

# STATEMENT OF ORGANIZATION, PRACTICES, AND PROCEDURES

*for the*

*NORTH PACIFIC FISHERY MANAGEMENT COUNCIL*



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**Draft For Council Review**

**April 2023**

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# **North Pacific Fishery Management Council**

## **Statement of Organization, Practices, and Procedures**

The North Pacific Fishery Management Council (Council), created by Section 302(a)(1)(G) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA, or the Act), hereby publishes a revised Statement of Organization, Practices, and Procedures (SOPP), as required by Section 302(f)(6) of the Act. The SOPP was approved by Council in October 2019.

Copies of this SOPP are provided to each member of the Council, its Scientific and Statistical Committee (SSC), and its Advisory Panel (AP). The SOPP is available electronically on the Council's website at [www.npfmc.org](http://www.npfmc.org). Paper copies of the SOPP may be obtained by contacting the Executive Director, North Pacific Fishery Management Council, Suite 306, 605 West Fourth Avenue, Anchorage, Alaska 99501; telephone (907) 271-2809.

### **1.0 Council Functions and Responsibilities**

In accordance with the requirements of the Act, and other applicable law, the Council will:

- A. Prepare and submit to the Secretary of Commerce (Secretary) or his delegate a fishery management plan (FMP) with respect to each fishery requiring conservation and management within the Council's geographic area of authority and such plan amendments as are necessary.
- B. Review and comment on applications for foreign fishing transmitted to the Council under a governing international fishery agreement by the Secretary of State under the terms of the Act.
- C. Prepare comments on any FMP or amendments prepared by the Secretary which are transmitted to the Council under Section 304(c)(4) of the Act.
- D. Conduct public hearings at appropriate times and locations in the Council's membership area, to allow interested persons an opportunity to be heard in the development of FMPs and amendments and with respect to the administration and implementation of the provisions of the Act.
- E. Submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary.
- F. Review on a continuing basis, and revise as appropriate, the assessments and specifications contained in each FMP for each fishery within its geographical area.
- G. Comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any state or federal agency that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority. The Council may comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any state or federal agency that, in the view of the Council, may affect habitat, including essential fish habitat, of a fishery resource under its authority.
- H. Develop annual catch limits for each of its managed fisheries that may not exceed the maximum acceptable biological catch level recommendations of its Scientific and Statistical Committee (SSC).
- I. Develop, in conjunction with the SSC, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall establish priorities for 5-year periods; be updated as necessary; and be submitted to the

Secretary and the regional science centers of the National Marine Fisheries Service (NMFS) for their consideration in developing research priorities and budgets for the region of the Council.

- J. Prepare regulations for the halibut fisheries, consistent with provisions of the Northern Pacific Halibut Act of 1982. The Act provides that, for the halibut fishery off Alaska, the Council may develop regulations, including limited access regulations, to govern the fishery, provided that the Council's actions are not in conflict with regulations adopted by the International Pacific Halibut Commission.
- K. Conduct any other activities which are required by or provided for in the Act or which are necessary and appropriate to the foregoing functions.

The Council expects to participate in international negotiations concerning any fishery matters under the cognizance of the Council. The Council also expects to be consulted during preliminary discussions leading to U.S. positions on international fishery matters, including the allocation of fishery resources to other nations within its area of authority.

## 2.0 Council Organization

The Council has eleven voting members and four non-voting members. The Council's geographic area of authority includes the Exclusive Economic Zone (EEZ) of the Arctic Ocean and Pacific Ocean seaward of Alaska, including the Bering Sea, Aleutian Islands, and Gulf of Alaska. The states of Alaska, Washington, and Oregon are represented on the Council.

The eleven voting members include the Commissioner of the Alaska Department of Fish and Game, Director of the Washington Department of Fish and Wildlife, Director of the Oregon Department of Fish and Wildlife, the Alaska Regional Administrator of NOAA Fisheries, five members appointed by the Secretary from the State of Alaska, and two members appointed by the Secretary from the State of Washington. Council member nomination and appointment procedures are detailed at 50 CFR 600.215.

The four non-voting members include the Alaska Regional Director of the U.S. Fish and Wildlife Service, the Commander of the Seventeenth Coast Guard District, the Executive Director of the Pacific States Marine Fisheries Commission, and a representative of the U.S. Department of State.

Non-voting members of the Council may serve on committees of the Council and may serve as chairpersons of committees and, as members of the committee, may initiate and second motions, as well as vote on matters that pertain to the committee. At meetings of the Council, non-voting members may initiate or second motions, but may not vote on matters that may be classified as business of the Council. They may, however, participate fully in discussions of such matters.

Each voting member appointed to a Council pursuant to Section 302(b)(2) must take the following oath of office:

*"I, {name of person taking oath}, as a duly appointed member of a Regional Fishery Management Council established under the Magnuson-Stevens 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 fishery 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-Stevens 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 given freely and without mental reservation or purpose of evasion."*

## **2.1 Terms of Council Members, Removal, and Council Officers**

### **2.1.1 Term of Appointment – Voting Members**

Voting members (other than principal state officials, the Regional Administrator, or their designees) are appointed for a term of three years and may be reappointed. The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than three years, if necessary, to provide for balanced expiration of terms of office. Members may not serve more than three consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member. A member who has completed three consecutive terms will be eligible for appointment to another term one full year after completion of the third consecutive term.

### **2.1.2 Removal**

The Secretary of Commerce may remove for cause any Secretarial appointed member of a Council in accordance with Section 302(b)(6) of the Act, wherein the Council concerned first recommends removal of that member by not less than two-thirds of the voting members. A recommendation of the Council to remove a member must be made in writing to the Secretary and accompanied by a statement of the reasons upon which the recommendation is based. The Secretary may also remove for cause any Secretarial appointed member of a Council if the Secretary finds the member, after notice and an opportunity for a hearing, knowingly and willfully failed to disclose, or falsely disclosed, any financial interest required under Section 302(j) of the Act, or knowingly voted on a Council decision that would have a significant and predictable effect on the member's financial interest in violation of Section 302(j)(7)(A) of the Act.

### **2.1.3 Officers**

A Chair and Vice Chair are elected from the voting members of the Council by a majority vote of the voting members present and voting. Both serve for one year and may succeed themselves. They are elected at the first regular Council meeting held after August 11 (election meeting) and their terms of office expire at the next meeting after August 11 of the subsequent year. If the Council terms of either or both of the officers end before a regular election meeting, the Council shall appoint at the next regular Council meeting interim officers to serve until the next election meeting.

The Chair, or in the Chair's absence the Vice Chair, of the Council has authority to convene and adjourn meetings and public hearings and designate members of the Council, Scientific and Statistical Committee, and Advisory Panel to attend meetings and public hearings. The Chair will control meetings and hearings by recognizing speakers, establishing the order of business, and designating members of the Council and its advisory bodies as members of committees and working groups.

## **2.2 Designees**

The Act authorizes only the principal state officials, the Regional Administrator, and the non-voting members to designate individuals to act on their behalf at Council meetings. 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, of 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. A designee may be elected as Chair or Vice-Chair of the Council, and as Vice-Chair would serve as Chair in the absence of the elected Chair; however, a designee for an elected Chair cannot serve as Chair. Reimbursement of travel expenses to any meeting is limited to either the member or one designee. Additional requirements for principal state officials and their designees include the following:

- (1) Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be appointed by a constituent state Governor as the principal state official for purposes of Section 302(b) of the Act.
- (2) A principal state official may name his/her designee(s) to act on his/her behalf at Council meetings. Individuals designated to serve as designees of a principal state official on a Council, pursuant to Section 302(b)(1)(A) of the Act, must be a resident of the state and be knowledgeable and experienced, by reason of his or her occupational or other experience, scientific expertise, or training, in the fishery resources of the geographic area of concern to the Council.
- (3) New or revised appointments by state Governors of principal state officials and new or revised designations by principal state officials of their designees(s) must be delivered in writing to the appropriate NMFS Regional Administrator and the Council chair at least 48 hours before the individual may vote on any issue before the Council. A designee may not name another designee. Written appointment of the principal state official must indicate his or her employment status, how the official is employed by the state fisheries agency, and whether the official's full salary is paid by the state. Written designation(s) by the principal state official must indicate how the designee is knowledgeable and experienced in fishery resources of the geographic area of concern to the Council, the County or Borough in which the designee resides, and whether the designee's salary is paid by the state.

## **2.3 Advisory Groups**

The Council has established two formal advisory groups: a Scientific and Statistical Committee (SSC) and an Advisory Panel (AP). Subject to the availability of appropriations, stipends are available to members of committees formally designated as SSCs or APs who are not employed by the Federal Government or a state marine fisheries agency. For purposes of this section, a state marine fisheries agency includes any state or tribal agency that has conservation, management, or enforcement responsibility for any marine fishery resource.

The Council also maintains Plan Teams for each fishery management plan, and appoints standing and ad hoc committees necessary to advise the Council on particular conservation and management issues. Stipends are not available to members of plan teams or other committees and taskforces.

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

As required by the Act at Section 302(g)(1), the Council shall establish, maintain, and appoint the members of a SSC to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to the Council's development and amendment of any of its fishery management plans. The SSC is composed of experts in biology, statistics, economics, anthropology/sociology, and other relevant disciplines from the federal, state, and private scientific communities and other appropriate sources. Members appointed by the Council to the SSC shall be federal employees, state employees, academicians, or independent experts and shall have strong scientific or technical credentials and experience. Independent experts on the SSC cannot be employed by an interest group or advocacy group. Each member of the SSC shall be treated as an affected individual for purposes of financial interest disclosure provisions for SSC members as specified in the Act. Financial interest disclosures for SSC members will be reviewed annually by the Council prior to appointment, and when updated by an SSC member reporting any substantial changes in financial interest. Financial interest disclosures will be kept on file by the Secretary.

The SSC will provide the peer review process for scientific information used to advise the Council about the conservation and management of the fisheries. The review process, which may include existing committees or panels, is deemed to satisfy the requirements of the guidelines issued pursuant to Section

515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554—Appendix C; 114 Stat. 2763A–153).

#### **A. Objectives and Duties**

As requested by the Council, through the Council Chair or the Executive Director, the SSC shall:

- 1) Provide ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, overfishing limits, maximum sustainable yield, and achieving rebuilding targets, and report on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.
- 2) Provide expert scientific and technical advice to the Council on the development of fishery management policy, fishery management plans and amendments, their goals and objectives, proposed regulations, and criteria for judging plan effectiveness.
- 3) Assist the Council's planning and execution of fishery management, by determining the best scientific information available, as required by National Standard 2.
- 4) Advise the Council by providing comments on any relevant fishery management plan or amendment prepared by the Secretary or Secretary's delegate pursuant to Section 304(c) of the Act.
- 5) Submit to the Council reports deemed appropriate by the Committee or requested by the Council.
- 6) Perform other appropriate duties as may be required by the Council to carry out its functions under the Act.
- 7) Serve as the Council's peer review body for influential scientific information pursuant to requirements of the Information Quality Act (Section 515 of Public Law 106-554) and NOAA information quality guidelines.

