Regulatory Impact Review and Regulatory Flexibility Act Analysis for Revisions to National Standard 1 Guidelines to Address Annual Catch Limit and Other Measures to End Overfishing and Rebuild Overfished Stocks

National Marine Fisheries Service
Office of Sustainable Fisheries
May 30, 2008

Table of Contents

1.1 Regulatory Impact Review .....p. 3

1.2 Executive Order 12866 .....p. 3

1.3 Background on the Proposed Guidance .....p. 3

1.3.1 Definition of Terms and their Relationships .....p. 3

1.3.2 Control Rules .....p. 4

1.3.3 Accountability Measures .....p. 5

1.3.4 Stocks in a Fishery and Ecosystem Component Species .....p. 6

1.4 Statement of the Problem .....p. 7

1.5 Description of the Fishery .....p. 8

1.6 Description of No Action vs. Preferred Action and its Issues and Options .....p. 9

1.7 Economic Analysis of the Expected Effects of Preferred Action and Options Relative to "No Action" .....p. 16

1.8 Changes in Net Benefits .....p. 18

1.9 Overall Benefits to the Nation .....p. 20

1.9.1 Benefits of the Preferred Options .....p. 21

1.9.2 Costs of the Preferred Options .....p. 21

1.10 Determination of Significance under Executive Order 12866 .....p. 22

2.1 Analysis Pertaining to Regulatory Flexibility Act (RFA) .....p. 23

2.2 Requirements of the RFA .....p. 23

2.3 Certification of this Action under the RFA .....p. 23

2.4 Information for this Action Related to Section 605(b) of the RFA .....p. 24

2.4.1 Description of the Reasons why Agency Action is being considered .....p. 24

2.4.2 Succinct Statement of Objectives of, and legal Basis for, the Proposed

Guidance.....p. 25

2.4.3 Description of and, where Feasible, an Estimate of Small Entities to which the Proposed Guidance will Apply .....p. 26

2.4.4 Description of the Projected Reporting, Recordkeeping and other Compliance Requirements of the Proposed Guidance .....p. 26

2.4.5 Identification, to the Extent Practicable, of all Relevant Federal Rules which may Duplicate, Overlap or Conflict with the Proposed Guidance.....p. 26

2.4.6 Estimate of Economic Impacts on Small Entities by Entity Size and Industry...p. 26

List of Acronyms .....p. 27

Document prepared by…… p. 27

REFERENCES…… p. 28

List of Tables and Figures

Table 1. U.S. Stocks "Subject to Overfishing": Historic and Current determinations. 1997 – 2007 .....p. 29

Table 2: Reference points, accountability measures, and control rules that would be required or recommended for various types of stocks.....p. 34

Table 3: Federal Vessel Permits by Council/FMP. Also Operator and Dealer Permits by Region.....p. 35

Figure 1: Relationship between OFL, ABC, ACL, and ACT.....p. 41

Figure 2: Proposed classification of stocks in an FMP.....p. 42

1.1 Regulatory Impact Review

The National Marine Fisheries Service (NMFS) requires that a Regulatory Impact Review (RIR) be prepared for actions that have a proposed and final rule, and actions that have a final rule only, to address requirements of Executive Order (E.O.) 12866 as amended by E.O. 13258 and E.O. 13422 (NMFS 2007). This section constitutes the RIR for the proposed revisions to National Standard (NS1) guidelines, including guidance for developing Annual Catch Limits (ACLs) and Accountability Measures (AMs).

1.2 Executive Order 12866

The objectives of E.O. 12866 are to enhance planning and coordination with respect to both new and existing regulations. The goals include designing regulations in a cost-effective manner. NMFS believes that the benefits of this action, i.e., the revisions to the NS1 guidelines, justify the known costs that might be incurred. The proposed revisions would provide explicit guidance to the Councils and the Secretary, as appropriate, to develop and implement ACLs and AMs to end and prevent overfishing, to satisfy the objectives of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) (P.L. 109-479).

1.3 Background on the Proposed Guidance

1.3.1 Definition of Terms and their Relationships:

The MSRA which was signed into law by President Bush on January 12, 2007, requires that any fishery management plan (FMP) which is prepared by any Council, or by the Secretary, with respect to any fishery, shall *"establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability"* (section 303(a)(15) of the Magnuson-Stevens Act).

The MSRA does not define ACLs, AMs, and acceptable biological catch (ABC); therefore, NMFS proposes definitions for each of these terms, as well as annual catch target (ACT) and overfishing limit (OFL), in this proposed guidance. Considering the combined effects of new requirements for ACLs and ABC, described in sections 303(a)(15), 302(h)(6), and 302(g), and the current definition for maximum fishing mortality threshold (MFMT) in the NS1 guidelines, NMFS proposes that:

1. Maximum fishing mortality threshold (MFMT) means the level of fishing mortality (F), on an annual basis, above which overfishing is occurring. MFMT usually corresponds to F_{MSY}.

2. Overfishing limit (OFL) means the annual amount of catch that corresponds to the estimate of MFMT applied to a target stock's biomass.

3. Acceptable biological catch (ABC) means the level of a stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and should be specified based on the ABC control rule.

4. Annual catch limit (ACL) means the level of annual catch of a stock or stock complex that serves as the basis for invoking accountability measures.

5. Annual catch target (ACT) means the amount of annual catch of a stock or stock complex that is the management target of the fishery. A stock or stock complex's ACT should usually be less than its ACL and results from the application of the ACT control rule. If sector-ACLs are established, each one should have a corresponding sector-ACT.

6. Accountability measures (AMs) means management controls that prevent ACLs or sector-ACLs from being exceeded (inseason AMs), where possible, and corrected or mitigate overages if they occur.

The proposed definition framework of the terms is OFL$\geq$ABC$\geq$ACL$\geq$ACT (See Figure 1). Because a primary goal of the Magnuson-Stevens Act, and management responsibility of NMFS and the Councils, is to end and prevent overfishing, rather than account for it after it occurs, management should take the approach that OFL>ABC and ACL>ACT. This is because scientific uncertainty will usually exist when estimating OFL and management implementation uncertainty will usually exist when specifying an ACT.

OFL is the upper bound of ABC, but ABC should generally be reduced from the OFL to account for scientific uncertainty in determination of OFL. For overfished stocks, ABC must also be set to reflect the annual catch that is consistent with the rebuilding plan for that stock, therefore, if a stock is being managed under a rebuilding program, its ABC should be lower during all stages of rebuilding than when the stock is rebuilt. The ABC will be set on the basis of the ABC control rule, which is determined by the Council and applied by the SSC.

The ACL is a level of catch specified for a stock or stock complex each year that cannot exceed its ABC. If the ACL is exceeded, AMs will be invoked as specified in the FMP. The ACL is set by the Council and cannot exceed the ABC. Setting of the ACL provides an opportunity to divide a stock's total ACL into sector-ACLs. The ACT would be the targeted amount of catch that a stock is managed to attain. The ACT is set on the basis of the ACT control rule, which is determined and applied by the Council. A stock's ACT would usually be less than its ACL. If a stock has sector-ACLs, then it should have corresponding sector-ACTs.

1.3.2. Control Rules:

Control rules are harvest strategies that specify how a stock's or stock complex's catch will be modified in response to one or more factors, particularly estimated stock size.

The current NS1 guidelines include MSY control rules which are “limit” control rules and OY control rules which are “target” control rules.

In this proposed guidance, an ABC control rule is an approach to setting ABC for each stock or stock complex as a function of stock abundance, scientific uncertainty, and other factors. An ACT control rule is an approach to setting the ACT for each managed stock such that the risk of exceeding ACL due to management uncertainty (ability to control catch and variability in catch data) is at an acceptably low level. Both control rules in combination are designed to reduce the probability that overfishing occurs, and the ACT control rule reduces the chance that the ACL is exceeded and improves the likelihood that OY is achieved for the fishery as a whole.

NMFS proposes a performance standard for ACT control rules such that if catch of a stock exceeds its ACL more often than one out of four years (i.e., more often than 25 percent of the time), or overfishing occurs, then the ACT control rule for the stock needs to be re-evaluated and revised (or other new management measures need to be implemented) to improve the likelihood that the stock’s ACL is not exceeded in the future. NMFS believes that allowing more than a 25-percent frequency of the ACL being exceeded would not safeguard enough against overfishing.

1.3.3. Accountability Measures:
AMs are management controls implemented for stocks in a fishery such that exceeding the ACL or sector-ACL is prevented (i.e., in-season AMs), where possible, and corrected or mitigated if it occurs. AMs include: (1) those that are applied in-season and designed to prevent the ACL from being reached, and (2) measures applied after the fishing year that are designed to address the operational cause of an ACL overage, ensure it doesn’t happen in subsequent fishing years, and, as necessary, address any biological harm to the stock. AMs should address and minimize both the frequency of overages and the magnitude of an overage. AMs should correct the problems that caused the overage in as short a time as possible.

AMs should make the best use possible of available data from a fishery so as to maximize effectiveness of the AMs. These AMs could include closure of the fishery, closure of specific areas, changes in gear requirements, changes in trip, size or bag limits, and reductions in effort controls, or any other management control appropriate to the fishery, in order to prevent overfishing. If the ACL for a fishery is exceeded, in-season AMs should be activated to close the fishery and prevent any further overage of the ACL.

The AMs for a fishery should be designed to minimize the extent of an overage, and should in some cases, include provisions for mitigating damage to the fishery caused by the overage. An overage payback in subsequent years is an appropriate AM for a fishery that exceeds the ACL or OFL depending on the circumstances. It is appropriate to compensate for an overage if overfishing occurred or the stock is in a rebuilding plan. If an overage is small then a Council may already have other appropriate AMs that become effective in the fishing year following an overage. AMs should be designed to adjust the

fishery as quickly as possible, so that the magnitude of overages is minimized and the problems causing the overage are corrected in as short a time as possible.

