

Revisions to the ACL proposed rule

§ 600.310

(b)(3) *Approach for setting limits and targets for consistency with NSI.* In general, when specifying limits and targets intended to avoid overfishing and achieve sustainable fisheries, Councils ~~should~~ must take an approach that considers uncertainty in scientific information and management control of the fishery. These guidelines identify limit and target reference points which ~~should~~ must be set lower as uncertainty increases such that there is a low risk that limits are exceeded as described in paragraphs (f)(4) and (f)(6) of this section.

(e)(3)(v) *Specification of OY.* The specification of OY must be consistent with preventing overfishing and ~~should~~ must be reduced from MSY to account for scientific uncertainty in calculating MSY, and economic, social, and ecological factors such as those described in paragraph (e)(3)(iv) of this section. If the estimates of MFMT and current biomass are known with a high level of certainty and management controls can accurately limit catch to the ACT then OY could be set very close to MSY. To the degree that such MSY estimates and management controls are lacking or unavailable, OY ~~should~~ must be set farther from MSY.

(f) *Acceptable biological catch, annual catch limits, and annual catch targets.* The following features (see paragraphs (f)(1) through (f)(7) of this section) of acceptable biological catch, annual catch limits, and annual catch targets apply to stocks and stock complexes in the fishery (see paragraph (d)(2) of this section).

(1) *Introduction.* A control rule is a policy for establishing a limit or target fishing level that is based on the best available scientific information and is established by fishery managers in consultation with fisheries scientists. Control rules ~~should~~ must be designed so that management actions become more conservative as biomass estimates, or other proxies, for a stock or stock complex decline and as science and management uncertainty increases.

(2) *Definitions.* (i) *Catch* is the total quantity of fish, measured in weight or numbers of fish, taken in commercial, recreational, subsistence, tribal, and other fisheries. Catch includes fish that are retained for any purpose, as well as mortality of fish that are discarded.

(ii) *Acceptable biological catch (ABC)* is a level of a stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL

and ~~should~~ must be specified based on the ABC control rule.

(iii) *ABC control rule* means a specified approach to setting the ABC for a stock or stock complex as a function of the scientific uncertainty in the estimate of OFL.

(iv) *Annual catch limit (ACL)* is the level of annual catch of a stock or stock complex that serves as the basis for invoking AMs. ACL cannot exceed the ABC, but may be divided into sector- ACLs (see paragraph (f)(5) of this section).

(v) *Annual catch target (ACT)* is an amount of annual catch of a stock or stock complex that is the management target of the fishery. A stock or stock complex's ACT ~~should usually~~ must be less than its ACL and results from the application of the ACT control rule. If sector-ACLs have been established, each one ~~should~~ must have a sector-ACT.

(vi) *ACT control rule* means a specified approach to setting the ACT for each stock or stock complex such that the risk of exceeding the ACL due to management uncertainty is at an acceptably low level.

(3) *Specification of ABC.* ABC ~~may~~ must not exceed OFL (see paragraph (e)(2)(i)(D) of this section) and ~~is recommended to~~ must be reduced from OFL to account for scientific uncertainty in the estimate of OFL. Councils ~~should~~ must develop a process for receiving scientific information and advice used to establish ABC. This process ~~should~~ must: 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. For Secretarial FMPs or FMP amendments, agency scientists or a peer review process would provide the scientific advice to establish ABC. For internationally-assessed stocks, an ABC as defined in these guidelines is not required.

(4) *ABC control rule.* For stocks and stock complexes required to have an ABC, each Council ~~should~~ must establish an ABC control rule based on scientific advice from its SSC. The process of establishing an ABC control rule could also involve science advisors or the peer review process established under Magnuson-Stevens Act section 302(g)(1)(E). The ABC control rule ~~should~~ must clearly articulate how far below the OFL, or OFL proxy, the ABC will be set based on the level of scientific knowledge about the stock or stock complex and the scientific uncertainty in the estimate of OFL. The ABC control rule ~~should~~ must take into account uncertainty in factors such as stock assessment results, time lags in updating assessments, the degree of retrospective revision of assessment

results, and projections. The control rule may be used in a tiered approach to address different levels of scientific uncertainty.

