

Categorizing Council Activities for Prioritization

Setting the stage: Time spent on different topics in recent years

As part of the Pacific Fishery Management Council (Pacific Council or Council) and Process Efficiencies discussion, staff evaluated the amount of meeting floor time devoted to different topics as presented in a staff paper from June 2023 ([Agenda Item C.2, Attachment 1](#)). Two figures at the end of this paper provide a high-level refresher of that analysis, with data updated through 2023.

Figure 1 shows the amount of floor time spent at Council meetings on agenda topics, which are the headings in the agendas. (The four fishery management plan [FMP] headings are grouped under FMP.) This does not reveal a clear trend in meeting length, or the length of time spent on individual topics, except that time spent on administrative topics increased. In this graph administrative items are subdivided into “core” activities and what going forward are considered under a new heading called “Cross FMP.” Figure 2 focuses on the administrative items subdivided into those two categories. Here an increasing trend is apparent for administrative items and especially the cross FMP items.

These results may seem somewhat counterintuitive given the sense that demands on Council time and resources have been increasing in recent years. Council meeting floor time may be an imperfect proxy for actual demand, because it does not reflect the time spent by Council members preparing for the topics or the work of advisory bodies and staff in support of Council deliberations. Furthermore, the increasing number of administrative items and associated time will equate to less work on FMPs. This will tend to occur within advisory bodies and on the Council floor, and this competition for limited time may negatively impact decision making on fishery management matters.

An approach to prioritizing issues and actions

After reflecting on the use of time and resources in recent years, the Committee of the Whole could develop and recommend guidelines to help the Council decide what topics to prioritize when setting its agendas. Staff suggest these three categories to organize such a prioritization:

- *Proposing*: Actions for which the Council has statutory authority under the Magnuson-Stevens Act (MSA).
- *Advising*: Actions stemming from other applicable law (or other Federal mandates) where the Council does not have statutory authority to propose measures, but such actions will substantially affect fisheries and fishery resources under one or more of its fishery management plans.
- *Commenting*: Policies and activities affecting the region in which Council-managed fisheries and resources occur (including related fishing communities) that the Council therefore has an interest in.

When considering specific issues or activities, these categories fall on a continuum from core statutory responsibilities to those where the Council is less engaged. Thus, the boundaries between these categories may not be precisely delineated.

Activities related to the basic functions of the Council, such as setting agendas, making appointments, and considering budgets, do not fall neatly within the descriptions of these three categories. But they are core activities and broadly speaking could be considered within the MSA's provisions establishing the Councils.

Below we characterize these categories, suggesting the kinds of issues and actions within them.

Council Statutory Authority to Propose

Fishery Management Councils are mentioned in various sections of the MSA, but §302 is devoted to their establishment, conduct, and function. Regarding the latter, in §302(h) the MSA directs Councils to:

- (1) for each fishery under its authority that requires conservation and management, prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments to each such plan that are necessary from time to time...
- (2) prepare comments on any application for foreign fishing...
- (3) conduct public hearings ... so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans...
- (4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary.
- (5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to [content of a fishery management plan] with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery...
- (6) develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process...
- (7) develop, in conjunction with the scientific and statistical committee, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes...
- (8) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

Implicit in this list is that the highest priority Council activity is the preparation and updating (through amendments) of FMPs. Other specific functions are enumerated, most of which relate to FMPs. The last paragraph ("conduct any other activities") is more open ended, allowing consideration of other sections of the MSA where Councils are mentioned. Section 303 describes required and discretionary provisions of FMPs, which fleshes out the scope of Councils' authority in relation to its FMPs (along with §303A on limited access privilege programs). Importantly, §303(c) gives Councils authority to propose regulations "the Council deems necessary and appropriate" for implementing FMPs and amendments or modifying such regulations. FMPs and related regulations are proposed by the Council and reviewed by the National Marine Fisheries Service (NMFS). But NMFS review is limited to determining whether the proposal is consistent with applicable law; NMFS cannot substitute its judgement for the Council's.¹ This construction

¹ Except that NMFS may prepare a "Secretarial FMP" or amendment, and implementing regulations, in circumstances where it determines the Council has failed to address a conservation and management problem or the disapproval or partial disapproval of a proposed FMP (§304(c)). NMFS must give the relevant Council the opportunity to comment on any such plan or amendment. Secretarial Amendment 1 to the Pacific Coast Groundfish FMP supplanted the Council's proposed Amendment 16-5 addressing overfished species rebuilding plans.

