

MSA Fishery Management Program



**Council Member
Orientation**

11/29 – 12/1

Silver Spring, MD

Agenda

- ◆ **The MSA's Fishery Management Program**
 - ◆ FMPs and Regulations
 - ◆ National Standards
 - ◆ Mandatory and Discretionary FMP Components
 - ◆ Secretarial Review
 - ◆ Other Applicable Laws
 - ◆ Limited Discretion
 - ◆ Timelines

Fishery Management Plans

For each fishery under its authority that requires conservation and management, a Council must prepare and submit to the Secretary

- ◆ (A) a fishery management plan, and
- ◆ (B) amendments to each such plan that are necessary from time to time.

-- MSA p. 67, section 302(h)(1)

Regulations

Proposed regulations which the Council deems necessary or appropriate for the purposes of--

- (1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 1854 of this title; and
- (2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 1854 of this title.

-- MSA p. 78, section 303(c)

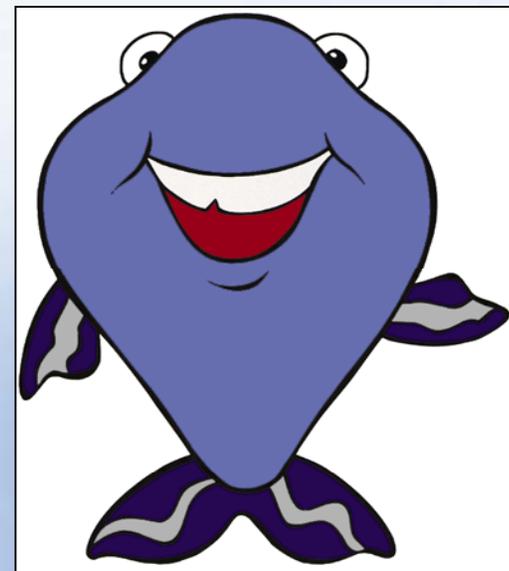
Requirements for Fishery Management Plans

National Standards

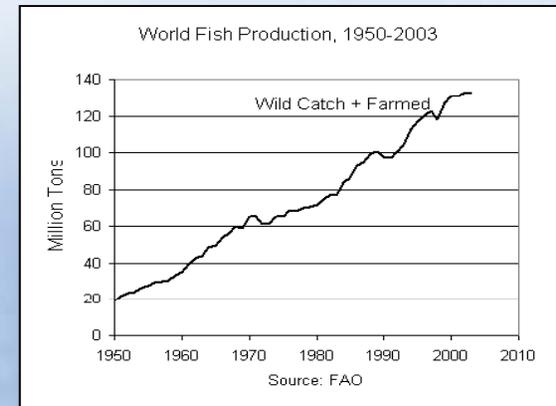
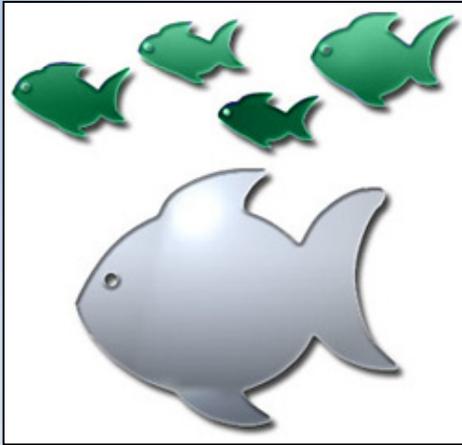
FMP Components (Mandatory and
discretionary)

