



Development of Comments on NMFS Fisheries Climate Governance Policy

**Draft Guidance on Application of MSA
Section 304(f)**

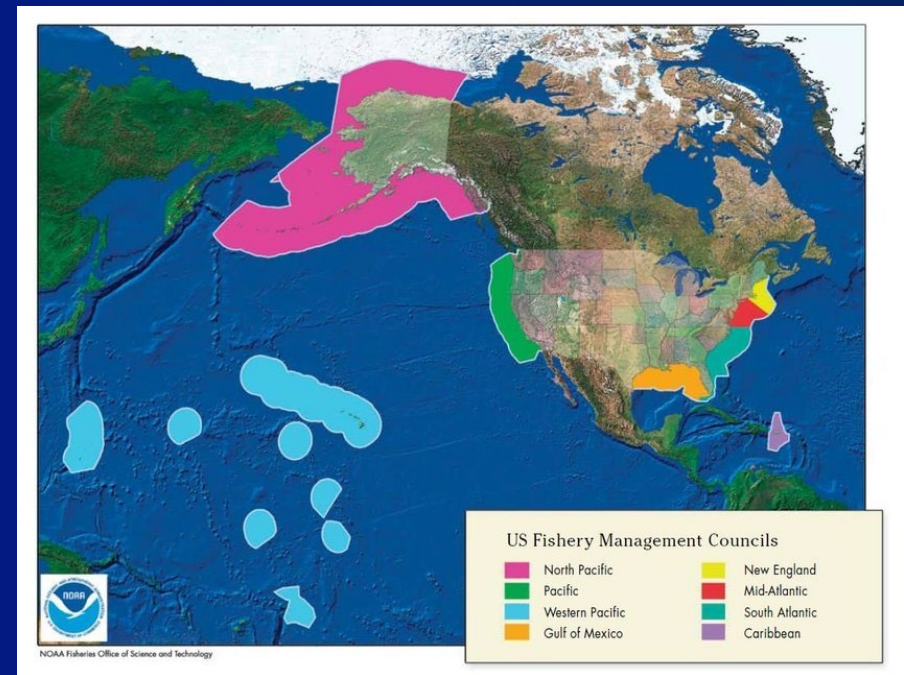
Council

August 9, 2023

MSA §304(f)

For fisheries that extend beyond the “geographical area of authority of any one Council,”

- (1) the Secretary may —
 - (A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or
 - (B) may require that the plan and amendment be prepared jointly by the Councils concerned.



Purpose of NMFS Draft Guidance

- Draft guidance on determining:
 - When the geographic scope of a fishery may need review
 - Determining the geographic scope of fisheries
 - Which Council(s) will be responsible for new and/or existing FMPs for fisheries extending or moving beyond the geographical area of any one Council
- Anticipating “an increasing number of fish stocks shifting in geographic distribution, new fisheries emerging, and other demographic shifts in fisheries”