The primary determinant of the time needed to make adjustments in a fishery is the timeliness of data quantifying catch and bycatch. If final data, or data on some components of the catch, are delayed, AMs should make appropriate use of preliminary data, or data on a portion of the fishery, such as landed catch. The goal is to prevent overages from occurring and to minimize their extent if they do occur.

1.3.4. Stocks in a Fishery and Ecosystem Component Species:
Stocks and stock complexes are included in FMPs for different purposes: conservation and management to end overfishing and rebuild stocks, but also, data collection and ecosystem considerations. Acknowledging these different purposes, the NS1 guidelines distinguish between "stocks in a 'fishery' or 'fisheries' " and "ecosystem component species" (See Figure 2).

"Stocks in a 'fishery' or 'fisheries' " include (1) target stocks, (2) non-target stocks retained for sale or personal use, and (3) non-target stocks that are not retained for sale or personal use and that are either determined to be subject to overfishing, approaching overfished, or overfished, or could become so, according to the best available information without conservation and management measures. Stocks in a fishery require ACLs and AMs, unless they qualify for an exception as described in the "effective date note" for Magnuson-Stevens Act section 303(a)(15). The exceptions for stocks needing an ACL and AMs therein described include: (1) the stock has a life cycle of approximately 1 year, unless the Secretary has determined the fishery is subject to overfishing of that species; or (2) if already provided for under an international agreement in which the U.S. participates. Any stock that is determined to be "subject to overfishing" or is overfished should be considered to be a "stock in a fishery." Most stocks and stock complexes in a fishery should have quantitative SDC, MSY, OY, ABC, ACL and ACT.

If a stock is identified in more than one "fishery," Councils should choose which FMP will be the primary FMP in which management objectives, SDC, and other reference points for the stock are established. In most cases, the primary FMP for a stock will be the one in which the stock is identified as a target stock. Other FMPs in which the stock is identified as part of a fishery should be consistent with the primary FMP. For example, if a yellowtail flounder stock off New England is affected by the Atlantic sea scallop fishery, then management of yellowtail flounder in the sea scallop FMP should have any allowed incidental take of the yellowtail flounder stock in the sea scallop fishery included within the overall ACL and ACT for yellowtail flounder in the Northeast Multispecies FMP.

All stocks currently identified in an FMP should be considered "stocks in a fishery" under the FMP, unless a Council can provide sufficient rationale for classifying a stock as an Ecosystem Component (EC) species. The classification of a species or stock as an EC species should be conducted through an FMP amendment, which documents rationale for

the decision.

EC species are generally not retained for any purpose, although *de minimus* amounts might occasionally be retained. EC species may be identified at the species or stock level, and may be grouped into complexes. EC species may be included in an FMP for any of the following reasons: (1) for data collection purposes; (2) for ecosystem considerations related to specification of OY for the associated fishery, and/or (3) to address other ecosystem issues. While EC species are not considered to be "in a fishery," a Council should consider measures for the fishery to minimize bycatch and bycatch mortality of EC species consistent with National Standard 9, and to protect their associated role in the ecosystem. EC species do not require MSY, OY, ABC, ACL ACT, and AMs, but they should be monitored on a regular basis to the extent practicable, to determine changes in their status or their vulnerability to the fishery.

1.4 Statement of the Problem

The NMFS Fourth Quarterly Update for "The 2007 Status of U.S. Fisheries" indicates that 41 stocks managed by Federal FMPs are subject to overfishing. Twenty-nine of these stocks are considered subject to chronic overfishing (i.e., 4+ years of undergoing overfishing) (Table 1). Stocks become listed as "overfishing" in the Report for a variety of reasons, including:

1. The goal of the FMP may be to end overfishing over several years by gradually reducing fishing mortality rates instead of ending overfishing immediately.
2. Management measures have proven ineffective in ending overfishing (e.g., lack of in-season closure authority for the fishery, and management measures are aimed to achieve a target catch that is set too close to the catch amount that results in overfishing, or both).
3. Management measures to address overfishing have not been implemented yet.
4. Recent change in scientific advice (i.e., the Council has not had sufficient time to amend FMP and no automatic measures exist in the FMP to make necessary adjustments to end overfishing in the subsequent fishing year).
5. Bycatch mortality in other fisheries has not yet been addressed adequately or is poorly known.
6. Data sufficient to verify whether or not overfishing is occurring are not available, so existing overfishing determination is retained.
7. International fishing pressure is responsible for large majority of overfishing.
8. Fishing pressure in state or territorial waters is responsible for the large majority of overfishing. Federal action alone is not sufficient to end overfishing, and state, territorial and Federal managers are unable thus far to agree on a concerted approach to end overfishing.

The objective of the proposed revisions to the NS1 guidelines is to establish ACL and AM guidance that will end overfishing for as many stocks as possible in 2010, and prevent overfishing in 2011, and beyond. NMFS believes that ACL and AM requirements would end overfishing that currently exists from reasons #1, 2, 3, and 4

above. Better scientific data along with adequate ACLs and AMs, should enable Councils to prevent stocks from undergoing overfishing for those stocks listed under reasons #5 and 6. Stocks that are undergoing overfishing for reason #7 would likely qualify for a statutory exception from ACLs and AMs "if otherwise provided for under an international agreement in which the U.S. participates." Stocks in a Federal FMP that are caught mostly in state or territorial waters need ACLs. If Federal and state or territorial managers are unable to agree on an ACL and AMs for a stock that is listed as overfishing under reason #8, such a stock would still need to have an ACL under its Federal FMP, however it's acknowledged that the AMs implemented by Federal managers would only apply to the portion of the fishery under Federal jurisdiction.

1.5 Description of the Fishery

For the purposes of sections 303(a)(15) of the Magnuson-Stevens Act, ACLs and AMs are required for fisheries managed by Federal FMPs. This means that fisheries occurring in the U.S. Exclusive Economic Zone (EEZ) that are not contained in any Federal fishery management plan (FMP) under the Magnuson-Stevens Act (e.g., American lobster, Pacific herring, Dungeness crab, horseshoe crab, and Pacific halibut) will not be federally managed by ACLs and AMs. NMFS believes that "fishery" and "fisheries" should be interpreted to mean a stock (e.g., stock or species) or stock complex (e.g., stock complex or species group), for the purposes of sections 3(34), 302(h)(6), 303(a)(10), 303(a)(15), and 304(e) of the Magnuson-Stevens Act, because they are used in reference to biological concepts that can only be applied at the stock or stock complex level (except OY that is occasionally applied in a broader manner). A Council and/or the Secretary is required to develop ACLs "for each of its managed fisheries" (Magnuson-Stevens Act section 302(h)(6)) and the ACLs must be set "at a level such that overfishing does not occur in the fishery" (Magnuson-Stevens Act section 303(a)(15)). Because overfishing is a biological concept that is applied at the stock or stock complex level, NMFS is proposing in this action that ACLs be developed and applied to stocks and stock complexes that are identified "in a fishery."

The fisheries in the EEZ are described in detail in each FMP. The most recent amendment to a given FMP contains the most updated information for that fishery. Many of these stocks also occur in state, territorial or tribal waters requiring that the Councils manage such stocks in cooperation with those entities. Also, some of the stocks are highly migratory such that much or most of the stock is caught by foreign fishermen and managed by international regional fishery management organizations.

Fish stocks managed by the 46 Federal FMPs are the subject of this action, especially the 530 stocks listed in the NMFS Status of U.S. Fisheries Report to Congress. The FMPs and stocks are listed by Council in Quarterly Updates of the NMFS "2007 Status of U.S Fisheries" which can be found at:
http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm

1.6 Description of No Action vs. Preferred Action and its Issues and Options

No Action. Do not revise the current NS1 guidelines to include guidance for ACLs and AMs. Councils are statutorily required to implement ACLs and AMs. Without guidelines, Councils may develop and submit FMP amendments that the Secretary may determine to be inadequate. Secretarial disapproval of an FMP amendment would be followed by a request that the Council modify and resubmit their amendment, making it unlikely that the ACLs and AMs can be implemented by the first statutory deadline of 2010, for stocks undergoing overfishing, and 2011, for all other stocks.

Preferred Action. Revise the current NS1 guidelines to include guidance for ACLs and AMs. Councils and the Secretary are more likely to prepare adequate ACLs and AMs for ending and preventing overfishing, if NMFS provides guidance through the NS1 guidelines, than by relying on statutory language alone. Secretarial approval of FMP amendments that contain adequate ACLs and AMs for ending overfishing is more likely if NMFS provides new guidance on NS1, ACLs and AMs. Also, if NMFS provides such guidance, it is more likely that FMPs will have ACLs and AMs in place for stocks undergoing overfishing by the first statutory deadline of 2010, and the second statutory deadline of 2011, for all other stocks.

<u>Issue 1: Stocks that need ACLs and AMs</u>

- **Option 1: (Preferred):** "Stocks in a fishery" would need ACLs and AMs; EC species would not need ACLs and AMs. Stocks with a statutory exception from ACLs would not need ACLs and AMs. Stocks with statutory exceptions (see section 1.3.4) would include: 1) those stocks that have a life cycle of approximately 1 year unless they are determined to be subject to overfishing; and 2) stocks subject to management under an international agreement in which the U.S. participates. There are limited circumstances that may not fit the standard approaches to specification of reference points and management measures set forth in these guidelines. These include, among other things, conservation and management of ESA-listed species, harvests from aquaculture operations, and stocks with unusual life history characteristics (e.g., Pacific salmon where spawning potential for a stock is spread over a multi-year period). In these circumstances, Councils may propose alternative approaches for satisfying NS1 requirements of the MSA and those set forth in the NS1 guidelines. Councils should document their rational for alternative approaches for these limited circumstances in an FMP or FMP amendment, which will be reviewed for consistency with the Magnuson-Stevens Act.
    - **Pros**—this approach recognizes that many FMPs contain stocks traditionally considered to be part of an OY-managed fishery, but also have begun including stocks for ecosystem considerations only. These EC stocks or species, however, are monitored to ensure the fishery does not negatively impact them. This approach avoids having to assign ACLs to stocks not in a fishery, but still provides appropriate management for them.

