

6.0 CONSISTENCY WITH THE MAGNUSON-STEVENS CONSERVATION AND MANAGEMENT ACT

[After final decision this section will be updated with the new MS-Act provisions]

6.1 NATIONAL STANDARDS

Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act requires that fishery management plans (FMPs) contain conservation and management measures that are consistent with the ten National Standards:

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...national standards for fishery conservation and management.

[To be completed for final submission document]

- (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 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.*

6.2 OTHER REQUIRED PROVISIONS OF THE M-S ACT

Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act contains 14 additional required provisions for FMPs, which are discussed below. Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, shall:

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- (1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are-- (A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery; (B) described in this subsection or subsection (b), or both; and (C) consistent with the National Standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;*
- (2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;*
- (3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;*
- (4) assess and specify-- (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3); (B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and (C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;*
- (5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the*

estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

- (6) *consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;*
- (7) *describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;*
- (8) *in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;*
- (9) *include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on-- (A) participants in the fisheries and fishing communities affected by the plan or amendment; and (B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;*
- (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;*
- (11) *establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority-- (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided;*
- (12) *assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;*
- (13) *include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;*

- (14) *to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.*

6.3 DISCRETIONARY PROVISIONS RELATED TO LIMITED ACCESS

Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act also includes discretionary provisions for FMPs, one of which relates to the development of a limited access program for a fishery and is discussed below.

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Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, may:

- (6) *establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account --*
- (A) *present participation in the fishery,*
 - (B) *historical fishing practices in, and dependence on the fishery,*
 - (C) *the economics of the fishery,*
 - (D) *the capability of fishing vessels used in the fishery to engage in other fisheries,*
 - (E) *the cultural and social framework relevant to the fishery and any affected fishing communities, and*
 - (F) *any other relevant considerations.*

7.0 RELATIONSHIP TO OTHER APPLICABLE LAW

7.1 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

7.1.1 Introduction

NEPA requires preparation of an Environmental Impact Statement (EIS) for major Federal actions that significantly affect the quality of the environment. The Council published a Notice of Intent (NOI) to prepare this Amendment and the EIS in the *Federal Register* on February 6, 2006, which was followed by three scoping meetings in Cape May, NJ, Portsmouth, NH, and Hyannis, MA. The Council prepared a scoping document that outlined some of the major issues and types of management measures that the Council might consider during the development of Amendment 11. The Council invited discussion on the scoping document and any other issues of concern at the scoping meetings as well as suggestions for appropriate management measures to consider during the development of this amendment.

To prepare the DSEIS, the Council held numerous meetings of its Scallop Oversight Committee, Scallop Advisory Panel, and Scallop Plan Development Team. The Council assembled a specific advisory panel with general category participants within the region while Amendment