

# **Operating Agreement**

Between the

Mid-Atlantic Fishery Management Council;

NOAA<sup>1</sup> Fisheries Service Northeast Regional Office;

NOAA Fisheries Service Northeast Fisheries Science Center; and

NOAA Fisheries Service Office of Law Enforcement, Northeast

July 22, 2013

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<sup>1</sup> "NOAA" is the National Oceanic and Atmospheric Administration. "NOAA Fisheries Service" and the "National Marine Fisheries Service (NMFS)" are two names for the same agency. NMFS is the term used in this document.

## Acronyms and Abbreviations

ASMFC	Atlantic States Marine Fisheries Commission
Council	Mid-Atlantic Fishery Management Council
FMAT	Fishery Management Action Team
FMP	Fishery Management Plan
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NEFSC	NMFS's Northeast Fisheries Science Center
NEPA	National Environmental Policy Act
NERO	NMFS's Northeast Regional Office
NMFS	National Marine Fisheries Service (also known as NOAA Fisheries)
NOAA	National Oceanic and Atmospheric Administration
NRCC	Northeast Region Coordinating Council
OLE	NMFS's Office of Law Enforcement, Northeast
SSC	Scientific and Statistical Committee

## Overview

This Operating Agreement (Agreement) confirms the mutual interests of, and describes the working relationship among the following entities:

- Mid-Atlantic Fishery Management Council (Council)
- NMFS's Northeast Regional Office (NERO)
- NMFS's Northeast Fisheries Science Center (NEFSC)
- NMFS's Office of Law Enforcement, Northeast (OLE)
- NOAA's Office of General Counsel (represents NMFS but is actually part of NOAA).

The primary objective of this Agreement is to facilitate the development and implementation of FMPs and associated actions under the MSA. Other important purposes include: Ensuring compliance with other applicable laws and regulations; simplifying regulations where possible; helping the affected public better understand how and why fishery management actions are developed; helping the affected public understand how to become involved in the process; and maintaining effective collaboration among staff from the Council, NERO, NEFSC, NOAA General Counsel, and OLE.

This Agreement primarily addresses advance planning of major fishery management actions (i.e., amendments and frameworks) through development and regular updating of Action Plans. Action Plans describe schedules, approaches, and staff responsibilities to ensure that management actions are developed effectively. Action plans should provide management partners and the affected public with clear and reliable information about the progress of an action and the timing of all opportunities for public comment and involvement during the development of that action.

## **Roles and Responsibilities**

### **Council**

The Council is responsible under the MSA for the preparation of FMPs, FMP amendments, and other related actions for species under its management authority. The Council 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 focus for public involvement during the development of fishery management actions. Additional specific Council responsibilities include:

- The Council works with NMFS (which implements, administers, and enforces regulations and programs), state agencies, and other entities (e.g., the ASMFC) to develop effective management measures.
- To obtain scientific and technical advice, the Council establishes Council Committees and other groups, such as the SSC, Monitoring Committees, Advisory Panels, and FMATs. These entities bring forward recommendations to the Council via a variety of mechanisms for consideration and eventual final Council approval and recommendation to NMFS.
- The Council clearly documents details on internal Council processes in its Standard Operating Practices and Procedures Document, which is available on the Council website.

The roles of several groups on which NMFS and the Council staff jointly participate are summarized below.

### ***Council Monitoring Committees***

A Monitoring Committee, established for most FMPs, reviews fishery performance on an ongoing basis and provides management recommendations to the Council. The exception is the Atlantic Surfclam and Ocean Quahog FMP, which does not utilize a Monitoring Committee. Monitoring Committee recommendations are considered and implemented via the annual specifications process. Monitoring Committees are typically chaired by the Council staff lead for an FMP, as appointed by the Council's Executive Director. The Monitoring Committees are populated as described in each FMP, and may include staff from the Council, NERO, NEFSC, Southeast Fisheries Science Center, and state biologists from the ASMFC technical committees.