- **Cons**—some members of the public might view this approach as not using enough precaution in management.

- **Option 2:** All stocks in an FMP require ACLs, except stocks with statutory exceptions (see section 1.3.4).
  - Pros—this approach is straightforward and consistent with approaches taken under existing NS1 guidelines.
  - Cons—this approach is not practical or realistic given the more inclusive ecosystem approaches taken in some FMPs. Assigning ACLs and AMs for stocks in an FMP that are seldom encountered by fishing gear, but occur in the ecosystem would have little or no meaning on a scientific or practical basis. This approach could result in removal of EC stocks from FMPs, which conflicts with NMFS's goal of managing fisheries through an ecosystem approach. This approach might also discourage Councils from adding stocks to their FMP for ecosystem considerations.

<u>Issue 2: Acceptable methods for overfishing determinations</u>

- **Option 1: (Preferred):** Allow a combination of option 2 and option 3. In other words, a Council (with Secretarial approval) can choose whether to base status determinations on stock assessments only, or on comparison of fishing mortality rate to F or catch to OFL, if that data is available even when stock assessments are not prepared.
  - **Pros—**Combines the advantages of Options 2 and 3.
  - **Cons—**none.

- **Option 2:** For stocks with ACLs, overfishing could be determined annually by comparing the annual OFL with the annual actual catch, or F with MFMT. Stock assessments could be used to identify retrospective overfishing patterns, establish or re-define OFL or MFMT, and make overfishing determinations.
  - **Pros—**Overfishing determinations could be made more frequently.
  - **Cons—**Overfishing determinations based on annual comparisons of catch against an OFL may be flawed sometimes (e.g., the OFL may be based on an incorrect or outdated MFMT or biomass estimate).

- **Option 3:** For stocks with ACLs, overfishing would be determined based on stock assessments or other accepted methods (e.g., method used in the Caribbean in 2005[1]).
    - **Pros—**Overfishing determinations based on stock assessments might be less prone to criticism, but even these determinations are sometimes met with resistance by stakeholders or the public.
    - **Cons—**Overfishing determinations would be determined sporadically based on available funding for stock assessments; funding might only be available for assessments spaced 3 to 5 years apart.

[1] Basis of Caribbean 2005 Determinations: Due to complete lack of both detailed stock assessments for these species and more discrete landings and effort data, the overfishing and overfished determinations relied on informed judgment and theoretical approaches developed by a Council-appointed SFA Working Group. The methodology is generally accepted in the scientific community, especially in data-poor situations; as stated in Restrepo et al. (1998), "in cases of severe data limitations, qualitative approaches may be necessary, including expert opinion and consensus-building methods."

Issue 3: Performance standards for trigger points that indicate a need for re-evaluation of the ACT control rule and AMs.

Option 1: (Preferred): If a stock's ACL is exceeded more than once in four years, then a stock's ACT control rule and AMs should be re-evaluated for possible revisions.

- Pros—Exceeding an ACL more often than once in four years is a reasonable frequency such that an ACT control rule and AMs would be re-evaluated and probably revised.
- Cons—some reviewers might believe that any time an ACL is exceeded, the ACT control rule and AMs should be re-evaluated and revised.

Option 2: If a stock's ACL is exceeded more than twice in four years, then a stock's ACT control rule and AMs should be re-evaluated for possible revisions.

- Pros—ACT control rule and AMs should be re-evaluated and probably revised if a stock's ACL is exceeded more often than twice every four years; but a Council could choose to be more precautionary and re-evaluate its ACT control rule according to Option 1.
- Cons—waiting to see if an ACL is exceeded more than twice in four years would be too lenient an approach for waiting to re-evaluate an ACT control rule and AMs.

Option 3: If a stock's ACL is exceeded more than once in five or six years, then a stock's ACT control rule and AMs should be re-evaluated for possible revisions.

- Pros—Exceeding an ACL more than once every five or six years might be a good approach for determining when to re-evaluate an ACT control rule and AMs for stocks that a Council determines are especially vulnerable to overfishing.
- Cons—some reviewers might believe that exceeding an ACL more than once every five or six years, might be too strict an approach for already re-evaluating an ACT control rule and AMs for most stocks.

Issue 4: Stocks in Federal FMPs, but caught mostly in state or territorial waters

- **Option 1: (Preferred):** Even if stocks in a Federal FMP are caught mostly in state(s) waters, require ACLs for such stocks, but the AMs would pertain to Federal waters (i.e., close EEZ when the ACL has been reached).
    - **Pros—**provides for some protection of jointly managed stocks using ACLs and AMs.
    - **Cons—** overfishing could occur if states (or territories) and Federal managers don't agree to the same overall ACL, and/or states (or territories) don't have effective AMs. AMs in Federal

waters would only apply to the portion of the fishery under Federal jurisdiction. Unfairness issues of Federal permit holders being affected more than state permit holders might occur.

- **Option 2:** Leave stocks caught mostly in state waters in a Federal FMP, but do not require an ACL.
    - **Pros—**when overfishing is occurring or is imminent, unfairness issue of Federal permit holders being affected more than state permit holders does not occur.
    - **Cons—**No additional protection of stocks through ACLs and AMs. Overfishing seems more likely to occur without an overall ACL and Federal AMs.

- **Option 3:** Remove stocks from FMP if less than a *de minimus* amount of the fishery is harvested from Federal waters.
    - **Pros—**none.
    - **Cons—**No additional protection of stocks through ACLs and AMs. There is difficulty in justifying any particular absolute threshold amount as a *de minimus* amount for a stock's fishery that occurs in Federal waters, below which it is removed from an FMP.

<u>Issue 5: AMs based on running averages</u>

- **Option 1: (Preferred):** Allow AMs based on multi-year averages for stocks that do not have sufficient in-season data or highly variable landings to inform managers whether a stock is approaching or has reached overfishing within a fishing year, as long as the average of actual catch does not exceed the average ACL.
    - **Pros—**a multiyear average AM may prove more practical than annual corrective AMs for most or all recreational fisheries and other fisheries that lack in-season monitoring to detect overfishing within a fishing year. Exceeding an ACL for some of these stocks is not always a true reflection of whether overfishing is, or is not occurring.
    - **Cons—**does not provide the more stringent management of fisheries that annual corrective AMs would provide.

- **Option 2:** Do not allow AMs based on multiyear averages (e.g., the average of actual catch over 3 years).
    - **Pros—**provides more stringent management of fisheries without in-season monitoring to detect overfishing within a fishing year.

- **Cons—**the absence of a multiyear average AM may prove impractical for some recreational fisheries and other fisheries that lack in-season monitoring to detect overfishing within a fishing year. Exceeding an ACL for some of these stocks might not be a true reflection of whether overfishing is or is not occurring.

Issue 6: Relationship between OFL and ABC

- **Option 1: (Preferred):** Set ABC equal to or below the OFL to take into account the scientific uncertainty in calculating OFL, including the elapsed time between OFL assessment updates and the typical degree of retrospective revision in OFL calculations. Do not set a standard amount of difference between ABC and OFL.
    - **Pros—**this is the best method to ensure that the scientific uncertainty of calculating biomass and MFMT has been calculated and considered in trying to prevent or end overfishing.
    - **Cons—**none.

    .

- **Option 3:** Set ABC such that there is no more than a 25-percent chance that this level will subsequently be found to exceed the revised estimate of OFL.
    - **Pros—**establishes a consistent standard for setting ABC compared to OFL.
    - **Cons—**may not fit well for all stocks based on frequency of stock assessments and date of most recent stock assessment. This type of data may not be available for many stocks.

Issue 7: Relationship between ACL and ACT

- **Option 1: (Preferred):** ACT should be less than ACL for all stocks subject to overfishing, and other stocks if ability to manage catch amounts indicates frequent late reporting, underreporting or suspected misreporting. This method would take into account the management uncertainty in controlling actual annual catch to the ACT level. ABC should be less than or equal to OFL and ACL$\leq$ABC.
    - **Pros**—provides a separate step necessary for most stocks in setting an annual catch limit that accounts for management uncertainty. Improves likelihood of preventing/ending overfishing.
    - **Cons**—none.

- **Option 2:** Set ACT equal to ACL, if management uncertainty is not an issue for a stock. If a stock has never been subject to overfishing (an example

might be some fisheries with individual fishing quotas or individual transferable quotas), then a Council might determine that the stock's ACT can equal its ACL. Timely, effective AMs would be needed for the subsequent fishing year if an ACL is exceeded or overfishing occurs.

- **Pros—**management of a stock under this option and circumstances could remain the same without disruption**.**
- **Cons—**overfishing is more likely under this option than if ACL>ACT.

- **Option 3:** Do not specify an ACT. Set ACL as catch amount that management measures are set to attain. Under this option, set ACL below the ABC to take into account management uncertainty in controlling annual catch and ABC would usually be set below OFL to take into account scientific uncertainty in estimating a stock's OFL (i.e., biomass and MFMT).
  - **Pros—**there would not be a need for another parameter (ACT) and management uncertainty would be accounted for in attempting to end/prevent overfishing by always setting ACL below ABC.
  - **Cons—**ACL would likely be exceeded more often when ACTs are not used; if so, AMs would be triggered more often. Overfishing also seems more likely depending on management control in the fishery.

