



# National Marine Fisheries Service and the Legal Framework for Federal Fisheries Management

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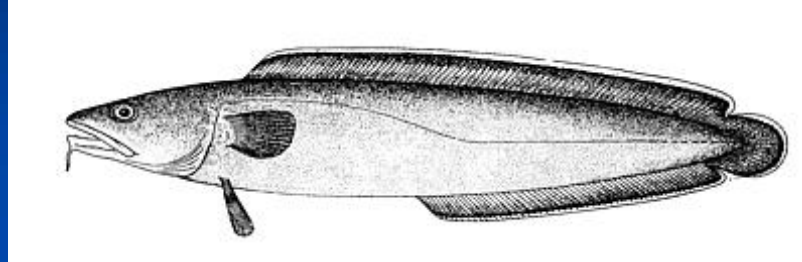
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# Goals for Today



 First Presentation – Provide an understanding of the legal framework for Federal fisheries management

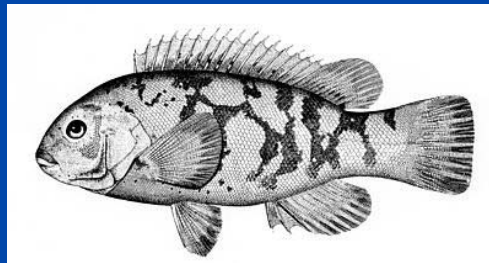
 Second Presentation – Provide insight into the regulatory process

# Framework vs. Process

- ❖ Legal framework made up of several requirements
  - ❖ Conservation (MSA, MMPA, ESA)
  - ❖ Analysis (NEPA, RFA, E.O. 12866)
  - ❖ Process (NEPA, APA, PRA, DQA)
- ❖ Framework is created by Congress
- ❖ NMFS and Councils must abide by the framework
- ❖ Note: States not subject to this framework, but are subject to ASFMC process for species for which there is an ISFMP
  - ❖ For species that have significant fisheries in both state and federal waters (i.e., Atlantic herring, summer flounder), the Commission works cooperatively with the relevant East Coast Regional Fishery Management Councils to develop fishery management plans.
  - ❖ The Commission also works with NMFS to develop compatible regulations for the federal waters of the exclusive economic zone (i.e., American lobster).

# Framework vs. Process

- ❖ Regulatory process consists of steps taken to fulfill framework
- ❖ Process is intended to balance framework requirements in a logical manner
- ❖ Process can be constraining (intentionally) to ensure the framework is not violated





U.S.  
Department of Commerce



National Oceanographic &  
Atmospheric Administration



National Marine Fisheries Service  
(NOAA Fisheries Service)



