

FINANCE COMMITTEE MEETING

April 25, 1980

The Finance Committee met at 7 a.m. this morning in the Council Conference Room. In attendance were 17 people:

Charles Meacham	Donald Rosenberg
Harold Lokken	Gordon Jensen
Richard Lauber	Jim Branson
James Campbell	Judy Willoughby
Ronald Skoog	Harry Rietze
John Harville	Donald Bevan
Mark Hutton	Guy Thornburgh
Jim Richardson	Maggie Duff
Kirk Beiningen	

I. RFP for Halibut Limited Entry

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II. "A Study of Offshore Chinook & Coho Salmon Fishery off Alaska"

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III. Contract 78-4 "The Development and Enhancement of a Computerized Fisheries Information System"

The final report was accepted. The Committee was briefed by Guy Thornburgh about the possible merger of computer sections in Commercial Fishery Entry Commission and ADF&G which could require some minor changes with Phase II of this contract.

Mr. Bevan requested a status report on the S.B. 346, on confidentiality of statistics. It was reported it was in the House Rules Committee. A request for a copy of this Bill has been made and upon receipt will be mailed to the Council.

78-5 "Assessment of Spawning Herring and Capelin Stocks at Selected Coastal Areas in the Eastern Bering Sea"

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Dr. Harville moved for approval of the request and extension. It carried with no objections.

79-3 "A Coded Wire Tag Recovery Program on Chinook and Coho Salmon in Southeastern Alaska - 1979"

Mr. Thornburgh requested approval of purchase of a computer terminal for \$5,165 from the balance of this contract. The Committee agreed to this request.

IV. The FY80 mid-year administrative budget/expenditure analysis was reviewed. The Council has requested from NMFS an additional \$26,600 for the remaining six months of FY80.

A status of programmatic obligations was reviewed. It was noted slightly over \$100,000 of the 510K budgeted remained unobligated. The SSC has been requested to submit a report by the next meeting on the remaining funds and FY81.

V. Dr. Bevan requested an update on the NOAA study on clam leasing. If they cannot provide the study for the draft clam FMP then it was suggested we contract outside the Government.

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Agenda Item J-1
April, 1980

MEMORANDUM

DATE: April 19, 1980

TO: Council Members, Scientific & Statistical Committee
and Advisory Panel

FROM: Jim H. Branson, Executive Director

SUBJECT: Six Month Review of FY80 Administrative Budget

ACTION REQUIRED

Informational

BACKGROUND

As required by the provisions of the Cooperative Agreement, a mid-year review of expenditures has been performed. An additional \$26,600 has been requested for the remaining six months in FY1980 to fund personnel and travel. A comparison of the Council's original request and of the actual grant is included.

Attachment

JW

SIX MONTH REVIEW OF NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

OBJECT CLASS	OBLIGATIONS		PROJECTIONS		FY80 Projection	Variance Req. for Addtl Funds	NOAA/NMFS Coop. Agree.	Council C.A. Req. (budget)	FY79 Expenses
	3-31-80	%	9-30-80						
Personnel									
Council	23,675	53%	25,993	49,668	5,000 ¹	44,668	61,668	Total personnel 270,789	
Staff	124,342	48%	143,631	267,973	9,600 ²	258,373			
Consultants & Parttime	4,709	47%	8,291	13,000	3,000 ³	10,000	10,000		
Fringe Benefits	23,450	47%	26,241	49,691	-	49,691	49,691	37,613	
Travel	97,919	51%	102,531	200,450	9,000 ⁴	191,450	240,450	142,337	
Misc.	3,361	67%	3,139	6,500					
SSC	17,666	37%	22,334	40,000					
AP	35,062	26%	34,938	70,000					
Staff	15,774	36%	18,226	34,000					
Council	26,056	49%	23,944	50,000					
Equipment	2,727	39%	4,263	7,000	-	7,000	7,000	6,181	
Supplies	6,171	47%	6,828	13,000	-	13,000	13,000	18,122	
Contractual	8,367	48%	9,158	17,525	-	17,525	17,525	13,013	
Other	57,845	45%	71,639	129,484	-	129,484	134,484	99,904	
TOTALS	349,315	48%	398,575	747,791	26,600	721,191	839,191	588,348	

NOTES: Variances:


- ¹NPFMC will hold 10 Council meetings in FY80 rather than projected 9
²Additional amount needed to fund approved 9th position
³Additional funding required for summer part time help
⁴Additional funding required for travel to additional Council meeting

Agenda Item J-2
April, 1980

MEMORANDUM

DATE: April 15, 1980

TO: Council Members and Finance Committee

FROM: Jim H. Branson, Executive Director 

SUBJECT: Finance Committee Agenda

ACTION REQUIRED

Informational

BACKGROUND

The Finance Committee will meet in the Council Conference Room, Friday, April 25 at 7 a.m. The agenda is attached. The following people are members:

James Campbell (Chairman)	Charles Meacham	Harry Rietze
Harold Lokken	Gordon Jensen	Adm. Duin
Jeff Stephan	Richard Lauber	Ronald Skoog
John Harville	Donald Bevan	SSC Member
		(appointment to be made prior to Friday)

This is an open meeting, and anyone interested is invited.

