

MEETING REPORT
COUNCIL COORDINATION COMMITTEE

October 11-13, 2023

Arlington, Virginia

The Council Coordination Committee (CCC) met October 11-13, 2023, in Arlington, Virginia. The meeting was chaired and hosted by the Gulf of Mexico Fishery Management Council. The following is a summary of presentations, discussions, and outcomes from the meeting. Briefing materials and presentations are available at <https://www.fisheries.noaa.gov/event/2023-october-council-coordination-committee-meeting>

October 11, 2023

NOAA Fisheries Updates & Priorities – Ms. Janet Coit / Ms. Kelly Denit

Ms. Kelly Denit provided a summary of the Advance Notice of Proposed Rulemaking (ANPR) to potentially update National Standards (NS) 4,8, and 9. The purpose of the ANPR was to evaluate if updates to the Guidelines for National Standards 4, 8, and 9 are necessary to improve federal fisheries management. Public engagement opportunities were held to gather input regarding the current guidelines and areas that might benefit from reconsideration or revision. Two major challenges were highlighted: climate-related impacts on fisheries and promoting equity and environmental justice (EEJ). Feedback indicated that changes to the National Standard Guidelines were unnecessary; however, some feedback supported changes to NS4 and NS9. Notably, there was opposition to changing the definition of fishing communities and concern was expressed about the effects of trawling. The National Oceanic and Atmospheric Administration (NOAA) Fisheries will continue reviewing the comments to determine if changes are appropriate and, if necessary, will draft a proposed rule for publication in spring 2024. This process would include further opportunities for comment and Council engagement, with an update planned for the May 2024 CCC meeting.

Ms. Janet Coit provided some opening remarks and welcomed new Council members. She discussed some significant personnel updates, such as Emily Menashes being appointed as the new Deputy Assistant Administrator for Operations at NOAA Fisheries and Dr. Charles Littnan taking the role of Science and Research Director for NOAA's Pacific Islands Fisheries Science Center. She also provided an update on recent events, including participation in National Fishing & Boating Week, the Western Pacific Council Meeting in American Samoa, Klamath River related discussions in California and Oregon, visits to Alaska Offices in Juneau and Anchorage, collaboration with Belugas Count! to commemorate the Endangered Species Act (ESA) 50th Anniversary, and involvement in Capitol Hill Oceans Week. She described plans to allocate approximately \$3 million among the eight Councils for climate-related fisheries management. Ms. Coit also touched upon the Inflation Reduction Act (IRA) Climate and Ecosystem Fisheries Initiative, the climate crisis, east coast scenario planning for climate change, offshore wind development, EEJ Strategy, Recreational Policy, and the National Seafood Strategy. She concluded her remarks noting that October is National Seafood Month.

Budget and 2024 Outlook – Mr. Brian Pawlak

Mr. Brian Pawlak gave a presentation on the NOAA Fisheries Budget and the outlook for 2024. He discussed the timeline, Council funding, FY24 status, and budget supplementals. Detailed Council and Commission funding was covered, which illustrated 2022 and 2023 enacted funding alongside the FY 2024 Presidential Budget and Senate Mark. The Presidential Budget requests a slight increase in funding for Councils in 2024 while the Senate flat-funds Regional Councils.

As part of the 2024 Fiscal Year, the National Marine Fisheries Service (NMFS) is transitioning to a new financial management system. The Business Applications Solution (BAS) conversion has required a blackout period that will range from October 1 through October 25. Use of the financial systems need to be at a minimal level during the transition period. The Grants Enterprise Management System (GEMS), which will be a system used by grantees (including Councils) is scheduled to go live in October. In order to facilitate continued Council operations during this time, Council financial representatives were authorized to drawdown funds to cover the month of October. Mr. Pawlak indicated that NOAA is planning to operate under a continuing resolution for the rest of the year.

A brief overview of the IRA funding was given. This overview discussed the plan for the remainder of FY2023 and the plan for 2024 through 2026. Most of the discussion surrounding IRA funding was deferred to the second day of the CCC meeting.

Mr. Pawlak covered the Congressional Appropriations Process, which indicated the Senate Commerce, Justice, Science and related Agencies (CJS) appropriations bill has passed, while a House CJS bill has not passed. The top-line message under the Senate Mark is that, while there are some increases in discretionary funding, these increases do not cover inflationary adjustments. The increases that are provided for in the Senate Mark cover several programmatic areas (Protected Resources, Fisheries Science and Management, Habitat Conservation). While a House Mark has not been passed, an early view of discussions within the House indicate that some aspects of funding within a House Mark would be substantially less in 2024 compared to FY23. In response to the uncertainty regarding future funding, NMFS is making plans to operate in a flat budget environment in 2024.

He provided a summary of supplemental funding to NOAA of approximately \$1.2 billion provided by NOAA as part of the IRA. This funding is dedicated to specific efforts, including \$20M for Councils' IRA funding. Thus far, funding has helped to advance habitat restoration efforts around the country and additional funding opportunities for habitat restoration are being provided.

NOAA Fisheries Science Update – Dr. Cisco Werner / Dr. Evan Howell

Dr. Cisco Warner and Dr. Evan Howell provided the NMFS science update. Topics included surveys, IRA funding, addressing “midlife repair periods” for vessels, and Marine Recreational Information Program (MRIP). In FY23, 70% of planned surveys were completed. The 2024 target is 1,500 survey days-at-sea across the 15 ‘white vessels.’ The intent of the IRA funding supported Climate, Ecosystem and Fisheries initiative is to build an end-to-end operational ocean

modeling and decision support system to help Councils plan for increasingly complex decision making. To support climate preparedness, NMFS has established a goal to provide climate related information and advice to all 6 NMFS regions by 2025/26. Data modernization efforts continue, along with a need to mitigate losses of at-sea survey capabilities. Many of NOAA's white vessels were launched between 2003-2012 and are reaching the end of their expected 20-year initial service period. Conducting "midlife repairs" on these vessels will cost approximately \$85 million per vessel and take 12-24 months per vessel. Schedule adjustments to vessels will be made to ensure coverage of planned surveys in the region where a vessel is offline during repairs.

The CCC is concerned with the impacts of budget cuts and inflation on the agency's ability to maintain basic survey and fisheries monitoring activities. All regions are experiencing reductions in basic scientific activities tied to increasing expenses and declining or stagnant budgets. Members of the CCC made several comments reiterating the importance of maintaining basic data collection capabilities, such as surveys and life history evaluations. Such activities are critical to addressing a changing climate and cannot be sacrificed for new technologies. It is also critical to manage vessel maintenance to prevent loss of survey capability. This should include making greater use of industry vessels. The agency agreed with the importance of basic foundational information and noted that conducting projections based on conditions that no longer exist will not strengthen decision making.

An improvement study will begin in 2024 to further evaluate the potential for bias recently acknowledged in the MRIP Fishery Effort Survey (FES). Communication and coordination will continue with Councils to identify actions that can be taken while the survey is conducted. Work will also continue on expanding Federal-State partnerships for recreational data collection.

There was discussion on plans for keeping stakeholders informed about the process for addressing the potential MRIP survey bias and the impact of biased estimates on management actions. Councils are struggling to answer stakeholder concerns. NMFS responded that communication plans should be developed cooperatively with Councils and Regions, and the MRIP program is available to assist.

Clarification was requested on a process for providing feedback on IRA Climate Ready Fisheries spend plans. No formal process is in place. Councils were advised to provide feedback through regional pathways.

Legislative Outlook – Mr. David Whaley

Dave Whaley provided an update on legislative activities and committees involved in fisheries management legislation. There are two draft Magnuson-Stevens bill updates in preparation. Other topics of interest that may be addressed in future legislation include aquaculture, offshore wind, endangered whales, establishing NOAA as an independent agency, and changing endangered species responsibilities.

A continuing resolution was passed to fund the federal government through November 17, and the Speaker of the House was voted out. The House is unable to act on legislation until a new

speaker is selected. Only 4 of 12 appropriation bills have been passed by the house. Delays could make it challenging to complete the remaining appropriation bills by the Nov 17 deadline, potentially again threatening a shut down. There is also an automatic 1% cut in the budget if a continuing resolution is in effect on December 31.

There was discussion on recent hearings related to monuments and wind energy. Next steps resulting from these hearings are not clear at this time. The CCC continues to support addressing fisheries protection through the Magnuson-Stevens Act.

October 12, 2023

NOAA Fisheries Policy regarding Governance (MSA304(f)) – Ms. Kelly Denit

Ms. Kelly Denit provided an update on recent activities related to the draft NMFS procedural directive titled “Guidance on Council Authority for Preparing Fishery Management Plans for Stocks that May Extend across the Geographic Areas of more than one Council, pursuant to MSA §304(f).” The draft procedural directive, which has also been referred to as the Climate Governance Policy, was first presented to the CCC in May 2023. In the intervening months, NMFS held one public webinar and gave a presentation to the New England Council at their September 2023 meeting. NMFS is accepting comments until November 17, 2023, with a goal of finalizing and implementing the procedural directive in Summer 2024.

Dr. Chris Moore (MAFMC) noted that the CCC recently submitted a [joint comment letter](#) outlining a number of concerns about the draft policy. He stated that the MAFMC is currently developing a separate letter which will incorporate [comments](#) from the Mid-Atlantic Council’s Scientific and Statistical Committee. Dr. Moore provided an overview of the Mid-Atlantic Council’s primary concerns with the policy. He then provided an overview of the CCC concerns outlined in the recent letter. The CCC agrees with the need for transparency and forward-thinking in our collective efforts to address climate-related governance issues. However, as described in the joint CCC letter, the draft “climate governance policy” developed by NOAA Fisheries has a number of serious flaws that need to be addressed before any guidance is finalized and implemented. The CCC then approved a motion recommending that NOAA Fisheries engage the Councils and CCC on development of a revised version of the policy directive to effectively address cross-jurisdictional fisheries governance issues.

Motion: Recommend that NOAA Fisheries engage the Councils and CCC to develop a revised version of the policy directive to effectively address cross-jurisdictional fisheries governance issues.

