

Executive Director's Report

National Standard 1 Final Rule

The only MSA related update I can provide at this time is the publication of the final rule to revise National Standard 1 guidelines, pursuant to the MSA requirement for annual catch limits (ACLs). Item B-1(a) is the January 16 FR notice, and Item B-1(b) is a copy of a powerpoint presentation provided to us by NOAA Fisheries HQ. Each regional Council has been requested to provide a status of where we stand relative to the final rule at our upcoming interim CCC meeting in Washington, D.C. (February 25-26). Item B-1(c) is the summary we will be providing at that meeting.

As we had presumed, our existing groundfish annual specifications process is consistent with the intent of the legislation and the guidelines, though there may be some technical amendments necessary to fulfill the letter of the guidelines. As you can see from the summary, there will likely be amendments necessary to provide for ABC specifications in our Crab and Scallop FMPs. Regarding the Salmon FMP, we believe that it is exempt from the ACL and AM requirements, but would be subject to the alternative approach described in section (h)(3), and may require a minor amendment to that FMP. We are still in the process of assessing all this with NMFS staff, and will also be including selected Plan Team and/or SSC members in that assessment, with the intent of providing you a more definitive gameplan in April.

A secondary (discretionary) consideration is how to deal with the ecosystem component (EC) classification. We should consider whether the Council is interested in implementing a new (optional) stock classification in the groundfish FMPs. Along with a number of new requirements for managing federal fisheries, NMFS identified an ecosystem component category in the final guidelines. EC classification is not required but is discretionary. To be considered for possible ecosystem component classification, species should, among other considerations:

- Be a non-target species or non-target stock;
- Not be determined to be subject to overfishing, approaching overfished, or overfished;
- Not be likely to become subject to overfishing or overfished, according to the best available information, in the absence of conservation and management measures; and
- Not generally be retained for sale or personal use.

While waiting for publication of the above final rule, in 2008 the Council initiated several analyses to manage skate, squid, octopus, shark, sculpin, and grenadier groups as separate specification categories in the BSAI and GOA groundfish FMPs. The Council is scheduled to review an analyses to revise management of BSAI skates in April 2009 and BSAI/GOA squids in October 2009. The Council may wish to refer the issue of whether to implement an EC category in the groundfish FMPs to its Non-Target Species Committee, which has been advising the Council on how best to manage non-target groundfish species since 2003. The committee could convene in May 2009 to develop advice on whether to incorporate alternatives to amend the groundfish FMPs to move some or all of the non-target species (including some or all the other species groups) into a new ecosystem component category. Committee recommendations could be provided to the Council in time for initial review of the BSAI skates analysis in June 2009. A workshop on how to implement the guidelines tentatively is scheduled for May 2009 in Seattle and the committee meeting could be convened after the workshop.

Interim CCC meeting

The Council Coordination Committee (CCC) is having its interim annual meeting with NOAA Fisheries leadership February 25-26 to discuss a number of issues including budgets, our funding cycles and associated statements of work (and performance metrics), administration transition issues, MSRA implementation (including the ACL rule), Council and staff ID badges, and miscellaneous other issues.

Also on the agenda for discussion at the interim meeting is the issue of MPAs and the associated process for listing sites in the national inventory. I requested discussion of this topic at the interim CCC meeting, due to the great uncertainty regarding this process and the respective roles of the Council and various agencies within NOAA. David Witherell is attending a workshop this week in Monterey, CA, sponsored by the MPA Center, to "scope an analytical process to identify priority conservation areas in US coastal, marine, and estuarine waters including the Great Lakes". See Item B-1(d) for further details on this workshop. Hopefully some of this process will be further clarified before our April meeting.

NPRB seeks representative

Item B-1(e) is an announcement from the North Pacific Research Board (NPRB) seeking nominations to fill the executive committee seat designated for fishing interests. Nominations are due by February 6!

Scallop Plan Team nominations

Item B-1(f) contains two nomination letters from ADF&G for our Scallop Plan Team. Mr. Ryan Burt would replace Jeff Barnhart who has retired from ADF&G, while Mr. Rich Gustafson would be an additional Plan Team member (as recommended by the Plan Team). Their CVs are also attached and will be reviewed by the SSC at this meeting.

Obama Administration memo on regulations

Item B-1(g) is a recent memo from the White House Chief of Staff regarding publication of proposed or final regulatory rulemaking. Essentially it prohibits the publication of any new regulation unless and until it has been reviewed and approved by a department or agency head of the new Administration. I do not know what impact this might have on our process, but it is possible that some of our rulemakings could be affected by this policy.

June 2009 meeting

As you know by now we will be meeting at the Anchorage Hilton Hotel this June, rather than Dutch Harbor, due to intensive construction projects occurring there this summer and the attendant shortage of accommodations. For those members of the public wanting to get under our room block (and the \$175 rate) you can now call and use code 'NFM' until our block is filled. Council family and regular agency staff are already on the list but at some point you will simply need to call and confirm your specific dates.

Freezer Longline report

Item B-1(h) is a letter from the Freezer Longline Conservation Cooperative (FLCC) notifying the Council of that group's intent to submit to the Secretary another capacity reduction plan for that sector. This is consistent with the legislative requirement to notify the appropriate Council of such intent.

Miscellaneous items of interest

Item B-1(i) is an announcement for the 'Blue Vision Summit' to be held in March in Washington, D.C. and sponsored by a number of NGOs. As an aside, and for your information, we are coordinating with the other seven Councils, and taking a lead role, to develop a professionally formatted informational brochure in order to help inform the new administration regarding the overall role of the Councils in our national fishery management program, including some of each of the Councils' most important accomplishments. We hope this will not only be generally informative but also useful in budget discussions regarding the Councils. We are trying to complete this within the next couple months.

Item B-1(j) is an announcement for a Seattle Open House of the 2009 Alaska Symphony of Seafood. This will be on Tuesday, February 10 from 5:30 to 7:00 pm at Farestart on Westlake Avenue. There is a website and email contact for further information.

Item B-1(k) is an announcement for a symposium on fish processing byproducts, sponsored by University of Alaska Fairbanks, the Fishery Industrial Technology Center, and the Alaska Fisheries Development Foundation. This will be held February 25-26 in Portland, Oregon. Contact information and website are listed on the announcement.

Item B-1(l) is a recent press release from the Marine Conservation Alliance (MCA) regarding the recent Northern Economics report "The Seafood Industry in Alaska's Economy", commissioned by MCA, At-sea Processors Association, and Pacific Seafood Processors Association. We have copies of the full report which we will be providing to Council members.

Events this week

Item B-1(m) is an announcement from the Seattle Chamber of Commerce, Alaska Committee, regarding a presentation on Thursday, February 5 from Randy Rice, Seafood Technical Program Director for the Alaska Seafood Marketing Institute. That will be from 7:45 am to 9:15 am just down the block at the Ranier Square Conference Room on 5th Ave. (just across from the Rock Bottom Brewery). Cost of attendance is \$15.

And tonight, Wednesday, February 4 there will be an industry sponsored 'gala' here in the Madison Ballroom. There will be food and beverage and live music from 6 to 9 pm. Please see Item B-1(n) for details and list of sponsors and organizers.



Federal Register

Friday,
January 16, 2009

Part III

Department of Commerce

**National Oceanic and Atmospheric
Administration**

**50 CFR Part 600
Magnuson-Stevens Act Provisions; Annual
Catch Limits; National Standard
Guidelines; Final Rule**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 070717348-81398-03]

RIN 0648-AV60

Magnuson-Stevens Act Provisions;
Annual Catch Limits; National
Standard Guidelines

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA); Commerce.

ACTION: Final rule.

SUMMARY: This final action amends the guidelines for National Standard 1 (NS1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action is necessary to provide guidance on how to comply with new annual catch limit (ACL) and accountability measure (AM) requirements for ending overfishing of fisheries managed by Federal fishery management plans (FMPs). It also clarifies the relationship between ACLs, acceptable biological catch (ABC), maximum sustainable yield (MSY), optimum yield (OY), and other applicable reference points. This action is necessary to facilitate compliance with requirements of the Magnuson-Stevens Act to end and prevent overfishing, rebuild overfished stocks and achieve OY.

DATES: Effective February 17, 2009.

ADDRESSES: Copies of the Regulatory Impact Review (RIR)/Regulatory Flexibility Act Analysis (RFAA) can be obtained from Mark R. Millikin, National Marine Fisheries Service, 1315-East-West Highway, Room 13357, Silver Spring, Maryland 20910. The RIR/RFAA document is also available via the internet at <http://www.nmfs.noaa.gov/msa2007/catchlimits.htm>. Public comments that were received can be viewed at the Federal e-Rulemaking portal: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mark R. Millikin by phone at 301-713-2341, by FAX at 301-713-1193, or by e-mail: Mark.Millikin@noaa.gov.

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I. Overview of Revisions to the NS1 Guidelines

The MSA serves as the chief authority for fisheries management in the U.S. Exclusive Economic Zone (EEZ). The Act provides for ten national standards (NS) for fishery conservation and management, and requires that the Secretary establish advisory guidelines based on the NS to assist in the development of fishery management plans. Guidelines for the NS are codified in subpart D of 50 CFR part 600. NS1 requires that conservation and management measures "shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry."

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) amended the MSA to include new requirements for annual catch limits (ACLs) and accountability measures (AMs) and other provisions regarding preventing and ending overfishing and rebuilding fisheries. To incorporate these new requirements into current NS1 guidance, NMFS initiated a revision of the NS1 guidelines in 50 CFR 600.310. NMFS published a notice of intent (NOI) to prepare an environmental impact statement (EIS) and commenced a scoping period for this action on February 14, 2007 (72 FR 7016), and proposed NS1 guidelines revisions on June 9, 2008 (73 FR 32526). Further background is provided in the above-referenced **Federal Register** documents and is not repeated here. The proposed guidelines provided a description of the reasons that overfishing is still occurring and the categories of reasons for overfishing likely to be addressed by new MSA requirements combined with the NS1 guidelines. The September 30, 2008 NMFS Quarterly Report on the Status of U.S. Fisheries indicates that 41 stocks managed under Federal FMPs are undergoing overfishing.

NMFS solicited public comment on the proposed NS1 guidelines revisions through September 22, 2008, and during that time, held three public meetings, on July 10, 2008 (Silver Spring, Maryland),

July 14, 2008 (Tampa, Florida), and July 24, 2008 (Seattle, Washington), and made presentations on the proposed revisions to each of the eight Regional Fishery Management Councils (Councils). NMFS received over 158,000 comments on all aspects of the proposed NS1 guidelines revisions. Many of the comment letters were form letters or variations on a form letter. In general, the environmental community supported the provisions in the proposed action but commented that they needed to be strengthened in the final action. Alternatively, comments from the fishing industry and some of the Councils said the proposed revisions were confusing, too prescriptive or strict, and lacked sufficient flexibility.

II. Major Components of the Proposed Action

Some of the major items covered in the proposed NS1 guidelines were: (1) A description of the relationship between MSY, OY, overfishing limits (OFL), ABC, ACLs, and annual catch targets (ACT); (2) guidance on how to combine the use of ACLs and AMs for a stock to prevent overfishing when possible, and adjust ACLs and AMs, if an ACL is exceeded; (3) statutory exceptions to requirements for ACLs and AMs and flexibility in application of NS1 guidelines; (4) "stocks in the fishery" and "ecosystem component species" classifications; (5) replacement of MSY control rules with ABC control rules and replacement of OY control rules with ACT control rules; (6) new requirements for scientific and statistical committees (SSC); (7) explanation of the timeline to prepare new rebuilding plans; (8) revised guidance on how to establish rebuilding time targets; (9) advice on action to take at the end of a rebuilding period if a stock is not yet rebuilt; and (10) exceptions to the requirements to prevent overfishing.

III. Major Changes Made in the Final Action

The main substantive change in the final action pertains to ACTs. NMFS proposed ACT as a required reference point that needed to be included in FMPs. The final action retains the concept of an ACT and an ACT control rule, but does not require them to be included in FMPs. After taking public comment into consideration, NMFS has decided that ACTs are better addressed as AMs. The final guidelines provide that: "For fisheries without inseason management control to prevent the ACL from being exceeded, AMs should utilize ACTs that are set below ACLs so that catches do not exceed the ACL."

In response to public comment, this final action also clarifies text on ecosystem component species, OFL, OY specification, ABC control rule and specification, SSC recommendations, the setting of ACLs, sector-ACLs, and AMs, and makes minor clarifications to other text. Apart from these clarifications, the final action retains the same approaches described in the proposed guidelines with regard to: (1) Guidance on how to combine the use of ACLs and AMs for a stock to prevent overfishing when possible, and adjust ACLs and AMs, if an ACL is exceeded; (2) statutory exceptions to requirements for ACLs and AMs and flexibility in application of NS1 guidelines; (3) "stocks in the fishery" and "ecosystem component species" classifications; (4) new requirements for SSCs; (5) the timeline to prepare new rebuilding plans; (6) rebuilding time targets; (7) advice on action to take at the end of a rebuilding period if a stock is not yet rebuilt; and (8) exceptions to the requirements to prevent overfishing. Further explanation of why changes were or were not made is provided in the "Response to Comments" section below. Detail on changes made in the codified text is provided in the "Changes from Proposed Action" section.

IV. Overview of the Major Aspects of the Final Action

A. Stocks in the Fishery and Ecosystem Component Species

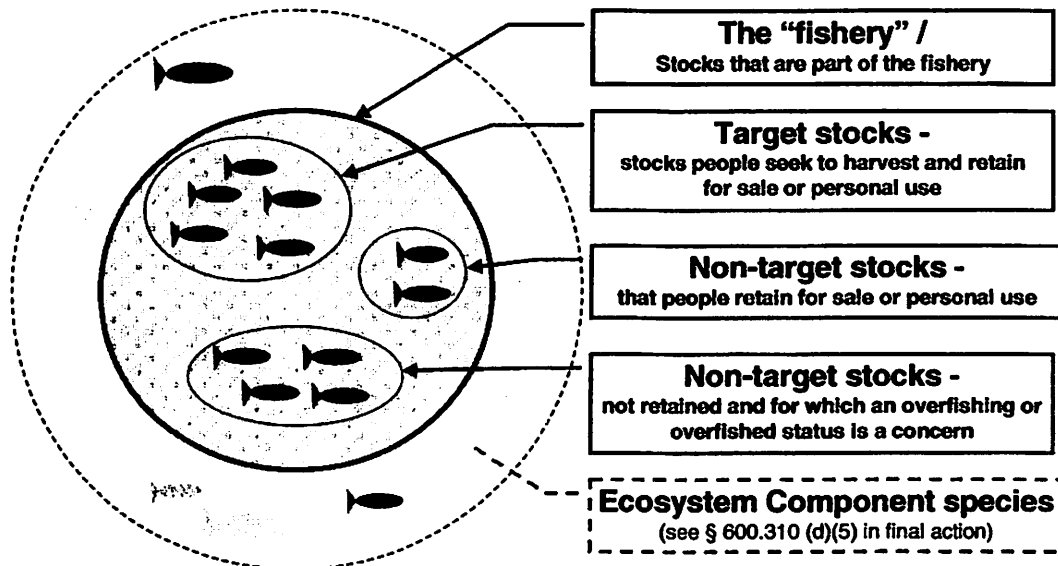
The proposed NS1 guidelines included suggested classifications of "stocks in the fishery" and "ecosystem component (EC) species." See Figure 1 for diagram of classifications. Public comments reflected confusion about this proposal, so NMFS has clarified its general intent with regard to these classifications. More detailed responses to comments on this issue are provided later in this document.

The classifications in the NS1 guidelines are intended to reflect how FMPs have described "fisheries," and to provide a helpful framework for thinking about how FMPs have incorporated and may continue to incorporate ecosystem considerations. To that end, the proposed NS1 guidelines attempted to describe the fact that FMPs typically include certain target species, and sometimes certain non-target species, that the Councils and/or the Secretary believed required conservation and management. In some FMPs, Councils have taken a broader approach and included hundreds of species, many of which may or may not require conservation and management

but could be relevant in trying to further ecosystem management in the fishery.

NMFS wants to encourage ecosystem approaches to management, thus it proposed the EC species as a possible classification a Council or the Secretary could—but is not required to—consider. The final NS1 guidelines do not require a Council or the Secretary to include all target and non-target species as "stocks in the fishery," do not mandate use of the EC species category, and do not require inclusion of particular species in an FMP. The decision of whether conservation and management is needed for a fishery and how that fishery should be defined remains within the authority and discretion of the relevant Council or the Secretary, as appropriate. NMFS presumes that stocks or stock complexes currently listed in an FMP are "stocks in the fishery," unless the FMP is amended to explicitly indicate that the EC species category is being used. "Stocks in the fishery" need status determination criteria, other reference points, ACL mechanisms and AMs; EC species would not need them. NMFS recognizes the confusion caused by wording in the proposed action and has revised the final action to be more clear on these points.

Figure 1. General Framework for "Stocks in the Fishery" versus "Ecosystem Component Species." This figure describes the kind of stocks or stock complexes that might fall into the two classifications, but should not be viewed as requiring FMPs to include specific stocks or stock complexes in either category.



B. Definition Framework for OFL, ABC, and ACL

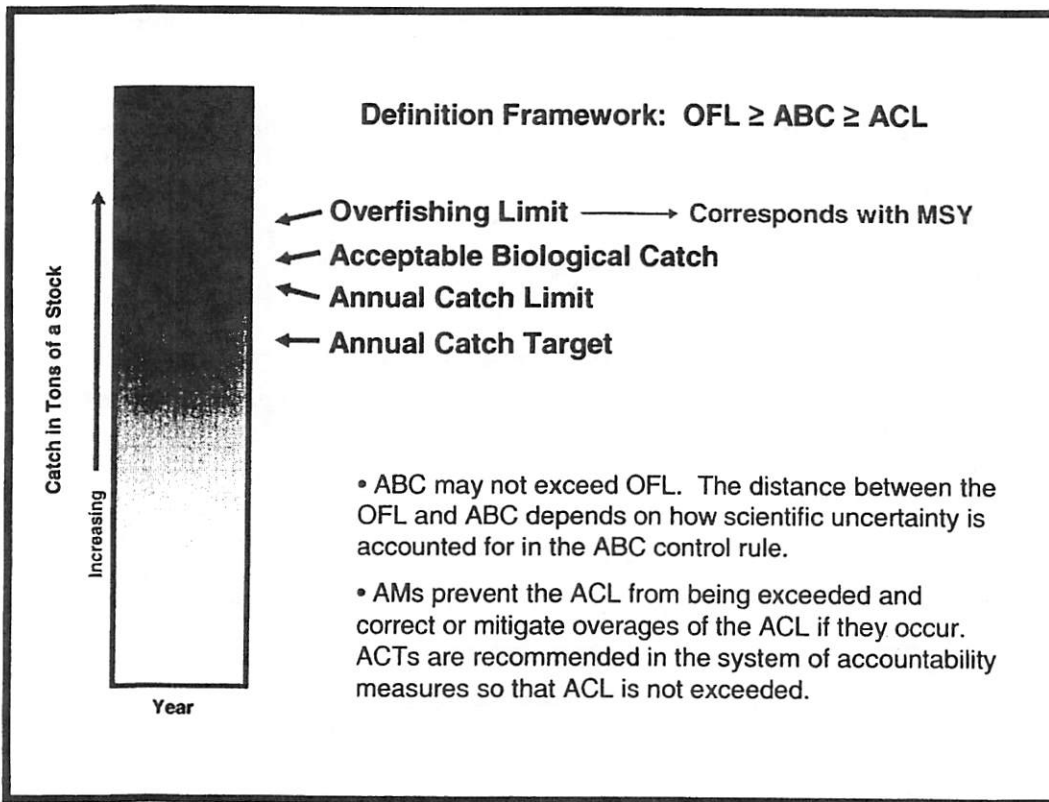
The MSRA does not define ACLs, AMs, and ABC, so NMFS proposed definitions for these terms in the proposed action. NMFS also proposed definitions for the terms OFL and ACT because it felt that they would be useful tools in helping ensure that ACLs are not exceeded and overfishing does not occur. The proposed NS1 guidelines described the relationship between the terms as: $OFL \geq ABC \geq ACL \geq ACT$. In response to public comment, the final action revises the definition framework as: $OFL \geq ABC \geq ACL$. As described above, NMFS has retained ACT and the

ACT control rule in the NS1 guidelines, but believes that they are more appropriate as AMs. NMFS believes ACTs could prove useful as management tools in fisheries with poor management control over catch (i.e., that frequently exceed catch targets).

NMFS received many comments on the definition framework, and some commenters stated that it should be revised as: $OFL > ABC > ACL$. Having considered public comment and reconsidered this issue, NMFS has decided to keep the framework as: $OFL \geq ABC \geq ACL$. However, NMFS believes there are few fisheries where setting OFL, ABC, and ACL all equal to each other would be appropriate. While the

final action allows ABC to equal OFL, NMFS expects that in most cases ABC will be reduced from OFL to reduce the probability that overfishing might occur in a year. NMFS has added a provision to the final NS1 guidelines stating that, if a Council recommends an ACL which equals ABC, and the ABC is equal to OFL, the Secretary may presume that the proposal would not prevent overfishing, in the absence of sufficient analysis and justification for the approach. See figure 2 for an illustration of the relationship between OFL, ABC, ACL and ACT. Further detail on the definition framework and associated issues is provided in the "Response to Comments" section below.

Figure 2: Relationship between OFL, ABC, ACL and ACT



C. Accountability Measures (AMs)

Another major aspect of the revised NS1 guidelines is the inclusion of guidance on AMs. AMs are management controls to prevent ACLs, including sector-ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur. NMFS has identified two categories of AMs, inseason AMs and AMs for when the ACL is exceeded. As described above, ACTs are recommended in the system of AMs so

that ACLs are not exceeded. As a performance standard, if catch exceeds the ACL for a given stock or stock complex more than once in the last four years, the system of ACLs and AMs should be re-evaluated, and modified if necessary, to improve its performance and effectiveness.

D. SSC Recommendations and Process

Section 302(h)(6) of the MSA provides that each Council is required to "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)." MSA did not define "fishing level recommendations," but in section 302(g)(1)(B), stated that an SSC shall provide "recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets," and other scientific advice.

NMFS received a variety of public comments regarding interpretation of "fishing level recommendations." Some commenters felt that the SSC's "fishing level recommendations" that should constrain ACLs is the overfishing limit (OFL); other commenters stated that "fishing level recommendations" should be equated with MSY. NMFS does not believe that MSA requires "fishing level recommendations" to be equated to the OFL or MSY. As described above, the MSA specifies a number of things that SSCs recommend to their Councils. Of all of these things, ABC is the most directly relevant to ACL, as both ABC and ACL are levels of annual catch.

The preamble to the proposed NS1 guidelines recommended that the Councils could establish a process in their Statement of Organization, Practices and Procedures (SOPPs) for: establishing an ABC control rule, applying the ABC control rule (i.e., calculating the ABC), and reviewing the resulting ABC. NMFS believes that this may have caused confusion and that some commenters misunderstood the intent of this recommendation. NMFS received comment regarding inclusion of the ABC control rule in the SOPPs, and wants to clarify that the actual ABC control rule should be described in the FMP. NMFS believes it is important to understand how the Councils, SSC, and optional peer review process work together to implement the provisions of the MSA and therefore recommends that the description of the roles and responsibilities of the Council, SSC, and optional peer review process be included in the SOPPs, FMP, or some other public document. The SSC recommends the ABC to the Council whether or not a peer review process is utilized.

E. Management Uncertainty and Scientific Uncertainty

A major aspect of the revised NS1 guidelines is the concept of incorporating management and scientific uncertainty in using ACLs and AMs. Management uncertainty occurs because of the lack of sufficient information about catch (e.g., late reporting, underreporting and misreporting of landings or bycatch). Recreational fisheries generally have late reporting because of the method of surveying catches and the lack of an ability for managers to interview only marine recreational anglers. NMFS is addressing management uncertainty in the recreational fishery by implementing a national registry of recreational fishers in the Exclusive Economic Zone (EEZ) (see proposed

rule published in the *Federal Register* (73 FR 33381, June 12, 2008)) and a Marine Recreational Implementation Program that will, in part, revise the sampling design of NMFS's marine recreational survey for fishing activity.

Management uncertainty also exists because of the lack of management precision in many fisheries due to lack of inseason fisheries landings data, lack of inseason closure authority, or the lack of sufficient inseason management in some FMPs when inseason fisheries data are available. The final NS1 guidelines revisions provide that FMPs should contain inseason closure authority that gives NMFS the ability to close fisheries if it determines, based on data that it deems sufficiently reliable, that an ACL has been exceeded or is projected to be reached, and that closure of a fishery is necessary to prevent overfishing. NMFS believes that such closure authority will enhance efforts to prevent overfishing. Councils can derive some idea of their overall extent of management uncertainty by comparing past actual catches to target catches to evaluate the magnitude and frequency of differences between actual catch and target catch, and how often actual catch exceeded the overfishing limit for a stock.

Scientific uncertainty includes uncertainty around the estimate of a stock's biomass and its maximum fishing mortality threshold (MFMT); therefore, any estimate of OFL has uncertainty. Stock assessment models have various sources of scientific uncertainty associated with them and many assessments have shown a repeating pattern that the previous assessment overestimated near-future biomass, and underestimated near-future fishing mortality rates (i.e., called retrospective patterns).

V. Response to Comments

NMFS received many comments about the proposed definition framework ($OFL \geq ABC \geq ACL \geq ACT$), especially regarding the ACT and ACT control rule. Some commenters suggested that the ACT and ACT control rule should not be required, while others supported their use. NMFS also received comments expressing: That the proposed terminology should not be required; OFL should always be greater than ABC; and concern that too many factors (i.e., management and scientific uncertainty, and ACT) will reduce future target catches unnecessarily. Some commenters felt additional emphasis should be placed on T_{min} in the rebuilding provisions. Councils, for the most part, are very concerned about the challenge of implementing ACLs

and AMs by 2010, and 2011, as required. Some commenters felt the international fisheries exception to ACLs is too broad. Several commenters stated that an EIS should have been or should be prepared and two commenters stated an Initial Regulatory Flexibility Analysis under the Regulatory Flexibility Act should be prepared. NMFS also received many comments regarding the mixed-stock exception.

NMFS received many comments expressing support for the proposed revisions to the Magnuson-Stevens Act National Standard 1 guidelines. Comments included: This good faith effort to implement Congress' intent will work to end overfishing and protect the marine ecosystem; these guidelines reduce the risk of overfishing and will work to rebuild depleted stocks through the use of science based annual catch limits, accountability measures, 'buffers' for scientific and management uncertainty, and protections for weak fish stocks; and this solid framework will ensure not only healthy stocks but healthy fisheries.

Comment 1: Several comments were received regarding NMFS's decision to not prepare an environmental impact statement or environmental assessment for this action. Some supported the decision, while others opposed it and believed that a categorical exclusion under the National Environmental Policy Act (NEPA) is not appropriate.

Response: NMFS believes a categorical exclusion is appropriate for this action. Under §§ 5.05 and 6.03c.3(i) of NOAA's Administrative Order (NAO) 216-6, the following types of actions may be categorically excluded from the requirement to prepare an EA or EIS: " * * * policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature, or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case. * * * "

In this instance, a Categorical Exclusion is appropriate for this action, because NMFS cannot meaningfully analyze potential environmental, economic, and social impacts at this stage. This action revises NS1 guidelines, which are advisory only; MSA provides that NS guidelines "shall not have the force and effect of law." MSA section 301(b). See *Tutein v. Daley*, 43 F. Supp.2d 113, 121-122 (D. Mass. 1999) (reaffirming that the guidelines are only advisory and holding that the national standards are not subject to judicial review under the

MSA). The NS1 guidelines are intended to provide broad guidance on how to comply with new statutory requirements. While the guidelines explain in detail how different concepts, such as ACL, ABC, MSY, and OY, should be addressed, the guidelines do not mandate specific management measures for any fishery. It is not clear what Councils will or will not do in response to the NS1 guidelines. Thus, it is not possible to predict any concrete impacts on the human environment without the necessary intervening actions of the Councils, e.g., consideration of best available scientific information and development of specific conservation and management measures that may be needed based on that information. Any analysis of potential impacts would be speculative at best.

None of the exceptions for Categorical Exclusions provided by § 5.05c of NAO 216-6 apply. While there is controversy concerning the NS1 guidelines revisions, the controversy is primarily related to different views on how new MSA requirements should be interpreted, rather than potential environmental consequences. The NS1 guidelines would not, in themselves, have uncertain environmental impacts, unique or unknown risks, or cumulatively significant or adverse effects upon endangered or threatened species or their habitats. Moreover, this action would not establish a precedent or decision in principle about future proposals. As noted above, the guidelines provide broad guidance on how to address statutory requirements but do not mandate specific management actions.

Comment 2: One commenter criticized NMFS' approach as placing unnecessary burden on the Councils to conduct the NEPA analysis.

Response: No change was made. One of the Councils' roles is to develop conservation and management measures that are necessary and appropriate for management of fisheries under their authority. NMFS believes that Councils should continue to have the discretion to determine what measures may be needed in each fishery and what alternatives should be considered and analyzed as part of the fishery management planning process. Councils routinely incorporate NEPA into this process, and the actions to implement ACLs in specific fisheries must address the NEPA requirements, regardless of the level of analysis conducted for the guidelines. Therefore, having reviewed the issue again, NMFS continues to find that a categorical exclusion is appropriate for this action.

Comment 3: Two commenters stated that NMFS should have prepared an initial regulatory flexibility analysis under the RFA for this action. They said it was not appropriate to certify under the RFA because in their opinion, this action will have significant economic impacts on a substantial number of small entities.

Response: No change was made. The final NS1 guidelines will not have significant economic impacts on a substantial number of small entities. The guidelines are advisory only; they provide general guidance on how to address new overfishing, rebuilding, and related requirements under the MSA. Pursuant to MSA section 301(b), the guidelines do not have the force and effect of law. When the Councils/Secretary apply the guidelines to individual fisheries and implement ACL and AM mechanisms, they will develop specific measures in their FMPs and be able to analyze how the new measures compare with the status quo (e.g., annual measures before the MSRA was signed into law and the NS1 guidelines were revised) with respect to economic impacts on small entities. At this point, any analysis of impacts on small entities across the range of diverse, Federally-managed fisheries would be highly conjectural. Therefore, a certification is appropriate.

Comment 4: Several comments were received that the guidelines are too complex and they contain guidance for things, such as the ACT that are not required by the MSA. They suggested removing these provisions from the guidance, or only providing guidance for terms specifically mentioned in the statute.

Response: NMFS agrees that the guidelines can appear complex. However, the purpose of the guidelines is not simply to regurgitate statutory provisions, rather it is to provide guidance on how to meet the requirements of the statute. As discussed in other comments and responses, MSRA includes new, undefined terms (ABC and ACL), while retaining other long-standing provisions, such as the national standards. In considering how to understand new provisions in light of existing ones, NMFS considered different ways to interpret language in the MSA, practical challenges in fisheries management including scientific and management uncertainty, the fact that there are differences in how fisheries operate, and public comment on proposed approaches in the NS1 guidelines. MSA does not preclude NMFS from including additional terminology or explanations in the NS1

guidelines, as needed, in order to facilitate understanding and effective implementation of MSA mandates. In the case of NS1, conservation and management measures must prevent overfishing while achieving, on a continuing basis, the optimum yield. This is inherently challenging because preventing overfishing requires that harvest of fish be limited, while achieving OY requires that harvest of fish occur. In developing the guidelines, NMFS identified the reasons that overfishing was still occurring in about 20 percent of U.S. Fisheries, and wrote the guidelines to address the primary causes. These include:

- (1) Setting OY too close to MSY,
- (2) Failure to consider all sources of fishing mortality,
- (3) Failure to adequately consider both uncertainty in the reference points provided by stock assessments (scientific uncertainty) and uncertainty in management control of the actual catch (management uncertainty),
- (4) Failure to utilize best available information from the fishery for inseason management, and
- (5) Failure to identify and correct management problems quickly.

NMFS believes that the guidelines address these causes and appropriately provide practical guidance on how to address them, while providing sufficient flexibility to acknowledge the differences in fisheries. NMFS believes that Congress intended that the ACLs be effective in ending and preventing overfishing. Simply amending the FMPs to include ACL provisions is not enough—the actual performance of the fishery is what ultimately matters. NMFS believes that all of the provisions in the guidelines are essential to achieving that goal, and that if the guidelines are followed, most of the problems that have led to continued overfishing will be addressed. NMFS has made changes in the final action to clarify the guidelines and simplify the provisions therein, to the extent possible. One specific change is that the final guidelines do not require that ACT always be established. Instead, NMFS describes how catch targets, such as ACT, would be used in a system of AMs in order to meet the requirements of NS1 to prevent overfishing and achieve OY. More details on these revisions are covered in responses pertaining to comments 8, 32, 44, 45, and 48.

Comment 5: Several commenters stated that Councils' workloads and the delay of final NS1 guidelines will result in some Councils having great difficulty or not being able to develop ACLs and AMs for overfishing stocks by 2010, and all other stocks by 2011.

Response: The requirements in MSA related to 2010 and 2011 are statutory; therefore ACLs and AMs need to be in place for those fishing years such that overfishing does not occur. NMFS understands that initial ACL measures for some fisheries have been developed before the NS1 guidelines were finalized in order to meet the statutory deadline, and thus may not be fully consistent with the guidelines. ACL mechanisms developed before the final guidelines should be reviewed and eventually revised consistent with the guidelines.

Comment 6: Several commenters stated that certain existing FMPs and processes are already in compliance with the ACL and AM provisions of the MSA and consistent with the proposed guidelines. One commenter stated that NMFS should bear the burden of determining whether current processes are inconsistent with the MSA, and indicate what action Councils should take. Another commenter stated that Congress intended Total Allowable Catch (TAC), which is already used in some fisheries, to be considered to be an ACL. NMFS also received comments stating that certain terms have had longstanding use under FMPs, and changing the terminology could cause too much confusion.

Response: NMFS believes that some existing FMPs may be found to need little or no modification in order to be found to be consistent with the MSA and NS1 guidelines. In general, these are fisheries where catch limits are established and the fishery is managed so that the limits are not exceeded, and where overfishing is not occurring. NMFS agrees that, in some fisheries, the TAC system currently used may meet the requirements of an ACL. However, there are a wide variety of fisheries that use the term TAC, and while some treat it as a true limit, others treat it simply as a target value on which to base management measures. Therefore, NMFS does not agree that the use of a TAC necessarily means the fishery will comply with the ACL and AM provisions of the MSA. NMFS will have to review specific FMPs or FMP amendments. In addition, upon request of a Council, NMFS can provide input regarding any changes to current processes that might be needed for consistency with the MSA and guidance in the NS1 guidelines.

Regarding the comment about terminology, the preamble to the proposed action provided that Councils could opt to retain existing terminology and explain in a proposed rule how the terminology and approaches to the FMPs are consistent with those set forth in the NS1 guidelines. NMFS has given

this issue further consideration and believes that a proposed rule would not be necessary or appropriate. Instead, a Council could explain in a **Federal Register** notice why its terminology and approaches are consistent with the NS1 guidelines.

Comment 7: Some commenters thought that before requiring implementation of a new management system, it should first be demonstrated that the current management system is not effective at preventing overfishing or rebuilding stocks that are overfished, and that a new management system would be more effective. Changing a management system that is effective and responsive would not be productive.

Response: While NMFS understands that current conservation and management measures prevent overfishing in some fisheries, the MSA requires a mechanism for specifying ACLs and AMs in all fisheries, including those that are not currently subject to overfishing, unless an exception applies. There is no exception to the requirement for ACLs and AMs for fisheries where other, non-ACL management measures are preventing overfishing. NMFS is required by the MSRA to implement the new provisions in all FMPs, unless an exception applies, even on those whose current management is preventing overfishing. NMFS believes the guidance provides the tools for Councils to implement ACLs in these fisheries that will continue to prevent overfishing without disrupting successful management approaches. The guidelines provide flexibility to deviate from the specific framework described in the guidelines, if a different approach will meet the statutory requirements and is more appropriate for a specific fishery (see § 600.310(h)(3) of the final action).

Comment 8: Some commenters supported the use of ACT to address management uncertainty in the fishery. Others did not support ACTs, and commented that ACTs are not required under the MSA and that inclusion of ACTs in the guidelines creates confusion and complexity. One commenter stated that the proposed guidelines were "out of line" with NMFS's mandate and authority provided under the MSA because the guidelines for ACTs and associated control rules completely undermine the clear directive Congress provides in National Standard 1 to achieve optimum yield on an ongoing basis.

Response: The proposed guidelines stressed the importance of addressing scientific and management uncertainty in establishing ACL and AM mechanisms. Scientific uncertainty was

addressed in the ABC control rule, and management uncertainty was addressed in the ACT control rule. Use of catch targets associated with catch limits is a well-recognized principle of fishery management. The current NS1 guidelines call for establishment of limits, and targets set sufficiently below the limits so that the limits are not exceeded. The revised guidelines are based on this same principle, but, to incorporate the statutory requirements for ABC and ACLs, are more explicit than the current guidelines. While MSA does not refer to the term ACT, inclusion of the term in the NS1 guidelines is consistent with the Act. The NS1 guidelines are supposed to provide advice on how to address MSA requirements, including how to understand terminology in the Act and how to apply that terminology given the practical realities of fisheries management. In developing the proposed guidelines, NMFS considered a system that used ABC as the limit that should not be exceeded, and that required that ACL be set below the ABC to account for management uncertainty. This had the advantage of minimizing the number of terms, but would result in the ACL having been a target catch level. NMFS decided, that since Congress called for annual catch limits to be set, that the ACL should be considered a true limit—a level not to be exceeded. ACT was the term adopted for the corresponding target value which the fishery is managed toward so that the ACL is not exceeded.

Taking public comment into consideration, NMFS has decided to retain ACTs and ACT control rules in the final guidelines, but believes they are better addressed as AMs for a fishery. One purpose of the AMs is to prevent the ACL from being exceeded. Setting an ACT with consideration of management uncertainty is one way to achieve this, but may not be needed in all cases. In fisheries where monitoring of catch is good and in-season management measures are effective, managers may be able to prevent ACLs from being exceeded through direct monitoring and regulation of the fishery. Therefore, the final guidelines make ACTs optional, but, to prevent ACLs from being exceeded, Councils must adequately address the management uncertainty in their fisheries using the full range of AMs.

