

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON FISHERY
MANAGEMENT PLAN (FMP) AMENDMENTS TO IMPLEMENT
ANNUAL CATCH LIMIT (ACL) REQUIREMENTS

The majority of the Highly Migratory Species Advisory Subpanel (HMSAS) understands that National Marine Fisheries Service (NMFS) has defined in National Standard 1 that HMS species that are internationally managed by RFMOs are exempt from Management Councils determining annual catch limits (ACLs) and accountability measures (AMs). If ACLs were required, a likely outcome is that U.S. fishers may be subject to more restrictive measures than ones being required of foreign fleets. NMFS believes that the intent of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) is not to unfairly penalize U.S. fishers for overfishing which is occurring predominantly at the international level. Applying ACL requirements to U.S. fishers on just the U.S. portion of the catch or quota while other nations fish without such additional measures will not end overfishing and would disadvantage U.S. fishers. The guidance given for the international exception allows the Councils to continue managing the U.S. portion of stocks under international agreements, while the U.S. delegation works with regional fishery management organizations (RFMOs) to end overfishing through international cooperation. NMFS has decided not to revise the international exception, and we support this decision. Between now and November 2009, we understand that the Highly Migratory Species Management Team (HMSMT) will determine which of the species in the Pacific Fishery Management Council (PFMC) HMS Fishery Management Plan (FMP) are under international management. We understand that other species in the HMS FMP that are not under international management need to be quantified as target stocks, non-target stocks, or ecosystem component species. We ask that the HMSMT is directed to include the HMSAS participation in the classification of the non-internationally managed stocks between now and November.

A minority of the HMSAS (Meghan Jeans, Ocean Conservancy) believe that the Council and NMFS have an obligation to implement the ACL and AM requirements of the reauthorized MSA as intended by Congress. The rules of statutory construction reveal that Congress did not intend to exempt internationally managed fisheries from the ACL and AM requirements; therefore the Council should amend the HMS FMP to reflect both the spirit and letter of the law. Should the Council and NMFS maintain the flawed legal interpretation embodied in the revised National Standard 1 guidelines, the alleged “international exemption” should be more narrowly construed to apply only to those stocks that are *actively* and *effectively* managed by RFMOs to which the U.S. is a party. Whether a stock is “effectively managed” should be evaluated based on whether the RFMO with jurisdiction over the stock or stock complex has established annual catch limits that are consistent, at a minimum, with the conservation objectives outlined in the MSA, including ending overfishing immediately and rebuilding overfished stocks in as short as time as possible. Application of the alleged exemption notwithstanding, it is important to note that stocks managed under an international agreement are not exempt from compliance with other management requirements, including the establishment of allowable biological catch.