

OPERATING AGREEMENT

Between the
South Atlantic Fishery Management Council,
NOAA Fisheries Service Southeast Regional Office
and
NOAA Fisheries Service Southeast Fisheries Science Center,



December 2013

This Agreement outlines the roles and responsibilities of the South Atlantic Fishery Management Council (Council), NOAA Fisheries Service Southeast Regional Office (SERO), NOAA Fisheries Service Southeast Fisheries Science Center (SEFSC), and NOAA General Counsel, Southeast Region (GCSE), related to preparing documentation for fishery conservation and management actions in the South Atlantic region. However, NOAA General Counsel, Southeast Region is not a signatory to this agreement.

STATEMENT OF PURPOSE

The purpose of this Agreement is to confirm the mutual interests of the Council, SERO, SEFSC, and GCSE in the need for and principles associated with the wise conservation and management of the Nation's fisheries, and to establish the roles, responsibilities, and commitments of the parties to that end.

BACKGROUND

NOAA's National Marine Fisheries Service (NMFS) distributed draft operational guidelines for developing and implementing fishery management actions (Operational Guidelines) to Office Directors, Regional Administrators, and Regional Fishery Management Councils (Councils) in August 2005 (currently being updated). The purpose of the Operational Guidelines is to provide a model process for better integrating the agency's multiple statutory mandates to address the following specific needs:

- More clearly define missions, authorities, roles, and responsibilities;
- Assure adequacy of decision documents;
- Reconcile statutory timelines;
- Eliminate unnecessary delays and unpredictable outcomes;
- Increase accountability; and
- Utilize standardized practices.

The Operational Guidelines provide a general description of the model process, which relies heavily on the concepts of cooperation, shared responsibility, and frontloading of review among the Councils, NMFS Regional Offices, NMFS Science Centers, NMFS Headquarters, NOAA General Counsel, and the NOAA National Environmental Policy Act Coordinator. However, they require NMFS' Regional Offices and the Councils delineate in Regional Operating Agreements region-specific agency and Council roles, responsibilities, and obligations related to developing fishery management decision documents using a frontloading approach. The relationship between NMFS' Headquarters and Regional Offices is to be addressed separately through a Communication Protocol.

Generally, the purpose of Regional Operating Agreements is to specify how frontloading procedures will be used to ensure the processes and documentation associated with

fishery management proposals are legally adequate, timely, and provide a rational basis for decisionmaking. For that reason, the Operational Guidelines encourage Regional Offices to address in their Operating Agreements the roles and obligations of all responsible/contributing parties, including the Science Centers and General Counsel, to the extent possible.

This Operating Agreement describes processes, products, roles, and responsibilities designed to maximize frontloading during each of the four main rulemaking phases described in the Operational Guidelines: I) Planning and scoping; II) Document preparation; III) Council final action; and IV) Secretarial review and implementation. The intended effect of the described protocol is to promote early planning, cooperation, and open communication in developing fishery management documentation, with the objective of streamlining the review and approval process and, ultimately, improving fishery management decisionmaking. The Regional Operating Agreement is not intended to limit or prevent staff from agreeing upon alternative processes on a case-specific basis in response to specific management needs or concerns. Additionally, it is considered a “living document,” which will change over time in response to lessons learned, and to changing management needs and conditions.

ACRONYMS AND ABBREVIATIONS

AM	Accountability Measure
ACCSP	Atlantic Coastal Cooperative Statistics Program
ACL	Annual Catch Limit
ALS	Accumulated Landings System
APA	Administrative Procedure Act
ARA	Assistant Regional Administrator
BiOp	Biological Opinion
CE	Categorical Exclusion
Council	South Atlantic Fishery Management Council
CZMA	Coastal Zone Management Act
EA	Environmental Assessment
EPA	Environmental Protection Agency
F/HC	NMFS Office of Habitat Conservation
F/PR	NMFS Office of Protected Resources
F/SF	NMFS Office of Sustainable Fisheries
FY	Fiscal Year
DEIS	Draft Environmental Impact Statement
DQA	Data Quality Act
EFH	Essential Fish Habitat
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
FLS	Fisheries Logbook System
FMP	Fishery Management Plan
GCF	General Counsel for Fisheries
GCSE	General Counsel, Southeast Region

