

Regional Operating Agreements

Action: Each Region-Council develops a draft Regional Operating Agreement for Council review and signature.

IG Report

In January 2013, the Department of Commerce, Office of Inspector General (OIG), issued a final report (OIG-13-011-A) addressing opportunities for NMFS to continue streamlining the rulemaking process for fisheries management and improving the transparency and consistency in fisheries management, and included a recommendation that NMFS finalize regional operating agreements (ROAs) between NMFS regional offices and Councils.

The report identified that implementing ROAs, as identified by the 2005 draft Operational Guidelines, could help improve fishery management processes. The OIG cited the primary purpose of the ROA to provide a clear understanding of roles, responsibilities, and obligations between Councils and NMFS regional offices. The report recognized that each Region-Council pair had developed systems to assign and track tasks and responsibilities that were documented in different formats, but identified that documenting processes and expectations of those individual coordination systems should give NOAA a better opportunity to identify necessary tasks and ensure they are appropriately assigned and completed.

Action Plan

The Action Plan developed in response to the OIG's report committed to develop and approve ROAs that identify the roles and responsibilities of the Region and Council, communication protocols, and process for working together during the development of fishery management plans, amendments, and regulations, including discussion of how roles, responsibilities, and milestones will be set and communicated for specific actions.

The intent of the Action Plan response was to allow each Region-Council pair to continue using the existing systems and protocols that they had developed to coordinate their work, but to document those existing mechanisms to ensure that the various roles and responsibilities, communication protocols, and processes for working together were clearly understood and communicated. Where appropriate, the documentation should also explain how these systems operate in context of the open, public Council process.

Deadlines

The Action Plan committed NMFS to working with each Council to prepare draft ROAs for Council review and signature by December 31, 2013.

October 1, 2013: Regional Administrators provide an update to Emily Menashes and Alan Risenhoover on the status of ROAs, including current draft or final ROAs.

December 2, 2013: Regional Administrators submit final drafts or final ROAs to Emily Menashes and Alan Risenhoover. Final draft documents should be substantively complete, although signatures may be pending final review and approval by the Councils. If not yet signed, indicate when final signature is expected.

DRAFT

Operating Agreement

Among the

Pacific Fishery Management Council;

NOAA¹ Fisheries Service West Coast Regional Office;

NOAA Fisheries Service Northwest Fisheries Science Center;

NOAA Fisheries Service Southwest Fisheries Science Center;

NOAA Fisheries Service Office of Law Enforcement, Northwest; and

NOAA Fisheries Service Office of Law Enforcement, Southwest

September 2013

¹ "NOAA" is the National Oceanic and Atmospheric Administration. "NOAA Fisheries Service" and the "National Marine Fisheries Service (NMFS)" are **synonymous** names for the same agency. NMFS is the term used in this document.

Acronyms and Abbreviations

COP	Council Operating Procedure
Council	Pacific Fishery Management Council
ESA	Endangered Species Act
FMP	Fishery Management Plan
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service (also known as NOAA Fisheries)
NOAA	National Oceanic and Atmospheric Administration
NWFSC	NMFS' Northwest Fisheries Science Center
OLE	NMFS' Office of Law Enforcement
PSMFC	Pacific States Marine Fisheries Commission
SSC	Scientific and Statistical Committee
SWFSC	NMFS' Southwest Fisheries Science Center
Teams	Plan, Technical, and Management Teams and Workgroups
WCRO	NMFS' West Coast Regional Office

Overview

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

- NMFS' Northwest Fisheries Science Center (NWFSC),
- NMFS' Office of Law Enforcement, Northwest and Southwest Divisions (OLE),
- NMFS' Southwest Fisheries Science Center (SWFSC),
- NMFS' West Coast Regional Office (WCRO),
- NOAA's Office of General Counsel,² Northwest and Southwest Sections, and
- Pacific Fishery Management Council (Council).

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, NOAA General Counsel, NWFSC, OLE, SWFSC, and WCRO.

