

JOINT NMFS/COUNCIL STAFF REPORT ON MAJOR FOCUS AREAS FOR REVISIONS TO THE REGIONAL OPERATING AGREEMENT

The Pacific Fishery Management Council (PFMC or Council), National Marine Fisheries Service (NMFS) West Coast Region (WCR), Office of General Counsel Northwest Section (GCNW), Office of General Counsel Southwest Section (GCSW), Office of Law Enforcement (OLE), Northwest Fishery Science Center (NWFSC), and Southwest Fishery Science Center (SWFSC) staff have been in discussions since late 2019 about revising the Regional Operating Agreement (ROA).

The ROA is a guide for how each Council/NMFS Region pair implements the Magnuson-Stevens Act (MSA) and other requirements throughout the fishery management process. The ROA confirms the mutual interests and describes the working relationships, including a clear understanding of roles, responsibilities, and obligations, between a NMFS Region and the Council, and may also include the corresponding NOAA General Counsel Section, NMFS Fisheries Science Centers, and OLE. As such, ROAs give NMFS and the Councils a platform to specify coordination mechanisms and roles and responsibilities in the fishery management process and identify necessary tasks and ensure they are appropriately assigned and completed. The first guiding principle of ROAs is that NMFS and the Councils are partners and should cooperate in working towards the common goal of managing fishery resources consistent with the MSA; specifically continuing efforts to rebuild fish stocks, achieve sustainable fisheries, promote safe seafood production and recreational opportunities, and maintain vibrant fishing communities.

The [existing ROA](#) for PFMC was signed in July 2017. [NMFS policy guidance](#) recommends that ROAs be reviewed at least every three to five years. The ROAs should be updated, as necessary and by approval of all signed parties to the ROA, in response to learned or improved best practices, changing management needs and conditions, or new statutory requirements.

Council and WCR staff have identified several topic areas that would be prudent to incorporate into or update in the ROA. We have included summary information below for the major topics under discussion. We also expect that there will be other, less substantive revisions to the ROA.

Best Scientific Information Available (BSIA)

The MSA and National Standard 2 (NS2) guidelines provide legislative and policy context for the scientific basis of fish stock status determinations and catch recommendations and specifications, but do not describe the specific steps involved. NMFS published a policy directive in 2019 providing recommendations on procedures for how BSIA determinations are made and documented in the context of stock status determinations and catch specifications ([NMFS Policy Directive 01-101-10](#)). Discussions on regional BSIA frameworks for each Fishery Management Plan (FMP) under the Council's purview are underway and we expect the ROA to incorporate these procedures by reference.

Council Member Financial Recusals

Since the last ROA was signed, NMFS published a [new rule](#) related to recusals for Council members. The Council received a [presentation on the rule at the November 2020 meeting](#). A NOAA policy on recusals is also forthcoming. We intend to update the ROA to incorporate recusal determinations into the GCNW and GCSW description of roles and responsibilities.

Improved Coordination between Council and West Coast Region Staff

We plan to update the ROA to reaffirm our commitment to regular workload planning discussions between Council staff and NMFS WCR and the Science Centers. These discussions are especially important so that we can provide the Council our perspectives on our ability to support various agenda items and their relative timing. We also intend to update the ROA to capture more formalized project planning to facilitate effective and efficient coordination and communication between Council staff and NMFS staff. The goal of project planning is to ensure early discussions on the necessary elements of the development of an action from Council initiation through implementation and agreement on timing and roles and responsibilities.

We are in discussion about the development of tools for staff to use to facilitate this planning, though we do not expect to explicitly include specific tools in the ROA. We expect to be able to use these tools to better communicate about the sufficiency of analyses produced throughout the Council process and also to ensure all necessary regulatory and implementation details are decided by Council final action. This will support efficient review by NMFS of Council actions as well as the rulemaking and implementation process. Preparation of substantially complete analyses for Council decision-making is also important to facilitate one of the seven guiding principles for ROAs, frontloading, which specifies that:

“To the extent possible, all Council and NMFS staff, and other NOAA offices as appropriate, with responsibility for reviewing fishery management actions should participate in the development of those actions to ensure their concerns are raised early enough in the process to inform the Councils’ decisions. This will allow issues to be addressed in a way that does not unduly delay or halt the review and approval process.”¹

Roles and Responsibilities

An additional area of the ROA we intend to clarify defines the primary roles and responsibilities for Council staff and for NMFS staff. In general, Council staff have the lead role in coordinating documentation supporting Council action to ensure compliance with applicable statutes. For Council actions that address NMFS priorities, NMFS may take the lead on analysis development to support Council action. Regardless of who is the lead on the development of analyses to support Council action, analyses in fulfillment of MSA, National Environmental Policy Act (NEPA), Executive Order (EO) 12866, etc. should be substantially complete prior to Council final action.

¹ [NOAA Policy Directive on ROAs](#)

Council Staff Role on Council Actions

Council staff, with the support of the management teams, technical teams, ad-hoc committees, etc., are the primary leads for the development of analyses for the purposes of MSA, NEPA, EO 12866, etc. The analyses developed to support Council final action should include, and be sufficient to satisfy the necessary MSA and NEPA documentation to complete any subsequent rulemaking process, consideration of effects of an action in light of reasonable alternatives that NEPA envisions.²

We will clarify Council staff's responsibility for ensuring Council priorities and direction are addressed by the advisory bodies, and the role management and technical teams may have in drafting analytical/decision documents used in routine management actions, FMP amendments, and regulatory amendments.

We will also update the section on preparation of an administrative record to reflect Council staff responsibilities for transmittal of Council actions and supporting documents to NMFS and consulting with NMFS on any questions of clarification/interpretation of Council actions under MSA 304(b)(3).

NMFS WCR Staff Role on Council Actions

NMFS WCR staff support the development of analyses, bearing the primary role of advising on technical, policy, administrative, and legal requirements and issues as well as being the primary coordinator with any other NOAA and NMFS groups that may be included in action development, such as GC, NEPA Coordinators, Permits & Monitoring, etc. NMFS is committing to assigning staff leads to Council actions as early as possible so that NMFS may support Council staff in the development of analytical documents and undertake the coordination necessary prior to final action so that once the Council makes a final recommendation, review of the action and any rulemaking and implementation can proceed efficiently. NMFS bears the ultimate responsibility for most legal requirements, such as NEPA, so works closely with Council staff through the development of NEPA documents.

NMFS WCR staff also provide advice, guidance, and information on fishery management policy issues and requirements, as requested, including considerations of administrative costs and complexity, potential approvability issues, enforceability concerns, timing of the development and implementation of the action under development, particularly with regard to the Secretarial review phase, and regulatory simplification (i.e., how to keep measures and regulations as simple and clear as possible). Additionally, NMFS staff are primarily responsible for completing the documentation for Council actions consistent with the Administrative Procedure Act (through rulemaking), the Endangered Species Act (through Section 7 consultations on fishery actions), the Paperwork Reduction Act (through approval for information collections), the Information Quality Act, the Coastal Zone Management Act, the Marine Mammal Protection Act, and the Regulatory Flexibility Act (RFA) (through promulgation of initial and final RFAs and development and

² [NOAA Policy Directive on NEPA and the Council Process](#)

dissemination of small entity compliance guides) as well as are responsible for issuing Exempted Fishing Permits and producing Essential Fish Habitat consultation pursuant to the MSA.

PFMC
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