

Development of Rollover Provisions in the Groundfish Fishery

White Paper

Groundfish Plan Development Team

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Overview

To address the issue of beginning a fishing year without specifications, so-called “rollover provisions” or “default measures” have been adopted in other NEFMC and MAFMC FMPs. Through FW53, the Council is exploring options to enable the rollover of specifications to address all instances when a fishing year could begin without specifications in place for a stock due to a potential delay in rule making. Such provisions would remain in effect until new specifications are implemented.

The Groundfish Plan Development Team (PDT) examined regulations in other FMPs and developed draft alternatives for consideration that would facilitate the implementation of specifications for all stocks at the start of a fishing year as a contingency provision in the event that a planned regulatory action is not implemented in time for the start of the fishing year. The PDT also discussed trade-offs of these alternatives with respect to specific groundfish stocks.

1. Lack of specifications at start of the Fishing Year

Groundfish Fishery Implications

If specifications for a groundfish stock are not in place at the start of a fishing year (May 1), directed fishing for that stock would not be allowed in the relevant stock area(s). The lack of specifications would not address the M-S Act requirements to achieve optimum yield and consider the needs of fishing communities.

Non-Groundfish Fishery Implications

The inability to set groundfish specifications in a timely manner may adversely impact other fisheries during and after the fishing year. While non-groundfish fisheries with sub-ACLs for groundfish stocks are *not* required to cease fishing in the absence of specifications for a groundfish stock (e.g. scallop and whiting fisheries), these fisheries may be subject to accountability measures for overages in the following fishing year.

2. Fishing Year 2016

For several stocks in the Northeast multispecies complex, there are no specifications currently in place for the 2016 fishing year (Table 1). In prior groundfish actions, the absence of specifications for a stock in an upcoming fishing year, i.e., the No Action alternative, raised

concern with respect to compliance with M-S Act requirements to achieve OY and consider the needs of fishing communities (if the No Action alternative was selected).

The timing of the 2015 operational assessments presents challenges for the management process in completing the necessary action in time for the start of the FY 2016. This could lead to a delay in the implementation of the updated specifications past the start of the 2016 fishing year (May 1st). Operational assessments for all 20 groundfish stocks are currently scheduled for September 21-25, 2015 in Woods Hole, MA. Existing regulations call for the Groundfish PDT to send ABC and ACL recommendations to the SSC prior to the September Council meeting, to the extent possible (CFR 648.90 (a)(4)(B)(ii)). In previous years, assessments were reviewed by the SSC in August/September, allowing time for the PDT to provide ABCs/OFLs for the SSC to consider and review in advance of the September Council meeting. Final Council action would be expected in November. Final submission is expected early in the subsequent year.

Table 1: Overview of Current Stock Status and FY 2016 & 2015 US ABCs

Stock	2016 U.S. ABC	2015 U.S. ABC	Overfished?	Overfishing?	Rebuilding Status	ABC/ACL Buffer	Last Assessment or Update
Cod, GB	2015 TRAC	2,506mt	Yes	Yes	TBD	95% of ABC	Dec-12
Cod, GOM	FW53	FW53	Yes	Yes	Rebuild by 2014	95% of ABC Comm., 93% ABC for rec	Sep-14
Haddock, GB	2015 TRAC	43,606mt	No	No	Rebuilt	95% ABC	Feb-12
Haddock, GOM	FW53	FW53	No	No	Rebuilt	95% of ABC Comm., 93% ABC for rec	Jul-14
YTF, GB	2015 TRAC	FW53	Yes	Yes	Rebuild by 2032	97% of ABC	Apr-14
YTF, SNE/MA		700mt	No	No	Rebuilt	93% of ABC	Jun-12
YTF, CC/GOM		548mt	Yes	Yes	Rebuild by 2023	95% of ABC	Feb-12
American Plaice		1,544mt	No	No	Rebuild by 2024	95% of ABC	Feb-12
Witch Fl.		783mt	Yes	Yes	Rebuild by 2017	95% of ABC	Feb-12
Winter Fl., GB	FW53	FW 53	No	Yes	Rebuild by 2017	95% of ABC	Aug-14
Winter Fl., GOM	FW53	FW53	Unknown	No	Stock Status unknown	95% of ABC	Aug-14
Winter Fl., SNE/MA		1,676mt	Yes	No	Rebuild by 2014	93% of ABC	Jun-11
GB/GOM Arcadian Redfish		11,974mt	No	No	Rebuilt	95% of ABC	Feb-12
White Hake	4,645mt	4,713mt	No	No	TBD	95% of ABC	Feb-13
Pollock	FW53	FW53	No	No	Rebuilt	95% of ABC	Aug-14
GOM/GB Windowpane		151mt	Yes	Yes	Rebuild by 2017	95% of ABC	Feb-12
SNE/MAB Windowpane		548mt	No	No	Rebuilt	95% of ABC	Feb-12
Ocean Pout		235mt	Yes	No	Rebuild by 2017	95% of ABC	Feb-12
Atlantic Halibut		119mt	Yes	No	Rebuild by 2055	95% of ABC	Feb-12
Atlantic Wolffish		70mt	Yes	No	Unable to determine rebuilding period	95% of ABC	Feb-12

