

*Revised Draft*  
**Operating Agreement**

Among the

Pacific Fishery Management Council;

NOAA<sup>1</sup> 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

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

## Acronyms and Abbreviations

COP	Council Operating Procedure
EO 12866	Executive Order 12866 Regulatory Planning and Review
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
Pacific Council	Pacific Fishery Management Council
PSMFC	Pacific States Marine Fisheries Commission
RFA	Regulatory Flexibility Act
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 parties:

- Pacific Fishery Management Council (Pacific Council)
- National Marine Fisheries Service (NMFS') West Coast Regional Office (WCR),
- NMFS' Northwest Fisheries Science Center (NWFSC),
- NMFS' Southwest Fisheries Science Center (SWFSC),
- NOAA's Office of General Counsel,<sup>2</sup> 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 Magnuson-Stevens Act (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 (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act, the Regulatory Flexibility Act (RFA), the Paperwork Reduction Act, the Information Quality Act, Executive Order (EO) 12866, and the Administrative Procedure Act. To support the mutual and dependent responsibilities of the Pacific Council, the NMFS WCR, NWFSC, SWFSC, NOAA GC, and the NMFS OLE, this Agreement specifies responsibilities of each party to be implemented to the fullest extent that anticipated funding and staffing levels allow; anticipated funding is within the range of the recent decade. Should funding and staffing fall

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<sup>2</sup> Represents NMFS but is actually a part of NOAA.

to levels that affect the ability to meet expectations, the Pacific Council and the Federal Parties shall confer in an effort to adjust expectations and, if necessary, proceed to terminate this agreement (see “Life of Agreement” section below).

## **Roles and Responsibilities**

### **Pacific Council**

The Pacific Council is responsible under the MSA for the preparation of Fishery Management Plans (FMPs), FMP amendments, and other related actions for species under its authority that require conservation and management. 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 engaging 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. Typically, Pacific Council staff are the lead drafters of required analyses to support these recommendations (e.g., NEPA, MSA, RFA/EO 12866, etc.) (see “Inter-staff Workload and Communication Protocols” section below). 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 recommendations.

### ***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 Statement of Organization, Practices, and Procedures (SOPP) and Council Operating Procedure (COP) 1. This is to include the preparation of advance briefing books with notice of decision-making specifics scheduled for each particular Pacific Council meeting, together with informational material and public comment received in advance of publication deadlines. Pacific Council staff shall work with NMFS parties to ensure to the extent practicable that informational material produced by NMFS can be included in the advance briefing book. The Pacific Council is responsible for distribution of information about Pacific 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 a Scientific and Statistical Committee (SSC), Management Teams and Advisory Subpanels for each of the Pacific Council FMPs, a Habitat Committee, an Enforcement Consultants Committee, a Groundfish Allocation Committee, a Budget Committee, 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 Pacific Council meetings.

### ***Preparation of an Administrative Record***

As noted above, 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 Pacific Council meeting is maintained at the Pacific 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 Pacific Council meeting

and summarize pertinent Pacific Council discussion for each Pacific Council Guidance, Discussion, or Action item, including detailed descriptions of rationale leading to a decision and discussions between an initial motion and the final vote.

3. Audio recordings of the testimony, presentations, and discussions occurring at the meeting. Recordings are labeled by agenda number and time to facilitate electronic review of a particular agenda item.

4. All documents produced for consideration at the Pacific 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 Pacific Council Secretariat and distributed to Pacific Council Members; (4) written public comments received at the Pacific Council meeting in accordance with agenda labeling requirements; and (5) electronic material or handout materials used in presentations to Pacific Council Members during the open session.

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

6. Draft or final analytical documents, such as Environmental Impact Statements or Environmental Assessments as appropriate.

