

RSA Committee Meeting
April 11, 2012
Duck, NC
Agenda

Review actions from Oct 2011 Meeting

Review response letter from NOAA General Counsel

Options and recommendations for future of RSA Program

Other business

RSA Program Options (Draft October 2011)

1. Maintain current RSA Program structure with modifications to address scientific and administrative/enforcement issues
 - 1a. maintain current mix of NEAMAP and cooperative research
 - 1b. fund NEAMAP only (i.e., RSA=NEAMAP)
 - 1c. fund NEAMAP and fishery dependent sampling
 - 1d. Write 2013 RSA RFP for NEAMAP research only and transition to option 2 in 2014

2. MAFMC administers RSA Program
 - 2a. Council administers program directly
 - 2b. Council contracts third party to administer RSA Program
 - 2b1. form Mid-Atlantic Research Consortium
 - 2b2. Sea Grant
 - 2b3. other third party entity

3. Eliminate RSA Program
 - 3a. set RSA=0
 - 3b. amend FMPs to eliminate RSA specifications

Recommendations for Scientific Issues

Staff recommends that the SSC be formally integrated into the RSA program as follows:

Science Recommendation 1: Make SSC Chair and Vice-Chair members of RSA Committee.

Science Recommendation 2: Develop protocol for technical review of RSA proposals and completed reports to be conducted by the SSC.

Science Recommendation 3: Create SSC Research Subcommittee to oversee development of MAFMC Research Plan which outlines the research/information needs along with a formal plan of action to address the needs identified based on prioritization developed jointly with RSA Committee.

Recommendations for Administrative/Enforcement Issues

Overview: Staff finding is that the administration of the RSA program as a Grants program compromises the RSA program's ability to meet its objectives. The principal problems are related to the annual grants cycle and the mismatch in timing of the grants cycle requirements and implementation of the RSA Program. The panel of grants experts assembled for the NMFS RSA Programmatic review unanimously agreed that the program would be more appropriately funded through contractual acquisition methods.

Therefore, staff concluded that alternative models such as no cost contracts and/or third party administration of the RSA program should be considered by the Council..

A/E recommendation 1: Request legal opinion from NOAA Fisheries on the viability of the Council operating the RSA Program under no cost contractual agreements or similar mechanisms. Staff recommends that the current RSA program be moved from the current grants administration process to a contractual acquisition system.

Overview: Currently researchers request a certain amount of RSA quota by species and generate the funds to pay for their research either by entering into an agreement with a fisherman to catch the fish or by selling them through the NFI auction. The principal impediment to participation by many researchers in the current RSA program is the uncertainty about how many research dollars will be generated by a given request for RSA quota. Auctioning of the entire RSA quota is likely to produce the highest level of revenue from the RSA set-aside.

A/E Recommendation 2: The RSA Program should enter into a formal agreement with an outside entity to sell the entire RSA quota through an auction mechanism.

A/E Recommendation 3: Funds generated from sale at auction of RSA quota should be deposited in a RSA Trust fund or similar mechanism to fund future RSA projects. This may require a hiatus of funding for some or all projects for 2-3 years to build up enough revenue to transition to the new system.

Overview: One of the major problems with maintaining continuity of research projects within the RSA program is the current requirement to specify RSA amounts annually and as percentage of the TAL.

A/E Recommendation 4: The Council should move to a system of specifying RSA in a fixed amount for multiple years. This may require a buffer or similar mechanism to allow for overages, when they occur, in the fishery overall or in certain sectors. The buffer could be adjusted in future years depending on ACL/AM system performance.

A/E Recommendation 5: Successful bidders at auction would be granted an RSA IFQ that would be tracked in the same way that other IFQ/ITQ programs are monitored under current Council FMPs. Only federally permitted vessels (commercial and/or party/charter) would be eligible to participate in the RSA IFQ Program. All commercial vessels would be required to call into an IVR system 24 hours prior to departing on an RSA IFQ trip and sell the RSA amount taken to designated federal dealers. Party/charter vessels would be subject to the same IVR reporting requirements but additional reporting and monitoring/enforcement mechanisms may need to be developed for party/charter vessels.

A/E Recommendation 6: The allowance of party charter vessel participation in the RSA IFQ program should be left to the discretion of individual States. This could be accomplished by the requirement for state endorsement of the program through issuance

of an equivalent state RSA IFQ permit. If states fail to issue such permits then party charter vessels from those states would not be eligible to participate in the RSA IFQ Program.

MAFMC Motions
Seaview Dolce, Galloway, NJ
October 12-13, 2011

RSA Committee

On behalf of the RSA Committee, I Move to accept 3 science recommendations by staff and pass along to the Council for full action including:

1. Make SSC Chair and Vice-Chair members of the RSA Committee;
2. Develop protocol for technical review of RSA proposals and completed reports to be conducted by the SSC; and
3. Create SSC Research Subcommittee to oversee development of MAFMC Research Plan which outlines the research/information need along with a formal plan of action to address the needs identified based on prioritization developed jointly with RSA Committee.