#### **B. Members and Chair**

The SSC will consist of no more than 20 members. SSC members shall be appointed by, and serve at the pleasure of, the Council. They shall be appointed for one year, and may be reappointed. Vacancies may be filled for the remaining unexpired term. The SSC Chair and Vice Chair(s) shall be nominated by the Committee from among its members and confirmed by the Council for one-year terms.

Each statutory agency designated as a member of the North Pacific Fishery Management Council by the Act may have a member on the Scientific and Statistical Committee. That member may have an alternate, although it is expected that the primary member from an agency will attend meetings of the Scientific and Statistical Committee in person whenever possible. The statutory agency may nominate the alternate for their primary member, notifying the Chair of the SSC by letter of that selection. Alternates will be appointed for the same period as the primary member (i.e., one year).

Other Scientific and Statistical Committee members may have an alternate on a case-by-case basis (to be approved by the Council Chair or Executive Director in advance of the next meeting) when the member would be unable to participate for an extended period of time. It is expected that those alternates would be experts in the same field as the member and familiar with the work of the SSC and the Council.

The key requirement in appointing members or alternates is for the Council to maintain the highest level of objective scientific and technical expertise. Members should be able to make unbiased and objective scientific recommendations to the Council. Additionally, SSC members shall maintain high standards of ethical conduct and fully abide by the Council's anti-harassment policy.



### **C. *Administrative Provisions***

The SSC shall meet as a whole, or in part, at the request of the Chair of the SSC, with the approval of the Chair of the Council, as often as necessary to fulfill the SSC's responsibilities, taking into consideration time and budget constraints. Normally, the SSC will meet prior to the scheduled Council meetings. The SSC shall hold its meetings in conjunction with meetings of the Council, to the extent practicable. SSC meetings are open to the public, unless closed pursuant to Section 3.4. The Executive Director of the Council shall provide such staff and other support as the Council considers necessary for SSC activities, within budgetary limitations.

Notices of SSC meetings shall comply with the notice requirements specified in Section 3.1. The agenda for each SSC meeting shall be developed by the SSC Chair in consultation with the Deputy Director or Executive Director. SSC meetings will follow established protocols. Following staff reports, the public will have an opportunity to submit oral or written statements on scientific aspects of an issue on the agenda prior to SSC deliberations, within reasonable limits established by the SSC Chair. SSC members shall disclose any potential conflicts regarding a particular topic prior to any discussion of that issue. SSC decisions will be reached by consensus, whenever possible; however if a decision is required and consensus cannot be reached, the opinion of the majority will prevail.

A report of the meeting shall reflect the discussion and deliberations that were made during the SSC meeting. The SSC Chair, or designee, will be responsible for reporting the SSC's recommendations to the Council. A report of the SSC meeting will be made available to the public on the Council's website after the meeting.

SSC members shall serve without compensation, except that (subject to the availability of appropriations), a stipend may be paid to members of the scientific and statistical committees who are not employed by the federal government or a state marine fisheries agency, as defined at 50 CFR 600.134. SSC members will be paid their actual travel expenses in performing their duties in accordance with applicable law and Council travel policy.

### **2.3.2 *Advisory Panel (AP) / Fishing Industry Advisory Committee (FIAC)***

The Council has established, and maintains, a permanent fishing industry advisory committee (FIAC) under Section 302(g)(3), as required by the Act. The Council's FIAC is known as its 'Advisory Panel' (AP) and performs the functions of a section 302(g)(2) advisory panel. Subject to the availability of appropriations, members of the AP may be eligible to receive stipends provided they are not employed by the Federal Government or a state marine fisheries agency, as defined at 50 CFR 600.134.

The North Pacific Fishery Management Council appoints this Advisory Panel (AP) of recognized experts from the fishing industry and several related fields, and which represents a variety of gear types, industry and related interests as well as a spread of geographic regions of Alaska and the Pacific Northwest having major interest in the fisheries off Alaska.

#### **A. *Objectives and Duties***

The AP will provide to the Council information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans. The Council relies on the AP for comprehensive advice on how various fishery management alternatives will affect the industry and local economies, on potential conflicts between user groups of a given fishery resource or area, and on the extent to which the United States will utilize resources managed by the Council's fishery management plans.

#### **B. *Members and Chair***

The AP will consist of approximately 20 members. However, the Council will not necessarily keep all seats filled. This arrangement should allow sufficient flexibility in funding so the Council can invite as necessary

other individuals with particular expertise to work with the AP on an ad hoc basis. It is expected that as the issues and concerns of the Council change and evolve so, too, will the profile of the membership of the AP.

To ensure Tribal perspectives are included and represented on its Advisory Panel, the Council has established one designated Alaska Native Tribal seat on its Advisory Panel, noting that this designated seat in no way limits the number of Alaska Natives that may serve as members of the AP. The person serving on the AP in the designated seat must meet the same qualifications and considerations for service on the AP as all other members.

The Council will give highest priority to the following considerations when selecting AP members:

- 1) Of paramount importance is the demonstrated ability of the candidate to be objective and to consider all aspects of an issue.
- 2) The AP members should be of top quality and caliber and be committed to full and active participation for each meeting during their term.
- 3) The candidate should be considered because of the experience he/she brings to the Council rather than his/her political clout or connection.
- 4) The candidate should be an active, involved member of his/her community and business to ensure the best and most pertinent input into the Council and likewise be responsible and diligent in reporting Council decisions and concerns back to his/her community/business.
- 5) The AP membership should represent a broad geographic spread both for Alaska and the Pacific Northwest. Representation for the three states should be in the same proportions as those of the voting membership of the Council. However, recognizing that issues and priorities will change, the Council cautions that no seat is reserved for a particular area.
- 6) The AP membership should represent a variety of interests within the fishing industry and others with interests in maintaining and managing Council fisheries. While it is hoped that major gear types from the harvesting sector will be broadly represented, as with geographic representation, no particular seat is guaranteed to a gear type or fishery.
- 7) The Council expects AP members to fully abide by the Council's anti-harassment policy (see Section 4.8) and to treat all participants (fellow AP members, members of the public) with respect and civility.

New AP members, with the exception of AP members appointed to fill the designated Alaska Native Tribal seat or on an ad hoc basis, will be appointed for a one-year orientation term, that if subsequently extended by 2 years, would constitute a full three-year term for purposes of term limits. In determining whether to extend the initial term, the Council will consider whether the AP member is meeting expectations based on the initial considerations for selection (listed above), as well as the range of issues the Council anticipates addressing in the coming 3 years. The AP member appointed to fill the designated Alaska Native Tribal seat will serve for a full three-year term. Terms begin with the first meeting each calendar year. All members will be appointed by and serve at the pleasure of the Council and may be reappointed to two subsequent consecutive terms. Members initially appointed after 2022 are limited to either three, 3-year terms, or 9 consecutive years total. Appointments will be staggered to provide for the appointment of 1/3 of the membership of the AP each year. A call for nominations to serve on the Advisory Panel will be issued before each December Council meeting and announced on the Council website. Nominations for the designated Alaska Native Tribal seat on the Advisory Panel must include documentation of support from an Alaska Native Tribe and/or Tribal Consortia.

Resumes and requests to serve will not be retained after the annual appointment process. The Council may use this list of candidates in choosing AP members to fill full-year terms or interim vacancies, but may also solicit individuals not on the list if a particular combination of experience and expertise is deemed desirable. AP members serve at the pleasure of the Council and can be removed by a majority vote of the Council

prior to the completion of a full 3-year term. Cause for removal may include, but is not limited to, change in affiliation or status, poor attendance, or violations of the Council's anti-harassment policy. The Council Chair is authorized to fill interim vacancies on the AP subject to confirmation by the Council at the next regular meeting. Interim appointments are for the remaining unexpired term of the vacancy or until the end of the calendar year.

### *C. Administrative Provisions*

Members of the AP serve without compensation. They may be paid their actual expenses for travel and per diem incurred in the performance of their duties during the days in which the panel is in session. The Chair, Vice-Chair, or the AP member designated to report to the Council may be paid expenses for additional days when necessary and approved by the Executive Director. Security clearances for AP members are requested as necessary. Subject to the availability of appropriations, a stipend may be paid to members of the AP who are not employed by the federal government or a state marine fisheries agency, as defined at 50 CFR 600.134.

AP members travel reimbursement shall be limited to attendance at formal meetings of the AP, or to the Chair, Vice-Chair (s), or designee while officially representing the AP with the advance approval by the Executive Director. AP members shall follow the same general travel rules set forth for Council employees. In extenuating circumstances, which must necessarily be related to their fishing or processing activities and with advance notice, the Executive Director may authorize travel reimbursement to and from locales other than an AP member's normal home location.

The Chair and Vice-Chair(s) of the AP are nominated for one-year terms by the Panel from among its members and are confirmed by the Council.

AP members are expected to attend all meetings and participate fully at these meetings including voting on each issue. Poor attendance will be cause for a member being removed. Generally, acceptable absences will be the result of or involve personal emergencies or unavoidable conflicts related to the member's area of expertise.

The Executive Director, in consultation with the Council Chair shall assign the agenda topics for the Advisory Panel to discuss at its meetings. These topics will not normally include all items on the Council's agenda, but the AP may consider any topic or issue it deems important to bring to the Council's attention, time permitting and with the concurrence of the Council Chair or Executive Director. The AP members should be given sufficient advance notice of these topics to allow adequate preparation before the meeting. Notice of meetings of the AP shall comply with the notice requirements specified in Section 3.1. Meetings of the AP are open to the public, unless closed pursuant to Section 3.4.

The AP is expected to conduct meetings in a timely fashion with the objective of presenting AP recommendations to the Council consistent with the Council's order of business. Generally, the panel should utilize Council procedures limiting the time allowed for public testimony and questions by AP members. Interested persons are permitted to present oral or written statements on matters on the agenda, within reasonable limits established by the AP chair. Should the meeting run behind schedule, the AP Chair will consult with the Deputy Director, Executive Director, or Council Chair to determine priority issues for the AP to address in the time remaining.

The AP Chair or designee will be responsible for reporting the AP's recommendations (AP report) to the Council. The AP report shall include a record of passed motions and close call votes (even if the motion failed), and rationale points to explain the AP action. This report shall include the results of votes taken, including minority reports which are signed by at least 3 of the members voting in the minority at the time of the vote and submitted in writing. All minority reports consistent with the above standard shall be included in the written AP report to the Council, but not read into the record during the oral report to the

Council. A report of the AP meeting will be made available to the public on the Council's website after the meeting.

The Executive Director of the Council shall, upon request of the Chair of the AP, provide such staff and other support as the Council considers necessary for AP activities, within budgetary limitations.

