Missouri, and Nebraska. These negative declarations certify that MWCs subject to the requirements of section 111(d) and section 129 of the Clean Air Act do not exist in these states. In the final rules section of the **Federal Register**, the EPA is approving the states' negative declarations as a direct final rule without prior proposal because the Agency views this action as noncontroversial, and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by September 3, 1997.

ADDRESSES: Comments may be mailed to Aaron J. Worstell, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Aaron J. Worstell at (913) 551–7787.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: July 11, 1997.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–20476 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970708168–7168–01; I.D. 061697B]

RIN 0648–AJ58

Magnuson-Stevens Act Provisions; National Standard Guidelines

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes revisions to the guidelines for national standards 1 (optimum yield), 2 (scientific information), 4 (allocations), 5 (efficiency), and 7 (costs and benefits); and adds guidelines for new national standards 8 (communities), 9 (bycatch), and 10 (safety of life at sea). The guidelines are intended to assist in the development and review of Fishery Management Plans (FMPs), amendments, and regulations prepared by the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The proposed revisions and additions implement the October 1996 amendments to the Magnuson-Stevens Act, which resulted from the Sustainable Fisheries Act (SFA). Additional minor changes are made to conform national standard guideline language to the Magnuson-Stevens Act, as amended.

DATES: Comments must be received by September 18, 1997.

ADDRESSES: Comments should be sent to Dr. Gary C. Matlock, F/SF, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, 301–713–2341.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the President signed into law the SFA (Public Law 104–297), which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq*.). This proposed rule amend 50 CFR part 600, subpart D, to update the national standard guidelines and to implement some of the Magnuson-Stevens Act amendments.

Background

Section 301(a) of the Magnuson-Stevens Act contains 10 national standards for fishery conservation and management, with which all FMPs and amendments prepared by the Councils and the Secretary must comply. Section 303(b) requires that the Secretary establish advisory guidelines, based on the national standards, to assist in the development of FMPs. The SFA established three new national standards, which require consideration of impacts of fishery management decisions on fishing communities (national standard 8), bycatch (national standard 9), and safety of life at sea (national standard 10). This proposed rule would add those standards and associated guidelines to subpart D of 50 CFR part 600. Other provisions of the SFA necessitate significant revisions to the guidelines for national standard 1 (optimum yield), as proposed in this rule. Minor revisions to national standards 2 (scientific information), 4 (allocations), and 5 (efficiency) are also proposed to conform those standards and their guidelines to the Magnuson-Stevens Act, as amended. Additional technical changes would be made to § 600.305 (general) and to guidelines for national standards 3 (management units)(§ 600.320) and 7 (costs and benefits)(§ 600.340) to update terminology.

The proposed guidelines explain requirements and provide some options for compliance with the guidelines. Lists and examples are not all inclusive; rather, they are intended to provide illustrations of the kind of information, discussion, or examination/analysis useful in demonstrating consistency with the standard in question. The proposed guidelines are intended to provide for reasonable accommodation of regional or individual fishery characteristics, provided that the requirements of the Magnuson-Stevens Act are met. The guidelines are intended as an aid to decisionmaking, with responsible conservation and management of valued national resources as the goal. The proposed revisions and additions are described below.

General

The new and revised national standards apply to all FMPs and implementing regulations, existing and future. However, as Congress recognized by allowing the Councils 2 years from enactment (i.e., until October 11, 1998) to submit FMP amendments to comply with the related new requirements in section 303(a), it will take considerable time and effort to bring all FMPs into compliance with the Magnuson-Stevens Act. For example, national standard 9 requires that management measures minimize bycatch, but section 303(a)(11), which states exactly the same requirement, need not be fully implemented in all FMPs until October 1998; NMFS will therefore not expect full compliance with standard 9 until that date. Once issued in final, NMFS will use these guidelines to review all new FMPs and amendments to determine whether they comply with the new and revised national standards. The Councils should review existing FMPs for compliance with the new and revised national standards and submit necessary amendments by October 11, 1998.

The main purpose of the guidelines is to aid the Councils in fulfilling the requirements of the Magnuson-Stevens Act. In the context of preparing an FMP or FMP amendment, the guidelines typically address only the Councils'

responsibilities, even though the Secretary has similar responsibilities in developing Secretarial FMPs or amendments to Secretarial FMPs (sections 304(c) and 304(g) of the Magnuson-Stevens Act). A new definition for ''Council'' would be added to § 600.305 to include the Secretary, as applicable, when preparing FMPs or amendments under section 304(c) and (g) of the Magnuson-Stevens Act, for efficiency of language and consistency throughout the national standard guidelines.

The proposed guidelines seek as much precision as possible in the use of the words ''should'' and ''must.'' ''Must'' is used to denote an obligation to act and is used primarily when referring to requirements of the Magnuson-Stevens Act, the logical extension thereof, or other applicable law. ''Should'' is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens Act, and is a factor that reviewers will look for in evaluating an FMP. Definitions of ''must'' and ''should'' in § 600.305 would be revised to reflect current terminology. A definition for ''stock or stock complex'' would be added to § 600.305 to clarify use of that term and the term ''fishery,'' as used throughout the national standard guidelines.

National Standard 1

National standard 1 guidelines were last revised in July 1989; that revision focused on establishing a conservation standard, with the requirement that specific, objective, and measurable definitions of overfishing be established for each fishery managed under the Magnuson-Stevens Act (then called the Magnuson Act). By 1993, more than 100 such definitions had been approved by NMFS. At that time, NMFS convened a panel of scientists from inside and outside the agency to review the approved definitions, investigate their strengths and shortcomings, and standardize, as much as possible, the criteria and basis for future evaluations of overfishing definitions. The goal of the review was to develop a scientific consensus as to the appropriateness of the definitions and the criteria used in their evaluation. The resulting analysis and report (Rosenberg *et al.*, 1994) provided a set of scientific principles for defining overfishing. However, these principles were not incorporated into the national standard guidelines. The SFA introduced or revised definitions for a number of terms and introduced several new requirements for contents of FMPs. As a consequence of the 1994 report and the statutory amendments, revisions to the national standard 1 guidelines are proposed in this rule, as described below.

Overview of Issues

Revisions to the guidelines for national standard 1 center on the Magnuson-Stevens Act's definitions of ''overfishing,'' ''overfished,'' and ''optimum yield (OY);'' the requirement for the establishment of objective and measurable criteria for determining the status of a stock or stock complex; and the requirement for remedial action in the event that overfishing is occurring or that a stock or stock complex is overfished.

The Magnuson-Stevens Act, in section 3(29), defines both ''overfishing'' and ''overfished'' as a rate or level of fishing mortality that jeopardizes a fishery's capacity to produce maximum sustainable yield (MSY) on a continuing basis. Neither term was defined statutorily, prior to passage of the SFA. The existing national standard guidelines define overfishing somewhat differently, by qualifying ''capacity'' with the phrase ''long-term,'' and do not include a definition of ''overfished.'' The Magnuson-Stevens Act, in section 3(28), defines OY as the amount of fish that: (1) 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; (2) is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factors; and (3) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery. The main changes relative to the pre-SFA definition include the requirements that OY take into account protection of marine ecosystems, that OY be no greater than MSY, and that OY for an overfished fishery allow rebuilding to the MSY level.

The Magnuson-Stevens Act, in section 303(a)(10), requires each FMP to specify objective and measurable criteria for identifying when the fishery to which the FMP applies is overfished (also referred to as ''criteria for overfishing''), with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery. The Magnuson-Stevens Act also requires, in section 304(e), the Secretary to report annually to Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For each fishery managed under an FMP or international agreement, the status is to be determined using the criteria for overfishing specified in that FMP or agreement. A fishery is to be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that it will become overfished within 2 years.

