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New England Fishery Management Council

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

MEMORANDUM

DATE: August 7, 2014
TO: Research Steering Committee
FROM: Staff
SUBJECT: Meeting materials for RSA agenda item

The Research Steering Committee is scheduled to have a general discussion about Research Set-Aside Programs in New England. Several issues have been raised at recent Council meetings about the current structure of the RSA program, and this meeting is an opportunity to have an initial discussion about potential concerns and possible improvements to the RSA process.

Two specific issues have been raised at recent Council meetings. First, are Council research priorities adequately addressed in the final selection process? Specifically, does the final list of awarded projects reflect the Council priorities and management needs? Is input from technical reviewers and management reviewers integrated in the most effective way to identify the most scientifically sound projects with the greatest management relevance. Second, is the NOAA grants process flexible enough for this type of research that often has changing needs? For example, a large portion of RSA funds are used to enhance resource surveys. Some of these survey needs are unpredictable and priority areas may change. Are there other mechanisms that could be explored that would potentially better suit the RSA process; i.e. contracts.

As background for this agenda item, Deirdre Boelke with the Council staff is going to briefly summarize the issues that have come up at recent Council meetings. Ryan Silva from the NEFSC Cooperative Research Program is going to present an overview of the current RSA programs in New England. Finally, Cheryl Corbett, also with the Cooperative Research Program, is going to summarize the review and selection process for RSA programs, as well as the grant process overall. Several meeting materials related to this agenda topic are provided with this memo to facilitate the discussion.

- A. Summary of issues that have been discussed at New England Council meetings
- B. Frequently Asked Questions about the Mid-Atlantic RSA Program
- C. Summary of the review and selection process for the Scallop RSA Program
- D. Correspondence from NMFS to Mid-Atlantic Council regarding the potential use of contractual agreements for RSA
- E. Summary of the decision process used in the Federal Grant and Cooperative Act of 1977

Recent RSA Issues raised at NE Council

- Several issues have come up at recent NEFMC meetings
 1. Are Council research priorities adequately addressed in the selection process?
 2. Is the Grant process flexible enough for resource survey projects?

1. Council Priorities

- For Scallop RSA Program there are many priorities
- Projects ranked on technical merit (including 25/100 points for priorities)
- Management review panel also provides input on whether to fund projects based on relevance to priorities
- What is the best way to integrate these two sources of input?

2. Grant process

- Not very flexible for resource survey needs that change often and sometimes quickly
- Some survey needs are unpredictable
- Can other mechanisms be explored? Contracts?
- Are there legal constraints?
- Do FMPs need to be modified to better address this needed flexibility?



Mid-Atlantic Research Set-Aside Program - Frequently Asked Questions

Vessel Participation and Eligibility

1. *How does the Mid-Atlantic Research Set Aside (RSA) Program generate funds to support research?*

Recipients of RSA grants partner with fishing vessel owners who harvest RSA quota, and they either agree to share the proceeds from the sale of the RSA quota after it has been landed or the vessel owner may purchase the opportunity to harvest RSA quota outright from the grant recipient before it has been harvested. Most of the RSA quota under the Mid-Atlantic RSA program is obtained outright by the vessel owner through the National Fisheries Institute (NFI) RSA auction, although both arrangements occur.

2. *What is the NFI RSA auction and why does NOAA Fisheries allow RSA quota to be auctioned off to the highest bidder?*

The NFI RSA auction was created as a way to connect grant recipients with vessel owners interested in participating in the RSA program, and has become an established service used by Mid-Atlantic RSA grant recipients to secure the funds needed to support their research. The terms and conditions of the NFI RSA auction are determined by NFI and the RSA grant recipient, and is not a process authorized or directed by NOAA Fisheries. The exchange of RSA quota for money is not unique to the NFI RSA auction; all of the RSA programs depend on this exchange between the grant recipient and the industry partners. The NFI RSA auction is simply a more structured service to facilitate this exchange. Each RSA grant recipient is free to determine the most efficient approach for his/her project, and none are bound to use the NFI RSA auction.

3. *Why does NOAA Fisheries allow vessels harvesting Mid-Atlantic RSA quota to catch more than other vessels, and to fish during closures when other vessels can't?*

These effort control exemptions provide additional fishing opportunities to participating vessels, which adds value to RSA quota. Without the added value generated by these additional fishing opportunities, there is little incentive to vessels to participate in the program. If the RSA quota is not harvested, funds cannot be generated to support the research projects.

