

# Introduction to the MSA



**Council Member  
Orientation**

**10/27-10/29**

**Silver Spring, MD**

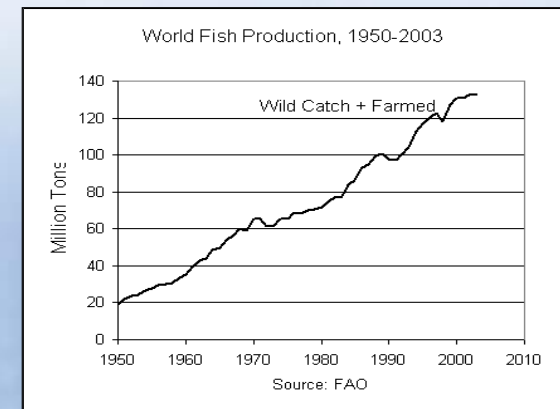
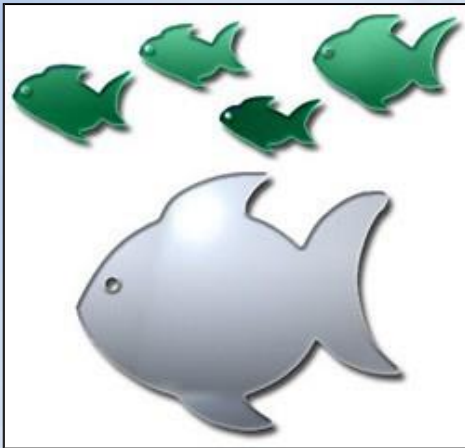
# **Objectives are for you to be able to:**

- **Identify the 10 National Standards**
- **Identify the Mandatory FMP Components**
- **Recognize required considerations for Discretionary FMP Components**
- **State the Requirements for Secretarial approval of an FMP**
- **Utilize Guidance and Interpretations to support the record for a proposed action**

# The MSA Approach to Fisheries Management

- Federal Jurisdiction
- Councils
- Fishery Management Plans (FMPs)
  - National Standards
  - FMP Components (Mandatory and discretionary)
  - Other Applicable Law
  - Secretarial Review
- Special Provisions

# The National Standards: Ten Policy Objectives



# What do they Say?

- (1) Achieve OY and prevent overfishing**
- (2) Best available scientific information**
- (3) Manage stocks as a unit**
- (4) Allocations fair and equitable, promote conservation, and prevent excessive shares**
- (5) Consider efficiency in utilization; not have economic allocation as sole purpose**
- (6) Allow for variations and contingencies**
- (7) Minimize costs, avoid duplication**
- (8) Consider fishing communities to provide for their sustained participation and to minimize adverse economic impacts**
- (9) Minimize bycatch, and bycatch mortality**
- (10) Promote safety of human life at sea**



# What do they mean?



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



**OY means: Food,  
Recreation, and  
Ecosystems**



# Achieve OY/Prevent Overfishing

- **OY = greatest overall benefit to the Nation**
  - With respect to: Food, recreation, marine ecosystems
  - Based on MSY, as reduced by:
    - Social, economic, or ecological factors
  - Consistent with Rebuilding
- **MSY**
  - Largest long-term average yield
  - Under prevailing ecological conditions
- **Overfishing**
  - Rate of fishing mortality
  - Jeopardizes long-term ability to produce MSY



# 2009 N.S. 1 Guidance

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

# 2009 N.S. 1 Guidance: Defines Terms

ACLS



Ecosystem  
Components



Target  
Stocks

MFMT

N.S. Guidelines, section 600.310(d)

# 2009 N.S. 1 Guidelines: Terminology

- Target and Non-target Stocks: 600.310(d)(3)
- Ecosystem Components (EC): 600.310(d)(5)
- Status Determination Criteria (SDC): 600.310(e)(2)(i)(A)  
(MFMT, OFL, and MSST, or their proxies)
- Overfishing/Overfished: 600.310(e)(2)(i)(E)
- ABC/ABC Control Rule: Section 600.310(f)
- Sector-ACLs: (660.310(f)(2)(iv)
- Catch Target (ACT)/ACT Control Rule: 600.310(f)(2)(v)&(vi)