### **2.3.3 Plan Teams**

The Council appoints plan teams for each of the major fishery management plans (FMPs), and has also appointed plan teams for specialist issues such as ecosystem-based fishery management and use of social science information. Members of each team are selected from those agencies and organizations having a role in the research and/or management of fisheries. The team should be small enough to work efficiently and effectively but sufficiently large to provide the diverse experience and knowledge needed to cover all aspects of a particular fishery or fishery management issue. At a minimum, teams shall be composed of one member from agencies having responsibility for management of the fishery resources under the jurisdiction of the Council. Nominations of these individuals are at the discretion of the agencies. Appointments to the team will be made by the Council with recommendations from the SSC.

Members of the Plan Teams serve without compensation. Non-federal employees may be paid their actual expenses for travel and per diem incurred in the performance of their duties during the days in which the Plan Team is in session. The Plan Team chair, vice-chair, or Plan Team member designated to report to the Council may be paid expenses when necessary and approved by the Executive Director.

The FMP Plan Teams shall review stock assessment information and assist in the preparation of the annual Stock Assessment and Fishery Evaluation (SAFE) documents including formulation of recommendations on annual Acceptable Biological Catch (ABC) levels for groundfish, crab, and scallop species under jurisdiction of the Council. All Plan Teams may also prepare and/or review plans, amendments and supporting analytical documents for the Council, SSC and AP; aggregate and evaluate public/industry proposals and comments; summarize and evaluate data related to the biological, economic and social conditions of the fishery or fishery management topic; conduct and evaluate analyses pertaining to management of the fisheries; evaluate the effectiveness of management measures in achieving the Council's objectives; and recommend when and how management measures need to be changed.

These and other provisions concerning the teams are included in each Plan Team's Terms of Reference, which are approved by the Council. The current Terms of Reference for the Groundfish, Crab, and Scallop Plan Teams as well as the Bering Sea Fishery Ecosystem Plan Team and the Social Science Planning Team are posted on the Council's web site.

The Plan Teams are constituted pursuant to Section 302(g)(2) to assist the Council in carrying out Council functions under the MSA. Meetings are open to the public, unless closed pursuant to Section 3.4. Notices of Plan Team meetings shall comply with the notice requirements specified in Section 3.1. Interested persons are permitted to present oral or written statements on matters on the agenda, within reasonable limits established by the Plan Team chair. Reports of Plan Team meetings will be publicly available.

### **2.3.4 Council Committees**

The Council may appoint standing and ad hoc committees from among the voting and non-voting members and knowledgeable members of the public, as it deems necessary for the conduct of Council business. The Council Chair may also appoint standing or ad hoc Committees that include industry representatives or other participants to address specific management issues or programs. Compensation and travel expenses for non-Council participants on such Committees will not be provided by the Council.

Council Committees are constituted pursuant to Section 302(g)(2) to assist the Council in carrying out Council functions under the MSA. Meetings are open to the public, unless closed pursuant to Section 3.4. Notices of Council committee meetings shall comply with the notice requirements specified in Section 3.1.

Interested persons are permitted to present oral or written statements on matters on the agenda, within reasonable limits established by the Committee chair. Reports of Committee meetings will be publicly available.

### **2.3.5 Council Taskforces**

The Council may appoint project specific Taskforces that include staff from agencies and knowledgeable members of the public, as it deems necessary to address specific projects. Travel expenses and per diem for non-Federal participants on such Taskforces may be provided, as authorized by the Council and its Executive Director. Council Taskforces are constituted pursuant to Section 302(g)(2) to assist the Council in carrying out Council functions under the MSA. Meetings are open to the public, unless closed pursuant to Section 3.4. Notices of meetings of a Taskforce shall comply with the notice requirements specified in Section 3.1. Interested persons are permitted to present oral or written statements on matters on the agenda, within reasonable limits established by the Taskforce chair. Reports of Taskforce meetings will be publicly available.

## **3.0 Council Meetings**

The Council will meet at the call of the Chair or upon request of a majority of the voting members, subject to the general policy outlined in Section 3.5. 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 recommendations regarding material before them, with Council decisions made in plenary session. Emergency meetings shall be held at the call of the Chair or equivalent presiding officer. The following guidelines apply with respect to the conduct of business at meetings and hearings of the Council.

### **3.1 Agenda and Notice**

At the direction of the Council Chair, the Executive Director is delegated the authority to schedule action items and other topics for upcoming meetings. This delegation provides the Executive Director the ability to consult with the Council Chair, and to manage the schedule in the most efficient and effective manner based on the availability of staff expertise and contract assistance, and a realistic assessment of the workloads and time necessary to complete each project. Council members will have the opportunity to comment on a proposed future meeting outlook and state their priorities for scheduling at each meeting.

The agenda for each Council meeting is drafted by the Executive Director in consultation with the Council Chair. All Council members will have an opportunity to review and comment on a draft agenda before it is released to the public.

Timely notice of each regular meeting, hearing, and each emergency meeting, including the time, place, and agenda of the meeting, shall be provided by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery) except that e-mail notification and website postings alone are not sufficient. Timely notice of each regular meeting shall also be published in the Federal Register. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or such notice must be given at least 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c) of the Act, in which case public notice shall be given immediately.

Drafts of all regular public meeting notices must be transmitted to the NMFS Headquarters Office (i.e., Federal Register) at least 23 calendar days before the first day of the regular meeting. Drafts of emergency public notices must be transmitted to the NMFS Headquarters Office at least five working days prior to the first day of the emergency meeting. Although notices of and agendas for emergency meetings are not

required to be published in the *Federal Register*, notices of emergency meetings must be promptly announced through any means that will result in wide publicity in the major fishing ports of the region.

The Council shall ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings. Anyone needing a special accommodation to attend and participate in a Council-hosted meeting must contact the Council office 14 days before the scheduled meeting. Guidance addressing disability-related accommodations is found at Department Administrative Order (DAO) 209-8, Access for People with Disabilities to Meetings and Other Group Events.

## **3.2 Conduct of Meetings**

### **3.2.1 Written Statements and Oral Testimony**

Each regular meeting and each emergency meeting shall be open to the public. Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings, within reasonable limits established by the Chair. Current Council policy on oral testimony limits individuals to three minutes, and organizations to six minutes, per agenda item. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement. During Council meetings the area adjacent to and behind the Council seating area will be restricted to only Council members and Council/agency staff.

#### Written comments

Written comments can be provided electronically in advance of the Council meeting; directions on submitting comments, and deadlines for posting comments, are posted on the Council website [www.npfmc.org](http://www.npfmc.org). Persons wishing to submit written comments after the deadline (in conjunction with oral testimony at the Council meeting), may attach their written comment digitally when they sign up for oral testimony, or may provide 25 copies of their written comments and these will then be distributed to Council members during the Council meeting. All written comments, in order to be considered part of the Council Record, must identify the submitter, their affiliation, and date of written comment. Public comments that come in randomly during a Council meeting and are not associated with an in-person testifier during public testimony will not be considered part of the record. In order for those late written comments to be heard and “included in the record,” someone must submit them during their part of public testimony.

Written comments to the Council on subject matter not specifically pertaining to the Council’s published agenda may be distributed to Council members, as appropriate, through regular Council mailings or may be posted under the B reports or under Staff Tasking agenda item for the next Council meeting.

Written comments directed to specific Council members will not be considered part of the Council Record (unless disseminated at the meeting or mentioned specifically during Council meeting deliberations) and will not be copied and distributed to Council members. Written comments directed to specific Council staff prior to the deadline for written comments may be forwarded for posting on the Council website as part of a specific agenda item.

### **3.2.2 Quorum, Voting by Proxy, and Roll Call Voting**

- (1) A majority of the voting members of any Council constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings. Decisions of any Council are by majority vote of the voting members present and voting (except for a vote to propose removal of a Council member, see 50 CFR 600.230, where Roberts Rules of Order require a 2/3 majority vote, or if the MSA requires something more than a majority vote for any particular action). Voting by proxy is permitted only pursuant to 50 CFR 600.205(b). An abstention does not affect the

unanimity of a vote. At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official report and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.

- (2) A roll call vote is required for Council approval or amendment of a fishery management plan (including any related proposed regulations, or harvest specifications), a Council finding that an emergency exists involving any fishery, or Council comments to the Secretary on fishery management plans developed by the Secretary. A final vote may not be taken until the motion before the Council is recorded in written form visible to each Council member present and the public. The written motion, as voted on, must be preserved as part of the record or minutes of the meeting. For a vote on a Council finding that an emergency exists in a fishery, the exact number of votes (for, against, and abstaining) must be preserved as part of the record of the meeting.
- (3) 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 such a statement, it should be submitted to the Secretary at the same time the majority report is submitted.

### **3.2.3 Procedure for Proposed Regulations**

The procedure for changing Federal fishing regulations follows a standardized process, set forth by a combination of laws, regulations, operational guidelines, policies, as well as adjustments and adaptations developed by the Council to increase efficiency, provide public participation, and produce quality outcomes. Concerns and proposals for regulatory change or amendments are brought to the Council's attention by the public through the AP, SSC or other Plan Teams, Committees, and Task Forces, or directly to the AP or Council via written or oral public comment during the 'Staff Tasking' agenda item at each Council meeting. A discussion paper is frequently prepared by staff as a first step to flesh out the scope of the problem identified by the council and discuss issues that may be of concern in the development of alternatives. For very complex issues, several discussion papers may be necessary to explore the full scope of an issue before reasonable alternatives can be developed. For relatively simple changes, where the problem and alternatives are self-evident, a discussion paper may not be necessary, and the issue can go straight to analysis, even without developing a problem statement and range of alternatives.

In most instances, evaluation of changes to an FMP or regulations is done through a two-step process: Initial Review and Final Action. Normally, the Council adopts a problem statement (or thoroughly describes the problem) and identifies alternatives to be considered, and then staff prepares a draft analysis that integrates analytical requirements of applicable laws and executive orders, with the primary purpose of evaluating the environmental, social, and economic effects of the alternatives. The analysis is released for initial review by the Council about 2-3 weeks before the meeting and available for written public comment. The analysis is typically reviewed by the SSC for scientific merit (for most initial review analyses), and by the AP to make recommendations regarding any missing information and the suite of alternatives and options evaluated. If the SSC has deemed the analysis inadequate and not ready for Final Action, or if the Council determines that additional alternatives or other substantial changes to the analysis are required, another initial review may be scheduled before the issue is scheduled for final action. If the analysis is to be released, the Council may designate a preliminary preferred alternative to focus public comments on their indicated course of action.

After initial review, staff typically revises the analysis based on SSC, AP, and Council comments, and the analysis is posted on the Council website about 3-4 weeks before the meeting at which the Council plans to take Final Action, and available for written public comment. When an issue is scheduled for Final Action, the Council can make a final decision by roll call vote on the motion to identify a preferred alternative.