Attachment

JW

FINANCE COMMITTEE AGENDA

April 25, 1980


- I. Review bids and recommend contractor for Halibut Limited Entry off Alaska (We have approval of up to \$50,000 for this contract.)
- II. Review bids and recommend contractor for "A Study of Offshore Chinook and Coho Salmon Fishery off Alaska." (We have approval of up to \$50,000 for this contract.)
- III. Briefing by staffs and SSC on final reports of three contracts. Finance Committee to make payment recommendations to Council for the following:
 - (1) #78-4 "The Development and Enhancement of a Computerized Fisheries Information System"
 - (2) #78-5 "Assessment of Spawning Herring and Capelin Stocks at Selected Coastal Areas in the Eastern Bering Sea"
 - (3) #79-3 "A Coded Wire Tag Recovery Program on Chinook and Coho Salmon in Southeast Alaska - 1979"
- IV. Mid-year review of FY80 administrative grant.
- V. Briefing by staff on FCMA Operations Handbook (this is the second draft from NMFS).
- VI. Other business

Agenda Item J-3
April, 1980

MEMORANDUM

DATE: April 19, 1980

TO: Council Members, Scientific & Statistical Committee

FROM: Jim H. Branson, Executive Director 

SUBJECT: Contract Briefing

ACTION REQUIRED

Mostly informational. Specific Finance Committee recommendations may need approval.

BACKGROUND

Two draft and one final reports have been received. They are for contracts:

1. 78-4 - "The Development and Enhancement of a Computerized Fisheries Information System (EWR)"
2. 78-5 - "Assessment of Spawning Herring and Capelin Stocks at Selected Coastal Areas in the Eastern Bering Sea"
3. 79-3 - "A Coded Wire Tag Recovery Program on Chinook and Coho Salmon in Southeast Alaska - 1979"

Contract 78-4:

The draft final report was received according to schedule. There are no foreseeable problems with the contract. There may be problems

however with the follow-up "phase 2" contract already approved by the Council. If the Commercial Fisheries Entry Commission data processing Section merges with ADF&G's data processing section that contract might have to be renegotiated. A representative from the State will speak to the problem with the Finance Committee.

Contract 78-5:

The draft final report was received according to schedule. The final report, however, was several months late. It lacks one section but is complete enough for use by the SSC in their review of the Herring Plan and options. Two alternatives exist:

- (1) partial payment for incomplete final report, or
- (2) amended deadline for receipt of final (complete) report.

A representative from the State will speak to these alternatives with the Finance Committee.

Contract 79-3:

The draft final report was received on time. We may be asked to allow use of some monies in that contract to aid the 1980 port sampling program for the troll fishery.

Copies of all reports are available upon request.

MIH

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Contract 78-5:

The draft final report was received according to schedule. The final report, however, is several months late and several more months from completion. It lacks a final section and ADF&G interdepartmental rewrite and approval. Two alternatives exist:

- (1) partial payment for incomplete final report, or
- (2) amended deadline for receipt of final report.

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Contract 79-3:

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NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

<u>Description</u>	<u>7-XXX2</u>	<u>9-XXX1</u>	<u>9-XXX3</u>	<u>0-XXX1</u>	<u>0-XXX2</u>	<u>0-XXX3</u>	<u>TOTAL</u>
Cash in Bank as of 3-31-80	\$ 45.79	-0-	<\$ 2,933.38>	\$ 684.91	\$1,596.46	-0-	<\$ 606.22>
Grants Receivable as of 2-29-80	<u>100,427.00</u>	<u>81,561.96</u>	<u>53,528.00</u>	<u>407,191.00</u>	<u>-0-</u>	<u>70,000.00</u>	<u>712,707.96</u>
TOTALS	\$100,472.79	\$81,561.96	\$50,594.62	\$407,875.91	\$1,596.46	\$70,000.00	\$712,101.74

TOTAL FUNDS AVAILABLE AS OF MARCH 31, 1980 = \$712,101.74

0-XXX1

MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

Cooperative Agreement #80-ABH-0001
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>Monthly Expenditures</u>
Personnel	\$303,041.00	\$138,473.47***	46%	\$164,567.53***	\$20,982.10**
Parttime and Special Consultants	10,000.00	3,324.13	33%	6,675.87***	510.00***
Fringe Benefits	49,691.00	21,950.84	44%	27,740.16	3,267.72
Travel	191,450.00	85,277.59	45%	106,172.41	10,658.17
Equipment	7,000.00	291.33	4%	6,708.67	-0-
Supplies	13,000.00	5,674.87	44%	7,325.13	1,472.15
Contractual	17,525.00	7,202.05***	42%	10,322.95***	307.00***
Other	<u>129,484.00</u>	<u>51,020.81***</u>	<u>39%</u>	<u>78,463.19***</u>	<u>9,70</u>
TOTALS	<u>\$721,191.00</u>	<u>\$313,215.09***</u>	<u>43%</u>	<u>\$407,975.91***</u>	<u>\$46,904.93</u>

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$407,191.00
Drawdown for March	-0-
Increases for March	-0-
Balance as of March 31, 1980	<u>\$407,191.00</u>

CASH IN BANK

Balance as of March 1, 1980	\$47,568.92
Receipts for March	190.00
Disbursements for March	<u>47,074.01</u>
Balance as of March 31, 1980	<u>\$ 684.91</u>

***Revised 4-2-80

0-XXX2
MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

State of Alaska, Bottomfish Contract No. 3869 - Herring Symposium
 NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>Monthly Expenditures</u>
Misc. Travel, Rents and Contracts for Herring Symposium	\$10,000.00	\$8,403.54	84%	\$1,596.46	\$555.04