If the Secretary determines at any time that a fishery is overfished or approaching an overfished condition or that existing remedial action taken for the purpose of ending any previously identified overfishing has not resulted in adequate progress, the Secretary must notify the Council and request that remedial action be taken. Section 304(e)(3) of the Magnuson-Stevens Act requires that the Council then, within 1 year of notification, prepare an FMP, FMP amendment, or proposed regulations for the purposes of ending (or preventing) overfishing and rebuilding (or sustaining) affected stocks of fish.

Overview of Approach

In developing the proposed revised guidelines, policy guidance was taken from the Magnuson-Stevens Act and other applicable law. Because the guidelines deal with technical subject matter, guidance was also taken from the scientific literature. In particular, the report by Rosenberg *et al.* (1994) was used to the extent that it is consistent with the Magnuson-Stevens Act and other applicable law.

Overview of Policy and Rationale

Sustainability

Sustainable fisheries is a key theme within the Magnuson-Stevens Act. The idea of sustainability is inherent in MSY, a quantity that is central to the Magnuson-Stevens Act's definitions of both overfishing and OY. Closely related to the idea of sustainability is the phrase ''on a continuing basis,'' which is used both in the Magnuson-Stevens Act's definition of overfishing and in national standard 1. The appropriate interpretation of sustainability or the phrase ''on a continuing basis'' is the one generally accepted in the fishery science literature, which relates to an average stock level and/or average potential yield from a stock over a long period of time.

It is important to distinguish between the theoretical concept of MSY as an unconditional maximum independent of management practice, and actual estimates of MSY, which are necessarily

conditional on some type of (perhaps hypothetical) management practice. Specifically, the proposed guidelines, in § 600.310(c), describe the role of ''control rules'' in estimating MSY, where an MSY control rule is any harvest strategy that, if implemented, would be expected to result in a long-term average catch close to MSY. A Council could choose an MSY control rule in which fishing mortality is held constant over time at an appropriate rate, one in which escapement is held constant over time at an appropriate level, or some other control rule, so long as that control rule is consistent with the Magnuson-Stevens Act.

Although the Magnuson-Stevens Act's definition of overfishing is expressed in terms of a stock's capacity to produce MSY on a continuing basis, nothing in the Magnuson-Stevens Act implies that such production, in the form of harvest, must actually occur. That is, a stock does not actually need to produce MSY on a continuing basis in order to have the capacity to do so.

Use of the Terms ''Overfishing'' and ''Overfished''

The relationship between the terms ''overfishing'' and ''overfished'' can be confusing. As used in the Magnuson-Stevens Act, the verb ''to overfish'' means to fish at a rate or level that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis. ''Overfishing,'' then, occurs whenever a stock or stock complex is subjected to any such rate or level of fishing mortality. Interpreting the term ''overfished'' is more complicated. In the Magnuson-Stevens Act, this term is used in two senses: First, to describe any stock or stock complex that is subjected to overfishing; and second, to describe any stock or stock complex for which a change in management practices is required in order to achieve an appropriate level and rate of rebuilding. (See, for example, section 303(a)(1)(A) and section 304(e)(1)) To avoid confusion, the proposed guidelines use ''overfished'' in the second sense only. Both terms would be defined in § 600.310(d).

Status Determination Criteria

The Magnuson-Stevens Act, in section 303(a)(10), requires that each FMP specify objective and measurable criteria (status determination criteria) for identifying when stocks or stock complexes covered by the FMP are overfished. To fulfill the intent of the Magnuson-Stevens Act, such status determination criteria are comprised of two components: A maximum fishing mortality threshold and a minimum stock size threshold (see § 600.310(d)(2)). The maximum fishing mortality threshold should be set at the fishing mortality rate or level defined by the chosen MSY control rule. The minimum stock size threshold should be set at one-half the MSY level, 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 maximum fishing mortality threshold, whichever is greater. When data are insufficient to estimate any of these quantities, use of reasonable proxies would be required.

It is important to note that, even if no minimum stock size threshold were set, the maximum fishing mortality threshold would define a minimum limit on the rate of rebuilding for a stock that falls below its MSY level. The reason for requiring a minimum stock size threshold in addition to a maximum fishing mortality threshold is to define the point at which this minimum rebuilding rate is no longer prudent. For example, in the case of a slow-growing stock, a rebuilding rate that satisfies the statutory deadline of 10 years would be considered prudent management. However, for a fast-growing stock, it might be possible to fall to an extremely low level of abundance and still rebuild to the MSY level within 10 years, which would not be considered prudent management. Thus, the definition of the minimum stock size threshold includes a constraint, equal to one-half the MSY level, to ensure that the 10-year allowance is not abused in the case of fast-growing stocks.

Choosing an MSY control rule is thus key to satisfying national standard 1, because it defines the maximum fishing mortality threshold and plays a role in defining the minimum stock size threshold. Any MSY control rule defines a relationship between fishing mortality rate and stock size. This relationship is the maximum fishing mortality threshold, which may be a single number or a mathematical function. In addition, any MSY control rule defines a rate of rebuilding for stocks that are below the level that would produce MSY. The smallest stock size at which rebuilding to the level that would produce MSY is achieved within 10 years defines the minimum stock size threshold for that rule, unless such a stock size is less than one-half the MSY level. The MSY control rule also defines an upper bound on any OY control rule that might be specified.

The proposed status determination criteria in § 600.310(d)(2) would play a fundamental role in developing the Secretary's annual report to Congress and the Councils, as required by section 304(e) of the Magnuson-Stevens Act. Under the proposed guidelines, the Secretary's annual report would list all stocks or stock complexes for which the maximum fishing mortality rate has been exceeded or for which the minimum stock size has not been achieved. Thus, the Secretary's decision as to whether a stock or stock complex is listed in the annual report of overfished stocks would be based on either the current rate of fishing mortality or the current condition of the stock, regardless of whether that condition is associated with either previous or current overfishing.

Preventing Overfishing

The Magnuson-Stevens Act is clear in its requirement to prevent overfishing. Except under very limited conditions, discussed below, this requirement must be satisfied. The Magnuson-Stevens Act's requirement to take remedial action in the event that a stock becomes overfished is not a substitute for the requirement to prevent overfishing in the first place.

Previous versions of the national standard guidelines have described limited conditions under which some amount of overfishing is permissible. Some of these conditions are retained in § 600.310(d)(6) in the proposed revision, but they are tightened considerably. Although the Magnuson-Stevens Act requires that OY and overfishing criteria be specified for each fishery, it does not require a one-to-one relationship between the fisheries for which OYs are specified and the fisheries for which overfishing criteria are specified. For example, in a mixed-stock fishery, overfishing criteria may be specified for the individual stocks, even if OY is specified for the fishery as a whole (see § 600.310(c)(2)(iii)). Thus, it is conceivable that OY could be achieved for the fishery as a whole, even while overfishing of an individual stock is occurring.

Ending Overfishing and Rebuilding Overfished Stocks

In the event that overfishing occurs or is projected to occur within 2 years, or in the event that a stock or stock complex is overfished or is projected to become overfished within 2 years, the Magnuson-Stevens Act, in section 304(e), gives detailed requirements for Council action that must be undertaken in response. As described in § 600.310(e) of the proposed guidelines, if overfishing is occurring, Council action must be designed to reduce

fishing mortality to a rate or level no greater than the maximum fishing mortality threshold. If a stock or stock complex is overfished, fishing at a rate or level equal to the maximum fishing mortality threshold will not meet the required rate and level of rebuilding. In such cases, Council action must go beyond that required for situations involving only overfishing.

