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fishers and processors

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# AMERICAN ALBACORE FISHING ASSOCIATION

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April 16, 2007

**VIA E-MAIL TO: annual.catch.limitDEIS@noaa.gov**

Attn: NMFS Office of Sustainable Fisheries

**Re: Guidelines on Annual Catch Limits (ACLs), Accountability Measures (AMs), and other provisions of the 2006 Amendments to the Magnuson-Stevens Act**

For Your Respected Consideration:

I am writing on behalf of the American Albacore Fishing Association (AAFA), a nonprofit corporation of over two dozen American commercial fishing vessels that participate in the troll/baitboat (“*pole & troll*”) North Pacific albacore fishery,<sup>1</sup> to submit comments in connection with the requirements of the reauthorization and 2006 Amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

AAFA acknowledges and supports the efforts of the Pacific Fishery Management Council (Council) to effectively implement the 2006 Amendments to the MSA in connection with the measures and mechanisms for meeting the MSA’s new Annual Catch Level requirements (ACLs) with regard to Highly Migratory Species such as albacore.<sup>2</sup>

We echo the Council’s observations stemming from the fact that albacore, as a Highly Migratory Species (HMS), are widely distributed over a large range. The North Pacific albacore fishery harvest by vessels of the West Coast-based troll/baitboat fleet represents just a small fraction of total fishing mortality over the large range of the stock. Accordingly, it is likely that in many cases, unilateral action by the United States may not achieve a desired, significant biological effect on the stock’s status. We encourage the appropriate consideration of this aspect of HMS fisheries when developing and implementing the required ACLs and AMs.

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<sup>1</sup> AAFA is founded upon the belief that, by promoting the environmental benefits of the troll and/or pole & line fisheries and promoting the health benefits of tuna consumption, the economic viability of these traditional troll and/or pole & line fisheries can be sustained.

<sup>2</sup> As set forth in the February 28, 2007 letter of Dr. Donald McIsaac, Executive Director, Pacific Fishery Management Council, to Mr. Alan Risenhoover, Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

Attn: NMFS Office of Sustainable Fisheries

Re: Guidelines on Annual Catch Limits (ACLs) and Accountability Measures (AMs)

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Our collective experience, gained through decades of fishing albacore off the West Coast, has shown us that factors other than mere biomass status of the albacore stock often play a role in the fishery fluctuations. The relative success or productivity of the West Coast albacore fishery from year to year depends upon a number of variables, such as market conditions, fuel costs, weather, gear type, and more.

The reauthorized MSA, at §104(b)(1), directs that Fishery Management Plans shall establish a mechanism for specifying Annual Catch Limits "...*unless otherwise provided for under an international agreement.*". AAFA requests NMFS undertake efforts to interpret such ambiguous clauses, and to determine if such clauses may be applied to provide relief for setting ACLs for international fisheries. Otherwise, U.S. fishermen will find themselves at a disadvantage if they are restricted to the same quota systems as those fishing on domestic stocks. The concept of ACLs may be appropriate for setting limits between U.S. fishermen fishing coastal stocks, but that simple arrangement would be impractical in an international setting.

AAFA questions how such statutory language is to be interpreted. If the principle objective of ACLs is to curb overfishing, are international agreements that undertake to control fishing in ways other than quotas considered sufficient as "*unless otherwise provided for*" in the MSA?

AAFA is wholly supportive of the MSA's National Standards (NSs) directed toward ensuring the long-term sustainability of the North Pacific albacore stock, support for the sustained participation of the fishing communities and their long history of interdependency with the West Coast fleet. Efforts to minimize, and hopefully reverse, the adverse economic impacts experienced by these fishing communities, as directed by NS-8, also has our support.

Similarly, AAFA encourages fishery management efforts to minimize bycatch, or mortality from bycatch, as directed by NS-9. AAFA recognizes and promotes the long standing history and tradition of the troll/baitboat methods of albacore fishing that our members continue today. The troll/baitboat albacore fishery has minimal, or virtually insignificant, bycatch mortality rates.

On behalf of AAFA and its members, I greatly appreciate having the opportunity to comment on these matters. If you have any questions or would like to discuss this matter further, please do not hesitate to contact me at (619) 941-2307.

Sincerely,

*/Jack Webster/*

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Jack Webster, F/V Millie G.  
AAFA president

Mr. Mark Millikin  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910  
*Via email: annual.catchlimitDEIS@noaa.gov*

Dear Mr. Millikin:

The following scoping comments on the draft environmental impact statement (DEIS) for annual catch limit and accountability measures (ACL/AM) are submitted on behalf of Associated Fisheries of Maine, Garden State Seafood Association, and West Coast Seafood Processors Association. Collectively, these groups represent thousands of commercial fishermen, seafood processors and workers, dock facilities, and seafood-related businesses in Maine, New Jersey, California, Oregon, Washington, and Alaska. These groups and individuals will be directly affected by the proposed action.

### BACKGROUND

To begin, we must keep in mind that although the requirement to establish ACL/AM is mandatory, the national standard guidelines – which are the subject of the DEIS – do not “have the force and effect of law.” (16 USC 1851(b)). Further, “[i]n developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives.” (50 CFR 600.305(a)(2)). Finally, the national standards themselves, which the guidelines interpret, are “basic objectives for a viable conservation and management program for the Nation’s fishery resources, are designed to assure that management plans and regulations take into account the variability of fish resources, the individuality of fishermen, the needs of consumers, and the obligations to the general public, now and in generations to come [emphasis added].” (Conference Report 94-711, March 24, 1976). In other words, under law and regulatory interpretation by the National Marine Fisheries Service (NMFS), the guidelines themselves merely provide suggested ways for regional fishery management councils (Councils) to carry out their statutory obligations, and those suggestions are intended to be flexible, taking into account the variety of fisheries that are conserved and managed within the U.S. Exclusive Economic Zone.

The existing guidelines for National Standard 1 are a good example of this principle: they provide four alternatives for specifying maximum sustainable yield (MSY) and indicate that other alternatives are viable as long as they are based on the best scientific information available; they provide alternatives to specifying MSY; and they even state that “Councils have a reasonable degree of latitude in determining which estimates to use and how these estimates are to be expressed.” (50 CFR 600.310(c)(2)(ii)).

In fact, some Councils have been complying with the new provisions of law before they were enacted. For example, the Pacific Fishery Management Council has had only 1 documented case of overfishing involving a fully managed species since the statutory recognition of overfishing in 1996. The Council promptly resolved the problem through the use of in-season management measures, a fact noted in the *Federal Register* notice (72 FR 12771; March 19, 2007) that simultaneously declared overfishing had occurred and had been corrected.

Given this background, it is evident that no “one size fits all” prescription can – or even should – be applied to the diverse fisheries subject to U.S. jurisdiction. Rather, NMFS should develop a more general standard that meets the law but under which Regional Councils would have the flexibility to take actions appropriate to their regions and fisheries.

This also raises the issue of the level of management to which the ACL/AM would apply. The requirement for ACL/AM is found in the mandatory measures needed in a fishery management plan (16 USC 1853(a)). Some Regional Councils have single species plans; others have multi-species plans. The statute itself defines “fishery” as “one or more stocks of fish that can be treated as a unit...; and any fishing for such stocks.” Management measures (including data reporting, which will be a cornerstone of any ACL/AM) applied to fishing for a single species or stock may vary greatly depending on what type of fishing is being addressed.

Further, allocations are often made among different fisheries utilizing the same species or stock. Thus, flexibility needs to be provided to establish accountability measures on individual sectors, even if the ACL is applied to a species or stock as a whole. It makes no sense, for example, to apply an accountability measure to a trawl fishery for rockfish if a recreational fishery for that same species/stock consistently harvests more than is intended.

Similar issues exist with species/stocks that are under the authority of more than one management entity. Some stocks, like certain tunas are subject to one or more Council fishery management plans as well as international agreements. For example, establishing ACL/AM for the entire stock of bigeye tuna – of which the U.S. harvests 1 or 2% - makes no sense and is doomed to failure since international management measures will take precedence and the U.S. will have no effective control over fishing conducted by other nations on the high seas or within their own exclusive economic zones.

Other stocks such as Pacific whiting, Pacific halibut, and some Pacific salmon are jointly managed by the U.S. and Canada via treaty and some stocks of Northeast groundfish, Atlantic herring and mackerel are transboundary. Some stocks of West Coast salmon and fish in other regions are managed by both state and federal governments. Other examples of the latter include East Coast summer flounder, black sea bass, and scup.

We also note that in the material provided on NMFS’ web site and at public scoping meetings, the question is raised as to whether other issues related to National Standard 1 guidelines need to be addressed during this process. In our view, the answer is an unequivocal “YES.” On June 22, 2005, NMFS issued a proposed rule to revise National Standard 1 guidelines. The proposal was the product of substantial work by NMFS scientific staff, was reviewed and commented on by the Secretary of Commerce’s Marine Fisheries Advisory Committee and most – if not all – of the Councils and their advisory and scientific bodies, and was subject to extensive public comments. In January, 2006, Dr. William Hogarth, Assistant Administrator for Fisheries, made the following statement which was published on the NMFS web site:

*“Based on the high volume of comments and concerns we received from the public, we’ve decided to issue a notice of intent to prepare an environmental impact statement for the proposed revisions to the guidelines. The notice of intent will include our original proposals and some additional proposals, in light of your comments and other developments, such as recent movement in Congress to*

*reauthorize the Magnuson-Stevens Act. The public will have the opportunity to comment on this new development and submit new ideas for other possible changes to the guidelines. After we publish the notice of intent, we will complete a draft environmental impact statement and hold public hearings.”*

The DEIS for current scoping comments is the only existing DEIS on the subject of National Standard 1 guidelines that has been published since that announcement. Since the initial 2005 proposed rule incorporated advanced scientific thinking in terms of overfishing and rebuilding – subjects that also are being considered in the current DEIS – it is entirely appropriate that the June 22, 2005 proposed rule be included as a sub-option in all of the proposed action alternatives.

Finally, we note that the Council on Environmental Quality’s regulations applicable to preparation of environmental impact statements (40 CFR 1502.14(a)) stipulate that alternatives presented should “rigorously explore and objectively evaluate all reasonable alternatives...” We do not believe that the NMFS Preliminary Alternatives provided in the scoping material meet this test. In fact, it is difficult to distinguish between Alternative 2 and Alternative 3.

#### RECOMMENDATIONS

1. Revise Preliminary Alternative 2 to list examples of performance standards that would have to be met (i.e., would be acceptable to the Secretary of Commerce). These should include such things as requiring a target fishing level (TFL) that does not exceed the overfishing level (including an acceptable proxy such as MFMT, MSST, or natural mortality rate); requiring that management measures be put in place to ensure that harvests do not exceed the TFL; and require that the Council take action if the TFL is nevertheless exceeded, using management tools that are appropriate to the fishery.
2. Due to the general nature of the description of Alternative 3, we are unable to comment on specific performance standards and guidelines at this time. However, we note that performance standards and guidelines should reflect the availability of data to measure success or failure. Therefore, we believe that NMFS needs to revise Preliminary Alternative 3 to more explicitly state what the specific guidelines might be.
3. Both alternatives should also explicitly recognize that Councils do not have to amend existing fishery management plans if they are already complying with the revised National Standard; and both should specify that if a fishery is managed under multiple jurisdictions (federal, state, international) that ACL/AM would only apply to domestic fishing within the exclusive economic zone and only to that portion of the fishery that is under Council jurisdiction.
4. Include under both alternatives the capability for a Council to apply ACL/AM to each individual sector within a fishery, as well as the entire fishery, if those sectors are clearly defined.
5. Include as a sub-option under both alternatives the proposed rule for revision of the National Standard 1 guidelines that was published on June 22, 2005.
6. Specify applicable exclusions for species known to exhibit annual life cycle characteristics, e.g. *Loligo* spp. and *Illex* squids.