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$ -0-
Drawdown for March	-0-
Increases for March	-0-
Balance as of March 31, 1980	\$ -0-

CASH IN BANK

Balance as of March 1, 1980	\$ 2,151.50
Receipts for March	39.55
Disbursements for March	594.59
Balance as of March 31, 1980	\$ 1,596.46

0-XXX3
MONTHLY FINANCIAL REPORT - MARCH, 1980

Cooperative Agreement #NA80-A-BH-00008
 NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>Monthly Expenditures</u>
Management Plan					
Writing & Development	\$60,000.00	-0-	-0-	\$60,000.00	-0-
Keypunch and Analysis					
Halibut Fish Tickets	\$10,000.00	-0-	-0-	\$10,000.00	-0-
TOTALS	\$70,000.00	-0-	-0-	\$70,000.00	-0-

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$70,000.00
Drawdown for March	-0-
Increases for March	-0-
Balance as of March 31, 1980	<u>\$70,000.00</u>

CASH IN BANK

Balance as of March 1, 1980	-0-
Receipts for March	-0-
Disbursements for March	-0-
Balance as of March 31, 1980	-0-

9-XXX1***
MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

Cooperative Agreement No. NA79AA-H-00001
 NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>Monthly Expenditures</u>
Personnel	\$273,000.00	\$270,788.89	99%	\$2,211.11	-0-
Fringe Benefits	44,000.00	37,612.46	85%	6,387.54	-0-
Travel	220,000.00	142,336.72	65%	77,663.28	-0-
Equipment	5,000.00	6,330.55	127%	1,330.55	-0-
Supplies	8,000.00	18,122.21	227%	10,122.21	-0-
Contractual	21,000.00	13,012.72	62%	7,987.28	-0-
Other	<u>99,000.00</u>	<u>100,144.49</u>	<u>101%</u>	<u>1,144.49</u>	<u>-0-</u>
TOTALS	<u>\$670,000.00</u>	<u>\$588,348.04</u>	<u>88%</u>	<u>\$81,651.96</u>	<u>-0-</u>

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$81,651.96
Drawdown for March	-0-
Increases for March	-0-
Balance as of March 31, 1980	<u>\$81,651.96</u>

CASH IN BANK

Balance as of March 1, 1980	-0-
Receipts for March	-0-
Disbursements for March	-0-
Balance as of March 31, 1980	<u>-0-</u>

 ***NOTE: This grant was closed January 15, 1980. NOAA has been requested to lower the Letter of Credit by the balance amount of \$81,651.96.

9-XXX3
MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

Cooperative Agreement #79-ABH-0035
 NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>Monthly Expend.</u>
79-4 ADF&G Analysis of SE Alaska Troll Data	\$53,528.00	\$2,933.38	5%	\$50,594.62	-0-

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$53,528.00
Drawdown for March	-0-
Increase for March	-0-
Balance as of March 31, 1980	<u>\$53,528.00</u>

CASH IN BANK

Balance as of March 1, 1980	<2,933.38>
Receipts for March	-0-
Disbursements for March	-0-
Balance as of March 31, 1980	<2,933.38>

7-XXX2
MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

GRANT NO. 04-158-44145
 NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>March Expend.</u>
77-4 University of Wash. Salmon Continent of Origin	44,500.00	44,500.00	100%	-0-	closed
77-5 ADF&G Groundfish Obser.	100,000.00	77,162.96	77%	22,837.04	-0-
78-1 University of AK Joint Vent. Analysis	19,523.00	19,522.24	100%	.76	closed
78-4 ADF&G, Computer Prog.	197,600.00	147,820.26	75%	49,779.74	-0-
78-5 ADF&G B/S Herring	240,000.00	218,390.16	91%	21,609.84	-0-
78-6 Dames & Moore, Socio-Eco Herring Study	80,826.00	80,826.00	100%	-0-	closed
78-7 Troll Salmon Tag Rec.	79,300.00	79,300.00	100%	-0-	closed
78-8 Troll Logbook Data	10,668.00	10,667.98	100%	.02	-0-
78-9 Troll Salmon Observer	39,810.00	39,810.00	100%	-0-	-0-
78-10 Clam-Eastern B/S	107,550.00	107,550.00	100%	-0-	closed
79-3 Troll Salmon Tag Rec.	<u>74,000.00</u>	<u>67,754.61</u>	<u>92%</u>	<u>6,245.39</u>	<u>67,754.61</u>
TOTALS	\$993,777.00	\$893,304.21	90%	\$100,472.79	\$67,754.61

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$175,677.00
Drawdown for March	75,250.00
Decrease for March	-0-
Balance as of March 31, 1980	<u>\$100,427.00</u>

CASH IN BANK

Balance as of March 1, 1980	(\$ 7,449.60)
Receipts for March	75,250.00
Disbursements for March	<u>67,754.61</u>
Balance as of March 31, 1980	\$ 45.79