3. Rollover Provisions in other NEFMC and MAFMC FMPs:

Several NMFMC and MAFMC FMPs include provisions that allow for the rollover of specifications or default measures (Table 2). Additional regulatory text is contained in Appendix 1.

Table 2: Overview of existing rollover provisions in NEFMC FMPs:

Roll-over Provisions for Specifications			
FMP	Rollover Provision?	Action(s)	Federal Register
Skates	YES	A3, Section 5.1.4.2	-
Spiny Dogfish	YES	A3, Section 5.3	50 CFR 648.232
Scallops	Default measures	A15, FW22, FW24	50 CFR 648.55
Monkfish	YES	FW4, used in FW8	50 CFR 648.96
Small-Mesh	YES	A19, Section 5.1.1.1	50 CFR 648.90
Herring	YES	Original FMP	50 CFR 648.200 (d)
Red Crab	No	-	-

Skates:

Amendment 3 to the Skate FMP allows for the rollover of the prior year's specifications if new specifications for the fishery have not been implemented. Skates are managed as a complex, with a single ABC/ACL set for seven managed species.

Spiny Dogfish:

Through Amendment 3 to the Spiny Dogfish FMP, both the Mid-Atlantic and New England Councils approved administrative provisions that allow for the rollover of prior year specifications in the event that annual specifications are not in place by the start of the fishing year. The regulation recently published in the Federal Register on July 15th, 2014. At the time of this action, Spiny Dogfish was not overfished, and overfishing was not occurring.

Scallops:

The Council has veered away from using a straight rollover of specifications in the Scallop FMP in the event of a delay in specifications implementation. In recent FWs, default management measures for Y3 of the specifications process has set DAS allocations at more precautionary levels (75% of DAS projections). Default measures in the Scallop FMP were adopted in Amendment 15 as a year-three (Y3) extension to the two-year specifications package (7/22/11). This action was taken in part to *avoid* a straight rollover of the previous year's specifications. Framework 22 set default measures at 75% of the DAS allocations, and allowed access area effort. Default measures in FW 24 continued to release 75% of DAS for the start of the FY, but did not allocate for access areas. The full LAGC IFQ allocation (~5% of the ACL) is released at the start of the FY on March 1st.

As the scallop FY begins on March 1st, in recent years the fishery has operated under a set of default measures that are replaced through final rule making for the most recent Council action. For example, the 2014 fishing season began on March 1st and the final rule for FW25 was published on June 16th (Access Areas were assigned on the same day), with the fishery operating under default measures for a 15-week window. While the Scallop FMP allows for two-year specification setting and default measures in year three, more recent specifications have been set through annual FW actions.

In A15 rulemaking, NMFS was clear that the use of “default measures” is preferable to a rollover of prior year specifications in the scallop fishery, stating that “It [default measure] serves as a safety mechanism to prevent against management measure rollovers during implementation delays. These rollover measures complicate management of the scallop fishery, do not make sense for the industry, and may cause undesired negative effects or require further management intervention” (A15, 50 CFR 648.55).

Monkfish:

Rollover provisions were included in Framework Adjustment 4 to the Monkfish FMP. The Purpose and Need section (2.2, p. 18) of Amendment 5 notes that the FW4 rollover provision was enacted as a contingency provision, and indicates that it was not the Council’s intent to circumvent the triennial specifications setting process by allowing a rollover of the prior year’s specifications. The Monkfish FMP’s rollover provision was used in FY2014 (starting May 1, 2014) due to a delay in the implementation of FW8 to the FMP. In an [April 21st, 2014 letter to permit holders](#), NMFS explained that the Council did not adopt final measures until the January/February Council meeting, and that analyses of FW8 measures were not completed until April of 2014, leading to a delay in implementation of the FW action. No DAS were withheld at the start of the FY.

