting: (1) the process for establishing annual catch limits (ACLs) and accountability measures (AM); (2) consideration of proposals for a new environmental review process for fishery management actions; and (3) implementation of Western Central Pacific Fisheries Commission provisions.

The reauthorized MSA requires that fishery management plans (FMPs) “*establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.*” Council FMPs are currently being reviewed for consistency with this recommendation. Council staff has provided information to the National Oceanic and Atmospheric Administration (NOAA) regarding existing mechanisms for ACLs and AMs (Agenda Item C.2.a, Attachment 1) and has drafted a staff white paper on groundfish harvest issues associated with individual fishing quotas, intersector allocation, and rebuilding requirements (Agenda Item C.2.a, Attachment 2). If current Council ACLs and AMs are determined by NOAA to be insufficient, Council FMPs may be required to be amended by 2010 for overfished species and 2011 for all other species. NOAA is currently soliciting input on the development of alternative guidelines for ACLs and AMs and has published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) (Agenda Item C.2.b, Attachment 1). The public comment deadline for the NOI has been extended to April 17, 2007. The resulting guidelines are intended to be added to the proposed revision to National Standard 1 Guidelines.

The reauthorized MSA requires the development of revised procedures on environmental review and analysis of fishery management decisions within one year. The Council Coordination Committee (CCC) has submitted a draft proposal intended to integrate applicable environmental analytical procedures of the National Environmental Policy Act (NEPA) with the procedures for preparation or amendment of FMPs (Agenda Item C.2.a, Attachment 3). The goal is to align timelines more closely with FMP processes and reduce paperwork while providing clear and concise analyses for decision makers and maintaining effective public involvement.

The reauthorized MSA also requires that NMFS promulgate new Experimental Fishing Permit (EFP) regulations that “create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits. NMFS is considering “experimental fishing permits” to be synonymous with “exempted fishing permits,” for which national regulations were established in May 1996. Since the March 2007 Council meeting, NMFS has solicited Council comments on EFP provisions in the MSA and the current EFP application and issuance process on the West Coast.

NMFS is holding scoping sessions around the nation, including Council deliberations and public testimony under this agenda item. To facilitate discussion, NOAA has drafted a scoping session handout on ACLs and AMs (Agenda Item C.2.b, Attachment 2), has distributed a request for comments on new environmental review requirements (Agenda Item C.2.b, Attachment 3), and has circulated a timeline for meeting the new MSA provisions for EFP regulations (Agenda Item C.2.b, Attachment 4). These documents and a presentation on ACLs and AMs are posted on a NMFS website on implementation of provisions of the MSA reauthorization ([www.nmfs.noaa.gov/msa2007/](http://www.nmfs.noaa.gov/msa2007/)).

Finally, the Council requested input from its Highly Migratory Species (HMS) advisory bodies regarding implementation of the Western and Central Pacific Fisheries Convention (WCPFC) (Agenda Item C.2.a, Attachment 4). Specifically the Council is interested in recommendations on coordination with Pacific Regional Fishery Management Councils and in determining appropriate Council and West Coast representation. To facilitate focused public comment and Council decision-making, the Council will take this matter up under Agenda Item J.5 where the Council is scheduled to review the Council Operating Procedure covering HMS recommendations to Regional Fishery Management Organizations.

The Council is scheduled to hear a NMFS presentation on ACLs and AMs, review and discuss NMFS and Council staff documents on new MSA provisions, consider the testimony of its advisory bodies and the public, and direct planning on the next steps in implementation. Additionally, the Council may approve formal comments on NMFS plans to prepare an EIS on ACL and AM guidelines, the CCC proposal for environmental review procedures, and revisions to EFP regulations.

### **Council Task:**

**1) Direct Planning and Action on New MSA Requirements, 2) Approve formal comments on ACL and AM guidelines, 3) Approve formal comments on environmental review procedures, 4) Approve formal comments on new EFP regulations, and 5) Plan to discuss U.S. representation to the WCPFC under Agenda Item J.5.**

### **Reference Materials:**

1. Agenda Item C.2.a, Attachment 1, February 8, 2007 memorandum from Mr. Risenhoover regarding Council input to NOAA regarding existing ACLs and AMs.
2. Agenda Item C.2.a, Attachment 2, Council Staff White Paper: *Managing Yield in a Groundfish Management Regime of Individual Fishing Quotas, Intersector Allocations, and Stringent Rebuilding Requirements.*
3. Agenda Item C.2.a, Attachment 3, CCC Draft Proposed for MSA/NEPA Compliance.
4. Agenda Item C.2.a, Attachment 4: WCPFC Excerpt from the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.*
5. Agenda Item C.2.b, Attachment 1, February 14, 2007 Federal Register Notice of Intent to prepare and EIS to analyze alternative guidelines for ACLs and AMs.
6. Agenda Item C.2.b, Attachment 2, NMFS Scoping Session Handout: *ACLs and AMs: Requirements of the 2006 Amendments to the MSA.*
7. Agenda Item C.2.b, Attachment 3, NMFS Request for Comments: *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, Environmental Review Procedures.*
8. Agenda Item C.2.b, Attachment 4, NMFS Timeline for EFP Regulations

### **Agenda Order:**

- a. Agenda Item Overview
  - b. NMFS Comments
  - c. Reports and Comments of Advisory Bodies
  - d. Public Comment
  - e. **Council Action:** Direct Planning and Action on New Requirements as Needed for Timely Implementation
- Mike Burner

PFMC  
03/19/07



## Pacific Fishery Management Council

7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384  
Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | www.pccouncil.org

February 28, 2007

Mr. Alan Risenhoover  
Deputy Director, Office of Sustainable Fisheries  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

RE: Magnuson-Stevens Fishery Conservation and Management Act Implementation

Dear Alan:

Please note the following in response to your February 5, 2007 memorandum requesting information as a follow-up of the January 10-11, 2007 meeting of Regional Fishery Management Council Chairs and Executive Directors.

### **1. Meeting the New Annual Catch Level Requirements**

In general, the Pacific Council currently prevents overfishing by various precautionary mechanisms in initial harvest level setting, specific to individual fishery management plans (FMPs), bolstered by in-season management for some species. The good Pacific Council track record on overfishing events speaks to the adequacy of these mechanisms. Accountability for overages when they do occur is typically via adjustments in management measures (seasons, trip limits, closed areas, etc.) to reduce fishing power below that of the year of overage to the extent that another overage would not occur. See the attached narratives for the Pacific Council's FMPs for salmon (Attachment 1), highly migratory species (Attachment 2) groundfish (Attachment 3), and coastal pelagic species (Attachment 4). Should your staff have further questions on these attachments, please have them contact Chuck Tracy (salmon), Kit Dahl (highly migratory species), John DeVore (groundfish), or Mike Burner (coastal pelagic species) at the Council office.

### **2. Stipends for SSC and AP and other Committee Members**

The attached spread sheet (Attachment 5) details the information requested in your memo. We interpreted "employed by a federal government or State marine fisheries agency" as full time employment, not partial or contracted employment. We note that if a stipend was granted at half the pay rate of Council Members, the estimated annual cost for the Pacific Council would be just over \$380,000.

### **3. Management Plan Schedule**

We do not have routine reviews of any of our FMPs scheduled prior to 2010. However, we are tracking currently scheduled amendments for the groundfish (5) and highly migratory species (1) FMPs, for specific purposes other than annual catch limit amendments.

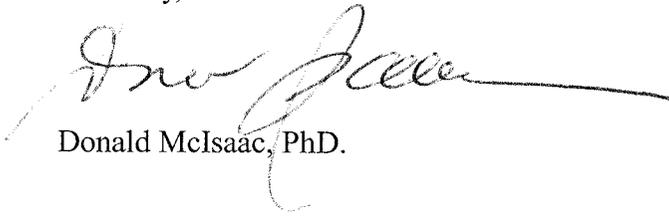
### **4. Training Requirements**

Please see attached emails (Attachments 6 and 7) received in response to your request. Additionally, we received comment that the adequacy of National Marine Fisheries Service funding of Council activities be included as a topic.

### **5. 2007 Training and Orientation for New Council Members**

The weeks of October 22 and October 15 are offered as suggestions for 2007 orientation and training efforts.

Sincerely,



Donald McIsaac, PhD.

cc: Mr. Don Hansen  
Mr. Dave Ortmann  
Dr. John Coon  
Mr. Mike Burner  
Dr. Kit Dahl  
Mr. John DeVore  
Mr. Jim Seger  
Mr. Chuck Tracy  
Mr. Daniel Furlong  
Mr. Paul Howard  
Mr. Robert Mahood  
Mr. Chris Oliver  
Mr. Miguel Rolon  
Ms. Kitty Simonds  
Mr. Wayne Swingle

# **Salmon Fishery Management Plan**

## **Annual Catch Limit**

### **Mechanisms and Measures**

#### ***Mechanisms***

Council area salmon seasons are set using the total allowable ocean harvest determined by conservation and allocation objectives in the fishery management plan (FMP). Conservation objectives have been established for over 40 salmon stocks originating in Council area production regions; unfortunately, estimating the stock composition in the landed catch can not be done visually; therefore, models are frequently used to estimate stock composition in mixed stock salmon fisheries and to constrain fisheries to acceptable impact levels for critical stocks.

For each management area or subarea, the Council has the option of managing the commercial and recreational fisheries for either coho or Chinook using the following methods: (1) fixed quotas and seasons; (2) adjustable quotas and seasons; and (3) seasons only. The Council may also use harvest guidelines within quotas or seasons to trigger inseason management actions which were established in the preseason regulatory process.

The total allowable harvest is based on the expected impacts to the constraining stock(s) associated with projected harvest of all stocks in the time/area management strata. Regulation models are used to estimate impacts for key stocks in Council managed fisheries. The Chinook and Coho Fishery Regulation Assessment Models (FRAM) are multi stock models, while the Klamath Ocean Harvest Model (KOHM) is a single stock model. The Coho FRAM covers the entire Council management area, and includes representations for all key stocks. All coho fisheries in this area are quota managed based on the Coho FRAM projections. The Chinook FRAM covers the area from Cape Falcon, Oregon to the U.S./Canada border and includes representations for Chinook stocks from the Columbia River north. All Chinook fisheries in this area are quota managed based on the Chinook FRAM projections. The KOHM covers the area from Cape Falcon, Oregon to Point Sur, California, but only estimates impacts on Klamath River fall Chinook. Because the KOHM is a single stock model, estimates of total catch are sufficiently accurate only in areas where Klamath River fall Chinook make up a large fraction of the total abundance. Therefore, quota management is generally only used in the Klamath Management Zone (KMZ), between Humbug Mt. Oregon and Horse Mt. California, or to limit catch in data poor management strata.

Quotas provide very precise management targets and work best when accurate estimates of stock abundance and distribution are available, or when needed to ensure protection of depressed stocks from potential overfishing. Quotas are not guaranteed harvests, but rather the maximum allowable harvest which assures meeting the conservation objective of the species or stock of concern. While time and area restrictions are not as precise as quotas, they allow flexibility for effort and harvest to vary in response to abundance and distribution.

## **Measures**

Managers require certain information about the fisheries during the season to control the harvest to meet established quotas and goals. If conditions differ substantially from those expected, it may be necessary to modify the fishing seasons, quotas, or other management measures. The following information is used for inseason management:

- a. harvest of each species by each fishery in each fishing area by day and by cumulative total;
- b. number of commercial troll day boats and trip boats fishing;
- c. estimated average daily catch for both day and trip boats;
- d. distribution and movement of fishing effort;
- e. average daily catch and effort for recreational fishery;
- f. estimates of expected troll fishing effort for the remainder of the season;
- g. information on the contribution of various fish stocks, determined from recovered coded-wire tags, scales, or other means.