Although the Magnuson-Stevens Act implicitly sets the rebuilding target equal to the MSY stock size, this constitutes a minimum standard only. In general, management practices should be designed to achieve an average stock size equal to the stock size associated with OY (or the average OY, in cases where OY is determined annually), and rebuilding plans should be consistent with this goal. Because OY cannot exceed MSY on average, the stock size that would produce OY will generally be greater than the stock size that would produce MSY. Remedial action should do more than merely assure that the stock reaches the target level; rather, the goal should be to restore the stock's capacity to remain at that level on a continuing basis, consistent with the stock's natural variability. For example, a stock should not be considered rebuilt just because its current size matches the target level, which could result from a single good year class, if the stock's condition would not likely be sustained by succeeding year classes. In order to conclude that a stock has fully recovered, it may be necessary to rebuild the age structure, in addition to achieving a particular biomass target. This generally requires keeping fishing mortality at an appropriately low level for several years (approximately one generation of the species).

Remedial action should be designed to make consistent and reasonably rapid progress towards recovery. ''Consistent progress'' means that no grace period exists beyond the statutory timeframe of 1 year for taking remedial action, and that such action should include explicit milestones expressed in terms of measurable improvement of the stock with respect to its status determination criteria. The Magnuson-Stevens Act, in section 304(e)(4), requires that the time period for rebuilding be as short as possible, but always less than 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.

Optimum Yield

One of the most significant changes made by the SFA is a requirement that OY not exceed MSY. Further, for overfished fisheries, OY must be based upon a rebuilding schedule that increases stock levels to those that would produce MSY. These changes are expressions of a precautionary approach, which should contain three features (see § 600.310(f)(5)). First, target reference points, such as OY, should be set safely below limit reference points, such as the catch level associated with the maximum fishing mortality threshold. Second, a stock that is below its MSY level should be harvested at a lower rate or level of fishing mortality than if it were above its MSY level. Third, the criteria used to set target catch levels should be explicitly risk averse, so that greater uncertainty regarding a stock's status or productive capacity corresponds to greater caution in setting target catch levels. Because specification of a precautionary approach can be a complicated exercise, NMFS plans to supplement these guidelines in the near future with technical guidance for use in implementing such an approach. This additional guidance may be provided in a form similar to that developed to implement the 1994 amendments to the MMPA.

The Magnuson-Stevens Act is clear in its requirement that specification of OY take into account protection of marine ecosystems. This is reflected in the new provisions concerning the identification and description of essential fish habitat (EFH). Proposed guidelines for designation of EFH were published in the **Federal Register** on April 23, 1997, at 62 FR 19723. Due to the complex nature of marine ecosystem structure and function, qualitative methods may be used to satisfy this requirement wherever data or scientific understanding are insufficient to permit use of quantitative methods.

NMFS recognizes the growing importance of non-consumptive uses of marine fishery resources. Such activities include ecotourism, fish watching, recreational diving, and marine education. These proposed guidelines are intended to accommodate such uses in specifying OY.

National Standard 2

National standard 2 requires that conservation and management measures be based on the best scientific information available. Guidelines for national standard 2, at § 600.315, would be revised to clarify that data to be considered include information on the marine ecosystem, and that information on the fishery should include information on fishing communities. These proposed revisions reflect increased emphasis placed on these areas by the SFA. In addition, § 600.315(e)(3) would be revised to require that each Stock Assessment and Fishery Evaluation (SAFE) report contain a description of the maximum fishing mortality threshold and the minimum stock size threshold for each stock or stock complex, along with additional information to determine the stock status relative to the overfishing criteria.

National Standard 4

Language from section 303(a)(14) of the Magnuson-Stevens Act would be added to § 600.325(c)(3)(ii) to specify that, to the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery.

National Standard 5

The SFA reworded this standard by replacing the word ''promote'' with ''consider.'' The proposed revisions to § 600.330 would revise the national standard language and make other minor adjustments to bring the guidelines into conformance with that change, replace the term ''Magnuson Act'' with ''Magnuson-Stevens Act,'' and correct references to that statute.

National Standard 7

National standard 7 requires that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. Section 600.340(b) would be revised to clarify that, while the Magnuson-Stevens Act does not require that an FMP be prepared for every fishery, Councils must prepare FMPs for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs.

National Standard 8

National standard 8 requires that conservation and management measures take into consideration the importance of fishery resources to fishing communities, with a goal of providing for the sustained participation of those communities and minimizing adverse economic impacts to the extent practicable. In successive drafts of standard 8, Congress clarified that the

importance of fishery resources to fishing communities must be considered within the context of the conservation requirements of the Magnuson-Stevens Act by including in the final standard the phrase ''consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks).'' Therefore, the proposed guidelines emphasize that national standard 8 must not compromise the conservation goals of the Magnuson-Stevens Act.

For the purposes of national standard 8, fishing communities are considered geographic areas encompassing a specific locale where residents are dependent on fishery resources or are engaged in the harvesting or processing of those resources. The geographic area is not necessarily limited to the boundaries of a particular city or town. No minimum size for a community is specified, and the degree to which the community is ''substantially engaged in'' or ''substantially dependent on'' the fishery resources must be defined within the context of the geographical area of the FMP. Those residents in the area engaged in the fisheries include not only those actively working in the harvesting or processing sectors, but also ''fishery-support services or industries,'' such as boat yards, ice suppliers, or tackle shops, and other fishery-dependent industries, such as ecotourism, marine education, and recreational diving.

The term ''sustained participation'' does not mandate maintenance of any particular level or distribution of participation in one or more fisheries or fishing activities. Changes are inevitable in fisheries, whether they relate to species targeted, gear utilized, or the mix of seasonal fisheries during the year. This standard implies the maintenance of continued access to fishery resources in general by the community. As a result, national standard 8 does not ensure that fishermen would be able to continue to use a particular gear type, to target a particular species, or to fish during a particular time of the year.

National Standard 9

National standard 9 requires that the Councils and NMFS consider the effects of conservation and management measures on bycatch. This standard applies to all existing and planned conservation and management measures, because most of these measures can affect amounts of bycatch or bycatch mortality in a fishery, as well as the extent to which further reductions in bycatch are practicable (but see discussion above under ''General''.

Specifically, national standard 9 requires that conservation and management measures, to the extent practicable, minimize bycatch and, to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. Bycatch occurs when fishing methods are not perfectly selective or when fishermen catch more than they are able to or choose to retain. A fishing method is perfectly selective if it results in the catch and retention only of the desired size, sex, quality, and quantity of the target species, without causing other fishing-related mortality; few, if any, fishing methods meet these strict criteria. Bycatch results in fishing mortality because some portion of the bycatch does not survive, even if it is returned to the sea or escapes after an encounter with the fishing gear. Bycatch mortality affects the ability to achieve sustainable fisheries and the benefits they can provide to the Nation.

For purposes of national standard 9, the term ''bycatch'' means fish that are harvested in a fishery, but that are not sold or kept for personal use. Fish released alive under a recreational catch-and-release fishery management program are not considered bycatch if they are not regulatory discards (fish released because regulations require it). Fish released dead under a recreational catch-and-release program are considered bycatch. Atlantic highly migratory species harvested in a commercial fishery managed by the Secretary under section 304(g) of the Magnuson-Stevens Act or the Atlantic Tunas Convention Act (16 U.S.C. 971d) that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary are not bycatch. Bycatch also does not include any fish that are legally retained in a fishery and kept for personal, tribal, or cultural use or that enter commerce through sale, barter, or trade. Fish donated to a nonprofit organization are bycatch if the retention of the donated fish otherwise would be prohibited.