7. Delete references to a “pay back” provision and the need to implement “precautionary” management as neither component is a requirement of current law.
8. Given that Councils have already established overfishing definitions and MSY control rules, we see no reason to require the Councils to revise these definitions to specify an overfishing level. In fact, there is no requirement in the Act that a specific overfishing level be established for any fishery.
9. We agree with the concept that fish species do not always segregate in space and time and that harvest often involves the take of several species. We note this is the case regardless of gear type or type of fishery be it commercial, recreational, subsistence, or research. Thus, we recommend specifying that ACL’s may apply to stock complexes, stock assemblages and similar stock groupings.
10. Recommendations for in-season adjustment capability should be confined to stocks where fishery-dependent data are sufficiently accurate/precise and timely enough to justify rapid management action; this capability should be a tool for Councils to use, not a requirement.
11. While ACL’s are specified by law to be set using the best scientific information available and at levels such that overfishing does not occur, the Act still requires that we achieve OY on a continuing basis. Therefore, there are no legitimate legal or scientific reasons to propose or specify a precautionary buffer (or determine its required size) between the ACL and OY. For some fisheries, relatively little is known about stock size, productivity, or other crucial biological parameters. In those cases, the existing National Standard 1 guidelines at 50 CFR 600.310(5)(iii) specify a risk-averse approach to establishing optimum yield (OY). We see no reason to revise this section of the guidelines. Therefore, when an OY is established that is less than the overfishing level and is based on appropriate control rules, rebuilding plans, or established risk-averse approaches, ACL can be set as the OY plus any expected fishing mortality from bycatch, as long as the total mortality does not exceed the overfishing level.
12. NMFS needs to recognize that data available to adequately assess population size of, and establish ACLs on, all stocks may be bountiful or nearly non-existent. Requiring Councils to meet the same standards for every species will not work. We therefore suggest that NMFS consider different tiers of data availability and set ACL rules accordingly. Thus, for a stock with reasonable amounts of data for an assessment, ACL can be set equal to OY. For stocks with insufficient data for an assessment, NMFS should allow Councils to treat them as an assemblage, or use a scientifically accepted precautionary means to set ACL. In the case of assemblages, Councils should be allowed to set an ACL on a core stock that can then be used as a proxy for the assemblage.
13. Accountability measures (AM) are those actions taken by a Council with advice from the SSC designed to prevent overfishing and achieve optimum yield. Accountability measures, like fishery management plans, need to relate to the fisheries being managed. Councils are already operating under specific requirements to ensure accountability. These actions are taken under the existing National Standard 1 guidelines and the requirements of the Act. They include the current process for setting total allowable catch (and the new ACL requirement), MSY control rules, and overfishing targets and thresholds. We believe that there is no reason to establish

additional point-specific AM requirements as the Councils have already adopted AMs and are required now to end overfishing. In the event that an overfishing level is approached or overfishing does occur the Councils have numerous tools at their disposal: effort reductions, days at sea, harvest limits, time / area closures, size limits, bag limits, etc. As long as current Council actions to achieve accountability are based on a sound scientific analysis indicating that they will have the desired outcome, there should be no restrictions on what sort of method a Council might choose to use.

14. We believe that all *fishing* mortality – including bycatch and discard mortality – should be counted when determining whether overfishing is occurring. Estimates of mortality other than landed catch mortality must be based on the best scientific information available; any models used to estimate fishing mortality from other than landed catch should be peer reviewed pursuant to the provisions of 16 USC 1852(g).

However, non-fishing mortality should not be counted. The definition of “overfishing” (16 USC 1802(34)) speaks to “a rate or level of fishing mortality” and not to mortality from non-fishing sources. In particular, mortality due to scientific research cannot be counted as fishing mortality, as the definition of “fishing” (16 USC 1802(16)) specifically excludes “any scientific research activity which is conducted by a scientific research vessel.”

15. When looking at AM, Councils should be allowed to take credit for harvest below ACL and apply that unharvested amount to the succeeding year’s ACL. While not all Councils may choose to do this for every fishery, they should have the flexibility to do so. Not only will this serve as a de facto buffer to temper the effects of unforeseen circumstances, but it also allows Councils to meet the provisions of National Standard 1: “achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.”

16. In some instances such as the Atlantic monkfish fishery, NMFS has utilized effort controls (i.e., days at sea closely linked to a total allowable catch / trip limit combination) to manage the fishery. These sorts of management tools should be reserved for use by the Councils on a case-by-case basis.

We look forward to continue working with NMFS as work proceeds on revising the National Standard 1 guidelines.

Sincerely,

Maggie Raymond, Associated Fisheries of Maine  
Greg DiDomenico, Garden State Seafood Association  
Rod Moore, West Coast Seafood Processors Association



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April 17, 2007

**VIA ELECTRONIC MAIL**

Mr. Mark Millikin  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

**RE: Comments on Notice to Prepare an Environmental Impact Statement  
Regarding Intent to Prepare Guidance on Annual Catch Limits**

Dear Mr. Millikin:

We are submitting these comments on behalf of the Fisheries Survival Fund (“FSF”) in response to the call for comments in the Notice of Intent to prepare an environmental impact statement relating to the Magnuson-Stevens Act National Standard Guidelines for National Standard One. 72 Fed. Reg. 7016 (Feb. 14, 2007). The FSF represents the bulk of the full-time, limited access Atlantic sea scallop fishing fleet from Massachusetts to Virginia. We appreciate this opportunity to present these comments on the Notice of Intent.

As a general comment, FSF supports the National Marine Fisheries Service’s decision to hold scoping sessions at all of the Regional Councils. The implementation of the Magnuson-Stevens Fishery and Conservation Management Act Reauthorization of 2006 (“Reauthorization Act”) requirements to set annual catch limits (“ACL”) and the institution of accountability measures (“AM”) is of critical importance to the fishing industry and worthy of the attention NMFS is providing it.

The FSF must, however, express an overall concern about the restrictive nature of the NMFS proposal, and its tendency to mandate a one-size-fits-all approach. In general, the proposal NMFS has put forth in this Notice of Intent is incredibly restrictive and narrow when compared to the statutory reauthorization of the law on which the purported revisions to the guidelines are purportedly based. In contrast to the NMFS proposal, Congress passed a law that is remarkable in its expansive approach to fisheries management and its allowance for regional differences and flexibility in the use of differing management approaches.

These comments address detailed concerns FSF has with the direction and implications of some of the issues raised in the Notice of Intent. Below, FSF addresses the specific questions raised in the Notice, as well as raising some overarching concerns. Among the greatest problems identified is the notion of creating a “buffer zone” between the ACL and what is to be termed the “overfishing levels,” which runs counter to the command of National Standard One requiring the achievement of optimum yield on a “continuing basis.” 16 U.S.C. § 1851(a)(1). Similarly, the

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Notice appears to suggest that a broader, management-focused role for the Scientific and Statistical Committees (“SSC”) should be considered, such as in suggesting AMs. Nothing in the law, however, provides the SSCs with such authority. Rather, management responsibilities continue to rest squarely with the regional management councils.

The entire ACL provision enacted into law is a broad requirement, lacking the specific mandates NMFS seems inappropriately bent on prescribing. Congress intentionally left ACL provision open so as to ensure management councils could use all of the management tools available to achieve the objective of the provision, which is to set an ACL for each fishery. A flexible mandate without specific requirements is one of the underpinning themes of the Magnuson-Stevens Act (“MSA”). From the inception of the MSA in 1976, Congress realized a one size fits all approach to fisheries management was not in the national interest, which is why the Congress created the regional councils to allow for different regions to manage fisheries in a way that best suited particular regions.

As to the general concerns, a prime example of the overly restrictive approach referred to above is the agency’s the proposal to require a “payback” provision in fishery management plans to account for any overage of the ACL. The “payback” provision was included in the Senate version of the Magnuson-Stevens reauthorization, but it was never included in the House version of the bill. When the House and Senate negotiated and settled on a final bill for passage, the “payback” provision from the Senate bill was not included in final version of the bill that Congress passed into law.

Instead, both Houses of Congress agreed on much broader language. Indeed, even within the Senate, the Commerce Committee rejected language that would have mandated hard total allowable catch limits for every fishery. Rather, the Senate Commerce Committee reported out a bill that allowed regional fishery management councils to set ACL’s using input or output controls, just as the enacted law allows. Thus, NMFS should not mandate hard TACs; equally, it should not establish a system that makes hard TACs the only practicable alternative (such as prescribing buffer zones that would greatly reduce an ACL if a hard TAC were not employed). The guidelines should not take away the flexibility in management approaches Congress sought to maintain, nor preempt successful management strategies such as days-at-sea management for the Atlantic sea scallop fishery.

In summary, FSF fears that NMFS’s specific proposals in the Notice undermine the flexibility in setting and monitoring ACLs which Congress provided. NMFS would instead inappropriately set specific requirements where they are clearly not called for by the Reauthorization Act. FSF respectfully requests NMFS reevaluate its proposals to the better reflect the terms and spirit of the Reauthorization Act. Congress specifically did not require a one-size-fits-all approach to fisheries management and NMFS does not have the authority to unilaterally impose it.

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Within the Notice of Intent, NMFS sets out a series of ideas on which it is seeking comment. What follows is FSF's response to the NMFS solicitation of comments:

**1. NMFS asked for comments on what is the role of the Scientific and Statistical Committees ("SSC") and "other peer review" processes in setting ACLs and AMs.**

The law provides a detailed framework for the roles of the SSC's and the Councils in setting the ACL and AM. 16 U.S.C. § 1852(g) as amended states:

Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

*Id.* 16 U.S.C. § 1852(h), as amended, states the Council shall:

develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g).

*Id.* The law unequivocally bifurcates the roles of the SSC and the Council in setting the ACLs. The law directs the SSC to recommend an overall level of fishing mortality that the Council cannot exceed, but the law only authorizes the Council to set the ACL at or below the recommended level.

As for the AMs, 16 U.S.C. § 1853(a) directs the Council to establish accountability measures. The Act does not authorize the SSC's to make any management decisions or set the AMs. The law only authorizes the SSC's to provide advice and assistance on issues pertaining to the scientific analysis of a fishery and not to the actual management measures. *See* 16 U.S.C. § 1852(g). The Act certainly does not authorize the SSC's to have any role in a decision that would affect allocations of catch, as this would deviate from the SSC's delineated role of providing scientific advice, and detract from their role as impartial advisors.

**2. NMFS asked for comments on the relationship between the ACL and Optimum Yield ("OY").**

The reauthorization of the Magnuson-Stevens Act did not change the existing language that requires conservation and management measures to achieve OY on a continuing basis. 16 U.S.C. § 1851(a)(1). Therefore, the Councils must set an ACL, which is a conservation and management measure, at a level that achieves OY on a continuing basis. This is a critical issue. As Congress did not amend the OY requirements in the Act, NMFS must be careful to continue

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to abide by the preexisting requirements of the MSA as it moves to implement the new complimentary conservation provisions, such as the ACL provision.

**3. NMFS solicited comments on what revisions are necessary to the existing overfishing definition to accommodate the overfishing limit (OFL).**

The agency explains its rationale for creating the OFL as follows:

Under the NS1 guidelines, overfishing of the stock occurs when the maximum fishing mortality threshold (MFMT) is exceeded (50 CFR 600.310(d)(2)(i)). Thus, it is important to clarify the relationship between the ACL and the MFMT. While the MFMT is expressed as a rate of fishing, NMFS may recommend that FMPs be amended so that annual catch levels corresponding to MFMT—an overfishing level (OFL)—are specified along with ACLs in comparable units (e.g., weight or numbers of fish) to ACLs, to facilitate subsequent monitoring against the ACL. The OFL would be the maximum amount of annual catch from all sources (landings and discard mortality from all sectors) which does not result in overfishing.

72 Fed. Reg. at 7018. The rationale above says an OFL is needed because an ACL is presumably measured in an amount while the MFMT is a rate. FSF does not believe the translation of a unit of weight into a fishing rate is a significant hurdle that requires the formulation of a whole new term. Councils routinely set target or hard TACs in amounts and then translate the amount into a rate in order to establish appropriate management measures. The introduction of the concept of OFL will only lead to further confusion in fisheries management and provide little to no benefit from its creation.

FSF would also like to comment on the important assertion contained in the parentheses in the agency rationale quoted above to the effect that all mortality from landings and discards should count against the ACL. The Act is silent on what mortality should count against the ACL and the agency should not assume that landings **and** discards must count against the ACL. Councils may choose to count mortality in this fashion and NMFS may establish it as a preference, but NMFS has not authority under the law to mandate this form of accounting for mortality.

**4. NMFS solicited comments on concerns over the variability in data currently available for each stock.**

In this regard, FSF would like bring to NMFS's attention that upon the retirement of the *Albatross IV* there is no plan in place to conduct the Atlantic sea scallop survey. FSF is extremely concerned about the long term health of the sea scallop stock and the viability of the rotational management plan, currently in use, if there is no sea scallop survey. One of the most

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profitable fisheries in the world is dependent upon the execution of an accurate yearly survey of the sea scallop stock.

**5. NMFS solicited comments on what should be done about the variability in management approaches in reaching target fishing mortality levels.**

FSF is concerned the Agency is soliciting comments on a topic that is not within the scope of its mandate under the MSA reauthorization. The Congress through the reauthorization of the Act specifically did not allow or disallow any particular sort of management tool. On the contrary, the Congress, unlike in past reauthorizations, did not prohibit the Councils from using any specific management tool. Indeed, early version of the Reauthorization Act included requirements for all fisheries to be managed by hard TACs, yet this specific language was never passed by a Congressional committee, let alone either house of the legislature. Congress debated the merits of prescribing a specific management tool and rejected the language. As a result, all management tools and conservation measures are at the disposal of the Councils. Every management tool has pros and cons, which the Council must weigh when it deliberates a FMP. However, it is not appropriate for NMFS to pre-select any specific management tool as there is no authorization under the Act to do so.

**6. NMFS has solicited comments on setting a buffer between the ACL and the OFL and how large the buffer needs to be.**

FSF is extremely concerned about the position NMFS has put forward in the scoping document. NMFS' stated rationale for the requirement of a buffer is:

**NMFS believes that the extent of future management success using ACLs will depend largely upon ACLs being set sufficiently below the OFL for a fish stock, i.e., the size of the buffer needed between the OFL and ACL, to reduce the chance of exceeding the OFL.**

72 Fed. Reg. at 7018 (emphasis added). This is an extremely problematic approach that is apparently based upon the precautionary principle, which is not a requirement of the Magnuson-Stevens Act. The fact is the proposed buffer between the ACL and the OFL is illegal under the MSA. As FSF stated above, the MSA still requires conservation and management measures to achieve OY on a continuing basis. To achieve OY on a continuing basis, the Councils must set the ACL at OY. If NMFS requires a buffer zone that artificially lowers ACL below OY, then it is requiring the Councils to set a conservation and management measure in a manner inconsistent with National Standard One by not setting management measures at a level to achieve OY on a continuing basis. Any requirement that is not consistent with the national standards set forth in the Act is a *prima facie* violation of the MSA.