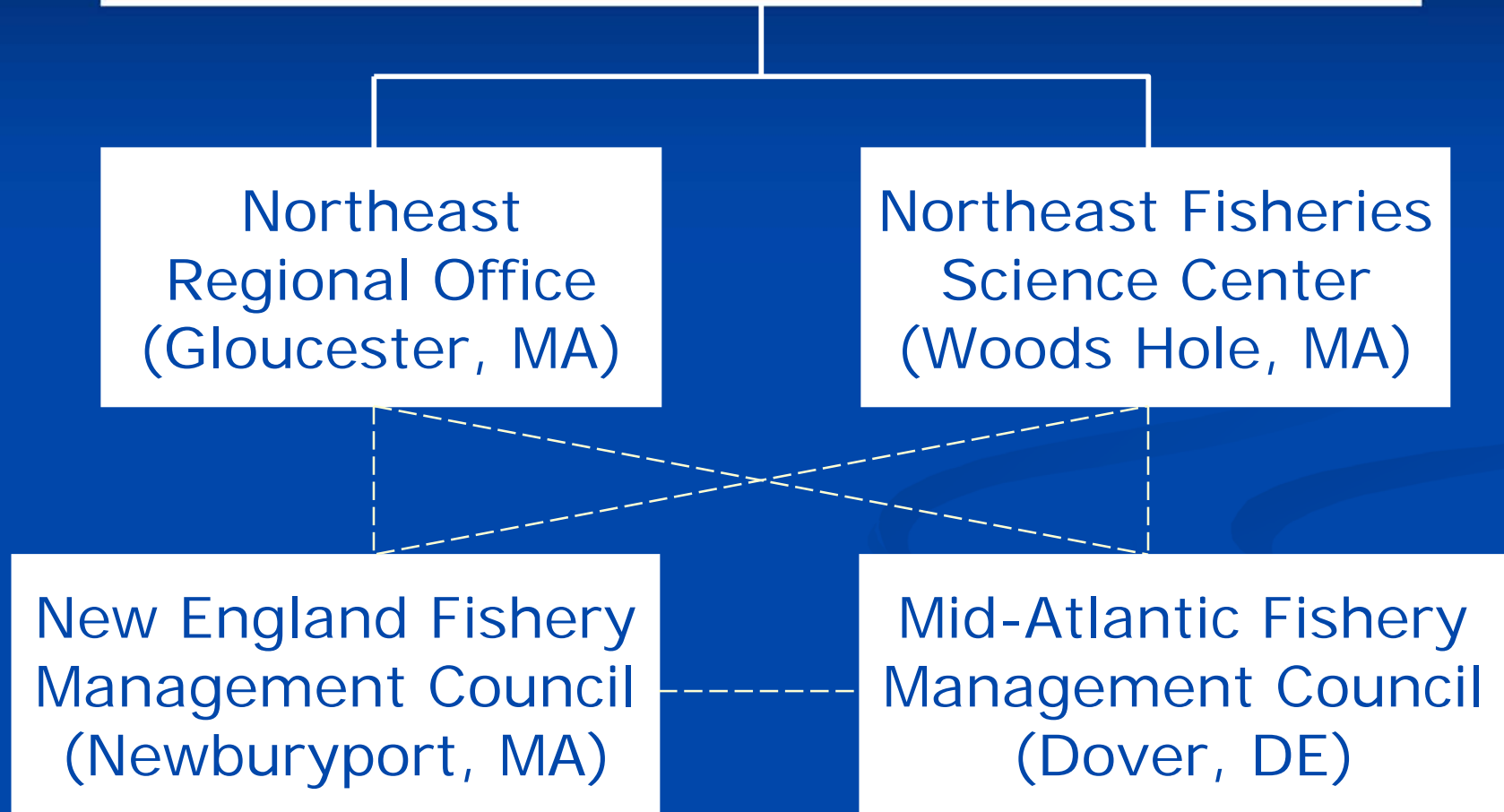
# National Marine Fisheries Service

Northeast  
Regional Office  
(Gloucester, MA)

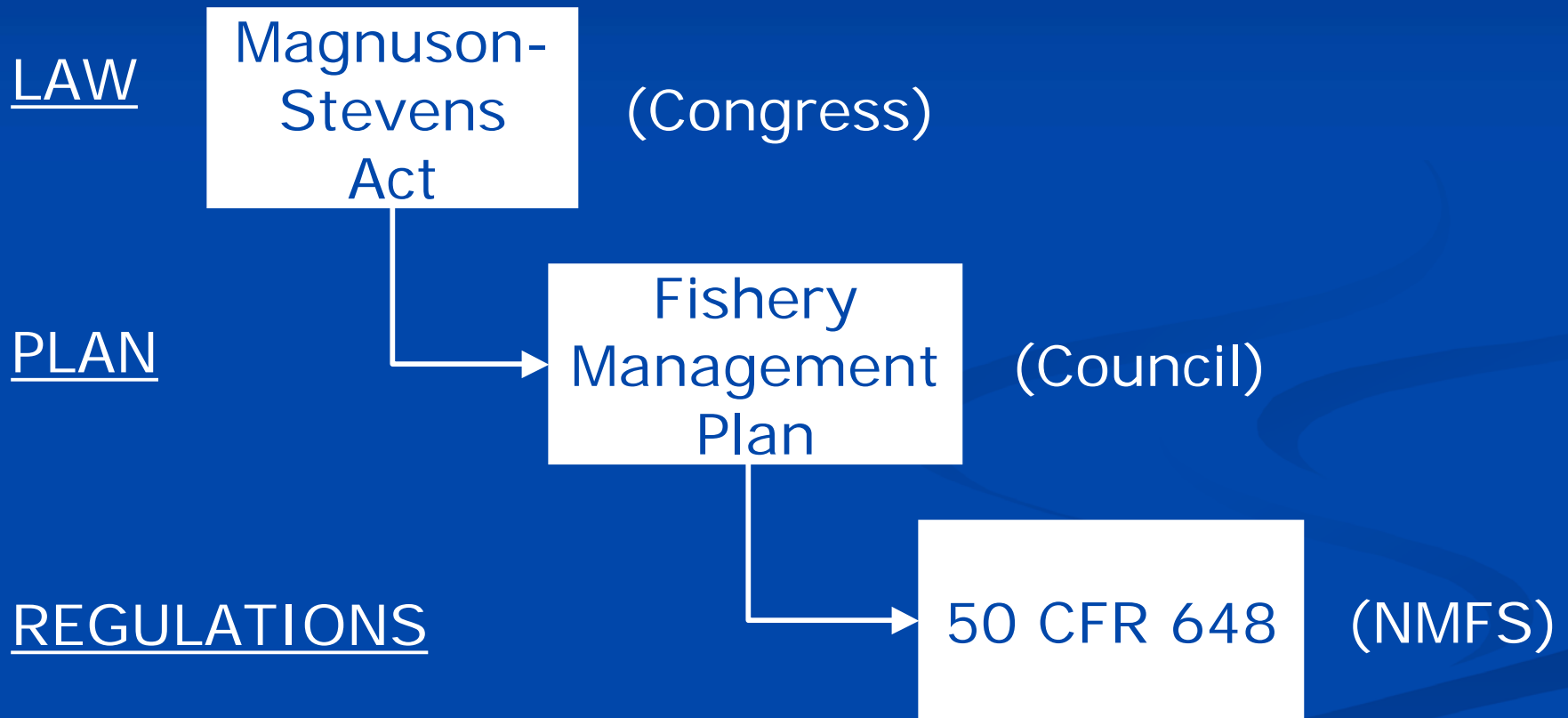
Northeast Fisheries  
Science Center  
(Woods Hole, MA)

