

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;

NOAA Fisheries Service Office of Law Enforcement, Southwest;

NOAA General Counsel, Northwest Section; and

NOAA General Counsel, Southwest Section

November 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
GC	General Counsel
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
SOPP	Statement of Organization, Practices, and Procedures
SSC	Scientific and Statistical Committee
SWFSC	NMFS' Southwest Fisheries Science Center
Teams	Plan, Technical, and Management Teams and Workgroups
WCR	NMFS' West Coast Regional Office

Overview

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

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

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 and the Pacific Council 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 and dependent responsibilities of the Pacific Council, the NMFS WCR, NWFSC, SWFSC, NOAA General Counsel, and the NMFS OLE, this Agreement specifies responsibilities of each entity.

Roles and Responsibilities

² Represents NMFS but is actually a part of NOAA.

Pacific Council

The Pacific Council is responsible under the MSA for the preparation of FMPs, FMP amendments, and other related actions for species under its authority. The Pacific Council develops, analyzes the likely impacts of, and recommends management measures to NMFS that are the product of an open and transparent public process open to all interested in the fishery and consistent with all applicable laws and regulations. The Pacific Council is responsible for documenting its fishery management process and providing the justification and rationale for its recommendations. Pacific Council members must be informed of the potential impacts of the actions they are recommending by ensuring all documentation and analysis necessary to support fishery management actions are available prior to final action on Pacific Council recommendation.

An Open, Public, Transparent Decision-Making Process

The Pacific Council is responsible for conducting a properly noticed, open process in an accessible public forum that encourages public input throughout all developmental stages and at the time of final decision making, in accordance with the Pacific Council's SOPP and COP1. This is to include the preparation of advance Briefing Books with notice of situational decision making specifics scheduled for each particular Council meeting, together with informational material and public comment received in advance of publication deadlines. Pacific Council staff shall work with NMFS entities to insure to the extent possible that informational material produced by NMFS can be included in the advance Briefing Book. The Pacific Council is responsible for distribution of information about Council decisions to the public in a timely manner.

Pacific Council Advisory Bodies

The Pacific Council is responsible for appointing members to Advisory Bodies and conducting their meetings in accordance with COPs 2, 3, 4, 5, 6, 7, 8, and the SOPP document, including an SSC, Management Teams and Advisory Subpanels for each of the Pacific Council FMPs, a Habitat Committee, and Enforcement Consultants Committee, a Groundfish Allocation Committee, a Budget Committee and a Legislative Committee, and other permanent and ad-hoc committees. The Pacific Council staff is responsible for facilitating input of scientific, technical and policy analysis and advice from these Advisory Bodies to Pacific Council Members and the public in the form of written statements presented at Council meetings.

Preparation of an Administrative Record

The Pacific Council is responsible for documenting its fishery management process and providing the justification and rationale for its recommendations. The full record of each Council meeting is maintained at the Council office, and consists of the following:

1. The meeting notice and proposed agenda.
2. The approved minutes. The minutes summarize actual meeting proceedings, noting the time each agenda item was addressed and identifying relevant key documents. The agenda item summaries consist of a narrative on noteworthy elements of the gavel-to-gavel components of the Council meeting and summarize pertinent Council discussion for each Council Guidance, Discussion, or Action item, including detailed descriptions of rationale leading to a decision and discussion between an initial motion and the final vote.
3. Audio recordings of the testimony, presentations, and discussion occurring at the meeting. Recordings are labeled by agenda number and time to facilitate tape or CD-ROM review of a particular agenda item.
4. All documents produced for consideration at the Council meeting, including (1) pre-meeting advance briefing book materials, (2) pre-meeting supplemental briefing book documents, (3)

supplemental documents produced or received at the meeting, validated by a label assigned by the Council Secretariat and distributed to Council Members; (4) written public comments received at the Council meeting in accordance with agenda labeling requirements; and (5) electronic material or handout materials used in presentations to Council Members during the open session.

