Regional Operating Agreement

To Develop and Implement Fishery Management Actions

Western Pacific Fishery Regional Management Council
NMFS Pacific Islands Regional Office
NMFS Pacific Islands Fisheries Science Center

Final May 12, 2016

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Abbreviations

AP	Advisory Panel
Council	Western Pacific Fishery Management Council
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FEP	Fishery Ecosystem Plan
OGC	NOAA Office of General Counsel
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
MMPA	Marine Mammal Protection Act
MUS	Management Unit Species
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
OLE	NOAA Office of Law Enforcement
PIFSC	Pacific Islands Fisheries Science Center
PIRO	Pacific Islands Regional Office
ROA	Regional Operating Agreement
SSC	Scientific and Statistical Committee
WPFMC	Western Pacific Fishery Management Council

Background

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) establishes a partnership between the National Marine Fisheries Service (NMFS) and the regional fishery management councils for the management of fisheries in the U.S. exclusive economic zone (EEZ). To facilitate this partnership, NMFS issued Operational Guidelines for the MSFCMA Process, which describe the procedures and actions NMFS and regional fishery management Councils must undertake to implement fishery conservation and management measures and regulations for the Nation's fisheries[1]. Additionally, each region developed regional operating agreements (ROAs) specific to its region's management needs and relationship to facilitate the MSFCMA process. This ROA is consistent with the 2015 NMFS operational guidelines.

This ROA is between the Western Pacific Fishery Management Council (Council), NMFS Pacific Islands Regional Office (PIRO) and NMFS Pacific Islands Fisheries Science Center (PIFSC), though it may necessarily contain references to other NOAA line offices, such as the NOAA Office of General Counsel (NOAA OGC). This ROA documents the specific roles and responsibilities in developing, approving, and implementing fishery management actions under the MSFCMA. An additional objective of the ROA is to set forth procedures and review processes to ensure that NMFS and the Council adequately analyze proposed management actions. The development of management alternatives and preliminary impact analyses of the alternatives should be as early in the management action development process as necessary to ensure consistent and informed decision making by the Council and NMFS (frontloading). The ROA functions within the general parameters of the 2015 Operational Guidelines. NMFS and the Council may alter or update the ROA if NMFS revises the Operational Guidelines.

As parties to this ROA, the Council Executive Director, NMFS Regional Administrator, and NMFS Science Center Director and their staffs agree to engage in good faith and communication to accomplish the goals of this agreement, to minimize adverse impacts to the mission of the Council or NMFS, and to ensure that neither the Council nor NMFS are surprised by actions of the other. In addition to the formal aspects of this ROA, frequent communication among key Council and NMFS staff are encouraged to accomplish these goals.

This ROA will apply to all new proposed actions, and may apply to ongoing actions depending upon their stage of development relative to the ROA. Council and NMFS staff will meet between one to three years to assess the effectiveness of the ROA and review components of the ROA for any necessary revisions. This ROA does not limit or prevent staff from agreeing upon alternative processes on a case-by-case basis in response to specific issues or needs.

Roles and responsibilities

The Council is responsible under the MSFCMA to recommend and prepare Fishery Ecosystem Plans (FEPs), FEP amendments, and other related actions for species under its management authority, including regulations it deems necessary or appropriate for implementing such actions.

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[1] Operational Guidelines for the Magnuson-Stevens Fishery Conservation and Management Act Fishery Management Process. National Marine Fisheries Service Instructions 01-101-03. September 30, 2015. Available from http://www.nmfs.noaa.gov/sfa/laws_policies/operational_guidelines/index.html.

The Council uses best scientific information available to develop and analyze the potential impacts of management measures, and recommends these measures to NMFS, consistent with the MSFCMA and other applicable laws. The Council must document the management development process and provide the justification and rationale for its recommendations. The Council process is the avenue for public involvement during the development of fishery management actions. Additional specific Council (or Council staff) responsibilities include the following:

1. The Council works with NMFS, NOAA Office of Law Enforcement (OLE), NOAA OGC, state agencies, and consults with other entities (U.S. Coast Guard, U.S. State Department, U.S. Fish and Wildlife Service, Secretariat of the Pacific Community Fisheries Division, Western and Central Pacific Fisheries Commission, Inter-American Tropical Tuna Commission, Forum Fisheries Agency, Pacific Fishery Management Council, and North Pacific Fishery Management Council, and others) to develop effective management measures.
2. To obtain scientific, technical and policy advice, the Council establishes committees and other groups, such as the Scientific and Statistical Committee (SSC), Protected Species Advisory Committee, Marine Planning and Climate Change Committee, Regional Ecosystem Advisory Committees, Social Science Planning Committee, Advisory Panels, and Plan Teams. These groups provide recommendations to the Council for consideration and final Council approval.
3. Council staff is responsible for the development of the various analyses and documentation necessary to support Council decision-making, and the preparation of proposed regulations in accordance with Section 304(b)(1) of the MSFCMA.
4. Council staff, in coordination with NMFS staff, is responsible for ensuring the Council's agency[2] review package contains adequate analyses for NMFS to initiate review of the proposed action for consistency with all applicable laws.
5. Coordinate with NMFS staff on fishery management public and media engagement before the event.

The NMFS PIRO, which implements and administers federal fisheries management, assists the Council in the development of fishery management actions through collaboration. This collaboration may include participation in development or review of early documentation of fishery management issues, including discussion papers, dependent on priorities and available resources. For FEP amendments and rulemaking, the NMFS PIRO participation will include the following:

1. Providing staff representation on, or presentations to, appropriate committees and working groups, to advise on technical, policy, administrative, and rulemaking requirements and issues.
2. Identifying a lead staff person in the Sustainable Fisheries Division to assist with coordinating other NMFS programs as needed in support of fishery management actions, including Habitat Conservation, Protected Resources, NEPA, Observer Program, PIFSC, OLE, International Fisheries, and NOAA OGC.

[2] Agency review package supports the preparation of the Department of Commerce Secretarial Review transmittal package

3. Identifying and managing staff resource needs, requirements, and/or limitations associated with the development, review, approval, and/or implementation of an action, including assisting in the development, drafting, and compilation of analyses to support management actions.
4. Coordinating the review of Council actions and documentation within line offices, including through NMFS headquarters offices.
5. Providing advice, guidance, and information on fishery management policy issues and requirements, as requested, including considerations of administrative costs, approvability issues, enforceability concerns, and timing of the development and implementation of the action with regard to the Secretarial review.
6. Writing proposed and issuing final rules to implement approved actions, consistent with the Council's recommendation and NMFS decision.
7. Addressing all applicable laws and Executive Orders.
8. For actions that may require further Council review or action, consulting with the Council on the following activities:
    a. Essential Fish Habitat (EFH) consultations[3], if required.
    b. Endangered Species Act (ESA) consultations[4], if required.
    c. Response to substantive public comments received during rulemaking.
    d. Develop and implement emergency actions and interim actions.
    e. Developing proposed or final rules when staff identify issues after Council action based on agency review, litigation, or public comment.
9. Implementing approved programs and program changes; working closely with OLE and NOAA OGC to enforce regulations and defend approved Council actions in litigation.
10. Coordinate with the Council on fishery management public and media engagement and ensure the Council is aware of the agency's management action roll-out activities.
11. Maintain the agency decision file for fishery management actions.