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Nor should NMFS use buffer zone measures as a means to force Councils to apply particular management regimes, such as hard TACs, or face the required imposition of major and crippling buffer zones for their ACLs. The presentations to the fishery management councils in this regard were particularly troubling.

As the Reauthorization Act as plainly states, Councils must establish ACLs that do not allow overfishing and FMPs must include measures to ensure accountability. 16 U.S.C. § 1853. The Act's language is purposely vague and open-ended in order to allow the Councils the maximum amount of flexibility in tailoring individual FMPs. NMFS is attempting to single handedly, and without any authorization, remove the flexibility placed within the law by Congress. FSF strenuously opposes this proposal to mandate buffer zones as it is impermissible under the law and contrary to Congressional intent.

**7. NMFS has solicited comments on what is the appropriate probability that the ACL will prevent overfishing.**

The Act is silent on what level of certainty is required for setting the ACL. In the absence of any statutory guidance judicial precedent is appropriate. Courts have consistently stated in opinions that a plan must have a 50 percent chance of success. NMFS does not have any authority to arbitrarily increase the judicial standard of 50 percent. The FSF strongly encourages the agency to adopt the judicial standard in the guidelines.

**8. NMFS has asked for comments on limiting the extent of overfishing should it occur.**

16 U.S.C. § 1853 requires Councils to set an ACL at a level that does not allow overfishing, including measures to ensure accountability. The intent of the Reauthorization Act is for the accountability measures to prevent overfishing. What NMFS is apparently proposing in this solicitation is an additional requirement, not required by law, to limit overfishing should it occur. FSF believes, as supported by the law, that any limit on the amount of overfishing is an issue for the Councils to individually decide on, taking into account all of the national standards and weighing the viability of all the available accountability measures. It is improper for NMFS to mandate or require limits when none are called for under the Act.

Parenthetically, FSF is troubled by the statement: "With regard to 'measures of accountability' ... required by MSRA section 104(a)(10), NMFS' initial interpretation is that they are part of the ACL mechanism and FMPs should contain AMs for each stock." 72 Fed. Reg. at 7018. Even though the Magnuson-Stevens Act defines a "stock of fish" as "species, subspecies, geographical grouping, or other category of fish capable of management as a unit," 16 U.S.C. § 1802(37), and the Notice itself ties the use of the term "stock" or "stock complex" to the MSA's definition of a

Mr. Mark Millikin  
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fishery,<sup>1</sup> 72 Fed. Reg at 7018 (quoting 50 C.F.R. § 600.305(c)(12)), the context suggest that NMFS is viewing stocks at essentially a species or subspecies level. The proper term in this context should be “fishery” as that is the unit of management to which all of the requirements of the MSA apply.

This nomenclature is significant. In the Reauthorization Act, Congress did not change the definition of a fishery, nor in any way attempted to restrict the ability of Councils to manage assemblages of species as a unit for purposes of the law. This flexibility, which is inherent in the definition of a fishery as functional unit that can be defined, among others, in economic terms, is the basis for what has erroneously been termed the “mixed stock exception.” Rather than the exception, it is the rule, and the National Standard One guidelines should not subvert the law by essentially requiring management at the species or subspecies level.

In application, Councils retain flexibility under the MSA as amended to treat an assemblage of species caught in a mixed catch fishery as a single “fishery” and manage it according to the law. With respect to ACLs and AMs, this means that reference points can be set for the aggregated stock and these measures are applied to fishery as a whole, not to the individual species within the fishery. The National Standard One guidelines should be absolutely clear in this regard.

**9. NMFS is seeking comments on establishing corrective actions to ensure accountability in a subsequent year for an overage of the OFL of a stock for the previous year.**

The FSF is struck by the similarity of this agency proposal to the “payback” language in the Senate passed version of the Reauthorization Act. The Senate passed language required the Council to reduce the ensuing year’s ACL by the same amount of any overage of the prior year’s ACL. As NMFS is aware, the payback provision fell out of the bill during the negotiations between the House and Senate and was not passed into law. What ended up in the Act was the unspecific language in 16 U.S.C. § 1853 stating the Council shall take “measures to ensure accountability.”

Therefore, the Reauthorization Act authorizes a Council and NMFS to institute a payback provision if the ACL is exceeded. What the Act does not do is require a payback. It is solely up to the Council to decide whether or not to instate a payback provision as part of its accountability measures in a particular FMP. Generally speaking, however, it is inappropriate to use “payback” provisions in fisheries which are managed through hard TACs or other mechanisms, such as days-at-sea (“DAS”) designed to achieve a target fishing mortality level, when those measures

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<sup>1</sup> Which is defined as “one or more stocks of fish that can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics; and any fishing for such stocks.” *Id.* §1802(13).

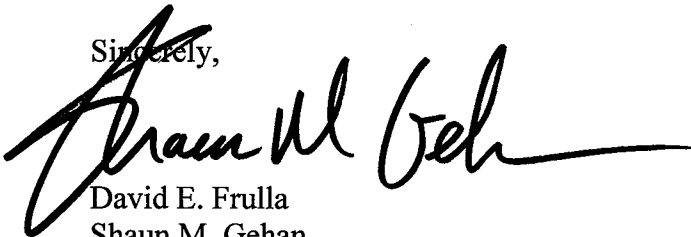
Mr. Mark Millikin  
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are specified on an annual or multi-year basis. In such instances, the only reason target fishing levels are exceeded is due to the fact that the estimate of the TAC or number of DAS was incorrect. SSCs and the Councils will consider the actual fishing mortality rate achieved in the prior year or years when developing subsequent specifications for the fishery. Arbitrarily reducing ACLs by the amount of "overages" in such cases amounts to a capricious decision to fish at less than OY, which, as explained above, is a *prima facie* violation of National Standard One.

###

This scoping process is the first in a series of important steps in the implementation of the Magnuson Stevens Reauthorization Act. FSF appreciates this opportunity to comment on the Notice of Intent to prepare an environmental impact statement and are hopeful these comments will guide the agency in implementing the Act. Please do not hesitate to contact us if you require any further information.

Sincerely,



David E. Frulla  
Shaun M. Gehan  
Andrew Minkiewicz

Attorneys for the Fisheries Survival Fund



From [Mark Millikin <Mark.Millikin@noaa.gov>](mailto:Mark.Millikin@noaa.gov) ▶

Sent Friday, June 1, 2007 11:17 am

To [annual.catch.limitDEIS <annual.catch.limitDEIS@noaa.gov>](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject [Fwd: Comments on Annual Catch Limits]

Attachments [FSF Comments on Notice of Intent.pdf](#)

566K

From Sean McKeon, April 18, 2007.

----- Original Message -----

**Subject:** Comments on Annual Catch Limits

**Date:** Wed, 18 Apr 2007 13:32:36 -0400

**From:** Sean McKeon <[srm@ncfish.org](mailto:srm@ncfish.org)>

**To:** [Mark.Millikin@noaa.gov](mailto:Mark.Millikin@noaa.gov)

Dear Mark,

I realize the date for comments was yesterday, but I am at the MAFMC meeting in MD and just had a chance to get this off to you.

The North Carolina Fisheries Association fully supports the comments attached above, which were sent to you last night by the Fishery Survival Fund representatives.

We would like to concur with the FSF's comments and submit them here as representing our thoughts, comments and concerns about the NMFS proposal.

I hope you allow these comments to be considered even though they come a few hours late.

Thank you for your consideration of this request.

Sincerely,

Sean McKeon

President

NCFA

New Bern, NC

252-633-2288

**KELLEY DRYE**  
**COLLIER SHANNON**

David E. Frulla  
Partner  
Direct dial 202.342.8648  
DFrulla@kelleydrye.com

April 17, 2007

**VIA ELECTRONIC MAIL**

Mr. Mark Millikin  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

**RE: Comments on Notice to Prepare an Environmental Impact Statement  
Regarding Intent to Prepare Guidance on Annual Catch Limits**

Dear Mr. Millikin:

We are submitting these comments on behalf of the Fisheries Survival Fund (“FSF”) in response to the call for comments in the Notice of Intent to prepare an environmental impact statement relating to the Magnuson-Stevens Act National Standard Guidelines for National Standard One. 72 Fed. Reg. 7016 (Feb. 14, 2007). The FSF represents the bulk of the full-time, limited access Atlantic sea scallop fishing fleet from Massachusetts to Virginia. We appreciate this opportunity to present these comments on the Notice of Intent.

As a general comment, FSF supports the National Marine Fisheries Service’s decision to hold scoping sessions at all of the Regional Councils. The implementation of the Magnuson-Stevens Fishery and Conservation Management Act Reauthorization of 2006 (“Reauthorization Act”) requirements to set annual catch limits (“ACL”) and the institution of accountability measures (“AM”) is of critical importance to the fishing industry and worthy of the attention NMFS is providing it.

The FSF must, however, express an overall concern about the restrictive nature of the NMFS proposal, and its tendency to mandate a one-size-fits-all approach. In general, the proposal NMFS has put forth in this Notice of Intent is incredibly restrictive and narrow when compared to the statutory reauthorization of the law on which the purported revisions to the guidelines are purportedly based. In contrast to the NMFS proposal, Congress passed a law that is remarkable in its expansive approach to fisheries management and its allowance for regional differences and flexibility in the use of differing management approaches.

These comments address detailed concerns FSF has with the direction and implications of some of the issues raised in the Notice of Intent. Below, FSF addresses the specific questions raised in the Notice, as well as raising some overarching concerns. Among the greatest problems identified is the notion of creating a “buffer zone” between the ACL and what is to be termed the “overfishing levels,” which runs counter to the command of National Standard One requiring the achievement of optimum yield on a “continuing basis.” 16 U.S.C. § 1851(a)(1). Similarly, the

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Notice appears to suggest that a broader, management-focused role for the Scientific and Statistical Committees (“SSC”) should be considered, such as in suggesting AMs. Nothing in the law, however, provides the SSCs with such authority. Rather, management responsibilities continue to rest squarely with the regional management councils.

The entire ACL provision enacted into law is a broad requirement, lacking the specific mandates NMFS seems inappropriately bent on prescribing. Congress intentionally left ACL provision open so as to ensure management councils could use all of the management tools available to achieve the objective of the provision, which is to set an ACL for each fishery. A flexible mandate without specific requirements is one of the underpinning themes of the Magnuson-Stevens Act (“MSA”). From the inception of the MSA in 1976, Congress realized a one size fits all approach to fisheries management was not in the national interest, which is why the Congress created the regional councils to allow for different regions to manage fisheries in a way that best suited particular regions.

As to the general concerns, a prime example of the overly restrictive approach referred to above is the agency’s the proposal to require a “payback” provision in fishery management plans to account for any overage of the ACL. The “payback” provision was included in the Senate version of the Magnuson-Stevens reauthorization, but it was never included in the House version of the bill. When the House and Senate negotiated and settled on a final bill for passage, the “payback” provision from the Senate bill was not included in final version of the bill that Congress passed into law.

Instead, both Houses of Congress agreed on much broader language. Indeed, even within the Senate, the Commerce Committee rejected language that would have mandated hard total allowable catch limits for every fishery. Rather, the Senate Commerce Committee reported out a bill that allowed regional fishery management councils to set ACL’s using input or output controls, just as the enacted law allows. Thus, NMFS should not mandate hard TACs; equally, it should not establish a system that makes hard TACs the only practicable alternative (such as prescribing buffer zones that would greatly reduce an ACL if a hard TAC were not employed). The guidelines should not take away the flexibility in management approaches Congress sought to maintain, nor preempt successful management strategies such as days-at-sea management for the Atlantic sea scallop fishery.

In summary, FSF fears that NMFS’s specific proposals in the Notice undermine the flexibility in setting and monitoring ACLs which Congress provided. NMFS would instead inappropriately set specific requirements where they are clearly not called for by the Reauthorization Act. FSF respectfully requests NMFS reevaluate its proposals to the better reflect the terms and spirit of the Reauthorization Act. Congress specifically did not require a one-size-fits-all approach to fisheries management and NMFS does not have the authority to unilaterally impose it.

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Within the Notice of Intent, NMFS sets out a series of ideas on which it is seeking comment. What follows is FSF's response to the NMFS solicitation of comments:

**1. NMFS asked for comments on what is the role of the Scientific and Statistical Committees ("SSC") and "other peer review" processes in setting ACLs and AMs.**

The law provides a detailed framework for the roles of the SSC's and the Councils in setting the ACL and AM. 16 U.S.C. § 1852(g) as amended states:

Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

*Id.* 16 U.S.C. § 1852(h), as amended, states the Council shall:

develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g).

*Id.* The law unequivocally bifurcates the roles of the SSC and the Council in setting the ACLs. The law directs the SSC to recommend an overall level of fishing mortality that the Council cannot exceed, but the law only authorizes the Council to set the ACL at or below the recommended level.