(5) *Setting the annual catch limit*—(i) *General*. ACL cannot exceed the ABC and may be set annually or on a multiyear plan basis. A “multiyear plan” as referenced in section 303(a)(15) of the Magnuson-Stevens Act is a plan that establishes harvest specifications or harvest guidelines for each year of a time period greater than 1 year. A multiyear plan ~~should~~ must include ACLs and ACTs for each year with appropriate AMs to prevent overfishing and maintain an appropriate rate of rebuilding if the stock or stock complex is in a rebuilding plan. The AMs specified for a multiyear plan ~~should~~ must provide that, if an ACL is exceeded for a year, then a subsequent year’s harvest specification (including ACLs and ACTs) ~~could~~ must be revised.

(6) *ACT control rule*. For stocks and stock complexes required to have an ACL, each Council ~~should~~ must establish ACT control rules for setting the ACTs. The ACT control rule ~~should~~ must clearly articulate how far below the ACL the target will be established based on the amount of management uncertainty associated with harvest of a stock or stock complex. For example, the ACT ~~may need to~~ must be set further below the ACL in fisheries where inseason monitoring of catch data is unavailable or infeasible, or where AMs are established using a multi-year averaging approach (see paragraph (g)(4) of this section).

(i) *Determining management uncertainty*. Two sources of management uncertainty ~~should~~ must be accounted for in establishing the ACT control rule: Uncertainty in the ability of managers to constrain catch to the ACT and uncertainty in quantifying the true catch amounts (i.e., estimation errors). To determine the level of management uncertainty in controlling catch, analyses ~~should~~ must consider past management performance in the fishery and factors such as time lags in reported catch. Such analyses ~~should~~ must be based on the best available scientific information from an SSC, agency scientists, or peer review process as appropriate.

(ii) *Establishing tiers and corresponding ACT control rules*. Tiers can be established based on levels of management uncertainty associated with the fishery, frequency and accuracy of catch monitoring data available, and risks of exceeding the limit. An ACT control rule could be established for each tier and have, as appropriate, different formulas and standards used to establish the ACT.

(7) *Relationships of OFL to MSY and ACT to OY*. The following (see paragraphs (f)(7)(i) and (ii) of this section) describes the relationships between terms

used in ending and preventing overfishing and rebuilding overfished stocks and stock complexes.

(i) *Relationship of OFL to MSY*. OFL is the amount of catch for a particular year that corresponds to the estimate of MFMT applied to a stock or stock complex’s abundance, and MSY is the long-term average of such catches. ABC ~~is recommended to~~ must be set below OFL to take into account the scientific uncertainty in the estimate of OFL.

(ii) *Relationship of ACT to OY*. Paragraphs (a) and (e)(3) of this section define and describe OY and the goal of preventing overfishing, while achieving on a continuing basis the OY from each stock, stock complex, or fishery. Management measures for a fishery ~~should~~ must, on an annual basis, achieve the ACTs and prevent the ACLs from being exceeded. The long-term objective is to achieve OY through annual achievement of ACT.

~~(m) Exceptions to requirements to prevent overfishing. Exceptions to the requirement to prevent overfishing could apply under certain limited circumstances. Harvesting one stock at its optimum level may result in overfishing of another stock when the two stocks tend to be caught together (This can occur when the two stocks are part of the same fishery or if one is bycatch in the other’s fishery). Before a Council may decide to allow this type of overfishing, an analysis must be performed and the analysis must contain a justification in terms of overall benefits, including a comparison of benefits under alternative management measures, and an analysis of the risk of any stock or stock complex falling below its MSST. The Council may decide to allow this type of overfishing if the analysis demonstrates that all of the following conditions are satisfied:~~

~~(1) Such action will result in longterm net benefits to the Nation;~~

~~(2) Mitigating measures have been considered and it has been demonstrated that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur; and~~

~~(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, although it is recognized that persistent overfishing is expected to cause the affected stock to fall below its Bmsy more than 50 percent of the time in the long term.~~