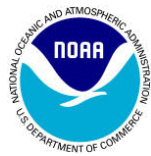


ESA/MSA INTEGRATION AGREEMENT

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL
NOAA FISHERIES SOUTHEAST REGIONAL OFFICE

Draft

~~May 14~~ August 3, 2015



Introduction

In January 2015, NMFS released a policy directive on Integration of Endangered Species Act (ESA) Section 7 with Magnuson-Stevens Act (MSA) processes. The directive implemented recommendations from the ESA Working Group which was convened by the Marine Fisheries Advisory Committee (MAFAC) and the Council Coordination Committee (CCC) to make recommendations on how to improve the involvement of regional management councils in the ESA section 7 consultation process. The directive provides guidance on development of an ESA/MSA Integration Agreement between a fishery management council and the regional office.

This draft ESA/MSA Integration Agreement (Agreement) is between the NOAA Fisheries Southeast Regional Office (SERO) and the South Atlantic Fishery Management Council (Council). The Agreement outlines procedures for Council involvement in each step of the formal consultation process, the role of SERO Protected Resources staff in the IPT process, expectations of SERO Protected Resources staff in communicating and informing the Council during Protected Resources Committee meetings, and communication standards between Council staff and SERO Protected Resources staff. ~~Additionally, the Agreement focuses on ESA requirements but will also include some MMPA issues that interact with the Council process.~~

Comment (JL1): I think we need to just decide. If we want this policy to also outline procedures specific to handling MMPA issues then we should just change this title to be MMPA/ESA/MSA integration.

Contents

Introduction.....	2
Council Involvement in Formal Consultations	3
A. Agreement of the procedure.....	3
B. Council Involvement During Consultation	4
Role of Protected Resources Staff in the IPT Process and Amendment Development	5
A. SERO PR Staff Involvement in IPTs.....	5
Protected Resources Staff Involvement at Committee/Council meetings	6
A. Continue Existing Agreement to Update Council on PR-related Issues at each Council Meeting ...	6
B. SERO PR Point of Contact.....	6

Council Involvement in Formal Consultations

A. Agreement of the procedure

As soon as a need for a formal ~~or informal~~ consultation is identified, SERO Sustainable Fisheries Division (SFD) will notify the Council by the next Council meeting. ~~The Council will be notified whether Notification will occur if the need to (re)initiate is consultation is initiated~~ due to a potential Council action (i.e., selection of a preferred alternative) or due to ~~external factors, changes external to the Council process,~~ including but not limited to, changes in species listing or critical habitat, new scientific information on a listed species ~~or interactions with the fishery,~~ or exceedance of the incidental take statement (ITS). ~~At the meeting the Council is notified that formal consultation needs to be (re)initiated, the Council will discuss, either At the Council meeting~~ during the Protected Resources Committee and/or at the full Council session, ~~the Council will discuss,~~ with input from SERO and NOAA General Counsel, the level of involvement (I, II, or III) ~~that the Council~~ requests for the consultation. ~~Once consultation has been initiated, SERO Protected Resources Division (PR) and SFD,~~ and the Council will ~~also agree on a tentative tentatively agree on a~~ timeline for delivery of draft RPAs/RMPMSs and draft biological opinion for review if the level of involvement includes review of these draft documents. It is acknowledged that timing may need to be adjusted during the process, and that SERO PR will notify the Council as soon as possible ~~when there are any changes to the timeline. Additionally, the Agreement focuses on ESA requirements but will also include some MMPA issues that interact with the Council process.~~

1) Involvement I

- The Council receives status updates on the consultation at each Council meeting during Protected Resources Committee or during Full Council session (status quo).
- ~~Delays in completion of the Biological Opinion are not expected to result from PRD's preparation and delivery of these updates as a result of the updates. These updates will be used to assess consultation progress and to make adjustments to tentative timeline agreements as necessary.~~