The NMFS Pacific Islands Fisheries Science Center assists the Council in the development of fishery management actions by the following:

1. Providing the Council with data and analysis to support drafting of FEPs and plan amendments to ensure that the best scientific information available is used.
2. Identifying a lead staff person to assist with coordinating other NMFS PIFSC divisions as needed in support of fishery management actions.
3. Providing staff representation on, or presentations to, appropriate committees, teams and advisory bodies to advise on technical and scientific information and issues; and
4. Consulting with the Council on the following:
    a. Scheduling and peer review of stock assessments for MUS.
    b. Review of stock assessments or other scientific information through the Western Pacific Stock Assessment Review process.
    c. Provision of economic and social science data and the analysis thereof for impact evaluation.
    d. Modifications or changes to fishery data collection and monitoring protocols and programs.

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[3] Follow guidelines in Appendix 2.

[4] Follow guidelines in Appendix 1.

e. Development of technical reviews as required under ESA or other authorities.
f. Supporting the Council in its fulfillment of the scientific requirements under the MSFCMA, including the Council's 5-year research priorities, cooperative research, EFH and climate change research needs, and other research plans and activities.

Components of the ROA

Specific components of this ROA reflect the main phases of the fishery management process in the Pacific Islands region, and include the following:

1. Planning (including the Action Planning process);
2. Document drafting;
3. Public review and Council action to recommend a measure (initial and final action);
4. Post-Council action (including development of the FEP amendment transmittal package and implementing regulations and Secretarial review and implementation); and
5. Ongoing management

A further description of these components follows. Please see the ESA-MSFCMA Integration Agreement and EFH Consultation Agreement appendices for supplemental procedures. The ESA-MSFCMA Integration Agreement describes the coordination between NMFS and the Council in the development and implementation of fishery management action that may affect ESA-listed species. The EFH Consultation Agreement describes the NMFS and Council coordination for EFH consultations on Federal actions that may affect EFH. These activities may include fishing and non-fishing activities.

1) **Planning** (Action Plans)

Before the Council directs staff to prepare a formal analysis, the Council may direct staff to scope an issue for further consideration by requesting a discussion paper and/or public outreach for stakeholder input and participation. Depending on priorities and resources, NMFS may provide information, review, and comments on a discussion paper for Council staff consideration before presenting to the Council for review. The Council may consider the discussion paper and results of public outreach to decide whether to request Council staff to further develop a management action.

Early planning begins when the Council directs staff to prepare an analysis of a proposal for a management action. To support a proposed action, Council staff will collaborate with Regional Office and Science Center staff to develop an analytical document that identifies the purpose and need of the action, a reasonable range of preliminary alternatives, and appropriate impact analyses of the alternatives, consistent with requirements of the MSFCMA and NEPA.

To facilitate frontloading after Council recommends developing an analysis for a proposed action, Council staff will draft Action Plans and will be the primary point of contact. Council staff will work with NMFS and PIFSC staff to develop an action plan. The Action Plan content and form will be consistent with the Action Plan Template in Appendix 3 to this ROA. Each Action Plan is a fluid document and staff may adjust as necessary in response to internal staff discussions, Council actions, staffing needs, and the time needed for preliminary reviews,

iterative revisions, and subsequent review of the revised analyses. While the primary purpose of each Action Plan is to guide project development at the staff level, the Council Executive Director, or Regional Administrator, and Science Director will have the opportunity to review all Action Plans and provide direction where necessary.

The Council Executive Director, Regional Administrator, Science Director will meet after each Council meeting to update the list of ongoing Council projects, identify priorities and set high-level deadlines.

2) Document drafting

After the Council recommends development of an amendment to an FEP or a regulatory amendment, the Action Plan will serve as the guiding document for coordination of analyses consistent with the MSFCMA, NEPA and other applicable law. Under this ROA, the analyses will contain information needed to complete the NEPA process, based on guidance from NMFS Sustainable Fisheries Division, the Regional NEPA coordinator, and/or NOAA OGC, consistent with agency guidance, policies and procedures (e.g., 40C.F.R. Section 1507.3 and NEPA implementing procedures for MSA Section 204(i)).

Once the Action Team completes the draft analysis, NMFS Sustainable Fisheries Division staff will distribute the analysis, as practicable, for internal review by the NMFS. NMFS must receive the document in sufficient time before a Council meeting to allow NMFS staff to coordinate review and comment and to provide those comments to Council staff for consideration and document revisions. Council and NMFS staff should estimate the amount of time needed for agency review during the Action Plan development to allow setting priorities and timing for using staff resources.

3) Public review and Council action to recommend a measure

Generally, Council staff will provide documents (discussion papers or drafts of Plan or Regulatory amendment packages) to the Council and to the public at least two weeks prior to the Council meeting at which the action is scheduled. As practicable, the Action Plan will allow reasonable time for internal review, including NOAA OGC, of the draft analysis prior to its release to the Council and public. Council staff will revise document based on NMFS internal review prior to distribution to the Council. If time does not allow for prior internal review, Council staff may distribute the draft analysis to the Council, SSC, and AP at the same time it is distributed for internal review. In this case, if NMFS is able to review the analysis before Council action, Council staff will identify all substantive concerns to the Council.

The Council, SSC, and AP may review the amendment analysis at the same meeting. After consideration of recommendations from the SSC and AP and the public, the Council may take action as necessary. The Council schedules hearings for all action items during the Council meetings. As outlined in the 2015 Operational Guidelines, any necessary document revisions could result in additional Council meetings (and an additional review of the draft analysis) prior to final action by the Council. The Council may schedule the issue for final action at a subsequent meeting. Additional public review and comment on the draft analysis may further inform the Council's final action. Council adoption of a preferred alternative in the draft for

public review and comment during initial review is not required, except in those cases where formal ESA/EFH consultations are necessary or NMFS releases a draft EIS for public review.

The analytical documents must provide the rationale for, and analysis of, the proposed action to support the Council's recommendation and NMFS decision. This is critical to ensure the information used by the Council for recommendations is consistent with the information used by NMFS for its decision for the proposed action. If information used by the Council differs substantially from the information used by NMFS, NMFS may request that the new information be brought before the Council for further recommendation on the action or to clarify the record for the Council's decision.

Notwithstanding MSFCMA Section 303(c), For FEP amendments and regulatory amendments, deeming language may be included with the Council's final action recommendation that authorizes the Executive Director and the Council Chairperson to review the draft regulations to verify that they are consistent with the Council action before transmitting them to the Secretary for approval. The deeming language also authorizes the Executive Director and the Chairperson to withhold submission of the Council action and/or proposed regulations and take the action back to the Council if, in their determination, the proposed regulations are not consistent with the Council action.

4) Post-Council action

Following the Council's final action, Council staff will finalize the analysis to reflect the specific action of the Council and to describe the public process. The Council's action may be one of the alternatives specified in the document, or something within the range of the alternatives specified. If NMFS staff is the lead author, he or she will complete the analysis, in coordination with Council staff. This process will include the necessary coordination and reciprocal, internal review to achieve a mutually agreed upon final document for Secretarial transmittal.

Comments on internal drafts will include revised or substitute language, where appropriate, or additional information and will not include personal opinions. To ensure the Council's recommended action is consistent with the MSFCMA requirements and other applicable laws, NMFS staff will be responsible for preparing the necessary decision documents and may seek input from Council staff as necessary.

The documentation and report of activities under this agreement, particularly timelines involved in frontloading and approval/implementation of actions, as well as the results of any litigation efforts, will inform the evaluation of the success of the operational guidelines and this ROA.