Inflation Reduction Act (IRA) Climate-Ready Fisheries Council Funding Priorities and Process – Ms. Kelly Denit

Ms. Kelly Denit (NOAA Fisheries) provided an update on plans for distributing the \$20M of Climate-Ready Fisheries IRA funds to the Councils. NMFS has made some modifications to the proposed process in response to Council concerns, but also must adhere to certain requirements for execution of the funds. The first \$3M will be distributed equally among the Councils. The Councils will apply for these funds through an initial “umbrella” grant, which will provide a

mechanism through which additional funds can be added to the grants at a later point to distribute the remaining \$17M.

These additional funds will be distributed to the Councils based on NMFS review of project proposals from each Council. Ms. Denit provided an overview of the project proposal template for submission of Council proposals. NMFS will review project proposals and make funding determinations after considering alignment with stated IRA funding priorities, geographic distribution of funding, and cross-Council collaboration.

The timeline of this process remains uncertain, but Councils will soon be asked to respond to a Request for Applications (RFA) to apply for the initial umbrella funds. It is anticipated that the initial funding will be available to the Councils in early 2024. Project proposals for additional funding will be due at the end of January 2024, with distribution of funds expected in the spring. The project proposal process is expected to repeat in FY2025, if needed, to allow for submission of additional proposals that Councils may not be able to develop in the limited time frame. All funds must be obligated by the end of FY2026.

The Regional Management Councils (RMC) directors requested modifications to the *Template for Council RFA Proposals in FY24*. Track changes were provided to Ms. Denit from RMC directors and she will aim to incorporate those within the requested two-week timeframe.

CCC Subcommittee Updates

Climate Workgroup – Mr. Ryan Rindone

Mr. Ryan Rindone (GMFMC staff) presented a handout compiled by the CCC's Climate Change Workgroup (CCWG) to solicit feedback on draft questions for review and input across all SSCs and Councils. The CCWG's purpose is to develop a common understanding and voice among the Councils on current capacity, future needs, and fishery management designs that can respond to climate change, while assisting the regional Councils in coordinating with NOAA on a response to the Ocean Climate Action Plan, and specifically climate-ready fisheries. The CCWG's first step is to provide an overview and common understanding of climate capacity and needs across all Councils, and asked for feedback on the proposed survey questions listed in the handout.

Mr. Bill Tweit (NPFMC) was concerned about the CCWG's timeframe for operations, which was laid out by the CCC before the timelines associated with IRA funding were known. He thought the CCC should delay the CCWG timeframe, to allow the Councils to work towards their individual IRA funding proposals for their respective climate goals. Mr. Tweit recommended giving the Council Executive Directors, collectively, the discretion to determine what the timelines should be for the individual CCWG tasks, and on the timing of information exchange and collaboration. Executive Directors Dr. Cate O'Keefe (NEFMC), Dr. Chris Moore (MAFMC), and Dr. Carrie Simmons (GMFMC) all agreed. Dr. Simmons also asked about science needs to support adaptation, and about moving forward with the proposed survey specific to regional Councils' science needs in relation to anticipated IRA Climate Resilience Funding. She asked Dr. Cisco Werner (NOAA Headquarters) whether pulling this section of the

survey out and moving forward with it separately would be useful for helping the Councils in submitting proposals for IRA Climate Resilience funding and better inform NOAA Fisheries regional uses for the Data Acquisition and Management pot of IRA funding. Dr. Werner replied that he thought addressing science needs to support climate adaptation was appropriate, and stated that the agency is expecting the data collection to occur within about a two-year time period. He said that the associated follow-up work would be expected to be completed within 5 years. Ms. Kelly Denit added that the Councils should be engaging with their respective regional offices on their IRA proposals, to better understand what support could be provided to the Councils to address their goals and needs. With respect to science needs to support adaptation, the agency would benefit from feedback from the Councils, and not just on what data the Councils have had available in the past, but also what will be needed in the future.

Endangered Species Act – Magnuson-Stevens Act (ESA – MSA) – Sam Rauch

Mr. Sam Rauch, NMFS, reported on the takeaways from the regional meetings with Sustainable Fisheries, Protected Resources, and Council staff, and response to key CCC ESA Working Group's redline edits to the ESA Policy Directive (PD) 01-117 to integrate ESA Section 7 with MSA. NMFS Headquarters worked with the regional offices and Councils to get a clear picture of how the Policy Directive is working in practice within each region and to share lessons learned. Mr. Rauch reported that through these regional meetings, the Councils highlighted the importance of early coordination, which is happening in all regions, but at varying levels, and there is greater interest across the board for greater involvement. There is a workload issue in every region, and there is a need to balance commitment between early coordination and workload. There is also interest in setting clear expectations of how Councils will engage with NMFS. Mr. Rauch noted that the Policy Directive does set out a strong statement that NOAA intends to engage with the Councils, and NMFS believes the Councils are a partner in the consultation process and would like to involve the Councils, but there are limits. Some regions have used liaisons to improve coordination and develop work products. Development of integration agreements has improved coordination and set expectations on engagement in some regions.

Mr. Rauch described the CCC's redline edits and noted that NMFS has been considering the edits in the context of the regional meetings. NMFS did not have a draft policy to share at this meeting, and is trying to take their time and be iterative. Regarding the CCC redline edits on working in close coordination throughout the Council process to address impacts, rather than relying on after-the-fact reasonable prudent measures (RPM) and reasonable and prudent alternatives (RPA) resulting from consultations, Mr. Rauch acknowledged that the Councils take a proactive approach in avoiding impacts and that it can be disruptive when NMFS finds late in the Section 7 consultation process that more needs to be done. NMFS wants to work with the Councils on those actions ahead of time that might avoid the need for a more prescriptive process at the end of the consultations.

In response to the CCC redline edits on early coordination for developing RPMs and associated Terms and Conditions (T&C), Mr. Rauch stated there should never be an RPM or T&C that requires Council action because RPMs can only be a minor change (i.e., cannot alter the basic design, location, scope, duration or timing of the action). Mr. Rauch acknowledged that NMFS

in the past has included RPMs that required the Councils to change the management of the fishery, and NMFS is proposing to remove this CCC redline edit pertaining to the RPMs and instead make it clear in the PD that anything that would require the Council to act will not be more than a minor change. If NMFS finds jeopardy during the consultation process, meaning that the status quo management is having such a significant impact that the status quo needs to change, NMFS should be working with the Council on those management changes as part of the RPA development. However, consultation timelines may not allow for the time it takes for the Council to undertake an FMP amendment at that time, in which case NMFS may take Secretarial action to temporarily fill the gap. NMFS intends to spell out in the PD how they would like to incorporate Councils in those processes, and where NMFS may not be able to do so due to timing constraints.

Regarding CCC redline edits on sharing of drafts, Mr. Rauch clarified that NMFS can share the full draft BiOp if it has been internally cleared for public release, but sharing sections without the full draft would be limited to clarifying the proposed action or to discuss whether draft RPAs are feasible to do through an FMP amendment and the timing of the amendment. Mr. Rauch also stated that NMFS is interested in coordinating timeframes, but NMFS would not be able to have an integrated timeline with the Council process when consultations are non-discretionary or mandatory (e.g., if ITS is exceeded and triggers consultation; court ordered timelines). Mr. Rauch also noted that it will be difficult for NMFS to include a dispute resolution process, and NMFS also cannot accept the redline edits that would require the consulting agency to communicate with the Council if the Council has requested involvement, as NMFS may not always be able to do so.

NMFS will take the input to date and will be making changes to the PD to include these concepts, and clearly articulate how coordination works in the scenario in which consultation is triggered external to the Council process. Changes will also address training opportunities for both NMFS and the Council. The PD changes will also include edits to the glossary, emphasize importance of pre-consultation assistance to avoid jeopardy determinations, and clarify what can and cannot be shared. NMFS is working on the revisions, and intends to meet with the CCC ESA Working Group directly, and bring back a robust draft policy at the spring 2024 CCC meeting. Mr. Rauch indicated they intend to have the draft before the CCC meeting to allow for review. NMFS is also in the process of revising Section 7 programmatic regulations with the US Fish and Wildlife Service, and plans to present that to the CCC once finalized. NMFS will also consider development of the regional integration agreements where they currently do not exist to identify key points of contact.

Integration Policy Update and CCC ESA-MSA Workgroup – Kitty Simonds

Ms. Kitty Simonds, Executive Director WPFMC, provided an update from the CCC ESA Working Group formed at the May 2022 CCC meeting and tasked to consider potential changes to the ESA Policy Directive addressing issues identified by the CCC through the May 2021 and January 2022 meetings. Ms. Simonds recapped the CCC's characterization of the redline changes to the Policy Directive, and emphasized importance of early Council involvement and coordination to ensure development of practical and effective measures through a transparent stakeholder-based process that takes MSA National Standards into account. Since the May 2023

CCC meeting, the remaining four Councils had their regional meetings. The regional meetings continued to highlight the importance of working through the Council process to address ESA issues and the importance of early coordination on Section 7 consultations, as these have been at the root of the challenges Councils have experienced in recent consultations. Overall, the Working Group did not see any new significant issues identified through the regional meetings, and reiterates the importance of addressing the CCC redline changes.

The Working Group reconvened on October 6, 2023, to review Mr. Rauch's presentation, which was made available two days prior. Without a companion document, the Working Group found it difficult to evaluate whether NMFS' proposed changes were consistent with the intent of the CCC's redline version. The Working Group was also disappointed that a timeline on next steps was not made available in advance. The Working Group suggested that the CCC work with NMFS to develop a clear timeline for next steps. The Working Group also requested a meeting with NMFS Headquarters staff to discuss the draft changes to the Policy Directive prior to NMFS completing the revisions with regions and General Counsel. The Working Group additionally suggested that any Section 7 consultation training should occur after changes to the Policy Directive are approved so that the near-term priority is to agree on the changes.

Mr. Rauch reiterated that the goal is to review the draft Policy Directive at the May 2024 CCC meeting, and NMFS does want to meet with the Working Group at this stage. Tanya Dobrzynski, NMFS' New Chief of the Endangered Species Interagency Cooperation Division, will work closely on the Policy Directive revision.