Inseason management requires updating information on the fisheries daily. Thus, data will be collected by sampling the landings, radio reports, and telephone interviews.

In general, data necessary for inseason management will be gathered by one or more of the following methods. Data on the current harvests by commercial and treaty Indian Ocean fishermen will be obtained by telephoning selected (key) fish buyers, by sampling the commercial landings on a daily basis, and from radio reports. Data on the current effort of, and harvests by, the recreational fisheries will be obtained by telephoning selected charter boat and boat rental operators and by sampling landings at selected ports. Analyses of fish scales, recovered fish tags, and other methods will provide information on the composition of the stocks being harvested.

The Salmon FMP specifies the following procedures for taking inseason actions:

1. Prior to taking any inseason action, the Regional Director will consult with the Chairman of the Council and the appropriate State Directors.
2. As the actions are taken by the Secretary, the Regional Director will compile, in aggregate form, all data and other information relevant to the action being taken and shall make them available for public review during normal office hours at the Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, Washington 98115.
3. Inseason management actions will become effective by announcement in designated information sources (rather than by filing with the Office of the Federal Register [OFR]). Notice of inseason actions will still be filed with the OFR as quickly as possible.

The following information sources will provide actual notice of inseason management actions to the public: (1) the U.S. Coast Guard "Notice to Mariners" broadcast (announced over Channel 16 VHF-FM and 2182 KHZ); (2) state and federal telephone hotline numbers specified in the annual regulations and (3) filing with the *Federal Register*. Identification of the sources will be incorporated into the preseason regulations with a requirement that interested persons periodically monitor one or more source. In addition, all the normal channels of informing the public of regulatory changes used by the state agencies will be used.

4. If the Secretary determines, for a good cause, that a notice must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

Accountability is assured during the annual preparation of the Stock Assessment and Fishery Evaluation document and the preseason planning documents for upcoming seasons. Quota overages in the previous season are noted and the cause identified. Total allowable catch overages are fairly rare in Council area salmon fisheries, although exceeding individual stock impact expectations occur more frequently. For constraining stocks the target impact level is expected to be exceeded 50% of the time, assuming an unbiased model. However, if the model appears to have a consistent bias, or if results fall outside the observed range, a review is conducted and necessary adjustments are made. Adjustments are usually associated with input data for the models, such as the years included in parameter estimates.

## Highly Migratory Species Management Plan Annual Catch Limit Mechanisms and Measures

*Mechanisms to specify annual catch limits in the highly migratory species (HMS) fishery management plan (FMP), implementing regulations or annual specifications to prevent overfishing. Measures to ensure accountability such as but not limited to control rules or default measures.*

The default control role in the HMS FMP is to set optimum yield (OY) (or an OY proxy) equal to maximum sustainable yield (MSY) (or proxy) for species not considered vulnerable. For vulnerable species the OY (or proxy) is set to 75% of MSY (or proxy). Vulnerability of species can stem from many reasons, and any species that has been depleted to 50% below  $B_{MSY}$  (for the logistic production model, to 25% of unfished level  $B_0$ ) that is incapable of recovering back to that  $B_{MSY}$  level within 10 years (with fishing removed) is to be considered vulnerable in this FMP. The productivities (potential per capita rates of population increase  $r$ ) of such species would have to be 5% or less per year, assuming recovery time is determined by a linear compensatory increase in  $r$  with population decline (logistic model). Only the sharks among the Management Unit Species (MUS), including common thresher, are likely to have such low rates and long recovery times, and they are therefore considered vulnerable by this criterion. Vulnerable OYs are also appropriate for other fish species for other reasons of stock health concern.

The Council may adopt or modify any harvest guidelines, quotas or other management measures annually based on information provided in the Stock Assessment and Fishery Evaluation (SAFE) Report. The Regional Administrator will implement through rulemaking any necessary and appropriate harvest guidelines or other management measures based on the SAFE Report recommendations from the Council and the requirements contained in the FMP. (see 50 CFR 660.709)

Initial harvest guidelines established in the FMP apply to the shortfin mako shark and thresher shark. A harvest guideline if surpassed calls for review of the stock/population and its fishery. The purpose is to alert the Council to the possibility that catches under its jurisdiction are at or near a particular target level.

Most HMS are widely distributed and harvest by West Coast-based vessels represents only a small fraction of total fishing mortality out of the overall range of the species, and any unilateral action, such as a reduction in the US West Coast harvest or effort, would not have significant biological effect on the stock. However, in some cases unilateral action may be warranted. Otherwise the Council may make recommendations for action to the appropriate Regional Fishery Management Organization through National Marine Fisheries Service and the Department of State.

## **Mechanisms Used to Meet Annual Groundfish Catch Limits on the West Coast**

The Pacific Fishery Management Council (Council) uses a variety of mechanisms to meet annual catch limits (ACLs) (all sources of fishing-related mortality are counted against ACLs) for groundfish that are intended to prevent overfishing. These mechanisms include precautionary reductions to acceptable biological catch (ABC); precautionary management measures such as depth-based closed areas or Groundfish Conservation Areas (GCAs), precautionary trip limits, bag limits, seasons, and gear configurations; established harvest guidelines and bycatch caps; and periodic inseason adjustments to management measures.

The precautionary reductions to ABCs are made in cases where (1) stocks are quantitatively assessed with biomasses estimated to be below that which supports maximum sustainable yield (MSY), (2) stocks are not quantitatively assessed, but appear to have a declining biomass trend based on catch or catch per effort trends, (3) stocks have data-poor assessments, and (4) stocks are quantitatively assessed with biomasses estimated to be at or above that which supports MSY, but co-occur with overfished stocks. Annual catch limits are managed to prevent overfishing by updating projections of total catch through the year using landings and discard mortality estimates and adjusting management measures accordingly. Fixed bycatch caps and harvest guidelines are also specified by fishing sector with automatic regulatory actions, such as fishing closures and GCA adjustments when they are attained inseason. All of these mechanisms have worked in concert to prevent overfishing, except in rare circumstances of unexpected effort shifts of a magnitude significant enough to prevent timely fishery adjustments. While there are no forcing mechanisms in the fishery management plan or federal regulations that automatically adjust harvest specifications or management measures following an instance of overfishing, Council practice has been to specify more precautionary management measures the following season to prevent those rare management miscues.

## Coastal Pelagic Species (CPS) Fishery Management Plan (FMP)

### Mechanisms the Pacific Council uses to prevent overfishing of CPS:

The Annual Catch Limit (ACL) for Actively Managed species (Pacific sardine, and Pacific mackerel):

- The maximum ACL is calculated using species specific Maximum Sustained Yield (MSY) Harvest Control Rules. The Harvest Control Rules are applied to biomass estimates resulting from annual stock assessment updates reviewed and approved by the Scientific and Statistical Committee. Every three years, full assessments are completed and reviewed by both the SSC and a Stock Assessment Review Panel before harvest recommendations go before the Pacific Council.
- Within an ACL the Pacific Council implements a harvest guideline or quota that may be at or below the recommended ACL. Landings are monitored throughout the fishing season and directed harvest is prohibited if landings are projected to meet or exceed harvest specifications before the end of the season. At such time, predetermined incidental harvest provisions are implemented to ensure incidental landings in other CPS fisheries do not result in overfishing of the species of concern.

The Annual Catch Limit for Monitored species (northern anchovy, jack mackerel, and market squid):

- Northern anchovy and jack mackerel landings are relatively low and ACL is determined by a default MSY Harvest Control sets ACL for the entire stock (U.S., Mexico, Canada, and international fisheries) equal to 25% of the best estimate of the MSY catch level. AS with actively managed species, inseason landings are closely monitored.
- The market squid fishery operates on an annual landings cap. The MSY Control Rule for market squid is based on evaluating (throughout a fishing season) levels of egg escapement associated with the exploited population. The estimates of egg escapement are evaluated in the context of a “threshold” that represents a minimum level that is considered necessary to allow the population to maintain its level of abundance into the future (i.e., allow for “sustainable” reproduction year after year). The fishing mortality ( $F_{MSY}$ ) that results in a threshold level of egg escapement of at least 30% will be used initially as a proxy for MSY. However, it is important to note that the level of egg escapement will be reviewed on an intermittent basis as new information becomes available concerning the dynamics of the stock and fishery, to ensure that the proposed threshold meets its objective as a long-term, sustainable biological reference point for this marine resource. The market squid fishery operates within the constraints of currently adopted regulations as dictated by the California Department of Fish and Game (e.g., annual landings cap, weekend closures, closed areas) and NMFS, as long as egg escapement is equal to, or greater than, the threshold value. In the event that egg escapement is determined to be below the 30% threshold for two successive years, then a point-of-concern would be triggered under the FMP’s management framework and the Council could consider moving market squid from Monitored to Active management status.

## **Mechanisms the Pacific Council uses to Ensure Accountability:**

### Pacific Council CPS Harvest Control Rule

The general form of the MSY control rule utilized for West Coast CPS fisheries was designed to continuously reduce the exploitation rate as biomass declines. The general formula used is:

$$H = (\text{BIOMASS}-\text{CUTOFF}) \times \text{FRACTION}$$

H is the harvest target level, CUTOFF is the lowest level of estimated biomass at which directed harvest is allowed and FRACTION is the fraction of the biomass above CUTOFF that can be taken by the fishery. BIOMASS is generally the estimated biomass of fish age 1+ at the beginning the season. The purpose of CUTOFF is to protect the stock when biomass is low. The purpose of FRACTION is to specify how much of the stock is available to the fishery when BIOMASS exceeds CUTOFF. It may be useful to define any of the parameters in this general MSY control rule so that they depend on environmental conditions or stock biomass, as is currently done with Pacific sardine. In such cases, the MSY control rule depends explicitly on the condition of the stock or environment.

The general MSY control rule for CPS is useful for CPS that are important as forage and for protecting stocks from overfishing or from becoming overfished. If the CUTOFF is greater than zero, then the harvest rate (H/BIOMASS) declines as biomass declines. By the time BIOMASS falls as low as CUTOFF, the harvest rate is reduced to zero. The CUTOFF provides a buffer of spawning stock that is protected from fishing and available for use in rebuilding if a stock becomes overfished. The combination of a spawning biomass buffer equal to CUTOFF and reduced harvest rates at low biomass levels means that a rebuilding program for overfished stocks may be defined implicitly. Moreover, the harvest rate never increases above FRACTION. If FRACTION is approximately equal to  $F_{\text{MSY}}$ , then the MSY control rule harvest rate will not exceed  $F_{\text{MSY}}$ . In addition to the CUTOFF and FRACTION parameters, a maximum harvest level parameter (MAXCAT) is established for Pacific sardine and is used to guard against extremely high catch levels due to errors in estimating biomass to reduce year to year variation in catch levels, and to avoid overcapitalization during short periods of high biomass and high harvest. MAXCAT also prevents the catch from exceeding MSY at high stock levels and spreads the catch from strong year classes over a wider range of fishing seasons.

### Additional Pacific Council Accountability Measures in the CPS FMP

Overfishing occurs in the CPS fishery whenever catch exceeds acceptable biological catch (ABC) and overfishing is approached whenever projections indicate that fishing mortality or exploitation rates will exceed the ABC level within two years. The definition of an overfished stock is an explicit part of the MSY control rule for CPS stocks. Under the CPS FMP the Pacific Council must take action to eliminate overfishing when it occurs and to avoid overfishing as exploitation rates approach overfishing levels. Per the MSY Harvest Control Rules, ACL would automatically reduce as biomass declines but the Pacific Council may take additional action if overfishing levels are approached by setting the ACL below the harvest levels allowed under the MSY Harvest Control Rules to ensure overfishing levels are avoided.