DRAFT – NOT FOR DISTRIBUTION

HC	SERO Habitat Conservation Division
IPT	Interdisciplinary Plan Team (defined in the Operational Guidelines as the Fishery Management Action Team, or FMAT)
MARMAP	Marine Resources Monitoring, Assessment, and Prediction
MRIP	Marine Recreational Information Program
MRFSS	Marine Recreational Fisheries Statistics Survey
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
OMB	Office of Management and Budget
PPI	NOAA Office of Program Planning and Integration
PR	SERO Protected Resources Division
RA	Regional Administrator
RFA	Regulatory Flexibility Act
RID	Regulatory Information Data
RIN	Regulation Identifier Number
SEAMAP	Southeast Area Monitoring and Assessment Program
SEDAR	Southeast Data, Assessment, and Review
SEFSC	Southeast Fisheries Science Center
SERO	Southeast Regional Office
SF	SERO Sustainable Fisheries Division
TIP	Trip Interview Program

**STATEMENT OF RESPONSIBILITIES
PHASE I: PLANNING AND SCOPING**

1. ANNUAL WORKLOAD

(a) Process

The South Atlantic Council, NMFS’ SERO, and the SEFSC will identify and prioritize fishery management needs and actions for each fiscal year using a collaborative planning process. This process will take the form of operational meetings/conferences/webinars to occur as needed throughout each fiscal year following Council meetings or other pertinent events (i.e. stock assessments). Meeting logistics will be determined based on necessary/required management actions and budgetary constraints. FY stock assessment schedule and priorities will be defined by the SEDAR Steering Committee.

(b) Products/Deliverables

DOCUMENT	DESCRIPTION	LEAD DRAFTER	CONTRIBUTORS/ REVIEWERS
Council “Follow Up” Document	Summarize and prioritize the CY workload agreed upon; provide sufficient flexibility to accommodate unanticipated needs/issues that are likely to arise throughout the year.	Council Staff	Council Members SERO SEFSC
Council “Follow Up” Document	Track key components of the FMP, Amendment and other actions (e.g., status of current actions, schedule of pending actions) throughout the CY.	Council Staff	SERO SEFSC

(c) Roles/Responsibilities

Council

Staff and Members

- Organize, staff, and participate in operational meetings depending on required management actions
- Assume lead in drafting and revising Council Follow Up Document after each Council meeting

SERO

- Organize, staff, and participate in operational meetings depending on required management actions
- Review and comment on Council Follow Up Document after each Council meeting

SEFSC

- Participate in operational meetings
- Participate in defining stock assessment schedules/priorities through the SEDAR Steering Committee
- Review and comment on Council Follow Up Document after each Council meeting

2. INDIVIDUAL FISHERY MANAGEMENT PROPOSALS/ACTIONS

(a) Process

The South Atlantic Council, NMFS’ SERO, the SEFSC, and NOAA GCSE will collaborate through IPTs in planning and defining the scope of individual fishery management actions.

(b) Products/Deliverables

DOCUMENT	DESCRIPTION	LEAD DRAFTER	CONTRIBUTORS/ REVIEWERS
Follow-Up Document	Describe regulatory proposals/actions, request staff support, and communicate expectations related to role of IPT members (IPT Protocol; Attachment 1).	Council Staff	SERO SEFSC
Decision Document	Describe problem/objective, proposed action/alternatives, data/analytical requirements, tentative implementation schedule and outstanding questions/issues.	SERO and Council IPT Leads	Council Staff SERO SEFSC IPT
Notice of Intent/Scoping Meetings	<i>Federal Register</i> notices that meet applicable NEPA and MSA.	SERO	IPT GCSE Council Staff
Other Scoping Meeting Notices	<i>Federal Register</i> notices that meet applicable NEPA and MSA.	Council Staff	