5) Ongoing management

NMFS and the Council will work together to ensure the ongoing management of the fisheries meets the Council's intent for management actions and results in sustainable management of the fisheries consistent with the MSFCMA and the objectives of the applicable FEP. The Council may include in proposed actions monitoring and reporting requirements to collect information that the Council can use to determine effectiveness of the actions. The Council may identify changes needed for fisheries management through the Council process or by NMFS providing

recommendations to the Council on needed management changes. The Council may periodically review the effectiveness of fisheries management measures and may work with NMFS to develop proposed actions that would improve fisheries management.

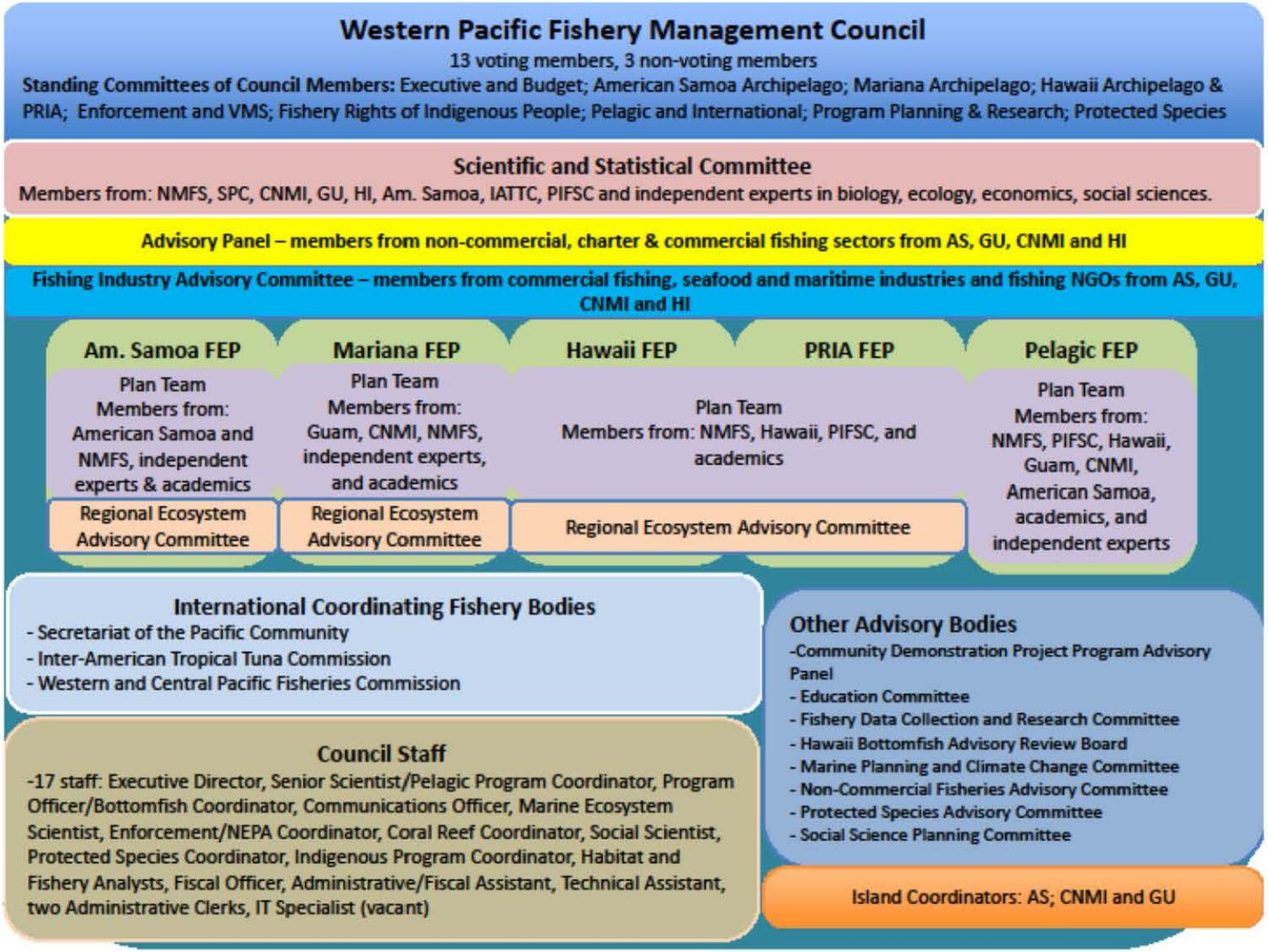
This Agreement will remain in effect unless and until it is terminated or revised by mutual agreement. By signature below, and on behalf of the organization I represent, I support the tenants of this agreement, and agree to fulfill the roles and responsibilities outlined herein, and to support the efforts of the other parties in doing likewise.

Edwin Ebisui Jr., Council Chair _____

Kitty M. Simonds, Council Executive Director _____

Michael Tosatto, NMFS Regional Administrator _____

Michael Seki, NMFS Science Center Director _____


Western Pacific Fishery Management Council
13 voting members, 3 non-voting members
Standing Committees of Council Members: Executive and Budget; American Samoa Archipelago; Mariana Archipelago; Hawaii Archipelago & PRIA; Enforcement and VMS; Fishery Rights of Indigenous People; Pelagic and International; Program Planning & Research; Protected Species
Scientific and Statistical Committee
Members from: NMFS, SPC, CNMI, GU, HI, Am. Samoa, IATTC, PIFSC and independent experts in biology, ecology, economics, social sciences.
Advisory Panel – members from non-commercial, charter & commercial fishing sectors from AS, GU, CNMI and HI
Fishing Industry Advisory Committee – members from commercial fishing, seafood and maritime industries and fishing NGOs from AS, GU, CNMI and HI
Am. Samoa FEP
Plan Team Members from: American Samoa and NMFS, independent experts & academics
Regional Ecosystem Advisory Committee
Mariana FEP
Plan Team Members from: Guam, CNMI, NMFS, independent experts, and academics
Regional Ecosystem Advisory Committee
Hawaii FEP
PRIA FEP
Plan Team Members from: NMFS, Hawaii, PIFSC, and academics
Regional Ecosystem Advisory Committee
Pelagic FEP
Plan Team Members from: NMFS, PIFSC, Hawaii, Guam, CNMI, American Samoa, academics, and independent experts
International Coordinating Fishery Bodies
- Secretariat of the Pacific Community
- Inter-American Tropical Tuna Commission
- Western and Central Pacific Fisheries Commission
Council Staff
-17 staff: Executive Director, Senior Scientist/Pelagic Program Coordinator, Program Officer/Bottomfish Coordinator, Communications Officer, Marine Ecosystem Scientist, Enforcement/NEPA Coordinator, Coral Reef Coordinator, Social Scientist, Protected Species Coordinator, Indigenous Program Coordinator, Habitat and Fishery Analysts, Fiscal Officer, Administrative/Fiscal Assistant, Technical Assistant, two Administrative Clerks, IT Specialist (vacant)
Other Advisory Bodies
-Community Demonstration Project Program Advisory Panel
- Education Committee
- Fishery Data Collection and Research Committee
- Hawaii Bottomfish Advisory Review Board
- Marine Planning and Climate Change Committee
- Non-Commercial Fisheries Advisory Committee
- Protected Species Advisory Committee
- Social Science Planning Committee
Island Coordinators: AS; CNMI and GU

Appendix 1: ESA-MSA Integration Agreement

ESA-MSA Integration Agreement

Western Pacific Fishery Management Council

And

NMFS Pacific Islands Regional Office

May 12, 2016

Introduction

On January 19, 2015, the National Marine Fisheries Service (NMFS) issued a Policy Directive on the Integration of Endangered Species Act (ESA) Section 7 with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA) Processes[1] (ESA Policy Directive). The ESA Policy Directive implements recommendations from a joint working group of the Council Coordination Committee (CCC), Marine Fisheries Advisory Committee (MAFAC) and NMFS to improve integration of the Fishery Management Councils into the ESA Section 7 consultation process.

