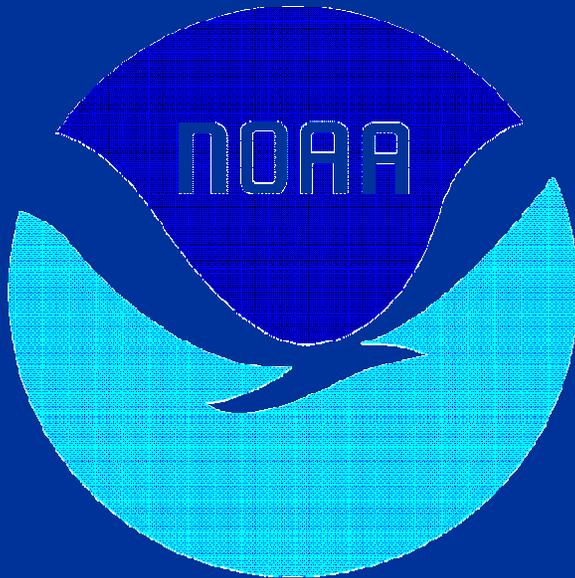


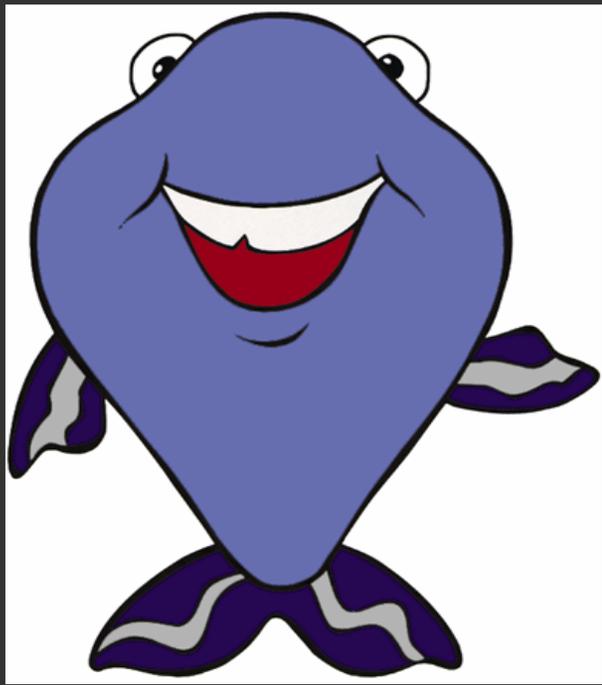
The MSA National Standards



**Council Member
Orientation**

**Oct. 31 – Nov. 2, 2006
Washington, D.C.**

FMP Requirements



*National Standards

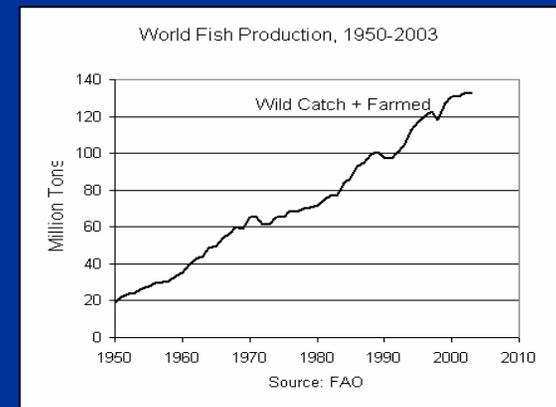
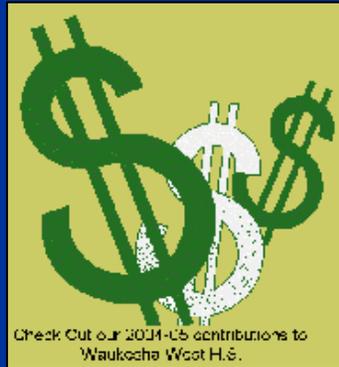
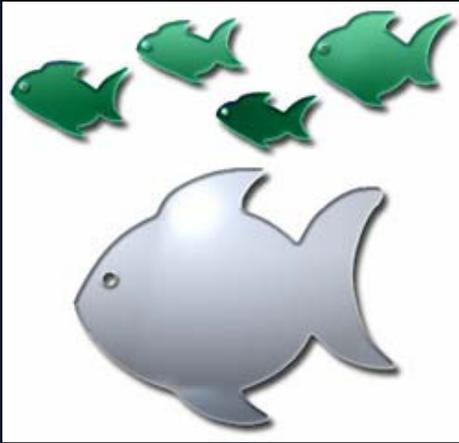
FMP Components