NMFS disagrees that ACTs undermine NS1. NS1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the OY. The MSA describes that OY is based on MSY, as reduced based on consideration of

several factors. In some cases, the amount of reduction may be zero, but in some cases may the OY exceed MSY.

conservation and management measures in the fishery must have very good control of the amount of catch in order to achieve the OY without overfishing.

The amount of fishing mortality that results in overfishing is dictated by the biology of the stock and its environment, and establishes a limit that constrains fisheries management. However, the specification of OY and the conservation and management measures for the fishery are both set by fishery managers. To achieve the dual requirements of NS1, Councils must specify an OY and establish conservation and management measures for the fishery that can achieve the OY without overfishing. The closer that OY is set to MSY, the greater degree of control over harvest is necessary in order to meet both objectives. The choice of conservation and management measures for a fishery incorporates social and economic considerations. For example, a Council may prefer to use effort controls instead of hard quotas to have a year-round fishery without a "race for fish," and to provide higher average prices for the fishermen. However, compared to hard quotas, management with effort controls gives more uncertainty in the actual amount of fish that will be caught. Because of this increased uncertainty, the OY needs to be reduced from MSY so that overfishing does not occur. Thus the social and economic considerations of the choice of management measures should be considered in setting the OY.

In cases where the conservation and management measures for a fishery are not capable of achieving OY without overfishing occurring, overfishing must be ended even if it means the OY is not achieved in the short-term. Overfishing a stock in the short term to achieve OY jeopardizes the capacity of the stock to produce OY in the long term, and thus cannot be sustained. Preventing overfishing in a fishery on an annual basis is important to ensure that a fishery can continue to achieve OY on a continuing basis. The specification of OY and the associated conservation and management measures need to be improved so that OY can be achieved without overfishing occurring. In a fishery where the NS1 objectives are fully met, the OY specification will adequately account for the management uncertainty in the associated conservation and management measures. Overfishing will not occur, and the OY will be achieved.

Comment 9: Commenters stated that the designation of the Virgin Islands Coral Reef Monument was not being

Council's FMPs.

Response: NMFS does not believe any revision of the NS1 guidelines is necessary in response to this comment but will forward the comment to the Council for its consideration.

Comment 10: NMFS received comments in support of the flexibility given to councils to manage stocks for which ACLs are not a good fit, such as management of Endangered Species Act listed species, stocks with unusual life history characteristics, and aquaculture operations. Commenters noted that Pacific salmon should be treated with flexibility under the NS1 guidelines, because they are managed to annual escapement levels that are functionally equivalent to ACLs, and there are accountability, review, and oversight measures in the fishery.

Response: NMFS agrees that flexibility is needed for certain management situations, and clarifies that § 600.310(h)(3) provides for flexibility in application of the NS1 guidelines but is not an exception from requirements of MSA section 303(a)(15) or other sections.

Comment 11: Congress did not mandate that all fisheries be managed by hard quotas, and so NMFS should include guidance for the continuation of successful, non-quota management systems, such as that used to successfully manage the Atlantic sea scallop fishery.

Response: NMFS agrees that the conservation and management measures for a fishery are not required to be "hard quotas." However, NMFS believes that the ACL was intended by Congress to be a limit on annual catch. Therefore, conservation and management measures must be implemented so that the ACL is not exceeded, and that accountability measures must apply whenever the ACL is exceeded. Congress did not exempt any fisheries from the ACL requirement on the basis that current management was successful. If the current conservation and management measures are effective in controlling harvest of sea scallops such that the ACL is not regularly exceeded, the ACL would have little effect on the fishery. If the current management measures are not effective in keeping catch from exceeding the ACL, then consistent with the ACL requirement in the MSA, additional management action should be taken to prevent overfishing.

Comment 12: The summary list of items to be included in FMPs should be

"as appropriate" (see § 600.310(c) of the final action).

Response: No change was made. If any item does not apply to a particular fishery, the Council can explain why it is not included, but believes that "as appropriate" would create further confusion as there is no clear definition of what appropriate means in this context.

Comment 13: The list of items to include in FMPs related to NS1 is extremely long, and it is unclear whether each item on the list needs to be addressed for all stocks that are "in the fishery," which is a very broad term. Including the extra information is unlikely to materially improve management.

Response: As a default, all the stocks or stock complexes in an FMP are considered "in the fishery" (see § 600.310(d)(1)), unless they are reclassified as ecosystem component stocks through an FMP amendment process. Further explanation of these classifications is provided below in other comments and responses. The benefit of including this list of items is to provide transparency in how the NS1 guidelines are being met. In addition, Councils should already have some of the items in their FMPs (ex: MSY, status determination criteria (SDC), and OY). The other items are new requirements of the MSA or a logical extension of the MSA.

Comment 14: NMFS received several comments both supporting and opposing the proposed "stocks in a fishery" and "ecosystem component species" (EC) classifications of stocks in a FMP. Comments included: EC species are not provided under the MSA and should not be required in FMPs; EC species classification is needed but may lead to duplication in different FMPs; support for the distinction between "stocks in a fishery" and EC species; and clarify how data collection only species should be classified.

Response: NMFS provided language for classifying stocks in a FMP into two categories: (1) "Stocks in the fishery" and (2) "ecosystem component species." MSA requires that Councils develop ACLs for each of their managed fisheries (see MSA sections 302(h)(6) and 303(a)(15)), but Councils have had, and continue to have, considerable discretion in defining the "fishery" under their FMPs. As a result, some FMPs include one or a few stocks (e.g., Bluefish FMP, Dolphin-Wahoo FMP) that have been traditionally managed for OY, whereas others have begun including hundreds of species (e.g., Coral Reef Ecosystem of the Western Pacific Region FMP) in an

effort to incorporate ecosystem approaches to management.

While EC species are not explicitly provided in the MSA, in the MSRA, Congress acknowledged that certain Councils have made significant progress in integrating ecosystem considerations, and also included new provisions to support such efforts (e.g., MSA section 303(b)(12)). As noted in the preamble of this action, NMFS wants to continue to encourage Councils to incorporate ecosystem considerations, and having classifications for "stocks in the fishery" versus "ecosystem component species" could be helpful in this regard. Thus, the final guidelines do not require Councils or the Secretary to change which species are or are not included in FMPs, nor do the guidelines require FMPs to incorporate the EC species classification. NMFS has revised the final guidelines to state explicitly that Councils or the Secretary may—but are not required to—use an EC species classification.

In developing the text regarding EC species and "stocks in the fishery," NMFS examined what existing FMPs are already doing and utilized that in its description of these classifications. For example, based on existing FMPs, the guidelines envision that species included for data collection and other monitoring purposes could be considered EC species (assuming they meet the criteria described in § 600.310(d)(5)(i)). However, such species could also be "stocks in the fishery," as described under the NS3 guidelines (§ 600.320(d)(2)). NMFS recognizes the desire for greater specificity regarding exactly which species could or could not be considered EC species, but does not believe that further detail in the guidelines could clarify things definitively. Determining whether the EC category is appropriate requires a specific look at stocks or stock complexes in light of the general EC species description provided in the NS1 guidelines as well as the broader mandates and requirements of the MSA. If Councils decide that they want to explore potential use of the EC species classification, NMFS will work closely with them to consider whether such a classification is appropriate.

Comment 15: NMFS received several comments regarding the level of interaction that would be appropriate for the EC classification. Comments included: *de minimis* levels of catch should be defined to clarify the difference between "stocks in a fishery" and EC species; all stocks that interact with a fishery should be included as "stocks in a fishery"; requiring non-

target stocks to be considered part of the fishery as written supersedes NS9; guidelines should clarify that EC species do not have significant interaction with the fishery; and, bycatch species should not be included as "stocks in a fishery."

Response: NMFS is revising the final guidelines to clarify preliminary factors to be taken into account when considering a species for possible classification as an EC species. Such factors include that the species should: (1) Be a non-target species or non-target stock; (2) not be determined to be subject to overfishing, approaching overfished, or overfished; (3) not likely to become subject to overfishing or overfished, according to the best available information, in the absence of conservation and management measures; and (4) not generally retained for sale or personal use. Factors (2) and (3) are more relevant to species that are currently listed in FMPs and that have specified SDCs. With regard to factor (4), the final guidelines add new language in § 600.310(d)(5)(i)(D)—"not generally retained for sale or personal use"—in lieu of "*de minimis* levels of catch" and clarify that occasional retention of a species would not, in itself, preclude consideration of a species in the EC classification. The NS1 guidelines provide general factors to be considered, as well as some examples of possible reasons for using the EC category. However, the decision of whether to use an EC classification requires consideration of the specific fishery and a determination that the EC classification will be consistent with conservation and management requirements of the MSA.

Under the MSA, a Council prepares and submits FMPs for each fishery under its authority that requires conservation and management, and there is considerable latitude in the definition of the fishery under different FMPs. The definition of "fishery" is broad, and could include one or more stocks of fish treated as a unit for different purposes, as well as fishing for such stock (see MSA section 3(13)(B)). While some comments encouraged inclusion of all species that might interact with a fishery, all bycatch species, or all species for which there may be "fishing" as defined in MSA section 3(13)(B), NMFS does not believe that MSA mandates such a result. MSA does not compel FMPs to include particular stocks or stock complexes, but authorizes the Councils or the Secretary to make the determination of what the conservation and management needs are and how best to address them. Taking the broader approaches noted above would interfere with this

discretion and also could result in overlapping or duplicative conservation and management regimes in multiple FMPs under different Council jurisdictions. As National Standard 6 requires that conservation and management measures, where practicable, minimize costs and avoid unnecessary duplication, NMFS believes that Councils should retain the discretion to determine which fisheries require specific conservation and management measures. With regard to bycatch, regardless of whether a species is identified as part of a fishery or not, National Standard 9 requires that FMPs, to the extent practicable, minimize bycatch and to the extent it cannot be avoided minimize bycatch mortality. Additional protections are afforded to some species under the Endangered Species Act, regardless of whether they are listed as stocks in a fishery. Further, as a scientific matter, NMFS disagrees that every bycatch species would require conservation and management measures to protect the species from becoming overfished, because some bycatch species exhibit high productivity levels (e.g., mature early) and low susceptibilities to fishery (e.g., rarely captured) that preclude them from being biologically harmed or depleted by particular fisheries.

Comment 16: NMFS received several comments requesting that the guidelines include a description of vulnerability and how it should be determined, since it is referenced throughout the guidelines.

Response: NMFS agrees, and has added § 600.310(d)(10) to the final action, to define vulnerability. In general, to determine the vulnerability of a species/stock becoming overfished, NMFS suggests using quantitative estimates of biomass and fishing rates where possible; however, when data are lacking, qualitative estimates can be used. NMFS is currently developing a qualitative methodology for evaluating the productivity and susceptibility of a stock to determine its vulnerability to the fishery, and anticipates the methodology to be finalized by February 2009. The methodology is based on the productivity-susceptibility analysis (PSA) developed by Stobutzki *et al.* (2001), which was suggested by many commenters. Stocks that have low susceptibilities (e.g., rarely interact with the fishery, no indirect impacts to habitat, etc.) and high productivities (e.g., mature at an early age, highly fecund, etc.) are considered to have a low vulnerability of becoming overfished, while stocks that have low productivities and high susceptibilities

to the fishery are considered highly vulnerable to becoming overfished.

Comment 17: Some commenters noted that the EC classification could be used to avoid reference point specification.

Response: NMFS believes that the guidelines provide mechanisms to address this issue. As a default, NMFS presumes that all stocks or stock complexes that Councils or the Secretary decided to include in FMPs are "stocks in the fishery" that need ACL mechanisms and AMs and biological reference points. Whether it would be appropriate to include species in the EC category would require consideration of whether such action was consistent with the NS1 guidelines as well as the MSA as a whole. If a Council or the Secretary wishes to add or reclassify stocks, a FMP amendment would be required, which documents rationale for the decision. However, the guidelines have been modified to note that EC species should be monitored to the extent that any new pertinent scientific information becomes available (e.g., catch trends, vulnerability, etc.) to determine if the stock should be reclassified.

Comment 18: With regard to ecological, economic, and social (EES) factors related to OY, some commenters requested more specific guidance in incorporating the factors, and others commented that accounting for the factors is too time consuming. Other commenters expressed support for the reference to forage fish species and suggested including text on maximum economic yield and fish health.

Response: The NS1 guidelines generally describe OY as the long-term average amount of desired yield from a stock, stock complex, or fishery. OY is prescribed on the basis of MSY as reduced by EES factors (MSA section 3(33)). The NS1 guidelines set forth examples of different considerations for each factor, and NMFS believes the examples provide sufficient guidance on EES factors. NMFS has not made substantive changes from the proposed action, but has clarified that FMPs must address each factor but not necessarily each example.

Comment 19: NMFS received several comments in support of using stock complexes as a management tool in data poor situations and other comments that expressed concern about the use of stock complexes and indicator species. Comments included: stock complexes should only be used when sufficient data are lacking to generate species-specific SDCs and related reference points; there is little ecological basis for using indicator species to set ACLs for

stock complexes (see Shertzer and Williams (2008)) as stocks within a stock complex exhibit different susceptibilities to the fishery; if used, stock complexes should be managed using the weakest or most vulnerable stock within the complex as a precautionary approach to management; it would be helpful to have examples of how a data poor stock could be periodically examined to determine if the stock is overfished or subject to overfishing.

Response: NMFS agrees that where possible Councils should generate stock-specific SDCs and related reference points for stocks in fishery; however, there are other circumstances in which stock complex management could be used. NMFS notes in § 600.310(d)(8) of the final action that stocks may be grouped into complexes for various reasons, including: where stocks in a multispecies fishery cannot be targeted independent of one another and MSY can not be defined on a stock-by-stock basis (see § 600.310(e)(1)(iii) of the final action); where there is insufficient data to measure their status relative to SDC; or when it is not feasible for fishermen to distinguish individual stocks among their catch.

NMFS believes that the guidelines sufficiently addressed the issue that stock complexes should be managed using the most vulnerable stock within the complex. In § 600.310(d)(9) of the final action the guidelines note that "if the stocks within a stock complex have a wide range of vulnerability, they should be reorganized into different stock complexes that have similar vulnerabilities; otherwise the indicator stock should be chosen to represent the more vulnerable stocks within the complex. In instances where an indicator stock is less vulnerable than other members of the complex, management measures need to be more conservative so that the more vulnerable members of the complex are not at risk from the fishery." Additionally, these guidelines address the concerns of Shertzer and Williams (2008), by recommending that both productivity and susceptibility of the stock (i.e., vulnerability to the fishery) is considered when creating or reorganizing stock complexes.

Lastly, NMFS agrees and has modified the phrase in § 600.310(d)(9) of the proposed action "Although the indicator stock(s) are used to evaluate the status of the complex, individual stocks within complexes should be examined periodically using available quantitative or qualitative information to evaluate whether a stock has become overfished or may be subject to

overfishing" to provide examples of quantitative or qualitative analysis.

Comment 20: NMFS received comments regarding the process for specifying the ACL for either a stock complex or for a single indicator species. The commenters were concerned that the proper data will not be utilized to determine whether the ACL should be set for the stock complex or for single indicator species. They feel that the use of single indicator species would not represent the stock's abundance, especially in the St. Thomas/St. John and St. Croix fisheries.

Response: NMFS understands the concern, but does not believe the guidelines need to be revised. NMFS will refer this comment to the Council.

Comment 21: NMFS received comments stating that the final action should clarify how SDCs and ACLs should be applied to stocks that are targeted in one fishery and bycatch in another, as well as circumstances where the stock is targeted by two or more FMPs that are managed by different regional councils.

Response: NMFS believes that the guidelines sufficiently addressed this issue in § 600.310(d)(7) of the final action, which notes " * * * Councils should choose which FMP will be the primary FMP in which management objectives, SDC, the stock's overall ACL and other reference points for the stock are established." NMFS believes that the Councils should continue to have the discretion to make such determinations. NMFS, however, suggests that the primary FMP should usually be the FMP under which the stock is targeted. In instances where the stock is targeted in two or more FMPs (e.g., managed by two or more Councils), Councils should work together to determine which FMP is the primary.

Comment 22: Several commenters requested further clarification on how prohibited species should be classified under the proposed classification scheme (see § 600.310(d)) because they felt it was unclear whether a species for which directed catch and retention is prohibited would be classified as "in the fishery" or as an "ecosystem component".

Response: NMFS believes that the information in § 600.310(d) provides a sufficient framework in which decisions can be made about how to classify a prohibited species under an FMP. Prohibition on directed catch and/or retention can be applied to either a stock that is "in the fishery" or an "ecosystem component" species. Managers should consider the classification scheme outlined in § 600.310(d) of the final action as well

as MSA conservation and management requirements generally. If a stock contains one of the "in the fishery" characteristics, then it belongs "in the fishery", regardless of the management tools that will be applied to it (e.g., prohibition, bag limits, quotas, seasons, etc.). Also, if the intent is to prohibit directed fishing and retention throughout the exclusive economic zone (EEZ) for which a Council has jurisdiction, then the stock would, most likely, be identified in an FMP as "in the fishery" rather than as an ecosystem component of one particular FMP.

Comment 23: Several commenters asked at what level an ACL would be specified for a species for which directed catch and retention is prohibited. Setting the ACL at zero would not be logical because if even one was caught incidentally then AMs would be triggered. Setting it higher would also not be logical because the point is to ensure little to no catch of the stock.

Response: Prohibiting retention is a management measure to constrain the catch to a minimal amount. If listed as a stock in the fishery, the reference points for the species, such as OFL and ABC, should be set based on the MSY for the stock, or, if ESA listed, would be set according to the associated ESA consultation's incidental take statement, regardless of the management approach used. The ACL may not exceed the ABC, but should be set at a level so that the mortality resulting from catch and discard is less than the ACL.

Comment 24: NMFS received a comment stating that the specification of MSY must incorporate risk, be based on gear selectivity and support a healthy, functioning ecosystem. The commenter supported revisions to § 600.310(e)(1) of the proposed action but suggested that it should be strengthened to address ecosystem principles. The commenter cited NOAA Tech Memo NMFS-F/SPO-40 in contending that the concept of MSY contains inherent risks that must be addressed in establishing reference points. Other commenters stated that: Councils establish management measures with high probabilities of success (e.g., 80 percent); "fishery technological characteristics" should be re-evaluated every two years; and MSY values normally equate to fishing down a population to forty percent of historic abundance and this may not be consistent with ecosystem based management.

Response: NMFS agrees that ecological conditions and ecosystem factors should be taken into account when specifying MSY and has added

additional language to § 600.310(e)(1)(iv) of the final action to highlight this point. Such factors might include establishing a higher target level of biomass than normally associated with the specific stock's B_{msy} . In addition, ecological conditions not directly accounted for in the specification of MSY can be among the ecological factors considered when setting OY below MSY. Regarding the comment about establishing management measures with a high probability of success, this is addressed in comment #63. NMFS does not believe that the NS1 guidelines need to be revised to require that fishery technological characteristics be evaluated every 2 years; such characteristics would be routinely updated with each stock assessment. The MSA bases management of fishery resources on MSY, but provides that OY can be reduced from MSY for ecological factors. NMFS believes the guidelines are consistent with the MSA and allow Councils to implement ecosystem approaches to management.

Comment 25: Several comments requested the guidelines state that specification of reference points should not be required for a stock "in the fishery" if its directed catch and retention is prohibited because managers applied the prohibition in an effort to prevent overfishing.

Response: Prohibition of retention does not necessarily mean that overfishing is prevented. Even though the species cannot be retained, the level of fishing mortality may still result in overfishing. Many stocks for which prohibitions are currently in place are considered data-poor. NMFS acknowledges that specifying reference points and AMs will be a challenge for such stocks, but reiterates the requirement to establish ACLs and AMs for all managed fisheries, unless they fall under the two statutory exceptions (see § 600.310(h)(2) of the final action), and also the need to take into consideration best scientific information available per National Standard 2.

Comment 26: NMFS received comments voicing a concern about the NMFS process of determining the overfishing status of a fishery, because fishery management measures have been implemented to end overfishing, but stocks are still listed as subject to overfishing and require ACLs by 2010. The commenters felt that several species under the Caribbean Fishery Management Council's protection should currently be removed from the overfished species list.

Response: NMFS agrees that this is an important issue. Due to the process

inherent in determining the status of a stock there is inevitably a lag time between implementation of management measures and a new assessment of the stock's status under those measures. NMFS is required by the MSA to establish new requirements to end and prevent overfishing through the use of ACLs and AMs. The fisheries subject to overfishing, including several in the Caribbean, are required to have ACLs by 2010, and all other fisheries must have ACLs by 2011. The Council's Comprehensive Amendment that implemented the Sustainable Fisheries Act in 2006 included measures designed to end overfishing. Although these measures may have ameliorated fishing pressure for some fishery resources in the U.S. Virgin Islands, the Council will need to evaluate the existing fishery management measures to determine whether they are sufficient to meet the new statutory requirements for ACLs and AMs.

Comment 27: Several commenters stated that NMFS should not include the OFL as the basis for overfishing SDC. Specific comments included: (1) The MSA does not define or require OFL, so NMFS should not use it in the guidelines; (2) catch-based SDC are inconsistent with the Magnuson-Stevens Act intent and SDC should only be based on the fishing mortality rate as it relates to a stock or stock complex's capacity to achieve MSY on a continual basis; (3) the Magnuson-Stevens Act does not require use of the long term average OFL as MSY; (4) NMFS increases the risk of overfishing when theoretical catch estimates or a constant fishing mortality rate (F) are used to manage a fishery especially when a retrospective pattern exists in a stock or stock complex.

Response: The term, OFL, is not defined in the MSA. However, OFL is directly based on requirements of the MSA, including the concept of MSY, and the requirement to prevent overfishing. NMFS does not believe that lack of a definition in the MSA precludes definition and use of OFL in order to meet the objectives of the MSA. The MSA defines overfishing as a rate or level of fishing mortality that jeopardizes the capacity of the stock to produce MSY. This mortality rate is defined by NMFS as the MFMT. The OFL for a year is calculated from the MFMT and the best estimate of biomass for a stock in that year, and thus is simply the MFMT converted into an amount of fish. The OFL is an annual level of catch that corresponds directly to the MFMT, and is the best estimate of the catch level above which overfishing is occurring. OFL is in terms

of catch, and thus is in the same units as ABC and ACL. NMFS believes, therefore, that comparing catch to OFL is a valid basis for determining if overfishing has occurred that year. The relationship of MSY to OFL is that MSY is the maximum yield that the stock can provide, in the long term, while OFL is an annual estimate of the amount of catch above which overfishing is occurring. The annual OFL varies above and below the MSY level depending on fluctuations in stock size. Since both MSY and OFL are related to the highest fishing mortality rate that will not result in overfishing, it is expected that the long-term average of OFLs would equate to MSY, provided that the stock abundance is high enough to support MSY.

The NS1 guidelines give the Councils flexibility to determine if overfishing occurs by using either MFMT ($F > MFMT$) or actual annual catch ($catch > OFL$) as the criteria for overfishing determinations. There are advantages and disadvantages of using either measure. The advantages of using OFL as a SDC are that catch can be easily understood by constituents, a determination can be made as soon as catch totals are available, and there is no retrospective problem with setting the SDC itself. Use of OFL might not be appropriate for stocks with highly variable recruitment that can not be predicted and therefore incorporated into the forecast of stock condition on which OFL is based. The advantage of using MFMT to determine if overfishing is occurring is because F is based on a stock assessment analyzing the past performance of the fishery. This means that the MFMT method is less sensitive than the OFL method to recent fluctuations in recruitment. However, F cannot not be calculated until an assessment has been updated, which may lag the fishery by several years. Therefore, a status determination based on MFMT could be less current than a determination based on OFL and catch, and reflects past, rather than current, fishery performance. Also, if there is a retrospective pattern in the assessment, then the hindsight estimate of F for a particular year used for the SDC will be different than the forecast estimate of stock condition used when setting target catch levels and management measures for that same year. The choice of SDC for a stock should consider things like the frequency of stock assessments, the ability to forecast future stock size, and any known retrospective patterns in the assessment. If the SDC are appropriately chosen, NMFS does not believe that one

method necessarily presents more risk that overfishing will occur.

Comment 28: NMFS received one comment which proposed that instead of being required to choose between OFL or MFMT as the SDC, that Councils should have the flexibility to use both. The comment implied that this would allow Councils to use MFMT as the SDC in years in which there is an assessment and OFL in years in which there is not an assessment.

Response: The NS1 guidelines require documentation for the rationale a Council uses to select the SDC within the FMP including defining overfishing status in terms of the MFMT (*i.e.*, fishing mortality rate) or OFL (*i.e.*, annual total catch) in such a way that overfishing can be monitored and determined on an annual basis. A Council could develop SDC based on both criteria, if sufficient rationale is provided.

Comment 29: NMFS received two comments in opposition to the "overfished" definition used by NMFS in the proposed rule. They point out that the current overfished definition could include stocks that are "depleted" due to changing environmental conditions not caused by fishing pressure. They propose that NMFS should revise the definition of "overfished" and create a "depleted" category for stocks that have declined below the minimum stock size threshold (MSST) due to changing environmental conditions.

Response: The overfished definition used by NMFS is consistent with the MSA. NMFS acknowledges that factors other than fishing mortality can reduce stock size below the MSST but NMFS believes the definition of overfished should not be altered. For stocks in a FMP, the MSA requires the Councils to rebuild the stock to a level consistent with producing the MSY regardless of the contributing factors. In most cases, the variation in relative contribution of environmental and fishing factors from year to year in reducing stock abundance is not known. When specifying SDC the Council is required to provide an analysis of how the SDC were chosen and how they relate to the reproductive potential of the stock. Specifically, the MSST should be expressed in terms of reproductive potential or spawning biomass. Furthermore, the stock assessment process can adjust the B_{msy} estimates and associated SDC due to environmental and ecological factors or changes in the estimates of reproductive potential, size/age at maturity, or other biological parameters.

Comment 30: Several comments suggested that NMFS should strike § 600.310(e)(2)(iii)(B) from the proposed action as it contradicts § 600.310(e)(2)(iii)(A) and could increase fishing pressure on a depleted stock by attributing low stock abundance to environmental conditions. Commenters criticized the requirement at § 600.310(e)(2)(iii)(B) that Councils "must" take action to modify SDC, and stated that there is little scientific evidence to show linkages between stock size and environmental conditions (citing to Restrepo *et al.* 1998 and NMFS. 2000. Endangered Species Act—Section 7 Consultation Biological Opinion and Incidental Take Statement). Commenters asserted that there is no statutory basis for this provision in the MSA and the legal standard for the word "affect" is vague and inadequate for ending overfishing. The comments stated that, in a time of anthropogenic climate change, stock dynamics are likely to change and by establishing this provision in the final action NMFS will undermine the statute's mandate to end overfishing. Commenters asserted that fisheries managers have and will respectify SDC to justify circumventing rebuilding targets, and the final guidelines should establish a high burden of proof to modify SDC due to changing environmental conditions or "regime change" (citing Fritz & Hinckley 2005).

Response: Section 600.310(e)(2)(iii) of this final action is essentially the same as text at § 600.310(d)(4) in the current NS1 guidelines, except for clarifications noted below. There is no change in the usage of "must" between the current guidance and this final NS1 guidance at § 600.310(e)(2)(iii). NMFS believes that the requirement of NS2, that conservation and management measures be based on the best available science, applies to the establishment of SDC. Therefore, in cases where changing environmental conditions alter the long-term reproductive potential of a stock, the SDC must be modified. As stocks and stock complexes are routinely assessed, long-term trends are updated with current environmental, ecological, and biological data to estimate SDCs. NMFS allows for flexibility in these provisions to account for variability in both environmental changes and variation in a stock's biological reaction to the environment.

The guidelines include language requiring a high standard for changing SDC that is consistent with NMFS Technical Guidance (Restrepo *et al.* 1998). NMFS outlines the relationship of SDC to environmental change in both the short and long-term in

§ 600.310(e)(2)(iii) of the final action. Total mortality of fish stocks includes many factors other than fishing mortality. Short-term environmental changes may alter the size of a stock or complex, for instance, by episodic recruitment failures, but these events are not likely to change the reproductive biology or reproductive potential of the stock over the long-term. In this case the Council should not change the SDC. Other environmental changes, such as some changes in ocean conditions, can alter both a stock's short-term size, and alter long-term reproductive biology. In such instances the Councils are required to respecify the SDC based on the best available science and document how the changes in the SDC relate to reproductive potential. In all cases, fishing mortality must be controlled so that overfishing does not occur. NMFS notes that, depending on the impact of the environmental change on the stock, failure to respecify SDC could result in overfishing, or could result in failure to achieve OY. In both cases, the fishery would not meet the requirements of NS1.

One change from § 600.310(d)(4) of the current NS1 guidelines occurs in § 600.310(e)(2)(iii)(A) of this final action. NMFS clarified that SDC "should not" rather than "need not" be changed if the long-term reproductive potential of a stock has not been affected by a changing environment. NMFS feels that this is consistent with setting a high standard for changing the SDC due to environmental changes. In addition, this action changes the phrase "long-term productive capacity" from the current NS1 guidance to "long-term reproductive potential." NMFS believes the latter phrase is clearer and more accurately reflects the language in MSA section 303(a)(10).

Any changes to SDC are subject to Secretarial approval (§ 600.310(e)(2)(iv) of the final action), and the NS1 guidelines set a high standard for respecification of SDC due to environmental change. The Council must utilize the best available science, provide adequate rationale, and provide a basis for measuring the status of the stock against these criteria, and the SDC must be consistent with § 600.310(e)(2)(iii) of the final action. If manmade environmental changes are partially responsible for the overfished condition, the Council should recommend restoration of habitat and ameliorative programs in addition to curtailing fishing mortality.

Comment 31: NMFS received several comments that state that by requiring reference points to be point estimates NMFS is not acknowledging the

uncertainty inherent in fishery management science. The comments expressed that the best way to incorporate uncertainty was to express SDCs as ranges and not point estimates.

Response: NMFS believes that uncertainty in SDC, OFL, and other fishing level quantities is best dealt with by fully analyzing the probability that overfishing will occur and that the stock might decline into an overfished condition, but we recognize that such a full analysis is not possible in many data-limited situations. When using a probability based approach, the distribution of probabilities includes a point estimate and it extends along a range. A probability based approach is already used in many rebuilding plans, for example, what fishing level will provide at least a 70% chance that the stock will be rebuilt in 10 years. NMFS scientists are working on a technical document that will describe some of the currently available methods to do such calculations, as well as some proxy approaches that could be used in situations where available data and methods do not allow calculation of the probability distributions.

Comment 32: NMFS received a number of comments regarding the proposed description of the relationship between ACT and OY—that achieving the ACT on an annual basis would, over time, equate to the OY. Comments requested more clarification, or did not agree with the described ACT–OY relationship.

Response: NMFS has revised the final action to remove the requirement that ACT be established, and instead discussed how targets, including ACT, function within the system of AMs to prevent the ACL from being exceeded. NMFS has also removed the discussion about the relationship of ACT to OY, based on the comments received. The full range of conservation and management measures for a fishery, which include the ACL and AM provisions, are required to achieve the OY for the fishery on a continuing basis. NMFS interprets the phrase "achieving, on a continuing basis, the optimum yield for each fishery" to mean producing from each stock or stock complex or fishery a long-term series of catches such that the average catch is equal to OY, overfishing is prevented, the long-term average biomass is near or above B_{msy} , and overfished stocks and stock complexes are rebuilt consistent with timing and other requirements of section 304(e)(4) of the MSA and § 600.310(j) of the final NS1 guidelines. NMFS notes that for fisheries where stock abundance is below the level that can produce the OY without the fishing

mortality rate exceeding the MFMT, the annual yield will be less than the long-term OY level. In the case of an overfished fishery, "optimum" with respect to yield from a fishery means providing for rebuilding to a level consistent with producing the MSY in such fishery. When stock abundance is above B_{msy} , a constant fishing mortality control rule may allow the annual catch to exceed the long-term average OY without overfishing occurring, but frequent stock assessments need to be conducted to update the level of stock abundance.

Comment 33: One commenter stated that "OY equates with the acceptable biological catch ("ABC"), which in turn is the level at which ACL should be set." Another commenter stated that, in specifying ACLs, a Council should not exceed MSY, because MSY—as opposed to ABC—is the "fishing level recommendation" that should not be exceeded per MSA 302(h)(6).

Response: MSA includes the terms "fishing level recommendations," "acceptable biological catch," and "annual catch limits" but does not define them. As such, NMFS has considered how to interpret these provisions in light of the statutory text and taking into consideration public comment during scoping and in response to the proposed NS1 guidelines. NMFS believes that ABC refers to a level of "catch" that is "acceptable" given the "biological" characteristics of the stock or stock complex. As such, OY does not equate with ABC. The specification of OY is required to consider a variety of factors, including social and economic factors, and the protection of marine ecosystems, which are not part of the ABC concept. The Councils determine the ACL, which may not exceed the fishing level recommendations of its science advisors. Of the several required SSC recommendations (MSA 302(g)(1)(B)), the ABC is most directly applicable as the constraint on the Council's ACL. Although MSY and ABC are both derived from a control rule, the ABC is the appropriate constraint on ACL because it is the annualized result of applying that control rule (thus is responsive to current stock abundance) whereas the MSY is the expected long-term average from a control rule. The Council should generally set the ACL lower than the ABC to take into account other factors related to preventing overfishing or achieving OY, or it may set the ACL equal to the ABC and take these additional factors into account when setting an ACT below the ACL.

Comment 34: Several commenters stated that NMFS's definition

framework for ACLs contains buffers that are not required by the Magnuson-Stevens Act and reduce or prevent the likelihood that OY can be achieved for a stock (Reducing a stock's OFL for scientific and management uncertainty, and OY factors results in too many reductions and makes it too difficult to achieve OY).

Response: NMFS believes that fisheries managers cannot consistently meet the requirements of the MSA to prevent overfishing and achieve, on a continuing basis, OY unless they address scientific and management uncertainty. The reductions in fishing levels that may be necessary in order to prevent overfishing should be only the amount necessary to achieve the results mandated by the MSA. Properly applied, the system described in the guidelines does not result in "too many deductions," but rather, sets forth an approach that will prevent overfishing, achieve on a continuing basis OY, and incorporate sufficient flexibility so that the guidelines can be applied in different fisheries.

Comment 35: Several commenters suggested that NMFS clarify language to ensure that all aspects of fishing mortality (e.g., dead discards and post-release mortality) are accounted for in the estimates of ABC or when setting the ACL, and that all catch is counted against OY. NMFS also received comments that accounting for bycatch mortality in data poor situations should not be required.

Response: NMFS agrees that all sources of fishing mortality, including dead discards and post-release mortality from recreational fisheries must be accounted for, but believes that language in § 600.310(e)(3)(v)(C), (f)(2)(i) and (f)(3)(i) in both the proposed and final action sufficiently explains that catch includes fish that are retained for any purposes, mortality of fish that have been discarded, allocations for scientific research, and mortality from any other fishing activity. NMFS, however, disagrees that, when bycatch data is lacking, managers could ignore this known source of fishing mortality. Ignoring a known source of fishing mortality because data are lacking leads to underestimating catch. Unless this is factored in—for instance, as increased uncertainty leading to more conservative ABC and appropriate AMs (including ACT control rules)—overfishing could occur. NMFS's National Bycatch Report (due to be published in late 2008 or early 2009) provides comprehensive estimates of bycatch of fish, marine mammals, and non-marine mammal protected resources in major U.S. commercial

fisheries. For instances where the National Bycatch Report does not provide bycatch data, NMFS suggests developing proxies based on National Bycatch Report bycatch ratios in similar fisheries until better data are available. For more information on the National Bycatch Report, see http://www.st.nmfs.noaa.gov/st4/nop/Outreach/NBR_Factsheet_Final.pdf. However, the decision about the best methodology for estimating bycatch should be made by the Council in consultation with its SSC, considering the best available scientific information.

Comment 36: One commenter requested clearer guidance for the specification of ABC and ultimately an ACL in cases where scientific uncertainty "overwhelms" the SSC's ability to make a valid ABC recommendation.

Response: The NS1 Guidelines recognize that precise quantitative assessments are not available for all stocks and some stocks do not have sufficient data for any assessment beyond an accounting of historical catch. It remains important to prevent overfishing in these situations, even though the exact level of catch that causes overfishing is not known. The overall guidance is that when stocks have limited information about their potential yield, harvest rates need to be moderated until such information can be obtained. Possible approaches include setting the ABC as 75% of recent average catch; see NMFS' Technical Guidance in Restrepo *et al.* (1998). NMFS is currently working on a report on control rules that will provide additional examples of possible approaches for data-limited situations as well as approaches that can use a better set of information.

Comment 37: ABC and ACT control rules should be revised to require consideration of life history characteristics (e.g., productivity, geographic range, habitat preferences, etc.) of a stock when setting control rules or catch limits.

Response: NMFS agrees that the productivity of stock, as well as the stocks susceptibility to the fishery should be considered when developing the ABC control rule. NMFS refers to these factors together as the vulnerability of stock, which is defined in § 600.310(d)(10) of the final action. The ABC control rule (see § 600.310(f)(4) of the final action) is based on scientific knowledge about the stock, which includes a stock's vulnerability to the fishery.

Regarding the ACT control rule, the final guidelines do not require that ACTs always be established, but provide

that ACTs may be used as part of a system of AMs. When used, ACT control rules address management uncertainty, which is not related to the productivity of the stock. As noted in § 600.310(g)(3) of the final action, however, a Council could choose a higher performance standard (e.g., a stock's catch should not exceed its ACL more often than once every five or six years) for a stock that is particularly vulnerable to the effects of overfishing. In considering the performance standard, a Council should consider if the vulnerability of the stock has been accounted for in the ABC control rule, so as not to double count this type of uncertainty and provide unduly cautious management advice.