<u>Issue 8: Providing guidance on action to take when a stock's rebuilding plan has ended and the stock is not rebuilt</u>

- **Option 1: (Preferred):** If a stock or stock complex reaches the end of its rebuilding plan period and has not been determined to be rebuilt, then rebuilding of the stock needs to continue. Generally, the rebuilding F should not be increased until the stock or stock complex has been demonstrated to be rebuilt. If the rebuilding plan was based on a T_{target} that was less than T_{max}, and the stock or stock complex is not rebuilt by T_{target}, rebuilding measures should be revised, if necessary, such that the stock or stock complex will be rebuilt by T_{max}. If the stock or stock complex has not rebuilt by T_{max}, and the rebuilding F is greater than 75 percent of MFMT, then the rebuilding F should be reduced to no more than 75 percent of MFMT, until the stock or stock complex has been demonstrated to be rebuilt.
  - **Pros**—explicit guidance ensures that Councils will know what steps to take if a stock is not rebuilt at the end of a rebuilding plan. Preferred option's guidance also makes continued rebuilding likely to occur.
  - **Cons**—none.

- **Option 2:** As with current NS1 Guidelines, continue with no explicit guidance about what to do when a rebuilding plan has ended and a stock is not rebuilt, but no longer overfished.
- **Pros**—none.
- **Cons**—lack of guidance creates too much flexibility in whether or not to extend a rebuilding plan and what to do if extending a rebuilding plan. Lack of guidance reduces likelihood that stocks that are not yet rebuilt would continue rebuilding.

1.7 Economic Analysis of the Expected Effects of the Preferred Action and Options Relative to "No Action"

The proposed revisions to the NS1 guidelines would not have any economic impacts on fishers and dealers. The proposed revisions to the NS1 guidelines provide guidance on how to address requirements to designate OFLs, ABCs, ACLs, ACTs and use AMs to end and prevent overfishing for "stocks in a fishery" by Federal FMPs. If the proposed guidance is implemented, the Councils and/or the Secretary, as appropriate, would have to amend their FMPs to include OFL (optional), ABCs, ACLs, ACTs, and AMs based on the preferred options within the proposed guidelines. These requirements will take effect in the fishing year 2010, for stocks determined by the Secretary of Commerce (Secretary) to be undergoing overfishing in 2009, and in the fishing year 2011, for all other stocks.

FMP amendments that are developed to address ACL and AM requirements will be accompanied by environmental, social and economic analyses. Annual or multiyear specifications or other regulatory actions that implement specific management measures associated with specific ACLs and AMs for one or more years to end or prevent overfishing will also be accompanied by environmental, social, and economic analyses. Each of those actions will address requirements of E.O. 12866 and the Regulatory Flexibility Act, beginning with the proposed rule stage of those actions.

The proposed revisions would require that the system of ACLs and AMs for "stocks in a fishery" result in a low risk of exceeding its ACL (i.e., also reduce the risk of overfishing). Preventing overfishing requires adequately controlling catch. In-season monitoring of catch levels coupled with AMs to restrict the fishery if catch levels are too high, is the most direct way to ensure catch limits are not exceeded. However, data limitations in some fisheries would prevent effective use of in-season monitoring and management at this time. Where in-season monitoring is not possible, it is critical that ACTs be set sufficiently below the ACL such that catch, though not available in real time, is less likely to exceed the ACL. These fisheries would also require robust AMs to address overages that may occur and to adjust the fishery in subsequent years to correct the problem causing the overage and mitigate any damage to the stock as quickly as possible.

If the proposed guidelines are implemented, they will be used to amend FMPs to bring them in compliance with the MSRA requirements. Given the diversity of Federally-managed fisheries under FMPs, and the discretion of the Councils and/or Secretary to develop different conservation and management measures to address specific fisheries, this RIR cannot quantify what economic effects will occur if certain FMPs are amended. Even if FMPs are amended per revised NS1 guidelines, and those FMP changes have economic effects, such effects cannot be meaningfully evaluated at this time.

Because it is not known for certain which stocks will be undergoing overfishing as of 2009, NMFS will recommend to the Councils that they amend their FMPs, as needed, to ensure they can implement ACLs and AMs as early as 2010, for any of their stocks considered to be "stocks in a fishery." Still, stocks not undergoing overfishing in 2009 would not be required to have ACLs and AMs until 2011.

The following stocks in Federal FMPs were subject to overfishing as of December 31, 2007 (Table 1):

- New England Council: Gulf of Maine cod, Georges Bank cod, Georges Bank yellowtail flounder, Southern New England/Mid-Atlantic yellowtail flounder, Cape Cod/Gulf of Maine yellowtail flounder, white hake, Southern New England/Mid-Atlantic winter flounder, and Georges Bank winter flounder.
- Mid-Atlantic Council: summer flounder and scup.
- South Atlantic (SA) Council: SA vermilion snapper, SA red drum, SA red snapper, SA snowy grouper, SA red grouper, SA black sea bass, SA gag, SA speckled hind, SA Warsaw grouper, SA tilefish, SA black grouper.
- Gulf of Mexico (GOM) Council: GOM red snapper, GOM greater amberjack, GOM gag, GOM gray triggerfish.
- Caribbean (CRB) Council: CRB Grouper unit 1, CRB grouper unit 4. CRB snapper unit 1, CRB parrotfishes, and CRB queen conch.
- North Pacific Council: no stocks.
- Pacific Council: yellowfin tuna-Eastern Pacific, Pacific bigeye tuna (also Western Pacific Council).
- Western Pacific Council: bottomfish multispecies complex (Hawaiian archipelago).
- Secretary of Commerce: blue marlin- Atlantic, white marlin- Atlantic, sailfish-west Atlantic, bluefin tuna-west Atlantic and albacore-North Atlantic, sandbar shark, finetooth shark, dusky shark.

If these stocks are still undergoing overfishing in 2009, they would need ACLs and AMs in place for their 2010 fishing years, unless a stock qualifies for a statutory exception.

Some FMPs will need more revisions than other FMPs, to ensure that they contain an effective combination of ACLs and AMs to hold the risk of overfishing and the risk of exceeding an ACL to an acceptably low probability. Even if stocks are not undergoing overfishing, their FMPs should be revised to explain how the requirements for ACLs and AMs will be implemented.

A preliminary review of FMPs indicates that for stocks that would likely need ACLs: (1) some stocks don't currently have an annual or multiyear specification process, or annual harvest or catch limits or quotas, (2) some stocks do not currently have in-season closure authority even though in-season fisheries data exists for them that would enable a timely closure to occur, (3) some stocks subject to chronic overfishing are more likely than others to need a substantial difference between their ACT and ACL, (4) some stocks subject to overfishing have measures that are AMs, but those measures have not been effective in preventing overfishing from occurring repeatedly, (5) some stocks that are caught mostly in state or territorial waters, are undergoing overfishing because measures in those waters are not restrictive enough, and (6) some stocks in rebuilding plans are more likely than others to need guidance about what to do when a stock is not rebuilt at the end of a rebuilding period.

For stocks that are currently undergoing overfishing, the guidelines will provide the basis for proposing measures to end overfishing. If stocks need lower ACLs, then there could be short-term economic effects, but it is not clear what those effects would be until Councils and/or the Secretary propose specific measures for particular fishermen. If no guidelines are provided, the "No Action" option, the Councils would have to amend their FMPs to meet the MSRA requirements without benefit of these guidelines. This could result in delays in the Secretary approving FMP amendments. If this should happen, overfishing for some stocks could continue to lead to more negative impacts in both the short- and long-term.

1.8 Changes in Net Benefits

The changes in net benefits are discussed for each issue in the guidelines in terms of the types of impacts that will be analyzed when management measures are proposed in future FMP amendments to implement ACLs and AMs for stocks in a fishery. The basic premise is that in the short-term, ACLs will be set lower than current harvest levels for stocks that are determined to be subject to overfishing as of 2009, while stocks not undergoing chronic overfishing will have less impact on their harvest levels due to ACLs and AMs. Stocks subject to chronic overfishing are more likely to have bigger differences between their ACL and ACT, until overfishing is ended and later prevented. In the long-term, stocks currently subject to overfishing would produce higher yields sooner, than they would without protection from overfishing afforded by ACLs and AMs.

<u>Issue 1: Stocks that need ACLs and AMs</u>
The preferred option would require ACLs for "stocks in a fishery" in an FMP. A number of factors would affect the ability to effectively develop and implement ACLs for fish stocks. Among these are: 1) the variety of ways in which fish stocks are currently managed; 2) data quality and availability of landings/catch data of the affected stocks and stock complexes; and 3) the inclusion of data-poor stocks in FMPs for data-collection only, versus the inclusion of data-poor stocks as stock complexes in FMPs.

Stocks subject to overfishing that are subject to management under an international agreement would not need ACLs and AMs. Otherwise, stocks still undergoing

overfishing in 2009, or newly determined to be subject to overfishing in 2009, would likely have lower annual catch limits established in 2010. In very general terms, stocks with lower annual catch limits could have short-term reductions in revenues. Once these stocks recover, and are no longer undergoing overfishing, allowable annual harvests could increase, with likely increases in revenues. For fish stocks that are not undergoing overfishing, ACL requirements still might require catch targets slightly less than current catch quotas to protect against overfishing. However, any reduction in short-term revenues would generally be smaller than for stocks subject to overfishing. NMFS believes that the preferred option represents improvements in the NS1 guidelines that should contribute to the conservation of stocks through more rapid rebuilding of overfished stocks and preventing overfishing, and greater long-term economic benefits. *Any economic impact or net benefits, will be assessed when management measures are proposed for various stocks in FMPs to implement the ACLs.*

Issue 2: Acceptable methods for overfishing determinations

The preferred Option would allow that for all stocks with ACLs, overfishing could be determined by comparing the annual OFL with the annual actual catch, actual F compared to MFMT, or when overfishing determinations are made as part of a stock assessment. The preferred option provides flexibility in the basis for making overfishing determinations. If the fishery is currently subject to overfishing, there will be some economic impact in the short-term. *Any economic impact or net benefits resulting from a determination of "subject to overfishing" will be evaluated when such a determination causes a change in management for a stock.*

Issue 3: Performance standards for trigger points that indicate a need for re-evaluation of the ACT control rule and AMs.