New England Fishery  
Management Council  
(Newburyport, MA)

Mid-Atlantic Fishery  
Management Council  
(Dover, DE)



# The Legal Framework



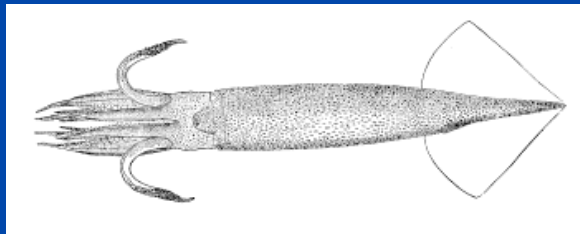
# Legal Framework (cont'd)

- ❖ Laws establish the authority to act
- ❖ Laws dictate what an FMP must do (i.e., Magnuson-Stevens Act), while the FMP dictates what the regulations will be
- ❖ NMFS develops regulations that flow directly from an FMP, which in turn must also comply with the law



# Legal Framework Issues

- ❖ Laws are often vague and subject to interpretation
- ❖ Two different ways laws can be interpreted:
  - ❖ NMFS interpretation: Guidelines (subject to review and comment; can be changed)
  - ❖ Court interpretation: Case law, rulings, opinions (not subject to comment; can be reviewed if appealed to a higher court)



# Legal Framework Issues (cont'd)

- ❖ FMPs can also be vague and subject to interpretation
  - ❖ Regulations are drafted by NMFS based on contents of FMP / Amendment / Framework
  - ❖ Council has opportunity to weigh in on draft regulations during final approval of action, and/or during proposed rule stage to insure they are consistent with intent of FMP
  - ❖ NMFS has tools (regulatory/technical amendment) to modify regulations in cases where Council intent has been misinterpreted

# Relevant Laws

- ❖ Magnuson-Stevens Fishery Conservation and Management Act (MSA) (*Reauthorization Bill Signed 1/12/07*)
- ❖ National Environmental Policy Act (NEPA)
- ❖ Administrative Procedure Act (APA)
- ❖ Regulatory Flexibility Act (RFA)
- ❖ Paperwork Reduction Act (PRA)
- ❖ Marine Mammal Protection Act (MMPA)
- ❖ Endangered Species Act (ESA)
- ❖ Coastal Zone Management Act (CZMA)
- ❖ Information Quality Act (Section 515) (IQA)
- ❖ Executive Orders (e.g., E.O. 12866)

