

Background and Overview of the MSA Fishery Management Process

I. MSA Overview

- MSA Background
- MSA Management Structure
- National Standards

II. MSA Process and Roles

- Councils
- NMFS

III. Evolution of the Process; Efforts to Improve

Part I

- **MSA Background**
- **MSA Management Structure**
- **Policy Mandates (National Standards)**

Background and History

- **Pre-1976**

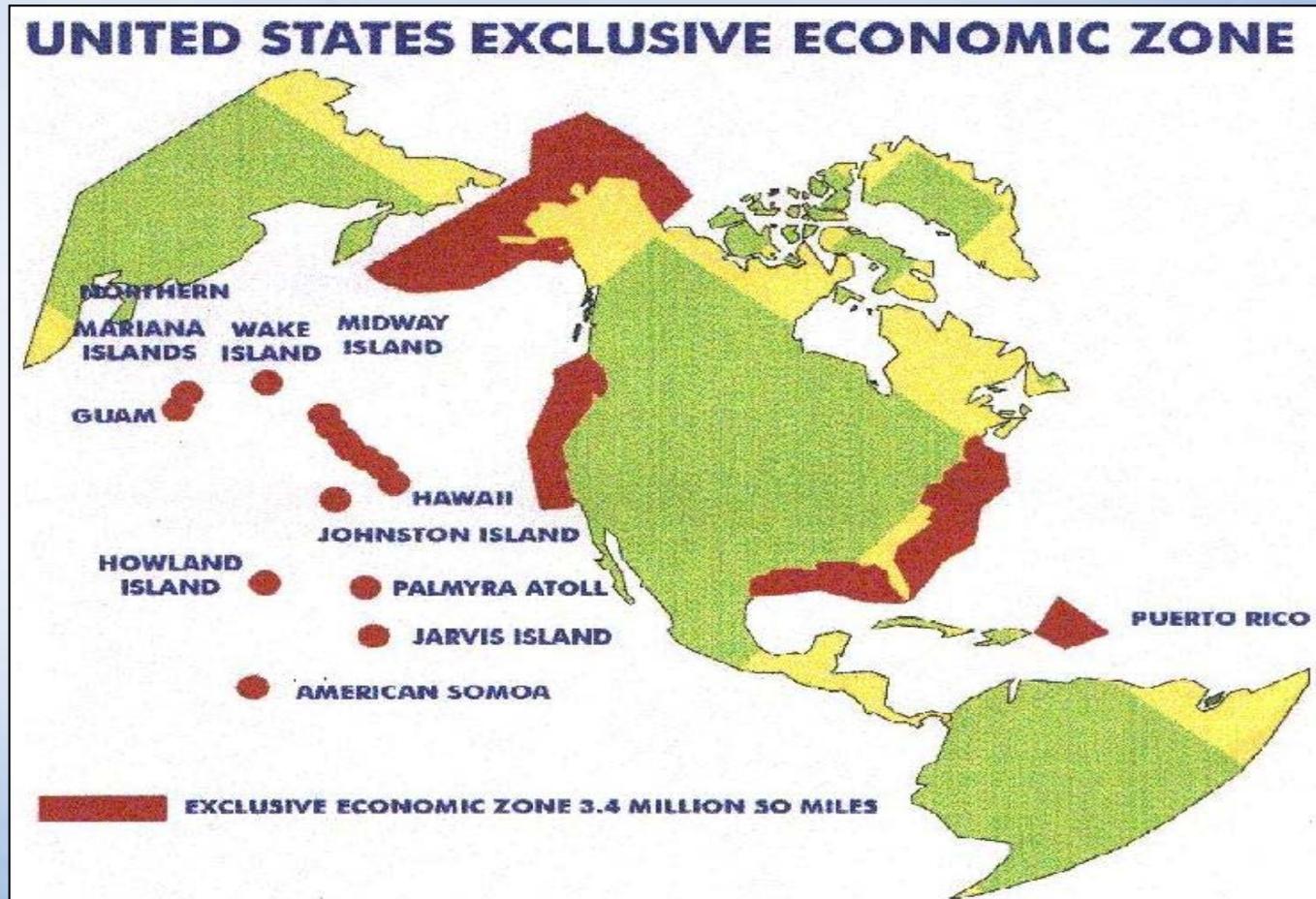
- State management within territorial waters