Other Applicable Law

Secretarial Review



The National Standards: Ten Policy Objectives



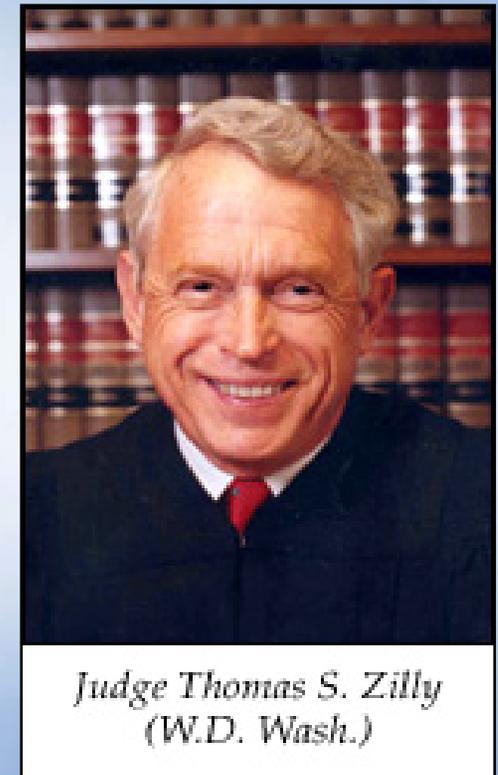
What do they Say?

- (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** -- MSA p. 58, section 301(a)

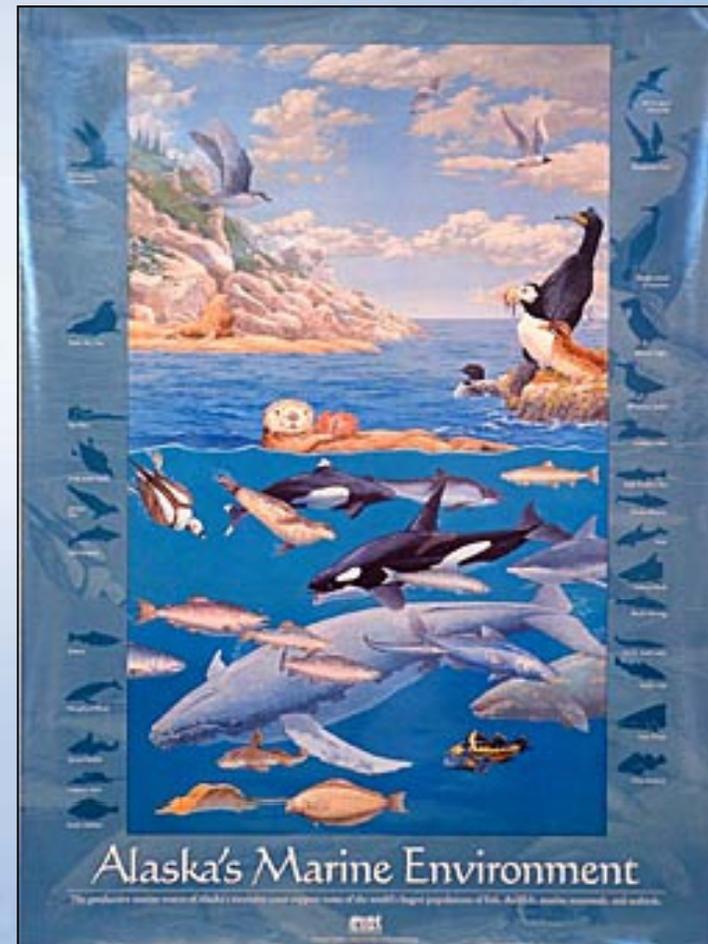
What do they mean?



- **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 -- MSA p. 10, section 3(33)
- **MSY**
 - Largest long-term average yield
 - Under prevailing ecological, environmental, and technological conditions --NS Guidelines, p. 5, section 600.310(e)
- **Overfishing**
 - Rate of fishing mortality
 - Jeopardizes long-term ability to produce MSY -- MSA p. 10, section 3(34)

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

2009 N.S. 1 Guidance

- Provide a Comprehensive Approach with implications for other parts of the MSA
- Rely on Control Rules, Targets, and limits
- Respond to Uncertainty conservatively
- Provide Guidance on Use of ACLs and AMs
- Provide Guidance and Interpretations on Ending Overfishing

