

# **OPERATING AGREEMENT**

**Between the**

**New England Fishery Management Council;**

**NOAA Fisheries Service Greater Atlantic Regional Fisheries Office;**

**NOAA Fisheries Service Northeast Fisheries Science Center; and**

**NOAA Fisheries Service Office of Law Enforcement, Northeast**

October 2014

This Operating Agreement (Agreement) is between the New England Fishery Management Council (Council); NOAA's National Marine Fisheries Service (NMFS) Greater Atlantic Regional Fisheries Office (GARFO); NMFS's Northeast Fisheries Science Center (NEFSC); and NMFS Office of Law Enforcement, Northeast (OLE).

## Statement of Purpose

This Agreement confirms the mutual interests of the Council, GARFO, NEFSC, and OLE in the effective conservation and management of the Northeast Region's fisheries, and clarifies the roles, responsibilities, and commitments of the parties.

The objectives of this Agreement are to facilitate the development and implementation of fishery management actions under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act); to ensure compliance with applicable law; to help simplify regulations where possible; to help the affected public better understand how fishery management actions are developed, in what timeframe, and how and when to be involved in the process; and to improve the process for developing management actions through more effective collaboration among Council, GARFO, NEFSC, and OLE staff.

The preparation, review, approval, and implementation of fishery management actions and the implementing rules and regulations under the Magnuson-Stevens Act is a complex process in which the Councils and NMFS, acting on behalf of the Secretary of Commerce (Secretary), have distinct, yet sometimes overlapping roles. In many instances, the issues are controversial, politically charged, and challenging to analyze. In addition, a variety of other applicable laws and Executive Orders have analytical and procedural requirements that must be complied with, including the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), the Regulatory Flexibility Act (RFA), the Paperwork Reduction Act (PRA), the Information Quality Act (IQA), and the Administrative Procedure Act.

In order to support the mutual objectives of the Council, GARFO, NEFSC, and OLE; and to provide an efficient and transparent process for the public; this Agreement specifies responsibilities of the parties, and the procedures that will be followed to develop fishery conservation and management actions.

The parties agree to facilitate public involvement in the management process. This will be done, in part, through advance planning of fishery management actions and development of an Action Plan; regular public discussion of progress and timing of actions under development; and by making schedules, status reports, and information for each action under development easily available to the parties to the Agreement and to the public, along with guidance on when and how the public can have input to that process.

The parties agree to implement the procedures and best practices recommended by a staff Tiger Team formed to identify improvements in the development of management actions. The approved recommendations of this group are attached to this agreement and are incorporated by reference.

The parties further agree to collaborate on encouraging and facilitating compliance with management measures and regulations, providing public outreach and education, simplifying and clarifying regulations whenever possible, and fostering better public understanding of how and why fisheries are managed as they are.

## Definition of Terms

**Action Plan** – The Action Plan lays out a realistic, mutually agreed upon path for development and completion of the action so that the Council, GARFO, NEFSC, OLE, NMFS Headquarters, and the public know what to expect, and when to expect it. Changes in the Action Plan and the schedule of development should be made in a public forum. The Action Plan is the first step in development of each action, and is a critical step, as the Action Plan serves as a roadmap and contract among the parties until the action is completed. The Action Plan is a critical component in the development of each fishery management action, serving as both a planning and public information tool.

The Action Plan is prepared by the Council's Plan Development Team (PDT), in consultation with the associated Council Oversight Committee, prior to the start of drafting the initial Magnuson-Stevens Act and NEPA document [Categorical Exclusion (CE) memo, Environmental Assessment (EA), or Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS)] for each management action [e.g., new Fishery Management Plan (FMP), FMP amendment, or framework adjustment].

The Action Plan is developed jointly by the PDT representatives from all disciplines (science, protected resources, habitat, fishery management, data collection and analysis, social sciences, economics, legal, enforcement, etc.), to ensure that all potential aspects of the action and its development are carefully considered.

Once the Action Plan is approved by the Executive Committee and Council, it may be unnecessary for all of the disciplines to remain active on the PDT during that specific action's development, if there are no significant issues relevant to those disciplines. However, representatives from all disciplines should be involved in preparing the Action Plan to ensure that all issues that may reasonably be expected to arise can be addressed.

The Action Plan must take into account the resources that will be needed to accomplish the action so as to reasonably ensure that the timeline can be met; this includes ensuring that the responsible parties and required information will be available at the appropriate times in the development process.

The Action Plan serves as a contract among the parties as to what will be done, how it will be done, who will be responsible for each aspect of the action's development, and when the action will be completed. If the parties cannot agree on respective roles and commitments at the PDT level, or to the timeline to be followed, the unresolved issues are to be raised to the Council's Executive Committee for discussion and resolution.

The Action Plan is also used to help the Council, GARFO, NEFSC, and other involved entities prioritize their actions. The timeline should include all major steps from initiation of the action, through Council development, Council adoption, Secretarial review, and implementation by GARFO.

Specifically, the Action Plan:

- Identifies the problem(s) to be addressed and the objective(s) to be met;
- To the extent possible, identifies the type of measures and potential alternatives that might be considered (e.g., limited entry, hard quotas, gear restrictions, allocations, etc.);
- Provides an outline of the type of analyses likely to be necessary to support the action;
- Identifies the staff resources that will be required, the core staff that will work on developing and implementing the action, and the specific responsibilities of each staff member during development (to provide analysis, data, background information, etc.);
- Identifies the type of NEPA analysis to be undertaken (CE, EA, EIS) initially (pending further development of the action, at which point the level of NEPA review may change), and why that level of analysis is expected to be necessary;
- Contains a checklist of applicable laws that will need to be addressed/complied with and, if possible, an initial indication of how these requirements will be addressed, and by whom;
- Identifies other issues (enforcement, data availability, assessment schedules, reporting requirements, administrative aspects and costs, etc.) that will need to be considered;
- Identifies regulatory simplification and/or clarification opportunities that should be considered;
- Provides a realistic timeline for complying with all applicable laws and for completing and implementing the action; and
- Informs the Oversight Committee, the Council, and the public of the schedule for the action's development and implementation (after approval of changes from the Council Executive Committee). The schedule is to be kept up to date and made easily available to the public, with clear guidance as to how and when the public can participate in the process and provide input.