- Foreign fishing in what is now EEZ



1976: FCMA

- Established FCZ/EEZ
- Established Council-Based management structure



1996: Sustainable Fisheries Act

- Same Management Structure
- New Name (MSA)
- Increased focus on Sustainability
 - New National Standards 8. 9. 10 (Communities, bycatch, and safety)
 - New Required Components in FMPs (specify overfishing definitions, identify and describe EFH, fishery impact statements)
 - Rebuilding Requirements (within 10 years)
 - Standardized Bycatch Reporting Methodology
 - Revised definition of OY
 - Modified NS 5



See “Guide to the Sustainable Fisheries Act
<http://www.nmfs.noaa.gov/sfa/sfaguide/102.htm>

2007: Magnuson-Stevens Reauthorization Act

- **Increased Accountability: ACLs and AMs; end & prevent Overfishing**
- **Strengthens role of science**
- **Emphasis on Market-Based Management: LAPPS**
- **Council Member Training**
- **Coordination with NEPA**
- **International Cooperation**
- **Registration of recreation fishers**



Structure of the MSA

- Councils recommend within Congressionally prescribed policy mandates (i.e., National Standards and other mandates)
- Secretary Reviews and Decides with limited discretion and time
- Both must utilize open public process
- Products are Fishery Management Plans (FMPs) and Regulations

8 Regional Councils

Governors

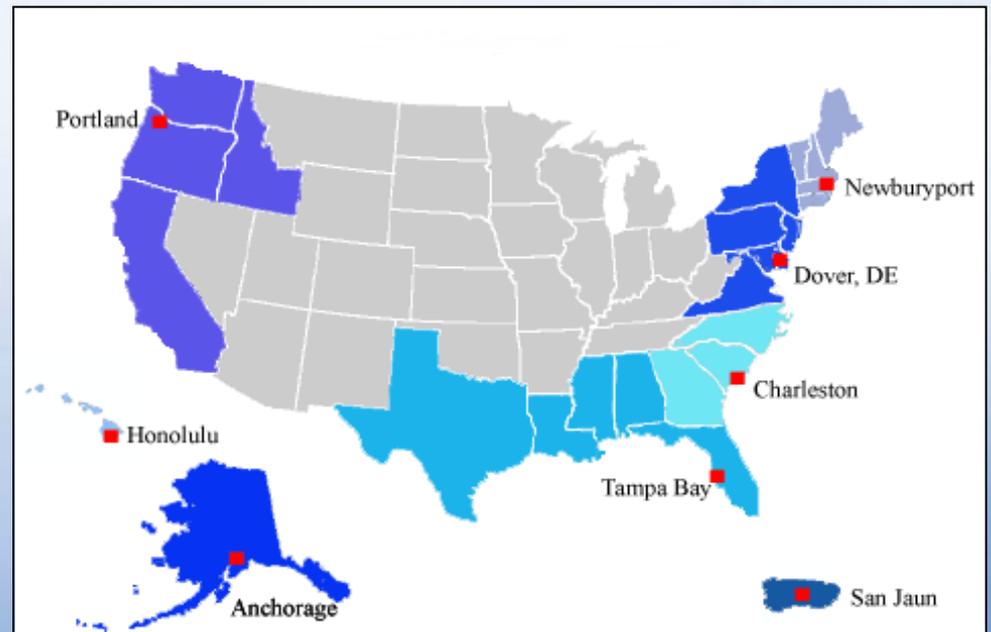
Nominate/Secretary
appoints

Special Representation

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

Qualifications

- Knowledgeable about fisheries
- Fair and balanced apportionment





The National Standards

- (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 §1851(a)