gives Councils substantial authority to develop policy and the regulations necessary to implement its policies.²

FMPs codify the policy framework for managing fisheries, implemented through regulations the Council may propose; this is the core function of Councils. FMPs must specify a variety of things including harvest limits and management measures to prevent overfishing and rebuild overfished stocks, criteria to define overfishing and overfished stocks, necessary data to be gathered, essential fish habitat, bycatch reporting and minimization measures, and allocation of fishing opportunity when necessary. This list is not exhaustive (and does not include discretionary provisions like closed areas and limited access programs) but suggests that the scope of Council authority when it comes to FMPs is capacious.

The Council spends most of its time on this core fishery management responsibility although a single agenda topic may encompass both FMP-related actions as described in the MSA and decision making outside the Council's direct statutory authority. (According to the analysis in the staff paper referenced above, in the past five years, the Council spent two-thirds of meeting floor time on agenda items associated with its four FMPs. But as noted, the proportion of time spent on core, statutorily mandated actions within these topics is likely less than this.)

Council Advice on Measures Stemming from Other Applicable Law

Outside its core function of developing FMPs, amendments, and related regulations, the Council has a strong interest in measures affecting fisheries managed under its FMPs but which the Council does not have the statutory authority to propose.

Two other conservation statutes are particularly salient: the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). Both these laws allow NMFS (or for birds under the ESA, the U.S. Fish and Wildlife Service) to implement measures to minimize the incidental take of relevant species. In some cases, Council engagement is reinforced because the MSA defines "fish" as all forms of marine life other than marine mammals and birds, allowing more expansive consideration of bycatch minimization.³ Furthermore, NMFS issued [Policy Directive 01-117](#), Integration of Endangered Species Act Section 7 with Magnuson-Stevens Act Processes. Council management of ocean salmon fisheries, where ESA-listed salmon stocks may be incidentally caught, reflects a high degree of Council engagement. The Council has also been directly involved in the development of mitigation measures for ESA listed Chinook salmon and short-tailed albatross take in groundfish fisheries and management of salmon fisheries to accommodate the dietary needs of Southern Resident Killer Whales. Most recently, as part of a settlement agreement, NMFS agreed to establish a take reduction team pursuant to the MMPA to consider mitigation measures to reduce humpback whale take in the sablefish pot gear fishery and more generally other fisheries that interact with relevant humpback whale stocks.⁴ The MMPA enumerates take reduction team membership including representatives from "appropriate Regional Fishery

² Although Councils, through their staff, may draft regulations for NMFS review, for the Pacific Council at least, it is more common for Council staff to defer to NMFS staff that has the requisite expertise in writing regulations to accomplish this task. Council staff then review the draft regulations to confirm they are consistent with Council intent.

³ The ESA uses the broader term "take" meaning to "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The MMPA also uses this term, similarly defined. In contrast, bycatch is generally confined to capture or incidental mortality resulting from direct interaction with fishing gear and operations.

⁴ A take reduction team is charged with developing a take reduction plan "designed to assist in the recovery or prevent the depletion of each strategic stock that interacts with Category I and II fisheries" (16 U.S.C. 1387(f)(1)). Strategic stocks include those marine mammal stocks listed, or likely to be listed, under the ESA; Category I and II fisheries have frequent or occasional incidental mortality/serious injury of marine mammals.

Management Councils.” NMFS has solicited input from the Council on the composition of this take reduction team.

In 2013 the Council adopted a Fishery Ecosystem Plan (FEP) and established the Ad Hoc Ecosystem Workgroup and Ecosystem Advisory Subpanel. This lies outside the responsibilities described in the MSA, although it notes “progress in integrating ecosystem considerations in fisheries management using the existing authorities provided under this Act” (§2(11)). The purpose of the FEP is similarly linked to existing authorities: “to enhance the Council’s species-specific management programs with more ecosystem science, broader ecosystem considerations, and management policies that coordinate Council management across its FMPs and the CCE [California Current Ecosystem].”

