



#6b

New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116

Eric Reid., Acting *Chairman* | Thomas A. Nies, *Executive Director*

DRAFT

Ms. Kelly Denit
Director, Office of Sustainable Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
1315 East-West Highway, Room 14743
Silver Spring, MD 20910

Dear Kelly:

Thank you for providing us the opportunity to comment on the draft technical memorandum “Managing with ACLs for data-limited stocks in federal fishery management plans - Review and recommendations for implementing 50 CFR 600.310(h)(2) flexibilities for data limited stocks.” We support development of this memorandum. After consulting with our Scientific and Statistical Committee (SSC), we would like to offer a number of suggestions for revising the document before it is published. We have attached detailed comments, but would first like to raise broad concerns with the draft memorandum.

Much of the document goes into detail on identifying different data elements and explaining how they may be used. As described in the draft, it is focused on the application of 50 CFR 600.310(h)(2) only for “data-limited stocks,” and not for any of the other reasons that are identified in this paragraph. We note, however, that this term is not used in the regulation, nor in the federal register notice that published this guidance. It is not defined in the draft technical memorandum, which appears to use the terms “data-poor” and “data-limited” interchangeably. The precise language of the guidelines refers to “...and stocks for which data are not available either to set reference points based on MSY or MSY proxies, or to manage to reference points based on MSY or MSY proxies.” We highlight this difference not to be pedantic, but as an introduction to our major concern with the draft document.

Most of the fisheries we manage are supported by long time series of catch data (both landings and discards), and long fishery independent data time series from multiple surveys. For many there are extensive biological sampling programs. Many would look at these data and conclude that it would be unusual for us to find that a stock is data-poor (or data-limited). The reality, however, is that it is becoming increasingly obvious that having data does not mean they provide meaningful information that can be used to set reference points based on MSY or MSY proxies. Since 2008, peer reviewers rejected analytic assessments for four stocks and concluded that MSY-based reference points are unknown.

An additional problem that we are facing is that even with these data streams, the changes to productivity caused by climate change are making it difficult, or in some cases impossible, to develop reference points. We also anticipate that anthropogenic factors – such as large wind farms – will further limit our ability to collect data in a manner that is consistent with past efforts. These factors may all reduce our ability to extract meaningful information from our data streams.

For these reasons, we recommend that the technical memorandum clarify that the issue is not whether data are collected, but whether those data provide reliable information that can be used to set reference points based on MSY or MSY proxies. This change will require significant editing of the document.

Another concern is that in some cases the technical memorandum reads more like a policy directive. We believe the text should be modified to focus on the technical issues associated with using the (h)(2) flexibilities. One such example is the entire section that begins on page 10 and is titled “Recommendation When Proposing to utilize the (h)(2) flexibilities for a data-limited stock.” While this describes a series of administrative steps that should be followed, it does not provide any technical guidance. A second example is the very last sentence, which seems out of place since the memorandum does not address the relationship between the Councils and NMFS.

Enclosure (1) provides additional comments on the draft technical memorandum. 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: Marianne McPherson
Stephanie Hunt
Enclosure (1)

Enclosure (1)
NEFMC Comments on “NS1 Technical Guidance Subgroup 3 Tech Memo”

Data-Limited/Data-Poor:

1. The draft memo uses the terms data-limited and data-poor interchangeably, and never defines either term. Neither term is defined in that National Standard 1 Guidelines (NS1G). The memorandum could be improved by referring to information-limited fisheries – those fisheries where MSY-based reference points cannot be reliably determined.
2. While these terms are not clearly defined, on page 3 the memo implies that “stocks for which data are not available to set reference points based on MSY or MSY proxies” are data-limited (p. 3 middle) and that the Alternate Approaches are appropriate for these stocks. Yet the memo (p. 13, middle) also indicates that “weight/numbers-based ACLs ... should be used for data-limited stocks when adequately supported by data.” What makes the latter case “data-limited”?

ABC Control Rule Tiers: The last paragraph in Section II.A. (p. 5) indicates that all Councils have a “tiered approach to their ABC control rules to describe how ABC will be specified based on different levels of data availability and/or the status of the stock.” The NEFMC does not use a tier approach (as this term is typically applied) for its ABC control rules.

Figure 1: This figure is difficult to understand. Its caption describes it, in part, as “The suite of analytical options and considerations in determining OFL.” The very first step determines if there are removal records or absolute abundance estimates and removals monitored. If removals are not monitored, what would be the source of data for biological composition? Wouldn't this require, at a minimum, a survey index – which is not evaluated until the next step? In addition, the very first purple box seems misplaced – shouldn't it follow an evaluation of the types of data and assessment that are available? This figure also suggests there are “risk analysis” and “indicator” approaches to determining the OFL, yet the memorandum does not address these two approaches in any detail. As noted below, what discussion there is on these topics seems inconsistent with their placement in this flow chart.

Uncaptioned figure, page 8: This figure illustrates our major concern with this draft memorandum. The box at the top of the figure focuses entirely on data availability and ignores whether that data provides meaningful information. This decision tree should include a step that evaluates whether the available data are truly useful. In addition, it should expand on the alternatives if a rate-based ACL is not appropriate. The memorandum devotes little attention to identifying alternatives to a rate-based approach.

How a Rate-Based ACL Could Work: On page 11, the memorandum attempts to explain how to implement a rate-based ACL.

- a) Part of this discussion seem inconsistent with earlier sections of the memorandum, For example, Figure 1 implies that indicator approaches are a separate approach that could be used if fishing rate limits are not an option. In this section, though, indicators are introduced as a way to implement a rate-based ACL.
- b) An additional weakness of this section is that it focuses entirely on using effort controls to control fishing. Using effort to control fishing mortality is difficult if a catch share system has been adopted for a fishery. This memorandum should explain how such tools can be used in concert with quota allocations in a multispecies fishery.
- c) A further inconsistency is the discussion on using multiple indicators. The flow chart in Figure 1 shows that fishing rate limits can only be used if removal records, or absolute abundance estimates and removals monitored, are not available. Several of the metrics suggested here - changes in species composition, changes in fishery CPUE, trip limits, and size limits – would not be possible given the missing data.

Implementation: In several places the memorandum emphasizes that adoption of an alternative method needs to be through an FMP or amendment. This is consistent with the language in NS1 (noting this does not have the effect of law). The problem is that in the case of a rejected assessment, a Council may need to develop an alternative on short notice. The timeline for an FMP, or an amendment, may prevent the prompt action needed to implement an ACL that will allow a fishery to take place without interruption.

General Comments:

- a) The memorandum would benefit from the inclusion of a glossary to define terms.
- b) It would be helpful to provide an appendix that summarizes the stocks that Councils are currently treating as data-limited, and the methods used for each in order to comply with ACL requirements. While this will only be a snapshot at the time the memorandum is completed, this will make it easier to share information on these approaches across the Councils.