(Mandatory and
discretionary)

Other Applicable

Law

Ten Policy Objectives



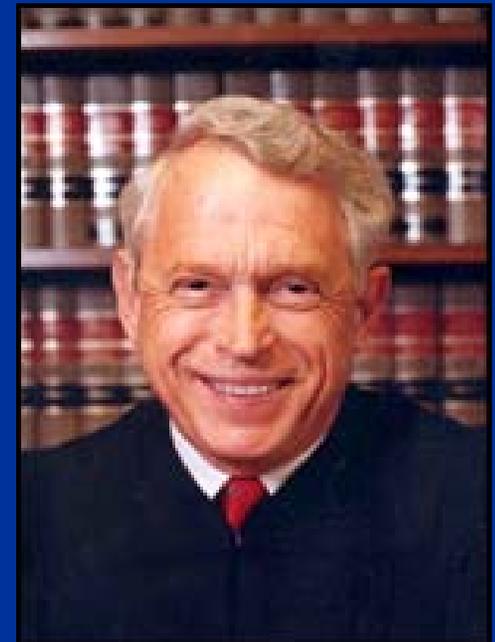
What do they say?

- (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**



*Judge Thomas S. Zilly
(W.D. Wash.)*

National Standard 1

- **Achieve OY**
 - ♦ Greatest overall benefit to Nation
 - ♦ Food production
 - ♦ Recreational opportunities
 - ♦ Marine ecosystems
 - ♦ Based on MSY, as reduced by
 - ♦ Social
 - ♦ Economic, or
 - ♦ Ecological factors
 - ♦ Must be consistent with rebuilding if overfished
- **MSY**
 - ♦ Largest long-term average yield
 - ♦ Under prevailing ecological/environmental conditions
- **Prevent Overfishing**

Overfishing

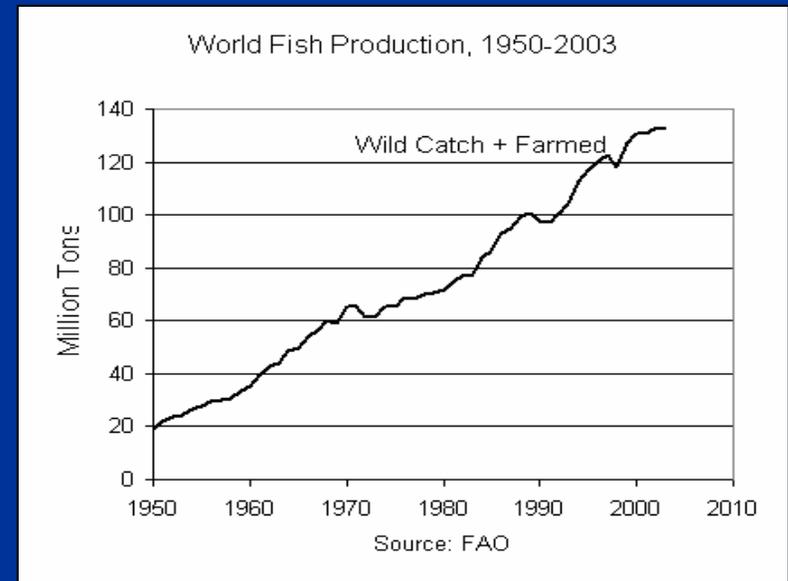
- A rate of fishing mortality
- That jeopardizes long-term ability to produce MSY

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.