Various transboundary stocks are managed under Council FMPs. As such, management measures for domestic fisheries may emerge from bilateral or multilateral arrangements such as the Pacific Salmon Commission, the International Pacific Halibut Commission, the U.S.-Canada Pacific Whiting/Hake Agreement, the U.S.-Canada Albacore Treaty, and the Inter-American Tropical Tuna Commission. Less directly, the Western and Central Pacific Fisheries Commission develops measures that may indirectly affect Council-managed fisheries.⁵ However, in some cases NMFS implements binding measures adopted by these organizations using authorities outside the MSA. This is most common for highly migratory species (HMS) related actions where it uses its authority under the Tuna Conventions Act.⁶ Nonetheless, it usually consults with the Council on the action. The development of trip limits for Pacific bluefin tuna is a good example. While catch limits for HMS are largely determined through multilateral processes, the MSA does give Councils authority to recommend measures to address overfishing of these stocks (§304(i)). Likewise, the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773) gives NMFS the authority to implement management measures recommended by the International Pacific Halibut Commission but also provides the Council authority to propose various types of management measures.

The Council periodically takes an interest in the designation and administration of National Marine Sanctuaries off the West Coast. The National Marine Sanctuaries Act affords Councils the opportunity to determine the need for and propose fishing regulations for Federal waters in a proposed sanctuary (16 USC 1434(a)(5)). Working with the Office of National Marine Sanctuaries (ONMS), the Council also used its authority to propose measures to mitigate adverse impacts to essential fish habitat from fishing to designate no fishing areas in the Channel Islands National Marine Sanctuary.⁷ Recently the ONMS approached the Council about using its MSA authority to close coral restoration areas in the Monterey Bay National Marine Sanctuary to fishing.

Council Comments on Policies and Proposals with Regional Impacts

This outer tier of engagement covers activities where the Council’s role is principally confined to providing comments to other agencies or entities on actions indirectly affecting its core responsibilities. The line between this category and higher levels of engagement can be fuzzy when the Council has limited scope to directly influence a proposal but there is a lot of interest among

⁵ Its processes are spearheading the development of harvest strategies for North Pacific albacore and Pacific bluefin tuna, both of which are caught in Council managed fisheries. In 2022 the WCPFC adopted an electronic logbook requirement that will apply to West Coast vessels fishing for South Pacific albacore.

⁶ <https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/west-coast-highly-migratory-species-management-measures>

⁷ Such designations must be demonstrably related to EFH designated within an FMP. In this case fishing affecting bottom habitat for groundfish was limited as part of a broader process of designating groundfish EFH Conservation Areas. While the Sanctuary intended to close the entire water column, Council authority could not be used for this purpose because only benthic habitat was designated groundfish EFH. Separate authorities were used for this purpose.

stakeholders, or the proposal is anticipated to have substantial effects on Council managed fisheries.

Leasing areas in Federal waters for offshore wind energy development offers the most obvious example of this mismatch between Council interest and authority. Wind energy development is expected to affect fisheries, because areas where wind turbines are installed would be off limits to most, if not all, types of fishing. Leasing is overseen by the Bureau of Ocean Energy Management (BOEM) and the process falls outside the Council's statutory authority.⁸ This has not prevented the Council from monitoring the process and regularly commenting to BOEM (supported by its Ad Hoc Marine Planning Committee). Council comments have influenced how BOEM considers what areas to open up to leasing.

Wind energy development is one example of overlapping and potentially conflicting ocean uses that could be reconciled through marine spatial planning, an occasional interest of state and Federal administrations that has not come to fruition in any comprehensive way.⁹ Historically, the Council has taken an interest in such efforts. Although now moribund, if revived this would likely be a topic the Council would wish to engage in.

The Council takes a broader interest in activities that may affect habitat even if not designated EFH. This is principally carried out through the efforts of its Habitat Committee. The Habitat Committee occasionally drafts comment letters for Council consideration. Comments have been directed at a range of activities affecting marine and riverine habitats ranging from the development of aquaculture facilities to the relicensing of dams.