''Fish,'' as defined in § 600.10, includes all forms of marine animal (including sea turtles) and plant life, other than marine mammals and birds. Thus, national standard 9 does not apply to the incidental catch of marine mammals or birds. Incidental catches of these species are governed under other statutes such as the MMPA, the ESA, or the Migratory Bird Treaty Act.

Bycatch includes fish taken by fishing gear but not captured by a fisherman (i.e., unobserved fishing-related mortality). For purposes of national standard 9, unobserved mortality is restricted to mortality resulting from direct interaction with fishing gear. Examples of unobserved bycatch mortality include mortality resulting from injuries to fish that escape through net mesh; mortality of crabs or other benthic organisms that are crushed by on-bottom gear; mortality of fish that are hooked, but not landed; or mortality of fish due to ghost fishing of abandoned or lost fishing gear. Mortality due to other than direct interactions of fish with fishing gear is not included as bycatch; however, the ecosystem or other effects of such mortality can be important.

''Discard'' refers only to the discard of whole fish at sea or elsewhere. Bycatch and bycatch mortality can be reduced by changing how, when, where, and how many fish are caught, how many fish are discarded, and how fish are handled before being discarded. Bycatch can be decreased either by decreasing the catch of fish that would be discarded or by retaining fish that otherwise would be discarded. National standard 9 establishes a priority first to reduce bycatch, and then to increase the survival rate of fish that are discarded.

Reducing bycatch by simply retaining juvenile fish that would otherwise have been discarded will not eliminate the problem of foregoing the potential growth of those fish. This approach may be substantially less beneficial than avoiding the catch of the juvenile fish in the first place. Therefore, alternatives that include reduction in the catch of juvenile fish should be considered.

The proposed national standard 9 guidelines acknowledge that bycatch and discard survival data, information to assess impacts on the population and ecosystem, and data on social and economic effects of alternative management measures to reduce bycatch may be limited. Due to these limitations, precise estimates of bycatch, bycatch mortality, or associated effects of alternative conservation and management measures may not be possible.

Councils should support monitoring programs to improve estimates of total fishing-related mortality and bycatch, as well as those to improve other information used to determine the extent to which it is practicable to reduce bycatch and bycatch mortality. Sources of this information could include at-sea observer programs, new technology to monitor catch weight and species composition, or better use of industry-reported catch and discard information. The importance of this activity is emphasized in section 303(a)(11) and (12) of the Magnuson-

Stevens Act, which requires that FMPs establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery. Timely summaries of the amount and type of bycatch for each fishery should be collated for each fishery; SAFE reports required under § 600.315(e) provide a vehicle for these summaries.

Because limited resources are available to the Councils and NMFS to address bycatch problems, and a variety of bycatch problems exists in most fisheries, each Council should identify and prioritize the bycatch problems in its fisheries, based on the benefits to the Nation expected to accrue from addressing these problems.

National Standard 10

This new standard states, ''Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.'' It requires that FMPs, FMP amendments, and other regulations consider impacts of management measures on safety of life at sea and attempt to minimize any adverse impacts. The proposed guidelines interpret the phrases ''to the extent practicable'' and ''safety of human life at sea,'' and include guidance on safety considerations, a consultation process, and possible mitigation measures to be used to avoid or lessen the impact of management measures on the safety of fishermen.

Classification

This rule has been determined to be significant for purposes of E.O. 12866, although a determination has not been made whether the actions associated with the guidelines will have an annual impact on the economy of $100 million or more.

The main thrust of the guidelines, in carrying out the 1996 revisions to the Magnuson-Stevens Act, is to reduce overfishing immediately, rebuild overfished stocks within a set timeframe, and reduce bycatch and bycatch mortality to the extent practicable. An economic analysis quantifying the expected benefits and costs is not available at this time. However, it is expected that as fish stocks are rebuilt, long-term benefits will significantly outweigh short-term costs of management regimes developed under these guidelines. The relative benefits and costs associated with the implementation of the guidelines will be determined as individual FMPs are revised to meet the new provisions of the Magnuson-Stevens Act.

Nevertheless, a rough estimate of the total potential benefits can be made, assuming that all stocks are rebuilt to their maximum sustainable levels. Over the long term, and summed for all fisheries within the exclusive economic zone, the potential increase in net revenues is estimated at $2.9 billion annually, along with an additional 300,000 jobs nationwide. As the flow of fish from rebuilt stocks to consumers increases, price fluctuations may begin to flatten, and employment will stabilize, thereby providing additional benefits to the Nation. The costs associated with programs developed under these guidelines will include short-term reductions in fishing effort and investment in new fishing gear. Each amendment to an existing FMP and all new FMPs will contain detailed analyses of the benefits and costs of the management programs under consideration, to ensure compliance with E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would add to and update the national standards and accompanying explanatory and interpretive language to implement statutory provisions of the SFA. The SFA's amendments to the national standards make it necessary for the Councils to examine their existing FMPs and all future proposed management measures to ensure that they comply with the national standards; FMPs found out of compliance will need to be amended. These proposed guidelines are intended to provide direction and elaboration on compliance with the national standards and, in themselves, do not have the force of law. Should Councils propose regulations as a result of the SFA, those actions may affect small entities and could be subject to the requirement to prepare a Regulatory Flexibility Analysis at the time they are proposed. Any future effects on small entities that may ultimately result from amendments to FMPs to bring them into compliance with the Magnuson-Stevens Act would be speculative at this time. As a result, a Regulatory Flexibility Analysis for this proposed rule was not prepared.

Reference

Rosenberg, A., P. Mace, G. Thompson, G. Darcy, W. Clark, J. Collie, W. Gabriel, A. MacCall, R. Methot, J. Powers, V. Restrepo, T. Wainwright, L. Botsford, J. Hoenig, K. Stokes. 1994. Scientific review of definitions of overfishing in U.S. fishery management plans. NOAA Tech. Memo. NMFS-F/SPO–17, 205 p. Nat. Mar. Fish. Serv., Office of Science and Technology, 1315 East-West Hwy., Silver Spring, MD 20910.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing.

Dated: July 30, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON ACT PROVISIONS

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

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. The part heading is revised to read as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

3. In § 600.305, paragraph (c)(13) is removed and the second and third sentences of paragraph (a)(2), the last sentence of paragraph (a)(3), and paragraphs (c)(1), (c)(3), (c)(11), and (c)(12) are revised to read as follows:

§ 600.305 General.

(a) * * *

(2) * * * The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Magnuson-Stevens Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) * * * FMPs that are in substantial compliance with the guidelines, the Magnuson-Stevens Act, and other applicable law must be approved.

* * * * *

(c) * * *

(1) *Must* is used, instead of ''shall,'' to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson-Stevens Act, the logical extension thereof, or of other applicable law.

* * * * *

(3) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens

Act, and is a factor reviewers will look for in evaluating a SOPP or FMP.

* * * * *

(11) *Council* includes the Secretary, as applicable, when preparing FMPs or amendments under section 304(c) and (g) of the Magnuson-Stevens Act.

(12) *Stock or stock complex* is used as a synonym for ''fishery'' in the sense of the Magnuson-Stevens Act's first definition of the term; that is, as ''one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics,'' as distinguished from the Magnuson-Stevens Act's second definition of fishery as ''any fishing for such stocks.''

4. 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 OY from each fishery for the U.S. fishing industry.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's multiple purposes and policies, implementing an FMP's objectives, and balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be reduced under paragraph (f)(3) 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.

(c) *MSY.* Each FMP should include an estimate of MSY.

(1) *Definitions.* (i) ''MSY'' is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions.