4. *Why does compensation fishing happen independently from the research? Isn't the RSA program supposed to be a cooperative research program that brings the science and fishing communities together? Doesn't this decoupling undermine the intent of the program?*

The harvest of RSA quota may or may not occur in conjunction with research activities, although typically these activities occur separately. This decoupling of the compensation

fishing from the research is not new, and was anticipated when the Mid-Atlantic RSA Program was created under Framework 1 in 2001. Decoupling these activities allows greater flexibility for the types of research projects that may be supported, particularly for projects that are conducted in a manner that is not conducive to harvesting commercial quantities of fish, such as surveys and tagging studies, or projects targeting species with relatively low value. In keeping with the intent of the program, the selected projects are cooperative research studies that closely involve the fishing industry, research community, and other stakeholders.

5. *Who decides which vessels get to catch Mid-Atlantic RSA quota?*

Vessel participation is largely determined by the grant recipient. RSA grant recipients are responsible for working with the fishing industry to harvest their RSA quota award. In practice, they partner directly with the vessel owner, and/or they use the service provided by the NFI RSA auction. Although the grant recipient identifies the vessels, NOAA Fisheries reviews vessel histories to ensure they do not conflict with the Greater Atlantic Regional Fisheries Office (GARFO) exempted fishing permit (EFP) sanction policy. If the vessel has previous violations that conflict with this policy, they are not authorized to participate in the program. In addition, state authorities have discretion when considering whether to grant waivers from state regulation.

6. *Can a private angler harvest RSA quota?*

Theoretically, it is possible that a private angler could catch RSA quota. However, without regulation waivers, there is no incentive for a private angler to do so. NOAA Fisheries supports the Council's position that authorizing private anglers would be extremely difficult to monitor and enforce and, therefore, has no intention of providing any exemptions to private anglers for the purpose of harvesting RSA quota.

7. *How many vessels are involved in harvesting Mid-Atlantic RSA quota?*

In recent years, 100-150 vessels annually engage in Mid-Atlantic RSA compensation fishing. This relatively high number of vessels is due to the large volume of fish awarded under this program, the diversity of awarded species, and the diversity of the fleet harvesting the RSA quota. The number of vessels is constrained by the NOAA Fisheries regional vessel cap policy, which restricts the number of vessels that can participate in compensation fishing at any given time.

8. *Why does NOAA Fisheries limit the number of vessels that can harvest Mid-Atlantic RSA quota?*

NOAA Fisheries limits the number of vessels that can participate in the RSA program to improve program oversight and enforceability. Currently, the number of vessels that can participate in a project is limited to 50 vessels per project. However, flexibility to exceed this cap has been provided at the request of grant recipients, given sufficient justification.

Exempted Fishing Permits and Reporting Requirements

9. *What is an exempted fishing permit (EFP)?*

An EFP waives Federal fishing regulations. To facilitate RSA compensation fishing, federally permitted vessels harvesting RSA quota are issued EFPs to exceed possession limits and to fish during quota closures. EFPs contain explicit terms and conditions that must be followed. EFPs must be signed by both the vessel owner or operator and the principal investigator to ensure that they agree to the terms and conditions of the EFP. They are subject to fines and/or sanctions if the terms and conditions are not followed.

10. *Do EFPs affect state fishing regulations?*

No; EFPs only waive Federal fishing regulations. State waivers must be obtained directly through the state. NOAA Fisheries coordinates with the applicable states to ensure they are aware of the EFPs that are issued.

11. *What are the requirements that must be followed when a vessel is on a Mid-Atlantic RSA compensation fishing trip?*

All vessels harvesting RSA quota have additional reporting requirements. The vessel operator must notify NOAA Fisheries prior to departing on an RSA compensation fishing trip to establish his intent to harvest RSA quota, and to identify when and where the vessel will land. Prior to landing, the vessel operator must report the amount of RSA quota on board, and when and where it is going to be landed. After landing, a final report must be submitted, which includes the exact amount of RSA quota landed, the state where the fish were landed, and the vessel trip report serial number.