SIX MONTH REVIEW OF NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

OBJECT CLASS	OBLIGATIONS		PROJECTIONS		FY80 Projection	Variance Req. for Addtl Funds	NOAA/NMFS Coop. Agree.	Council C.A. Req. (budget)	FY79 Expenses
	3-31-80	%	9-30-80						
Personnel									
Council	23,675	53%	25,993	49,668	5,000 ¹	44,668	61,668	Total personnel 270,789	
Staff	124,342	48%	143,631	267,973	9,600 ²	258,373			
Consultants & Parttime	4,709	47%	8,291	13,000	3,000 ³	10,000	10,000		
Fringe Benefits	23,450	47%	26,241	49,691	-	49,691	49,691	37,613	
Travel	97,919	51%	102,531	200,450	9,000 ⁴	191,450	240,450	142,337	
Misc.	3,361	67%	3,139	6,500					
SSC	17,666	37%	22,334	40,000					
AP	35,062	26%	34,938	70,000					
Staff	15,774	36%	18,226	34,000					
Council	26,056	49%	23,944	50,000					
Equipment	2,727	39%	4,263	7,000	-	7,000	7,000	6,181	
Supplies	6,171	47%	6,828	13,000	-	13,000	13,000	18,122	
Contractual	8,367	48%	9,158	17,525	-	17,525	17,525	13,013	
Other	57,845	45%	71,639	129,484	-	129,484	134,484	99,904	
TOTALS	349,315	48%	398,575	747,791	26,600	721,191	839,191	588,348	

NOTES: Variances:

- ¹NPFMC will hold 10 Council meetings in FY80 rather than projected 9
²Additional amount needed to fund approved 9th position
³Additional funding required for summer part time help
⁴Additional funding required for travel to additional Council meeting

CERTIFIED:

Robert Alverson, Chairman

ADVISORY PANEL MINUTES

APRIL 23, 1980

The Advisory Panel convened Wednesday, April 23, 1980, at the Kenai/Aleutian Room of the Anchorage Westward Hilton Hotel at 9:40 a.m. and adjourned at 5:03 p.m. The Panel reconvened Thursday, April 24, 1980, at the Anchorage/Kenai Room of the Holiday Hotel at 8:20 a.m. and adjourned at 11:30 a.m. The following Panel members were present: Bob Blake, Bud Boddy, Robin Chlupach, Truman Emberg, Sig Jaeger, Charles Jensen, Joe Kurtz, Rick Lauber, Ray Lewis, Sharon Macklin, Dan O'Hara, Ken Olsen, Don Rawlinson, Jeff Stephan, Tony Vaska and Chairman Robert Alverson.

A. CALL TO ORDER

The meeting was called to order on April 23, 1980, at 9:40 a.m. by Chairman Robert Alverson.

B. APPROVAL OF ADVISORY PANEL AGENDA

The agenda was approved by all Advisory Panel Members.

C. APPROVAL OF MARCH AP MINUTES

The minutes from the March meeting were approved by all Advisory Panel members.

G-1. Troll Salmon FMP - Proposed joint venture amendment plus an update.

ACTION REQUIRED: Act on a State of Alaska request to amend the salmon plan to authorize joint venture processing in Bristol Bay.

ADVISORY PANEL ACTION

The AP discussed the request by the State of Alaska to amend the Salmon Plan for the entire afternoon, from 1:00 until 6:00 on Wednesday. In addition to AP comments, public comment was received from fishermen, a representative of a labor union, and processors. Fishermen who testified presented a range of argument from the definition of the true Joint Venture to difficulties that some fishermen have in obtaining markets. A longshore and processing worker's representative found the JV concept unacceptable, but stated that if a Joint Venture is to exist, it should be based on pounds rather than amount of fish.

The Advisory Panel also heard from ADF&G biologist Charles Meacham, Jr., who explained the biological background that went into the estimation of the run forecast. Mr. Charles Meacham, Sr., who appeared in his capacity as a member of the audience, explained how the concept of the Joint Venture was arrived at and the amount of involvement by the state. Members of the AP questioned the people who offered public comment, with Mr. Jaeger asking how the peak of the run would be determined so that a possible surplus could be forecast. The answer from Mr. Meacham was that a peak period in the run can be predicted with some meaningful degree. Mr. Blake also asked what an optimum escapement figure was, and Mr. Meacham replied for this year is 17.5 million fish. On the subject of the run peak, Mr. Middleton explained that the Board of Fisheries has taken some measures to alleviate the problem of the run peaking and overloading small areas with huge concentrations of salmon. The Board has done this by extending fishing districts so that the front end of the run is intercepted. This will prevent a buildup of fish in a confined area.

Other comments from the Panel questioned why processors were allegedly employing fewer fishermen in a peak run period. It was explained by AP member Don Rawlinson that when the huge concentration of salmon is present, it takes fewer boats to catch more salmon. This argument was countered in part by one of the fishermen who testified that there are more processors now but they are processing less fish.

In questioning where the markets would be for the excess salmon and how they were developed, Mr. Meacham Sr. explained that the Governor's Trade Mission had explored market possibilities throughout Europe and, at this moment, had commitments from West Germany and Spain to take approximately 3 million fish between them. The question raised at that point was whether or not the 3 million fish was a guarantee.

The point was made that no domestic fishermen had ever received such a guarantee. Mr. Meacham also indicated there was interest in excess salmon from Korea, Poland, Taiwan and Russia. He said that GIFAs (governing international fisheries agreements) have all been set and are expected to be signed by the end of April for West Germany and Spain.

Following further discussion, the AP made the following recommendation:

The AP recommends that foreign tenders be allowed to enter Alaska state waters to receive U.S. caught fish for transport to U.S. processors at other U.S. locations or in Canada.

The vote on the AP recommendation was 8 in favor and 6 opposed.

G-2. Tanner Crab FMP - Proposed Amendments.

