

Introduction to the MSA



**Council Member
Orientation**

10/21-10/23

Washington, D.C

MSA and National Standards: Learning Objectives

- *You will be able to:*
- 1. State our fishery Management Mission
- 2. Describe the background and purpose of the MSA
- 3. List the requirements for NMFS approval of FMPs
- 4. Locate and Describe the Mandatory Components of an FMP and the National Standards
- 5. Explain why Other Applicable Laws (O.A.L.s) are important
- 6. Locate and Apply National Standard Guidelines

Agenda

- ◆ **The Fishery Management Mission**
- ◆ **Background and History**
- ◆ **Structure of the MSA**
 - ◆ Councils
 - ◆ FMPs
 - ◆ Special Provisions

The Fishery Management Mission



The Fishery Management Mission

“The Congress finds and declares [that]..... A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.”

Background and History

- **Pre-1976**

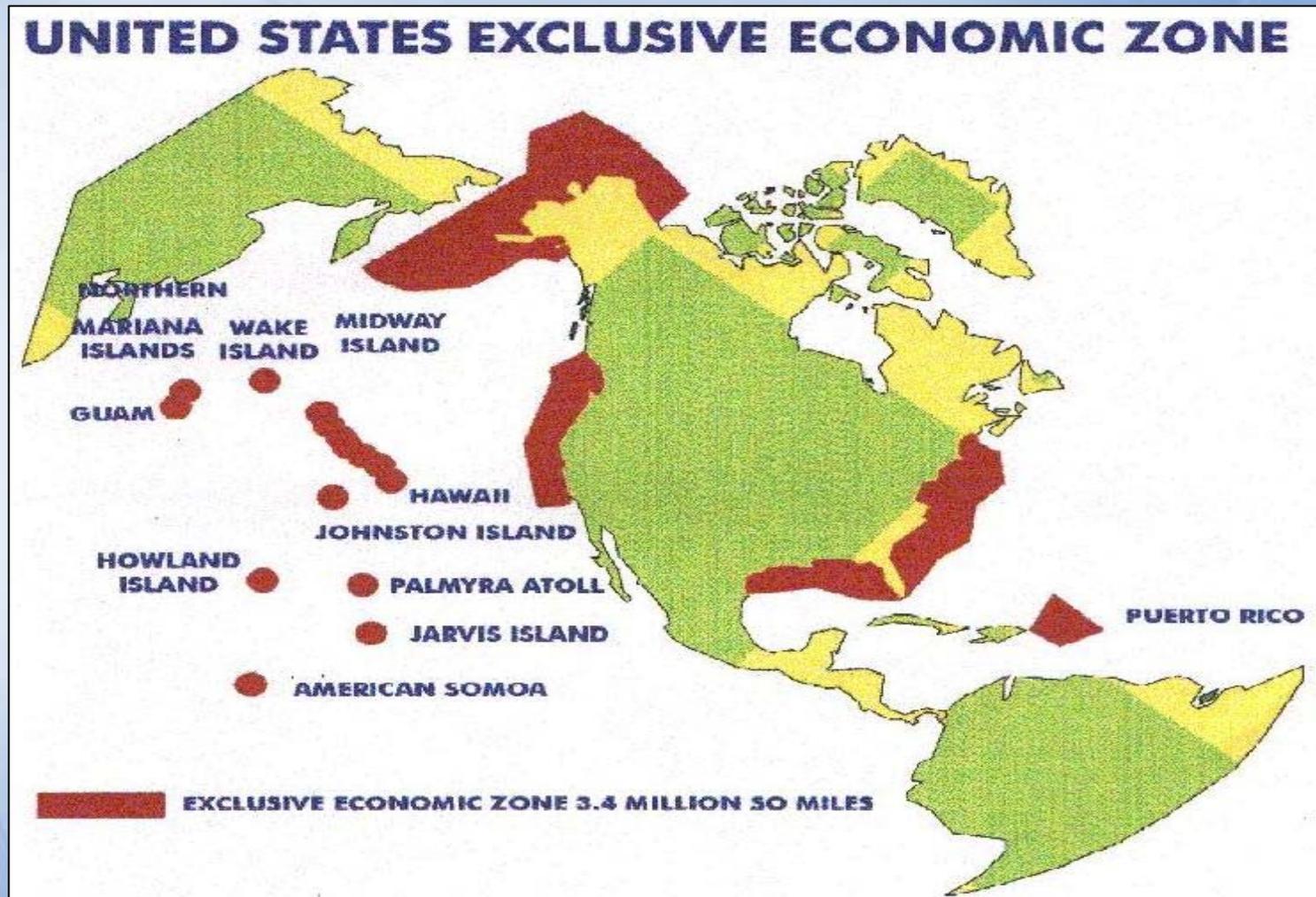
- State management within territorial waters

- Foreign fishing in what is now EEZ



1976: FCMA

- Established FCZ/EEZ
- Set management structure



1996: Sustainable Fisheries Act

- Same Management Structure
- Increased focus on Sustainability
- New Name (MSA)



2006: MSRA

- End & prevent **overfishing**
- Strengthen **role of science in management**
- Promote **market-based management** strategies
- Improve **science & data**
- Streamline **environmental review**
- Enhance **international cooperation**



2006: MSRA

- Increased Accountability: ACLs and AMs
- Strengthens role of science
- Emphasis on Market-Based Management: LAPPS
- Council Member Training
- Coordination with NEPA
- International Cooperation



Structure of the MSA

- Councils
- Fishery Management Plans (FMPs)
 - Achieve OY/Prevent Overfishing
 - Additional National Standards
 - FMP Components (Mandatory and discretionary)
 - Other Applicable Law
 - Secretarial Review
- Special Provisions

