

Introduction to the MSA



**Council Member
Orientation**

10/27-10/29

Silver Spring, MD

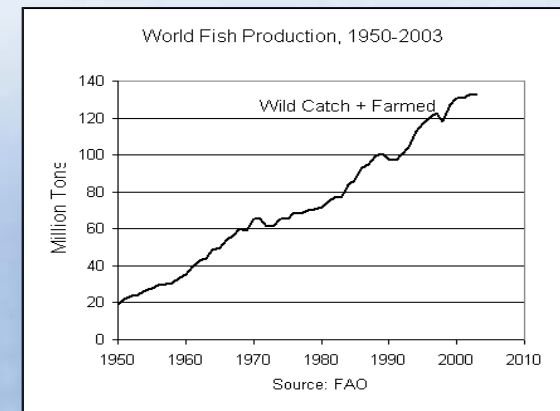
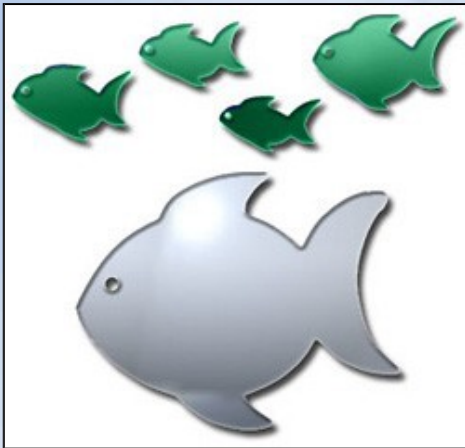
Objectives are for you to be able to:

- 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



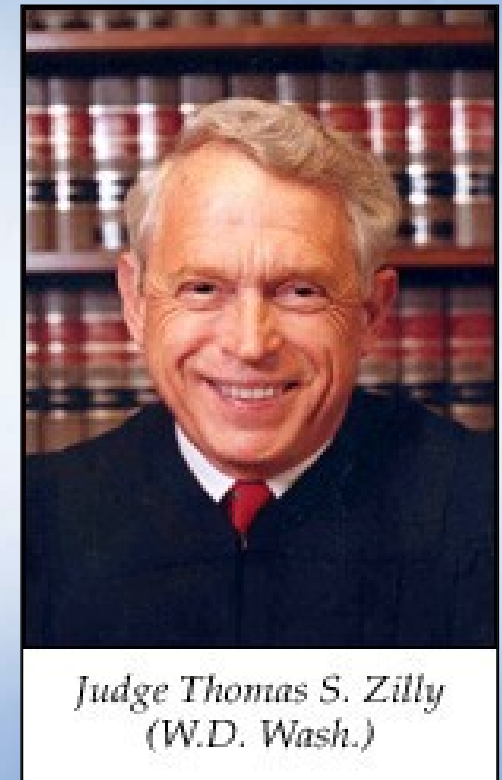
What do they Say?

- (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**



National Standard 1: MSA 301(a)(1)

- 1) Prevent Overfishing
- 2) Achieve Optimum Yield



N.S. 1 Key Concepts

- **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

--(MSA sec. 3(33) p. 10)

- **MSY**
 - Largest long-term average yield
 - Under prevailing ecological conditions

--(50 CFR 600.310(e)(1)(i)(A) p. 13)

- **Overfishing**
 - Rate of fishing mortality
 - Jeopardizes long-term ability to produce MSY

--(MSA sec. 3(34) p. 10)

N.S. 1 Guidelines

Provide a Comprehensive and Precautionary Approach to preventing OF, and guidance on determining MSY and OY.

Also include guidance relevant to:

- Establishing Overfishing Definitions and Status Determination Criteria(SDCs) – req'd by MSA sec. 303(a)(10)
- Annual Catch Limits (ACLs) and Accountability Measures (AMs) – req'd by MSA sec. 303(a)(15)
- Ending OF, and Rebuilding requirements – req'd by MSA sec. 301(a)(1), and 303(a)(15)

2016 Revisions to the National Standard Guidelines

Objectives:

1. Improve & streamline guidelines
2. Address experience gained during implementation of ACLs & AMs
3. Provide flexibility to address management issues within current statutory limits

