

# ESA/MSA INTEGRATION AGREEMENT

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL  
NOAA FISHERIES SOUTHEAST REGIONAL OFFICE

## Draft

May 14, 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.

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## 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. Notification will occur if the consultation is initiated due to a potential Council action (i.e., selection of a preferred alternative) or due to 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 exceedance of the incidental take statement (ITS). 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. SERO Protected Resources Division (PR) and SFD and the Council will also agree on a tentative timeline for delivery of draft RPAs/RMPS 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.

#### 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).

#### 2) Involvement II

- The Council receives status updates on the consultation at each Council meeting during Protected Resources Committee or during Full Council session.
- SERO PRD may request information from the Council for effects analysis.
- The Council will review draft RPAs/RPMs and provide input.
- Agreement on expected timeline and delivery of draft RPAs/RPMs.

#### 3) Involvement III

- The Council receives status updates on the consultation at each Council meeting during Protected Resources Committee or during Full Council session.
- SERO PRD may request information from the Council for effects analysis.
- The Council will review draft RPAs/RPMs and provide input.
- Agreement on expected timeline and delivery of draft RPAs/RPMs.
- The Council and Scientific and Statistical Committee (SSC) will review a draft biological opinion and provide input.
- Agreement on expected timeline and delivery of draft biological opinion.

### 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; 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.

### 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 PR will present draft RPAs or RPMs under consideration during Protected Resources Committee 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.

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

The Council and SERO will agree on a 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 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 memo to the Council 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 alternatives in early stages of development<sup>1</sup> 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 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.
- 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 for all issues in the South Atlantic, including Section 7 consultations, proposed regulations, recovery plans, stock assessments, status of completed RPMs for recent biological opinions, and other protected resources issues. Additionally, SERO PR staff will provide presentations on recent and upcoming actions that may affect South Atlantic fisheries and/or require action by the Council.

### B. SERO PR 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.

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<sup>1</sup> “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.