



New England Fishery Management Council

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ABC Control Rule Working Group

Meeting Summary

September 3, 2013

Meeting Attendance: *Working Group Members:* Mary Beth Tooley (Chair), Matthew McKenzie (NEMFC); Lori Steele, Demet Haksever (NEFMC Staff); Jason McNamee, Dan Georgianna (SSC); Jon Deroba (NEFSC), Sarah Heil (NMFS NERO).

Audience: Erika Fuller (EarthJustice).

The ABC Control Rule Working Group (ABC CR WG, or WG) met on September 3, 2013 to begin work to prepare a work plan regarding how the Council may proceed in developing ABC control rules that incorporate the Council's risk tolerance, for initial discussion at the September 24 – 26 Council meeting and consideration during the discussion of 2014 management priorities. The goal of the work plan will be to enable the Council to consider/approve a process for developing the risk policy as a 2014 Council priority. Guidance to the ABC CR WG states that the work plan should:

1. Consider the findings and recommendations from the Council's Risk Policy Workshop held in March 2013
2. Outline a process addressing:
 - Procedural options and the role of the Council, its advisors and the SSC in developing an approach to addressing risk when setting ABC control rules (risk policy);
 - Questions and the information or resources and analyses that may be needed
 - General alternatives for what a risk policy for setting ABC control rules could look like
 - A general timeline for the adoption of an approach including any rulemaking appropriate for implementing the risk policy

After the members of the working introduced themselves and reviewed the guidance provided to the WG (above), Ms. Steele provided a brief overview of the Council's Risk Policy Workshop, held in Salem MA in March 2013. The discussion focused on elements of the risk policy workshop that were most relevant to the current ABC CR WG discussion, i.e., approaches for establishing a risk policy and linking that policy to ABC control rules. The Risk Policy Workshop was a collaboration between the Council and the Fisheries Sustainability and Leadership Forum to provide a platform for Council members, Council staff, SSC members, NMFS and NEFSC staff, and other management partners to engage in discussions to advance the development of a risk policy to determine ABC buffers for New England fisheries. The workshop focused on understanding risk, accounting for uncertainty, and understanding roles

and responsibilities in the management process. Discussion at the workshop explored biological, ecological, social, and economic considerations associated with developing ABC control rules for federally-managed fisheries in the Northeast Region.

The Risk Policy Workshop explored a wide range of complex issues and identified challenges to setting ABC control rules that are unique to New England fisheries. The Workshop provided a foundation for developing a risk policy, but many of the details and recommendations are outside of the scope of the ABC Control Rule Working Group. The WG therefore agreed to focus its discussion on the elements of the risk policy workshop that are most specific to the guidance given to the group, i.e., the Workshop outcomes (consensus items, recommendations), lessons learned from other regions, and how the Council can move forward with the information generated at the Workshop to implement a risk policy and adopt ABC CRs.

Some of the outcomes and general consensus items from the Risk Policy Workshop were identified and discussed by the WG:

- Use a clearly defined process to specify how ABC CRs will be set in each FMP to reflect the Council's risk policy.
- The process should differentiate between ABC control rules, harvest control rules (HCRs), and a risk policy.
- The process should articulate/clarify roles and responsibilities of the Council and its SSC, and should consider the role of social scientists in the development of a risk policy and ABC control rules.

The Council's Risk Policy Workshop in March 2013 also provided a working definition of an *ABC Control Rule*: policies established by the Council intended to limit the probability of overfishing; the CR should articulate how far below OFL to set ABC based on scientific uncertainty, stock status, and other related issues, and it should reflect the Council's risk tolerance. By law, the ABC CR cannot result in a probability of overfishing that is greater than 50%. One WG member noted that the general "equation" for setting ABC as "OFL-scientific uncertainty" is somewhat unclear because scientific uncertainty is not in the same units as OFL and ABC. Scientific uncertainty is more often characterized as a probability or a multiplier for OFL, to set a buffer for ABC.

Some additional important considerations from the Risk Policy Workshop were identified and discussed, namely recommendations to start simple when developing a risk policy, adapt ABC control rules over time, consider and balance the need for consistency with flexibility, learn from existing approaches, and clearly define roles and responsibilities. One member of the WG wondered how complex issues like ecosystem considerations can be considered when developing a risk policy. The WG agreed that it would be appropriate to further discuss these issues and perhaps develop more specific recommendations in its report to the Council for consideration during the 2014 priority-setting discussion (November 2013 Council meeting).

Procedural Options

The ABC CR WG discussed possible options for the Council to move forward with adopting a risk policy and ABC CRs as a management priority in 2014. The group considered possible Council actions (policy versus amendment), pros and cons of each approach, the role of the Council/Committee/SSC, and general timelines for each approach. The WG also generally discussed some approaches utilized in other regions, focusing primarily on the Mid-Atlantic Council's recent omnibus amendment, which implemented ACL/AM provisions, a risk policy, and ABC control rules across all Mid-Atlantic Council FMPs.