Do **not** require Councils to revise their current FMPs

Features of the Final Rule

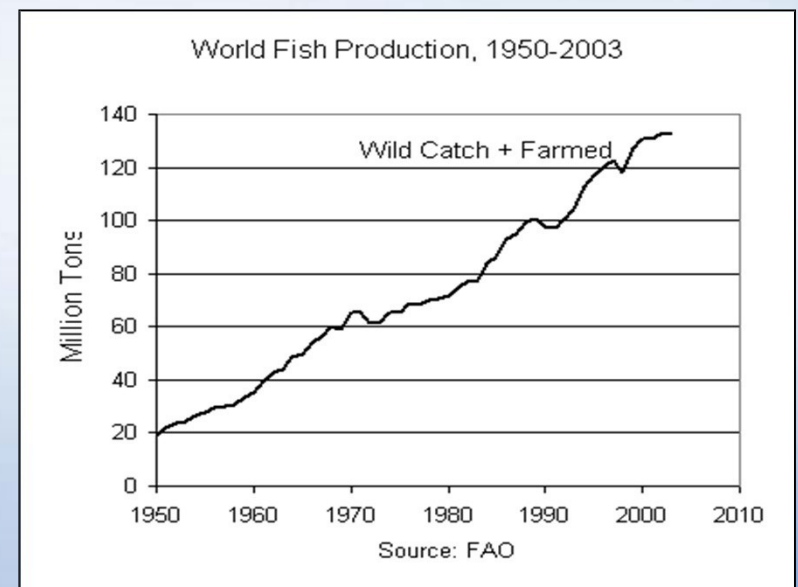
1. Determining which stocks require federal management
2. Increasing stability to fisheries
3. Increasing flexibility in rebuilding plans
4. Determining adequate progress in rebuilding
5. Clarifying OY & advancing ecosystem-based fisheries management (EBFM)

2016 N.S. 1 Guidelines: Terminology

- **ACLs:** 600.310(f)(1)(iii), and (f)(4)
- **Status Determination Criteria (SDC):** 600.310(e)(2)
(MFMT, OFL, and MSST, or their proxies)
- **Overfishing/Overfished:** 600.310(e)(2)(i)(B) & (E)
- **ABC/ABC Control Rule:** 600.310(f)(1)-(3)
- **Sector-ACLs:** 600.310(f)(4)(ii)
- **Catch Target (ACT)/ACT Control Rule:** 600.310(g)(4)

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.

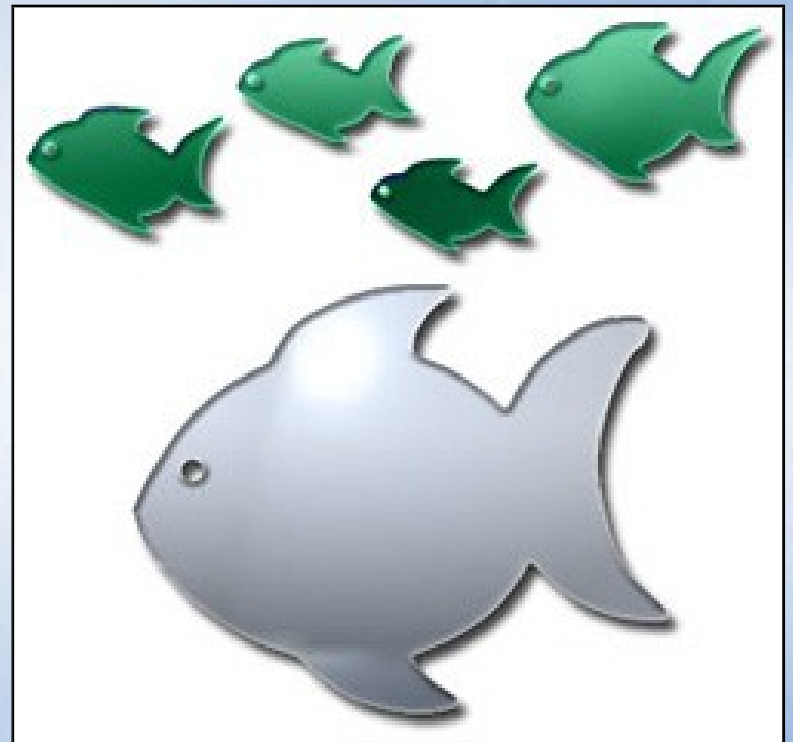
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Decisions based on politics instead of science are NOT OK.