Comment 38: NMFS received comments requesting that text in § 600.310(f) of the proposed action be modified to clarify that ABC may not equal or exceed OFL; Councils are required to establish ABC control rules; the ABC and ACT control rules must stipulate the stock level at which fishing will be prohibited; and ACL cannot equal or exceed the ABC.

Response: NMFS does not agree that the guidelines should prohibit ABC from being equal to OFL, or ACL from being equal to ABC. NMFS has added text to the guidelines (§ 600.310(f)(3) and (f)(4)) to clarify that it believes that ABC should be reduced from OFL in most cases, and that if a Council recommends an ACL which equals ABC, and the ABC is equal to OFL, the Secretary may presume that the proposal would not prevent overfishing, in the absence of sufficient analysis and justification for the approach. NMFS agrees that an ABC control rule is required. NMFS does not agree, however, that the ABC and ACT control rules must stipulate the level at which fishing is prohibited. Here it is important to distinguish between setting an annual level of catch equal to zero because the stock biomass is low, from prohibiting landings for the remainder of a fishing year because the ACL has already been achieved. For the first type of prohibition, an ABC control rule could stipulate the level at which fishing is prohibited due to low stock biomass, but such a low level of biomass is likely to be below the MSST which will invoke development of a rebuilding plan with associated modification of the ABC control rule for the duration of the plan. NMFS, however, disagrees that the ACT control rule should have a similar stipulation as the primary function of this control rule is to account for management uncertainty and to serve as the target for inseason management actions.

Comment 39: NMFS received several comments that spatial-temporal management of ACLs should be employed as an integral part of effective catch-limit management. The commenters noted that apportioning ACLs by seasons and areas could reduce bycatch, protect sensitive habitats, reduce competition among fishery sectors, avoid localized and serial depletions of stocks, and ensure geographic and seasonal availability of prey to key predators.

Response: NMFS acknowledges that spatial and temporal considerations of fishery removals from a stock can be important. Many fisheries currently incorporate spatial and temporal considerations. However, in the context of NS1, these considerations would be relevant only if the overfishing definition or the OY definition for a stock included spatial or temporal divisions of the stock structure. NMFS believes the guidelines give Councils flexibility to consider spatial and temporal issues in establishing ACLs for a stock, and does not agree that the NS1 guidelines need to specifically address this issue. Apportioning ACLs by seasons and areas could be considered as Councils develop conservation and management measures for a fishery to meet the full range of MSA requirements, including the NS for basing conservation and management measures upon the best scientific information available (NS2); taking into account the importance of fishery resources to fishing communities to provide sustained participation and minimize adverse economic impacts (NS8); minimizing bycatch (NS9); and allocating fishing privileges among various U.S. fishermen that are fair and equitable, reasonably calculated, and carried out in such a manner that no particular entity acquires an excessive share of the catch (NS4).

Comment 40: NMFS received several comments about the role of the SSC in specifying ABC. Several commenters stated that the final ABC recommendation should be provided by the SSC (i.e., final peer review process), rather than an additional peer review process. Some commenters expressed concern that both the SSC and peer review process would recommend an ABC, leaving the Council to use the lower of the two recommended ABC values. One comment stated that the SSC should have the discretion to recommend an ABC that is different from the result of the control rule calculation in cases where there was substantial uncertainty or concern relating to the control rule calculated ABC.

Response: NMFS agrees that the SSC should provide the final ABC recommendation to their Council. In the preamble of the proposed NS1 revisions, NMFS acknowledged that the statutory language could be subject to different interpretations (see p. 32532 of 73 FR 32526; June 9, 2008). MSA refers to not exceeding fishing level recommendations of "scientific and statistical committee or peer review process" in one place and SSC recommendations for ABC and MSY in another place. Compare MSA sections 302(h)(6) and 302(g)(1)(B). Section 302(g)(1)(E) of the MSA provides that the Secretary and a Council may, but are not required to, establish a peer review process. NMFS feels that the Council should not receive ABC recommendations from two different sources (SSC and peer review). In order to avoid confusion, and in consideration of the increased role of SSCs in the MSA, NMFS believes that the SSC should provide the ABC recommendation and Councils should establish a clear process for receiving the ABC recommendation (as described in § 600.310(f)(3) of this action). The advance notice of proposed rulemaking (ANPR) (73 FR 54132; September 18, 2008) for potential revision of the National Standard 2 Guidelines includes consideration of the relationship between SSCs and peer review processes. NMFS believes the roles of the peer review process and the SSC complement each other. For example, a peer review process may conduct an extensive technical review of the details of each stock assessment. The SSC can then use the assessment document and its peer review, consider unresolved uncertainties, seek consistency with assessment decisions made for other stocks in the region, and arrive at an ABC recommendation. In addition, NMFS agrees that SSCs could provide an ABC recommendation that differed from the result of the ABC control rule calculation based on the full range of scientific information available to the SSC. The SSC would have explain why the recommendation differed from the calculated value. NMFS has added clarifying language into § 600.310(f)(3) of this action.

Comment 41: NMFS received a variety of comments on the role of the SSC and suggestions that the SSC role should be clarified. Comments included: There should be a mandatory peer review of significant SSC recommendations; the SSC should be directed to draw information and recommendations from the broadest possible range of scientific opinion; the

SSC recommendation should include a discussion of alternative recommendations that were considered and alternative methodologies that were explored; what is the role of the SSC in providing recommendations for achieving rebuilding targets?; what is the SSC's role in providing "reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures and sustainability of fishing practices"?; the rule should clarify that the SSC is not charged with actually collecting the data and writing reports; the guidelines should specify the appropriate qualifications and membership of the SSCs and peer review process; the guidelines should specify the relative roles of the SSCs, peer review process, and Councils in establishing ACLs; the guidelines should specify the relative roles of NMFS, the Councils, the SSCs and the peer review process in selecting and evaluating AMs; NMFS should establish formal criteria for SSC membership, including formal training and/or experience in fisheries and/or ecological science or economics; NMFS should create oversight mechanisms and responsibility within NMFS to ensure that members are both qualified and acting in the public interest rather than representing stakeholders; NMFS should provide adequate training programs so that new members are well-prepared to meet these challenges; and NMFS should provide a mechanism for SSC members to identify and challenge political interventions, including potentially the development of a new scientific appeal function, staffed by a board of objective, external expert scientists.

Response: In developing the NS1 guidelines, NMFS focused on the SSC recommendation of the ABC as it is an important reference point for the Councils to use when developing ACLs. NMFS feels that the NS1 guidelines as proposed are clear in that the SSC provides the ABC recommendation and the Councils establish the ACLs. Both the ABC control rules and the ACT control rules could be developed with input from the SSC, Council, and peer review process as appropriate. NMFS believes that the NS1 guidelines adequately address the requirements for SSC recommendations that pertain to NS1. NMFS believes that other specific roles of the SSC would be more appropriately addressed in the National Standard 2 (NS2) guidelines.

Comment 42: Some commenters supported the proposed guidelines regarding the SSC, its relation to the Council, and provision of science advice such as ABC, but requested that the

guidelines further emphasize that managers follow the advice of their scientific advisors in all cases when setting catch limits. Other commenters opposed the provisions and stated that accounting for scientific uncertainty is a matter of policy, not science and therefore should be delegated to the Council. Instead, the commenters proposed that the SSC should be recommending the OFL and that the Council may not set an ACL in excess of the OFL as determined by the SSC.

Response: NMFS believes that determining the level of scientific uncertainty is not a matter of policy and is a technical matter best determined by stock assessment scientists as reviewed by peer review processes and SSCs. Determining the acceptable level of risk of overfishing that results from scientific uncertainty is the policy issue. The SSC must recommend an ABC to the Council after the Council advises the SSC what would be the acceptable probability that a catch equal to the ABC would result in overfishing. This risk policy is part of the required ABC control rule. The Council should use the advice of its science advisors in developing this control rule and should articulate the control rule in the FMP. In providing guidance on establishing a control rule for the ABC, NMFS recognizes that all estimates of the OFL are uncertain, and that in order to prevent overfishing with more than a 50 percent probability of success, the ABC must be reduced from the OFL. The guidance is clear that the control rule policy on the degree of reduction appropriate for a particular stock is established by the Council. To the extent that it results in the ABC being reduced from the OFL, the SSC is carrying out the policy established by the Council. NMFS disagrees that the SSC should recommend OFL and not ABC. The MSA specifies a number of things that make up the recommendations that SSCs provide to their Council including recommendations for ABC, preventing overfishing, MSY, achieving rebuilding targets, reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. Of these, the ABC is directly relevant as the fishing level recommendation that constrains the ACL.

Comment 43: One comment expressed that Councils must be allowed to specify information needed in the SAFE report.

Response: NMFS agrees. NMFS has removed the following sentence from § 600.310(b)(2)(v)(B) of the final action: "The SSC may specify the type of information that should be included in

the Stock Assessment and Fishery Evaluation (SAFE) report (see § 600.315)."

The contents of the SAFE report fall under the purview of the National Standard 2 (NS2) guidelines. NMFS is currently considering revising the NS2 guidelines, including modification of the language describing the content and purpose of SAFE reports. NMFS recently published an advance notice of proposed rulemaking (73 FR 54132; September 18, 2008) to revise the NS2 guidelines and encourages the public to provide comment.

Comment 44: One commenter believed the ACT should be a suggested component of a fishery management plan rather than a mandated component of an FMP. Although the ACT may clearly distinguish management uncertainty from other sources of uncertainty, adding a target does not fundamentally improve the process. It is more important to correctly adjust the ACL based on actual performance data than to create a separate target or ACT control rule based on theory to account solely for management uncertainty.

Response: The final guidelines do not require that ACTs always be established, but provide that ACTs may be used as part of a system of AMs. NMFS disagrees that a target does not fundamentally improve the process. ACL is to be treated as a limit—an amount of catch that the fishery should not exceed. The purpose of utilizing an ACT is so that, given uncertainty in the amount of catch that will result from the conservation and management measures in the fishery, the ACL will not be exceeded. Whether or not an ACT is explicitly specified, the AMs must address the management uncertainty in the fishery in order to avoid exceeding the ACL. ACLs are subject to modification by AMs.

Comment 45: One comment stated that the purpose of an ACT is to address "management uncertainty" which seems to be a very abstract and unquantifiable concept that the Councils are likely to struggle with.

Response: NMFS disagrees that management uncertainty is an abstract concept. It relates to the difference between the actual catch and the amount of catch that was expected to result from the management measures applied to a fishery. It can be caused by untimely catch data that usually prevents inseason management measures from being effective. Management uncertainty also results from underreporting, late reporting and misreporting and inaccurate assumptions about discard mortality of a stock in commercial and recreational

fisheries. One way to estimate management uncertainty is to examine a set of annual actual catches compared to target catches or catch quotas for a stock. If all or most of the catches fall closely around their target catches and don't exceed the OFL then management uncertainty is low; if actual catches often or usually result in overfishing then the management uncertainty is high and should be accounted for when establishing the AMs for a fishery, which may include setting an ACT.

Comment 46: NMFS received several comments regarding scientific and management uncertainty. In general these comments included: Clarify the meaning of scientific uncertainty; clarify that some types of uncertainty may not be considered in the ABC control rule process; increase research efforts in order to deal with scientific uncertainty; provide flexibility in the guidelines regarding how the Councils deal with uncertainty; and recognize that recreational fisheries are unduly impacted by the guidelines due to delayed monitoring of catch.

Response: Scientific uncertainty occurs in estimates of OFL because of uncertainty in calculations of MFMT, projected biomass amounts, and estimates in F (i.e., confidence intervals around those parameter estimates). In addition, retrospective patterns in estimates of future stock biomass and F (i.e., biomass may be overestimated and F underestimated on a regular basis) occur in some stock assessments and should be accounted for in determining ABC. NMFS revised the guidelines to make clear that all sources of scientific uncertainty—not just uncertainty in the level of the OFL—must be considered in establishing the ABC, and that SSCs may incorporate consideration of uncertainty beyond that specifically accounted for in the ABC control rule, when making their ABC recommendation. Management uncertainty should be considered primarily in establishing the ACL and AMs, which could include ACTs, rather than in specification of the ABC.

Comment 47: The definition of ABC in § 600.310(f)(2)(ii) of the proposed rule provides that ABC is a level of catch "that accounts for scientific uncertainty in the estimate of OFL" and is specified based on the ABC control rule. Scientific uncertainty is not and should not be limited to the estimate of OFL. That restriction would make it more difficult to implement other appropriate methods for incorporating scientific uncertainty in other quantities such as distribution of long term yield.

Response: NMFS agrees. NMFS has revised §§ 600.310(f)(2)(ii), (f)(2)(iii),

and (f)(4) of the action to state that ABC accounts for scientific uncertainty in the estimate of OFL and other scientific uncertainty.

Comment 48: Several commenters stated that buffers, or margins of safety, need to be required between the overfishing level and annual catch limits to account for uncertainty, and that the final action should require the use of such buffers to achieve a high probability that overfishing does not occur. NMFS received comments suggesting that buffers between limit and target fishing levels reduce the chance that overfishing will occur and should be recognized as an accountability measure. Other commenters thought that the provision for setting ACT less than ACL meant that a Council has no discretion but to establish buffers. They said that while buffers may be appropriate in certain circumstances, they may also prevent achievement of OY in some circumstances.

Response: As noted elsewhere, NMFS has revised the final guidelines: they do not require that ACTs always be established, but provide that ACTs may be used as part of a system of AMs. The guidelines are intended only to provide Councils with direction on how the requirements of NS1 can be met, incorporating the requirement for ACLs and AMs such that overfishing does not occur. To prevent overfishing, Councils must address scientific and management uncertainty in establishing ABC, ACLs, and AMs. In most cases, some reduction in the target catch below the limit will result. NMFS does not believe that requiring buffers is appropriate, as there may be circumstances where that is not necessary to prevent overfishing. However, the guidelines require that AMs in a fishery be adequate to prevent ACLs from being exceeded, and that additional AMs are invoked if ACL is exceeded.

Comment 49: Some commenters stated that Councils needed flexibility to effectively tailor fishery management plans to the unique conditions of their fisheries, and that Councils should also have flexibility in how to account for scientific and management uncertainty.

Response: NMFS agrees that Councils should have flexibility, so long as they meet the requirements of the statute. ACLs to prevent overfishing are required, and management and scientific uncertainty must be considered and addressed in the management system in order to achieve that objective. NMFS also believes that Councils should be as transparent and explicit as possible in how uncertainty is determined and addressed, and

believes the guidelines provide a good framework to meet these objectives.

Comment 50: One commenter supported NMFS' attention to scientific and management uncertainty, but thought that the better approach to deal with uncertainty is to reduce uncertainty. They stated that to accomplish this objective NMFS must increase its support for agency scientific research specific to stock assessments and ecosystem science.

Response: NMFS agrees. However, the processes proposed in the guidelines will address the current levels of uncertainty and accommodate reduced uncertainty in the future, as improvements in data are made.

Comment 51: Some commenters said that implementing ACLs would lead to economic disruption, particularly in the recreational fishing sector, because of a large degree of management uncertainty. One commenter cited difficulties in obtaining timely and accurate data, particularly for recreational fisheries, and asked if recreational allocations would have to be reduced due to delays in obtaining recreational harvest estimates.

Response: Preventing overfishing is a requirement of the MSA. The ACL mechanisms and AMs for a fishery must be adequate to meet that requirement, and in some cases, reductions in catch levels and economic benefits from a fishery may result. The specific impacts of implementing ACLs in a fishery will be analyzed when the ACLs are established in an FMP.

Comment 52: One commenter stated that the guidelines would require reducing catches well below existing OY levels, and that many species are known to be fished at low levels which are highly unlikely to lead to overfishing. They stated that this is inconsistent with responsible marine management and seems unlikely to represent the intent of Congress.

Response: Nothing in the guidelines would require a reduction in fishing if, in fact, the stocks are fished at low levels which are highly unlikely to lead to overfishing, and this conclusion is supported by science.

Comment 53: One commenter asked if OY could be specified for a fishery or a complex, or if the guidelines would require specification of OY for each species or complex.

Response: The guidelines provide that OY can be specified at the stock, stock complex or fishery level.

Comment 54: NMFS received several comments both supporting and opposing the use of inseason AMs (§ 600.310(g) of the proposed action). The commenters that supported the use

of inseason AMs typically suggested that the Councils and NMFS improve their capability to use inseason AMs and/or that NMFS must make inseason closure authority a required element of FMPs. Opponents of inseason AMs commented that it is more reasonable to implement AMs after reviewing annual fishery performance data; there is no requirement in the law to impose inseason measures; inseason closures without individual transferable quotas will generate derby fisheries; and the requirement to use inseason AMs whenever possible would be difficult where monitoring data is not available.

Response: MSA provides for ACLs to be limits on annual catch, thus it is fully appropriate and consistent with the Act that available data be utilized to prevent ACLs from being exceeded.

Conservation and management measures for a fishery should be designed so that ACLs are not routinely exceeded. Therefore, FMPs should contain inseason closure authority giving NMFS the ability to close fisheries if it determines, based on data that it deems sufficiently reliable, that an ACL has been exceeded or is projected to be reached, and that closure of the fishery is necessary to prevent overfishing. NMFS believes that the alternative result, which is that data are available inseason that show an ACL is being exceeded, but no management action is taken to prevent overfishing, would not meet the intent of the MSA. The MSA requires ACLs in all fisheries. It does not provide an exemption based on a concern about derby fishing. NMFS has modified the language in § 600.310(g)(2) of this action to indicate that "For fisheries without inseason management control to prevent the ACL from being exceeded, AMs should utilize ACTs that are set below ACLs so that catches do not exceed the ACL."

Comment 55: NMFS received some comments that generally expressed that AMs will be difficult to implement and that the provisions need to be clarified. Comments included: if an ACL is exceeded, a review by the Council must occur before implementation of the AMs; the Council must examine the "problem" that caused the overage—which means nothing will happen quickly; and it is not clear what "biological consequences" means in § 600.310(g)(3) of the proposed action.

Response: As proposed, AMs are management measures designed to prevent an ACL from being exceeded, as well as measures to address an overage of an ACL if it does occur. NMFS recommends that, whenever possible, Councils implement AMs that allow inseason monitoring and adjustment of

the fishery. The AMs should consider the amount of time required for a Council to conduct analyses and develop new measures. In general, AMs need to be pre-planned so they can be effective/available in the subsequent year, otherwise, there could be considerable delay from the time that an overage occurs to the time when measures are developed to address the overage. Not all overages may warrant the same management response. Consider hypothetically the example of a fishery for which a 3 fish bag limit with 16 inch minimum size is expected to achieve the target catch level without exceeding the ACL. For such a fishery, the Council might implement AMs such that, if the catch was under the ACL or exceeded it by less than 5 percent, the same bag and size limits would apply the following year. If the ACL was exceeded by 5–25 percent, the bag limit the following year would be reduced to 2 fish, and if the ACL was exceeded by more than 25 percent the bag limit would be reduced to 1 fish. The AMs could also address a situation where catch was below the target level, indicating that the initial measures might be too strict. The objective is to have pre-planned management responses to ACL overages that will be implemented in the next season, so that flawed management measures do not result in continuing overages for years while Councils consider management changes. An FMP must contain AMs (see § 600.310(c)(5) of the final action). However, NMFS believes that the FMP could contain more general framework measures and that specific measures, such as those described hypothetically above, could be implemented through harvest specifications or another rulemaking process.

By “biological consequences,” NMFS means the impact on the stock’s status, such as its ability to produce MSY or achieve rebuilding goals. For example, if information was available to indicate that, because of stronger than expected recruitment, a stock was above its B_{msy} level and continued to grow, even though the ACL was exceeded for the year, that could indicate that the overage did not have any adverse biological consequences that needed to be addressed through the AM. On the other hand, if the ACL for a long lived stock with low reproductive potential was exceeded by 100 percent, AMs should be responsive to the likelihood that some long-term harm to the stock may have been caused by the overage.

Comment 56: One commenter expressed concern about the term “re-evaluated” in §§ 600.310(g)(3) and (g)(4) in the proposed action. They stated that

this could imply that Councils simply have to increase ACLs when they have ACL exceedances, and suggested that, if catch exceeds ACL more than once in last four years, there should be automatic buffer increases in setting ACL below OFL to decrease likelihood of exceeding ACL.

Response: If the performance standard is not met, the Councils must re-evaluate the system of ACLs and AMs, and modify it if necessary so that the performance standard is met. Since the ACL cannot exceed the ABC recommended by the SSC, NMFS does not believe that the scenario described by the commenter would arise. NMFS also does not believe that the guidelines should recommend automatic buffer increases in this case. The specific factors that caused the performance standard to not be met need to be analyzed and addressed. NMFS also notes that, in addition to this re-evaluation of the system of ACLs and AMs, AMs themselves are supposed to prevent and address ACL overages.

Comment 57: Several comments were received related to accountability measures for when catch exceeds the ACL. Some comments supported the concept that a full payback of ACL overages should be required for all stocks. Comments included: Overage deductions should be normal business for rebuilding and healthy stocks alike; NMFS should require all overages to be accounted for in full for all managed fisheries no later than when the ACL for the following fishing year is determined; and overage deductions must be viewed as an independent requirement from actions geared to preventing overages from occurring in the future, such as modifications of management measures or changes to the full system of ACLs, ACTs, and AMs.

Response: MSRA is silent with regard to mandatory payback of ACL overages. However, in developing the ACL provisions in the MSRA, it appears that Congress considered mandatory paybacks and did not include that requirement in the MSRA. NMFS believes that paybacks may be an appropriate AM in some fisheries, but that they should not be mandated, but rather considered on a case by case basis for stocks and stock complexes that are not in a rebuilding plan.

Comment 58: Several comments opposed the concept of an overage adjustment when catch exceeds the ACL for stocks that are in rebuilding plans (§ 600.310(g)(3) of the proposed action). Comments included: The MSA does not require this, this provision was removed from the drafts of the MSRA, and a full “payback” the following year may be

unnecessary. Other comments supported the concept but wanted to strengthen § 600.310(g)(3) of the guidelines to remove text that stated: “unless the best scientific information available shows that a reduced overage adjustment, or no adjustment, is needed to mitigate the effects of the overages.”

Response: NMFS believes that more stringent requirements for AMs are necessary for stocks in rebuilding plans. MSA 304(e)(3) provides that, for overfished stocks, an FMP, FMP amendment, or proposed regulations are needed to end overfishing immediately in the fishery and rebuild overfished stocks. There are a number of examples where failure to constrain catch to planned levels early in a rebuilding plan has led to failure to rebuild and the imposition of severe catch restrictions in later years in order to attempt to meet the required rebuilding timeframe. Thus, for rebuilding stocks, NMFS believes that an AM which reduces a subsequent year’s ACL by the amount of any overage is appropriate, and will help prevent stocks failing to rebuild due to annual rebuilding targets being exceeded. NMFS does provide that if there is an analysis to show that all or part of the deduction is not necessary in order to keep the stock on its rebuilding trajectory, the full overage payback is not necessary. For example, an updated stock assessment might show that the stock size has increased faster than expected, in spite of the overage, and that a deduction from the subsequent ACL was not needed. For most rebuilding stocks, assessments cannot be updated annually, and in the absence of such analytical information, NMFS believes that the guideline provision is necessary to achieve rebuilding goals for overfished stocks.

Comment 59: Some commenters expressed support for the AMs as proposed and agreed that AMs should prevent catch from exceeding the ACL and address overages if they should occur. Other commenters suggested that AMs should be tied to overfishing or that AMs should be triggered when catch exceeds the ABC (as opposed to the ACL). Some commenters expressed that the MSA does not require the application of AMs if the ACL is exceeded.

Response: In developing the guidelines, NMFS considered using OFL or ABC as a point at which mandatory AMs should be triggered. However, NMFS believes that Congress intended the ACL to be a limit, and as such, it should not be exceeded. In addition, “measures to ensure accountability” are required in association with the ACL in MSA section 303(a)(15). Therefore, it is

most appropriate to apply AMs if the ACL is exceeded. In addition, the purpose of ACLs is to prevent overfishing, and AMs triggered at the ACL level should be designed so that the ABC and OFL are not exceeded.

Comment 60: Several comments were received regarding the proposed performance standards. The performance standard that NMFS proposed in the proposed action stated that: "If catch exceeds the ACL more than once in the last four years, the system of ACLs, ACTs and AMs should be re-evaluated to improve its performance and effectiveness." In cases where AMs are based on multi-year average data, the proposed performance standard stated: "If average catch exceeds the average ACL more than once in the last four years, then the ACL, ACT and AM system should be re-evaluated." The commenters that supported the proposed performance standard suggested that it would allow the Council more flexibility in the management of their fisheries with ACLs. Commenters that disliked the proposed performance standard suggested that the Councils should have more flexibility in determining the performance standards, expressed concerns that the performance standard may not be precautionary enough, or expressed that it was arbitrary.

Response: NMFS believes it is important to establish a performance standard to establish accountability for how well the ACL mechanisms and AMs are working that is consistent across all Councils and fisheries. NMFS believes that ACLs are designed to prevent overfishing and that it is important to prevent catches from exceeding ACLs. NMFS also believes that, given scientific and management uncertainty, it is possible that catch will occasionally exceed ACL for a given stock or stock complex. However, it would be unacceptable to allow catch to continually exceed ACL. Therefore, NMFS proposed the performance standard to allow for some flexibility in the management system but also prevent overfishing. It should not limit a Council from establishing stronger performance measures, or from reevaluating their management measures more often. Notwithstanding the performance standard, if, at any time, a Council determines that the conservation and management measures for a fishery are not achieving OY while preventing overfishing, it should revise the measures as appropriate.

Comment 61: Several comments were received that suggested that fishery managers should or be required to re-evaluate the system of ACLs, ACT and

AMs every time catch exceeds ACL. In addition, some expressed that NMFS should make clear that the "reevaluation" called for in the proposed action does not authorize simply raising ACLs or other numeric fishing restrictions in order to avoid the inconvenient fact that they have been exceeded.

Response: NMFS does not agree that a re-evaluation of the entire system of ACLs and AMs should be required every time an ACL is exceeded. If catch exceeds ACL in any one year, or if the average catch exceeds the average ACL, then AMs will be implemented and they should correct the operational issues that caused the overage, as well as any biological consequences resulting from the overage. Councils should be allowed the opportunity to see if their AMs work to prevent future overages of the ACL.

Comment 62: NMFS received comments that requested clarification or changes to the proposed performance standard. For example, one commenter suggested that NMFS should require a higher performance standard for vulnerable stocks. Two commenters expressed that the performance standard should apply at the stock or stock complex level as opposed to the fishery or FMP level. Another commenter questioned if the performance standard was if catch exceeds the ACL more than once in the last four years or if average catch exceeds the average ACL more than once in the last four years. NMFS also received some comments about the phrase "to improve its performance and effectiveness" in paragraph § 600.310(g)(3) of the proposed action. Those comments included: The phrase does not make sense in this context, because simply re-evaluating a system cannot improve its performance or effectiveness (only changing a system can do so); and use of this phrase in § 600.310(g)(3) is inconsistent with a similar sentence in paragraph § 600.310(g)(4) of the proposed action, where the same requirement is expressed, but this phrase does not appear.

Response: NMFS stated in the preamble of the proposed guidelines that a Council could choose a higher performance standard for a stock that is particularly vulnerable to the effects of overfishing. While NMFS agrees that a higher performance standard could be used for a stock or stock complex that is particularly vulnerable, NMFS believes the discretion to use a higher performance standard should be left to the Council. To reiterate this point, NMFS is adding additional language in § 600.310(g)(3) of the final action. NMFS intended that the performance standards

would apply at the stock or stock complex level and is adding additional clarifying language in the regulatory text. The National Standard 1 guidelines as proposed offered two performance standards, one applies when annual catch is compared to the ACL for a given stock or stock complex, as described in paragraph § 600.310(g)(3) of this action, the other performance standard applies in instances when the multi-year average catch is compared to the average ACL, as described in § 600.310(g)(4) of this action. NMFS intended that in both scenarios, if the catch exceeds the ACL more than once in the last four years, or if the average catch exceeds the average ACL more than once in the last four years, then the system of ACLs and AMs should be re-evaluated and modified if necessary to improve its performance and effectiveness. NMFS has modified language to § 600.310(g)(3) and (4) of this action to clarify this issue.

Comment 63: NMFS received several suggestions to require a specific and high probability of success in either preventing overfishing, preventing catch from exceeding the ACL, or achieving the ACT. Comments included: The rule should make clear that management measures must have a high probability of success in achieving the OY or ACT; we recommend a probability of at least eighty percent of achieving the OY or ACT; NMFS should establish a performance standard that defines low risk, as well as an acceptable probability of successfully managing catch levels of 90 percent; National Standard guidelines should explicitly define the maximum acceptable risk of overfishing. One commenter cited to several court cases (NRDC v. Daley, Fishermen's Dock Coop., and Coastal Conservation Ass'n) and stated that the ACT control rule should be revised to state that the risk of exceeding the ACL due to management uncertainty is no greater than 25 percent.

Response: Considering and making appropriate allowances for uncertainty in science and management is emphasized in the NS1 guidelines. NMFS believes that, if this is done, ACLs will not often be exceeded, and when they are, the overages will typically be small and will not jeopardize the status of the stock. Fisheries where ACLs are exceeded regularly or by large amounts should be quickly modified to improve the measures.

During the initial scoping period, NMFS received many comments on the topic of setting a specific probability of success; some commenters expressed that a 50 percent probability of success is all that is legally required, while other

commenters expressed that the probability of success should be higher (e.g. 75 or 100 percent). When developing the definition framework of OFL, ABC, ACL, and ACT, NMFS considered including specific probabilities of success regarding preventing overfishing or preventing catch from exceeding ACL. NMFS did not specify a particular probability in the NS1 guidelines, for a number of reasons. NMFS did not believe it had a basis for picking a specific probability number that would be appropriate for all stocks and stock complexes in a fishery. Councils should analyze a range of alternatives for the probability that ACL will not be exceeded or that overfishing will not occur. NMFS recognizes that fisheries are different and that the biological, social and economic impacts of managing at a specific probability will differ depending on the characteristics of the fishery. NMFS also recognizes that it is not possible to calculate a probability of success in many fisheries, due to data limitations.

NMFS does not believe that MSA and relevant case law require use of specific probabilities. However, a 50 percent probability of success is a lower bound, and NMFS believes it should not simply be used as a default value. Therefore, in § 600.310(f)(4) of the final action, NMFS states that the determination of ABC should be based, when possible, on the probability that catch equal to the stock's ABC would result in overfishing, and that this probability cannot exceed 50 percent and should be a lower value.

To determine if the system of ACLs was working adequately, NMFS decided to establish a performance standard in terms of the frequency that ACLs were exceeded. The comparison of catch to an ACL is a simpler task than calculating a probability of success, and can be applied to all fisheries, albeit some fisheries have more timely catch data than others. This does not preclude the Councils from using the probability based approach to setting limits and targets in their fisheries if they are able to do so.

Comment 64: Several comments were received urging NMFS to either require or encourage the use of sector ACLs and AMs and hold each sector accountable. Comments expressed that to provide the right incentives for conservation, catch reductions and increases must be tied to compliance and performance in adhering to ACLs. One commenter stated that MSA 303(a)(14) compels distinct ACLs and AMs for each sector due in part to the variation in management uncertainty among sectors. Sector management should be required

in FMPs to ensure equitable treatment for all stakeholder groups including harvest restrictions and benefits to each sector.

Response: Separate ACLs and AMs for different fishery sectors may be appropriate in many situations, but the Councils should have the flexibility to determine this for each fishery. The decision to use sectors should be at the discretion of each Council. NMFS agrees that, if Councils decide to use sectors, each sector should be held accountable if catches for a sector exceed sector-ACLs. In addition, the NS1 guidelines provide that the ACL/AM system must protect the stock or stock complex as a whole. NMFS does not believe that MSA necessarily compels use of sector ACLs and AMs, thus the final action does not require their use. However, in developing any FMP or FMP amendment, it is important to ensure consistency with MSA 303(a)(14), NS 4, and other MSA provisions. Section 303(a)(14) pertains to allocation of harvest restrictions or recovery benefits fairly and equitably among commercial, recreational, and charter fishing sectors. NS 4, in part, pertains to fair and equitable allocations.

Comment 65: Some commenters expressed that managing recreational fisheries with ACLs and AMs will be difficult as they typically lack timely data. Comments included: The initiative to set ACLs and AMs for any fishery that has a recreational component cannot be done and any attempt will be arbitrary at best; in-season management is impractical in most recreational fisheries; current data collection programs used to evaluate recreational fishing activity do not offer a level of confidence to fisheries managers or fishermen to implement ACL in the recreational sector; and NMFS should improve recreational data collection to a level where inseason management is possible.

Response: NMFS acknowledges that recreational fisheries often do not have timely catch data and that is why NMFS suggested the multi-year averaging provision for AMs. NMFS and the Council still need to meet the mandate of the MSA and have ACLs for all fisheries. NMFS is developing a new data collection program for recreational fisheries to improve the data needed to implement the new provisions of the MSA.

Comment 66: Some commenters suggested that for recreational fisheries, catch limits should be expressed in terms of fishing mortality rates or in terms of numbers of fish instead of pounds of fish.

Response: NMFS intends that ACLs be expressed in terms of weight or numbers of fish. In fact, the definition of "catch" in the proposed guidelines indicates that catch is measured in weight or numbers of fish. NMFS disagrees that ACL can be expressed in terms of fishing mortality rates. While conservation and management measures for a fishery can be designed to achieve a target fishing mortality rate, the fishing mortality rates that are achieved can only be estimated by performing a stock assessment. Stock assessments usually lag the fishery by a year or more, and are not suitable as the basis for ACL accountability measures.

Comment 67: One commenter suggested that when recreational fisheries account for a significant portion of the catch, the buffers should be correspondingly larger to account for the management uncertainty.

Response: NMFS believes that management uncertainty should be addressed in all fisheries. Accountability measures may include an ACT set below the ACL based on the degree of uncertainty that the conservation and management measures will achieve the ACL. This applies to all fisheries, commercial or recreational.

Comment 68: NMFS received a few comments expressing that Councils should have flexibility when specifying AMs.

Response: NMFS agrees and believes that the guidelines provide this flexibility.

Comment 69: AMs should be approved by the Secretary of Commerce, should be subject to regular scientific review, and should provide opportunities for public comment; performance must be measurable and AMs must be modified if not working; AMs should be reviewed annually as part of the catch specification process.

Response: AMs will be implemented through public processes used for amending FMPs and implementing regulations. There is no need for additional guidance in the NS1 guidelines.

Comment 70: NMFS received comments that support the use of AMs based on comparisons of average catch to average ACL, if there is insufficient data to compare catch to ACL, either inseason or on an annual basis. In recreational fisheries, the use of a three-year rolling average ACL would moderate wild swings in ACLs due to variable fishing conditions and participation from year to year. Flexibility, such as the use of a multi-year average for the recreational sector, is needed due to limitations in the data collection. However, some commenters

expressed concerns about using the multi-year averaging approach and stated that it should be used rarely. In order to use such an approach, Councils should provide clear and compelling reasons in their FMPs as to why the use of multi-year average data are necessary and a plan for moving the fishery to AMs based on annual data. The guidelines should make it clear that AMs will be triggered annually in cases where the average catch exceeds the average ACL. NMFS should engage its quantitative experts in an investigation of the performance of using multi-year averages for managing highly variable fisheries with poor inseason data. Until such results are available, NMFS should use annual statistics for management of all fisheries, including those involving highly variable stocks or catch limits.

Response: Use of AMs based on comparison of average catch to average ACL is only appropriate in a limited number of fisheries, such as fisheries that have high variability in the estimate of total annual catch or highly fluctuating annual catches and no effective way to monitor and control catches inseason. NMFS intends that a comparison of the moving average catch to the average ACL would be conducted annually and that AMs would be implemented if average catch exceeds the average ACL. If the average catch exceeds the average ACL more than once in the last four years, then the system of ACLs and AMs should be re-evaluated and modified if necessary to improve its performance and effectiveness. NMFS agrees that the Council should analyze and explain why they are basing AMs on multi-year averaged data. NMFS has added clarifying language to § 600.310(g)(4) of the final action to make these points clear. Future improvements in data and management approaches should also be pursued so that true annual accountability for catch can be achieved. In addition, NMFS believes that AMs such as the use of ACT may be appropriate in fisheries that use the multi-year averaging approach.

Comment 71: Several comments were received regarding ACLs and AMs for fisheries that occur partly in state waters. Some comments stated that accountability measures for State-Federal fisheries could use further elaboration and should specifically address fisheries where management had been delegated to the state. Some commenters supported separate ACLs and AMs for Federal and state portions of the fishery, while others wanted combined overall ACLs and AMs. Some comments disagreed that closure of Federal waters while fishing continues

in non-Federal waters is a preferred option, and that efforts should be made to undertake cooperative management that allows coordinated responses.

Response: When stocks are co-managed by Federal, state, tribal, and/or territorial fishery managers, the goal should be to develop collaborative conservation and management strategies to prevent overfishing of shared stocks and ensure their sustainability. NMFS encourages collaboration with state managers to develop ACLs and AMs that prevent overfishing of the stock as a whole. As FMPs currently consider whether overfishing is occurring for a stock or stock complex overall, NMFS thinks it is appropriate to specify an overall ACL for the stock or stock complex. This ACL could be subdivided into state and Federal ACLs, similar to the approach used for sector-ACLs. However, NMFS recognizes that Federal management authority is limited to that portion of the fishery under Federal jurisdiction and therefore the NS1 guidelines only require AMs for the Federal fishery. The AMs could include closing the EEZ when the Federal portion of the ACL is reached, closing the EEZ when the overall stock or stock complex's ACL is reached, or other measures. NMFS recognizes the problem that may occur when Federal fisheries are closed but fishing continues in state waters. NMFS will continue to work with states to ensure consistency and effectiveness of management measures. If Councils delegate management under an FMP to the states, the FMPs still need to meet the requirements of the MSA, including establishment of ACLs and AMs.

Comment 72: One commenter asked, in the case where ACLs are exceeded because of the regulatory failures of one state, if other states in the Council's or the Atlantic States Marine Fisheries Commission's (ASMFC) area of jurisdiction be affected through mandatory AMs. Barring state-by-state allocations for all species (as with summer flounder), the proposed regulations could punish commercial fishermen and anglers in all states in a region.