Motion: The CCC requests that NMFS meet with the Working Group as soon as possible to discuss the current draft change to the policy directive prior to NMFS completing the revisions with regions and General Counsel. The CCC further requests that NMFS work with the Working Group to develop a draft revised policy directive for CCC's endorsement at the May 2024 meeting.

Motion carried without opposition.

CCC Subcommittee Updates (cont.)

Habitat Workgroup – Dr. Lisa Hollensead

Dr. Lisa Hollensead (GMFMC), the Habitat Workgroup chair, provided an update to the CCC about logistics and session objectives for an in-person meeting scheduled for January 17-18, 2024, in La Jolla, California. The two-day meeting will include discussions on topics broadly related to climate change effects on habitat management: habitat science available, climate challenges in essential fish habitat designations and consultations, and habitat/climate scenario planning. Several workgroup members have volunteered to lead, organize, and report out on the specific meeting session topics. The Habitat Working Group reached a consensus on the agenda outline at its September meeting and will finalize the meeting agenda during their November meeting.

Communications Workgroup – Ms. Emily Muehlstein

Ms. Emily Muehlstein (GMFMC staff) presented an in-person meeting proposal for the Council Communications Group in 2024. During the May 2023 CCC meeting, the CCC directed the Communications Group to plan an in-person meeting and seek approval of proposed discussion items during this meeting. Ms. Muehlstein reviewed a list of potential meeting topics that reflects both the Communications' Group suggestions and CCC recommendations from the May 2023 CCC meeting. Planning for the 50th Anniversary of Regional Fisheries Management Councils, development of CCC hosting guidance materials, professional development for group members, and handling CMOD and archiving Fishery Forum materials were all presented as potential meeting topics.

The CCC supports hosting an in-person meeting of its Communications Group and prioritized planning the Regional Fishery Management Council 50th Anniversary celebrations and creation of guidance materials for hosting the CCC. The CCC also supported the group's desire to engage in professional development and suggested that the Councils could split the cost of doing so. The CCC suggested that the group consider adding an agenda item on how to improve EEJ engagement across Council communications efforts.

Council Members Ongoing Development (CMOD) – Mr. David Witherell / Mr. Bill Tweit

The CCC **approved** the steering committee's proposal for the next Council Member Ongoing Development (CMOD) workshop. The theme will be "Adapting Council risk policies through operational changes to harvest control rules" that links directly with the operationalization of outcomes from SCS8 to be held in 2024. In addition to advancing the theme, CMOD would include a skills training session on "Effective communication of complex fishery management actions from Council members to stakeholders." Regarding workshop financing, there will be shared costs of about \$115,000 to cover the meeting venue, facilitator contract, and invited non-federal presenters. NMFS has already committed to providing half (\$57,500) of the funding, with the remaining costs shared equally among the 8 Councils. In addition, each Council and NMFS will fund travel for their own participants (4 per Council, 10 NMFS).

The NPFMC staff will provide administrative and logistic support for CMOD. The CCC indicated that the proposed meeting venue of Vancouver, Washington would be acceptable, as this location is right by the Portland, Oregon airport. Possible dates for CMOD were offered up for consideration: April 21-25, 2025, or April 28 - May 2, 2025.

EEJ Workgroup – Mr. Miguel Rolon

The CCC decided to activate the EEJ Subcommittee and start the coordination for a national workshop on EEJ to be held in 2025 or 2026. The EEJ Workgroup will look at the regional strategy plans from each NMFS Region that should all be completed by the first quarter of 2024, among other documents to prepare are a list of topics, agencies, and groups that should be invited to the workshop, as well as identification of sources of funds, among others. CFMC will be responsible for hosting the first and follow up meetings as soon as possible to begin work.

The topic of the EDF National Workshop that is being planned for Spring 2024 was presented. Members of all Councils are encouraged to participate to acquire knowledge on topics and best practices that could be used for actions at the Council and regional levels, as well as assisting in the preparation of the CCC EEJ National Workshop.

Process for Establishing Fishing Regulations in Sanctuaries – Mr. John Armor

Mr. John Armor (National Marine Sanctuaries) gave a presentation on “Fishing Regulations in National Marine Sanctuaries.” The core portion of the presentation addressed the process for developing fishing regulations, including existing regulatory language and a flow-diagram outlining how Council decisions regarding fishing regulations within Sanctuary waters would be considered by NOAA. The 2008 guidance (Appendix A) indicating how Regional Fishery Management Councils (RFMC) input should be received by NOAA was addressed, and Mr. Armor indicated that this guidance needs to be updated.

Questions arose regarding the timeline and process for Sanctuary and RFMC interaction when a Sanctuary designation is being considered. Mr. Armor indicated that input from the RFMCs is welcome and that the Sanctuaries are open and appreciative of ideas and suggestions for improving the process. Further discussion considered the specific role that Councils could play in helping to update the guidance and flowchart describing how fishing regulations within Sanctuaries should be developed. Mr. Armor and the Councils agreed that Councils should be afforded an opportunity to weigh in directly as guidance is updated. To ensure Council input is made into the revised guidance and flowchart, Mr. Armor will work with the Council Executive Directors to gather Council input.

Additional conversation covered the impression of some RFMCs that timelines for Sanctuary development and fishing regulations have been compressed compared to past practice. Other questions centered around the number of touch points for Sanctuary and Council interaction. It was suggested that there be more than one opportunity for Sanctuary/Council consultation. The first step in a consultation with the Council should occur during the early stages of Sanctuary designation where Councils could consider whether additional fishing regulations appear necessary to help meet Sanctuary objectives, and a second stage should occur if NMFS determines fishing regulations are necessary.

Representatives of the Western Pacific Council spoke of their history of fisheries, especially in American Samoa, and the importance of fisheries to local economies, culture, and the well-being of people. Significant concern exists surrounding a potential new Sanctuary around American Samoa and the effects it will have on the fishing economy—the economic backbone of American Samoa.

CCC Subcommittee Updates (*cont.*)

Area-Based Management – Ms. Michelle Bachman

Ms. Michelle Bachman (NEFMC) a subcommittee member, provided an update for the Area-Based Management Subcommittee. Following the May 2023 CCC meeting, the subcommittee

worked with GMFMC staff and CCC members to prepare a [press release](#) sharing the subcommittee's report. A core group of subcommittee members worked over the summer to finalize a manuscript for submission to a peer-reviewed journal. All co-authors were invited to revise the text. Submission to *Marine Fisheries Review* is planned for October pending final checks on the detailed conservation area tables in the paper.

The NEFMC, working on behalf of the subcommittee, executed a contract extension with Pacific States Marine Fisheries Commission to develop an Arc GIS online experience builder application, as recommended by the CCC. A draft application has been prepared by PSMFC staff and shared with the subcommittee for review. Ms. Bachman shared a demonstration of the application, including: 1) a homepage with project overview and basic methods, 2) a national results summary, 3) an interactive web map, 4) tabs that provide an area management overview for each region, and 5) a collection of links and resources for further information. The content for the application is adapted from the report and manuscript. The application will be disseminated widely, when complete, near the end of October 2023.

The CCC thanked the Area-Based Management subcommittee, specifically Ms. Michelle Bachman of the NEFMC and Ms. Jessica Coakley of the MAFMC.

8th Scientific Coordination Subcommittee Meeting – Cate O’Keefe

Dr. Cate O’Keefe, Executive Director of the New England Council, provided an update on the plans for the 8th Scientific Coordination Subcommittee meeting on behalf of Dr. Lisa Kerr, Chair of the NEFMC SSC and SCS Steering Committee. The meeting is scheduled to take place at the Seaport Hotel in the historic Seaport District of Boston, Massachusetts on August 26-28, 2024. The meeting theme is “Applying ABC control rules in a changing environment” with several sub-themes under development by the subcommittee, including: 1) what can be learned from previously applied management responses, 2) use of social science to understanding how fishing communities can adapt to dynamic conditions, 3) use of alternative indicators, and 4) identification of directional change in productivity and distribution to inform stock status determination criteria. The workshop structure is in development to include keynote speakers, “round robin” sessions, case studies, breakout sessions, and a plenary synthesis. The NEFMC, working on behalf of the subcommittee, is developing a budget to include travel expenses for up to four attendees from each region in addition to NOAA Fisheries staff and additional Council members.

Following the May 2023 CCC meeting, the subcommittee identified approaches to address the CCC’s recommendation to share workshop conclusions more broadly and make SCS recommendations more actionable. The subcommittee proposed efforts in advance of the workshop to increase engagement of regional SSCs by seeking input beyond the subcommittee representatives, assign attendees with preparatory work to familiarize topics and support plenary discussion, and plan time for regional discussion of final outcomes at SSC and Council meetings. Additionally, they recommended allotting time for synthesis during the meeting so that post-workshop follow-up can occur in a timelier manner. The subcommittee expects that regional SSCs and Councils will make efforts to proactively present results and conclusions and encourage continued discussions for applications of workshop recommendations.

The CCC encouraged Council members from all regions to attend the meeting, possibly in a passive role to allow in-depth discussion by the SCS. They also suggested coordination with NOAA Fisheries and leveraging NOAA's public outreach abilities to disseminate workshop outcomes.

October 13, 2023

Overview of the Fiscal Responsibility Act, (P.L. 118-5) and CEQs Proposed NEPA Regulations - Katie Renshaw / Sam Rauch

Ms. Katie Renshaw (NOAA NEPA Coordinator) discussed recent and proposed regulatory revisions to the National Environmental Policy Act (NEPA). Phase 1 NEPA revisions were made in 2022 which resulted in minor modifications to existing regulations. CEQ has been working on Phase 2 revisions with a proposed rule published July 31, 2023. The proposed rule included statutory revisions of the Fiscal Responsibility Act (FRA) of 2023 that included amendments to NEPA. FRA changed the threshold determination to determine if NEPA applies to a specific action. The FRA also included maximum time limits for Environmental Assessments (EA) (1 year from agency determination of EA being prepared to FONSI, and 2 years for an EIS ending with the ROD). The time limits can be extended by the lead agency, on a project-by-project basis. Page limits were also set by the FRA (75 pages for an EA, 150 pages for EIS unless complex then 300 pages; not including appendices). There is no process to allow for waivers. Both the FRA and proposed regulations revised how categorical exclusions can be used.

