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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600, 601, 604, and 605

[DOCKET NO. 80225-8025]

Style Guide, Regional Fishery Management Councils, Other
Applicable Law, Guidelines for Council Operations and
Administration

AGENCY: National Oceanic and Atmospheric Administration
(NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to revise regulations and guidelines concerning the operation of Regional Fishery Management Councils (Councils) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). This action implements parts of Title I of Pub.L. 99-659, which amends the Magnuson Act; clarifies instructions of the Secretary of Commerce on other statutory and regulatory requirements affecting the Councils; and adjusts the fishery management planning and development procedures in line with recommendations of two fishery management studies commissioned by NOAA in 1986. This action includes the uniform standards for the operation of the Councils required by the Magnuson Act.

DATE: Comments must be received by [insert date 60 days after date of publication].

ADDRESSES: Send comments on this proposed rulemaking to:
Richard H. Schaefer, Office of Fisheries Conservation and
Management, National Marine Fisheries Service, 1825 Connecticut
Ave., N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, telephone
(202) 673-5263.

SUPPLEMENTARY INFORMATION: Section 302(f)(6) of the Magnuson Act requires each Council to determine its organization, and prescribe its practices and procedures for carrying out its functions under the Act in accordance with such uniform standards as are prescribed by the Secretary of Commerce. This action repromulgates the Secretary's uniform standards governing the operations of the Councils. It includes (1) implementation of parts of Title I of Pub.L. 99-659; (2) supplementary instruction on requirements affecting the Councils under other applicable law; (3) guidelines for the fishery management process; and (4) guidelines for (a) Council Statements of Organization, Practices, and Procedures, (b) Council organization, (c) employment practices, (d) financial management systems, and (e) record-keeping. Included are some of the changes to the fishery management process approved by the Under Secretary that had been recommended by the two fishery management studies commissioned by NOAA in 1985 and 1986: the NOAA/Council Task Group Report, and

the NOAA Fishery Management Study. These two studies, each of which generated wide public comment, were undertaken to assess the Magnuson Act fishery management system after ten years of operation, with a view to making administrative and legislative improvements.

Other 1986 efforts to examine the Magnuson Act system, including the Mackerel Investigative Committee, the joint New England and Mid-Atlantic Council proposal, and the Center for Ocean Management Systems conference on Rethinking Fishery Management, have figured in the development of these regulations and guidelines. Some of the ideas are derived from procedures successfully implemented by the Councils over the years. Selected material from the Magnuson Act Operations Handbook and from the Operational Guidelines for the Fishery Management Process has been updated and included.

Three new parts and one subpart have been added: (1) Part 600--Definitions, is designed ultimately to consolidate the definitions, word usages, and abbreviations that apply to Chapter 6 of the CFR in one place. For purposes of this revision, only those definitions broadly connected with Parts 601-605 are included; definitions and word usages uniquely associated with particular topics remain in their appropriate section. (2) Part 601, Subpart D--Membership, addresses requirements affecting Council members individually, such as appointment, term, removal, conduct, compensation, financial disclosure, and so forth. (3) Part 604--Other Applicable Law--describes the requirements of other law that the Secretary has determined to be applicable to the fishery management process. (4) Part 605--Guidelines for

Council Operations and Administration--provides guidance for the development of (a) fishery management plans, and (b) each Council's Statement of Organization, Practices, and Procedures (SOPP).

The basic structure and authorities under the Magnuson Act were not changed by Title I of Pub.L. 99-659; however, certain requirements were modified or added. Provisions reflecting approved Task Group and Study recommendations are identified with an asterisk (*) in the following descriptive text. Statutory procedures addressed in these regulations include:

Council Structure and Operation

(1) Nomination and appointment of Council members.* Section 601.33(b) defines "knowledgeable and experienced" to clarify the basis on which governors nominate and the Secretary appoints. This section also includes the Pub.L. 99-659 requirement that governors consult commercial and recreational fishing representatives in the nomination process, and that the Secretary ensure a fair apportionment of membership. An oath of office, recommended by the Fishery Management Study, is included. The financial disclosure requirements of Pub.L. 99-659 are set forth in section 601.37. In addition, NOAA is making a technical amendment, recommended by the Study, to eliminate confusion regarding geographic proprietorship of a Council seat. By deleting the obligatory and at-large classification, governors are required to submit nominations for every vacancy regardless of perceived interstate representational patterns. It does not change the State representation nor the Governor's obligation to nominate three names for each vacancy. It does, however, provide greater

flexibility for the Secretary in choosing among names provided by the Governors, because individual seats would not be designated. NOAA particularly solicits comments on these provisions.

(2) Council procedures for protection of confidential statistics. Section 601.27 specifies that Council procedures must be consistent with procedures of the Secretary and the laws and regulations of a State submitting them, and expresses NOAA policy with regard to Council member and staff access to confidential statistics, pursuant to Pub.L. 99-659. These regulations supplement 50 CFR 603, which is being revised to regionalize the access system. Section 605.21 specifies that the Council SOPP should include these procedures.

(3) Security investigations and clearances. Section 601.38 provides expanded and updated instruction regarding the security clearance process. Paragraphs (h), (i), and (j) require the submission of any lawful disclosure agreement, required by the National Security Council or other lawful Directive, that may be developed in the future. (Pub.L. 100-202 prohibits the use of appropriated funds during FY 88 to require submission of, to implement, or to enforce the current Government-wide Non-Disclosure Agreement Form SF-189, "Classified Information Non-Disclosure Agreement.")

Fishery Management Process

(4) Role of Council advisory groups.* Section 605.23(d) highlights the functions of the advisory groups and specifically defines advisory group involvement in the fishery management planning and development process, as per Pub.L. 99-659. This section, in combination with Part 605, Subpart B, suggests an

operational structure that responds to recommendations from both commissioned studies. Part 605, Subpart B, describes a process whereby issues can be identified and resolved, and available expertise is called upon on a continuing basis, including relevant NMFS offices, State and academic scientists, advisory groups, planning teams, and others as appropriate.

(5) The conservation standard.* In a separate action, NOAA is in the process of developing amendments to the guidelines for two of the national standards (sections 602.11 and 602.12), precipitated in part by recommendations of the NOAA Fishery Management Study. The Study recommended that NOAA be responsible for determining a biologically acceptable catch for each managed fishery--the total allowable removals from the resource which would maintain a healthy and productive resource into the future. The Study's intent was that stocks be maintained at some level above that which preserves the minimum spawning stock from recruitment overfishing. The Study sought a conservation standard such that stocks are not continually driven to or maintained at the threshold of overfishing. NOAA is currently in the process of developing this conservation standard through a series of NMFS/Council workshops.

(6) The Stock Assessment and Fishery Evaluation (SAFE) report.* As part of this separate action to amend the guidelines for national standards 1 and 2, NOAA is also proposing that a periodic Scientific Assessment and Fishery Evaluation (SAFE) document or set of documents be prepared or aggregated as a summary of the best biological, social, and economic information available to a Council when it needs such data to determine

annual harvest levels for OYs for species in each fishery management unit.

Recognizing the need for early public involvement in developing new approaches, NOAA is including the SAFE proposal language in section 605.13 of these guidelines--analogous to an Advance Notice of Proposed Rulemaking--to invite public comment early in the process. However, as indicated above, NOAA intends to present the SAFE proposal again as part of the proposed amendments to national standard guidelines 1 and 2.

While the Secretary has responsibility for assuring that the SAFE report is produced, it is not intended to be exclusively authored by NOAA. The SAFE report may be produced by any combination of talent from Council, academic, government, or other sources. The SAFE reports are not required to be revised each year, except as there have been new developments or significant changes in a fishery. Although the contents of SAFE reports are not mandatory, certain basic descriptive data on the stocks and industry should be included.

The SAFE report is designed to provide a tracking tool for assessing the relative achievement of FMP objectives. It would establish a time-series data base indicating the relative health of stocks and the industry dependent on them. Including social and economic information in the same document or set of documents with biological information does not diminish the integrity of either type of information. By providing a summary of the best scientific information available for each type of data required in the determination of OY, subject to Council and outside peer review, the SAFE report is designed to improve the ability of

Councils to derive OY or any specified harvest level as the Act prescribes.

Other Applicable Law

(7) Administrative operations and employment practices. Section 604.3 addresses the statutes in this category, which include the Federal Tort Claims Act, the Fair Labor Standards Act, conflict of interest statutes, Workmen's Compensation, and Unemployment Compensation.

(8) The fishery management decision process. Section 604.4 addresses laws in this category, which require consideration of environmental, paperwork, and/or economic and social impacts, or establish rules of procedure for public and State participation or access. They include the Administrative Procedure Act, the National Environmental Policy Act, the Paperwork Reduction Act, the Regulatory Flexibility Act, Executive Order 12291, and Executive Order 12612.

(9) Uses of Oceans and Coastline. Section 604.5 explains how the following statutes affect the fishery management process: the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, and the Marine Protection, Research, and Sanctuaries Act.

Administrative Management Systems

(10) Employment practices. Section 605.25 establishes guideline standards to be implemented in each Council's SOPP, for staffing, recruitment, details, personnel actions, salary and wage administration, benefits, and travel reimbursement.

(11) Financial management. Section 605.26 sets out the cooperative agreement requirements and details relevant portions

of Office of Management and Budget (OMB) Circular A-110 governing financial management systems, procurement, property and space management, and financial reporting. It establishes audit schedules and criteria for programmatic funding.

(12) Recordkeeping. Section 605.27 addresses the requirements for FMP administrative records, Privacy Act records, and Freedom of Information Act requests.

In summary, the proposed regulations/guidelines have been directed to providing uniform standards and guidelines which clarify the system and strengthen accountability at both the administrative and programmatic levels.

CLASSIFICATION:

The Under Secretary for Oceans and Atmosphere has determined that this proposed rule is not a "major" rule under E.O. 12291 requiring a regulatory impact analysis. It prescribes agency policies and procedures and will have no economic impact until specific management decisions contained within specific FMPs are made; until a given FMP is developed there is no basis for evaluating the consequences of these management decisions. Economic impact on small entities is addressed at a later date through regulatory flexibility analyses for individual FMPs. For the same reasons, the General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10. Section 601.37 proposes a collection-of-information requirement subject to the Paperwork Reduction Act which has been approved by the Office of Management and Budget under Control No. 0648-0192. This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612, and is issued in compliance with Executive Order 12291.

Dated:

For the reasons set out in the preamble, 50 CFR Parts 600, 604, and 605 are proposed to be added, and Part 601 is proposed to be amended as set forth below:

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AUTHORITY: 16 U.S.C. 1801 et seq.

Part 600--Style Guide

Sec.

600.1 Definitions.

600.2 Word Usage.

600.3 Abbreviations.

AUTHORITY: 16 U.S.C. et seq.

Part 600--Style Guide

§600.1 Definitions. The terms used in these regulations/guidelines (Parts 600, 601, 604, and 605) have the meanings that are prescribed in section 3 of the Magnuson Act, 16 U.S.C. 1802. In addition, the following definitions apply:

Advisory group - means a Scientific and Statistical Committee (SSC) or Advisory Panel (AP) established by a Council under the Magnuson Act.

Allocation - means direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals.

Assistant Administrator - means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration or a designee.

Center - means one of the National Marine Fisheries Service (NMFS) major research centers that supervise the operations of approximately 25 fishery science laboratories throughout the United States.

Council - means one of eight Regional Fishery Management Councils established under the Magnuson Act: New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf of Mexico, Pacific, North Pacific, Western Pacific.

Exclusive economic zone (EEZ) - means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery management - means the system used to conserve and allocate the fishery resource--including research and data collection; specification of objectives and management measures; establishment, enforcement, and evaluation of regulations.

Fishery management plan (FMP) - means a document that contains a systematic description of a given fishery and the objectives and management measures for the fishery. Required and discretionary contents appear in section 303 of the Magnuson Act. Guidelines for contents of an FMP appear in the NMFS Operational Guidelines: Fishery Management Plan Process, Phase II, 1988.

Fishery management unit (FMU) - means a fishery or that portion of a fishery identified in an FMP relevant to the FMP's management objectives. The choice of an FMU depends on the focus of the FMP's objectives, and may be organized around biological,

geographic, economic, technical, social, or ecological perspectives.

Grants Officer - means the NOAA official who signs, on behalf of the government, the cooperative agreement providing funds to the Council.

Highly migratory species - means the species of tuna which in the course their life cycle spawn and migrate over great distances of the ocean, including, but not limited to:

Albacore, Thunnus alalunga;

Bigeye tuna, Thunnus obesus;

Bluefin tuna, Thunnus thynnus;

Southern bluefin tuna, Thunnus maccoyii;

Yellowfin tuna, Thunnus albacares; and

Skipjack tuna, Euthynnus pelamis.

Industry - means both recreational and commercial fishing, and includes the harvesting, processing, and marketing sectors.

Magnuson Act - means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)

Management measure(s) - means one or more technique(s) through which the objectives for a given fishery are achieved; a management measure embodied in a regulation has the force of law.

Plan Team - means a Council working group selected from agencies, institutions, and organizations having a role in the research and/or management of fisheries, whose primary purpose is to assist the Council in the preparation and/or review of FMPs, amendments, and supporting documents for the Council, and/or SSC and AP.

Region -- means one of five NMFS Regional Offices responsible for administering the management and development of marine resources in the United States in their respective geographical regions.

Regional Director (RD) -- means the director of a NMFS Regional Office or a designee. Regional Directors serve on the various Councils, as specified by section 605.33. RDs may arrange for the administrative services offered by the DOC Regional Administrative Support Centers.

Secretary - means the Secretary of Commerce or a designee.

Stock assessment - means the process of collecting and analyzing biological and statistical information to determine the changes in the abundance of fishery stocks in response to fishing, and, to the extent possible, to predict future trends of stock abundance. Stock assessments are based on resource surveys; knowledge of the habitat requirements, life history, and behavior of the species; the use of environmental indices to determine impacts on stocks; and catch statistics. Stock assessments are used as a basis to "assess and specify the present and probable future condition of a fishery," (as is required by the Magnuson Act), and are summarized in the Stock Assessment and Fishery Evaluation (SAFE) or similar document.