NMFS is proposing that a stock's ACT control rule and its AMs should be re-evaluated whenever its ACL is exceeded more than once in four years. NMFS recommends these performance standards to prevent chronic overfishing. It is not known how often various stocks in different FMPs would be impacted by these standards. *Any economic impact or net benefits resulting from management measures implemented because a performance standard was triggered, would be evaluated when an ACT control rule is re-evaluated for a stock for a new fishing year.*

Issue 4: Stocks in Federal FMPs, but caught mostly in state or territorial waters

The preferred option would require ACLs for "stocks in a fishery" in Federal FMPs, even if they are caught mostly in state or territorial waters. Stocks that have an ACL could be divided into Federal, and state or territorial ACLs. The amount of protection that jointly managed stocks receive from overfishing depends on the effectiveness of a stock's ACLs and ACTs and the timeliness of in-season Federal, and state or territorial AMs. If Federal, and state or territorial managers do not agree on the amount of a stock's overall ACL, Federal AMs would have limited effectiveness because they would only impact fishing in Federal waters. *If fishing in state waters causes overfishing and Federal waters are closed to reduce the amount of overfishing, Federal permit holders might lose*

a disproportionate share of revenue. Such economic impacts and net benefits would be assessed if this option is used in FMPs.

Issue 5: AMs based on running averages

The preferred option would manage some stocks by only implementing AMs if average catch over a set period (e.g., three or more years) exceeds the average ACL over that period. This option requires establishing ACT well below ACL to allow for management uncertainty. This larger difference would better ensure that overfishing is less likely to occur, or would occur infrequently. The difference between ACT and ACL will likely be based on the characteristics of the stock, and past performance of catches compared to harvest limits. Because ACT would be set below ACL, there would be some reduced revenue in the short-term for stocks that are experiencing overfishing. *Any economic impacts and net benefits for various stocks will be assessed when measures adopting this option are proposed in FMPs.*

Issue 6: Relationship between OFL and ABC

The preferred option would generally set ABC below the OFL to take into account the scientific uncertainty in calculating OFL. This method would better ensure that overfishing is ended/prevented. Setting the ABC below OFL could result in some short-term loss in revenue if the FMP does not currently use this framework. *The economic impact and net benefits of this option for various stocks will be evaluated when measures are proposed in FMPs.*

Issue 7: Relationship between ACL and ACT

ACT should be set less than ACL for all stocks subject to overfishing, and other stocks if past ability to manage catch amounts indicates management uncertainty (i.e., late reporting, underreporting or suspected misreporting). By taking into account the management uncertainty in attempting to control actual annual catch to the ACT level, the risk of overfishing would be reduced. ABC should generally be less than OFL and ACL$\leq$ABC. This option would provide a separate step necessary for most stocks in setting an annual catch limit that in combination with an ACT accounts for management uncertainty and improves the likelihood of preventing/ending overfishing. *The economic impacts and net benefits of this option for various stocks will be evaluated when measures are proposed in FMPs.*

Issue 8: Providing guidance on action to take when a stock's rebuilding plan has ended and the stock is not rebuilt.

The preferred option would clarify that rebuilding must continue at the end of a rebuilding period if a stock is no longer overfished, but not yet rebuilt. Stocks that are nearing the end of their rebuilding plan should benefit from continued rebuilding by using the proposed guidance. *The economic impacts and net benefits of this option for various stocks will be evaluated when measures are proposed in FMPs.*

1.9 Overall Benefits to the Nation

1.9.1 Benefits of the Preferred Options:

If implemented, the proposed revisions to the NS1 guidelines would have no economic impact on individuals or the economy. The next step, implementation of measures that would be contained in FMP amendments in 2010, and 2011, might have economic impacts, and such impacts will be evaluated in those actions. The magnitude of those impacts would vary depending on stock status, and past success or failure of management measures in an FMP in preventing overfishing. Failure to prevent overfishing or the occurrence of chronic overfishing would generally result in more changes in management in an FMP to implement ACLs and AMs that are effective in ending/preventing overfishing. These impacts will be analyzed when such management measures are proposed in FMP amendments.

Generally speaking, if ACLs need to be lowered per the NS1 guidelines, there could be negative economic impacts for some stocks in a fishery in the short-term, where general economic welfare, as measured by the aggregate effect of consumer and producer surplus may decrease due to decreases in harvest levels (supply) accompanied by higher prices. Consumer surplus is defined as the difference between what consumers must pay for a good and what they are willing to pay, and producer surplus measures the amount of rents or economic profits available to fishing units/firms. In addition to possible short- and near-term reductions in general economic welfare, employment and economic growth could decrease in other indirectly affected sectors of the economy such as dockside services, food and fuel suppliers for fishing vessels and fish processors and dealers.

Even if there are short-term effects from future FMP amendments, in the long-term, ACL and other management measures should yield net positive benefits to the Nation as the aggregate of consumer surplus and producer surplus increase based upon higher sustainable quantities of seafood products entering the market likely at stable prices. For example, NMFS anticipates shorter recovery periods for stocks that are currently undergoing overfishing. This should increase net benefits at a more rapid pace as compared to present conditions (no-action). In addition, increased sustainable supplies of seafood products should increase employment in various sectors related to fishing and accompanying economic growth should occur in sectors such as fishing vessels, suppliers of food and fuel for fishing vessels, fish processors and dealers, wharf owners and stevedores.

1.9.2 Costs of the Preferred Options:

There are administrative costs involved with developing the revisions to the NS1 guidelines, and publishing the proposed guidance. These costs are:

Staff (2007): $425,000
Travel (2007): $30,000
Staff (2008): $250,000
Travel (2008): $25,000

Also, FMP amendments that will be developed as a result of the new guidelines will have administrative costs associated with them. These costs will be determined during the

development of the FMP amendments. Other costs associated with the implementation of the measures that will be proposed in FMPs will be identified during the development of the FMPs.

1.10 Determination of Significance under Executive Order 12866

Section 3(f)(1) through (4) of Executive Order (E.O.) 12866 as amended by E.O. 13258 and E.O. 13422 defines a "significant regulatory action." Section (g) defines "Guidance document." And, Section 3(h) defines "Significant guidance document." E.O. 12866 requires a review of proposed regulations to determine whether the expected effects would be significant.

"Significant regulatory action" is any regulatory action that is likely to result in a regulation that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients thereof; or
(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

"Guidance document" means an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory or technical issue or an interpretation of a statutory or regulatory issue.

"Significant guidance document" –

(1) means a guidance document disseminated to regulated entities or the general public that, for purpose of this order, may reasonably be anticipated to:

(A) lead to an annual effect of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
(C) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs of the rights or obligations of recipients thereof; or
(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order; and

(2) does not include:

(A) Guidance documents on regulations issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(B) Guidance documents that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;
(C) Guidance documents on regulations that are limited to agency organization, management, or personnel matters;
or
(D) Any other category of guidance documents exempted by the Administrator of OIRA.

The Office of Management and Budget has determined that the action is significant.

2.1 Analysis Pertaining to the Regulatory Flexibility Act (RFA)

2.2 Requirements of the RFA

Section 603 of the Regulatory Flexibility Act (RFA) requires that whenever an agency is required to publish general notice of proposed rulemaking for any proposed rule, the agency shall either: (1) Prepare and make available for public comment an initial regulatory flexibility analysis (IRFA), or (2) prepare a Regulatory Flexibility Act analysis and certify to the Small Business Administration under section 605(b) of the RFA, that a rule would not, if promulgated, have any significant economic impact on a substantial number of small entities. When certifying under section 605(b) of the RFA, it is not necessary to prepare an IRFA for the proposed rule and a final regulatory flexibility analysis (FRFA) for the final rule.

2.3 Certification of this Action under the RFA

This proposed guidance, if promulgated, would not have any significant economic impact on a substantial number of small entities, because the guidance would not have economic impacts on small entities. The proposed revisions to the NS1 guidelines provide guidance on how to address new overfishing, rebuilding and related requirements under the Magnuson-Stevens Act sections 303(a)(15), 304(e) and other sections. Pursuant to section 301(b) of the Magnuson-Stevens Act, the National Standard guidelines do not have the force and effect of law. Regional Fishery Management Councils and the Secretary, as appropriate, would use the NS1 guidelines when developing FMPs, or to amend FMPs to implement ACLs and AMs to end/prevent overfishing and to take necessary actions to rebuild overfished fisheries. ACL and AM requirements under section 303(a)(15) of the Magnuson-Stevens Act are effective in fishing year 2010, for stocks undergoing overfishing, and in fishing year 2011, for all other fisheries. NMFS believes that revisions to the NS1 guidelines will assist the Councils and the Secretary in addressing the new MSRA requirements, ensure greater consistent in approaches to ending overfishing and rebuilding stocks, increase efficiency in reviewing actions and tracking annual management performance, and improve communication between NMFS and the Councils.

Because the NS1 guidelines are general guidance and there is considerable diversity in different federally-managed fisheries, potential economic impacts of the guidelines are highly speculative. As the Councils and/or the Secretary apply these guidelines to specific fisheries, they will develop FMPs, FMP amendments or other regulatory actions that will be accompanied by environmental, economic, and social analyses prepared pursuant to the Regulatory Flexibility Act, National Environmental Policy Act, and other statutes.

The process for developing and preparing FMP amendments addressing ACL and AM mechanism requirements, and submission of the FMP amendments for Secretarial review and implementation should be accomplished before the 2010 fishing years for stocks subject to overfishing. Secretarial review and rule implementation take on average, four months. The FMP amendments should establish the ACL and AM mechanisms to the point that specific AMs automatically occur in the fishing year subsequent to the one when an ACL is exceeded or overfishing occurred.