8 Regional Councils

Governors

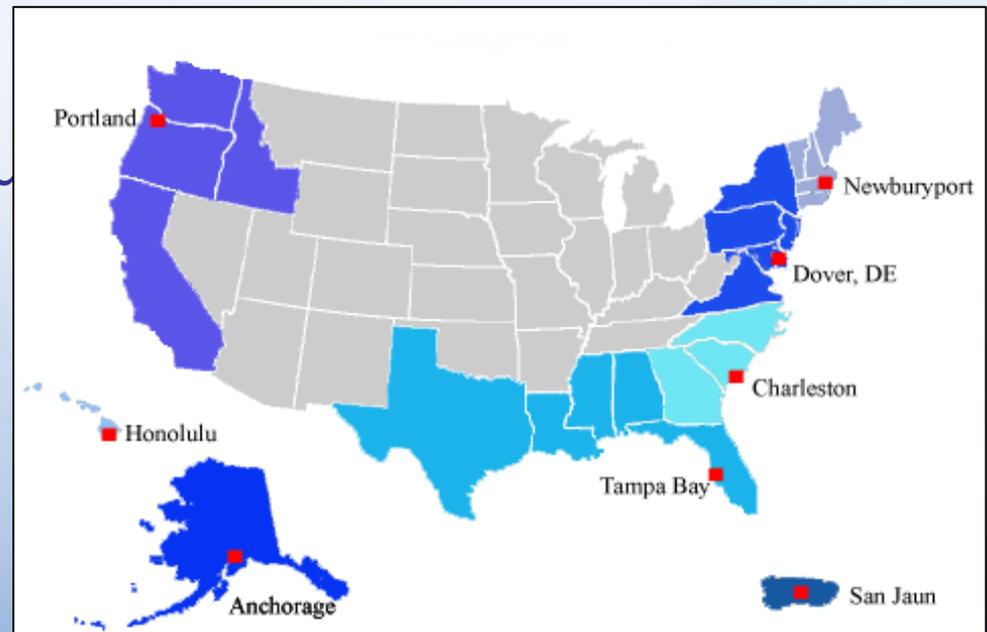
Nominate/Secretary
appoints

Special Representation

E.g., North Carolina on
Mid-Atlantic; Tribal seat
on Pacific

Qualifications

- Knowledgeable about fisheries
- Fair and balanced apportionment



Council Functions

- **Prepare and submit FMPs/amendments**
- **Convene Committees and panels**
 - SSC; Fishing Industry Advisory Committee; Other advisory panels
- **Conduct Public Meetings**
- **Submit Periodic Reports**
- **Set ACLs based on science**
- **Develop, with SSC, research priorities**



Agenda

- ◆ **The Fishery Management Mission**
- ◆ **Background and History**
- ◆ **Structure of the MSA**
 - ◆ Councils
 - ◆ *FMPs*
 - ◆ Special Provisions
- ◆ **Parties and Roles**

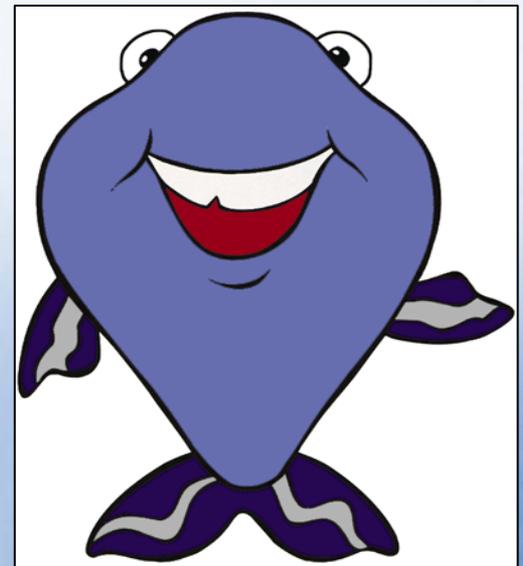
Fishery Management Plans

National Standards

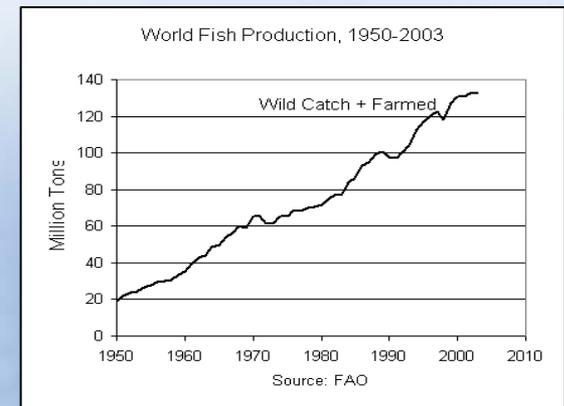
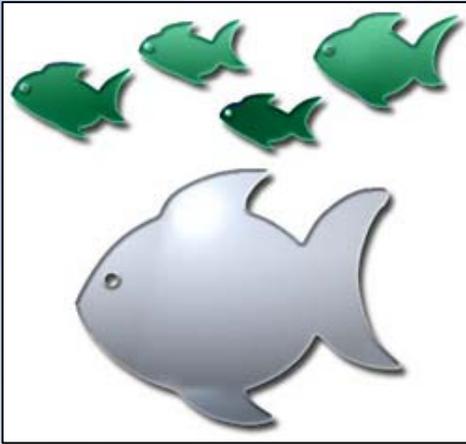
FMP Components (Mandatory and discretionary)