ACTION REQUIRED: To accept or reject (or modify) eight (8) proposed changes to the Tanner crab regulations endorsed by the Alaska Board of Fisheries for Council action.

AP ACTION

The Advisory Panel considered all the amendments previously approved by the Board of Fisheries and moved to adopt amendments No. 1 - 7 on the recommendation of Sig Jaeger and Jeff Stephan.

Discussion on amendment #8 was led by Mr. Sig Jaeger and Mr. Jeff Stephan to the effect that the amendment as proposed did not distinguish between floating processors and catcher processors for reporting purposes. It was felt that if the reporting requirement applied to floating "catcher processors" it would discriminate in favor of tank boats which do not have to report. A motion was made by Mr. Jaeger to amend the proposed amendment to include the parenthetical insertion of "not catcher/processors". The amended proposal would read:

"To require floating processors (not catcher/processors) to report their intended processing location to the local biologists within the area of intended operation as follows...."

G-3. Herring Draft FMP - Consider and approve major options in plan.

ACTION REQUIRED: A presentation is scheduled on the plan and significant issues. Then a decision on the options presented in the Herring Fishery Management Plan is scheduled.

AP ACTION

The Advisory Panel met at 8:30 a.m., Thursday morning, to consider the Herring Draft FMP. A presentation of options, and an overview of the SSC Herring decisions were given by Vidar Wespestad (NW & AFC) and Ron Regnart (ADF&G), both on the herring PDT.

#2 - Incidental Catch

After extended discussions, the Advisory Panel chose Option No. 2a as it relates to the Allowable Incidental catch.

#3 - Allocations

The AP chose Option No. 1 as it relates to the allocation of surplus OY to the offshore food and bait fishery. The motion was passed on a vote of 9 to 4.

TALFF

The AP considered the question of TALFF options and Don Rawlinson made a motion to to adopt Option No. 2, with the understanding that the OY will be reassessed after the inshore fishery is conducted. That motion was unanimously passed.

Inshore Roe Fishery

On the matter of the inshore roe fishery (April 1 - July 1) the offshore domestic food & bait and fishery, the Panel chose option No. 1, to close the FCZ to the food and bait fishery. The motion passed unanimously.

Item 12

If any part of the initial offshore "food and bait" allocation remains after September 31st, the panel chose Option No. 1 as a solution. Option No. 1 is that the fishery continue unrestricted. The motion was passed unanimously.

Herring Savings Area

On the matter of implementation of Herring Savings area, the Panel endorsed the concept of establishing a herring savings

area to protect herring when stock condition is poor. However, there appears to be no problem for the 1980 - 1981 fishing year and a closing area regulation is unnecessary. We suggest the discussion of closing areas remain in the plan but that no regulations be promulgated at present. The vote was 6 to 5. Those in opposition to the motion would like to see a mechanism whereby an area closure could be implemented (A-B-C-D) but not limited to those areas.

Also, the AP requests that the SSC review the PDT recommendations for research and prioritize or make additions for consideration by the AP at the May meeting.

G-4. Gulf of Alaska Groundfish FMP; Review proposed 1981 amendments and consider release of reserves.

ACTION REQUIRED:

1. Reschedule a public hearing date for public comment on the 1981 amendment package. Action needed at this meeting.
2. Review 1981 amendment package as prepared for public comment. Informational only. No action required at this meeting.
3. Consider and comment on release of reserves scheduled for May 2. Action needed at this meeting.

AP ACTION

The Advisory Panel reviewed the proposed amendments as prepared for the public hearing. An addition to the list of amendments was added: #10 will be the proposed joint venture policy statement to be added to the language of the plan. The language approved by the AP is:

"The Council finds that one method of implementing provisions of the Processor Preference Amendment (P.L. 95-354) requires that ocean areas in the vicinity of U.S. processing facilities be designated as closed areas to joint venture processing operations.

The Fishery Management Plan therefore provides that the Regional Director, NMFS, Alaska Region, may, upon the recommendation of the Council, designate such areas within which foreign fishing vessels may not receive U.S. harvested fish."

KODIAK GEAR AREAS

The Advisory Panel also, on a motion by Jeff Stephans, passed an amplified proposed amendment #5 which calls for the specific closure of the Kodiak gear areas during specific times when foreign trawling is not permitted. (See attachment #1).

PUBLIC HEARING DATE

On the matter of the date for a public hearing, the AP passed a motion to allow the staff to choose a date in May which will give them adequate time to hold a public hearing, prepare the comments and amendments as they might change in relation to the comments received and present the material to the Council for approval.

RELEASE OF RESERVES

Mr. Ron Berg, NMFS, Juneau, gave the AP a current overview of the reserve amounts and told of the latest reserve release by the Regional Director. The Reserve release for March was made in mid-April and consisted of 25% of all reserves except for sablefish Gulfwide and Rockfish in the Western and Central regulatory areas.

On a motion by Mr. Lewis, the AP recommended that the May 2 reserve release be held until July 2 to allow the Korea Marine Industrial Development Corp. (KMIDC) to show a performance scenario. Mr. Ed Naughton spoke to the efforts of KMIDC and was supported by Mr. Greg Ockus, attorney for KMIDC. Mr. Ockus said that the political situation in Korea and the availability of fish for joint venture operations will determine which and how many processing vessels will be sent to Alaskan waters in support of the joint venture.