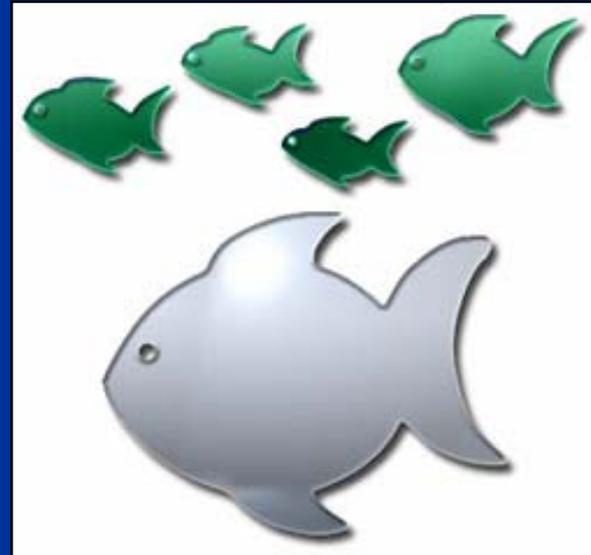
Using data that we have stated is unreliable without explaining why we're using it is NOT OK.



Decisions based on politics instead of science are NOT OK.

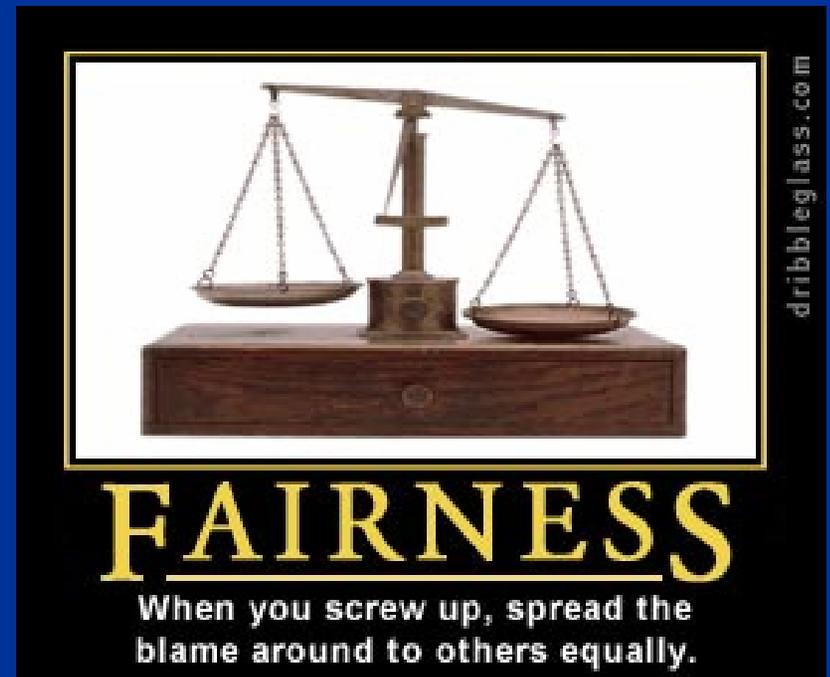
N.S. 3: Manage Stocks as a Unit

- Discretion in defining management unit
 - Depends on FMP's objectives
 - May rely on biological, geographic, economic, technical, social, or ecological issues
- Record should explain
 - Rationale for selection
 - Impacts of other activities
 - Range, distribution of stocks and fishing practices