Other Applicable Law

Secretarial Review



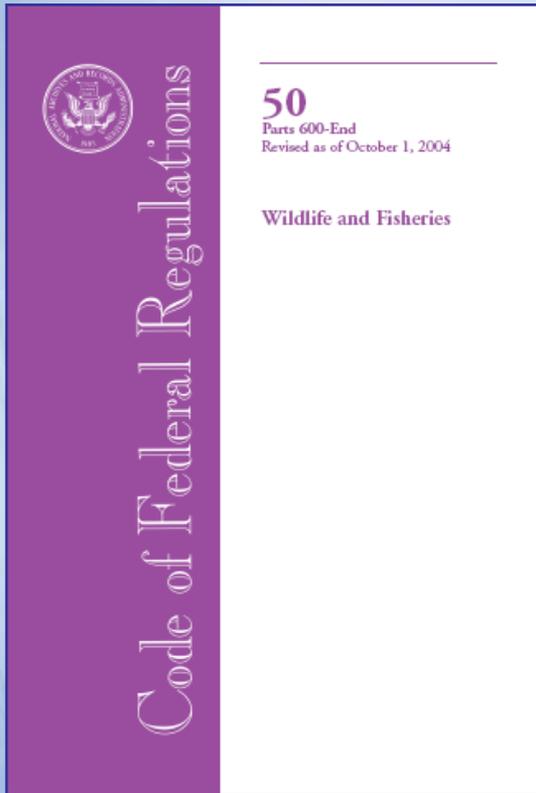
The National Standards: Ten Policy Objectives



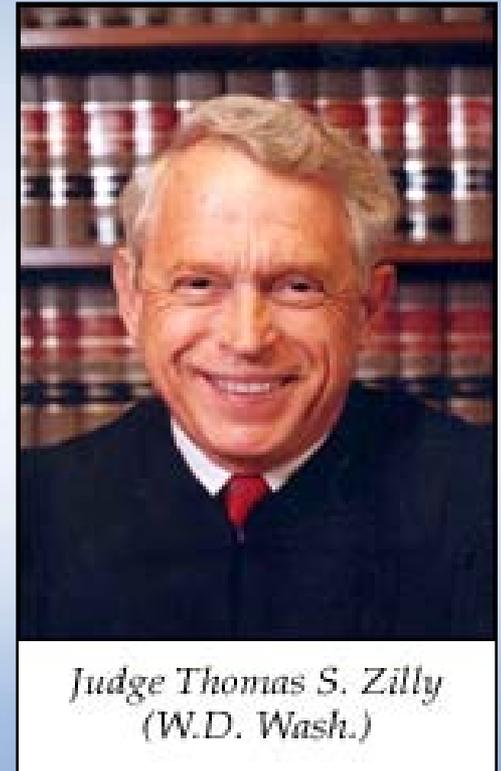
What do they Say?

- (1) Achieve OY and prevent overfishing**
- (2) Best available scientific information**
- (3) Manage stocks as a unit**
- (4) Allocations fair and equitable, promote conservation, and prevent excessive shares**
- (5) Consider efficiency in utilization; not have economic allocation as sole purpose**
- (6) Allow for variations and contingencies**
- (7) Minimize costs, avoid duplication**
- (8) Consider fishing communities to provide for their sustained participation and to minimize adverse economic impacts**
- (9) Minimize bycatch, and bycatch mortality**
- (10) Promote safety of human life at sea**

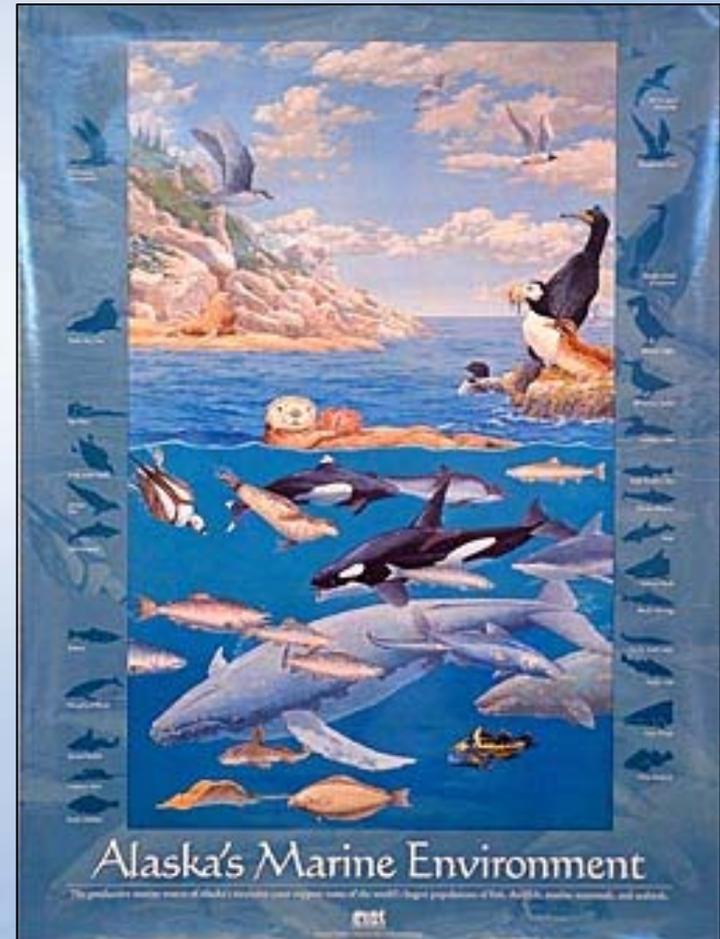
What do they mean?