Response: The guidelines acknowledge that NMFS and the Councils cannot mandate AMs on state fisheries. However, NMFS encourages collaboration between state and Federal managers to develop ACLs and AMs to prevent overfishing for the stock as a whole. In cases where there is collaboration, accountability measures for the fishery should be designed to address this issue. Specific AMs that may be needed would have to be

evaluated and addressed on a case-by-case basis.

Comment 73: NMFS received a question regarding the meaning of the phrase "large majority" in § 600.310(g)(5) of the proposed action. NMFS had stated that: "For stocks or stock complexes that have a large majority of harvest in state or territorial waters, AMs should be developed for the portion of the fishery under Federal authority and could include closing the EEZ when the Federal portion of the ACL is reached, or the overall stock's ACL is reached, or other measures." The commenter stated that the meaning of the term "large majority" and its importance is not clear and should therefore be eliminated.

Response: NMFS agrees that ACL and AMs need to be established for all stocks and stock complexes in Federal fisheries regardless of the whether a large majority of harvest occurs in state waters. NMFS agrees the amount, *i.e.*, "large majority," is not pertinent to this provision. Therefore, § 600.310(f)(5)(iii) and (g)(5) have been revised in the final action.

Comment 74: NMFS received several comments noting that NMFS should require or recommend the use of limited access privilege programs (LAPPs) or catch shares by Councils in the final rule. Many commenters referenced an article on catch shares (Costello *et al.* 2008).

Response: The article cited above and other articles note the potential benefits of LAPPs. NMFS supports use of LAPPs, and believes they can be a beneficial approach to use in implementing effective ACLs. However, while ACLs are required in all fisheries, under the MSRA, LAPPs are optional and at the discretion of each Council. NMFS does not have authority to require Councils to use LAPPs, but is currently developing guidelines on LAPPs that will be published for public comment in the future.

Comment 75: One comment requested that NMFS expand the concept of accountability measures to include effective catch monitoring, data collection and analysis, and enforcement. The commenter suggested that for accountability measures that are not LAPPs, managers should demonstrate how the measures will ensure compliance with the ACLs as well as improve data and enforcement, reduce bycatch, promote safety, and minimize adverse economic impacts at least as well as LAPPs.

Response: NMFS agrees that catch monitoring, data collection and analysis, and enforcement are all important to consider in developing

AMs for a fishery and believes the guidelines are adequate. Under § 600.310(i) of the final action, FMPs, or associated documents such as SAFE reports, must describe data collection methods. In addition, § 600.310(g)(2) of the final action, states that whenever possible, inseason AMs should include inseason monitoring and management measures to prevent catch from exceeding ACLs. NMFS believes the guidelines are clear that catch monitoring data is very important to consider when Councils establish their AMs. Councils are already directed to: minimize adverse economic impacts under National Standard 8; minimize bycatch and bycatch mortality under National Standard 9; and promote safety of human life at sea under National Standard 10. See MSA 301(a)(8), (9), and (10) (setting forth specific requirements of the national standards).

Comment 76: NMFS received comments expressing concern about establishing ACL and AM mechanisms in FMPs. One commenter expressed concern that if ACL and AM mechanisms were located in the FMP, it would require a multi-year process to change any measure. They instead suggested that Councils should have the ability to framework the mechanisms and establish an annual or multi-year process for making adjustments. Another commenter suggested that Councils should be required to modify their SOPPs to incorporate a mechanism for specifying ACLs and reviewing AMs annually through regular catch specification procedures. NMFS received another comment that disagreed with the idea that the Council's SOPPs are the proper place to describe the process for establishing ABC Control Rules, including the role of SouthEast Data Assessment and Review (SEDAR) and the SSC. This commenter recommended instead that ABC Control Rules be included in Fishery Management Plans and have the ability to refine management through framework actions.

Response: The FMP needs to contain the ACL mechanisms and AMs, as they are part of the conservation and management measures for the fishery. The ACL mechanisms and AMs can contain framework provisions and utilize specification processes as appropriate. NMFS does not agree that the ACL and AM mechanisms should be established in the SOPPs. Also, NMFS never intended that ABC control rules would be described in the SOPPs and agrees that the ABC control rules should be described in the Fishery Management Plans. However, it is important to understand how the Councils, SSC, and

peer review process work together to implement the provisions of the MSA, and that can be explained in the SOPPs, FMP, or some other document.

Comment 77: NMFS received several comments supporting the exception to the ACL rule for stocks with a life cycle of approximately one year. Commenters asked for a list of species which fit the exception, specific guidance on how to set ACLs for these stocks if they become overfished, and expansion of the exception to species with a two year life cycle.

Response: Due to their unique life history, the process for setting ACLs does not fit well for stocks which have a life cycle of approximately one year. The exception for species with an annual life cycle allows flexibility for Councils to use other management measures for these stocks which are more appropriate for the unique life history for each stock and the specifics of the fishery which captures them. NMFS believes that the final guidance should not include a list of stocks which meets these criteria; this is a decision that is best made by the regional Councils. Even though ACLs are not required for these stocks, Councils are still required to estimate other biological reference points such as SDC, MSY, OY, ABC and an ABC control rule. However, the MSA limits the exception and clearly states that if overfishing is occurring on the stock, the exception can not be used, therefore ACLs would be required. MSA only provided for a 1-year life cycle exception, thus NMFS cannot expand the exception to two years. Section (h)(3) of the final action acknowledges that there may be circumstances when flexibility is needed in applying the NS1 guidelines. Whether such flexibility is appropriate for certain two year life cycle species would have to be considered on a case-by-case basis.

Comment 78: NMFS received many comments expressing different interpretations of the MSA's ACL international exception. Some commented that the exception only pertains to the 2010/2011 timing requirement. If fisheries under international agreements were intended to be exempt from ACLs, Congress could have drafted the exception to say that ACLs "shall not apply" to such fisheries, similar to language used in the one-year life cycle exception. Several comments stated that by requiring ACLs for U.S. fishermen, the U.S. would be in a better bargaining position in international fora by taking the "higher ground." Others agreed with the exception as set forth in the proposed guidelines but requested clarification.

For example, one comment was that the exception should be expanded to cover the US/Canada Resource Sharing Understanding and other arrangements that may not be formal international agreements. Other suggestions included clarifying that the exception applied where a regional fishery management organization had approved a stock assessment, where there were conservation and management measures under an international agreement, or where there were annual catch limits established under international agreement consistent with MSA overfishing and rebuilding requirements.

Response: The ACL international exception is set forth in an uncodified note to MSA section 303. MSRA, Public Law 109-479 section 104(b)(1). The text is vague, and NMFS has spent considerable time looking at different possible interpretations of this text in light of the plain language of the text, public comments, and other relevant MSA provisions. NMFS agrees that one possible interpretation, in light of the text of the one-year life cycle exception (MSRA section 104(b)(2)), is that stocks under international management are only exempt from timing requirements. However, Congress added significant new requirements under the MSRA regarding international fisheries, thus NMFS has tried to interpret the exception in light of these other statutory provisions.

In many fisheries, the U.S. unilaterally cannot end overfishing or rebuild stocks or make any measurable progress towards those goals, even if it were to stop all U.S. harvest. Thus, it has signed onto various treaties and negotiates binding, international conservation and management measures at regional fishery management organizations (RFMOs) to try to facilitate international efforts to end overfishing and rebuild overfished stocks. MSRA acknowledged the challenges facing the United States in international fisheries by, among other things, including a new "International Overfishing" section (MSA section 304(i)) that refers domestic regulations to address "relative impact" of U.S. vessels; changes to highly migratory species provisions (MSA section 102(b)-(c)); and amendments to the High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826h-1826k, to encourage strengthening of RFMOs and establish a process for identification and certification of nations whose vessels engage in illegal, unreported or unregulated (IUU) fishing and bycatch of protected living marine resources.

While NMFS actively communicates and promotes MSA requirements regarding ending overfishing and rebuilding overfished stocks at the international level (*see, e.g.*, MSA section 102(c)), it is unlikely that RFMOs will adopt ACL/AM mechanisms as such mechanisms are understood and required in the context of U.S. domestic fisheries. Given the practical problem of ensuring the U.S. could negotiate such mechanisms, and Congress' clear recognition of U.S. fishing impact versus international fishing effort, NMFS believes that a reasonable interpretation of the exception is that it should apply to the ACL requirement, not just the effective date. If ACLs were required, a likely outcome is that U.S. fishermen may be subject to more restrictive measures than their foreign counterparts, *e.g.*, each country may be assigned a catch quota but the U.S. portion may be subject to further restriction below the assigned amount. Further, requiring ACLs may raise potential conflicts with implementing legislation for some of the international fishery agreements.

NMFS believes that the intent of MSRA is to not unfairly penalize U.S. fishermen for overfishing which is occurring predominantly at the international level. In many cases, applying ACL requirements to U.S. fishermen on just the U.S. portion of the catch or quota, while other nations fished without such additional measures, would not lead to ending overfishing and could disadvantage U.S. fishermen. The guidance given for the international exception allows the Councils to continue managing the U.S. portion of stocks under international agreements, while the U.S. delegation works with RFMOs to end overfishing through international cooperation. The guidelines do not preclude Councils or NMFS from applying ACLs or other catch limits to stocks under international agreements, if such action was deemed to be appropriate and consistent with MSA and other statutory mandates.

NMFS considered different suggestions on how the exception might be clarified, *e.g.*, exception would only apply where there is an approved stock assessment, conservation and management measures, annual catch limits consistent with MSA overfishing and rebuilding requirements, etc. Regardless of how the exception could be revised, establishing ACL mechanisms and AMs on just the U.S. portion of the fishery is unlikely to have any impact on ending overfishing and rebuilding. For these reasons, and taking into consideration possible statutory

interpretations and public comment, NMFS has decided not to revise the international exception.

With regard to whether an arrangement or understanding is an "international agreement," it will be important to consider the facts and see if the arrangement or understanding qualifies as an "international agreement" as understood under MSA section 3(24) (defining "international fishery agreement") and as generally understood in international negotiation. The Case-Zablocki Act, 1 U.S.C. 112b, and its implementing regulations provide helpful guidance on interpreting the term "international agreement."

Comment 79: With regard to fisheries data (§ 600.310(i) of NS1 guidelines), comments included: data collection guidelines are burdensome, clarification is needed on how the Councils would implement the data collection requirements, and that data collection performance standards and real-time accounting are needed.

Response: NMFS believes that § 600.310(i) of the final action provides sufficient guidance to the Councils in developing and updating their FMPs, or associated public documents such as SAFE reports, to address data needed to meet the new requirements of the MSRA. There is a close relationship between the data available for fishery management and the types of conservation and management measures that can be employed. Also, for effective prevention of overfishing, it is essential that all sources of fishing mortality be accounted for. NMFS believes that detailing the sources of data for the fishery and how they are used to account for all sources of fishing mortality in the annual catch limit system will be beneficial. NMFS revised the final guidelines to clarify that a SAFE report, or other public document adopted by a Council, can be used to document the required fishery data elements.

Comment 80: NMFS received several comments requesting that better data be used when creating conservation and management measures.

Response: NMFS agrees that improvements in fishery data can lead to more effective conservation and management measures, including ACLs. NMFS is aware of the various gaps in data collection and analysis for FMPs in U.S. fisheries, and has ongoing and future plans to improve the data needed to implement the new provisions of the MSRA. NMFS programs and initiatives that will help produce better quality data include the: Marine Recreational Information Program (MRIP), National

Permits System, and Fisheries Information and National Saltwater Angler Registry.

Comment 81: Some comments recognized the ongoing programs to improve data, but were concerned that the time that it would take to implement and fold these new data into the management process could cause overly restrictive measures when implementing ACLs on fisheries that are data poor (*e.g.* recreational fisheries).

Response: ACLs must be implemented using the best data and information available. Future improvements in data will allow corresponding improvements in conservation and management measures. This is an incremental process. NMFS believes that Councils must implement the best ACLs possible with the existing data, but should also look for opportunities to improve the data and the ACL measures in the future. It is important that the ACL measures prevent overfishing without being overly restrictive. In data poor situations, it is important to monitor key indicators, and have accountability measures that quickly adjust the fishery in response to changes in those indicators.

Comment 82: Some commenters noted they want more transparency in the data being used to manage fisheries.

Response: NMFS believes the NS1 guidelines provide sufficient guidance to the Councils in developing and updating their FMPs, or associated public documents such as SAFE reports, to address data needed to meet the new requirements of the MSRA. NMFS agrees that transparency in the Council process and NMFS decision process in regard to data and data analysis is critical to the public and user groups understanding of how fisheries are managed. NMFS is aware of this issue and will continue to seek improvements in such processes.

Comment 83: NMFS received several comments about the timing associated with submitting a rebuilding plan. Commenters asked for clarification on when the clock started for the implementation of the plan, stated that Councils should have two years to submit the plan to the Secretary, and suggested that a 6-month review/implementation period be used instead of a 9-month period. Commenters noted that MSA provides for specific time periods for Secretarial review.

Response: Ending overfishing and rebuilding overfished stocks is an important goal of the MSA and the performance of NMFS is measured by its ability to reach this goal. Currently, the Council has 12 months to submit an FMP, FMP amendment, or proposed

regulations to the Secretary, but there is no time requirement for implementation of such actions. MSA section 304(e)(3), which is effective July 12, 2009, requires that a Council prepare and implement an FMP, FMP amendment, or proposed regulations within 2 years of the Secretary notifying the council that the stock is overfished or approaching a condition of being overfished. The guidelines provide that such actions should be submitted to the Secretary within 15 months so NMFS has 9 months to review and implement the plan and regulations. NMFS recognizes that there are timing requirements for Secretarial review of FMPs and regulations (MSA section 304(a),(b)). The 15-month period was not intended to expand the time for Secretarial review, but rather, to address the new requirement that actions be implemented within two years. NMFS believes the timing set forth in the guidelines is appropriate as a general rule: it would continue to allow for 60 days for public comment on an FMP, 30 days for Secretarial review, and 6 months for NMFS to implement the rebuilding plan. However, in specific cases NMFS and a Council may agree on a schedule that gives the Council more time, if the overall objective can still be met.

Comment 84: NMFS received many comments in support of the language regarding ending overfishing immediately. One comment, however, stated that intent of the MSA is to end all overfishing, not just chronic overfishing, as described in the preamble.

Response: NMFS agrees that the intent of the MSA is to end overfishing, and in the context of a rebuilding plan, overfishing must be ended immediately. However, as long as fishing is occurring, there always is a chance that overfishing may occur given scientific and management uncertainty. The guidelines explain how to incorporate scientific and management uncertainty so that fishing may continue but with an appropriately low likelihood of overfishing. The term "chronic overfishing" is used to mean that annual fishing mortality rates exceed the MFMT on a consistent basis over a period of years. The MSA definition of overfishing is "* * * a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis." NMFS believes that the best way to ensure that overfishing does not occur is to keep annual fishing mortality rates below the MFMT. However, exceeding the MFMT occasionally does not necessarily

jeopardize the capacity of a fishery to produce the MSY on a continuing basis. The more frequently MFMT is exceeded, the more likely it becomes that the capacity of a fishery to produce the MSY on a continuing basis is jeopardized. Thus, NMFS believes that ACLs and AMs should be designed to prevent overfishing on an annual basis, but that conservation and management measures need not be so conservative as to prevent any possibility that the fishing mortality rate exceeds the MFMT in every year.

Comment 85: NMFS received several comments regarding what happens when a rebuilding plan reaches T_{max} but the stock is not fully rebuilt. Commenters supported the approach in the proposed action that provided that the rebuilding F should be reduced to no more than 75 percent of MFMT until the stock or stock complex is rebuilt. One commenter suggested clarifying the final guidelines text to provide: "If the stock or stock complex has not rebuilt by T_{max} , then the fishing mortality rate should be maintained at $F_{rebuild}$ or 75% of the MFMT, whichever is less." Other commenters stated that 75 percent MFMT is not precautionary enough and that 50 percent MFMT (or less) should be used.

Response: This new language in the guidelines fills a gap in the current guidelines which did not prescribe how to proceed when a stock had reached T_{max} but had not been fully rebuilt. NMFS believes that requiring that F does not exceed $F_{rebuild}$ or 75 percent MFMT, whichever is lower, is an appropriate limit, but Councils should consider a lower mortality rate to meet the requirement to rebuild stocks in as short a time as possible, pursuant to the provisions in MSA section 304(e)(4)(a)(i). NMFS agrees that the suggested edit would clarify the provision, and has revised the guidelines.

Comment 86: NMFS received many comments on the relationship between T_{min} , T_{target} and T_{max} . Some comments supported the proposed guidelines and others stated that the guidelines should be modified. Comments included: T_{min} is inconsistent with MSA's requirement to take into account needs of fishing communities and should include those needs when evaluating whether rebuilding can occur in 10 years or less; management measures should be designed to achieve rebuilding by the T_{target} with at least a 50% probability of success and achieve T_{max} with a 90% probability of success; as in the 2005 proposed NS1 guidelines revisions, T_{max} should be calculated as T_{min} plus one mean generation time for purposes of

determining whether rebuilding can occur in 10 years or less; per *NRDC v. NMFS*, 421 F.3d 872 (9th Cir. 2005), T_{target} should be as close to T_{min} as possible without causing a short-term disaster; rebuilding timeframes should only be extended above T_{min} where "unusually severe impacts on fishing communities can be demonstrated, and where biological and ecological implications are minimal;" rebuilding times for stock complexes must not be used to delay recovery of complex member species; and the "generation time" calculation for T_{max} should refer to generation time of the current population.

Response: In developing the guidance for rebuilding plans, NMFS developed guidelines for Councils which, if followed, are strong enough to rebuild overfished stocks, yet flexible enough to work for a diverse range of fisheries. The timeline for a rebuilding plan is based on three time points, T_{min} , T_{target} and T_{max} . T_{min} is the amount of time, in the absence of any fishing mortality, for the stock to have a 50% probability of reaching the rebuilding goal, B_{msy} . T_{min} is the basis for determining the rebuilding period, consistent with section 304(e)(4)(A)(ii) of the MSA which requires that rebuilding periods not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise. T_{min} provides a biologically determined lower limit to T_{target} . Needs of fishing communities are not part of the criteria for determining whether a rebuilding period can or cannot exceed 10 years, but are an important factor in establishing T_{target} .

Just as T_{min} is a helpful reference point of the absolute shortest time to rebuild, T_{max} provides a reference point of the absolute longest rebuilding period that could be consistent with the MSA. T_{max} is clearly described in the guidelines as either 10 years, if T_{min} is 10 years or less, or T_{min} plus one generation time for the stock if T_{min} is greater than 10 years. NMFS agrees that this calculation can cause a discontinuity problem when calculating T_{max} , and proposed revisions to the NS1 guidelines in 2005 that would have addressed the issue by basing T_{max} on T_{min} + one generation time in all cases, which would have removed the requirement that T_{max} is 10 years in all cases where T_{min} was less than 10 years. NMFS did not finalize those revisions, but proposed the same changes to the MSA in the Administration's proposed MSA reauthorization bill. However,

when MSRA was passed, Congress did not accept the Administration's proposal and chose to keep the existing provision. NMFS has, therefore, not revised this aspect of the NS1 guidelines.

The generation time is defined in the guidelines as "the average length of time between when an individual is born and the birth of its offspring." Typically this is calculated as the mean age of the spawners in the absence of fishing mortality (per Restrepo *et al.*, 1998), but the exact method is not specified in the guidance.

T_{max} is a limit which should be avoided. When developing a rebuilding plan, it is good practice for Councils to calculate the probability of the potential management alternatives to achieve rebuilding by T_{max} , in order to inform their decision.

T_{target} is bounded by T_{min} and T_{max} and is supposed to be established based on the factors specified in MSA section 304(e)(4). Section 600.310(j)(3) of the final action reiterates the statutory criteria on specifying rebuilding periods that are "as short as possible," taking into account specified factors.

Management measures put in place by the rebuilding plan should be expected (at least 50% probability) to achieve rebuilding by T_{target} . NMFS does not believe these sections should be revised to focus on "short-term disasters" or "unusually severe" community impacts, as the MSA provides for several factors to be considered. NMFS believes the final guidelines provide sufficient general guidance on the MSA requirements, but acknowledges that there is case law in different jurisdictions (such as NRDC v. NMFS), that fishery managers should consider in addition to the general guidance.

Comment 87: A commenter stated that § 600.310(j)(3)(i)(E) of the proposed action should be revised to state that "as short as possible" is a mandate, not just a priority.

Response: NMFS deleted the "priority" text in § 600.310 (j)(3)(i)(E) of the final action. That text is unnecessary given that § 600.310 (j)(3)(i) of the guidelines explains "as short as possible" and other rebuilding time period requirements from MSA section 304(e)(4).

Comment 88: Commenters raised several questions about the relationship of NS1 and National Standard 8 (NS 8), including whether NS 1 "trumps" NS 8 and whether the ACL guidance provides sufficient flexibility to address NS 8 considerations.

Response: NS 1 states: "Conservation and management measures shall prevent overfishing while achieving, on a

continuing basis, the optimum yield from each fishery for the United States fishing industry." MSA section 301(a)(1). NS 8 states: "Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks, take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2) [i.e., National Standard 2], in order to (A) provide for sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities." MSA section 301(a)(8) (*emphasis added*).

The objectives in NS8 for sustained participation of fishing communities and minimization of adverse economic impacts do not provide a basis for continuing overfishing or failing to rebuild stocks. The text of NS8 explicitly provides that conservation and management measures must prevent overfishing and rebuild overfished stocks. MSA does provide, however, for flexibility in the specific conservation and management measures used to achieve its conservation goals, and NMFS took this into consideration in developing the revised NS1 guidelines.

Comment 89: NMFS received many comments regarding § 600.310(m) of the proposed action, a provision commonly called the "mixed stock exception." One comment supported the revision as proposed. Some commenters noted that the provision is very important in managing specific mixed stock fisheries, and that changes in the proposed guidelines would make it impossible to use. Specific concern was noted about text that stated that the "resulting rate of fishing mortality will not cause any stock or stock complex to fall below its MSST more than 50 percent of the time in the long term." In addition, commenters stated that the proposed revisions do not allow for social and economic aspects to be taken in to account adequately and would negatively impact several fisheries and fishing communities. Many others commented that the provision should be removed entirely, because it is contrary to the intent of the MSA. The MSA, as amended by the MSRA, requires preventing and ending overfishing, and a mixed stock exception would allow for chronic overfishing on vulnerable fish stocks within a complex.

Response: MSRA amended overfishing and rebuilding provisions of the MSA, reflecting the priority to be given to the Act's conservation goals.

NMFS believes that the final NS1 guidelines provide helpful guidance on the new statutory requirements and will strengthen efforts to prevent overfishing from occurring in fisheries. Preventing overfishing and achieving, on a continuing basis, the OY is particularly challenging in mixed stock fisheries. To address this issue, the proposed action retained a mixed stock exception. NMFS recognizes the concerns raised about how the exception will impact efforts to prevent and end overfishing, and thus, revised the current NS1 guidelines text in light of new MSRA provisions.

The current mixed stock exception allows overfishing to occur on stocks within a complex so long as they do not become listed under the Endangered Species Act (ESA). As explained in the proposed guidelines, NMFS believes that ESA listing is an inappropriate threshold, and that stocks should be managed so they retain their potential to achieve MSY. The revised guidelines propose a higher threshold, limiting F to a level that will not lead to the stock becoming overfished in the long term. In addition, if any stock, including those under the mixed stock exception, were to drop below its MSST, it would be subject to the rebuilding requirements of the MSA, which require that overfishing be ended immediately and that the stock be rebuilt to B_{msy} (see § 600.310(j)(2)(ii)(B) of the final action). The exception, as revised, addresses concerns regarding social, economic, and community impacts as it could allow for continued harvest of certain stocks within a mixed stock fishery.

Having considered public comments on the proposed guidelines, NMFS has decided to retain the mixed stock exception as proposed in the guidance. While NMFS has chosen in the NS1 guidelines to emphasize the importance of stock-level analyses, MSA refers to preventing overfishing in a fishery and provides for flexibility in terms of the specific mechanisms and measures used to achieve this goal. The mixed stock exception provides Councils with needed flexibility for managing fisheries, while ensuring that all stocks in the fishery continue to be subject to strong conservation and management. However, NMFS believes that the mixed stock exception should be applied with a great deal of caution, taking into consideration new MSRA requirements and NS1 guidance regarding stock complexes and indicator species. NMFS also believes that Councils should work to improve selectivity of fishing gear and practices in their mixed-stock fisheries so that the need to apply the mixed stock exception is reduced in the future.

VI. Changes From Proposed Action

Annual catch target (ACT) is described as a management option, rather than a required reference point in paragraphs (f)(1), (f)(2)(v), (f)(6), (f)(6)(i), and (g)(2) in the final action.

The following sentence was deleted from paragraph (b)(2)(v)(B): "The SSC may specify the type of information that should be included in the Stock Assessment and Fishery Evaluation (SAFE) report (see § 600.315)."

Paragraph (b)(2)(v)(C) was revised to make some clarifying edits regarding the SSC and peer review process. The following sentence was included in (b)(2)(v)(D): "The SSC recommendation that is the most relevant to ACLs is ABC, as both ACL and ABC are levels of annual catch."

Paragraph (c)(5) is removed because "ACT control rule" is no longer a required part of the definition framework. Paragraph (c)(6) in the proposed action is re-designated as paragraph (c)(5) in the final action. Paragraph (c)(7) in the proposed action is re-designated as paragraph (c)(6) in the final action.

Paragraph (d)(1) was revised to clarify that Councils may, but are not required to, use the "ecosystem component" species classification. Paragraphs (d)(2) through (d)(7) were revised to better clarify the classification system for stocks in an FMP. Paragraph (d)(9) is revised to emphasize that indicator stocks are stocks with SDC that can be used to help manage more poorly known stocks that are in a stock complex. Paragraph (d)(10) has been added to describe in general how to evaluate "vulnerability" of a stock.

Paragraph (e)(1)(iv) was revised to clarify that ecological conditions should be taken into account when specifying MSY. The following sentence was added to paragraph (e)(2)(i)(C): "The MFMT or reasonable proxy may be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential." The following sentence was added to paragraph (e)(2)(i)(D): "The OFL is an estimate of the catch level above which overfishing is occurring." The following sentence was deleted from (e)(2)(ii)(A)(1): "The MFMT must not exceed F_{msy} ." Paragraph (e)(3)(iv) was revised to improve clarity. The following sentence was deleted from (e)(3)(v)(A): "As a long-term average, OY cannot exceed MSY."

Paragraph (f)(1) was revised to give examples of scientific and management uncertainty. Paragraphs (f)(2)(ii) and (iii) were revised to clarify that scientific

uncertainty in the OFL and any other scientific uncertainty should be accounted for when specifying ABC and the ABC control rule. Paragraph (f)(3) was revised to improve clarity; to acknowledge that the SSC may recommend an ABC that differs from the result of the ABC control rule calculation; and to state that while the ABC is allowed to equal OFL, NMFS expects that in most cases ABC will be reduced from OFL to reduce the probability that overfishing might occur in a year. Paragraph (f)(4) on the ABC control rule was revised to include the following sentences: "The determination of ABC should be based, when possible, on the probability that an actual catch equal to the stock's ABC would result in overfishing. This probability that overfishing will occur cannot exceed 50 percent and should be a lower value. The ABC control rule should consider reducing fishing mortality as stock size declines and may establish a stock abundance level below which fishing would not be allowed." Paragraph (f)(5)(i) was revised to include the following sentences: "ACLs in coordination with AMs must prevent overfishing (see MSA section 303(a)(15)). If a Council recommends an ACL which equals ABC, and the ABC is equal to OFL, the Secretary may presume that the proposal would not prevent overfishing, in the absence of sufficient analysis and justification for the approach." Also, paragraph (f)(5)(i) was revised to clarify that "a multiyear plan must provide that, if an ACL is exceeded for a year, then AMs are triggered for the next year consistent with paragraph (g)(3) of this section." Paragraph (f)(5)(ii) now clarifies that "if the management measures for different sectors differ in degree of management uncertainty, then sector-ACLs may be necessary so appropriate AMs can be developed for each sector." Paragraphs (f)(5)(iii) and (g)(5) were revised to remove the phrase "large majority" from both provisions. The description of the relationship between OFL to MSY and ACT to OY was removed from paragraph (f)(7) and is replaced with the following sentence: "A Council may choose to use a single control rule that combines both scientific and management uncertainty and supports the ABC recommendation and establishment of ACL and if used ACT."

Paragraph (g)(2) on inseason AMs was revised to include the following sentences: "FMPs should contain inseason closure authority giving NMFS the ability to close fisheries if it determines, based on data that it deems sufficiently reliable, that an ACL has

been exceeded or is projected to be reached, and that closure of the fishery is necessary to prevent overfishing. For fisheries without inseason management control to prevent the ACL from being exceeded, AMs should utilize ACTs that are set below ACLs so that catches do not exceed the ACL." Paragraph (g)(3) was revised to improve clarity and to include the following sentence: "A Council could choose a higher performance standard (e.g., a stock's catch should not exceed its ACL more often than once every five or six years) for a stock that is particularly vulnerable to the effects of overfishing, if the vulnerability of the stock has not already been accounted for in the ABC control rule." Paragraph (g)(4) on AMs based on multi-year average data was revised to clarify: That Councils should explain why basing AMs on a multi-year period is appropriate; that AMs should be implemented if the average catch exceeds the average ACL; the performance standard; and that Councils can use a stepped approach when initially implementing AMs based on multi-year average data.

Paragraph (h) was revised to include the sentence: "These mechanisms should describe the annual or multiyear process by which specific ACLs, AMs, and other reference points such as OFL, and ABC will be established." Paragraph (h)(1)(v) was removed because the requirement to describe fisheries data is covered under paragraph (i). Paragraph (i) is revised to clarify that Councils must describe "in their FMPs, or associated public documents such as SAFE reports as appropriate," general data collection methods.

Paragraph (j)(2)(ii)(C) was removed and paragraph (j)(2)(ii)(B) was revised to include information about stocks or stock complexes that are approaching an overfished condition. Paragraph (j)(3)(i)(E) was revised to remove the "priority" text. That text is unnecessary given that section (j)(3)(i) explains "as short as possible" and other rebuilding time period requirements from MSA section 304(e)(4). Paragraph (j)(3)(ii) was revised to clarify that "if the stock or stock complex has not rebuilt by T_{max} , then the fishing mortality rate should be maintained at $F_{rebuild}$ or 75 percent of the MFMT, whichever is less."

Introductory language (General) has been added to paragraph (l) to clarify the relationship of other national standards to National Standard 1. Also, paragraph (l)(4) has been revised to ensure that the description about the relationship between National Standard 8 with National Standard 1 reflects more

accurately, section 301(a)(8) of the Magnuson-Stevens Act.

The words "should" or "recommended" in the proposed rule are changed to "must" or "are required" or "need to" in this action's codified text if NMFS interprets the guidance to refer to "requirements of the Magnuson-Stevens Act" and "the logical extension thereof" (see section 600.305(c) of the MSA). In the following, items in paragraphs of § 600.310 are followed by an applicable MSA section that contains pertinent requirements:

Paragraph (b)(3) is revised to state that Councils "must take an approach that considers uncertainty in scientific information and management control of the fishery" because it needs to meet requirements in MSA section 303(a)(15).

Paragraph (c) is revised to state " * * * Councils must include in their FMPs * * * " because it needs to meet various requirements in MSA section 303(a).

Paragraph (c) is revised to state "Councils must also describe fisheries data * * * " because it needs to meet requirements of various portions of MSA sections 303(a) and 303(a)(15).

Paragraph (c) is revised to state " * * * Councils must evaluate and describe the following items in their FMPs * * * " because it needs to meet requirements of various portions of MSA sections 303(a) and 303(a)(15).

Paragraph (e)(1) is revised to state that "Each FMP must include an estimate of MSY * * * " because it needs to meet requirements of MSA section 303(a)(3).

Paragraph (e)(2)(ii) is revised to state that a Council "must provide an analysis of how the SDG were chosen * * * " because it needs to meet requirements of MSA section 303(a)(10).

Paragraph (e)(2)(ii)(A) is revised to state "each FMP must describe which of the following two methods * * * " because it needs to meet requirements of MSA section 303(a)(10).

Paragraph (e)(2)(ii)(B) is revised to state "the MSST or reasonable proxy must be expressed in terms of spawning biomass * * * " because it needs to meet requirements of MSA section 303(a)(10).

Paragraph (f)(4) is revised to state each Council "must establish an ABC control rule * * * " because it needs to meet requirements of MSA sections 303(a)(15) and 302(g)(1)(B).

Paragraph (f)(4) is revised to state "The ABC control rule must articulate how ABC will be set compared to the OFL * * * " because it needs to meet requirements of MSA sections 303(a)(15) and 301(a)(2).

Paragraph (f)(5)(i) is revised to state "A multiyear plan must include a

mechanism for specifying ACLs for each year * * * " because it needs to meet requirements of MSA section 303(a)(15).

Paragraph (f)(5)(i) is also revised to state "A multiyear plan must provide that, if an ACL is exceeded * * * " because it needs to meet requirements of MSA section 303(a)(15).

Paragraph (f)(6)(i) is revised to state "Such analyses must be based on best available scientific * * * " because it needs to meet requirements of MSA section 301(a)(2).

Paragraph (g)(3) is revised to state a Council "must determine as soon as possible after the fishing year if an ACL is exceeded * * * " because it needs to meet requirements of MSA sections 303(a)(15), 301(a)(1) and 301(a)(2).

Paragraph (h) is revised to state FMPs or FMP amendments "must establish ACL mechanisms and AMs * * * " because it needs to meet requirements of MSA section 303(a)(15).

Paragraph (h)(3) is revised to state "Councils must document their rationale for any alternative approaches * * * " because it needs to meet requirements of MSA section 303(a)(15).

Paragraph (j)(2) is revised to state "FMPs or FMP amendments must establish ACL and AM mechanisms in 2010 * * * " because it needs to meet requirements of MSA section 303(a)(15).

Paragraph (j)(2)(i)(A) is revised to state that " * * * ACLs and AMs themselves must be specified * * * " because it needs to meet requirements of MSA section 303(a)(15).

Paragraph (k) is revised to state that "The Secretary, in cooperation with the Secretary of State, must immediately take appropriate action at the international level * * * " because it needs to meet requirements of MSA section 304(i)—INTERNATIONAL OVERFISHING.

Paragraph (k)(3) is revised to state that "Information used to determine relative impact must be based upon the best available scientific * * * " because it needs to meet requirements of MSA section 301(a)(2).

Paragraph (l)(2) is revised to state that "Also scientific assessments must be based on the best information * * * " because it needs to meet requirements of MSA section 301(a)(2).

VII. References Cited

A complete list of all the references cited in this final action is available online at: <http://www.nmfs.noaa.gov/msa2007/catchlimits.htm> or upon request from Mark Millikin [see FOR FURTHER INFORMATION CONTACT].

VIII. Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that these final NS1 guidelines are consistent with the Magnuson-Stevens Act, and other applicable law.

The final NS1 guidelines have been determined to be significant for purposes of Executive Order 12866. NOAA prepared a regulatory impact review of this rulemaking, which is available at: <http://www.nmfs.noaa.gov/msa2007/catchlimits.htm>. This analysis discusses various policy options that NOAA considered in preparation of the proposed action, given NOAA's interpretation of the statutory terms in the MSRA, such as the appropriate meaning of the word "limit" in "Annual Catch Limit," and NOAA's belief that it has become necessary for Councils to consider separately the uncertainties in fishery management and the scientific uncertainties in stock evaluation in order to effectively set fishery management policies and ensure fulfillment of the goals to end overfishing and rebuild overfished stocks.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that these revisions to the NS1 guidelines, if adopted, would not have any significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed action and is not repeated here. Two commenters stated that an initial regulatory flexibility analysis should be prepared, and NMFS has responded to those comments in the "Response to Comments." After considering the comments, NMFS has determined that a certification is still appropriate for this action. Therefore, a regulatory flexibility analysis is not required for this action and none was prepared.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 9, 2009.

James W. Balsiger,
Acting Assistant Administrator, for Fisheries,
National Marine Fisheries Service.

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Section 600.310 is revised to read as follows:

§ 600.310 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the U.S. fishing industry.

(b) *General.* (1) The guidelines set forth in this section describe fishery management approaches to meet the objectives of National Standard 1 (NS1), and include guidance on:

(i) Specifying maximum sustainable yield (MSY) and OY;

(ii) Specifying status determination criteria (SDC) so that overfishing and overfished determinations can be made for stocks and stock complexes that are part of a fishery;

(iii) Preventing overfishing and achieving OY, incorporation of scientific and management uncertainty in control rules, and adaptive management using annual catch limits (ACL) and measures to ensure accountability (AM); and

(iv) Rebuilding stocks and stock complexes.

(2) *Overview of Magnuson-Stevens Act concepts and provisions related to NS1—(i) MSY.* The Magnuson-Stevens Act establishes MSY as the basis for fishery management and requires that: The fishing mortality rate does not jeopardize the capacity of a stock or stock complex to produce MSY; the abundance of an overfished stock or stock complex be rebuilt to a level that is capable of producing MSY; and OY not exceed MSY.

(ii) *OY.* The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's conservation and management objectives, achieving a fishery management plan's (FMP) objectives, and balancing the various interests that comprise the greatest overall benefits to the Nation. OY is based on MSY as reduced under paragraphs (e)(3)(iii) and (iv) of this section. The most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing.

(iii) *ACLs and AMs.* Any FMP which is prepared by any Council shall establish a mechanism for specifying ACLs in the FMP (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 (Magnuson-Stevens Act section 303(a)(15)). Subject to certain

exceptions and circumstances described in paragraph (h) of this section, this requirement takes effect in fishing year 2010, for fisheries determined subject to overfishing, and in fishing year 2011, for all other fisheries (Magnuson-Stevens Act section 303 note). "Council" includes the Regional Fishery Management Councils and the Secretary of Commerce, as appropriate (see § 600.305(c)(11)).

(iv) *Reference points.* SDC, MSY, acceptable biological catch (ABC), and ACL, which are described further in paragraphs (e) and (f) of this section, are collectively referred to as "reference points."