# Magnuson-Stevens Act

- ❖ **1976: Magnuson Act first enacted**
  - ❖ Established regional councils
  - ❖ Defined roles in fisheries management
- ❖ **1996: Sustainable Fisheries Act**
  - ❖ Reauthorized the Magnuson Act through 1999
  - ❖ Amended the Magnuson Act (new National Standards, bycatch, EFH, overfishing/overfished, rebuilding, etc.)
- ❖ **2006: Magnuson-Stevens Fishery Conservation and Reauthorization Act**
  - ❖ Reauthorizes the MSA through 2013
  - ❖ Sets a firm deadline to end over-fishing by 2011
  - ❖ Establishes guidelines and requirements for the development and implementation of limited access privilege programs (LAPPs)
  - ❖ Establishes a national registry for recreational fishermen (better recreational data)
  - ❖ Provides a stronger emphasis on ecosystem based management
  - ❖ Establishes a cooperative research and management program
  - ❖ NMFS MSA Website: <http://www.nmfs.noaa.gov/msa2007/>

# What Does MSA Do?

- ❖ Defines role of Eight Fishery Management Councils
  - ❖ – New England
  - ❖ – Mid-Atlantic
  - ❖ – South Atlantic
  - ❖ – Caribbean
  - Gulf
  - Pacific
  - North Pacific
  - Western Pacific
- ❖ Dictates what FMPs must include
- ❖ Defines what FMPs must do

# MSA Requirements

- ❖ *National Standards* -- Set objectives against which FMPs must be judged
- ❖ *Required Provisions* (FMPs must...)
- ❖ *Discretionary Provisions* (FMPs may...)
- ❖ Any FMP developed by a Council must be consistent with the 10 National Standards and other requirements of the Magnuson-Stevens Act.

# National Standards Overview

- ❖ All FMPs and resulting regulations must be consistent with the National Standards
- ❖ 10 National Standards address science, conservation, analysis, and industry
- ❖ Not all equal -- Appeals Court found that conservation (NS 1) has priority
- ❖ Important distinction between *shall* and *shall, to extent practicable*
- ❖ NMFS guidelines
  - ❖ required by Sustainable Fisheries Act of 1996
  - ❖ proposed NS 1 update (72 FR 7016; February 14, 2007)

# National Standards

- ❖ NS 1: FMPs *shall* prevent overfishing while achieving optimum yield
- ❖ NS 2: FMPs *shall* be based on best scientific information available
- ❖ NS 3: FMPs *shall*, to extent practicable, manage stock as a unit
- ❖ NS 4: FMPs *shall* not discriminate between residents of different states
  - ❖ if necessary to allocate fishing privileges, allocation *shall be* fair/equitable, promote conservation, and be carried out so no entity gets excessive shares

# National Standards (cont'd)

- ❖ NS 5: FMPs *shall* consider efficient utilization of fishery resources, where practicable, except *shall not* have economic allocation as sole purpose
  - ❖ FMPs that allow a fishery to operate the lowest cost for a particular level of catch and initial stock size are considered efficient.
  - ❖ An FMP should demonstrate that measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.
- ❖ NS 6: FMPs *shall* take into account variations in fisheries, resources, catches
- ❖ NS 7: FMPs *shall* minimize costs and avoid unnecessary duplication, where practicable

# National Standards (cont'd)

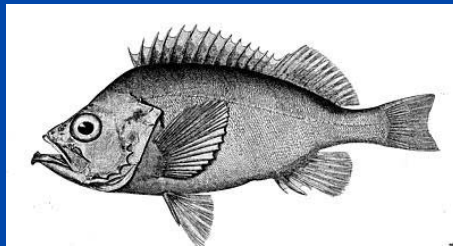
- ❖ NS 8: FMPs *shall*, consistent with conservation requirements, consider importance of resources to fishing communities to by utilizing the best available economic and social data to:
  - ❖ provide for sustained participation of those communities, and
  - ❖ minimize adverse economic impact *to the extent practicable*
- ❖ NS 9: FMPs *shall, to extent practicable*, minimize bycatch
- ❖ NS 10: FMPs *shall, to extent practicable*, promote safety at sea

# FMPs Must Also Address

- ❖ Condition of stock; define optimum yield
- ❖ Define overfishing, prevent or end overfishing, & rebuild overfished stocks
- ❖ Describe commercial & recreational fisheries
- ❖ Bycatch & measures to minimize it
- ❖ Identify essential fish habitat, and measures to minimize impacts of fishing
- ❖ Impacts of management on fishermen & communities
- ❖ Potential for foreign fishing