12. *What does NOAA Fisheries do to make sure a vessel adheres to the RSA reporting requirements?*

NOAA Fisheries has recently adopted a set of quality assurance procedures to audit and validate RSA reported data to identify potential reporting errors or cases of non-compliance. All RSA trip reports are processed through these audits. If an aspect of the report conflicts with an audit, it will be flagged and then investigated to determine the appropriate course of action, including vessel outreach, referral to the Office of Law Enforcement, or potential revocation of compensation fishing privileges.

The Office of Law Enforcement also has near-real time access to RSA data, including information on when and where a vessel is landing, and how much RSA quota the vessel has on board. Using this information, they will be able to determine if a vessel has met the reporting requirements.

13. What happens if a vessel does not follow the program reporting requirements?

If a vessel operator does not follow the RSA reporting requirements, the vessel will be removed from the RSA program. We are currently revising the RSA compliance policy to better articulate when compensation fishing privileges will be revoked for failing to follow program requirements, which includes outreach procedures to the vessel operator, owner, and grant recipient notifying them of program compliance problems.

14. Does NOAA Fisheries conduct a background check on vessel compliance history prior to allowing them to harvest RSA quota?

Yes. NOAA Fisheries has an EFP sanction check policy that is used to vet vessels that are put forward by the grant recipient to harvest RSA quota. If a vessel conflicts with the criteria outlined in this policy, the vessel will not be authorized to harvest RSA quota.

Enforcement

15. What is NOAA Fisheries doing to improve RSA program oversight and compliance in light of the recent Mid-Atlantic RSA enforcement actions?

NOAA Fisheries has overhauled RSA program monitoring and oversight procedures in response to these enforcement actions and in response to requests from the Council. This includes more robust trip audit and matching procedures, development of a more explicit policy for revoking compensation fishing privileges, and more advanced data sharing and data analysis capabilities with the Office of Law Enforcement. In addition to more effective vessel oversight, these new procedures will enable more detailed and comprehensive analysis to evaluate program performance and to identify program areas of concern.

16. Would these violations have happened if the new oversight procedures had been in place?

The new reporting requirements, in conjunction with the new oversight procedures, would have made it much more difficult and risky for these violations to be carried out. Specifically, we are now requiring that vessels provide more detailed trip information (e.g., vessel landing time and location, the amount of RSA quota onboard prior to landing) and there are new procedures in place that will enable us to more effectively audit and reconcile vessel trip and dealer reports. All of this information will be available to the Office of Law Enforcement and their state partners to monitor vessel activity, and to intercept vessels to confirm compliance and validate reported data.

17. How does enforcement keep track of RSA vessel activity?

NOAA's Office of Law Enforcement has near-real time access of all RSA trip data via a web-based application. This system allows enforcement to monitor vessel activity. In the near future, audits and reports can also be generated through this new system. In addition, regional office staff will notify the Office of Law Enforcement of vessel reporting compliance issues that are identified through quality assurance procedures.

18. What if a vessel decides to take an RSA compensation fishing trip but does not report at all?

If a vessel does not submit any RSA trip report, they are not considered to be on an RSA compensation fishing trip, and would be subject to all applicable regulation, including the regular possession limit and season closures.

19. What else could be done to increase RSA program oversight and compliance?

The recent program adjustments in response to the RSA enforcement actions and requests from the Council will significantly bolster oversight of RSA compensation fishing activity. There were additional measures considered during the development of these procedures that were not adopted for various reasons, including dealer specific authorizations and reporting requirements, and controls on landing time and location. NOAA Fisheries expects that these adjustments that were made to improve oversight and compliance will be effective. However, NOAA Fisheries will continue to examine all of the RSA programs to improve program performance and oversight, which includes working closely with the Councils, state partners, fishing industry, and the cooperative research community.

RSA Quota Monitoring

20. How does NOAA Fisheries track Mid-Atlantic RSA quota?

Vessel reports, in conjunction with dealer reports, are used to monitor and track RSA quota. Commercial RSA quota landings reported by the vessel are deducted from the commercial landings, by state, to ensure RSA landings are not applied against state commercial quotas. If an RSA or dealer report is flagged through the audit process, the issue will be investigated in accordance with quality assurance procedures to ensure accurate monitoring reports.

21. What does NOAA Fisheries do to make sure a vessel does not catch more than the amount of fish they purchased at the NFI RSA auction?