Stock Assessment and Fishery Evaluation (SAFE) - means a document or set of documents that provides Councils with a summary of the most recent biological condition of species in a fishery management unit, and the social and economic condition of the recreational and commercial fishing industries and the fish processing industries. It provides, on a periodic basis, the

best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

Under Secretary - means the Under Secretary of Commerce for Oceans and Atmosphere, who is Administrator of the National Oceanic and Atmospheric Administration (NOAA), or a designee.

§600.2 Word usage.

(a) Must is used, instead of "shall", to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson Act, the logical extension thereof, or of other applicable law.

(b) Shall is used only when quoting statutory language directly, to avoid confusion with the future tense.

(c) Should is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson Act, and is a factor reviewers will look for in evaluating a SOPP or FMP.

(d) May is used in a permissive sense.

(e) May not is proscriptive; it has the same force as must not.

(f) Will is used descriptively, as distinguished from denoting an obligation to act or the future tense.

(g) Could is used when giving examples, in a hypothetical, permissive sense.

(h) Can is used to mean "is able to" as distinguished from "may."

§600.3 Abbreviations:

(a) Fishery management terms.

ABC--acceptable biological catch
DAH--estimated domestic annual harvest
DAP--estimated domestic annual processing.
EEZ--exclusive economic zone
FMP--fishery management plan
FMU--fishery management unit
JVP--joint venture processing
MSY--maximum sustainable yield
OY--optimum yield
PMP--preliminary fishery management plan
TAC--total allowable catch
TALFF--total allowable level of foreign fishing

(b) Legislation.

APA--Administrative Procedure Act
CZMA--Coastal Zone Management Act
ESA--Endangered Species Act
FOIA--Freedom of Information Act
MFCMA--Magnuson Fishery Conservation and Management Act
MMPA--Marine Mammal Protection Act
MPRSA--Marine Protection, Research, and Sanctuaries Act
NEPA--National Environmental Policy Act
PA--Privacy Act
PRA--Paperwork Reduction Act
RFA--Regulatory Flexibility Act

(c) Federal agencies.

CEQ--Council on Environmental Quality
DOC--Department of Commerce
DOI--Department of the Interior
DOS--Department of State
EPA--Environmental Protection Agency
FWS--Fish and Wildlife Agency
NMFS--National Marine Fisheries Service
NOAA--National Oceanic and Atmospheric Administration
OMB--Office of Management and Budget
SBA--Small Business Administration
USCG--United States Coast Guard

Part 601--Regional Fishery Management Councils

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AUTHORITY: 16 U.S.C. 1801 et seq.

Part 601--Regional Fishery Management Councils

Subpart A--General

§601.1 Purpose and scope.

(a) This part governs the jurisdiction, organization, practices, and procedures of the eight Regional Fishery Management Councils (Councils) established by the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act), 16 U.S.C. 1801 et seq. The Councils are institutions created by Federal law, whose actions must conform to the uniform standards established by the Secretary of Commerce in this part.

(b) The definitions, word usage, and abbreviations set forth in Part 600 apply within this part.

Subpart B--Boundaries

§601.11 Intercouncil boundaries.

(a) New England and Mid-Atlantic Councils. The boundary begins at the intersection point of Connecticut, Rhode Island, and New York at 41 18'16.249" N. latitude and 71 54'28.477" W. longitude and proceeds south 37 22'32.75" E. to the point of intersection with the outward boundary of the exclusive economic zone (EEZ) as specified in the Magnuson Act.

(b) Mid-Atlantic and South Atlantic Councils. The boundary begins at the seaward boundary between the States of Virginia and North Carolina, and proceeds due east to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson Act.

(c) South Atlantic and Gulf of Mexico Councils. The boundary coincides with the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, which begins at the intersection of the outer boundary of the EEZ, as specified in the Magnuson Act, and 83 00' W. longitude, proceeds northward along that meridian to 24 35' N. latitude (near the Dry Tortugas Islands), thence eastward along that parallel, through Rebecca Shoal and the Quicksand Shoal, to the Marquessas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquessas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf of Mexico.

§601.12 Intercouncil fisheries. If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may--

(a) Designate a single Council to prepare the FMP for such fishery and any amendments to such FMP, in consultation with the other Councils concerned; or

(b) Require that the FMP and any amendments be prepared jointly by all the Councils concerned.

(1) A jointly prepared FMP or amendment must be adopted by majority of the voting members, present and voting, of each participating Council. Different conservation and management measures may be developed for specific geographic areas, but the FMP should address the entire geographic range of the stock(s).

(2) In the case of joint FMP or amendment preparation, one Council will be designated as the "administrative lead." The "administrative lead" Council is responsible for the preparation of the FMP or any amendments and other required documents for submission to the Secretary.

(3) None of the Councils involved in joint preparation may withdraw without Secretarial approval. If Councils cannot agree on approach or management measures within a reasonable period of time, the Secretary may designate a single Council to prepare the FMP or may issue the FMP under Secretarial authority.

Subpart C--Uniform Standards for
Organization, Practices, and Procedures

§601.21 Purpose. Section 302(f)(6) of the Magnuson Act, 16 U.S.C. 1852(f)(6), requires each Council to determine its own organization, practices, and procedures for carrying out its functions in accordance with such uniform standards as are prescribed by the Secretary. This subpart provides these uniform standards.

§601.22 Council Statement of Organization, Practices, and Procedures.

(a) Councils are required to publish and make available to the public a Statement of Organization, Practices, and Procedures (SOPP) in accordance with such uniform standards as are prescribed by the Secretary. The purpose of the SOPP is to inform the public how the Council operates within the framework of the Secretary's uniform standards.

(b) Accordingly, within 180 days of the effective date of these regulations, Councils must prepare and submit for Secretarial review and approval amendments to their current SOPPs which are consistent with the guidelines in Part 605, statutory requirements of the Magnuson Act, and other applicable law. Upon approval of a Council's SOPP amendment by the Secretary, a Notice of Availability will be published in the FEDERAL REGISTER, including an address where the public may write to request copies.

(c) Councils may deviate, where lawful, from the guidelines with appropriate supporting rationale, and Secretarial approval of each amendment to a SOPP would constitute approval of any such deviations for that particular Council.

§601.23 Employment practices. Council members (except for Federal government officials) and staff are not Federal employees subject to Office of Personnel Management (OPM) regulations. Council staffing practices are set forth in each Council's Statement of Operating Practices and Procedures. (See Part 605

for guidelines concerning Council personnel matters and standards.)

§601.24 Budgeting, funding, and accounting. The Councils' administrative operations are governed by the requirements of OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations), and A-122 (Cost Principles for Nonprofit Organizations), and the Council Statement of Organization, Practices, and Procedures.

§601.25 Support services. Section 302(f)(3) of the Magnuson Act directs the Secretary to provide the Councils with administrative support services necessary for their effective functioning.

(a) Section 302(f)(4) of the Magnuson Act directs the Administrator of the General Services Administration to furnish each Council with such offices, equipment, supplies and services as he is authorized to furnish to any agency or instrumentality of the United States.

(b) Section 302(f)(2) of the Magnuson Act authorizes all Federal agencies to detail personnel on a reimbursable basis to the Councils after consulting with the Assistant Administrator.

(c) NOAA regional offices are assigned to arrange for services and support to each Council as follows:

<u>Council</u>	<u>Servicing field unit</u>
New England.....	Northeast Region, NMFS
Mid-Atlantic.....	Northeast Region, NMFS
South Atlantic.....	Southeast Region, NMFS
Caribbean.....	Southeast Region, NMFS
Gulf of Mexico.....	Southeast Region, NMFS

Pacific.....Northwest Region, NMFS
North Pacific.....Alaska Region, NMFS
Western Pacific.....Southwest Region, NMFS

(d) Transfer of funds between NMFS and Councils. Once funds are provided to the Councils, they cannot be transferred from a Council to a NMFS Center or Region, or any other Federal agency. Councils can request that NOAA transfer funds identified for Council programmatic activities to NMFS' Centers or Regional Offices.

(1) Councils may not reimburse, or otherwise pay for, NOAA employees' travel, per diem, or other expenses to participate in Council activities. *Unless approved by the Asst Adm. on a case-by-case basis =*

(2) Regional Offices or Centers may not transfer funds to the Council, or in any way purchase products, services, or supplies directly from the Councils. Any transfer of funds or purchases of any type must be made through NOAA, with appropriate documents prepared by the Assistant Administrator, to secure the services or goods from the Councils.

§601.26 Other applicable law. Under section 303(a)(1)(C) of the Magnuson Act, an FMP must be "consistent with the national standards, the other provisions of this Act, and any other applicable law." Part 604 sets forth the Secretary's determination and announcement to the public of other law that is considered applicable to the fishery management process.

§601.27 Protection of confidentiality of statistics.

(a) Each Council must establish appropriate procedures applicable to it and to its committees and advisory panels for

ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council member or advisory group access and the prevention of conflicts of interest, except that such procedures must be consistent with procedures of the Secretary, and, in the case of statistics submitted to the Council by a State, the confidentiality laws and regulations of that State.

(b) NOAA does not release or allow access to confidential information in its possession to Council members and members of Council advisory groups. Council staff access to such data is granted after Councils have: (1) ~~documented a need for unaggregated data~~ and (2) established procedures to ensure the confidentiality of such information as required by the Magnuson Act.

Subpart D--Membership

§601.31 Purpose. This subpart sets forth obligations under law and Secretarial policy that affect Council members individually. It provides information for the public regarding the nomination process, qualification for Council membership, compensation, and conduct while in office.

§601.32 Terms of Council members. Voting members (other than principal State officials, the RD, or their designees) are appointed for a term of three years and may be reappointed. An

*(Magnuson) #11
of Dele.*

individual appointed to fill a vacancy occurring prior to the expiration of any term of office will be appointed for the remainder of that term. The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than the normal three years if necessary to provide for balanced expiration of terms of office.

§601.33 Appointments.

Lots of Disc. on this one.

(a) Each year approximately one-third of the appointed members' terms expire; members will be appointed or reappointed by the Secretary from lists of nominees submitted by March 15 of each year by the Governors of each constituent State. Governors must submit the names of three nominees for each applicable vacancy. These procedures also apply when a vacancy occurs prior to the expiration of a member's term.

(b) The Governors are responsible for nominating only those persons who meet the qualification requirements of the Magnuson Act; they must provide appropriate documentation to the Secretary that (i) each nomination was made in consultation with commercial and recreational fishing interests, and (ii) each nominee is knowledgeable and experienced in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

(1) At least three years' experience in the harvesting, processing, or marketing of fish or fish products;

(2) At least three years' experience promoting fishing for pleasure, amusement, relaxation or consumption. This may include operating a recreational fishing business;

(3) Former or current officer or leadership role in a State, regional, or national organization made up of representatives of any of the interests described in paragraphs 601.33(b) (1) and (2);

(4) At least three years' experience managing and conserving natural resources, including at least one year interacting with industry, government bodies, academic institutions, and public agencies. This would include experience serving as a member of a Council, Advisory Panel, or Scientific and Statistical Committee.

(5) At least three years' experience representing consumers of fish or fish products through participation in local, State, or national organizations, or performing other activities specifically related to the education and/or protection of the consumer of marine resources.

(6) At least three years' experience in teaching, journalism, writing, or researching matters related to fisheries, fishery management and fishery resource conservation. Such experience includes both natural and social sciences.

(7) At least three years' consulting or legal experience in areas directly related to fisheries resource management, conservation, or use, including interacting with officials of local, State, or Federal agencies.

(c) To assist in identifying necessary qualifications, each nominee should furnish to the appropriate Governor's office a current resume or equivalent, describing career history--with particular attention to experience related to the above criteria. Nominees may provide such information in any format they wish. Career and educational history information sent to the Governors

should also be sent to the Office of Fisheries Conservation and Management.

(d) If the Secretary determines that any nominee is not qualified, the Secretary will notify the appropriate Governor of that determination. The Governor may then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

(e) Each member State must have at least one appointed voting member serving on the Council who has been nominated by the Governor of that State. If a Governor fails to submit a list of qualified nominees within the time allotted, and if that State is not already represented by one appointed voting member, the seat will remain vacant until three qualified nominations are received and have been acted upon by the Secretary.

(f) If a Governor fails to submit a list of qualified nominees within the time allotted, and that member State is already represented by one appointed voting member, then the new member(s) will be appointed from the list of names submitted by the Governors of the other constituent States.

(g) The Secretary must ensure a fair apportionment, on a rotating or other basis, of the active participants (or their representatives) involved in the fisheries under Council jurisdiction. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries within Council jurisdiction are fairly represented as voting members.

§601.34 Oath of office. As trustees of the Nation's fishery resources, all voting members must take an oath specified by the Secretary as follows: I, _____, as a duly appointed member of a Regional Fishery Management Council established under the Magnuson Fishery Conservation and Management Act, hereby promise to conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the Nation. I recognize my responsibility to serve as a knowledgeable and experienced trustee of the Nation's marine fisheries resources, being careful to balance competing private or regional interests, and always aware and protective of the public interest in those resources. I commit myself to uphold the provisions, standards, and requirements of the Magnuson Fishery Conservation and Management Act and other applicable law, and shall conduct myself at all times according to the rules of conduct prescribed by the Secretary of Commerce. This oath is freely given and without mental reservation or purpose of evasion.

§601.35 Rules of Conduct.

(a) Council members, as Federal officeholders, are subject to most Federal criminal statutes covering bribery, conflict-of-interest, disclosure of confidential information, and lobbying with appropriated funds. In particular, the following provisions apply:

(1) 18 U.S.C. 201 - prohibits offer or acceptance of anything of value to influence any official act;

(2) 18 U.S.C. 203, 205 - prohibits officials from representing anyone before a Federal court or agency in a matter involving a specific party in which the United States has a direct and substantial interest and in which the official has worked personally and substantially.

(3) 18 U.S.C. 207 - prohibits a former official from representing others before a Federal agency concerning a particular matter involving specific parties in which the official participated personally and substantially as a Federal official or which was under the person's official responsibility.