DOCUMENT	DESCRIPTION	LEAD DRAFTER	CONTRIBUTORS/ REVIEWERS
Scoping Document	Preliminary draft document describing problems/objectives, proposed action/initial alternatives, and key issues/concerns; intended to provide background information for scoping meetings.	IPT Leads	Council Members/ Staff SERO SEFSC IPT
Scoping Summary Report (if applicable)	Report summarizing comments and alternatives.	Council Staff	IPT SERO SEFSC
Options Paper (optional)	Preliminary draft document describing problems/objectives, proposed action/initial alternatives, key issues/concerns, and preliminary analyses; intended to inform/solicit Council input on how to proceed in developing public hearing draft and associated analyses.	IPT	Council Staff SERO SEFSC

(c) Roles/Responsibilities

Council

Staff

- Identify staff from appropriate disciplines who will serve on IPT; designate co-team lead
- **Draft** *Federal Register* notices (if applicable)
- Conduct scoping meetings (if applicable)
- Present IPT advice/recommendations to Council
- Prepare Scoping Summary report and communicate scoping comments to Council (if applicable)
- Review IPT products/deliverables

Members

- Identify need for management proposals/actions and preliminary range(s) of alternatives
- Review IPT products/deliverables

SERO

- Identify staff from appropriate disciplines who will serve on IPT; designate co-team lead
- Draft *Federal Register* notices to meet NEPA requirements (if applicable)
- Review Scoping Summary report (if applicable)
- Review IPT products/deliverables

SEFSC

- Identify staff from appropriate disciplines who will serve on IPT
- Review IPT products/deliverables

GCSE

- Identify staff member who will serve on IPT in advisory capacity
- Review *Federal Register* notices (if applicable)
- Review Scoping Summary report (if applicable)
- Review IPT products/deliverables

IPT

- Review IPT protocol outlined in Attachment 1
- Advise Council and SERO on: purpose and need statement (problems/objectives); type of NEPA analysis (e.g., CE, EA, EIS); initial range of alternatives; needed documentation/analyses associated with all applicable laws
- Propose implementation schedule/timeline that takes into account all relevant timing requirements (e.g., NEPA, APA, ESA)
- Propose data, analytical, and writing assignments
- Identify key reviewers of draft and final documentation within Council, SERO, SEFSC, and NMFS' HQ
- Draft Scoping and Options Papers (if applicable)
- Review scoping comments (if applicable)

PHASE II: DOCUMENT PREPARATION

1. DATA & ANALYSES

(a) Process

The South Atlantic Council, NMFS’ SERO, the SEFSC, and NOAA GCSE will collaborate through IPTs in identifying, synthesizing, reviewing, and analyzing data needed to support fishery management proposals/actions.

(b) Products/Deliverables

DOCUMENT	DESCRIPTION	LEAD DRAFTER/ANALYST	CONTRIBUTORS/ REVIEWERS
Data Plan (optional)	Plan outlining data/analytical needs, deliverables, and review schedule.	IPT	Council Staff SERO
Data Memo(s)	Describe data and analyses, or analytical support, needed from SEFSC; specify schedule.	SERO/ Council Staff	IPT
Statistical Analyses (if applicable)	Statistical analyses IPT needs to draft documentation supporting preliminary Council action.	TBD by need	TBD by need

(c) Roles/Responsibilities

Council

Staff

- **Draft/Review data request** memos to SEFSC **(if applicable)**
- Provide IPT with statistical analyses (as needed)

SERO

- Collect and maintain permit data for use in tracking fishery participation and evaluating the effects of fishery management proposals/actions
- Assume responsibility for quality of permit and other (e.g., law enforcement) data provided by SERO to the IPT
- Draft memo(s) requesting additional data and statistical analyses from SEFSC **(if applicable)**