Mr. Ockus said further that the cost per ton of fish in directed fisheries is \$150 less delivered to Pusan than American caught tonnage in the joint venture. If more reserves are released, there would be no incentive for other Korean boats to fish with the joint venture. A large release of reserves would mean the death of the joint venture.

G-5. Bering Sea/Aleutian Islands Groundfish FMP

ACTION REQUIRED:

1. Reschedule public hearing date for public comment on the 1981 amendment package. Action needed.
2. Review 1981 amendment package as prepared for public comment. Information only.
3. Consider a proposal to increase the OY-ABC for Pacific cod for 1980. Action needed.

AP ACTION

The Advisory Panel considered the matter of the date for a public hearing and passed a motion to allow the staff to choose a date in May which would give them adequate time to hold a public hearing, prepare the comments and amendments as they might change in relation to the comments and present the material to the Council for approval. Action was taken on the assumption that the Council has chosen option 2, a separate schedule for the public hearings to be conducted on the two Groundfish FMP's.

REVIEW AMENDMENT PACKAGE

The Advisory Panel reviewed the proposed amendments as prepared for the public hearing. An addition to the proposed amendments was approved, satisfying the Council's intent to propose a joint venture policy. The amendment is:

14.3.2.3 (D) Joint Venture

The Council finds that one method of implementing provisions of the Processor Preference Amendment (P.L. 95-354) requires that ocean areas in the vicinity of U.S. processing facilities be designated as closed areas to joint venture processing operations.

The Fishery Management Plan therefore provides that the Regional Director, NMFS, Alaska Region, may, upon the recommendation of the Council, designate such areas within which foreign fishing vessels may not receive U.S. harvested fish.

INCREASED PACIFIC COD OY/ABC

The Advisory Panel considered the possibility of increasing the OY/ABC for Pacific cod for 1980. On a motion by Jeff Stephan, the Advisory Panel voted not to increase the OY/ABC for 1980.

In the discussions which preceded the vote, the Advisory Panel considered the status of foreign allotments. It was learned from NMFS that Japan still had 80% of its Pacific cod allotment left for this year. The Advisory Panel also took into consideration that portion of the SSC report which warned against a large allocation of Pacific cod and the affects that would have on the market.

RELEASE OF RESERVES

The Advisory Panel, anticipating a scheduled June 2 Release of Reserves, and possible postponement of its next meeting until after that date, recommends that the release of reserves scheduled for June 2 be made at the discretion of the Regional Director, NMFS.

H-1. Consideration of a Policy on the Management Plan Development Process.

ACTION REQUIRED: Develop and adopt a policy. Action at this meeting should be appointment of a working group to draft a policy statement with direction from the Council.

The Advisory Panel considered the appointment of members of the Advisory Panel to a working group to draft a policy statement with direction from the Council.

The Advisory Panel appointed Sig Jaeger to be part of a working group to draft a policy statement with direction from the Council. A second Panel Member is to be appointed at a later date.

H-2. Review of the Environmental Defense Fund (EDF) Petition.

ACTION REQUIRED: Review and comment on the EDF Petition.

The Advisory Panel reviewed the EDF Petition and the recommendations provided in the SSC report on the matter.

Don Rawlinson urged all Advisory Panel members to endorse the SSC report on the Review of the EDF Petition on National Standard Guidelines. No motion was introduced.

Considerable comment by Advisory Panel members indicated that the Advisory Panel and fisheries managers in general should be on the alert for petitions of this type from environmentally oriented groups. The consensus was that the recommendations of the Environmental Defense Fund, in this particular instance, would wreak considerable havoc with the established fishery management plan format and the Fishery Management Act as we know it.

H-3. Proposed modified policy for routine approval of foreign permit applications with minor violations.

ACTION REQUIRED: Consider modifying the review procedures for the routine approval of foreign fishing vessel permit applications.

The Advisory Panel considered the proposed modifications for routine approval of foreign permit applications with minor violations. After a brief discussion among Panel member, Mr. Lewis made the following motion:

"That vessels with a record of "non-significant, non-catch related" violations be deleted from the list requiring review by the Council's Permit Review Committee."

Advisory Panel member Tony Vaska requested that a report be made to the Council of the vessels which have non-significant, non-catch related violations and which receive permits.

The motion was unanimously passed.

I-1. Review proposals and award contract for A Study of the Offshore Chinook and Coho Salmon Fishery off Alaska. (RFP 80-2)

ACTION REQUIRED: Review proposals and award contract.

I-2. Review proposals and award contract for the Halibut Limited Entry Study off Alaska.

ACTION REQUIRED: Review Proposals and award contract.

I-3. Proposal to conduct a study of Herring stocks and populations in the Eastern Bering Sea.

FINANCE COMMITTEE AGENDA

April 25, 1980

- I. Review bids and recommend contractor for Halibut Limited Entry off Alaska (We have approval of up to \$50,000 for this contract.) *41, T*
- II. Review bids and recommend contractor for "A Study of Offshore Chinook and Coho Salmon Fishery off Alaska." (We have approval of up to \$50,000 for this contract.) *48T + Trav. Top m trav 10, T*
- III. Briefing by staffs and SSC on final reports of three contracts. Finance Committee to make payment recommendations to Council for the following:
 - (1) #78-4 "The Development and Enhancement of a Computerized Fisheries Information System"
 - (2) #78-5 "Assessment of Spawning Herring and Capelin Stocks at Selected Coastal Areas in the Eastern Bering Sea"
 - (3) #79-3 "A Coded Wire Tag Recovery Program on Chinook and Coho Salmon in Southeast Alaska - 1979"
- IV. Mid-year review of FY80 administrative grant.
- V. Briefing by staff on FCMA Operations Handbook (this is the second draft from NMFS).
- VI. Other business