(4) 18 U.S.C. 208 - prohibits official acts in a matter in which the official has a personal financial interest. This prohibition does not apply to a financial interest of a Council voting member or Executive Director if the official obtains a waiver under 18 U.S.C. 208(b), or if the financial interest is in a harvesting, processing, or marketing activity that has been disclosed in a report filed under section 601.37.

(5) 18 U.S.C. 209 - prohibits an official from receiving compensation for performing Federal duties from a source other than the United States Government. This restriction does not apply to an official who has served for 130 days or less in a 365-day period.

(6) 18 U.S.C. 210, 211 - prohibit offer or acceptance of value to procure appointment to public office.

(7) 18 U.S.C. 1905 - prohibits disclosure of trade secrets or confidential commercial information except as provided by law.

(8) 18 U.S.C. 1913 - prohibits use of appropriated funds to influence a member of Congress to favor or oppose any legislation

or appropriation. However, this prohibition does not apply when responding to a request from a member of Congress or a Congressional Committee. Personal communications of a Council member or employee at his own expense that are identified as such are not prohibited.

(b) The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. In addition to abiding by the applicable Federal conflict of interest statutes, which apply to Council members, both members and employees of the Councils must comply with these standards of conduct:

(1) No employee of a Council may use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, State, county, or municipal elective office.

(2) No employee of a Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, State, county, or municipal election, or on account of his or her political affiliation.

(3) No Council member or employee may pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, a contribution of money or anything of value in consideration of either support or the use of influence or the

promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.

(4) No employee of a Council may have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties. However, an Executive Director may retain a financial interest in harvesting, processing or marketing activities, and participate in matters of general public concern on the Council which might affect that interest, if that interest has been disclosed in a report filed under section 601.37.

(5) No Council member, employee of a Council, or member of a Council advisory group may use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(6) No Council member or employee of the Council may engage in criminal, infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.

(7) No Council member or employee of the Council may use Council property on other than official business. Such property must be protected and preserved from improper or deleterious operation or use.

(8) No Council member may participate

(i) Personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a particular matter in which he or she has a financial interest; or

(ii) In any matter of general public concern which is likely to have a direct and predictable effect on a member's financial interest unless that interest is in harvesting, processing, or marketing activities and has been disclosed in a report filed under section 601.37. For purposes of this subsection, the member's financial interest includes that of the member's spouse, minor child, partner, organization in which the member is serving as officer, director, trustee, partner or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment.

§601.36 Removal. The Secretary may remove for cause any Secretariially-appointed member of a Council in accordance with section 302(b)(5) of the Magnuson Act wherein the Council concerned first recommends removal by not less than two-thirds of the voting members. A removal recommendation of a Council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

§601.37 Financial disclosure.

(a) The Magnuson Act requires the disclosure by Council nominees, appointees, voting members, and Executive Directors of any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the jurisdiction of the individual's Council or of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is

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serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members, Nominees and Executive Directors of Regional Fishery Management Councils," or such other form as the Secretary, or designee, may prescribe. The report must be filed by nominees for Secretarial appointment before the date of appointment as prescribed by the Secretary. Other voting members and Executive Directors must file the report with the Executive Director of the appropriate Council prior to taking office. Individuals must update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The information required to be submitted will be kept on file, and made available for public inspection at reasonable hours at the Council offices. A copy of the form may be obtained from the appropriate Regional Office.

(b) The provisions of 18 U.S.C. 208 do not apply to an individual who has filed a financial report under this section regarding an asset that has been reported.

§601.38 Security investigations and clearances. (a) Access to security classified material is governed by security regulations and procedures pursuant to E.O. 12356, effective August 1, 1982. No person may have access to classified information unless that person has been determined to be trustworthy, and unless access is necessary for the performance of official duties. This determination, referred to as a security clearance, shall be based on an investigation in accordance with the standards and

criteria of Department Administrative Order (DAO) 207-4. The authority having custody of the classified information determines whether the requester has a need to know the information in the performance of the requester's official duties. The noncritical sensitive position has access to information classified as CONFIDENTIAL or SECRET which is normally sufficient for Council purposes; however, clearance for access to TOP SECRET information may be granted by the Secretary following regular Federal procedures. Foreign nationals may not receive security clearance; however, with the consent of the Director, DOC Office of Security, classified information may be released to a foreign national.

(b) All Council members, staff, and members of advisory groups are individually required to protect classified information and may be subject to sanctions if they violate E.O. 12356, 18 U.S.C. 793, 794, or 952, or the National Security Act (50 U.S.C. 401 et seq.)

(c) Security clearances are required for all Council members and Executive Directors. Other staff and advisory group members may be required to obtain clearances at the Councils' discretion. Those who have not been cleared may not participate in meetings closed for reasons of national security, or have access to any classified information.

(d) To initiate security ^{clearance} assurances, Council members, staff, and members of advisory groups and nominees must submit two documents to initiate security assurances: (1) an FBI fingerprint card (FD-258), and (2) a Standard Form 85, "Data for Nonsensitive or Noncritical-Sensitive Position."

(e) The Standard Form 85 is a multi-use biographical form developed by the Office of Personnel Management. The following instructions apply to completion of the SF-85:

- (1) The form must be typed.
 - (2) Blocks 1, 2, 3, and 4 are self-explanatory.
 - (3) Block 5 must contain a title of a Council-related position, e.g., "Council member", "Council staff", "advisory group member."
 - (4) Block 6 must contain "NMFS, Wash. DC 20235."
 - (5) Block 7 must contain date and places of residence for the most recent five (5) year period.
 - (6) Blocks 8, 10, 11, 12, and 13 are self-explanatory.
 - (7) Block 9 must be marked "Noncritical-Sensitive."
 - (8) Block 14 must specifically list the nominee's employment for the most recent five (5) year period.
 - (9) The form must be signed and dated.
- (f) Form FD-258 is the standard fingerprint card used by the FBI. Fingerprints are not maintained on file with the FBI but are destroyed once the criminal history check has been completed. Individuals may have their fingerprints taken at their local police department or at the personnel/security office of any Federal agency willing to provide the service.
- (g) The security determination is valid for five (5) years.
 - (h) Individuals who are renominated and who have not undergone security processing within the five-year period will be required to submit a new processing package, including fingerprints.

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See notes*

(i) In addition to submission of SF-85 and FD-258, Council members, staff, and members of advisory groups ^{designated by the} will be required ^{to submit} to submit a Non-Disclosure Agreement in order to complete the clearance process, as lawfully required by any National Security Council or other lawful Directive in accordance with its terms. Final security clearances will become effective only upon receipt by the DOC Office of Security of any lawfully required Non-Disclosure Agreement.

(j) After notification of appointment, new Council members should submit any lawfully required Non-Disclosure Agreement to the Office of Fisheries Conservation and Management through the RDs as quickly as possible.

(k) All other individuals are encouraged to submit any lawfully required Non-Disclosure Agreement simultaneously with the SF-85 and FD-258 to expedite final clearances.

(l) Councils should maintain adequate records to determine when to initiate renewal requests as clearances expire. It will be the responsibility of Council staffs to request (through the Office of Fisheries Conservation and Management), as appropriate:

(1) Initial and renewal security clearances for State designees/alternates, and all members of advisory groups, (SSC, AP, team members, etc.); and

(2) Initial and renewal security clearances for Council staff.

(m) Security clearances for U.S. Fish and Wildlife Service, U.S. Coast Guard, U.S. Department of State, and Marine Fisheries Commission non-voting members are obtained by the respective

agencies. However, Council staffs are advised to verify periodically that these members have valid clearances in effect.

§601.39 Council member compensation.

(a) The voting members of each Council who are not employed by the Federal Government or any State or local government shall receive compensation at the daily rate for a GS-18 in the General Schedule when engaged in the actual performance of duties as assigned by the Chairman of the Council. Actual performance of duties, for the purposes of compensation, may include travel time.

Consensus (b) Council members whose eligibility for compensation has been established in accordance with NOAA guidelines *may* will be paid on a contract basis without deductions being made for Social Security or Federal and State income taxes. A report of compensation will be furnished each year as required by the Internal Revenue Service. Such compensation may be paid on a full day's basis whether in excess of eight hours a day or less than eight hours a day. The time is compensable where the individual member is required to expend a significant private effort which substantially disrupts the daily routine to the extent that a work day is lost to the member. "Homework" time in preparation for formal Council meetings is not compensable. State officials may be compensated at the GS-18 level if they can document they are on leave without pay (LWOP). (LWOP does not include annual leave, holidays, or weekends.)

(c) Non-government Council members receive compensation for:

(1) Days spent in actual attendance at a meeting of the Council or jointly with another Council.

(2) Travel on the day preceding or following a scheduled meeting that precluded the member from conducting his normal business on the day in question.

(3) Meetings of standing committees of the Council if approved in advance by the Chair.

(4) Individual member meeting with scientific and technical advisors when approved in advance by the Chair and a substantial portion of any day is needed.

(5) Conducting or attending hearings when authorized in advance by the Chair.

(6) Other meetings involving Council business when approved in advance by the Chair.

(d) The Council Chair must submit to the Regional Office annually a report of Council member compensation authorized. This report shall identify, for each member, amount paid, dates, and location and purpose of meetings attended.

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Part 604--Other Applicable Law

- 604.1 Definitions.
- 604.2 Categories.
- 604.3 Administrative operations and employment practices.
- 604.4 The decision process.
- 604.5 Uses of oceans and coastline.

AUTHORITY: 16 U.S.C. 1801 et seq.

Part 604--Other Applicable Law

§604.1 Definitions. The definitions, word usage, and abbreviations set forth in Part 600 apply within this part.

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§604.2 Categories. Section 304(a)(1)(B) of the Magnuson Act, 16 U.S.C. 1854(a)(1)(B), requires that each FMP or amendment be reviewed for consistency with the national standards, the other provisions of the Magnuson Act and other applicable law. The list of laws affecting the Councils and their operations are grouped, for ease of description, into three general categories: those dealing with administrative operations and employment practices; those dealing with the fishery management decision process; and those dealing with other uses of the oceans and coastline. More detailed guidance is cited throughout this part and also appears in the NMFS Operational Guidelines.

§604.3 Administrative operations and employment practices. Statutes in this category apply, in part, to Council staff, Council members, and members of Council advisory groups. These statutes include the Federal Tort Claims Act, 28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671-80; the Fair Labor Standards Act, 29 U.S.C. 201; the anti-lobbying statute, 18 U.S.C. 1913; the Trade Secrets Act, 18 U.S.C. 1905; the bribery and conflict of interest statutes, 18 U.S.C. 201, 205, 203, 207, 208, 209, 210, and 211; Workmen's Compensation, 5 U.S.C. 8101 et seq.; and Unemployment Compensation, 5 U.S.C. 8501 et seq. Applicability of these statutes is detailed in Part 601, Subpart D, and Part 605, Subpart C.

§604.4 The decision process. This category of laws applies to the fishery management decision process, and requires consideration of environmental, paperwork, and/or economic and social impacts, or establishes rules of procedure for public participation or access. These statutes include the Administrative Procedure Act (APA), 5 U.S.C. 551-553; the National Environmental Policy Act (NEPA), 42 U.S.C. 4321; the Paperwork Reduction Act (PRA), 49 U.S.C. 3501; and the Regulatory Flexibility Act (RFA), 5 U.S.C. 601. Procedures under these statutes and under Executive Orders (E.O.) 12291 and 12612 are described as follows:

(a) Administrative Procedure Act (APA). Sections of the APA (5 USC 551-553) establish procedural requirements applicable to decisionmaking of Federal agencies. The purpose is to ensure public access to the rulemaking process, protect the rights of individuals under the Privacy Act and make available to the

public information requested under the Freedom of Information Act. The effect on the Magnuson Act process is: to require a minimum 15- to 30-day public comment period for proposed rules and a 30-day delayed effectiveness date for final rules, with justification possible for waiving or shortening both; to require the Council to maintain security of personal records of Council members, employees, consultants under contract, and advisory group members; and to require NOAA to respond to requests for information under specified criteria for denial and time limits. Required procedures under these statutes are detailed in sections 604.34 and 605.25.

(b) E.O. 12291. This Executive Order (E.O.) applies to the issuance of new rules, the review of existing rules, and the development of legislative proposals concerning regulations. The E.O. requires that: regulatory objectives and priorities be established with the aim of maximizing net benefits to society; rules be developed with a cost/benefit approach when possible; the chosen regulatory approach or alternative be the one with the least net cost to society; regulatory action should not be undertaken unless the potential benefits outweigh the potential costs to society; and administrative decisions be based on adequate information concerning the need for and consequences of the proposed government action. The E.O. also requires that a semi-annual regulatory agenda be prepared. The effect on the Magnuson Act process is to require all rules to be reviewed by OMB unless covered by specific exemption, and to require a Regulatory Impact Analysis if the rule is "major". A prior determination whether the rule is major or nonmajor and whether

the rule complies with the above requirements is made based on a Regulatory Impact Review.

(c) National Environmental Policy Act (NEPA). NEPA requires that the effects of Federal activities on the environment be assessed. NEPA's purpose is to ensure that Federal officials weigh and give appropriate consideration in policy formulation, decisionmaking, and administrative actions to environmental values and ecological, economic and social benefits and costs and that the public is provided adequate opportunity to review and comment on the impact of major Federal actions. NEPA requires preparation of an Environmental Impact Statement (EIS) for major Federal actions that significantly affect the quality of the human environment. NEPA's effect on the Magnuson Act process is that a draft EIS, or environmental assessment for a finding of no significant impact, must be prepared. NEPA procedures are detailed in NOAA Directives Manual (NDM) 02-10.

(d) Paperwork Reduction Act (PRA). The PRA requires agencies to minimize paperwork and reporting burdens whenever collecting information from the public. PRA's effect on the Magnuson Act process is that if an FMP requires any form of information collection from the public, that collection must receive OMB approval. To obtain OMB approval, a written justification must be submitted. In addition, formal Council input is needed each Spring when the overall NMFS information collection budget request is formulated for submission to OMB. Procedures under the PRA are detailed in NDM 59-11.

