



New England Fishery Management Council

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June 23, 2017

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JUN 26 2017

South Atlantic  
Fishery Mgmt. Council

Dr. Cisco Werner  
Director of Scientific Programs and Chief Science Advisor  
1315 East West Hwy Room: 14659  
Silver Spring MD 20910

Dear Dr. Werner:

Last year the Council Coordination Committee (CCC) asked how the agency determines what is the Best Scientific Information Available (BSIA) that is used in fishery management decisions. While this is a broad topic, the initial focus is on the information used to establish the Acceptable Biological Catch (ABC). We are pleased that the National Marine Fisheries Service (NMFS) is working to establish a framework for these decisions. We reviewed the draft outline of the framework provided to the CCC in May and ask that you consider our comments.

The draft framework outlines a number of steps that should be followed as a stock assessment moves from a peer review, through the Scientific and Statistical Committee (SSC) and Council, to the review and implementation of an ABC by the agency. The Council and the agency will negotiate the details of this process in each region. What is missing from the outline is the idea presented at last year's CCC meeting that if the defined process is correctly followed the result will be considered BSIA, except in unusual circumstances (such as new information not considered by the SSC or Council, etc.). The final document should make this clear and identify the circumstances that could lead to the agency reaching a different conclusion than one reached through the defined process. While it is ultimately the agency's responsibility to ensure Council decisions use BSIA and comply with the law, the goal of this exercise is to agree on a process that makes it unlikely that the agency will need to overturn a Council decision due to a failure to use BSIA.

The framework is also silent on how NMFS will raise concerns during the process (including the SSC's deliberations). National Standard 2 establishes six principles for determining BSIA. Several are germane to the outline. The principles of transparency and openness mean that issues should be raised and discussed in public, with public comment solicited at the appropriate times. The information should be timely, so that managers can consider it when making decisions. Any NMFS concerns about assessments and specifications need to be raised when the SSC and Council are reviewing the information and making management decisions. This is not addressed by the draft framework. There should be a clear explanation of when, and how, agency concerns will enter into the process so that they may be considered by the Council. In addition, the outline does not describe the process NMFS will use to make the final determination, particularly in those rare instances that the agency makes a determination that is different than that of the SSC and/or peer review, or concludes a Council did not use BSIA.

The multiple decision points for determining BSIA may confuse many stakeholders. For example, step 3 says that the NMFS Science Center will document that an assessment is complete and constitutes BSIA and is ready to be used for management considerations before the SSC has met to review the results. This makes it difficult for an SSC to disagree with the findings of the peer review, a situation clearly allowed by the National Standard 2 Guidelines. This creates the awkward possibility that the Science Center and the SSC may reach a different conclusion about a peer reviewed assessment. We suggest that at this stage (step 3) the Science Center should just verify the assessment is complete and ready for use, and should defer a decision that it represents BSIA until later in the process (such as step 6(a)). In addition, any agency concerns about the SSC's evaluation of the assessment should be brought to the attention of the SSC during its discussions.

There is a similar possibility for confusion with the agency's stock status determination. As outlined in the framework, NMFS need not wait for the SSC's deliberation before specifying that the determination is based on BSIA. Once again, this creates the potential for a difference between the agency's and SSC's BSIA determination for the assessment and stock status. Such disagreements need to be avoided. Since in some regions an SSC must know stock status in order to determine OFLs/ABCs, the agency could make a preliminary determination based on the completed assessment, but should avoid saying that it is based on BSIA. After the SSC meets, the agency could make the final decision.

We are also concerned about how the aspects of fishery management that are listed in step (1) will be described in the final document. While the assessment may provide the technical basis for decisions on stock status, OFLs, ABCs, and other SDC, the assessment and its peer-review panel does not make decisions on these aspects. In particular, harvest control rules are the purview of the Council. A harvest control rule may incorporate Council decisions on acceptable levels of risk - that is not the responsibility of either the assessment team or the review panel. This should be clear in the process.

Finally, we hope that the agency recognizes that the process used to determine stock status and set specifications is tailored for each region. The final version of the framework should allow for these different approaches to continue and should not adopt a "one size fits all" approach.

Once again, thank-you for providing us the opportunity to review this document. Please contact me if you have questions.

Sincerely,



Thomas A. Nies  
Executive Director

cc: Regional Councils  
Jon Hare, NEFSC