This ESA-MSA Integration Agreement (Agreement) is between the Western Pacific Fishery Management Council (Council) and the NMFS Pacific Islands Regional Office (PIRO). The Agreement recognizes that the Council possesses a unique relationship with NMFS as a result of authorities and responsibilities created under the MSA. This Agreement outlines the roles and responsibilities of the Council and PIRO to integrate the ESA Section 7 and MSA processes.

Scope

This Agreement applies to Section 7 consultations on fishery management activities that are governed by fishery management plans developed by the Council pursuant to the MSA and may affect listed species or designated critical habitat under NMFS' jurisdiction. Opportunities for collaboration with the Council include when:

1. The Council is developing recommendations for a new or modified management measure that may affect listed species or habitat;
2. NMFS is consulting once a proposed action is identified; and,
3. There are changes external to the Council process (e.g., reinitiation is triggered by new species listing, exceeding Incidental Take Statement (ITS), or new scientific information).

This Agreement focuses primarily on the coordination between the Council and the PIRO

[1] NMFS PD 01-117

Sustainable Fisheries Division (SFD), which acts as the Action Agency. However, the Agreement also acknowledges the call made by the ESA Policy Directive for early involvement from the Protected Resources Division (PRD) prior to the initiation of consultation.[2]

Roles and Responsibilities

Early communication between the Council staff and NMFS may improve the quality of information available during consultation, and reduce the likelihood of consultation outcomes that negatively affect the fishery. Consultations may also affect the post-decision rulemaking process and the desired timing of Council-recommended fishery management actions. This Agreement stresses and calls for early involvement and effective communication between the Council and PIRO prior to initiation and throughout consultation.

In addition to the roles and responsibilities described in the Regional Operating Agreement, specific responsibilities for integrating Section 7 with MSA processes include the following:

Council:

1. Coordinate with PIRO Sustainable Fisheries Division (the action agency) throughout the Section 7 consultation process, as appropriate, including assisting with any or all of the following tasks:
    a. Describe the proposed action for purposes of initiating consultation;
    b. Provide Council views on the "best scientific information available" on fisheries management practices and potential effects of action on ESA-listed species and critical habitat;
    c. Prepare draft biological evaluations (BEs) and other consultation initiation documents; and
    d. Prepare or review additional information.
2. Transmit a written request to PIRO for an opportunity to review a draft Biological Opinion (BiOp) for applicable formal consultations; and
3. Review and provide comments to PIRO on draft BiOps, including the following to be included in an ITS, when provide with an opportunity for such review:
    a. Review draft Reasonable and Prudent Measures (RPMs); and
    b. Review draft Reasonable and Prudent Alternatives (RPAs) in the case of a jeopardy BiOp, and assist with identifying feasible alternatives.

PIRO:

1. Communicate with Council staff regarding information necessary for consultation;
2. Prepare BEs and other consultation initiation documents in collaboration with the Council;
3. Provide an opportunity for the Council to review draft BiOps, when the Council requests such a review and if PIRO determines that such review is appropriate, including review of draft RPAs or RPMs[3];

[2] The ESA Policy Directive encourages early involvement from PRD through technical assistance and/or assignment of liaisons.

[3] Additional guidance on this matter is provided in NMFS PD 01-117

4. Communicate with Council and Council staff as to the nature of how the comments on the draft BiOp were addressed; and,
5. Respond in writing within 30 days of the Council's request if a draft BiOp cannot be provided to the Council for reasons specified in the ESA Policy Directive.

NMFS retains the discretion to conduct any individual ESA consultation differently from the process outlined here.

Council Review of Draft Biological Opinions

The Council Executive Director will determine the method of review appropriate for each draft BiOp, e.g., internal staff review or by the SSC and Council in a public meeting. Given the statutory timeline to complete consultation and finalize the BiOp, unless extended, PIRO will strive to provide the Council with a reasonable time to review a draft BiOp.

Integrating ESA Section 7 with the MSA Process

Early coordination and clear communication improves project development, information sharing, and provides an opportunity to address potential conflicts between the action and the listed species early. Early and clear productive coordination are key to successful consultation, whether informal or formal. This section describes ways PIRO (the action agency) and the Council will enhance their coordination for successful consultation pursuant to the ESA and MSA. Unless otherwise noted, the process described below should be carried out for each applicable consultation.

General Coordination between the Council and PIRO

The Council Executive Director and the Regional Administrator may meet, as needed, to discuss priorities and desired timelines for ESA consultations as they relate to fishery actions. If situations not covered under this Agreement are identified, the Council Executive Director and the Regional Administrator may agree to the appropriate process for considering the necessary Section 7 consultation in the MSA process.

Frontloading ESA Section 7 consultations during development of Council actions

1. At the initial action planning meeting, Council and PIRO staff will identify potential consultation needs for the action.
2. Council and PIRO staff may discuss the potential exposure of listed species to the proposed action, their likely responses to that exposure, and the data and analysis needed to conduct an exposure and response analysis in the BE.
3. PIRO and Council staff may conduct any necessary analysis as part of the integrated FEP amendment/NEPA analysis.
4. PIRO and Council staff will discuss and determine who will develop the draft BE. The Council may take the lead in drafting the BE, in coordination with PIRO, as part of the NEPA document development process.
5. PIRO will coordinate with and involve Council staff when seeking technical assistance

from the Consulting Agency during the frontloading period.

6. PIRO will review and evaluate the scope and contents of the BE and initiate consultation.

Frontloading ESA Section 7 Consultations when Triggered by External Factors

When an external factor, such as exceedance of an Incidental Take Statement (ITS) or new species listing triggers consultation the following steps may be taken:

1. ESA Section 7 will be discussed at coordination meetings between the Council and PIRO staff to identify any new consultation needs triggered by external factors.
2. Council and PIRO staff may discuss the potential exposure of listed species to the proposed action, their likely responses to that exposure, and the data and analysis needed to conduct an exposure and response in the BE.
3. Council and PIRO staff will discuss and determine who will develop the draft BE. The Council may take the lead in drafting the BE, in coordination with PIRO.
4. PIRO will coordinate with and involve Council staff when seeking technical assistance from the Consulting Agency during the frontloading period.
5. PIRO will review and evaluate the scope and contents of the BE and initiate consultation.

Coordination during Formal Consultation

Once formal consultation is initiated, coordination between Council and PIRO may occur as follows:

1. PIRO Sustainable Fisheries Division (the action agency) will facilitate communication between the Council and the Consulting Agency.
2. PIRO will provide a draft BiOp or draft RPAs/RPMs to the Council for review, when requested by the Council and determined appropriate. When appropriate, the Council (or Council staff) may review draft BiOps or draft RPAs/RPMs and provide comments to PIRO.
3. Communicate with Council and Council staff as to the nature of how the comments on the draft BiOp were addressed.

This Agreement will remain in effect unless and until it is terminated or revised by mutual agreement. By signature below, and on behalf of the organization I represent, I support the tenants of this agreement, and agree to fulfill the roles and responsibilities outlined herein, and to support the efforts of the other parties in doing likewise.