- Ensure data used by IPT meet DQA requirements (Quality Control Standards; Attachment 2)
- Provide IPT with statistical analyses (as needed)

SEFSC

- Assume responsibility for quality of data (ALS, FLS, TIP, SEAMAP, ACCSP, MARMAP, MRFSS, etc.) provided by SEFSC to the IPT
- Update (as needed) data provided to the IPT during the document preparation process
- Provide analytical assistance (e.g., models/programs/staff support) to SERO and Council staff analyzing routine management proposals/actions (e.g., bag limit, size limit adjustments)
- Review analyses conducted by SERO and Council staff for routine management proposals/actions (e.g., bag limit, size limit adjustments)
- Provide IPT with statistical analyses for non-routine proposals/actions (as needed)

IPT

- Identify data and analytical needs (Data Plan, optional)
- Conduct statistical analyses (as needed, appropriate)

2. DRAFT DOCUMENTATION SUPPORTING PRELIMINARY COUNCIL ACTION

(a) Process

The South Atlantic Council, NMFS’ SERO, the SEFSC, and NOAA GCSE will collaborate through IPTs in drafting and reviewing documentation needed to support fishery management proposals/action. All parties will ensure draft documentation is sufficient for preliminary action prior to Council selection of preferred alternative(s), and approval of public hearing draft/DEIS (if applicable).

(b) Products/Deliverables

DOCUMENT	DESCRIPTION	LEAD DRAFTER	CONTRIBUTORS/ REVIEWERS
Draft FMP/ Amendment and Analyses	Public hearing draft with required analyses (e.g., NEPA, MSA, RFA/E.O. 12866, etc.).	IPT	Council Staff SERO SEFSC GCSE IPT

DOCUMENT	DESCRIPTION	LEAD DRAFTER	CONTRIBUTORS/ REVIEWERS
Preliminary ESA Consultation Documentation (optional)	Memo from SF ARA to RA through PR ARA stating recommendation regarding need to initiate/reinitiate Section 7 consultation.	SERO	SERO SEFSC
	Draft Biological Assessment, which describes preliminary conclusions about the probable effects of proposed action/alternatives on ESA-listed species, based on existing data/analyses.	SERO	SERO SEFSC IPT
	Section 7 Consultation Assessment memo from the PR ARA to the SF ARA, which summarizes preliminary conclusions expected to form the basis of a subsequent BiOp based on existing data/analyses; intended to facilitate meaningful discussion about the probable effects of a proposed action/alternatives on ESA-listed species and critical habitat, as well as mitigation measures.	SERO	SERO SEFSC GCSE
Preliminary EFH Consultation Documentation (optional)	Memo from SF ARA to HC ARA requesting EFH consultation.	SERO	
	EFH Consultation Assessment memo from the HC ARA to the SF ARA, which summarizes preliminary conclusions about the effects of the proposed action/alternatives on EFH based on available data/analyses, and probable conservation recommendations (if appropriate).	SERO	SERO SEFSC? GCSE?

(c) Roles/Responsibilities

Council

Staff

- Coordinate and review work of IPT
- Ensure draft documentation reflects Council discussion/administrative record
- Ensure review by Council staff in key responsibilities
- Advise Council of IPT issues prior to selection of preferred alternative

Members

- Identify preferred alternative(s), if any, based on draft documentation/analyses

SERO

- Draft initial ESA and EFH consultation memos (optional)
- Assume lead in drafting Biological Assessment
- Coordinate and review work of IPT
- Ensure review by SERO and GCSE staff in key responsibilities, and by Headquarter staff (F/SF, F/PR, F/HC, PPI) as needed/appropriate
- Frontload ESA and EFH consultation information to the extent practicable
- Ensure draft documentation/analyses are consistent with legal mandates, using the Quality Control Standards provided in Attachment 2