FY80 PROGRAMMATIC FUNDS OBLIGATED

80-1	Development and Writing of Management Plans	\$60,000.
80-2	Keypunching and Analysis Halibut Fish Tickets	10,000.
80-3	"Seasonal Use of Feeding Habits of Walruses in the Proposed Bristol Bay Clam Fishery Area"	87,220.
80-4	"The Development and Enhancement of a Computerized Fisheries Information System"	145,300.
RFP-80	Halibut Limited Entry Study (Approximately)	50,000.
RFP-80-2	"A Study of the Offshore Chinook & Coho Salmon Fishery" (Approximately)	<u>50,000.</u>
	Total Obligated	\$ 402,520.
	Total Budgeted FY80	<u>510,000.</u>
	Budget Balance FY80	107,480

ADF&G seeks authorization from the Council to purchase a computer micro-processor using funds from Contract 79-3, Microwire Tag Recovery.

The Department's tag recovery laboratory in Sitka currently utilizes a TTY-43 terminal (with offline storage) to interface with the University of Alaska's computer network in Fairbanks. This system allows the laboratory to process its own tag recovery data. However, the system is dependent on line connection quality (i.e. telecommunications between Sitka and Fairbanks are often interrupted) and line charges exceed \$3000 annually.

In addition to the current computer system, a stand alone processing unit would greatly enhance the data processing task and markedly reduce the line charges. The Computer Services Section recommends we purchase the GNAT System 10 at \$5,165 (see attached description).

It is important from a coastwide basis for the Department to contribute its tag recoveries to PMFC on a timely basis. This additional unit of computer hardware will improve our ability to meet this responsibility. Further, the Sitka office is responsible for processing inseason troll data (e.g. port sampling information) that are necessary for timely management. Achievement of the troll management objective of a stable troll fishery is dependent on this information. The new processing unit will have sufficient capability to handle this inseason fishery data in addition to tag data.

ADF&G has chosen the GNAT System 10 because:

1. It has the capability to meet the needs of the field office for processing troll related data.
2. Markets and technical support are available in Alaska.
3. It includes a port for connecting to TTY Model 43 terminals which are common in the Department. The system can be easily interfaced to the University of Alaska Computer Network for communications and large scale data analyses.
4. The price/performance ratio is competitive with other systems.
5. It is on State contract award.

We have been quoted the following price:

GNAT 10	\$ 3,995
Language Software	850
Installation	285
Modern cable	<u>35</u>
	\$ 5,165

SYSTEM 10 FEATURES

GENERAL

Attractive Desktop Cabinet
Portable
Selectric Style Keyboard
Software Definable Function Keys
Accounting Style Numeric Pad
Low Glare Screen
Full Screen Editing

HARDWARE

Z80 CPU
65K RAM
700K Mass Storage on Dual Minifloppys
DMA Data Transfer
Hard Disk Interface for Additional Mass Storage
2 RS232 Serial Ports (Printer and Modem)
1 RS449 Serial Communication Port
Programmable Baud Rate
Separate CRT Microprocessor
IEEE 488 GPIB Parallel I/O*
High Speed Arithmetic Processor*

SOFTWARE

PROM Resident Disk Boot and Diagnostic Monitor
CP/M** Version 2 Disk Operating System
Screen Oriented Editor
Word Processing Program*
GNAT Business Software*
GNAT Communications Software*
Extensive Software Support*
 BASIC FORTRAN PASCAL
 COBOL ASSEMBLER PL/1

*Optional

**Trademark of Digital Research

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

<u>Description</u>	<u>7-XXX2</u>	<u>9-XXX1</u>	<u>9-XXX3</u>	<u>0-XXX1</u>	<u>0-XXX2</u>	<u>0-XXX3</u>	<u>TOTAL</u>
Cash in Bank as of 3-31-80	\$ 45.79	-0-	<\$ 2,933.38>	\$ 684.91	\$1,596.46	-0-	<\$ 606.22>
Grants Receivable as of 2-29-80	<u>100,427.00</u>	<u>81,561.96</u>	<u>53,528.00</u>	<u>407,191.00</u>	<u>-0-</u>	<u>70,000.00</u>	<u>712,707.96</u>
TOTALS	\$100,472.79	\$81,561.96	\$50,594.62	\$407,875.91	\$1,596.46	\$70,000.00	\$712,101.74

TOTAL FUNDS AVAILABLE AS OF MARCH 31, 1980 = \$712,101.74

0-XXX1
MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

Cooperative Agreement #80-ABH-0001
 NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>Monthly Expenditures</u>
Personnel	\$303,041.00	\$138,473.47***	46%	\$164,567.53***	\$20,982.10**
Parttime and Special Consultants	10,000.00	3,324.13	33%	6,675.87***	510.00***
Fringe Benefits	49,691.00	21,950.84	44%	27,740.16	3,267.72
Travel	191,450.00	85,277.59	45%	106,172.41	10,658.17
Equipment	7,000.00	291.33	4%	6,708.67	-0-
Supplies	13,000.00	5,674.87	44%	7,325.13	1,472.15
Contractual	17,525.00	7,202.05***	42%	10,322.95***	307.00***
Other	<u>129,484.00</u>	<u>51,020.81***</u>	<u>39%</u>	<u>78,463.19***</u>	<u>9,707</u>
TOTALS	<u>\$721,191.00</u>	<u>\$313,215.09***</u>	<u>43%</u>	<u>\$407,975.91***</u>	<u>\$46,904.93</u>

