

**SUGGESTED ISSUES TO BE DISCUSSED
MAGNUSON-STEVEN ACT ANNUAL CATCH LIMITS
NATIONAL STANDARD GUIDELINES**

Background

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) was signed into law by President Bush on January 12, 2007. The MSRA included a requirement that NMFS prepare guidelines [Section 301(b) - “The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on national standards, to assist in the development of fishery management plans.”]. The proposed rule (included as Attachment 2 in the Snapper Grouper TAB) was published in the Federal Register on Monday, June 9, 2008 (73FR11:32526-32547). Comments were due by September 8, 2008 but the comment period was extended.

Suggested Issues for Discussion

1. Emergency Regulations/Interim Measures. Section 305(c) of the MSA, which was unchanged by MSRA, provides authority to the Secretary to promulgate emergency regulations or interim measures necessary to address an emergency or overfishing for any fishery without regard to whether an FMP exists for such fishery. (Note: See proposed rule, page 32528, 2nd column of text, near top.)

Draft Response: Guidance should be provided that given such regulations are only temporary by their nature (maximum of 1 year), that an Environmental Assessment (EA) is the appropriate NEPA analysis. An Environmental Impact Statement (EIS) would be completed in conjunction with the permanent regulations. Requiring an EIS effectively removes emergency/interim rule actions from the Councils’ toolbox because of the length of time required for completion and public review.

2. 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.)

Draft 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.

3. State/Federal Management & AMs. One of the reasons for overfishing is that “8. Fishing pressure in state or territorial waters is responsible for the large majority of overfishing, federal action alone is not sufficient to end overfishing, and managers in the various jurisdictions are unable thus far to agree on a concerted approach for preventing

overfishing.” (Note: See proposed rule, page 32528, 3rd column of text, near bottom.) Further, “There may be circumstances where managers in various jurisdictions are unable to agree on an ACL and AMs that would end or prevent overfishing for a fishery described under reason 8. In such cases, these proposed guidelines would require an ACL for the overall fishery, but AMs would be implemented only for the portion of the fishery under federal management authority.” (Note: See proposed rule, page 32529, 1st column of text, near top.)

Draft Response: The SAFMC is facing this situation with closures and potential red snapper management regulations. The management agency in the State of Florida has indicated they do not favor seasonal closures. If the Council continues with spawning season closures (e.g., gag and other shallow water groupers and vermilion snapper) and potential time/area closures to end overfishing of red snapper, and the State of Florida does not implement concurrent regulations, this could effectively preempt any fishing in the EEZ. The Council may want to comment on the impacts of such a situation and potential solutions.

4. 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.)

Draft 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. A possible cutoff point would be the top 20 species. The Council would have to discuss how to deal with prominent overfished species like speckled hind, Warsaw grouper, goliath grouper, and Nassau grouper. Also, how bycatch of the EC species are minimized and their role in the ecosystem protected. Such an approach would allow NMFS to focus available resources and develop a data collection program to collect adequate data for stock assessments on these “top 20” species.

5. 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.)

Draft Response: NMFS should clarify the requirements on page 32540 (9) Indicator stocks wherein “Although the indicator stocks(s) are used to evaluate the status of the complex, individual stocks within complexes should be examined periodically using available quantitative or qualitative information to evaluate whether a stock has become overfished or may be subject to overfishing.” This may negate benefits of species groupings if periodically one must make determinations about stock status relative to overfishing/overfished for each of the species. The SAFMC’s SSC has raised a number of concerns about proper species groupings and if periodic stock status

determinations for each species is required, species groupings may not be worth the trouble to establish.

6. Statutory Exemptions to ACLs and AMs. An exemption is included for species that have a life cycle of approximately 1 year. (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.

Draft Response: The Council may want to provide support for this interpretation and to comment specifically that we consider the following species to fall within this category: (a) white, brown, and pink shrimp; (b) rock and royal red shrimp; and (c) calico scallops.

7. 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 fisher 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.

Draft 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.

Draft 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.