SEFSC

- Review SERO findings in initial ESA and EFH consultation memos as consistent with best available information
- Ensure review by SEFSC staff of all appropriate disciplines and key responsibilities
- Ensure draft documentation/analyses and any preliminary ESA/EFH consultation information is based on best available scientific information
- Advise Council of any scientific/technical issues prior to selection of preferred alternative

GCSE

- Ensure review by GCSE staff in key responsibilities, and by Headquarters staff (GCF), as appropriate
- Ensure draft documentation/analyses are legally sufficient and provide a rational basis for decisionmaking
- Advise Council of any legal issues prior to selecting preferred alternative

IPT

- Draft, review, and revise supporting documentation/analyses, following IPT protocol outlined in Attachment 1

3. PROCESS REQUIREMENTS

(a) Process

The South Atlantic Council and NMFS’ SERO will collaborate in ensuring compliance with the process requirements of the MSA, NEPA, APA, and other applicable laws (Quality Control Standards; Attachment 2).

(b) Products/Deliverables

DOCUMENT	DESCRIPTION	LEAD DRAFTER	CONTRIBUTORS/ REVIEWERS
Notice of Public Hearings (if applicable)	<i>Federal Register</i> notice that meets applicable MSA requirements.	Council Staff	
Council Bulletins/Newsletters (optional)	Bulletins and/or newsletters advising public of the availability of draft documentation and public hearing logistics (if applicable).	Council Staff	
DEIS filing/transmittal package (if applicable)	Letters/memos requesting EPA notice the availability of the DEIS and soliciting comments on the draft documentation.	SERO	GCSE
RID Form (if applicable)	Form required to acquire a RIN for a proposed rule.	SERO	GCSE
E.O. 12866 Listing Document (if applicable)	Document requesting OMB concurrence on significance determination; must be transmitted no more than six months before Council submits proposals/actions for Secretarial review.	SERO	GCSE
Public Hearing Summary Report (if applicable)	Report summarizing comments received during public hearings.	Council Staff	IPT SERO SEFSC GCSE

(c) Roles/Responsibilities

Council

Staff

- Advise public of the availability of draft documentation and public hearing logistics through *Federal Register* notices and Council bulletins/newsletters
- Conduct public hearings and summarize/distribute public comments to the IPT and Council

SERO

- Prepare and transmit DEIS filing/transmittal package
- Review Public Hearing Summary Report (if applicable)
- Collect and distribute to the IPT comments received on the DEIS (if applicable)
- Prepare and transmit RID form and Listing Document (if applicable)

SEFSC

- Review Public Hearing Summary Report (if applicable)

GCSE

- Review listing document, RID form, and DEIS Transmittal Package (if applicable)
- Review Public Hearing Summary Report (if applicable)

4. FINAL DOCUMENTATION SUPPORTING FINAL COUNCIL ACTION

(a) Process

The South Atlantic Council, NMFS’ SERO, the SEFSC, and NOAA GCSE will collaborate through IPTs in revising and finalizing documentation needed to support fishery management proposals/action. All parties will ensure final documentation is complete and sufficient prior to final Council action.

(b) Products/Deliverables

DOCUMENT	DESCRIPTION	LEAD DRAFTER	CONTRIBUTORS/ REVIEWERS
Preliminary Final FMP/Amendment and Analyses	Preliminary Final FMP/Amendment with required analyses (e.g., NEPA, MSA, RFA/E.O. 12866, etc.).	IPT	Council Staff SERO SEFSC GCSE IPT

ESA Consultation Documentation	Final Biological Assessment.	Council Staff	SERO SEFSC IPT
EFH Consultation Documentation (optional)	Memo from the HC ARA to the SF ARA confirming preliminary assessment and response to Council action on EFH conservation recommendations (if appropriate).	SERO	SERO SEFSC GCSE

(c) Roles/Responsibilities

Council

Staff

- Coordinate and review work of IPT
- Ensure review by Council staff in key responsibilities
- Ensure “final” documentation reflects Council discussion/administrative record, and addresses/responds to review comments