The proposed rule includes revisions to public comment and requirements for mitigated Finding of No Significant Impact (FONSI) in EAs. For Environmental Impact Statements (EIS), revisions may require agencies to integrate climate change and environmental justice, which must be considered. Other new requirements include new or modified provisions for alternatives, the limitations on use of incomplete or unavailable information, and best available science requirements. Other EIS requirements include requiring the lead agency to identify an environmentally preferable alternative, identification numbers for EAs and EISs, website information, and other changes and requirements. There are also new provisions for programmatic environmental documents, including a requirement that agencies ensure the programmatic document is still valid if older than 5 years. Other proposed changes were discussed. Agencies will have 12 months from the effective date to propose updates to their NEPA procedures.

Mr. Sam Rauch provided a discussion of how the agency will approach making these changes. NEPA has been integrated into the Council process to provide full information to the Council and public. This integration of the Magnuson-Stevens Act (MSA) and NEPA makes the public engagement process and information process streamlined. Unfortunately, it will be difficult if not impossible to continue to use integrated documents due to the timelines. Almost every action a Council initiates takes longer than a year to complete so it is difficult to align timelines with the new requirements. NOAA Fisheries may need to separate the Council MSA and NEPA process, but that is clearly not ideal. Mainly, the CCC needs to grapple with "When does the NEPA

process start?” Integrated NEPA and MSA amendments have worked well for the Councils, but the CCC will likely need to unwind the existing procedures to separate out the NEPA portion. NEPA and Council public comment are two different processes. Furthermore, NMFS will need to revise terminology and methodology for discussing climate change and environmental justice. The NEPA document is the Secretary of Commerce (SOC) document, which may need to start AFTER the Council process. One possible work-around is to develop a “NEPA-like” document for use in the Council process that would have a different name. Mr. Rauch suggested that the agency work with Councils on rethinking this, perhaps using a NEPA CCC subgroup to work through these issues.

The CCC discussed several issues, including who gets to determine extension of the deadline (Answer: the agency). Note that the agency has to report annually to Congress and the House Natural Resource Committee on every determination. Thus, there may be some reluctance to allow extensions. However, Ms. Renshaw thought that so long as there is a good rationale, then the reporting requirement may not inhibit approval of an extension. There was also discussion about the use of Programmatic Supplementary Environmental Impact Statements (PSEIS), which Mr. Rauch noted can be very useful, but the deadlines still apply to these types of planning and programmatic documents.

Motion: To form a CCC-NEPA working group.

Motion carried without opposition.

This working group will work closely with the agency in developing revised procedures. Composition of the workgroup would depend on resources and interest from the different Councils, noting that there doesn’t need to be representation from each Council. The expectation is that the workgroup will report back in May 2024.

Wrap Up and Other Business

No other business was brought before the Committee. Mr. Kevin Anson reviewed the Actions and Outcomes from each day of the meeting. Motions were provided in the presentation. No feedback was offered on the wrap-up.

The CCC discussed that next meetings will be held May 21-24, 2024 in San Juan, Puerto Rico and October 16-17, 2024 in Washington, D.C.

Appendix A.

This appendix was provided by Mr. Armor after the meeting concluded.

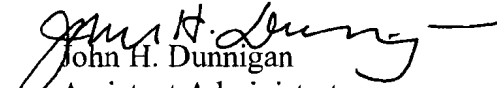


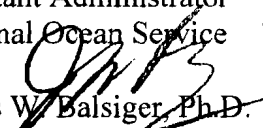
UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

JUL 30 2008

MEMORANDUM FOR: Regional Fishery Management Council Chairs
National Marine Sanctuary Advisory Council Chairs

FROM:


John H. Dunnigan
Assistant Administrator
National Ocean Service


James W. Balsiger, Ph.D.
Acting Assistant Administrator
National Marine Fisheries Service

As you know, past NOAA actions have highlighted the opportunity for improved coordination and collaboration concerning the promulgation of fishing regulations in our Nation's marine sanctuaries. The National Marine Sanctuaries Act (NMSA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are both important pieces of marine resource legislation administered by NOAA.

The attached flowchart graphically traces NMSA and MSA regulatory actions from initial concept to promulgation to clarify the role of Regional Fishery Management Councils, Sanctuary Advisory Councils, Treaty Tribes, National Marine Fisheries Service (NMFS) and the National Marine Sanctuary Program (NMSP) in this process.

As you may recall, this document was presented to you for comment on January 6, 2006. Since then, a working group of NOAA staff from NMSP and NMFS as well as attorneys from the General Counsel for Fisheries and the General Counsel for the Ocean Service, both from headquarters and the field, met to address your comments. Each comment was considered and a consensus was reached regarding the appropriate action to take. Subsequently, changes were made to the document and the final Flowchart updated version was agreed upon by NMFS and NMSP and is enclosed with this package.

Thank you very much for your continued participation in the conservation and management of our Nation's marine resources. We look forward to continuing to work with you to ensure the health of the ocean and coastal ecosystems for the benefit of future generations.



**NOAA'S REGULATION OF FISHING IN NATIONAL MARINE
SANCTUARIES**

JULY, 2008

This document describes how NOAA will administer the regulation of fishing in National Marine Sanctuaries as mandated by the National Marine Sanctuaries Act and the Magnuson-Stevens Fishery Conservation and Management Act. The regulatory processes under each authority are described in flowcharts followed by detailed text with emphasis on new efforts at integration indicated by italics.

Executive Summary

This document details how NOAA will administer the regulation of fishing in National Marine Sanctuaries as mandated by the National Marine Sanctuaries Act (NMSA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The regulatory processes under each act are described in flowcharts followed by detailed text with emphasis on new efforts at integration, collaboration and communication.

Parties involved in the processes:

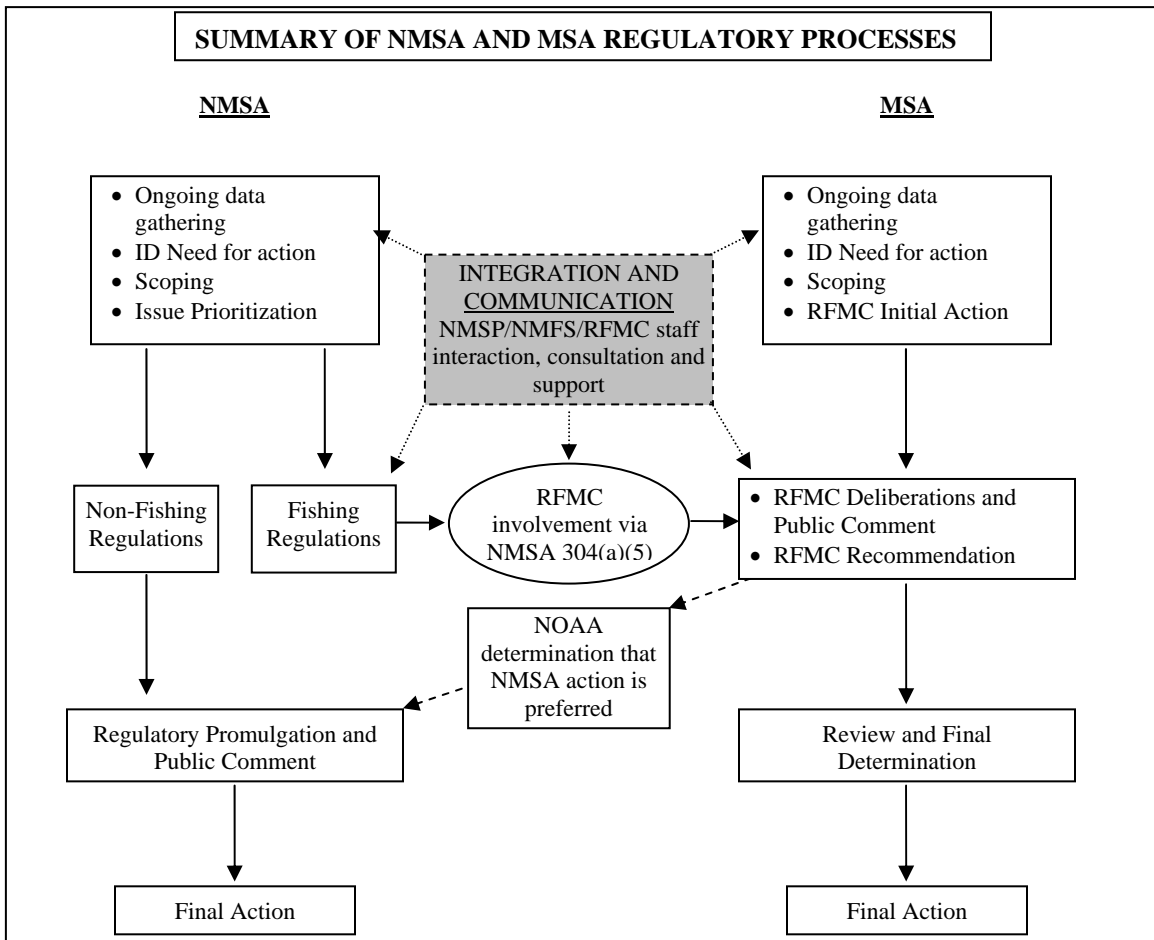
Primary Statutory Participants: NOAA National Marine Sanctuary Program (NMSP)
 Sanctuary Advisory Councils
 NOAA National Marine Fisheries Service (NMFS)
 Regional Fishery Management Councils (RFMC)

Government to

Government consultations: Federally recognized Indian Tribes

Public input/consultations:

States
 Other Federal Agencies
 Interested parties



Major Sections:

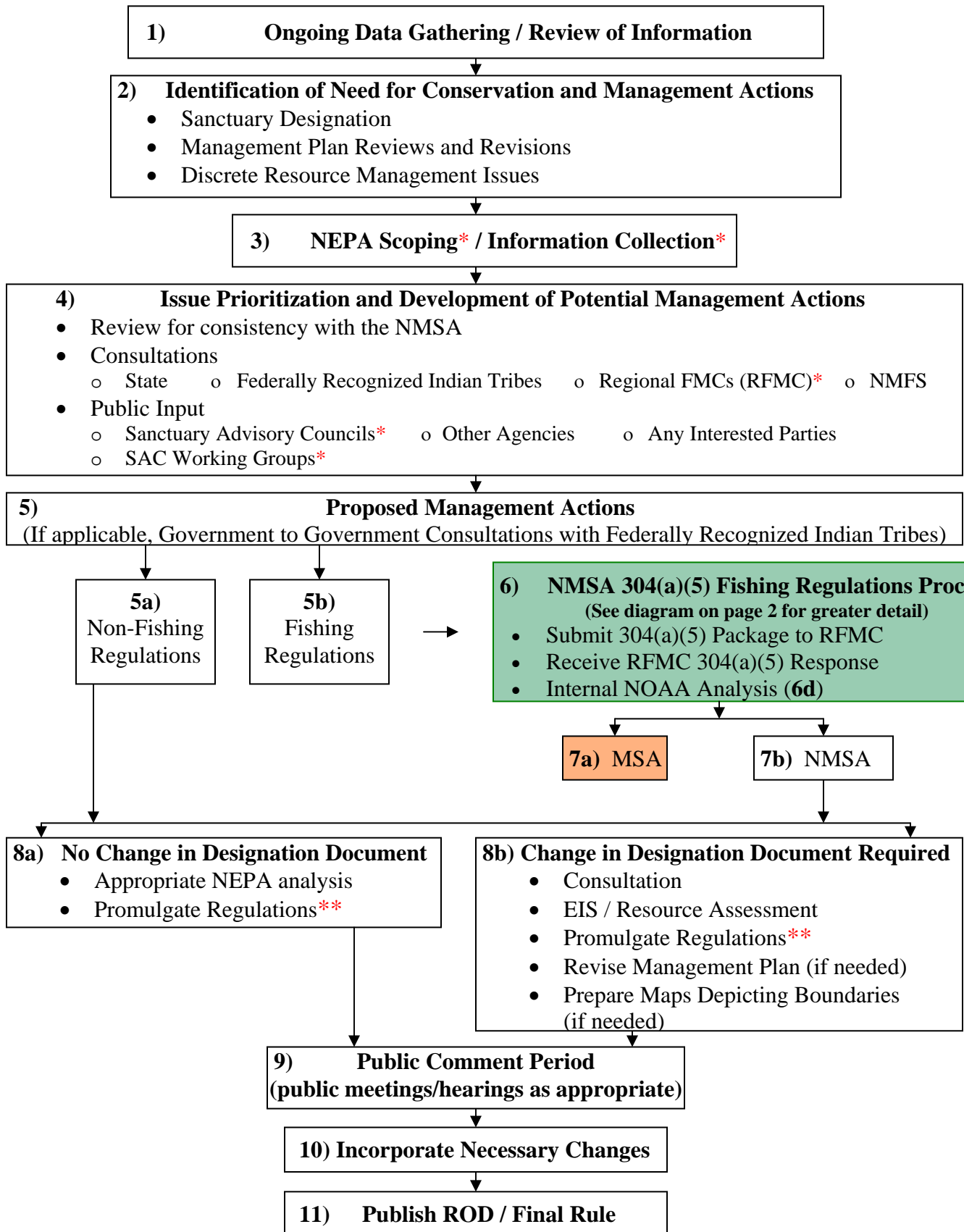
1. pp. 1-8. Flowchart and text describing the National Marine Sanctuaries Act regulatory process for addressing issues in National Marine Sanctuaries, with emphasis on the process for addressing fishing issues from initial concept through implementation.
2. pp. 9-13. Flowchart and text describing the Magnuson-Stevens Act Regulatory process. The flowchart and text traces a fishery management action under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) from initial concept through implementation.

Integration and Communication:

Overall, this document describes the efforts to improve coordination and communication among NMFS, NMSP and RFMCs. The document highlights opportunities for increased coordination, most of which are described below.

1. Frontloading - The first step in each flowchart is entitled, "Ongoing Data Gathering / Review of Information." This describes the concept of communicating in an ongoing fashion between NMFS, NMSP and RFMCs with respect to issues that may arise in a National Marine Sanctuary regarding fishing or issues that may arise before a Regional Fishery Management Council that may affect NMSP resources or sites.
2. Scoping - The third step in each flowchart includes this phase. NMSP will expressly notify and include personnel from NMFS and RFMCs in developing Goals and Objectives for NMSP action where fishing issues exist. RFMCs will expressly notify and include personnel from NMSP in Fishery Management Action Teams, which develop Action plans for fishing issues.
3. Action Development - NMFS/RFMC staff will invite NMSP staff to attend and participate at standing or specially appointed committee meetings regarding potential fishery management considerations that may affect sanctuary resources. Sanctuary Advisory Councils, which are established under the National Marine Sanctuaries Act, often include NMFS or RFMC members.
4. RFMC actions regarding NMSP fishing issues - NMSP staff will ensure that adequate information is provided to the RFMC and will work to coordinate and clarify issues during the RFMC process as needed. Subsequently, NMFS staff will ensure that NMSP staff have received draft analyses for potential management actions that may affect sanctuary resources. The NMSP will also be given an opportunity to review any such documents for those RFMC actions developed to fulfill sanctuary goals and objectives.

National Marine Sanctuaries Act Regulatory Process

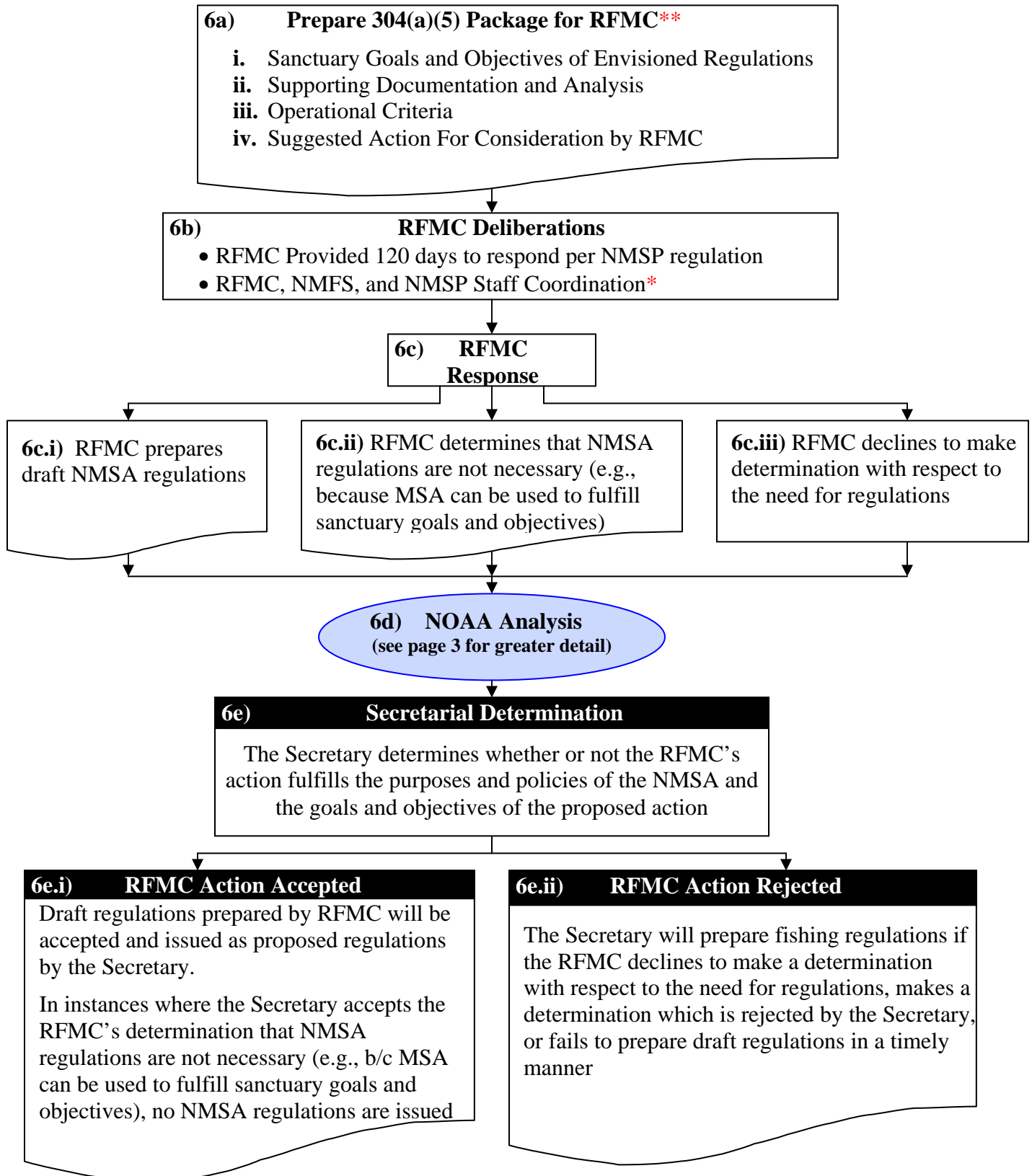


*These highlighted items represent specific steps in the process by which NOAA will actively engage the appropriate RFMC. Please see accompanying text for more detail.

**During final development of draft fishing regulations, staff of the NMSP, NMFS and RFMCs coordinate as appropriate to ensure that any resulting regulation fulfills sanctuary goals and objectives.