# PACIFIC FISHERY MANAGEMENT COUNCIL

Committee Name	Number of members who meet stipend criteria (A)	Number of meetings / year (B)	Average length of meeting (in days) (C)	Total number of work days (=A*B*C)
Ad Hoc CPS Tribal Allocation Committee	2	1	1	2
Ad Hoc Full Retention Committee	1	0	0	0
*Ad Hoc Groundfish EFH Review Committee	12	3	2	72
Ad Hoc Groundfish EFH EIS Oversight Committee	2	1	3	6
Ad Hoc Groundfish Habitat Technical Review Committee	6	0	0	0
Ad Hoc Multi-year Management Committee	0	0	0	0
Ad Hoc Groundfish Strategic Plan Implementation Oversight Committee	2	0	0	0
Ad Hoc Groundfish Strategic Plan Implementation Oversight Committee Open Access Conversion Subcommittee	7	1	2	14
Ad Hoc Groundfish Trawl Individual Quota Committee	15	3	2	90
Ad Hoc Highly Migratory Species Management Committee	1	0	0	0
Ad Hoc Marine Protected Area Committee	6	0	0	0
Ad Hoc Observer Implementation Committee	2	0	0	0
Ad Hoc Salmon Amendment Committee	8	7	1	56
Ad Hoc Shore-based Whiting Amendment Workgroup	3	0	0	0
Ad Hoc Trawl Individual Quota Analytical Team	0	0	0	0
Ad Hoc Trawl Individual Quota Enforcement Group	0	0	0	0
Ad Hoc Trawl Individual Quota Independent Experts Panel	5	1	2	10
Ad Hoc Vessel Monitoring System Committee	7	0	0	0
*Ad Hoc Committee To Be Named	12	3	2	72

# PACIFIC FISHERY MANAGEMENT COUNCIL

Committee Name	Number of members who meet stipend criteria (A)	Number of meetings / year (B)	Average length of meeting (in days) (C)	Total number of work days (=A*B*C)
*Ad Hoc Committee To Be Named	12	3	2	72
Coastal Pelagic Species Advisory Subpanel	10	3	2	60
Groundfish Advisory Subpanel	20	5	5	500
Groundfish Allocation Committee	9	2	2	36
Groundfish Management Team	1	9	4	36
Habitat Committee	8	5	1	40
Highly Migratory Species Advisory Subpanel	12	3	2	72
Model Evaluation Workgroup	3	2	1	6
Salmon Advisory Subpanel	15	5	4	300
Salmon Technical Team	1	7	4	28
Scientific and Statistical Committee	5	5	2	50
<b>TOTAL</b>				1522
M:\isaac\CCED AB Chart.xls				

From Rod Moore <seafood@attglobal.net>

Sent Tuesday, February 20, 2007 3:47 pm

To 'Carolyn Porter' <Carolyn.Porter@noaa.gov>

Subject RE: Council Member Training and Orientation

Carolyn - I've been at two of the training sessions, once as a participant and once as a presenter. On the whole, I think NMFS - or more accurately, their contractor - has done a very good job in trying to bring a diverse group of people up to speed over the course of a couple of days.

Since MSFCMA is changing and management is becoming even more science-driven, I agree with the commenters that emphasis should be placed on understanding stock assessments and how they relate to management. You need to understand how you arrived at the bottom line before you start trying to adjust it.

I disagree with giving Robert's Rules a high priority. Copies of Robert's are available in any bookstore; this isn't something that needs to be taught in a national class.

Similarly, I would not emphasize specific regional issues (NWHI for example); I would, however, suggest that some discussion be given over to the interaction of the Councils with National Marine Sanctuaries. Every Council but the North Pacific has at least one Sanctuary in its waters; people need to understand how they interact.

Please feel free to pass these comments on to Alan.

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Rod Moore  
West Coast Seafood Processors Association  
1618 SW 1st Ave., Suite 318  
Portland, OR 97201  
503-227-5076

From SwordsTuna@aol.com

Sent Tuesday, February 20, 2007 1:09 pm

To Carolyn.Porter@noaa.gov

Subject Re: Council Member Training and Orientation

The orientation list covers almost everything. But, one item that may need attention is socioeconomic needs and affects to management, even though National Standard 1 always takes precedence. There is some confusion on fairness of resource management

where in particular to share the resource among the groups.

Kathy Fosmark

**Managing Yields in a Groundfish Management Regime of Individual Fishing Quotas, Intersector Allocations, and Stringent Rebuilding Requirements  
Potential Mechanisms Designed to Avoid Overharvest  
and Optimize Sector Fishing Opportunities**

**An Issue Paper Developed by Council Staff for the Pacific Fishery Management Council's  
Consideration in April 2007**

**(NOTE: suggested analyses and key questions for consideration are noted in this document  
in *bold italics*)**

***Introduction***

The Pacific Fishery Management Council (Council) is considering a trawl individual quota (TIQ) program for rationalizing the limited entry trawl groundfish fishery. Concurrently, the Council is considering an allocation of the available harvest of managed groundfish stocks and stock complexes to each of four different non-tribal sectors of the West Coast groundfish fishery: limited entry trawl, limited entry fixed gear, directed open access (i.e., vessels commercially targeting groundfish without a federal permit), and recreational<sup>1</sup>. This intersector allocation process supports development of a TIQ program, where trawlers will need a set allocation of species to manage their fishery using individual transferable quotas and/or fishing cooperatives, as well as other Council objectives such as bycatch reduction and a more stable management regime.

The reauthorized Magnuson Stevens Act includes a new provision to end overfishing once it is detected. Overfishing is defined in federal regulations as a realized harvest rate in excess of that which produces maximum sustainable yield (MSY). In terms of absolute harvest of West Coast groundfish stocks, this would equate to a total catch in excess of the acceptable biological catch (ABC). In the Pacific Council process, precautionary management measures and frequent inseason adjustments to ongoing fisheries are used to stay within specified ABCs and OYs. While occurrences of overfishing groundfish stocks on the West Coast have been rare using this process, there have been recent instances of overfishing. Significant uncertainty in current catch monitoring systems has led to unanticipated occurrences of overharvest (i.e., harvest in excess of sector catch limits and/or sector catch projections) in recent years in both commercial and recreational fisheries. These reasons and the need to protect fishing sectors from premature closures due to catch overages in other sectors compel consideration of a different management framework.

***Challenges to Managing Low Yields with Intersector Allocations***

The Council has identified the four non-tribal groundfish fishing sectors for consideration of set allocations of groundfish species and complexes. The Council proposes set-asides of needed yields to account for the unavoidable, incidental groundfish bycatch in non-groundfish and tribal fisheries and total mortalities accrued in research activities. These set-asides would be deducted from the allowable harvest before intersector allocations are made. There is a high likelihood

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<sup>1</sup> Tribal allocations may be pursued in a separate government-to-government process and treated as a yield set-aside in the analyses in the intersector allocation EIS.

that very low yields of the most constraining groundfish stocks will be available to groundfish fishing sectors once this management regime is implemented. Implicit in this process is that each sector would be responsible for maximizing their fishing opportunities while not overharvesting their allocated quotas of groundfish. Each sector has unique challenges to overcome that depend on the sector's ability to avoid constraining species and the relative uncertainty of their catch monitoring systems.

#### Limited Entry Trawl Management Challenges

Current fishing opportunities for the limited entry non-whiting trawl sector are most constrained on the shelf by the bycatch of canary, bocaccio (south of 40°10' N latitude), and widow rockfish; and on the slope north of 38° N latitude by darkblotched rockfish and Pacific ocean perch. Gear restrictions, depth-based rockfish conservation area (RCA) and essential fish habitat area closures, and trip limits are used to target healthy species while minimizing bycatch. At-sea observers track discards in this fishery with about 25% of the trips sampled under the West Coast Groundfish Observer Program (WCGOP).

The whiting-directed trawl sectors are most constrained by canary, darkblotched, and widow rockfish. Fixed allocations of whiting and hard bycatch caps for the three most constraining rockfish species are used to target whiting while minimizing bycatch. Attainment of the hard bycatch caps during the primary whiting season triggers closure of the non-tribal sectors even if sector whiting allocations have not been caught. Unlike the non-whiting trawl fleet, whiting vessels are exempt from RCA restrictions, but are subject to specific Chinook salmon conservation area closures adjacent to the mouths of the Klamath and Columbia rivers. Further depth-based area closures are implemented inseason if Chinook salmon bycatch approaches critical levels as determined in a consultation process pursuant to the Endangered Species Act. The at-sea fleets (catcher vessels delivering to motherships, and catcher-processor vessels) have 100% at-sea observation requirements. Whiting vessels delivering to shoreside plants are required to fully retain and deliver all their catch. Electronic monitoring is contemplated for the shore-based whiting sector to ensure maximum retention of catches.

Due to catch monitoring uncertainty and other facets of the current management regime, none of the trawl fleets are without risk of exceeding their harvest guidelines and/or allocations. The whiting fleets, which receive almost real time reports of their total catch, are at risk of attaining the bycatch cap for an overfished species before achieving their annual whiting quotas. The non-whiting trawl fleet is at greater risk of exceeding their allocations due to greater variance of catch estimates since only about a quarter of the fleet is sampled at any one time under the WCGOP. There is also a lag of about two months for receiving landings information from fish tickets, and an even longer lag for receiving trawl logbooks; both streams of data are needed to reconcile observer data and provide final trawl catch estimates.

While the limited entry trawl fleets are observed at-sea more frequently than any other West Coast fishing sector, fishing opportunities are still compromised by random "disaster" tows, i.e., significantly large catches of a constraining species. Disaster tows are unpredictable and rare events. ***[Determine frequency and magnitude of disaster tows in the various trawl sectors from the WCGOP]***. Depth-based management is currently the most effective strategy for reducing bycatch. Seasonally variable trip limits and selective trawl gear configurations also contribute to bycatch reduction. In spite of these measures, the fleets are still hampered by overcapacity and uncertain fishing prospects due to unpredictable disaster tows. Therefore, to achieve mandated economic and conservation objectives, the Council is considering rationalizing

the limited entry trawl sector using individual transferable quotas and/or a cooperative system, enabling vessels to combine quotas, risks, and profits.

Under the contemplated trawl rationalization system, quota pounds would be allocated and could be transferred between vessels. Vessels could no longer fish once their allocation of quota pounds for a target or bycatch species is exhausted. More quota pounds would need to be purchased to cover any deficits before that vessel could again go fishing. This mechanism should reduce bycatch given a strong economic incentive for fishermen to more carefully and selectively prosecute their fishery. However, the risk of sector catch overages (i.e., catches exceeding the sector's annual allocation of a given species) would not be entirely eliminated since a single disaster tow of a more constraining species (e.g., canary rockfish) could easily be large enough to exceed the sector's allocation and adversely affect further fishing opportunities for that sector and possibly other sectors as well. (The worst case scenario is a disaster tow or series of tows that are sufficiently large to risk exceeding the species' OY or ABC and prematurely closing the IFQ fishery). Furthermore, the availability of quota to cover catch overages may be scarce. It is also possible that the demand for quota pounds of the most constraining stocks may drive the price of this quota up to a point where it is not economically feasible to continue fishing. These inherent risks are not fully mitigated with a TIQ management system.

#### Limited Entry Fixed Gear Management Challenges

Current fishing opportunities for the limited entry fixed gear sector are most constrained on the shelf by canary and yelloweye coastwide, bocaccio south of 40°10' N latitude, and cowcod south of 34°27' N latitude. Depth-based RCA closures and seasonally varying trip limits are used to target healthy species while minimizing bycatch. At-sea observers track discards in this fishery, although the fleet is observed at less than a 25% rate under the WCGOP. *[Determine the current WCGOP sample rate].*

The primary target groundfish species for the limited entry fixed gear sector are nearshore species, which are managed using limited entry state permits in California and Oregon (there are no nearshore commercial fisheries allowed in Washington waters), sablefish, and slope rockfish. Fixed gears are particularly effective at targeting rockfish in high relief, rocky habitats. The management measures most often used to manage harvest in this sector are trip limits and specification of the non-trawl RCA. There is very little information to justify seasonally varying the boundary lines of the non-trawl RCA due to the lack of a logbook program and other area/season-specific catch information. Therefore, the non-trawl RCA has been static since its inception and its configuration is likely to remain unchanged given the very low harvest rates allowed for canary and yelloweye rockfish in their respective rebuilding plans. This fact also limits further fishing opportunities for this sector. Any liberalization of management measures in the latitudes and depths these species are distributed increases the risk of exceeding harvest guidelines and quotas allocated to this sector.