NOAA Fisheries provides weekly reports to grant recipients and state partners to ensure they are apprised of reported RSA compensation fishing activity. However, NOAA Fisheries does not dictate the specific arrangements between the grant recipient and partnering vessel, and how much RSA quota each vessel is allowed to catch. Consequently, NOAA Fisheries monitors all trips to ensure vessels operate in accordance with the program requirements, and that the overall project award is not exceeded, but not how much fish each vessel is allowed to catch.

22. Does RSA catch count against state quotas?

No. RSA catch is in addition to the state quota, and does not reduce the amount of fish that may be harvested in that state. The RSA quotas are “taken off the top” during the quota setting process so that overall catch is within scientifically sound catch limits. NOAA Fisheries works very closely with the states to ensure RSA catch is accounted for properly,

including sending weekly reports and posting RSA catch data on our regional office website. The recently adopted monitoring procedures will further enhance the ability to properly account for RSA quota landings to ensure they are applied properly.

23. Does NOAA Fisheries allocate Mid-Atlantic RSA quota to vessels?

No. NOAA Fisheries awards RSA quota to successful applicants to carry out a research project. Grant recipients are responsible for arranging which vessels will harvest their grant award and how much quota each vessel gets. NOAA Fisheries does not dictate the agreements between the grant recipient and industry partner.

However, NOAA Fisheries monitors every RSA trip to ensure compliance with program requirements and to ensure that the overall quota award is not exceeded. If the overall RSA quota award is exceeded, it could result in fines and/or sanctions for the vessel and the grant recipient, and could affect future funding decisions.

24. What is the responsibility of the researcher when it comes to the harvest of Mid-Atlantic RSA quota?

The grant recipient is responsible for managing vessels harvesting RSA quota, and to ensure vessels do not exceed the RSA quota award. The RSA Federal Funding Opportunity that solicits research proposals clearly states that the principal investigator must have effective safeguards in place to ensure an RSA quota award is not exceeded.

25. What are the specific requirements for researchers?

The grant recipient must submit a formal request to NOAA Fisheries requesting authorization for the vessels they've partnered with to conduct compensation fishing. The grant recipient must sign all EFPs to acknowledge the terms and conditions of the permit. The grant recipient must also ensure all program requirements are distributed to their partner vessels. Failure to meet these requirements could impact future funding decisions.

26. Why doesn't NOAA Fisheries require dealers to report Mid-Atlantic RSA quota separate from non-RSA catch? Wouldn't this help track RSA quota, and improve program oversight?

NOAA Fisheries considered implementing a regulation that would require a dealer to explicitly identify RSA quota purchases. However, it was decided that this requirement would have marginal benefit, and that there are more effective ways to match RSA vessel reports with dealer reports using RSA trip audit procedures. The primary concern with an RSA dealer regulation is that data quality would likely be poor, and that enforceability would be difficult given the dependency between the vessel and the dealer.

Atlantic Scallop Research Set-Aside (RSA)

C

Competitive Review/Selection Process

- Minimum Requirements Review
 - Conducted by Federal Program Officer (FPO) in Grants On-Line (GOL)
- Technical Review (min. 3 reviewers – typically 1 Northeast Fisheries Science Center (NEFSC), 1 NOAA Fisheries Greater Atlantic Regional Fisheries Office (GARFO) & 1 Industry Expert)
 - Coordinated by FPO (30 day review period) in accordance with the five evaluation criteria listed in the Federal Funding Opportunity (FFO), Section V.A. Evaluation Criteria (See below)
- *Management Panel Review
 - Coordinated & conducted by FPO/Cooperative Research Coordinator (30 day review period, meeting with non-consensus discussions, and 7-10 day submission of written comments from date of meeting). Panel evaluates proposals based on their potential contribution to management decisions in accordance with the RSA Program Research Needs and Priorities listed in the FFO (Program Priorities provided by Fishery Management Councils)

DOC Grants & Acquisition Handbook

*The program office may implement additional tiers of internal reviews between the independent or technical review and the final selection stage as long as the additional internal reviews are described in the FFO, along with the evaluation and selection criteria

- Final Rankings
 - determined by technical score and management panel comments in accordance with Section V.C. Selection Factors from the FFO (See below)
- Decision/Selection Memorandum
- Regulatory Consistency Review
 - Coordinated & conducted by GARFO
- Issuance of Favorably Reviewed Letters
 - Information provided for Exempted Fishing Permits (EFP)
- Conduct Negotiations