In rare cases, the Council may wish to schedule Initial Review and Final Action at the same meeting to speed implementation. Typically, this involves simple actions, such as a rollover of existing regulations, a descriptive FMP amendment change with no accompanying regulations, or a time-critical simple regulatory change. In evaluating whether to take Initial Review and Final Action at the same meeting, the Council will consider whether the public has sufficient notice of the action to provide informed comment, the relative complexity of the issue, the level of public support and engagement, and whether the Council has information necessary to develop a sufficient record to support its recommended action.

At the time a final vote is taken to approve an amendment or fishery management plan, the Council will follow the procedure for proposed regulations consistent with Section 303(c) of the MSA (note: this procedure is not required for regulations implemented under the Halibut Act). The procedure describes how the Council deems proposed regulations necessary or appropriate for the purposes of implementing a fishery management plan or plan amendment, or making modifications to regulations implementing a fishery management plan or plan amendment. In addition, the procedure describes how the Council submits proposed regulations to the Secretary. The Council could choose one of two options:

Option 1: Request to see the draft proposed regulations developed for their action. If the Council chooses this option, then the Council should indicate that intent in their motion. That means that NMFS staff would submit the draft proposed regulations to the Council and at the next Council meeting following the receipt of the draft proposed regulations, the Council would review the draft proposed regulations as a scheduled agenda item.

Option 2: Determine that the Council does not need to review and vote on draft proposed regulations text prior to its submission to the Secretary. If the Council chooses this option, then the Council should indicate that intent in the motion by providing the following two statements in their motion:

**“The Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c).” and “The Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.”**

Under Option 2, any draft proposed regulations that are not 303(c) regulations would be proposed by NMFS under its authority at Section 305(d). Also, the Executive Director and the Chairman would retain their ability to withhold submission of the FMP amendment and/or proposed regulations and take the action back to the Council if the Executive Director and Chairman determine that the Section 305(d) draft proposed regulations are not in keeping with Council intent for the action.

### **3.2.4 Parliamentary Procedure; Consensus; Other**

Parliamentary procedure will be used in the conduct of the meetings. Agreement among Council members can be reached by consensus and non-voting members are expected to take part in all discussions and indicate their opinions on all specific issues. Those matters pertaining to the approval or disapproval of a fishery management plan or amendment, including proposed regulations, or comments for the Secretary on foreign fishing applications, or Secretarially-prepared management plans, require a vote.

### **3.2.5 Other Procedures**

At any time when a Council determines it appropriate to consider new information from a state or federal agency or from a Council advisory body, the Council shall provide opportunity for public comment before the Council takes final action on conservation and management measures. The Council shall adhere to “Mace’s Rules” to improve the efficiency of Council meetings. During agency reports at the beginning of



each meeting (i.e., the “B” reports), each Council member shall be limited to two questions per report. During public testimony for a given issue, under any agenda item, each Council member will be limited to two questions per testifier. There are no limits on how many questions a Council member can ask staff, however, outside of agency reports. The Chair is granted the authority as necessary to improve the quality of Council debate and enhance the overall efficiency of Council meetings in general.

### **3.3 Record**

A report of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed, and conclusions reached, and copies of all statements filed. The summary report, combined with the detailed newsletter, time log, and audio/visual recordings of the meeting, are intended to meet the requirements for minutes as described in Section 302(i)(2)(E) of the Act. The Council Chair shall verify the accuracy of the report of each such meeting and ensure that a copy is readily available to the Secretary. The report and recordings shall be made available to any court of competent jurisdiction. Subject to the guidelines prescribed by the Secretary pursuant to Section 402(b) of the Act, the administrative record, including minutes, of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council, or the Secretary, as appropriate. Reports of the meetings will also be made available to the public on the Council’s website.

### **3.4 Closed Meetings**

If any meeting or portion is closed, the Council shall provide notice by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery), except that e-mail notification and website posting alone are not sufficient, including in that notification the time and place of the meeting. Notification is not required regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters.

- (1) A Council, SSC, AP, or other committees shall close any meeting, or portion thereof, that concerns information bearing on a national security classification.
- (2) A Council, SSC, AP, or other committees may close any meeting, or portion thereof, that concerns matters or information pertaining to national security, employment matters, or briefings on litigation in which the Council is interested.
- (3) A Council, SSC, AP, or other committees may close any meeting, or portion thereof, that concerns internal administrative matters other than employment. Examples of other internal administrative matters include candidates for appointment to AP, SSC, and other subsidiary bodies and public decorum or medical conditions of members of a Council or its subsidiary bodies. In deciding whether to close a portion of a meeting to discuss internal administrative matters, a Council or subsidiary body should consider not only the privacy interests of individuals whose conduct or qualifications may be discussed, but also the interest of the public in being informed of Council operations and actions.
- (4) Without the notice required above, a Council, SSC, AP, or other committees may briefly close a portion of a meeting to discuss employment or other internal administrative matters. The closed portion of a meeting that is closed without notice may not exceed 2 hours.
- (5) Before closing a meeting or portion thereof, a Council or subsidiary body should consult with the NOAA General Counsel Office to ensure that the matters to be discussed fall within the exceptions to the requirement to hold public meetings described above. Actions that affect the public, although based on discussions in closed meetings, must be taken in public. For example, appointments to an AP must

be made in the public part of the meeting; however, a decision to take disciplinary action against a Council employee need not be announced to the public.

### **3.5 Frequency and Duration**

The Council normally meets five times each year. Each meeting normally lasts from six to seven days. The Council's SSC and AP generally meet concurrently with the Council, starting prior to the Council. The specific timing of each meeting shall be coordinated by the Executive Director in consultation with the Chair.

### **3.6 Location**

The Council shall meet at appropriate times and places in any of the constituent states of the Council. Council meetings typically will be held in Alaska, with the exception that one meeting each year may be held in the constituent state of Washington or Oregon, normally at a ratio of two meetings in Washington for every one meeting in Oregon. Specific meeting locations within each state will be coordinated by the Executive Director in consultation with the Chair.

The Council attempts to hold at least one meeting per year in an Alaska location other than Anchorage, as is practicable. While the Council strives to hold Council meetings in locations which reach fishery constituents, including locations not typically on the Council meeting schedule, certain logistical considerations place practical limitations on the Council's ability to meet in some locations. Council outreach activities other than plenary meetings may be conducted in remote, rural locations within Alaska, as appropriate on an issue-by-issue basis.

Full, plenary meetings of the Council, in addition to Council, Advisory Panel, and SSC members, also require attendance of numerous Council, State, and Federal agency staff, as well as regular public attendance by affected fishery constituents. In order to consider future meeting locations, the Council has approved general criteria for plenary (full) Council meetings, that are published on the Council's website.

### **3.7 Public Hearings**

The Council may hold public hearings in order to provide the opportunity for all interested individuals to be heard with respect to the development of fishery management plans or amendments, and with respect to the administration and implementation of other relevant features of the Act. Notice of each hearing must be received by NMFS for publication in the *Federal Register* at least 23 calendar days prior to the proposed hearing. The Council will also issue notices to announce the time, location, and agenda for each hearing in a manner sufficient to assure all interested parties are aware of the opportunity to make their views known. If it is determined a hearing is appropriate, the Council Chair will designate at least one voting member of the Council to officiate. An accurate record of the participants and their views, obtained by use of recording, typewritten transcript, or detailed minutes, will be made available to the Council at the appropriate Council meeting and maintained as part of the Council's administrative record.

### **3.8 Council Member Compensation**

Those voting members of the Council who are not employed by the Federal Government or any state or local government shall receive compensation at the daily rate for GS-15 (Step 7) of the General Schedule as adjusted by applicable COLA/Locality Pay. Such compensation shall be limited to attendance at formal meetings of the Council (actual meeting days), meetings of standing or ad hoc committees on which the Council member is a designated member, or to the Chair, Vice-Chair, or designee while officially representing the Council or conducting official business of the Council outside of such meetings, and travel days when applicable. A member may claim daily compensation for travel days before or after the meeting if his or her normal business activity was substantially disrupted by the travel. Travel days are not

compensated if the travel occurs after normal business hours. Compensation for meeting or travel days may be paid on a full day's basis whether in excess of eight hours a day or less than eight hours a day. "Homework" time in preparation for any meeting, or attendance of any meeting other than specified above, is not compensable.

The Executive Director, with the approval of 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.

### **3.9 Council Member Travel**

Council members travel reimbursement shall be limited to attendance at formal meetings of the Council, Council member training, meetings of standing or ad hoc committees on which the Council member is a designated member, or to the Chair, Vice-Chair, or designee while officially representing the Council or conducting official business of the Council outside of such meetings, including meetings of the Council Coordination Committee. Council members shall follow the same general travel rules set forth for Council employees. In extenuating circumstances, which must necessarily be related to their fishing or processing activities and with advance notice, the Executive Director, at the direction of the Council Chair, may authorize travel reimbursement to and from locales other than a Council member's normal home location. Additional travel rules are detailed in Section 4.

### **3.10 Training**

Council members appointed after January 12, 2007, shall complete a training course that will cover a variety of topics relevant to matters before the Council. Such training shall be available as well to existing Council members, staff from the regional offices and regional science centers of NMFS, and may be made available to committee or advisory panel members as resources allow.

## **4.0 Employment Practices**

This section describes the major employment practices for Council employees. Additional details are explained in the Council's personnel rules. Copies of these rules are given to each new employee.

### **4.1 Staffing**

The Council staff includes an Executive Director, a Deputy Director, and other full and part-time employees as determined necessary to the performance of Council functions consistent within budgetary limitations. The Executive Director is responsible to the Council, and the staff is responsible to the Executive Director.

The Executive Director may establish positions, recruit to fill vacant positions, and hire, compensate, promote, demote, discipline, and dismiss personnel. Position vacancies will be filled on a competitive basis, unless unusual circumstances dictate otherwise. The Council can hire its Executive Director directly (e.g., promotion of an existing staff member), or through a competitive process.

### **4.2 Experts and Consultants**

As long as funding is available in its budget, the Council may contract with experts and consultants as needed to provide technical assistance not available from NOAA. This includes legal assistance, though a Council must notify the NOAA Office of General Counsel before seeking outside legal advice, which may be for technical assistance not available from NOAA. If the Council is seeking legal services in connection with an employment practices question, the Council must first notify the Department of Commerce's Office

of the Assistant General Counsel for Administration, Employment and Labor Law Division. The Council may not contract for the provision of legal services on a continuing basis.

### **4.3 Detail of Government Employees**

The Council may request the detail of other government employees to assist the Council in the performance of its functions. Council requests for Federal employees must contain the purpose of the detail and its duration. Federal employees so detailed retain all benefits, rights, and status to which they are entitled in their regular employment. The Council may also negotiate agreements or other arrangements with state or local agencies for detail of their worker to accomplish Council purposes.