- **National Standard Guidelines (50 CFR 600)**
- **Lessons from Case Law**



OY means: Food, Recreation, and Ecosystems



Achieve OY/Prevent Overfishing

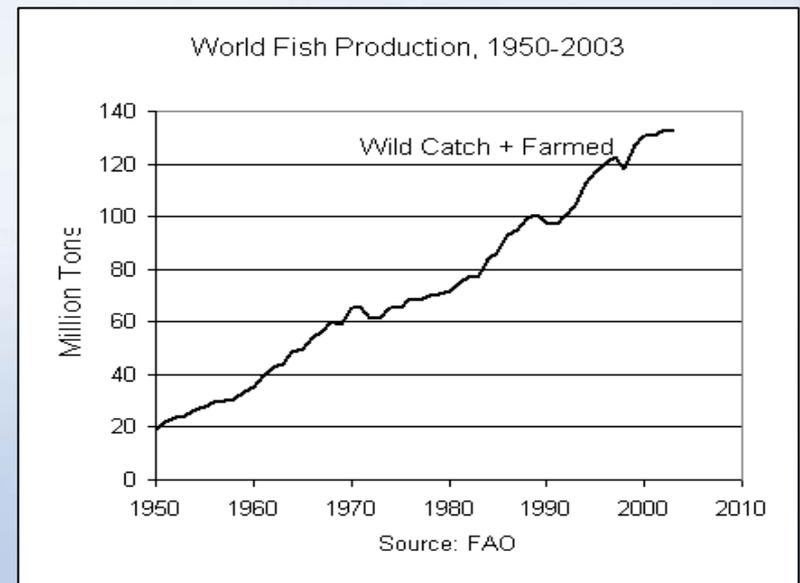
- **OY = greatest overall benefit to the Nation**
 - With respect to: Food, recreation, marine ecosystems
 - Based on MSY, as reduced by:
 - Social, economic, or ecological factors
 - Consistent with Rebuilding
- **MSY**
 - Largest long-term average yield
 - Under prevailing ecological conditions
- **Overfishing**
 - Rate of fishing mortality
 - Jeopardizes long-term ability to produce MSY

N.S. Guidelines: The Precautionary Approach

- Set targets safely below limits
- More conservative management for stocks below the level that could produce MSY
- Greater uncertainty should lead to greater caution in setting catch levels

N.S. 2: Best Available Scientific Information

- “Best Available” may be incomplete or allow conflicting interpretations
- Councils should justify choices
- What to do with new data
- SAFE Report



Case Law: *National Standard 2*



It is OK to rely on limited data.

X

Using data that we have stated is unreliable without explaining why we're using it is NOT OK.

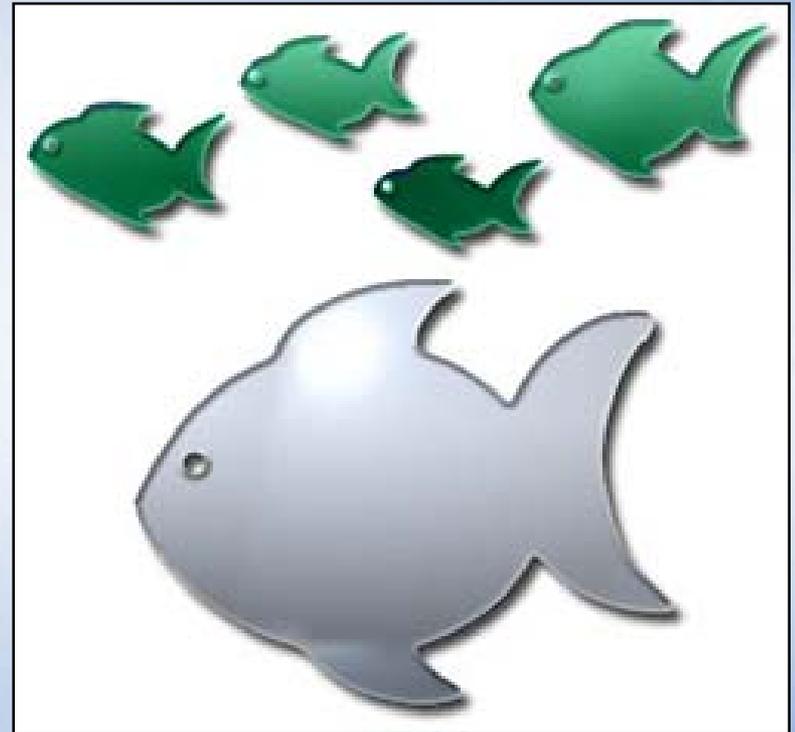
X

Decisions based on politics instead of science are NOT OK.