(e) Regulatory Flexibility Act (RFA). The RFA establishes the principle that where Federal regulation is necessary, the

regulation should be tailored to the regulated entity's size and capacity to bear the regulatory burden. RFA's effect on the Magnuson Act process is to require a determination of whether a proposed rule is likely to have a significant economic impact on a substantial number of small entities. If the determination is affirmative, initial and final regulatory flexibility analyses must be prepared to accompany the proposed and final rules respectively. These analyses must consider the benefits and costs of compliance, with particular emphasis on the effects of the rule on the competitive position, cash flow and liquidity, and ability of the small entity to remain in the market. The RFA also requires a projection of reporting and record-keeping requirements.

(f) E.O. 12612. This E.O. requires Executive departments and agencies, in formulating and implementing policies, to be guided by federalism principles and criteria. Federalism principles and criteria involve close consultation with the States in any actions which have substantial direct effects on the States or on the distribution of power and responsibility between and among the levels of government. The effect on the Magnuson Act process is to require the Councils to identify federalism issues before submitting management programs to the Secretary for approval. Any principal State official opposed to adoption of an FMP or amendment may file a dissenting report explaining the nature of the State's objection and its relation to the policies of the executive order. (See section 605.24(a)(3)(iv).)

§604.5 Uses of oceans and coastline. This category of laws also applies to the fishery management process, and deals with the competing uses of the ocean, the protection of certain living marine resources and their habitats, and the management of the nation's coastal areas. These statutes include the Coastal Zone Management Act (CZMA), 16 U.S.C. 1451; the Endangered Species Act (ESA), 16 U.S.C. 1531; the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361; and Title III of the Marine Protection, Research and Sanctuaries Act (MPRSA), 16 U.S.C. 1431. Procedures under these statutes are described as follows:

(a) Coastal Zone Management Act (CZMA). The principal objective of the CZMA is to encourage and assist States in developing coastal zone management programs, to coordinate State activities, and to safeguard the regional and national interests in the coastal zone. Section 307(c) of the CZMA requires that any Federal activity directly affecting the coastal zone of a State be consistent with that State's approved coastal zone management program to the maximum extent practicable. CZMA's effect on the Magnuson Act process is to require determination that an FMP has no direct effect on the coastal zone, or is consistent with the State's approved coastal zone management program to the maximum extent practicable. Procedures under the CZMA are detailed in 15 CFR 930.

(b) Endangered Species Act (ESA). The ESA provides for the conservation of endangered and threatened species of fish, wildlife, and plants. The program is administered jointly by the Department of Interior (DOI), which generally has jurisdiction over terrestrial and freshwater species, and the Department of

Commerce (DOC), which generally has jurisdiction over marine species. With respect to endangered or threatened sea turtles, DOC has jurisdiction while the turtles are in the water and DOI while the turtles are on land. Conflicts between the ESA and Federal actions are to be resolved by a consultation process between the project agency and DOC and/or DOI, as appropriate. ESA's effect on the Magnuson Act process is to require biological assessment and consultation with NMFS or the Fish and Wildlife Service (FWS) if an FMP or amendment may affect endangered or threatened species or cause destruction or adverse modification of any designated critical habitat. The consultation must conclude that there is no likelihood of jeopardy to any listed species, or, if jeopardy exists, reasonable and prudent alternatives approved by NMFS or FWS must be adopted before the FMP can be approved.

(c) Marine Mammal Protection Act (MMPA). The MMPA establishes a moratorium on the taking of marine mammals and a ban on the importation of marine mammal products with certain exceptions. Responsibility is divided between DOC (whales, porpoises, seals, and sea lions) and DOI (other marine mammals) to issue permits and to waive the moratorium for specified purposes, including incidental takings during commercial fishing operations. The Magnuson Act amended the MMPA to extend its jurisdiction to the EEZ. MMPA's effect on the Magnuson Act process is that if the FMP has an effect on the marine mammal population, certain information must be included in the EIS, and the FMP should indicate whether permits are needed for any incidental takings.

(d) Marine Protection, Research and Sanctuaries Act (MPRSA)
Title III of the MPRSA authorizes the Secretary to designate as marine sanctuaries areas of the marine environment that have been identified as having special national significance due to their resource or human-use values. The Marine Sanctuaries Amendments of 1984 amend this Title to include, as consultative agencies in determining whether the proposal meets the sanctuary designation standards, the Councils affected by the proposed designation. The Amendments also authorize the Council affected to prepare draft regulations for the Secretary's approval, consistent with the Magnuson Act national standards and the goals and objectives of the proposed designation, for fishing within the EEZ as it may deem necessary to implement a proposed designation.

Part 605--Guidelines for Council Operations/Administration

Subpart A--General

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Subpart C--Administration

605.21 Council Statement of Organization, Practices, and
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605.23 Council organization.

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605.26 Financial management.

605.27 Recordkeeping.

AUTHORITY: 16 U.S.C. 1801 et seq.

Part 605--Guidelines for Council Operations/Administration

Subpart A--General

§605.1 Purpose and scope.

(a) This part sets forth guidelines for the development of fishery management plans and for the organization, practices, and procedures of the Councils.

(b) The definitions, word usage, and abbreviations set forth in Part 600 apply within this part.

Subpart B--Operations

§605.11 General. The primary functions of each Council are to develop, monitor, evaluate, and propose amendments to FMPs and associated regulations for each fishery that requires conservation and management within its geographical area of authority. The following describes the Councils' and the Secretary's roles and responsibilities and sets out key activities necessary to produce FMPs, amendments, and annual specifications acceptable for review by the Secretary. It is designed to--

(a) Bring to bear the necessary expertise on all aspects of the process;

(b) Be responsive to other applicable law, the public interest, and shifts in Council priorities and objectives; and

(c) Ensure the quality, relevance, reliability, and independence of science in the management process.

§605.12 Use of available expertise. Councils should use all available expertise as necessary and appropriate in carrying out their functions. This includes experts within NMFS with Magnuson Act responsibilities, at State and academic institutions, Scientific and Statistical Committees (SSCs), Advisory Panels (APs), plan teams, and/or other working groups established to assist in the processes described below.

§605.13 Use of the best available scientific information. Management decisions must be based on the best scientific information available concerning the present and probable future condition of the stocks.

(a) The Stock Assessment and Fishery Evaluation (SAFE) report is a document or set of documents that provides Councils with a summary of the most recent biological condition of species in the fishery management unit (FMU), and the social and economic condition of the recreational and commercial fishing industries and the fish processing industries. It summarizes, on a periodic basis, the best scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

(1) The Secretary has the responsibility to assure that a SAFE report is prepared, reviewed annually, and changed as necessary for each FMP. ^{+ - by a rec. to complete / repr.} The Secretary or Council may ~~call~~ ^{utilize} on any combination of talent from Council, State, university, or other sources (but at a minimum must include Council and NMFS representatives) to acquire and analyze data and produce the SAFE report.

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(2) The SAFE report provides information for determining annual harvest levels from each stock, documenting significant trends or changes in the resource and fishery over time, and assessing the relative success of existing State and Federal fishery management programs. In addition, the SAFE report may be used as a basis to update or expand previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.

(3) Each SAFE report must be scientifically based, and cite data sources and interpretations.

(b) Each SAFE report should contain information on which to base harvest specifications. Examples are:

(1) Estimates of total biomass and/or spawning biomass for each stock in the FMU;

(2) Estimates of the annual surplus production (ASP) and maximum sustainable yield (MSY) for each stock in the FMU;

(3) Description of the estimated biomass, ASP, and MSY in previous years relative to those estimates for the current or next year;

(4) Description of the model or assumptions on which these estimates are based and a discussion of the reliability of each estimate;

(5) If a stock is below the level which will produce MSY, estimated time necessary to allow a stock to rebuild to MSY, threshold or other specified level under various harvest levels, and prevailing environmental conditions; and

(6) Significant changes (if any) in the habitat or ecosystem since it was last described in the FMP, an amendment to the FMP, or previous SAFE report.

(c) Each SAFE report should contain information on which to assess the condition of the recreational and commercial fishing industries and fish processing industries. Examples are:

(1) Estimate of the amount of fish harvested from each stock in the FMU, by gear type and area, in the most recent three years and in the year immediately prior to implementation of the FMP governing fisheries for (or in) the FMU. If applicable, a description of the amount of fish harvested in the same time period by wholly domestic, joint venture and foreign fisheries;

(2) The approximate ex-vessel value of the harvested fish described in paragraph (c)(1) of this section;

(3) Amounts and estimated value of each type of processed products derived from the harvested fish described in paragraph (c)(1) of this section;

(4) Estimates of the numbers of commercial vessels by gear type and in terms of individual vessels involved in each fishery for (or in) the FMU;

(5) Estimates of the number of commercial fishermen employed in each fishery for (or in) the FMU; *employees in the processing sector but not in the FMU.*

(6) The numbers of processing plants, floating and shore-based, individual and by product type, involved in processing the harvested fish described in paragraph (c)(1) of this section; ** add to def. Sect. from emp.*

(7) Estimates of the amount of fish harvested by recreational fishermen from the FMU;

(8) Estimates of the numbers of recreational fishermen who harvested fish from the FMU;

(9) Estimates of the number of charter vessels and party boats involved in the recreational fishery; and

(10) The estimated value of the recreational fishery for (or in) the FMU.

(d) Each SAFE report may contain additional economic, social, ecological, and other information pertinent to the success of management or the achievement of objectives of each FMP. Examples are:

(1) Enforcement actions taken and penalties assessed and collected over the most recent three years under an implemented FMP;

(2) Significant changes (if any) in State regulations pertinent to the FMU and their known or anticipated effects on stocks in the FMU;

(3) Significant changes (if any) in related fisheries which may affect the fishing effort for (or in) the FMU; and

(4) Potential conservation and management problems, their possible causes and solutions.

§605.14 Planning.

(a) General. Councils must establish procedures for identifying, on a continuing basis, fishery management issues and needs. The procedures established must ensure consideration of, and responsiveness to, the SAFE, economic and social impact analyses, enforcement experience, public perceptions and

proposals, management priorities and long-term management goals and objectives. In its planning process, the Councils should define the FMU, determine the need for management, identify data and information needs, examine the range of issues to be addressed, propose management objectives, and schedule future actions.

(b) Data Collection Program (DCP).

(1) The Magnuson Act authorizes collection of information and data which would be beneficial in determining whether an FMP is needed for a fishery or in preparing an FMP. Councils may request that the Secretary implement a DCP for a fishery which would provide the types of information and data specified by the Councils. If the need for data is justified for conservation and management and approved by OMB under the Paperwork Reduction Act, the Secretary will approve such a DCP and issue proposed regulations to implement the program within 60 days and establish an estimated date of availability of the data. If the Secretary determines the need for a DCP is not justified, the Council must be informed in writing of the reason(s) for the determination within a reasonable period of time.

(2) NOAA is authorized under the Magnuson Act and other statutes to collect proprietary or confidential commercial or financial information and provide nonconfidential aggregations of such data to fulfill a Council's request. Information and data that would disclose proprietary or confidential commercial or financial information regarding individual fishing operators or fish processing operations would not be provided to the Council except as provided in section 601.27 and Part 603.

§605.15 Fishery management objectives. Each FMP and amendment, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to achieve, i.e., the management objectives to be attained in regulating the fishery under consideration. (See section 602.10, national standard guidelines, which sets out the role of objectives in the development and review process.)

§605.16 Establishment of management measures.

(a) The Council develops management measures to achieve optimum yield (OY) and the management objectives of the Council. The Council must propose management measures that are consistent with the national standards, other sections of the Magnuson Act, and other applicable law. The Council must prepare draft regulations that implement the management measures for submission to the Secretary with the FMP or amendment. Supporting documents required by other applicable law (see Part 604) must accompany the Council submission. Procedural detail may be found in the NMFS Operational Guidelines.

(b) Prior to the Council's adoption of the management measures:

(1) The Council must prepare a regulatory ^{impact review} analysis of the economic and social effects of alternate management measures and their effectiveness in achieving the objectives in the FMP. The analysis must discuss the need for Federal action, and the benefits and costs of each alternative, and the effects on small entities and fishery-dependent communities. The analysis must

include a conclusion concerning the expected net economic and social benefits to be achieved by each alternative management measure or system. To the extent such net benefits cannot be quantitative, qualitative estimates must be provided.

(2) The SSC must advise the Council on the adequacy of all support analyses and whether they are based on the best scientific information available, and on the efficacy of proposed management measures.

(3) NOAA and the Coast Guard, upon request of a Council, must provide written comments ^{per 60 days} pertaining to the feasibility and cost of alternatives relative to enforcement and on vessel safety implications of the management measures. X

(4) The Council may solicit comment from the AP, and any other interested group or individual concerning the effects and probable effectiveness of the proposed alternatives.

Subpart C--Administration

§605.21 Council Statement of Organization, Practices, and Procedures (SOPP). Council SOPPs required under section 601.22 must, at a minimum, implement the standards outlined below in this subpart. As appropriate, these sections may be incorporated by reference. Councils should also include in their SOPPs implementation of section 601.27 on protection of confidentiality of statistics. In addition, they may wish to include selected regulatory sections from Parts 601 and 604, as circumstances warrant.

§605.22 SOPP checklist. The following is an outline/checklist of the sections in Subpart C for use in developing each Council's SOPP:

605.23 Council organization

- (a) Officers and terms of office
- (b) Designees
- (c) Designation of Regional Directors
- (d) Advisory groups
- (e) Working groups
- (f) Committees

605.24 Council meetings and hearings

- (a) Meetings
 - (1) General
 - (2) Notice
 - (3) Conduct
 - (4) Record
 - (5) Closed meetings
 - (6) Frequency and duration
 - (7) Location
- (b) Hearings
 - (1) General
 - (2) Notice
 - (3) Conduct
 - (4) Record

605.25 Employment practices

- (a) Staffing
- (b) Experts/consultants
- (c) Details
- (d) Personnel actions
- (e) Salary/wage
- (f) Recruitment
- (g) Leave
- (h) Employee benefits
- (i) Travel reimbursement
- (j) Foreign travel

605.26 Financial management

- (a) Cooperative agreements
- (b) Procurement
- (c) Property management
- (d) Space management
- (e) Accounting system
- (f) Audits
- (g) Financial reports

605.27 Recordkeeping

- (a) Administrative records for FMPs
- (b) Disposition of records
- (c) Permanent records
- (d) Privacy Act
- (e) Freedom of Information Act

§605.23 Council organization.