NMFS does not believe that a substantial number of small entities would be placed at a disadvantage compared to large entities if this guidance for NS1 revisions is implemented. Also, this guidance, if implemented should not reduce profit significantly for a substantial number of small entities for the reasons stated above. Therefore, an IRFA has not been prepared for this action. NMFS is recommending that the Office of General Counsel for Department of Commerce certify to the Chief Counsel for Advocacy of the Small Business Administration that the proposed guidance for this action would not have any significant economic impacts on a substantial number of small entities. Following NMFS Guidelines for Economic Review and Analysis of Fishery Management Actions, the information in section 2.4.1 provides the factual basis for the certification.

2.4 Information for this Action Related to Sections 605(b) of the RFA

2.4.1 Description of the Reasons why Agency Action is being considered:

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006 (P.L. 109-479) requires that any FMP which is prepared by any Council, or by the Secretary, with respect to any fishery, shall *"establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability"* (section 303(a)(15)). NMFS believes that revisions to the NS1 guidelines would assist the Councils and the Secretary in developing FMP amendments to meet the statutory provisions related to overfishing. The guidelines should also increase efficiency in reviewing FMPs and tracking annual management performance. Overfishing should not occur as often as it did before ACLs and AMs were implemented. There would be improvement in communication between NMFS Regional Offices and Councils to the extent that best management practices are used and shared.

NMFS conducted nine scoping sessions, one conducted at NMFS Silver Spring, Maryland facility and eight others associated with each Council's meeting during March

and April 2007. NMFS published the Notice of Intent (NOI) in the Federal Register on February 14, 2007 (72 FR 7016), to invite comments on potential preparation of an EIS or EA, for revising the NS1 Guidelines to include guidance on ACLs and AMs, solicited comments, and provided notice of a scoping meeting. Additional scoping notices were published in the Federal Register on February 28, 2007 (72 FR 8971), and March 19, 2007 (72 FR 12770), announcing additional scoping sessions associated with the Council meetings. The public comment period for scoping began February 14, 2007, and ended April 17, 2007.

NMFS listed three broad alternatives for developing guidance on ACL and AM requirements that it was considering on a preliminary basis. Scoping comments submitted on possible guidance for ACLs and AMs came from a variety of sources including: oral testimony at scoping meetings; written letters received via mail, fax, or provided at scoping meetings; and emails. NMFS identified issues before the scoping period for possible evaluation in any NEPA analysis or other analyses. NMFS provided this preliminary list to encourage the public to participate in scoping and focus their concerns on issues that NMFS was aware of, but the list was not intended to constrain public comment or analysis. Since then, NMFS has decided that potential environmental, economic, and social impacts cannot be meaningfully analyzed under the National Environmental Policy Act until the Councils and/or the Secretary apply the guidelines to specific fisheries and FMPs. At that time, the Councils and/or the Secretary would prepare an EIS or EA, as appropriate.

During the scoping period, NMFS received comments from 2,690 individuals and organizations on a variety of topics directly related to ACLs and AMs, as well as comments on other fisheries science and management topics. In addition to specific comments, most commenters stated that they were supportive of ending and preventing overfishing. Some written statements supported protection of marine habitat and reduction of bycatch. These statements were interpreted as representing broad support for the proposed action by the full range of constituents, stakeholders, and general public.

The proposed guidance contains eight issues (with a preferred option for each issue) that would revise the NS1 guidelines to assist the Councils and the Secretary in developing ACLs and AMs for various fisheries under their jurisdiction to be in compliance with the provisions of the MSRA. A discussion of the preferred options and the likely impacts of measures resulting from implementing ACLs and AMs are presented in sections 1.7 through 1.9.

2.4.2 Succinct Statement of the Objectives of, and the Legal Basis for, the Proposed Guidance:

NMFS believes that the proposed revisions to the NS1 guidelines will improve the ability of Councils and the Secretary to develop ACLs and AMs for stocks managed as a fishery that would meet the statutory requirements and the standards for Secretarial approval. The authority of this action is sections 303(a)(15) and 304(e) of the Magnuson-Stevens Act.

2.4.3 Description of and, where Feasible, an Estimate of Small Entities to which the Proposed Guidance will Apply:

An estimated number of Federal vessel permits by FMP are listed in Table 3. A total of 59,823 commercial vessel permit holders were identified. Also, headboat and charter boat vessel permits were estimated at 18,486. A total of 26,074 recreational permits were estimated for highly migratory species. Operator permits were estimated at 6,636 and dealer permits were estimated at 7,550. All the vessels included in the total vessel permits for each fishery are considered to be small entities for the purposes of the Regulatory Flexibility Analysis. The data in Table 3 are not further subdivided to describe instances that commercial vessel permits are actually divided into one of several categories (e.g., full-time, part-time and occasional), because such information is not necessary for this discussion. However, it is important to note that in most cases each vessel possesses permits for several fisheries (multiple vessel permits). As such, the total number of vessel permits (commercial, headboat and charter boat, and HMS recreational) grossly overestimate the actual number of vessels that are operating in these fisheries.

2.4.4 Description of the Projected Reporting, Recordkeeping and other Compliance Requirements of the Proposed Guidance:

These proposed revisions to the NS1 guidelines do not contain any new recordkeeping or reporting requirements subject to the Paperwork Reduction Act. When the Councils and the Secretary develop FMPs, FMP amendments, or other regulatory actions per the Magnuson-Stevens Act and NS1 guidelines, such actions may include new proposed collection-of-information requirements. In the event that new collection-of-information requirements are proposed, a specific analysis regarding the public's reporting burden would accompany such an action.

2.4.5 Identification, to the Extent Practicable, of all Relevant Federal Rules which may Duplicate, Overlap or Conflict with the Proposed Guidance:

NMFS is not aware of any other relevant Federal rules that may duplicate, overlap or conflict with the proposed guidance to revise NS1 guidelines.

2.4.6 Estimate of Economic Impacts on Small Entities by Entity Size and Industry:

As indicated earlier in section 2.3, the proposed revisions to the NS1 guidelines would not have any immediate economic impacts on small entities, and few, if any economic impacts on small entities within the first year or so, after the effective date of the final guidance for revisions to the NS1 guidelines. Any economic impacts on vessel owners or dealers "in the long-term," would be analyzed when specific management measures in various FMPs are proposed to include ACLs and AMs based on the revised NS1 guidelines, at which time specific economic impacts on small entities would be analyzed for a given action.

List of Acronyms

ABC – Acceptable Biological Catch
ACL – Annual Catch Limit
ACT – Annual Catch Target
AM – Accountability Measure
EEZ – Exclusive Economic Zone
EO – Executive Order
FMP – Fishery Management Plan
FRFA – Final Regulatory Flexibility Analysis
IRFA – Initial Regulatory Flexibility Analysis
MFMT – Maximum Fishing Mortality Threshold
MSRA – Magnuson-Steven Fishery Conservation and Management Reauthorized Act
MSY – Maximum Sustainable Yield
NMFS – National Marine Fisheries Service
NOAA – National Oceanic and Atmospheric Administration
NOI – Notice of Intent
NS1 – National Standard 1
OFL – Overfishing Limit
OY – Optimum Yield
RFA – Regulatory Flexibility Act
RFAA – Regulatory Flexibility Act Analysis
RIR – Regulatory Impact Review
SDC – Status Determination Criteria
SSC – Scientific and Statistical Committee

DOCUMENT PREPARED BY:

Mark Millikin
Office of Sustainable Fisheries,
NOAA Fisheries
NMFS Headquarters
Silver Spring, Maryland
and
Theo Brainerd
Science Planning and Coordination Office
Southeast Fisheries Science Center
NOAA Fisheries
Miami, Florida

REFERENCES

Guidelines for Economic Reviews of National Marine Fisheries Service Regulatory Actions. National Marine Fisheries Service, Silver Spring, Maryland. March 2007.

Magnuson-Stevens Fishery Conservation and Management Act: As amended through January 12, 2007. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (170 p). May 2007.

National Marine Fisheries Service (NOAA). National Marine Fisheries Service 2006 Report to Congress: The Status of U. S. Fisheries. (23 p., plus Tables and Appendicies). June 2007.

Summary of Comments Received on National Marine Fisheries Service' Proposal to Develop Guidance on Annual Catch Limits and Accountability Measures. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Sustainable Fisheries, Silver Spring, Maryland. July 2007.

Table 1. U.S. Stocks "Subject to Overfishing": Historic and Current Determinations. 1997 – 2007.

