



SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

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Mark R. Milliken
National Marine Fisheries Service
NOAA, Office of Sustainable Fisheries
1315 East-West Highway, Room 13357
Silver Spring, MD 20910

Dear Mr. Milliken:

Thanks you for the opportunity to comment on the Annual Catch Limit proposed rule. Our Council comments are as follows:

1. Performance Standard. Section 303(a)(15) was added to read: “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.” NMFS proposes to provide for some flexibility given scientific and management uncertainty by proposing a performance standard such that if catch of a stock exceeds its ACL more often than once in the last four years (i.e., more often than 25% of the time), then the system of ACLs, ACTs and AMs should be reevaluated to improve its performance and effectiveness. (Note: See proposed rule, page 32528, 2nd column of text, near bottom.)

Response: Given the extreme data deficiencies in the southeast, and the lack of necessary data collection programs, the Council may want to express support for such flexibility because the actual wording of the MSRA does not imply such flexibility.

2. Ecosystem Component Species. Such species would include non-target fish species that are not considered part of the “fishery” but rather species with which the fishery may occasionally interact (i.e., catch). Because EC species are not considered to be “in the fishery”, specification of reference points, ACLs, and AMs are not required. However, a Council should consider measures to minimize bycatch and bycatch mortality of EC species consistent with National Standard 9, and to protect their associated role in the ecosystem. NMFS is requesting comments on appropriate criteria for classification of EC species. (Note: See proposed rule, page 32529, 3rd column of text, near bottom.)

Response: Current plans are to address EC species in our Comprehensive ACL Amendment. Proposed criteria would focus on the level of catch (recreational and/or

commercial) including target catch and bycatch/discards. The Council requests latitude to develop and approach to designate Ecosystem Component Species and submit the approach for review and approval.

3. Species Groupings. The proposed rule allows for stock complexes to be established and proposes some criteria. (Note: See proposed rule, page 32531, 1st column of text. Also see page 32540.)

Response: The Council supports flexibility to use species groupings. This is important for our snapper grouper fishery management plan when species-specific SFA criteria are not available.

4. Statutory Exemptions to ACLs and AMs. An exemption is included for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species. (Note: See proposed rule, page 32531, 1st column of text, near bottom.) NMFS interprets “a life cycle of approximately 1 year” to mean the average length of time it takes for an individual to produce a reproductively active offspring is approximately 1 year, and that the individual has only one breeding season in its lifetime.

Response: The Council supports this interpretation and would like to indicate our position that the following species fall within this category: (a) white, brown, and pink shrimp; (b) rock shrimp; and (c) calico scallops. The Council requests guidance on whether protogynous hermaphrodites (e.g., gag grouper) qualify for an exemption to ACLs and AMs due to their unusual life history characteristics.

5. MSRA Requirements for SSCs Related to ACLs. New Section 302(g)(1)(B) states that and SSC “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.” Also, new Section 302(g)(1)(E) provides that “The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of the fishery.” In addition, new Section 302(h)(6) provides that each Council is required to “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).” (Note: See proposed rule, page 32532, 1st column of text, near top.) NMFS proposes that the Councils add to their SOPPs a process that will: Establish an ABC control rule, identify the body that will apply the ABC control rule (i.e., calculates the ABC), identify the review process that will verify the resulting ABC, and confirm that the SSC recommends the ABC to the Council.

Response: The Council should clarify that the SSC is not charged with actually collecting the data and writing reports (e.g., SAFE reports) to meet the requirements of Section 302(g)(1)(B). Rather, the SSC will review data, assessments, reports, etc. developed by the NMFS and other sources and provide advice to the Council based on those data, assessments, reports, etc. The SSC may be required to calculate ABC recommendations for species based on such information.

Response: Stock assessments in the southeast go through the SEDAR process and provide information on stock status. This includes a review workshop where independent CIE

experts serve as the peer review of the actual assessment. The SSC also serves as a part of the required peer review process when they review the outcome of the SEDAR assessments and develop their OFL and ABC recommendations. The Council views the SSC as the final peer review but it is not the intent to duplicate the SEDAR/peer review.