(ii) ''MSY control rule'' means a harvest strategy which, if implemented, would be expected to result in a long-term average catch approximating MSY.

(iii) ''MSY stock size'' means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate units, that would be achieved under an MSY control rule in which the fishing mortality rate is constant.

(2) *Options in specifying MSY.* (i) Because MSY is a theoretical concept, its estimation in practice is conditional on the choice of an MSY control rule. In choosing an MSY control rule, Councils should be guided by the characteristics of the fishery, the FMP's objectives, and the best scientific information available. The simplest MSY control rule is to remove a constant catch in each year that the estimated stock size exceeds an appropriate lower bound, where this catch is chosen so as to maximize the resulting long-term average yield. Other examples include the following: Remove a constant fraction of the biomass in each year, where this fraction is chosen so as to maximize the resulting long-term average yield; allow a constant level of escapement in each year, where this level is chosen so as to maximize the resulting long-term average yield; vary the fishing mortality rate as a continuous function of stock size, where the parameters of this function are constant and chosen so as to maximize the resulting long-term average yield. In any MSY control rule, a given stock size is associated with a given level of fishing mortality and a given level of potential harvest, where the long-term average of these potential harvests provides an estimate of MSY.

(ii) Any MSY values used in determining OY will necessarily be estimates, and these will typically be associated with some level of uncertainty. Such estimates must be based on the best scientific information available (see § 600.315) and must incorporate appropriate consideration of risk (see § 600.335). Beyond these requirements, however, Councils have a reasonable degree of latitude in determining which estimates to use and how these estimates are to be expressed. For example, a point estimate of MSY may be expressed by itself or together with a confidence interval around that estimate.

(iii) In the case of a mixed-stock fishery, MSY should be specified on a stock-by-stock basis. However, where MSY cannot be specified for each stock, then MSY may be specified on the basis of one or more species as an indicator for the mixed stock as a whole or for the fishery as a whole.

(iv) Because MSY is a long-term average, it need not be estimated annually, but it must be based on the best scientific information available, and should be re-estimated as required by changes in environmental or ecological conditions or new scientific information.

(3) *Alternatives to specifying MSY.* When data are insufficient to estimate MSY directly, Councils should adopt other measures of productive capacity that can serve as reasonable proxies for MSY, to the extent possible. Examples include various reference points defined in terms of relative spawning per recruit. For instance, the fishing mortality rate that reduces the long-term average level of spawning per recruit to 30–40 percent of the long-term average that would be expected in the absence of fishing may be a reasonable proxy for the MSY fishing mortality rate. The long-term average stock size obtained by fishing year after year at this rate under average recruitment may be a reasonable proxy for the MSY stock size, and the long-term average catch so obtained may be a reasonable proxy for MSY. The natural mortality rate may also be a reasonable proxy for the MSY fishing mortality rate. If a reliable estimate of pristine stock size (i.e., the long-term average stock size that would be expected in the absence of fishing) is available, a stock size somewhere in the range of 25–75 percent of this value may be a reasonable proxy for the MSY stock size, and the product of this stock size and the natural mortality rate may be a reasonable proxy for MSY.

(d) *Overfishing*—(1) *Definitions.* (i) ''To overfish'' means to fish at a rate or level that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(ii) ''Overfishing'' occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(iii) In the Magnuson-Stevens Act, the term ''overfished'' is used in two senses: First, to describe any stock or stock complex that is subjected to a rate or level of fishing mortality meeting the criterion in paragraph (d)(1)(i) of this section, and second, to describe any stock or stock complex whose size is sufficiently small that a change in management practices is required in order to achieve an appropriate level and rate of rebuilding. To avoid confusion, this section uses ''overfished'' in the second sense only.

(2) *Specification of status determination criteria.* Each FMP must specify, to the extent possible, objective and measurable status determination criteria for each stock or stock complex covered by that FMP and provide an analysis of how the status determination criteria were chosen and how they relate to reproductive potential. Status determination criteria must be expressed in a way that enables the Council and the Secretary to monitor the stock or stock complex and determine annually whether overfishing is occurring and whether the stock or stock complex is overfished. In all cases, status determination criteria must specify both of the following:

(i) *A maximum fishing mortality threshold or reasonable proxy thereof.*

The fishing mortality threshold may be expressed either as a single number or as a function of spawning biomass or other measure of productive capacity. The fishing mortality threshold must not exceed the fishing mortality rate or level associated with the relevant MSY control rule. Exceeding the fishing mortality threshold for a period of 1 year or more constitutes overfishing.

(ii) *A minimum stock size threshold or reasonable proxy thereof.* The stock size threshold should be expressed in terms of spawning biomass or other measure of productive capacity. To the extent possible, the stock size threshold 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 maximum fishing mortality threshold specified under paragraph (d)(2)(i) of this section. Should the actual size of the stock or stock complex in a given year fall below this threshold, the stock or stock complex is considered overfished.

(3) *Relationship of status determination criteria to other national standards*—(i) *National standard 2.* Status determination criteria must be based on the best scientific information available (see § 600.315). When data are insufficient to estimate MSY, Councils should base status determination criteria on reasonable proxies thereof to the extent possible (also see paragraph (c)(3) of this section). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data.

(ii) *National standard 3.* The requirement to manage interrelated stocks of fish as a unit or in close coordination notwithstanding (see § 600.320), status determination criteria should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (also see paragraph (c)(2)(iii) of this section).

(iii) *National standard 6.* Councils must build into the status determination criteria appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors (see § 600.335).

(4) *Relationship of status determination criteria to environmental change.* Some short-term environmental changes can alter the current size of a stock or stock complex without affecting the long-term productive capacity of the stock or stock complex. Other environmental changes affect both the current size of the stock or stock complex and the long-term productive capacity of the stock or stock complex.

(i) If environmental changes cause a stock or stock complex to fall below the minimum stock size threshold without affecting the long-term productive capacity of the stock or stock complex, fishing mortality must be constrained sufficiently to allow rebuilding within an acceptable timeframe (also see paragraph (e)(4)(ii) of this section). Status determination criteria need not be respecified.

(ii) If environmental changes affect the long-term productive capacity of the stock or stock complex, one or more components of the status determination criteria must be respecified. Once status determination criteria 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.

(iii) If manmade environmental changes are partially responsible for a stock or stock complex being in an overfished condition, in addition to controlling effort, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible.

(5) *Secretarial approval of status determination criteria.* Secretarial approval or disapproval of proposed status determination criteria will be based on consideration of whether the proposal:

(i) Has sufficient scientific merit.

(ii) Contains the elements described in paragraph (d)(2) of this section.

(iii) Provides a basis for objective measurement of the status of the stock or stock complex against the criteria.

(iv) Is operationally feasible.

(6) *Exceptions.* There are certain limited exceptions to the requirement to prevent overfishing. Harvesting one species of a mixed-stock complex at its optimum level may result in the overfishing of another stock component in the complex. A Council may decide to permit this type of overfishing only if all of the following conditions are satisfied:

(i) It is demonstrated by analysis (paragraph (f)(6) of this section) that such action will result in long-term net benefits to the Nation.

(ii) It is demonstrated by analysis 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.

(iii) The resulting rate or level of fishing mortality will not cause any species or ecologically significant unit thereof to require protection under the ESA, or any stock or stock complex to fall below its minimum stock size threshold.

(e) *Ending overfishing and rebuilding overfished stocks.* (1) *Definition.* A threshold, either maximum fishing mortality or minimum stock size, is being ''approached'' whenever it is projected that the threshold will be breached within 2 years, based on trends in fishing effort, fishery resource size, and other appropriate factors.