Small-Mesh Multispecies:

Rollover provisions for the Small-Mesh FMP are contained in Amendment 19, and appear in 50 CFR 658.90. The final rule calls for a straight rollover over of the prior year’s specifications to ensure that specifications are in place of the start of the fishing year.

Herring:

Section 3.3.4 of the Herring FMP (1999) contains provisions that roll forward the previous year’s specifications. In 2003, specifications were rolled over though the Atlantic Herring Specifications for Fishing Year 2004 package. The rollover of herring specifications was taken during the development of Amendment 1 to the Herring FMP.

Red Crab:

There are no rollover provisions in place for specifications in the Red Crab FMP.

4. Setting of ABCs/OFLs

Typically, the SSC recommends ABCs for groundfish stocks on a two-year basis with an additional third year as a backstop due to assessment scheduling (with some exceptions). The Groundfish PDT and the SSC have raised concerns about the projections in the “out-years”. In particular, year 3 of projections is often considered unreliable. The SSC typically operates with the expectation that the assessment process to proceed in such a way that year 3 ABCs would be revised.

Stock status varies widely across groundfish stocks (Table 1). In considering various approaches to rolling over specifications, the PDT examined options that would address the risk of overfishing groundfish stocks between May 1st and the implementation of updated specifications through rule making.

In the past, the SSC has been unwilling to base new specifications on medium-term projections that are over three years past the terminal year of the last assessment. (see NEFMC [SSC to Paul Howard, January 29, 2013](#) in Appendix 2). More recently the SSC has indicated that ABCs for stocks without assessment updates or more information would likely be carried forward. In a memo to Tom Nies summarizing its November , 2013 meeting the SSC stated that, “With respect to 2015 ABCs for pollock, GOM winter flounder and GB winter flounder, the SSC expects that it will not be willing to develop new ABCs based on projections without additional information on landings and survey results to corroborate the predicted trends. However, we note the PDT’s comment that the time required to provide that breadth of analysis was comparable to what would have been needed to complete an update, and therefore recommends that new assessment updates be considered. *In the absence of assessment updates or other information and analyses, it is likely that 2014 ABCs would simply be carried over to 2015*”(NEFMC SSC to Tom Nies, December 2nd, 2013).

References:

Memo from New England Fishery Management Council [SSC to Paul Howard, January 29, 2013.](#)

Memo from New England Fishery Management Council SSC to Tom Nies, December 2nd, 2013.

Appendix 1:

Relevant Rollover Language from CFR and FMPs.

Skates:

Amendment 3 – Section 5.1.4.2:

“If a regulatory action is not implemented to establish new ACLs for the skate fishery for a given year, either through the annual review procedure or the biennial specification process, the ACL, ACT, and TALs in effect during the previous year will remain in effect until new measures are implemented.”

Spiny Dogfish:

Amendment 3 – Section 1.0 Executive Summary of Management Actions:

3. Delayed Implementation of Commercial Quota at Start of New Fishing Year

Problem statement: Under the current FMP, if the effective date for the final rule for specifications is delayed beyond the start of the new fishing year (May 1), the previous year’s daily possession limit is maintained in the regulations; however, the fishery operates without a commercial quota. In order to correct this, the FMP can be changed to keep in place all of the previous fishing year’s management measures, including the quota, until they are replaced via rulemaking.

Alternatives:

3A: No action

3B: (Preferred) Maintain Previous Year Quota until Effective Date for New Quota

Council recommendation: The Councils chose Alternative 3B as their preferred alternative in order to close this administrative loophole and be consistent among Council-managed FMPs.

Impact analysis: This is a purely administrative action that is not associated with any impacts to the human environment.

Spiny Dogfish (continued)

Amendment 3 – Section 5.3

Delayed implementation of Commercial Quota

Alternative 3A: No action. (No Commercial Quota Until Final Rule Effective)

Under this alternative, the fishery would continue to potentially open the start of the fishing year (May 1) without a commercial quota and continue to operate until the effective date for the final rule for the commercial quota for that fishing year. The daily possession limit from the previous year, however, would be maintained until replaced by the possession limit specified for the new fishing year.

Alternative 3B (Preferred): Maintain Existing Quota until Effective Date for New Quota

Under this alternative, if the effective date for the commercial quota in a given fishing year falls after May 1, then the commercial quota from the previous year would remain in effect until the effective date for the quota specified for the new fishing year. The Councils chose Alternative 3B as their preferred alternative in order to close this administrative loophole and be consistent across FMPs.

