

# Annual Catch Limits

An Overview of the  
Substantive and Procedural  
Mandates of the MSRA and  
National Standard 1  
Guidelines

## Statutory Origins



- **REQUIRED PROVISIONS.**--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall-  
- \*\*\* (15) establish a mechanism for specifying *annual catch limits* in the plan (including a multiyear plan), implementing regulations, or annual specifications, *at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.*

**MSA § 303(a)(15) (16 U.S.C. § 1853(a)(15)).**

## Timeline for Implementation



- The FMPs for stocks managed by the North Pacific Fishery Management Council must include Annual Catch Limits by the fishing season that begins during 2011.
- **EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.**—The amendment made by subsection (a)(10)— (1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect— (A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and (B) in fishing year 2011 for all other fisheries; and (2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and (3) *shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson- Stevens Fishery Conservation and Management Act* (16 U.S.C. 1851(a)(1) or 1854(e), respectively). **P.L. 109-479, sec. 104(b).**

## Nomenclature in the Guidelines



- *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.  
50 C.F.R. § 600.305(c)(1).
- *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.  
50 C.F.R. § 600.305(c)(3).

## Overview of Basic Components of ACLs

- Overfishing Limit (OFL)
- Acceptable Biological Catch (ABC)
- ABC Control Rule
- Annual Catch Limit (ACL)
- Annual Catch Target (ACT)\*
- Accountability Measures (AMs)

\*Not mandatory

## Overfishing Limit

- The more things change, the more they stay the same...
- Definition: ... The OFL is the estimate of the catch level above which overfishing is occurring.  
50 C.F.R. § 600.310(e)(2)(D).

ACLs must be set at a level such that



## Acceptable Biological Catch (ABC)

- Definitions: *Acceptable biological catch (ABC)* is a level of a stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty ... and should be specified based on the ABC control rule.  
50 CFR § 600.310(f)(2)(ii)
- "Catch" includes all fish taken in any fishery or retained for any purpose and all discard mortality.
  - *Catch* is the total quantity of fish, measured in weight or numbers of fish, taken in commercial, recreational, subsistence, tribal, and other fisheries. Catch includes fish that are retained for any purpose, as well as mortality of fish that are discarded.  
50 CFR § 600.310(f)(2)(i).

## ABC Control Rule

- Each FMP must include an ABC Control Rule for every stock "in the fishery." 50 C.F.R. § 600.310(c)(3).
- Definition: *ABC control rule* means a specified approach to setting the ABC for a stock or stock complex as a function of the scientific uncertainty in the estimate of OFL and any other scientific uncertainty (*see paragraph*

## Substantive Requirements of ABCs

- $ABC \leq OFL$ . 50 C.F.R. § 600.310(f)(3).
- ABC must account for all retained “catch” and all discard mortality. See 50 C.F.R. § 600.310(f)(2).
- For overfished stocks, a rebuilding ABC must be set that will rebuild the stock within the specified rebuilding time period. 50 C.F.R. § 600.310(f)(3)(ii).

## Substantive Requirements of ABCs (Cont'd)

- The ABC control rule must articulate how ABC will be set compared to the OFL based on the scientific knowledge about the stock or stock complex and the *scientific uncertainty* in the estimate of OFL and *any other scientific uncertainty*.  
50 C.F.R. § 600.310(f)(4).



## ABC Control Rule & Uncertainty

- Control rules *should* be designed so that management actions become more conservative as biomass estimates, or other proxies, for a stock or stock complex decline and as science and management uncertainty increases. Examples of scientific uncertainty include uncertainty in the estimates of MFMT and biomass. Management uncertainty may include late catch reporting, misreporting, and underreporting of catches and is affected by a fishery's ability to control actual catch.

50 CFR § 600.310(f)(1) (emphasis added).

## Statutory Provisions Concerning the ABC Setting Process



- COMMITTEES AND ADVISORY PANELS.— (1) \*\*\* (B) Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch.... MSA § 302(g)(1)(B) (16 U.S.C. § 1852(g)(1)(B)).
- FUNCTIONS.--Each Council shall, in accordance with the provisions of this Act-- (6) develop annual catch limits for each of its managed fisheries that may not exceed the *fishing level recommendations* of its scientific and statistical committee . . . . MSA § 302(h)(6) (16 U.S.C. § 1852(h)(6)).