### ***FMAT***

An FMAT is a team formed by the Council to develop alternatives and provide technical analysis in support of a specific, major Council action. FMATs help plan and execute the procedural and technical steps needed to complete an action, and collaborate to create the supporting documents for Council actions (e.g., white papers, environmental assessments, environmental impact statements, etc.). FMATs work closely with Council Committees to refine options and evaluate management proposals to ensure they are consistent with Council goals and any statutory or regulatory requirements.

Membership on FMATs can include scientists, managers, and other experts with knowledge and experience relevant to the Council action under development. Upon request for the formation of an FMAT, NERO and Council staff will collaboratively identify the required expertise. The Council Executive Director will then request that the NERO Regional Administrator and NEFSC Director appoint



appropriate individuals. Once appointed to an FMAT, active participation by all members is expected, as determined and agreed to in the Action Plan for that action. It is expected that FMAT members will consult with their supervisors before making final commitments.

FMATs are chaired by Council staff as designated by the Council Executive Director. FMAT chairs will draft any meeting objectives and agendas (based on the Council's "Purpose and Need for Action"), and will be responsible for coordinating analyses and presentation of results to the Council.

The Council's "Purpose and Need for Action", as described in the Action Plan, provide the basis for development and evaluation of management options by the FMAT. The FMAT chair, or Executive Director, will review the Action Plan and FMAT progress on an action with the Council or relevant Committee to ensure the FMAT understands the objectives of the Council. FMAT recommendations and reports will reflect the consensus of its members where possible.

Additional specific responsibilities of the FMATs include:

- The development of an Action Plan that is a realistic, mutually agreed upon path for development and completion of the action so that the Council, NERO, NEFSC, NOAA General Counsel, OLE, NMFS Headquarters, and the public know what to expect, and when it will be implemented.
- The development of the scope of issues that will be considered in the development of the action.
- The incorporation of recommendations of the Council and its committees or other groups, into management alternatives development, as appropriate.
- Guidance, and technical and analytical expertise, and/or review of proposed measures during the development and preparation of FMP actions (e.g., amendments, supporting NEPA analyses, etc.).

As chair of the FMAT, Council staff will: Coordinate logistics for FMAT meetings; schedule meetings as far in advance as practicable; coordinate assignments of specific tasks to individuals or subgroups of the FMAT (consistent with the Action Plan); distribute agendas and meeting objectives prior to FMAT meetings; and keep FMAT members informed of relevant Council actions. The FMAT chair will coordinate the creation and organization of the documentation and analysis necessary to support fishery management actions, including the MSA document (i.e., FMP, amendment, framework adjustment), the NEPA document (i.e., Categorical Exclusion, Environmental Assessment, Finding of No Significant Impact, or Environmental Impact Statement), information necessary for NERO to conduct Endangered Species Act (ESA) Section 7 consultations, and documentation demonstrating compliance with all other relevant applicable laws and Executive Orders.

NERO staff will be responsible for writing implementing rules and regulations, and conducting Paperwork Reduction Act or Information Quality Act analyses. However, Council staff will be responsible for facilitating the deeming of proposed implementing regulations for Council developed actions to ensure that regulations are consistent with Council intent.

## **NMFS**

NMFS reviews the Councils' fishery management recommendations for consistency with all statutory and regulatory requirements and Executive Orders. NMFS approves, disapproves, or partially approves the Councils' recommendations. If a measure is disapproved, NMFS is responsible for providing the rationale and justification for the disapproval. If measures are approved, NMFS is responsible for implementing, administering, and enforcing the management programs. NMFS staff also participates in the development of Council actions through FMATs, Monitoring Committees, and other informal collaboration, as detailed below.

NMFS Headquarters is responsible for:

- Deciding whether to concur with the Regional Administrator's decision regarding approval/disapproval/partial approval of Council-recommended actions;
- Deciding whether to approve final rules implementing regulations;
- Determining that an appropriate NEPA document has been completed for the action; and
- Resolving with NOAA General Counsel any issues elevated to Headquarters, including issues related to determinations of legal sufficiency.