### Open Access Management Challenges

Current fishing opportunities for the directed open access sector are most constrained on the shelf by canary and yelloweye coastwide, bocaccio south of 40°10' N latitude, and cowcod south of 34°27' N latitude. Depth-based RCA closures and seasonally varying trip limits are used to target healthy species while minimizing bycatch. At-sea observers track discards in this fishery, although the fleet is observed at a very low rate under the WCGOP, especially south of 40°10' N latitude. *[Determine the current WCGOP sample rate north and south of 40°10' N latitude].*

Like the limited entry fixed gear sector, the primary target groundfish species for the directed open access sector are nearshore species, sablefish, and slope rockfish, and the same types of management measures are used for this sector. However, trip limits for the directed open access sector are typically much less than those for the limited entry fixed gear sector. Beginning sometime in 2007, any open access vessel landing groundfish species on the West Coast will be required to carry a vessel monitoring system (VMS) to ensure compliance with the RCA closure.

The directed open access sector is at great risk of exceeding specified harvest guidelines and quotas primarily due to the lack of effort controls and the paucity of at-sea observations of discards in the sector. Effort is currently controlled by varying the trip limits and, most frequently, the daily or weekly limits in the daily-trip-limit (DTL) sablefish fishery. This strategy is, at best, an inexact instrument for controlling open access effort. The Council is currently contemplating a limited entry scheme for the directed open access fishery, whereby any vessel catching and retaining groundfish in federal waters would be required to have a federal permit. This process is at too early a stage to predict fleet size, qualification criteria for a federal permit, or any of the effects of implementing a limited entry system for this sector.

### Recreational Management Challenges

Current fishing opportunities for recreational groundfish fisheries are most constrained by canary and yelloweye rockfish coastwide, bocaccio south of 40°10' N latitude, and cowcod south of 34°27' N latitude. Seasons, bag and size limits, and depth-based closures are used to manage recreational groundfish catch. Retention of cowcod, canary, and yelloweye rockfish is prohibited coastwide to prevent targeting. A small bocaccio bag limit is specified in California to reduce discards and accommodate unavoidable bycatch. State and federal harvest guidelines are set for many of the harvestable stocks. Federal harvest guidelines are also specified for canary and yelloweye rockfish to control the amount of discard mortality allowed for the sector. Automatic management actions, such as season and/or depth-based closures, are invoked when it is projected that these federal harvest guidelines will be prematurely attained.

Recreational catch monitoring is based on stratified, random creel surveys in each state and the resulting mortality estimates for the sector are highly variable. Discard estimates are particularly uncertain since they are primarily based on angler interviews, with unobserved estimates of the magnitude and species composition of discards. There is an at-sea observer and mandatory logbook program for Commercial Passenger Fishing Vessels (CPFVs or charterboats) in California; total mortality estimates for this fleet are therefore more precise. The precision of overall recreational catch projections is compromised by this uncertainty and the highly variable nature of effort. Angler effort is hard to predict since it is influenced by the relative abundance of various target species, weather, and competing fishing and non-fishing activities. These factors contribute to a high risk of recreational fisheries exceeding harvest guidelines and quotas.

*[Determine recreational groundfish sample rates by state and mode. Variance of catch estimates- landings and discards- by state and mode? ]*

### Tribal Management Challenges

There are four tribes that fish groundfish (Makah, Quileute, Hoh, and Quinault), all located in Washington. Current fishing opportunities are most constrained by canary and yelloweye rockfish. Of the four tribes, only the Makah Tribe fishes with trawl gear. Therefore, the Makah tribal fishing opportunities could also be constrained by darkblotched rockfish and Pacific ocean perch. The Makah Tribe requires full retention of groundfish and has an at-sea observation program to monitor compliance and provide area-specific bycatch information to the rest of the fleet. The Makah observer program targets a sample rate of 15% of all trips on a monthly and annual basis.

While tribal fishing activities are not subject to RCA restrictions, they are restricted to their usual and accustomed fishing areas, which are limited to discrete areas off the central and northern Washington coast. Two of the most constraining stocks on the West Coast, canary and yelloweye rockfish, are most abundant off the northern Washington coast within the usual and accustomed fishing areas of the Makah, Quileute, and Hoh tribes. Conducting tribal fisheries in areas where the most constraining stocks occur poses a significant risk of exceeding tribal sector allocations for those species.

### ***Potential Mechanisms Designed to Avoid Overharvest and Optimize Sector Fishing Opportunities***

There are a variety of mechanisms currently used by the Council to avoid overharvest and optimize fishing opportunities, such as buffers, bycatch caps, and sideboards. Other mechanisms, such as multiyear OYs and carryover provisions, are not currently used by the Council to achieve these objectives, but are posed for Council consideration to meet the challenges of managing harvest under a system of fixed sector allocations and trawl individual quotas.

#### Buffers

Buffers are residual yields at the beginning of a season not anticipated to be caught by any directed fishery. The Council often specifies management measures that are not expected to catch the entire OY of a given species. Any left over yield is reserved as a buffer to be used by any sector or dedicated to a given sector if catch is higher than anticipated. Buffers are particularly useful for managing total catch in a sector when catch accountability is highly uncertain. In theory, the higher the catch uncertainty of a given stock, the larger the buffer should be. As catch data is collected inseason, reducing annual catch uncertainty over the course of a season, fishing opportunities may be enhanced by reducing the buffer to allow higher mortality that is still within a specified annual catch limit or OY. This management strategy tends to break down when catch uncertainty is very high and time runs out in the season before management measures can be adjusted to achieve but not exceed OYs. Therefore, the risks and benefits of buffer management need to be constantly weighed to achieve mandated conservation and economic objectives.

### Bycatch Caps

Bycatch caps are yield set-asides of species specified for a sector that, when attained, would trigger closure of a fishery. Bycatch caps are currently used on the West Coast to manage groundfish bycatch in whiting-directed trawl fisheries and, in most cases, approved exempted fishing permit (EFP) activities. The non-tribal whiting sectors are currently managed with bycatch caps for canary, darkblotched, and widow rockfish. When these caps are projected to be attained, the non-tribal whiting fishery automatically closes even if whiting quotas have not yet been attained. Bycatch caps specified for approved EFPs are used to close fishing activities by a participating vessel or vessels when they are attained. (EFP bycatch caps are often specified for individual vessels and all participating vessels on a monthly and/or annual basis). Bycatch caps are allowed under the groundfish FMP, but they have not yet been used more extensively.

Bycatch caps are often very small yield set-asides that require almost real-time reporting of total catch to be effective. Therefore, management using bycatch caps is compromised when sector catch accountability is poor. In such cases, there is an increased probability of a sector's catch overage co-opting fishing opportunities for other sectors, especially when the stock's OY is low.

### Sideboards

Sideboards are very much like bycatch caps, but with perhaps more flexibility. A sideboard is a catch threshold that, when attained, would trigger an automatic action to reduce or eliminate mortality of that species. Such automatic actions include adjustment of RCAs, implementation of new regulations seaward or shoreward of the RCA, and/or trip limits. For instance, if a canary rockfish sideboard was specified and attained inseason in the non-whiting trawl fishery, the automatic action could be closure of all areas shoreward of the trawl RCA. Such an action would eliminate further catch of canary rockfish while still allowing opportunities to fish on the slope for flatfish and species in the Dover sole-thornyheads-sablefish (DTS) complex. While such an action may adversely affect vessels incapable of fishing in deep water, other vessels in the fleet would retain some fishing opportunity.

### Carryover Provisions and Multiyear Optimum Yields

The use of buffers, bycatch caps, and sideboards are all effective strategies for reducing bycatch, but they alone will not eliminate the risk of exceeding sector quotas and OYs for some species. If each sector is ultimately responsible for limiting its bycatch, there would be less risk of one sector's overharvest compromising fishing opportunities for other sectors. An incentive/disincentive mechanism may be needed to change fishing behaviors to more selectively harvest healthy target species, while avoiding species of concern. Such a mechanism is managing constraining stocks with carryover provisions and multiyear OYs.

Carryover provisions would allow a transfer of yield surpluses or deficits of some species at the sector level (or permit/co-op level under a TIQ program) from one year to the next. Sector accounts would be settled by the end of the prescribed multiyear OY period. Management risk of exceeding a sector bycatch limit in any one year could then be spread over a longer period. Any one sector, or trawl vessel/co-op under a TIQ program, could consider a management strategy in the first year of a multiyear OY period and, if the annual bycatch target was exceeded, could adopt more conservative management measures in following years. This reduces the risk that management miscues might pre-empt future fishing opportunities for that or other sectors, and promotes more precautionary and selective fishing practices.

Stock life history characteristics should be considered when determining an appropriate multiyear OY period. Faster growing stocks with shorter mean generation times and fewer age classes should probably be managed with shorter OY periods. The most constraining rockfish stocks on the West Coast (i.e., cowcod, canary, and yelloweye rockfish) have many age classes in their populations and might be better managed with longer OY periods. Factors such as mean generation time and recruitment variability may be important considerations in selecting a risk-averse multiyear OY period.

Another consideration in determining the length of a multiyear OY period and implementing a carryover of sector or vessel yield surpluses and deficits is how this strategy could be managed across a period when new assessments are being approved for management use. Currently, all the overfished species are assessed every other year (i.e., as frequently as possible under the biennial management regime) to understand whether progress has been made in rebuilding these species. Other stocks may also potentially be assessed during a multiyear OY period. This begs the question of whether a carryover mechanism can work when an OY changes as a result of a new assessment partway through a multiyear OY management period. One possible solution may be to carry over yield surpluses and deficits based on the proportion of the OY this surplus or deficit represents. For instance, if a sector exceeds its previous year's quota by 10% and a new assessment of that stock resulted in a change to the OY, the new quota for that sector would be reduced by the proportion of the sector's previous catch overage (i.e., 10% of the OY) applied to the new OY. *[SSC: Are there any adverse biological stock effects managing groundfish species under such a mechanism?]*

Managing OYs over a longer period may also be more responsive to new mandates in the Magnuson-Stevens Act to end overfishing. While current Council practices have led to few incidents of overfishing in recent years, spreading overfishing risk over a longer period may reduce the frequency of overfishing. The Council and NMFS may need to pose these considerations when developing new National Standard 1 Guidelines interpreting the re-authorized Magnuson-Stevens Act. The groundfish FMP and current groundfish rebuilding plans would need to be amended to accommodate multiyear OYs.