6) NMSA §304(a)(5) Fishing Regulations Process

(Expansion of Box 6 on page 1. When this process is complete return to 7a, 7b, or both – p.1)

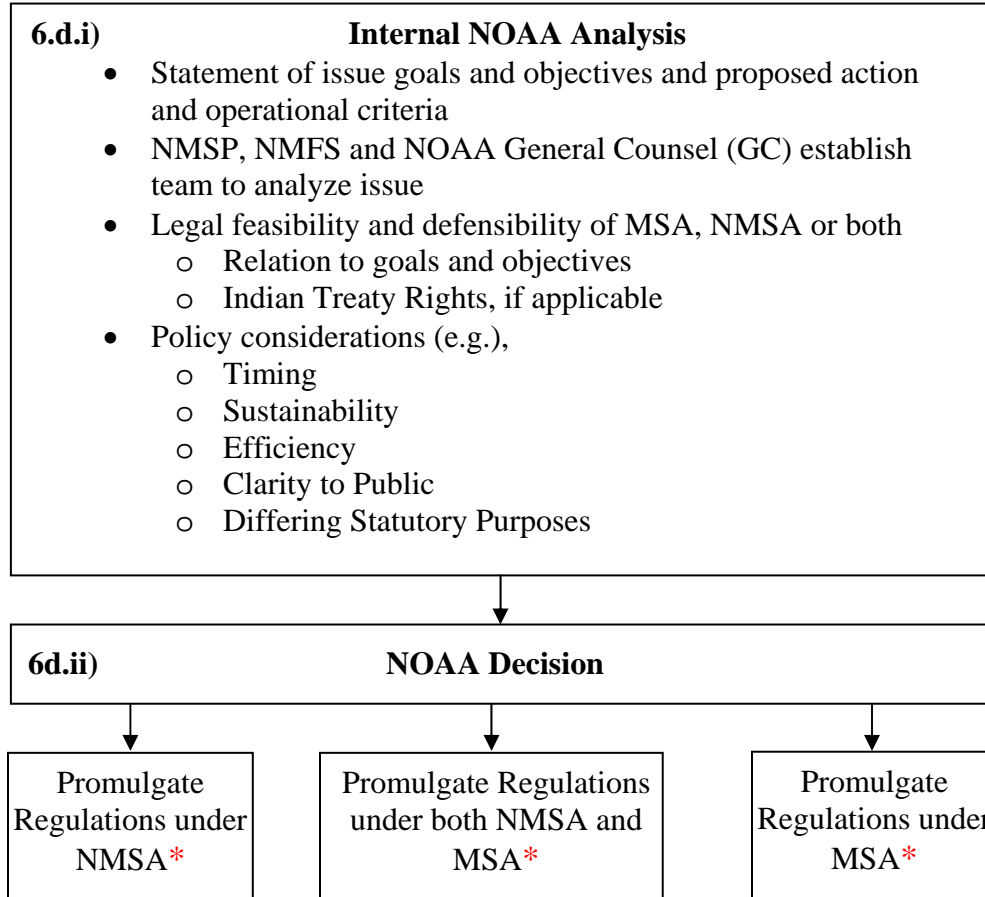


* This highlighted item is a step in the process by which NOAA will actively engage the RFMC. Please see accompanying text for more detail.

** These materials are developed from the Scoping and Issue Prioritization steps in the process.

6d) NOAA Analysis

(Expansion of Box 6d on page 2. When complete, return to 6e – p.2)



* During promulgation of regulations resulting from the NMSA 304(a)(5) process, staff of the NMSP, NMFS and RFMCs will coordinate as appropriate to ensure the resulting regulation fulfills its intended goals and objectives, regardless of the statute(s) under which it is promulgated. NOAA will ensure that any proposed regulations are consistent with Indian treaty fishing rights.

The flowchart graphically traces a National Marine Sanctuaries Act (NMSA) as well as Magnuson-Stevens Fishery Conservation and Management Act (MSA) action from initial concept through implementation. The following text bullets correspond to the numbered boxes on the flowchart and are intended to more fully explain the contents of the boxes and identify the points of consultation for three players (NOAA National Marine Sanctuary Program (NMSP), NOAA National Marine Fisheries Service (NMFS), Regional Fishery Management Councils (RFMCs)) at the different stages in the generic process of developing fishing regulations, and decision criteria used in moving from one step to the next in the decision making process.

National Marine Sanctuaries Act Regulatory Process

- 1) **Ongoing Data Gathering / Review of Information.** *The NMSP collects information on an ongoing basis with regard to resource protection, resource use, issues of concern, etc. In an effort to increase “frontloading” with regard to issues involving, fishing, the NMSP will seek out opportunities to engage the appropriate RFMC(s), NMFS Science Centers, NMFS Regional Offices, and other experts in ongoing data gathering and review of information in order to efficiently and effectively further adaptive management approaches through the application of state of the art science and policy.*
- 2) **Identification of Need for Conservation and Management Actions.** This represents the initial concept or idea stage of what may eventually develop into a proposed federal action. Three typical categories of actions are most often taken by NMSP: a proposed sanctuary designation, a sanctuary management plan review and revision, or a regulatory proposal that is developed in response to a discrete Sanctuary resource issue. An Environmental Impact Statement under the National Environmental Policy Act (NEPA) is required when a major federal action significantly affecting the human environment is taken under the NMSA, or when a change in a term of designation for the sanctuary is proposed.
- 3) **NEPA Scoping / Information Collection.** A scoping process is undertaken which includes community outreach, public meetings, and literature review. Scoping provides a framework for identifying environmental issues and coordinating with interested parties. *NMFS, the appropriate RFMC(s) established under the MSA and Federally Recognized Indian Tribes are identified among the interested parties and will be expressly notified at this step because of their role under the NMSA and fisheries expertise. Obtaining best available information, that is both high quality and composed of transparent data and methodology, is a primary goal in this stage of the process. It is here that early goal and objective consideration begins. NMFS and RFMC input in this process are critical to the successful development of final Goals and Objectives in the following step.*
- 4) **Issue Prioritization and Development of Potential Management Actions.** A Sanctuary Advisory Council (SAC) is charged by NOAA under the NMSA to advise throughout the process. Representatives from NMFS and the appropriate RFMCs are invited to be members of SACs or SAC Working Groups. *SACs are appointed to represent multiple stakeholders and provide advice and recommendations to NMSP management. NOAA in turn makes final determinations. The SAC prioritizes issues that may be addressed by the NMSP. The SAC may also form issue specific working groups to assist the SAC. For instance, if there are fishing issues associated with designation or management of a Sanctuary, a fisheries working group could be formed. Such working group could consist of representatives from NMFS (e.g., regional office and /or science center staff), the RFMCs, other agencies, Federally Recognized Indian Tribes, State marine resource management*

departments, the fishing industry, non-governmental environmental groups, and subject-matter experts and other interested parties. SAC working groups may be charged to develop potential management actions and recommendations to the SAC. The SAC in turn provides NMSP with recommendations. As a result of activities related to NMSP or SAC issue prioritization, an RFMC may pursue actions under the MSA. Refer to the Magnuson-Stevens Act Regulatory Process diagram for further description of the ensuing process. NMSP draft goals and objectives are developed at this step for internal NOAA review, which includes another opportunity for NMFS comment.

- 5) NMSP Proposed Management Actions.** The recommendations provided by the SAC and interested Indian tribes are considered by the NMSP in its development of draft goals and objectives. The draft goals and objectives are ultimately reviewed within NOAA and become an agency statement of proposed goals and objectives for that sanctuary (“goals and objectives”). Because the draft goals and objectives become a statement of NOAA goals and objectives for that sanctuary, NOAA will conduct government to government consultation with any potentially affected federally recognized Indian tribe(s). These goals and objectives are the benchmark by which a RFMC recommendation under NMSA §304(a)(5) is assessed. Management recommendations normally come about through a SAC deliberative process as described in 4) above. The potential regulatory actions for a given sanctuary are divided into non-fishing and fishing actions (**5a** and **5b**) by the NMSP prior to proceeding to the next step

6) NMSA §304(a)(5) Regulatory Process

6) Section 304(a)(5) of the NMSA requires that the appropriate RFMC(s) be given the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone of a sanctuary’s boundaries. When such regulations appear desirable, NOAA develops and presents a 304(a)(5) package to the appropriate RFMC(s). All of the materials provided to the RFMC(s) as part of the §304(a)(5) package are intended to help the RFMC make a determination of what would best fulfill the sanctuary goals and objectives. The entire package is reviewed and approved by NOAA and provided to the RFMC.

- a. Prepare 304(a)(5) Package for RFMCs.** NOAA develops a §304(a)(5) package (package) and provides it to the appropriate RFMC(s). These materials are developed from the Scoping and Issue Prioritization steps in the process. Copies are made publicly available and given concurrently to the appropriate NMFS regional office(s). The package usually consists of, but is not limited to:
- i. Sanctuary specific goals and objectives.** (Refer to boxes 3,4 and 5 for the process a sanctuary goes through to develop goals and objectives.)
 - ii. Supporting documentation and analyses** come from a variety of sources including: literature and reports authored by the NOAA Science Centers or interagency and university scientists, notes and reports of the working group and SAC, data and/or analyses obtained via contract from consultants, NMSP assembled socio-economic and biological information, along with NMSP prepared GIS maps and relevant supporting information. *NOAA will ensure that adequate environmental and socioeconomic information is provided to the RFMC to inform them of the consequences of the “requested action”.*
 - iii. Site-specific operational criteria** are developed and approved by NOAA (NMSP and NMFS staff) to better define the goals and objectives.