## **NERO**

The NERO/NMFS process is the focus for public comment on NEPA documents, approval/disapproval decisions, and rulemaking. NERO will assist the Council in the development of fishery management actions, by:

- Providing staff representation on appropriate committees, FMATs, and working groups, to advise on technical, policy, administrative, and legal requirements and issues.
- Identifying a lead staff person in the Sustainable Fisheries Division to assist with coordinating other NERO/NMFS divisions as needed in support of FMATs, including the Habitat Conservation Division, Protected Resource Division, NEPA staff, Fisheries Data Services Division, Analysis and Program Support Division, OLE, and NOAA General Counsel.
- Identifying and responding to staff resource needs, requirements, and/or limitations associated with the development, review, approval, and/or implementation of an action.
- Coordinating any necessary interactions between the Council and NMFS Headquarters and the various offices within NMFS Headquarters (e.g., Office of Sustainable Fisheries, Office of Science and Technology, and the NOAA NEPA Coordinator).
- Coordinating the review of Council actions and documentation within NERO, NEFSC, OLE, and NOAA General Counsel.
- Providing advice, guidance, and information on fishery management policy issues and requirements, as requested, including considerations of administrative costs and complexity, potential approvability issues, enforceability concerns, timing of the development and implementation of the action under development, particularly with regard to the Secretarial review phase, and regulatory simplification (i.e., how to keep measures and regulations as simple and clear as possible).
- Writing proposed and final rules to implement approved measures, with the accompanying regulatory language, consistent with the Council's action and intent.
- Ensuring that all applicable laws and executive orders are addressed (e.g., Paperwork Reduction Act, Information Quality Act).



- Conducting Essential Fish Habitat (EFH) consultations.
- Conducting Consultations under the Endangered Species Act (ESA), if required.
- Responding to public comments received during rulemaking.
- Implementing and administering approved programs and program changes; working closely with OLE and NOAA General Counsel to enforce regulations and defend approved Council actions in litigation.
- Monitoring, projecting, and documenting fishing activity and catches, and taking appropriate in-season and/or post-season actions relative to annual catch limits and seasonal catch quotas.
- Developing and implementing emergency actions, interim actions, and Secretarial FMPs/amendments to respond to new information or management/statutory requirements.

## **NEFSC**

The NEFSC will provide staff and assistance to the Council during the development of fishery management actions, including representation on FMATs and technical working groups as needed. The NEFSC also reviews Council-developed documents supporting fishery management actions and makes certifications regarding certain analytical and scientific requirements of applicable law, such as the Regulatory Flexibility Act, overfishing definitions, adequacy of economic analyses, and use of best available scientific information.

NEFSC staff on the Monitoring Committee also collaborates with the Council staff to provide the necessary materials and/or analyses for meetings of the Council's SSC. NEFSC staff attends and/or makes presentations to the SSC or Council, as appropriate and/or requested.

## **NOAA General Counsel**

NOAA General Counsel advises the Council and NERO throughout the process of developing documentation and making and reviewing decisions, and provides legal advice to the NERO Regional Administrator confirming legal sufficiency of documentation and processes. NERO coordinates the interaction of NOAA General Counsel with the Council process and any technical groups such as FMATs. It is expected that a representative from NOAA General Counsel will be on FMATs so that legal issues are addressed early in the process of developing potential actions. If challenged legally, NOAA General Counsel is responsible for assisting the Department of Justice in defending approved management actions.

## **OLE**

OLE staff will provide enforcement-related advice, as required, to the Council and its Committees and other entities such as FMATs. OLE staff may be assigned to FMATs. If an OLE staff person is not on an FMAT, it will be the responsibility of the lead NERO Sustainable Fisheries Division staff person to coordinate OLE input on Council actions. OLE will ensure that any potential enforcement-related issues that may be associated with an action are identified as early as possible and addressed to the extent practicable.

## **NRCC**

The NRCC reviews proposed priority actions of the Mid-Atlantic and New England Fishery Management Councils and the ASMFC for the upcoming year, schedules stock assessments, and helps assess and balance the resources (especially staff resources) needed to complete the actions of both Councils. The NRCC will review Council Action Plans during priority setting.

The NRCC is composed of the Chairs and Executive Directors of the Mid-Atlantic and New England Fishery Management Councils, the NERO Regional Administrator, the NEFSC Science and Research Director, the SSC Chairs of the two Councils, and the Executive Director of the ASMFC. The NERO Regional Administrator and the NEFSC Science Director chair the meetings.