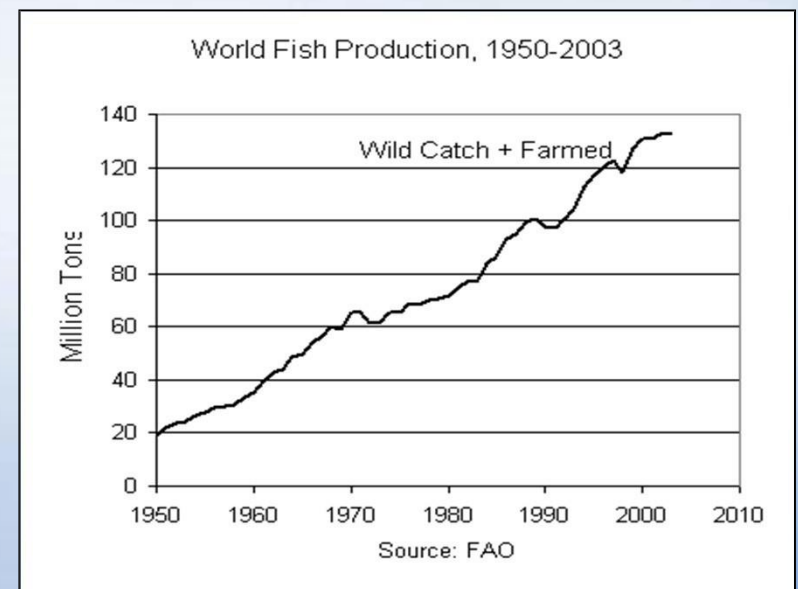
# 2009 N.S. 1 Guidelines: Links to Ending Overfishing and Rebuilding

- T<sub>min</sub>: 600.310(j)(3)(i)(A)
- T<sub>max</sub>: 600.310(j)(3)(i)
- International Overfishing: 600.310(k)
- Can overfishing ever be allowed? 600.310(m)  
(provides limited exceptions)



## N.S. 2: Best Available Scientific Information

- “Best Available” may be incomplete or allow conflicting interpretations
- Councils should justify choices
- What to do with new data
- SAFE Report



# Case Law: National Standard 2



It is OK to rely on limited data.

**X**

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

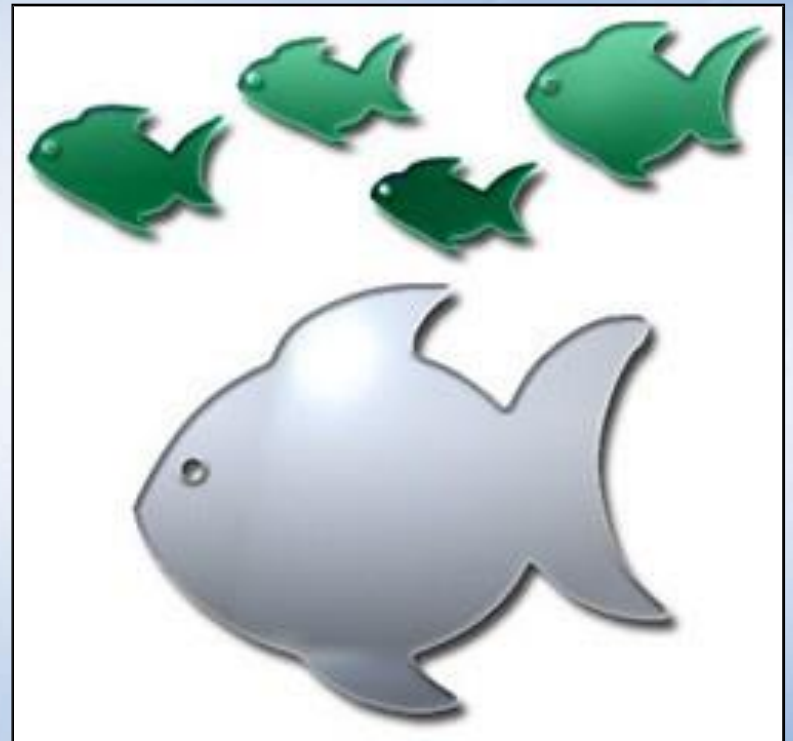
**X**

Decisions based on politics instead of science are NOT OK.