## **DRAFT Proposed 'Revised Procedure' for MSA/NEPA Compliance**

**(February 28, 2007 draft as proposed by the subcommittee of the Council  
Coordination Committee (CCC))**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) was recently amended with explicit direction to the Secretary of Commerce to “revise and update agency procedures for compliance with NEPA”. Moreover, the revised MSA specifically states that such procedures “shall integrate applicable environmental analytical procedures, including time frames for public input, with the procedures for preparation and dissemination of FMPS, plan amendments, and other actions taken or approved pursuant to this Act (the MSA)...”, and that “the updated agency procedures promulgated in accordance with this section shall be the sole environmental impact assessment procedure for FMPs, plan amendments, regulations, or other actions taken or approved pursuant to this Act (the MSA)”. The revised procedure proposed herein envisions a single environmental review procedure, and a single environmental impact assessment (EIA), that pertains to all FMPs, amendments, or regulations promulgated through the regional fishery management council (RFMC) process under MSA. The distinction between an environmental assessment (EA), and environmental impact statement (EIS) becomes moot, as does the determination of ‘significance’. This is because the single environmental assessment procedure (EIA) will be the same for any actions taken under MSA, and will generally be designed consistent with the higher standards typically associated with preparation of an EIS, in order to better ensure compliance with the underlying intent of NEPA. While it is envisioned that the level of analysis will be dictated by the issue at hand and the information at hand, this approach allows for the development of some tiers, related to the significance of the action (no impact, minor impact, major impact, for example), which may be created to frame the range of alternatives and necessary level of analysis.

It is proposed that the appropriate way to achieve this revised procedure is to develop a new NOAA Administrative Order (AO) which would be specific to fisheries actions under the MSA. NOAA and possibly CEQ regulations would be amended as necessary to reflect the application of this revised procedure. This new AO will specify the procedures to be used to integrate the environmental impact assessment (EIA) of proposed fishery management actions within the existing MSA process, in a manner which meets the NEPA requirements, and thereby achieve functional equivalency relative to the NEPA statute. The MSA process will be the vehicle for promulgating all fisheries actions, but will include measures necessary for NEPA compliance, as well as requirements of all other applicable Acts and Executive Orders, all incorporated into a single document. This Order would not affect any other existing regulations, Orders, or Acts, including the existing AO216-6, as it pertains to other NOAA line offices, which are promulgated under authorities other than the MSA.

### **Philosophy of proposal:**

1. All actions approved or taken pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) must comply with the National Environmental Policy Act (42 USC 4321-4347).
2. MSA actions, under this approach, need not necessarily comply with *existing* CEQ regulations (40 CFR 1500-1508), which govern the procedural provisions of the Act (NEPA). However, *new CEQ regulations may need to be developed* to reflect the new AO.

3. NOAA's environmental review procedures for implementing NEPA (NAO 216-6) must be replaced or rewritten with new procedures specifically for MSA actions, in the form of a new Administrative Order, but which include key CEQ regulatory provisions.
4. The single analytical process will be based on development of an environmental impact assessment (EIA), rather than make any distinction between an EA or EIS (and there is no need to determine whether 'significant' effects on the quality of the human environment will occur). The higher standard of the EIS model will be the default, though range of alternative and level of analysis would depend on the issue at hand and the information at hand. Some definition of tiers (no impact, minor impact, major impact, for example) may be included to frame the analytical requirements.
5. The Secretary cannot comply with timelines specified in the MSA, if the NEPA process commences only upon receiving the Council's proposed plan. Therefore, to implement the provisions of PL109-479, that the NEPA and MSA timeframes be consistent, the Council FMP development process (MSA) needs to be the primary vehicle for identifying alternatives and conducting the requisite analyses. The EIA (NEPA document) will be incorporated within the overall MSA analytical document.

### Solution

- Develop a single environmental impact assessment (EIA) procedure to be used for all MSA actions.
  - Categorical exclusions for actions that have no environmental impact may still be utilized.
- Proposed Procedure will replace the CEQ regulations and NAO 216-6 as procedure for complying with NEPA for MSA actions.
  - Procedure will capture the substance of the CEQ regulations regarding analytical content and opportunities for public review and input.
  - Procedure will modify NAO 216-6 procedure to replace CEQ/NOAA's public involvement and notice requirements with the MSA public involvement procedure.
- Procedure and sample analytical format **attached**.
- Proposed new administrative order will specify the detailed new procedures.

#### Changes to CEQ regulations:

- Amend CEQ regulations as necessary to state that 40 CFR Parts 1500-1508 will not apply to actions approved or taken pursuant to the MSA (or revise with regulations which mirror the new procedures).
- For MSA actions, the newly developed, integrated procedure defined here will be the functional equivalent of the provisions of NEPA as implemented by CEQ regulations.
- Issue revised CEQ regulations consistent with provisions in the new AO.

#### Changes to NAO 216-6:

- Amend NAO 216-6 to state that administrative order does not apply to actions approved or taken pursuant to the MSA.
- Issue new administrative order and/or procedural regulations, as appropriate, specifying procedure for satisfying NEPA compliance for MSA actions (as contained in the new AO).
- RFMCs should be identified as partners in preparing the EIA to satisfy NEPA procedures.
- Remove references to fishery actions from NAO 216-6.

## Changes to the Operational Guidelines for the Fishery Management Process

- Revise to incorporate process as described.

### **Practical effects of proposed process**

- The Council shall complete a scoping process to identify the range of reasonable alternatives to accomplish the Council's management objective and to identify the issues which should be examined to evaluate the merits of those alternatives. In completing the scoping process, the Council shall solicit public comment.
- After completing the scoping process, the Council shall identify a reasonable range of reasonable alternatives to accomplish the Council's objectives. The Council shall explain its reasons for selecting those alternatives and for rejecting any other alternatives which may have been identified in the scoping process.
- After selecting the range of reasonable alternatives, the Council shall evaluate the ecological, social, economic, health, aesthetic and cultural effects of each alternative on the affected environment. The Council shall also evaluate the cumulative impact on the environment of each such alternative. In developing the required analyses, the Council shall solicit public comment regarding the effects of each alternative.
- After completing the evaluation provided for above, the Council shall review the analysis and may select a preferred alternative, or combination of alternatives, to accomplish the Council's objective. The Council shall explain the purpose of, and need for, the action and the reasons for selecting the alternative adopted by the Council. The Council shall solicit public comment on the analysis and the alternatives, including the preferred alternative if identified.
- After considering the analysis and public comments, the Council shall select a preferred alternative for recommendation to the Secretary for approval pursuant to the MSA. The submittal package to the Secretary shall include the necessary environmental analyses (EIA) required pursuant to 40 C.F.R. Part 1500 (*or the necessary revised regulations*).
- The Secretary shall review the FMP and NEPA documents (EIA) to determine if the requirements of MSA and NEPA have been satisfied. If not, the Secretary shall disapprove the FMP or FMP amendment. Practically, the EIA and other analyses would be evaluated concurrently and jointly throughout the development process by both the Council and appropriate NMFS personnel, to ensure that MSA, NEPA, and other requirements have been satisfied.

## New process

Steps in MSA-NEPA analytical process		<b>MINIMUM</b> timeline to be specified in procedure
RFMC initiates analysis	<ul style="list-style-type: none"> <li>- develops purpose and need</li> <li>- develops alternatives</li> </ul>	1 <sup>st</sup> RFMC meeting (may take several meetings to refine problem statement and alternatives depending on complexity and controversy of analysis)
Public input	<ul style="list-style-type: none"> <li>- scoping commences with RFMC/NMFS action to initiate analysis</li> <li>- public notice of proposed analysis in RFMC agenda, and in RFMC newsletter/ website</li> <li>- public comment invited as written letters to RFMC or oral testimony at RFMC meeting</li> </ul>	
Initial Review Draft	<ul style="list-style-type: none"> <li>- RFMC/NMFS prepare draft analysis that addresses MSA, NEPA and other analytical requirements (see outline)</li> <li>- may be distributed at or before RFMC meeting, depending on size and complexity of analysis; RFMCs/NMFS should try to circulate document 14 days before start of meeting (mailing, website)</li> </ul>	before/at 2 <sup>nd</sup> RFMC meeting
RFMC reviews IR draft, approves for public review	<ul style="list-style-type: none"> <li>- RFMC will consider scoping comments (on the purpose and need and the alternatives) and comments on the draft document</li> <li>- RFMC will approve draft for public review (perhaps following staff alterations to the document)</li> </ul>	2 <sup>nd</sup> RFMC meeting  (may also take multiple meetings and iterations of draft before document is ready to be released for public review)
Public Review Draft distributed <i>(functional equivalent of CEQ Draft EIS)</i>	<ul style="list-style-type: none"> <li>- mailed to RFMC, any affected agencies, or interested persons who have requested document</li> <li>- public notice of availability announced in RFMC agenda (published in FR); posted on RFMC website</li> </ul>	distribution to occur a minimum of 23 days before first day of meeting at which final action is scheduled
Public comment	<ul style="list-style-type: none"> <li>- public comment accepted as written letters to RFMC or oral testimony at RFMC meeting</li> </ul>	minimum 23 days  (RFMC/NMFS may specify a longer comment period or an end date for accepting written letters)
RFMC Final Action	<ul style="list-style-type: none"> <li>- RFMC will consider public comments</li> <li>- RFMC will respond appropriately to issues raised in public comment</li> <li>- RFMC decision on recommended action</li> </ul>	3 <sup>rd</sup> RFMC meeting  (RFMC may request further analysis in response to public comment before they are ready to take final action)
Secretarial Review Draft <i>(functional equivalent of CEQ Final EIS)</i>	<ul style="list-style-type: none"> <li>- Document will include RFMC/NMFS response to written public comment on the public review draft</li> <li>- NMFS will follow existing procedure to check document for legal compliance (NEPA and other laws)</li> </ul>	after 3 <sup>rd</sup> RFMC meeting
Transmission to SoC/HQ	<ul style="list-style-type: none"> <li>- RFMC transmits Secretarial Review Draft to Secretary</li> <li>- ?NMFS files document w/ EPA as Final EIS</li> </ul>	begins 90 day approval timeline
SoC decision on amendment	<ul style="list-style-type: none"> <li>- SoC concurrently signs Record of Decision</li> </ul>	within 90 days of transmission

## Sample Format for Analytical Document Supporting Fishery Action Under MSA

### Title page

*(equates to CEQ 'cover sheet')*

- Identify title of analysis; responsible agencies; contact person with contact information; designation of draft, public review draft, etc; one paragraph abstract; date by which comments must be received

### Table of Contents

### Table of Figures and Tables (as appropriate)

### List of Acronyms and Abbreviations (as appropriate)

### Summary

- Identify objectives or purpose of action *(equates to CEQ 'issues to be resolved')*
- Identify alternatives and brief comparison of impacts under the alternatives (summary table often works well) *(equates to CEQ 'major conclusions')*
- In Secretarial Review Draft, describe RFMC's recommended action, identify how factors were balanced among alternatives to enter that into the decision, identify environmentally preferable alternative, and state whether all practicable means to avoid or minimize environmental harm from recommended alternative have been adopted, or why not
- In Secretarial Review Draft, include areas of controversy including those raised by the public

### Problem statement

*(equates to CEQ 'need for action')*

### Purpose or objectives of action

### Alternatives for proposed action

- explore range of reasonable alternatives
- include a no action alternative (defined as status quo)
- identify the preferred action if possible
- if appropriate discuss why alternatives may have been eliminated from detailed study (this discussion may instead be appropriate in an appendix)

### NEPA effects analysis (as appropriate)

- environmental consequences of the alternatives (including direct, indirect, and cumulative effects, and describing any adverse environmental effects which cannot be avoided should the proposal be implemented)
- discuss affected environment as necessary to understand environmental consequences

### EO 12866, Regulatory Impact Review analysis (as appropriate)

- description of the affected fishery
- economic analysis of the expected effects of each alternative relative to the baseline

### Analysis of consistency of action with MSA, National Standards

### Regulatory Flexibility Act analysis (as appropriate)

- description and estimate of the number of small entities affected by the proposed action
- estimate of the economic impacts on small entities

### EO 12898, Environmental Justice analysis (as appropriate)

- assess whether there are disproportionately high and adverse human health or environmental effects on a minority population, low-income population, or Indian tribe from the proposed action