Edwin Ebisui Jr., Council Chair

Kitty M. Simonds, Council Executive Director

Michael Tosatto, NMFS Regional Administrator

Appendix 2: Agreement Regarding Essential Fish Habitat Consultations and the Five Year Review

Agreement Regarding Essential Fish Habitat Consultations and the Five Year Review

Western Pacific Regional Fishery Management Council, NMFS Pacific Islands Regional Office and NMFS Pacific Islands Fisheries Science Center

October 5, 2016

1 Introduction

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) and accompanying regulations at 50 Code of Federal Regulations (CFR) Subpart J set forth requirements for the conservation and enhancement of Essential Fish Habitat (EFH). The MSFCMA and these regulations place requirements on Councils, the National Marine Fisheries Service (NMFS), and Federal agencies. The two chief processes of the mandate are EFH consultations and the five year EFH review, which are addressed in sections 2 and 3 below.

This EFH Agreement (Agreement) is between the Western Pacific Regional Fishery Management Council (Council), the NMFS Pacific Islands Regional Office (PIRO), and the NMFS Pacific Islands Fisheries Science Center (PIFSC), and is Appendix 2 to the Regional Operating Agreement to Develop and Implement Fishery Management Actions dated May 12, 2016. The Agreement provides a framework for coordination between the Council and PIRO in conducting EFH consultations consistent with MSFCMA § 305(b)(3)(A) and sharing the overlapping responsibilities of the EFH Review between the Council, PIRO, and PIFSC consistent with § 305(b)(1)(A).

Council and NMFS staff may meet every one to three years to assess the effectiveness of this Agreement and make revisions as necessary. This Agreement does not limit or prevent staff from agreeing upon alternative processes on a case-by-case basis in response to specific issues or needs. Nothing in this Agreement shall impede the Council, NMFS or the Secretary of Commerce from exercising appropriate authority to fulfill their responsibilities under all applicable laws when necessary. Implementation of the Agreement is dependent upon available resources.

2 EFH Consultation

EFH consultations are undertaken by Federal agencies with NMFS. Specifically, 50 CFR § 600.920(a) requires Federal agencies that authorize, fund, or undertake actions that may adversely affect EFH to consult with NMFS regarding the potential effects of their actions on EFH, and respond to NMFS conservation recommendations. Under section 305(b)(4)(A) of the MSFMCA, NMFS is required to provide EFH Conservation Recommendations to Federal and

State agencies for actions that would adversely affect EFH.

Under 50 CFR § 600.905(c), the Regional Fishery Management Councils and NMFS are to cooperate closely to identify actions that may adversely affect EFH and to provide EFH information to Federal and State agencies. In addition, NMFS may coordinate with the Council in developing comments and EFH Conservation Recommendations to Federal and state agencies on key actions of joint concern that will adversely affect EFH. Section 305(b)(3)(A) of the MSFCMA also provides Councils the opportunity, if needed, to provide comments to federal or state agency actions that may adversely affect the EFH of managed species independently of NMFS consultations and outside of the scope of NMFS' conservation recommendations.

2.1 Scope

This Section applies to EFH consultations for two categories of actions consistent with §305(b)(3)(A) and (b)(4) and implementing regulations:

1. Fishing actions undertaken by NMFS pursuant to the MSFCMA.
2. Fishing actions *other* than those undertaken by NMFS pursuant to the MSFCMA that have more than minimal adverse effect on EFH; major federal non-fishing actions that have more than minimal adverse effect on EFH (e.g., CNMI Joint Military Training; BOEM wind leases); and actions identified by the Council or its advisory bodies to be of concern regarding their impact on EFH.

2.2 Roles and Responsibilities

MSFCMA Fishing Actions

The Council and NMFS work together to manage fisheries pursuant to the MSFCMA. For EFH consultations on fishing actions pursuant to MSFCMA, PIRO's Sustainable Fisheries Division (SFD) is the Action Agency and PIRO's Habitat Conservation Division (HCD) is the NMFS consulting regulatory program entity. In addition to the roles and responsibilities described in the Regional Operating Agreement (ROA), the Council, SFD and HCD have responsibilities related to EFH consultations on MSFCMA fishing actions.

Council (or Council staff) responsibilities include developing EFH sections of NEPA documents and providing input to HCD for their consideration in developing EFH conservation recommendations.

PIRO SFD (Action Agency) responsibilities include notifying Council and HCD on intent to prepare EFH assessments; reviewing Council's EFH sections of NEPA documents; and providing EFH assessments to HCD.

PIRO HCD (Consulting Agency) responsibilities include providing SFD guidance regarding the information required in EFH assessments; providing the Council an opportunity to provide input on HCD's draft EFH conservation recommendations; providing EFH conservation recommendations to SFD, copying the Council; and timely completion of EFH consultation once

all necessary information has been provided.

Other fishing actions and non-fishing actions (as defined in Scope)

PIRO HCD provides EFH conservation recommendations on Federal and State actions that will adversely affect EFH. For non-MSFCMA fishing actions and non-fishing actions as defined in the Scope of this Agreement, PIRO HCD will provide the Council the opportunity for input in developing NMFS conservation recommendations.

PIRO HCD (Consulting Agency) responsibilities include alerting the Council on known major federal actions that will have more than minimal adverse effect on EFH as early as is practicable; sharing with the Council appropriate pertinent information on these actions such as the EFH assessments; and providing the Council with draft NMFS conservation recommendations with clear timelines for Council input.

Council (or Council staff) responsibilities include notifying HCD of any activities that the Council and its advisory bodies identify that may be of concern regarding impacts to EFH; providing input on HCD draft EFH conservation recommendations within HCD given timelines; and providing HCD the opportunity to provide input on any Council comments being sent to Action agencies.

2.3 Process

MSFCMA Fishing Actions

EFH consultations on MSFCMA Fishing Actions are generally triggered by new or modified management measures proposed by the Council. Some instances may include action taken by NMFS without Council recommendation.

Much of the coordination and work on the EFH consultation process can be frontloaded in the existing fishery management action process outlined in the ROA. For example, during the kickoff meeting of the Action Team planning process, Action Team leads may identify if the proposed MSFCMA fishing action may adversely affect EFH. If an EFH consultation is necessary, Action Team leads may identify non-HCD NMFS staff to draft the EFH assessment and to notify HCD of the fishery management action with the intent to prepare the assessment, and may determine the timing for completing the EFH consultation.

Other fishing actions and non-fishing actions (as defined in Scope)

EFH consultations on non-MSFCMA fishing actions and non-fishing actions that may adversely affect EFH are usually triggered by a Federal action agency notifying NMFS of the action. On occasion, an action of concern for EFH is identified through the Council or other local government agency process.

For actions identified in this Agreement under Scope for which a Federal action agency has initiated an EFH consultation with NMFS, HCD staff will notify Council designated staff of the proposed action as early as is practicable to initiate Council – NMFS coordination. Coordination

includes NMFS providing Council with appropriate documents relevant to the consultation such as EFH assessments, and providing appropriate opportunity for Council input on NMFS draft EFH conservation recommendations. If an action of concern to EFH is identified by the Council or Council advisory bodies, the Council will provide timely notice to NMFS of this action following the Council or advisory body meeting at which the action is identified.

3 EFH Review

The MSFCMA EFH mandate requires fishery ecosystem plans (FEPs) to describe and identify essential fish habitat (EFH) for species managed under the FEPs, evaluate the potential adverse effects of fishing on EFH designated under the FEP, minimize to the extent practicable the adverse effects of fishing on EFH, and identify actions to encourage the conservation and enhancement of EFH. _Section 305(b)(1)(A) and 50 CFR § 600.815(a)(10) call for Councils and NMFS to review the EFH provisions of FEPs and revise or amend EFH provisions as warranted based on available information. This review is to be completed periodically, but not less than every five years. NMFS provides recommendations to assist each Council in the identification of EFH, and for any modification of the EFH components of an FEP (50 CFR § 600.815(b)).