(2) *Notification.* The Secretary will immediately notify a Council and request that remedial action be taken whenever the Secretary determines that:

(i) Overfishing is occurring;

(ii) A stock or stock complex is overfished;

(iii) The rate or level of fishing mortality for a stock or stock complex is approaching the maximum fishing mortality threshold;

(iv) A stock or stock complex is approaching its minimum stock size threshold; or

(v) 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.

(3) *Council action.* Within 1 year of such time as the Secretary may identify that overfishing is occurring, that a stock or stock complex is overfished, or that a threshold is being approached, or such time as a Council may be notified of the same under paragraph (e)(2) of this section, the Council must take remedial action by preparing an FMP, FMP amendment, or proposed regulations. This remedial action must be designed to accomplish all of the following purposes that apply:

(i) If overfishing is occurring, the purpose of the action is to end overfishing.

(ii) If the stock or stock complex is overfished, the purpose of the action is to rebuild the stock or stock complex to the MSY level within an appropriate timeframe.

(iii) If the rate or level of fishing mortality is approaching the maximum fishing mortality threshold (from below), the purpose of the action is to prevent this threshold from being reached.

(iv) If the stock or stock complex is approaching the minimum stock size threshold (from above), the purpose of the action is to prevent this threshold from being reached.

(4) *Constraints on Council action.* (i) In cases where overfishing is occurring,

Council action must be sufficient to end overfishing.

(ii) In cases where a stock or stock complex is overfished, Council action must specify a time period for rebuilding the stock or stock complex that is as short as possible, taking into account the status and biology of the stock or stock complex, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock or stock complex within the marine ecosystem. However, in no case may the timeframe for rebuilding exceed 10 years, except where the biology of the stock or stock complex, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise.

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

(5) *Interim measures*. The Secretary, on his/her own initiative or in response to a Council request, may implement interim measures to reduce overfishing under section 305(c) of the Magnuson-Stevens Act, until such measures can be replaced by an FMP, FMP amendment, or regulations taking remedial action.

(i) These measures may remain in effect for no more than 180 days, but may be extended for an additional 180 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 overfishing on a permanent basis. Such measures, if otherwise in compliance with the provisions of the Magnuson-Stevens Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(ii) If interim measures are made effective without prior notice and opportunity for comment, they should be reserved for exceptional situations, because they affect fishermen without providing the usual procedural safeguards. A Council recommendation for interim measures without notice-and-comment rulemaking will be considered favorably if the short-term benefits of the measures in reducing overfishing outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants in the fishery.

(f) *OY*—(1) *Definitions*. (i) The term ''optimum,'' with respect to the yield from a fishery, means 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.

(ii) In national standard 1, use of the phrase ''achieving, on a continuing basis, the OY from each fishery'' means producing, from each fishery, a long-term series of catches such that the average catch is equal to the average OY and such that status determination criteria are met.

(2) *Values in determination*. In determining the greatest benefit to the Nation, these values that should be weighed are food production, recreational opportunities, and protection afforded to marine ecosystems. They should receive serious attention when considering the economic, social, or ecological factors used in reducing MSY to obtain OY.

(i) The benefits of food production are derived from providing seafood to consumers, maintaining an economically viable fishery, and utilizing the capacity of U.S. fishery resources to meet nutritional needs.

(ii) The benefits of recreational opportunities reflect the importance of the quality of the recreational fishing experience and of the contribution of recreational fishing to the national, regional, and local economies and food supplies. Such benefits also include the quality of non-consumptive fishery experiences such as ecotourism, fish watching, recreational diving, and other non-consumptive activities important to the national, regional, and local economies.

(iii) The benefits of protection afforded to marine ecosystems are those resulting from maintaining viable populations (including those of unexploited species), 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.

(3) *Factors relevant to OY*. Because fisheries have finite capacities, any attempt to maximize the measures of benefit described in paragraph (f)(2) of this section will inevitably encounter practical constraints. One of these is MSY. Moreover, various factors can constrain the optimum level of catch to a value less than MSY. The Magnuson-Stevens Act's definition of OY identifies three categories of such factors: Social, economic, and ecological. Not every factor will be relevant in every fishery. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding reductions in MSY.

(i) *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. Other factors that may be considered include the cultural place of subsistence fishing, obligations under Indian treaties, and worldwide nutritional needs.

(ii) *Economic factors*. Examples are prudent consideration of the risk of overharvesting when a stock's size or productive capacity is uncertain, 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, and the attendant increase in catch per unit of effort, alternate employment opportunities, and economies of coastal areas.

(iii) *Ecological factors*. Examples are stock size and age composition, the vulnerability of incidental or unregulated stocks in a mixed-stock fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. 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.

(4) *Specification*. (i) The amount of fish that constitutes the OY should be expressed in terms of numbers or weight of fish. However, OY may be expressed as a formula that converts periodic stock assessments into target harvest levels; in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement; or as an amount of fish taken only in certain areas, in certain seasons, with particular gear, or by a specified amount of fishing effort.

(ii) Either a range or a single value may be specified for OY. Specification of a numerical, fixed-value OY does not preclude use of annual target harvest

levels that vary with stock size. Such target harvest levels may be prescribed on the basis of an OY control rule similar to the MSY control rule described in paragraph (c)(1)(ii) of this section, but designed to achieve OY on average, rather than MSY. The annual harvest level obtained under an OY control rule should always be less than or equal to the harvest level that would be obtained under the MSY control rule.

(iii) All fishing mortality must be counted against OY, including that resulting from bycatch, research fishing, and any other fishing activities.

(iv) The OY specification should be translatable into an annual numerical estimate for the purposes of establishing any TALFF and analyzing impacts of the management regime. 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.

(v) The determination of OY requires a specification of MSY, which may not always be possible or meaningful. 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, the OY must still be based on the best scientific information available. When data are insufficient to estimate MSY directly, Councils should adopt other measures of productive capacity that can serve as reasonable proxies for MSY to the extent possible (also see paragraph (c)(3) of this section).

(vi) In a mixed-stock fishery, specification of a fishery-wide OY may be accompanied by management measures establishing separate annual target harvest levels for the individual stocks. In such cases, the sum of the individual target levels should not exceed OY.

(5) *OY and the precautionary approach*. In general, Councils should adopt a precautionary approach to specification of OY. A precautionary approach is characterized by three features:

(i) Target reference points, such as OY, should be set safely below limit reference points, such as the catch level associated with the fishing mortality rate or level defined by the status determination criteria. Because it is a target reference point, OY does not constitute an absolute ceiling, but rather a desired result. An FMP must contain conservation and management measures to achieve OY, and provisions for information collection that are designed to determine the degree to which OY is achieved on a continuing basis—that is, to result in a long-term average catch equal to the long-term average OY, while meeting the status determination criteria. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach OY, but not to exceed OY by a substantial amount. The Secretary has an obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive, or not rigorous enough to realize 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 national standard 1, because OY was not achieved on a continuing basis.

(ii) A stock or stock complex that is below the size that would produce MSY should be harvested at a lower rate or level of fishing mortality than if the stock or stock complex were above the size that would produce MSY.

(iii) Criteria used to set target catch levels should be explicitly risk averse, so that greater uncertainty regarding the status or productive capacity of a stock or stock complex corresponds to greater caution in setting target catch levels. Part of the OY may be held as a reserve to allow for factors such as uncertainties in estimates of stock size and 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.