5. The Council Decision Summary Document. This document is distributed immediately after the meeting and contains very brief descriptions of Council decisions.

6. Draft or final decision documents finalized after the Council meeting such as Environmental Impact Statements or Environmental Assessments.

7. Pacific Council News. There are between two and four editions of the Pacific Council News produced each year. The Spring Edition covers March and April Council meetings; the Summer Edition covers the June Council meeting; the Fall Edition covers the September meeting; and the Winter Edition covers the November Council meeting. In some years the Summer Edition may be combined with the Spring Edition, and/or the Fall Edition Combined with the Winter Edition.

Inter-staff Workload Planning and Communication Protocols

It is recognized that workload for Pacific Council fishery management actions is a shared responsibility between the Pacific Council staff and the federal parties to this Agreement. During the meeting agenda and workload planning portion of each Council meeting, the parties shall strive to define the primary party responsible for major NEPA and other analytical documents the Council will rely on for decision-making and the Secretarial approval process. The Pacific Council is responsible for convening conference calls with the federal parties to the Agreement after each Council meeting to discuss workload follow-ups and next Council meeting preparations. Informal inter-staff “project teams” composed of representatives of the parties to this Agreement can be created to plan and execute the procedural and technical steps necessary for the regulatory process, and to collaborate on the supporting documents for Pacific Council actions, including the MSA documents (e.g., FMP, FMP amendment), the NEPA document (i.e., Categorical Exclusion, Environmental Assessment, Finding of No Significant Impact, or Environmental Impact Statement), information necessary for WCR to conduct ESA section 7 consultations, and documentation demonstrating compliance with all other relevant applicable laws and Executive Orders. (e.g., environmental assessments, environmental impact statements, FMP amendment, etc.).

Pacific Council staff will be responsible for authorizing the deeming of proposed implementing regulations for Pacific Council-developed actions to ensure that regulations are consistent with Pacific Council intent, while WCR staff will be responsible for writing draft implementing rules and regulations and conducting Paperwork Reduction Act or Information Quality Act analyses.

NMFS

NMFS reviews the Pacific Council’s fishery management recommendations for consistency with all statutory and regulatory requirements and Executive Orders. NMFS approves, disapproves, or partially approves the Pacific 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. In accordance with MSA §302(f)(3) and (4), NMFS is responsible for participating in the development of Pacific Council actions through attendance at Council meetings, meetings of established Advisory Bodies, specialized workgroups, project teams and workshops, and other informal collaboration, such as post-Council meeting conference calls to coordinate follow-ups.

NMFS HQ

NMFS Headquarters is responsible for:

- Deciding whether to concur with the Regional Administrator's decision regarding approval/disapproval/partial approval of Pacific 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.

WCR

WCR will assist the Pacific Council in the development of fishery management actions, by:

- Attending Pacific Council meetings with representation in the Regional Administrator Council Member seat, and with sufficient support staff to provide for documents and analysis necessary for Pacific Council decision-making.
- Ensuring staff representation on appointed seats for Advisory Bodies listed in the Pacific Council COPs, or participation in Advisory Bodies as necessary if not a member of the Advisory Body, to provide information and analysis on biological, technical, policy, administrative, and legal requirements and issues as appropriate.
- Ensuring active staff participation in specialized work groups, project teams or workshops leading to Pacific Council decision making, as well as on informal communication and collaboration efforts.
- Identifying a lead staff person in the Sustainable Fisheries Division to assist with coordinating other WCR/NOAA divisions as needed, including Habitat, Protected Resources, NEPA, OLE, and NOAA General Counsel.
- Identifying and responding to staff resource needs, requirements, and/or limitations associated with the development, review, approval, and/or implementation of an action.
- Coordinating any interactions as appropriate between the Pacific 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 Pacific Council actions and documentation within NWFSC, OLE, SWFSC, WCR, and NOAA General Counsel.
- Providing advice, guidance, and information on fishery management policy issues and requirements as appropriate, 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).
- Drafting proposed and final rules to implement approved measures, with the accompanying regulatory language, consistent with the Pacific Council's action and intent; providing such rules and regulations to Pacific Council staff in a timely manner to allow for the Pacific Council's regulatory deeming process.
- Ensuring that all applicable laws and executive orders are addressed (e.g., Paperwork Reduction Act, Information Quality Act) and integrated into the Pacific Council process as appropriate.
- In consultation with Pacific Council Staff, identifying the type of NEPA analysis expected to be undertaken to support the decision-making process (i.e., Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement).
- Taking the lead of the construction of NEPA documents beyond the capacity of Pacific Council resources, and providing them in the advance Briefing Book to Council meetings in which Pacific Council decision-making is scheduled.
- Conducting Essential Fish Habitat consultations, in a manner integrated with the Pacific Council process as appropriate.
- Conducting consultations under the Endangered Species Act, in a manner integrated with the Pacific Council process as appropriate.