The preparation, review, approval, and implementation of fishery management actions and the implementing rules and regulations under the MSA comprise a complex process in which the Regional Fishery Management Councils and NMFS, acting on behalf of the Secretary of Commerce (Secretary), have distinct, yet sometimes overlapping, roles. In addition to the MSA, a variety of other applicable laws and Executive Orders have analytical and procedural requirements with which NMFS must comply, including the National Environmental Policy Act, the Endangered Species Act, the Marine Mammal Protection Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, the Information Quality Act, and the Administrative Procedure Act. To support the mutual objectives of the Council, NOAA

² Represents NMFS but is actually a part of NOAA.

General Counsel, NWFSC, OLE, SWFSC, and WCRO, this Agreement specifies responsibilities of each entity.

Roles and Responsibilities

Council

This section is to describe the role and responsibility obligations of the Council that are relevant to this agreement. In it will include such areas as statements of general fishery management obligation, operational practices leading to and at Council meetings, establishing and maintaining functioning advisory bodies that provide expert advice to the Council, existing communication protocols and inter-staff work planning and implementation relationship mechanisms with the other parties to this Agreement, and responsibilities associated with documenting an administrative record of the Council process.

NMFS

NMFS reviews the Council's fishery management recommendations for consistency with all statutory and regulatory requirements and Executive Orders. NMFS approves, disapproves, or partially approves the Council's 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 Plan, Technical, and Management Teams and Workgroups, and other informal collaboration, such as Project Teams.

NMFS Headquarters

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 rule 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.

WCRO

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

- Providing staff representation on appropriate Teams 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 WCRO/NMFS divisions as needed, including Habitat, Protected Resources, NEPA, OLE, and NOAA General Counsel staff.
- 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 NWFSC, OLE, SWFSC, WCRO, 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 an action, 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).
- Identifying the type of NEPA analysis expected to be undertaken (i.e., Categorical Exclusion, Environmental Assessment, and Environmental Impact Statement)
- Conducting Essential Fish Habitat consultations.
- Conducting consultations under the Endangered Species Act.
- Conducting regulatory economic analyses (e.g., Regulatory Flexibility Act).
- 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.

NWFSC and SWFSC

The NWFSC and SWFSC will provide staff and assistance to the Council during the development of fishery management actions, including representation on Teams and committees as needed. The NWFSC and SWFSC staff also review Council-developed documents supporting fishery management actions; provide advice, data, and modeling (e.g., cost-earnings model) to support economic analyses; and promote the use of the best available scientific information.

NWFSC and SWFSC staff on the Teams also collaborate with the Council staff to provide the necessary materials and/or analyses for meetings of the Council's SSC. NWFSC and SWFSC staff attend and/or make presentations to the SSC or Council, as appropriate and/or requested.

NOAA General Counsel, Northwest and Southwest Sections

NOAA General Counsel advises the Council and NMFS throughout the process of developing documentation and making and reviewing decisions, and provides legal advice to the WCRO Regional Administrator confirming legal sufficiency of documentation and processes. NOAA General Counsel provides legal support to the Council, the SSC, and other advisory panels of the Council, in coordination with NMFS. It is expected that a representative from NOAA General Counsel will be involved, as necessary, 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 agency decisions.

OLE, Northwest and Southwest Divisions

OLE staff will provide enforcement-related advice, as required, to the Council and its Teams and other entities, as appropriate. OLE staff may be assigned to these teams. If an OLE staff person is not on a Team, it will be the responsibility of the lead WCRO 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.

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 objectives.

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.

Pacific Fishery Management Council:

Executive Director

Date

NOAA Fisheries Service West Coast Regional Office:

Regional Administrator

Date

NOAA Fisheries Service Northwest Fisheries Science Center:

Science and Research Director

Date

NOAA Fisheries Service Southwest Fisheries Science Center:

Science and Research Director

Date

NOAA General Council, Northwest Section:

Section Chief

Date

NOAA General Council, Southwest Section:

Section Chief

Date

NOAA Fisheries Service Office of Law Enforcement, Northwest Division:

Special Agent in Charge

Date

NOAA Fisheries Service Office of Law Enforcement, Southwest Division:

Special Agent in Charge

Date