(6) *Analysis*. An FMP must contain an assessment of how its OY specification was determined (section 303(a)(3) of the Magnuson-Stevens Act). It should relate the explanation of overfishing in paragraph (d) of this section to conditions in the particular fishery and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate them to determine the amount, if any, by which MSY exceeds OY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation. If overfishing is permitted under paragraph (d)(6) of this section, the assessment 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 species or ecologically significant unit thereof reaching a threatened or endangered status, as well as the risk of any stock or stock complex falling below its minimum stock size threshold.

(7) *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.

(i) *DAH*. Councils 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.

(ii) *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).

(iii) *JVP*. When DAH exceeds DAP, the surplus is available for JVP. JVP is derived from DAH.

5. In § 600.315, paragraphs (e)(3) and (e)(4) are redesignated as paragraphs (e)(4) and (e)(5), respectively; new paragraph (e)(3) is added; and paragraphs (c)(2), (c)(3), (e)(1) introductory text, (e)(1)(ii), and newly redesignated (e)(4) are revised to read as follows:

§ 600.315 National Standard 2—Scientific Information.

* * * * *

(c) * * *

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource, marine ecosystem, and the fishery (including fishing communities).

(3) The information submitted by various data suppliers should be comparable and compatible, to the maximum extent possible.

* * * * *

(e) * * *

(1) The SAFE report is a document or set of documents that provides Councils with a summary of the most recent

biological condition of stocks and the marine ecosystems in the FMU and the social and economic condition of the recreational and commercial fishing interests and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks, marine ecosystems, and fisheries being managed under Federal regulation.

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(ii) The SAFE report provides information to the Councils for determining annual harvest levels from each stock, documenting significant trends or changes in the resource, marine ecosystems, and fishery over time, and assessing the relative success of existing state and Federal fishery management programs. Information on bycatch for each fishery should also be summarized. In addition, the SAFE report may be used to update or expand previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.

* * * * *

(3) Each SAFE report should contain a description of the maximum fishing mortality threshold and the minimum stock size threshold for each stock or stock complex, along with information by which the Council may determine:

(i) Whether overfishing is occurring with respect to any stock or stock complex, whether any stock or stock complex is overfished, whether the rate or level of fishing mortality applied to any stock or stock complex is approaching the maximum fishing mortality threshold, and whether the size of any stock or stock complex is approaching the minimum stock size threshold.

(ii) Any management measures necessary to provide for rebuilding an overfished stock or stock complex (if any) to a level consistent with producing the MSY in such fishery.

(4) Each SAFE report may contain additional economic, social, community, and ecological information pertinent to the success of management or the achievement of objectives of each FMP.

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6. In § 600.320, the last sentence of paragraph (c) is revised to read as follows:

§ 600.320 National Standard 3—Management Units.

* * * * *

(c) * * * The Secretary designates which Council(s) will prepare the FMP, under section 304(f) of the Magnuson-Stevens Act.

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7. In § 600.325, paragraph (c)(3)(ii) is revised to read as follows:

§ 600.325 National Standard 4—Allocations.

* * * * *

(c) * * *

(3) * * *

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered ''conservation and management'' measures under section 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield, in terms of size, value, market mix, price, or economic or social benefit of the product. To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery.

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8. In § 600.330, paragraphs (a) and (b)(1), the first sentence of paragraph (c) introductory text, the last sentence of paragraph (c)(1), and paragraph (c)(2) are revised to read as follows:

§ 600.330 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) * * *

(1) *General.* The term ''utilization'' encompasses harvesting, processing, marketing, and non-consumptive uses of the resource, since management decisions affect all sectors of the industry. In encouraging efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

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(c) *Limited access.* A ''system for limiting access,'' which is an optional measure under section 303(b) of the Magnuson-Stevens Act, is a type of allocation of fishing privileges that may be considered to contribute to economic efficiency or conservation. * * *

(1) * * * Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Magnuson-Stevens Act, except for fees allowed under section 304(d)(2).

(2) *Factors to consider.* The Magnuson-Stevens Act ties the use of limited access to the achievement of OY. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Magnuson-Stevens Act and in § 600.325(c)(3). In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Magnuson-Stevens Act's limitations on returning economic rent to the public under section 304(d). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

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9. In § 600.340, paragraph (b)(1) is amended by revising the second sentence to read as follows:

§ 600.340 National Standard 7—Costs and Benefits.

* * * * *

(b) * * *

(1) * * * The Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. * * *

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10. Sections 600.345, 600.350, and 600.355 are added to subpart D to read as follows:

§ 600.345 National Standard 8—Communities.

(a) *Standard 8.* Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to:

(1) Provide for the sustained participation of such communities; and

(2) To the extent practicable, minimize adverse economic impacts on such communities.

(b) *General.* (1) This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is within the context of the conservation requirements of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to

affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.

(2) This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.

(3) The term ''fishing community'' means a community that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew, and fish processors that are based in such communities. A fishing community is a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing or on directly related fisheries-dependent services and industries (for example, boatyards, ice suppliers, tackle shops).

(4) The term ''sustained participation'' means continued access to the fishery within the constraints of the condition of the resource.

(c) *Analysis.* (1) FMPs should examine the social and economic importance of fisheries to communities potentially affected by management measures. For example, severe reductions of harvests for conservation purposes may decrease employment opportunities for fishermen and processing plant workers, thereby adversely affecting their families and communities. Similarly, a management measure that results in the allocation of fishery resources among competing sectors of a fishery may benefit some communities at the expense of others.

(2) An appropriate vehicle for the analyses under this standard is the fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act. Qualitative and quantitative data may be used, including information provided by fishermen, dealers, processors, and fisheries organizations and associations. In cases where data are severely limited, effort should be directed to identifying and gathering needed data.

(3) To address the sustained participation of fishing communities that will be affected by management measures, the analysis should first identify affected fishing communities and then assess their differing levels of dependence on and engagement in the fishery being regulated. The analysis should also specify how that assessment was made. The best available data on the history, extent, and type of participation of these fishing communities in the fishery should be incorporated into the social and economic information presented in the FMP. The analysis does not have to contain an exhaustive listing of all communities that might fit the definition; a judgment can be made as to which are primarily affected. The analysis should discuss each alternative's likely effect on the sustained participation of these fishing communities in the fishery.

(4) The analysis should assess the likely positive and negative social and economic impacts of the alternative management measures, over both the short and the long term, on fishing communities. Any particular management measure may economically benefit some communities while adversely affecting others. Economic impacts should be considered both for individual communities and for the group of all affected communities identified in the FMP. Impacts of both consumptive and non-consumptive uses of fishery resources should be considered.

(5) A discussion of social and economic impacts should identify those alternatives that would minimize adverse impacts on these fishing communities within the constraints of conservation and management goals of the FMP, other national standards, and other applicable law.

§ 600.350 National Standard 9—Bycatch.

(a) *Standard 9.* Conservation and management measures shall, to the extent practicable:

(1) Minimize bycatch; and

(2) To the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

(b) *General.* This national standard requires Councils to consider the bycatch effects of existing and planned conservation and management measures. Bycatch can, in three ways, impede efforts to achieve sustainable fisheries and the full benefits they can provide to the Nation. First, failure to include bycatch in estimating allowable catch in a directed fishery may result in unintended overfishing. Second, it can increase substantially the uncertainty concerning total fishing-related mortality, which makes it more difficult to assess the status of stocks, to set the appropriate OY and define overfishing levels, and to ensure that OYs are attained and overfishing levels are not exceeded. Finally, bycatch may preclude other more productive uses of fishery resources.

(c) *Definitions*—(1) *Bycatch.* The term ''bycatch'' means fish that are harvested in a fishery (i.e., removed permanently from the population as a result of fishing), but that are not sold or kept for personal use. Bycatch includes economic discards, regulatory discards, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality). Bycatch does not include any fish that legally are retained in a fishery and kept for personal, tribal, or cultural use, or that enter commerce through sale, barter, or trade. Bycatch does not include fish released alive under a recreational catch-and-release fishery management program.