### List of preparers, list of agencies/persons consulted

### List of those to whom analysis is distributed (for the Public Review Draft)

### References, Index (as appropriate)

### Appendices (as appropriate)

## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>Notice of Intent</b>	--	1501.7	5.02d (p.15)	
		- agency shall publish NOI in FR	- agency shall publish NOI in FR	- No NOI. Differs from CEQ regulations.
			- NOI shall include proposed action and alts, logistics of scoping process, contact info for RPM	
			- NOI initiates formal scoping process - written and verbal comments must be accepted during identified comment period - 30 day min formal comment period from date of NOI	- no 'formal' comment period. Scoping commences at time when Council initiates an analysis and determines draft alternatives - written comments will be considered by RFMC at any time; opportunity for oral comments during RFMC meetings - at minimum, public has 23 days to comment as analysis will be announced on agenda, which is published in FR
		- publish retraction if EIS does not go ahead	- RFMC newsletter announces if analysis does not go forward	
<b>Scoping</b>	--	1501.7	4.01w (p.9), 5.02d (p.15)	
		- agency shall invite participation	- solicit comprehensive public involvement and interagency and Indian tribal consultation	- RFMC/NMFS will solicit public comment on proposed analysis in RFMC newsletter and on website
		- agency shall eliminate from study issues that are not significant		- RFMC will consider comments and revise problem statement and alternatives accordingly
		- agency may hold scoping meetings	- scoping may be satisfied by meetings, or request for comment on documents; or discussion papers	- RFMC meetings will provide opportunity for public input

## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>EIS content</b>	102(C)	1502.10	5.04b (p.19)	<ul style="list-style-type: none"> <li>- include all these elements in analysis, as well as other requirements of MSA and other laws/ executive orders</li> <li>- <i>see sample document format for a fishery action analysis</i></li> </ul>
	<ul style="list-style-type: none"> <li>Include:</li> <li>- environmental impact of proposed action</li> <li>- adverse environmental impacts of proposal</li> <li>- alts</li> <li>- relationship between local short-term uses of environment and long-term productivity</li> <li>- irreversible/ irretrievable commitments of resources of proposal</li> </ul>	<ul style="list-style-type: none"> <li>- cover sheet</li> <li>- summary</li> <li>- TOC</li> <li>- purpose/need</li> <li>- alts</li> <li>- affected environment</li> <li>- environmental consequences (to include all elements required by statute)</li> <li>- list of preparers</li> <li>- circulation list</li> <li>- index</li> </ul>	<ul style="list-style-type: none"> <li>- cover sheet and TOC</li> <li>- purpose/need</li> <li>- summary</li> <li>- alts</li> <li>- affected environment</li> <li>- environmental impacts of proposed action and alts including cumulative impacts</li> <li>- circulation list and list of those consulted</li> <li>- index and appendices as appropriate</li> </ul>	
<b>Draft EIS</b>	--	1502.9		<ul style="list-style-type: none"> <li>- RFMC/NMFS will prepare a Public Review Draft of the analysis that will satisfy to extent possible the requirements established for final statements in 102(C)</li> </ul>
		<ul style="list-style-type: none"> <li>- draft statements shall satisfy to extent possible the requirements established for final statements in 102(C)</li> </ul>		

## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>Filing and Distribution of Draft/ Final EIS</b>	102(C)	1506.9, 1502.19	5.04c (p.20)	<ul style="list-style-type: none"> <li>- EPA filing requirements will only apply to Secretarial Review Draft (functional equivalent of CEQ Final EIS). No NOA for Draft EIS. Differs from CEQ regulations.</li> </ul>
	<ul style="list-style-type: none"> <li>- [final] statement shall be made available to President, CEQ, and public</li> </ul>	<ul style="list-style-type: none"> <li>- file statement with EPA, who will give to CEQ (counts as President)</li> <li>- distribute to affected and interested parties at same time as EPA</li> </ul>	<ul style="list-style-type: none"> <li>- preliminary review of D/FEIS by NEPA coordinator 1 week before package is submitted so changes can be incorporated</li> <li>- NEPA review package (D/FEIS and transmittal memos) to NEPA coordinator for clearance signatures min. 5 days before filing with EPA</li> </ul>	
<b>Comments on Draft EIS</b>	--	1506.10, 1503.1	5.04c.6	<ul style="list-style-type: none"> <li>- Public Review Draft will be available for a minimum of 30 days before RFMC final action. Differs from CEQ regulations.</li> <li>- RFMC/NMFS will consult with affected Federal, State and local agencies and Indian tribes (some of whom are represented on RFMC)</li> <li>- RFMC/NMFS will request comments from public and specifically any persons or organizations who express interest</li> </ul>
		<ul style="list-style-type: none"> <li>- comment period for DEIS is minimum 45 days from NOA</li> </ul>	<ul style="list-style-type: none"> <li>- date of NOA determines start of review period</li> <li>- public comment period on DEIS is min. 45 days</li> </ul>	
		<ul style="list-style-type: none"> <li>- agency shall request comments of appropriate Federal, State and local agencies, Indian tribes, affected public and organizations</li> </ul>		

## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>Final EIS</b>	--	1503.4	5.04c6	
		- all comments or summaries thereof must be attached to FEIS regardless of merit	- must include all substantive comments or summaries of comments received during the public comment period of the draft EIS	- RFMC/NMFS will include all written comments on the Public Review Draft in Secretarial Review Draft (functional equivalent of CEQ Final EIS)
		- agency must assess comments individually and collectively, and respond appropriately (5 ways)	- comments must be responded to in an appropriate manner	- RFMC will consider all comments, written and oral, on both drafts and respond appropriately
		- must state response in FEIS		- RFMC response to written comments will be included in the Secretarial Review Draft
<b>Record of Decision</b>	--	1505.2, 1506.10	5.04c.7	
		- agency shall prepare a concise public record of decision	- ROD will be made available through appropriate public notice (but not necessarily FR)	- RFMC will include recommendation to Secretary of Commerce on the MSA action as part of the Secretarial Review Draft
		ROD shall: - state the decision - identify all alternatives, including the environmentally preferable alternative, and how factors were balanced to enter into the decision - state whether all practicable means to avoid or minimize envtl harm from selected alt have been adopted, or why not		- RFMC will address these elements in its recommendation
		- no decision may be recorded until later of 90 days after NOA for DEIS or 30 days for NOA of FEIS	- ROD may not be recorded until min 30 days from NOA for FEIS	- NEPA analysis (EIA) will be submitted with MSA action, and ROD will be finalized along with SOC decision on MSA action

## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>Termination</b>	--	--	5.01c, 5.04c.8	<ul style="list-style-type: none"> <li>- proposed MSA action, including NEPA analysis (EIA), may be terminated at any stage</li> <li>- RFMC newsletter announces if analysis does not go forward</li> </ul>
			<ul style="list-style-type: none"> <li>- environmental review process may be terminated at any stage</li> <li>- termination must be announced in the FR and explained in writing to EPA</li> <li>- for supplemental NEPA documents, must notify CEQ if process stops after draft SEIS but before final</li> </ul>	
<b>Public Involvement</b>	--	1506.6	5.02b (p.13)	<ul style="list-style-type: none"> <li>- public involvement keystone of RFMC process – MSA requires regular, open meetings; timely public notice of time, place, and agenda of meetings; interested persons may present written or oral comments</li> <li>- RFMC meetings/agendas noticed in FR, documents available on RFMC websites (or by request)</li> <li>- RFMC meetings held regularly</li> <li>- public invited to comment on any RFMC agenda item</li> </ul>
		<ul style="list-style-type: none"> <li>- agencies shall make diligent efforts to involve the public in preparing and implementing NEPA procedures</li> </ul>	<ul style="list-style-type: none"> <li>- RPMs must make every effort throughout process to encourage participation of affected Fed, State, local agencies, Indian tribes, and interested persons</li> </ul>	
		<ul style="list-style-type: none"> <li>- agencies shall provide public notice of hearings/mtgs, documents</li> <li>- in cases of national concern notice to include publication in the FR</li> </ul>	<ul style="list-style-type: none"> <li>- RPM must provide public notice of NEPA hearings/mtgs, documents</li> </ul>	
		<ul style="list-style-type: none"> <li>- hold hearings/mtgs where appropriate</li> <li>- solicit appropriate info from public</li> </ul>	<ul style="list-style-type: none"> <li>- public involvement may be solicited through hearings/mtgs and through comments as appropriate</li> </ul>	
<b>Agency Responsibility</b>	--	1506.5	2.02 (p.3)	<ul style="list-style-type: none"> <li>- procedure should reflect that RFMCs are partners in preparing NEPA analyses and complying with NEPA procedures</li> </ul>
		<ul style="list-style-type: none"> <li>- EIS shall be prepared directly by or by a contractor selected by the lead agency, or by a cooperating agency</li> </ul>	<ul style="list-style-type: none"> <li>- NOAA NEPA coordinator will review and provide final clearance for all NEPA envtl review documents</li> <li>- a designated RPM will carry out specific proposed actions in the NEPA process</li> </ul>	

## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>Categorical Exclusion</b>	--	1508.4	5.05, 6.03d.4	
		- category of actions which do not individually or cumulatively have a significant effect on the human environment and which therefore require neither an EA nor an EIS	- actions that individually and cumulatively do not have the potential to pose significant effects to the quality of the human environment - examples given	- same as NOAA procedure
<b>Emergency Actions</b>	--	1506.11	5.06	
		- when emergency circumstances require an agency to take action with significant environmental impact without observing these regulations, the agency should consult with CEQ	- if timelines associated with EIS limit attaining the objectives of the emergency action, the NEPA Coordinator may consult with CEQ about alternative arrangements for NEPA compliance	- same as NOAA procedure

## SALMON TECHNICAL TEAM REPORT ON MAGNUSON-STEVENS ACT REAUTHORIZATION IMPLEMENTATION

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) amended National Standard 1 of the Magnuson-Stevens Act to require that fishery management plans “establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures of accountability.” Exemptions from this requirement are provided for species having a life cycle of approximately 1 year, and in cases where the annual catch limits (ACLs) and accountability measures (AMs) are otherwise provided for under an international agreement.

The National Marine Fisheries Service has interpreted the ACL to mean a specified target amount of measurable landings and discard mortality removed from a stock (or stock complex) each year, and that the ACL must be set at a level that overfishing does not occur.

The intent of the ACL/AM requirement of MSRA is to prevent overfishing. The Salmon Technical Team has identified a number of potential issues related to the development of ACLs and AMs for salmon stocks:

1. Overfishing for Chinook and coho stocks included in the Pacific Coast salmon FMP is defined in terms meeting conservation objectives. These objectives are generally expressed in terms of annual spawning escapement, not in terms of catch. The STT believes that providing adequate spawning escapement is a more direct measure of management success than can be provided by the monitoring of catch.
2. The stock origin of fish cannot be determined visually in ocean fisheries. This means that the only limits that could currently be set would be at a “stock complex” level by species. Implementation of a systematic coastwide genetic stock identification (GSI) monitoring program could potentially provide the ability to monitor catch at a finer scale, but there are currently stocks identified in the FMP that cannot be discriminated on a genetic basis.
3. Many of the salmon stocks identified in the FMP are excepted from the overfishing provisions of the FMP by virtue of being listed as threatened or endangered under the Endangered Species Act, stocks of hatchery origin, or stocks for which impacts in Council area fisheries are low. As explained in the FMP, the Council defers its conservation objectives to the ESA consultation standards for listed stocks because they meet the intent of overfishing provisions of the MSA. Hatchery stocks are excepted from the FMP overfishing provisions because meeting hatchery goals is not considered to be a conservation issue, and stocks with low exploitation rates in Council fisheries are excepted because manipulation of fishery impacts by the Council

would not be likely to have a measurable impact on the status of the stocks. The relation between the ACL/AM provisions of the MSRA and these excepted stocks is unclear.

