

Operational Guidelines for the Magnuson-Stevens Fishery
Conservation and Management Act Fishery Management
Process

September 30, 2015

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Operational Guidelines for the Magnuson-Stevens Fishery Conservation and Management Act Fishery Management Process

I. Introduction

This document, “Operational Guidelines for the Magnuson-Stevens Fishery Conservation and Management Act Fishery Management Process” (OGs), 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 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.³ NMFS may not modify regulations in a way that is inconsistent with an

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), 16 U.S.C. §§ 1801 *et seq.*, as amended through January 12, 2007, is available at: http://www.nmfs.noaa.gov/sfa/magact/MSA_Amended_2007%20.pdf

³ The MSA further provides that if NMFS fails to approve, disapprove, or partially approve a Council’s recommended FMP or FMP amendment within a specified timeframe, then the FMP or amendment shall take effect as if approved. 16 U.S.C. § 1854(a)(3).

underlying FMP or amendment or other applicable law.⁴

It is this unique partnership between the NMFS and the Councils that creates the need for these OGs.⁵

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), Marine Mammal Protection Act (MMPA)).

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

⁴ An exception exists under MSA 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. 16 U.S.C. § 1855(c).

⁵ 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.

B. Guiding Principles

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

- 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 the MSA; and (2) continuing efforts to rebuild fish stocks, achieve sustainable fisheries, promote safe seafood production and recreational opportunities, and maintain vibrant fishing communities.
- Roles and Responsibilities. To enhance transparency, NMFS and the Councils should describe specific roles and responsibilities through operating agreements (i.e. both formal and informal). Each Council/Region pair may develop 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, 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.
- Fishery Management Decisions Must be Supported by the Record. All fishery management decisions must be supported by a record that provides for the basis of a decision under the existing legal requirements and by analyses that comply with applicable law. 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.⁶ 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 based on the best scientific information available. Further, documents should be clearly written and as easily understandable as possible for decision makers, stakeholders, and the public. Clear, concise writing will facilitate good decision making, informed and

⁶ 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 Fishery Management Action Teams (FMATs), or regular calls, briefings, or issues advisories.

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.

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

C. Regional Operating Agreements (ROAs)

The documentation of how the guiding principles are applied, with the exception of the principle pertaining to coordination between regions and HQ, 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 phase of the fishery management process.⁷ A more detailed description of the ROAs and their contents are included in Appendix 2 to these OGs. Within 1 year of the effective date of these OGs, each Council/Region pair must review its ROA to ensure that it addresses the guiding principles. Subsequently, ROAs should be reviewed at least every 3-5 years thereafter. The Councils and NMFS should make the ROAs available to Council members, staff, and the public. 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

In addition to the MSA, a variety of other applicable laws affect the process and timelines for developing and implementing FMPs. To enhance transparency and foster public awareness, the attached appendices provide an overview of the fishery management process as well as general information about where key activities take place and 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)

⁷ A general description of the “phases” of the fishery management process is set forth in Appendix 2 C.2. Also, in addition to the information provided in the ROAs, 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 (16 U.S.C. § 1852(f)(6)) and implemented by 50 CFR 600.115. Approved SOPPs are available via Council websites and upon request.

- A general description of statutory roles and responsibilities. (Appendix 2)
- 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 authorities and requirements for rulemaking. (Appendix 2)
- A general description of approaches for documentation and information about administrative records. (Appendix 3)
- Links to other relevant sources of information and navigational tools. (Appendix 4).