

August 24, 2005

J. Michael Hemsley, PE
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RE: Common language in MOUs for IOOS Regional Associations

Dear Mike,

Earlier this year you asked the Sea Grant Law Center to examine the memoranda of understanding (MOUs) of the various Integrated Ocean Observing System Regional Associations (IOOS RAs) for common language. This letter contains the results of my analysis. Please understand that this letter does not constitute formal legal advice, but only my best effort to answer your question.

I examined the MOUs of the Central and Northern California OOS (CeNCOOS), the Gulf of Mexico Regional Coastal OOS (GCOOS), the Southeast Coastal Ocean Observations RA (SECOORA), the Alaska OOS (AOOS), and the Northwest Association of Networked OOSs (NANOOS). SECOORA stands alone among these as having an extremely basic MOU; the rest of the RAs are quite detailed and have much in common with one another. Their precise language differs but they all cover most of the same topics, which are listed and described below.

1. Parties

This section, typically the first, describes the parties to the MOU.

2. Background

A description of what the IOOS is and the types of entities that are included in the RA.

3. Justification

All of the MOUs provide language justifying the creation of the RA. This is usually done by listing “needs” and/or “findings” that the RA will address; for instance, “a need for more rapid detection and timely prediction of a broad spectrum of ocean/climate conditions” or “ensuring public health.”

4. Characteristics and Functions

The MOUs describe the concept of the RAs in general language. For example, “NANOOS will be a heterogeneous, distributed system of linked elements (based on existing, successful ocean observing and monitoring efforts), with organizational

structures and interfaces developed where common good is identified.” A mission statement may be included to clarify the RA’s overarching goals.

The MOUs describe what tasks the RAs will accomplish; for instance, “NANOOS will serve as the regional node for integrating coastal and ocean observing activities in Washington and Oregon.” The MOUs do not go into great detail about how the tasks are to be accomplished, as specifics will be worked out by the RAs.

5. Geographic Scope

The CeNCOOS, GCOOS, AOOS, and NANOOS MOUs delineate the geographic scope of their RAs. NANOOS, for example, encompasses “the waters from the U.S.- Canadian border south to northern California and from the coastline, including bays and estuaries, to the seaward extent of the Exclusive Economic Zone.” The CeNCOOS and NANOOS MOUs also describe the characteristics (e.g., physical, meteorological, economic) of their regions.

6. Funding

The CeNCOOS, GCOOS, AOOS, and NANOOS MOUs outline the RA’s funding sources and the financial obligations (if any) of the participating members. CeNCOOS, GCOOS, and NANOOS provide more detail than AOOS. This information may be provided in the section describing the members’ functions and responsibilities, or in a separate section, or both.

7. Governing and Functioning Bodies

The MOUs define the membership and duties of the RAs’ governing and functioning bodies. These are the groups that will make decisions for, and carry out the functions of, the RAs. The CeNCOOS, GCOOS, AOOS, and NANOOS MOUs describe the qualifications and duties of governing officers. CeNCOOS and NANOOS go into greater detail, including terms of office, election procedures, voting procedures, and committee structure.

8. Members’ Functions and Responsibilities

The MOUs describe what will be expected of the RAs’ members. For example, the CeNCOOS MOU states “[t]his undertaking requires active participation of the involved Parties in promoting collaboration among agencies and in ensuring compatibility and interoperability. Parties will support CeNCOOS by: 1) designating representative(s) for participation and voting, as needed and 2) providing funding to support CeNCOOS as an organization.”

9. Participation by Other Entities

The GCOOS, AOOS, and NANOOS MOUs contain language expressing an intention to encourage participation in the RA by entities who are not parties to the MOU, and an intention to establish mechanisms for such participation.

10. Shared Resources

The parties to the MOUs agree to share resources, including facilities, equipment, and expertise.

11. Performance Measures

The CeNCOOS and NANOOS MOUs express the parties' intention to establish performance measures to gauge how well the RA serves its functions.

12. Information and Data

The parties agree on what information and data they will share (e.g., non-proprietary and non-commercial) and how they will share it.

13. Intellectual Property

The CeNCOOS and NANOOS MOUs contain a statement regarding retention of intellectual property rights.

14. Joint Meetings

The parties agree to meet as needed. This section may also include some specifics on how meetings will be conducted, and what their purpose will be.

15. General Provisions

The CeNCOOS, GCOOS, and AOOS MOUs contain "laundry lists" of boilerplate provisions, including:

- Effective date.
- Withdrawal. Provides the procedure for a party to withdraw from the RA.
- Termination. Provides that the MOU will be effective until terminated by the parties.
- Dispute resolution. Provides for how disputes among parties will be resolved.
- Authority. Provides that the MOU will not limit or modify any party's authority.
- Third parties. Provides that the MOU vests no rights in those who are not parties to it.
- Amendment. Provides the procedure for amending the MOU.
- Antideficiency. Affirms that the MOU does not obligate the parties to expend funds in excess of what they are authorized by law to spend.

- Non-binding clause. Affirms that the MOU does not create any legally enforceable obligations.
- Notice. Provides that communication to parties regarding the MOU will be in writing and provides an address.

The more detailed MOUs (CeNCOOS, GCOOS, NANOOS, AOOS) are quite comprehensive and should be effective models for other regional groups. Of course, the needs of the regional groups may vary somewhat, and the parties should focus more heavily on having their MOUs clearly express their intentions than on strictly following any particular model. The primary purposes of these MOUs should be (1) embodying the parties' intentions and (2) preventing future disagreements; as long as the groups keep these purposes in mind they should be able to craft suitable MOUs using the common components listed above.

I hope this letter adequately responds to your question. If it does not, please let me know what I can do to give you the information you need.

Thank you for bringing your question to the Sea Grant Law Center.

Sincerely,
Josh Clemons
Research Counsel