4. Many of the stocks covered by the Pacific Coast salmon FMP are also managed under the provisions of the Pacific Salmon Treaty (PST). The PST places limits on fishery impacts on these stocks and contains accountability measures, and may thus exempt these stocks from the ACL/AM provisions of the MSRA.
5. Coho (and pink) salmon are only vulnerable to Council area fisheries during the final year of their life, and the majority of fishery impacts on Chinook salmon typically occur in the same year that they would mature and leave the ocean to spawn. Large interannual variability in year class strength and this relatively brief window of vulnerability to fisheries contributes to high interannual variability in the allowable catches in Council fisheries, and leads to dynamics similar to those of annual species which are exempt from the ACL/AM requirements. Because of the life history characteristics of salmon, AMs should focus on reasons why ACLs may have been exceeded rather than compensating for high catch in one year by reducing catch in the next.

## GROUND FISH MANAGEMENT TEAM REPORT ON MAGNUSON-STEVENSONS ACT REAUTHORIZATION IMPLEMENTATION

The Groundfish Management Team (GMT) reviewed the issue paper developed by Council staff regarding potential mechanisms designed to avoid overharvest and optimize sector fishing opportunities (Agenda Item C.2.a, Attachment 2). The GMT agreed that the approaches outlined in the paper warrant further analysis to evaluate their suitability for inclusion in the Council's management toolbox. The GMT focused their discussion on the issues of multiple year Optimum Yields (OYs) and carryover provisions. Sector-specific multi-year OYs and carryover provisions might, for example, facilitate individual roll-over of quota pounds in a trawl individual quota program, provide more opportunity to mitigate for "disaster" tows, as well as provide some protection against intersector pre-emption. However, such provisions might limit management flexibility in balancing the bycatch scorecard across sectors, or could result in greater harvest constraints at the conclusion of a multi-year OY, potentially resulting in fishery closures for extended periods. These benefits and costs, as well as other complexities associated with this approach, could be explored further in the 2009-2010 SPEX EIS.

Presently, acceptable biological catches (ABCs) and OYs for some species are set at an aggregated complex level (e.g., other flatfish). The current level of information does not support stock assessments for individual species within these complexes. The GMT would consider a requirement for Annual Catch Limits (ACLs) for individual species within the Groundfish Fishery Management Plan that do not have enough data to support stock assessments to be unfeasible. The GMT recommends that ACLs be set at the complex level for these species, with periodic review of the status of individual species within these complexes to determine if change is warranted. The GMT also suggests that the Council consider, possibly as part of a future harvest policy workshop, investigation of stock complex or assemblage assessments to better address groups of data-poor species. Another approach would be to use data-rich species as indicators for management for data poor species with similar life histories and habitat associations.

The GMT notes that the ABCs and OYs currently employed in groundfish management, and the associated precautionary approaches, meet the revised Magnuson-Stevens Act's ACL requirements for most groundfish species. One area where the current process might need to be revised to meet new ACL requirements would be for species that have been assessed to be above  $B_{40}$ , since OYs for those species are set equal to their ABCs. However, if complete inseason data are provided in a timely manner (e.g., in a trawl IQ program) and management can respond quickly (e.g., the whiting fishery), then it may be feasible to set the OY equal to the ABC. A de facto "buffer" already exists for species below  $B_{40}$  as a result of the Council's existing precautionary harvest adjustments. Otherwise, the GMT is pleased to note that the Pacific Council is ahead of the nationwide curve.

### GMT Recommendations

- Analyze multi-year OYs for use in the TIQ program and/or intersector allocation.
- Set ACLs at the complex level until species specific information becomes available.
- Examine mechanisms to prevent overfishing in cases where OYs are set equal to ABCs.
- Forward Alternative 2 for setting ACLs and AMs to the Secretary for consideration as the preferred alternative (C.2.b, Attachment 1).

## GROUND FISH ADVISORY SUBPANEL REPORT ON MAGNUSON-STEVENSON ACT REAUTHORIZATION IMPLEMENTATION

The Groundfish Advisory Subpanel (GAP) had a thorough discussion regarding implementation of Magnuson-Stevens Fishery Conservation and Management Act issues with an emphasis on items significant to the Pacific Fishery Management Council. The GAP has specific comments on the following:

1. Role of the Scientific and Statistical Committee (SSC)
2. National Environmental Policy Act (NEPA) process
3. Annual Catch Limits and Accountability Measures
4. Mandatory buffers
5. Multi-year optimum yields (OYs) and carry-over provisions
6. Stipends

### Role of the SSC

The GAP recommends that the PFMC's SSC maintain the advisory role it has fulfilled in the past. The SSC should continue to provide the Council ongoing scientific advice for fishery management decisions, including (1) recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield, achieving rebuilding targets; and (2) reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. With respect to OYs, the GAP recommends that the SSC provide an appropriate range of OY alternatives to the Council and that the Council makes the ultimate policy decisions on catch levels. The GAP also believes that an emphasis on the economic and social impacts of regulations should be pursued more aggressively by the SSC.

### NEPA Process

The GAP believes that the current protocol for public involvement in the decision-making process is sufficient and provides ample opportunity for stakeholder involvement.

### Annual Catch Limits and Accountability Measures

The GAP believes that annual catch limits and accountability measures are accomplished with the current OY system and that over the years the Council has utilized some form of annual catch limits with accountability measures routinely in the fishery management process. For example, OYs are currently set to prevent overfishing. Accountability measures, such as the 40-10 rule, seasons, trip limits, bag limits, rockfish conservation areas (RCAs) and other tools are routinely used to ensure catch levels do not exceed the OY.

### Mandatory Buffers

The GAP does not support a mandatory buffer system. The GAP believes that buffers should be considered on a species by species basis as appropriate. The GAP recognizes that "buffers" are already incorporated in our current management through catch monitoring and that data poor stocks are generally managed in a more precautionary way utilizing buffers. For example, OYs for stocks in the precautionary zone are set below ABC. When appropriate, buffers should continue to be established through the annual specifications process.

### Multi-year OYs and Carry-over Provisions

The GAP believes this approach should be analyzed and included in the tool box for use as appropriate. The GAP recognizes that there may be some unknown biological issues associated with this type of approach, but believes that these impacts should be further explored in NEPA analyses when annual specifications are decided.

The GAP is cognizant of problems with being able to access up-to-date harvest data, including, but not limited to, recreational harvest data in some areas, and how the delay in data acquisition could effect both the establishment of OYs and inseason adjustments. The GAP believes that setting a multi-year OY would provide the most flexibility for managers and harvesters, and would help avoid the types of problems that are addressed in Agenda Item C.2.a, Attachment 2 such as:

- One sector's overharvest pre-empting fishing opportunities for another sector;
- The current management system that relies on uncertain catch monitoring is more prone to overfishing; and
- The current management system thwarts fishermen's efforts to explore strategies to fish more selectively to reduce bycatch. Multi-year OYs and carryover provisions would allow individual fishermen and fishery sectors to manage risk over a longer period and to explore more sustainable fishing practices.

### Stipends

Stipends for advisory panels are now authorized in the MSA. The GAP recommends the Council seek funding for this.

PFMC

04/03/07

## **Highly Migratory Species Management Team Statement on the Implementation of Annual Catch Limits and Accountability Measures in the Magnuson-Stevens Act Reauthorization**

The Pacific Fisheries Management Council's (Council) Highly Migratory Species Management Team (HMSMT) briefly reviewed and discussed the development of National Standard 1 Guidelines to implement Annual Catch Limits (ACLs) and Accountability Measures (AMs) as required by the Magnuson-Stevens Reauthorization Act (MRSA) and discussed under Agenda Item C.2 at the April 2007 Council meeting. The HMSMT notes that P.L. 107-479, sec. 104(b) states that ACLs/AMs shall be established "unless otherwise provided for under an international agreement in which the United States participates..." Given the migratory nature and trans-boundary distribution of the 13 Management Unit Species (MUS) actively managed under the HMS Fishery Management Plan (FMP), the MUS are subject to management agreements under Pacific Regional Fishery Management Organizations (RFMOs), including the Inter-American Tropical Tuna Commission (IATTC) and the Western and Central Pacific Fisheries Commission (WCPFC). The HMSMT recommends that the National Standard 1 Guidelines include criteria and clear-cut procedures for determining when the terms of international agreements and resolutions are sufficient to substitute for the requirement to develop ACLs and AMs.

The HMSMT has a number of concerns related to the application of ACLs/AMs to HMS MUS managed under the Pacific Council's HMS FMP. First, catch by U.S. fisheries managed under the HMS FMP generally comprises a small portion of the total regional catch, ranging from less than 1 percent (tropical tunas, for example) to a maximum of about 15 percent for North Pacific albacore. The bulk of the remaining catch is made by commercial fishing vessels from other nations.

It is our understanding from the presentation by Rick Methot under Agenda Item C.2 that all sources of fishing mortality would need to be accounted for in the computation of ACLs. Obviously, the Council (or the U.S.) could not unilaterally establish ACLs for the fractional catch of each nation. Effectively, an ACL could only be applied to the U.S. portion of the catch, which presumably would be determined based on recent catch estimates for the FMP-managed U.S. fisheries. However, two HMS FMP stocks, Pacific-wide bigeye tuna, and Eastern Pacific Ocean yellowfin tuna, have been declared subject to overfishing by the Secretary of Commerce. As already noted, the estimated U.S. catch of these species is a very small fraction of the total estimated regional catch; if the U.S. unilaterally set the ACL at 0, or as indicated by section 304(i)(2)(A) set the ACL relative to the impact of U.S. fishing vessels, this would have almost no effect in ending overfishing while potentially severely disadvantaging U.S. West Coast-based HMS fisheries. More generally, the U.S. could be severely disadvantaged by unilaterally setting an ACL while similar constraints are not placed on those nations making the bulk of HMS catches. Those fisheries principally responsible for current overfishing may not be held accountable while U.S. fisheries would be constrained with little effect on stock status. In this regard, it should be noted that in general national quotas have not been

established and assigned by either the IATTC or the WCPFC (the exception being quotas established by the IATTC for bigeye tuna caught by large scale longline vessels).

Similarly, some of the stocks managed under the HMS FMP are also managed under the Western Pacific Council's Pelagics FMP. However, since domestic quotas or harvest guidelines have not been established for these stocks, allocation amongst the fisheries managed under the Councils' respective FMPs has not been an issue. Presumably, the two Councils would need to establish something like the "sector ACLs" discussed by Dr. Methot. This will require a higher level of coordination between the two councils than has heretofore been the case. The HMSMT recommends that the National Standard 1 Guidelines should include criteria for two or more Councils to establish consistent ACLs without disadvantaging their respective fisheries.

Second, the Guidelines should clarify whether biological reference points, upon which the Overfishing Level (OFL) would be based, should be established unilaterally and solely under our FMP or adopted domestically pursuant to their identification and agreement upon at the international level. In 2005 National Marine Fisheries Service (NMFS) requested that the HMSMT develop biological reference points for MUS managed under the HMS FMP; subsequently NMFS indicated it would be preferable if biological reference points were first adopted by the appropriate RFMO, and based on any such agreement, incorporated into the HMS FMP. If this latter policy is adopted, establishing an OFL would be contingent in part on action at the regional level. If the former, the biological reference points and related OFLs could be inconsistent with any subsequent action at the regional level.

Third, the HMS FMP includes two categories of species, actively managed species and monitored species. The latter comprises some 49 species that have been caught in FMP fisheries in the past, may not be managed under any other framework, or are of special concern due to unique biological characteristics. Monitored species are incidentally caught in HMS FMP fisheries, often discarded as bycatch, and are principally included in the management unit to track the effectiveness of bycatch reduction measures and any other federal or state management measures for these species. Many, if not most, of these species are caught in non-U.S. fisheries where there is little or no documentation of catch. This could make it very difficult to account for all sources of fishing mortality and compounds the problems discussed above with unilaterally establishing ACLs for domestic catches. Furthermore, in many cases there is little or no information on stock structure for these species. Thus, even if foreign catch information became available it could be difficult to determine whether such catches should be assigned to a single stock or, in terms of population dynamics, to separate stocks that should be managed separately with a related parsing of the ACL. The HMSMT recommends that these outstanding and critically important issues be considered when formulating the National Standard 1 Guidelines.