- iv. Suggested action(s) for consideration by RFMC** is the recommended actions developed throughout the process of **NEPA Scoping / Information Collection (3)** and Issue Prioritization and Development of Potential Management Actions **(4)**.
- b. RFMC Deliberations.** The RFMC is provided 120 days to respond to the 304(a)(5) package (15 CFR 922.22(b)). Extensions to this 120-day time limit may be, and often are, requested and granted to accommodate RFMC agendas and workloads. *During the 120-day period staff of RFMC, NMFS (e.g., regional office and /or science center staff) and NMSP may coordinate as necessary to clarify issues, address questions and provide preliminary feedback.*
- c. RFMC Response.** The RFMC may take any of three actions at this point. The RFMCs will make their determination by following their standard operating procedures and certain MSA procedural requirements. The RFMC could:
- i)** Prepare draft NMSA regulations. If the RFMC determines that regulations should be promulgated under the NMSA, the RFMC may prepare draft NMSA regulations and submit them to the NMSP. If the RFMC determines that regulations should be promulgated under the NMSA and the RFMC chooses not to provide draft regulations, then NOAA will draft the regulations. In either case, the RFMC may conduct such analyses as it considers helpful to making its determination. While the RFMC is not required to comply with all the MSA requirements for developing or amending an FMP (e.g., public notice and comment), it must rely on the MSA national standards as guidance to the extent that the standards are consistent and compatible with the goals and objectives of the proposed sanctuary designation or action. NOAA will develop the required NEPA and other analyses for the NMSA action.
 - ii)** Determine that NMSA regulations are not necessary (e.g., the RFMC could recommend that sanctuary goals and objectives be fulfilled by the MSA or could recommend that no action be taken). *If the RFMC determines that sanctuary goals and objectives could be fulfilled under MSA, an explanation of the specific regulatory mechanisms, FMP changes, legal basis, and projected timeline should accompany its recommendation.*
 - iii)** Decline to make a determination with respect to the need for regulations
- d. NOAA Internal Analysis.** NOAA determines, through the following internal process, whether or not the RFMC's proposed action would fulfill sanctuary goals and objectives.
- i. Analysis.** The internal NOAA analysis consists of NOAA NMSP, NMFS and GC staff examining the RFMC submission and determining whether the submission fulfills the sanctuary goals and objectives. As necessary, this team will analyze the feasibility and legal defensibility of the RFMC's proposed action. The team will also identify any relevant policy considerations (e.g., timeliness, sustainability, efficiency, clarity to the public, monitoring and research needs, and ease of enforcement) of the RFMC's proposed regulation(s).
 - ii. NOAA Decision.** After the team considers all aspects of the analysis, it makes a recommendation regarding acceptance / rejection of the RFMC proposal. If unable to reach consensus, or if the recommendation is to reject a RFMC

proposal, the team would elevate the issue to the Assistant Administrators (AAs) of the National Ocean Service and NMFS for a decision, and to the Administrator of NOAA as appropriate.

- e. **Secretarial Determination**¹. Once the NOAA decision has been made regarding a RFMC submission, the §304(a)(5) process is concluded.
 - i. **RFMC Action Accepted.** If NOAA determines that draft NMSA regulations prepared by the RFMC fulfill the sanctuary goals and objectives and the purposes and policies of the NMSA, the regulations will be issued as proposed regulations for public comment. If the RFMC determines that NMSA fishing regulations are not necessary because sanctuary goals and objectives can be fulfilled by the MSA, and the Secretary accepts that recommendation, no NMSA regulations are proposed and regulations are pursued through the MSA regulatory process, if appropriate (see accompanying diagram and text).
 - ii. **RFMC Action Rejected.** If NOAA determines that a RFMC submission fails to fulfill the goals and objectives of the sanctuary and the purposes and policies of the NMSA, then NOAA will prepare proposed fishing regulations for the sanctuary. NOAA will communicate the decision to the RFMC and coordinate as appropriate with the RFMC on the development of the fishing regulations.

7a) Magnuson-Stevens Act Regulatory Process. If the NOAA analysis of fishing actions (**6d**) determines the appropriate course of action is to pursue the proposed action fully or partially under the MSA, then the appropriate regulations are pursued under the MSA process.

7b) NMSA Regulatory Process. If the NOAA analysis of fishing actions (**6d**) determines the appropriate course of action is to pursue the proposed action fully or partially under the NMSA, then the appropriate regulations and supporting documentation (e.g., NEPA, APA, Reg. Flex) are prepared by the NMSP, including any change to a sanctuary designation document (per NMSA paragraph 8).

8) Sanctuary Designation Document. A designation document is prepared as part of a sanctuary's designation process. The terms of designation are defined by the NMSA as: 1) the geographic area of a sanctuary; 2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational or esthetic value; and 3) the types of activities that will be subject to regulation to protect those characteristics. A sanctuary can only prohibit or restrict an activity listed in its designation document. A sanctuary designation document can, however, be amended if a discrete resource management issue arises or during the routine sanctuary management plan review processes outlined in the NMSA.

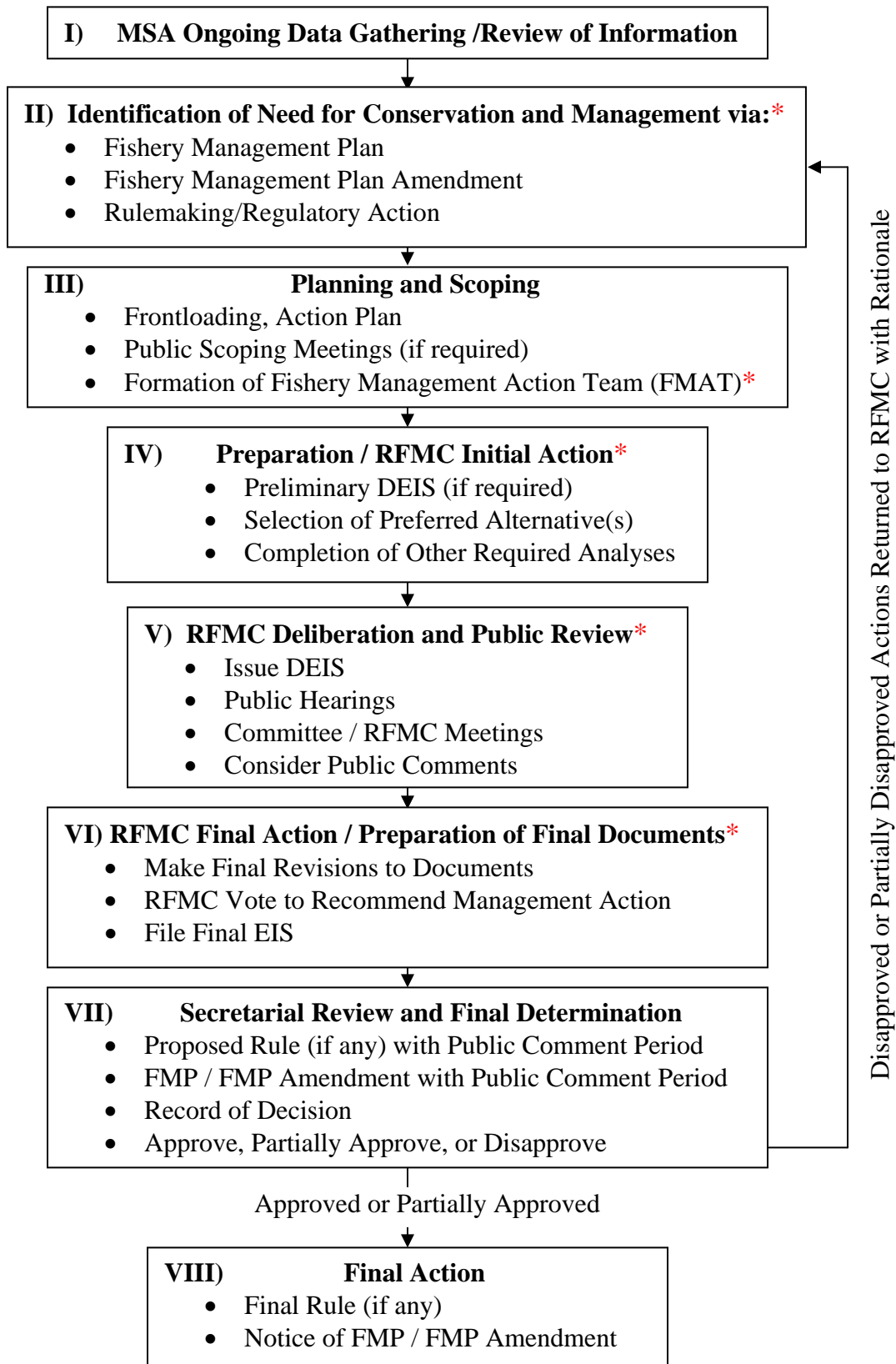
- a. **No Change Required in Designation Document.** If proposed regulations do not necessitate a change to the sanctuary's designation document, then the NMSP proceeds to promulgate regulations accompanied by the appropriate level NEPA analysis. *During final development of draft fishing regulations, staff of the NMSP, NMFS and RFMCs coordinate as appropriate to ensure that any resulting regulation fulfills sanctuary goals and objectives.*
- b. **Change Required in Designation Document.** Designation documents are changed following the applicable procedures for designation of a sanctuary (sections 303 and 304 of the NMSA). Some steps (e.g., consultation, draft EIS preparation) can be

¹ The Secretary's authority under the MSA and NMSA has been delegated to NOAA.

initiated as part of earlier actions under 4) Issue Prioritization and Development of Potential Management Actions. To issue a regulation prohibiting or restricting a fishing activity in a sanctuary for which a designation document does not have fishing as one of the activities subject to regulation, the sanctuary's designation document must be amended to include fishing as an activity subject to regulation. *During final development of draft fishing regulations, staff of the NMSP, NMFS and RFMCs coordinate as appropriate to ensure that any resulting regulation fulfills sanctuary goals and objectives.*

- 9) Public Comment Period.** Publish the proposed rule, Notice of Availability of a draft environmental impact statement or environmental analysis, and amended sanctuary designation document (if one is being amended) in the *Federal Register* to start the public comment periods (minimum 45 days DEIS; proposed rules generally have a 60-day review period). Hold public meetings or hearings as appropriate and collect public comments.
- 10) Incorporate Necessary Changes.** Consider the public comments and revise regulations and analyses as appropriate.
- 11) Publish Final Rule.** Issue the Record of Decision (ROD) and the final rule. If a final EIS was prepared, the ROD and final rule are issued after the required 30-day wait period from publication of the Notice of Availability of a final EIS. If there is a change to the designation document, the change becomes effective after a period of 45 days of continuous session of Congress (NMSA §304(a)(6)). During this final 45-day review period the Governor (when state waters are included) has the opportunity to certify to NOAA that the change to the terms of designation is unacceptable, in which case the unacceptable change to the term of designation shall not take effect in that part of the sanctuary that is within the boundary of that State.

Magnuson Stevens Act Regulatory Process



*These highlighted items are steps in the process by which RFMC and NMFS will actively engage NOS. Please see accompanying text for more detail.