Pate for Committee

Motion carries unanimously

Move that the RSA Committee consider developing an Advisory Panel.

Pate/deFur

Motion carries unanimously

On behalf of the RSA Committee I move approve the following Administrative recommendations:

Administrative Recommendation 1 - request legal opinion from NOAA fisheries on the viability of the Council operating the RSA Program under no cost contractual agreements or similar mechanisms and that the current RSA program be moved from the current grants administration process to a contractual acquisition system.

Pate for Committee

Motion carries unanimously

Administrative Recommendation 2 - RSA program should enter into a formal agreement with an outside entity to sell the entire RSA quota through an auction mechanism with consideration for adjustments for fish kept during the research.

Pate for Committee

Administrative Recommendation 3 - funds generated from sale at auction of RSA quota should be deposited in a RSA trust fund or similar mechanism to fund future RSA projects which may require hiatus of funding for some or all projects for 2-3 years to build up enough revenue to transition to new system, with the intent of maintaining funding for NEAMAP.

Pate for Committee

Move to table Recommendation 2 and Recommendation 3
Pate/Nolan
Motion carries unanimously

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Richard B. Robins, Jr.
Chairman

Lee G. Anderson
Vice Chairman

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Christopher M. Moore, Ph.D.
Executive Director

October 18, 2011

Mr. Joel MacDonald
Office of NOAA General Counsel
55 Republic Drive
Gloucester, MA 01930

Dear Joel,

As you are aware, the Mid-Atlantic Fishery Management Council (Council) instituted a Research Set Aside (RSA) Program for most of the species managed under its purview beginning in 2002. The original intent of this program was to fund scientific research to be conducted cooperatively with the fishing industry using funds generated from the sale of the portion of the quotas set aside for scientific research. The Council's RSA Committee has been conducting a systematic review of this program to evaluate its efficacy and to explore ways to improve its effectiveness in providing high quality scientific research to inform the fishery management process.

During the course of this program review, the RSA Committee has raised questions about the NOAA determination that the RSA Program must be administered under the Grants process. While the Council appreciates the competitive nature of the grants process and wishes to maintain the competitive nature of the program, the Council also finds that many aspects of the grants process compromise the ability of the program to achieve its original objectives. For example, under the grants process, scientists and staff from NMFS and the Councils are prohibited from working cooperatively with grant applicants to insure that the proposed scientific research aligns with the scientific and management needs articulated by the Council. In addition, many aspects of the grants program requirements make the process of funding research under this program unnecessarily time consuming and administratively burdensome.

The Council requests NOAA's legal opinion about the ability of the Council to enter into contractual agreements directly with outside entities to fund scientific research under the RSA Program. The program has been administered by NMFS since its inception, first by the Northeast Regional Office and later by the Northeast Fisheries Science Center. The Council also requests legal guidance on a proposal to transfer administrative responsibility to the Council directly or through a contractual agreement with a third party.

In addition, the Council has been exploring options that would generate the greatest economic value of the RSA amounts specified each year and believes that the auction of RSA fish may represent an alternative that achieves that objective. As such, the Council also requests legal guidance from NOAA

regarding the feasibility of the Council entering into a contractual agreement with a third party to sell RSA fish at auction to generate revenues for the funding of scientific research.

Finally, another aspect of the RSA program which contributes to its inefficiency is the uncertainty about the level of funding available in any given year. A number of scientific researchers have commented to the Council that this uncertainty has discouraged them from participating in the RSA Program. One option the Council has discussed is to deposit funds derived from the sale of RSA quota into a Research Trust Fund. If such a fund could be established, much of the uncertainty about the level of available funding for upcoming years would be eliminated. Thus, the Council also requests a legal opinion on the feasibility of establishing such a fund for deposit of revenues generated from sale of RSA quota.

Thank you for your attention in these matters and we look forward to your response. Please call me or Rich Seagraves of my staff if you have any questions.

Sincerely,



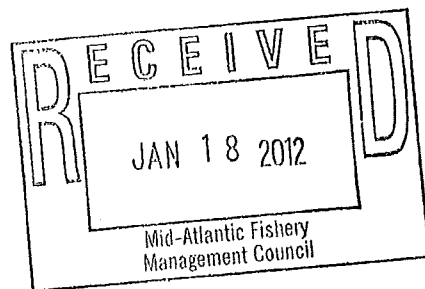
Christopher M. Moore, PhD.
Executive Director, Mid-Atlantic Fishery Management Council

cc: P. Pate, R. Robins, P. Kurkul, L. Anderson, V. O'Shea



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
OFFICE OF GENERAL COUNSEL
55 Great Republic Drive
Gloucester, Massachusetts 01930

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

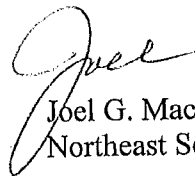


program administered by the Council but must be submitted to the agency for its "consideration in developing research priorities and budgets for the region of the Council." Similarly, the "basket" provision in section 302(h)(8) does not support the administration of the RSA Program by the Council. It 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