Fourth, implementation of ACL's also presents a challenge for determining when an ACL has been reached in-season and how to provide adequate and timely notice to fishery participants. It should be noted that the catch of some HMS species are relatively

rare events in terms of overall catch in some fisheries, for example, tuna catches in the West Coast recreational fisheries. Current recreational fishery monitoring programs were not designed to adequately track HMS catches for in-season management purposes.

Fifth, there are several HMS MUS (e.g., dorado (mahi-mahi)), whose stock status are not monitored on a regular basis by the RFMO's or any other fishery management body. Setting ACL's for these species without regular stock assessment outputs would be highly problematic.

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON COUNCIL  
OPERATING PROCEDURE FOR MAKING HIGHLY MIGRATORY SPECIES  
RECOMMENDATIONS TO REGIONAL FISHERY MANAGEMENT ORGANIZATIONS

Memorandum of Understanding

The Highly Migratory Species Advisory Subpanel (HMSAS) reviewed the draft Memorandum of Understanding (MOU) in conjunction with the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSA) and recommends that the MOU be amended to allow for broader and more balanced stakeholder representation on the Western and Central Pacific Fisheries Commission (WCPFC) Advisory Committee. Specifically, the HMSAS is concerned that the MOU is biased towards the Western Pacific region. As such, HMSAS advises the Council to amend Section V.C of the MOU to: (1) designate an additional seat for the Chair of the Pacific Fishery Management Council's HMSAS; and (2) replace the seat for one Pacific Council area albacore troll fishery representative with two or three commercial-at-large fisheries representatives from the Pacific region. Likewise, the three seats allocated to representatives of the Western Pacific longline, troll, and hook and line fisheries should be re-designated more generally as two or three commercial-at-large fisheries seats.

Council Operating Procedures

The HMSAS also reviewed the draft Council Operating Procedure (COP) document which is designed to facilitate coordination and communication of management advice between the Regional Fishery Management Councils and the Regional Fishery Management Organizations (RFMOs) that operate in the Pacific. Attached to this report and incorporated by reference is a red-line version of the draft COP document.

Magnuson-Stevens Act Reauthorization

The HMSAS submits these initial comments with regard to annual catch limit accountability measures under Agenda Item J.5. These comments apply equally and should be considered along with other comments on Agenda Item C.2. HMSAS members expressed the following concerns:

- (1) Does Section 104(b) of the reauthorized MSA exempt HMS fisheries that are managed internationally from the Council's jurisdiction (Section 303(a)(15)), and thus is the Council responsible or able to establish annual catch limits?
- (2) If HMS fisheries are not exempt from Section 303(a)(15), then are they exempt due to the current measures of the IATTC & WCPFC qualifying as measures "provided under international agreement?"

The HMSAS would like clarification about how these new provisions of the Magnuson-Stevens Act will affect this Council's authority to set regulations for U.S. HMS fisheries, and if that new authority will, in some way, disadvantage U.S. vessels relative to the fleets of other nations.

LEGISLATIVE COMMITTEE REPORT ON THE MAGNUSON-STEVENS ACT  
REAUTHORIZATION IMPLEMENTATION

The Legislative Committee reviewed four general issues under this agenda item and offers the following comments.

Annual Catch Limits – The Committee discussed various methods of complying with the new requirements for Councils to establish annual catch limits for each fishery that ensure overfishing does not occur in the fishery. After looking at the history of fisheries management by the Council since the 1996 amendments to the Act, the Committee could only find one instance in which overfishing had occurred (petrale sole in 2005) and that problem was corrected as soon as it was discovered. The Committee further determined that the Council had several precautionary management systems in effect, including but not limited to the harvest control rule for groundfish, precautionary optimum yield (OY) settings for highly migratory species (HMS) and coastal pelagic species (CPS), and conservation controls for salmon. Finally, the Committee noted that the Council is proceeding with a groundfish intersector allocation and a trawl individual quota (IQ) plan, both of which would add accountability. The Committee therefore recommends that that Council document these controls to prevent overfishing, submit them to NMFS as evidence that the Pacific Fishery Management Council is already complying with the law, and urge NMFS not to enact additional regulations or guidelines that would affect the Council's successful program.

Environmental Review – After discussion with Dr. McIsaac on the work being done by the Council Coordinating Committee, the Legislative Committee recommends that the Council endorse the Coordinating Committee's proposal.

Experimental Permitting Process – The Legislative Committee notes that the Council has already adopted an extensive science-based review process for exempted fishing permits. The Committee recommends that the Council provide this process to NMFS and request that implementing regulations reflect how our process operates.

PFMC  
04/03/07

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON MAGNUSON-STEVENSON  
ACT REAUTHORIZATION IMPLEMENTATION

The Scientific and Statistical Committee (SSC) discussed issues pertaining to Magnuson-Stevens Act (MSA) reauthorization implementation as they relate to the role of the SSC in the Council process. The SSC also discussed particular issues regarding the implementation of annual catch limits (ACLs) and accountability measures (AMs).

The SSC's March 2007 report to the Council on this topic is still relevant. As such, it is attached to this report.

From the SSC's point of view, the stocks currently managed under Council FMPs that have biologically-based control rules governing harvest (e.g., the principal groundfish stocks and sardine) may already have sufficient precautionary characteristics to meet the reauthorized MSA requirements, such as ACLs, AMs and buffers. However, many Council stocks are managed through control rules that are not biologically based (e.g., minor rockfish species). While it may be desirable to manage all species with control rules, the large number of stocks involved and the data-poor nature of the assessments make this impractical for all stocks. Furthermore, salmon are generally managed for escapement, rather than using explicit catch accounting control rules. Managing for spawning biomass is generally appropriate, and is arguably closer to the management goal.

Even with substantial additional funding, it is unlikely explicit catch accounting control rules can be developed for all stocks managed under Council FMPs. The SSC suggests it may be prudent for NMFS to fully consider these factors when creating the National Standards needed to implement the reauthorized MSA.

PFMC  
04/03/07

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON REVIEW AND PLANNING  
FOR IMPLEMENTATION OF NEW REQUIREMENTS RESULTING FROM  
REAUTHORIZATION OF THE MAGNUSON-STEVENSON ACT

The Scientific and Statistical Committee (SSC) discussed new provisions of the 2006 Magnuson-Stevens Conservation and Management Reauthorization Act (MSRA) as they relate to the role of the SSC in the Council process. The SSC has a number of questions regarding these provisions:

Provision: “The Council shall establish annual catch limits for each managed fishery that may not exceed the fishing level recommendations of its SSC” (MSA 302(h)(6), p. 51)

The Pacific Council has maintained a clear distinction between scientific analysis and advice and policy decisions, with the SSC taking the lead on the science. With regard to coastal pelagic and groundfish catch limits, the SSC’s role has been to review the harvest control rule and the stock assessments that are fed into the control rule. The Council’s role has been to establish annual catch limits, which (for groundfish) involves taking into consideration the decision table showing harvest levels associated with high, medium, and low levels of risk to the stock. While not mandated by the SSC, it has generally been Council practice not to exceed the risk-neutral level of harvest indicated by the control rule.

If the “fishing level recommendations” that the SSC is expected to provide under the MSRA are intended to be numeric catch limits, this will be a major deviation from Council practice, as it will require the SSC to make policy decisions. This raises several issues: (1) Is the SSC supposed to establish catch limits strictly on the basis of biological considerations? If so, this will be tantamount to an implicit policy decision to disregard ecosystem and socioeconomic issues in setting catch limits. (2) What types of information would the SSC be required to consider in establishing catch limits? For instance, would the SSC consider results of a regulatory analysis and take input from advisory bodies and the public? If so, then what is the role of the Council with regard to setting catch limits? If not, does this leave the Council and NOAA Fisheries Service vulnerable to claims of procedural violations under the National Environmental Policy Act (NEPA) and the Magnuson Act?

Provision: “The SSC shall provide recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, socioeconomic impacts of management measures, sustainability of fishing practices (MSA 302(g), pp 49-50).

Clarification is needed with regard to SSC responsibilities entailed by this provision. For instance, does this responsibility pertain to all species (including salmon and highly migratory species)? In terms of “preventing overfishing” and “achieving rebuilding targets”, is the SSC supposed to set numeric bycatch levels associated with rebuilding? If

so, then the same issues raised above with regard to the SSC setting of catch limits would apply here as well.

Does the requirement that the SSC “provide” reports on stock and habitat status, bycatch, socioeconomic impacts of management measures and the like mean the SSC will “produce” these reports. If so, given the Council’s practice of separating analysis from review, who will review the SSC’s production of these reports?

The SSC also discussed pending efforts by NOAA Fisheries Service to integrate NEPA requirements with fishery regulatory requirements in such a way as to streamline the management process. Given that rationale for the biennial groundfish management and assessment cycle was the cumbersome nature of the regulatory process, would such streamlining reduce the time lag between groundfish management actions and the stock assessments on which they are based?

PFMC  
03/06/07

From [Mark Millikin <Mark.Millikin@noaa.gov>](mailto:Mark.Millikin@noaa.gov)

Sent Friday, June 1, 2007 11:19 am

To [annual catch limitDEIS <annual.catch.limitDEIS@noaa.gov>](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject [Fwd: Re: WP council breakout sign in sheet]

From Marcia Hamilton, March 27, 2007.

----- Original Message -----

Subject: Re: WP council breakout sign in sheet

Date: Tue, 27 Mar 2007 08:51:17 -1000

From: Marcia Hamilton <Marcia.Hamilton@noaa.gov>

To: Mark Millikin <Mark.Millikin@noaa.gov>

References: <46032090.9060803@noaa.gov> <46091AD7.E16CEE39@noaa.gov>

Sure, I think I said that although many of our fisheries are known by single-species/group titles (e.g. swordfish, tuna) - they are in fact multi-target fisheries for which incidental (non-target) species are an important component of their revenue. These include mahimahi, ono, opah, marlins and other species. There is not much bycatch (i.e. discards) as most fish caught is marketable and/or edible.

Another important factor is that many vessels (esp. the large fleet of vessels under 40') use more than one gear type in a trip/season/year. So again, one part of their activity (e.g. bottomfishing) is a very important of their annual fishing operation which could involve trolling on the way out to a bottomfishing spot or trolling in the summer and bottomfishing in the winter.

I hope that is the comment you were thinking of!

Marcia

PS - I think it would be very helpful if the NS1/ACL discussion and guidelines could uniformly maintain the MSA definition of bycatch as fish that are discarded and not retained for sale or consumption. This is the definition we use, we refer to non-target catch as incidental catch. Folks have gotten confused when alternative definitions have been used by NMFS at times.

Mark Millikin wrote:

> Thanks very much, Marcia. Could you please repeat your comment and example related to the incidental

> catch in the Western pelagic fisheries?

>

Mark

>

> Marcia Hamilton wrote:

>

>  
>> Hi Mark,  
>> Vera mentioned that you didn't get a copy of the sign in sheet for your  
>> breakout session so I've attached a scanned copy. Please let me know if  
>> you have questions.  
>> Marcia  
>>  
>> -----  
>> Name: NS1 breakout session sign in sheet.pdf  
>> NS1 breakout session sign in sheet.pdf Type: Portable Document Format  
>> (application/pdf)  
>> Encoding: base64  
>> Download Status: Not downloaded with message  
>>  
>  
> --  
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