Magnuson Stevens Act Regulatory Process

MSA Process for the Magnuson-Stevens Fishery Conservation and Management Act. This flowchart traces a fishery management action under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) from initial concept through implementation. The following descriptions correspond to the numbered boxes on the flowchart and are intended to more fully explain the contents of the boxes and identify the points of consultation for three players (NOAA National Marine Sanctuary Program (NMSP), NMFS, and RFMCs) at the different stages in the generic process of developing fishery-related regulations.

As part of internal NMFS efforts to manage expectations and outcomes, the agency has developed draft Operational Guidelines^{2,3} that emphasize the importance of early involvement of interested parties and identification of issues (“frontloading”). The draft Operational Guidelines identify key phases and steps that apply to all MSA fishery management actions whether the action is a rule, an FMP or an FMP Amendment, and whether it will be supported by an Environmental Assessment (EA), Categorical Exclusion (CE), or Environmental Impact Statement (EIS). The flowchart depicts a summary of these key steps.

The time it takes a proposed fishery management action to be developed varies depending on the complexity of the proposal, resources available to conduct the analyses and draft the documents, and a multitude of other contingencies. Staff resources to prepare FMP/rulemaking activities are pooled between RFMC and NMFS to variable degrees across the six NMFS regions and eight RFMCs.

We note that an RFMC recommendation proceeding from the NMSA 304(a)(5) process would not necessarily follow the steps outlined for full-blown MSA-based rulemaking.

I) Ongoing Data Gathering / Review of Information: The MSA requires that RFMCs conduct regular public meetings, and submit periodic reports, and submit recommended management action⁴ for any fishery under their jurisdiction that requires conservation and management.

Typical routes of initiating FMP/rulemaking by a RFMC include:

- a) NMFS submits information pertinent to Federal fisheries to the appropriate RFMCs.
- b) Constituents, fishing industry representatives, agency staff, RFMC members, and/or non-governmental organization representatives write or testify to the RFMC of their concern and may request a particular action.
- c) Some actions get on a RFMC agenda due to acts of Congress, which may require specific actions within statutory time frames. NMFS has an intermediate role between the Executive

² Draft Operational Guidelines: For Development and Implementation of Fishery Management Actions. August 23, 2005. http://www.nmfs.noaa.gov/sfa/domes_fish/OperationalGuidelines/DraftOGs_082405.pdf

³ NMFS has requested the Councils implement the Guidelines on a test basis. NOAA will review and consider revising this document as appropriate based on further decisions about implementation of the Guidelines and on other applicable procedures.

⁴ The term “fishery management actions” should be interpreted broadly to include a wide range of activities taken pursuant to the MSA, including proposed and final rulemakings, FMPs with no implementing regulations, and other substantive actions by the agency that promulgate or are expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, and advance notices of proposed rulemaking.

Branch and the RFMC, and is ultimately responsible for deadlines and actions required by the Secretary of Commerce as a result of legislation.

In an effort to increase “frontloading” with regard to issues involving sanctuary resources NMFS will seek out opportunities to engage the appropriate NMSP staff. The NMSP may provide information about potential relevant fishery management considerations that may affect sanctuary resources. Early identification of such issues will permit RFMCs to begin assessing potential management actions for fisheries.

II) Identification of Need for Conservation and Management. This is the point at which a RFMC determines that there may be a need to recommend action and may begin assessing the need for fishery management measures. *NMFS staff and NMSP staff will coordinate on a continuing basis regarding potential management actions that may affect sanctuary resources or the need to regulate fishing within Sanctuaries.*

At this stage ideas are developed for a response to an identified fisheries conservation or management need. The types of major Federal actions typically undertaken by RFMCs include: A new fishery management plan (FMP); an Amendment to an already approved FMP; and regulatory actions developed in response to a discrete marine conservation or management issue. FMPs and FMP Amendments must be consistent with the MSA national standards and other applicable laws, several of which require analysis of alternatives. Although it infrequently begins sooner, in most cases the National Environmental Policy Act (NEPA) process starts here.

III) Planning and Scoping.

The draft Operational Guidelines recommend the development of an “Action Plan” which describes objectives, resources, alternatives and applicable laws, prior to commencement of drafting the initial NEPA document. These Guidelines rely heavily on the concept of frontloading, which means the early involvement of all interested parties to address and resolve issues. The draft Operational Guidelines also recommend formation of a fishery management action team (FMAT) as a project management activity intended to identify and task those necessary to work on a particular action from the beginning. The FMAT will generally include representatives of the RFMC and NMFS, as well as other NOAA components and federal agencies, as necessary. *Draft Operational Guidelines will include “flags” to remind RFMCs that personnel from the NMSP will be invited to participate on FMATs regarding potential fishery management considerations that may affect sanctuary resources. Those regions not using FMATs should also involve the NMSP in early issue identification.*

Through deliberations of the FMAT, NOAA General Counsel, and agency NEPA advisors, determinations are made as to the appropriate MSA type of action (FMP or regulatory) and level of NEPA analysis (CE, EA, or EIS), or whether supplements or amendments to existing NEPA analyses are appropriate for compliance and any action necessary to comply with section 304(d) of the NMSA. *Section 304(d) of the NMSA requires federal agencies to consult on any federal action that is likely to destroy, cause the loss of, or injure any sanctuary resources. (Stellwagen Bank National Marine Sanctuary has a special standard, and consultation is required when a federal action “may affect” a sanctuary resource.)*

IV) Preparation / RFMC Initial Action. This step includes actions taken by preparers and the RFMC to complete preparation of the Draft NEPA analysis and all other required analyses.

Regulatory language, analyses and information collection requirements may be examined and preliminary estimates made of the costs and benefits of regulations depending on the nature of the proposed action and associated Federal permits, licenses, or other entitlements, and their respective accompanying analyses that will be required prior to implementation. RFMC standing committees or specially appointed committees may be asked by the RFMC to prepare components of actions for RFMC consideration. All meetings are advertised and open to the public, and public comments are taken each time an aspect of the proposed action appears on the agenda of the respective RFMC or one of its committees. *NMFS/RFMC staff will invite NMSP staff to attend and participate at standing or specially appointed committee meetings regarding potential fishery management considerations that may affect sanctuary resources.*

Preliminary Draft EIS: If schedules permit and the RFMC chooses, it may include a summary action, such as “Approve DEIS for Public Review” on the agenda. That would necessitate preparation and presentation of a preliminary DEIS to the RFMC (and public, because every action is open to the public).

Selection of Preferred Alternative: Because early identification of a preferred alternative facilitates compliance with the substantive requirements and procedural timelines of the MSA, ESA, and APA and other applicable law, the Draft Operational Guidelines encourage identification of the preferred alternative at the DEIS stage, though this is not always possible. *If consultation on a potential management action is required under §304(d) of the NMSA, it will be initiated at this stage, if it has not already been initiated.*

V) RFMC Deliberation and Public Review. Completed draft analyses are circulated for public review. *NMFS staff will ensure that NMSP staff have received draft analyses for potential management actions that may affect sanctuary resources. The NMSP would also be given an opportunity to review any such documents for those MSA actions developed from the NMSA 304(a)(5) regulatory process to fulfill sanctuary goals and objectives.* RFMC meetings or hearings are held to facilitate understanding of the documents, collect public comment and have RFMC deliberations. If deemed necessary, the NMSP shall provide NMFS with reasonable alternatives that will protect sanctuary resources. After public review and comment, the analysis documents are revised as necessary and provided to the RFMC.

VI) RFMC Final Action / Preparation of Final Documents. The RFMC holds a vote on the proposed action at a public meeting. After the RFMC votes to submit an action to the Secretary, RFMC and NMFS staff prepare the action document and any accompanying draft regulation and analyses for submission to the Secretary. It is anticipated that some work on the necessary supporting documentation will continue after the RFMC’s vote. However, if NOAA or the Council determines that the supporting analyses have been substantively changed at this point, the model in the Draft Operational Guidelines would call for reconsideration by the RFMC. All parts of a final EIS (FEIS) analysis must be completed and assembled prior to NMFS filing the FEIS with the EPA, who in turn publishes a Notice of Availability (NOA) of the FEIS in the *Federal Register*.

The MSA also requires that NMFS initiate formal public review of the RFMC’s proposed measures by publishing in the *Federal Register* the NOA of an FMP or FMP Amendment and/or the proposed rule to implement the RFMC’s recommendation. The NOA of an FEIS is different from a NOA of an FMP or FMP Amendment and is published in a different part of the *Federal Register*.

VII) Secretarial Review and Final Determination. The MSA limits the time for Secretarial review and decision on new FMPs and FMP Amendments to ninety days. NMFS must publish the NOA of the FMP or FMP Amendment immediately (within 5 days) of the transmittal date for a 60-day public comment period. The transmittal date is established by the NMFS Regional Administrator when all of the necessary documentation is determined to be complete.

The NMSP would be given an opportunity to review any such documents for those MSA actions developed from the NMSA 304(a)(5) regulatory process to fulfill sanctuary goals and objectives

Within 30 days of the close of the comment period, the agency must approve, partially approve, or disapprove the RFMC's recommendation. A Record of Decision is issued at this time. The determination to approve, partially approve, or disapprove is made by reference to the MSA's National Standards, other provisions of the MSA and other applicable law.

Approved: If a FMP or FMP Amendment is found to comply with the ten National Standards, contain all the required FMP components, and otherwise comply with all applicable laws and E.O.s, it is approved and the process is complete but for final publication of the regulations.

Disapproved or Partially Approved: If an FMP or FMP Amendment does not comply with the ten National Standards, contain all the required FMP components, and otherwise comply with all applicable law, it is disapproved. The NMFS Regional Administrator must specify in writing to the RFMC the inconsistencies of the FMP or FMP Amendment with the MSA and/or other applicable laws, the nature of inconsistencies, and recommendations for actions to make the FMP or FMP Amendment conform to applicable laws. If the RFMC is not notified within 30 days of the end of the comment period on the FMP or FMP Amendment of the approval, disapproval, or partial approval, such FMP or FMP Amendment shall take effect as if approved. If an FMP or FMP Amendment is disapproved or partially approved, the RFMC may resubmit a revised FMP or FMP Amendment and revised proposed rule, where applicable.

VIII) Final Action. For approved actions or partially approved actions a notice of availability of the final FMP or FMP amendment is issued and final regulation (if any) is published.