[Final Rule Approved Measures: Rollover of Specifications \(Vol. 79 No. 135- July 15th, 2014\)](#)

The specifications (annual catch limit, commercial quota, etc.) of the current fishing year will carry forward to the subsequent fishing year, in the event that rulemaking and implementation of revised specifications are delayed. If the implementation of new final specifications is delayed beyond the start of the new fishing year (May 1), the previous year's specifications would apply to the new fishing year until replaced by the final rule.

[50 CFR 648.232:](#)

(3) If the annual specifications are not published in the FEDERAL REGISTER prior to the start of the fishing year, the previous year's annual specifications will remain in effect. The previous year's specifications will be replaced by the current year's specifications as of the effective date of the final rule implementing the current year's specifications.

Scallops:

Amendment 15 – Section 3.4.5.2

(PROPOSED ACTION) Fishery specifications in the scallop fishery are generally set every two years. This alternative would extend the fishery specification process to include a third year of allocation measures that would be effective if subsequent framework actions are delayed. Rather than having specifications rollover from a previous year, this alternative would have specifications be set for three years at a time with the understanding that the third year measures would be superseded by the next specification package as soon as it was implemented. To be clear, this alternative would not change the start date of the fishing year. The start date would remain March 1.

Rationale: At the November 2010 Council meeting this alternative was added to the amendment. It is clear that timing is an issue for this FMP in terms of being able to utilize the most recent year of survey data and getting measures implemented before the start of the fishing year. Amendment 15 considered pushing the start date back to May 1 to alleviate this timing issue and potentially better integrate this plan with the groundfish plan since the scallop fishery receives an allocation of yellowtail flounder bycatch. During development of this action and during the public hearing process there was overwhelming opposition to changing the scallop fishing year to May 1. In addition, initial concerns about integrating the scallop and groundfish fishing years to improve ACL management were somewhat diminished. Instead, a compromise was supported that would reduce impacts of measures rolling over when an action was delayed” (A15, page 168, December 6, 2010).

[50 CFR 648.55 Framework Adjustments and Management Measures](#)

(e) Third-year default management measures. The biennial framework action shall include default management measures that shall be effective in the third year unless replaced by the measures included in the next biennial framework action. If the biennial framework action is not published in the Federal Register with an effective date on or before March 1, in accordance with the Administrative Procedure Act, the third-year measures shall be effective beginning March 1 of each fishing year until the framework adjustment is implemented, or for the entire fishing year if the framework adjustment is completed or is not implemented by NMFS for the third year. The framework action shall specify the measures necessary to address inconsistencies between specifications and allocations for the period after March 1 but before the framework adjustment is implemented for that year. In the case of third-year measures of a biennial adjustment being implemented, if no framework adjustment has been implemented by March 1 of the following year, the measures from the preceding year shall continue to be in effect until replaced by subsequent action.

Monkfish:

FW 4: regulations in Federal Register 648.96:

(2) Annual Target TACS for FY 2010 and beyond. If a regulatory action is not implemented to establish target TACs for the monkfish fishery for FY 2010 or subsequent years, either through the annual review procedure described in paragraph (a) of this section or another type of regulatory action, the target TACs in effect during FY 2007 – FY 2009 will remain in effect until new measures are implemented. The management measures for FY 2010 or subsequent years that would be associated with these target TACs are described in paragraph (b)(6) of this section.

Amendment 5 – Section 2.2:

Purpose and Need (p.18): Framework 4 included a provision to continue these specifications in FY2010 and beyond if the Councils do not adopt new specifications prior to that time. However, the Councils' intent was that the extension only be a contingency provision in the event unforeseen circumstances prevented setting specifications at the end of the three-year period.

[FW8 Final Rule: Supplementary Information – Approved Measures \(Vol. 79 No. 138, July 18th\):](#)

Because measures proposed under Framework 8 and implemented through this final rule did not become effective until after the start of fishing year (FY) 2014 on May 1, 2014, all monkfish catch since May 1, 2014, will be deducted from the catch levels specified in Table 1 for FY 2014. Further, consistent with the regulations at 50 CFR 648.96(a)(3)(iv), any monkfish DAS used by a vessel on or after the start of FY 2014 will be counted against the monkfish DAS allocation the vessel ultimately receives during FY 2014 upon the implementation of measures approved under this action.

Small-Mesh Multispecies:

Amendment 19 – Section 5.1.1.1:

“If a regulatory action is not implemented to establish new ACLs for the small-mesh multispecies fishery for a given year, either through the annual review procedure or triennial specification process, the OFL, ABC, ACL, and TAL specifications in effect during the previous year would remain in effect until new measures are implemented.”