National Standards



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



National Standard 1

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

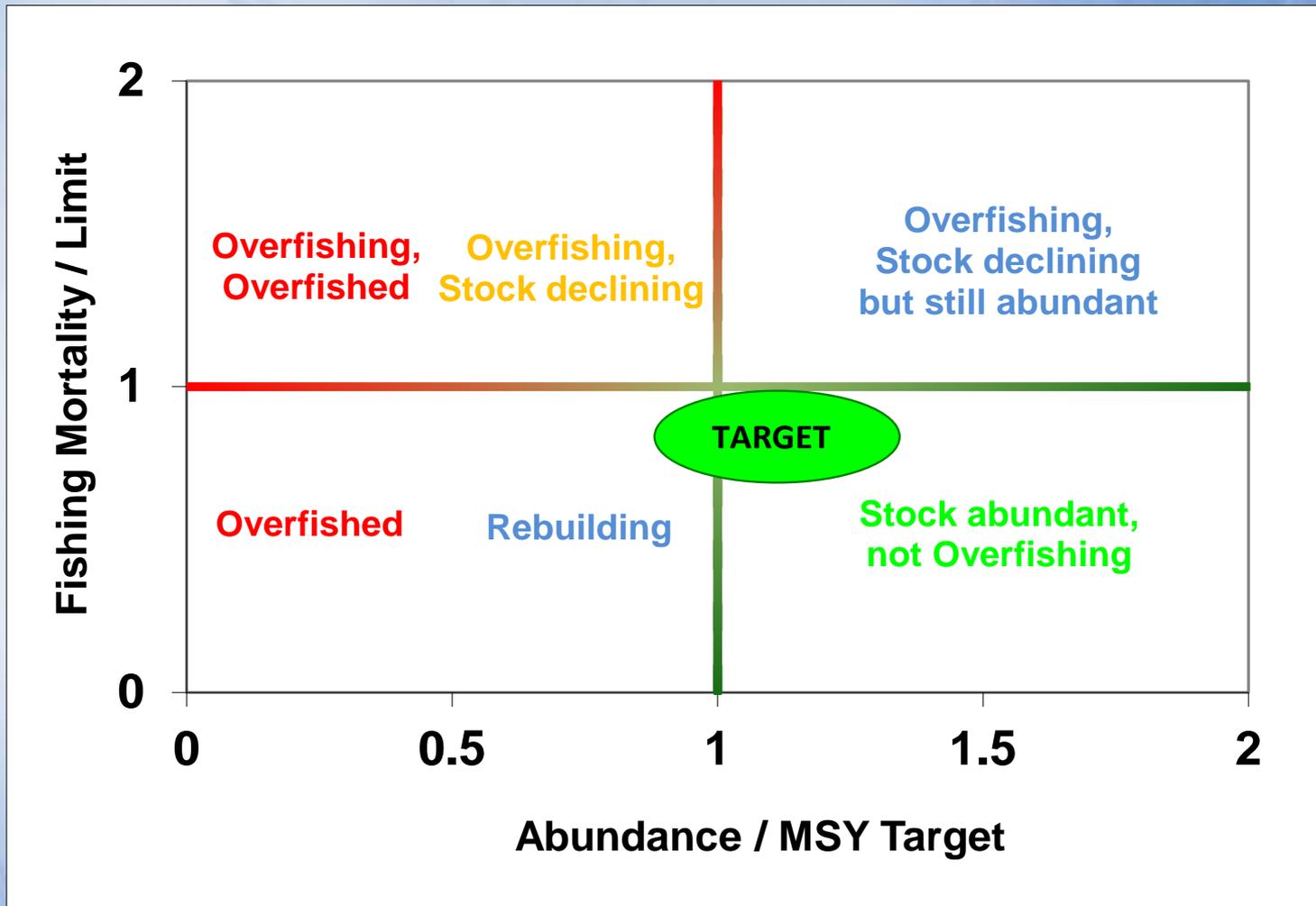
MSA §1851(a)(1) and §3(33)



Definitions

- (1) “subject to overfishing” refers to a stock that is experiencing a fishing mortality (harvest) rate above the level that provides for the maximum sustainable yield (i.e., rate of removals is too high).
- (2) “overfished” refers to a stock that has a biomass level below a biological threshold specified in its fishery management plan (i.e., the population is too low).