Once approved by the Council's Executive Committee, the Action Plan will be posted on the Council's website, with a link from the GARFO website, along with clear guidance as to when in the process the public can be involved (e.g., scoping, public hearings, comment periods, etc.), and what the appropriate participation at that stage would be (e.g., attend Oversight Committee meeting, comment on Draft EIS, comment on the proposed rule, etc.). A flowchart should be included in the Action Plan, along with projected dates for completion of each major step in the development and approval process, indicating when public involvement is possible. The Action Plan will be updated as necessary during development of the management action.

The Action Plan should be included in the Council's meeting binder at each Council meeting for which the action under development is on the agenda, and be the first topic to be discussed in the report of the Oversight Committee to the Council, to ensure the Action Plan is up to date, and so that the Council and public are aware of the progress of the action and can discuss any changes that might need to be made to the Action Plan.

An example template for an Action Plan is attached (Attachment 1). Other forms may be used. Staff from the signatory entities may modify the details of how Action Plans are developed based on lessons learned as the Action Plan process is implemented.

Prior to presentation of the action to the full Council for adoption, the PDT should complete a checklist of all documents that the PDT has completed and all documents and analyses that still must be completed before submission to NMFS for Secretarial review and approval. The checklist should also document that the PDT and Oversight Committee have considered all relevant aspects of the action, including regulatory simplification.

**Oversight Committee** – An Oversight Committee is established by the Council for each FMP, or group of FMPs, or on the basis of cross-cutting issues (e.g., Habitat Committee), to develop alternatives for actions related to the FMP or issues. The Oversight Committee brings forward recommendations for alternatives, and preferred alternatives, to the full Council for consideration and final approval.

**Plan Development Team (PDT)** – A PDT is a team formed by the Council to plan, develop options and alternatives, provide technical advice and analysis, and to write FMPs and associated actions (e.g., framework adjustments, FMP amendments).

The PDT is not independent, but works closely with its associated Oversight Committee (e.g., the Groundfish Committee) to refine options, evaluate management proposals to ensure they are consistent with Council strategies, and achieve the management objectives of the FMP. The PDT provides an expanded pool of expertise to conduct analyses and provide information to the Council, including scientists, managers, and other experts with knowledge and experience related to the biology and/or management of particular species or issues. The individual members of the PDT will carry out their usual responsibilities to their parent agencies, but as a group, the PDT is responsible to the Council.

The PDT helps ensure that Council FMPs, amendments, and framework adjustments meet scientific, legal, and technical requirements for review and approval. The PDT is also responsible for incorporating Scientific and Statistical Committee (SSC) recommendations, as accepted by the Council, into the management alternatives; for providing guidance and assistance, as appropriate, to the Council staff in the development and preparation of FMP, amendment, and framework adjustment submission documents; and for providing FMP monitoring, and scientific and technical expertise to the Council and its committees and, if appropriate, to the Stock Assessment Workshops conducted by the NEFSC.

PDT membership will usually consist of staff representatives of the offices and organizations necessary for the successful development, review, and/or implementation of the action, and may include representatives of state and academic institutions. This typically will include staff from the Council (including appropriate staff and a representative of the relevant species Oversight Committee), GARFO (Sustainable Fisheries Division, Habitat Conservation Division, Protected Resources Division, Fisheries Data Services Division, Analysis and Program Support Division, NEPA staff, etc., as appropriate), and NEFSC (Population Dynamics Branch, Social Sciences Branch, Protected Species Branch, and Fisheries Sampling Branch, and others as appropriate), with advice from General Counsel, Northeast (GCNE), and OLE, as necessary and appropriate.

Depending on the issues being discussed, or the action to be developed, the active participation of members may vary (i.e., not all actions may have issues that are relevant to all potential participants). However, all PDT members should be involved in developing the Action Plan, to ensure that all issues are considered. All members of a PDT are expected to contribute substantively to the development of the action. PDTs are working groups and PDT members are expected to contribute to the preparation of analyses and documents under development, based on their areas of expertise and within any constraints on their authority and availability, as determined by their parent organization. PDT members are expected to assist in preparing sections of documents, to analyze impacts of management action and prepare summaries of those analyses, and to help prepare and review materials prepared for the Oversight Committee and the Council.

It is important for the PDT to be impartial in evaluating management alternatives. To maintain the credibility of the PDT as an impartial body, PDT members should be careful not to become advocates for a particular management approach or a particular interest group. The parties to the agreement should evaluate and reward good performance in contributing to the successful development of management actions through participation on PDTs.

Following the first meeting of the PDT, involving the full range of potential participants, the PDT Chair and the GARFO SFD member should confirm the membership of the PDT that will remain active in the development of the action.

The PDT is expected to meet regularly, as needed, to respond to any direction provided by its respective Oversight Committee or the Council as a whole, to provide analysis of species-related information, and to develop issue papers, alternatives, and other documents, as appropriate.

A member of the Council staff chairs the PDT. While PDTs are generally established in support of each FMP (e.g., Monkfish and Sea Scallop PDTs), they may also be established on an issue-specific basis (e.g., Habitat PDT, Protected Resources PDT).