2009 N.S. 1 Guidance: Defines Terms

ACLS

Ecosystem

MSST

Components



Target

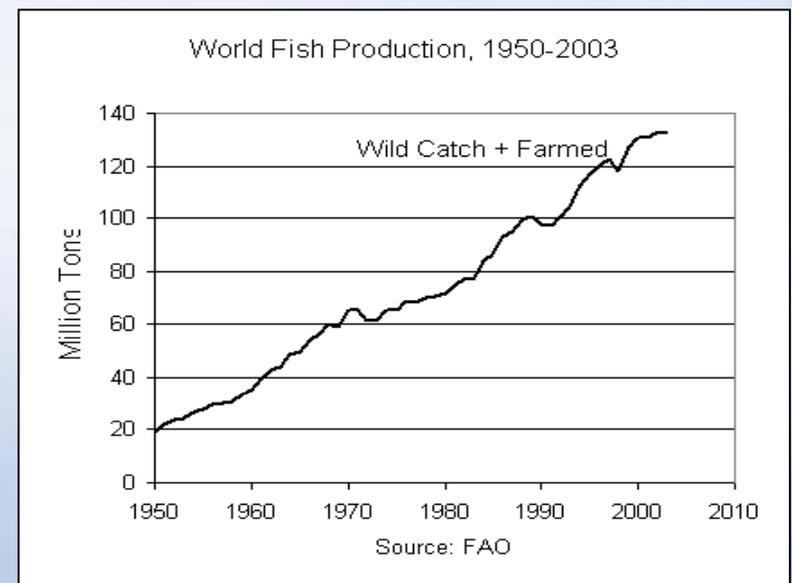
Stocks

MFMT

N.S. Guidelines, section 600.310(d)

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.

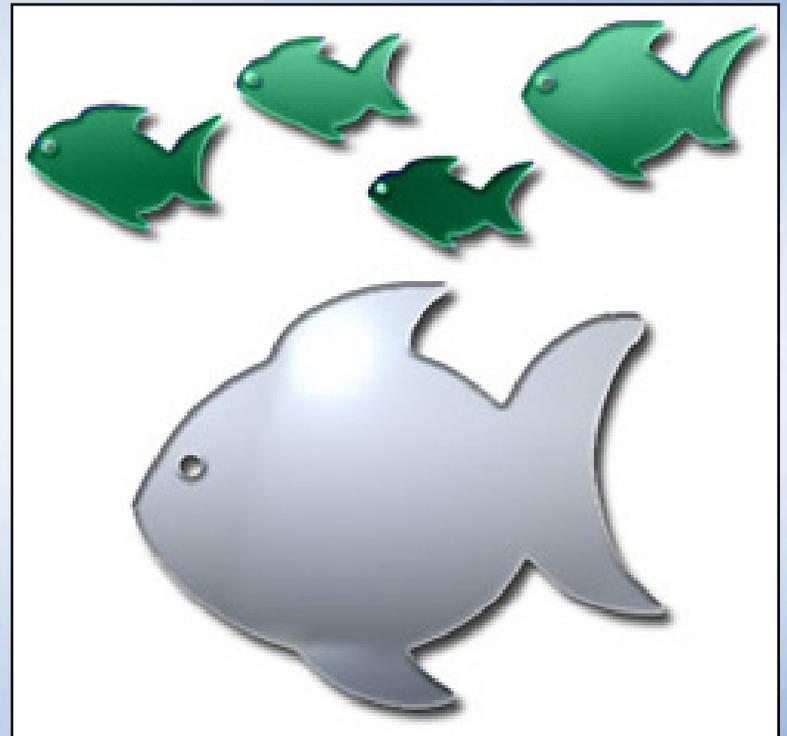
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Decisions based on politics instead of science are NOT OK.

