

**NEFMC RISK POLICY WORKSHOP**  
**March 20-21, 2013**

**Magnuson-Stevens Fishery Conservation and Management Act**

**Guide to provisions related managing risk and uncertainty**

The following guide refers to provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) related to managing risk and uncertainty when establishing annual catch limits. This guide is not exhaustive and is intended to serve as a reference to help support discussion and facilitate an understanding of the legal framework and guidance relevant to develop a risk policy. For the sake of brevity, only selected excerpts are included.

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**MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT**

**Public Law 94-265**

**As amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (P.L. 109-479) January 12, 2007**

**SEC. 3. DEFINITIONS (16 U.S.C. § 1802(33, 34))**

As used in this Act, unless the context otherwise requires—

(33) The term "optimum", with respect to the yield from a fishery, means the amount of fish which—

(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

(34) The terms "overfishing" and "overfished" mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

**TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM**

**SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT (16 U.S.C. § 1851(a-b))**

(a) IN GENERAL.—Any fishery management plan prepared, and any regulation

promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

- (1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.
- (2) Conservation and management measures shall be based upon the best scientific information available.
- (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
- (4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
- (5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.
- (6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.
- (7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.
- (8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.
- (9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.
- (10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

(b) GUIDELINES.—The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

**SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS (16 U.S.C. § 1852(g)(1), (h)(6))**

(g) COMMITTEES AND ADVISORY PANELS.—

(1)(A) Each Council shall establish, maintain, and appoint the members of a scientific and statistical committee to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

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

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

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

**SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS (16 U.S.C. § 1853(a)(10, 15))**

(a) REQUIRED PROVISIONS.

—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.