SERO

- Coordinate and review work of IPT
- Ensure review by SERO and GCSE staff in key responsibilities, and by Headquarter staff (F/SF, F/PR, F/HC, PPI) as needed/appropriate
- Ensure “final” documentation/analyses are consistent with legal mandates/administrative record, using the Quality Control Standards provided in Attachment 2, and address/respond to review comments, including EPA and public comments on the DEIS (if applicable)
- Elevate unresolved policy issues as needed, assuring appropriate coordination between HQ and regional offices and ensuring consistent interpretation and application of national policies
- Confirm preliminary ESA and EFH consultation findings to the extent practicable

SEFSC

- Ensure review by SEFSC staff of all appropriate disciplines and in key responsibilities
- Ensure “final” documentation/analyses are based on best available scientific information

GCSE

- Ensure review by GCSE staff in key responsibilities, and by Headquarters staff (GCF), as appropriate

- Ensure “final” documentation/analyses are legally sufficient, provide a rational basis for decisionmaking, and comply with all applicable legal requirements

IPT

- Revise and finalize FMP/Amendment and supporting documentation/analyses, following the IPT protocol outlined in Attachment 1

PHASES III & IV: COUNCIL FINAL ACTION & SECRETARIAL REVIEW

(a) Process

The South Atlantic Council will review all documentation and supporting analyses before voting to submit fishery management proposals/actions for Secretarial review and agency action. **The Council will authorize the Chairman to deem that the final document and the proposed rule are necessary and appropriate for the actions being taken.** NMFS’ SERO will initiate Secretarial review of the Council’s proposals, and will review supporting documentation and analyses for consistency with applicable law.

(b) Products/Deliverables

DOCUMENT	DESCRIPTION	LEAD DRAFTER	CONTRIBUTORS/ REVIEWERS
Final FMP/Amendment and Analyses	Final FMP/Amendment with required analyses (e.g., NEPA, MSA, RFA/E.O. 12866, etc.).	IPT	Council Staff SERO SEFSC GCSE
Issues Advisories	Memos advising HQ of pending proposals/actions.	SERO	GCSE
Proposed Rule (if applicable)	Rule proposing Council action(s).	SERO	Council Staff GCSE
Final Rule (if applicable)	Rule implementing Council action(s).	SERO	GCSE
Secretarial Review and Approval Packages	Regulatory packages required to complete the Secretarial review and approval processes (e.g., decision/info/transmittal memos, attorney work products, DQA memo, ESA and EFH consultation memos, SEFSC certification memo(s),	SERO	GCSE

DOCUMENT	DESCRIPTION	LEAD DRAFTER	CONTRIBUTORS/ REVIEWERS
	CZMA letters, etc.).		

(c) Roles/Responsibilities

Council

Staff

- Advise Council of outstanding/unresolved IPT issues prior to final action
- Review proposed rule
- Prepare and transmit Council recommendation to SERO for Secretarial review

Members

- Ensure text of FMP/Amendment reflects Council’s rationale
- Vote to submit (or not) the Council proposals/actions for Secretarial review based on final documentation/analyses and taking into account any outstanding IPT concerns
- Give the Chairman authority to deem that the final document and the proposed rule are necessary and appropriate

SERO

- Advise Council of any agency concerns prior to final action
- Draft issues advisories
- Draft proposed rule
- Review proposed rule (if applicable)
- Draft final rule (if applicable)
- Prepare Secretarial review and decision packages, using regional office checklists provided at <http://home.nmfs.noaa.gov/sf/regstream/Checklists/Checklists.htm>
- Declare transmit date

SEFSC

- Advise Council of any science issues prior to final action
- Draft certification memo(s) (as needed, appropriate)

GCSE

- Advise Council and SERO regarding the legal sufficiency of documentation and process prior to Council final action
- Review proposed and final rule for consistency with Council proposals/actions (if applicable)
- Draft attorney work product(s) (e.g., Certification of Attorney Review, Federalism and Takings Assessments, etc.)