- Supplemental Decision/Selection Memorandum (post negotiations as necessary)
- Selection Package to FALD for approval (all potential awards must be submitted at the same time)

Language from 2015 Scallop RSA FFO

V. Application Review Information

A. Evaluation Criteria

NMFS will solicit written technical evaluations from three or more appropriate private and public sector experts to determine the technical merit of the proposal and to provide a rank score of the project based on the criteria set forth below:

1. Importance and/or relevance and applicability of the proposed project: This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state, or local activities. Provide a clear definition of the problem, need, issue, or hypothesis to be addressed. The proposal should describe its relevance to RSA program priorities. If not directly related to priorities listed in this solicitation, provide justification why the proposed project should be considered.

(20 points)

2. Technical/scientific merit: This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. Special emphasis will be given to proposals that foster and improve cooperative interactions with NMFS. A clear definition of the approach to be used including description of field work, theoretical studies, and laboratory analysis to support the proposed research in the area and time proposed is important. The time frame for utilizing research DAS and conducting the proposed research should be clearly specified. Activities that take place over a wider versus narrower geographical range, where appropriate, are preferred. **(30 points)**

3. Overall qualifications of the project: This criterion assesses whether the applicant, and team members, possess the necessary education, experience, training, facilities, and administrative resources to accomplish the project. This includes demonstration of support, cooperation and/or collaboration with the fishing industry, and qualifications/experience of project participants. Where appropriate, combined proposals involving multiple principal investigators are preferred versus separate stand-alone proposals on related projects. For proposals involving multiple vessels, special attention

will be given to specification of safeguards to ensure that the authorized set-aside will not be exceeded. (15 points)

4. Project costs: This criterion evaluates the budget to determine if it is realistic and commensurate with the project needs and time frame. Cost-effectiveness of the project is considered. (25 points)

5. Outreach and education: This criterion assesses whether the project involves a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources. This includes identification of anticipated benefits, potential users, likelihood of success, and methods of disseminating results. Where appropriate, data generated from the research must be formatted in a manner consistent with NMFS and ACCSP databases. A copy of this format is available from NMFS. (10 points)

B. Review and Selection Process

Following completion of the technical evaluation as described above, NMFS will convene a management review panel, including Council members and technical experts, to review and individually critique the scored proposals to enhance NOAA's understanding of the proposals as they relate to the program priorities enumerated in Section I.B. above. Initial successful applicants may be required, in consultation with NMFS, to further refine/modify the study methodology as a condition of project approval. No consensus recommendations will be made by the management review panel.

C. Selection Factors

The program officer will make recommendations to the Selecting Official based on technical ranking and management reviews. The Selecting Official shall award in the rank technical order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of RSA quota allocation.
2. Balance/distribution of RSA quota:
 - a. Geographically
 - b. By type of institutions
 - c. By type of partners
 - d. By research areas
 - e. By project types

3. Whether this project duplicates other projects currently supported or being considered for support by other NOAA offices.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or Participation of targeted groups.
7. Adequacy of information necessary to conduct a NEPA analysis and determination.

Key program policy factors (see 4 above) to be considered by the Selecting Official are: (1) The time of year the research activities are to be conducted; (2) the ability of the proposal to meet the applicable experimental fishing requirements; (3) redundancy of research projects; and (4) logistical concerns. Therefore, the highest scoring projects may not necessarily be selected for an award. All approved research must be conducted in accordance with provisions approved by NOAA. Unsuccessful applications will be returned to the submitter. Successful applications will be incorporated into the award document.

The selection process is the same for all RSA programs. Highlighted below are a few differences within the process.

- Monkfish RSA requests Days-at-Sea (DAS) instead of pounds.
- Mid-Atlantic RSA- the Mid-Atlantic Fishery Management Council (MAFMC) has a separate RSA Committee who conducts the management panel review.
- MAFMC incorporated Science & Statistical Committee (SSC) involvement. They are one of the three technical reviewers in lieu of a GARFO technical reviewer during the proposal review.
- MAFMC SSC reviews all progress and final reports after award.