(a) Officers and terms of office. The Chair must be elected from among the voting members by a majority vote of the voting members present and voting. The term of office for the Chair may not exceed one year; however, the Chair may be eligible for re-election as set forth in the Council's SOPP. The Council may establish other officers as deemed necessary and set their terms of office.

(b) Designees.

(1) The Magnuson Act authorizes only the principal State officials, the Regional Directors, and the nonvoting members to designate individuals to attend Council meetings in their absence. The Chair of the Council must be notified in writing, in advance of any meeting at which a designee will initially represent the Council member, the name, address, and position of the individual designated. A designee may not name another designee. However, such officials may submit to the Chair, in advance, a list of several individuals who may act as designee, provided that the list designates who would serve if more than one designee is in attendance.

(2) Reimbursement of travel expenses to any meeting must be limited to the member, or, in the case of the absence of the member, one designee--in any case, one person.

(c) Designation of Regional Directors. The Regional Directors serve as voting members on the Councils as follows:

<u>Council</u>	<u>Regional Director</u>
New England	Northeast Region
Mid-Atlantic	Northeast Region
South Atlantic	Southeast Region

Caribbean
Gulf of Mexico
Pacific
North Pacific
Western Pacific

Southeast Region
Southeast Region
Northwest/Southwest Region*
Alaska Region
Southwest Region

* The Southwest Regional Director is the NMFS spokesman on the Council and votes on fishery matters primarily or exclusively off California. The Northwest Regional Director is the spokesman and votes on fishery matters primarily or exclusively off Oregon and Washington.

(d) Advisory groups. Each Council must establish a Scientific and Statistical Committee (SSC) and may establish such other Advisory Panels (APs) as necessary or appropriate to assist it in carrying out its functions. Size is discretionary within the resources budgeted to the particular Council. Each Council must specify procedures in its SOPP for continuing involvement of its advisory groups in the development or amendment of FMPs. Procedures for appointing members of these groups should also be specified in the SOPPs.

(1) Scientific and Statistical Committee (SSC). The SSC provides expert scientific and technical advice to the Council on the development of fishery management objectives and strategies, the scientific information supporting preparation of FMPs, the appropriateness of the ABC and OY levels, the adequacy of the regulatory analysis, and the effectiveness of FMPs once in operation. In providing this advice, the SSC assists the Council in identifying the need for research and data collection and the scientific resources available, and in establishing criteria for framework actions. Membership must be multidisciplinary, and should include biological and social scientists from the Federal

and State governments, and private scientific community who are knowledgeable about the fisheries to be managed.

(2) Advisory Panel (AP). The AP provides pragmatic advice from individuals most affected by, or interested in, Council matters of fishery management. A balanced representation should be maintained of those who are either actually engaged in harvesting, processing, marketing, or consuming fish, or knowledgeable and interested in the conservation and management of the fisheries within the Council's jurisdiction. With respect to each FMP or amendment under consideration by the Council, the AP should provide advice concerning the recommended OY, the management measures and allocations under consideration, the supporting documentation to any regulatory action, management objectives, and any other subject, as required by the Council.

(e) Working groups. Fishery management planning and development of FMPs may be performed by various types of working groups, under the direction of the Council. For example, the Council may establish a Plan Team to assess the need for management, assemble information, conduct and evaluate analyses, evaluate public/industry proposals and comments, and estimate the costs of plan development, implementation, and monitoring. In addition, Councils may use ad hoc groups to address resource user conflicts or other issues.

(f) Committees. The Council may appoint standing and ad hoc committees from among the voting and nonvoting members as it deems necessary for the conduct of Council business.

§605.24 Council meetings and hearings. In fulfilling the Council's responsibilities and functions, the Council members may meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information, or make decisions regarding material before them. To provide for review and decision by the Secretary, recommendations of each of these groups must be documented and available. The documentation must include, at a minimum, a statement of the problem, recommendations for corrective action, likely impact on the affected resource, and likely impact on affected user groups.

(a) Meetings.

(1) General. The Councils meet in plenary session at the call of the Chair or upon request of a majority of the voting members. Advisory groups may meet with the approval of the Chair. Emergency meetings may be held at the call of the Chair or equivalent presiding officer.

(2) Notice. With respect to the conduct of business at meetings of a Council, and of the scientific and statistical committee and advisory panels of a Council, timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, must be published in local newspapers in the major fishing ports of the Council's region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting must also be published in the FEDERAL REGISTER.

(3) Conduct of meetings.

(i) All meetings of the Council advisory and working groups must be open, unless closed in accordance with paragraph (a)(5) of this section. Interested persons will be permitted to present oral or written statements regarding the matters on the agenda at regular meetings of the Council, within reasonable limits established by the Chair. A vote is required for Council approval or amendment of a fishery management plan (including any proposed regulations), a Council finding that an emergency exists involving any fishery, [or Council comments to the Secretary on foreign fishing applications] or fishery management plans developed by the Secretary.

(ii) A majority of the voting members of any Council constitutes a quorum for Council meetings, but one or more such members designated by the Council may hold hearings.

(iii) Decisions of any Council are by majority vote of the voting members present and voting (except for proposed removal of Council members, see section 601.36). Voting by proxy is not permitted. An abstention does not affect the unanimity of a vote. ||

(iv) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary, including principal State officials raising federalism issues, may submit a written statement of their reasons for dissent. If any Council member elects to file a minority report, it must be submitted at the same time as that of the majority.

(4) Record.

(i) Minutes of each meeting must be kept and must contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed.

(ii) Subject to the procedures established by the Council under section 601.27, and the regulations prescribed by the Secretary under Part 603 relating to confidentiality, the administrative record (including minutes required under paragraph (a)(4)(i) of this section) of each meeting, and records or other documents which were made available to or prepared for or by the Council, SSC, or APs incident to the meeting, must be available for public inspection and copying at a single location in the offices of the Council.

(5) Closed meetings.

(i) Each Council, SSC, and AP:

(A) Must close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(B) May close any meeting, or portion thereof, that concerns matters or information that pertains to unclassified national security matters, employment matters, or briefings on litigation in which the Council is interested.

(ii) Closed meetings must be announced in the news media.

(6) Frequency. Each Council must meet in plenary session at least once every six months. Council advisory groups may meet as frequently as necessary, with the approval of the Council Chair.

(7) Location.

(i) Each Council must conduct all meetings within its geographic area of concern. In the particular case of the North Pacific Council, "geographical area of concern" means within the State of Alaska. When two or more Councils have been designated by the Secretary to prepare an FMP jointly, Councils so designated may meet jointly within any of their constituent States for the purpose of developing or amending such a plan or discussing issues of mutual concern.

(ii) The Council meeting place should have a capacity large enough to accommodate the anticipated public attendance and be accessible to those interested in attending, including consideration of the cost of transportation and lodging.

(b) Hearings.

(1) General. The Magnuson Act directs the Councils to hold public hearings, at appropriate times and in appropriate locations in the geographical area concerned, to provide the opportunity for all interested persons to be heard in the development of FMPs and amendments, and with respect to the administration and implementation of the Magnuson Act. The term "geographical area of concern", for purposes of holding hearings, may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area.

(2) Notice. Hearings must follow the same procedures for announcement as for Council and advisory group meetings. Timely

public notice also should be given to the local media where the hearing is to take place. Publicity should be sufficient in time, substance, and area coverage to assure that all interested parties are aware of the opportunity to make their views known.

(3) Conduct of hearings. When it is determined that a hearing is appropriate, the Chair of the Council must designate at least one voting member of the Council to officiate. All points of view must be given a fair chance to be heard.

(4) Record. An accurate and timely report of the participants and their views must be provided in writing to the Council and maintained as a part of the Council's official records.

§605.25 Employment practices. The following sets forth the responsibilities of the Councils with regard to personnel matters and establishes personnel-related standards. Council members (except for Federal government officials) and staff are not Federal employees subject to Office of Personnel Management (OPM) regulations.

(a) Staffing. Each Council may appoint and assign duties to an Executive Director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of Council functions consistent with budgetary limitations. The Executive Director is responsible to the Council, and the staff is responsible to the Executive Director. Each position must be justified during the budget process described in OMB Circular A-110, or prior to filling a new position established during the course of the cooperative

agreement year. Descriptions of the work to be performed must be submitted.

(1) Council staff positions must be filled solely on the basis of merit, fitness, competence, and qualifications. Employment actions must be free from discrimination based on race, religion, color, national origin, sex, age, or physical handicap.

(2) No employee of the Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, State, county, or municipal election, or on account of his or her political affiliation.

(3) Council members and staff generally have the same protection from individual tort liability as Federal employees or official actions, and are protected by the Federal workmen's compensation statute, by the minimum wage/maximum hour provisions of the Fair Labor Standards Act (FLSA), and by the rights of access and confidentiality provisions of the Privacy Act (PA).

(4) Council staff are eligible also for unemployment compensation in the same manner as Federal employees.

(b) Experts and consultants. As long as funding is available in its budget, each Council may contract with experts and consultants as needed to provide technical assistance not available from NOAA. (This includes legal assistance in clarifying issues, but Councils must contact NOAA General Counsel

before seeking outside legal advice.) (Such experts and consultants may not provide services on a continuing basis.)

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(c) Details of Government employees. All Federal agencies are authorized by section 302(f)(2) of the Magnuson Act, 16 U.S.C. 1852(f)(6), to detail personnel to the Council on a reimbursable basis to assist the Council in the performance of its functions. Nonreimbursable details are not precluded. Council requests to the heads of such agencies must contain the purpose of the detail, length of time, compensation to be paid, if any, and the stipulation that the Assistant Administrator be consulted prior to granting the request. Copies of this correspondence will be transmitted to the Assistant Administrator through the servicing Regional Office. Federal employees so detailed retain all benefits, rights, and status as they are entitled to in their regular employment. The Councils may negotiate arrangements with State or local governments to utilize employees of those governments. Assistance in arranging these details may be obtained through the servicing Regional Office.

(d) Personnel actions. Subject to these instructions, and within budgetary limits, the Councils may establish positions, recruit, hire, compensate and dismiss personnel. Dismissal will be made for misconduct, unsatisfactory performance, and/or lack of funds, with reasonable notice to the employee.

(e) Salary and wage administration.

(1) In setting rates of pay for Council staff, the principle of equal pay for equal work must be followed. Variations in basic rates of pay should be in proportion to substantial

differences in the difficulty and responsibilities of the work performed.

(2) A cost of living allowance may be applied to the salaries of Council members and staff whose post of duty is in one of the following areas: Alaska, Hawaii, Guam, Virgin Islands, the Northern Mariana Islands, and Puerto Rico. Members from American Samoa will receive post differential. The rate of cost of living allowance may not exceed that paid by the Federal Government in the same area. The current rates may be obtained from the applicable NOAA field unit.

(3) The duties of any new position must be contained in a brief description to be submitted to the Regional Office assigned to a Council prior to the submission of a budget in which the salary of that position is requested. The Council will be provided a salary range appropriate to the position and a determination of the applicability of the Fair Labor Standards Act. The Council then may fill the position at any salary level within that range; the policy of hiring at the beginning rate should be followed except in unusual cases when recruitment of an exceptionally qualified employee is hampered thereby. The annual pay for any staff position may not exceed the current rate for the top step of grade 15 of the Federal General Schedule at any time.

(f) Recruitment. All personnel vacancies should be filled on a competitive basis, unless unusual circumstances clearly dictate otherwise. For this purpose, the Council may avail itself of the vacancy advertising system operated by NOAA through

the servicing Regional Office or any other recruitment tool, including newspapers and local employment agencies.

(g) Leave. Council employees should be granted paid leave for holidays, vacations or exigencies, sickness, and civil duties (e.g., jury duty, military reserve obligations) as determined by the Council. Councils should inform employees that leave is not transferable to or from Federal agencies. Leave is subject to the following limitations:

(1) Annual leave. Full-time Council employees may accrue annual leave at rates not to exceed those for Federal employees. Part-time employees accrue leave at the same rate, per hours worked.

(i) (A) Up to three years of service--maximum of 2 hours leave per 40 hours (13 days per year);

(B) Three to 15 years--maximum of 3 hours per 40 hours (20 days per year); and


(C) Over 15 years: maximum of 4 hours per 40 hours (26 days per year).

(ii) If the Council so desires, it may credit prior Federal, State, or local government service for the purpose of determining leave accrual of individual employees. Application of such a policy must be uniform and public.

(iii) Employees may carry over up to 240 hours (30 days) unused annual leave from one calendar year ^{anniversary date(?) No of} to the next. Amounts remaining above 240 hours will be forfeited. Employees who were authorized to carry over more than 240 hours in accordance with Council SOPPs prior to the effective date of these guidelines may continue under such policy. Under certain conditions, forfeited

annual leave may be restored if it was properly scheduled for use and circumstances beyond the employee's control caused the forfeiture. Approval for this restoration must be obtained from the Council Chair or his/her designee, who will refer to the NOAA Personnel Regulations and other source documents for guidance. Lump sum reimbursements not to exceed 240 hours carryover plus current year earnings of unused leave are authorized upon employee separation. (Councils should neither budget nor account separately for anticipated or accrued leave costs payable upon employee separation. Should such costs arise and exceed Council funding availability, NOAA will defray these costs in total.)

(2) Sick leave.

 (i) Full-time Council employees may accrue sick leave at the rate of two hours per week (13 days per year). Part-time employees may accrue at a percentage of the hours worked compared to 40 hours. A 20-hour-a-week employee would accrue half the leave accrued by a 40-hour-a-week employee. Accumulation is without limits. Lump sum payments upon separation are not authorized. However, unused sick leave may be credited, upon an employee's retirement, as additional time worked.

(ii) In meritorious cases, Councils may advance up to one year's earnings of sick or annual leave when it is reasonably expected that the advanced leave will be repaid by the employee. This must be approved by the Council Chair or designee (designation must be in writing).