## Procedural Requirements for ABCs and ABC Control Rules

- The Council must establish the ABC Control Rule based on scientific advice from the SSC. 50 C.F.R. § 600.310(f)(4).
- The SSC must recommend the ABC to the Council. 50 C.F.R. § 600.310(f)(3).
- If the SSC recommends an ABC that differs from the result of the control rule, it must explain why. *Id.*

## Annual Catch Limit (ACL)

- Definition: *Annual catch limit (ACL)* is the level of annual catch of a stock or stock complex that serves as the basis for invoking [accountability measures]. ACL cannot exceed the ABC, but may be divided into sector-ACLs . . . .  
50 C.F.R. § 600.310(f)(2)(iv).
- Recall that “catch” is broadly defined.
- ACLs are required for all stocks “in the fishery.”
- FMP must include a “mechanism” for specifying ACLs



## Substantive Requirements for ACLs

- $ACL \leq ABC$ . 50 C.F.R. § 600.310(f)(5).
  - ACL may not exceed the ABC recommended by the SSC. MSA § 302(h)(6).
  - If  $ACL = ABC = OFL$ , the Secretary may presume the proposal would not prevent overfishing absent sufficient justification
- ACLs in coordination with accountability measures must prevent overfishing. 50 C.F.R. § 600.310(f)(5); MSA § 303(a)(15).

## Substantive Requirements for ACLs (Cont'd)

- The Groundfish FMPs are multiyear plans, which, therefore: must provide that, if an ACL is exceeded for a year, then [accountability measures] are triggered for the next year consistent with paragraph (g)(3) of this section.  
50 C.F.R. § 600.310(f)(5).



## Accountability Measures

- Measures taken to prevent ACLs from being exceeded and to rectify the harm that may result if catch does exceed ACL.
- Accountability measures must be included in an amendment to the FMP for all stocks in the fishery. 50 C.F.R. § 600.310(h)(2).

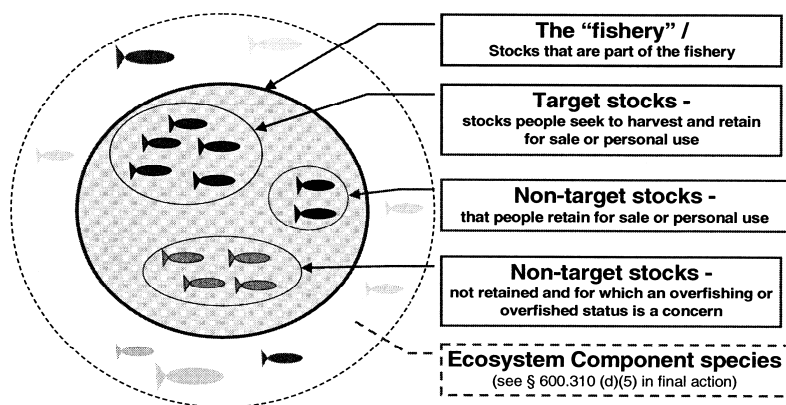
## Substantive Requirements for Accountability Measures

- If an ACL was exceeded [in the previous fishing year], AMs must be triggered and implemented as soon as possible to correct the operational issue that caused the ACL overage, as well as any biological consequences to the stock or stock complex resulting from the overage when it is known. 50 C.F.R. § 600.310(g)(3).

## Annual Catch Target (ACT)

- Harvest goal for the fishery; the intent is that the fishery should attain the target.
- Accounts for management uncertainty
- Use is discretionary under the Guidelines
- If used, ACT should be derived based on a control rule.
  - May use a single control rule that accounts for scientific and management uncertainty to set ABC, ACL and ACT.

## Stocks in the Fishery and Ecosystem Component Species





## How to Qualify as an Ecosystem Component Species

- Non-target species
- Not subject to overfishing or overfished
- Not likely to become subject to overfishing or overfished
  - Vulnerability analysis
- Not generally retained for sale or personal use

## Ecosystem Component Species in NPFMC FMPs

- May be appropriate to designate certain forage fish or non-specified species in the Groundfish FMPs as Ecosystem Component Species.
- Otherwise, may need to develop Status Determination Criteria and reference points (ABC, ACL, ACT).

## A Brief Comment on the Legal Status of the Guidelines



- The National Standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been, and will be, applied under these principles. ... FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval and implementation.

50 C.F.R. § 600.305(a)(3).

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50 C.F.R. § 600.305(c)(3).



## The Importance of Consistency



- "As a component of whether an agency's interpretation is permissible, we will take into account the consistency of the agency's position over time." *NRDC v. EPA*, 526 F.3d 591, 602 (9th Cir. 2008).
- "An agency interpretation of a relevant provision which conflicts with the agency's earlier interpretation is 'entitled to considerably less deference' than a consistently held agency view." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 447 n. 30 (1987).