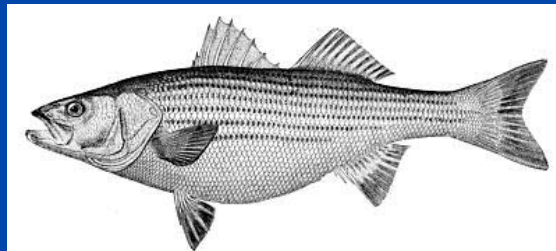
# FMPs May Include

- ❖ Permit requirements, including limited access systems
- ❖ Catch limits, area restrictions, gear restrictions
- ❖ Incentives for bycatch reduction
- ❖ Requirements for reporting, data collection, and observer coverage
- ❖ Set-asides for scientific research



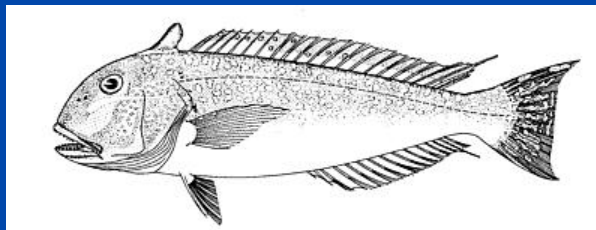
# Other Legal Requirements

- ❖ National Environmental Policy Act
  - ❖ Established in 1969
  - ❖ Basic National charter for protection of the environment
  - ❖ Establish National policy & set goals
  - ❖ Applies only to Federal agencies
  - ❖ Requires consideration of alternatives and comparison of impacts on the affected human environment



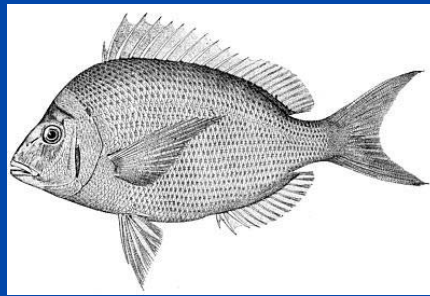
# National Environmental Policy Act

Purpose: “To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a **Council on Environmental Quality**.”



## NEPA (cont'd)

- ❖ Important to understand that NEPA requires a *process*; it does not require an *outcome*
- ❖ NEPA procedures ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken



# More Requirements . . .

- ❖ Administrative Procedure Act -- public review and comment of new regulations and provide 30 days to comply
- ❖ E.O. 12866 -- consider economic impacts to establish that regulation is necessary: significant or not significant; benefits vs. costs; distributive effects
- ❖ Regulatory Flexibility Act -- consider alternatives and compare economic impacts on small businesses to minimize impacts *if possible*

## And More . . .

- ❖ Marine Mammal Protection Act -- prohibits “taking” of marine mammals; requires mitigation of adverse impacts on marine mammals
- ❖ Endangered Species Act -- prohibits action that is likely to jeopardize existence of endangered species, or impact critical habitat