As for the AMs, 16 U.S.C. § 1853(a) directs the Council to establish accountability measures. The Act does not authorize the SSC's to make any management decisions or set the AMs. The law only authorizes the SSC's to provide advice and assistance on issues pertaining to the scientific analysis of a fishery and not to the actual management measures. *See* 16 U.S.C. § 1852(g). The Act certainly does not authorize the SSC's to have any role in a decision that would affect allocations of catch, as this would deviate from the SSC's delineated role of providing scientific advice, and detract from their role as impartial advisors.

**2. NMFS asked for comments on the relationship between the ACL and Optimum Yield ("OY").**

The reauthorization of the Magnuson-Stevens Act did not change the existing language that requires conservation and management measures to achieve OY on a continuing basis. 16 U.S.C. § 1851(a)(1). Therefore, the Councils must set an ACL, which is a conservation and management measure, at a level that achieves OY on a continuing basis. This is a critical issue. As Congress did not amend the OY requirements in the Act, NMFS must be careful to continue

Mr. Mark Millikin  
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to abide by the preexisting requirements of the MSA as it moves to implement the new complimentary conservation provisions, such as the ACL provision.

**3. NMFS solicited comments on what revisions are necessary to the existing overfishing definition to accommodate the overfishing limit (OFL).**

The agency explains its rationale for creating the OFL as follows:

Under the NS1 guidelines, overfishing of the stock occurs when the maximum fishing mortality threshold (MFMT) is exceeded (50 CFR 600.310(d)(2)(i)). Thus, it is important to clarify the relationship between the ACL and the MFMT. While the MFMT is expressed as a rate of fishing, NMFS may recommend that FMPs be amended so that annual catch levels corresponding to MFMT—an overfishing level (OFL)—are specified along with ACLs in comparable units (e.g., weight or numbers of fish) to ACLs, to facilitate subsequent monitoring against the ACL. The OFL would be the maximum amount of annual catch from all sources (landings and discard mortality from all sectors) which does not result in overfishing.

72 Fed. Reg. at 7018. The rationale above says an OFL is needed because an ACL is presumably measured in an amount while the MFMT is a rate. FSF does not believe the translation of a unit of weight into a fishing rate is a significant hurdle that requires the formulation of a whole new term. Councils routinely set target or hard TACs in amounts and then translate the amount into a rate in order to establish appropriate management measures. The introduction of the concept of OFL will only lead to further confusion in fisheries management and provide little to no benefit from its creation.

FSF would also like to comment on the important assertion contained in the parentheses in the agency rationale quoted above to the effect that all mortality from landings and discards should count against the ACL. The Act is silent on what mortality should count against the ACL and the agency should not assume that landings **and** discards must count against the ACL. Councils may choose to count mortality in this fashion and NMFS may establish it as a preference, but NMFS has not authority under the law to mandate this form of accounting for mortality.

**4. NMFS solicited comments on concerns over the variability in data currently available for each stock.**

In this regard, FSF would like bring to NMFS's attention that upon the retirement of the *Albatross IV* there is no plan in place to conduct the Atlantic sea scallop survey. FSF is extremely concerned about the long term health of the sea scallop stock and the viability of the rotational management plan, currently in use, if there is no sea scallop survey. One of the most

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profitable fisheries in the world is dependent upon the execution of an accurate yearly survey of the sea scallop stock.

**5. NMFS solicited comments on what should be done about the variability in management approaches in reaching target fishing mortality levels.**

FSF is concerned the Agency is soliciting comments on a topic that is not within the scope of its mandate under the MSA reauthorization. The Congress through the reauthorization of the Act specifically did not allow or disallow any particular sort of management tool. On the contrary, the Congress, unlike in past reauthorizations, did not prohibit the Councils from using any specific management tool. Indeed, early version of the Reauthorization Act included requirements for all fisheries to be managed by hard TACs, yet this specific language was never passed by a Congressional committee, let alone either house of the legislature. Congress debated the merits of prescribing a specific management tool and rejected the language. As a result, all management tools and conservation measures are at the disposal of the Councils. Every management tool has pros and cons, which the Council must weigh when it deliberates a FMP. However, it is not appropriate for NMFS to pre-select any specific management tool as there is no authorization under the Act to do so.

**6. NMFS has solicited comments on setting a buffer between the ACL and the OFL and how large the buffer needs to be.**

FSF is extremely concerned about the position NMFS has put forward in the scoping document. NMFS' stated rationale for the requirement of a buffer is:

**NMFS believes that the extent of future management success using ACLs will depend largely upon ACLs being set sufficiently below the OFL for a fish stock, i.e., the size of the buffer needed between the OFL and ACL, to reduce the chance of exceeding the OFL.**

72 Fed. Reg. at 7018 (emphasis added). This is an extremely problematic approach that is apparently based upon the precautionary principle, which is not a requirement of the Magnuson-Stevens Act. The fact is the proposed buffer between the ACL and the OFL is illegal under the MSA. As FSF stated above, the MSA still requires conservation and management measures to achieve OY on a continuing basis. To achieve OY on a continuing basis, the Councils must set the ACL at OY. If NMFS requires a buffer zone that artificially lowers ACL below OY, then it is requiring the Councils to set a conservation and management measure in a manner inconsistent with National Standard One by not setting management measures at a level to achieve OY on a continuing basis. Any requirement that is not consistent with the national standards set forth in the Act is a *prima facie* violation of the MSA.

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Nor should NMFS use buffer zone measures as a means to force Councils to apply particular management regimes, such as hard TACs, or face the required imposition of major and crippling buffer zones for their ACLs. The presentations to the fishery management councils in this regard were particularly troubling.

As the Reauthorization Act as plainly states, Councils must establish ACLs that do not allow overfishing and FMPs must include measures to ensure accountability. 16 U.S.C. § 1853. The Act's language is purposely vague and open-ended in order to allow the Councils the maximum amount of flexibility in tailoring individual FMPs. NMFS is attempting to single handedly, and without any authorization, remove the flexibility placed within the law by Congress. FSF strenuously opposes this proposal to mandate buffer zones as it is impermissible under the law and contrary to Congressional intent.

**7. NMFS has solicited comments on what is the appropriate probability that the ACL will prevent overfishing.**

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**8. NMFS has asked for comments on limiting the extent of overfishing should it occur.**

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fishery,<sup>1</sup> 72 Fed. Reg at 7018 (quoting 50 C.F.R. § 600.305(c)(12)), the context suggest that NMFS is viewing stocks at essentially a species or subspecies level. The proper term in this context should be “fishery” as that is the unit of management to which all of the requirements of the MSA apply.

This nomenclature is significant. In the Reauthorization Act, Congress did not change the definition of a fishery, nor in any way attempted to restrict the ability of Councils to manage assemblages of species as a unit for purposes of the law. This flexibility, which is inherent in the definition of a fishery as functional unit that can be defined, among others, in economic terms, is the basis for what has erroneously been termed the “mixed stock exception.” Rather than the exception, it is the rule, and the National Standard One guidelines should not subvert the law by essentially requiring management at the species or subspecies level.

In application, Councils retain flexibility under the MSA as amended to treat an assemblage of species caught in a mixed catch fishery as a single “fishery” and manage it according to the law. With respect to ACLs and AMs, this means that reference points can be set for the aggregated stock and these measures are applied to fishery as a whole, not to the individual species within the fishery. The National Standard One guidelines should be absolutely clear in this regard.

**9. NMFS is seeking comments on establishing corrective actions to ensure accountability in a subsequent year for an overage of the OFL of a stock for the previous year.**

The FSF is struck by the similarity of this agency proposal to the “payback” language in the Senate passed version of the Reauthorization Act. The Senate passed language required the Council to reduce the ensuing year’s ACL by the same amount of any overage of the prior year’s ACL. As NMFS is aware, the payback provision fell out of the bill during the negotiations between the House and Senate and was not passed into law. What ended up in the Act was the unspecific language in 16 U.S.C. § 1853 stating the Council shall take “measures to ensure accountability.”

Therefore, the Reauthorization Act authorizes a Council and NMFS to institute a payback provision if the ACL is exceeded. What the Act does not do is require a payback. It is solely up to the Council to decide whether or not to instate a payback provision as part of its accountability measures in a particular FMP. Generally speaking, however, it is inappropriate to use “payback” provisions in fisheries which are managed through hard TACs or other mechanisms, such as days-at-sea (“DAS”) designed to achieve a target fishing mortality level, when those measures

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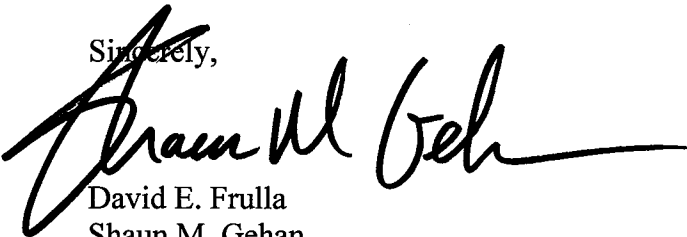
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This scoping process is the first in a series of important steps in the implementation of the Magnuson Stevens Reauthorization Act. FSF appreciates this opportunity to comment on the Notice of Intent to prepare an environmental impact statement and are hopeful these comments will guide the agency in implementing the Act. Please do not hesitate to contact us if you require any further information.

Sincerely,



David E. Frulla  
Shaun M. Gehan  
Andrew Minkiewicz

Attorneys for the Fisheries Survival Fund

# NORTHEAST SEAFOOD COALITION

April 17, 2007

Mark R. Milliken  
Office of Sustainable Fisheries  
National Marine Fisheries Service  
Silver Spring, MD 20910

Dear Mr. Milliken:

The Northeast Seafood Coalition submits the following comments in response to the request for the solicitation in Federal Register / Vol. 72, No. 30 on Wednesday, February 14, 2007:

## **National Standard 1 Guidelines: Notice of Intent to Prepare Environmental Impact Statement**

Founded in January 2002, Northeast Seafood Coalition (NSC) represents over 300 fishermen participating in all the predominant groundfish gear sectors including trawl, gillnet and hook gear, and 60 shore-side businesses from Maine to Long Island, New York. The mission of the NSC is to promote a healthy and sustainable commercial fishing and seafood industry comprised of family-owned business and viable ports. NSC encourages, and inherently supports, reasonable and rational fishery management measures that are based on good science and legislation.

NSC greatly appreciates the opportunity to provide comments pertaining to National Standard 1.

Sincerely,

Jackie Odell  
Executive Director

April 17, 2007

**TO: Mark Millikin**  
**National Marine Fisheries Service / NOAA**  
**1315 East West Highway**  
**Silver Spring, MD 20910**

**RE: Scoping Comments on Annual Catch Limit DEIS**

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The Northeast Seafood Coalition (NSC) is pleased to provide the following scoping comments on the 'Notice of Intent' (NOI) regarding implementation of the Magnuson-Stevens Reauthorization Act (MSRA) and associated revisions to the National Standard 1 guidelines published in the Federal Register on February 14, 2007. NSC also presented oral comments at the scoping meetings in Silver Spring, MD on March 9, 2007, and at the New England Fishery Management Council (NEFMC) meeting on April 9, 2007. NSC's comments are presented primarily in the context of the Northeast Multispecies (groundfish) Fishery Management Plan (FMP). They address most of the "key issues" bullets identified in the NOI as well as several additional issues.

## 1) Prepare an EIS

- The NOI states: "After considering comments received during the scoping process, NMFS will either develop a draft environmental impact statement (DEIS) and proposed rule or an environmental assessment (EA) and proposed rule."
- NSC strongly urges the Agency to prepare a full EIS because this action represents a major federal action with significant impacts.
- Under CEQ's NEPA regulations (40 CFR 1508.27), and NOAA guidance for NEPA compliance, the determination of a significant impact is a function of both context (scope) and intensity. The impacts associated with the proposed action cover the full range of context; from local to 'society as a whole'. A review of the 10 specific considerations for evaluating the intensity of the impacts of the proposed action also strongly suggests they are significant.
- Preparation of an EIS would be constructive to the overall objective of developing the most effective NS1 guidelines that achieve the confidence of affected interests. A comprehensive EIS analysis would enhance the ability of the Councils and affected interests to understand and evaluate the proposed changes to the NS1 guidelines in terms of the unique fisheries in each region.

## 2) **Groundfish Data Collection and Analysis Capabilities**

- The NE Multispecies FMP covers 19 stocks and soon may be expanded to more than 20. It is a diverse fishery in a highly dynamic ecosystem. It presents significant scientific and management challenges.
- Although improvements could definitely be made, the current effort-based (days at sea) ‘input control’ data collection and management system for this fishery has proven to be a poor predictor of actual catch/fishing mortality, has generated unacceptable levels of regulatory discard mortality and waste, and has left as much of the Optimum Yield (OY) of valuable stocks in the water as it has put on the dock. Large segments of the fishery and many fishery dependent communities are experiencing severe adverse economic impacts as a consequence of extreme fishery restrictions.
- NSC and many in NE groundfish community are very eager to develop a catch-based management system that will correct these deficiencies and achieve the new MSRA requirements. The NEFMC has initiated Amendment 16 to the Plan and solicited proposals for ‘output control’ (catch-based) management systems to replace the current system.
- NSC has submitted and the Council is presently developing and evaluating a catch-based “Points System” for managing NE groundfish for this purpose. One of the accountability measures this system would utilize is an ‘in-season management measure’ system to achieve annual catch limits and optimum yield.
- In-season management measures are one of the two primary tools identified in the NOI to satisfy new MSRA requirements for Accountability Measures (AM) to achieve Annual Catch Limits (ACL). The technological and analytical capabilities needed to conduct timely monitoring of landings, and to use such data for the implementation of in-season management measures, are a prerequisite to the implementation of an effective catch-based management system.
- NMFS has made clear it does not have the technological or analytical capabilities to conduct timely monitoring of landings or implement in-season management for the NE Multispecies fishery. In other words, NMFS does not have the capability to implement a catch-based ‘output control’ management system for NE groundfish. NMFS must allocate new and existing assets to develop these critical capabilities in order to meet the new MSRA requirements.