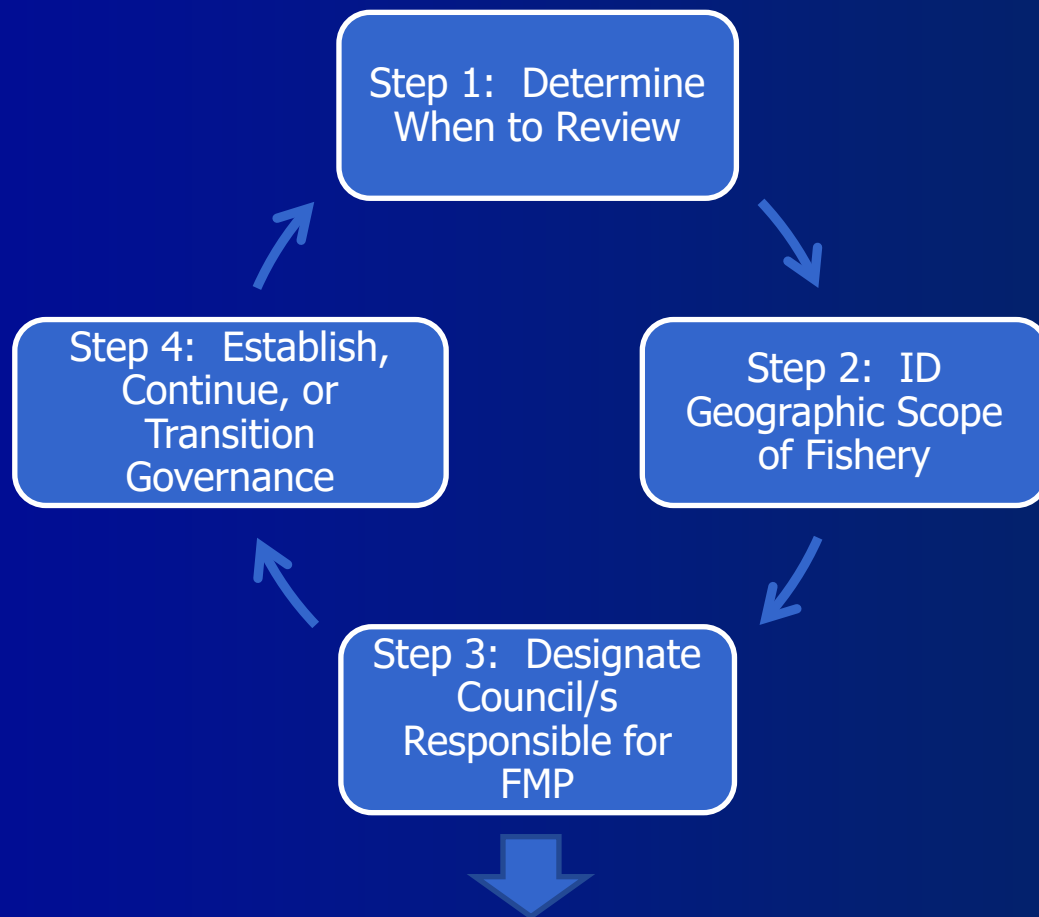
Potential Implications for Mid-Atlantic Council

- Based on draft criteria, at minimum, several Mid-Atlantic species would be subject to frequent reviews of their geographic scope
 - May or may not trigger change in responsibility
- Based on draft presumptions pertaining to designations in policy, potential for one or more species to be jointly managed with, or transferred to, NEFMC

Timeline for Development of Comments

May 15	NMFS distributes draft policy to Councils
May 23	Overview at CCC meeting; initial CCC comments
June 8	Brief discussion during Exec. Director's report at June Council meeting
July 12	SSC webinar meeting
August 9	Council reviews draft guidance, SSC, and staff comments; develops comments
Sept/Oct	Staff refine comment letter and submit
Oct 11-13	CCC meeting; NMFS update and discussion of Council/CCC comments
November 17	Deadline for submission of Council comments

Proposed Process for Determining the Geographic Scope of a Fishery and Council Authority



Designation 1 – 1 Council, 1 FMP

Designation 2 – Multiple Councils, 1 FMP

Designation 3 – Multiple Councils, Multiple FMPs

Proposed Process for Determining the Geographic Scope of a Fishery and Council Authority

Step 1: Consider Whether to Review Geographic Scope and/or Council Authority

- NMFS will conduct a review:
 - If specified criteria are met (see draft policy)
 - Indicators of “significant changes in the **location of stocks or fishing effort**” (e.g., >15% shift in landings revenue or rec. effort by region; documented shift in stock distribution)
 - Certain Council actions with “cross-jurisdictional implications” (e.g., allocation changes)
 - Upon request from a Council

Proposed Data Sources for Step 1 (Initial Review) and Step 2 (Determination of Geographic Scope)

- Stock Assessments.
- Fishery independent surveys.
- Fishery dependent data.
 - Landings.
 - Observer Information.
 - Logbooks.
 - Vessel Monitoring System (VMS) data.
- Recreational fisheries catch and effort estimates.
- NOAA's Distribution Mapping and Analysis Portal (DisMap)
- Traditional and Ecological Knowledge.
- Stakeholder-provided Information.
- Ecosystem Status Reports or similar products.