### **4.4 Personnel Actions**

Council staff are at-will employees, and all staff employees serve at the pleasure of the Council. The Executive Director may be dismissed by a two-thirds (2/3) majority vote of the voting Council members (i.e., 8 of the 11 voting members), and other staff employees may be dismissed by the Executive Director acting for the Council. Dismissals may be made for misconduct, unsatisfactory performance, and/or lack of funds, or other reasons.

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

### **4.5 Salary and Wages**

In setting rates of pay for Council staff, the principle of equal pay for equal work is followed. The annual pay rates for Council staff positions are consistent with the pay rates established for General Schedule federal employees as set forth in 5 USC 5332, and/or the Alternative Personnel Management System for the U.S. Department of Commerce (62 FR 67434), including cost of living (COLA)/Locality Pay differentials and a supervisory pay allowance of up to 6%. The NPFMC is using the discretion allowed for in the regulations to adjust pay rates and pay increases based on COLA/Locality Pay differentials in Alaska, consistent with the federal payscale, including adjustments necessary to achieve equivalency with federal counterparts. COLA/Locality Pay and other adjustments in pay rates and pay increases are being provided for staff members. No pay adjustment based on geographic location exceeds the equivalent COLA and locality pay adjustments available to federal employees in the same geographic area. Salary increases funded in lieu of life and medical/dental policies are not permitted.

Employees will be entitled to promotions and associated pay raises solely on the basis of merit and performance. The Executive Director, acting for the Council, shall conduct performance reviews at least biennially with each Council employee and will approve promotions and raises based on the employee's performance, length of service, or special accomplishments. Pay raises and performance evaluations for the Executive Director will be accomplished through a review process, at least biennially, involving the Council's Executive Committee. Career development, including formal training, will be supported by the Council, subject to budgetary limitations, when directly beneficial to both the employee and the Council.

A cash award or other award (e.g., leave, airline miles) may be provided to employees as an exceptional performance award in recognition of one or more particularly meritorious accomplishments, at the discretion of the Council Chair (for awards to the Executive Director) and the Executive Director (for awards to other staff). The total amount of a cash award will not exceed those allowable under current U.S. Department of Commerce guidelines.

## **4.6 Council Member and Staff Legal Protections**

In conducting official Council business, Council members and staff generally have the same protection from individual tort liability as federal employees on 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). Council staff are eligible also for unemployment compensation in the same manner as federal employees. Overtime payments shall be made in accordance with the provisions of the Fair Labor Standards Act (FLSA) 29 USC 201 et. seq.

## **4.7 Recruitment and Anti-Discrimination Policy**

Council staff positions must be filled solely on the basis of merit, fitness for duty, competence, and qualifications. The Council is an Equal Employment Opportunity Employer. All employment actions will be free from discrimination based on race, religion, color, national origin, sex, age, disability, sexual orientation, status as a parent, and reprisal, or on any additional bases protected by applicable Federal, state, or local law. See 50 CFR 600.120.

Except for complaints alleging sexual orientation and a status as a parent, complaints by employees alleging that they may have been discriminated against on the bases listed above, should be processed in accordance with 29 CFR part 1614. Employees must contact an EEO Counselor at NOAA's Office of Civil Rights within 45 days of the date of the alleged discrimination. Employees alleging discrimination on the basis of sexual orientation will have their complaints processed in accordance with DAO 215-11. Employees must contact an EEO Counselor at NOAA's Office of Civil Rights within 45 days of the date of the alleged discrimination.

## **4.8 Anti-Harassment Policy**

The Council will not tolerate harassment or retaliation against those who report harassment. For purposes of this policy, harassment includes unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). This policy does not cover allegations of incivility not based on a protected characteristic. However, this policy is not intended to limit in any way the Council's ability to address incivility, inappropriate behavior, or other issues in an appropriate manner for the context.

Employees are strongly encouraged to report any incident they perceive as harassment, to include incidents personally experienced or witnessed, to their supervisor or the designated point of contact (Executive Director or Administrative Officer) as soon as possible. Any Council process participant who observed or receives a report of harassment of a Council employee is strongly encouraged to report the incident to the Executive Director, Deputy Director, or Chair or Vice Chair of the Council as soon as possible. The Council's policy on addressing allegation of harassment of Council employees is detailed here as Attachment 1. The Council's Harassment Policy extends beyond staff and includes the conduct of Council members, staff members, and public during the course of official Council meetings, advisory body meetings, or committee meetings. The Council's policy on addressing harassment of process participants other than Council employees is detailed here as Attachment 2.

## **4.9 Whistleblower Protection**

It is the intent of the Council to adhere to all applicable laws and regulations. The Office of Inspector General (OIG) wants to hear any concerns regarding the Council or other Department of Commerce program or employee fraud – lying, cheating and stealing. The underlying purpose of this Policy is to encourage the organization's goal of full legal compliance. The support of all employees is necessary to

achieving this result. To this end, any person who reasonably believes that a policy, practice, or activity of the Council is in violation of law has a right to file a complaint with the U.S. Department of Commerce's Office of Inspector General. This right notwithstanding, any employee with such concerns is encouraged to report those concerns to the Council for review and any necessary correction.

The Council will not retaliate against employees who disclose or threaten to disclose to the Department, any activity, policy, or practice of the Council that the employee reasonably believes is in violation of a law, or a rule, or regulation mandated pursuant to law or is in violation of a clear mandate of public policy concerning the health, safety, welfare, or protection of the environment.

## **4.10 Leave**

Employees of the Council shall be granted paid leave for holidays, vacations or exigencies, sickness, and civic duties (jury, military reserve obligations) as determined by the Council, parental leave, and leave consistent with the Family and Medical Leave Act of 1993. The accrual and use of leave is explained in the Council Staff Personnel Rules. Copies of these rules are given to each new employee and reviewed periodically with the staff.

### **4.10.1 Leave Accounting**

One account shall be maintained to pay for unused sick or annual leave as authorized, and will be funded from the Council's annual operating allowances. Funds may be deposited into this account at the end of the budget period if unobligated balances remain. Interest earned on this account will be maintained in the account, along with the principal, for the purpose of payment of unused annual and sick leave only. This account, including interest, may be carried over from year to year. Budgeting for accrued leave will be identified in the "Other" object class categories section of the SF-424A.

### **4.10.2 Annual Leave**

Full-time Council employees shall accrue annual leave at rates not to exceed those for federal employees. Part-time employees accrue leave at the same rate, per hours worked. 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.

Employees may carry over up to 240 hours (30 days) unused annual leave from one year to the next. Amounts remaining above 240 hours will be forfeited. 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 Executive Director or Council Chair, 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. Each Council may pay for unused annual leave upon separation, retirement, or death of an employee.

### **4.10.3 Sick Leave**

Full-time Council employees shall 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. Unused sick leave credit may be accumulated without limit. Lump sum payments to the employee upon separation are not authorized. However, distributions of accumulated funds for unused sick leave may be made to the employee upon his or her departure if eligible for retirement (defined by PERs retirement rules) or to any employee who is age 60 or older and vested in PERs retirement, or upon his or her death, for up to 150 days of unused sick leave, at the employee's current salary rate, subject to budgetary limitations.

#### **4.10.4 Advanced Leave**

In meritorious cases, the Council 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 Executive Director in writing.

#### **4.10.5 Parental Leave**

The Council will provide twelve (12) weeks of paid parental leave to an eligible employee following the birth of the employee's child or the placement of a child with the employee in connection with the employee's adoption of the child. Paid parental leave is compensated at the employee's regular pay, and insurance and other benefits will continue to be paid by the Council during this period.

#### **4.10.6 Family Medical Leave Act of 1993**

Under the Family Medical Leave Act of 1993, 29 C.F.R Part 825, an employee is entitled to a total of up to 12 work weeks of unpaid leave during any 12-month period for the following purposes: the birth of a child of the employee and the care of such child; the placement of a child with the employee for adoption or foster care; the care of a spouse, child, or parent of the employee who has a serious health condition; or a serious health condition of the employee that makes the employee unable to perform the essential function of his or her position.

### **4.11 Employee Benefits**

The Council shall provide its employees and their legal dependents health insurance coverage and limited life insurance and accidental death and dismemberment coverage through the State of Alaska (Aetna) program. Retirement benefits are realized through Council participation in, and mandatory employee contributions to, the State of Alaska Public Employee System (PERS). Employee participation in a 403(b) plan or similar savings plan is optional and at the employee's expense. Moving expenses for new employees are authorized, up to limits specified in federal guidelines, subject to budgetary limitations.

### **4.12 Travel Reimbursement for Non-Federal Travelers**

Non-Federal members of the Council, Council staff, and members of the SSC, AP, Plan Teams and Taskforces, may be reimbursed for travel expenses incurred in the performance of Council duties, including transportation, room, meals, and incidental travel expenses at per diem limits established by the federal government for the applicable geographic locale. However, there will be situations when standard limits for hotel room rates must be exceeded, for example, for last minute travel or during the busiest tourist season in some locations. Provided meals will not be reimbursed. Claims for reimbursement are to be submitted on specified forms to the Finance Officer within 30 days following completion of travel. Claims received 30 days or more following completion of travel may not be reimbursed unless there are exceptional circumstances, and reimbursement is approved by the Executive Director. In no case will claims be reimbursed 30 days after the end of a funding year. Federal employees serving in the above capacities are subject to the reimbursement rules of their agencies. Payment for Federal personnel from Council funds is not authorized.

Coach air transportation must be utilized when available, and economy fares are encouraged. Purchased travel via first class air may be authorized in extenuating circumstances subject to pre-approval by the Council Chair or Executive Director. Domestic invitational travel for non-Council personnel may be approved by the Council Chair or Executive Director. Payment for travel by NOAA personnel is not authorized. In extenuating circumstances, and with advance notice, the Executive Director may authorize travel reimbursement to and from locales other than a member's normal home location. Members and staff may also combine private travel with Council travel; however, a cost comparison must be provided to

ensure that the Council does not reimburse costs that exceed what would otherwise have been authorized. 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 reimbursement 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.

## **4.13 Foreign Travel**

- (1) Foreign travel is authorized as described within the NOAA grant, when approved by the Executive Director, as necessary to conduct Council business.
- (2) The Executive Director may approve foreign travel for employees, and the Council Chair may approve foreign travel for Council members, within specified federal rates.
- (3) Foreign invitational travel for non-Council personnel must be approved as described in paragraph (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 federal personnel from Council funds is not authorized.

## **5.0 Standards of Conduct**

### **5.1 Federal Criminal Statutes**

Council members, as Federal office holders, and Council employees are subject to most Federal criminal statutes covering bribery, conflict-of-interest, and disclosure of confidential information. Among other statutes, the following provisions apply:

18 U.S.C. § 201 - prohibits offer or acceptance of anything of value to influence any official act.

18 U.S.C. §§ 203, 205 - prohibits officials from contacting any Federal agency or Federal court on behalf of others concerning a particular matter involving specific parties with the intent to influence Government action if they participated personally and substantially in the matter as a Council member. Furthermore, officials may not receive compensation for the representational activities of others regarding such matters.