## Action Plans

This Agreement describes the commitment of the signed parties to use and refine the use of Action Plans for FMP frameworks and amendments. Action Plans provide a realistic, mutually-agreed upon path for development and completion of major actions. Action plans are also communication tools to inform the public about the status of a fishery management actions and opportunities for public input.

Action plans should provide detailed information about the participants, roles, and projected timelines so that all parties, including the Council, NERO, NEFSC, NOAA General Counsel, OLE, and NMFS Headquarters, understand their individual and collective responsibilities.

### Process:

- Action Plans will be prepared prior to MSA and NEPA document development for each action.
- The FMAT will collaboratively develop Action Plans, and the relevant Committee or Council will review action plans with the FMAT chair, or Executive Director, as appropriate during the process of developing the Council action.
- The Council's Executive Committee will address issues relating to staff resources or timelines.
- Changes in the Action Plan and the schedule of action development (both of which are likely as development of an action proceeds) will be communicated to the appropriate Committee or Council and will be made available via updated action plans.
- Current action plans will be available via the Council website.
- The Action Plan should be included in the Council's meeting binder at each Council meeting for which the action under development is on the agenda, and be presented to the appropriate Committee or Council by the FMAT chair, or Executive Director.
- Staff from the signatory entities will develop and utilize a common template for Action Plans to ensure consistency across plans, and the template may be updated periodically, if appropriate.

### Action Plan Content - As appropriate for a particular action, Action Plans should:

- Identify the purpose and need for the action, and define any additional objective(s) to be met.
- Identify the types of measures and potential alternatives that might be considered (e.g., limited entry, quotas, gear restrictions, allocations, etc.).
- Provide a realistic timeline for complying with all applicable laws and for completing the action.
- Identify whether consultation under the ESA is required and whether authorization under the Marine Mammal Protection Act is required.
- Identify the staff resources and analyses that will be required, the core staff that will work on developing and implementing the action, and the general responsibilities during development.



- Identify the type of NEPA analysis expected to be undertaken (i.e., Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement), and why that level of analysis is expected to be appropriate.
- Identify other issues (e.g., enforcement, data availability, assessment schedules, reporting requirements, administrative aspects and costs, etc.) that will need to be considered.
- Identify regulatory simplification and/or clarification opportunities that should be considered.

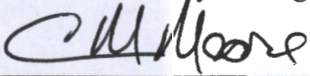
## Life of Agreement

This Agreement will become effective when signed by all parties, and will remain in effect unless and until it is terminated by one or more parties, or it is superseded by another agreement. Any party may terminate this Agreement by providing 90 days written notice to the remaining parties. This Agreement may be expanded to include other aspects of the development and implementation of management actions and may be amended at any time upon written agreement among all parties. A review shall be performed every 5 years by the signatories to ensure that the Agreement is meeting its stated purpose.

## Statement of Commitment

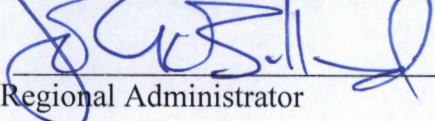
By signing below, I agree, on behalf of the organization I represent, to fulfill the roles and responsibilities outlined herein, and to support the efforts of the other parties.

Mid-Atlantic Fishery Management Council:

  
Executive Director

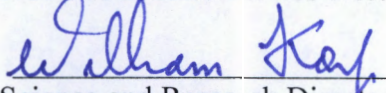
7.22.2013  
Date

NOAA Fisheries Service Northeast Regional Office:

  
Regional Administrator

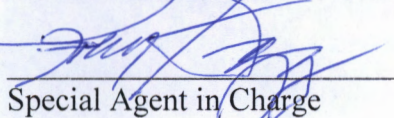
7.24.2013  
Date

NOAA Fisheries Service Northeast Fisheries Science Center:

  
Science and Research Director

7.25.2013  
Date

NOAA Fisheries Service Office of Law Enforcement, Northeast:

  
Special Agent in Charge

7-22-2013  
Date