(v) *Scientific advice.* The Magnuson-Stevens Act has requirements regarding scientific and statistical committees (SSC) of the Regional Fishery Management Councils, including but not limited to, the following provisions:

(A) Each Regional Fishery Management Council shall establish an SSC as described in section 302(g)(1)(A) of the Magnuson-Stevens Act.

(B) Each SSC shall provide its Regional Fishery Management Council recommendations for ABC as well as other scientific advice, as described in Magnuson-Stevens Act section 302(g)(1)(B).

(C) The Secretary and each Regional Fishery Management Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of a fishery (see Magnuson-Stevens Act section 302(g)(1)(E)). If a peer review process is established, it should investigate the technical merits of stock assessments and other scientific information used by the SSC or agency or international scientists, as appropriate. For Regional Fishery Management Councils, the peer review process is not a substitute for the SSC and should work in conjunction with the SSC. For the Secretary, which does not have an SSC, the peer review process should provide the scientific information necessary.

(D) Each Council shall develop ACLs for each of its managed fisheries that may not exceed the "fishing level recommendations" of its SSC or peer review process (Magnuson-Stevens Act section 302(h)(6)). The SSC recommendation that is the most relevant to ACLs is ABC, as both ACL and ABC are levels of annual catch.

(3) *Approach for setting limits and accountability measures, including targets, for consistency with NS1.* In general, when specifying limits and accountability measures intended to avoid overfishing and achieve

sustainable fisheries, Councils must take an approach that considers uncertainty in scientific information and management control of the fishery. These guidelines describe how to address uncertainty such that there is a low risk that limits are exceeded as described in paragraphs (f)(4) and (f)(6) of this section.

(c) *Summary of items to include in FMPs related to NS1.* This section provides a summary of items that Councils must include in their FMPs and FMP amendments in order to address ACL, AM, and other aspects of the NS1 guidelines. As described in further detail in paragraph (d) of this section, Councils may review their FMPs to decide if all stocks are "in the fishery" or whether some fit the category of "ecosystem component species." Councils must also describe fisheries data for the stocks, stock complexes, and ecosystem component species in their FMPs, or associated public documents such as Stock Assessment and Fishery Evaluation (SAFE) Reports. For all stocks and stock complexes that are "in the fishery" (see paragraph (d)(2) of this section), the Councils must evaluate and describe the following items in their FMPs and amend the FMPs, if necessary, to align their management objectives to end or prevent overfishing:

(1) MSY and SDC (see paragraphs (e)(1) and (2) of this section).

(2) OY at the stock, stock complex, or fishery level and provide the OY specification analysis (see paragraph (e)(3) of this section).

(3) ABC control rule (see paragraph (f)(4) of this section).

(4) Mechanisms for specifying ACLs and possible sector-specific ACLs in relationship to the ABC (see paragraphs (f)(5) and (h) of this section).

(5) AMs (see paragraphs (g) and (h)(1) of this section).

(6) Stocks and stock complexes that have statutory exceptions from ACLs (see paragraph (h)(2) of this section) or which fall under limited circumstances which require different approaches to meet the ACL requirements (see paragraph (h)(3) of this section).

(d) *Classifying stocks in an FMP—(1) Introduction.* Magnuson-Stevens Act section 303(a)(2) requires that an FMP contain, among other things, a description of the species of fish involved in the fishery. The relevant Council determines which specific target stocks and/or non-target stocks to include in a fishery. This section provides that a Council may, but is not required to, use an "ecosystem component (EC)" species classification. As a default, all stocks in an FMP are

considered to be "in the fishery," unless they are identified as EC species (see § 600.310(d)(5)) through an FMP amendment process.

(2) *Stocks in a fishery.* Stocks in a fishery may be grouped into stock complexes, as appropriate. Requirements for reference points and management measures for these stocks are described throughout these guidelines.

(3) "Target stocks" are stocks that fishers seek to catch for sale or personal use, including "economic discards" as defined under Magnuson-Stevens Act section 3(9).

(4) "Non-target species" and "non-target stocks" are fish caught incidentally during the pursuit of target stocks in a fishery, including "regulatory discards" as defined under Magnuson-Stevens Act section 3(38). They may or may not be retained for sale or personal use. Non-target species may be included in a fishery and, if so, they should be identified at the stock level. Some non-target species may be identified in an FMP as ecosystem component (EC) species or stocks.

(5) *Ecosystem component (EC) species.* (i) To be considered for possible classification as an EC species, the species should:

(A) Be a non-target species or non-target stock;

(B) Not be determined to be subject to overfishing, approaching overfished, or overfished;

(C) Not be likely to become subject to overfishing or overfished, according to the best available information, in the absence of conservation and management measures; and

(D) Not generally be retained for sale or personal use.

(ii) Occasional retention of the species would not, in and of itself, preclude consideration of the species under the EC classification. In addition to the general factors noted in paragraphs (d)(5)(i)(A)–(D) of this section, it is important to consider whether use of the EC species classification in a given instance is consistent with MSA conservation and management requirements.

(iii) EC species may be identified at the species or stock level, and may be grouped into complexes. EC species may, but are not required to, be included in an FMP or FMP amendment for any of the following reasons: For data collection purposes; for ecosystem considerations related to specification of OY for the associated fishery; as considerations in the development of conservation and management measures for the associated fishery; and/or to address other ecosystem issues. While

EC species are not considered to be "in the fishery," a Council should consider measures for the fishery to minimize bycatch and bycatch mortality of EC species consistent with National Standard 9, and to protect their associated role in the ecosystem. EC species do not require specification of reference points but should be monitored to the extent that any new pertinent scientific information becomes available (e.g., catch trends, vulnerability, etc.) to determine changes in their status or their vulnerability to the fishery. If necessary, they should be reclassified as "in the fishery."

(6) *Reclassification.* A Council should monitor the catch resulting from a fishery on a regular basis to determine if the stocks and species are appropriately classified in the FMP. If the criteria previously used to classify a stock or species is no longer valid, the Council should reclassify it through an FMP amendment, which documents rationale for the decision.

(7) *Stocks or species identified in more than one FMP.* If a stock is identified in more than one fishery, Councils should choose which FMP will be the primary FMP in which management objectives, SDC, the stock's overall ACL and other reference points for the stock are established. Conservation and management measures in other FMPs in which the stock is identified as part of a fishery should be consistent with the primary FMP's management objectives for the stock.

(8) *Stock complex.* "Stock complex" means a group of stocks that are sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery such that the impact of management actions on the stocks is similar. At the time a stock complex is established, the FMP should provide a full and explicit description of the proportional composition of each stock in the stock complex, to the extent possible. Stocks may be grouped into complexes for various reasons, including where stocks in a multispecies fishery cannot be targeted independent of one another and MSY can not be defined on a stock-by-stock basis (see paragraph (e)(1)(iii) of this section); where there is insufficient data to measure their status relative to SDC; or when it is not feasible for fishermen to distinguish individual stocks among their catch. The vulnerability of stocks to the fishery should be evaluated when determining if a particular stock complex should be established or reorganized, or if a particular stock should be included in a complex. Stock complexes may be comprised of: one or

more indicator stocks, each of which has SDC and ACLs, and several other stocks; several stocks without an indicator stock, with SDC and an ACL for the complex as a whole; or one of more indicator stocks, each of which has SDC and management objectives, with an ACL for the complex as a whole (this situation might be applicable to some salmon species).

(9) *Indicator stocks.* An indicator stock is a stock with measurable SDC that can be used to help manage and evaluate more poorly known stocks that are in a stock complex. If an indicator stock is used to evaluate the status of a complex, it should be representative of the typical status of each stock within the complex, due to similarity in vulnerability. If the stocks within a stock complex have a wide range of vulnerability, they should be reorganized into different stock complexes that have similar vulnerabilities; otherwise the indicator stock should be chosen to represent the more vulnerable stocks within the complex. In instances where an indicator stock is less vulnerable than other members of the complex, management measures need to be more conservative so that the more vulnerable members of the complex are not at risk from the fishery. More than one indicator stock can be selected to provide more information about the status of the complex. When indicator stock(s) are used, periodic re-evaluation of available quantitative or qualitative information (e.g., catch trends, changes in vulnerability, fish health indices, etc.) is needed to determine whether a stock is subject to overfishing, or is approaching (or in) an overfished condition.

(10) *Vulnerability.* A stock's vulnerability is a combination of its productivity, which depends upon its life history characteristics, and its susceptibility to the fishery. Productivity refers to the capacity of the stock to produce MSY and to recover if the population is depleted, and susceptibility is the potential for the stock to be impacted by the fishery, which includes direct captures, as well as indirect impacts to the fishery (e.g., loss of habitat quality). Councils in consultation with their SSC, should analyze the vulnerability of stocks in stock complexes where possible.

(e) *Features of MSY, SDC, and OY.*—
(1) *MSY.* Each FMP must include an estimate of MSY for the stocks and stock complexes in the fishery, as described in paragraph (d)(2) of this section.

(i) *Definitions.* (A) *MSY* is the largest long-term average catch or yield that can be taken from a stock or stock complex

under prevailing ecological, environmental conditions and fishery technological characteristics (e.g., gear selectivity), and the distribution of catch among fleets.

(B) *MSY fishing mortality rate* (F_{msy}) is the fishing mortality rate that, if applied over the long term, would result in MSY.

(C) *MSY stock size* (B_{msy}) means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate measure of the stock's reproductive potential that would be achieved by fishing at F_{msy} .

(ii) *MSY for stocks*. MSY should be estimated for each stock based on the best scientific information available (see § 600.315).

(iii) *MSY for stock complexes*. MSY should be estimated on a stock-by-stock basis whenever possible. However, where MSY cannot be estimated for each stock in a stock complex, then MSY may be estimated for one or more indicator stocks for the complex or for the complex as a whole. When indicator stocks are used, the stock complex's MSY could be listed as "unknown," while noting that the complex is managed on the basis of one or more indicator stocks that do have known stock-specific MSYs, or suitable proxies, as described in paragraph (e)(1)(iv) of this section. When indicator stocks are not used, MSY, or a suitable proxy, should be calculated for the stock complex as a whole.

(iv) *Specifying MSY*. Because MSY is a long-term average, it need not be estimated annually, but it must be based on the best scientific information available (see § 600.315), and should be re-estimated as required by changes in long-term environmental or ecological conditions, fishery technological characteristics, or new scientific information. When data are insufficient to estimate MSY directly, Councils should adopt other measures of reproductive potential, based on the best scientific information available, that can serve as reasonable proxies for MSY, F_{msy} , and B_{msy} , to the extent possible. The MSY for a stock is influenced by its interactions with other stocks in its ecosystem and these interactions may shift as multiple stocks in an ecosystem are fished. These ecological conditions should be taken into account, to the extent possible, when specifying MSY. Ecological conditions not directly accounted for in the specification of MSY can be among the ecological factors considered when setting OY below MSY. As MSY values are estimates or are based on proxies, they will have some level of uncertainty

associated with them. The degree of uncertainty in the estimates should be identified, when possible, through the stock assessment process and peer review (see § 600.335), and should be taken into account when specifying the ABC Control rule. Where this uncertainty cannot be directly calculated, such as when proxies are used, then a proxy for the uncertainty itself should be established based on the best scientific information, including comparison to other stocks.

(2) *Status determination criteria*—(i) *Definitions*. (A) *Status determination criteria (SDC)* mean the quantifiable factors, MFMT, OFL, and MSST, or their proxies, that are used to determine if overfishing has occurred, or if the stock or stock complex is overfished. Magnuson-Stevens Act (section 3(34)) defines both "overfishing" and "overfished" to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the MSY on a continuing basis. To avoid confusion, this section clarifies that "overfished" relates to biomass of a stock or stock complex, and "overfishing" pertains to a rate or level of removal of fish from a stock or stock complex.

(B) *Overfishing* (to overfish) occurs whenever a stock or stock complex is subjected to a level of fishing mortality or annual total catch that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(C) *Maximum fishing mortality threshold (MFMT)* means the level of fishing mortality (F), on an annual basis, above which overfishing is occurring. The MFMT or reasonable proxy may be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential.

(D) *Overfishing limit (OFL)* means the annual amount of catch that corresponds to the estimate of MFMT applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish. The OFL is an estimate of the catch level above which overfishing is occurring.

(E) *Overfished*. A stock or stock complex is considered "overfished" when its biomass has declined below a level that jeopardizes the capacity of the stock or stock complex to produce MSY on a continuing basis.

(F) *Minimum stock size threshold (MSST)* means the level of biomass below which the stock or stock complex is considered to be overfished.

(G) *Approaching an overfished condition*. A stock or stock complex is approaching an overfished condition when it is projected that there is more

than a 50 percent chance that the biomass of the stock or stock complex will decline below the MSST within two years.

(ii) *Specification of SDC and overfishing and overfished determinations*. SDC must be expressed in a way that enables the Council to monitor each stock or stock complex in the FMP, and determine annually, if possible, whether overfishing is occurring and whether the stock or stock complex is overfished. In specifying SDC, a Council must provide an analysis of how the SDC were chosen and how they relate to reproductive potential. Each FMP must specify, to the extent possible, objective and measurable SDC as follows (see paragraphs (e)(2)(ii)(A) and (B) of this section):

(A) *SDC to determine overfishing status*. Each FMP must describe which of the following two methods will be used for each stock or stock complex to determine an overfishing status.

(1) *Fishing mortality rate exceeds MFMT*. Exceeding the MFMT for a period of 1 year or more constitutes overfishing. The MFMT or reasonable proxy may be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential.

(2) *Catch exceeds the OFL*. Should the annual catch exceed the annual OFL for 1 year or more, the stock or stock complex is considered subject to overfishing.

(B) *SDC to determine overfished status*. The MSST or reasonable proxy must be expressed in terms of spawning biomass or other measure of reproductive potential. To the extent possible, the MSST should equal whichever of the following is greater: One-half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years, if the stock or stock complex were exploited at the MFMT specified under paragraph (e)(2)(ii)(A)(1) of this section. Should the estimated size of the stock or stock complex in a given year fall below this threshold, the stock or stock complex is considered overfished.

(iii) *Relationship of SDC to environmental change*. Some short-term environmental changes can alter the size of a stock or stock complex without affecting its long-term reproductive potential. Long-term environmental changes affect both the short-term size of the stock or stock complex and the long-term reproductive potential of the stock or stock complex.

(A) If environmental changes cause a stock or stock complex to fall below its MSST without affecting its long-term reproductive potential, fishing mortality must be constrained sufficiently to allow rebuilding within an acceptable time frame (*also see* paragraph (j)(3)(ii) of this section). SDC should not be respecified.

(B) If environmental changes affect the long-term reproductive potential of the stock or stock complex, one or more components of the SDC must be respecified. Once SDC have been respecified, fishing mortality may or may not have to be reduced, depending on the status of the stock or stock complex with respect to the new criteria.

(C) If manmade environmental changes are partially responsible for a stock or stock complex being in an overfished condition, in addition to controlling fishing mortality, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible (see also the guidelines issued pursuant to section 305(b) of the Magnuson-Stevens Act for Council actions concerning essential fish habitat).

(iv) *Secretarial approval of SDC.* Secretarial approval or disapproval of proposed SDC will be based on consideration of whether the proposal:

- (A) Has sufficient scientific merit;
- (B) Contains the elements described in paragraph (e)(2)(ii) of this section;
- (C) Provides a basis for objective measurement of the status of the stock or stock complex against the criteria; and

(D) is operationally feasible.

(3) *Optimum yield*—(i) *Definitions*—(A) *Optimum yield (OY).* Magnuson-Stevens Act section 3(33) defines “optimum,” with respect to the yield from a fishery, as the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be established at the stock or stock complex level, or at the fishery level.

(B) In NS1, use of the phrase “achieving, on a continuing basis, the optimum yield from each fishery” means producing, from each stock, stock complex, or fishery: a long-term series of catches such that the average catch is equal to the OY, overfishing is

prevented, the long term average biomass is near or above B_{msy} , and overfished stocks and stock complexes are rebuilt consistent with timing and other requirements of section 304(e)(4) of the Magnuson-Stevens Act and paragraph (j) of this section.

(ii) *General.* OY is a long-term average amount of desired yield from a stock, stock complex, or fishery. An FMP must contain conservation and management measures, including ACLs and AMs, to achieve OY on a continuing basis, and provisions for information collection that are designed to determine the degree to which OY is achieved. These measures should allow for practical and effective implementation and enforcement of the management regime. The Secretary has an obligation to implement and enforce the FMP. If management measures prove unenforceable—or too restrictive, or not rigorous enough to prevent overfishing while achieving OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification. Exceeding OY does not necessarily constitute overfishing. However, even if no overfishing resulted from exceeding OY, continual harvest at a level above OY would violate NS1, because OY was not achieved on a continuing basis. An FMP must contain an assessment and specification of OY, including a summary of information utilized in making such specification, consistent with requirements of section 303(a)(3) of the Magnuson-Stevens Act. A Council must identify those economic, social, and ecological factors relevant to management of a particular stock, stock complex, or fishery, and then evaluate them to determine the OY. The choice of a particular OY must be carefully documented to show that the OY selected will produce the greatest benefit to the Nation and prevent overfishing.

(iii) *Determining the greatest benefit to the Nation.* In determining the greatest benefit to the Nation, the values that should be weighed and receive serious attention when considering the economic, social, or ecological factors used in reducing MSY to obtain OY are:

(A) The benefits of food production are derived from providing seafood to consumers; maintaining an economically viable fishery together with its attendant contributions to the national, regional, and local economies; and utilizing the capacity of the Nation’s fishery resources to meet nutritional needs.

(B) The benefits of recreational opportunities reflect the quality of both the recreational fishing experience and non-consumptive fishery uses such as

ecotourism, fish watching, and recreational diving. Benefits also include the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(C) The benefits of protection afforded to marine ecosystems are those resulting from maintaining viable populations (including those of unexploited species), maintaining adequate forage for all components of the ecosystem, maintaining evolutionary and ecological processes (e.g., disturbance regimes, hydrological processes, nutrient cycles), maintaining the evolutionary potential of species and ecosystems, and accommodating human use.

(iv) *Factors to consider in OY specification.* Because fisheries have limited capacities, any attempt to maximize the measures of benefits described in paragraph (e)(3)(iii) of this section will inevitably encounter practical constraints. OY cannot exceed MSY in any circumstance, and must take into account the need to prevent overfishing and rebuild overfished stocks and stock complexes. OY is prescribed on the basis of MSY as reduced by social, economic, and ecological factors. To the extent possible, the relevant social, economic, and ecological factors used to establish OY for a stock, stock complex, or fishery should be quantified and reviewed in historical, short-term, and long-term contexts. Even where quantification of social, economic, and ecological factors is not possible, the FMP still must address them in its OY specification. The following is a non-exhaustive list of potential considerations for each factor. An FMP must address each factor but not necessarily each example.

(A) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery (e.g., involvement in fisheries and ability to adapt to change). Consideration may be given to fishery-related indicators (e.g., number of fishery permits, number of commercial fishing vessels, number of party and charter trips, landings, ex-vessel revenues etc.) and non-fishery related indicators (e.g., unemployment rates, percent of population below the poverty level, population density, etc.). Other factors that may be considered include the effects that past harvest levels have had on fishing communities, the cultural place of subsistence fishing, obligations under Indian treaties, proportions of affected minority and low-income groups, and worldwide nutritional needs.

(B) *Economic factors.* Examples are prudent consideration of the risk of overharvesting when a stock's size or reproductive potential is uncertain (see § 600.335(c)(2)(i)), satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S. harvested fish. Other factors that may be considered include: The value of fisheries, the level of capitalization, the decrease in cost per unit of catch afforded by an increase in stock size, the attendant increase in catch per unit of effort, alternate employment opportunities, and economic contribution to fishing communities, coastal areas, affected states, and the nation.

(C) *Ecological factors.* Examples include impacts on ecosystem component species, forage fish stocks, other fisheries, predator-prey or competitive interactions, marine mammals, threatened or endangered species, and birds. Species interactions that have not been explicitly taken into account when calculating MSY should be considered as relevant factors for setting OY below MSY. In addition, consideration should be given to managing forage stocks for higher biomass than B_{msy} to enhance and protect the marine ecosystem. Also important are ecological or environmental conditions that stress marine organisms, such as natural and manmade changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(v) *Specification of OY.* The specification of OY must be consistent with paragraphs (e)(3)(i)–(iv) of this section. If the estimates of MFMT and current biomass are known with a high level of certainty and management controls can accurately limit catch then OY could be set very close to MSY, assuming no other reductions are necessary for social, economic, or ecological factors. To the degree that such MSY estimates and management controls are lacking or unavailable, OY should be set farther from MSY. If management measures cannot adequately control fishing mortality so that the specified OY can be achieved without overfishing, the Council should reevaluate the management measures and specification of OY so that the dual requirements of NS1 (preventing overfishing while achieving, on a continuing basis, OY) are met.

(A) The amount of fish that constitutes the OY should be expressed in terms of numbers or weight of fish.

(B) Either a range or a single value may be specified for OY.

(C) All catch must be counted against OY, including that resulting from

bycatch, scientific research, and all fishing activities.

(D) The OY specification should be translatable into an annual numerical estimate for the purposes of establishing any total allowable level of foreign fishing (TALFF) and analyzing impacts of the management regime.

(E) The determination of OY is based on MSY, directly or through proxy. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or where the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size diminish the meaningfulness of the MSY concept, OY must still be established based on the best scientific information available.

(F) An OY established at a fishery level may not exceed the sum of the MSY values for each of the stocks or stock complexes within the fishery.

(G) There should be a mechanism in the FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(H) Part of the OY may be held as a reserve to allow for factors such as uncertainties in estimates of stock size and domestic annual harvest (DAH). If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(vi) *OY and foreign fishing.* Section 201(d) of the Magnuson-Stevens Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States. The FMP must include an assessment to address the following, as required by section 303(a)(4) of the Magnuson-Stevens Act:

(A) *DAH.* Councils and/or the Secretary must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(B) *Domestic annual processing (DAP).* Each FMP must assess the capacity of U.S. processors. It must also assess the amount of DAP, which is the sum of two estimates: The estimated amount of U.S. harvest that domestic processors will process, which may be based on historical performance or on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and the estimated amount of fish that will be harvested by domestic vessels, but not

processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(C) *Joint venture processing (JVP).* When DAH exceeds DAP, the surplus is available for JVP.

(f) *Acceptable biological catch, annual catch limits, and annual catch targets.* The following features (see paragraphs (f)(1) through (f)(5) of this section) of acceptable biological catch and annual catch limits apply to stocks and stock complexes in the fishery (see paragraph (d)(2) of this section).

(1) *Introduction.* A control rule is a policy for establishing a limit or target fishing level that is based on the best available scientific information and is established by fishery managers in consultation with fisheries scientists. Control rules should be designed so that management actions become more conservative as biomass estimates, or other proxies, for a stock or stock complex decline and as science and management uncertainty increases. Examples of scientific uncertainty include uncertainty in the estimates of MFMT and biomass. Management uncertainty may include late catch reporting, misreporting, and underreporting of catches and is affected by a fishery's ability to control actual catch. For example, a fishery that has inseason catch data available and inseason closure authority has better management control and precision than a fishery that does not have these features.

(2) *Definitions.* (i) *Catch* is the total quantity of fish, measured in weight or numbers of fish, taken in commercial, recreational, subsistence, tribal, and other fisheries. Catch includes fish that are retained for any purpose, as well as mortality of fish that are discarded.

(ii) *Acceptable biological catch (ABC)* is a level of a stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty (see paragraph (f)(3) of this section), and should be specified based on the ABC control rule.

(iii) *ABC control rule* means a specified approach to setting the ABC for a stock or stock complex as a function of the scientific uncertainty in the estimate of OFL and any other scientific uncertainty (see paragraph (f)(4) of this section).

(iv) *Annual catch limit (ACL)* is the level of annual catch of a stock or stock complex that serves as the basis for invoking AMs. ACL cannot exceed the ABC, but may be divided into sector-ACLs (see paragraph (f)(5) of this section).

(v) *Annual catch target (ACT)* is an amount of annual catch of a stock or stock complex that is the management target of the fishery, and accounts for management uncertainty in controlling the actual catch at or below the ACL. ACTs are recommended in the system of accountability measures so that ACL is not exceeded.

(vi) *ACT control rule* means a specified approach to setting the ACT for a stock or stock complex such that the risk of exceeding the ACL due to management uncertainty is at an acceptably low level.

(3) *Specification of ABC.* ABC may not exceed OFL (see paragraph (e)(2)(i)(D) of this section). Councils should develop a process for receiving scientific information and advice used to establish ABC. This process should: Identify the body that will apply the ABC control rule (*i.e.*, calculates the ABC), and identify the review process that will evaluate the resulting ABC. The SSC must recommend the ABC to the Council. An SSC may recommend an ABC that differs from the result of the ABC control rule calculation, based on factors such as data uncertainty, recruitment variability, declining trends in population variables, and other factors, but must explain why. For Secretarial FMPs or FMP amendments, agency scientists or a peer review process would provide the scientific advice to establish ABC. For internationally-assessed stocks, an ABC as defined in these guidelines is not required if they meet the international exception (see paragraph (h)(2)(ii)). While the ABC is allowed to equal OFL, NMFS expects that in most cases ABC will be reduced from OFL to reduce the probability that overfishing might occur in a year. Also, see paragraph (f)(5) of this section for cases where a Council recommends that ACL is equal to ABC, and ABC is equal to OFL.

(i) *Expression of ABC.* ABC should be expressed in terms of catch, but may be expressed in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC.

(ii) *ABC for overfished stocks.* For overfished stocks and stock complexes, a rebuilding ABC must be set to reflect the annual catch that is consistent with the schedule of fishing mortality rates in the rebuilding plan.

(4) *ABC control rule.* For stocks and stock complexes required to have an ABC, each Council must establish an ABC control rule based on scientific advice from its SSC. The determination of ABC should be based, when possible, on the probability that an actual catch

equal to the stock's ABC would result in overfishing. This probability that overfishing will occur cannot exceed 50 percent and should be a lower value. The ABC control rule should consider reducing fishing mortality as stock size declines and may establish a stock abundance level below which fishing would not be allowed. The process of establishing an ABC control rule could also involve science advisors or the peer review process established under Magnuson-Stevens Act section 302(g)(1)(E). The ABC control rule must articulate how ABC will be set compared to the OFL based on the scientific knowledge about the stock or stock complex and the scientific uncertainty in the estimate of OFL and any other scientific uncertainty. The ABC control rule should consider uncertainty in factors such as stock assessment results, time lags in updating assessments, the degree of retrospective revision of assessment results, and projections. The control rule may be used in a tiered approach to address different levels of scientific uncertainty.

(5) *Setting the annual catch limit—(i) General.* ACL cannot exceed the ABC and may be set annually or on a multiyear plan basis. ACLs in coordination with AMs must prevent overfishing (see MSA section 303(a)(15)). If a Council recommends an ACL which equals ABC, and the ABC is equal to OFL, the Secretary may presume that the proposal would not prevent overfishing, in the absence of sufficient analysis and justification for the approach. A "multiyear plan" as referenced in section 303(a)(15) of the Magnuson-Stevens Act is a plan that establishes harvest specifications or harvest guidelines for each year of a time period greater than 1 year. A multiyear plan must include a mechanism for specifying ACLs for each year with appropriate AMs to prevent overfishing and maintain an appropriate rate of rebuilding if the stock or stock complex is in a rebuilding plan. A multiyear plan must provide that, if an ACL is exceeded for a year, then AMs are triggered for the next year consistent with paragraph (g)(3) of this section.

(ii) *Sector-ACLs.* A Council may, but is not required to, divide an ACL into sector-ACLs. "Sector," for purposes of this section, means a distinct user group to which separate management strategies and separate catch quotas apply. Examples of sectors include the commercial sector, recreational sector, or various gear groups within a fishery. If the management measures for different sectors differ in the degree of management uncertainty, then sector

ACLs may be necessary so that appropriate AMs can be developed for each sector. If a Council chooses to use sector ACLs, the sum of sector ACLs must not exceed the stock or stock complex level ACL. The system of ACLs and AMs designed must be effective in protecting the stock or stock complex as a whole. Even if sector-ACLs and AMs are established, additional AMs at the stock or stock complex level may be necessary.

(iii) *ACLs for State-Federal Fisheries.* For stocks or stock complexes that have harvest in state or territorial waters, FMPs and FMP amendments should include an ACL for the overall stock that may be further divided. For example, the overall ACL could be divided into a Federal-ACL and state-ACL. However, NMFS recognizes that Federal management is limited to the portion of the fishery under Federal authority (see paragraph (g)(5) of this section). When stocks are co-managed by Federal, state, tribal, and/or territorial fishery managers, the goal should be to develop collaborative conservation and management strategies, and scientific capacity to support such strategies (including AMs for state or territorial and Federal waters), to prevent overfishing of shared stocks and ensure their sustainability.

(6) *ACT control rule.* If ACT is specified as part of the AMs for a fishery, an ACT control rule is utilized for setting the ACT. The ACT control rule should clearly articulate how management uncertainty in the amount of catch in the fishery is accounted for in setting ACT. The objective for establishing the ACT and related AMs is that the ACL not be exceeded.

(i) *Determining management uncertainty.* Two sources of management uncertainty should be accounted for in establishing the AMs for a fishery, including the ACT control rule if utilized: Uncertainty in the ability of managers to constrain catch so the ACL is not exceeded, and uncertainty in quantifying the true catch amounts (*i.e.*, estimation errors). To determine the level of management uncertainty in controlling catch, analyses need to consider past management performance in the fishery and factors such as time lags in reported catch. Such analyses must be based on the best available scientific information from an SSC, agency scientists, or peer review process as appropriate.

(ii) *Establishing tiers and corresponding ACT control rules.* Tiers can be established based on levels of management uncertainty associated with the fishery, frequency and accuracy of catch monitoring data

available, and risks of exceeding the limit. An ACT control rule could be established for each tier and have, as appropriate, different formulas and standards used to establish the ACT.

(7) A Council may choose to use a single control rule that combines both scientific and management uncertainty and supports the ABC recommendation and establishment of ACL and if used ACT.

(g) *Accountability measures.* The following features (see paragraphs (g)(1) through (5) of this section) of accountability measures apply to those stocks and stock complexes in the fishery.

(1) *Introduction.* AMs are management controls to prevent ACLs, including sector-ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur. AMs should address and minimize both the frequency and magnitude of overages and correct the problems that caused the overage in as short a time as possible. NMFS identifies two categories of AMs, inseason AMs and AMs for when the ACL is exceeded.

(2) *Inseason AMs.* Whenever possible, FMPs should include inseason monitoring and management measures to prevent catch from exceeding ACLs. Inseason AMs could include, but are not limited to: ACT; closure of a fishery; closure of specific areas; changes in gear; changes in trip size or bag limits; reductions in effort; or other appropriate management controls for the fishery. If final data or data components of catch are delayed, Councils should make appropriate use of preliminary data, such as landed catch, in implementing inseason AMs. FMPs should contain inseason closure authority giving NMFS the ability to close fisheries if it determines, based on data that it deems sufficiently reliable, that an ACL has been exceeded or is projected to be reached, and that closure of the fishery is necessary to prevent overfishing. For fisheries without inseason management control to prevent the ACL from being exceeded, AMs should utilize ACTs that are set below ACLs so that catches do not exceed the ACL.

(3) *AMs for when the ACL is exceeded.* On an annual basis, the Council must determine as soon as possible after the fishing year if an ACL was exceeded. If an ACL was exceeded, AMs must be triggered and implemented as soon as possible to correct the operational issue that caused the ACL overage, as well as any biological consequences to the stock or stock complex resulting from the overage when it is known. These AMs could include, among other things,

modifications of inseason AMs or overage adjustments. For stocks and stock complexes in rebuilding plans, the AMs should include overage adjustments that reduce the ACLs in the next fishing year by the full amount of the overages, unless the best scientific information available shows that a reduced overage adjustment, or no adjustment, is needed to mitigate the effects of the overages. If catch exceeds the ACL for a given stock or stock complex more than once in the last four years, the system of ACLs and AMs should be re-evaluated, and modified if necessary, to improve its performance and effectiveness. A Council could choose a higher performance standard (e.g., a stock's catch should not exceed its ACL more often than once every five or six years) for a stock that is particularly vulnerable to the effects of overfishing, if the vulnerability of the stock has not already been accounted for in the ABC control rule.

(4) *AMs based on multi-year average data.* Some fisheries have highly variable annual catches and lack reliable inseason or annual data on which to base AMs. If there are insufficient data upon which to compare catch to ACL, either inseason or on an annual basis, AMs could be based on comparisons of average catch to average ACL over a three-year moving average period or, if supported by analysis, some other appropriate multi-year period. Councils should explain why basing AMs on a multi-year period is appropriate. Evaluation of the moving average catch to the average ACL must be conducted annually and AMs should be implemented if the average catch exceeds the average ACL. As a performance standard, if the average catch exceeds the average ACL for a stock or stock complex more than once in the last four years, then the system of ACLs and AMs should be re-evaluated and modified if necessary to improve its performance and effectiveness. The initial ACL and management measures may incorporate information from previous years so that AMs based on average ACLs can be applied from the first year. Alternatively, a Council could use a stepped approach where in year-1, catch is compared to the ACL for year-1; in year-2 the average catch for the past 2 years is compared to the average ACL; then in year 3 and beyond, the most recent 3 years of catch are compared to the corresponding ACLs for those years.

(5) *AMs for State-Federal Fisheries.* For stocks or stock complexes that have harvest in state or territorial waters, FMPs and FMP amendments must, at a minimum, have AMs for the portion of

the fishery under Federal authority. Such AMs could include closing the EEZ when the Federal portion of the ACL is reached, or the overall stock's ACL is reached, or other measures.

(h) *Establishing ACL mechanisms and AMs in FMPs.* FMPs or FMP amendments must establish ACL mechanisms and AMs for all stocks and stock complexes in the fishery, unless paragraph (h)(2) of this section is applicable. These mechanisms should describe the annual or multiyear process by which specific ACLs, AMs, and other reference points such as OFL, and ABC will be established. If a complex has multiple indicator stocks, each indicator stock must have its own ACL; an additional ACL for the stock complex as a whole is optional. In cases where fisheries (e.g., Pacific salmon) harvest multiple indicator stocks of a single species that cannot be distinguished at the time of capture, separate ACLs for the indicator stocks are not required and the ACL can be established for the complex as a whole.

(1) In establishing ACL mechanisms and AMs, FMPs should describe:

(i) Timeframes for setting ACLs (e.g., annually or multi-year periods);

(ii) Sector-ACLs, if any (including set-asides for research or bycatch);

(iii) AMs and how AMs are triggered and what sources of data will be used (e.g., inseason data, annual catch compared to the ACL, or multi-year averaging approach); and

(iv) Sector-AMs, if there are sector-ACLs.

(2) *Exceptions from ACL and AM requirements—(i) Life cycle.* Section 303(a)(15) of the Magnuson-Stevens Act "shall not apply to a fishery for species that has a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species" (as described in Magnuson-Stevens Act section 303 note). This exception applies to a stock for which the average length of time it takes for an individual to produce a reproductively active offspring is approximately 1 year and that the individual has only one breeding season in its lifetime. While exempt from the ACL and AM requirements, FMPs or FMP amendments for these stocks must have SDC, MSY, OY, ABC, and an ABC control rule.

(ii) *International fishery agreements.* Section 303(a)(15) of the Magnuson-Stevens Act applies "unless otherwise provided for under an international agreement in which the United States participates" (Magnuson-Stevens Act section 303 note). This exception applies to stocks or stock complexes

subject to management under an international agreement, which is defined as "any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party" (see Magnuson-Stevens Act section 3(24)). These stocks would still need to have SDC and MSY.

(3) *Flexibility in application of NS1 guidelines.* There are limited circumstances that may not fit the standard approaches to specification of reference points and management measures set forth in these guidelines. These include, among other things, conservation and management of Endangered Species Act listed species, harvests from aquaculture operations, and stocks with unusual life history characteristics (e.g., Pacific salmon, where the spawning potential for a stock is spread over a multi-year period). In these circumstances, Councils may propose alternative approaches for satisfying the NS1 requirements of the Magnuson-Stevens Act than those set forth in these guidelines. Councils must document their rationale for any alternative approaches for these limited circumstances in an FMP or FMP amendment, which will be reviewed for consistency with the Magnuson-Stevens Act.

(i) *Fisheries data.* In their FMPs, or associated public documents such as SAFE reports as appropriate, Councils must describe general data collection methods, as well as any specific data collection methods used for all stocks in the fishery, and EC species, including:

(1) Sources of fishing mortality (both landed and discarded), including commercial and recreational catch and bycatch in other fisheries;

(2) Description of the data collection and estimation methods used to quantify total catch mortality in each fishery, including information on the management tools used (i.e., logbooks, vessel monitoring systems, observer programs, landings reports, fish tickets, processor reports, dealer reports, recreational angler surveys, or other methods); the frequency with which data are collected and updated; and the scope of sampling coverage for each fishery; and

(3) Description of the methods used to compile catch data from various catch data collection methods and how those data are used to determine the relationship between total catch at a given point in time and the ACL for stocks and stock complexes that are part of a fishery.

(j) *Council actions to address overfishing and rebuilding for stocks and stock complexes in the fishery—*

(1) *Notification.* The Secretary will

immediately notify in writing a Regional Fishery Management Council whenever it is determined that:

(i) Overfishing is occurring;

(ii) A stock or stock complex is overfished;

(iii) A stock or stock complex is approaching an overfished condition; or

(iv) Existing remedial action taken for the purpose of ending previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress.

(2) *Timing of actions—*(i) *If a stock or stock complex is undergoing overfishing,* FMPs or FMP amendments must establish ACL and AM mechanisms in 2010, for stocks and stock complexes determined to be subject to overfishing, and in 2011, for all other stocks and stock complexes (see paragraph (b)(2)(iii) of this section). To address practical implementation aspects of the FMP and FMP amendment process, paragraphs (j)(2)(i)(A) through (C) of this section clarifies the expected timing of actions.