Oversight Committee chairs provide detailed guidance to their associated PDTs. Committees may ask PDTs to evaluate management proposals, develop options to meet FMP objectives, or to provide guidance on a variety of scientific, technical or FMP implementation issues. The goal is to direct the PDTs to develop and/or analyze a variety of options consistent with FMP objectives.

PDT chairs will be responsible for presenting or overseeing the presentation of PDT reports and analyses to the committees or the Council. PDT chairs may request that other PDT members make special presentations to the committees, as appropriate.

In meeting the management objectives specified by the Oversight Committee, the PDT should consider a broad range of management alternatives intended to meet the Council's goals and objectives for the action.

PDTs will provide reports to their respective Oversight Committees in response to the Committee's guidance. The PDT reports will contain options and analyses of options that meet specified objectives. PDT conclusions and recommendations will reflect the consensus of its members. PDT members must have the chance to review and comment on PDT reports prior to their distribution.

**Implementation Team** – The Implementation Team is an internal NMFS team that reviews specific management actions to identify implementation issues and limitations early in and throughout the action development process. It includes both GARFO and NEFSC membership. Additional details of this team are included in Appendix 2 (Tiger Team report).

## General Roles

**Regional Fishery Management Councils (Councils)** are responsible under the Magnuson-Stevens Act for the preparation of FMPs, FMP amendments, and other related actions for species under their management authority. As such, the Councils develop, analyze the impacts of, and recommend management programs and program changes that are consistent with applicable law. The Councils must document the management process to ensure consistency with the processes required by statute, and provide the justification and rationale for their recommendations. The process used must ensure that the Council members are informed of the potential impacts of the actions they are recommending, and that the actions are enforceable and can be implemented and administered in a cost-effective way.

The Councils, in partnership with NMFS Regional Offices and Science Centers, state agencies, and other entities, such as regional fisheries commissions (e.g., the Atlantic States Marine Fisheries Commission), as appropriate, develop the documentation to support fishery conservation and management decisions. The Councils also establish groups to provide technical and practical advice, such as SSCs, Advisory Panels, and Monitoring Committees.

The Council process is the focus for public involvement during the development of fishery management actions, while the Secretarial rulemaking process is the focus for public comment on the approval/disapproval decision and the proposed implementing regulations for the action.

**NOAA** is responsible for reviewing the Councils' fishery management recommendations for consistency with applicable statutes and Executive Orders, and for approval, disapproval, or partial approval of the Councils' recommendations. If disapproved, NOAA is responsible for providing the rationale and justification for the disapproval. If approved, NOAA is responsible for implementing, administering, and enforcing the management programs. The implementation of any action should be consistent with the Council's intent. If challenged legally, NOAA is responsible for defending approved management actions.

**GARFO** is responsible for assisting the New England Fishery Management Council in the development of fishery management actions, by:

- Providing staff representation on appropriate committees, such as PDTs and working groups, to advise on technical, policy, administrative, and analytical requirements and issues;
- Coordinating the review of Council-submitted actions within GARFO, NEFSC, OLE, and GCNE;
- Writing proposed and final rules to implement approved measures, with the accompanying regulatory language, consistent with the Council's action and intent;



- Preparing decision packages for Secretarial review, including all memoranda and documentation required for NMFS Headquarters, NOAA, Department of Commerce (DOC), and Office of Management and Budget (OMB) reviews;
- Completing PRA submissions for approval of new or revised data collections from OMB;
- Completing IQA analyses;
- Responding to public comments received during rulemaking;
- Responding to requests for briefings on proposed actions;
- Implementing and administering approved programs and program changes, including cost-recovery programs, quota and effort leasing programs, vessel replacements and upgrades;
- Consultations under the ESA;
- Making determinations regarding marine mammal and essential fish habitat (EFH) impacts of fishery management actions;
- Collection and analysis of fishery dependent data;
- Monitoring fisheries, projecting and documenting fishing activity, and taking appropriate in-season and/or post-season actions;
- Providing timely landings and discard reports for monitoring fishery performance relative to annual catch limits and seasonal catch quotas;
- Determining eligibility for limited access permits;
- Issuing and renewing fishery permits, including vessel permits, dealer permits, operator permits, exempted fishery permits, scientific research permits, educational permits, and letters of authorization for scientific research;
- Providing information and assistance to the public and to NMFS Headquarters, NOAA, and DOC to respond to constituent needs, including requests from Members of Congress;
- Providing outreach and educational services;
- Developing and implementing emergency actions, interim actions, and Secretarial FMPs/amendments to respond to new information or management/statutory requirements;
- Conducting any referenda that may be required under the Magnuson-Stevens Act limited access privilege program provisions; and

- Continuing to work on ways of expediting and streamlining document preparation and review processes.

GARFO also works closely with OLE and GCNE in enforcing regulations and in defending approved Council actions in litigation.

The GARFO/NMFS process is the focus for public involvement during rulemaking, through comment periods on proposed rules and FMP/NEPA documents.

**NEFSC** is responsible for providing staff and assistance to the Council during its development of fishery management actions, including representation on PDTs and technical working groups, to provide technical advice and assist in analysis, as needed. NEFSC also reviews Council-developed documents supporting fishery management actions and makes certifications regarding certain analytical and scientific requirements of applicable law, such as the RFA, including overfishing definitions, adequacy of economic analyses, and use of best available scientific information.

**GCNE** advises the Council and GARFO throughout the process of developing documentation and making and reviewing decisions, and provides legal advice to the GARFO Regional Administrator confirming legal sufficiency of documentation and processes. GCNE provides NOAA General Counsel Headquarters with an analysis of the legal issues associated with Council actions and works with them to resolve any issue preventing a determination of legal sufficiency. NOAA General Counsel also provides legal advice to NMFS leadership, as appropriate, and provides final clearance for legal sufficiency of regulatory packages requiring clearance from NOAA Headquarters or DOC General Counsel. NOAA General Counsel Headquarters works with NMFS Headquarters to resolve legal issues elevated from the Regions. GCNE also coordinates the defense of approved actions that have been legally challenged. GCNE also serves as the legal advisor to the Council.