Assessment Outcomes: Status Determinations



Mandates to Fulfill N.S. 1

The 2007 MSRA added new mandates to ensure compliance with National Standard 1:

- Secretarial duty to end overfishing immediately (MSA §§ 304(e)(3)(A), 302(h)(6))**
- Annual Catch Limits based on science (MSA §303(a)(15))**
- Accountability Measures (MSA §303(a)(15))**

Ending Overfishing and Rebuilding

- Annual Status Report
- Detailed timelines
- Must end overfishing immediately
- If Council fails to submit rebuilding within 2 years, Secretary must within 9 months
- Specifies criteria for Rebuilding plans
 - End overfishing immediately
 - Rebuild in as short a time as possible
 - Not exceed 10 years



(MSA §§ 304(e))

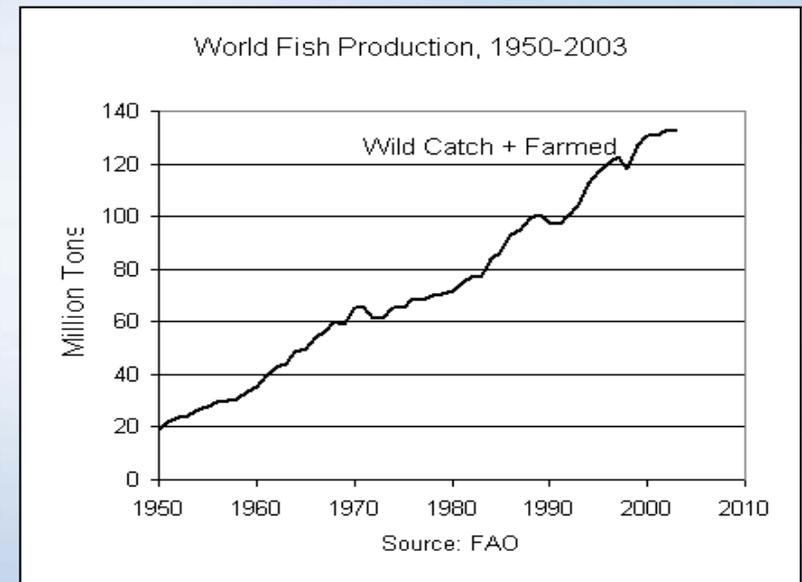
Relevant Additional National Standards

Science and Socio-economic considerations and mandates are highlighted in National Standards 2, 5, 7, and 8.

(MSA §301(a)(2), (5), (7), (8))

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

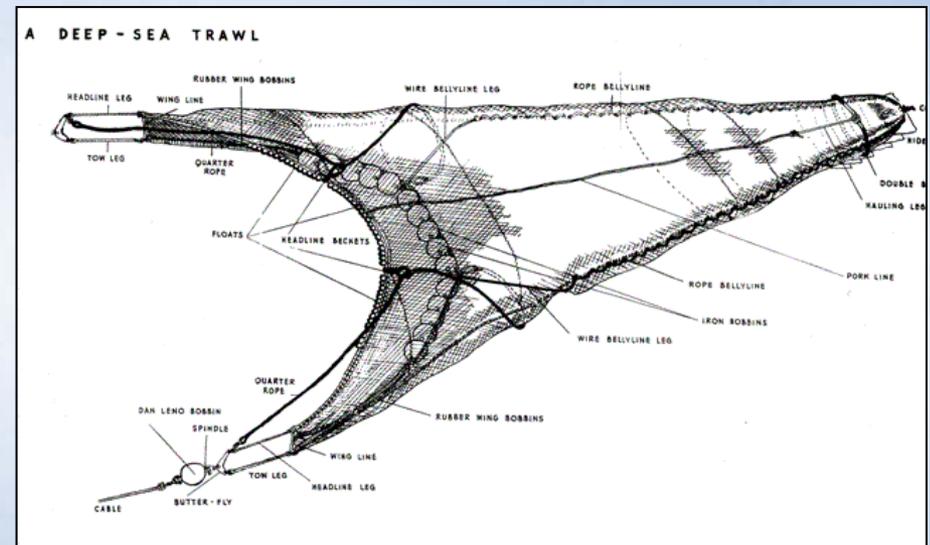
Using data that we have stated is unreliable without explaining why we're using it is NOT OK.

X

Decisions based on politics instead of science are NOT OK.

N.S. 5: Efficiency in Utilization

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



50 CFR 600.330

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.



Special Provisions of the MSA

- Secretarial FMPs/amendments, MSA § 304(c)
- Ending Overfishing, MSA § 304(e)
- Highly Migratory Species (HMS), MSA § 304(g)
- Essential Fish Habitat, MSA § 305(b)
- Emergency Actions, MSA § 305(c)