- This point is also directly relevant to the consideration of how to establish AMs for multiple sectors where the ACL is subdivided for a stock. NSC believes each sector should be held individually accountable (through either in-season measures or through the subsequent pay-back of ACL overages) for its portion of the ACL. In-season AMs need to be tailored to the unique realities of each sector fishery including the quality and timeliness of the data monitoring system. Any sector ACL payback should be in proportion to the biological impact of the overage. Sectors that have achieved their respective ACLs should never be penalized through in-season or post-season (payback) measures because of ACL overages in another sector. The ACL payback mechanism provides the means to achieve the necessary biological accountability for a non-compliant sector while insulating compliant sectors from being held accountable for overages in the other sector. However, in any case, NMFS presently does not have the monitoring or analytical capabilities necessary to manage and hold accountable multiple sectors in the NE groundfish fishery. This point was also made by the NEFMC Executive Director at the April 9, 2007, scoping hearing in Mystic, CT.
- NSC has submitted an appropriations request to Congress to allocate to NMFS \$3 million in FY08 to initiate the development of the necessary monitoring and analytical capabilities to effectively implement a catch-based management system for NE groundfish that can meet the new MSRA requirements. NMFS should recognize its current limitations and actively support this request.

### **3) Scientific and Statistical Committees (SSCs)**

- NSC believes that a greater role for the SSCs in the Council process presents an opportunity to substantially improve upon the PDT process now in use in the NE region. NSC has found that the lack of transparency and accessibility of the PDT process is not conducive to the development of much needed innovation and improvement in NE groundfish management. NSC hopes that the SSC process will substantially improve this situation.
- Nevertheless, NSC does not believe that Congress intended for the SSCs to dictate ACLs and AMs to the Councils. Instead, SSCs should be tasked with presenting alternatives to the Councils accompanied by biological risk evaluations whenever possible, as well as their recommendations. The SSC should be advisory in its role.
- Councils should retain the discretion and authority they have held since enactment of the Magnuson-Stevens Act (MSA) to set such management parameters as ACLs and AMs (and any buffer). If the Council fails to submit measures that are consistent with

the MSRA and MSA requirements, then the Secretary should disapprove such measures under the authority of MSA section 304.

#### 4) **Buffer Between OFL and ACL**

- There does not appear to be any statutory mandate for establishing a ‘buffer’ where the ACL must always be set below the Overfishing Limit (OFL). NSC does not believe the NS1 Guidelines should fundamentally alter or add to the relevant statutory requirements or Congressional intent. In fact, the OFL concept is a NMFS initiative that was not specified by Congress in the MSRA or underlying MSA.
  - There are existing layers of precaution built into the process of specifying stock status determination criteria and setting control rules. NSC questions whether an additional layer of precaution should be mandated for setting the ACL below the OFL.
  - A higher priority objective for NSC is to have the Agency invest the resources necessary to improve scientific precision in monitoring and managing on a timely basis the output performance of the NE groundfish fishery rather than ‘planning for failure’ by mandating more even more precaution through a buffer. We need a long term solution rather than another patch (buffer) for the hole in the boat!
  - Nevertheless, NSC fully appreciates the need to provide a mechanism and guidance for managers to consider, at their discretion, the need for additional precaution in setting ACLs. Councils should consider if there is a need to incorporate a buffer as a means to anticipate and account for uncertainty in the science and ecosystem dynamics on a stock by stock basis. Again, this should remain entirely at the discretion of the Council process and not be a requirement in the guidelines. This is analogous to the underlying discretion to set OY at or below MSY.
- To the point of the relationship between the ACL and OY, NSC suggests the ACL is the annual expression of OY. If the Council chooses to set OY equal to MSY, then the ACL should be equal to the OFL. To the extent a Council chooses to set OY below MSY (based on “any relevant economic, social or ecological factor”), the ACL would be proportionately lower than the OFL (the catch value equivalent to  $F_{msy}$ ). Again, the ‘buffer’ between ACL and OFL is analogous to the difference between OY and MSY. NSC feels very strongly that in no case should any of the new MSRA requirements for ACLs and ending overfishing supercede or subvert the fundamental

MSA mandate to achieve OY on a continuing basis. NMFS should reflect this in the guidelines as well as an explicit reflection of the policy embodied in the MSA definition of OY.

- Further, in evaluating the degree of ‘uncertainty’ and, therefore, the size (if any) of a buffer between the ACL and OFL, the Councils should consider more than just the quality or variability in the data, or the historical performance of the fishery/management measures in achieving a specific OFL. The Councils should also consider the potential ‘down-side’ consequences (biological relevance) of exceeding an OFL relative to the biological status of the stock in question. If an OFL is exceeded by 10% for a stock that is at or above Bmsy, the consequences (biological risk) are likely to be small. Conversely, the same level of ‘overfishing’ may present much greater consequences (risk) for a stock at or below 50% Bmsy. This consideration should be reflected in the guidelines.
- Finally, as to the respective roles of the SSCs and the Councils, NSC believes that the Councils should retain the authority and discretion whether or not to establish a buffer (where the ACL is below the OFL). As previously stated, the SSCs should be advisory and tasked with providing the Council with risk-assessed alternatives and recommendations to be considered by the Council in setting ACLs, OFLs and AMs.

## 5) Accountability

- The NMFS Discussion Documents for the scoping hearings state that an ACL is an “annual numerical target catch level” that is “an annual value set in weight or numbers of fish”.
- NSC supports this interpretation in the sense that the performance of a management system/fishery should be held accountable to the ACL measured as a quantity of catch—not a fishing mortality rate target. ACLs measured in this way should be the benchmark for management success.
- This is particularly relevant to the NE Multispecies fishery because the current management system uses fishing mortality rate targets from which target Total Allowable Catches (TACs) are computed. However, the performance of the fishery is ultimately evaluated in terms of whether the fishery met stock specific fishing mortality rate targets set forth in Amendment 13 to the Plan.
- It is a fact that in recent years the NE Multispecies fishery (management measures) has rarely exceeded the target TACs established for each stock, and in nearly all cases

has consistently and substantially under-yielded the TACs (OY). However, subsequent retrospective scientific analyses have produced very large downward revisions of the target TAC for certain stocks. These after-the-fact revisions have generated draconian management responses, extreme economic hardship, wasted yield, and the incorrect perception by Congress and the public that NE fishermen and fishery managers were acting irresponsibly.

- Finally, to the issue of circumstances where a numerical ACL cannot be set, NMFS should include guidance for establishing a proxy for an ACL that provides a biologically relevant measure of fishing mortality relative to the overfishing threshold. This approach may be necessary for those ‘data poor’ stocks that comprise a portion of the NE Multispecies complex.

## 6) Administrative Procedures Act (APA)

- The NOI identifies ‘in-season management measures’ as one of two ‘Accountability Measure’ tools to ensure ACLs are respected.
- As in other fisheries, catch trajectories for NE groundfish stocks can be steep relative to the TACs (ACLs). Therefore, very timely in-season management responses will be needed in order to implement an effective catch-based management system now under development by the NEFMC.
- NSC is very concerned that the APA may present a significant barrier to the effective use of timely in-season management measures. The time required to satisfy APA requirements may substantially exceed the response time needed to implement effective in-season management measures in response to timely catch data.
- NSC urges the agency to evaluate what it can do to facilitate the use of in-season management measures in the APA context. Should the agency provide specific guidance for minimizing potential APA delays/barriers to the implementation of timely in-season management measures? Are there any waivers or other procedures that could be useful?

## 7) MSRA and Amendment 16 Implementation Schedules

- MSRA subsections 104(a) and (b) require the Councils to “**establish a mechanism** for specifying annual catch limits”... “**in fishing year** 2010” for fisheries subject to overfishing (emphasis added).



- NSC’s interpretation of this provision is that for, fisheries subject to overfishing, the Councils need to have a mechanism in place no later than the end of fishing year 2009 (for effect in 2010) that will specify annual catch limits either immediately or at some time in the future. Indeed, those annual catch limits when implemented must not allow overfishing to occur—but the provision does not require immediate implementation of the annual catch limit (or ending overfishing) in or by fishing year 2010. The operative term is “mechanism”.
- In the NE Multispecies FMP context, fishing year 2010 begins on May 1, 2010, and ends on April 30, 2011. Therefore, in order to comply with this provision, Amendment 16 would have to be implemented (and include a mechanism to specify annual catch limits) no later than April 30, 2010. Given the 6 month period for NMFS to approve and implement an Amendment (stated in the NOI), the NEFMC would need to submit Amendment 16 to the Secretary for approval no later than November 1, 2009, in order to comply with MSRA.
- The NEFMC’s current implementation schedule for Amendment 16 is to submit to the Secretary for approval in September 2008, more than 1 year in advance of the MSRA subsection 104(a) and (b) requirements. Amendment 16 is the NEFMC’s vehicle for implementing MSRA for NE groundfish.
- It should be noted—and NMFS should reflect this in their guidance –that Amendment 16 would not necessarily have to implement annual catch limits that prevent overfishing in fishing year 2010—but it would have to include a mechanism for specifying such annual catch limits at some point (in FY2010 or thereafter).
- Beginning on July 12, 2009, (30 months after enactment), MSRA subsections 104(c) and (d) provide Councils/NMFS with two years to implement management measures that will end overfishing immediately for stocks where overfishing is occurring.
  - NSC’s interpretation of these provisions is that the Councils/NMFS have until July 12, 2011, to implement measures that will end overfishing immediately.
  - Given the 6 month period for NMFS to approve and implement an Amendment (as stated in the NOI), the NEFMC would need to submit Amendment 16 to the Secretary for approval no later than January 12, 2011, to comply with these MSRA requirements. NSC recognizes that the timing requirements of

subsections (a) and (b) might supercede (trump) the timing of subsections (c) and (d), depending on the circumstances.

- In any case, there is a major problem with the NEFMC's current Amendment 16 implementation schedule (target date for submission = September 2008). This will require the Council to fully develop and issue for public comment its preferred management alternatives well before receiving the results of the NEFSC 2008 benchmark stock assessment in late August/early September of 2008, on which such management measures are supposed to be based. It is widely anticipated that this benchmark assessment will include major changes in the status of some or many stocks—but no one can possibly predict the size or scope of these changes in advance—at least not with sufficient certainty to develop effective management measures. It will also require the Council to take final action within one month of receiving the benchmark assessment. This is unnecessarily inconsistent with the MSRA implementation schedule, and it is certainly inconsistent with at least the spirit of the National Standard 2 requirement to utilize the best scientific information available.
- Again, the most conservative interpretation of the MSRA implementation schedule would require NEFMC submission of Amendment 16 no later than November 1, 2009. The Agency should provide guidance to all Councils and, specifically, to the NEFMC to clarify the MSRA implementation schedule requirements. NMFS should discuss this with NEFMC (soon !), and consider if it would be possible and desirable to conform the A16 implementation schedule to the MSRA schedule and avoid this major problem.



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Mark Millikin  
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Re: Scoping comments on annual catch limit DEIS

Dear Mr. Millikin,

Thank you for the opportunity to address the scope of the forthcoming DEIS regarding revisions to the National Standard 1 Guidelines, both to implement the newly passed Magnuson-Stevens Act amendments, and to conform more closely with the current state of scientific understanding of marine ecosystems. Pacific Marine Conservation Council (PMCC) is a West Coast non-profit organization that works with commercial and recreational fishermen, marine scientists, environmentalists, and coastal community leaders to promote ecosystem-based management that fosters sustainable fishing communities.

PMCC is a member of the Marine Fish Conservation Network (MFCN), and we concur with the scoping comments submitted by MFCN. The purpose of this letter and attachment is to highlight the need to improve guidance regarding assessing overfishing on finer spatial scales.

National Marine Fisheries Service should help the Regional Management Councils understand the need to avoid localized depletion and fragmentation of the structure of many fish populations. If assessments focus on too gross a geographic range, area management measures may need to be employed to mitigate the potential for overfishing distinct portions of a stock.

Our expertise is in West Coast ocean fisheries, so our discussion will focus on West Coast groundfish. We are also attaching a scientific consensus statement that deals primarily with the West Coast. However, much of this material can apply to other fisheries.

West coast groundfish are social-ecological systems (Gunderson and Pritchard 2002), integrated concepts of humans in nature. They are seldom linear and predictive. The issue of scale – in particular the match between spatial and temporal scales at which institutional, ecosystem and associated human community processes occur - becomes central to effective policy (Berkes 2004).