Draft Response: The MRSA clearly states that the SSC specifies the overfishing level (OFL) and the acceptable biological catch (ABC). The proposal for the Council to

set an “ABC Control Rule” that specifies how the ABC is calculated seems to go against this provision. The following steps are suggested for consideration:

- Step 1. Assessments provide MFMT and a measure of the scientific uncertainty associated with that value. The CIE reviewers provide peer review.
- Step 2. The SSC sets the OFL and ABC. The SSC may develop an ABC control rule for their use or may develop their ABC recommendations on a species by species basis. The SSC provides the final peer review.
- Step 3. The Council incorporates the OFL and ABC recommendations into amendments and sets the ACL based on the ABC from the SSC.

8. 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 account 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 (inseason 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.

Draft Response: The Council should indicate their agreement or disagreement with these definitions. In particular the determination that $ABC = \text{landings} + \text{discard mortality}$.

Draft Response: NMFS proposes flexibility that does not seem present in the MSRA. The MSRA specifies the ACL as a limit, implying that it should not be exceeded. Further, that a quantity of fish (numbers or weight) be specified that ensures overfishing will not occur. The proposal that OFL is greater than or equal to ABC which is greater than or equal to ACL which is greater than or equal to ACT implies that ACT could be set equal to OFL which is not implied by the MSRA. The suggestion that OFL is greater than ABC and that ACL is greater than ACT comes closer to tracking the MSRA.

9. 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 inseason if timely catch data indicates its ACL has been reached. If a sector does not have timely inseason 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) inseason 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.

Draft Response: The MSRA talks about an ACL that is a limit not to be exceeded. The idea of using a multi-year average for the recreational sector because the data collection program has not been improved to provide the data necessary for management seems counter to this requirement. The data system should be augmented such that the data are sufficient for the Councils' management needs. The ACT should be set such that the known variability (measured by the Proportional Standard Error or PSE) is incorporated and the catch should be tracked inseason and action taken inseason to ensure the ACT is not exceeded. Some are comfortable with using averages for the recreational catches but this will be a challenge to demonstrate that we are achieving accountability on the recreational catches.

10. 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.)

Draft Response: Good idea. We should do this. Proposed modification to data collection processes are proposed in Snapper Grouper Amendment 17, excluding implementing measures to estimate bycatch. The Council may want to reexamine all of the data collection programs in the Comprehensive ACL Amendment. In addition, the Council may want to indicate that NMFS in the southeast needs additional resources to be able to provide the required data.

11. 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.)

Draft 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.

12. 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 rte 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.)

Draft Response: This requires that we have 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 you cannot allow overfishing. 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 may want to request very specific guidance on these issues.

More General Issues for Discussion

1. OFL/MSY and ACT/OY. This is section XII of the PR. There is considerable treatment of OFL and MSY, and it is generally helpful. OY is another story: “long term objective is to achieve OY through annual achievement of ACT”. Consider how this plays out if applied to what is already implemented, and ACL/ACT/AM is viewed as supplementary and not as outright replacement of everything. I read the quote to imply $OY=ACT$. If existing OY’s are still acceptable (and nothing in here say says they are not), then all the other values must be filled using the range between yield at F_{msy} and yield at $F_{75\%F_{msy}}$ (using the default). That is a very different outcome than setting $ABC=F_{75\%} F_{MSY}$.

Draft Response: The Council should request further clarification on this – whether NMFS intends that $OY = ACT$, and whether NMFS intends that existing OY definitions should be replaced with new definitions that are defined in the end, once ACT is done. In other words, the question is: do we have endpoints based on $OFL=Yield$ at $MFMT$ (essentially F_{msy}) and $ACT=Yield$ at FOY , and therefore ABC and ACL fall in between, or Do we have a whole new system where we start at OFL and work downwards until reaching ACT , at which time OY is redefined on the basis of ACT ?

Hopefully this makes some sense. Maybe the gist is whether OY becomes a vestige that is defined in the end, or it remains an accepted parameter that helps define the new parameters. Note that in the intro to PR Sect XI it states ‘...MSRA did not effect changes to the MSA that would require changes to these concepts (MSY , OY , SDC)’. Section XVII also refers back to MSY and OY and the goal of FMPs being to achieve OY .