2) Involvement II

- The Council receives status updates on the consultation at each Council meeting during Protected Resources Committee or during Full Council session (same as Involvement I).
- SERO PRD may request information from the Council for effects analysis, ~~which may result in delays of the Biological Opinion depending on the level of analysis requested.~~
- ~~Agreement on expected timeline and delivery of draft RPAs/RPMs.~~
- The Council will review draft RPAs/RPMs and provide input.
- ~~Agreement on expected timeline and delivery of draft RPAs/RPMs.~~
- ~~Review of RPAs/RPMs could delay the delivery of the Biological Opinion by up to three months (time between the Council meetings).~~

3) Involvement III

- The Council receives status updates on the consultation at each Council meeting during Protected Resources Committee or during Full Council session (same as Involvement I).
- SERO PRD may request information from the Council for effects analysis ~~which may result in delays of the Biological Opinion depending on the level of analysis requested (same as Involvement II).~~

Comment [JL2]: Per heading his section is focusing only on informal; assume this is leftover from last draft

Comment [JL3]: Our preference is to leave who (i.e. SFD, PRD, or Roy) informs the Council flexible.

Comment [AH4]: Does this mean officially initiated or once the Council has been notified that a consultation is required. Request for consultation is very different than initiation of consultation.

Comment [AH5]: Would this be better stated as "agree on what work products should be provided (i.e., drafts RPAs/RPMS, draft biological opinion) and when"

Comment [AH6]: Would this be during the next Council meeting or actually mean sending an email/memo to Council and staff indicating a change?

Comment [JL7]: So is it envisioned that we would do this outside of a council meeting?

Comment [JL8]: This doesn't fit with "Consultation Involvement in Formal Consultations" heading or agreement of the procedure subheading. MMPA issues appear to be included under the IPT process section. And then the Protected Resources Staff Involvement at Committee/Council meetings

Comment [JL9]: Is this what was meant?

Comment [AH10]: Just a suggestion

Comment [JL11]: Or Council staff? Really, I can see why we may request information on the proposed action from the Council, but I am unclear what we would ask the Council for effects analysis... Information from SERO SFD or our SEFSC is most common and can/does result in delays sometimes of our final product

Comment [JL12]: We (SERO) may do this regardless of the involvement level requested by the Council.

Comment [AH13]: Seems like we'd need/want to have an agreement on when draft RPAs/RPMS are going to be provided to the Council before they can review them.

Comment [AH14]: Just a suggestion

Comment [AH15]: Just a suggestion

- Agreement on expected timeline and delivery of draft RPAs/RPMs (same as Involvement II).
- The Council will review draft RPAs/RPMs and provide input (same as Involvement II).
- ~~Agreement on expected timeline and delivery of draft RPAs/RPMs.~~
- Review of RPAs/RPMs should not delay the delivery of the Biological Opinion.
- The Council and Scientific and Statistical Committee (SSC) will review a draft biological opinion and provide input. The SSC meets twice per year (although the SSC can meet through webinar outside of their regular schedule) to review science related to management issues. The review by the SSC review would result in a significant additional delay of the biological opinion due to SSC meeting scheduling. Additional delays may also occur and because of the time it takes needed for: (1) the Council and SSC to review the biological opinion and provide recommendations, (2) and SERO to respond to Council any recommendations, and/or (3) could may require significant revision to the analyses in the biological opinion.
- Agreement on expected timeline and delivery of draft biological opinion.

Comment [JL16]: If the Council is going to look at whole biop, would we still have this step? Pros and Cons?

Comment [AH17]: Just a suggestion

Comment [AH18]: Below we indicate that the entire draft BiOp would be shared with the Council, the would include any draft RPAs/RPMs. Given that, do we need to indicate that we would share them here? As written, this implies that first we would share draft RPAs/RPMs with the Council and then at some later time we would share the entire BiOp with them (presumably with the draft RPAs/RPMs). Is that the intention? If not, this needs to be re-worded to make the intention more clear.

Comment [AH19]: Just a suggestion

Comment [JL20]: If the Council is going to look at whole biop, would we still have this step? Pros and Cons?

