



Regional Operating Agreement

To Develop and Implement Fishery Management Actions

**Western Pacific Regional Fishery Management Council,
NMFS Pacific Islands Regional Office, and
NMFS Pacific Islands Fisheries Science Center**

Final April 2014

Scope

This Regional Operating Agreement (ROA) is between the Western Pacific Fishery Management Council (Council), National Marine Fisheries Service (NMFS) Regional Office and NMFS Science Center, though it may necessarily contain references to other NOAA line offices, such as the Office of General Counsel. This ROA is intended to document the specific roles and responsibilities of the Council and NMFS in developing, approving, and implementing fishery management actions under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). An additional objective of the ROA is to set forth procedures and review processes to ensure that proposed management actions are adequately and completely analyzed, and to facilitate development of such analyses as early in the process as possible (frontloading). The ROA is intended to function within the general parameters of the existing "Operational Guidelines," and may be altered or updated if such Operational Guidelines are revised.

As parties to this ROA, the Council Executive Director, NMFS Regional Administrator, and NMFS Science Center Director and their staffs agree to engage in good faith and communication to accomplish the goals of this agreement, to minimize adverse impacts to the mission of the Council or NMFS, and work to ensure that neither the Council nor NMFS are surprised by actions of the other. In addition to the formal aspects of this ROA, frequent communication among key Council and NOAA staff are encouraged to accomplish these goals.

This ROA will apply to all new proposed actions, and may be applied to ongoing actions depending upon their stage of development relative to the guidelines. Council and NOAA staff will meet annually to assess the success of this effort and review components of the ROA for any necessary revisions. This ROA is not intended to limit or prevent staff from agreeing upon alternative processes on a case-by-case basis in response to specific issues or needs.

Roles and responsibilities

The Council is responsible under the Magnuson-Stevens Act for the preparation of Fishery Ecosystem Plans (FEPs), FEP amendments, and other related actions for species under its management authority. The Council (through its staff) develops, analyzes the likely impacts of, and recommends management measures to NMFS that are consistent with all applicable laws and

regulations. The Council must document the management process and provide the justification and rationale for its recommendations. Council members must be informed of the potential impacts of the actions they are recommending. The Council process is the avenue for public involvement during the development of fishery management actions. Additional specific Council (or Council staff) responsibilities include the following:

1. The Council works with NMFS, which implements, administers, and enforces regulations, state agencies, and other entities (U.S. Coast Guard, U.S. State Department, U.S. Fish and Wildlife Service, Secretariat of the Pacific Community Fisheries Division, Western and Central Pacific Fisheries Commission, Inter-American Tropical Tuna Commission, Forum Fisheries Agency, Pacific and North Pacific Fisheries Management Councils, and others) to develop effective management measures.
2. To obtain scientific, technical and policy advice, the Council establishes committees and other groups, such as the Scientific and Statistical Committee (SSC), Protected Species Advisory Committee, Climate Change Committee, Regional Ecosystem Advisory Committees, Advisory Panels, and Plan Teams. These advisors bring forward recommendations to the Council for consideration and final Council approval.
3. Council staff are responsible for the compilation of the various analyses and documentation necessary to support Council decision-making.

Most management actions considered by the Council are supported by collaborative analyses between Council and NMFS staff. The NMFS Pacific Islands Region assists the Council in the development of fishery management actions, by the following:

1. Providing staff representation on appropriate committees and working groups, to advise on technical, policy, administrative, and legal requirements and issues.
2. Identifying a lead staff person in Sustainable Fisheries to assist with coordinating other NMFS programs as needed in support of fishery management actions, including Habitat Conservation, Protected Resources, NEPA, Fisheries Data Services, Analysis and Program Support, Law Enforcement, International Fisheries and NOAA General Counsel.
3. Identifying and responding to staff resource needs, requirements, and/or limitations associated with the development, review, approval, and/or implementation of an action, including assisting in the development and compilation of analyses to support management actions.
4. Coordinating the review of Council actions and documentation within line offices.
5. Providing advice, guidance, and information on fishery management policy issues and requirements, as requested, including considerations of administrative costs approvability issues, enforceability concerns, timing of the development and implementation of the action with regard to the Secretarial review.
6. Writing proposed and final rules to implement approved measures, with the accompanying regulatory language, consistent with the Council's action, intent and proposed regulations.
7. Ensuring that all applicable laws and Executive Orders are addressed.
8. In consultation with the Council, do the following:
 - a. Conduct Essential Fish Habitat (EFH) consultations.
 - b. Conduct consultations under the Endangered Species Act (ESA), if required.
 - c. Respond to public comments received during rulemaking.
 - d. Implement and administer approved programs and program changes; working closely with OLE and NOAA General Counsel to enforce regulations and defend approved Council actions in litigation.
 - e. Develop and implement emergency actions and interim actions.

The NMFS Pacific Islands Fisheries Science Center assists the Council in the development of fishery management actions by the following:

1. Providing the Council with the necessary data and analysis to support drafting of FEPs and plan amendments to ensure that the best socio-economic and bio-physical scientific information available is used;
2. Identifying a lead staff person to assist with coordinating other NMFS PIFSC divisions as needed in support of fishery management actions;
3. Providing staff representation on appropriate committees, teams and advisory bodies to advise on technical and scientific information and issues
4. Consulting with Council on the following:
 - a. Development and peer review of stock assessments for MUS
 - b. Stock assessment review through the Council's Western Pacific Stock Assessment Review process or NMFS Center for Independent Experts (CIE) review.
 - c. Provision of economic and social science data and the analysis thereof for impact evaluation.
 - d. Modifications or changes to fishery data collection and monitoring protocols and programs.
 - e. Development of technical reviews as required under ESA or other authorities.
 - f. Identifying and prioritizing cooperative research and other research plans and activities.

Components of the ROA

Specific components of this ROA reflect the four main rulemaking phases outlined in the Operational Guidelines, and include the following:

1. Planning, scoping, and coordination (including the Action Planning process).
2. Document preparation (including adoption of a standardized analytical template).
3. Council action (initial and final action); and
4. Post-Council action (including development of implementing regulations and Secretarial review).

A further description of these primary components follows:

1) Early planning, scoping, and coordination (Action Plans) - Early planning begins when a proposal for a management action is adopted for formal analysis by the Council, or when the Council initiates consideration of a management action by requesting a discussion paper to initially scope an issue for further consideration. When initiating an action for formal analysis, the Council develops a Magnuson-Stevens Act/NEPA document that identifies the problem to be addressed and a reasonable range of preliminary alternatives to resolve the problem.

Following initiation of a proposed action, either at that meeting or following that meeting, an Action Plan will be developed by Council and/or NOAA staff. In most cases Council staff will be the lead in terms of drafting and updating the Action Plan. The Action Plan will include the problem statement; alternatives to date; identification of necessary analytical resources (and project analytical team where possible); necessary data needs for analysis; estimated timelines for analysis, action, and implementation (based on the 16 steps identified in the operational guidelines, as relevant/appropriate); identification of other applicable laws, legal issues, or other special

considerations; and, determination of the appropriate NEPA document (EIS, EA, CE) to be prepared. In the case of discussion papers tasked by the Council, or a relatively simple regulatory amendment, an Action Plan may be relatively brief, and not contain all of the elements described above.

Action Plans will identify, to the extent practicable, specific individuals necessary for coordinated development of the discussion paper or analysis, including identification of specific individual(s) within the Office of General Counsel and Office of Law Enforcement for purposes of contact, input, or review. Council staff will take the lead in drafting Action Plans and will be the primary point of contact, recognizing that each Action Plan is a fluid document and may be adjusted as necessary in response to internal staff discussions, Council actions, or staffing needs. While the primary purpose of each Action Plan is to guide project development at the staff level, the Council, Regional Administrator and Science Director will have the opportunity to review all Action Plans, and provide direction where necessary.