# N.S. 3: Manage Stocks as a Unit

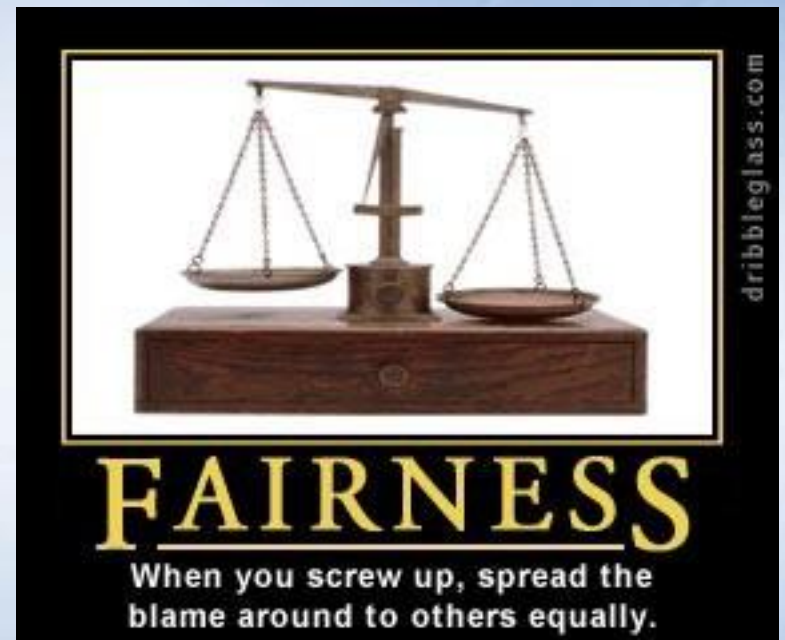
Discretion in defining management unit

- Depends on objectives
- May be based on biological, geographic, economic, technical, social, or ecological issues



# N.S. 4: No Discrimination; Rules for Allocations

- No discrimination between residents of different states.
- If necessary to allocate, allocation must be:
  - (1) Fair and equitable
  - (2) Reasonably calculated to promote conservation.
  - (3) No excessive shares of privileges.





## N.S. 4: Allocations

“Allocation” means –

- Direct, deliberate distribution of opportunity to participate among identifiable, discrete user groups or individuals.
- Incidental allocative effects not included