(A) In addition to establishing ACL and AM mechanisms, the ACLs and AMs themselves must be specified in FMPs, FMP amendments, implementing regulations, or annual specifications beginning in 2010 or 2011, as appropriate.

(B) For stocks and stock complexes still determined to be subject to overfishing at the end of 2008, ACL and AM mechanisms and the ACLs and AMs themselves must be effective in fishing year 2010.

(C) For stocks and stock complexes determined to be subject to overfishing during 2009, ACL and AM mechanisms and ACLs and AMs themselves should be effective in fishing year 2010, if possible, or in fishing year 2011, at the latest.

(ii) *If a stock or stock complex is overfished or approaching an overfished condition.* (A) For notifications that a stock or stock complex is overfished or approaching an overfished condition made before July 12, 2009, a Council must prepare an FMP, FMP amendment, or proposed regulations within one year of notification. If the stock or stock complex is overfished, the purpose of the action is to specify a time period for ending overfishing and rebuilding the stock or stock complex that will be as short as possible as described under section 304(e)(4) of the Magnuson-Stevens Act. If the stock or stock complex is approaching an overfished condition, the purpose of the action is to prevent the biomass from declining below the MSST.

(B) For notifications that a stock or stock complex is overfished or approaching an overfished condition made after July 12, 2009, a Council must prepare and implement an FMP, FMP amendment, or proposed regulations within two years of notification, consistent with the requirements of section 304(e)(3) of the Magnuson-Stevens Act. Council actions should be submitted to NMFS within 15 months of notification to ensure sufficient time for the Secretary to implement the measures, if approved. If the stock or stock complex is overfished and overfishing is occurring, the rebuilding plan must end overfishing immediately and be consistent with ACL and AM requirements of the Magnuson-Stevens Act.

(3) *Overfished fishery.* (i) Where a stock or stock complex is overfished, a Council must specify a time period for rebuilding the stock or stock complex based on factors specified in Magnuson-Stevens Act section 304(e)(4). This target time for rebuilding (T_{target}) shall be as short as possible, taking into account: The status and biology of any overfished stock, the needs of fishing communities, recommendations by international organizations in which the U.S. participates, and interaction of the stock within the marine ecosystem. In addition, the time period shall not exceed 10 years, except where biology of the stock, other environmental conditions, or management measures under an international agreement to which the U.S. participates, dictate otherwise. SSCs (or agency scientists or peer review processes in the case of Secretarial actions) shall provide recommendations for achieving rebuilding targets (see Magnuson-Stevens Act section 302(g)(1)(B)). The above factors enter into the specification of T_{target} as follows:

(A) The "minimum time for rebuilding a stock" (T_{min}) means the amount of time the stock or stock complex is expected to take to rebuild to its MSY biomass level in the absence of any fishing mortality. In this context, the term "expected" means to have at least a 50 percent probability of attaining the B_{msy} .

(B) For scenarios under paragraph (j)(2)(ii)(A) of this section, the starting year for the T_{min} calculation is the first year that a rebuilding plan is implemented. For scenarios under paragraph (j)(2)(ii)(B) of this section, the starting year for the T_{min} calculation is 2 years after notification that a stock or stock complex is overfished or the first year that a rebuilding plan is implemented, whichever is sooner.

(C) If T_{min} for the stock or stock complex is 10 years or less, then the maximum time allowable for rebuilding (T_{max}) that stock to its B_{msy} is 10 years.

(D) If T_{min} for the stock or stock complex exceeds 10 years, then the maximum time allowable for rebuilding a stock or stock complex to its B_{msy} is T_{min} plus the length of time associated with one generation time for that stock or stock complex. "Generation time" is the average length of time between when an individual is born and the birth of its offspring.

(E) T_{target} shall not exceed T_{max} , and should be calculated based on the factors described in this paragraph (j)(3).

(ii) If a stock or stock complex reached the end of its rebuilding plan period and has not yet been determined to be rebuilt, then the rebuilding F should not be increased until the stock or stock complex has been demonstrated to be rebuilt. If the rebuilding plan was based on a T_{target} that was less than T_{max} , and the stock or stock complex is not rebuilt by T_{target} , rebuilding measures should be revised, if necessary, such that the stock or stock complex will be rebuilt by T_{max} . If the stock or stock complex has not rebuilt by T_{max} , then the fishing mortality rate should be maintained at $F_{rebuild}$ or 75 percent of the MFMT, whichever is less.

(iii) Council action addressing an overfished fishery must allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery.

(iv) For fisheries managed under an international agreement, Council action addressing an overfished fishery must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(4) *Emergency actions and interim measures.* The Secretary, on his/her own initiative or in response to a Council request, may implement interim measures to reduce overfishing or promulgate regulations to address an emergency (Magnuson-Stevens Act section 304(e)(6) or 305(c)). In considering a Council request for action, the Secretary would consider, among other things, the need for and urgency of the action and public interest considerations, such as benefits to the stock or stock complex and impacts on participants in the fishery.

(i) These measures may remain in effect for not more than 180 days, but may be extended for an additional 186 days if the public has had an opportunity to comment on the measures and, in the case of Council-recommended measures, the Council is actively preparing an FMP, FMP amendment, or proposed regulations to

address the emergency or overfishing on a permanent basis.

(ii) Often, these measures need to be implemented without prior notice and an opportunity for public comment, as it would be impracticable to provide for such processes given the need to act quickly and also contrary to the public interest to delay action. However, emergency regulations and interim measures that do not qualify for waivers or exceptions under the Administrative Procedure Act would need to follow proposed notice and comment rulemaking procedures.

(k) *International overfishing.* If the Secretary determines that a fishery is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures (or no effective measures) to end overfishing under an international agreement to which the United States is a party, then the Secretary and/or the appropriate Council shall take certain actions as provided under Magnuson-Stevens Act section 304(i). The Secretary, in cooperation with the Secretary of State, must immediately take appropriate action at the international level to end the overfishing. In addition, within one year after the determination, the Secretary and/or appropriate Council shall:

(1) Develop recommendations for domestic regulations to address the relative impact of the U.S. fishing vessels on the stock. Council recommendations should be submitted to the Secretary.

(2) Develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock. Councils should, in consultation with the Secretary, develop recommendations that take into consideration relevant provisions of the Magnuson-Stevens Act and NS1 guidelines, including section 304(e) of the Magnuson-Stevens Act and paragraph (j)(3)(iv) of this section, and other applicable laws. For highly migratory species in the Pacific, recommendations from the Western Pacific, North Pacific, or Pacific Councils must be developed and submitted consistent with Magnuson-Stevens Reauthorization Act section 503(f), as appropriate.

(3) *Considerations for assessing "relative impact."* "Relative impact" under paragraphs (k)(1) and (2) of this section may include consideration of

factors that include, but are not limited to: Domestic and international management measures already in place, management history of a given nation, estimates of a nation's landings or catch (including bycatch) in a given fishery, and estimates of a nation's mortality contributions in a given fishery. Information used to determine relative impact must be based upon the best available scientific information.

(1) *Relationship of National Standard 1 to other national standards—General.* National Standards 2 through 10 provide further requirements for conservation and management measures in FMPs, but do not alter the requirement of NS1 to prevent overfishing and rebuild overfished stocks.

(1) *National Standard 2 (see § 600.315).* Management measures and reference points to implement NS1 must be based on the best scientific information available. When data are insufficient to estimate reference points directly, Councils should develop reasonable proxies to the extent possible (also see paragraph (e)(1)(iv) of this section). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data. SSCs should advise their Councils regarding the best scientific information available for fishery management decisions.

(2) *National Standard 3 (see § 600.320).* Reference points should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (also see paragraph (e)(1)(iii) of this section). Also, scientific assessments must be based on the best information about the total range of the stock and potential biological structuring of the stock into biological sub-units, which may differ from the geographic units on which management is feasible.

(3) *National Standard 6 (see § 600.335).* Councils must build into the reference points and control rules appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors.

(4) *National Standard 8 (see § 600.345).* National Standard 8 directs the Councils to apply economic and social factors towards sustained participation of fishing communities and to the extent practicable, minimize adverse economic impacts on such communities within the context of preventing overfishing and rebuilding overfished stocks as required under National Standard 1. Therefore, calculation of OY as reduced from MSY

should include economic and social factors, but the combination of management measures chosen to achieve the OY must principally be designed to prevent overfishing and rebuild overfished stocks.

(5) *National Standard 9* (see § 600.350). Evaluation of stock status with respect to reference points must take into account mortality caused by bycatch. In addition, the estimation of catch should include the mortality of fish that are discarded.

(m) *Exceptions to requirements to prevent overfishing*. Exceptions to the requirement to prevent overfishing could apply under certain limited circumstances. Harvesting one stock at its optimum level may result in overfishing of another stock when the

two stocks tend to be caught together (This can occur when the two stocks are part of the same fishery or if one is bycatch in the other's fishery). Before a Council may decide to allow this type of overfishing, an analysis must be performed and the analysis must contain a justification in terms of overall benefits, including a comparison of benefits under alternative management measures, and an analysis of the risk of any stock or stock complex falling below its MSST. The Council may decide to allow this type of overfishing if the fishery is not overfished and the analysis demonstrates that all of the following conditions are satisfied:

(1) Such action will result in long-term net benefits to the Nation;

(2) Mitigating measures have been considered and it has been demonstrated that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur; and

(3) The resulting rate of fishing mortality will not cause any stock or stock complex to fall below its MSST more than 50 percent of the time in the long term, although it is recognized that persistent overfishing is expected to cause the affected stock to fall below its B_{msy} more than 50 percent of the time in the long term.

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Revisions to the National Standard 1 Guidelines:

Guidance on Annual Catch Limits and Other Requirements

January 2009

NOAA Fisheries Service
Office of Sustainable Fisheries
Silver Spring, MD

1



Note: This presentation provides only a summary of the National Standard 1 guidelines. Any discrepancies between this presentation and the National Standard 1 guidelines as published in the *Federal Register* on January 16, 2009 (74 FR 3178) will be resolved in favor of the *Federal Register*.



2



Statutory Requirements

3



National Standard (NS) 1

- “Conservation and management measures shall **prevent overfishing** while achieving, on a continuing basis, the **optimum yield** from each fishery for the United States fishing industry.”

– MSA Section 301(a)(1)



4



2007 MSA Amendments

- The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (*MSRA*) added new requirements for annual catch limits (ACLs) and accountability measures (AMs).
- Fishery management plans shall “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.”

MSA Section 303(a)(15)

5



ACLs

- Exceptions to ACL requirement*:
 - Species with a life cycle of approximately one year, unless subject to overfishing
 - Stocks managed under an international agreement to which the U.S. is party
- Implementation in fishing year*:
 - 2010 for fisheries subject to overfishing
 - 2011 for all other fisheries
- May not exceed a Council’s Scientific and Statistical Committee’s (SSC) fishing level recommendation**

*MSA sec. 303 note, MSRA sec. 104(b)

**MSA sec. 302(h)(6)

6





New SSC requirements

- “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.”

MSA Section 302(g)(1)(B)

7



For “overfished” stocks

- Effective July 12, 2009, within 2 years of an “overfished” or “approaching overfished” stock status notification, Councils (or Secretary for Atlantic HMS) must “prepare and implement” management measures to:
 - **Immediately** end overfishing
 - Rebuild affected stocks
 - Rebuilding time shall be “as short as possible”
 - “not exceed 10 years”, unless biological or environmental circumstances, or management under an international agreement dictates otherwise

MSA Sec. 304(e)(3), MSRA sec. 104(c)

8





NMFS Objectives in Revising the NS 1 Guidelines

9



Strong, Yet Flexible, Guidelines

- Ensure that the MSA mandate for ACLs and AMs to end and prevent overfishing is met and account for U.S. fisheries diversity:
 - Biological and ecological
 - Management approaches
 - Scientific knowledge
 - Monitoring capacity
 - Overlap in management jurisdiction
 - Resource users



10



Incorporate New Terms

- Define and provide guidance on the terms ACLs, AMs, and acceptable biological catch (ABC) that are required but not defined by MSA.
- Explain the relationship between ACLs, AMs, and ABC and other reference points such as the overfishing limit (OFL) and the annual catch target (ACT).



11



Consider Public Input

- Scoping: February – April 2007
 - Held 9 scoping sessions
- Proposed Guidelines: 73 FR 32526 (June 9, 2008)
- Public comment period: June 9 – September 22, 2008
 - Held 3 public meetings
 - Made presentations to each of the 8 Councils
 - Received over 150,000 comments
- Final Guidelines: 74 FR 3178 (January 16, 2009)



12



Themes From Comments Received (June 9th – September 22nd, 2008)

- Proposed definition framework (OFL ≥ ABC ≥ ACL ≥ ACT)
- Buffers between OFL and ABC
- Complexity of the guidelines
- Challenge of implementing ACLs and AMs by 2010 and 2011
- ACT and ACT control rule
- Analysis to support the action (i.e., Environmental Impact Statement)
- Ecosystem component species
- Spatial-temporal management as part of effective ACLs
- Specific guidelines for forage fish management
- Include a description of vulnerability to help classify stocks

See 74 FR 3178 (January 16, 2009) for full summary of comments and responses



13



Themes From Comments Received (continued)

- Addressing scientific and management uncertainty
- Use of catch shares or limited access privilege programs
- Encourage the use of sectors
- Support and opposition for the use of inseason AMs
- AMs for when the ACL is exceeded
- AMs for recreational fisheries
- ACLs and AMs for state-Federal fisheries
- Rebuilding provisions
- International fishing exception
- Mixed-stock exception

See 74 FR 3178 (January 16, 2009) for full summary of comments and responses



14



Changes from proposed to final NS1 guidance

15



Changes in final guidance

- ACTs and ACT control rules are optional accountability measures. For fisheries without inseason management control to prevent ACL from being exceeded, should utilize ACTs set below ACLs so catches do not exceed ACL.*
- If Council recommends $OFL=ABC=ACL$, Secretary may presume the proposal would not prevent overfishing, in the absence of sufficient analysis and justification. In most cases, expect ABC to be reduced from OFL to account for scientific uncertainty and reduce probability that overfishing might occur in a given year. **
- Clarification of statutory/mandatory provisions versus discretionary provisions.

*§ 600.310 (g)(2), **§ 600.310 (f)(3), **§ 600.310 (f)(5)(i)





Major aspects of the NS1 guidelines

17



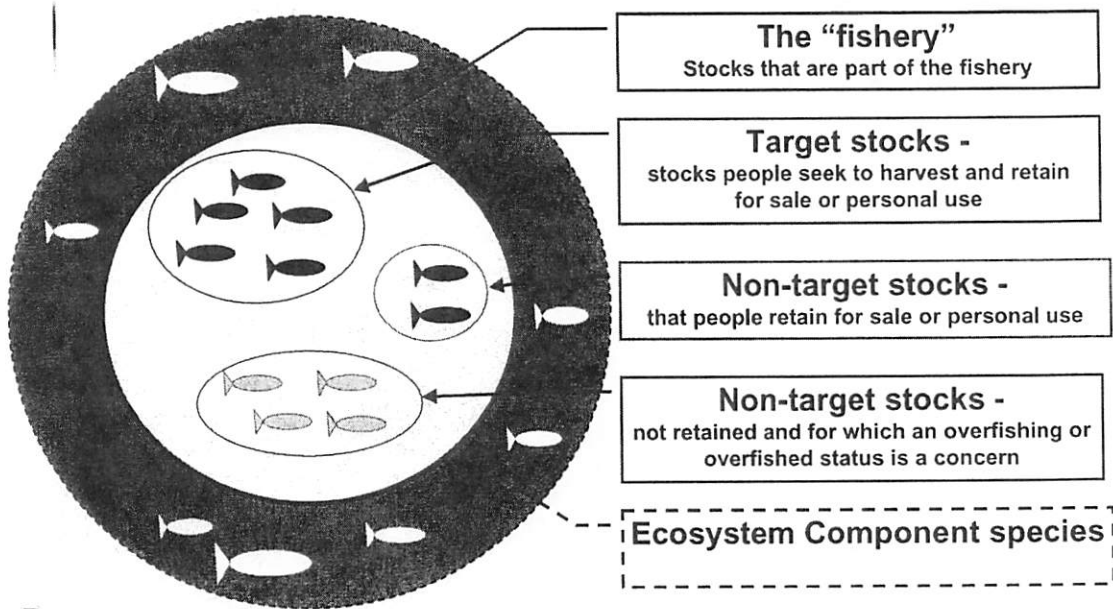
Stock classification in FMPs

- All stocks in FMP are considered “in the fishery” unless specified as ecosystem component (EC) species.
- EC classification is not required but is discretionary.
- To be considered for possible EC classification, species should, among other considerations:
 - Be a non-target species or non-target stock;
 - Not be determined to be subject to overfishing, approaching overfished, or overfished;
 - Not be likely to become subject to overfishing or overfished, according to the best available information, in the absence of conservation and management measures; and
 - Not generally be retained for sale or personal use.





Example of the kind of stocks that may fall into the two classifications.



19



ACLs Apply to Stocks "in the Fishery"

- In practice, overfishing is determined at the stock or stock complex level. Therefore, ACLs should be applied at the stock or stock complex level.
- ACLs would apply only to stocks "in a fishery."
- ACLs would not apply to "ecosystem component species."



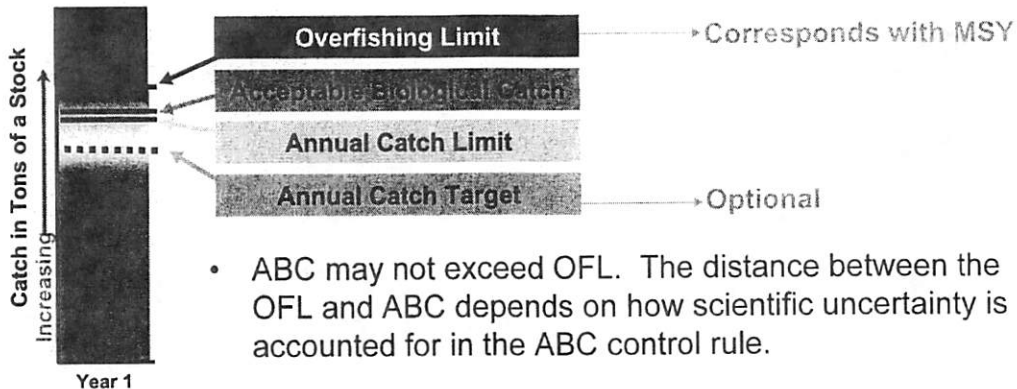
§ 600.310 (c)(4)
§ 600.310 (f)

20



Definition Framework

$$OFL \geq ABC \geq ACL$$



- ABC may not exceed OFL. The distance between the OFL and ABC depends on how scientific uncertainty is accounted for in the ABC control rule.
- The ACL may not exceed the ABC.
 - ABC is one of the fishing level recommendations under MSA section 302(h)(6).

§ 600.310 (f)(1)-(7)

21



Approach for Setting Limits and AMs

- Councils must take an approach that considers uncertainty in **scientific information and management control** of the fishery.
- **Scientific Uncertainty**
 - **ABC control rule:** A specified approach to setting the ABC for a stock as a function of the scientific uncertainty in the estimate of OFL and any other scientific uncertainty. § 600.310 (f)(2)(iii)
 - **Risk policy is part of ABC control rule:** The determination of ABC should be based, when possible, on the probability that an actual catch equal to the stock's ABC would result in overfishing. This probability that overfishing will occur cannot exceed 50 percent and should be a lower value. § 600.310 (f)(4)
- **Management Uncertainty**
 - Address through a full range of AMs.
 - For fisheries without inseason management control to prevent the ACL from being exceeded, AMs should utilize ACTs that are set below ACLs so that catches do not exceed the ACL.

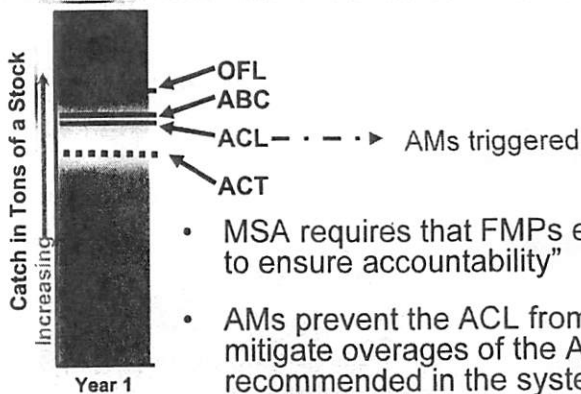
§ 600.310 (g)(2)



22



Accountability Measures (AMs)



- MSA requires that FMPs establish ACLs, “including measures to ensure accountability”
- AMs prevent the ACL from being exceeded and correct or mitigate overages of the ACL if they occur. ACTs are recommended in the system of accountability measures so that ACL is not exceeded.
- Two types of AMs:
 - Inseason measures to prevent exceeding the ACL
 - AMs for when the ACL is exceeded
 - Operational factors leading to an overage
 - Biological consequences to the stock, if any

§ 600.310 (g)(1)-(3)

23



Performance Standards

- Because of scientific and management uncertainty, there is always a chance that overfishing could occur.
- The system of ACLs and AMs should be re-evaluated and modified if necessary, if the ACL is exceeded more than once in the last 4 years.
- A higher performance standard could be used if a stock is particularly vulnerable to the effects of overfishing.

§ 600.310 (g)(3)

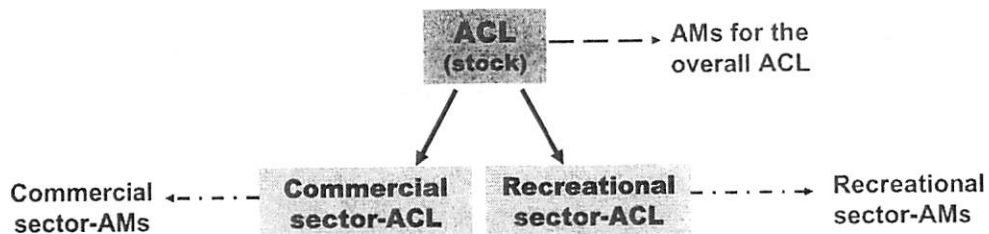
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ACLs & AMs for a Fishery Sector

- **Optional** to sub-divide a stock's ACL into "sector-ACLs".
- If the management measures for different sectors differ in the degree of management uncertainty, then sector ACLs may be necessary so that appropriate AMs can be developed for each sector.
- The sum of sector-ACLs must not exceed the overall ACL.
- For each sector-ACL, "sector-AMs" should be established.
- AMs at the stock level may be necessary.



§ 600.310 (f)(5)(ii) 25



State-Federal Fisheries

- ACL should be specified for the entire stock and may be further divided (e.g., Federal-ACL and state-ACL)
- AMs required for portion of fishery under Federal authority
- Goal should be to develop collaborative conservation and management strategies (including AMs) with Federal, state, tribal, and/or territorial fishery managers.

§ 600.310 (f)(5)(iii) & (g)(5)



ABC and ACL for Rebuilding Stocks

- For rebuilding stocks, the ABC and ACL should be set at lower levels during some or all stages of rebuilding than when a stock is rebuilt for two reasons:
 1. Overfishing should not occur, and
 2. Rebuilding at a rate commensurate with the stock's rebuilding plan should occur.
- **ABC for overfished stocks:** For overfished stocks and stock complexes, a rebuilding ABC must be set to reflect the annual catch that is consistent with the schedule of fishing mortality rates in the rebuilding plan.

§ 600.310 (f)(3)(ii)

27



AMs for Rebuilding Overfished Stocks

- If a stock is in a rebuilding plan and its ACL is exceeded, the AMs should include overage adjustments that reduce the ACL in the next fishing year by the full amount of the overage, unless the best scientific information available shows that a reduced overage adjustment, or no adjustment, is needed to mitigate the effects of the overage.
- This AM is important to increase the likelihood that the stock will continue to rebuild.

§ 600.310 (g)(3)

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Summary of the Major Aspects of the NS1 Guidelines

- MSA requires:
 - ACLs and AMs to prevent overfishing,
 - ACLs not exceed fishing level recommendations of SSCs, and
 - ACLs and AMs in all managed fisheries, with 2 exceptions.
- NS1 guidelines:
 - ACLs and AMs for all stocks and stock complexes in a fishery, unless the 2 MSA exceptions apply.
 - Clearly account for both scientific and management uncertainty
 - AMs should prevent ACL overages, where possible, and always address overages, if they occur.
 - An optional “ecosystem component” category could allow flexibility in FMPs for greater ecosystem considerations.



Other Aspects of the NS1 Guidelines



Timeline for Implementing Rebuilding Plans After July 12, 2009

- For notifications that a stock or complex is **overfished or approaching an overfished condition**, a Council (or Secretary for Atlantic HMS) must prepare and implement management measures within 2 years of the notification.
- For timely implementation:
 - Councils should submit an FMP, FMP amendment, or proposed regulations within 15 months of notification.
 - This provides the Secretary 9 months to implement the measures, if approved.
- If the stock is overfished and overfishing is occurring, the rebuilding plan must end overfishing immediately.

§ 600.310 (j)(2)(ii)(B)

31



Establishing rebuilding time targets

- SSCs (or agency scientists or peer review processes in the case of Secretarial actions) shall provide recommendations for achieving rebuilding targets (see MSA sec. 302(g)(1)(B)).
- NS1 guidelines clarify calculation of **target time to rebuild** (T_{target}) for stocks in rebuilding plans.





Minimum time for rebuilding (T_{\min})

- T_{target} must be “as short as possible,” taking into account factors set forth under MSA sec. 304(e)(4)(A)(i), and may not exceed 10 years, except as provided under sec. 304(e)(4)(A)(ii). See NS1 guidelines at § 600.310 (j)(3).
- T_{target} should be based on the **minimum time for rebuilding a stock (T_{\min})** and the above factors.
- T_{\min} is the amount of time the stock or complex is expected to take to rebuild to its MSY biomass level in the absence of any fishing mortality. In this context, the term “expected” means to have at least a 50% probability of attaining the B_{MSY} .

§ 600.310 (j)(3)(i)

33



Maximum Time Allowable for Rebuilding (T_{\max})

- If T_{\min} is ≤ 10 years, then T_{\max} is 10 years.
- If T_{\min} is > 10 years, then T_{\max} is T_{\min} + the length of time associated with one generation time for that stock or stock complex.
 - **Generation time** is the average length of time between when an individual is born and the birth of its offspring.
- T_{target} shall not exceed T_{\max} , and should be calculated based on the factors described in § 600.310 (j)(3)

§ 600.310 (j)(3)(i)(A)-(E)

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Action at the end of a rebuilding period if a stock is not yet rebuilt

- If a stock reaches the end of its rebuilding plan period and it is not yet determined to be rebuilt, then the rebuilding F should not be increased until the stock has been demonstrated to be rebuilt.
- If the rebuilding plan was based on a T_{target} that was less than T_{max} , and the stock is not rebuilt by T_{target} , rebuilding measures should be revised if necessary, such that the stock will be rebuilt by T_{max} .
- If the stock has not rebuilt by T_{max} , then the fishing mortality rate should be maintained at F_{rebuild} or 75 percent of the MFMT, whichever is less.

§ 600.310 (j)(3)(ii)

35



International Overfishing - MSA section 304(i)

- Section 304(i) applies if the Secretary determines that a fishery is overfished or approaching overfished due to excessive international fishing pressure, and for which there are no management measures to end overfishing under an international agreement to which the U.S. is a party. Actions under section 304(i) include:
 - The Secretary, with Secretary of State, immediately takes action at the international level to end overfishing
 - Within 1 year, the Secretary and/or appropriate Council shall:
 - Recommend domestic regulations to address "relative impact" of U.S. fishing vessels
 - Recommend to Secretary of State and Congress, international actions to end overfishing and rebuild affected stocks, taking into account relative impact of vessels of other nations and vessels of the U.S.

§ 600.310 (k)

36





"Relative Impact"

- NMFS describes "relative impact":
 - May include consideration of factors that include, but are not limited to: domestic and international management measures already in place, management history of a given nation, estimates of a nation's landings or catch (including bycatch) in a given fishery, and estimates of a nation's mortality contributions in a given fishery.
 - Information used to determine relative impact should be based upon the best available scientific information.

§ 600.310 (k)(3)

37



Forming Stock Complexes

- **Stock complex** = a group of stocks sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery such that the impact of management actions on the stocks is similar.
- May be formed for various reasons, including where:
 - stocks in a multispecies fishery cannot be targeted independent of one another and MSY cannot be defined on a stock-by-stock basis;
 - there is insufficient data to measure their status relative to SDC; or
 - it is not feasible for fishermen to distinguish individual stocks among their catch.
- The vulnerability of stocks to the fishery should be evaluated when establishing or reorganizing a complex.
- May be comprised of:
 - 1 or more indicator stocks, each with SDC and ACLs, and several other stocks;
 - several stocks without an indicator stock, with SDC and an ACL for the complex as a whole; or
 - 1 or more indicator stocks, each of which has SDC and management objectives, with an ACL for the complex as a whole (might be applicable to salmon species).

§ 600.310 (d)(8) 38





Indicator Stocks & Vulnerability

- An indicator stock is a stock with measurable SDC that can be used to help manage and evaluate more poorly known stocks that are in a stock complex. If one is used to evaluate the status of a complex, it should be representative of the typical status of each stock within the complex, due to similarity in vulnerability.
- A stock's vulnerability is a combination of its productivity, which depends upon its life history characteristics, and its susceptibility to the fishery.
 - Productivity – refers to capacity of the stock to produce MSY and to recover if the population is depleted
 - Susceptibility – potential for the stock to be impacted by the fishery, which includes direct captures, as well as indirect impacts to the fishery



§ 600.310 (d)(9) & (10) 39



Status Determination Criteria (SDC)

- SDC must be expressed in a way that enables the Council to monitor each stock or complex in the FMP, and determine annually, if possible, whether overfishing is occurring and whether the stock or complex is overfished.
- In specifying SDC, a Council must provide an analysis of how the SDC were chosen and how they relate to reproductive potential.
- Two approaches may be chosen for SDC to determine overfishing:
 - **Fishing mortality rate exceeds MFMT.** Exceeding the MFMT for a period of 1 year or more constitutes overfishing.
 - **Catch exceeds the OFL.** If the annual catch exceeds the annual OFL for 1 year or more, the stock or complex is considered subject to overfishing.



§ 600.310 (e)(2)(ii)



Fisheries Data

- In their FMPs, or associated public documents such as SAFE reports as appropriate, Councils must describe general data collection methods, as well as any specific data collection methods used for all stocks in the fishery, and EC species, including:
 - Sources of fishing mortality;
 - Description of the data collection and estimation methods used to quantify total catch mortality in each fishery; and
 - Description of the methods used to compile catch data from various catch data collection methods and how those data are used to determine the relationship between total catch at a given point in time and the ACL for stocks and stock complexes that are part of a fishery.

§ 600.310 (i)(1)-(3)

41



Mixed stock exception

- Exceptions to the requirement to prevent overfishing could apply under certain limited circumstances.
- Fishery must not be in overfished condition and analysis must be performed that demonstrates the below conditions are satisfied:
 - Will result in long-term net benefits to the Nation;
 - Mitigating measures have been considered and it has been demonstrated that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur; and
 - The resulting rate of fishing mortality will not cause any stock or stock complex to fall below its MSST more than 50 percent of the time in the long term, although it is recognized that persistent overfishing is expected to cause the affected stock to fall below its Bmsy more than 50 percent of the time in the long term.

§ 600.310 (m) 42





Summary

- **The NS1 guidelines provide guidance on the following topics:**
- Rebuilding plans:
 - changing the timeline to prepare new rebuilding plans
 - guidance on how to establish rebuilding time targets
 - advice on action to take at the end of a rebuilding period if a stock is not yet rebuilt.
- Implementing MSA Section 304(i)
- Forming stock complexes and use of indicator stocks
- Two approaches for making overfishing status determinations
- Fisheries Data
- Mixed stock exception



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Additional Information

- Additional information about ACLs and NS1 can be found at the following website:
 - <http://www.nmfs.noaa.gov/msa2007/catchlimits.htm>
- Public comments on the proposed revisions to the NS1 guidelines can be viewed at the Federal e-Rulemaking portal:
 - <http://www.regulations.gov>
 - You can search for documents regarding the NS1 guidelines under “Advanced docket search” using “0648-AV60” as the RIN keyword.



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North Pacific Fishery Management Council
Report on ACLs, Ending Overfishing, and Rebuilding Status
CCC Meeting, February 2009

AGENDA B-1(c)
FEBRUARY 2009

Annual Catch Limits

The NPFMC's two Groundfish FMPs include a suite of catch limits for individual groundfish stocks. These catch limits include an overfishing limit (OFL), and acceptable biological catch limit (ABC) and a total allowable catch limit (TAC) where $TAC \leq ABC < OFL$. The OFL and ABC are set by the SSC, and the TAC is set by the Council. The groundfish TAC meets the definition of an ACL per the guidelines -- it is set not to exceed the ABC, and there are accountability measures geared both to prevent the TAC from being exceeded (e.g. directed fishing closures) and to respond if the TAC is exceeded (e.g. prohibition of retention).

The state/federal BSAI Crab FMP currently specifies annual OFLs (set by the SSC) and TACs (set by state) for individual stocks, where $TAC \leq OFL$. A direct allocation of harvest shares prevents the TAC from being exceeded (catch is limited by individual/cooperative quota shares). Any harvest over the allotted quota results in forfeiture and/or fines.

The state/federal Alaska Scallop FMP specifies an overfishing level for weathervane scallops and annual guideline harvest levels (GHL) for stock areas that cumulatively are set well below the OFL. The upper end of the GHL in each management area is analogous to a TAC or ACL. The fishery operates as a cooperative and has 100% at-sea observer coverage. The GHL is prevented from being exceeded by directed fishing closures.

The state/federal salmon FMP is unique in that the catches for the thousands of stocks are limited by in-season management by the Alaska Department of Fish and Game. We believe that our Salmon FMP meets the alternative approach described in section (h)(3) on page 3211 of the final rule, which specifically mentions Pacific salmon, and thus should be deemed exempt from ACL and AM requirements.

Action for the Council: In 2009, the Council will begin to develop an analysis to specify ABCs for stocks under the Crab and Scallop FMPs. The Salmon FMP will also be reviewed to ensure that the existing language is consistent with the MSA and the NSI alternative approach, and the FMP will be amended if necessary. Final action on these amendments would occur in 2010.

Ending Overfishing

No stocks are subject to overfishing in the North Pacific.

Action for the Council: No action appears necessary.

Rebuilding Status

To date, there have been four stocks that were deemed 'overfished' (Bering Tanner crab, Bering Sea opilio crab, St. Matthew blue king crab, and Pribilof blue king crab) when the stocks fell below MSST following years of poor recruitment. Rebuilding plans were implemented for these crab stocks. To date, one stock is fully rebuilt above Bmsy (Tanner crab). Two stocks are no longer overfished but not yet fully rebuilt to Bmsy (opilio crab and St. Matthew blue king crab). One stock, Pribilof blue king crab, remains well below MSST ('overfished') despite not having a fishery since 1999, establishment of a no-trawl zone to protect the stock since 1995, and closures of other fisheries to limit bycatch.

Action for the Council: In 2009, the crab plan team will develop an analysis to review and revise the Pribilof Islands blue king crab rebuilding plan. The Council is tentatively scheduled to make an initial review of this analysis in December 2009, with final action scheduled for February or April 2010. The Council may also need to revise the rebuilding plans for Bering Sea opilio crab and St. Matthew blue king crab as it does not appear these stocks will be rebuilt by 2010 (Tmax for both rebuilding plans).

Groundfish Catch Limits

A CORNERSTONE FOR SUSTAINABILITY

Strict annual catch limits for every target fishery provide the most basic and effective management tool to ensure sustainable fisheries. In the North Pacific, a rigorous process in place for over 30 years ensures that annual quotas are set at conservative, sustainable levels.

SCIENTIFIC LIMITS

Three reference points are used for management of groundfish fisheries in the North Pacific. The **overfishing level (OFL)** is the harvest limit which should never be exceeded. It is based on the fishing mortality rate associated with producing the maximum sustainable yield on a continuing basis. The **acceptable biological catch (ABC)** is set lower than the OFL, as the annual sustainable harvest limit. The buffer between these reference points allows for uncertainty in single species stock assessments, ecosystem considerations, and operational management of the fishery. The **total allowable catch (TAC)** is the annual harvest limit that incorporates social and economic considerations. The FMP prescribes that TAC may equal but never exceed ABC, which is set lower than OFL. The sum of TACs for all groundfish stocks must also remain within the optimum yield range defined in the FMP. In the BSAI, the upper limit of the range is 2 million mt, which can be constraining. TAC may be set lower than ABC for a variety of reasons, such as to remain under the 2 million mt optimum yield limit; to increase a rebuilding rate or address other conservation issues; to limit incidental bycatch, for example of halibut; or to account for state water removals. Fisheries are managed in-season to achieve the TACs without exceeding the ABC or OFL.

The reference points and catch limits are specified annually through an established process. The annual process of determining OFL and ABC specifications begins with the assignment of each stock to one of six "tiers" based on the availability of information about that stock. Stocks in Tier 1 have the most information, and those in Tier 6, the least. Application of a control rule for each tier prescribes the resulting OFL and ABC for each stock. For many groundfish stocks, the estimate of $F_{40\%}$ is used as a surrogate for F_{ABC} . $F_{40\%}$ is the fishing mortality rate at which the spawning biomass per recruit is reduced to 40% of its value in the equivalent unfished stock. The control rules for Tiers 1-3 also provide for automatic rebuilding, because if a stock falls below target biomass levels, ABC and OFL are drastically reduced.