N.S. 3: Manage Stocks as a Unit

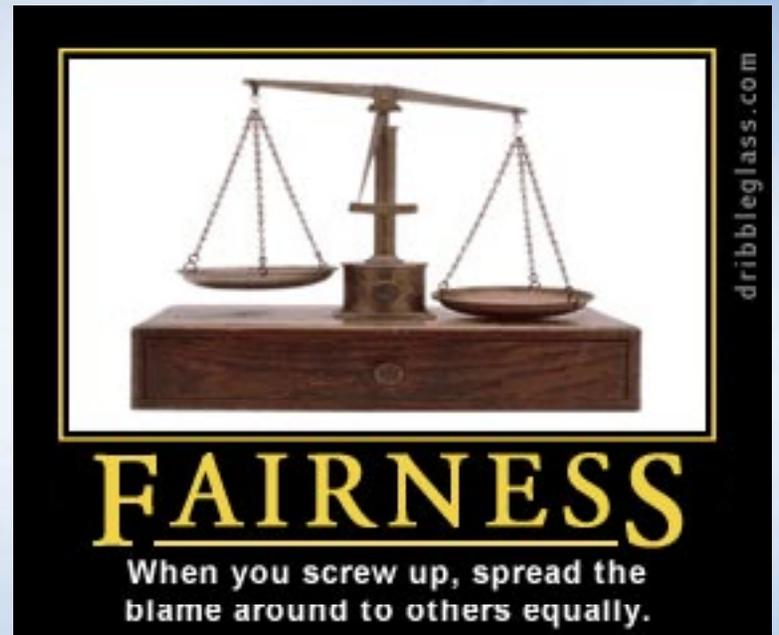
Discretion in defining
management unit

- 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

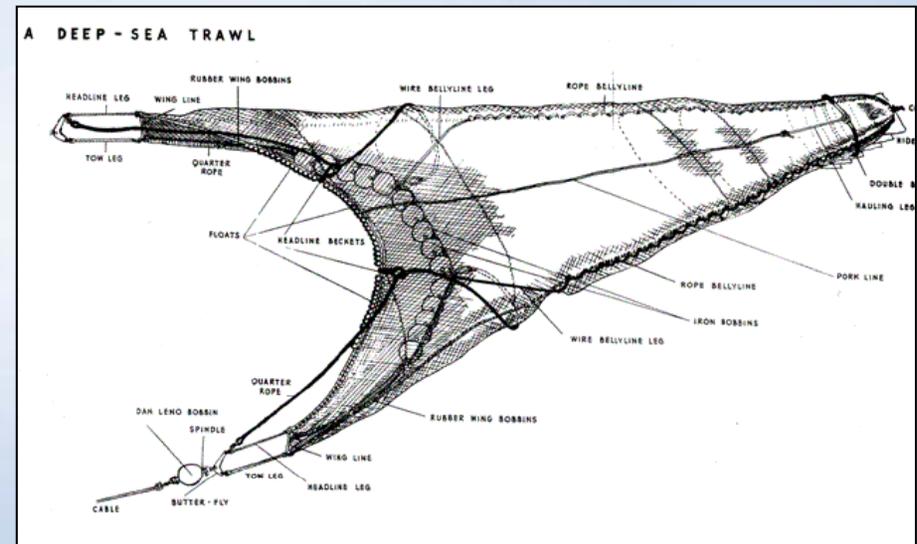


Case Law: National Standard 4

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

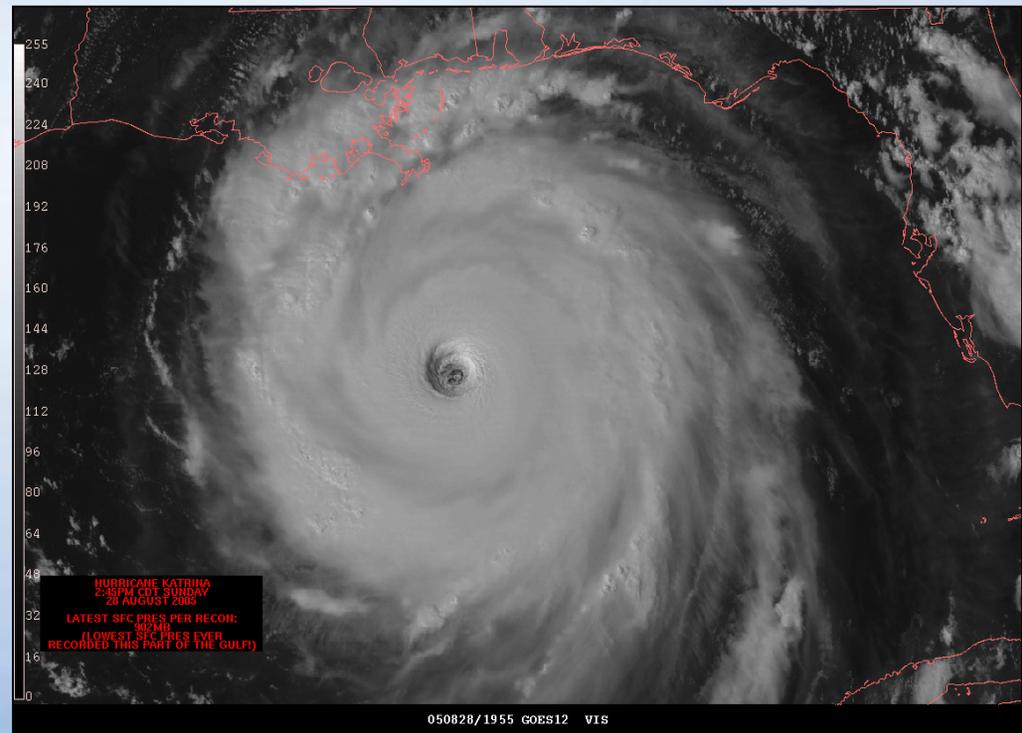
N.S. 5: Efficiency in Utilization

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



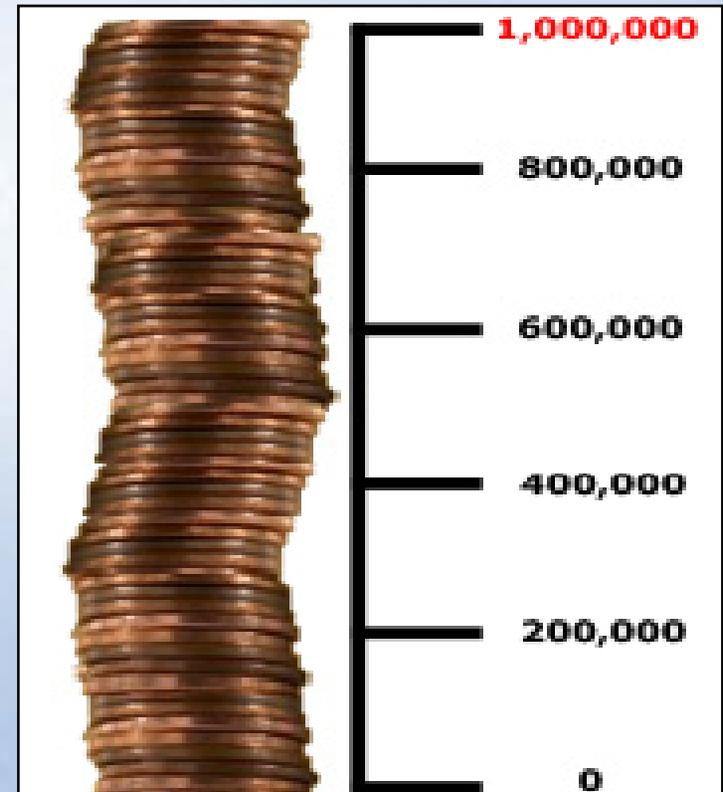
N.S. 6: Variations and Contingencies

- 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

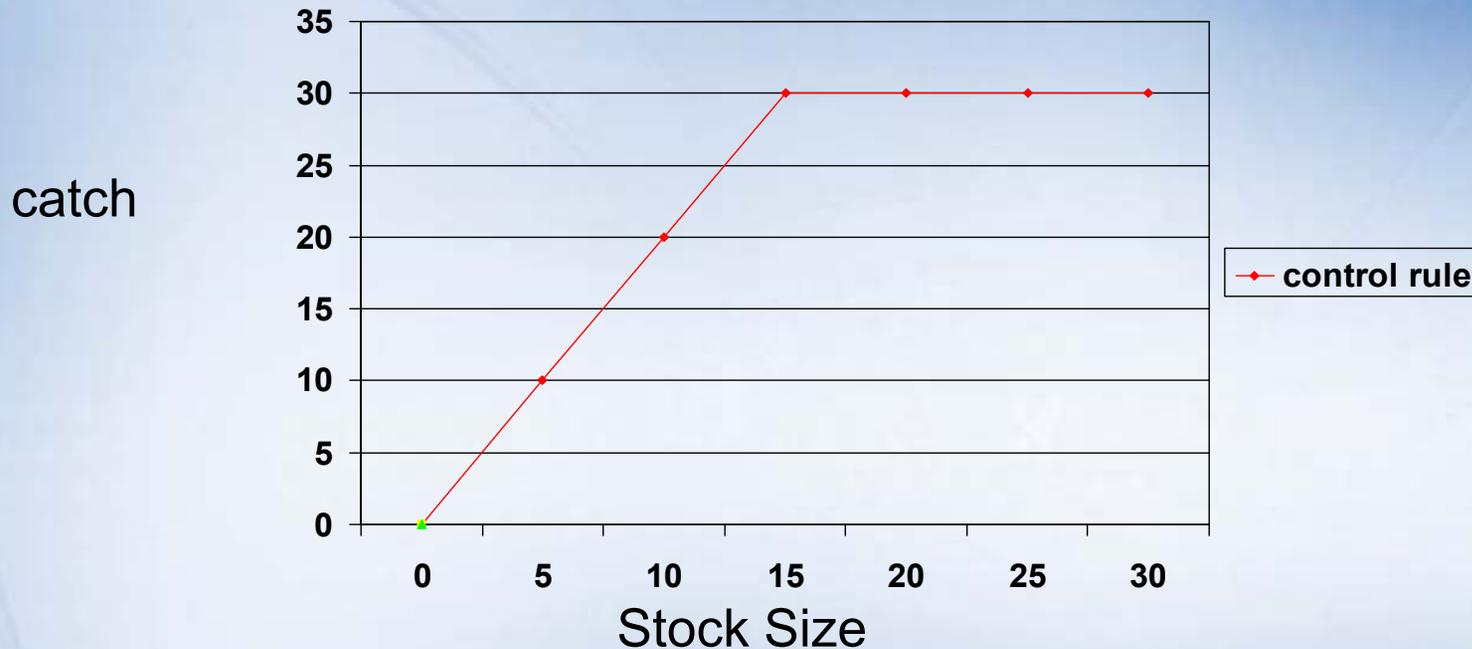