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 Pacific Council meetings; the Summer Edition covers the June Pacific Council meeting; the Fall Edition covers the September meeting; and the Winter Edition covers the November Pacific 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 Pacific Council meeting, the parties shall strive to define the primary party responsible for major NEPA, EO 12866, RFA, and other analytical documents the Pacific 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 Pacific Council meeting to discuss workload follow-ups and next Pacific 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 Pacific Council decision-making and regulatory processes, and to collaborate on the supporting documents for Pacific Council actions, including MSA documents (e.g., FMP, FMP amendment), NEPA documentation (e.g., Environmental Assessment, 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. In addition, the senior leadership of the Pacific Council, WCR, NWFS, and SWFS will meet periodically to discuss workload planning.

Pacific Council staff will be responsible for reviewing proposed implementing regulations for Pacific Council-developed actions, and for making a recommendation to the Executive Director (and if appropriate, the Pacific Council) that regulations are deemed consistent with Pacific Council intent before transmitting the deeming decision and associated materials to NMFS.

## **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 Pacific Council meetings, meetings of established Advisory Bodies, specialized workgroups, project teams and workshops, and other informal collaboration, such as post-Pacific Council meeting conference calls, to coordinate follow-up actions.

## **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 GC any issues elevated to Headquarters, including issues related to determinations of legal sufficiency.
- **Providing guidance on FMP approval processes and underlying regulatory requirements.**

## **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's Pacific Council Member seat, and with sufficient support staff to assist with 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. **In the absence of direct OLE staff input on a Pacific Council action, it will be the responsibility of the WCR to coordinate with OLE and ensure appropriate input occurs on Pacific Council actions.**
- 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, offices, and experts as needed, including Area Offices, the Protected Resources Division, OLE, NOAA GC, and NEPA and ESA experts.
- Identifying and responding to Pacific Council and WCR 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 GC as necessary.

- Providing advice, guidance, and information on fishery management policy issues and requirements as appropriate, including considerations of administrative costs and complexity, enforceability, timing of the development and implementation of an action, potential obstacles to the approvability of an action in advance of 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 in the construction of NEPA documents in response to limited Pacific Council resources, and providing these documents in the advance briefing book to Pacific 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 ESA, in a manner integrated with the Pacific Council process as appropriate.
- Assisting Pacific Council staff in developing analyses that will aid NMFS with its economic analysis of regulations (e.g., RFA and EO 12866). In most instances, Pacific Council staff are to develop preliminary analyses for Pacific Council decision-making that can be finalized by NMFS as part of the rulemaking process.
- Responding to public comments received during rulemaking, in consultation with Pacific Council staff as appropriate.
- Implementing and administering approved programs and program changes; working closely with OLE and NOAA GC to enforce regulations and defend approved Pacific Council recommendations in litigation.
- Monitoring, projecting, and documenting fishing activity and catches, providing such information to the appropriate Pacific Council Advisory Body, and 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 as appropriate.
- Notification to Pacific Council staff concerning 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; provide for 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, and; 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, and provide advice, data, modeling (e.g., ecosystem impacts models, stock assessments, cost-earnings modeling) and analyses that promote the use of the best available scientific information. NWFSC and SWFSC will provide support for stock assessments and STAR Panels as scheduled through the Pacific Council process.

**NOAA General Counsel, Northwest and Southwest Sections**

NOAA GC advises the Pacific Council and NMFS throughout the process of developing documentation, making and reviewing decisions, and provides legal advice to the WCR Regional Administrator confirming legal sufficiency of documentation and processes. NOAA GC staff will attend Pacific Council meetings, will make every effort to participate in Pacific Council Advisory Bodies to which they have agreed to be appointed, and will participate in meetings of other Advisory Bodies as needed. NOAA GC provides legal support to the Pacific Council, the SSC, and other Advisory Bodies of the Pacific Council, in coordination with NMFS. 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. NOAA GC is responsible for assisting the Department of Justice in defending agency decisions when they are challenged legally.

**OLE, Northwest and Southwest Divisions**

OLE staff will provide active staff representation and participation in support of Pacific Council meetings and Advisory Body meetings 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, OLE will coordinate with the WCR to ensure the WCR can provide appropriate 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 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.

**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