Proposed Process for Determining the Geographic Scope of a Fishery and Council Authority

Step 2: Determine the Geographic Scope of a Fishery

- Consider both:
 - Location of fish species, sub-species, and stocks
 - Location of fishing effort
- Using data sources on previous slide
- Additional considerations:
 - Management goals/objectives of existing FMPs
 - Need for conservation/management
 - Management efficiency
 - Biological considerations
 - Infrastructure (vessels, dealers, ports, etc.)
- Time: NMFS may give relevant Council(s) up to 6 months from notification to recommend geographic scope

Proposed Process for Determining the Geographic Scope of a Fishery and Council Authority

Step 2: Determine the Geographic Scope of a Fishery

■ Determination at conclusion of Step 2:

Outcome 1

- There is one fishery in one Council's area of authority. That Council is responsible for that fishery under MSA § 302(a).

Outcome 2

- There are separate fisheries in multiple Council areas of authority. Each Council is responsible for the fishery/ies under its area of authority under MSA § 302(a).

Outcome 3

- There is one fishery that extends into areas of authority for more than one Council. NOAA Fisheries may designate a Council or Councils to be responsible for developing the FMP. If this is the outcome, proceed to Step 3

Proposed Process for Determining the Geographic Scope of a Fishery and Council Authority

Step 3: Designation of a Council or Councils under 304(f)

Designation 1

- One Council, One FMP. The Secretary designates one Council to manage the fishery throughout its range.

Designation 2

- Multiple Councils, One FMP. The Secretary designates multiple Councils to jointly manage the fishery throughout its range within a single FMP. This may include designating one Council as the "lead."

Designation 3

- Multiple Councils, Multiple FMPs. The Secretary designates multiple Councils to manage the fishery via multiple FMPs.

Time: NMFS will consult with relevant Councils and provide 6 months to recommend a designation

Proposed Process for Determining the Geographic Scope of a Fishery and Council Authority

Step 3: Designation of a Council or Councils under 304(f)

General considerations (condensed):

- Geographic range of the fishery or management units
- Number and distribution of species, sub-species, and/or stocks
- Need for conservation and management
- Efficiency/responsiveness/adaptability of management
- Representation, access, and participation of stakeholders
- Location of fishing effort/activities
- Location of landings
- Location of current and potential future processing facilities
- Existing permits
- Community impacts
- Relationships with other managed species.
- Need for cross-jurisdictional coordination
- Objectives of existing FMPs, and effectiveness in achieving them
- Optimum yield, NS 3, and other National Standards
- Ability to maintain fishing mortality targets and limits across the fishery's range
- Cost
- Existence of data collection programs
- Comparative effectiveness of existing examples of single vs joint Council management in other fisheries
- International management considerations
- Other relevant factors

Proposed Process for Determining the Geographic Scope of a Fishery and Council Authority

Step 3: Designation of a Council or Councils under 304(f)

Presumptions pertaining to designations:

- If **more than 75% of a fishery's landings revenue accrues to, or recreational fishing effort occurs in**, another Council's jurisdiction, there is a presumption that NOAA Fisheries will assign/reassign management authority to the other Council;
- If **between 40% and 75% of a fishery's landings revenue accrues to, or recreational fishing effort occurs in**, another Council's jurisdiction, there is a presumption that NOAA Fisheries will either assign joint management authority to the two Councils or assign multiple Councils to develop multiple FMPs.
- [If data from **non-fishery dependent sources indicate [15 - 75 % distribution changes]**, then [NMFS is seeking input on how to establish a presumption here].

