

Operational Guidelines for the **Federal** Fishery Management Process

[DRAFT September, 2015]

Coakley, Jessica 6/12/2015 9:53 AM

Comment [1]: Federal should be included, so it's clear it's not the states or Commission process, or inland USFWS fisheries process. Alternatively you could title "Operational Guidelines for the Fishery Management Process under the Magnuson-Stevens Act". Either way, I suggest a more descriptive title.

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Comment [2]: I did a Flesch-Kincaid Readability Test on this document and it reads at the Grade Level 15.7. The reading ease score is 17.8 – something at 60-70 is considered appropriate for the public. Just something to think about if the overall goal is to have a document that is readable.

Operational Guidelines for the Federal Fishery Management Process
[September 2015]

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ATTACHMENTS:

- Appendix 1. General Terminology and Abbreviations
- Appendix 2. Description of the Fishery Management Process
- Appendix 3. Documentation
- Appendix 4. Additional Resources and Links

Operational Guidelines for the Fishery Management Process

I. Introduction

This document, “Operational Guidelines for the Fishery Management Process” (OG’s), provides guidance on the development, review, and implementation of federal fishery management plans (FMPs), amendments, and regulations. This guidance reflects and builds on the progress that the National Marine Fisheries Service (NMFS) and Councils have made, since implementation of the Fishery Conservation and Management Act (FCMA) in 1976, towards fostering a cooperative and accessible public process for managing our nation’s fisheries.¹

The Magnuson-Stevens Fishery Conservation and Management Act (MSA)² establishes the basis for federal management of United States marine fisheries and vests primary management responsibility with the Secretary of Commerce (Secretary). The Secretary has delegated this responsibility to the NMFS. Notably, the MSA management system is unique insofar as Congress has established eight regional fishery management councils with specific responsibilities for recommending FMPs and amendments and regulations to NMFS for implementation. FMPs and regulations must comply with the MSA and all other applicable law.

Councils are composed of federal, state, and territorial fishery management officials, participants in commercial and recreational fisheries, and other individuals with experience, scientific expertise, or training that give them knowledge about fishery conservation and management or commercial or recreational harvest. In addition, for the Pacific Council, there is a mandatory seat for a tribal representative. The Councils’ primary responsibility is to develop and recommend fishery management measures for any fishery under their jurisdiction that requires conservation and management.

The MSA mandates an open, public process for the development of fishery management measures and actions through the fisheries management council system. For fishery management actions developed under the MSA, NMFS’s authority to modify Council-recommended FMPs and FMP amendments is restricted: NMFS may only approve, disapprove, or partially approve a proposed FMP or FMP amendment recommended by the Council, and the sole basis for disapproval of any such recommendation is that it is not consistent with applicable law. NMFS may not modify regulations in a way that is inconsistent with an underlying FMP or amendment or other applicable law.³

It is this unique partnership between NMFS and the Councils that creates the need for these

¹ These guidelines supersede the 1997 Operational Guidelines and will completely replace them when accepted into NMFS’s Policy Directives System.

² The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended through 2006, is available at: http://www.nmfs.noaa.gov/sfa/magact/MSA_Amended_2007%20.pdf

³ An exception exists under section 305. If the Secretary finds that an emergency or overfishing exists, NMFS can promulgate emergency regulations. If those regulations would change an underlying FMP, they are treated as an amendment while the regulations are in effect.

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Comment [3]: New sentences sometimes have 1, 2, or 3 spaces after the period – suggest setting a fixed format. This example had three spaces.

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Operational Guidelines (OGs).⁴

II. Guidelines

A. Goals and Objectives

The overarching goals of the OGs are to:

- Promote and continually improve the quality of fishery management *decisions and documentation*; and
- Promote a timely, effective, and transparent *public process* for development and implementation of fishery management measures pursuant to the MSA.

Key objectives for achieving these goals include:

- Simplify and speed the flow of work: Promote efforts to streamline compliance with regulatory requirements, including working to ensure that relevant information and comment is provided early in the process and that unnecessary delays are eliminated.
- Increase transparency: Promote transparency and effectiveness of the decision making process by clearly explaining the Council and regulatory process, promoting the public’s accessibility to the process, fostering effective and constructive public input, and providing mechanisms for people to track the progress of different actions.
- Achieve appropriate standardization: Apply standardized practices where appropriate, while still recognizing regional variability, including continuing to seek ways to standardize compliance with other applicable laws (e.g., Endangered Species Act (ESA), National Environmental Policy Act (NEPA)).

To help achieve these goals and objectives, section II sets forth six guiding principles for the NMFS and Council partnership.

B. Guiding Principles

For Council-managed fisheries, the following principles guide actions taken to develop, review, and implement FMPs, amendments and regulations.