N.S. 3: Manage Stocks as a Unit

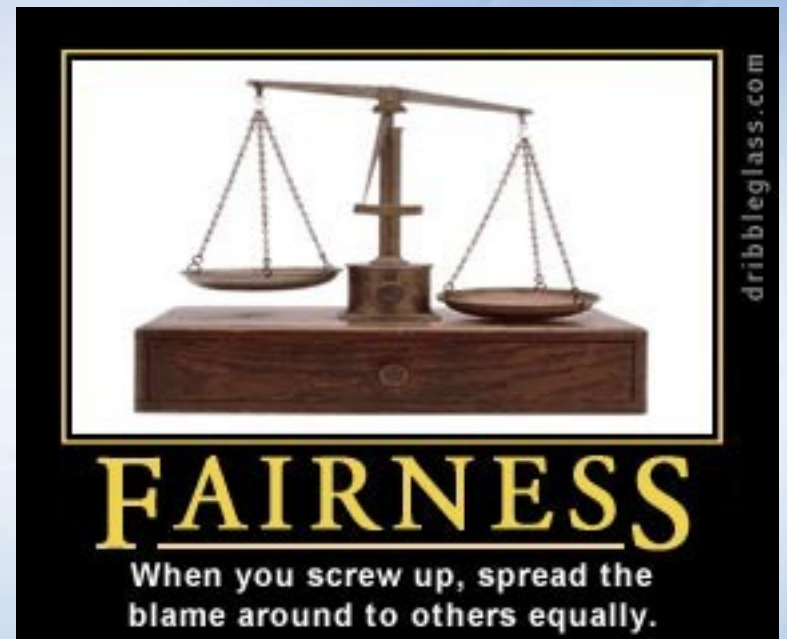
Discretion in
defining
management unit

- 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

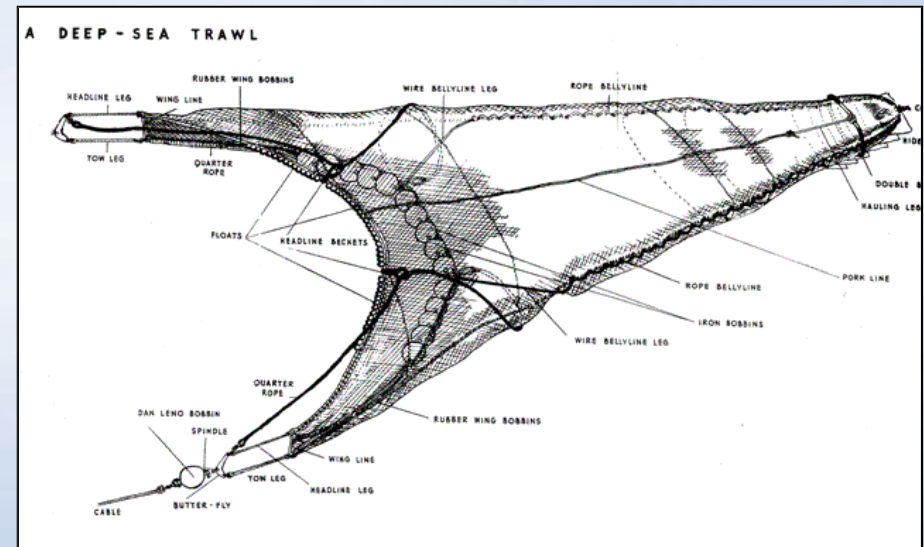


Case Law: National Standard 4

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