Juris-diction	Stocks with Past Overfishing Status	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
NEFMC	Atlantic sea scallop[1]	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No
	haddock - Gulf of Maine	UNK	UNK	Yes	No	No	No	No	No	No	No	No
	American plaice	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
	witch flounder	Yes	Yes	No	No	No	Yes	Yes	Yes	No	No	No
	windowpane flounder - Gulf of Maine / Georges Bank	Und	Und	Yes	No	No	No	No	No	No	No	No
	cod - Gulf of Maine	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	cod - Georges Bank	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
	yellowtail flounder - SNE/ Mid-Atlantic[2]	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	yellowtail flounder - Cape Cod/Gulf of Maine	UNK	UNK	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
	white hake	Und	Und	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	winter flounder - SNE/ Mid-Atlantic	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes
	yellowtail flounder – Georges Bank	No	No	No	No	No	No	No	No	Yes	Yes	Yes
	winter flounder – Georges Bank	UNK	UNK	Yes	No	No	No	No	No	Yes	Yes	Yes
	winter skate	Und	Und	Und	Und	Und	Und	UNK	UNK	No	Yes	No
NEFMC / MAFMC	spiny dogfish	Und	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No
	monkfish – North	Und	Und	Yes[3]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	monkfish – South	Und	Und	Yes[3]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
MAFMC	black sea bass	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No

Juris-diction	Stocks with Past Overfishing Status	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
	Bluefish	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No
	squid – *Illex*	No	No	Yes	Yes	No	No	No	No	No	No	No
	golden tilefish	Und	Und	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
	Scup	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	summer flounder	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
SAFMC	Scamp	Yes	No	No	No	No	No	No	No	No	No	No
	red porgy	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
	Wreckfish	UNK	Yes	No	No	No	No	No	No	No	No	No
	Nassau grouper**	Yes	Yes	Yes	No	No	No	No	No	No	No	No
	white grunt	Yes	No	No	No	No	No	No	No	No	No	No
	vermilion snapper	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	red snapper	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	snowy grouper	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Tilefish	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	red grouper	UNK	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	black sea bass	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Gag	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	speckled hind	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Warsaw grouper	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	black grouper	UNK	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	red drum**	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
SAFMC/ GMFMC	king mackerel - Gulf group	Yes	Yes	Yes	No	No	No	No	No	No	No	No
	yellowtail snapper	UNK	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No

Juris-diction	Stocks with Past Overfishing Status	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
GMFMC	Nassau grouper	Yes	Yes	Yes	No	No	No	No	No	No	No	No
	vermilion snapper	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No
	red drum	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No	No
	red snapper	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	red grouper	UNK	UNK	UNK	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	greater amberjack	No	No	No	No	No	No	No	Yes	Yes	Yes	Yes
	Gag	UNK	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes
	gray triggerfish	UNK	UNK	UNK	UNK	UNK	UNK	UNK	UNK	UNK	Yes	Yes
CFMC	Grouper Unit 2	Yes	Yes	Yes	No	No	No	No	No	No	No	No
	Queen conch	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Grouper Unit 1	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes
	Grouper Unit 4	-	-	-	-	-	-	-	-	Yes	Yes	Yes
	parrotfishes**	-	-	-	-	-	-	-	-	Yes	Yes	Yes
	Snapper Unit 1	-	-	-	-	-	-	-	-	Yes	Yes	Yes
PFMC	Lingcod	No	No	No	No	No	Yes	Yes	Yes	No	No	No
	shortspine thornyhead	No	No	No	No	No	No	No	Yes	No	No	No
	black rockfish	UNK	UNK	UNK	No	No	No	No	Yes	No	No	No
	Pacific whiting	No	No	No	No	No	Yes	Yes	No	No	No	No
	darkblotched rockfish[4]	UNK	UNK	Yes	Yes	No	No	No	No	No	No	No
	bank rockfish	UNK	UNK	Yes	No	No	No	No	No	No	No	No
	silvergrey rockfish**	UNK	UNK	Yes	Yes	No	No	No	No	No	No	No
	yelloweye rockfish	UNK	UNK	UNK	Yes	No	No	No	No	No	No	No
	petrale sole	No	No	No	No	No	No	No	No	No	Yes	No
	yellowfin tuna – Eastern Pacific[5]	Und	Und	Und	Und	Und	Und	No	No	No	Yes	Yes

Juris-diction	Stocks with Past Overfishing Status	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
PFMC / WPFMC	bigeye tuna – Pacific	Und	Und	Und	Und	Und	Und	Yes	Yes	Yes	Yes	Yes
WPFMC	Bottomfish multi-species complex – Hawaiian archipelago[6]	-	-	-	-	-	-	-	Yes	Yes	Yes	Yes
	yellowfin tuna – Central Western Pacific	Und	Und	Und	Und	Und	Und	No	No	Yes	Yes	No
NPFMC	None											
HMS	Swordfish	Und	Yes	Yes	Yes	Yes	No	No	No	No	No	No
	blue marlin – Atlantic	Und	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	white marlin - Atlantic	Und	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	sailfish - West Atlantic	Und	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	bigeye tuna - Atlantic	Und	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	albacore - North Atlantic	Und	Und	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	bluefin tuna - West Atlantic	Und	Und	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	sandbar shark	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	finetooth shark	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
	dusky shark	-	-	-	-	-	-	-	-	-	Yes	Yes
	Large Coastal Shark Complex[7]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	UNK	UNK

Listings are as-reported from published Reports to Congress on the Status of U.S. Fisheries and, as such, are uncorrected.
UNK = Unknown. For stocks with an "unknown" overfishing determination, an overfishing definition exists in the FMP but no determination of overfishing has been made relative to that definition.
Und = Undefined. For stocks identified as "undefined", no overfishing definition exists in the FMP.
A dash (-) denotes that the stock or complex/unit was not assessed as the currently defined stock or complex/unit.
**non-FSSI stock

Table 1 Footnotes:

[1] Before 2003, this stock was listed as two stocks: Georges Bank and Mid-Atlantic. Only Mid-Atlantic had been listed as subject to overfishing.

[2] Before 2003, this stock was listed separately as two stocks, Southern New England and Mid-Atlantic. From 2000-2002, only the Mid-Atlantic portion of the stock was listed as subject to overfishing.

[3] In 1999, the monkfish stocks were assessed as one stock.

[4] Although this stock was listed as overfishing occurring during the Q2 2006 update, it was a mistake and has been corrected by the NW Region.

[5] Even though this stock is shown to be under the jurisdiction of a single Council and under the management of a single FMP, it is acknowledged that both the Pacific Council and the Western Pacific Council have jurisdiction over this stock, and it is managed under both the West Coast Highly Migratory Species FMP and the Western Pacific Pelagics FMP. The Council indicated here is the lead Council for the purpose of reporting. Prior to 2004, this stock was listed as YFT – Eastern Tropical Pacific and Central Western Pacific stocks (WPFMC jurisdiction).

[6] This complex contains up to 19 species. Prior to 2004, these 19 species were listed as single stocks with an unknown overfishing determination.

[7] Although stocks were listed individually before 2005, was assessed as a complex.

Table 2. Reference points, accountability measures, and control rules that would be required or recommended for various types of stocks

Reference points, accountability measures, and control rules	**Stocks and Stock Complexes in a Fishery** (***excluding*** those with an approximate 1 year life cycle and those managed under international fishery agreements)	**Stocks and Stock Complexes in a Fishery That Have a Life Cycle of Approximately 1 Year**	**Stocks and Stock Complexes in a Fishery Managed Under an International Fishery Agreement[3]**	**Ecosystem Component Species[4]**
MSY[1]	✓	✓	✓	N/A
SDC[1] (e.g. MFMT[2], MSST[2])	✓	✓	✓	N/A
OY[1]	At the stock, stock complex, or fishery level	At the stock, stock complex, or fishery level	R	N/A
OFL[2]	R	R	R	N/A
ABC[1]	✓	✓	R	N/A
ACL[1]	✓	Only if "subject to overfishing"	R	N/A
AMs[1]	✓	Only if "subject to overfishing"	R	N/A
ACT[2]	✓	Only if "subject to overfishing"	R	N/A
ABC control rule[2]	✓	✓	R	N/A
ACT control rule[2]	✓	R	R	N/A

[1]MSA requirement
[2]For consistency with the NS1 Guidelines
[3]If the stock is in a U.S. FMP and managed under an international fishery agreement to which the U.S. is party.
[4]Not required by MSA, but an option provided in the NS1 Guidelines

Legend:
✓ = Yes, this is applicable
ABC = Acceptable Biological Catch
ACL = Annual Catch Limit
AM = Accountability Measures
MFMT = Maximum Fishing Mortality Threshold
MSST = Minimum Stock Size Threshold
MSY = Maximum Sustainable Yield
N/A = Not Applicable
OFL = Overfishing Limit
OY = Optimum Yield
R = Recommended
SDC = Status Determination Criteria

Table 3. Federal Vessel Permits by Council / FMP. Also Operator and Dealer Permits by Region

Regional Fishery Council	Fishery Management Plan (FMP)	No. of Permits			Gear Type
Fishing Vessel Permits		**Commercial**	**Headboat & Charter Boat**	**Recreational**	
New England Council	Northeast Multispecies	4,121	735		Longline, gillnet, trawl, hook & line
	Atlantic Sea Scallops	3,018			Dredge and trawl
	Monkfish (joint FMP with MAFMC)	3,013			Gillnet, trawl, dredge
	Atlantic Herring	2,635			Mid-water trawl, purse seine
	Deep-Sea Red Crab	1,678			Traps
	Skates	2,656			
	Atlantic Salmon	None	None		
	Spiny Dogfish (joint FMP with MAFMC)	3,157			
SUB-TOTAL		**20,278**	**735**	None	
Mid-Atlantic Council	Summer Flounder, Scup and Black Sea Bass				Trawl, H&L, trap, gillnet
	Summer Flounder	989	867		Trawl, H&L, trap, gillnet
	Scup	854	753		Trawl, H&L, trap, gillnet
	Black Sea Bass	901	827		Trawl, H&L, trap, gillnet
	Spiny Dogfish (joint FMP with NEFMC)				Trawl, gillnet
	Surf Clams and Ocean Quahogs				Dredge
	Surf Clams	1,926			Dregde
	Ocean quahogs	1,871			Dredge

Regional Fishery Council	Fishery Management Plan (FMP)	No. of Permits			Gear Type
Fishing Vessel Permits		Commercial	Headboat & Charter Boat	Recreational	
	Atlantic Mackerel, Squid, and Butterfish		777		Otter trawl, trap, gillnet
	Atlantic Mackerel				
	Squid (Illex)	79			Otter trawl
	Loligo Squid/Butterfish	2,639			
	Atlantic Bluefish	3,344	917		H&L, gillnet,otter trawl
	Tilefish	2,375			Longline, H&L
	Monkfish (joint FMP with NEFMC)				Gillnet, trawl, dredges
SUB-TOTAL		**14,978**	**4,141**	None	
South Atlantic Council	Snapper Grouper (including Wreckfish)	1,076	1,774		Rod & reel, bandit gear, longline, handline, spear, powerhead
	Coastal Migratory Pelagics (joint with GMFMC)		1,893		Gillnet, H&L
	King Mackerel	2,158			Gillnet, H&L
	Spanish Mackerel	1,741			Gillnet, H&L
	Dolphin/Wahoo	2,203	1,859		
	Shrimp (including Rock shrimp)	1,144			Trawl
	Atl. Coast Red Drum				
	Coral, Coral Reef, and Live /Hard Bottom				Hand harvest
	Golden Crab	12			Traps
	Pelagic Sargassum				