One argument I can see for $ACT < OY$ is due to implementation error – you may need to *target* a lower quota so that on average (across years) you do not exceed OY, and in such a case $OY = ACL$ essentially. Setting $ABC = \text{previous OY}$ is effecting a change in these concepts in my mind, in that it is implying our previously approved OY definitions are excessive. Some on the SSC may believe prior OYs are too risky, but in several opportunities they supported the 65/75/85% range as options and the preferred at 75.

2. Setting ABC to account for scientific uncertainty. The only other thing is setting ABC to account for ‘scientific uncertainty’. That is an enormously subjective assignment, but requesting clarification or more specific guidance may not be beneficial so it may be best to leave as is.

NOTE: THE GULF COUNCIL’S COMMENTS ARE ATTACHED.



GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

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Mr. Mark R. Millikin
National Marine Fisheries Service, NOAA
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Silver Spring, Maryland 20910

Dear Mr. *Mark* Millikin:

With this letter, the Gulf of Mexico Fishery Management Council (Council) is providing the following comments on the National Marine Fisheries Service's (NMFS) proposed rule to amend the Guidelines for National Standard 1 (NS1) of the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA).

1. The Council recognizes that the Magnuson Stevens Reauthorization Act (MSRA) requires Annual Catch Limits (ACL) and Accountability Measures (AM) for all required Gulf fisheries by 2011. This is an ambitious goal and we will work to meet it, but it is unlikely that we will accomplish this by 2011.
2. During 2008, the Council has included ACL and AM in Fishery Management Plans (FMP) for three reef fish species subject to overfishing: Greater Amberjack, Grey Triggerfish, and Gag Grouper. These measures were developed before NMFS' ACL and AM guidelines were available, and we believe they are consistent with these guidelines and will meet the 2010 date required in MSRA.
3. During 2007, the Council addressed overfishing in Red Snapper by setting hard quotas for both the recreational and commercial sectors. This management action uses pre-MSRA terminology, but we believe that it complies with the requirement to establish ACL and AM for Red Snapper by 2010.
4. The Council supports the guideline that allows some flexibility in the management of ACLs, such that catch levels could be exceeded one year out of every four years (25% of the time) without triggering a reevaluation of the management action.
5. The Council supports the guideline that sets out a process for Status Determination Criteria (SDC) to be set for an indicator species and an ACL set for the related complex of data poor stocks.
6. The Council supports the guideline that wild brood stock for aquaculture should be addressed if a species is undergoing overfishing or rebuilding, but that harvest from an aquaculture facility need not be subject to management.

Mr. Mark R. Millikin
August 26, 2008
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7. The Council disagrees with the guideline that suggests that the Council's Statement of Organization, Practices and Procedures (SOPPs) is the proper place to describe the process for establishing ABC Control Rules, including the role of SEDAR and the SSC. We recommend instead that ABC Control Rules be included in Fishery Management Plans and with the ability to refine management through framework actions.

8. Recreational harvest is a large and important component of reef fish and coastal migratory fisheries in the Gulf. We lack timely in-season monitoring data for these recreational fisheries, and it will be difficult to have in-season accountability measures. There will be additional time delays in accountability if Gulf coast states need to implement compatible state regulations. The guidance recommends large buffers between ACL and ACT in these situations of management uncertainty and overages, and we anticipate that lower ACT for the recreational fishing sector will result in economic disruptions. These disruptions will be even greater if AMs are triggered in these recreational fisheries. These many challenges will make management using ACL and AM difficult in Gulf recreational fisheries.

Please accept these as our formal comments on the proposed rule, and if you have any questions, please contact the Council's office. Thank you for the opportunity to comment.

Sincerely,



Thomas D. McIlwain, Ph.D.
Chairman

c: James Balsiger
Alan Risenhoover
Gulf Council
Council Executive Directors
Technical Staff