[50 CFR 658.90:](#)

(D) If the final specifications are not published in the FEDERAL REGISTER for the start of the fishing year, the previous year's specifications will remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

Herring

Herring FMP – Section 3.3.4 (1999)

FMP Monitoring – Specifications (for OY, DAH, DAP, JVPt, JVPs, IWP, BT, USAP, and Reserve) and TACs will be implemented by the Regional Administrator. Proposed re-specifications and TACs will be published in the *Federal Register* on or about September 15 for the following fishing year and will provide for a 30 day public comment period. At the close of the comment period, a notice of final specifications will be published in the *Federal Register*. The previous year's specifications will remain effective unless changed by the Regional Administrator. If the specifications will not be changed, this will be announced through a notice action.

Atlantic Herring Specifications for the 2004 Fishing Year

1.0 INTRODUCTION AND PROPOSED ACTION

This document contains information to support a rollover of the 2003 specifications for the Atlantic herring fishery through the 2004 fishing year (January 1, 2004 – December 31, 2004) with no changes.

This document provides additional information to support the conclusions in Environmental Assessment (EA) for the 2003 specifications (Attachment 1). There are no significant differences between the conclusions reached in this document and those reached in the EA for the 2003 specifications. Rolling over the 2003 specifications through the 2004 fishing year is not likely to result in any significant impacts. The EA for the 2003 specifications and the conclusions reached therein, therefore, are still applicable, and the EA should be referenced for additional information and analysis.

1.1 PURPOSE AND NEED

According to the regulations specified in 50 CFR Section 648.200(d), NMFS can rollover the previous year's specifications for the herring fishery if the Council recommends no changes. The regulations specify that: "the previous year's specifications shall remain effective unless revised through the specification process. NMFS shall issue notification in the *Federal Register* if the previous year's specifications will not be changed."

The Council is proposing a rollover of the 2003 specifications through the 2004 fishing year with no changes primarily because it is currently developing an amendment to the Herring FMP that will allow for a complete assessment of stock and fishery conditions so that appropriate management adjustments can be made in a comprehensive manner. A full Environmental Impact Statement (EIS) will be prepared to support Amendment 1. Rolling over the specifications provides additional time for the Herring Plan Development Team (PDT), Herring Committee, and Council to work on the development of Amendment 1 so that it can be implemented in a timely manner.

Herring (Continued)

1.2 PROPOSED ACTION

The proposed specifications for the 2004 fishing year are the same as the (current) specifications for the 2003 fishing year (**Error! Reference source not found.**). This includes the specifications for: Allowable Biological Catch (ABC); Optimum Yield (OY); Domestic Annual Harvest (DAH); Total Allowable Foreign Fishing (TALFF); Domestic Annual Processing (DAP); Total Joint Venture Processing (JVpt); Joint Venture Processing for Areas 2 and 3 (JVP); Internal Waters Processing (IWP); U.S. At-Sea Processing by Vessels >165 feet or >750 GRT (USAP); Border Transfer (U.S.-caught herring transferred to Canadian vessels for export to Canada) (BT); and TAC Reserve.

Appendix 2:

Excerpts from SSC Correspondence:

SSC to Paul Howard, January 29, 2013:

Georges Bank cod

The PDT presented two ABC alternatives to the SSC. The first method applies 75% of the FMSY proxy to the projected biomass, resulting in values of 2,506mt for 2013, 2,732mt for 2014, and 3,172mt for 2015. The second method applies 75% of the FMSY proxy to the projected biomass in 2013 and then retains that value for 2014 and 2015. The SSC favors the second option: ABC should not exceed 2,506mt for 2013-2015. This recommendation was based on several factors.

Repeated experiences in recent years demonstrate poor performance of stock projections. Projections often deviate substantially from updated perceptions of stock dynamics revealed by later assessments, and this problem increases further into the future from the starting year of the projection. Therefore, while there is some confidence in estimated biomass in the first year of the projection, 2013, rapid deviations mean that confidence is much lower for 2014 and especially 2015. *In fact, the SSC's preference is to only provide ABCs for 2013 and 2014. While the SSC recognizes the rationale for setting a 2015 ABC at this stage as a placeholder in case circumstances do not allow it to be set later, the SSC cautions against basing fisheries management on data that is several years old (i.e., basing the ABC in 2015 on data no more recent than 2011).*