The **Northeast Region Coordinating Council (NRCC)** is composed of the Chairs and Executive Directors of the Mid-Atlantic and New England Fishery Management Councils, the GARFO Regional Administrator, the NEFSC Science and Research Director, and the Executive Director of the ASMFC. Other senior staff from those organizations also routinely participate in NRCC meetings and workgroups. The GARFO Regional Administrator and the NEFSC Science Director chair the meetings. Among other functions, the NRCC annually reviews lists of proposed priority actions of the Councils and the ASMFC for the coming year, schedules stock assessments (under the new assessment process under development, the NRCC would approve the annual schedule of Operational Assessments and topics for the Research Track), and helps assess and balance the resources (especially staff resources) needed to complete those actions. In considering Council priorities, the NRCC will review Council Action Plans, which will be used to consider current and future staffing and priority setting.

At **NMFS Headquarters**, the **Assistant Administrator for Fisheries** is responsible for: (1) Deciding whether to concur in the Regional Administrator's decision regarding approval/disapproval/partial approval of Council-recommended FMPs/amendments; (2) deciding whether to approve final rules implementing regulations; (3) determining that an appropriate NEPA document has been completed for the action; and (4) resolving with NOAA General Counsel any issues elevated to Headquarters, including issues related to determinations of legal sufficiency.

Within NMFS Headquarters, the **Office of Sustainable Fisheries** tracks Council and NMFS FMP activities, consults with and advises Regions on the national policy implications of decisions, packages and forwards regional documents to NMFS leadership, and facilitates communications to resolve problem issues raised during reviews by NMFS, NOAA, the Department of Commerce, and/or the Office of Management and Budget.

The **Office of Science and Technology** in NMFS Headquarters advocates and ensures the sound scientific basis for NMFS resource conservation and management decisions. It has oversight of NMFS scientific research and technology development activities, including biology, ecology, economic and social sciences, oceanography, management of scientific information, engineering, and other disciplines used to fulfill its conservation and management mission for living marine resources.

The **NOAA NEPA Coordinator**, in the Office of Strategic Planning, Program Planning, and Integration, in Silver Spring, MD, reviews and provides final clearance for all EISs and EA/Findings of No Significant Impacts (FONSI). In addition, the NOAA NEPA Coordinator is responsible for filing EISs with the Environmental Protection Agency and signing all transmittal letters that disseminate NEPA documents for public review. NOAA, as the action agency, has ultimate responsibility for the findings under NEPA.

### **Joint Responsibilities**

The Council, NESFC, and GARFO will hold regular meetings at the appropriate supervisory level with representation from the Region's Sustainable Fisheries Division, the Center, and the Council staff (this group has been referred to as "OpCor" in the Tiger Team recommendations)

- This group ideally meets monthly or before or after every Council meeting.
- The meetings serve as the focal point for PDT chairs/Project Managers to raise issues, communicate when specific problems are identified and resolve resource challenges.
- The meeting can be used to hold specific offices or individuals accountable if a management action is not meeting its specified timeline.
- The group identifies necessary adjustments to resource allocation between FMPs based on changes in management priorities.

## Specific Responsibilities

### **Council**

#### ***Executive Committee***

Based on input from a variety of sources (stakeholders, NRCC, Advisory Panels, staff, etc.), the Council's Executive Committee will identify issues warranting Council action and prioritize those issues for the coming year, for final approval by the Council.

The Executive Committee will review each Action Plan developed by a PDT and, if appropriate, forward it to the Council for approval. If the Executive Committee does not accept the Action Plan, the Action Plan will be returned to the PDT, with an explanation, for further development. The Executive Committee will also assist in resolving issues regarding resource availability and timelines relative to Action Plans.

#### ***Oversight Committee***

The responsibilities of the Oversight Committee are:

- To develop management alternatives consistent with the management objectives for each fishery management action, as established by the full Council, for approval by the Council to take to public hearings and for further development;
- To develop and recommend preferred alternatives to the full Council for final adoption and submission for Secretarial review; and
- To provide guidance and direction to the associated PDT to assist in technical development of management alternatives and analyses.

The Council Chair will appoint Council members to the Oversight Committee, and appoint a Chair of that committee. The Council's Executive Director will assign Council staff to support each Oversight Committee.

#### ***Scientific and Statistical Committee (SSC)***

The Council will establish and maintain a single SSC. The SSC operates at the direction of the Council, and the Council's Executive Director.

The responsibilities of the SSC are:

- Provide the Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices;

- Assist the Council in the development, collection, evaluation, and peer review of statistical, biological, economic, social, and other scientific information relevant to the development and amendment of fishery management plans; and
- Provide guidance to ensure that fishery management plans, amendments, and framework adjustments are based on the best scientific information available (National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act).

***Plan Development Team (PDT)***

The responsibilities of the PDTs are:

- To support the associated Oversight Committee;
- To provide plan development, and scientific and technical expertise to the Council and its committees and, if appropriate, to the Stock Assessment Workshops;
- To review major components of submission documents, such as draft and final environmental impact statements, economic, social and Regulatory Flexibility Analyses for all FMPs, and major amendments or framework adjustments, and to complete a checklist for the action, prior to final Council adoption, documenting that all documents and analyses have been, or will be, completed prior to submission to NMFS for Secretarial review.
- To develop an Action Plan for each action under development, prepared by all members of the PDT, representing all disciplines, which serves as a contract among the parties on the PDT, and that establishes, for that action, what the specific responsibilities of each individual on the PDT will be, and the timeline for completion of the action;
- To determine, based on direction from the Council, the scope of issues that will be considered in the development of the action, and to establish what areas of expertise should be actively represented on the PDT for that action, which is then documented in the Action Plan;
- To evaluate management proposals with respect to achieving FMP objectives, consistent with applicable law;
- To incorporate SSC recommendations, as accepted by the Council, into management alternatives;
- To develop and prepare FMP and amendment submission documents; and
- The Council's Executive Director will assign appropriate staff to chair each PDT and to coordinate the logistics for all PDT meetings.