There is clear evidence of spatial structure in marine ecosystems along the West Coast of North America (Gunderson and Vetter 2006, Allen et al. 2006, Blanchette et al. in prep). This is manifested in regional differences in the structural and functional aspects of both physical and biological components of marine ecosystems. Consequently, nearshore ecosystems exhibit marked regional differences in species composition, dynamics and productivity (Bennett et al.

2004). In particular, offshore ecosystems over the continental slope exhibit abrupt changes in the vicinity of the major capes (Blanco, Mendocino and Conception) (Tolimieri and Levin 2006).

However, this spatial structure is not fixed in time (Berkeley et al. 2004, Jay 1996, Levin et al. 2006). Much is defined by geomorphologic (e.g., bottom type, depth and topography) and oceanic (e.g., currents, upwelling) aspects of the physical environment, whereas the temporal variability is largely driven by climate-ocean processes (e.g., interannual variability, El Niño-Southern Oscillation (ENSO), Pacific Decadal Oscillation (PDO)). And these structuring processes are continually changing. In the face of increasing uncertainty and variability in the marine environment (e.g., climate change, dead zones), managing stocks on a finer scale should provide flexibility and increase the resilience of stocks and ecosystems. For example, Berkeley et al. (2004) suggest that the geographic source of successful recruits to west coast groundfish populations may differ from year to year. As a result, “management should strive to preserve a minimal spawning biomass throughout the geographic range of the stock.” Spatial management thus becomes proactive.

As elsewhere in the world, human communities along the West Coast of North America also exhibit marked spatial structure in size, composition and the socioeconomic processes that affect them. Like their marine ecological counterparts, this spatial structure reflects geographic variation in the physical (e.g., geomorphologic, hydrologic, climatic) and biological (vegetation and associated agricultural and forestry practices) attributes of the environment. This regional variation determines the relative role of fisheries in the socioeconomic and cultural composition of local communities. Highly populated regions around major ports facilitate large-scale, industrialized offshore fisheries, whereas small, remote communities support coastal family-based fisheries. In turn, the relative importance of subsistence, recreational and commercial fisheries varies regionally. Moreover, human impacts on the marine environment vary regionally in relation to the distribution and size of human populations and the magnitude and kinds of human activities (e.g., waste discharges, nutrient influx, cooling water intakes of power plants, likelihood of oil spills, altered riverine and estuarine structure and functions).

The scientific community and fishing industry have long recognized that spatial management congruent with the spatial and temporal scales of marine ecosystems and human communities is necessary for healthy marine ecosystems and sustainable fisheries (Gunderson and Vetter 2006, Jentoft 2000, Perry and Ommer 2003). Unfortunately, the existing coast-wide scale of institutional structures for the management of west coast groundfish does not correspond to the spatial and temporal structure of ecological and socioeconomic systems. As a consequence, this scale of management does not adequately protect against local area depletion of stocks, provides disincentives for stewardship, and fails to safeguard the biological structure of fish populations and the ecosystems that support them.

For example, as a result of this coast-wide management approach, over-harvest in one area has shut down fishing over large areas of the coast, resulting in prohibited access to historic resources by coastal fishing communities. The inability to account for spatial structure can lead to uncertainty in the status of stocks and the effects of local ecosystems on stock productivity and resilience. Generalizations of the status of a stock from one portion of a species range across its entire range can give misleading inferences regarding stock status over vast portions of a stock. Coast-wide fisheries management lacks the flexibility to accommodate and does not account for regional variation of multiple stressors (i.e. non-fishing impacts described above in combination with fishing impacts) to marine ecosystems and fished populations. Thus, one fundamental solution to the current management dilemma is a regionally-based management structure which recognizes that fish populations and community uses are not evenly distributed along the coast.

In conclusion, as NMFS prepares the DEIS considerable attention should focus on the need for finer scale assessments and area-based approaches. Especially needed is guidance on how to take a precautionary approach when there are enough data to indicate the existence of multiple sub-populations of a stock assessed on a broader geographic scale, but the resolution of the assessment is inadequate to fully inform management

on a finer scale. These are difficult but important issues that need attention, if we are truly going to end overfishing.

If you have questions regarding these scoping comments, please contact Jennifer Bloeser, science director ([jennifer@pmcc.org](mailto:jennifer@pmcc.org)) or Peter Huhtala, senior policy director ([peter@pmcc.org](mailto:peter@pmcc.org)).



Respectfully submitted,  
Matt Van Ess  
Executive Director

Attachment: "Consensus Statement on Spatial Management of West Coast Fisheries"

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PACIFIC MARINE  
CONSERVATION COUNCIL

## Consensus Statement on Spatial Management of West Coast Fisheries

In August 2006, a group of scientists, fishermen, and fisheries-policy experts were convened by Pacific Marine Conservation Council (PMCC) for the ‘Cape to Cape Meeting’, to explore the issue of spatial (area-based) management of west coast groundfish. This group was first tasked with reviewing existing information on three scales of spatial structure: population (genetic, metapopulation, population dynamic/stock assessment, life history), ecological community (assemblage and ecosystem scales), and human community. They were then tasked with evaluating the merits of some form of spatial management of west coast groundfish, and generating specific recommendations for its implementation.

As a starting point for this process, PMCC made the following straw proposal: a practical first step might be to increase the spatial resolution of current management measures by using the three major capes in the region: Blanco, Mendocino and Conception. The capes are well-known biogeographic boundaries of fish communities [1, 2, 3] and form the basis for existing International North Pacific Fisheries Commission (INPFC) statistical areas.

### **The following statement is a consensus of the Cape to Cape working group:**

*The Cape to Cape group feels that successful management of west coast fisheries depends in great measure on matching the spatial scales of interest for coastal communities with those scales naturally found within marine ecosystems. As such, the group supports management of west coast groundfish fisheries at regional scales that recognize the unique relationships between local stocks and the fishing communities that depend on them.*

### **Review of existing concepts and information**

As is the case with all fisheries, those for west coast groundfish are social-ecological systems [4], integrated concepts of humans in nature. They are seldom linear and predictive, and the issue of scale – in particular the match between spatial and temporal scales at which institutional, ecosystem, and associated human community processes occur - becomes central to effective policy [5].

There is clear evidence of spatial structure in marine ecosystems along the West Coast of North America [6, 7, 8]. This is manifested in regional differences in the structural and functional aspects of both physical and biological components of marine ecosystems. Consequently, nearshore ecosystems exhibit marked regional differences in species composition, dynamics and productivity [9]. Offshore ecosystems, in particular over the continental slope, exhibit abrupt changes in the vicinity of the aforementioned capes (Blanco, Mendocino and Conception) [10].

However, this spatial structure is not fixed in time [2, 3, 11]. Much is defined by geomorphologic (e.g., bottom type, depth and topography) and oceanic (e.g., currents, upwelling) aspects of the physical environment, whereas the temporal variability is largely driven by climate-ocean processes (e.g., interannual variability, El Niño-Southern Oscillation (ENSO), Pacific Decadal Oscillation (PDO), climate change.) And these dynamic structuring processes are continually changing. In the face of increasing uncertainty and variability in the marine environment (e.g., climate change, dead zones), managing stocks on a finer scale should provide flexibility and increase the resilience of stocks and ecosystems. For example, Berkeley et al. (2004) [11] suggest that the geographic source of successful recruits to west coast groundfish populations may differ from year to year. As a result, “management should strive to preserve a minimal spawning biomass throughout the geographic range of the stock.” Spatial management thus becomes proactive.

As elsewhere in the world, human communities along the West Coast of North America also exhibit marked spatial structure in size, composition and the socioeconomic processes that affect them. Like their ecological counterparts in the marine environment, this spatial structure reflects geographic variation in the physical (e.g., geomorphologic, hydrologic, climatic) and biological (vegetation and associated agricultural and forestry practices) attributes of the environment. This regional variation determines the relative role of fisheries in the socioeconomic and cultural composition of local communities. Highly populated regions around major ports facilitate large-scale, industrialized offshore fisheries, whereas small, remote communities support coastal family-based fisheries. In turn, the relative importance of subsistence, recreational and commercial fisheries varies regionally. Moreover, human impacts on the marine environment vary regionally in relation to the distribution and size of human populations and the magnitude and kinds of human activities (e.g., waste discharges, nutrient influx, cooling water intakes of power plants, likelihood of oil spills, altered riverine and estuarine structure and functions.)

The scientific community and fishing industry have long recognized that spatial management congruent with the spatial and temporal scales of marine ecosystems and human communities is necessary for healthy marine ecosystems and sustainable fisheries [6, 12, 13]. Unfortunately, the existing coast-wide scale of institutional structures for the management of west coast groundfish does not correspond to the spatial and temporal structure of ecological and socioeconomic systems. As a consequence, this scale of management does not adequately protect against local area depletion of stocks, provides disincentives for stewardship, and fails to safeguard the biological structure of fish populations and the ecosystems that support them.

For example, as a result of this coast-wide management approach, over-harvest in one area has shut down fishing over large areas of the coast, resulting in prohibited access to historic resources by coastal fishing communities. The inability to account for spatial structure can lead to uncertainty in the status of stocks and the effects of local ecosystems on stock productivity and resilience. Generalizations of the status of a stock from one portion of a species range across its entire range can give misleading inferences regarding stock status over vast portions of a stock. Coast-wide fisheries management lacks the flexibility to accommodate and does not account for regional variation of multiple stressors (i.e. non-fishing impacts described above in combination with fishing impacts) to marine ecosystems and fished populations. Thus, one fundamental solution to the current management dilemma is a regionally-based management structure which recognizes that fish populations and community uses are not evenly distributed along the coast.



## Conclusions

- A major factor of variability in the species composition of west coast marine fishes, invertebrates and algae assemblages occurs in an inshore/offshore direction [1, 2, 3, 7].
- There is a distinct similarity between the spatial homogeneity of the biological and human communities as one moves from the nearshore to the offshore groundfish fisheries. As one moves offshore, both the ecosystems and their associated fishing economies become more spatially homogeneous.
- It seems reasonable that offshore groundfish management might focus on the fish and associated harvest levels designed to sustain biological structure (i.e. an ecosystem-based approach.) This would likely be a scaled down version of management per status quo to one that is area-based and perhaps delineated by major capes. Providing incentives to reduce bycatch of overfished species could be a priority for spatial management offshore.
- In contrast, nearshore management might focus on human communities and access to nearshore resources. Nearshore management would likely be structured at a finer spatial scale than offshore, and more oriented toward coastal community or nearshore allocations based on gear-type.

## Recommendations

- The spatial pattern of groundfish management should be different between offshore and nearshore fisheries.
  - Offshore management would have larger geographic areas (e.g., regions with boundaries defined by capes), be top-down (Federal fishery councils), and be more traditionally species-based and model-driven, applied within an ecosystem-based management context. In essence this would be a scaling down of current assessment and management protocol to the Cape to Cape areas. The focus of offshore management would be on maintaining healthy offshore ecosystems utilizing an ecosystem-based management approach, with a spatial scale larger than that applied for nearshore fisheries management.
  - Nearshore management would have smaller areas defined by the interfacing of coastal communities with nearshore reefs and fishing grounds, be more bottom-up (States, local communities), and require more innovative approaches linking fishing communities with ecosystems. The focus of nearshore management would be on maintaining healthy interactions between coastal communities and nearshore ecosystems, with coast-wide coordination and information transfer across a network of local management entities.
- No new information or assessments are needed to initiate Cape to Cape management right now.

- Spatial management can be justified on both a biological basis (e.g., discrete population structure, spatially distinct species assemblages) and a social one (e.g., conservation incentives to keep fishing.)
  - This concept could be applied within the current structure of west coast groundfish management authority, stock assessment and survey methodologies.
  - Even if new stock assessments cannot be done at a newly (smaller) defined spatial scale right now, quotas can still be rationally and scientifically determined on a spatial grid (i.e. Cape to Cape). Most of the major species are quantitatively surveyed each year on a much smaller spatial grid than that which is currently used for management.
  - As a possible approach, coast-wide quotas could be pro-rated based on relative survey abundance by area.
- In order to initiate the spatial management process, and provide conservation incentives that will reduce the bycatch of overfished species while still maintaining harvest opportunities, we recommend that spatial quotas first be implemented for all overfished species.

Finally, the Cape to Cape working group supports the following three recommendations for spatial west coast groundfish research and management made by Golden (2006) [14] to the Pacific Fishery Management Council's (Council) Trawl Individual Quota Committee:

- The Council should continue to support research into spatial sampling and modeling approaches for stock assessments. The degree of localized overfishing is unknown; fishery and survey data and habitat information should be analyzed on a finer spatial scale to develop a better understanding of fishing effort and fish distribution patterns.
- Recent studies of population and age structure and recruitment dynamics raise serious biological concerns with current and proposed management. Current management measures (Rockfish Conservation Areas (RCAs), selective gears, etc.) alongside new tools (finer area allocation, Marine Protected Areas (MPAs), etc.) should be considered to enhance proper spatial management, safeguard against localized overfishing as a precautionary measure, and to conserve population and age structure needed to increase the likelihood of successful recruitment events.
- Area allocation of Optimum Yield (OY) for west coast groundfish should be employed as a hedge against unpredictable spawning success. Available information on species characteristics (genetic structure, age structure, reproduction, and larval dispersal) should be used as a guide to establish boundaries and OYs for sub-areas within the West Coast.