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

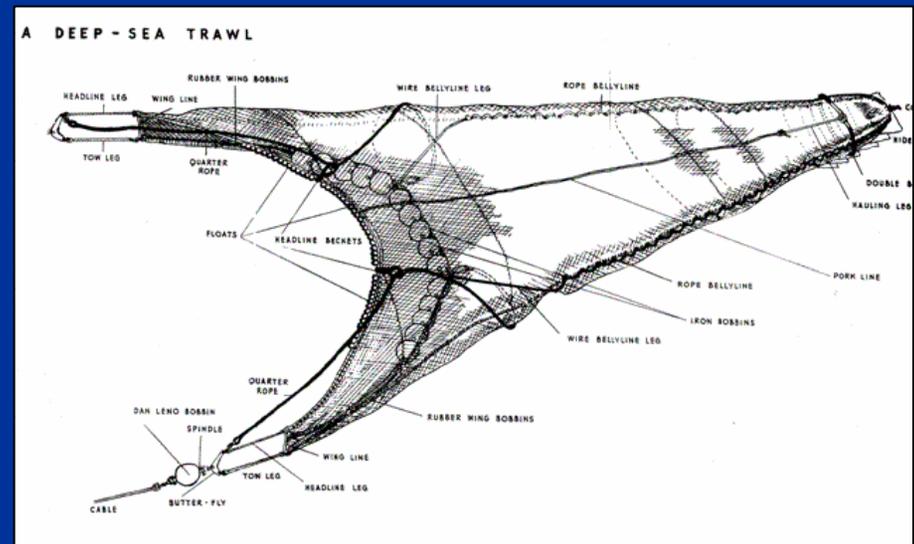


Case Law: National Standard 4

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

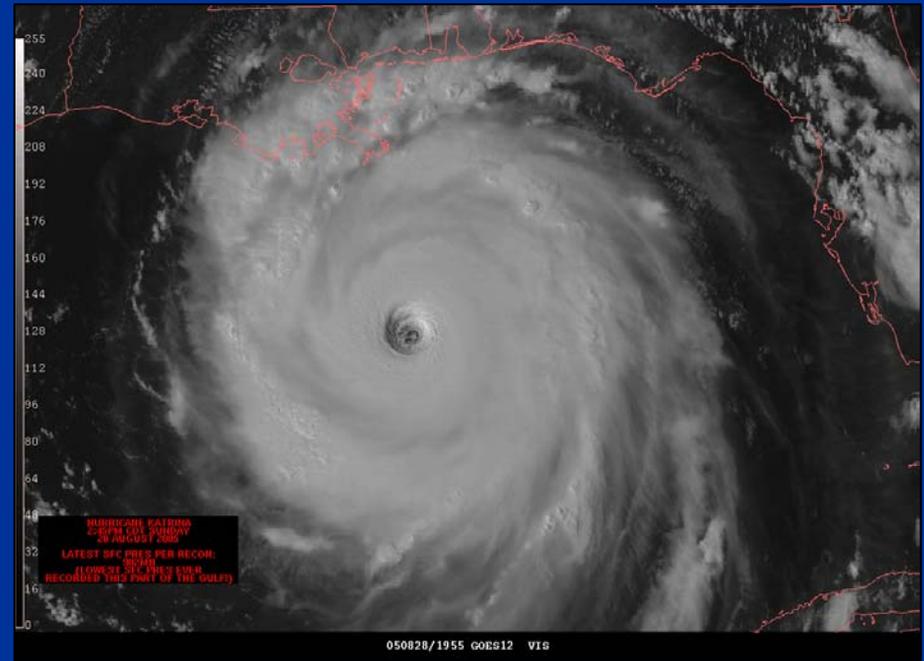
N.S. 5: Efficiency in Utilization

- 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. 1 and N.S. 8: Case Law

1. “A collapsed fishery will not be economically viable for decades, and is a worse economic consequence than the temporary measures (several years of industry shut-down) contained in the FMP...”
2. “while economic effects must be taken into account, such effects were not meant to trump the real purpose of the MSA, which is to preserve and protect US fisheries.”
3. “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.”

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