18 U.S.C. § 207 - prohibits a former official permanently from representing others before a Federal agency or Federal court concerning a particular matter involving specific parties in which the official participated personally and substantially as a Federal official or for two years concerning a matter which was under the person's official responsibility during their last year of Government service.

18 U.S.C. § 208 - which prohibits official acts in a matter in which the Federal employee has a personal financial interest, does not apply to a financial interest of a Council voting member if he obtains a waiver under 18 U.S.C. 208 (b), or if the disclosure of financial interest form has been filed under § 302 (j) of the Act, and that individual is in compliance with regulations promulgated under said section.

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.

18 U.S.C. §§ 210, 211 - prohibits offer or acceptance of value to procure appointment to public office.

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

31 U.S.C. § 1352 - generally prohibits the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the Federal award. The Council must also



complete Form SF-LLL “Disclosure of Lobbying Activities” and submit it to the Grants Office quarterly as necessary.

## 5.2 General Standards of Conduct

In addition to abiding by the applicable Federal conflict of interest statutes, both members and employees of the Council must comply with the following standards of conduct:

- (1) No employee of the Council shall 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 elections.
- (2) Council members, employees, and contractors must comply with the Federal Cost Principles Applicable to Regional Fishery Management Council Grants and Cooperative Agreements (see 2 CFR part 230, OMB Circular A-122 Cost Principles for Non-Profit Organizations), especially with regard to lobbying, and other restrictions with regard to lobbying (see 15 CFR part 28; 50 CFR 600.227).
- (3) No employee of the Council shall be deprived of employment, position, work, compensation, or benefit provided from or made possible by the 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.
- (4) No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, either as a political contribution or a personal emolument any 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.
- (5) No employee of the Council shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties.
- (6) No Council member, employee of the Council, or member of a Council advisory group shall use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment which has not been made available to the general public.
- (7) No Council member or employee of the Council shall engage in criminal, infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.
- (8) No Council member or employee of the Council shall use Council property for other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.
- (9) No Council member may (A) participate personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest, or in a particular matter in which the member, the member’s spouse, minor child, general partner, organization in which the member is serving as officer, director, trustee, general partner, or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment, has a financial interest, unless provided for under 50 CFR 600.235; or (B) vote in any matter of general public concern which is likely to have a significant and predictable effect on a member's financial interest. For purposes of this subsection, the member's financial interest includes that of the member's spouse, minor child, partner, organization in which the members is serving as officer, director, trustee, partner or employee.

## **5.3 Financial Disclosures**

### **5.3.1 General**

Council nominees and voting members appointed to the Council by the Secretary under subsections 302(b)(2) and 302(b)(5) (individuals not subject to disclosure and recusal requirements under the laws of Indian Tribal Governments) of the Act (“Affected Members”) and members of the SSC shall disclose any financial interest of the reporting individual; the individual's spouse, minor child, or partner; and any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee, in harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction or with respect to an individual or organization with a financial interest in such activity. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members and Nominees of Regional Fishery Management Councils and Members of the Scientific and Statistical Committee," or such other form as the Secretary, or designee, may prescribe. The report must be filed by nominees for Secretarial appointment by April 15 or, if nominated after March 15, one month after nomination by the Governor. Affected Members must file the report with the Council office within 45 days of taking office. An individual being considered for appointment to an SSC must file financial disclosures with the NMFS Regional Office within 45 days prior to appointment. Individuals must update the form within 30 days of the time that any such financial interest is acquired or the financial interests are otherwise substantially changed. Individuals must update the form annually by February 1 of each year, regardless of whether any information has changed. The information required to be submitted by Council members will be kept on file by the Council and NMFS Regional Office, and made available on the Internet and for public inspection at reasonable hours at the Council and NMFS offices. Information from SSC members will be kept on file by the NMFS Regional Office. A copy of the form may be obtained from the appropriate Regional Office.

It is unlawful for Council nominees, Affected Members, and members of the SSC to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest or to knowingly vote on a Council decision in violation of 50 CFR § 600.235. In addition to the penalties provided under 50 CFR §600.735, a violation may result in removal of the individual from Council or SSC membership.

### **5.3.2 Recusal**

Pursuant to Section 302(j) of the Act and 50 CFR 600.235, Affected Members may not vote on any Council decision that would have a significant and predictable effect on a disclosed financial interest, as those terms are defined in regulations at 50 CFR 600.235. Any individual who believes that a Council decision would have such an effect may, at any time before a vote is taken, announce to the Council his or her intent not to vote on the decision and identify the financial interest that would be affected. An individual who is recused from voting may participate in Council and committee deliberations relating to the decision, after notifying the Council of the voting recusal and identifying the financial interest that would be affected. In addition to this type of recusal (50 CFR 600.235- i.e., a MSA 302(j) recusal) there is also a recusal (50 CFR 600.225(b)(9) recusal - i.e., a 18 USC 208 recusal) under which the Council member can do nothing except testify as any other member of the public. Although the 600.225 type of recusals do not occur very often because they involve "particular matters primarily of individual concern," they have occurred when there is an action that affects only a handful of vessels and there is a Council member with financial interests in one or more vessels.

At the request of an affected member or upon the initiative of an appropriate designated official (see Section 302 (j)(1)(b)), such official shall determine for the record whether a Council decision would have a significant and predictable effect on that individual's financial interest. The determination will be based upon a review of the information contained in the individual's financial disclosure form and any other reliable and probative information provided in writing. In making the determination, the designated official

may contact an affected member to better understand the reported financial interest or any information provided in writing; in addition, the official will presume reported information is true and correct and is not responsible for determining the veracity of the reported information. All information considered will be made part of the public record for the decision, unless subject to confidentiality requirements.

At the beginning of each Council meeting, or during a Council meeting at any time reliable and probative information is received, the designated official shall announce the receipt of information relevant to a determination concerning recusal, the nature of that information, and the identity of the submitter of such information. If the designated official determines that the affected individual may not vote, the individual may state for the record how he or she would have voted. The Council Chair may not allow such an individual to cast a vote. Within 10 days of the recusal determination, a Council member may file a written request to the NOAA General Counsel for review of the designated official's determination. Further details on process and procedure followed in preparing and issuing recusal determinations will be provided in the NMFS Regional Recusal Determination Procedure Handbook.

## **6.0 Financial Management**

### **6.1 Governing Statutes**

Each Council's grant activities are governed by 2 CFR Part 200, Uniform Guidance, which provides uniform administrative requirements applicable to the Council, including standards for financial management, financial reporting, property management, and procurement. The Council will operate in full compliance with these applicable standards and terms and conditions of the cooperative agreement.

The Council is exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).<sup>1</sup> As such, the Council is liable for taxes under the Federal Insurance Contributions Act (social security taxes), but not liable for the tax imposed under the Federal Unemployment Tax Act.

### **6.2 Cooperative Agreements and Contracts**

The Council receives funds through cooperative agreements for two basic types of expenditures: administrative (operations) funds to cover general operating expenses such as salaries, office space, utilities, travel, state liaison activities, meeting expenses, etc., and programmatic funds primarily designed to fund contracts generated by the Council for development and amendment of FMPs or FMP-oriented information. Councils may not independently enter into agreements, including grants, contracts, or cooperative agreements, whereby they will receive funds for services rendered. All such agreements must be approved and entered into by NOAA on behalf of the Councils. Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to NOAA in accordance with applicable regulations.

#### **6.2.1 Administrative**

The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through the Department, in the budgets of NOAA and NMFS. The Council applies for and receives such funding through the appropriate processes of the NOAA Grants Management Division.

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<sup>1</sup> This determination was made by the Department of Treasury, IRS, in a letter dated June 4, 2002.

A Cash Receipts and Disbursement Journal with a monthly Summary of Accounts is required as a minimum bookkeeping system for the administrative budget. Each cash disbursement must be approved by the Council Executive Director or Deputy Director. All checks require signatures from two of the following people: Council Executive Director, Deputy Director, or Administrative Officer.

### **6.2.2 Programmatic**

The Council 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 and each agreement must specify the nature and extent of Council participation. The Council is not authorized to accept gifts or contributions directly. All such donations must be directed to NOAA in accordance with applicable regulations.

Requests for programmatic funding may be submitted at the same time as the Council's administrative budget, or at other times as required by the Assistant Administrator. Documentation should include a cover letter explaining the need for the project, the manner in which it contributes to a fishery management plan (proposed, developing or existing), and the manner in which it meets criteria outlined in this section.

### **6.2.3 Contracts**

Negotiated and advertised contracts will be administered under the same principles of equality and integrity outlined under the section "Employment Practices" and will generally follow the specifications normally characteristic of contracts with public entities (e.g., public announcement, emphasis on competition, change orders, etc.).

## **6.3 Procurement**

All procurements must comply with the terms and conditions of the award and 2 CFR Part 200, Uniform Guidance. The purchase of all equipment, not previously approved in the award, costing in excess of \$5,000 per unit and having a useful life of more than 1 year, requires the approval of the Regional Program Officer and the Grants Officer. 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.

Commodities and services will be procured by means of a document-oriented system, with a receipt, check, or purchase order type document maintained on all transactions. Equipment and supplies available in the General Services Administration will usually be given primary consideration, except where cost-effectiveness and efficiency dictate otherwise. A petty cash fund for over-the-counter purchases will be maintained as necessary in the Council staff office.

## **6.4 Property Management**

An accountability system of all non-expendable items of personal property, with a current market value of greater than \$5,000, will be maintained by means of an inventory system. An annual inventory report will be submitted to the NOAA Grants Officer. Theft will be reported promptly to the appropriate authorities. All non-expendable items over \$5,000 in current market value, will be inventoried. Disposal of surplus will be performed in accordance with grant provisions. Any item no longer functional may be discarded in any manner deemed appropriate by the Executive Director or Administrative Officer.

## **6.5 Real Property**

The leasing, renting, and acquisition of real property and space will be effected in a manner consistent with 2 CFR Part 200, Uniform Guidance.

## 6.6 Accounting System

The finance and budget control system will be a direct responsibility of the Administrative Officer, who will maintain full cognizance of, and compliance with, all Department of Commerce requirements, pursuant to the Act, Treasury Department (IRS) regulations as well as any applicable local requirements (state, municipal, etc.).