(2) *Discard.* The term ''discard'' refers only to the discard of whole fish at sea or elsewhere.

(d) *Minimizing bycatch and bycatch mortality.* The priority for reducing bycatch under this standard is to minimize or avoid catching bycatch species where possible. Fish that are bycatch and cannot be avoided should, to the extent practicable, be returned to the sea alive. To evaluate conservation and management measures relative to this and other national standards, as well as to evaluate total fishing mortality, Councils should:

(1) *Promote development of a database on bycatch and bycatch mortality in the fishery to the extent practicable.* A review and, where necessary, improvement of data collection methods, data sources, and applications of data should be initiated for each fishery to determine the amount, type, disposition, and other characteristics of bycatch and bycatch mortality in each fishery for purposes of this standard and of section 303(a)(11) and (12) of the Magnuson-Stevens Act. Bycatch should be categorized to focus on management responses necessary to minimize bycatch and bycatch mortality to the extent practicable. When appropriate, management measures, such as at-sea monitoring programs, should be developed to meet these information needs.

(2) *For each management measure, assess the effects on the amount and type of bycatch and bycatch mortality in*

the fishery. Most conservation and management measures can affect the amounts of bycatch or bycatch mortality in a fishery, as well as the extent to which further reductions in bycatch are practicable. In analyzing measures, including the status quo, Councils should assess the impacts of minimizing bycatch and bycatch mortality, as well as consistency of the selected measure with other national standards and applicable laws. The benefits of minimizing bycatch to the extent practicable should be identified and an assessment of the impact of the selected measure on bycatch and bycatch mortality provided. Due to limitations on the information available, fishery managers may not be able to generate precise estimates of bycatch and bycatch mortality or other effects for each alternative. In the absence of quantitative estimates of the impacts of each alternative, Councils may use qualitative estimates.

(3) *Select measures that, to the extent practicable, will minimize bycatch and bycatch mortality*. A determination of whether a conservation and management measure minimizes bycatch or bycatch mortality to the extent practicable, consistent with other national standards, should consider the following factors:

(i) Population effects for the bycatch species.

(ii) Ecological effects due to changes in the bycatch of that species (effects on other species in the ecosystem).

(iii) Changes in the bycatch of other species of fish and the resulting population and ecosystem effects.

(iv) Effects on marine mammals and birds.

(v) Changes in fishing, processing, disposal, and marketing costs.

(vi) Changes in fishing practices and behavior of fishermen.

(vii) Changes in research, administration, and enforcement costs and management effectiveness.

(viii) Changes in the economic, social, or cultural value of fishing activities and nonconsumptive uses of fishery resources.

(ix) Changes in the distribution of benefits and costs.

(x) Social effects.

(4) *Implement and monitor selected management measures*. Effects of implemented measures should be evaluated routinely. Monitoring systems should be established prior to fishing under the selected management measures. Where applicable, implementation plans should be developed and coordinated with industry and other concerned organizations to identify opportunities for cooperative data collection, coordination of data management for cost efficiency and avoidance of duplicative effort.

(e) *Other considerations*. Other applicable laws, such as the MMPA, the ESA, and the Migratory Bird Treaty Act, require that Councils consider the impact of conservation and management measures on living marine resources other than fish; i.e., marine mammals and birds.

§ 600.355 National Standard 10—Safety of Life at Sea.

(a) *Standard 10*. Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

(b) *General*. (1) Fishing is an inherently dangerous occupation where not all hazardous situations can be foreseen or avoided. The standard directs Councils to reduce that risk in crafting their management measures, so long as they can meet the other national standards and the legal and practical requirements of conservation and management. This standard is not meant to give preference to one method of managing a fishery over another.

(2) The qualifying phrase ''to the extent practicable'' recognizes that regulation necessarily puts constraints on fishing that would not otherwise exist. These constraints may create pressures on fishermen to fish under conditions that they would otherwise avoid. This standard instructs the Councils to identify and avoid those situations, if they can do so consistent with the legal and practical requirements of conservation and management of the resource.

(3) For the purposes of this national standard, the safety of the fishing vessel is considered the same as ''safety of human life at sea.'' The safety of a vessel and the people aboard it is ultimately the responsibility of the master of that vessel. Each master makes many decisions about vessel maintenance and loading and about the capabilities of the vessel and crew to operate safely in a variety of weather and sea conditions. This national standard does not replace the judgment or relieve the responsibility of the vessel master related to vessel safety. The Councils, the USCG, and NMFS, through the consultation process of paragraph (d) of this section, will review all FMPs, amendments, and regulations during their development to ensure they recognize any impact on the safety of human life at sea and minimize or mitigate that impact where practicable.

(c) *Safety considerations*. The following is a noninclusive list of safety considerations that should be considered in evaluating management measures under national standard 10.

(1) *Operating environment*. Where and when a fishing vessel operates is partly a function of the general climate and weather patterns of an area. Typically, larger vessels can fish farther offshore and in more adverse weather conditions than smaller vessels. An FMP should try to avoid creating situations that result in vessels going out farther, fishing longer, or fishing in weather worse than they generally would have in the absence of management measures. Where these conditions are unavoidable, management measures should mitigate these effects, consistent with the overall management goals of the fishery.

(2) *Gear and vessel loading requirements*. A fishing vessel operates in a very dynamic environment that can be an extremely dangerous place to work. Moving heavy gear in a seaway creates a dangerous situation on a vessel. Carrying extra gear can also significantly reduce the stability of a fishing vessel, making it prone to capsizing. An FMP should consider the safety and stability of fishing vessels when requiring specific gear or requiring the removal of gear from the water. Management measures should reflect a sensitivity to these issues and provide methods of mitigation of these situations wherever possible.

(3) *Limited season and area fisheries*. Fisheries where time constraints for harvesting are a significant factor and with no flexibility for weather, often called ''derby'' fisheries, can create serious safety problems. To participate fully in such a fishery, fishermen may fish in bad weather and overload their vessel with catch and/or gear. Where these conditions exist, FMPs should attempt to mitigate these effects and avoid them in new management regimes, as discussed in paragraph (e) of this section.

(d) *Consultation*. During preparation of any FMP, FMP amendment, or regulation that might affect safety of human life at sea, the Council should consult with the USCG and the fishing industry as to the nature and extent of any adverse impacts. This consultation may be done through a Council advisory panel, committee, or other review of the FMP, FMP amendment, or regulations. Mitigation, to the extent practicable, and other safety considerations identified in paragraph (c) of this section should be included in the FMP.

(e) *Mitigation measures*. There are many ways in which an FMP may avoid or provide alternative measures to reduce potential impacts on safety of

human life at sea. The following is a list of some factors that could be considered when management measures are developed:

(1) Setting seasons to avoid hazardous weather.

(2) Providing for seasonal or trip flexibility to account for bad weather (weather days).

(3) Allowing for pre- and post-season ''soak time'' to deploy and pick up fixed gear, so as to avoid overloading vessels with fixed gear.

(4) Tailoring gear requirements to provide for smaller or lighter gear for smaller vessels.

(5) Avoiding management measures that require hazardous at-sea inspections or enforcement if other comparable enforcement could be accomplished as effectively.

(6) Limiting the number of participants in the fishery.

(7) Spreading effort over time and area to avoid potential gear and/or vessel conflicts.

(8) Implementing management measures that reduce the race for fish and the resulting incentives for fishermen to take additional risks with respect to vessel safety.

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