N.S. 3: Manage Stocks as a Unit

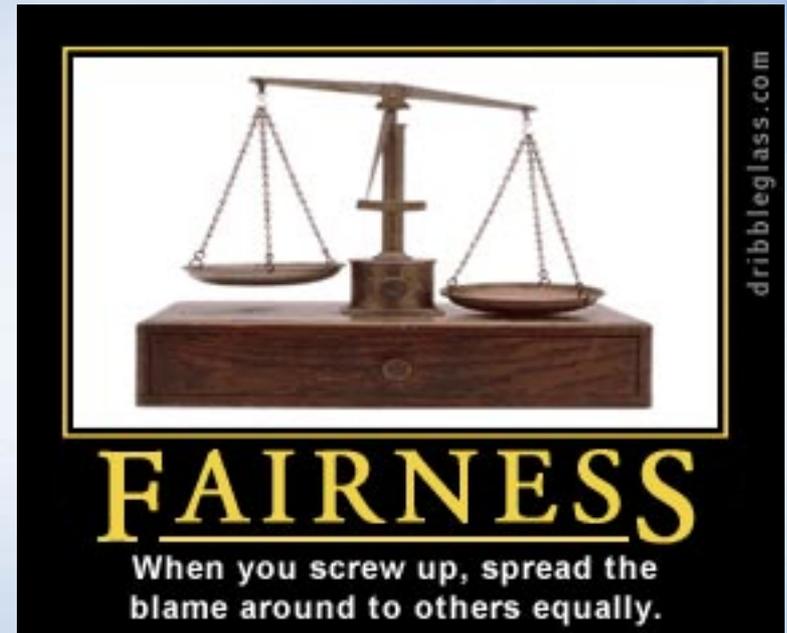
Discretion in defining management unit

- Depends on objectives
- May be based on biological, geographic, economic, technical, social, or ecological issues



N.S. 4: No Discrimination; Rules for Allocations

- No discrimination between residents of different states.
- If necessary to allocate, allocation must be:
 - (1) Fair and equitable
 - (2) Reasonably calculated to promote conservation.
 - (3) No excessive shares of privileges.



N.S. 4: Allocations

“Allocation” means –

- Direct, deliberate distribution of opportunity to participate among identifiable, discrete user groups or individuals.
- Incidental allocative effects not included

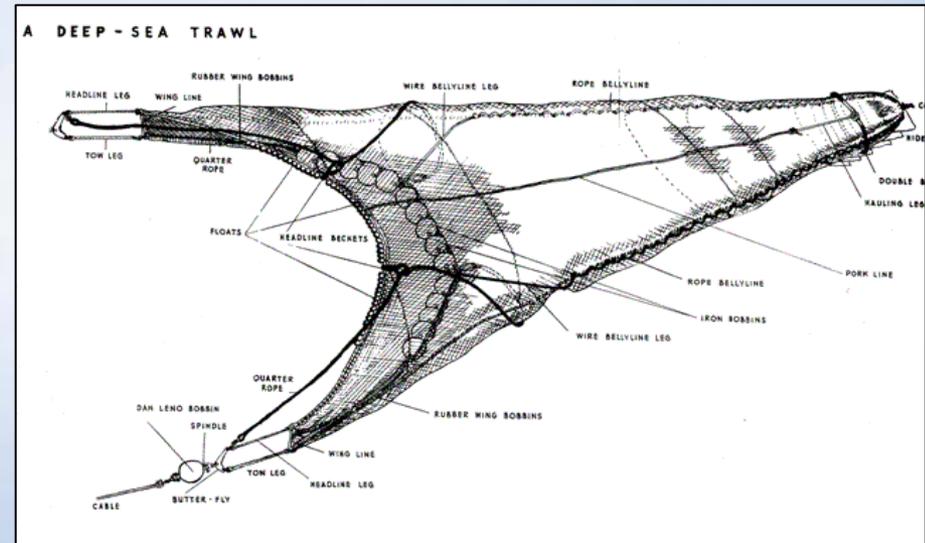


Case Law: National Standard 4

- **Incidental allocative effects are OK.**
- **Allocations are OK if necessary to achieve conservation benefits.**

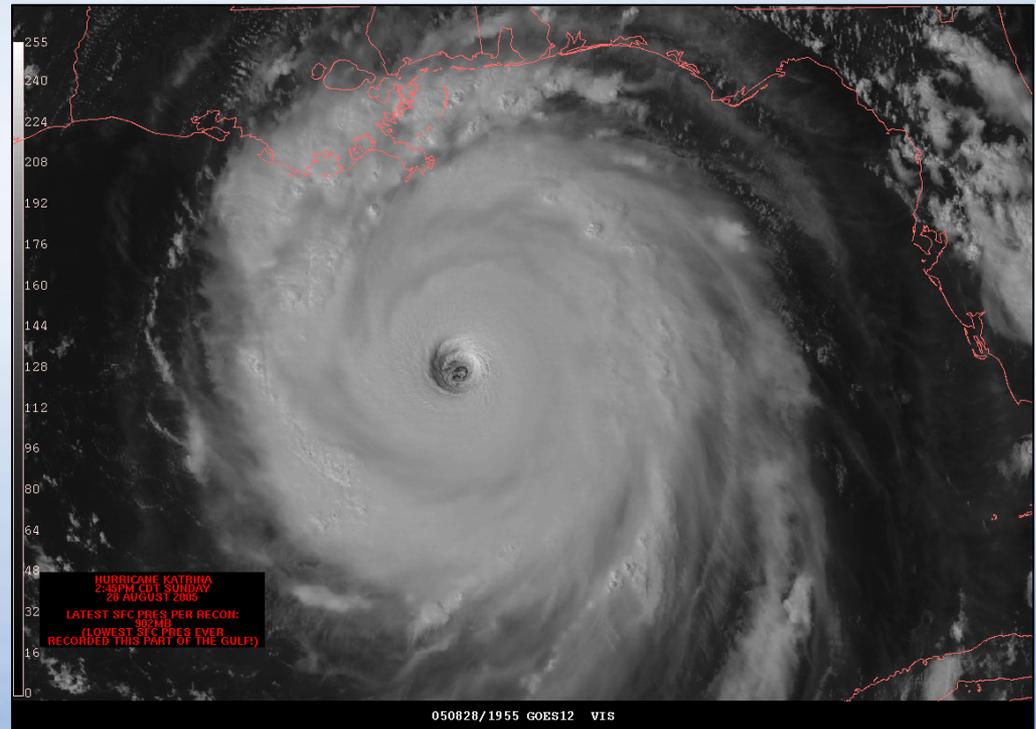
N.S. 5: Efficiency in Utilization

- Consider efficiency in the utilization of fishery resources;
- Except economic allocation may not be the sole purpose.