(h) Employee benefits. Employee benefits are identified in Councils' SOPP, a copy of which should be provided to each

employee. The Council should provide its employees the opportunity to participate in group medical insurance, life insurance, and retirement plans, and pay a reasonable proportion of the cost of such plans. Total employee benefits may not exceed 20 percent (exclusive of FICA) of employees' gross salary, without NOAA approval.

(1) Medical insurance. Councils may provide group medical and dental insurance to their employees either through a commercial underwriter or through a State or local government program, within the total percentage limitation previously stated. Councils are not authorized to increase employee salaries in lieu of a medical or dental insurance plan.

(2) Life insurance. Councils may provide group life insurance for employees within the total percentage limitation previously stated. An increase in salary in lieu of insurance coverage is not authorized.

(i) Travel Reimbursement.

(1) General.

(i) Each Council must include travel reimbursement procedures in its SOPP. Current per diem and actual subsistence rates contained in the NOAA Travel Handbook apply.

(ii) Actual expenses include transportation by air coach, rail coach, bus or privately owned vehicle (automobile or private plane reimbursed on a per mile basis); room and meals within a reasonable limit established by the NOAA Travel Handbook; and incidental expenses such as taxi fares, parking, and telephone calls on official business.

(iii) Coach air transportation must be utilized when available. Travel via first class air must be justified on the reimbursement voucher and approved by the Council Chair or his/her authorized representative. Privately owned vehicles (POVs) may be authorized when other modes of transportation are either unavailable or inconvenient. When a POV is authorized for the convenience of the traveler, the reimbursed costs must not exceed the costs of coach air fare. Accommodations equivalent to other-than-first-class should be utilized in the unlikely event that water vessel transportation is required. When substantial savings can be realized by utilizing rail travel, this mode of transportation should be considered when available and adequate.

(2) Council, AP, SSC Members. Section 302(d) and (f) of the Magnuson Act provide that the voting members of each Council, the Executive Director of the Marine Fisheries Commission on each Council, the additional non-voting member of the Pacific Council, and members of advisory groups will be reimbursed for actual expenses incurred in the performance of Council duties. They are not bound by the separate per diem limits for meals and lodging as set forth in the GSA Rules. They are subject, however, to the total reimbursement limits established by the Handbook for actual expenses, and they must itemize their actual expenses up to the specified limit each day. Lodging receipts are required. The rates are included in the GSA Rules. Federal employees serving in the above capacities are subject to the reimbursement rules of their agencies.

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(3) Council staff, members of plan teams, and others.

Members of the Council staff and plan teams, invited experts,

consultants, or others specifically invited, unlike those described in paragraph (i)(2) of this section, must adhere to the per diem limits or actual expense requirements set forth in the GSA Rules.

(4) Non-NOAA team members. Non-NOAA team members may be reimbursed for travel expenses but receive no other compensation from the Council.

(j) Foreign travel.

(1) Foreign travel must be approved, in advance, by the Assistant Administrator for Fisheries or designee and by the Grants Officer. Requests for foreign travel approval should be submitted, in writing, at least 15 days in advance to the Assistant Administrator, through the NMFS Office of Management and Budget and the Grants Officer. Routine across-the-border travel to Mexico and Canada is exempt.

(2) Each Council should specify in its SOPP any delegation of authority to approve routine across-the-border travel which has been granted to it by NOAA.

(3) Council Chairmen or their authorized representatives may approve routine across-the-border travel to Canada or Mexico for Council members and employees within specified Federal rates.

(4) Domestic invitational travel for non-Council personnel may be approved by the Council Chairman or his/her authorized representative. Foreign invitational travel must be approved as described in paragraph (j)(1) of this section. The per diem limits or actual expense requirements described above also are

applicable to non-Council personnel traveling at Council expense. Payment for NOAA personnel from Council funds is not authorized.

601.26 Financial management. The Councils' administrative operations are governed by OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) and OMB Circular A-122 (Cost Principles for Non-Profit Organizations). A-110 prescribes standards for financial management systems, procurement, property management, financial reporting, cash depositories, and grant close-out procedures. Councils are required to comply strictly with the provisions of the Circulars, DOC regulations and directives, NOAA directives, and terms and conditions of the awards.

(a) Cooperative agreements. Councils receive funds through cooperative agreements for two basic types of expenditures: administrative (or operations) funds to cover general operating expenses, such as salaries, office space, utilities, travel, State liaison activities, etc., and programmatic (or contract) funds primarily designed to fund contracts generated by the Councils for development of FMPs (including amendments) or FMP-oriented information.

(1) Administrative. The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through that agency, in the budgets of NOAA and NMFS. The funding requirements for the Councils are subject to regular budgetary review procedures. Annual ^{or biannual} grants and cooperative agreements will provide such

Federal funds as the Secretary determines are necessary to the performance of the functions of the Councils and consistent with budgetary limitations. Requirements for periodic reports for purposes of NOAA budgetary control are described in individual grants and cooperative agreements issued to the Councils.

(i) Application for cooperative agreement.

(A) The Council must submit a formal application (Standard Form 424, Federal Assistance Short Form) to the appropriate Regional Director. This application includes a Budget Data Form, a Program Narrative Statement supporting the application, and a Statement of General Assurances. As backup to the Budget Data Form, each Council must prepare a Budget Summary Worksheet for three fiscal/calendar years. The amounts reflected in lines A1 through A8 of the Worksheet are then transferred to the appropriate categories of the Budget Data Form. On the budget submission, Councils should list all contemplated equipment purchases over \$500 each; approval of the application will convey approval of these purchases. The Program Narrative Statement should describe in appropriate detail the purpose for which funds are sought, e.g., operational expenses, FMP-oriented contracts, State liaison support.

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(B) Upon receiving a recommendation from the Regional Director (RD), the Assistant Administrator will review the application and transmit the application through the RD to the appropriate Grants Officer for processing. If the application is disapproved by the Assistant Administrator, the RD will be contacted and supplied with the reasons for disapproval and the criteria for resubmission.

Consensus
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(ii) Accounting. A Cash Receipts and Disbursement Journal with a monthly Summary of Accounts is required as a minimum bookkeeping system. In addition, a Statement of Income and Expenses for the Council must be prepared monthly for the Council membership. Each cash disbursement must be approved by the Council Executive Director. *Admin Doc* All checks for amounts more than \$5,000 require two signatures--the Council Executive Director and another person designated by the Council. The approval authority must be included in any SOPP published after the effective date of this *guideline* regulation. When budget estimates are submitted to the Assistant Administrator, the uniform account classification titles should be used.

(iii) Advance of funds. A Letter of Credit will be established for each cooperative agreement. Drawdowns from the Treasury will be made at the commercial bank through electronic fund transfer from Treasury. The Council shall initiate each drawdown at approximately the same time that checks are issued by the Council in payment of Council liabilities. Drawdowns should not be made more frequently than daily or in amounts less than \$10,000. These requirements are under the Department of the Treasury Circular 1075, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs" (31 CFR Part 205).

(2) Programmatic.

(i) Nature of request. Councils may enter into cooperative agreements with Federal agencies, State, and private institutions on matters of mutual interest which further the objectives of the Magnuson Act. Approval from the Secretary of Commerce must be

obtained prior to entering into such arrangements, and each agreement must specify the nature and extent of Council participation. The Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to the NOAA Administrator in accordance with Agency regulations, which are available from NMFS Regional Offices upon request.

(ii) Criteria. NOAA has established the following criteria to guide each year's decisions on programmatic funding:

(A) Proposed projects must be directly related to the formulation of an FMP, amendment, or emergency action (including data collection necessary to determine whether an FMP should be formulated); necessary to evaluate an FMP already in place; or, necessary to obtain information for use in framework FMP management actions.

(B) Proposed projects must be short-term, preferably one year or less but generally not longer than two years.

(C) Proposed projects must avoid duplication of effort and operate as cost efficiently as possible in order to maximize benefits for Federal expenditures. When a Council has identified data needs for a particular fishery, available resources from NOAA, the States, Office of Sea Grant, academic institutions, and other established sources of information should be utilized to avoid duplication of effort. If certain biological, ecological, economic, or social data is needed on a high-priority basis which cannot readily be supplied free-of-charge by NMFS or other institutions, the Councils may be authorized to contract for the information collection and analysis. The SSC of each Council

should assist in identifying immediate and longer-range research and data needs.

(iii) Procedure.

(A) Requests for programmatic funding may be submitted at the same time as the Council's administrative budget, or at other times as requested by the Assistant Administrator. Documentation should include a cover letter explaining the need for the project, how it contributes to an FMP (proposed, developing or existing), and how it meets criteria outlined in this section. An additional factor that is considered during NOAA review is documentation jointly submitted by the Regional Director and Chief Scientist stating that needed information is not available from NOAA or other sources and establishing regional priorities among the various Council requests.

(B) Competing project proposals which meet the above criteria may be funded based on an evaluation of urgency of problem to be addressed, impact of failing to fund, impact of delay in funding, and importance and size of fishery.

(C) Programmatic contract services always must be described in the context of overall Council plans in a particular programmatic area. The relationship of individual contracts to past and projected goals must be reflected in all Council applications for contract funds.

(b) Procurement. Draft contracts or solicitations relating to the development or monitoring of FMPs must be submitted to the RD. Proposed sole source procurements over \$5,000 and contracts for automated data processing (ADP) equipment purchases and leases must also be submitted to the RD prior to award. Solicita-

tions will not be released, nor contracts awarded, until all substantive issues noted by the RD have been satisfactorily resolved. Proposed sole source contracts over \$10,000 must be approved in writing by the Grants Officer. Final copies of all contracts awarded will be filed with the appropriate Grants Officer. The cost and financial management principles outlined in OMB Circulars A-122 and A-110 are to be applied fully to all Council procurement actions.

(1) To avoid duplication of work, efforts must be made to use existing support sources (Federal, State, other Councils, etc.) before commercial sources are sought.

(2) Competition must be held for all commercial purchases over \$5,000 unless the unique nature of the procurement, unforeseen time constraints, and/or substantiated overall savings (administrative plus contractual) clearly dictate otherwise. All sole source procurements above \$5,000 with individuals and commercial vendors will be documented and reviewed by the RD as described above. Such purchases over \$10,000 must be approved by the Grants Officer. Internal Council evaluations may be made on unusual and large procurements to ensure their legality, economy, and viability, or the Council may delegate such authorization to its Executive Director or Chair.

(3) Efforts must be made to inform minority firms of planned Council procurements. The Commerce Business Daily (CBD) should be considered by each Council as a means of publicizing contemplated contracts.

(4) The purchase or lease of ADP equipment by Councils and its subcontractors requires prior approval by the RD. Such

approval will be made only after a cost-benefit analysis (system life cost, lease vs. purchase, compatibility, etc.) by the Council demonstrates the economy of the proposed action.

(5) Councils are authorized to purchase supplies and services from GSA directly. Individual accounts have been set up for each Council, and information is available through Regional Offices.

(c) Property management. A listing of Federally-owned (Council) property must be submitted to the Grants Officer annually. Theft of Council property should be reported promptly to local law enforcement personnel, including the FBI, the Grants Officer, and to the Regional Office. Property management procedures must ensure adequate control and protection of Council property at all times. Such procedures are included in Council's SOPP, and must include the following as a minimum:

(1) A perpetual inventory system for all nonexpendable items, e.g., office equipment, furniture, etc.;

(2) Procedures for marking such items as Council property;

(3) Provision for safeguarding sensitive items such as cameras and biological equipment. Insurance should not be obtained.

(4) Procedures to be followed in disposing of surplus items;

(5) Listing of all personnel, including consultants if appropriate, authorized to have access to Council property.

(d) Space management. In all cases, reason should be exercised regarding the amount and cost of space acquired. When

acquiring office space, Councils may avail themselves of the following:

- (1) General Services Administration leasing assistance;
- (2) Regional Office assistance;
- (3) Direct negotiations within the guidelines stated above.

(e) Accounting system. Councils must maintain a document-oriented, obligation-accounting system (with accruals, as necessary, for budget projection purposes) rather than a cash-accounting system. Actual journals and ledgers must be maintained either manually or on an automated system; in either case, however, all obligations must be clearly documented and organized in order to provide quick access and verification by professional auditors. The actual composition (chart of accounts) of the system may vary somewhat from Council to Council. As a minimum, however, the system must provide fiscal control over expenditures in line with those object classes depicted in the Council budget submission. This will allow not only timely submission of the periodic financial status reports, but it will also ensure close coordination between actual spending rates and budgeted amounts so that comparisons and changes can be made at any time. All financial records must be handled in accordance with OMB Circular A-110.

(f) Audits. An independent audit is required at least biennially by DOC auditors or an independent public accountant (IPA). All Councils are subject to audit by the Secretary and the General Accounting Office. The scope of the audit may include: conduct of financial operations; compliance with

applicable laws and regulations; economy and efficiency of administrative procedures; and achievement of results.

(1) If an IPA is to perform the audit, the request for proposals and contract must comply with the Audit Guidelines.

(2) As part of the IPA's examination of Council records, it is requested that they comment on whether efforts have been made by the Council to include small, minority, and women-owned businesses as sources of supplies and services.

(3) In order to provide guidance or provide additional information to the auditors and the Councils on audit-related matters, it is suggested that the following NOAA personnel be invited to participate in the audit exit conference:

(i) The Grants Officer;

(ii) The Assistant Administrator's staff and/or a representative of the Regional Office;

(g) Financial reports. Reports are required which summarize total expenditures made and Federal funds unexpended for each award, and the status of Federal cash received. The Report of Federal Cash Transactions (Form SF-272) is required from each Council quarterly and is due to the Grants Officer no later than 30 working days after the end of the quarter. A final report is required upon completion of the grant, to be submitted within 90 days after completion of the grant. The Financial Status Report (Form SF-269) is required from each Council quarterly and is due to the Grants Officer no later than 30 working days after the end of the quarter. A final report is required 90 days following completion of the grant. Guidance for the preparation of these

reports and other financial reporting procedures is in Attachment G of OMB Circular A-110.

605.27 Recordkeeping.

(a) Administrative records for FMPs.

(1) Councils and NMFS Headquarters, Regions and Centers collectively are responsible for maintaining records pertaining to the development of FMPs and amendments within their geographic area of authority. In the event of litigation, compilation of an administrative record for a court case will be under the direction of the NOAA General Counsel.