The Council Executive Director, NMFS Regional Administrator, Science Director and appropriate staff will meet after each Council meeting to update the list of on-going Council projects, identify priorities and set high-level deadlines.

2) Document preparation and development of analyses – After the Council recommends an amendment to an FEP, the Action Plan will serve as the guiding document for coordination of analyses consistent with Magnuson-Stevens Act, NEPA and other applicable law. Under this ROA, the analyses will follow a standardized format.

Once the draft analysis (or discussion paper) is completed by the Action Team for initial consideration by the Council, it will be distributed, as practicable, for internal review by the Action Team prior to release for Council and public consideration.

3) Adoption of draft analysis, completion of final analyses, and Council action – Generally, documents (discussion papers or initial review of Plan or Regulatory amendment packages) will be provided to the Council and to the public at least two weeks prior to the Council meeting at which initial review is scheduled. The draft analysis may be distributed to the Council, SSC, and AP at the same time it is distributed for internal review, or if time allows the document will be revised based on internal review prior to distribution to the Council.

The Council, SSC, and AP may review the amendment analysis at the same meeting, and take action as necessary. As outlined in the guidelines, any necessary document revisions could result in additional Council meetings (and an additional review of the draft analysis) prior to final action by the Council. However, the Council could determine that any necessary revisions to the document be made without an additional Council review, and the issue scheduled for final action by the Council at a subsequent meeting, noting that an additional round of public review and comment on the final analysis will occur prior to Council final action. Council adoption of a preferred alternative in the draft for public review and comment is not required, except in those cases where formal ESA/EFH consultations are necessary.

Generally, documents scheduled for final action by the Council will be made available to the Council and the public at least two weeks prior to the Council meeting at which final action is

scheduled. As practicable, the Action Team, including NOAA GC, will be allowed reasonable time for internal review of the final analysis prior to its release to the Council and public.

4) Post-Council action – Following the Council’s final action, the analysis will be finalized as necessary to reflect the specific action of the Council (which may be one of the alternatives specified in the document, or something within the range of the alternatives specified). This process typically rests with the primary author (project lead), which may be either Council or NMFS staff, and will include the necessary coordination and reciprocal, internal review to achieve a mutually agreed upon final document for Secretarial transmittal.

Comments on internal drafts will include revised or substitute language or information and will not include personal opinions. The remainder of the submittal package, including implementing regulations and any other necessary decision documents, will be completed by NOAA staff, with input from Council staff as necessary (noting the Magnuson-Stevens Act requirements for submittal of Council plan or regulatory amendments).

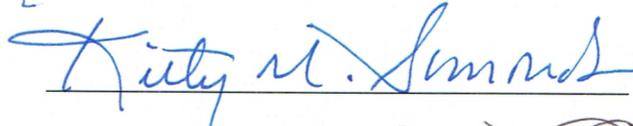
Revisions to documentation/analyses following Council action should be minimal. The rulemaking process prescribed by statutes remains unchanged, though the time required to review and implement the post-decision rulemaking should be expedited if the frontloading process is successful. The documentation and report of activities under this agreement, particularly timelines involved in frontloading and approval/implementation of actions, as well as the results of any litigation efforts, will be informative in evaluating the success of the revised guidelines, and this ROA.

This Agreement will remain in effect unless and until it is terminated or revised by mutual agreement. By signature below, and on behalf of the organization I represent, I support the tenants of this agreement, and agree to fulfill the roles and responsibilities outlined herein, and to support the efforts of the other parties in doing likewise.

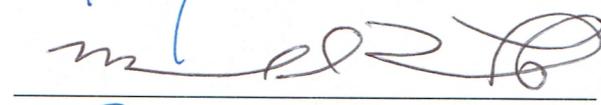
Arnold Palacios, Council Chair



Kitty M. Simonds, Council Executive Director



Michael Tosatto, NMFS Regional Administrator



Samuel Pooley, NMFS Science Center Director