N.S. 6: Variations and Contingencies

- Buffers for variations and uncertainties
- Flexibility for unpredictable events



N.S. 7: Minimize Costs, Avoid Duplication

- Not every fishery needs an FMP
- Consider costs: fuel costs, enforcement costs, burdens of collecting data
- Analysis to show benefits justify costs



N.S. 8: Communities

Consistent with conservation requirements, take into account the importance of fishery resources to fishing communities in order to:

- (1) Provide for their sustained participation; and
- (2) To the extent practicable, minimize adverse economic impacts.



“Fishing Community” means:

- **Substantially dependent on the fishery, or**
- **Substantially engaged in harvesting or processing to meet social and economic needs**
- **Geographically based**

***“Sustained Participation”
means:***

**....continued access to the
fishery within the constraints of
the condition of the resource.**

Case Law: National Standard 8

The conservation requirements of NS 1 trump duty to minimize economic impacts.



N.S. 9: Bycatch

To the extent practicable:

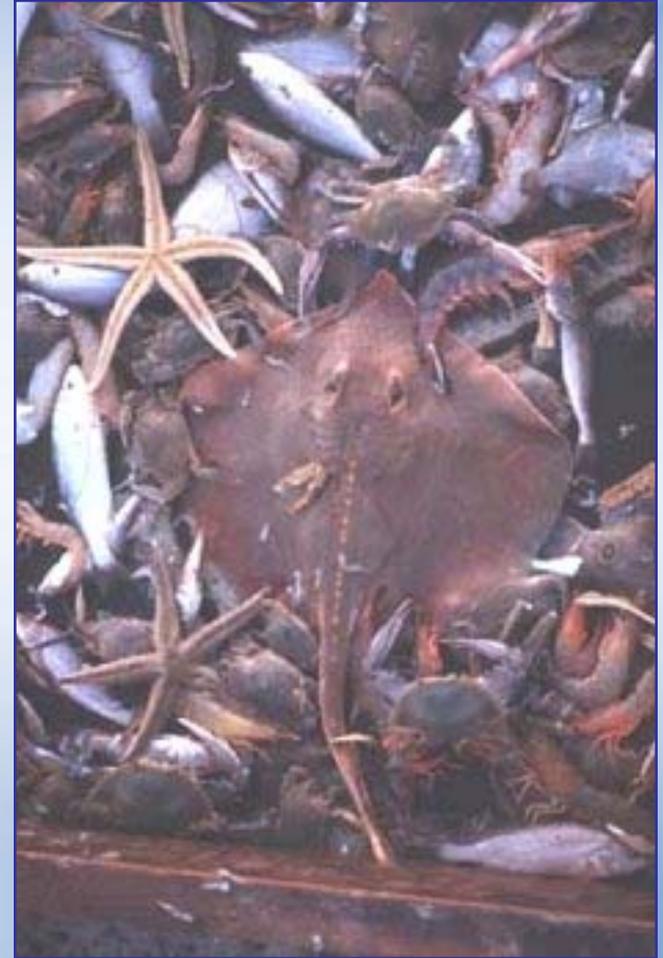
(1) Minimize bycatch; and

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



“Bycatch” means:

- “Fish” that are harvested but not sold or kept
- Does not include birds or mammals
- Includes economic and regulatory discards and unobserved mortalities
- Does not include legally retained non-target species



N.S. 10: Safety

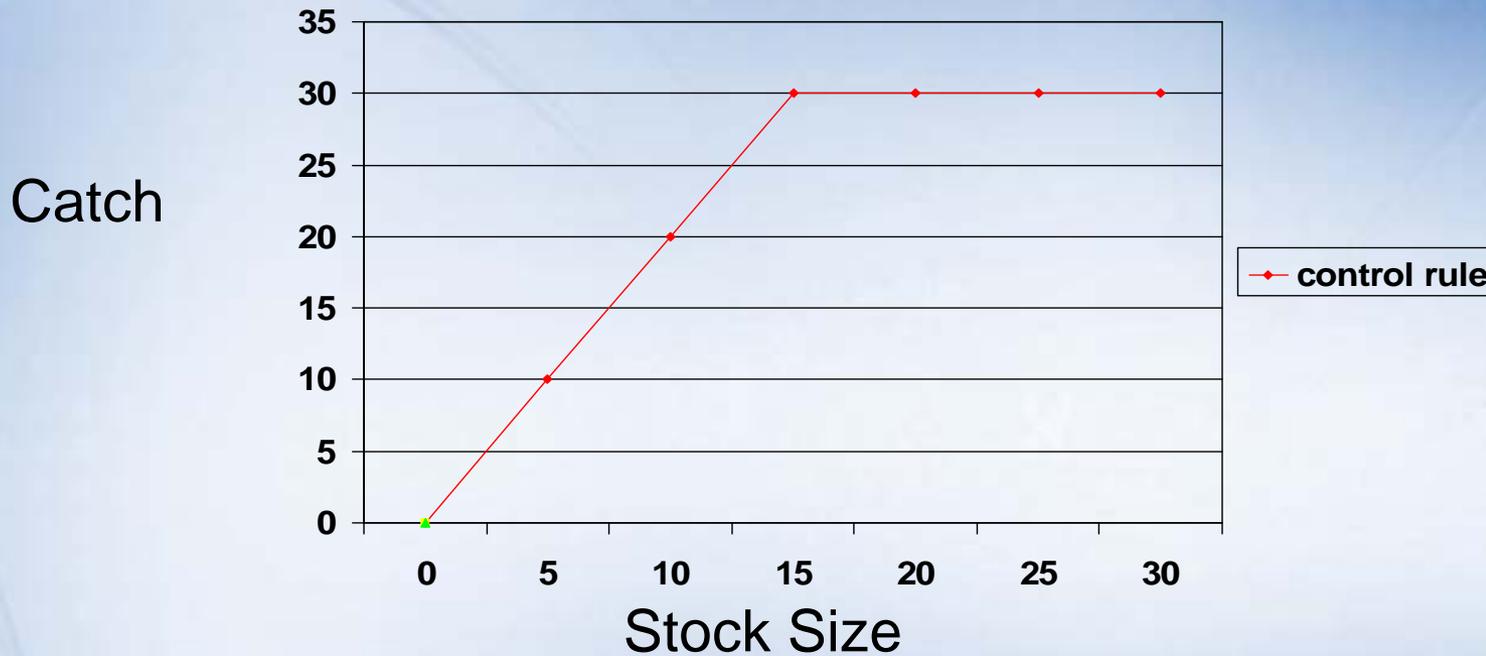
- To the extent practicable, promote the safety of human life at sea.
- Avoid constraints that pressure fishermen to fish in unsafe conditions