The responsibilities of Council staff on the PDT are:

- To serve on and chair the PDT;
- To coordinate logistics for PDT meetings and to schedule meetings as far in advance as possible;
- To ensure that an Action Plan is developed for each action, with input from all disciplines;
- To have the responsibility for the development of all actions assigned to the PDT and, with assistance from other PDT members as described in the Action Plan, for all Council documents related to the action;
- To coordinate assignments of specific tasks to individuals or subgroups of the PDT, consistent with the approved Action Plan;
- To communicate guidance from the relevant Oversight Committee prior to PDT meetings;
- To keep PDT members informed of all Council actions affecting a PDT's area of responsibility;
- To oversee and be a key contributor to the preparation of reports and meeting summaries documenting the proceedings of the PDT. The PDT reports and meeting summaries should clearly identify conclusions, recommendations, and/or decisions reached by consensus among all participating PDT members, and, when consensus is not reached, the majority and minority viewpoints expressed by the members of the PDT;
- To ensure that all documentation and analysis necessary to support fishery management actions are completed, including the Magnuson-Stevens Act document (FMP, amendment, framework adjustment, or annual specifications), the NEPA document (EA/FONSI or EIS), information necessary for GARFO to conduct ESA section 7 consultations, and documentation demonstrating compliance with all other relevant applicable laws and executive orders, with the exception of the PRA and the IQA; and
- To post on the Council's website, and keep current, the Action Plan for each action under development, including clear information as to how and when the public can be involved in that process.

Council staff will not be responsible for writing implementing rules and regulations for Council-developed actions, or for conducting PRA or IQA analyses.

Council staff will be responsible for facilitating the deeming of implementing regulations for Council-developed actions to be consistent with the proposed actions and Council intent.

The responsibilities of GARFO and NEFSC personnel on the PDT are:

- Attend PDT meetings, as appropriate, and participate in the development of management options and the analysis of their impacts, according to the terms of the Action Plan;
- Consistent with their expertise and the terms of the Action Plan, provide documents and analyses necessary to support management actions;
- Consistent with their expertise and the terms of the Action Plan, draft materials for presentation to the Committee and or the Council and, if necessary, present those materials at appropriate meetings; and
- Review PDT reports and management documents to ensure they accurately and appropriately reflect PDT proceedings and viewpoints.

## **GARFO**

### **Sustainable Fisheries Division (SFD)**

At the development stage, responsibilities of SFD staff are:

- To support and participate in all PDTs established by the Council for which SFD has the lead within GARFO, and to serve as Project Manager for the action;
- To participate in the development of all associated Action Plans;
- To ensure that a current Action Plan for each action under development is available to the public, both through the NEFMC's website and GARFO's website, including clear guidance to the public as to the status of each action and how and when they can have input to the process;
- To serve as the lead in coordinating participation and responsibilities of other GARFO divisions, in support of the PDT;
- To request additional support from the various divisions/offices of GARFO and NEFSC, on an as-needed basis, to ensure that all issues related to the action are adequately addressed in compliance with the Magnuson-Stevens Act, NEPA, ESA, MMPA, and all other applicable laws and Executive Orders. This task includes chairing the GARFO Implementation Team and coordinating the action with the Fishery Dependent Data Working Group, as necessary;
- To provide advice, guidance, and information on fishery management policy issues and requirements, as requested, including considerations of administrative costs and complexity, potential approvability issues, enforceability concerns, timing of the development and implementation of the action under development, particularly with

regard to the Secretarial review phase, and regulatory simplification (i.e., how to keep measures and regulations as simple and clear as possible);

- To complete specific responsibilities (e.g., to provide information, data, etc.) necessary for the successful completion of the action, and as documented in an approved Action Plan for each action; and
- To provide a link to each Action Plan on the GARFO website, and update timelines for Secretarial review, approval, rulemaking, and implementation.

The Assistant Regional Administrator (ARA) for Sustainable Fisheries will assign SFD staff to participate on each PDT, as necessary and appropriate.

Once a complete fishery management action document, including all required analyses, is submitted to GARFO by the Council, SFD staff will have primary responsibility for:

- Ensuring that the appropriate review procedures are followed, in accordance with the timeline established in the Action Plan;
- Coordinating the review of Council-submitted actions within GARFO, NEFSC, OLE, and GCNE;
- Drafting the proposed regulatory text, working with the appropriate Council staff to ensure consistency with Council intent, which will be submitted to the Council's Executive Director prior to publication in the Federal Register to be deemed necessary and appropriate to implement the Council's action;
- Completing the proposed and final rule packages, including all Issues Advisories and other memoranda necessary for Secretarial review of the action;
- Preparing decision packages for Secretarial review, including all memoranda and documentation required for NMFS Headquarters, NOAA, DOC, and OMB reviews;
- Completing PRA submissions for approval of new or revised data collections by OMB;
- Completing and signing IQA analyses;
- Requesting section 7 consultations under the ESA from PRD;
- Making initial determinations regarding marine mammal and essential fish habitat (EFH) impacts of fishery management actions, and requesting concurrence from PRD and HCD;
- Responding to requests for briefings on proposed actions;
- Responding to all relevant comments received from the public on proposed regulations and FMPs/amendments in the final rule;



- Implementing and administering approved programs and program changes, in cooperation with other GARFO divisions, including cost-recovery programs, quota and effort leasing programs, vessel replacements and upgrades;
- Monitoring fisheries, in cooperation with APSD;
- Taking appropriate in-season and/or post-season actions and implementing accountability measures;
- Assisting APSD in determining eligibility for limited access permits;
- Providing information and assistance to the public and to NMFS Headquarters, NOAA, and DOC to respond to constituent needs, including requests from Members of Congress;
- Assist GARFO communications staff in providing outreach and educational services; and
- Work closely with NOAA OLE and GCNE in enforcing regulations and in defending approved Council actions in litigation.