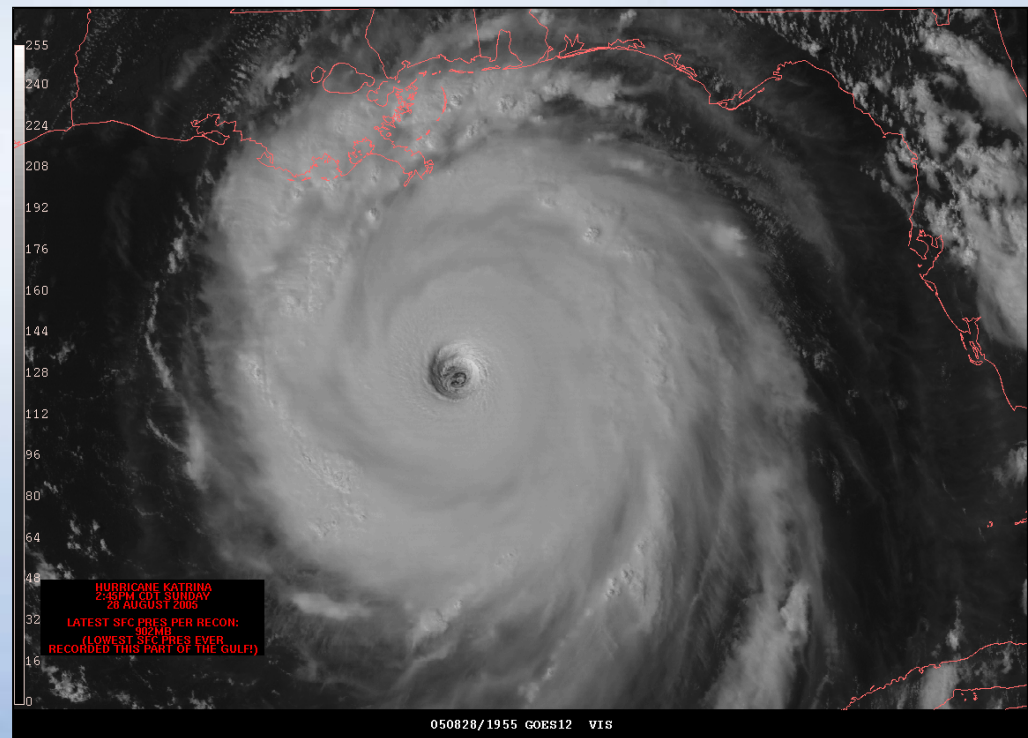
N.S. 5: Efficiency in Utilization

- 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 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



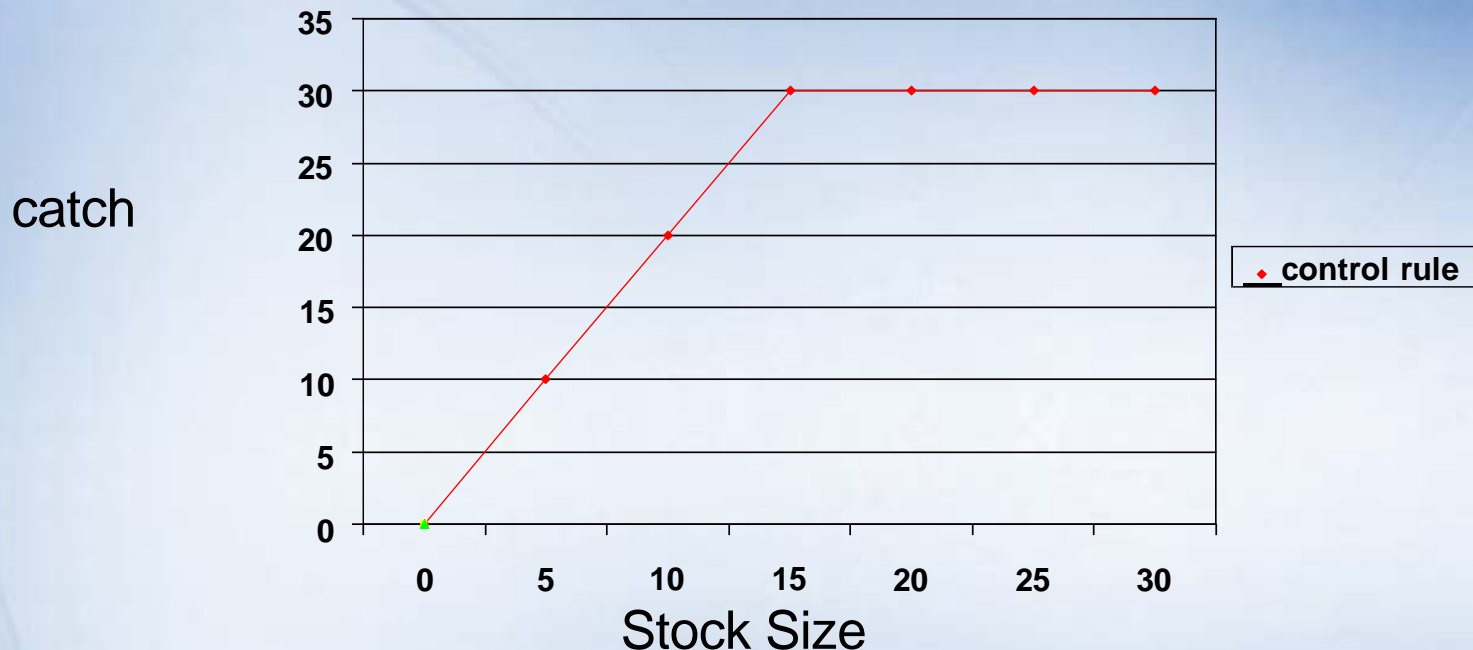
Required FMP Components: MSA sec. 303(a)