(2) Categories of documents which generally constitute an administrative record include the following:

- (i) Council meeting agendas;
- (ii) Minutes of Council meetings;
- (iii) Plan Team reports, if any;
- (iv) SSC reports;
- (v) AP reports;
- (vi) Hearing reports;
- (vii) Council reports/recommendations;
- (viii) Correspondence relating to the FMP;
- (ix) Scoping comments;
- (x) Work plan, if any;
- (xi) Discussion papers, if any;
- (xii) NEPA documents;
- (xiii) Regulatory analyses
- (xiv) PRA justification
- (xv) Proposed regulations;

- (xvi) Final regulations;
- (xvii) Emergency regulations; and
- (xviii) Notices of meetings (Council, SSC, AP, Team).

(b) Disposition of records.

(1) The goal of an effective disposition program is annually to destroy at least enough unneeded records to equal the volume of records created, while preserving records having long-term or enduring value because of administrative, legal, scientific, or historical importance.

(2) Councils must consult with NOAA before destroying Council records. Financial records (including time and attendance records) should be handled according to the stipulations of OMB Circular A-110. Councils must send records associated with FMPs to the appropriate Region for disposition.

(3) All records and documents created or received by Council employees while in active duty status belong to the Federal Government. When employees leave the Council, they cannot take the original or file copies of records with them; to do so violates Federal law.

(C) Permanent records. The designation of a file as "permanent" means that the records are appropriate for offer to the National Archives when 15 years old, unless otherwise specified. Destruction of permanent records is not authorized. The following are examples of permanent files:

(1) EIS files: Documents relating EIS's or environmental assessments. Cut off at end of calendar year when created. Permanent retention; no approved disposition at this time.

(2) Annual report files: Input for the DOC Annual Reports and related correspondence. Cut off at end of calendar year when created; permanent.

(3) Meeting files: Including agendas, minutes, reports, studies and related correspondence. Cut off at end of calendar year; permanent.

(d) Privacy Act (PA) records. Each Council will maintain in its office, under appropriate safeguards in accordance with the PA, personnel files on employees, experts and consultants under contract, and advisory group members.

(1) Maintenance. A file for each Council member containing appointment papers, security reports, biographical data and other official papers will be centrally maintained in NOAA under security and safeguard conditions required of files subject to the PA. This file will be available to members to which it pertains on request, and to other members and government officials when a need to know the information in the performance of the requester's official duties is established.

(2) Protection. The PA provides the following protection for individuals, including Council employees, except as otherwise limited by law:

(i) An individual is permitted to determine what records pertaining to him/her are collected, maintained, used, or disseminated.

(ii) An individual is permitted to prevent records pertaining to him/her, which have been obtained for a particular purpose, from being used or made available for another purpose without his/her consent.

(iii) An individual is permitted to gain access to information in Federal records pertaining to him/her, to have a copy made of all or any portion of such records, and to correct or amend such records.

(iv) The collection, maintenance, use, or dissemination of any record of identifiable personal information must be in a manner which assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(v) Exemption from the requirements of the PA are permitted only in those cases where there is an important public need for such exemption as has been determined by specific statutory authority.

(vi) Federal agencies are subject to civil suit for any damage which occurs as a result of willful or intentional action which violates any individual's rights under the PA.

(3) Request for PA information. Any time an individual is asked to provide information about himself/herself to be maintained in a PA record, the individual must be given a written statement for his/her retention which provides the following information:

(i) the authority (law or executive order) which authorizes the collection of the information, indicating whether the authority either imposes or authorizes any penalty for failing to answer; whether providing the information is mandatory or voluntary;

(ii) the principal purpose for which the information is to be used; and

(iii) any other uses which may be made of the information. These uses must be limited to those published in the FEDERAL REGISTER, and the effect(s), if any, on the individual of not providing all or any of the requested information, both beneficial and adverse.

(4) Disclosure of PA records. The disclosure of PA records to the individual to whom they pertain, to a person accompanying the individual, to the parent of a minor, or to a legal guardian comprise a fundamental aspect of the Act. Otherwise, Councils may only disclose PA records under one of eleven situations outlined in NOAA Circular 75-82.

(5) Disposition of PA records. Councils must contact NOAA for guidance before disposing of PA records. Examples of PA records with recommended timeframes for disposition are as follows:

(i) Membership files: Containing biographical data on members. Cut off when member leaves Committee; destroy five years later.

(ii) Time and attendance files: Retain for three years following the final financial report for each grant year in accordance with OMB Circular A-110.

(e) Freedom of Information Act (FOIA). All FOIA requests must be submitted in writing. The envelope and letter should be clearly marked "Freedom of Information Request."

(1) Requests.

(i) FOIA requests should be time-and-date stamped upon receipt. Each request must be acknowledged within 10 working days and filled as expeditiously as possible. Time limits for processing FOIA requests start upon receipt of the request for information. In unusual circumstances, the 10-day time limit may be extended up to an additional 10 working days. Discretion should be used in invoking the 1- to 10-day extension provision. Any extension reduces availability by the same number of days of an extension that otherwise can be invoked, if partial or full denial should result in an appeal.

(ii) FOIA requests received by a Council should be coordinated promptly with the Regional Office. The Region will coordinate logging the FOIA request and obtain clearance from the NOAA General Counsel concerning initial determination for release or denial of information (under paragraph (c)(5)(ii) of this section.

(iii) FOIA requests will be controlled and documented in the Region by completion of Form CD-244. Councils may obtain copies of this three-part form from the NOAA Logistics Supply Center at Kansas City or from local GSA stores, and assist the Regional Office in completing the form as well as in assigning an official response date. Copies of the CD-244 should be distributed to the Regional Director (white copy) and the Council (yellow copy), and an information copy with the incoming request should be provided to the NMFS FOIA Officer.

(iv) Councils should recover allowable costs for locating and reproducing information released under the FOIA and forward

these funds through the NOAA Freedom of Information Officer to the U.S. Treasury. Appropriate charges are outlined in the DOC Uniform Schedule of Fees.

(2) Initial denials.

(i) The purpose of the FOIA is to make available to the public all information requested, with some exceptions in nine categories of information. Each Council may determine who may disclose unclassified information in its possession. However, only the Assistant Administrator has been delegated authority to make initial determinations on whether to deny information requested under the FOIA. This authority may not be redelegated. Regions must keep Councils informed.

(ii) Proposals to deny, or partially deny, a request for information should be coordinated with the appropriate Regional Attorney who will, in turn, coordinate with the DOC's Office of General Counsel, and with NOAA's Office of Public Affairs, and NOAA's FOIA Office. No initial denial may be issued until the concurrence of the Department's Office of General Counsel has been obtained.

(iii) After the coordination mentioned in paragraph (e)(2)(ii) of this section, the Assistant Administrator must send a letter to the requesting party denying the request for information. The denial letter should include the following:

(A) The specific exemption(s) which apply and why they apply.

(B) In the case of a partial denial, a statement of the specific manner in which a portion of a record is being provided after deletion of the portions which are determined to be exempt.

(C) A statement of the right to appeal to the DOC General Counsel within 30 days of the receipt of the denial.

(D) A statement that the appeal should include a copy of the original request, the initial denial, the requester's reasons why the records should be made available, and the reasons why the initial denial is believed to be in error.

(E) Copies of the letter of denial, along with the original FOIA request, should be sent to the DOC Office of General Counsel, the NOAA FOIA Officer, and the NMFS FOIA Officer.

**SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL'S COMMENTS ON THE
PROPOSED 600,601,604 & 605 REGULATIONS/GUIDELINES
PREPARED FOR THE COUNCIL CHAIRMEN'S MEETING**

At the SAFMC's June meeting, members reviewed the proposed 600, 601, 604 and 605 regulations/guidelines provided on June 3, 1988 by Jim Douglas, Acting Assistant Administrator for Fisheries. The following comments and recommendations were prepared specifically for the Council Chairmens meeting. Also included are notations as to where additions and changes were made to the Council Chairmen's draft document that was submitted to Bill Evans.

SAFMC comments and recommendations:

Part 600--Style Guide

600.1 Definitions

Page 15: Under the Fishery management plan (FMP) definition, line 5, language was added stating "Guidelines for contents of an FMP appear in the NMFS Operational Guidelines: Fishery Management Plan Process, Phase II, 1988." The Council is concerned about the exact status of the Operational Guidelines. (see comments in later sections)

Page 16: A definition for highly migratory species was added. The Council agrees this is a good idea.

600.2 Word usage

Page 18: This is a new section. It is a positive addition as it clarifies the meaning of these significant terms.

Part 601--Fishery Management Councils

601.1 Purpose and Scope

Page 22: (a) line 5 states: "The Councils are institutions created by federal law..." The Council Chairmen had recommended using the verbiage "Congressionally created"

601.12 Intercouncil fisheries.

Page 24: (3) line 5 states: "...or may issue the FMP under Secretarial authority" This language was not in the Council Chairmen's recommendation.

601.22 Council Statement of Organization, Practices and Procedures.

Page 25: The Council Chairmen had recommended this section be under 602 guidelines. The South Atlantic Council is concerned about this change and the some of the language as follows: (b) line 4 states: "...consistent with the guidelines in Part 605..." This reference appears to give the 605 guidelines the status of regulations. It is recommended this issue be clarified.

601.25 Support services.

Page 26: (b) This seems to contradict (d)(1) on page 27.

601.27 Protection of confidentiality of statistics.

Page 28: (b) line 4 states: "...(1) documented a need for unaggregated data..." What constitutes the needed documentation? The Council feels very strongly this should be deleted.

Subpart D—Membership

Page 28: This follows the language of the Act and is repetitious. The Council Chairmen had recommended that the language in the Act not be repeated.

601.33 Appointments.

Page 31: (e) This part does away with the obligatory member from each State. The SAFMC strongly objects to this and recommends maintaining the obligatory member category.

601.39 Council member compensation.

Page 41: (b) line 2 states: "...will be paid..." The "will" was previously "may".

Page 42: (d) All. The Council recommends deleting (d) as it only adds additional paper work for everyone involved.

Part 604--Other Applicable Law

604.2 Categories.

Page 43: line 10 states: "More detailed guidance is cited throughout this part and also appears in the NMFS Operational Guidelines." Does this reference give the Operational Guidelines the status of Other Applicable Law? The Council recommends it should be clearly stated that this is not the case.

604.4 The decision process.

Page 45: line 10 states: "Required procedures under these statutes are detailed in sections 604.34 and 605.25." Does this reference to 605 guidelines under this part give them the status of Other Applicable Law? The Council does not believe this is the case, however, this should be clarified.

Part 605--Guidelines for Council Operations/Administration

605.13 Use of the best available scientific information.

Page 54: (2) line 1. It is recommended that the words "to the Councils" be inserted between the words "information" and "for". The sentence would then read: "The SAFE report provides information to the Councils for determining...."

605.14 Planning.

Page 57: (b)(1) line 13. The Council Chairmen had recommended that a 30 day limit be substituted for the language "...within a reasonable period of time." The SAFMC recommends that a time limit between 30-60 days be established.

605.23 Council organization.

Page 69: (a) Staffing, line 7. The requirement to justify each Council staff position in the annual budget has been added. It used to be only each new position. The Council recommends justification only be required for new positions.

Page 70-71: (b) Experts and consultants, line 5. The Council Chairmen had recommended deleting the language "...but Councils must contact NOAA General Counsel before seeking outside legal advice." The SAFMC recommends it be deleted.

Page 76-77; (i) Travel Reimbursement (2) and (3) This does not follow what the Council Chairmen had recommended. The Council Chairmen recommended that Council, AP and SSC members as well as Council staff, members of plan teams, others and NMFS personnel assigned to Council activities be reimbursed for travel in the same manner as indicated under (2) on page 76. However, it is not clear what the difference is between (2) and (3) as currently written.

PACIFIC FISHERY MANAGEMENT COUNCIL

CHAIRMAN
Robert Fletcher

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July 27, 1988

Mr. Richard Shaefer, Director, F/CM
National Marine Fisheries Service-NOAA
Universal Building South, Room 909
1825 Connecticut Avenue, NW.
Washington, DC 20235

Dear Dick:

The Pacific Fishery Management Council (Pacific Council) has the following comments on the guidelines/regulations for regional councils (Parts 600, 601, 604, and 605).

Part 601

§ 601.33 Appointments

The current obligatory/at-large system is working satisfactorily and should not be changed. Governors should not be required to submit nominations for every vacancy, but should have the option to do so for at-large seats, which is the current procedure. The at-large seats give the Secretary of Commerce the flexibility needed to choose among various states' nominees.

Part 605

§ 605.1(a) Purpose and Scope

After the word "guidelines" in the first line, we suggest the addition of the following phrase: "(which do not have the force and effect of law)." This is consistent with the October 1987 recommendation of the council chairmen and clarifies the status of guidelines as opposed to regulations.

§ 605.13(a)(1) SAFE Report

As recommended by the council chairmen, the first and second sentences should read

The Secretary of Commerce has the responsibility to assure that a SAFE report is prepared, reviewed annually, and changed as necessary for each fishery management plan, and must provide the necessary data and support to complete the report. The Secretary of Commerce will prepare the report unless a council elects to do so. (Underlined language added).

Adopted

This reinforces the Secretary's responsibilities under the Magnuson Fishery Conservation and Management Act (MFCMA) to provide the necessary data and support to the councils, and provides some assurance to those councils which do not have the capability of preparing the report.

§605.24(a)(3)(i) Conduct of Meetings

A vote is not necessary and should not be required for council comments on foreign fishing applications. MFCMA Sections 204(b)(5) and 302(h)(2) speak only to written comments from councils on foreign applications, but do not require votes. Many of the councils delegate approval of certain applications to the executive director.

§605.25(b) Experts and Consultants

This provision prohibits contracting with experts and consultants on a continuing basis. We would be unable to retain our part-time, contract economist under this rule. This individual provides supplementary economic expertise on an as needed basis, which is critical to completion of important economic analyses required by the MFCMA and other applicable law. This is a cost-effective arrangement which is consistent with §605.12: "Councils should use all available expertise as necessary and appropriate in carrying out their functions."

