

A map of the New England fishery management area, showing the coastline of the United States from Maine down to the Gulf of Mexico. The map is color-coded by depth, with shallower waters in lighter blues and deeper waters in darker blues. Numerous small circles, representing fishing vessels or catch locations, are scattered across the area, with a high concentration near the coast. Two red boxes are drawn on the map: one rectangular box in the lower-left quadrant and one larger, irregular box in the upper-right quadrant. The text is overlaid on the map in white.

Annual Catch Limits; National Standard Guidelines Final Rule & Issues Raised by the NEFMC

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September 19, 2008

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

Dear Mr. Milliken:

The New England Fishery Management Council, its Scientific and Statistical Committee and staff appreciate the opportunity to comment on the June 9, 2008 proposed revisions to the guidelines for National Standard 1 (NS1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). As described by the National Marine Fisheries Service (NMFS), the agency considers this action necessary to provide guidance on how to comply with new annual catch limit (ACL) and accountability measure (AM) requirements for ending overfishing in fisheries managed through federal fishery management plans and clarifies the relationship between ACLs, maximum sustainable yield (MSY), optimum yield (OY) and other applicable reference points.

To facilitate a thorough review, the Council charged its staff with reviewing the proposed rule, convened a meeting of its SSC to solicit comments and finally reviewed and approved the following comments at a meeting of the full Council on September 3, 2008. While the details of these recommendations are provided in the appended table, the Council would like to reiterate several points that it considers critical to any revisions in the NS1 guidelines. These include the NEFMC's very serious concerns about:

- 1) the mandated addition of an annual catch target (ACT) as a requirement of fishery management plans (FMPs);
- 2) the option to define overfishing in terms of catch rather than a rate of fishing mortality;
- 3) the FMP requirement to include AMs as an in-season adjustment whenever possible;
- 4) the very burdensome, and in some cases duplicative, additional information requirements for FMPs;
- 5) the criteria for the exception to preventing overfishing in a mixed-stock fishery;
- 6) the need for the guidelines to allow a) stock status determinations using criteria for overfishing specified in the U.S./Canada Resource Sharing Understanding, and b) rebuilding timelines consistent with the Understanding, as well as exceptions to ACL and/or AM requirements for these stocks.

Revisions to National Standard 1 Guidelines on issues commented on by the NEMFC
 (Comments addressed through revisions in guidelines are highlighted below)

Page	Section	Text from Proposed Guideline	Comment
32539	600.310 (b)(2)(v)(B)	(B) Each SSC shall provide its Regional Fishery Management Council recommendations for ABC as well as other scientific advice, as described in Magnuson-Stevens Act section. The SSC may specify the type of information that should be included in the Stock Assessment and Fishery Evaluation (SAFE) report (see 5 600.315).	The guidelines should be clearer about the roles of the SSC and the Council in determining information to be included in SAFE reports. As managers the Council must also be allowed to specify management information needed in the SAFE.
	600.310 (b)(2)(v)(C)	(C) The Secretary and each Regional Fishery Management Council may establish a peer review process for that Regional Fishery Management Council for scientific information used to advise the Regional Fishery Management Council about the conservation and management of the fishery (see Magnuson-Stevens Act section 302(g)(1)(E)). If a peer review process is established, it should investigate the technical merits of stock assessments and other scientific information used by the SSC. The peer review process is not a substitute for the SSC and should work in conjunction with the SSC.	At least in the northeast, the SARC and TRAC would have to include SSC members to comply with this provision.
	600.310 (b)(2)(v)(D)	(D) Each Regional Fishery Management Council shall develop ACLs for each of its managed fisheries that may not exceed the fishing level recommendations of its SSC or peer review process (Magnuson-Stevens Act section 302(h)(6)). The following language was added: (3) Specification of ABC ... The SSC must recommend the ABC to the Council.	The final recommendation for ABC should come from the SSC and not the peer review process. The peer review process or Council Plan Development Teams could provide alternatives and appropriate information about uncertainty, stock vulnerability, alternative candidates for ABCs, etc. for the SSC to consider. In relation to existing stock assessment peer review processes, the SSC's role should be interpretative and not to provide additional peer review to work that has already been peer-reviewed. This section says the peer review process can set fishing level recommendations. This does not seem consistent with the MSA, which places this authority squarely on the SSC. Nor does it seem consistent with an earlier paragraph that says the SSC cannot be replaced by the peer review process.
	600.310 (c)	(c) <i>Summary of items to include in FMPs related to NS1.</i> The Councils should evaluate and describe the following items in their fishery management plan ... (5) ACT control rule ACTs are now optional	As recommended by its SSC, the NEMFC feels it is appropriate to list the ACT as a suggested component of a fishery management plan rather than require it as a legally mandated component of an FMP. Using an ACT as proposed in the guidelines is a way of trying to separately account for management uncertainty. Although the ACT may clearly distinguish management uncertainty from other sources of uncertainty, adding a target does not fundamentally improve the process. It is more important to correctly adjust the ACL based on actual performance data than to create a separate target or ACT control rule based on theory to account solely for management uncertainty. The list of items to include in FMPs related to NS1 is extremely long. Also, is it supposed to be included for all stocks that are "in the fishery", a very broad term? It is not clear that including the extra information will materially

Major Issues in Council Comments

1. ACTs - **optional**
2. Define overfishing in terms of F instead of catch – **no change** – may be defined in terms of either catch or F
3. FMPs required to include in-season AMs where possible – **no change**

Major Issues in Council Comments

4. Burdensome FMP information requirements – revised
Information required on data collection, assessment methods, etc.) can be contained in FMP or other documents such as the SAFE report
5. Mixed stock fishery exception – no change – will be almost impossible to apply
6. No recognition / accommodation of US Canada Resource Sharing Understanding in terms of NS1 requirements – no change

Other Issues in Council Comments

1. **Change** - Council responsible for the contents of SAFE reports rather than SSC
2. **Change** - Final recommendations on ABCs to come from SSCs, not the peer review process
3. The peer review process is not a substitute for the SSC & should work in conjunction with the SSC. **No change** which means that the Council will have to meet this requirement in using TRAC recommendations.

Clarification: ACLs / Hard Quotas

NMFS response to comment #11

NMFS agrees that the conservation and management measures for a fishery are not required to be “hard quotas.” However, NMFS believes that the ACL was intended by Congress to be a limit on annual catch. Therefore, conservation and management measures must be implemented so that the ACL is not exceeded, and that accountability measures must apply whenever the ACL is exceeded.