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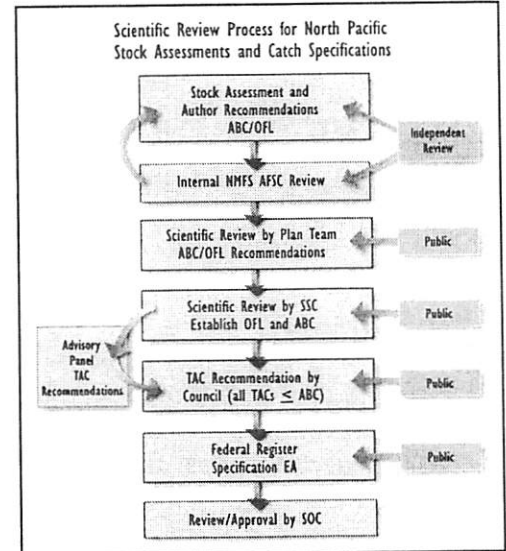
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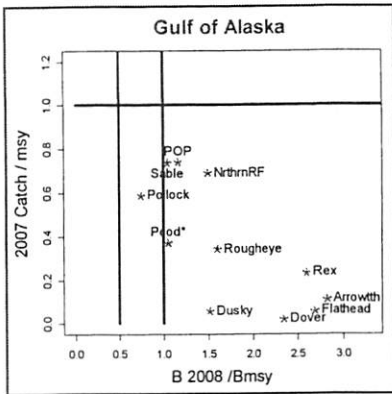
Goodman, D., Mangel, M, Parkes, G, Quinn, T, Restrepo, V., Smith, T., and K. Stokes. 2002. Scientific Review of the Harvest Strategy Currently Used in the BSAI and GOA Groundfish Fishery Management Plans. www.fakr.noaa.gov/npfmc/misc/pub/f40review1102.pdf

FMP References

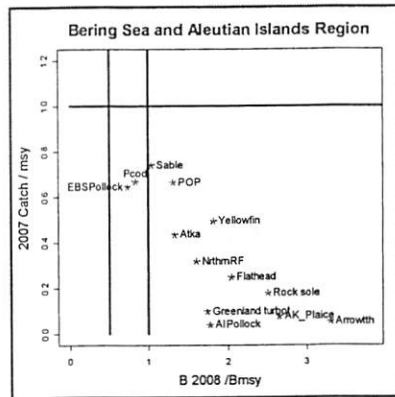
Forage fish category: BSAI Groundfish FMP Amendment 56, GOA Groundfish FMP Amendment 56; 64 FR 10952, implemented January 27, 1999.



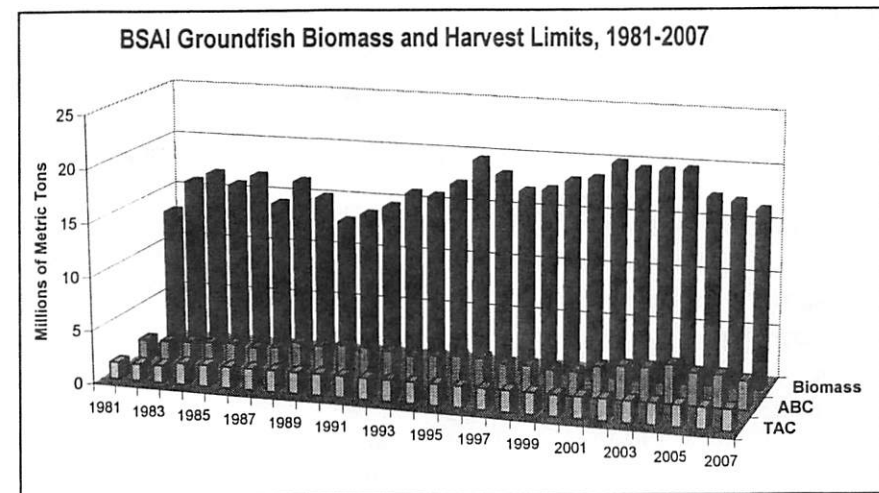
Flow chart depicting the scientific review process for stock assessments and establishment of catch specifications, where $TAC \leq ABC < OFL$.



Status of modeled GOA and BSAI groundfish stocks, relative to overfished and overfishing thresholds (indicated by red lines). The blue line indicates the target biomass, B_{MSY} .



Estimates of biomass, acceptable biological catch (ABC), and total allowable catch (TAC), in millions of tons, for groundfish in the BSAI from 1981-2007.



Scientists write an assessment of the status of each stock (or group of stocks), and include alternate model simulations and tier assignments to arrive at a recommendation for OFLs and ABCs. The Groundfish Plan Teams compile these assessments into a Stock Assessment and Fishery Evaluation (SAFE) report, develop their own recommendations (which may or may not agree with the stock assessment author), and present this information to the Council and its Scientific and Statistical Committee (SSC) and Advisory Panel (AP). The SSC is responsible for setting the Council's OFL and ABC limits, using the SAFE reports and Plan Team recommendations. The SSC retains the flexibility to adjust ABC and OFL values from the control rule, based on factors such as multispecies interactions and ecosystem considerations. The Council then sets the TAC levels at or below the ABC levels, incorporating recommendations from the Advisory Panel and public testimony.

POSITIVE RESULTS

In 2002, the Council commissioned an independent review of the basic exploitation strategies by a panel of internationally recognized scientists. The panel concluded that in a single-species/target-stock context, the TAC-setting process employed by the Council is a very conservative one, at least for Tiers 1 through 5 (no reliable estimates of biomass or natural mortality are available for stocks in Tier 6, and OFL and ABC are based on catch history), and the in-season monitoring and management system is adequate for implementing the TACs with little risk of exceeding them. In addition to this panel review, many of the groundfish stocks' harvest strategies have been independently reviewed by the Center for Independent Experts.

Annual catch limits have resulted in abundant fish stocks and sustainable fisheries. No groundfish stock is overfished or undergoing overfishing. Further, most stocks are well above target biomass levels (shown in the figure as B_{MSY} , the biomass level that produces maximum sustainable yield).

ON THE HORIZON

The Council and its SSC will review a pending proposed rule on national guidelines for annual catch limits, which is expected to be published in early 2008. Although the Magnuson-Stevens Act was reauthorized in 2007 to end overfishing by using the North Pacific annual catch limit specification process as a model, changes to the current specification process may be required.



Crab Catch Limits

FEDERAL AND STATE PARTNERSHIP

The BSAI King and Tanner Crab Fishery Management Plan (FMP) establishes a State and Federal cooperative management regime that largely defers crab fisheries management to the State of Alaska, with Federal oversight. The FMP defines three categories of management measures:

1. those that are fixed in the FMP and require a Federal FMP amendment to change;
2. those that are framework-type measures that the State can change following criteria set out in the FMP; and
3. those measures that are neither rigidly specified nor frameworked in the FMP and are at the discretion of the State.

In the GOA, crab fisheries are managed solely by the State of Alaska. For most regions in the GOA, actual abundance estimates are limited and commercial fishing has been closed.

CATCH SPECIFICATIONS FOR BSAI CRAB FISHERIES

Specifying **overfishing levels (OFLs)** for each fishery is a Federal responsibility. The Magnuson-Stevens Fishery Conservation and Management Act requires each FMP to specify criteria for determining when a fishery is overfished or when overfishing is occurring. The Council and NOAA Fisheries annually evaluate total catch levels relative to OFLs to determine if stocks are overfished or are approaching an overfished condition. If either of these occurs, the Council must immediately end overfishing and develop an FMP amendment to rebuild the stock within two years.

The State is responsible for setting allowable harvest levels for the crab fisheries, following guidelines in the crab FMP. Catch levels established by the State must be in compliance with OFLs established in the FMP to prevent overfishing. For those stocks included under the Crab Rationalization Program (see below), a **total allowable catch (TAC)**, expressed in pounds of crab, is specified. For other stocks, a **guideline harvest level (GHL)** is the preseason estimated level of allowable harvest which will not jeopardize the sustained yield of the stock. The GHL is expressed as a range, to allow the State to make in-season management decisions based on current data obtained from the fishery.

ALLOCATION OF CATCH LIMITS

The Crab Rationalization Program allocates BSAI crab resources among harvesters, processors, and coastal communities. 100% of the TAC is allocated as harvest shares, and processor quota shares are also issued. Crab fishing under the program began on August 15, 2005. Several crab fisheries under the FMP are excluded from the Program, including the Norton Sound red king crab fishery, which is operated under a "superexclusive" permit program intended to protect the interests of local, small-vessel



Mark Fina



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For More Information

Stock Assessment and Fishery Evaluation Report for the King and Tanner Crab Fisheries, 2007, www.fakr.noaa.gov/npfmc/SAFE/2007/CRABSAFE07.pdf

Environmental Assessment for proposed Amendment 24, to revise overfishing definitions, 2007. NPFMC, www.fakr.noaa.gov/npfmc/current_issues/crab/KTC24907.pdf

FMP References

Fishery Management Plan for Bering Sea / Aleutian Islands King and Tanner Crabs, www.fakr.noaa.gov/npfmc/fmp/crab/CRABFMP2004.pdf

Revised overfishing definitions: proposed Amendment 24 to the BSAI Crab FMP.

2007/2008 TACs for major crab fisheries

Bristol Bay red king crab:	20,383,000 lbs
Western Aleutian Islands (Adak) golden king crab (west of 174°W):	2,700,000 lbs
Eastern Aleutian Islands (Dutch Harbor) golden king crab (east of 174°W):	3,000,000 lbs
Bering Sea snow crab:	63,034,000 lbs
Bering Sea Tanner crab (east):	3,445,000 lbs
Bering Sea Tanner crab (west):	2,176,000 lbs

participants. An LLP license is required to participate in the FMP crab fisheries excluded from the Program.

The Community Development Quota (CDQ) program receives 10% of the TAC for all fisheries in the crab rationalization program except Western Aleutian stocks, and 7.5% of the Norton Sound fishery. Sixty-five communities located along the Bering Sea are eligible for the CDQ program, and these communities are aligned into six CDQ groups. 10% of the Western Aleutian Island golden king crab fishery is allocated to an entity representing the community of Adak. This allocation is managed similar to allocations made under the CDQ program.

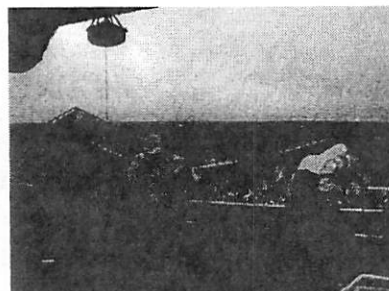
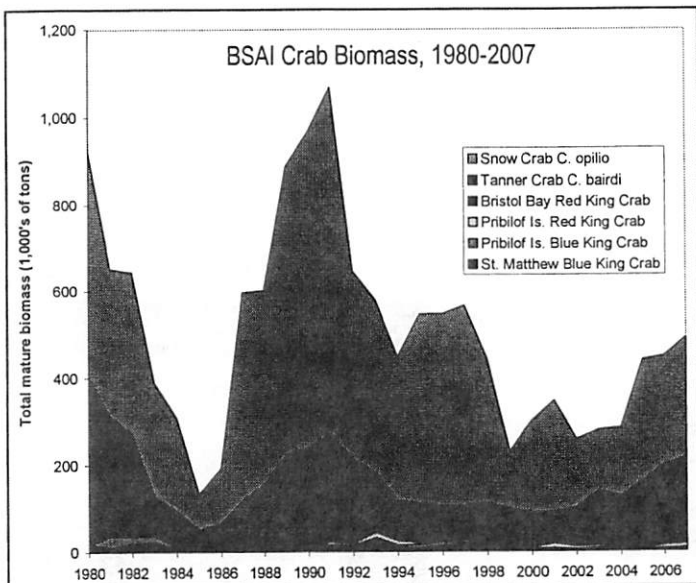
REVISED OVERFISHING DEFINITIONS

In December 2007, the Council took action under amendment 24 to revise the OFLs specified in the crab FMP. The amendment establishes a framework OFL tier system that provides a mechanism to continually improve the status determination criteria as new information becomes available. Revised OFLs use alternative biological reference points depending on the availability of and uncertainty about stock assessment data for each crab stock. Under the new procedure, the Council's Crab Plan Team and Scientific and Statistical Committee will review the stock assessments, including models and tier levels (which determine how OFL is calculated) for each stock. The Council will annually review crab stock OFLs. Overfishing is determined by calculating the total catch removals from all fishing sources compared to the calculated OFL for the same time period. Implementation of the amendment is awaiting approval from the Secretary of Commerce.

The amendment will also remove twelve state-managed stocks from the FMP, which will now be the sole responsibility of the State of Alaska. The stocks either have no directed fishery, a limited incidental or exploratory fishery, or the majority of catch occurs in State waters. With the removal of these stocks, all remaining crab stocks in the FMP will be subject either to the Crab Rationalization Program or the Norton Sound permit program.

ON THE HORIZON

The 2006 revision of the Magnuson-Stevens Act requires specification of annual catch limits for each Federal fishery. While the Council's recent crab catch specifications amendment should comply with annual catch limit requirements, there may be some technical revisions required once specific guidance is published.



A SMALL FISHERY

The Alaska weathervane scallop (*Patinopecten caurinus*) fishery started in 1967 when two vessels harvested weathervane scallops from fishing grounds east of Kodiak Island. From its inception through early 1993, the scallop fishery was managed in-season without a defined fishery management plan. Closed waters and seasons were established to protect crabs and crab habitat. When catches declined in one bed, the few vessels participating would move to new areas.

Catch has fluctuated somewhat since the inception of the fishery. Catches in the early years were high, reaching a peak of 1.8 million pounds of shucked scallop meats in 1969. More recent catches have been in the order of 500,000 pounds per year, with ex-vessel prices ranging from \$5.25/lb in 2002 to \$8.00/lb in 2006.



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For More Information

Scallop Stock Assessment and Fishery Evaluation report,
www.fakr.noaa.gov/npfmc/SAFE/ScallopSAFE2008.pdf

FMP References

Fishery Management Plan for the Scallop Fishery off Alaska,
www.fakr.noaa.gov/npfmc/SAFE/ScallopSAFE2007.pdf

FEDERAL MANAGEMENT NEEDED

In the early 1990s, the Alaska weathervane scallop fishery expanded rapidly, with an influx of boats from the East Coast of the United States. Concerns about overharvest of scallops and bycatch of other commercially important species, such as crabs, prompted the Commissioner of the Alaska Department of Fish and Game (ADF&G) to designate the weathervane scallop fishery a high-impact emerging fishery in 1993. This designation required ADF&G to close the fishery and implement an interim management plan prior to reopening. The interim management plan included a provision for 100% onboard observer coverage to monitor crab bycatch and to collect biological and fishery data.

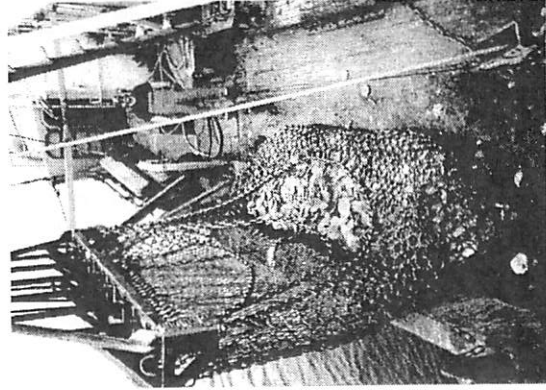
From 1967 until early 1995, all vessels participating in the Alaska scallop fishery were registered under the laws of the State of Alaska. Scallop fishing in both State and Federal waters was managed under state jurisdiction. In January 1995, the captain of a scallop fishing vessel returned his 1995 scallop interim use permit card to the State of Alaska Commercial Fisheries Entry Commission in Juneau and the F/V Mr Big proceeded to fish scallops in Alaska Federal waters with total disregard to harvest limits, observer coverage, and other management measures and regulations. In response to this unanticipated event, Federal waters were closed to scallop fishing by emergency rule to control unregulated fishing until a fishery management plan (FMP) could be implemented to close the fishery.

The Alaska Scallop FMP, which was approved on July 26, 1995, established a 1-year interim closure of federal waters to scallop fishing to prevent uncontrolled fishing. The fishery was reopened with Amendment 1 on August 1, 1996.

The scallop fishery is jointly managed by the National Marine Fisheries Service and ADF&G under the FMP. Management measures in the FMP fall into two categories: Category 1 measures are those delegated to the State for implementation, while Category 2 measures are limited access management measures and other measures which are fixed in the FMP, implemented by Federal regulation, and require an FMP amendment to change.

LIMITED ENTRY

In 1997, the Council adopted Amendment 2, a vessel moratorium under which 18 vessels qualified for Federal moratorium permits to fish weathervane scallops in Federal waters off Alaska. In 1999 the Federal moratorium program was replaced by a more restrictive License Limitation Program (Amendment 4). The Council created a total of 9 licenses with no area endorsements; each vessel is permitted to fish statewide. However, vessels that fished exclusively in the Cook Inlet Registration Area, where a single 6-foot dredge was the legal gear type during the qualifying period, were limited to using the same gear when fishing outside Cook Inlet. In 2005, the gear restriction was later modified under Amendment 10 to allow these vessels to fish 2 dredges with a combined maximum width of 20 feet.



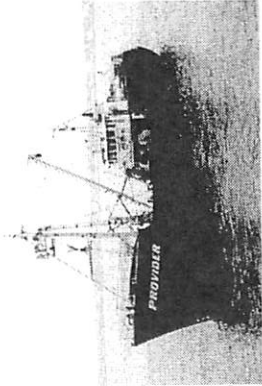
Greg Rosenkranz

FLEET FORMS VOLUNTARY COOPERATIVE

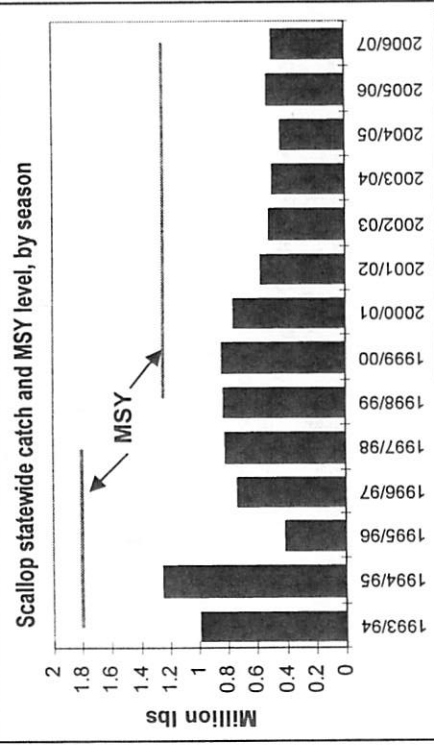
The License Limitation Program established a small closed class of license holders. In 2000, owners of 6 of the 9 licenses formed the North Pacific Scallop Cooperative under authority of the Fishermen's Cooperative Marketing Act. The cooperative regulates individual vessel allocations within the catch limits and crab bycatch caps, under the terms of their cooperative contract. Non-cooperative vessels are not bound by any contract provisions. The cooperative does not receive an exclusive allocation of the scallop harvest. Some owners opted to remove their boats from the fishery and arranged for their shares to be caught by other members of the cooperative.

OVERFISHING DEFINITIONS

The Magnuson-Stevens Act requires FMPs to establish an overfishing level for each stock. Overfishing is a level of fishing mortality that jeopardizes the capacity of a stock to produce maximum sustainable yield (MSY) on a continuing basis. Amendment 6 to the scallop FMP established the statewide MSY for weathervane scallops at 1.24 million lbs of shucked meats, based on the average catch from 1990-1997, excluding 1995. Optimum Yield was defined as 0-1.24 million lbs, and the overfishing control rule was defined as a fishing rate in excess of the natural mortality rate, which has been estimated at 12% per year statewide. The fishery is managed conservatively, with harvest levels well below MSY.



Greg Rosenkranz



ON THE HORIZON

The Magnuson-Stevens Act was reauthorized in 2007 to require annual catch limits for all managed stocks. NMFS is preparing to issue a proposed rule on guidelines for annual catch limits, which is expected to be published in 2008. Because the scallop fishery is managed by ADF&G using guideline harvest ranges, rather than annual catch limits using a process involving peer review by the Council's Scientific and Statistical Committee, changes to the current specification process may be required.

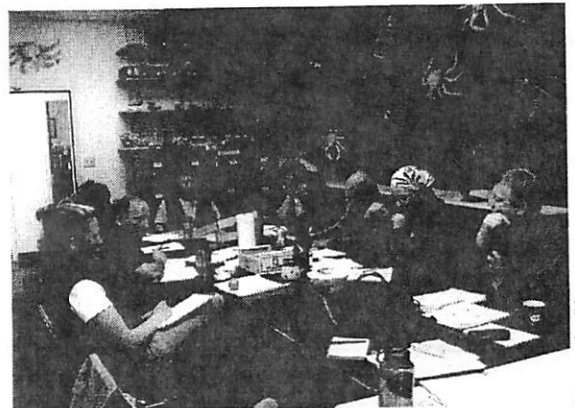
REBUILDING DEPLETED STOCKS

The Sustainable Fisheries Act of 1996 required that overfished stocks be rebuilt as soon as possible, but no longer than in ten years, except under special circumstances. If the Secretary of Commerce determines that a fishery is overfished or approaching an overfished condition, the responsible fishery management council must revise the management program to stop overfishing, if it is occurring, and rebuild the stocks. Since 1996, there have been four stocks in the North Pacific that were deemed 'overfished', and rebuilding plans were developed and implemented for each. All four stocks were Bering Sea/Aleutian Island crab stocks. Environmental conditions for these stocks have resulted in sequential years of poor recruitment and contributed, with other factors, to the decline in abundance.

A stock under the BSAI King and Tanner Crab fishery management plan (FMP) is deemed overfished if the spawning biomass is below a minimum stock size threshold (MSST), which is defined as 50% of the target biomass level (B_{MSY}). Currently, the rebuilding program for each stock includes adjustments to the State of Alaska harvest strategy, bycatch controls, and habitat protection measures. Stocks are considered rebuilt if the estimate of biomass is above the B_{MSY} level for two consecutive years.

BSAI Tanner Crab. A rebuilding program for Tanner crab (*Chionocetes bairdi*) was adopted by the Council in October 1999. The rebuilding program established a very conservative harvest strategy (including low exploitation rates and threshold female biomass levels), and reduced crab bycatch limits for the trawl fisheries. It was projected that the stock had a 50% probability of rebuilding to the B_{MSY} level in 10 years. The stock has now met the B_{MSY} threshold (189.6 million pounds) and is considered fully rebuilt.

BSAI Snow Crab. A rebuilding program for snow crab (*C. opilio*) was adopted by the Council in June 2000. Rebuilding measures included very low exploitation rates, stair-stepped based on spawning biomass; minimum thresholds for establishing guideline harvest levels (GHLs); pot gear modifications to provide escapement of female and juvenile crabs; and a fishery closure when the stock falls below 50% MSST. Under the rebuilding plan, the stock had a 50% probability of rebuilding to the B_{MSY} level (921.6 million pounds) in 7 to 10 years. Estimated total mature biomass has been oscillating slightly above and below the MSST threshold since 1999. Mature biomass increased in 2007 relative to 2006 and remains above MSST for the third consecutive year but still remains below B_{MSY} .



Herman Savikko



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For More Information

Stock Assessment and Fishery Evaluation Report for the King and Tanner Crab Fisheries, 2007, www.fakr.noaa.gov/npfmc/SAFE/2007/CRABSAFE07.pdf

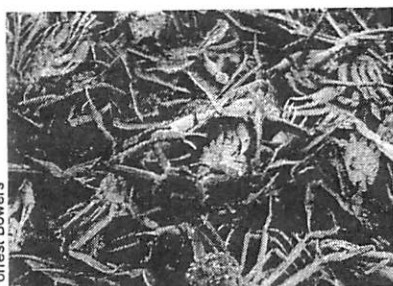
FMP References

BSAI Tanner Crab: BSAI Crab Amd 11; 65 FR 38216, implemented June 20, 2000.

BSAI Snow Crab: BSAI Crab Amd 14; 66 FR 742, implemented January 4, 2001.

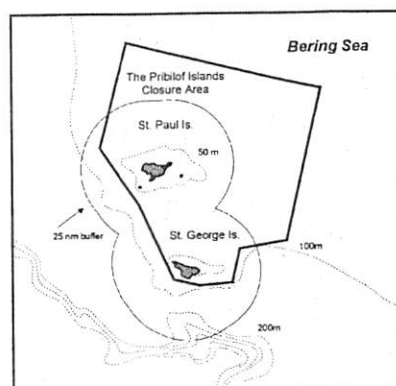
St Matthew Blue King Crab: BSAI Crab Amd 15; 65 FR 76175, implemented December 6, 2000.

Pribilof Blue King Crab: BSAI Crab Amd 17; 69 FR 17651, implemented April 5, 2004.



All trawling is prohibited within the Pribilof Islands Habitat Conservation Area, to protect blue king crab habitat, as well as to reduce the bycatch of juvenile crab and halibut.

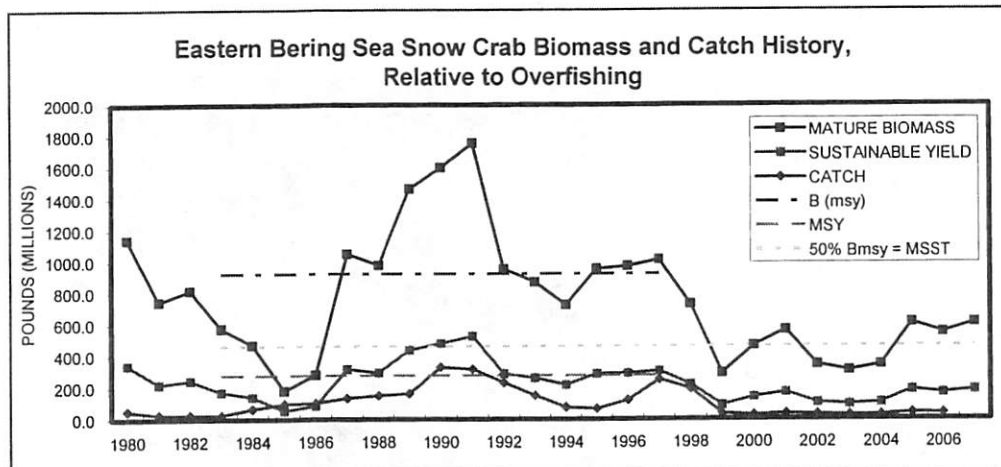
St. Matthew Blue King Crab. A rebuilding program for St. Matthew blue king crab was adopted by the Council in June 2000. The harvest strategy includes a conservative harvest rate based on biomass, a minimum stock threshold for fishery opening, minimum GHM requirements, and a maximum legal male harvest rate. The stock has not met the threshold measures included in the harvest strategy and has been closed to fishing since 1999. Rebuilding measures also included pot gear modifications to provide escapement of female and juvenile crabs, and closure of State waters around the island to all groundfish fishing to protect vulnerable egg-bearing female blue king crab that occupied these areas. Under the rebuilding plan, the stock had a 50% probability of rebuilding to the B_{MSY} level (22.0 million pounds) in 6 years. In 2007, total mature biomass was above the MSST for the second year in a row and trawl survey results indicated increased recruitment of smaller size classes of crabs. There continues to be uncertainty about the abundance of egg-bearing females for this stock as the trawl survey does not adequately measure inshore, rocky terrain, although a 2007 pot survey indicated an increase in these mature females from the previous 2004 survey.



Pribilof Blue King Crab. A rebuilding program for Pribilof blue king crab was adopted by the Council in October 2003. Bycatch controls and habitat protection measures for groundfish and crab fleets had already been implemented around the Pribilof Islands. Under the rebuilding plan, fishing is prohibited until the stock is completely rebuilt to B_{MSY} (13.2 million pounds). In addition, once rebuilt, the plan establishes an extremely conservative harvest strategy and a delayed opening for the second year the stock is above a minimum threshold. Under the rebuilding plan, the stock was projected to rebuild to the B_{MSY} level in 9-10 years, at a 50% probability. The stock continues to be at very low stock size, and little or no recruitment is apparent.

ON THE HORIZON

In December 2007, the Council took final action to revise overfishing definitions for all FMP crab stocks (Amendment 24). The Council's preferred alternative is a proposed tier system structured upon the



criteria for stock recovery.

availability of information for a given stock. Once a stock is assigned to its appropriate tier, the tier determines how the OFL is calculated. The new OFL setting process is awaiting approval by the Secretary of Commerce, and may begin as soon as Spring 2008. Once the new overfishing definitions are in place, the rebuilding plans will need to be reconsidered in light of new information and



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

January 8, 2009

Dear Mr. David Witherell:

On behalf of the National Oceanic and Atmospheric Administration's Marine Protected Area Center (MPA Center), we are pleased to invite you to participate in a technical workshop to scope an analytical process to identify priority conservation areas in US coastal, marine and estuarine waters including the Great Lakes.

The workshop will be held on February 3rd and 4th, 2009, in Monterey, California. You have been selected based on your regional or national scale knowledge related to conducting gap analyses, conservation assessments or based on your organization's efforts toward marine conservation. I hope you will be able to join us.

The MPA Center has recently released the *Framework for the National System of Marine Protected Areas (Framework)*, available at <http://mpa.gov>, which outlines the goals, objectives and processes for the US national system of MPAs. We are now creating the initial national system with existing MPAs that meet the framework's conservation and management criteria. The next phase, to begin this year, will provide the scientific information needed to set regional priorities for strengthening and expanding, where needed, the national system of MPAs. Additional information on the national system of MPAs, and on the MPA Center's plans for regional gap analyses is provided in the enclosed fact sheet.

To this end, and with input from the Marine Protected Areas Federal Advisory Committee, this two-day scoping workshop's objectives include:

- Evaluating alternative analytical approaches to assess the contribution of existing MPAs to the national system's goals and objectives, including assessing types and levels of protection in relation to threats from human activities
- Evaluating alternative methods to identify future priority areas for strengthened or new MPAs
- Identifying potential sources for data, expertise, resources and partners in support of this ambitious, collaborative, national effort.

We hope that you will be able to contribute your expertise to this important and timely endeavor to identify conservation priorities for our nation's most valuable marine areas. Please RSVP or pose questions regarding the February workshop by January 23, 2009 to Rondi Robison, Conservation Planner Rondi.Robison@noaa.gov, (831) 645-2701. Further details will follow including invitational travel information and venue. We very much appreciate your consideration of this invitation and look forward to hearing from you.

Sincerely,

Charles M. Wahle, Ph.D.
Senior Scientist
National MPA Center
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Lauren Wenzel
National System Coordinator
National MPA Center
Silver Spring, MD
(301) 563-1136
Lauren.Wenzel@noaa.gov

Attachments: Gap Analysis Fact Sheet



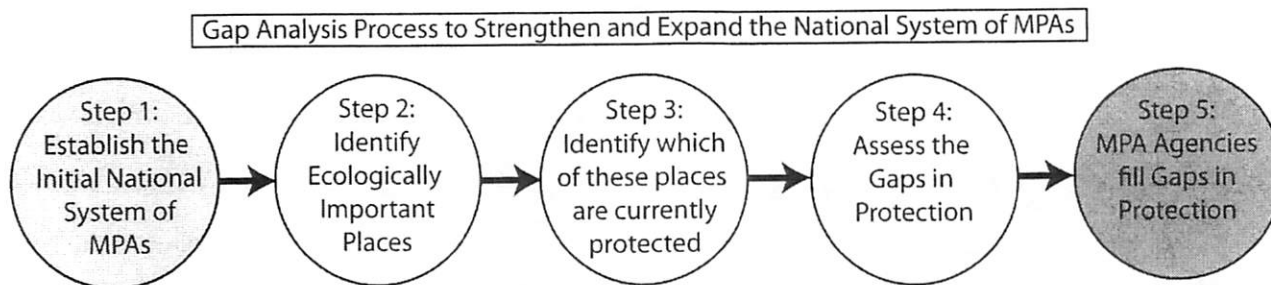
BUILDING THE NATIONAL SYSTEM OF MPAS: FILLING GAPS IN PROTECTION FOR IMPORTANT PLACES IN OUR OCEANS

www.mpa.gov

The framework for a comprehensive, science-based and effective national system of marine protected areas (MPAs) in U.S. waters was recently released by NOAA and the Department of the Interior. The national system will include eligible existing MPAs across all levels of government, as well as those established in the future by agencies to protect important habitats and resources.

CREATING A NATIONAL SYSTEM OF MARINE PROTECTED AREAS: While our oceans may seem vast and uniform, certain areas have special ecological, economic or cultural significance. Some, but not all, of these places fall within marine protected areas: a management tool used worldwide to conserve important resources and habitats. Recognizing the critical national importance of these special ocean places, the United States (U.S.) is building a comprehensive, science-based national system of marine protected areas (MPAs) to enhance the conservation of the nation's natural and cultural marine heritage, and to ensure the sustainable production of harvested resources. Following the release of the *Framework for the National System of Marine Protected Areas of the United States of America* (Framework) in late 2008, the initial suite of national system MPAs will be inaugurated in Spring 2009 (See Step 1 in Figure 1).

Figure 1: The Long-Term Development Process for the National System of MPAs



IDENTIFYING GAPS IN PROTECTION TO STRENGTHEN AND EXPAND THE NATIONAL SYSTEM OF MPAS: (see Steps 2-5 in Figure 1) Led by NOAA's National MPA Center, the national system of MPAs will enhance the effectiveness of existing national system MPAs through coordination, science and technical assistance. It will also work with other management agencies to identify gaps in protection among important ocean areas whose current management does not adequately address existing or emerging threats from human uses. Both priorities will be addressed through a collaborative gap analysis process designed to guide the developing national system of MPAs as well to inform and support its partner MPA programs and sites across the U.S.

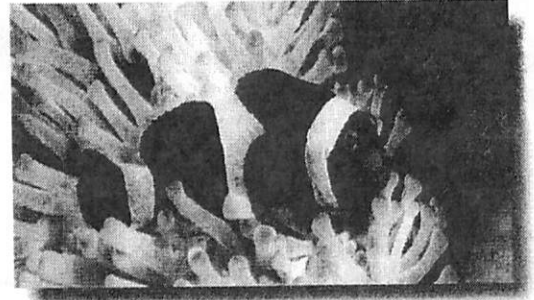
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NOAA's National Marine Protected Areas (MPA) Center's mission is to facilitate the effective use of science, technology, planning, and information in the planning, management, and evaluation of the nation's system of marine protected areas. The MPA Center works in partnership with federal, state, tribal, and local governments and stakeholders to develop a science-based, comprehensive national system of MPAs. These collaborative efforts will lead to a more efficient, effective use of MPAs now and in the future to conserve and sustain the nation's vital marine resources.

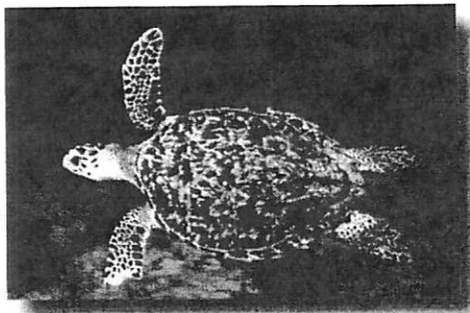


Key components of the gap analysis process include:

1. **Establishing the Initial National System of MPAs** - Following the release of the Framework, the first group of existing MPAs will be inaugurated into the national system in Spring 2009.
2. **Identifying Ecologically Important Areas** - The MPA Center will bring regional science experts together in a participatory GIS workshop to map the location of ecologically important areas corresponding to the national system's priority conservation objectives.
3. **Identifying Current Protection for Important Places** - Using its unique national inventory of MPAs in U.S. waters, the MPA Center will identify and assess the location, type and level of protection afforded by existing U.S. MPAs to those ecologically important areas, and to the national system's priority conservation objectives.
4. **Comprehensively Assessing Gaps in Protection** - Working closely with other MPA agencies and stakeholders, and using the best available ecological, ocean uses, and governance data, the MPA Center will evaluate regional gaps in protection for regionally important ocean areas.
5. **Supporting MPA Agencies in Filling Gaps** - Using the results of the collaborative gap analysis process, the MPA Center will work with partner agencies at all levels of government who have the authority to enhance the effectiveness of existing MPAs or expand protections to threatened important areas to fill critical gaps.



BROAD APPLICATIONS FOR THE GAP ANALYSIS PRODUCTS: Although born from a need to develop a science-based national system of MPAs for the U.S., the gap analysis process has many applications and many clients. By working collaboratively with a variety of agencies and stakeholders, the MPA Center will design and execute this process to create data, map products and planning tools that can inform and support all forms of ocean management. These range from local marine parks, to regional fisheries management, to ocean energy siting, to ocean zoning schemes. Beginning on the West Coast in 2009, the gap analysis process will be conducted regionally around the U.S. over the coming years.



For more information, visit www.mpa.gov

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NORTH PACIFIC RESEARCH BOARD

"Building a clear understanding of the North Pacific, Bering Sea, and Arctic Ocean ecosystems that enables effective management and sustainable use of marine resources."

David Benton, Chairman
Eric Olson, Vice Chairman
Clarence Pautzke, Executive Director

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Released: January 26, 2009

North Pacific Research Board Seeks Fishing Industry Representative

The North Pacific Research Board (NPRB) was created by Congress in 1997 to recommend marine research activities to the Secretary of Commerce, supported by interest earned from the Environmental Improvement and Restoration Fund. The enabling legislation requires the funds to be used to conduct research on or relating to the fisheries or marine ecosystems in the north Pacific Ocean, Bering Sea, and Arctic Ocean. NPRB has developed a comprehensive science program which has supported 200 individual projects at 70 organizations and institutions across the U.S. and beyond. It also is fielding an integrated ecosystem research program in the Bering Sea in partnership with the National Science Foundation, and is developing a similar, though smaller-scale integrated program in the Gulf of Alaska. Approximately \$60 million supports these meritorious programs. Additional information about NPRB programs is available at www.nprb.org.

NPRB enabling legislation restricts it to 20 members knowledgeable by education, training, or experience regarding fisheries or marine ecosystems in the north Pacific Ocean, Bering Sea, or Arctic Ocean. Ten members are ex-officio members representing various agencies and organizations. Nine other members are nominated by the governors of Alaska (5), Washington (3), and Oregon (1), and appointed by the Secretary of Commerce to serve a 3-year term, and may be reappointed. The 20th member is nominated by the Board itself and appointed by the Secretary for a 3-year term. That member is on the executive committee of the Board and represents fishing interests, according to Section 401(e)(3)(N) of the enabling legislation.

The Board is seeking nominations for this fishing industry seat. Self-nominations are acceptable also. Nominations and resumes must be sent by email to the Board's Executive Director, Clarence Pautzke, at cpautzke@nprb.org by 5 p.m. Alaska Time, February 6, 2009.