- Conducting regulatory economic analyses (e.g., Regulatory Flexibility Act) and providing it to Pacific Council staff in a timely manner for including it in Briefing Book materials prior to meetings in which Pacific Council decision-making is scheduled.
- Responding to public comments received during rulemaking, in consultation with Pacific Council staff.
- Implementing and administering approved programs and program changes; working closely with OLE and NOAA General Counsel to enforce regulations and defend approved Pacific Council recommendations in litigation.
- Monitoring, projecting, and documenting fishing activity and catches and providing such information to the appropriate Pacific Council Advisory Body, taking appropriate in-season and/or post-season actions relative to annual catch limits and seasonal catch quotas.
- In consultation with, or as a result of, Pacific Council recommendations or discussion, develop and implement emergency actions, interim actions, and Secretarial FMPs/amendments that respond to new information or management/statutory requirements.
- Notification of the timing for formal transmittal of Pacific Council action and associated documentation for FMP amendments and other major actions of the Pacific Council.

NWFSC and SWFSC

The NWFSC and SWFSC staff will attend Pacific Council meetings as necessary and ensure staff representation on appointed seats for Advisory Bodies listed in the Pacific Council COPs, or participation in Advisory Bodies as necessary if not a member of the Advisory Body, to provide scientific information and analysis relative to the development of fishery management actions. The NWFSC and SWFSC staff will also contribute to and review Pacific Council-developed documents supporting fishery management actions; provide advice, data, modeling (e.g., ecosystem impacts models, stock assessments, cost-earnings modeling) and analysis that promotes the use of the best available scientific information. NWFSC and SWFSC will provide for stock assessments and STAR Panels as scheduled in the Pacific Council process.

NOAA General Counsel, Northwest and Southwest Sections

NOAA General Counsel will attend Pacific Council meetings and Advisory Bodies as appointed, to advise the Pacific Council throughout the process of developing documentation and making sequential and final decisions on fishery management matters. NOAA GC also provides legal advice to the WCR Regional Administrator confirming legal sufficiency of documentation and processes. WCR coordinates the interaction of NOAA General Counsel with the Pacific Council process and their Advisory Bodies. It is expected that a representative from NOAA GC 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 approved management actions and will consult with and involve with the Pacific Council and its staff in the process.

OLE, Northwest and Southwest Divisions

OLE staff will attend Pacific Council meetings and participate on Advisory Bodies as appointed, to provide enforcement-related advice to the Pacific Council, its various Advisory Bodies, and other entities, as appropriate. If an OLE staff person is not on an Advisory Body, it will be the responsibility of the lead WCR Sustainable Fisheries Division staff person to coordinate OLE input on Pacific 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 practical.

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.

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 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

NOAA General Counsel, Southwest Section

Section Chief

Date

NOAA General Counsel, Northwest Section

Section Chief

Date

DRAFT