Proposed Process for Determining the Geographic Scope of a Fishery and Council Authority

Step 4: Transitioning to Revised Council Authority

- At least 2-year phase in period for transition of authority
- Existing FMP and regulations should remain in place under superseded by responsible Council(s)
- Important that fishery remains compliant with MSA
- Presumption that no modifications to allocations or permitting take place during transition phase
- Provide for adequate knowledge/staffing transfer
- Address data collection, storage, and access issues

SSC COMMENTS

From July 12, 2023 webinar meeting

SSC Comments – ToR #1

Comment on the overall proposed process to review the geographic scope and/or Council authority

- Support proactive process to address consequences of climate change
- Objectives need to be clearly & specifically defined
 - Utility of policy unclear given NOAA Directives are non-binding/do not have force and effect of law
 - Impossible to evaluate metrics without stated objectives
- Change in authority should be last resort
 - Implications significant for stakeholders & management partners
 - Need for meaningful input
 - Not all range shifts will necessarily be unidirectional

SSC Comments – ToR #1

Comment on the overall proposed process to review the geographic scope and/or Council authority

- Lack of definition in some decision points could lead to unpredictable and scientifically unjustified decisions
 - Limits the transparency provided by directive
 - Other decision points specifically defined, but with no justification provided (e.g., 15% threshold)
- Lack of specified process for independent scientific review – could lead to change without compelling evidence
- Interaction with other NMFS climate related policies unclear (e.g., NS3; agency-wide EBFM policy/road map)

SSC Comments – ToR #2

Feedback on the application and potential implications of the proposed review criteria, metrics, and data sources

- Presumption that changes are permanent and caused by climate change vs. other factors like management
- Criteria for change may differ from those used to originally establish jurisdiction
- Consider both footprint of/changes in stock and fishery (MSA definition)

SSC Comments – ToR #2

Feedback on the application and potential implications of the proposed review criteria, metrics, and data sources

- Documenting a change in stock distribution will not be easy to define
 - Need to standardize definitions and methods, prioritize data/indicators, provide basis for metrics and thresholds
 - Work needed to distinguish short vs long term change. 3 year periods likely too short to differentiate range shift from interannual variability
 - Need to identify how to reconcile divergent indicators, align metrics with goals, account for data quality & uncertainty
 - Need for consideration of suite of drivers of change, in addition to climate-related drivers

SSC Comments – ToR #3

Social and economic implications and considerations the draft policy could have on Mid-Atlantic fisheries and communities

- Could be extremely disruptive – introduce substantial management uncertainty; influence value of permits/quota
- Social and economic analyses & data considered are inadequate to understand and evaluate future changes in fishing behavior and market conditions
- Policy may create perverse incentives – disincentivize collaboration, changes in landing location to cause/prevent jurisdiction shift
- Should recognize difference between fishing business and fishing vessel
- Proposed timelines unreasonable for stakeholder input
- Freeze on FMP modifications during phase-in has serious business planning consequences

SSC Comments – ToR #4

Potential science and stock assessment implications of this policy

- Important data, stock assessment, and Science Center workload implications and considerations
 - Who will determine and conduct distribution shift analyses?
 - How will data be shared, standardized, and improved across regions? Likely need for new data streams and processes
 - Who will conduct stock assessments and oversee peer reviews? Greater need for spatially explicit assessments
 - Information and advice offered from existing MSE's will likely no longer be relevant given different Council control rules/risk policies
- Loss and/or cost of transitioning institutional knowledge
 - Science Center, Council staff, SSCs

SSC Comments – ToR #5

Provide guidance and/or recommendations for Council consideration

- Procedural Directive should address the science & management issues in an approved Policy Directive
 - Draft contains no info on policy foundation or scientific basis for issues
 - No information on efforts by Councils to address climate/governance challenges or intersection with East Coast scenario planning
 - Does not clarify specific representation concerns/species concerns
- Triggers should be significantly large to minimize change in authority and associated disruption
- Should test process, objectives, rules, and triggers through a case study evaluation across a range of species
 - Develop a national work group of experts to provide advice
- No consideration of interaction and intersection with state science and management partnerships, laws, policies, agreements
 - E.g., cooperative agreements, joint enforcement agreements, research/monitoring partnerships, etc.