Regional Fishery Council	Fishery Management Plan (FMP)	No. of Permits			Gear Type
Fishing Vessel Permits		Commercial	Headboat & Charter Boat	Recreational	
	Habitat				
	Spiny Lobster (joint with GMFMC)	527			Trap, trawl, SCUBA
SUB-TOTAL		**8,861**	**5,526**	None	
Gulf of Mexico Council	Coastal Migratory Pelagics (joint with SAFMC)		1,944		Gillnet, H&L
	King Mackerel				Gillnet, H&L
	Spanish Mackerel				Gillnet, H&L
	Coral and Coral Reefs				SCUBA
	Red Drum				
	Stone Crab				Traps, SCUBA
	Shrimp	2,578			Otter trawl
	Spiny Lobster (joint with SAFMC)				Trap, trawl, SCUBA
	Reef Fish	1,488	1,883		Longline, fish trap, H&L
SUB-TOTAL		**4,066**	**3,827**	None	
Caribbean Council	Spiny Lobster				Trap, pot, dip net, trammel net, hand harvest
	Shallow Water Reef Fish				Longline, H&L, trap, pot, gillnet, trammel,dip net, handline, rod & reel, slurp gun, spear
	Queen Conch				Hand harvest
	Corals and Reef Associated Plants				Dip net, slurp gun, hand harvest
SUB-TOTAL		None	None	None	

Regional Fishery Council	Fishery Management Plan (FMP)	No. of Permits			Gear Type
Fishing Vessel Permits		**Commercial**	**Headboat & Charter Boat**	**Recreational**	
Pacific Council	Pacific Coast Groundfish				Trawl, H&L, pots, set net
	Limited Entry	325			
	Open Access				
	West Coast Salmon				Troll, H&L
	Coastal Pelagic Species	63			Purse seine
	Limited Entry				
	Open Access				
	U.S. West Coast Fisheries for HMS	1,976			
SUB-TOTAL		**2,364**	None	None	
Western Pacific Council	Bottom and Seamount Groundfish	217			Handline, rod and reel
	Pelagics				Troll, handline, longline
	Precious Corals	1			Manned submersible
	Crustaceans				Trap
	Coral Reef Ecosystems				
SUB-TOTAL		**218**	None	None	
North Pacific Council	Bering Sea/Aleutian Islands Groundfish	137			Trawl, pot, H&L, jigs
	Federal Fishing Permits	598			
	LLP Permits	434			

Regional Fishery Council	Fishery Management Plan (FMP)	No. of Permits			Gear Type
Fishing Vessel Permits		**Commercial**	**Headboat & Charter Boat**	**Recreational**	
	Gulf of Alaska Groundfish				Trawl, pot, H&L, jigs
	Federal Fishing Permits	1,456			
	LLP Permits	1,251			
	King and Tanner Crab	429			Pot
	Salmon off Alaska				Troll
	Scallop off Alaska	9			Dredge
SUB-TOTAL		**4,314**	None	None	
Secretary of Commerce (HMS)	Consolidated Highly Migratory Species	4,744	4,257	26,074	Harpoon, Longline, purse seine, Trap
SUB-TOTAL		**4,744**	**4,257**	**26,074**	
TOTAL		**59,823**	**18,486**	**26,074**	
	OPERATOR PERMIT	**No. of Permits**			
	Northeast Region	3,153			
	Southeast Region	2,379			
	Alaska Region	1,071			
	Southwest Region	33			
	TOTAL	**6,636**			
	DEALER PERMIT	**No. of Permits**			
	Northeast Region	5,262			

Regional Fishery Council	Fishery Management Plan (FMP)	No. of Permits			Gear Type
Fishing Vessel Permits		Commercial	Headboat & Charter Boat	Recreational	
	Southeast Region	1,253			
	HMS - Headquarters	226			
	Alaska Region	809			
	TOTAL	**7,550**			

Notes: Commercial vessel permits include: Full Time, Part Time, Occasional, Moratorium, Limited Access, Incidental Bycatch, Catcher/Processor

Figure 1: Relationship between OFL, ABC, ACL and ACT (see discussion of the ABC and ACT control rules below).

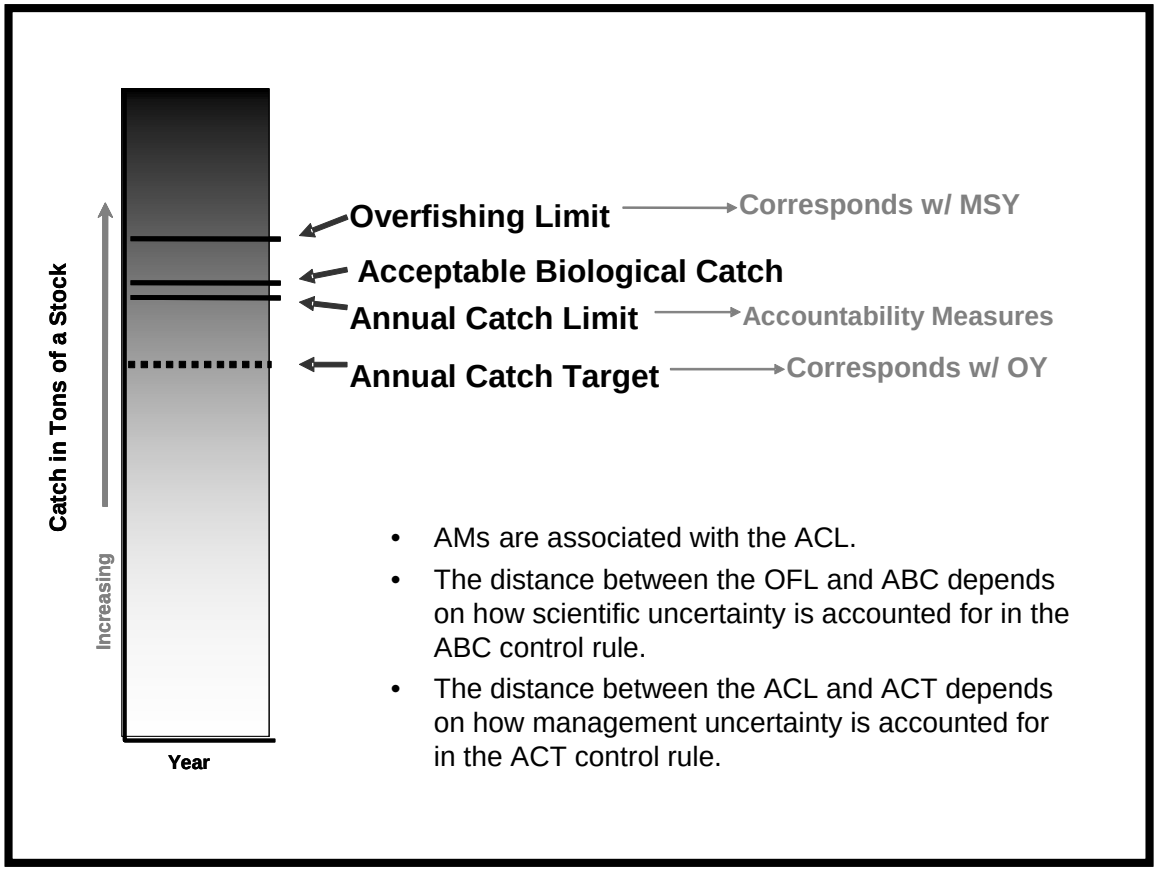
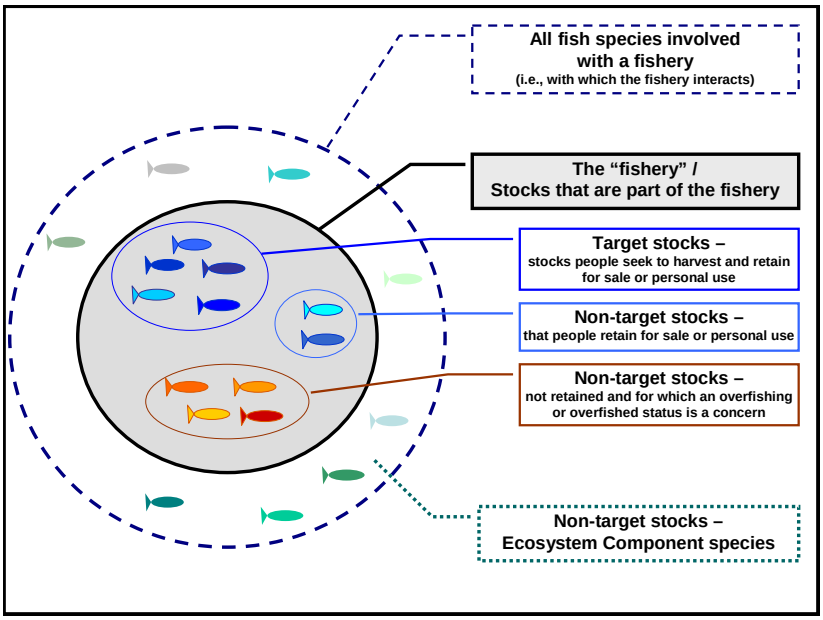
Figure 2. Proposed Classification of stocks in an FMP