- (1) Financial control will be effected by means of a basic document-oriented accrual accounting system, which will include provisions for at least the following: direct labor (salary); indirect labor (employer contributions for FICA, life and health insurance, retirement, and unemployment taxes), travel expenses (transportation and subsistence), transportation of things, rent and utilities, taxes (non-employment), printing, communications, supplies, equipment, contracts, and any appropriate contra-accounts (contract accruals, etc.).
- (2) A general ledger, supported by appropriate journals, will be maintained on all obligations and expenses, including appropriate accruals, and will be used to prepare periodic reports for review by the Executive Director, the Council, or Department of Commerce representatives. As a minimum, a complete financial status report should be completed on a monthly basis. The financial management system will be coordinated with the budget management system so that current and projected fund usage can be determined at any time.
- (3) A separate payroll register, indicating all applicable expenses and accruals, will be maintained on each member of the Council and the Council staff.

## 6.7 Audits

Audits will be performed biennially (once every 2 years) by DOC Office of Inspector General or an independent public accountant. NOAA personnel will be invited as appropriate to participate in the audit exit conference.

## 6.8 Financial Reporting

Reports will be submitted as required by 2 CFR Part 200, Uniform Guidance to summarize total expenditures and federal funds unexpended, and the status of the federal cash received. All financial reports will be kept until audited or approved for disposal by the appropriate Department of Commerce representative.

## 7.0 Recordkeeping

### 7.1 Definitions

The Council and Council staff must create, maintain, and dispose of records in accordance with federal law. This includes creating records of the business of the Council (including decisions and actions taken); maintaining records so that they are preserved, can be located, and are safeguarded from unauthorized access or release; and disposing of records in accordance with federal law and the applicable NOAA records schedule.

*Records:* all recorded information that is made or received by an agency of the United States under federal law or in connection with the transaction of public business. Agencies are legally required to keep these records as evidence of their actions, and they must be maintained in accordance with the agency's records schedule or one of the government's general records retention schedules. They can be in any format regardless of physical form or characteristics including digital and electronic forms (i.e. text documents, e-mail, photos, computer codes, electronic files, CD-ROMS, disks, USB keys, magnetic tapes). Pursuant to

federal law (44 U.S.C. 2911), any electronic communications on non-official accounts (texts, chats, etc.) must be copied or forwarded to an official electronic account (e-mail).

*Non-records:* items made or acquired solely for reference, extra copies of documents kept for reference/personal convenience (even if it's a copy of something that is a record – only the original is the record), notes taken during a meeting which aren't shared with others, and some limited types of drafts or working files that are not shared with others or that lack substantive revisions.

*Personal papers:* materials pertaining solely to your private affairs, for example the telephone bill that you brought in to pay during your lunch break or your personal appointment calendar.

All records and documents created or received by Council staff while in active duty status belong to the Federal government pursuant to 50 CFR 600.150(a) and may be agency records (as defined above).

Documents written or received by individual Council members are agency records if the documents reflect the business of the Council as a full body on a matter within the Council's jurisdiction and if the documents are specifically discussed or disseminated at a Council meeting. These records must be collected by Council staff (the Executive Director) and maintained in accordance with the Federal Records Act and the applicable NOAA records schedule.

## **7.2 Availability of Records**

In accordance with 50 CFR 600.150(b), the Council will maintain documents generally available to the public on its Internet site. Documents for posting must include: fishery management plans and their amendments for the fisheries for which the Council is responsible, drafts of fishery management plans and amendments under consideration, analysis of actions the Council has under review, minutes or official records of past meetings of the Council and its committees, materials provided to Council members in preparation for meetings, and other Council documents of interest to the public. For documents too large to maintain on the Web site, not available electronically, or seldom requested, the Council will provide copies of the documents for viewing at the Council office during regular business hours or may provide the documents through the mail.

## **7.3 Administrative Records for FMPs**

The Council and NMFS Headquarters, Regions and Centers collectively are responsible for maintaining records pertaining to the development of FMPs and amendments. In the event of litigation, compilation of an administrative record for a court case will be under the direction of the NOAA General Counsel.

## **7.4 Disposition of Records**

Council records must be handled in accordance with Department of Commerce and NOAA records management office procedures. 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 may not take the original or file copies of records with them. Before any records are disposed of, Council employees will coordinate with the NOAA records management office.

## **7.5 Privacy Act Records**

The Council will maintain in its office, under appropriate safeguards in accordance with the Privacy Act (PA), personnel files on employees, experts and consultants under contract, and advisory group members. Maintenance, protection, handling of requests for information, and disclosure and disposition of PA records will be accomplished as provided for in the Secretarial guidelines and regulations.

## **7.6 Freedom of Information Act (FOIA)**

FOIA requests received by the Council must be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to FOIA staff in the NMFS Regional Office to secure a FOIA number and log the request into the FOIA online database. The request will be assigned an official FOIA number and due date.

NMFS Regional Office staff and NOAA General Counsel will coordinate with Council staff on responding to the FOIA request, including but not limited to assessing whether scope clarification is necessary, developing search terms reasonably apprised to locate responsive records, and identifying staff who may have responsive records, information that will be documented in a search tasker. A search for responsive documents must begin immediately upon receipt of the search tasker from the FOIA office. Copies of responsive records must be promptly provided to the FOIA office, in accordance with the instructions in the search tasker. All responsive documents must be reviewed for disclosure on a line-by-line basis, and segregable portions must be released. Council staff may make recommendations regarding potential exemptions to be asserted; however, only a Federal employee can make a disclosure determination. All exemptions will be reviewed and cleared by NOAA General Counsel.

The original documents must be retained by the originating office. Any fees collected from requesters are transferred to the U.S. Treasury, and the Council does not recover its costs.

## **7.7 Confidentiality of Statistics**

The Council has established appropriate procedures for ensuring the confidentiality of the statistics, in accordance with the guidelines prescribed by the Secretary pursuant to Section 402(b) of the Act at 50 CFR Part 600, Subpart E (Confidentiality of Statistics) and NAO 216.100; and the laws and regulations of the State concerning the confidentiality of such statistics

# Attachment 1 NPFMC Policy on Addressing Allegations of Harassment of Council Employees

## SECTION 1. PURPOSE.

The purpose of this policy is to protect Council employees and provide guidance for Councils on taking action related to incidents or allegations of harassment **experienced by Council employees** prohibited by Federal law (i.e., harassment based on sex, sexual orientation, gender identity, race, color, national origin, age, religion, disability, or reprisal). **The Council will not tolerate harassment or retaliation against those who report harassment.** Preventing harassment is everyone's responsibility and individuals who experience or observe harassment are strongly encouraged to come forward to ensure a safe working environment for everyone involved in the Council process. This policy provides a framework for procedures to encourage employees to come forward with harassment allegations without fear of retaliation. This policy outlines an expedited process for reviewing allegations of harassment, ending actual incidents of harassment, and taking disciplinary actions as appropriate. The procedures established in this policy are distinct from the NOAA equal employment opportunity (EEO) complaint process, which is also available to Council employees to pursue allegations of – and seek remedies for – discrimination or harassment.

## SECTION 2. BACKGROUND.

### Definition of Unlawful Harassment:

Harassment is a form of discrimination. The Equal Employment Opportunity Commission defines harassment as: “unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.”<sup>2</sup>

.01 The Council is responsible for maintaining a workplace free of harassment. As part of this responsibility, supervisors are responsible for addressing and correcting misconduct that constitutes harassment.

.02 Employees can pursue allegations of harassment to several forums. The allegations or incidents covered in this policy are such that immediate appropriate action by the appropriate supervisor to resolve such matters is mandatory regardless of which forum an employee selects in pursuing an allegation. Employees have recourse when supervisors fail to address allegations of harassment, which could result in serious consequences for the Council.

## SECTION 3. SCOPE.

This policy covers incidents or allegations of harassment prohibited by Federal law<sup>3</sup>, experienced by a Council employee, whether the alleged harassment is ongoing or occurred in the past. The conduct covered by this policy involves:

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<sup>2</sup> See the Equal Employment Opportunity Commission website for more information: <https://www.eeoc.gov/harassment>.

<sup>3</sup> This policy covers allegations of unlawful harassment, which is a form of discrimination. See the Equal Employment Opportunity Commission website for more information : <https://www.eeoc.gov/harassment>. Allegations of incivility or other inappropriate behavior not based on a protected characteristic are outside the scope of this policy. However, this policy is not intended to limit in any way the Council's ability to address incivility, inappropriate behavior, or other issues in an appropriate manner.



- a. the targeting of an employee for harassment because of his/her sex (this includes harassment which is not necessarily sexual in nature) or other protected status;
- b. a pattern of pervasive harassment in the work unit including unwelcome behavior towards an individual or individuals which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment; or
- c. a single incident of harassment of such a serious nature that the continued effective functioning of the unit will be impacted.

## SECTION 4. PROCEDURES.

### .01 Reporting Allegations of Harassment

- a. Councils should each determine a preferred point of contact to coordinate responses to harassment allegations. For the NPFMC, the preferred contact persons are the Executive Director and the Finance Officer.
- b. Employees are strongly encouraged to report any incident they perceive to be harassment, to include incidents personally experienced and those witnessed. They may report it to any Council supervisor or the designated point of contact, as soon as the incident occurs.
- c. Any Council process participants (e.g. Council Member, NOAA employee, or others participating in the Regional Fishery Management Council process, aside from Council employees) who observe or receive a report of harassment of a Council employee should report the incident to the Council Executive Director, Deputy Director, chair or vice-chair as soon as possible.
- d. To the extent possible, the Council will protect the confidentiality of individuals who make harassment reports. However, the Council cannot guarantee complete confidentiality, since it cannot always conduct an effective inquiry without revealing certain information to the alleged harasser and potential witnesses. The Council is committed to ensuring that the allegation of harassment is shared only with those who have a need to know and in a respectful and sensitive manner.
- e. Employees who make reports of harassment or provide information related to such reports will be protected from retaliation.
- f. All reports of harassment when received by the designated point of contact will be promptly evaluated (typically within one week, absent extenuating circumstances, but in some cases more quickly if warranted under the circumstances) to determine if they come within the scope of this policy. Reports that fall within the scope of this policy will be reviewed thoroughly and impartially in accordance with the procedures in this policy.

### .02 Taking Action on Reported Allegations of Harassment.

- a. A supervisor who receives an allegation that a Council employee has been harassed (whether the allegation is received from the employee or from another person on their behalf) must immediately<sup>4</sup> report the allegation, in writing, to the designated point of contact. Failure by the supervisor to report the allegation could result in disciplinary or adverse action against the supervisor for failure to adhere to the provisions of this Policy.

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<sup>4</sup> Absent extenuating circumstances, for purposes of the required report, "immediately" means within 24 hours of receipt of allegations.

- b. In all cases, the supervisor, or designated point of contact to whom the incident is reported, must inform the employee of his or her right to seek counseling from an Equal Employment Opportunity counselor in NOAA's Office of Inclusion and Civil Rights<sup>5</sup>. The employee must be informed that all counseling contacts must occur within 45 days from the date of the alleged harassing event.
- c. In some instances, an employee may request that a supervisor keep the employee's allegations of harassment confidential.
  - 1. In such an instance, the supervisor is obligated to inform the designated point of contact of the allegations and of the request for confidentiality, and must inform the employee of this obligation.
  - 2. Where the employee requests confidentiality, the responsible supervisor must provide a written statement to the employee indicating that any inquiry and action will be very limited if anonymity is required. Any such statement should be coordinated with the designated point of contact.