STAFF REACTIONS AND PRELIMINARY COMMENTS

Staff Comments: Overarching Comments & Key Takeaways

- Document does not adequately describe the problem to be addressed
 - MSA provides for management of unit stock throughout range
 - Management units have always extended beyond Council region boundaries
- Does not define objectives
- Treats reassignment of management authority as a first course of action for distribution changes
 - Revisions of authority should be last resort when other approaches have failed to address governance concerns

Staff Comments: Overarching Comments & Key Takeaways

- Undermines Scenario Planning process outcomes – should put resources toward addressing these actions first
- Too prescriptive – should include general principles vs. specifics that are not appropriate across all regions/species
- As written, could lead to near-constant reviews of geographic scope of fisheries

Staff Comments: Overarching Comments & Key Takeaways

- Some review criteria problematic and/or unclear in their intent or justification
 - Concern with heavy reliance on commercial revenue and recreational fishing effort
 - Thresholds appear arbitrary and time frames too short to track longer-term change
 - “Certain Council actions” concerning as a review trigger
- Does not acknowledge complexities of evaluating stock distribution changes
 - Should meet standards of BSIA and include peer review component
- Draft is difficult to follow and lacks critical details needed to ensure predictable implementation

Staff Comments: Questions and Areas Requiring Clarification

- Why a procedural directive? Linked to existing policy directive?
- Reference to initial reviews conducted for “most currently managed fisheries” – meaning during development of original FMPs, or recent evaluation? Which fisheries do not have such an evaluation?
- Application at species or FMP level?
- How does application differ for new/emerging vs. existing FMPs?
- Role of ASFMC?
- Basis for metrics and triggers?
- Reconciling divergent indicators?

Staff Comments: Questions and Areas Requiring Clarification

- What constitutes “documented” shift in stock distribution? How to separate longer term trends, and reconcile divergent indicators?
- How would policy apply to species that have always included substantial portions of fishery beyond Council jurisdiction boundaries? Is a certain degree of change in geographic scope needed to proceed to designation step?
- Would both stock location and fishing effort location need to change to indicate change in geographic scope?

Staff Comments: Questions and Areas Requiring Clarification

- Will Council budgets be modified to reflect change in workload/resources needed associated with transfer?
- Who is responsible for each step of process? Where Council does not have primary responsibility, what is Council role/involvement?
- Who will track all indicators for all Council managed species?
- What kind of external review might occur for each step?

Policy Recommendations

If NOAA Fisheries moves forward with policy:

- NOAA Fisheries should directly engage with Councils on revisions
- Include clear description of problem and tie reviews to documented governance issues
- Reassignment of management authority should be a last resort
- Process for reviews and modifications to authority should include analysis, documentation, and public input at least on par with FMP amendment

Policy Recommendations

If NOAA Fisheries moves forward with policy:

- Reviews of geographic scope should begin at request of one or more Councils
- If specific criteria used, should be technically robust with well-supported connection to clear objectives for evaluation
- Multiple evaluation factors should be used addressing stock location, fishing location, shoreside factors, and more

Policy Recommendations

If NOAA Fisheries moves forward with policy:

- Separate process for new/emerging vs. existing FMPs
- Policy may be complicated to apply to multi-species complexes
- Designed to minimize frequency of reviews and changes in authority
- Clearly define roles of NOAA Fisheries, Councils, and Commission
- Include cost/benefit analysis for any proposed transition in management authority

Council Tasks and Next Steps

- Provide input on Council letter
 - Final Deadline: November 17, 2023
 - Aim to get Council comments submitted in September to allow more time for consideration by NOAA Fisheries
- Decide whether to solicit public comments on the draft policy
 - Current assumption is that NOAA Fisheries is not conducting a formal comment period
 - Comments would be submitted separately from the Council's letter

BACKUP

Initial Staff Thoughts: Step 3