In addition, as necessary, SFD staff will have the lead in development and implementation of emergency actions, interim actions, and Secretarial FMPs/amendments to respond to new information or management/statutory requirements.

### **Habitat Conservation Division (HCD)**

**HCD staff** will participate in the PDT established for each fishery management action for which habitat-related concerns can reasonably be identified or expected, and will participate in the development of Action Plans for all actions.

The ARA for Habitat Conservation will assign HCD staff to participate on the PDT, as necessary and appropriate.

**HCD staff** assigned to a PDT will be responsible for:

- Participating in the development of all Action Plans;
- Ensuring that any potential habitat-related issues that may be associated with the action are clearly identified as early as possible in the process, and that they are addressed in the Action Plan;
- Identifying to the PDT any habitat-related requirements that may have to be satisfied during the development, review, approval, and/or implementation of the action, and ensuring that they are included in the Action Plan;

- Explaining how habitat-related issues and/or requirements may affect the Action Plan and/or timeline for the completion of the action;
- Identifying any staff resource needs, requirements, and/or limitations associated with the development, review, approval, and/or implementation of the action, and ensuring they are reflected in the Action Plan;
- Providing guidance and assistance to Council staff in the preparation of the EFH assessment required for an EFH consultation under the Magnuson-Stevens Act;
- Completing specific responsibilities (e.g., to provide habitat information, data, etc.) necessary for the successful completion of the action, and as documented in an approved Action Plan for each action; and
- Assisting in the development of sections of documents related to habitat protection, including the “Affected Environment” sections required by NEPA, and analysis of fishery management actions on EFH by providing information, data, technical guidance, and reviewing draft documents.

For all fishery management actions submitted to NMFS for Secretarial review, HCD staff will have primary responsibility for ensuring that all EFH consultation activities required under the Magnuson-Stevens Act are completed in accordance with the timeline established in the Action Plan.

### **Protected Resources Division (PRD)**

**PRD staff** will participate in the PDT established for each fishery management action for which significant protected resource-related concerns (marine mammals and/or threatened or endangered species) can reasonably be identified or expected, and will participate in the development of Action Plans for all actions.

The ARA for Protected Resources will assign PRD staff to participate on the PDT, as necessary and appropriate.

As the creation of a PDT is contemplated by the Council, SFD, and PRD ARAs will meet to determine whether a significant protected resource related concern may exist for a fishery management action.

If significant protected resource related concerns may exist for a fishery management action, PRD staff will participate in the initial meetings of the PDT to determine whether staff are needed throughout the development of the action. Based on outcome of the initial meeting of the PDT, the ARA for Protected Resources will assign PRD staff to participate on the PDT, as necessary and appropriate.

PRD staff assigned to a PDT will be responsible for:

- Participating in the development of Action Plans;
- Providing to the PDT guidance and assistance related to determining protected species presence in an area, and the species' abundance, and distribution, including descriptions of protect resources for the "Affected Environment" section of NEPA documents;
- Identifying to the PDT how protected resource-related issues and/or requirements (such as a formal section 7 consultation and the resulting Biological Opinion) may affect the Action Plan and/or timeline for the completion of the action;
- Identifying any staff resource needs, requirements, and/or limitations associated with the development, review, approval, and/or implementation of the action, and ensuring they are reflected in the Action Plan;
- Completing specific responsibilities (e.g., to provide information, data, etc., relating to protected resources) necessary for the successful completion of the action, and as documented in an approved Action Plan for each action. This will not include an analysis of the effects of the fishery action on ESA listed species, or drafting of text to incorporate into an effects analysis, as this is the responsibility of the consulting agency; and
- Assisting in the development of sections of documents related to protected resources, including the "Affected Environment" sections required by NEPA, and analysis of fishery management actions on EFH by providing information, data, technical guidance, and reviewing draft documents.

For all fishery management actions submitted to NMFS for Secretarial review, PRD Greater Atlantic Region staff will have primary responsibility for ensuring that all review and consultation activities required under the ESA are completed in accordance with the statutory timelines (e.g., 135 days for formal consultations). For marine mammal interactions that require a permit, consultation with the Office of Protected Resources in Headquarters is required, as this is not a program area for which GARFO PRD has delegation.

### **GARFO NEPA Staff**

NEPA staff will participate in the PDT established for each fishery management action, and will participate in the development of Action Plans for all actions.

The Regional NEPA Coordinator will assign NEPA staff to participate on the PDT, as necessary and appropriate.

NEPA staff assigned to a PDT will be responsible for:

- Participating in the development of all Action Plans;

- Ensuring that any potential NEPA-related issues that may be associated with the action are clearly identified as early as possible in the process, and that they are addressed in the Action Plan;
- Identifying to the PDT any NEPA-related requirements that may need to be satisfied during the development, review, approval, and/or implementation of the action, and ensuring that they are included in the Action Plan;
- Explaining how NEPA-related issues and/or requirements may affect the Action Plan and/or timeline for the completion of the action;
- Identifying any staff resource needs, requirements, and/or limitations associated with the development, review, approval, and/or implementation of the action, and ensuring they are reflected in the Action Plan;
- Providing guidance and assistance to Council staff in the preparation of the documentation required under NEPA;
- Completing specific responsibilities (e.g., to provide information, formats, examples, etc., relative to NEPA compliance requirements) necessary for the successful completion of the action, and as documented in an approved Action Plan for each action; and
- As needed and as staff resources allow, assist in the development of sections of FMP documents related to NEPA requirements including the preparation of the Cumulative Affects Analysis in collaboration with PDTs.