#### .03 Incidents Where Facts Are Known and Not in Dispute.

Employees may allege, or supervisors may become aware of, incidents of harassment where the facts are not in dispute, i.e., where all parties admit the allegations are true. In such situations, corrective action, including stopping any ongoing harassment and initiating disciplinary or adverse action, if appropriate, should be taken immediately in consultation with the designated point of contact. If disciplinary or adverse action is taken against a Council employee, it must proceed in accordance with established Council policy and practice. Corrective actions may include an oral warning or written reprimand if the misconduct was isolated and minor. If the misconduct by a Council employee was severe or pervasive, then reassignment, suspension, demotion or removal may be appropriate.

#### .04 Incidents Where Facts Are in Dispute.

If the validity of the allegations of harassment is in dispute, or not enough facts are known to proceed with corrective action, the responsible supervisor must provide, in writing to the designated point of contact, a summary of the allegations of harassment initially communicated to them within 5 days. The designated point of contact, where appropriate, will select someone authorized by the Council to conduct an inquiry. The designated point of contact will provide advice and assistance to the official conducting the inquiry. Such inquiries should be completed within 45 days, absent extenuating circumstances. While the inquiry is pending, consideration should be given to undertaking immediate measures before completing the inquiry to ensure that the opportunity for additional actual or perceived harassment does not occur. Examples of such measures are:

- a. Making scheduling changes so as to avoid contact between the parties; and using all available tools to separate the parties. Granting telework flexibility could be a solution for either the employee experiencing harassment or the accused.
- b. Where the allegations concern the employee's supervisor or a co-worker in the unit, temporary transfers of the supervisor or coworker or placing the supervisor or coworker on non-disciplinary leave with pay pending the conclusion of the inquiry; or having the employee report to an alternative supervisor while the inquiry is being conducted, if the employee agrees that this should be done.

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<sup>5</sup> <https://www.noaa.gov/organization/inclusion-and-civil-rights/eo-counseling-complaints>

.05 Incidents where the allegations concern another Council process participant are highly fact-specific.

It is important for Council management to take appropriate measures, which will differ depending on the alleged harasser.

.06 Procedures for Conducting an Inquiry.

The inquiry must result in a record sufficient to support any corrective and/or disciplinary action taken, or to indicate that there is not sufficient evidence to support corrective and/or disciplinary action.

- a. The person selected to perform the inquiry must be authorized by the Council to conduct the inquiry and shall take signed, sworn statements from the employee who has alleged harassment, from the employee against whom the allegations are made, and from all principal witnesses.
- b. The person conducting the inquiry shall coordinate with the designated point of contact to ensure all obligations are met in conducting the inquiry.
- c. The following process should be followed in the course of the inquiry:
  1. Confirm the name, position and supervisory chain of the employee.
  2. Identify the alleged misconduct and the names of those parties allegedly responsible for the conduct.
  3. Obtain from the employee a detailed account of the alleged harassing actions/comments including, a description of the alleged actions/comments, the dates, times and locations of the alleged actions/comments as well as the names, contact information, and affiliations of any witnesses to, or persons with knowledge of, the alleged actions/comments.
  4. With regard to allegations of sexual harassment, determine specifically whether the employee is claiming that someone has made and/or carried out any threats or promises regarding the employee's terms and conditions of employment.
  5. Obtain from those accused of the misconduct a detailed response to each of the employee's allegations, as well as the names of witnesses who can corroborate the accused's account of events.
  6. Obtain statements from all witnesses listed by the employee and the accused of what they witnessed with regard to the alleged misconduct. If available, obtain supporting evidence (e.g. meeting recordings).
  7. Inform all interviewees about the prohibition forbidding retaliation against the employee who reported the alleged harassment.
  8. When the inquiry is completed, the findings should be shared with the designated point of contact, and the person conducting the inquiry will determine, if possible, whether the alleged actions occurred. The designated point of contact will share these findings with appropriate management officials in the organizations to which the alleged harasser and the employee who is the subject of the alleged harassment are assigned. The designated point of contact may also share the findings with the Department of Commerce Office of the General Counsel in order to receive their guidance on appropriate resolution of the matter.
  9. In all instances, upon completion of the inquiry the conclusions will be communicated to the employee who was the target of the alleged harassment. If the inquiry establishes that immediate and appropriate corrective action is warranted, the Council will follow its policies including its disciplinary policy, as appropriate.

.07 The Council shall maintain appropriate documentation for any disciplinary measures and corrective actions that may result from the findings of the inquiry.

**SECTION 4. EFFECT OF THIS POLICY IN RELATION TO EEO COUNSELING AND FORMAL EEO COMPLAINTS.**

A Council employee, at any time, has access to a NOAA EEO Counselor and may file a formal complaint of harassment – including allegations covered by this policy – and/or any other allegations of discrimination not covered by this policy.<sup>6</sup> Sometimes supervisors are not aware of an allegation of harassment until approached by an EEO Counselor or investigator. Once informed by an EEO Counselor or investigator that there is an allegation of harassment by an employee, the supervisor must immediately inform the designated point of contact under this policy about the allegations. The designated point of contact will then promptly evaluate the allegation pursuant to this policy. The EEO Counselor will assist management and employees in resolving allegations but is not authorized to conduct inquiries into employee misconduct, and the existence of an EEO investigation does not alter the Council’s duty to conduct its own inquiry. Where an employee files a formal EEO complaint regarding harassment, a copy of any inquiry done by the Council, pursuant to this Policy, will be forwarded to the Office of Civil Rights for inclusion in the Report of Investigation.

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<sup>6</sup> To file a complaint with a NOAA EEO Counselor go to: <https://www.noaa.gov/organization/inclusion-and-civil-rights/contact-us>.

## Attachment 2 NPFMC Policy on Addressing Allegations of Harassment of Process Participants other than Council Employees

### SECTION 1. PURPOSE.

The purpose of this policy is to protect North Pacific Fishery Management Council (Council) process participants and provide guidance on taking action related to incidents or allegations of harassment **experienced by Council process participants. The Council will not tolerate harassment or retaliation against those who report harassment.** Preventing harassment<sup>7</sup> is everyone's responsibility and individuals who experience or observe harassment are strongly encouraged to come forward to ensure a safe working environment for everyone involved in the Council process. Council members, including chairs and vice chairs, hold positions of trust and responsibility and it is incumbent upon them, together with the Council Executive Directors, to make every reasonable effort to establish an environment free of harassment and to implement this policy fully. This policy provides a framework for procedures to encourage Council process participants to come forward with harassment allegations without fear of retaliation and outlines a process for reporting and reviewing allegations of harassment and taking action as appropriate.

### SECTION 2. BACKGROUND.

The Council process involves a complex and dynamic relationship among federal and state employees, Council professional staff, appointed Council members, and members of the public. These individuals frequently meet and interact at various worksites and temporary meeting locations for extended meetings amid challenging issues, which can sometimes lead to interpersonal conflict. The Council process should operate in an atmosphere of respect, collaboration, openness, safety, and equality and every individual who participates in the Council process should be treated with dignity and respect and should be free from abusive conduct and harassment.

### SECTION 3. SCOPE.

The reporting and response provisions described in this policy apply to "Council Process Participants." In this document, that term includes all persons who participate in the Council process in any setting, with the exception of individuals employed by the Council, who are covered under a separate policy. Council Process Participants include all individuals present under the context of Council business regardless of location, whether in a Council office, at a Council meeting, or at offsite meetings, hearings and events sponsored by a Council. For example, Council Process Participants may include Council members, Advisory Panel or Scientific and Statistical Committee members, external consultants, etc.

### SECTION 4. PROCEDURES.

#### Reporting

Council Process Participants who observe, experience, or receive a report of harassment, including but not limited to sexual harassment or assault, should report the matter as soon as possible to an appropriate official. Swift reporting allows appropriate law enforcement authorities, the NOAA National Marine

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<sup>7</sup>For purposes of this policy covers a harassment includes unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). This policy does not cover allegations of incivility not based on a protected characteristic. However, this policy is not intended to limit in any way the Council's ability to address incivility, inappropriate behavior, or other issues in an appropriate manner for the context.

Fisheries Service (NMFS), or the Council, as appropriate, to take measures to ensure that offensive behavior stops, the harasser's needs are addressed, and action is taken against the offender.

Council Process Participants who observe or are subject to harassment by any Council member, Council employee, or other Council Process Participants may report incidents in a variety of ways, including but not limited to:

- The Council Executive Director or Deputy Director;
- The Council chair or vice-chair;
- Appropriate law enforcement authorities, as needed.

#### Council Response to Reports

Unless the particular circumstances require otherwise, any Council Member, Council employee, or NOAA employee who receives a report of harassment of a Council process participant should communicate the details of that report, in writing, to the Council Executive Director for appropriate action under this policy. In the event of a reported incident, a response team should be convened consisting of, as appropriate depending upon the context, the Council Executive Director, other designated Council points of contact, and the Council Chair. The response team will determine appropriate follow-up, including whether to engage the NMFS Regional Administrator in the response to the incident, based on the allegations raised and the parties involved<sup>8</sup>. The Council shall maintain a record of each allegation received under this policy, which shall be made available to NMFS upon request.

#### NMFS Role

The Councils are primarily responsible for addressing issues that arise within the Council environment. NMFS will, in consultation with NOAA and the Department of Commerce, provide such support and advice to the Councils as may be appropriate under the circumstances. Any Council that receives a report of harassment against or by a Council member **must** inform the NMFS Regional Administrator of the nature of the incident and any steps taken to address the incident.

#### Related Processes

This policy does not apply to allegations of harassment experienced by employees of a Council. Instead, in the event an individual employed by the Council is alleged to have experienced harassment, the Council must follow the steps outlined in the *North Pacific Fishery Management Council Policy on Addressing Allegations of Harassment of Council Employees* (Attachment 1 to the SOPP).

**Individuals who are federal employees (including but not limited to NOAA employees) or employed by state agencies, academic institutions or other organizations should report any concerns and seek assistance or action through their supervisor and/or within their own organization**, as appropriate, but are encouraged to also report incidents to a Council official described above so that prompt action can be taken by the Council, as needed.

Individuals who are employed by the Councils or the federal government, including but not limited to NOAA, also have the right to file an Equal Employment Opportunity (EEO) complaint with their employing federal agency's EEO office within 45 days of the matter alleged to be discriminatory.

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<sup>8</sup> If the person alleged to have experienced harassment is a current federal employee, including but not limited to a NMFS employee, the NMFS Regional Administrator must be notified.