Consistent with these regulations and the MSFCMA, this Agreement outlines the roles and responsibilities of the Council, PIFSC, and PIRO, and describes the review process. This Agreement is guided by the Council's FEP EFH review process and the NMFS Stock Assessment and Fishery Evaluation (SAFE) report requirements. The FEPs require that new EFH information be reviewed, as necessary, during preparation of the annual reports by the plan teams. Similarly, the Councils are encouraged to report on their review of EFH information as part of the SAFE report in 50 CFR § 600.815(a)(10).

3.1 Roles and Responsibilities

The Council, PIFSC, and PIRO are the primary organizations cooperating under the EFH review portion of this Agreement and each will attempt to secure fiscal resources needed to support the EFH review process. The Council, PIFSC, and PIRO leadership as well as habitat staff from each of the organizations have roles under this Agreement. The Council's Executive Director, PIFSC Science Director, and the PIRO Regional Administrator will provide guidance and oversight on the overall coordination of the EFH review process and activities. Leadership will meet as needed, but at least annually, and may wish to discuss EFH review items concurrently at Western Pacific Stock Assessment Review (WPSAR) Steering Committee meetings. Responsibilities of the three organizational leaders are to:

- Approve and/or provide input to the five year EFH review schedule;
- Assign as appropriate staff to undertake EFH reviews using best available scientific information and to present review documents to the Council and advisory bodies for their consideration; and
- Consider EFH reviews for the WPSAR or Center for Independent Experts (CIE) review schedule.

The PIRO EFH Coordinator, Council habitat coordinator, and PIFSC designated habitat expert share responsibilities and will work together in undertaking EFH reviews. The PIRO EFH Coordinator is designated by title, while the Council and PIFSC habitat staff are identified by

Council and PIFSC leadership, respectively. To facilitate communication and efficiency, when possible, the PIFSC habitat expert serving as the EFH representative will be the same PIFSC staff member who serves as the habitat expert on the Council's Plan Team. Responsibilities of the three organizational habitat staff are to:

- Develop the five year EFH review schedule;
- Provide advice to leadership on whether or not the EFH review should be referred to the WPSAR or CIE schedule;
- Evaluate EFH 5 year review draft reports to ensure that they meet scientific needs, any established national guidelines, and the Council's management objectives; and
- Resolve any additional business as directed by Council, PIFSC and PIRO leadership.

3.2 Process

The EFH Review process takes place in three phases: drafting, review, and final presentation and management application.

Drafting
Habitat staff as defined in Section 3.1, plan team members, or contractors with appropriate expertise will summarize available essential fish habitat information required in fishery management plans per 50 CFR § 600.815. Reviews will contain updated narrative descriptions in the FEP. This descriptive or summary information includes the species descriptions, research and information needs, and organization of available EFH data sources into the EFH Level of Information tables for each managed species. Because this information supports refinement of the designations, it shall be directly updated during the review and delivered as a review product. In addition to the narrative descriptions, information, as available, on distribution, abundance, reproduction, growth, survival, and productivity by habitat type will be analyzed to inform the value of the habitat to the fishery. This analysis should be used to define all habitat used by a species that can then be used to delineate EFH designations for the Council.

The specific nature and duration of this process depends on staff and fiscal resource availability. Habitat staff as defined in Section 3.1 will serve as project managers, if not authors, and attempt to meet review schedules or update leadership on challenges to the process and adjust the schedule. The primary authorship responsibility lies with PIFSC staff and Council plan team members.

Review
All EFH 5 year reviews will involve three components: a scientific review to ensure consistency with National Standard 2; consultation with participants in the fishery, which will be coordinated by the Council and may be completed at public meetings of the Council and advisory bodies; and Council and PIRO staff review to determine consistency with both Council management objectives and PIRO Habitat Conservation Division EFH program and consultation processes.

Final Presentation and Management Application
The Council will review and consider final EFH review products to determine whether to refine the EFH (or HAPC) designations or update EFH summary information found in the FEPs, and as such whether an EFH amendment is warranted. If the Council finds that the EFH review is

incomplete, the EFH review documents will be returned to the EFH review authors or other appropriate staff for further development. Once an EFH review is completed and accepted by the Council, the EFH Review Process under section 3 herein is completed.

3.3 Schedule

While habitat staff from the Council, PIFSC, and PIRO develop the EFH review schedule, PIFSC is the primary caretaker of the schedule, similar to the WPSAR schedule. The EFH reviews will be prioritized by management unit species according to available resources.

This Agreement will remain in effect unless and until it is either terminated or revised by mutual, written agreement. By signature below, and on behalf of the organization I represent, I support the tenants of this agreement, and agree to fulfill the roles and responsibilities outlined herein, and to support the efforts of the other parties in doing likewise.