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 115526
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PHONE: (907) 465-4100
FAX: (907) 465-2332

January 22, 2009

Mr. Eric Olson, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501

Dear Chairman Olson:

I am pleased to nominate Mr. Ryan Burt to the Council's Scallop Plan Team to replace Mr. Jeff Barnhart, who retired from ADF&G at the end of 2007. Mr. Burt has recently been promoted to the position of scallop observer coordinator, the position previously held by Mr. Barnhart, and he will also have responsibilities for conducting scallop stock assessments for the department. He has worked for the Division of Commercial Fisheries for nine years as a fisheries biologist, most recently in Dutch Harbor. I am confident that he will be a valuable asset to the scallop plan team.

Thank you for your consideration of this request.

Sincerely,



Denby S. Lloyd
Commissioner

Ryan M. Burt

P.O. Box 4122, Kodiak, AK 99615
work 907-486-1816, cell 907-229-6874
ryan.burt@alaska.gov

Professional Experience

Alaska Department of Fish and Game

Scallop Observer Program Coordinator (FBII)
Kodiak, AK. October 16, 2008 to present.

- I am currently working as the Scallop Observer Program Coordinator. I supervise one Technician II position and oversee all aspects of the scallop observer program: observer training, observer briefing and debriefing, data entry and editing as well as the documentation of database corrections and revisions.
- Other duties include establishing scallop observer program data collection objectives and sampling protocols, helping organize historical and current fisheries data, participating in the design and implementation of relational data repositories and moving historical data sets into current formats on Oracle and PostgreSQL servers.

Crab Observer Program Database Manager (FBII)
Dutch Harbor, AK. February 1, 2003 to October 15, 2008.

- As the Crab Observer Program Database Manager, I supervised one Fishery Biologist I and two Administrative Clerk II positions.
- I oversaw the entry and editing of crab observer collected data as well as the documentation of database corrections and revisions.
- Other duties included assisting in the establishment of crab observer program data collection objectives and sampling protocols, helping organize historical and current fisheries data, participating in the design and implementation of relational data repositories and moving historical data sets into current formats on Oracle and PostgreSQL servers.
- To accomplish these, I made decisions on corrections or the elimination of data by applying specific knowledge of crab biology, the observer program and commercial shellfish fisheries.
- The creation of clear, concise instructional materials regarding sampling protocols, various research project goals, and numerous fishery specific data collections and conveying those instructions to observers was another very important aspect of this position.
- Due to the nature of this position, close cooperation with the research, management and observer program sections as well as other agencies and organizations was essential.
- I accumulated 310 at-sea days as a biological crew member on several shellfish research surveys and short-term vessel charter projects in the Bering Sea and Aleutian Islands.

Crab Observer Program Assistant Database Manager (FBI)
Dutch Harbor, AK. November 1, 2000 to January 31, 2003.

- The duties of this position were very similar to my current position as database manager with the biggest difference being that the assistant position does not have supervisory responsibilities.

Crab Observer Program Staff Biologist (FBI)
Dutch Harbor, AK. Aug. 26, 1999 to October 31, 2000.

- Duties included assisting the Observer Program Coordinator and Assistant Coordinator with the supervision and evaluation of the performance of up to 60 different observers deployed on approximately 200 trips at-sea throughout the year.
- This supervision included assigning duties, training and testing, reviewing collected data, evaluating job performance, granting observer certification and issuing reprimands when warranted.

- Scheduled and conducted briefings and debriefings of observers, generated sampling addenda for each fishery to emphasize sampling goals and created outlines to assist with briefings and debriefings.
- Trained observer candidates including updating training manuals, writing test questions, going out to sea on short term charters to collect various species of live crab specimens, organizing, setting up, conducting, and evaluating individual results of the training and tests.
- Other duties included receiving and decoding radio reports using marine VHF and single side band radios, reviewing and editing thousands of pages of data, writing letters of recommendation and responding to observer, observer contractor, interagency and public inquiries about the observer program.

Field Biologist (FBI)

Soldotna, AK. July 1, 1998 to February 28, 2001 (Three field seasons).

- For the months of July and August in 1998, 1999 and 2000, I was involved with the adult salmon sonar enumeration project located on the Yentna River.
- I was hired as a Technician II in 1998; in 1999 I was promoted to Fishery Biologist I and for the 2000 season assumed the responsibility of field crew leader.
- My main responsibilities included installation of Bendix Side Scan sonar units and transducers, placing weirs in the river, calibration of the sonar unit, data analysis and entry, apportioning sonar counts, relaying summarized sonar and fishwheel counts to the Soldotna office, training new employees, setting work schedules and collecting daily environmental data.
- Other duties included operation and maintenance of outboard motors and boats; regular camp maintenance including set up and take down; working with the sonar engineer to solve technical problems with the sonar; explaining the sonar to visitors; and all other duties assigned by the project biologist.

Shellfish Observer

Northwest Observers Inc.

Dutch Harbor, AK. August 1998 to August 1999.

- After attending the September 1998 training in Anchorage, I was deployed as an observer for the ADF&G Shellfish Observer Program in Dutch Harbor.
- The majority of my time involved collecting biological and management data on commercially harvested shellfish onboard commercial fishing vessels in the Bering Sea and Aleutian Islands waters.
- This data included measurements of crab carapace length and width, sex, maturity, determination of shell age, assessment of clutch condition of female crab and assessments of bycatch injury and mortality rates resulting from handling.
- Other duties included determining the percentage of illegal/undersized crab retained, keeping a detailed log of daily sampling and vessel activities, weekly reporting to Dutch Harbor via single side band and adapting sampling goals based on vessel operations.
- Accumulated 134 at-sea days in four different fisheries as a crab observer.

Education

Bachelors of Science Degree in Aquatic Biology

Minor in Chemistry

Bemidji State University, Bemidji MN

Certifications

Alaska Drivers License, November 1997

Certified Shellfish Observer, November 1998

Certified ADF&G Peace Officer, April 2003

Certified PADI Open Water SCUBA Diver, February 2005

CPR/First Aid Certificate, valid until October 2009

Subject: NPRB Review Request for Proposal# 20 "ACL Estimation in US Fisheries".

From: admin@nprb.org

Date: Tue, 27 Jan 2009 18:04:37 -0700 (MST)

To: chris.oliver@noaa.gov

Dear Dr. Oliver:

Thank you for agreeing to be a technical reviewer for North Pacific Research Board (NPRB) proposals this year. We received 85 proposals in response to our 2009 RFP by the December 5, 2008 deadline. The total amounts requested add up to over \$13 million, but only \$3.7 million may be made available. In this highly competitive environment, your technical background and experience will help the Board maintain the highest quality science standards in the research we fund.

Your anonymous comments will be made available to our Science Panel so they can develop funding recommendations for the Board.

If you accept to review this proposal below, please submit your review by **Friday, February 20th, 2009**.

The reviews are done online and may be accomplished very efficiently by following the instructions below.

Please take 10min now or as soon as possible to proceed through steps 1-4 below, so we may reassign proposals if needed.

Having carefully considered the subject matter of each proposal and your qualifications and expertise, I am requesting you to review the following proposal:

Comparison of Methodologies to Estimate Annual Catch Limits (ACLs) for US Regional Fisheries

Please proceed through these steps:

- **STEP 1 (DECLINE):** If you have decided you can no longer review proposals this year for NPRB please click the following link to decline this request:
<http://proposal.nprb.org/reviews/decline?id=e2bbdb1c-605b-4411-b73d-a33d145fd548>
- **STEP 2 (CONSIDER SUBJECT MATTER):** If you are still willing to review proposals, please download the following proposal pdf document from:
http://proposal.nprb.org/documents/peer_review_20.pdf?id=a816aa3e-db51-4e91-992d-ecfa11e4843b
Then give the proposal documents a quick read and consider the principal investigators, co-investigators and collaborators involved.
If you think your expertise is a good match with this proposal please proceed to **STEP 3**. Otherwise click on the decline link provided in **STEP 1** and you are done.
- **STEP 3 (CONFLICT OF INTEREST):** Review the conflict of interest statement available at: [conflict-of-Interest_and_confidentiality_statement.pdf](#) and determine if you have a conflict of interest. If you do have a conflict, please click the decline link in **STEP 1**.
- **STEP 4 (ACCEPT):** You have reviewed the proposal and the conflict of interest form and are willing to conduct the review. Please click on the accept link below to let us know about this decision.
<http://proposal.nprb.org/reviews/accept?id=e2bbdb1c-605b-4411-b73d-a33d145fd548>
- **STEP 5 (REVIEW):** Fill out and submit the online electronic review form by **Friday, February 20th, 2009** at:
<http://proposal.nprb.org/review.jsf?id=e2bbdb1c-605b-4411-b73d-a33d145fd548>

We suggest you also download and read for context [the 2009 RFP](#) Please contact me or Carrie Eischens (Carrie.Eischens@nprb.org) if you need any clarifications.

If you have technical difficulties using this web application please contact Igor Katrayev by email at igor.katrayev@nprb.org

If you hit the decline or accept link by mistake, you can just hit the link you originally intended and we will receive your final decision about your ability to review this proposals.

Thank you for your consideration of our request. Your help is deeply appreciated.

Francis

Francis Wiese
Science Director
North Pacific Research Board
1007 West Third Avenue, Suite 100
Anchorage, AK 99501
Phone: 907-644-6713
Fax: 907-644-6780
francis.wiese@nprb.org
<http://www.nprb.org>

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR

P.O. BOX 115526
JUNEAU, AK 99811-5526
PHONE: (907) 465-4100
FAX: (907) 465-2332

January 22, 2009

Mr. Eric Olson, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501

Dear Chairman Olson:

The Alaska Department of Fish and Game is pleased to nominate Mr. Rich Gustafson to the Council's Scallop Plan Team. Mr. Gustafson has been involved with management and research for our weathervane scallop program in the Department's Central Region in Homer for 23 years. He is currently responsible for conducting the dredge surveys in Central Region at Kamishak Bay and Kayak Island. He is also responsible for the scallop survey data analysis and is an instrumental part of Fish and Game's state wide scallop age determination program. I feel confident that Mr. Gustafson's considerable experience with our scallop program will be a valuable asset to the scallop plan team.

Thank you for considering this request.

Sincerely,



Denby S. Lloyd
Commissioner

Curriculum Vitae

Richard L. Gustafson

Current Position:

Fisheries Biologist I: Central Region Commercial Fisheries Groundfish and Shellfish Research Biologist

Address: Alaska Department of Fish and Game

Division of Commercial Fisheries

3298 Douglas Place

Homer, Alaska 99603

Phone: (907) 235-8191; Fax: (907) 235-2448

Email: richard.gustafson@alaska.gov

Education:

B.S. Wildlife Management-University of Alaska, Fairbanks-
December, 1976.

Work Experience:

Current Position: 1985–Present

Supervisor: Dr. Kenneth J. Goldman (July 2005-present), W. R. Bechtol (1995- retired in 2004),
Al Kimker (1985-1995 – retired in 2005)

I am a fisheries research biologist responsible for the collection and analysis of biological data used for managing shellfish and groundfish species in lower Cook Inlet and Prince William Sound (PWS). I am responsible for the following stock assessment surveys: weathervane scallops dredge survey, large and small-mesh trawl surveys, and hardshell clam survey. I also participate in other surveys that include: ROV lingcod/rockfish, golden king crabs pot survey in PWS, video scallop assessments, PWS pot shrimp/ROV survey, pollock trawl surveys in PWS, sablefish long line surveys, video Westward region's 400-mesh Eastern Trawls, and Norton Sound red king crab trawl survey. I have worked in fisheries management dockside sampling commercial crab species, observed crab and scallop fish boat, entered fish tickets, and compiling fisheries data.

Other ADF&G experience as a FB I, Tec III, and Tec II has been on the following projects: Anchor River steelhead research (1982-1984), Wood River sockeye smolt (1982), Lower Cook Inlet shellfish management and research (1979), Seldovia red king/Dungeness crab dockside sampling (1978) OSC beach seining (1978), Office Manager for the King Salmon (1978), Wood River arctic char control program (1976-1975), Kvichak River smolt (1974), Becharof-Ugashik Lake inventory program(1974,1976), Naknek adult sockeye enumeration (1974 & 1973), and Naknek sockeye smolt enumeration (1973).

Publications:

Goldman, K.J., R.L. Gustafson, and M. Byerly. 2007. Monitoring Ecosystem Parameters in the Northern Gulf of Alaska, Exxon Valdez Oil Spill Restoration Project Final Report (GEM Project G-040639), Alaska Department of Fish and Game, Division of Commercial Fisheries, Homer, Alaska.

Bechtol, W.R., R.L. Gustafson, and J.L. Cope. 2003. A survey of weathervane scallops in Kamishak Bay, Alaska, 2001. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 2A03-31, Anchorage.

Bechtol, W.R. and R.L. Gustafson. 2002. A survey of weathervane scallops in Kamishak Bay, Alaska, 1998 and 1999. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 2A02-21, Anchorage.

- Gustafson, R.L. and W.R. Bechtol. 2001. Trawl shrimp index surveys in the Southern District of Cook Inlet Management Area, spring 1995 and 1997. . Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report No. 2A01-09, Anchorage.
- Gustafson R. 1995. Kachemak Bay littleneck clam assessments, 1990-1994. Alaska Department of fish and Game, Commercial Fisheries Management and Development Division, Regional Information Report 2A95-19, Anchorage, Alaska.
- William R. Bechtol and R. L. Gustafson, 1998. Abundance, recruitment, and Mortality of Pacific littleneck clams *Protohaca staminea* at Chugachik Island, Alaska. Journal of Shellfish Research, Vol. 17, No. 4, 1003-1008. 1998.
- Gustafson R. 1995. Kachemak Bay littleneck clam assessments, 1995. Alaska Department of fish and Game, Commercial Fisheries Management and Development Division, Regional Information Report 2A96-12, Anchorage, Alaska.
- Gustafson R. L. 1994. Trawl shrimp index fishing in the Southern District of Cook Inlet Management Area, Spring 1992 and 1993. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report No. 2A94-23, Anchorage.

Manuscripts in Review or Preparation:

- Bechtol, W.R., R.L. Gustafson, and T.R. Kerns. ****. Assessment of weathervane scallops near Kayak Island, Alaska, 2002. Alaska Department of Fish and Game, Division of Commercial Fisheries, Fishery Data Series 2A0*-**, Anchorage.
- Bechtol, W. R., R. L. Gustafson and T. R. Kerns. ****. A survey of weathervane scallops in Kamishak Bay, 2003. Alaska Department of Fish and Game, Fishery Data Series No. 05-XX, Anchorage.
- Gustafson, R. L and K. J. Goldman. In preparation. Weathervane scallop dredge surveys conducted by Alaska Department of Fish and Game near Kayak Island and Kamishak Bay, Alaska, 2004-2008. Alaska Department of Fish and Game, Division of Commercial Fisheries, Fishery Data Series 2A0*-**, Anchorage.
- Spahn, M., R.L. Gustafson and K.J. Goldman. In preparation. Relative abundance and distribution of golden king crab in Prince William Sound, Alaska.

Presentations:

ADF&G Central Region 2007 Large Mesh Trawl Survey Results and Tanner Crab Trawl Catchability-Interagency Crab Meeting, Anchorage

Posters

- Gustafson, Richard L. Small Mesh Trawl Surveys in Kachemak Bay-Marine Science in Alaska: 2006 Symposium, Jan 22-25, Anchorage, Alaska
- Bechtol, William R. and Richard L. Gustafson. Small Mesh Trawl Surveys in Kachemak Bay-Marine Science in Alaska: 2005 Symposium, Jan 24-26, Anchorage, Alaska.

Grants Awarded:

May 2007. Nearshore Marine Research Program (VII & IX) Grant Applications.

- 1) \$51,300 for project titled 'Net mensuration equipment for ADF&G Central Region trawl surveys'. Role: Co-Principal Investigator with Mike Byerly (ADF&G).Mar. 2006. Nearshore Marine Research Program (VIII) Application for Federal Assistance.
- 2) \$151,796 for project titled 'North Gulf shrimp assessment'. Role: Co- Investigator with Dr. Kenneth J. Goldman J and Mike Byerly.
- 3) \$117,742 for project titled 'Trawl Catchability Investigations'. Role: Co- Investigator with Dr. Kenneth J. Goldman J and Mike Byerly.

THE WHITE HOUSE

WASHINGTON

January 20, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM:


Rahm Emanuel

Assistant to the President and Chief of Staff

SUBJECT:

Regulatory Review

President Obama has asked me to communicate to each of you his plan for managing the Federal regulatory process at the beginning of his Administration. It is important that President Obama's appointees and designees have the opportunity to review and approve any new or pending regulations. Therefore, at the direction of the President, I am requesting that you immediately take the following steps:

1. Subject to any exceptions the Director or Acting Director of the Office of Management and Budget (the "OMB Director") allows for emergency situations or other urgent circumstances relating to health, safety, environmental, financial, or national security matters, or otherwise, no proposed or final regulation should be sent to the Office of the Federal Register (the "OFR") for publication unless and until it has been reviewed and approved by a department or agency head appointed or designated by the President after noon on January 20, 2009, or in the case of the Department of Defense, the Secretary of Defense. The department or agency head may delegate this review and approval power to any other person so appointed or designated by the President, consistent with applicable law.
2. Withdraw from the OFR all proposed or final regulations that have not been published in the *Federal Register* so that they can be reviewed and approved by a department or agency head as described in paragraph 1. This withdrawal is subject to the exceptions described in paragraph 1 and must be conducted consistent with OFR procedures.
3. Consider extending for 60 days the effective date of regulations that have been published in the *Federal Register* but not yet taken effect, subject to the

exceptions described in paragraph 1, for the purpose of reviewing questions of law and policy raised by those regulations. Where such an extension is made for this purpose, you should immediately reopen the notice-and-comment period for 30 days to allow interested parties to provide comments about issues of law and policy raised by those rules. Following the 60-day extension:

- a. for those rules that raise no substantial questions of law or policy, no further action needs to be taken; and
 - b. for those rules that raise substantial questions of law or policy, agencies should notify the OMB Director and take appropriate further action.
4. The requested actions set forth in paragraphs 1-3 do not apply to any regulations subject to statutory or judicial deadlines. Please immediately notify the OMB Director of any such regulations.
 5. Notify the OMB Director promptly of any regulations that you believe should not be subject to the directives in paragraphs 1-3 because they affect critical health, safety, environmental, financial, or national security functions of the department or agency, or for some other reason. The OMB Director will review all such notifications and determine whether an exception is appropriate.
 6. Continue in all instances to comply with any applicable Executive Orders concerning regulatory management.

As used in this memorandum, "regulation" has the meaning set forth in section 3(e) of Executive Order 12866 of September 30, 1993, as amended; this memorandum covers "any substantive action by an agency (normally published in the *Federal Register*) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking."

This regulatory review will be implemented by the OMB Director, and communications regarding any matters pertaining to this review should be addressed to that official.

The OMB Director is authorized and directed to publish this memorandum in the *Federal Register*.

Freezer Longline Conservation Cooperative FLCC

AGENDA B-1(h)
FEBRUARY 2009



2303 West Commodore Way
Suite 202
Seattle, WA 98199
(206) 284-2522

RECEIVED
JAN 11 2009

January 9, 2009

NPFMC
Chris Oliver, Exec. Director
605 W. 4th Avenue, Suite 306
Anchorage AK 99501

N.P.F.M.C.

Subject: Longline Catcher Processor Subsector Capacity Reduction Plan.

Dear Mr. Oliver,

This letter is to satisfy a requirement of public law 108-447 Section 219(e)(1) which reads. "DEVELOPMENT—Each catcher processor subsector may, after notice to the Council, submit to the Secretary a capacity reduction plan for the appropriate subsector to promote sustainable fisheries management through the removal of excess harvesting capacity from the non-pollock groundfish fishery."

This letter is notification to the Council of our group's intent to submit to the Secretary a capacity reduction plan for the BSAI longline catcher processor subsector. As you are aware our group had a similar effort in 2007 that eliminated three vessels and one "latent" LLP permit. In further efforts towards the forming of a 100% voluntary cooperative within our sector we will be requesting that the remaining funds previously authorized for a capacity reduction loan be made available to our sector per section 219(c)(3). This will allow options to be made available to our group that would be extinguished without this new effort.

We will keep the Council apprised of our progress as we move forward with this effort. Please call if you have need for any clarifications.

Thank you,

Kenny Down
President
Freezer Longline Conservation Cooperative
2303 West Commodore Way
Suite 202
Seattle, WA 98199
Office Phone 206-284-2522
Cellular Phone 206-972-4185
Fax 206-284-2902

Cc: To,
Gary C Reisner
Leo C. Erwin
U.S. Department of Commerce
National Marine Fisheries Service
Financial Services Division
1315 East-West Highway
Silver Spring, Maryland 20910

Join the Blue Vision Summit in Washington D.C.

Saturday Evening, March 7–
Tuesday, March 10, 2009



Up to 500 local, regional and national blue groups, scientists, sailors surfers, fishermen, maritime workers, businesses, educators, clergy and youth who care about our public seas

Two days of speakers and panels on Federal action on the ocean. Solutions that are working and ways to address Climate Change impacts. Also evening 'Celebrations of the Sea' and a 'Capitol Hill Day,' to meet your representatives



Carnegie Institution, George Washington University, Capitol Hill

- To influence the new President and Congress to take leadership on our endangered ocean and coasts
- To inform and inspire the Public about Solutions that Work
- To find a common voice on Climate and other emerging issues

Early bird registration of \$125 by February 7, 2009.
\$150 after that date



For registration and more detailed information go to:
www.bluefront.org/bluevision

Blue Vision Summit

March 7-10, 2009

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News

Media Releases

View media releases related to the conference.

Join the Blue Vision Summit March 7-10, 2009

Come to Washington D.C. to help Turn the Tide

Our Ocean Planet is in trouble. President Obama and the new Congress are inheriting the worst economy of our lifetimes plus two wars and a climate crisis. They need to be reminded how vital a healthy ocean and coasts are to our economy, security and climate response. For them to become ocean champions, we need to come together to educate our leaders and each other about the state of our public seas, coasts and watersheds and the human and wildlife communities that depend on them.

The Blue Vision Summit will bring a range of people engaged in ocean conservation and its sustainable use together around three themes:

- To influence President Obama and Congress to take leadership actions on the ocean
- To Address Climate Change impacts on the Ocean
- To highlight Solutions to marine threats that are working from the local to the global level

The Summit will include a night with top Ocean Explorers, Two Days of Meetings and discussions, two evening celebrations and a Capitol Hill Day that will provide an opportunity for people to meet with their elected representatives

Join with up to 500 ocean leaders including new NOAA Administrator Dr. Jane Lubchenco (invited, waiting Senate confirmation), White House Council on Environmental Quality Chair Nancy Sutley (invited, waiting Confirmation), Representative Sam Farr and other members of the House Ocean Caucus, Sylvia Earle, Philippe Cousteau, Leon Panetta, Ralph Nader, Actor Ted Danson (invited), Author Bill Mckibben, California Secretary of Resources Mike Chrisman, Senators Barbara Boxer and Sheldon Whitehouse (invited), Sherman's Lagoon Cartoonist

Jim Toomey, "Arctic Tale," Director Adam Ravetch, Terry Tamminen, Ocean Rower Roz Savage and many other dedicated ocean defenders from sea to shining sea.

Summit sites include the Carnegie Institution, George Washington University, the new Smithsonian Ocean Hall and Capitol Hill.

Summit Sponsors to date include: Blue Frontier Campaign, Khaled bin Sultan Living Oceans Foundation, Pew Environment Group, Oceana, Natural Resources Defense Council, The Ocean Conservancy, Clean Ocean Action, The Ocean Foundation and the D.C. Chapter - Surfrider.

Discounted early seabird registrations and hotel discounts expire Feb. 7. Register soon as space is limited.

For Detailed information including the latest Agenda and registration materials go to: www.bluefront.org/bluevision

Or contact David Helvarg at helvarg@bluefront.org 202-387-8030 or 510-491-6296 or 202-387-8030 about the Summit.

For Summit registration or hotel or facility questions contact Jamie Post at Jamie@natalieshear.com or 1-800-833-1354 X 112.

Ocean Related News

[Visit this page to read about current news related to ocean issues.](#)

Blue Notes

[Read our Blue Notes.](#)

For More Information or to get involved contact:

helvarg@bluefront.org

Tel: 202-387-8030 or 510-778-8470

Subject: Join us for the Alaska Symphony of Seafood in SEATTLE - FEBRUARY 10TH
From: Val Motley <val@symphonyofseafood.com>
Date: Wed, 28 Jan 2009 15:09:39 -0800
To: Jane.DiCosimo@noaa.gov

You're invited to the 16th Annual Alaska Symphony of Seafood!

See where today's manufacturers are
headed with Alaska seafood products.
Taste, confer, debate, and then cast your
vote for the People's Choice winner.

Find more information by visiting
www.symphonyofseafood.com

Join Us!

The 2009 Alaska Symphony of Seafood
Seattle Open House

Tuesday, February 10
5:30 PM to 7:00 PM
at FareStart

2004 Westlake Avenue, Seattle, WA 98101

RSVP to Val Motley @ 206/859-4514
or val@symphonyofseafood.com

Parking information:

There are numerous surface parking lots surrounding the FareStart building
many with evening rates (after 5pm). Street parking is also available.
Parking garages near 15th & Virginia include: Bed, Bath & Beyond (1st &
Virginia), Radio Place (15th & Pike), Whole Foods Garage (2210 Westlake Ave),
and the Olive Garage (entrance on 8th Avenue).

MAJOR
SYMPHONY
SPONSORS



When:

February 25-26, 2009
After the PFT Annual Meeting.

Where:

Portland, OR
Downtown Hilton Hotel

Contact:

Dr. Scott Smiley
smiley@sfos.uaf.edu
(907) 486-1513

Dr. Peter Bechtel
Bechtel@sfos.uaf.edu
(907) 474-2708

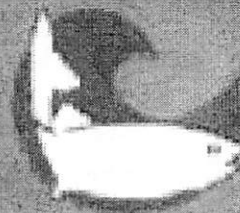
James Browning
jbrowning@afdf.org
(907) 276-7315

Symposium Web page

<http://www.sfos.uaf.edu/fftc/FPB09/>



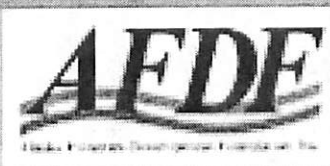
University of Alaska Fairbanks



School of Fisheries and Ocean Sciences

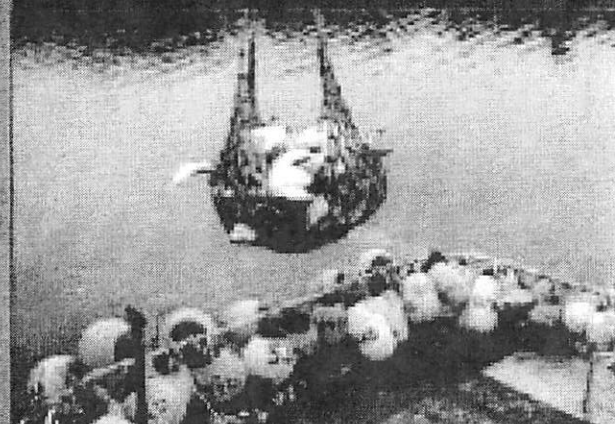


Fishery Industrial Technology Center



Symposium:

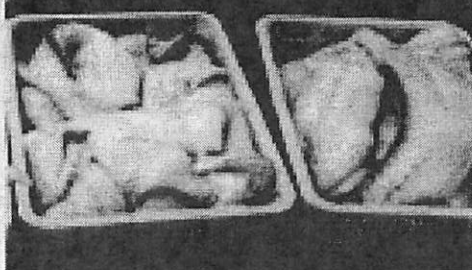
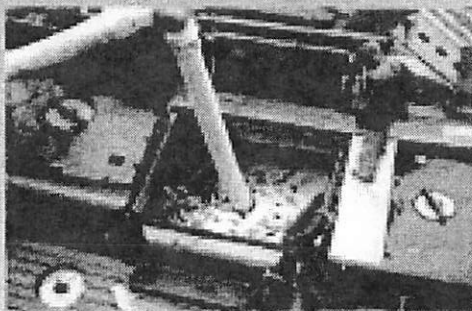
**A Sustainable Future:
Fish Processing
Byproducts**



**At the end of the
Pacific Fisheries
Technologists Annual
Meeting
(February 25-26, 2009)**

Tentative Session Titles

- Options for handling salmon processing by-products
- Community and Economic Round Table- Stakeholders, Pacific Coast and Alaskan Communities
- New product forms—Marine and fish processing by-products
- Feed ingredients: changing quality of aquacultured fish
- New technologies for seafood processing by-products
- Research agenda—User needs and marketing



Total and Efficient Utilization

Roughly 2.5 million metric tons of fish are harvested annually in Alaska. This includes pollock, cod, black cod, a number of species of flatfish, rockfish, halibut, five species of wild salmon and herring among others.

Depending on what food products are made from the fish, up to 1.75 million tons of fresh healthful biomass is lost as processing byproducts. This includes heads, skin, frames, trim and viscera. Efficient utilization of this biomass is critical for sustainability.



Marine Conservation Alliance

promoting sustainable fisheries to feed the world

431 N. Franklin St. Ste 305
Juneau, AK 99801
(907) 523-0731
(206) 260-3639 fax

Adak Fisheries, LLC
Alyeska Seafoods
Alaska Crab Coalition
Alaska Dragers Association
Alaska Groundfish Data Bank
Alaska Pacific Seafoods
Aleutian Islands Brown Crab Coalition
Aleutian Pribilof Island Community Development Association
Akulon, Atka, False Pass, Nelson Lagoon, Nikolski, St. George
At-Sea Processors Association
Bristol Bay Economic Development Corp.
Aleknagik, Clark's Point, Dillingham, Egegik, Ekluk, Eravok, King Salmon, Levelock, Menomitiak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Topiak, Twin Hills, Ugashik
Central Bering Sea Fishermen's Association
St. Paul
City of Unalaska
Coastal Villages Region Fund
Chelomek, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipruk, Kongiganak, Kwigillingak, Mestoyuk, Napakak, Napasakak, Newtok, Nightmute, Oscenville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Turutuliak, Tununak
Groundfish Forum
High Seas Catchers Cooperative
Icicle Seafoods
Mid-Water Trawlers Cooperative
Mothership Group
PV Excellence
PV Ocean Phoenix
PV Golden Alaska
Norton Sound Economic Development Corporation
Brevig Mission, Diomedes, Elm, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktolik, Stebbins, Teller, Unalakleet, Wales, White Mountain
Pacific Seafood Processors Association
Alaska General Seafoods
Alyeska Seafoods, Inc.
Golden Alaska Seafoods, Inc.
Peter Pan Seafoods, Inc.
Premier Pacific Seafoods, Inc.
Supreme Alaska Seafoods, Inc.
UniSea, Inc.
Wards Cove Packing Company
Western Alaska Fisheries, Inc.
Westward Seafoods, Inc.
Prowler Fisheries
Trident Seafoods Corp.
United Catcher Boats
Akulon Catcher Vessel Assoc.
Arctic Enterprise Assoc.
Mothership Fleet Cooperative
Northern Victor Fleet
Peter Pan Fleet Cooperative
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FOR IMMEDIATE RELEASE: January 21, 2009
Contact: David Benton, (907) 523-0731w

Alaska's Seafood Industry: Global Stature, Local Impact Commercial Fishing Nets Statewide Economy \$5.8 billion

Alaska's seafood industry is global in stature and has a \$5.8-billion economic impact on the state and local economies. That's the conclusion of the report *The Seafood Industry in Alaska's Economy*, prepared by Northern Economics of Anchorage and commissioned by the Marine Conservation Alliance, At-sea Processors Association and the Pacific Seafood Processors Association.

"Alaska's seafood industry has played a major role in the state's history and remains a major part of Alaska's economy today, with more jobs than any other private sector spread from the biggest cities to the smallest villages," said David Benton, executive director of MCA. "With key issues affecting fisheries and fishing communities facing the Legislature and Congress, this report is a vivid reminder of the importance of fisheries throughout the entire Alaska economy."

Among the findings of the report:

GLOBAL STATURE

- If Alaska were a nation, it would place 9th among seafood producing countries.
- The harvest of Bering Sea pollock, cod and other groundfish (2 million metric tons annually) ranks among the largest fisheries in the world.
- Alaska produces 42 percent of the world's harvest of wild salmon and 80 percent of the production of high value species such as sockeye, king and coho salmon.

NATIONAL LEADER

- Alaska accounted for 62 percent of all seafood landings in the United States in 2007.
- Unalaska/Dutch Harbor has reigned as the national top fishing port in terms of volume for decades and is the nation's number 2 port in terms of ex vessel value.
- Kodiak is number 3 on the top 20 port list in terms of value of fish caught, along with Naknek-King Salmon (7), Seward (9), Sitka (10), Cordova (11), Homer (13) and Petersburg (16).

- Akutan, King Cove and Sand Point would also make the top-20 were it not for confidentiality requirements.

STATEWIDE SIGNIFICANCE

- The overall value of the Alaska seafood industry is over \$1.5 billion paid to fishermen in 2007 and \$3.6 billion at the wholesale level.
- Direct and induced economic output boosts the total to \$5.8 billion, more than that of mining or tourism sectors and second only to oil and gas
- Alaska's seafood industry generates \$71 million in state taxes and fees annually in addition to local fish taxes.

LOCAL IMPACT

- The seafood industry is the largest private sector employer creating 56,600 direct and 22,000 indirect jobs annually, more jobs than oil and gas and mining combined.
- Jobs are spread widely across the state, with more than 10,000 jobs each in Southeast, South Central, the Aleutian Islands and Bristol Bay; 5,000 jobs in Kodiak and 2,500 jobs in the Northwest, Arctic, Yukon, and Kuskokwim region.
- The Community Development Quota program, an allocation of the Bering Sea catch given to coastal communities generates more than \$100 million in revenue annually, employs 2,000 workers, pays \$15 million in wages and invests millions more in training.

Positive trend

- The inflation adjusted wholesale value of Alaska seafood has steadily increased over the past five years from \$2.88 billion in 2003 to \$3.63 billion in 2007, an increase of 26 percent and led by a 62 percent increase in the wholesale value of salmon.
- State and federal fishery managers set catch allocations at scientifically set levels to protect the resource. As a result, no stocks of groundfish are considered overfished.
- Key habitat areas are closed to protect the broader ocean ecosystem totaling more than five times the entire US National Park System.
- Alaska fisheries operated under limited access or catch share quota systems now recognized as a key strategy to prevent overfishing.
- *National Geographic* listed Alaska as one of only three well-managed fisheries in the world, the others being Iceland and New Zealand.

“Wild fish stocks are a dynamic resource, subject to swings in abundance, Alaska’s Seafood Industry continues to earn superlatives thanks to a commitment to stewardship and sustainability,” Benton said. “With continued science-based management, Alaska’s seafood industry is a growing, sustainable and vital part of the Alaska economy.”

Based in Juneau, the Marine Conservation Alliance is a seafood industry trade association that represents most of the fishermen, vessel owners, processors and many communities involved in the Bering Sea and Gulf of Alaska Groundfish and crab fisheries. Among its members are the At-sea Processors Association and the Pacific Seafood Processors Association.

The complete report is available at: www.marineconservationalliance.org

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

From: [Ann Reid](#)

Sent: Thursday, January 15, 2009 10:40 AM

Subject: Feb. 5 Alaska Committee Meeting

AGENDA B-1(m)
FEBRUARY 2009

TO: Alaska Committee Members

FROM: Dave Glessing and Val Motley, Co-Chairs

RE: Alaska Committee Program – February 5, 2009

SPEAKER: Randy Rice, Seafood Technical Program Director, Alaska Seafood Marketing Institute

TOPIC: Sustainable Fisheries Management

Alaska's fishery management stands as a model for the world. Yet, market access and the perception of what constitutes sustainable seafood in the marketplace have grown increasingly complex because of the proliferation of NGO 3rd party fishery sustainability certifications. This presentation will show how Alaska is using the United Nations Food & Agricultural

Code of Conduct for Responsible Fisheries as an independent, neutral, international standard. In addition, it will be demonstrated that Alaska has been the pioneer and world leader of sustainable fisheries management, and decades ahead on criteria and methods. A case will be made that the seafood supply chain and retailers in the marketplace need to make their own independent evaluations of sustainable sources, and thus take charge of their own companies' commitment to corporate and social responsibility, rather than rely on agenda driven 3rd party NGO groups. Differences and disconnects between certification schemes and actual fishery regulatory mandates that fishery managers are under, will also be highlighted.

TIME: 7:45 am – 9:15 am

PLACE: Rainier Square Conference Room, 1301 5th Ave., 3rd Floor across from Rock Bottom Brewery

COST: \$15 (includes coffee, juice, fruit, and muffins)

If paying with a credit card, you can register on line by [clicking here](#). You can also email Ann Reid or call her at 206-389-7265.

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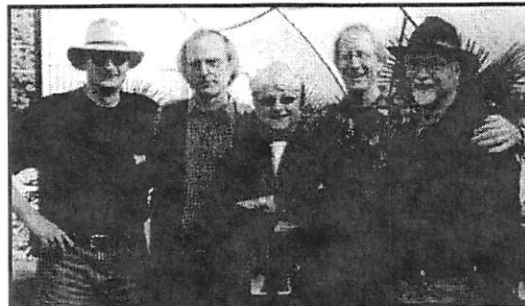
Assorted Foods ~ Hosted Beer & Wine ~ (limited) Hosted Bar

Wednesday, February 4th
6:00pm—9:00pm

Madison Ballroom
@ The Renaissance Hotel

Musical Guests: Leap of Faith

Leap of Faith will perform a variety of classic rock n' roll hits from the 50's to the 90's, including songs from the Beatles, Creedence, Eagles and many more...



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Alaska Scallop Association (Scallops) ◆ North Pacific Seafoods (Salmon) ◆ Waterfront Associates (Crab)

Coordinating Committee

At-sea Processors Association ◆ Pacific Seafood Processors Association ◆ United Catcher Boats
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