Required FMP Components

- (1) Prevent overfishing; rebuild; protect, restore, promote long-term health and stability**
- (2) Description of the fishery**
- (3) Specify MSY and OY**
- (4) Specify capacity and domestic harvest and processing of OY**
- (5) Specify the data to be submitted**
- (6) Temporary adjustments to address unsafe ocean conditions**
- (7) Essential fish habitat: identify, minimize impacts from fishing.**
- (8) Specify the scientific data needed to implement the plan**
- (9) Fishery impact statement**
- (10) Overfishing definitions**
- (11) Bycatch: reporting methodology and measures to minimize**
- (12) Number, types, and mortality of fish caught and released recreationally; minimize mortality and ensure the extended survival**
- (13)Describe sectors (commercial, recreational, and charter); quantify landings trends by sector**
- (14) Allocate restrictions and benefits fairly and equitably among sectors.**
- (15) Establish a mechanism for setting ACLs and AMs**

Overfishing Definitions



- Tied to overall approach for ending overfishing
- FMPs must specify objective and measurable criteria

Essential Fish Habitat (EFH)

FMP's Must

- Identify and Describe
- Minimize adverse effects from fishing

EFH Consultations

(Action Agencies Must...)



Bycatch



- **Standardized reporting methodology to assess (SBRM)**
- **Minimize bycatch**
- **Minimize mortality of unavoidable bycatch**

Oceana Case

The mandatory components
must be **EXPLICITLY** written
into the FMP.

Discretionary FMP Components

- (1) Require permits and fees**
- (2) Designate zones and times where fishing restrictions apply (area-based)**
- (3) Establish restrictions on catch, sale, and transshipment,**
- (4) Include gear requirements**
- (5) Incorporate State measures**
- (6) Establish a limited access system**
- (7) Require processors to submit data**
- (8) Require observer coverage**
- (9) Assess and specify the effect of the FMP on anadromous fish**
- (10) Include harvest incentives for reduced bycatch**
- (11) Reserve a portion of the allowable biological catch for use in research**
- (12) Conserve target and non-target species and habitat**
- (14) Prescribe other measures, requirements, or conditions and restrictions necessary and appropriate for the conservation and management of the fishery**

303(b)(2): *Area-based Management*

- MSRA requires that area closures must:
 - Be based on science
 - Include criteria to assess benefit
 - Include timetable for review
 - Be based benefit/impact analysis
- MSRA allows closures to protect corals

Limited Access Programs



Must address:

- present participation,
- historical practices and dependence,
- economics
- ability of vessels to switch fisheries,
- cultural and social framework, and
- other relevant considerations.

New section 303A: LAPPs

MSRA allows Councils to recommend "Limited Access Privilege Programs" in fisheries managed under limited access.

Other Applicable Law

- **RFA:** IRFA/FRFA, Publication of Summary
- **ESA:** Biological Opinion
- **PRA:** OMB Clearance, Notice and Comment
- **CZMA:** Letters to States, State Concurrence
- **DQA:** Pre-dissemination Review Form
- **APA:** Notice and Comment, 30 Day Delay
- **NEPA:** EIS or EA/FONSI
- **EOs 12866, 13272:** Economic Impact Analysis
- **EO 13132:** Consult with States

Secretarial Review of FMPs

- **Strict Timelines**
 - 95 days for FMPs/amendments
- **Limited Scope**
 - 3 possible outcomes
 - Approve
 - Disapprove
 - Partially approve
- **Criteria for Approvability**
 - National Standards
 - FMP Components
 - Other applicable law
 - Disapproval must be based on inconsistency with law