Comment [JL21]: Why is this different from under II?

Comment [AH22]: Is the intention to have SSC review a draft BiOp each time? NMFS policy directive indicates we should be sharing t

B. Council Involvement During Consultation

1) Status updates [All levels]

The Council receives status updates on the consultation at each Council meeting during Protected Resources Committee or during Full Council session. The updates should include but are not limited to: current progress of analysis and biological opinion; expected timeline; and possible issues that will need to be addressed; more?

2) Information from the Council for Effects Analysis [Levels II and III]

Following initiation of a consultation, and while SERO SFD is compiling data and information for use in the analysis, SERO SFD may request information from the Council about fishing practices, landings, and other information about the fishery, which will utilize the knowledge and expertise of Council members. SERO SFD can present the request to the Council prior to an upcoming Protected Resources Committee or Full Council Session, or contact staff outside of a Council meeting. Sufficient time is necessary for Council members and Council staff to review the request and gather information to provide. Additional information may be provided by Council members and Council staff to SERO PR following the Council meeting.

Comment [JL23]: May be best to leave this open as it could be SF or PRD

Comment [AH24]: This is a nice option and could be a good resource, but we generally ask our SEFSC and SF for this information. Particularly, if our requests would have to be reviewed during a Council meeting, it would likely be easier to just use those other resources that can be accessed at any time.

3) Council Review of Draft RPAs/RPMs [Levels II and III]

The Council and SERO will agree on a timeline for delivery of the draft RPAs/RPMs for Council review. When available, SERO PRD will present draft RPAs or RPMs under consideration during Protected Resources Committee and/or Full Council session and allow input from Council members. The draft RPAs/RPMs should be provided for the briefing book to allow time for Council members to review and prepare input. The briefing book deadline is generally three weeks prior to the Council meeting. If draft RPAs/RPMs undergo multiple revisions, the draft RPAs/RPMs can be presented at subsequent Council meetings.

The Council or Council staff may also request that Council staff be provided draft RPAs/RPMs for internal review.

Comment [JL25]: Is this intended outside of Councils meetings?

4) Council/SSC Review of Draft Biological Opinion [Level III]

The Council and SERO will agree on a tentative timeline for delivery of the draft biological opinion for SSC and Council review. When available and cleared by NOAA GC, SERO PR will provide a draft biological opinion for review by the Council and/or the SSC. The Council may convene a special meeting of the SSC (in-person or webinar) to review the draft biological opinion, or the SSC may review the draft biological opinion at a regularly scheduled SSC meeting. The draft biological opinion is due two weeks prior to the SSC meeting to allow adequate review of the materials, methods, and conclusions. At the subsequent Council meeting, the Council will review the SSC recommendations and also provide comments and input. In addition to discussion at the Council meeting, the Council recommendations will be provided to SERO PR in a report. SERO PR will provide responses to all Council recommendations in a memorandum to the Council. When not workload limited, the memorandum will be provided at the subsequent Council meeting.

Role of Protected Resources Staff in the IPT Process and Amendment Development

A. SERO PR Staff Involvement in IPTs

Currently, SERO PR staff are included on interdisciplinary planning teams (IPTs) that are assembled for each amendment. Direct involvement of PR staff in IPT calls and writing responsibilities for amendments depends on the level of potential effects of the Council actions on protected species. For some Council actions, PR staff involvement will be minimal. Involvement at the IPT level could prevent the need for consultation at a later step. When Council alternatives and decisions could affect protected species, PR staff will continue to be actively involved in the IPT and amendment process, including but not limited to:

- Provide input on the potential impact of alternatives on protected resources in early stages of development¹ of the alternatives, specifically if an alternative will trigger a formal consultation and any resulting timing considerations;
- Evaluate timing for analysis of potential alternatives to be compliant with ESA and MMPA by the first IPT call, and provide analysis as soon as possible. If an alternative is not viable, the IPT will need to notify the Council at the subsequent meeting to avoid further work on an alternative that will be removed.
- PR staff may be assigned to analysis and writing assignments for an amendment document. IPT leads will provide expected timelines and deadlines for writing

¹ "Early stage" will depend on the expected timeline and prioritization of the amendment for the Council, but in general the early stage would mean the first and second IPT meetings after the Council has directed staff to start work on an amendment.