§605.25(i) Travel Reimbursement

We oppose the separate treatment of council, advisory subpanel, and Scientific and Statistical Committee members on the one hand and council staff and plan team members on the other. All council "family" members must travel to the same locations under the same conditions and thus should be treated equally. We continue to support the language approved by the council chairmen which provides reimbursement to all the above groups for actual expenses incurred in the performance of council duties. They would not be bound by the separate per diem limits for meals and lodging, but are subject to the total limits established by General Services Administration.

We have difficulty with the prohibition on reimbursement for meals and lodging on trips under 50 miles. In order to conserve scarce federal dollars, the councils have reduced the number of meetings and held meetings in more cost-effective locations. The Pacific Council meets frequently in Portland, Oregon where the staff and several Pacific Council members live and work. Some of these meetings are week-long sessions and many meetings are held at night. This situation creates significant out-of-pocket expenses for some individuals. There needs to be some authority given to the executive director to make exceptions to this rule.

We oppose the provision that bars non-National Oceanic and Atmospheric Administration team members from receiving compensation from the council (other than travel expenses). Provision should be made to compensate individuals from state agencies, universities, or private companies if such

Mr. Richard Shaefer
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participation is required by a council to fully meet its responsibilities. Compensation ensures that participation by these individuals will be consistent and adequate.

Dick, we appreciate the improvements you have made in these guidelines in response to previous council comments. We believe that NMFS should reconsider additional comments which the council chairmen provided in October 1987. The above changes would result in an acceptable and useful document which improves the accountability of the councils and NMFS. We look forward to discussing these with you at the council chairmen's meeting in Homer, Alaska.

Sincerely,



Robert C. Fletcher
Chairman

LDS:mps

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL
Lincoln Center, Suite 881 • 5401 W. Kennedy Blvd.
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July 18, 1988

00 JUL 88 * 003771

Mr. Richard H. Schaefer
National Marine Fisheries Service
Office of Fishery Conservation and Management
1825 Connecticut Avenue, N.W.
Washington, DC 20235

Dear Dick:

The Gulf Council has reviewed the proposed rules and guidelines under 50 CFR Parts 601, 604, and 605 and requests the following revisions be included in the final rule/guidelines:

Part 601

Under 601.25 (d) (1), We recommend the addition of the underlined phrase to the sentence so that it reads as follows: "(1) Councils must not reimburse, or otherwise pay for, NOAA employees' travel, per diem, or other expenses to participate in Council activities, unless approved by the Assistant Administrator on a case by case basis." Our reason for requesting this change is that certain NMFS technical personnel are critical to the successful completion of our activities in Council, AP, SSC, and PDT sessions. Frequently, these persons are unable to attend as a result of travel funding limitations for their unit. We invest a great deal of money in holding each of these sessions, and it is both ridiculous and cost ineffective to be precluded from successfully completing the activity for lack of several hundred dollars for that person's travel. This problem has, upon occasion, caused us to hold meetings in localities that assure the NMFS person(s) attendance at a higher individual participant Council cost. We envision the process working similar to foreign travel requests and in many cases, the AA directing the NMFS unit to pay travel costs. You can rest assured that if approved, its use by this Council will be infrequent.

Under 601.33 (e) and (f), We strenuously object to elimination of the obligatory appointed seat for each state. We request these paragraphs be modified to retain the obligatory seat as follows:

"(e) There are two categories of seats for which an appointed voting member is eligible: "obligatory" and "at-large." Each member state must have one obligatory seat. When the term of a state obligatory member is expiring, only the Governor of that state may submit nominees. The Governors of all member states may submit nominees for expiring at-large seats."

"(f) If a Governor fails to submit a list of qualified nominees within the time allotted, then new at-large members will be appointed from the list of names submitted by other Governors, and an obligatory seat will remain vacant until three qualified nominations are received and acted upon by the Secretary."

Because of our extreme concern over NMFS revision of these sections, we have elected to provide our position on this issue directly to the Secretary by personal letter.

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Under 601.38(i), We recommend that the sentence be revised as follows: "(i) In addition to submission of SF-85 and FD-258 Council members and Executive Director, as well as other staff and members of advisory groups designated by the Council under paragraph (c), will be required to submit a Non-Disclosure agreement" This change is recommended because paragraph (c) provides only those staff and advisory group members designated by the Council will comply with the security clearance provisions.

Under 601.39 (b), We recommend the substitution of "may" for "will" (as requested by the Council Chairman) in the first sentence to read as follows: "(b) Council members whose eligibility for compensation has been established in accordance with NOAA guidelines may be paid on a contract basis without deductions being made for Social Security or Federal or State income taxes." We realize that some Councils have elected to pay on a contract basis, and the insertion of "may" would allow them to continue to do so. We, however, have always provided for these deductions for our members. Since at the insistence of our auditor we use a payroll service (at \$35 per pay period) to issue our salary checks and compute deductions, no savings will accrue that will compensate for the inconvenience to individual members to file these taxes. It seems very inconsistent for FICA to be paid and deducted for all federal and Council employees and not for members. Under a contractual basis, each member's salary would be reduced from the statutory level set under the Magnuson Act by the 7.5 percent for the Council's share of FICA which we would individually have to pay to I.R.S. Viewed in another context, what this would amount to is members subsidizing Council activity by contributing 7.5 percent of annual salary. You should also understand that many of our members do not pay the maximum FICA amount, some would not be eligible for Social Security without the deductions, and finally, I.R.S. (Atlanta) has indicated that the Council should pay FICA for all members.

Under 601.39 (d), We recommend deletion of "Chair" from the first sentence to read as follows: "(d) The Council must submit to the Regional Office annually a report of Council member compensation authorized." We really do not understand the need for codifying this, but do not object since such salary information is public record, and we already compute this information (under the Ethics in Government Act) which has always been available to the Regional Director.

Part 604

We request that this part in its entirety be guideline rather than rule by revising 604.1 as follows:

"604.1 Purpose and scope. (a) This part sets forth ~~as guidelines~~ abbreviated summaries of other law applicable to the FMP process. (Regulations or agency directives specific to each law may also apply.) (b) Definitions. Definitions used in this part are those set forth in Part 600."

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We, like the Council Chairmen, have concern that if promulgated as rule, these very abbreviated summaries of these acts and executive orders could be utilized as interpretive law as to their application under the Magnuson Act. Each of these laws has its own set of regulations or agency compliance requirements spelled out in directives and, therefore, there is no need for them to be rule. If this part is to be promulgated as rule, then NMFS should synthesize all existing regulations and directives for each law into a comprehensive set applicable to the Magnuson Act, and resubmit it for public and agency review or at least publish the laws in their entirety. All Councils have these statutes, other regulations, and directives anyway. All this part really does is notify the public that these other laws apply, which can be done as guideline.

Part 605

Under 605.1 (a), We request the insertion of the underlined phrase into first sentence to read as follows: "(a) This part sets forth guidelines (which do not have the force and effect of law) for the development of FMPs and for the organization, practices, and procedures of the Councils." We feel this statement is necessary to truly qualify these as guidelines as was intended by both NMFS and the Council Chairmen. Those portions which are law are not changed by this qualifying statement.

Under 605.12, We recommend deleting the phrase "with Magnuson Act responsibilities" after "NMFS." From our perspective, the Assistant Administrator for Fisheries has Magnuson Act responsibility and thereby the personnel under him. We do not understand why that phrase was inserted. Does it mean, for example, that information from personnel charged with monitoring imports and exports would not be available from them because that is not a Magnuson Act responsibility?

Under 605.13 (a) (1), We recommend that the Chairmen's language (underlined) be reinserted into the first sentence and as the subsequent sentence as follows: "(1) The Secretary must assure that a SAFE report is prepared, reassessed annually, and changed as necessary for each FMP and must provide the necessary data and support to complete the report. The Secretary will prepare the SAFE unless a Council elects to do so." Recognizing that these are guidelines and not law, and recognizing that a principal reason for the whole exercise was to establish a degree of accountability for, and set out the roles of, both NMFS and the Councils, the Chairmen included this language for good reasons. First, it is the Secretary's responsibility under Section 304 (e) of the Act to provide the data and analyses (support) needed to carry out the provisions of the Act. Secondly, some Councils utilizing PDT's which include the NMFS technical personnel would prefer to complete the SAFE, whereas other Councils that primarily utilize NMFS for stock assessments do not have that capability, without instituting systems where PDT members (or sponsoring agencies) are compensated for their time, as they are on the west coast. Therefore, the language recognizes these two approaches. We, like you, do not expect miracles to be performed by either partner, but we do expect both to try to comply with the guidelines to the fullest extent possible.

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Under 605.13 (b), We request you insert a new paragraph (6), to replace Chairmen's language deleted, and renumber existing paragraph (6) as (7). Our suggested wording for (6) is as follows:

"(6) A recommendation of a threshold level or other definition of overfishing for each stock that will assure recruitment overfishing does not occur and ^{method of derivation;} and"

It is obvious from the regional discussions of the threshold concept that a single model will not be applicable for very many fisheries. The Councils will, therefore, be required to submit alternatives [as provided for in 602.11 (j)] to the Secretary. The logical group to develop and propose these alternatives to the Councils is the NMFS/Council group preparing the SAFE.

Under 605.14 (b), We request the last sentence be modified by deleting the phrase "a reasonable period of time" and inserting "60 days." Our reason again relates to joint accountability under the guidelines and we see no difference between this and the 180 days within which we will revise and submit our SOPP.

Under 605.16 (b) (3), We request insertion of "within 60 days" after "must provide written comments" for the same reason.

Under 605.24 (a) (3) (i), We recommend deletion of the phrase "comments to the Secretary on foreign fishing applications." As you recall, NMFS asked each Council to delegate to the Executive Director authority to comment on applications; therefore, normally there is no vote on these.

Under 605.24 (a) (3) (iv), We recommend substituting "should" for "must" in the last sentence. While desirable that minority dissenting opinions be filed with the majority action and while we have modified our SOPP to provide for this, it is not always possible.

Under 605.26, We request deletion of "and directives, NOAA directives," in last sentence, so it reads: "Councils are required to comply strictly with the provisions of the Circulars, DOC regulations and terms and conditions of awards." The OMB Circulars provide no granting agency shall set terms and conditions more stringent than the provisions of the Circulars. We have and will comply with regulations. Directives are an internal agency requirement for their personnel and are not developed in a public forum and should not, therefore, be included.

Under 605.26 (a) (1) Administrative, We suggest insertion of "or biennial" after "annual" and before "grant" since grants or cooperative agreements may be for two years.

Under 605.26 (a) (1) (i) (A), We object to insertion of \$500 for \$2500 as allowed in the OMB Circulars. It is unrealistic to list all equipment purchases down to \$500 in a two-year budget and is certainly not a practice NMFS follows in its budget.

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Under 605.26 (a) (1) (ii) Accounting, We request revision of the third sentence to include cash disbursement approval by Executive Director "or Administrative Officer." It is certainly not cost effective for the Executive Director to approve all checks. Each Council has standards for E.D. involvement in this process, but certainly not for each check, that is why Administrative Officers were employed. We also note that this section is incorrectly referred to as regulation rather than guideline in the next to last sentence.

We appreciate the opportunity to provide our comments on the rules and guidelines and we compliment your staff on their work.

Best personal regards.

Sincerely,


John M. Green
Chairman

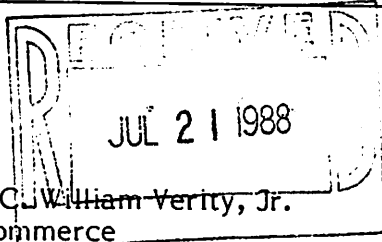


JMG:WES:mmb

cc: Gulf Council
New England Council
Mid-Atlantic Council
South Atlantic Council
Caribbean Council
Pacific Council
North Pacific Council
Western Pacific Council
Staff

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL
Lincoln Center, Suite 881 • 5401 W. Kennel. E.
Tampa, Florida 33609-2486 • 813 228-2915

July 18, 1988



The Honorable C. William Verity, Jr.
Secretary of Commerce
14th and Constitution Avenue, N.W.
Washington, DC 20230

ACTION	ROUTE TO	INITIAL
	00 JUL 88	003772
	Deputy Dir.	
	Admin. Off.	
	Exec. Sec.	W
	Staff Asst. 1	Personal
	Staff Asst. 2	
	Staff Asst. 3	
	Economist	
	Sec./Bldr.	
	Sec. Typ.	

Dear Mr. Secretary:

We are writing to express our concern directly to you over one aspect of the proposed rule for 50 CFR Part 601 which regulates the fishery management councils under the Magnuson Act. Our concern relates to Sections 601.33 (e) and (f) where NMES is proposing to eliminate the obligatory appointed seat held by each state since the inception of the Magnuson Act under current 601 rule. Our member states strenuously object to this proposed change. Under the current rule, only the Governor of that state must submit a minimum of three nominees for your consideration for appointment to that seat. This allows the incumbent Governor to nominate those individuals that he feels would most ably represent fishery interests for his state.

The obligatory seat provided for in current rules is consistent with the Magnuson Act which under Section 302(a) provides each state will have one appointed member. It is also consistent with the legislative history of the Magnuson Act and thus with Congressional intent, i.e., the Senate bill that became Magnuson Act provided three obligatory seats for each state, one of whom was the state fishery official.

We feel that the current appointment system utilizing obligatory seats has worked very well and fairly over the last 12 years. Apparently this view is not shared by the senior career service employees within NOAA/NMFS since they rejected the Council Chairmen's recommendation to retain the obligatory seats in the redrafted proposed rule. We have concluded that to respond to them on this issue would be useless and, therefore, we have addressed our comment to you. We hope you will honor our request.

Sincerely,

John M. Green

John M. Green
Chairman

by [signature]

JMG:WES:mmb

- cc: William Evans
The Honorable William P. Clements, Governor of Texas
The Honorable Harold G. Hunt, Governor of Alabama
The Honorable Bob Martinez, Governor of Florida
The Honorable Ray Maybus, Governor of Mississippi
The Honorable Charles E. Roemer, III., Governor of Louisiana
Gulf Council
Other Councils
Staff