- To the extent practicable, promote the safety of human life at sea.
- Avoid constraints that pressure fishermen to fish in unsafe conditions



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 --MSA p. 74, sect. 303(a)**

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

-- MSA p. 76, sect. 303(b)

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
 - MSA p. 76, sect. 303(b)(2)(B)

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.

-- MSA p. 77, sect. 303(b)(6)

New section 303A: LAPPs

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

-- MSA p. 79, sect. 303A

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

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)



-- MSA p. 89, sect. 304(c)(1)

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 taking certain factors into account
 - Not exceed 10 years, with exceptions



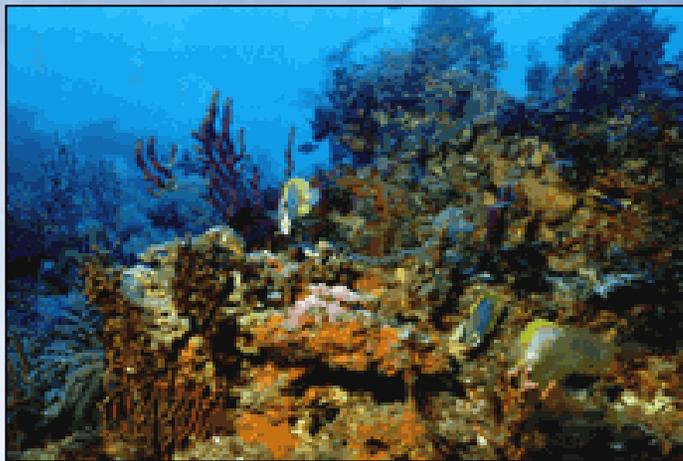
-- MSA p. 92, 304(e)

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**
 - -- MSA p. 94, sect. 304(g)



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

-- MSA p. 98, sect. 305(b)⁴⁵

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**