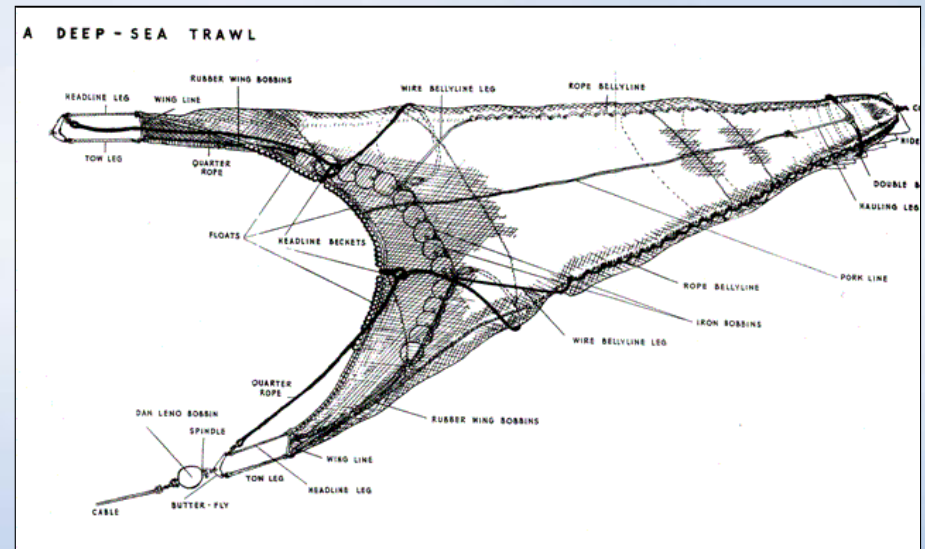


# **Case Law: National Standard 4**

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

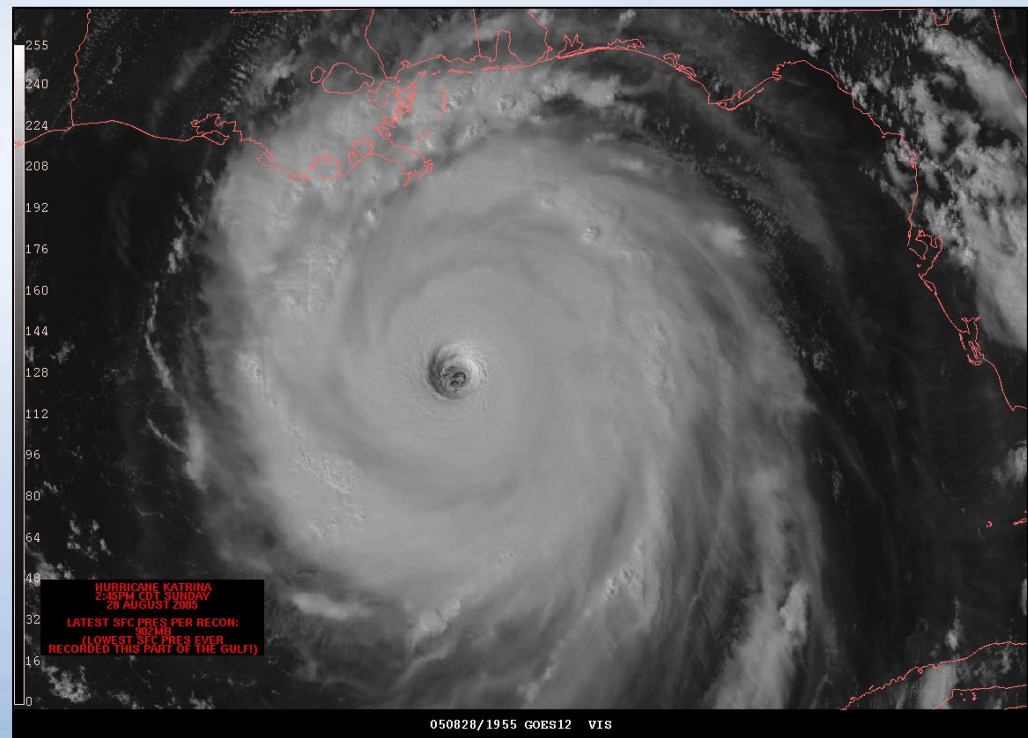
## N.S. 5: Efficiency in Utilization

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



# N.S. 6: Variations and Contingencies

- Buffers for variations and uncertainties
- Flexibility for unpredictable events





## N.S. 7: Minimize Costs, Avoid Duplication

- Not every fishery needs an FMP
- Consider costs: fuel costs, enforcement costs, burdens of collecting data
- Analysis to show benefits justify costs



## N.S. 8: Communities

Consistent with conservation requirements, take into account the importance of fishery resources to fishing communities in order to:

(1) Provide for their sustained participation; and

(2) To the extent practicable, minimize adverse economic impacts.



## **“Fishing Community” means:**

- **Substantially dependent on the fishery, or**
- **Substantially engaged in harvesting or processing to meet social and economic needs**
- **Geographically based**

# **“Sustained Participation” means:**

**....continued access to the  
fishery within the constraints of  
the condition of the resource.**



## Case Law: National Standard 8

*The conservation requirements of NS 1 take precedence over duty to minimize economic impacts.*

## N.S. 9: Bycatch

To the extent practicable:

(1) Minimize bycatch; and



(2) To the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

# “Bycatch” means:

- “Fish” that are harvested but not sold or kept
- Does not include birds or mammals
- Includes economic and regulatory discards and unobserved mortalities
- Does not include legally retained non-target species