## Summary

The Cape to Cape working group strongly supports spatial management of west coast groundfish fisheries. This system will benefit both the resource and the fishing industry. Information is

currently available to allow its immediate implementation. A white paper now in preparation will document and elaborate on the points made in this statement. Subsequently, PMCC will host meetings with members of the fishery science, fishery management and fishing communities to further outline an implementation strategy. The Cape to Cape working group recognizes that spatial management will take time to implement and looks forward to continued collaboration on this issue.

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**Members of the Cape to Cape working group who endorsed this statement:**

Jennifer Bloeser, *Science Director*, Pacific Marine Conservation Council, Port Townsend, WA  
Mark Carr, *Associate Professor*, University of California at Santa Cruz, Santa Cruz, CA  
Leesa Cobb, *Communication Coordinator*, Port Orford Ocean Resources Team, Port Orford, OR  
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Robert Francis, *Professor Emeritus*, University of Washington, Seattle, WA  
Caroline Gibson, *Communications Director*, Pacific Marine Conservation Council, Port Townsend, WA  
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Megan Mackey, *Ocean Policy Analyst*, Pacific Marine Conservation Council, Portland, OR  
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Russ Vetter\*, *Leader, Fish Ecology*; NOAA Fisheries/ SWFSC, La Jolla, CA  
Mike Zucker, *Fisherman*, Santa Cruz, CA

\* *Support for this document represents personal scientific view, and does not imply endorsement by NOAA Fisheries Service.*



# Southern Shrimp Alliance, Inc

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[John@Shrimpalliance.com](mailto:John@Shrimpalliance.com)

**April 17, 2007**

**TO: Mark Millikin  
National Marine Fisheries Service / NOAA  
1315 East West Highway  
Silver Spring, MD 20910**

**RE: Scoping comments on annual catch limit DEIS**

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The Southern Shrimp Alliance (SSA) is pleased to provide the following scoping comments on the 'Notice of Intent' (NOI) regarding implementation of the Magnuson-Stevens Reauthorization Act (MSRA) and revisions to the National Standard 1 guidelines published in the Federal Register on February 14, 2007. SSA also presented oral comments at the scoping meetings in Silver Spring on March 9, 2007. SSA's members include wild domestic shrimp producers (harvesters and processors) throughout the Gulf and South Atlantic region.

## **(1) Annual Species Exception**

Section 104 (a)(10) of the MSRA adds a new provision to section 303 (a) of the Magnuson-Stevens Act (MSA) that requires any Fishery Management Plan (FMP) to establish a mechanism for specifying annual catch limits for managed species/stocks. Section 104(b)(3) of the MSRA provides an exception to this requirement for "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".

The NOI states that this exception applies to "possibly some shrimp or squid species". SSA worked very closely with Congressional Majority and Minority Committee staff to ensure that this exception specifically applies to penaeid and rock shrimp species in the Gulf and South Atlantic shrimp fisheries. The language in the NOI suggests that there may be some question as to Congressional intent and the meaning of this exception as it applies to these shrimp species. SSA urges NMFS to confirm the correct application of this exception to penaeid and rock shrimp species and include a clear explanation in the guidelines.

## **(2) Annual Catch Limits (ACL) for Shrimp Species Subject to Overfishing**

Language was added to the end of the MSRA section 104(b)(2) exception for annual species that would require an ACL to be set for shrimp species when “the Secretary has determined the fishery is subject to overfishing of that species”. NMFS needs to very carefully consider the many practical implications of this provision for warm-water shrimp species and provide very clear and specific guidance. As explained below, it is not at all clear how this specific provision can be implemented in a logical way.

First, even when a shrimp population is found to be at an historically low level in a given fishing year, great care must be taken to evaluate whether there is a relationship between the current stock status and fishing mortality. In other words, can NMFS ever determine with sufficient confidence that “the fishery is subject to overfishing for that species”?

In the vast preponderance if not all of cases, the status of a warm-water shrimp species is highly likely to be a direct consequence of the peculiar environmental (weather) and ecological conditions in that particular fishing year. These conditions are not static, of course, and it is extremely difficult (questionable) to isolate the effects of fishing mortality when compared to extremely high natural mortality in these species. Consequently, there is often no basis for implementing a fishery management response when such circumstances occur.

In those rare (non-existent?) cases where a fishery management response might be determined to be justified, it should be well understood that setting an Annual Catch Limit (ACL) for warm-water shrimp species that exhibit “a life cycle of approximately 1 year” would be impossible to implement (as NMFS proposed to define ACL) and would be of limited, if any, biological utility.

The NOI identifies two principal Accountability Measures (AMs) for ensuring ACLs are respected; 1) in-season management measures; and 2) a post-fishing year payback of an ACL overage.

In the first case, the timeliness of NMFS shrimp catch monitoring capabilities does not support the implementation of an ACL through an in-season management measure. It is not possible to achieve a measure of total annual shrimp catch until months after the end of the fishing year, and there is no basis to anticipate this reality will change.

Further, it does not make any biological sense to apply a post-fishing year AM for shrimp, such as an ACL overage ‘payback’, because the ACL overage in the previous year is from a different shrimp population than the current year shrimp population. Deducting from the current fishing year an ACL overage that occurred in a previous year is not relevant to the ‘overfishing’ that may have occurred. The shrimp population that was subject to overfishing would already be dead in the subsequent fishing year.

The NMFS Scoping Hearing Discussion Documents define ACLs in terms of a “numerical annual value set in weight or numbers of fish” (shrimp). In other words, a quota or Total

Allowable Catch (TAC) for shrimp. NMFS should reconsider this definition for warm-water shrimp species that exhibit “a life cycle of approximately 1 year”. As explained above, setting an ACL in terms of a specific quantity of shrimp (eg. a TAC) cannot be implemented and, in the case of a post-season payback, is biologically irrelevant and illogical.

Perhaps NMFS should instead include additional guidance for establishing alternative proxies for ACLs and AMs for these unique species if such measures are to be required. Proxies might include adjustments to seasons and areas and/or the management of shrimp fishing effort which have proven to be successful tools in managing the shrimp fisheries. The primary concern of shrimp population management is to ensure that there is sufficient escapement (recruitment) from the inshore nursery areas to the offshore adult spawning areas, and it takes a very small amount of such escapement to achieve full production in the subsequent year.

However, SSA reiterates that even if a meaningful proxy for an ACL could be developed for a shrimp fishery it would appear to have limited, if any, biological relevance/utility in addressing a situation of overfishing. As explained above, just like an ACL, a proxy for an ACL also could not be implemented as an in-season management measure during the year that such overfishing occurred because, in reality, the fact that overfishing was occurring would not be known until well after that fishing year ended.

Also as explained above, deducting the amount of shrimp catch or mortality ‘overage’ in one year from the harvest/mortality in a subsequent year has no real biological relevance to the overfishing that occurred. This is because the population of shrimp on which overfishing occurred would already be dead through natural mortality before the subsequent fishing year. Again, NMFS needs to very carefully consider what guidance it can provide to implement the annual species provision and particularly the requirement to specify an ACL when a shrimp fishery is subject to overfishing.

SSA also calls attention to the specific language at the end of the MSRA “annual species” provision: “...unless the Secretary has determined the fishery is subject to overfishing of that species”. (emphasis added). NMFS should include clarification in the guidelines that this was specifically intended by Congress to limit the Secretary’s overfishing determination to the relevant shrimp species and not to any species of bycatch in the shrimp fisheries. In other words, NMFS should clarify that it would not be correct to use this provision as a basis for specifying an ACL for a shrimp fishery in order to address overfishing of a bycatch species such as red snapper.

Generally speaking, the issues discussed above should indicate that there has been inadequate treatment in the MSA/MSRA of fisheries “for species that have a life cycle of approximately 1 year”. The same could be said of the current NMFS guidelines as well as the revisions NMFS proposed in 2005. The biological realities of these species simply do not fit well into the conventional understanding of concepts like “overfished”, “overfishing”, Maximum Sustainable Yield, Optimum Yield, and how the new ACL and AM requirements can be

appropriately implemented. SSA reiterates its request for NMFS to very carefully consider and develop specific guidelines for these species that reflect these unique realities. To that point, SSA strongly recommends NMFS convene a special working group of warm-water shrimp biologists and managers (and perhaps industry experts) to consider their unique biological, ecological and fishery characteristics for the purpose of developing a distinct subset of guidelines for these and other species that have “a life cycle of approximately 1 year”.

### **3) Guidance for Bycatch Sectors of a Fishery**

National Standard 1 requires FMPs to prevent overfishing but also to achieve on a continuing basis the Optimum Yield from a fishery. MSA section 304(e)(4) requires overfishing restrictions and recovery benefits to be allocated fairly and equitably among sectors of the fishery. A closely related provision is section 303(a)(14) which also requires any harvest restrictions or recovery benefits to be fairly and equitably allocated among the commercial, recreational, and charter fishing sectors in the fishery.

Reconciling these mandates in even the most conventional circumstances involving sectors of a directed fishery is a major challenge. What may be far more difficult but also greatly needed is for NMFS to provide thoughtful guidance on how to put these MSA mandates into the context of when there are competing interests between the directed and bycatch sectors of a fishery. A specific ongoing example is the bycatch of red snapper in the Gulf shrimp fisheries, but it is not difficult to imagine examples in other fisheries.

For example, SSA suggests the following interpretations of these provisions;

- 1) The National Standard 1 mandate to achieve OY in the shrimp fishery cannot be subverted to the mandate to end overfishing of red snapper, or any other mandates relevant to the management of red snapper – or vice versa.
- 2) As required by sections 303(a)(14) and 304(e)(4), there must be fairness and equity in allocating both red snapper harvest restrictions and the benefits of red snapper rebuilding to the directed and bycatch (shrimp) sectors of the red snapper fishery.

Clearly, Congress intended for FMPs to achieve a clear sense of balance between these competing interests. NMFS needs to provide guidance on how to achieve this balance.

There is also the question of whether bycatch in one fishery always constitutes a ‘sector’ of the overall fishery for that species—or is the fishery in which the bycatch occurs always a separate fishery altogether? The interrelated MSA definitions of “fishery” and “fishing” certainly suggest an interpretation that bycatch should be, at least in some cases, considered a sector of a fishery in the context of the MSA ‘fairness and equity’ provisions.



This is especially true when, in the case of red snapper and shrimp, management is being implemented through joint FMP Amendments. Treating the shrimp fishery as a ‘bycatch sector’ of the red snapper fishery for the purposes of allocating harvest restrictions necessary to end overfishing and rebuild the red snapper stock while in the same management action denying the shrimp fishery the same treatment for enjoying the benefits of red snapper recovery would be grossly inconsistent with sections 303(e)(14) and 304(a)(4).

SSA strongly urges NMFS to very carefully consider these issues and provide clear guidance on how to achieve these critical MSA mandates simultaneously for directed and bycatch sectors of a fishery. SSA believes these are directly relevant to the guidelines being developed under this NOI.

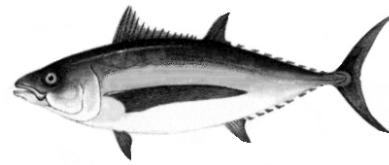
#### **4) Prepare an EIS**

The NOI states: “After considering comments received during the scoping process, NMFS will either develop a draft environmental impact statement (DEIS) and proposed rule or an environmental assessment (EA) and proposed rule.” SSA strongly urges the Agency to prepare a full EIS because this action represents a major federal action with significant impacts.

Under CEQ’s NEPA regulations (40 CFR 1508.27), and NOAA guidance for NEPA compliance, the determination of a significant impact is a function of both context (scope) and intensity. The impacts associated with the proposed action cover the full range of context; from local to ‘society as a whole’. A review of the 10 specific considerations for evaluating the intensity of the impacts of the proposed action also strongly suggests they are significant.

Preparation of an EIS would be constructive to the overall objective of developing the most effective NS1 guidelines that achieve the confidence of affected interests. A comprehensive EIS analysis would enhance the ability of the Councils and affected interests to understand and evaluate the proposed changes to the NS1 guidelines in terms of the unique fisheries in each region.

# WESTERN FISHBOAT OWNERS ASSOCIATION<sup>©</sup>



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Mr. Mark Millikin  
National Marine Fisheries Service  
NOAA1315 East-West Highway  
Silver Spring, MD 20910  
Via e-mail: [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

April 13, 2007

Re: National Standard One Concerning Annual Catch Limits (ACL) and Accountability Measures (AM)

Dear Mr. Millikin:

Western Fishboat Owners Association (WFOA) which represents more than 400 west coast albacore tuna hook and line vessels would like to express our concerns over the Annual Catch Limits (ACL) and related issues.

WFOA's concern is the manner in which NOAA-Fisheries apparently intends to apply the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), particularly sections 103(b)(1) and (c)(3), 104(a)(10), (b), and c). The Notice of Intent filed at 72 Fed. Reg. 7016 (Feb. 14, 2007) seeks to obtain comments to identify significant issues under the application of these sections. Section 16 USC 1851(a)(1) and NS 1 provide, in summary, that conservation and management measures shall prevent overfishing while achieving optimum yield in each fishery for the U.S. fishing industry. Because you are focusing on the "overfishing" provisions of the MSRA you believe it is important to approve new guidance on the NS 1 standards which seek to guide the Councils in their formulation of Fishery Management Plans. For the purpose of these comments we will assume this is a correct approach.