6. Acceptable Biological Catch. The MSRA does not define ACLs, AMs, and ABC. NMFS proposes the following (Note: See proposed rule, page 32535, 1st column of text.) :

1. Overfishing limit (OFL) means the annual amount of catch that corresponds to the estimate of MFMT applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish.
2. Acceptable biological catch (ABC) means a 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.
3. 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.
4. Annual catch target (ACT) means an amount of annual catch of a stock or stock complex that is the management target of the fishery. ACT should usually be less than its ACL and results from the application of the ACT control rule. If sector-ACLs have been established, each one should have a corresponding sector-ACT.
5. Accountability measures (AMS) means management controls that prevent ACLs or sector-ACLs from being exceeded (in-season AMs) where possible, and correct or mitigate overages if they occur.
6. Catch includes fish that are retained for any purpose, as well as mortality of fish that are discarded. Therefore, for fisheries where bycatch estimates are not available in a timely enough manner to manage annual catch, targets may be specified for landings, so long as an estimate of bycatch is accounted for such that total of landings and bycatch will not exceed the stock's or stock complex's ACL.

Response: The Council wishes to indicate their agreement with these definitions. In particular the determination that $ABC = \text{landings} + \text{discard mortality}$ although the ABC could be specified in terms of landings as long as an estimate of bycatch has been deducted.

7. Sector ACLs, ACTs, and AMs. A Council may decide, but is not required, to divide the ACL into sector-ACLs. A sector must be closed in-season if timely catch data indicates its ACL has been reached. If a sector does not have timely in-season fisheries data, or has a history of annual overage, then a Council should establish a large enough difference between a sector's ACT and ACL to improve the probability that the sector-ACL and the stock's ACL are not exceeded.

Accountability Measures. Three types: (1) in-season to prevent the ACL from being reached, (2) after the fishing year that are designed to address the operational issue that caused the ACL overage, and (3) those based on multi-year average data which are still reviewed and applied annually.

Response: The Council supports flexibility such as the use of a multi-year average for the recreational sector due to limitations in the data collection.

8. Data. FMPs should contain a description of fisheries data for the stocks, stock complexes, and ecosystem component species. The sources of fishing mortality, such as commercial catch (both landed and discarded), recreational catch, and bycatch in other fisheries should be listed in the FMP for each fishery, along with a description of the data collection and estimation methods used to quantify total catch mortality in each fishery. The description of the data collection methods used to monitor the fishery should include information on the frequency that those data are collected and updated and the scoping of sampling coverage for the fishery. In addition, the FMP should describe how those data are used to determine the relationship between total catch at any given point in time and the ACL for a stock or stock complex. (Note: See proposed rule, page 32536, 1st column of text, near middle.)

Response: The Council strongly supports inclusion of specific data needs in fishery management plans and amendments. In addition, the Council wants to indicate that NMFS in the southeast needs additional resources to be able to provide the required data for the 3 Councils.

9. Timetable when establishing a Rebuilding Plan. NMFS is proposing that the 2-year period to prepare and implement measures to end overfishing after July 12, 2009, 15 months be allocated to the Council and 9 months be allocated to NMFS. (Note: See proposed rule, page 32536, 2nd column of text, near bottom.)

Response: The Magnuson-Stevens process is a public and open process that requires a lot of time to work with the public. The MSA specifies a rigid timeline for the Secretary after receipt of a plan or amendment. The law should be followed. However, recognizing the difficulties of the review and implementation process, up to 6 months could be allowed for NMFS to review and implement any plan or amendment. This is approximately twice the time specified by the MSA and should be sufficient particularly given the high level of regulatory streamlining currently in place. This would give the Councils 18 months to develop and complete a proposed plan or amendment. This length of time is necessary given the very high impacts resulting from the necessary management to end overfishing immediately upon implementation.

10. Exemptions to requirements to prevent overfishing. Harvesting one stock at its optimum level may result in overfishing of another stock when the two stocks tend to be caught together.....must include an analysis of the risk of any stock or stock complex falling below its MSST.....(3) The resulting rate of fishing mortality will not cause any stock or stock complex to fall below its MSST more than 50 percent of the time in the long term.....Note: See proposed rule, page 32547, 2nd and 3rd columns.)

Response: This requires that the Council specify a MSST for every species including species like speckled hind, Warsaw grouper, Nassau grouper, and goliath grouper. It also implies that if a stock is below its MSST then overfishing cannot be allowed. This will require the Council to manage the deepwater snapper grouper fishery in a manner to get speckled hind and Warsaw grouper above their MSST (when the MSST is developed and to manage the shallow water/mid-shelf fishery in a manner to get red snapper above its MSST). The Council would like to request more specific guidance on how to address these issues.

Sincerely,

Duane Harris
Chairman

cc: Council Members & Staff
Council Executive Directors
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