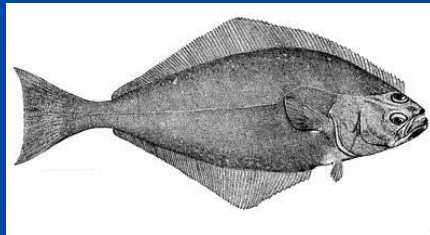


## And Finally . . .

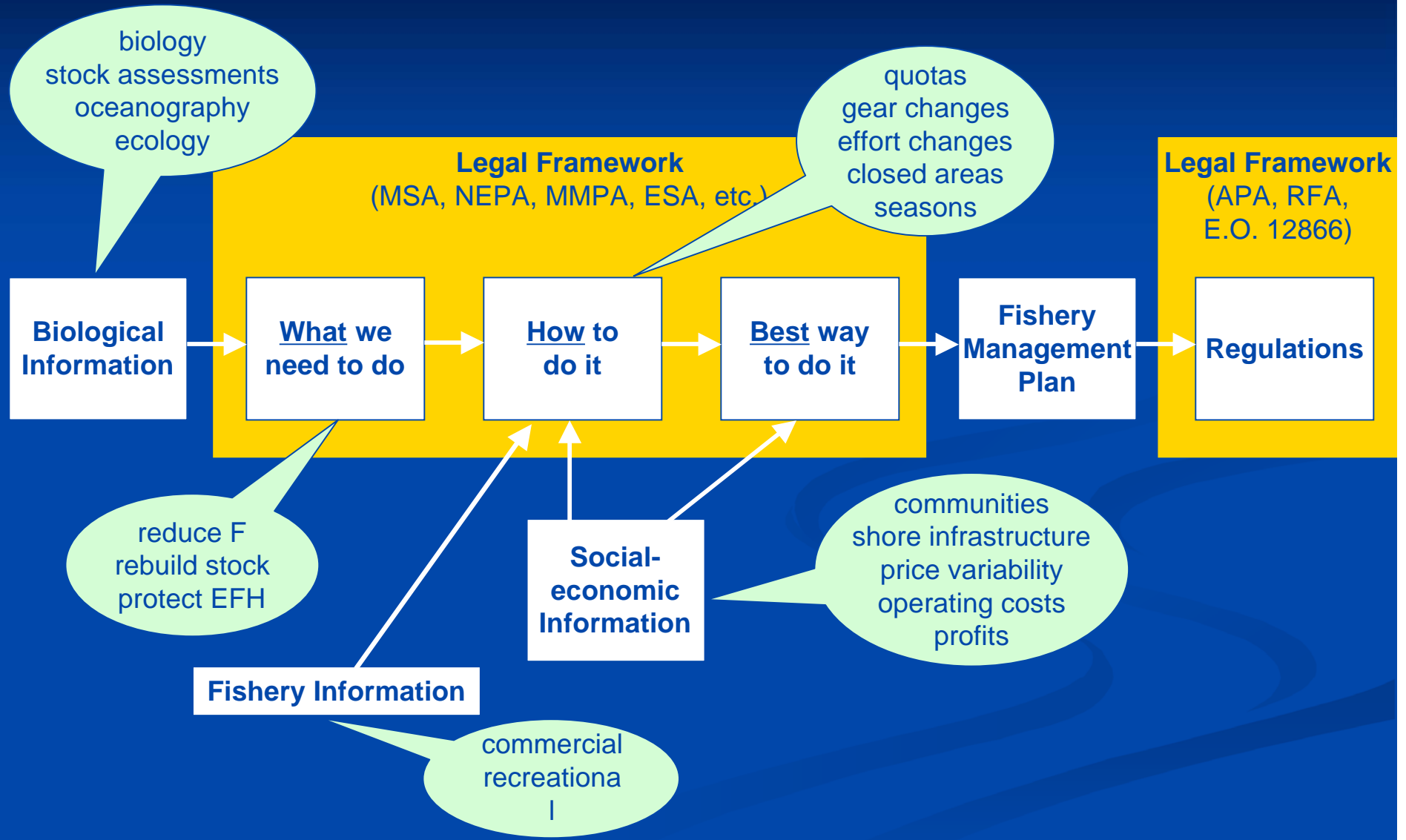
- ❖ Paperwork Reduction Act -- justification for information collections (such as reporting and permit applications) to prevent unnecessary burden on public
- ❖ Coastal Zone Management Act -- consistency with enforceable provisions of state CZM plans, *to extent practicable*
- ❖ Information Quality Act -- requires information disseminated to public meet standards for quality, objectivity, utility, and integrity

# Taken All Together . . .

- ❖ Decision-makers must consider alternatives and their impacts, but actions with severe impacts can still be the result
- ❖ Compliance with the requirements of these laws is not optional
- ❖ Even limited waivers of legal requirements (e.g., 30-day delay in effectiveness) can be difficult to obtain



# How Legal Framework Fits Into Process



# NMFS as Participant

- ❖ Regional Office & Science Center staff provide:
  - ❖ Stock assessments and other scientific analyses,
  - ❖ Social and economic information and analyses,
  - ❖ Statistical information and analyses,
  - ❖ Protected species management advice,
  - ❖ Essential fish habitat advice, and
  - ❖ Fisheries management advice
- ❖ Advise throughout process about legal, policy, implementation, or enforcement concerns

# NMFS as Reviewer

- ❖ Can only approve or disapprove FMPs (including amendments or framework adjustments); cannot modify after submitted
- ❖ Annual reviews/specifications allow Regional Administrator to modify measures to some extent
- ❖ NMFS implements and enforces regulations (permit programs, data collections, tag programs, ITQ program) so review must include administrative and enforcement feasibility

# The End!