- (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
- (14) Allocate restrictions and benefits fairly and equitably among sectors.
- (15) Establish a mechanism for setting ACLs and AMs *

* Additional guidance provided in NS 1 Guidelines

Overfishing Definitions

--MSA sec 303(a)(10)



- Tied to overall approach for ending overfishing (MSA sec. 303(a)(1), 304(e))
- FMPs must specify objective and measurable criteria (MSA sec. 303(a)(10))
- Additional Guidance in N.S. 1 Guidelines (50 CFR 600.310(e)(2))

NS 1 Guidance on determining Overfishing

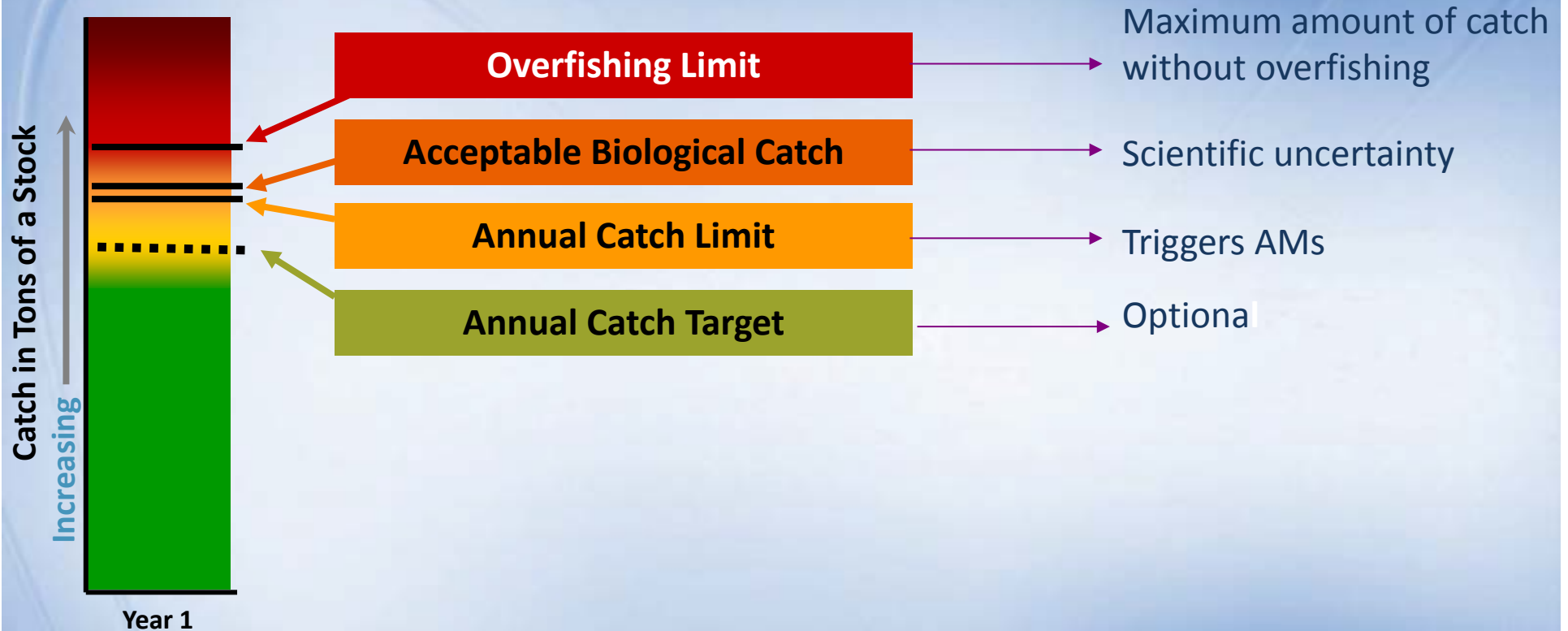
Each FMP must specify the method used, as either:

1. F exceeds MFMT for 1 year;
2. Catch exceeds OFL for 1 year
3. Multi-year approach if appropriate and specified in FMP (e.g., uncertain or fluctuating data)

50 CFR 600.310(e)(2)(ii)(A)

Prevention of Overfishing: NS 1 Guidance

$$\text{OFL} \geq \text{ABC} \geq \text{ACL}$$



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