⁴ These Guidelines specifically address the NMFS/Council relationship in developing fishery management measures through the Council System. NMFS has also issued specific guidance pertaining to NMFS/Council roles as pertaining to NEPA and ESA compliance for fishery management actions. In 2013, NMFS issued a Policy Directive on “National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions under the Magnuson-Stevens Act,” that pertains to roles and responsibilities for NEPA compliance; and in 2015, a Policy Directive on “Integration of Endangered Species Act section 7 with Magnuson-Stevens Processes.” These Operational Guidelines address the NMFS/Council relationship on a broader, process-wide level.

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- NMFS and the Councils are Partners. NMFS and the Councils are partners and should cooperate in (1) working towards the common goal of managing fishery resources consistent with MSA; and (2) continuing efforts to rebuild fish stocks, achieve sustainable fisheries, promote safe seafood production, and maintain vibrant fishing communities.
- Roles and Responsibilities. To enhance transparency, NMFS and the Councils describe specific roles and responsibilities through operating agreements (i.e., both formal and informal). Each Council/Region pair develops its own system for working cooperatively to achieve the fishery management mission, and there may be variation in how tasks are assigned and completed for each pair.
- Frontloading. To the extent possible, 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.
- Fishery Management Decisions Must be Supported by the Facts and Analyses in the Record. All fishery management decisions must be supported by documentation that provides for the basis of a decision under the existing legal requirements. The respective decisions of the Councils and NMFS are sufficiently interrelated that they should be supported by the same record. Thus, collaborative efforts should be undertaken by Council and NMFS staff to cooperate in the development of the documentation that supports decisions.
- Coordination between NMFS Regions and Headquarters (HQ). NMFS Regions should ensure that NMFS HQ offices have the opportunity to consider and provide input to fishery management decisions at the earliest stages of development.⁵ Councils, as partners, should be aware of this step in planning timelines. NMFS HQ will track decisions as they progress and will be expected early in the process to advise the Regional Offices of any national policy concerns.
- Clear and Concise Information and Analytical Products. Documents to support decisions must be clearly written and easily understandable by decision makers, stakeholders, and the public. Clear, concise writing will facilitate good decision making, informed and meaningful public participation, development of a clear and complete record, and development of enforceable regulations.
- Promoting Meaningful Public Participation. NMFS and the Councils should promote early and active involvement from stakeholders and the public by using effective communication tools to highlight opportunities for participation in the process and providing information and materials to support informed and meaningful participation.

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Comment [4]: Bullets in this section say, "Council should", but in this case says "Regions must".

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Comment [5]: This should not be a guiding principle between NMFS and Council's – this is an operations issue between HQ and Regions. I don't think it belongs here. Have a section in the appendix that talks about how NMFS regions and HQ cooperate would be more appropriate.

⁵ These OGs do not specify a particular method regions must use to communicate with HQ. Some examples of methods could be including HQ participants on FMATs, or regular calls, briefings, or issues advisories.

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NMFS and the Councils work cooperatively to comply with these principles.

C. Regional Operating Agreements (ROAs)

The documentation of how the guiding principles are applied is specified in Regional Operating Agreements (ROAs) developed with each Council. The ROAs describe the planning tools, processes, products, roles, and responsibilities designed to maximize frontloading during each of the main rulemaking phases.⁶ A more detailed description of the ROAs and their contents are included in Appendix 2 to these OGs. 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.

Section III. Use and Applicability

A. Usage

This guidance pertains to fishery management actions developed pursuant to the MSA.

B. Appendices

The MSA is the basis for action taken to manage federal marine fisheries. In addition to the MSA, a variety of other applicable laws affect the process and timelines for developing and implementing FMPs. The attached appendices provide an overview of the fishery management process as well as general information about where additional details can be accessed at a Council/Region level. Specifically, the Appendices to this document provide:

- Definitions of key terms and acronyms (Appendix 1),
- A general description of the MSA process for development and implementation of fishery management actions (phases and timing: Appendix 2),
- A general description of other applicable laws that affect the MSA decision-making process (Appendix 2),
- A general description of roles and responsibilities with navigational tools to guide readers to council-specific information on this topic (Appendix 4)
- Describe Appendix 3 here. Records and Documentation

⁶ In addition, each Council's operational and administrative processes are described in Standard Operating Practices and Procedures (SOPPs), as required by Section 302(f)(6) of the MSA and implemented by 50 CFR 600.115. Approved SOPPs are published by each Council and are available upon request.

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Comment [6]: One of your guiding principles is coordination between NMFS Regions and HQ; that is not something each NMFS/Council pair can address in the ROA. It's a NMFS Region/HQ issue. These review requirements seem unnecessary as any ROA would meet applicable laws and requirements.

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Comment [7]: Need a lead sentence. Should not start a new paragraph with "In addition".

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