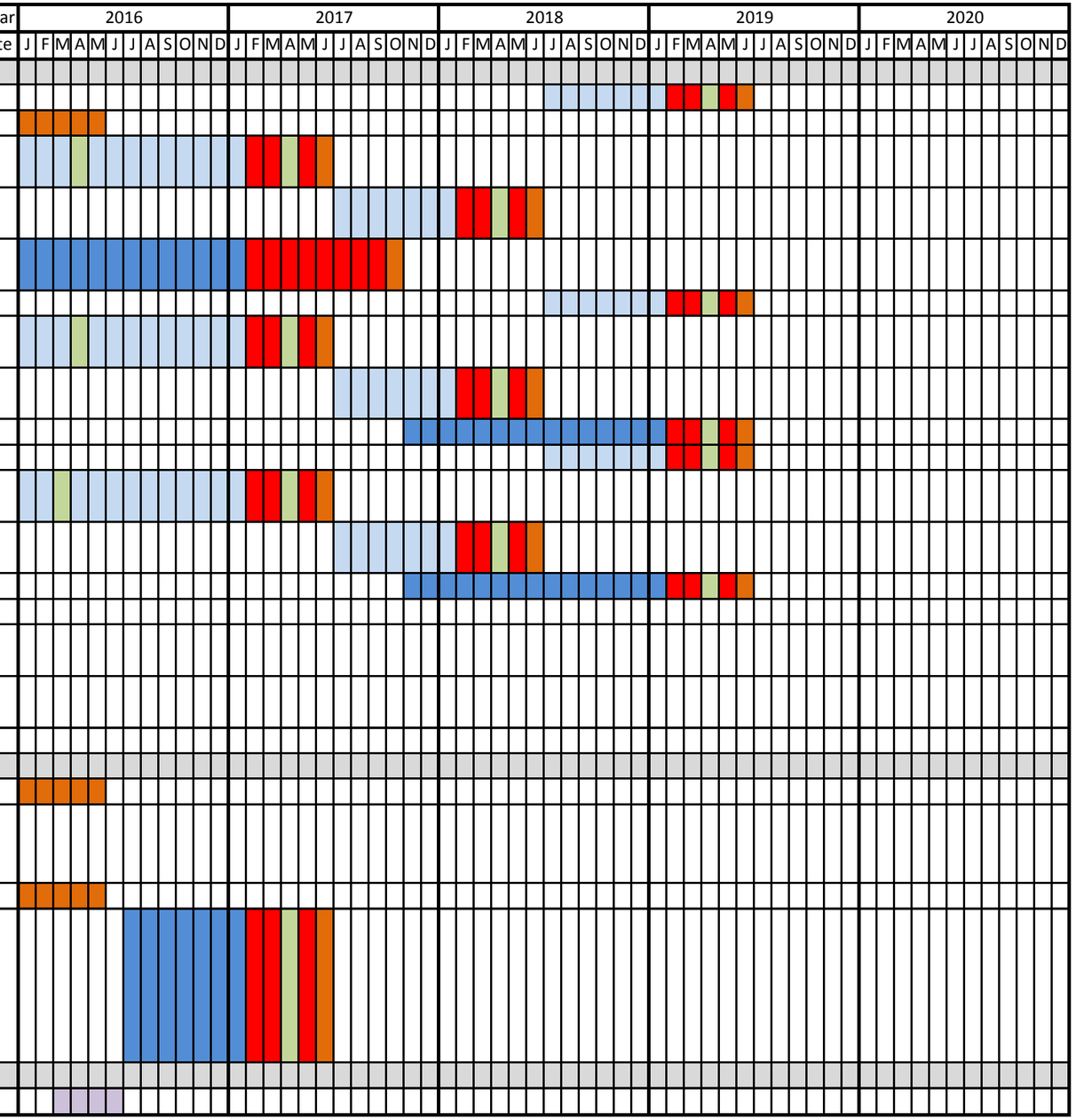
Edwin Ebisui Jr., Council Chair _____

Kitty M. Simonds, Council Executive Director _____

Michael Tosatto, NMFS Regional Administrator _____

Michael Seki, NMFS Science Center Director _____

EFH Component (from CFR)	FEP	MUS	Most Recent Review	Due Date
Biological Components				
1 - EFH Description and Identification 7 - Prey Species List and Locations 8 - Habitat Areas of Particular Concern 9 - Research and Information Needs	Pelagic	Pelagic MUS	Out of date 2012 doc	
	Hawaii Archipelago	Bottomfish MUS	Complete May 2016	
		Precious Corals MUS	Plan Team Review 2016/17	
		Crustaceans MUS/Deepwater Shrimp	1999/2008	
		Coral Reef MUS	Out of date 2012 doc/EF developing model	
	Mariana Archipelago	Bottomfish MUS	Out of date 2012 doc	
		Precious Corals MUS	Plan Team Review 2016/17 - limited info	
		Crustaceans MUS/Deepwater Shrimp	1999/2008	
		Coral Reef MUS	Out of date 2012 doc	
	American Samoa Archipelago	Bottomfish MUS	Out of date 2012 doc	
		Precious Corals MUS	Plan Team Review 2016/17 - limited info	
		Crustaceans MUS/Deepwater Shrimp	1999/2008	
		Coral Reef MUS	Out of date 2012 doc	
	PRIA	Bottomfish MUS	Out of date 2012 doc	
		Precious Corals MUS	Plan Team Review 2016/17 - limited info	
		Crustaceans MUS/Deepwater Shrimp	1999/2008	
		Coral Reef MUS	Out of date 2012 doc	
Impact Components				
2 - Fishing activities that may adversly affect EFH 3 - Non-MSA fishing activities that may adversly affect EFH	Hawaii Archipelago	Bottomfishing Gear	Complete May 2016	
	Other FEPs	All Other Gear	1999/2002. No change in gear.	
4 - Non-fishing activities that may adversely affect EFH 5 - Cumulative Impacts Analysis 6 - EFH Conservation and Enhancement Recommendations 9 - Research and Information Needs	Hawaii Archipelago	Effect on BMUS EFH	Complete May 2016	
	Other FEPs	All activities and all fisheries	Contract Underway (Research and Information Needs for MUS - through annual SAFE report)	4/16
Process Component				
10 - EFH Update Procedure	All FEPs	All Components	EFH Policy	4/16



Legends:

- Plan Team
- PIFSC
- Contractor
- Council
- Review Phase - HCD, PIFSC, WPSAR
- Management application (if amendment with analysis is recommended, extend application a year)

Appendix 3

Action Plan Process

Initial Activity

The action planning process begins when the Council directs staff to begin formal analysis of a proposal for management action. The Action Plan is a frontloading tool to provide coordination among Council, PIRO, and PIFSC staff in guiding the action and supportive analyses through the Council process. PIRO, PIFSC and Council staff may work together to develop information to consider in the development of issues for Council consideration. Some of the features of this action plan may be applied to this early Council review and planning process.

This document includes the template action plan. Once the action begins, the Council project lead will:

- Work with PIRO and PIFSC to identify and contact members of the Action Team and fill out the table in the action plan, as appropriate,
- Schedule a kick-off meeting with the Action Team, and
- The extent possible, populate the questions in the "Characterizing the Action" section of the action plan with obvious responses

The "Characterizing the Action" questions comprise the kick-off meeting agenda items. The Council project lead will focus the team on those questions that may need input from the team. Staff document the responses to each question in the Action Plan, as appropriate, and these responses are the foundation for the analysis. At the kick-off meeting, the Action Team will also consider any additional issues appropriate for the action and document them. This process recognizes that these answers may evolve over the course of the project, and the Council project lead should revise the Action Plan accordingly so that it remains current.

Based on the results of the Action Team discussion in the kick-off meeting, the Council project lead, in consultation with the PIRO project lead (usually staff from Sustainable Fisheries Division) and PIFSC project lead, will populate the remainder of the action plan template: the description of the action, purpose and need, summary of anticipated analyses, timeline, and responsibilities.

The summary of analyses table gives a snap shot of the complexity of the action. This will assist Action Team leads in tasking writing, analyses, and review, as well as estimating how long the action may take to complete. The summary table also assists leadership and program managers to prioritize Council actions and set high-level deadlines.

Filling out the timeline requires the Action Team leads to break the action into tasks and then set deadlines for document(s) drafting and review in order to meet the document deadline for Council meetings. Council staff must provide action item drafts to the Council and the public two weeks prior to the meeting at which the Council is considering the action. The Council project lead must ensure that the Action Team has enough time to write, review, and address comments on the draft ahead of this deadline. The amount of time needed for NMFS review of the draft will depend on the complexity and

quality of the analysis. The Council project leads will schedule at least two weeks for NMFS review of all draft analyses.

As soon as the action plan is complete or whenever there are substantive changes to the plan, the Council project lead will:

- Notify the Action Team of deadlines
- Forward the Action Plan to the Council's NEPA Coordinator and Program Officer and to the PIRO and PIFSC project leads.

Ongoing Activity

Throughout the fishery management process and in consultation with the PIRO project lead, the Council project lead will monitor document(s) development and staff resources and update the substantive and timeline portions of the Action Plan as necessary.

Action Plan Template

[NAME OF PROPOSED ACTION HERE]

Action
[Insert from kick-off meeting discussion]

Purpose and Need
[Insert from kick-off meeting discussion]

Action Team (example)

Role	Name	Responsibilities
Council lead*	First Last, Title	
PIRO lead^		
PIFSC lead^		
GC^		
OLE^		
Council staff writer(s)*		
PIRO staff writer(s)*		
GIS*		

*Indicates drafting responsibility

^Indicates review, input, or other quality control (QC) responsibility

Summary of Analyses (example)

Consideration	Determination
Alternatives	Reasonable Range
NEPA Level	Propose: EIS, SIR, CE, or EA
Economics	Is Significant under EO 12866?, RFA
GIS	Action area graphic, spatial analysis of impacts. Substantial analysis required for NEPA cumulative impacts section; figure production depicting action area, closed

Consideration	Determination
	area alternatives (5 figures + unknown number for cumulative impacts analysis)
Implementation Planning	OLE, observer program, fisheries data, and GIS Coordination on GPS Coordinates;
NHPA	Historical or cultural resources affected?
EFH	EFH Assessment Required?
ESA	Effects on ESA-listed species or critical habitat? Level of Consultation Required?
CZM	Identify potential states and territories
MMPA	Impacts to marine mammals
seabirds	Longline fisheries effects?
ecosystem	Impacts to ecosystem function?
FONSI 16 questions	If doing an EA, are the 16 questions for FONSI addressed?