## N.S. 10: Safety

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

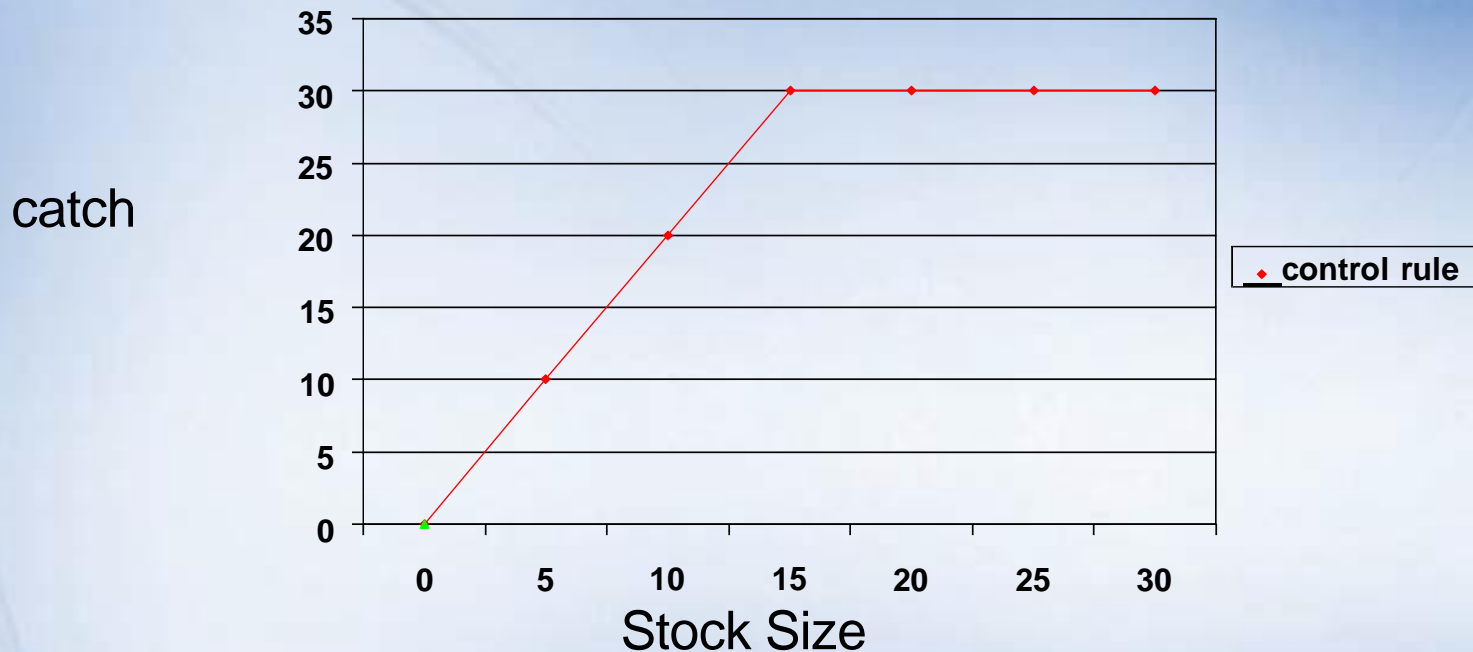


# Required FMP Components

- (1) Prevent overfishing; rebuild; protect, restore, promote long-term health and stability
- (2) Description of the fishery
- (3) Specify MSY and OY
- (4) Specify capacity and domestic harvest and processing of OY
- (5) Specify the data to be submitted
- (6) Temporary adjustments to address unsafe ocean conditions
- (7) Essential fish habitat: identify, minimize impacts from fishing.
- (8) Specify the scientific data needed to implement the plan
- (9) Fishery impact statement
- (10) Overfishing definitions
- (11) Bycatch: reporting methodology and measures to minimize (12) Number, types, and mortality of fish caught and released recreationally; minimize mortality and ensure the extended survival
- (13) Describe sectors (commercial, recreational, and charter); quantify landings trends by sector
- (14) Allocate restrictions and benefits fairly and equitably among sectors.
- (15) Establish a mechanism for setting ACLs and AMs



# Overfishing Definitions



- Tied to overall approach for ending overfishing
- FMPs must specify objective and measurable criteria

# Essential Fish Habitat (EFH)

## FMP's Must

- Identify and Describe
- Minimize adverse effects from fishing

## EFH Consultations

(Action Agencies Must...)



# Bycatch



- **Standardized reporting methodology to assess (SBRM)**
- **Minimize bycatch**
- **Minimize mortality of unavoidable bycatch**

# Oceana Case

The mandatory components  
must be **EXPLICITLY** written  
into the FMP.

# Discretionary FMP Components

- (1) Require permits and fees
- (2) Designate zones and times where fishing restrictions apply (area-based)
- (3) Establish restrictions on catch, sale, and transshipment,
- (4) Include gear requirements
- (5) Incorporate State measures
- (6) Establish a limited access system
- (7) Require processors to submit data
- (8) Require observer coverage
- (9) Assess and specify the effect of the FMP on anadromous fish
- (10) Include harvest incentives for reduced bycatch
- (11) Reserve a portion of the allowable biological catch for use in research
- (12) Conserve target and non-target species and habitat
- (14) Prescribe other measures, requirements, or conditions and restrictions necessary and appropriate for the conservation and management of the fishery



## 303(b)(2): Area-based Management

- MSRA requires that area closures must:
  - Be based on science
  - Include criteria to assess benefit
  - Include timetable for review
  - Be based benefit/impact analysis
- MSRA allows closures to protect corals

# Limited Access Programs



Must address:

- present participation,
- historical practices and dependence,
- economics
- ability of vessels to switch fisheries,
- cultural and social framework, and
- other relevant considerations.

## Section 303A: LAPPs

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

# Other Applicable Law

- **RFA:** IRFA/FRFA, Publication of Summary
- **ESA:** Biological Opinion
- **PRA:**
- **CZMA:** OMB Clearance, Notice and Comment
- **DQA:** Letters to States, State Concurrence
- **APA:** Pre-dissemination Review Form Notice
- **NEPA:** and Comment, 30 Day Delay  
EIS or EA/FONSI
- **EOs 12866, 13272:** Economic Impact Analysis
- **EO 13132:** Consult with States

# Secretarial Review of FMPs

- **Strict Timelines**

- 95 days for FMPs/amendments

- **Limited Scope**

- 3 possible outcomes
  - Approve
  - Disapprove
  - Partially approve



- **Criteria for Approvability**

- National Standards
- FMP Components
- Other applicable law
- Disapproval must be based on inconsistency with law