MSRA Section 104(a)(10) - ACLs and Ams:

This section of the MSRA amends Section 303(a) of the Magnuson Stevens Act (MSA) and indicates that any FMP shall establish a mechanism for establishing annual catch limits, regulations to implement these annual catch limits and specifications (it is not clear to me if this is where NOAA Fisheries finds the requirement for AMs which are not mentioned in the statute?) at a level such that "overfishing does not occur in the fishery." Species which live a year or less are exempted.

This provision would also not apply if "otherwise [annual catch limits are?] provided for under an international agreement in which the United States participates." The Inter-American Tropical Tuna Convention would seem to qualify as an "international agreement in which the United States participates." The IATTC has set "annual catch limits" for certain species and gear types, however,

so far its primary focus to end overfishing, if indeed it is occurring is to limit the cubic meter well space of purse seine vessels to a stated maximum for each nation party.

It seems to WFOA that the intent of Congress was to avoid the Councils from having to set ACLs and AMs for internationally managed fisheries is clear from this provision and others in the MSRA. Congress finally recognized that HMS are to be managed differently than groundfish.

Similarly, when the U.S. is involved in an HMS fishery where there is a Regional Fisheries Management Organization (RFMO), and that organization is managing the species in question, that the U.S. fishery, including provisions of the FMP relating to that species should follow what has been agreed to on an international level. This is particularly true since in every HMS fishery in which U.S. vessels participate today they account for a small percentage of the catch – sometimes only 5% depending upon the species and the area. To require an ACL and AM for such a fishery which would only apply to U.S. vessels is a useless act which would have no effect upon conservation or management of the resource. Congress doesn't usually ask the executive branch to perform useless acts. I believe it is obvious that to set an ACL and AM at a global level for the entire international fishery, would also be a useless act unless it were agreed to under an RFMO.

Setting an ACL and AM for an international fishery would be a useless act. However, setting such an ACL and AM for the U.S. fleet, possibly preventing it from staying at the same effort level, while their international competitors, (which by the way sell to the U.S. over 70% of the fish Americans consume at a time when fish consumption is increasing) is not only merit less and useless, but actually harmful. In sum, the statement in the Notice of Intent that "the ACL/AM requirements may be applicable for some species managed under international agreements", is in our view absolutely incorrect.

The problem of setting an ACL for an international HMS fishery is further evidenced by the definition the Notice of Intent gives to ACL, i.e., "a specified amount of a fish stock for a fishing year that is a target amount of annual total catch that takes into account projected estimates for landings and discard mortality from all user groups and sectors." The information upon which such an estimate could be made depends upon information collected by, for example in the Pacific, two or more RFMOs. Not only is this data collected at different times in different forms, but it often runs 2 years or more behind. In addition, HMS fisheries are notorious for their wide swings in catch data, catch per unit of effort, effort, and other information which must be taken into consideration. Again, in relation to the Pacific, I do not believe the IATTC nor the Western and Central Pacific Fisheries Commission (WCPFC) even collect information on discards for all species. Neither organization keeps track of recreational of any species.

Sincerely,

*Wayne Heikkila*

Wayne Heikkila  
Executive Director

From [Paavo Carroll <paavoc@hotmail.com>](mailto:paavoc@hotmail.com)



Sent Wednesday, April 4, 2007 0:14 am

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject

It seems clear that we are entering a phase of rapid and unprecedented change in the climate and thus fisheries. So as we try to figure out how to "end overfishing" I just want to emphasize the importance of not regulating the commercial fisherman out of existence. Nature is going the move faster than the fisher in terms of what is available and not available to catch, and regulatory agencies tend to move the slowest of the three. Speed is going to be more and more of the essence, not just in protecting marine creatures that need it, but also utilizing those that can be utilized. So I would just say there is no point in not allowing people to make a living off fishing while they can, as any true mass extinctions and regime shifts are going to occur with or without a robust commercial fishing culture.

Paavo Carroll, F/V Titan.

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From [viking fishing fleet <vikingfleet@hotmail.com>](mailto:vikingfishingfleet@hotmail.com)

Sent Monday, March 26, 2007 1:39 pm

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject Roy Crabtree/Gulf Council

March 23, 2007

National Oceanic & Atmospheric Administration  
 Dr. William Hogarth, Director NOAA Fisheries  
 1315 East West Highway  
 Silver Spring, MD 20910

Dear Dr. Bill Hogarth,

This letter is being written with complete outrage that Dr. Roy Crabtree has not been removed from his position as the Southeast Regional Director NMFS; as well as the rest of the NMFS Gulf Council. It is clear that Dr. Crabtree along with the NMFS Gulf Council has been lying to the entire Recreational/Commercial fishing community for years. This letter serves as a request for their resignations.

The Recreational and Commercial fishing communities have been lied to for years by the NMFS that Red Grouper have been over fished. We are now being told by the same body that this is indeed not the case at all and that in actuality it is the Gag Grouper that have been over fished; the end result being a closed season for both. This is inexcusable.

During the Gulf of Mexico Grouper Forum 2007, held on February 27, 28 of this year, we were informed that the findings regarding the Red Grouper population being over fished are grossly inaccurate; this species has not been over fished since at least the year 1999. If the best available science is truly being instituted in these decisions, how can we possibly have such contradicting information in the space of only one year and be expected to believe it? It is clear that the Gulf Council, as well as those at the NMFS have their own agendas without regard to the economic impact on the livelihoods of all involved in the fishing community.

It is a fact that the NMFS is required by law to take the economical impact of any regulations into consideration, this has not been done. Dr. Roy Crabtree and other Gulf Council members need to be held accountable for the unnecessary economical hardships endured by businesses, loss of jobs, and bankruptcies in the fishing and related industries. The fact is that **BILLIONS OF DOLLARS** in the state of Florida have been lost due to the incompetence of Dr. Roy Crabtree and the Gulf Council.

We are hereby calling for the immediate removal of Dr. Roy Crabtree and the NMFS Gulf Council; they **MUST** be held accountable for their actions!

We request that they be replaced with competent people ASAP. In addition, recreational bag limits should be increased to where they were in July 2005; and the one month Grouper season closure for Recreational and Commercial fishermen be removed.

With Respect,

**Capt. Paul G. Forsberg**

Owner/Operator Viking Fleet  
 Member of the Board of Directors, United Boatmen of New York  
 Current holder of two large multi-passenger party boat licenses in the Gulf of Mexico  
 Current holder of two commercial reef fishing permits

**Capt. Richard J. Castellano**

Owner/Operator Gulf Star Ventures, LLC.  
 Owner/Operator Fishbone Fishing Consultants

**Capt. George Lontakos**

Captain/Tackle Engineer, Vikings of Tarpon Springs

**Capt. Arlen Leiner**

Current holder of gulf reef permit  
 Charter Boat Owner

CC: Mr. Samuel D. Rauch, NOAA  
 Dr. Steven Murawski, NOAA  
 Dr. James Balsiger, NOAA  
 Mr. Alan Risenhoover, NOAA  
 Mr. Alex Chester, NOAA  
 Dr. Roy Crabtree, NOAA  
 NOAA Fisheries Service Southeast Reg. Office  
 Mr. William Daughdrill, Gulf Council  
 Mr. Robert Gill, Gulf Council  
 Ms. Julie Morris, Gulf Council  
 Mr. Robert Shipp, Gulf Council  
 Ms. Bobbi Walker, Gulf Council  
 Mr. Philip Horn, Gulf Council  
 Mr. Thomas McIlwain, Gulf Council  
 Mr. Harlon Pearce, Gulf Council  
 Ms. Susan Villere, Gulf Council  
 Mr. Degraaf Adams, Gulf Council  
 Mr. Joseph Hendrix, Jr., Gulf Council  
 Mr. William Teehan, Gulf Council, FWC  
 Mr. R. Vernon Minton, Gulf Council, Alabama Dept. of Conservation & Natural

## Resources

Mr. Corky Perret, Gulf Council, Dept. of Marine Resources, Biloxi MS  
Ms. Karen Foote, Gulf Council, Louisiana Dept. of Wildlife & Fisheries  
Robin Riechers, Gulf Council, Texas Parks & Wildlife Dept.  
Mayor Beverly Billiris, Tarpon Springs, FL  
Senator Bill Nelson, Washington DC  
Senator Mel Martinez, Washington DC  
Congressman Bilirakis, Washington DC  
FL State Representative Peter Nehr, Washington DC  
Governor Charlie Crist, Tallahassee, FL  
Lt. Governor Jeff Kottkamp, Tallahassee, FL  
St. Petersburg Times, Editor  
Tampa Tribune, Editor  
Miami Herald, Editor  
Florida Press Association  
Orlando Sentinel, Editor  
Local Angler Magazine, Seminole, FL  
Saltwater Angler Magazine, Tampa, FL  
Onshore ? Offshore Magazine, St. Petersburg, FL  
Florida Sportsman Magazine, Stewart, FL  
National Fisherman, Portland, ME

From "[Hawtin, Bob](mailto:HawtinB@TheLeeCo.com)" <[HawtinB@TheLeeCo.com](mailto:HawtinB@TheLeeCo.com)>



Sent Friday, February 23, 2007 7:45 am

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject

As an East Coast fisherman and boat owner plus the occasional trip on a cod fishing charter I am for any regulations that will control the over fishing of all stocks. I would like you to pay particular emphasis to reducing by-product catches, limiting the number of commercially available licenses, and totally closing any fishing grounds that need to replenish their stocks. The successes we enjoy today from the Stripe Bass program are a testament to proper fishery management and those lessons learned should be employed to the rest of the fishery. I would also be in favor of a national recreational licensing program IF it can be guaranteed those monies would be used exclusively for Fisheries Management and not let politicians use it for their own projects. Thank You.

Robert Hawtin  
5 Marks Drive  
West Haven, CT. 06516



From "[Capt. Tim Myers](mailto:stamas27@hotmail.com)" <[stamas27@hotmail.com](mailto:stamas27@hotmail.com)>

Sent Thursday, March 1, 2007 1:41 am

To [annual.catch.limitDEIS@noaa.gov](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject Over fishing

Capt. Tim Myers  
P.O. Box 689  
Newberry, Fl. 32669  
352-256-6468

I am Tim Myers and I have been fishing and diving in the Gulf of Mexico from Tampa to Keaton Beach for about fifteen years. I also fish commercial and charter as well.

With regard to some of the over fishing of the gag grouper in the Gulf. It seems that the commercial annual poundage quota has not increased in past years, so what is going on? If I am not mistaken, in the last several years the harvest of gag grouper has closed when the red grouper harvest has been reached. The red grouper harvest is closing early because the deep water grouper quota has been reached early. Then the deep water boats come and fish for the shallow water grouper closing the harvest earlier each year. The domino affect.

So the recent decline in gag grouper can't be blamed on commercial fishing because we cannot continue fishing when the harvest is closed. I propose a possible reason for the decline of gag grouper. Due to better technology, fish finders and GPS and the deep water trolling lures such as the Mann's Stretch 18, 30, 50, the recreational fishing for many years has been unchecked. Ten years ago when the recreational quota for gags was 10 or 15 per person and fishing the old fashioned way with hook and line, fishermen were lucky to pull up 2-5 legal grouper each from the rocks. When the deep water trolling lures were introduced the fishermen's catch increased and suddenly the coolers were full in no time and most recreational fishermen got their quota. I was one of them. Now multiply all of the fishing in the gulf per day times the increase in the catch and it's evident that the reduction in numbers is attributed to the unchecked recreational fishing. As a diver, I have seen a big decline in the number of gags from the 25 to 65 feet depths. Now a boat can cover more ground trolling and bring up bigger fish because the fish will come up away from the rocks to strike the lure and they can't get back down to the rocks. Almost every strike will hook the gag, I've seen it from the bottom. **They have become a striking fish instead of a bottom fish!** A Stretch 30 with several hundred feet of line, especially braided line, at 6-9 knots will easily dive 55 or 60 feet bringing up some big gags that with hook and line would not be in the cooler. Millions of pounds of fish each day.

So the solution is not to limit the number of fish, but limit how they are caught. As a recreational charter captain I almost always have to troll for grouper because of their decline. Furthermore, with such a low recreational fishing quota, hardly any one wants to pay 500 bucks to catch only a couple of fish, not to mention the cost of fuel. I would gladly have a client talk about "the one that got away", with hook and line, than continue depleting the near shore stocks.

I propose: **that in the Gulf of Mexico- THERE SHOULD NOT BE ANY DEEP WATER LURES.** However the use of a down rigger or deep diving rig not attached to the lure itself should be allowed. Or better yet, **a fishermen can only fish for bottom fish with hook and line.**

I realize that there would be some enforcement issues, but I believe that a restrictive measure on how the fish are caught, not a limit, would be the best way to bring back our near shore stocks in the shortest period of time! I believe that the charter fishing industry would benefit as well as

the stocks return. **PLEASE CONSIDER A HOW BOTTOM FISH ARE CAUGHT RESOLUTION.**

Thank You for your consideration!