For all fishery management actions submitted to GARFO for Secretarial review, NEPA staff will have primary responsibility for ensuring that all review and consultation activities required under NEPA by the Council on Environmental Quality and through NOAA Administrative Order 216-6 are completed in accordance with the timeline established in the Action Plan.

### **Analytical and Program Support (APS) Division**

**APS staff** will participate in the PDT established for each fishery management action for which fishery monitoring, data, and/or reporting-related issues/concerns can reasonably be identified or expected, as necessary and appropriate, and will participate in the development of Action Plans for all actions.

The APS Director will assign staff to participate on the PDT, as necessary and appropriate.

**APS staff** assigned to a PDT will be responsible for:

- Participating in the development of all Action Plans;

- Ensuring that any potential data, reporting, and/or fishery monitoring-related issues that may be associated with the action are clearly identified as early as possible in the process, and that they are addressed in the Action Plan;
- Identifying to the PDT any data, reporting, and/or fishery monitoring requirements that may have to be satisfied during the development, review, approval, and/or implementation of the action, and ensuring they are reflected in the Action Plan;
- Explaining how these data, reporting, and/or fishery monitoring-related issues and/or requirements may affect the Action Plan and/or timeline for the completion of the action;
- Identifying any staff resource needs, requirements, and/or limitations associated with the development, review, approval, and/or implementation of the action, and ensuring they are reflected in the Action Plan; and
- Completing specific responsibilities (e.g., to provide information, data, data analysis, permit-related data, etc.) necessary for the successful completion of the action, and as documented in an approved Action Plan for each action.

## NEFSC

The NEFSC will support the Council through participation in PDTs that are established for fishery management actions. The Science and Research Director will designate representatives to serve on PDTs, and will balance PDT demands on staff with support for other Center priorities. Because of competing demands for Center resources, there may be occasions where the extent of NEFSC support to PDTs will be limited. In these instances, the Science and Research Director will define the extent of participation and communicate the limitations to the Council and GARFO. NEFSC staff also will assist in the preparation of the appropriate sections of SAFE Reports.

NEFSC staff will participate in the PDT established for each fishery management action. Center staff will participate in the drafting of action plans and these action plans will accurately reflect Center resource and scheduling priorities as well as those of the Council. NEFSC support to a PDT will typically include a biologist and a social scientist. NEFSC staff assigned to a PDT will typically be selected from the Population Dynamics and/or Social Sciences Branches, but personnel may be assigned from other branches as appropriate or necessary due to resource constraints. For those actions that will specify OFLs, ABCs, and ACLs, the NEFSC will attempt to assign a biologist from the Population Dynamics Branch.

NEFSC personnel assigned to the PDT will possess the following expertise:

### Biologist:

- Understanding of stock assessment models and catch projection methods; ability to develop catch advice for OFL/ABC/ACL determinations;

- Familiarity with the biology of the managed species/stock, including spawning behavior;
- Familiarity with catch estimation, including the allocation of landings to stock area, estimation of discards, and methods used to determine age of the catch;
- Familiarity with fishery independent surveys, indices, and swept area biomass estimates for those surveys; and
- Understanding of and ability to query databases managed by the NEFSC, including but not limited to the observer database, dealer and VTR databases, and survey databases.

Social Scientist:

- Expertise in either fisheries economics or social impact analyses; and
- If an economist:
  - Ability to analyze the economic impacts of fishery management actions, including cost/benefit analyses;
  - Ability to summarize landings, revenues, and fishing effort, using NEFSC databases; and
  - Ability to prepare Regulatory Impact Review and Regulatory Flexibility Analyses of fisheries management actions.
- If a social scientist:
  - Ability to analyze the social impacts of fishery management actions; and
  - Ability to update community level information using NEFSC databases.

NEFSC staff assigned to a PDT will be responsible for:

- Participating in the development of all Action Plans;
- Supporting the work of the PDTs as necessary and appropriate to the requirements of each action plan. This would include analytical and regulatory considerations as well as drawing on the broader resources of the Center;
- Ensuring that any potential issues that may be associated with the action for which the NEFSC staff have expertise are clearly identified as early as possible in the process, and that they are addressed in the Action Plan;
- Providing guidance and assistance to Council staff in the preparation of the documentation necessary to meet the requirements of the Magnuson-Stevens Act and all other applicable law;
- Preparing biological, ecological, economic, and social analyses as needed to support the PDT in fulfilling its functions, consistent with the approved Action Plan;
- Requesting additional support from the various offices of NEFSC, on an as-needed basis, to ensure that all scientific issues related to the action are adequately addressed in compliance with the Magnuson-Stevens Act, NEPA, and all other applicable laws and Executive Orders. Additional support will be provided if it does not conflict with other NEFSC priorities; and

- Completing specific responsibilities (e.g., to provide information, data, analyses, etc.) necessary for the successful completion of the action, and as documented in an approved Action Plan for each action.

### **NOAA Office of Law Enforcement (OLE)**

The Antideficiency Act prohibits Federal agencies from obligating or expending Federal funds in advance or in excess of an appropriation, apportionment, or certain administrative subdivisions of those funds, 31 U.S.C. §§ 1341, 1517(a). The Act also prohibits agencies from accepting voluntary services, 31 U.S.C. §§ 1342. Nothing in this Agreement is intended to require the Federal Government to expend and Federal funds, including labor, in the event of a lack of appropriation or in excess of appropriation.

