



September 22, 2008

Via Federal Rulemaking Portal

Mark Millikan
Office of Sustainable Fisheries
National Marine Fisheries Service
1315 East-West Highway, Rm. 13357
Silver Spring, MD 20910

Re: 0648-AV60; Comments on Annual Catch Limits Proposed Rule

Dear Mr. Millikan,

The Center for Biological Diversity offers these comments the National Marine Fisheries Service's ("NMFS") proposed revisions to the guidelines for National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act ("MSA"). 73 Fed. Reg. 32526 (June 9, 2008). Overall, we support many aspects of the proposed rule that will improve efforts to end overfishing. However, several aspects of the rule must be strengthened if it is to be successful. We discuss these items below.

The purpose of the proposed rule is to put in place mechanisms necessary to end overfishing in overfished fisheries by 2010 and to prevent or end overfishing in all fisheries by 2011. Such measures are crucial. Too many fisheries around the nation are overfished or are experiencing overfishing. Data gaps, bycatch mortality, lack of coordination at state, federal, and international levels, and failure to formulate and implement effective management measures have contributed to the degradation of our fisheries.

The accountability measures ("AMs") and conservative methods for setting catch limits contained in the proposed rule are critical to addressing these chronic management problems. We support NMFS's proposal to set acceptable biological catch ("ABC") levels lower than overfishing limits ("OFL") and annual catch targets ("ACT") lower than annual catch limits ("ACL"). Doing so accounts for uncertainty in estimating the OFL as well as uncertainty in accounting for catch and delays in halting catch once the ACT is reached. Leaving a buffer between the number of fish allowed to be caught the maximum number that can be caught sustainably is crucial to preventing overfishing.

In addition, we support the accountability measures contained in the proposed rule. These measures, which are aimed at preventing ACL overages from occurring during a particular year or recurring in future years, are particularly important for rebuilding fish

stocks. NMFS's proposal to reduce the ACL for a stock in a rebuilding plan in the next fishing year by the full amount of the ACL overage in the current year is a common sense approach to ensuring that the rebuilding plan will succeed. Similarly, NMFS has proposed more stringent measures for rebuilding severely depleted fish stocks. We agree that when fishery managers fail to meet their deadline for rebuilding such fish stocks, it is appropriate and necessary to set catch limits at no more than 75% of the OFL. As with any fish stock, the actual catch limit set should ultimately be dictated by the best available science. The final rule should make clear that fishery managers may not simply set catch limits for severely depleted stocks at 75% of OFL if the best available science dictates a lower catch limit – or no catch at all.

While we support aspects of the proposed rule, we also see room for improvement. For instance, the rule should require, rather than simply recommend, that catch limits be set using the best available science and account for scientific and management uncertainty. Given that fishery managers must often rely on incomplete data and less than perfect modeling exercises to predict ABC, OFL, ACT, and ACL, catch limits must be set at levels that prevent overfishing and allow rebuilding even when uncertainty in estimating stock levels or fishing effort results in greater impacts on the stock than expected. Indeed, the historic failure to take this precautionary approach has resulted in sustained overfishing and prevented the recovery of many of the nation's fish populations.

A precautionary approach must also be taken with respect to multiple fish stocks that are managed as a single unit. The danger in managing stocks as a unit is that the catch limits may be set based on the strongest stock, leaving weaker stocks vulnerable to overfishing. The proposed rule should be amended to ensure that when stocks are managed as a unit, catch limits are based on the weakest stocks in the unit, thereby maintaining the health of all stocks in that unit. Similarly, NMFS's final rule should offer specific guidance on grouping fish stocks into complexes to ensure that all stocks in the complex have similar vulnerabilities to fishing.

The proposed rule proposes the addition of an "ecosystem component species" in order to account for fishing impacts on species that are not targeted or retained by a fishery but nonetheless interact with it. This classification could improve fishery management planning by incorporating important ecosystem effects. However, it may also be open to abuse. We understand that some members of the fishing industry have pushed for provisions to classify many species as ecosystem component species even though these species are targeted, caught, and sold. To allow the ecosystem component species category to be misused in this way would defeat the purpose of including ecosystem component species in an FMP and would make these species extremely vulnerable to overfishing, since fishery managers are not required to set ACLs or AMs for ecosystem component species. NMFS's final rule must make absolutely clear that the proposed "ecosystem component species" classification may not be used to expand the number of *de facto* target species in a fishery or shield targeted stocks from being subject

to ACLs and AMs. Classification as an ecosystem species should be made based on the species' ecological role in the system affected by the fishery, the likelihood that it interacts with the fishery, and its vulnerability to fishery interactions. Under no circumstances should a species that is retained for use or sale be classified as an ecosystem component species.

Finally, NMFS's proposal to exempt fisheries that are managed under international agreements in which the U.S. participates from measures regarding overfishing and rebuilding, such as the imposition of ACLs and AMs and ABC requirements, is contrary to the intent of the MSA. The Magnuson-Stevens Reauthorization Act ("MSRA") recognized overfishing in international waters as a significant problem and mandated the federal government to do more, not less, to address that problem. Contrary to NMFS's strained interpretation, section 104(b)(1) of the MSRA does not exempt internationally managed fisheries from ACLs and AMs. Rather, it specifies that ACLs and AMs shall be set for these fisheries by 2010 or 2011, "unless otherwise provided for by an international agreement in which the U.S. participates." The most reasonable interpretation of this provision is that the specified deadline for setting ACLs and AMs applies to every fishery, including those managed under international agreements, unless the agreement specifies a different deadline. Had Congress intended to exempt internationally managed fisheries from ACLs and AMs themselves, it would have done so specifically, as it did in section 104(b)(2), which specifies that the ACL and AM requirements "shall not apply" to a fishery for species with a one-year life cycle unless the fishery is subject to overfishing.

If anything, the U.S. must take a leadership role in ensuring the sustainable, scientific management of international fisheries. NMFS's assumption that "[a]pplying ACLs or AMs only to the U.S. portion of the catch would not effect rebuilding or end overfishing," 73 Fed. Reg. at 32531, is both unsupported and contrary to Congress's intent that the U.S. exert its considerable market power and scientific expertise to end overfishing around the globe. The MSA does not allow NMFS or any U.S. fishery manager to shirk its responsibilities simply because applying the required measure will not instantaneously or singlehandedly end overfishing.

In closing, we believe the proposed rule has the potential to make important strides in ending overfishing, but only if it is strengthened and its significant loopholes are closed. Our fisheries are severely depleted. Bold action is needed to repair the damage of decades of mismanagement and restore our ocean ecosystems to productivity and balance. Thank you for your consideration of these comments.

Sincerely,
/s/
Andrea A. Treece