Comment [AH26]: Per my comment below, consider changing this to: "...SSC and Council review. The agreed upon timeline should ensure the document and any supporting materials are provided with adequate time for SSC review prior to their meeting."

Comment [AH27]: Wouldn't this be accounted for when developing the tentative timeline discussed in the first sentence. I can envision scenarios where the SSC might prefer more time than 2 weeks to review. I suggest incorporating this point into that sentence.

Comment [AH28]: Something missing? Is this just an artifact? Perhaps a heading?

Comment [AH29]: Like Jenny's point, I think what we mean here is that the need for formal consultation may be avoided later.

Since FMP development/amendments are federal actions in all most all cases some sort of consultation will be required.

Comment [JL30]: I Although I know that has always been a goal with front-loading, I feel like this sets unrealistic expectations; with fisheries that's pretty unlikely..I recommend striking this.

Comment [AH31]: I think we might want to say

Comment [AH32]: I don't understand what this means. As written, it sounds like PR will be expected to alert the IPT if we think a formal consultation will be required (which I get), but it also sounds like we are supposed to alert the IPT if this alternative would have any resulting timing considerations (which I don't get).

Comment [AH33]: This is confusing too. What do you mean by "evaluate time for analysis of potential alternatives..."? Do you mean establish a time table for when we thin

Comment [AH34]: Often times the first IPT call is close to the development of Actions and Alternatives stage (pre-scoping). Given our workload it's unrealistic for us to evaluate all the potential actions/alts being considered,

Comment [JL35]: By first call seems somewhat of a set up for failure as its likely there will not be sufficient information to do this

Comment [AH36]: What does this mean? Under the ESA, the only thing that isn't viable is an action that would jeopardize the continued existence of a spp. or destroy/adversely modify CH. Those

assignments. In most cases, analysis and writing assignments are due within 3-4 months of the IPT call. If PR staff assigned to analysis/writing cannot meet a deadline, the IPT leads must be notified as soon as possible. If PR staff are unable to complete analysis and writing assignments, other IPT members will be assigned to complete the sections in order to meet timeline expectations for an amendment.

- Provide input on ways that effects on protected species could be minimized
- Others?

Protected Resources Staff Involvement at Committee/Council meetings

A. Continue Existing Agreement to Update Council on PR-related Issues at each Council Meeting

Currently, SERO PR staff provides a briefing book document for each Council meeting with the status of ~~for~~ all ~~PRD~~ ESA and MMPA-related actions issues in the South Atlantic that may affect South Atlantic fisheries management and/or require action by the Council. Briefings may include, but are not limited to, ~~including updates on~~ Section 7 consultations, proposed regulations, recovery plans, status reviews, stock assessments, and take reduction team/plan developments. ~~Additionally, SERO PRD staff will also provide presentations on one or more of the recent and upcoming these actions at the request of SERO PRD or the Council, depending on the level of detail needed to keep the Council informed that may affect South Atlantic fisheries and/or require action by the Council.~~

Comment [JL37]: This is something we have been doing already

B. SERO PR and Council Staff Point of Contact

Currently, SERO PR staff Jennifer Lee serves as the Council Liaison and Chip Collier serves as SAFMC staff lead for Protected Resources Committee. The Liaison and staff lead provides a Point of Contact for emerging protected resources issues.

Comment [JL38]: Seems like the agreement should specify that SERO PRD and the Council maintain a POC for emerging pr issues rather than list who they are in this document and their responsibilities to aid implementation of this policy etc. Having this information posted on the Council website and requiring that it be kept up to date would be helpful I think.