D

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
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January 12, 2012

Christopher M. Moore, Ph.D.
Executive Director
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, Delaware 19901-3910

Dear Chris,

This letter responds to your correspondence of October 18, 2011, to me in which you asked for legal advice regarding whether the Mid-Atlantic Fishery Management Council (Council) could assume responsibility for the administration of the Research Set Aside (RSA) Program either directly or through a contractual agreement with a third party. Specifically, you asked: (1) could the RSA Program operate using contracts, instead of grants, with those whose research proposals are accepted in order to conduct research on board fishing vessels and to make compensation trips to harvest RSA amounts of fish; (2) can the Council enter into contractual agreements with outside entities to fund scientific research under the RSA Program; (3) can the Council enter into a contractual agreement with a third party to sell RSA species of fish at auction to generate revenues to fund scientific research; and (4) can revenues generated from the auction of RSA species of fish be deposited in a fund established by the Council.

I have consulted with the Department of Commerce's Office of General (DOC/GC) with respect to a number of these questions. DOC/GC advised that there is no basis upon which to revise its original advice that, as presently configured, the RSA Program should operate using a grant funding mechanism as opposed to a contract award. NOAA's primary purpose with respect to this program is not to acquire services from the applicants for its direct benefit or use. Rather, the agency is providing financial assistance (in this case, amounts of fish that can be sold to offset the cost of conducting research) to the researchers to accomplish a public objective focused on fisheries research. This determination is dispositive and supports the use of federal assistance to fund these projects.

Your remaining questions really turn on a determination as to whether the Council has the legal authority to take over administration of the RSA Program. It matters not whether the Council does this directly or under contract with a third party. The functions of a fishery management council are set forth in section 302(h) of the Magnuson-Stevens Fishery Conservation and Management Act (Act). None of these functions contemplate that the Council can take over administration of the RSA Program. This would put the Council in the role of conducting a scientific research program, which is more properly the province of an organization like the Northeast Fisheries Science Center. Such activity would be well beyond the Council function in section 302(h)(7) that empowers the Council to develop research priorities, as it currently does for the RSA Program. These research priorities cannot be implemented through a research



program administered by the Council but must be submitted to the agency for its "consideration in developing research priorities and budgets for the region of the Council." Similarly, the "basket" provision in section 302(h)(8) does not support the administration of the RSA Program by the Council. It allows the Council to conduct "other activities" which are required by, or provided for in, the Act or which are necessary and appropriate for to the functions enumerated in section 302(h). These other activities are circumscribed by sections 302 and 303 of the Act which outlines the authorities and functions of the Council. Further, if you look at section 404 of the Act respecting fisheries research, it is the Secretary who is charged with initiating the research program "in cooperation with the Councils." The cooperation of the Councils is limited by section 302(h)(7) to making recommendations on research priorities. The "other activities required by, or provided for, in the Act" language runs more to the administration of those activities mentioned in section 302(f). There is no authority vested in the Council in sections 302, 303, or 404 of the Act to run a research program such as the RSA Program.

While your remaining questions need not be answered in light of the limitations on the Council's functions noted above, they deserve some comment. The only auction authority contained in the Act appears at section 303a(d) which deals with auctioning off allocations under a limited access privilege program to collect royalties. Given that Congress limited the auction authority to this activity, the canons of statutory construction do not support an additional Congressional intent to allow the Council to auction off RSA species of fish. As above, it matters not that the auction is conducted by a third party under contract with the Council. Further, monies generated as the result of the auction might be considered program income which must be applied to the administration of the Council's grant or returned to the agency. Finally, a fund to receive the monies from the auction can only be established if there is express statutory authority to do so. There is no such authority in the Act.

If you have any further questions, please do not hesitate to contact me.

Sincerely,



Joel G. MacDonald
Northeast Section Chief

The Federal Grant and Cooperative Agreement Act of 1977

Contract vs Grant (31 U.S.C. 6303 & 31 U.S.C. 6304)

Decision Process –

Question 1

Is the Federal agency's **primary purpose** to acquire goods or services for the **direct benefit** for or use by the **Government**?

- Yes: the award instrument should be a contract
- No: then use a grant or cooperative agreement

Question 2

Is the Federal agency's primary purpose to provide financial or other assistance for the recipient to use in order to **accomplish a public objective** authorized by law?

- Yes: then the award instrument should be a grant or cooperative agreement
- No: then the award instrument should be a contract