Timeline

Year 1	Schedule												Status
Quarter:	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			
Month:	J	F	M	A	M	J	J	A	S	O	N	D	
Fishery Management Action (example tasks)													
Council directs staff to prepare analysis of proposal for management action													
Action Team Kick off meeting													
Action Team recommends level of the NEPA													
Schedule ESA Meeting with PRD for actions requiring Section 7 Consultation													
Section Authors draft amendment document with analysis													
Draft FEP Amendment Language appendix													
Draft ESA document													
Draft EFH assessment													
Action Team section reviewers review amendment document													
Action Team review FEP Amendment Language appendix													
PIFSC review													
OLE review													
GC review													
Leads address Action Team comments													
Council Initial Action													
Action Team modify analysis based on public review and Council recommendations													

NMFS review of revised analysis and confirm level of NEPA													
Action team incorporate NMFS comments													
Action Team sends analysis to SSC, AP and Council													
Council Action (final)													
Council Project Lead updates analysis to incorporate Council final recommendation and public process													
Leads prepare final amendment package													
Transmittal													
NOA published for amendment													
Proposed rule published (if needed)													
Action on amendment (approval, disapproval, partial approval)													
Final Rule or notice of approval published													
Effective Date													
Update FEP to incorporate approved amendment													

Characterizing the Action

What is the action?

- Is this an FEP amendment, regulatory amendment, or framework action?
- What section of the FEP does or might the action amend?
- Does it require regulatory changes?
- Is there a potential for a PRA collection?

Why are we doing it?

- What is the purpose and need of the action?
- What is the range of preliminary management alternatives that meet the purpose and need?
- Is there precedent for the action in previous Council recommendations or actions?

Legal Issues

- Is there any legal guidance for this action or type of action?
- Are there any unique legal issues that should be addressed in the analysis?
- Are there any unique legal authorities for this type of action?
- Are there any previous or ongoing litigation for this type of action?

NEPA Analysis

- Does the action have the potential to impact the human environment, affect an ESA-listed species or critical habitat, or adversely affect essential fish habitat (EFH)?
    - If **not**, does the action qualify for a categorical exclusion? Identify categorical exclusion from NAO 216-6. No need to consider additional NEPA issues.
- If **yes**, does the action have the potential to significantly impact the human environment and has not been previously analyzed?
    - If **yes**, do an EIS
    - If **no**, go to next questions for potential EA or EIS
- Are there related NEPA documents that can be adopted by reference or supplemented?
- What is fishery outcome of the Council recommended action and alternatives?
- Identify the species potentially impacted by the action/alternative--
    - Does the action have the potential to impact any target species, non- target species, endangered or threatened species, marine mammals, or seabirds?
    - Identify the type of analysis appropriate to understand the impacts on the identified species and to conclude whether or not those impacts are significant.
    - Can the proposed action reasonably be expected to jeopardize the sustainability of any target or non-target species that may be affected by the action?
    - Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

- Does the action have the potential to damage the ocean, coastal habitats, EFH, or critical habitat of endangered or threatened species?
    - Identify the habitat areas/types impacted.
    - Identify the type of analysis appropriate to understand the impacts on habitat and to conclude whether or not those impacts are significant.
    - Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat?
- Does the action have the potential to impact public health or safety?
    - Identify the type of analysis appropriate to understand the impacts on safety.
- Does the action have the potential to impact biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?
    - Identify the type of analysis appropriate to understand the impacts on the ecosystem.
- Are there any significant social or economic impacts interrelated with natural or physical environmental effects?
- Does the action have the potential to impact unique areas or cause loss or destruction of significant scientific, cultural, or historical resources? Unique areas may include park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas.
- Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?
- Can the proposed action reasonably be expected to result in cumulative adverse effects?
    - Identify the type of analysis appropriate to understand the cumulative effects.
- Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources?
- Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?
- Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?
- Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirement imposed for the protection of the environment?
- Climate changes impacts?

Economic and Social Analysis

- Who are the directly-regulated entities?
- Which sectors or stakeholders are likely to be directly affected? Indirectly affected?
- Are any of the affected entities “small entities” (earn less than the threshold)?
- What type of analysis is appropriate to understand how the identified entities would be impacted?
- Does the action have costs/benefits that can be quantitatively assessed or only qualitatively assessed?
- Which are the best data sources to use for the economic analysis?
- Are the impacts primarily distributive (and to what sectors) or does the action affect national net benefits?
- Is the regulatory action significant in terms of EO 12866 ($100 million or more threshold)?

- What information is needed to support the RFA?
- How are communities affected and which ones?
- Potential EO 12898 Environmental justice issues?

ESA Analysis

- Are there ESA consultation needs for this action?
    - Is this action substantially different from previous the action analyzed for ESA consultations for this fishery?
    - Has there been any new ESA species listing or critical habitat, or change in listing status since the existing consultations?
    - Have any of the ITSs been exceeded?
- If yes, what is the level of interactions anticipated for each applicable species and what data and analyses are appropriate to develop the BE?

Data Availability and Uncertainty

- What data are necessary to conduct the analysis and the sources?
- How long will it take to get the data?
- With the best available information, can we predict the potential impacts of the alternatives?
- What are the data gaps and sources of uncertainty?
- What GIS support is appropriate for development of the action?
- Are the effects likely to be highly uncertain or involve unique or unknown risks?
- What criteria will be used to determine significance of effect? (for EAs)
- What related actions have recently been completed that may provide information to inform the analysis for this action?

Controversy

- What controversial issues are associated with the action?
- What is the nature of the controversy?
- Are the effects, or our understanding of the effects, likely to be highly controversial? Could different experts look at the same information and come to a different conclusion (like whether the effect is significant or not)?
- Will there be a large number of public comments to address?

Creating the NMFS Agency Decision File (Record)

- Briefly review procedures necessary to build the agency decision file on this issue. Analysts must be able to provide the Pacific Islands Region a pdf of every document referenced in the analysis (limited information needed for books referenced) and copies of information from websites referenced in the analysis.
- NMFS staff will acquire from the Council staff documents that support Council action and that are needed for the agency decision file.

- For very controversial issues or large programmatic actions, consider separately developing an agency decision file plan.

Implementation Planning

- What are the implementation issues? When do we need to implement the action?
- Use this initial identification of implementation issues to start the implementation planning process, as appropriate.
- Proposed and final amendment and rulemaking process timing?
- For example, does the proposed action affect or interact with:
    - ✓ Inseason management
    - ✓ Catch accounting
    - ✓ Observer Program, observer coverage
    - ✓ Permitting
    - ✓ Recordkeeping and Reporting (information collection, PRA, eLandings, elogs)
    - ✓ Equipment or operational requirements on vessels or in plants
    - ✓ Information technology (programming, applications development, website needs)
    - ✓ Legal issues, General Counsel
    - ✓ Enforcement considerations (OLE, GC-EL)
    - ✓ Other NMFS divisions (PR, HCD)
    - ✓ NEPA coordination
    - ✓ ESA incidental take or listing issues
    - ✓ Budget, cost recovery, or fee collection
    - ✓ Other agencies and authorities (local agencies)
    - ✓ NMFS Public Affairs
    - ✓ Administrative – (complicated document formatting, compilation, transmission)
- Are there statutory or litigation deadlines for the action?