In preparation for the next WG meeting, Council staff agreed to work with NMFS staff to outline some information regarding approaches utilized by Fishery Management Councils in other regions, exploring the following questions:

1. Is there a formal risk policy that has been established/adopted by the Council? If so:
 - What process was utilized to develop the risk policy? Was the risk policy adopted region-wide or FMP-by-FMP?
 - How does the policy link to the ABC control rules for each managed stock? Were the risk policy and ABC control rules developed/linked in one action or in a stepwise process?
 - Is the risk policy codified in regulations?
2. For Councils that have adopted risk policies, what do these policies generally look like?
 - What metrics are utilized, and what tradeoffs are evaluated?
 - Does the risk policy provide clear guidance to the SSC for setting ABCs?
 - What kinds of ABC control rules have been implemented based on the risk policy?

The ABC CR WG briefly discussed the concept of a risk policy versus ABC control rules versus harvest control rules (HCRs) and agreed that a clear distinction between the three terms is helpful. In general, a risk policy would be determined by the Council and would apply broadly across all FMPs. The policy would serve as guidance to the SSC for recommending ABC levels for all fisheries. It is not clear whether a risk policy requires rulemaking in all cases. ABC Control Rules are FMP-specific, and in most cases species- or stock-specific. ABC CRs are already established for most species/stocks managed by the New England Council (but are not linked to a risk policy). ABC CRs articulate how the SSC should set ABC for a species/stock, given the level of scientific uncertainty and taking into account the Council's risk policy. Harvest control rules (HCRs) are species-specific and/or stock-specific and come from overfishing definitions established in FMPs. HCRs include status determination criteria (overfished, overfishing) and form the basis of the specification of the overfishing limit (OFL). The ABC CR WG agreed that the primary focus for this group would be developing the risk policy, linking this policy to ABC CRs, and determining if/how existing ABC CRs should be modified.

After lengthy discussion, the ABC CR WG agreed to develop an outline of three possible approaches for the Council to consider:

1. **“Risk Policy Approach”** – The Council would adopt a risk policy as part of its SOPPs (Standards and Operating Policies and Procedures); under this approach, no regulatory action would be necessary. The risk policy would serve as formal guidance to the SSC for setting ABCs but would not be formally incorporated into each FMP. FMPs could be amended in the future to adopt ABC CRs that are consistent with the risk policy on an as-needed basis.
2. **“Omnibus Amendment Approach”** – The Council would initiate an omnibus amendment to all of its FMPs to implement a risk policy and modify ABC Control Rules; under this approach, the risk policy would be formally adopted in each FMP along with any modifications to the ABC CRs in the FMP. In general, this is similar to the Mid-Atlantic Council’s approach. Several WG members noted that the timeline for this approach may be as long as 2-3 years.

(However, it was noted that the Mid-Atlantic Council’s omnibus amendment to implement a risk policy and ABC CRs was part of a larger omnibus amendment that was developed to address all new elements of the reauthorized MSA (including ACL/AM provisions).

3. **“Step-wise Approach”** – The Council would first develop/approve a risk policy and “field test” the policy during a transition time to determine if/how ABC CRs should be modified in each FMP; under this approach, the Council would first focus on a risk policy to apply broadly across all FMPs. During the development of the risk policy, the Council could evaluate existing ABC CRs in all of its FMPs to determine how the risk policy may affect the ABC CRs and how quickly modifications/adjustments to the ABC CRs should be considered/developed. In some cases, WG members felt that it may be more effective over the long-term for the Council to “work through” a stock assessment and specifications cycle using the newly-developed risk policy to evaluate its performance any identify/address any unique considerations on a case-by-case basis. This could also provide an opportunity for the Council to test/refine its risk policy.

The ABC Control Rule Working Group acknowledged that developing a risk policy is not a legal requirement and that the Council is not under a legal mandate/deadline to move forward with one of the options identified above. In general, the Council has met its Magnuson-Stevens Act (MSA) requirements to establish ACLs and AMs in its FMPs and utilizes the SSC to recommend ABC levels that account for scientific uncertainty (although the WG recognized that some ABC control rules are vague, leaving the SSC with unclear guidance for recommending ABCs). However, the WG agreed that developing a risk policy is appropriate and promotes responsible management by improving clarity and consistency in the ABC-setting process. The lack of a legal deadline provides the Council with some flexibility with respect to the above options and how to approach developing a risk policy. The WG agreed that some preliminary feedback from the Council regarding the level of urgency associated with this issue in the context of other 2014 management priorities.

The WG also discussed whether its current composition would be sufficient to develop a risk policy or any related Council action under the three possible approaches identified above. The group agreed that representation and/or input from NOAA General Counsel would be helpful at this time. The future composition of the Working Group depends, in part, on which option is selected by the Council to move forward. Manpower and resource demands for 2014 may be different under each of the options.

The ABC CR WG appeared to favor the third option but agreed to discuss all three options further at its next meeting. Council staff will draft a work plan that outlines the three approaches generally described above, including pros/cons, regulatory requirements/issues, potential legal issues/challenges, resource/manpower needs, technical/analytical needs, role(s) of Council, SSC, and PDTs, public participation, and general timeline(s). The group emphasized the importance of stakeholder involvement in the process under all three possible scenarios. At its next meeting, the WG will review this outline, discuss the pros/cons, and develop recommendations for the Council to consider during its discussion of 2014 management priorities. The WG also agreed to begin drafting (via email) goals/objectives for the risk policy, which will be included in the report to the Council at its November 2013 meeting.