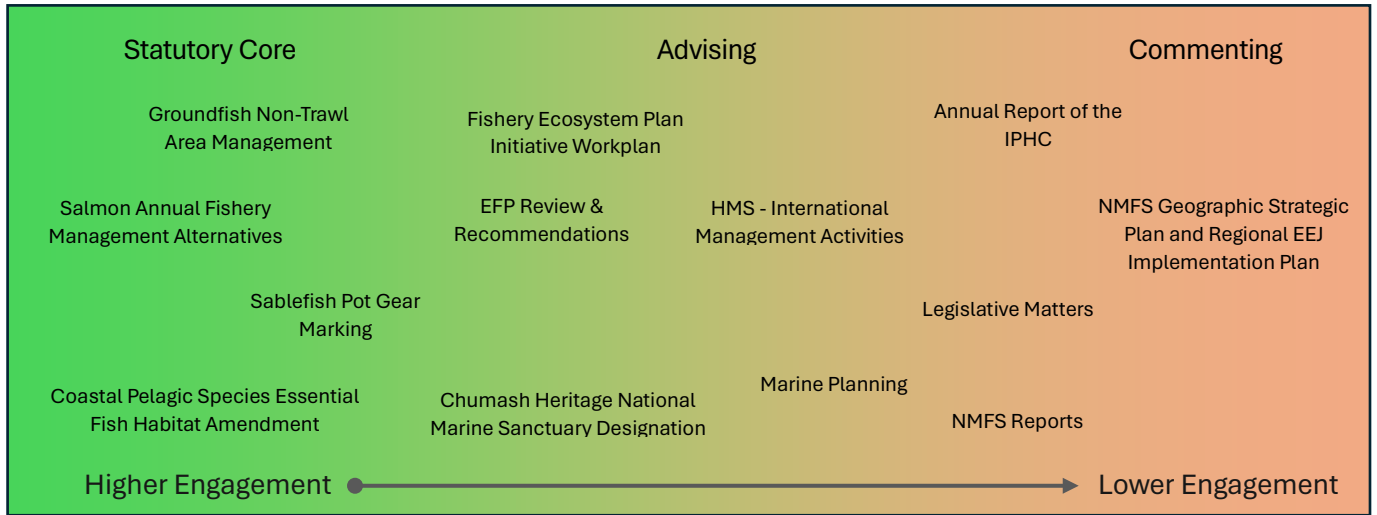
The Council is sometimes asked to comment on policies and proposals from NMFS, other Federal agencies, and Congress. Recently the Council has taken a keen interest in the development of NMFS's Equity and Environmental Justice Strategy, forming an ad hoc committee to work with NMFS on the matter.

⁸ Effects of facility installation, to the degree that it adversely affects Council-designated essential fish habit, would be something where the Council has statutory authority to "Comment on and make recommendations to the Secretary and any Federal or State agency concerning any activity authorized, funded, or undertaken... [or so proposed] ... that, in the view of the Council, may affect ... essential fish habitat ..." (MSA §305(b)(3)(A)). While leasing itself does not result in any such impacts, it presupposes development that may. The Council could also exercise this commenting authority in later stages when such development is being permitted.

⁹ Nearshore areas, where use conflicts are more intense, are subject to state coastal zone management programs, which entail spatial planning.

A framework for prioritizing Council activities

The following figure shows how the Council could prioritize issues and actions by showing various agenda topics.



