



New England Fishery Management Council

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E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

February 5, 2016

Dr. William Karp  
Science and Research Director  
Northeast Fisheries Science Center  
166 High Street  
Woods Hole, MA 02543-1026

Dear Bill:

Since 2010 the Council's Statistical and Scientific Committee (SSC) has met its statutory requirement to provide the Council ongoing scientific advice, including recommendations for Acceptable Biological Catch (ABC) and ending overfishing. On several occasions in recent years the National Marine Fisheries Service (NMFS) questioned the advice provided by the SSC. I believe we need to review our processes to prevent the appearance that the agency is substituting its preferred policy choices for the best scientific information that is developed in an open, transparent, and public process.

As we all know, the Magnuson-Stevens Act (M-SA) charges the Councils to base management actions on the "best scientific information available", or BSIA. To that end, the Councils are required to establish an SSC to assist it in the "development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan." The SSC is given specific tasking, with one of its major responsibilities the identification of ABCs. This is an enormous responsibility, since Councils are prohibited by the statute from specifying catch levels that exceed this value.

The use of BSIA is required by National Standard 2 (NS2). The National Standard 2 Guideline (NSG2) provides extensive advice on this subject. It is worth noting that both apply to the agency as well as the Council. There are a few key elements of NSG2 that bear repeating. First, broad principles are adopted for evaluating the BSIA: relevance, inclusiveness, objectivity, transparency and openness, timeliness, verification and validation, and peer review. Second, NSG2 acknowledges that "alternative scientific points of view should be acknowledged and addressed openly when there is a diversity of scientific thought." Third, the BSIA should be provided to the Council in a timely manner, so that the Council can consider it during its deliberations.

In our region, it does not appear to me that the agency is fully participating in the determination of BSIA by the Council, particularly with respect to the setting of ABCs by the SSC. While our SSC has several agency scientists, they are assigned on the basis of their expertise and do not represent the agency. For many years the Northeast Fisheries Science Center (NEFSC) assigned a liaison to the SSC, but that position has been vacant for over a year in spite of our repeated

informal requests for a replacement. Even when assigned in the past, the liaison did not present agency positions.

Perhaps as a result there have been at least three instances where the agency, after the fact, questioned the ABC recommendation of our SSC. The justification seems to be Section 304(a) of the M-S Act which requires the Secretary of Commerce to verify that the proposed action complies with applicable law. The agency interprets this language as a trump card that wins every scientific debate. This section, however, does not exempt the Secretary from the requirement to comply with NS2. Nowhere does NSG2 state that the agency is the sole arbiter of what is the BSIA, or that this determination can be made without an open, transparent, public process. To the extent the agency has scientific information that bears on the setting of an ABC, it should be brought forward through the established peer review and SSC process so that it can be considered by the Council during its deliberations. The agency's information should be subject to the same public scrutiny and evaluation by the SSC that is required of all others. If BSIA is determined solely by the agency's opinion, then we should streamline our processes to acknowledge this fact.

Resolving this issue will no doubt be difficult. In the near term, I believe it essential that NMFS, through the NEFSC, consider participating in the discussions at the SSC. I request that the vacant SSC liaison position be immediately filled, and that this representative be charged with presenting the agency's concerns on BSIA so they may be addressed in an open forum. This is only the first step, however, as we need to clarify the process used by the agency to determine what is BSIA. I look forward to a continuing dialogue on this important subject.

Sincerely,



Thomas A. Nies  
Executive Director

cc: Mr. John Bullard, GARFO  
Dr. Chris Moore, MAFMC  
Dr. Richard Merrick, Scientific Programs and Chief Science Advisor, NOAA Fisheries