**OLE staff** will participate in the PDT established for each fishery management action for which enforcement-related concerns can reasonably be identified or expected, as needed, and will participate in the development of Action Plans for all actions.

OLE staff assigned to a PDT will be responsible for:

- Participating in the development of all Action Plans;
- Ensuring that any potential enforcement-related issues that may be associated with the action are clearly identified as early as possible in the process, and that they are addressed in the Action Plan;
- Identifying any enforcement-related requirements that may have to be satisfied during the development, review, approval, and/or implementation of the action, and ensuring that they are addressed in the Action Plan;
- Explaining to the PDT how these enforcement-related issues and/or requirements may affect the Action Plan and/or timeline for the completion of the action;
- Identifying any staff resource needs, requirements, and/or limitations associated with the development, review, approval, and/or implementation of the action, and ensuring that they are reflected in the Action Plan;
- Providing an enforceability assessment for draft amendments and other actions, as necessary, and as early in the development process as possible; and
- Completing specific responsibilities (e.g., providing information, data, etc.) necessary for the successful completion of the action, and as documented in an approved Action Plan for each action.

**Life of Agreement**

This Agreement will become effective when signed by all parties, and will remain in effect unless and until it is terminated by one or more parties, or it is superseded by another agreement. Any party may terminate this Agreement by providing 90 days written notice to the remaining parties. This Agreement may be expanded to include other aspects of the development and implementation of management actions and may be amended at any time upon written agreement among all parties.

**Statement of Commitment**

By signing below, I agree, on behalf of the organization I represent, to fulfill the roles and responsibilities outlined herein, and to support the efforts of the other parties involved in the fishery management process.

New England Fishery Management Council:

Thomas A. Nien 10/21/2014  
Executive Director Date

NOAA Fisheries Service Greater Atlantic Regional Fisheries Office:

[Signature] 10/21/14  
Regional Administrator Date

NOAA Fisheries Service Northeast Fisheries Science Center:

William Kirk 10/21/14  
Science and Research Director Date

NOAA Fisheries Service Office of Law Enforcement, Northeast:

[Signature] 10/31/14  
Special Agent in Charge Date



Attachment 1.

## Action Plan

[With Guidance]

**Council:** *[Insert name of lead Council]*

**Fishery:** *[Insert name of fishery or FMP]*

**Title of Action:** *[Insert title of action, e.g., Amendment 18, Framework 49, Specifications for the 2012 fishery, etc.]*

**Problem Statement/Objective of Action:** *[Describe the problem(s) or issue(s) the action is intended to address]*

**Range of Alternatives Expected to be Considered:** *[Describe the likely range of alternatives that may be considered. It is understood that this may change as the Team; the Council=s Management Committee Oversight Committee; and/or the Council as a whole further develop the action. But the team should make an initial attempt to define what sorts of alternatives are expected to be examined so that the appropriate staff can be involved, and to update the Action Plan as the alternatives are better defined.]*

### **Fishery Management Action Team or Plan Development Team:**

*[Insert the names of individuals identified to serve as team members or contacts for this action, and the role and responsibilities of each person, such as completion of an analysis or consultation. Not every action will involve all of these areas of discipline at the same level; one of the purposes of the Action Plan is to assess the appropriate involvement of the various disciplines. This will serve as a contract among the parties, once the Action Plan is approved.]*

Council staff:

NMFS GARFO Sustainable Fisheries:

NMFS GARFO Habitat Conservation:

NMFS GARFO Protected Resources:

NMFS GARFO FDS:

NMFS GARFO APS:

NMFS GARFO NEPA:

NMFS Enforcement:

GCNE:

NMFS NEFSC:

Other(s):

**Type of NEPA Analysis Expected (CE/EA/EIS):** *[Insert the type of analysis expected. It is understood that this could change as the action progresses, as the scope and significance could change].*

**Applicable laws/issues:** *[Briefly identify significant issues or analyses that are expected to be required for this action, as appropriate. This will assist in determining what staff resources are needed and what the timing issues may be. See AResource Considerations for Fishery Management Actions@ document for additional guidance.]*

Magnuson-Stevens Act:

Administrative Procedure Act:

National Environmental Policy Act:

Regulatory Flexibility Act:

Paperwork Reduction Act:

Coastal Zone Management Act:

Endangered Species Act:

Marine Mammal Protection Act:

E.O. 12866 (Regulatory Planning and Review):

E.O. 12630 (Takings):

E.O. 13132 (Federalism):

Essential Fish Habitat:

Data Quality Act:

Other:

**Other Issues:** *[Describe other issues and/or needs that must be considered in the development and implementation of this action.]*

Enforcement:

Statistics:

Observer Coverage:

Administrative issues/costs:

Regulatory clarification/simplification: *[Are there aspects of this action that could be used to simplify or improve existing regulations for this fishery? Simplification should be a strong consideration in the development of alternatives.]*

Other:

**Timeline for Development/Review/Implementation:** *[Based on the complexity of the issues, procedural requirements, statutory requirements, analytical requirements, and taking into account other workloads and demands on staff resources, develop a schedule for the action that is realistic. This will allow the Council, the reviewers, and the affected public to plan. In some cases, the schedule may be driven by a critical implementation date (e.g., start of a new fishing year, court-ordered deadline, sunset provision, etc.); in other cases there will be no critical implementation date and the schedule should be based on a reasonable pace of development and implementation, with consideration of other priorities and staff and data availability. Clearly indicate the stages in development, and timeframes, that the public can have input to the process. This timeline should be posted on both the Council's and GARFO's public website, and updated as necessary.]*