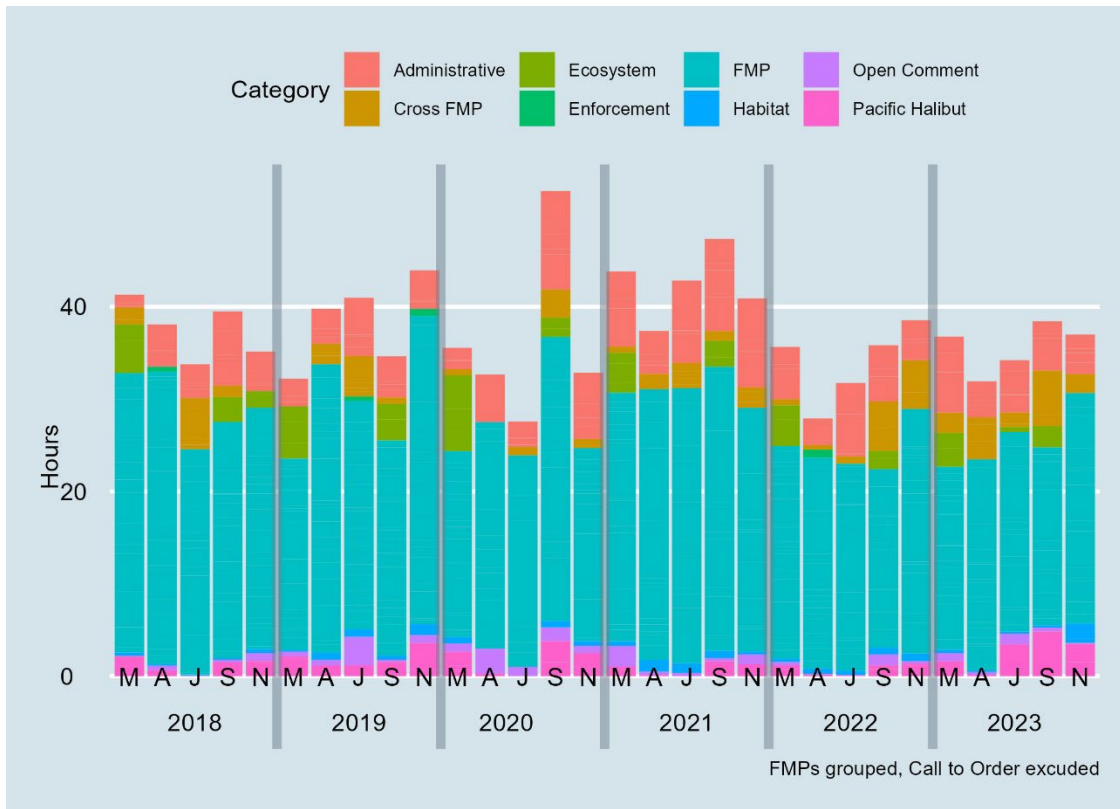


Figure 1. Duration of agenda topics at Council meetings, 2018-2023.

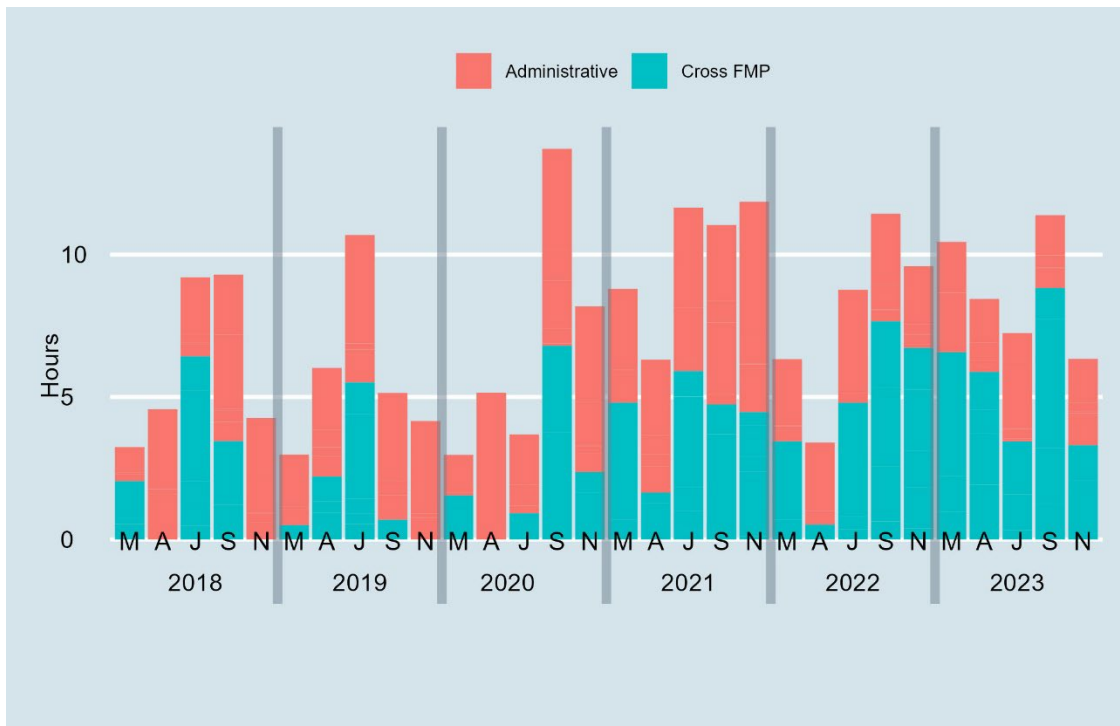


Figure 2. Time spent on administrative items according to "core" versus "cross-FMP" topics at Council meetings from 2018 through 2023.