Agenda

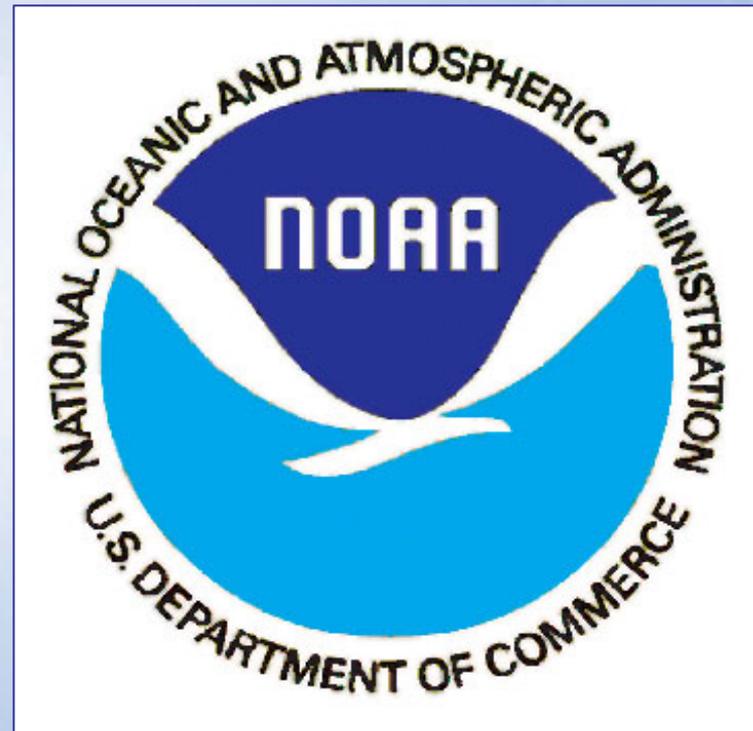
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 - ◆ *Special Provisions*
- ◆ Parties and Roles

Special Provisions of the MSA

- Secretarial FMPs/amendments
- Ending Overfishing
- Highly Migratory Species (HMS)
- Essential Fish Habitat
- Emergency Actions
- Other

Secretarial FMPs/amendments

- The Secretary may prepare an FMP if:
 - A fishery requires management and a Council fails to act
 - The Secretary disapproves a Council submission and Council fails to submit revision
 - Special Secretarial authority (e.g., HMS, overfishing)



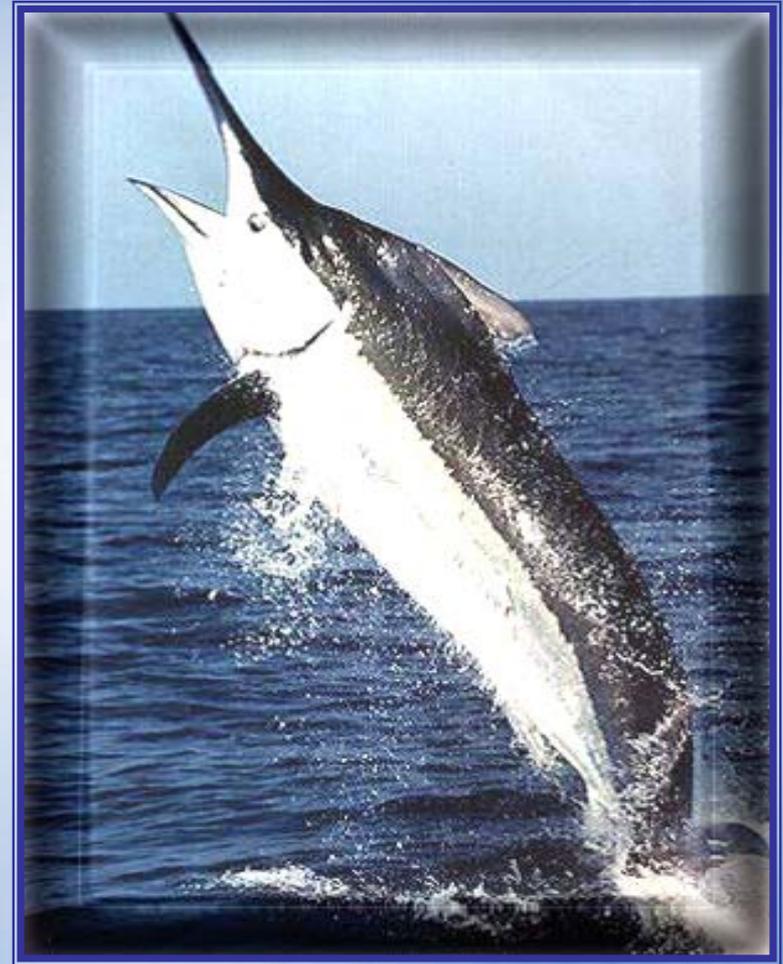
Ending Overfishing

- **Annual Status Report**
- **Detailed timelines**
- **If Council fails to implement within 2 years, Secretary must**
- **Specifies criteria for Rebuilding plans**
 - End overfishing immediately
 - Rebuild in as short a time as possible
 - Not exceed 10 years



Highly Migratory Species (HMS)

- Centralized management for Atlantic HMS
 - Tuna, marlin, oceanic sharks, sailfishes, and swordfish
- Primary responsibility rests with Secretary
- Consult with Councils
- Utilize Advisory Committees



Essential Fish Habitat



Council Comments

- May comment on agency actions that may affect habitat
- Must make recommendations on actions likely to substantially affect habitat of anadromous fish

Consultations:

- Action agencies must consult

CRs/Response:

- NMFS makes conservation recommendation for actions that would adversely affect EFH.
- Action agency must respond within 30 days

Emergency Actions

- **Is it an Emergency?**
 - Unforeseen circumstances
 - Serious problems in fishery
 - Benefits outweigh normal public process
- **Is Emergency Procedure justified?**
 - Substantial damage and loss
 - For specific reasons:
 - Ecological
 - Economic
 - Social



Recap: the MSA

- ◆ **Our Mission/Competing Objectives**
- ◆ **Evolution towards more holistic approach**
- ◆ **Basic Structure and Goals**
 - ◆ **Councils**
 - ◆ **FMPs: OY, National Standards, FMP Components, other applicable law, Secretarial review**
 - ◆ **Special Provisions**