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$407,191.00
Drawdown for March	-0-
Increases for March	-0-
Balance as of March 31, 1980	<u>\$407,191.00</u>

CASH IN BANK

Balance as of March 1, 1980	\$47,568.92
Receipts for March	190.00
Disbursements for March	<u>47,074.01</u>
Balance as of March 31, 1980	<u>\$ 684.91</u>

***Revised 4-2-80

0-XXX2

MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

State of Alaska, Bottomfish Contract No. 3869 - Herring Symposium
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>Monthly Expenditures</u>
Misc. Travel, Rents and Contracts for Herring Symposium	\$10,000.00	\$8,403.54	84%	\$1,596.46	\$555.04

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$ -0-
Drawdown for March	-0-
Increases for March	-0-
Balance as of March 31, 1980	<u>\$ -0-</u>

CASH IN BANK

Balance as of March 1, 1980	\$ 2,151.50
Receipts for March	39.55
Disbursements for March	<u>594.59</u>
Balance as of March 31, 1980	<u>\$ 1,596.46</u>

0-XXX3
MONTHLY FINANCIAL REPORT - MARCH, 1980

Cooperative Agreement #NA80-A-BH-00008
 NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>Monthly Expenditures</u>
Management Plan					
Writing & Development	\$60,000.00	-0-	-0-	\$60,000.00	-0-
Keypunch and Analysis					
Halibut Fish Tickets	<u>\$10,000.00</u>	<u>-0-</u>	<u>-0-</u>	<u>\$10,000.00</u>	<u>-0-</u>
TOTALS	\$70,000.00	-0-	-0-	\$70,000.00	-0-

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$70,000.00
Drawdown for March	-0-
Increases for March	-0-
Balance as of March 31, 1980	<u>\$70,000.00</u>

CASH IN BANK

Balance as of March 1, 1980	-0-
Receipts for March	-0-
Disbursements for March	-0-
Balance as of March 31, 1980	-0-

9-XXX1***

MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

Cooperative Agreement No. NA79AA-H-00001
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>Monthly Expenditures</u>
Personnel	\$273,000.00	\$270,788.89	99%	\$2,211.11	-0-
Fringe Benefits	44,000.00	37,612.46	85%	6,387.54	-0-
Travel	220,000.00	142,336.72	65%	77,663.28	-0-
Equipment	5,000.00	6,330.55	127%	1,330.55	-0-
Supplies	8,000.00	18,122.21	227%	10,122.21	-0-
Contractual	21,000.00	13,012.72	62%	7,987.28	-0-
Other	<u>99,000.00</u>	<u>100,144.49</u>	<u>101%</u>	<u>1,144.49</u>	<u>-0-</u>
TOTALS	<u>\$670,000.00</u>	<u>\$588,348.04</u>	<u>88%</u>	<u>\$81,651.96</u>	<u>-0-</u>

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$81,651.96
Drawdown for March	-0-
Increases for March	-0-
Balance as of March 31, 1980	<u>\$81,651.96</u>

CASH IN BANK

Balance as of March 1, 1980	-0-
Receipts for March	-0-
Disbursements for March	-0-
Balance as of March 31, 1980	<u>-0-</u>

***NOTE: This grant was closed January 15, 1980. NOAA has been requested to lower the Letter of Credit by the balance amount of \$81,651.96.

9-XXX3

MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

Cooperative Agreement #79-ABH-0035
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>Monthly Expend.</u>
79-4 ADF&G Analysis of SE Alaska Troll Data	\$53,528.00	\$2,933.38	5%	\$50,594.62	-0-

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$53,528.00
Drawdown for March	-0-
Increase for March	-0-
Balance as of March 31, 1980	<u>\$53,528.00</u>

CASH IN BANK

Balance as of March 1, 1980	<2,933.38>
Receipts for March	-0-
Disbursements for March	-0-
Balance as of March 31, 1980	< <u>\$2,933.38</u> >

7-XXX2
MONTHLY FINANCIAL STATUS REPORT - MARCH, 1980

GRANT NO. 04-158-44145
 NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

	<u>Budgeted</u>	<u>Amount Expended to Date</u>	<u>Percent Expended to Date</u>	<u>Balance</u>	<u>March Expend.</u>
77-4 University of Wash. Salmon Continent of Origin	44,500.00	44,500.00	100%	-0-	closed
77-5 ADF&G Groundfish Obser.	100,000.00	77,162.96	77%	22,837.04	-0-
78-1 University of AK Joint Vent. Analysis	19,523.00	19,522.24	100%	.76	closed
78-4 ADF&G, Computer Prog.	197,600.00	147,820.26	75%	49,779.74	-0-
78-5 ADF&G B/S Herring	240,000.00	218,390.16	91%	21,609.84	-0-
78-6 Dames & Moore, Socio-Eco Herring Study	80,826.00	80,826.00	100%	-0-	closed
78-7 Troll Salmon Tag Rec.	79,300.00	79,300.00	100%	-0-	closed
78-8 Troll Logbook Data	10,668.00	10,667.98	100%	.02	-0-
78-9 Troll Salmon Observer	39,810.00	39,810.00	100%	-0-	-0-
78-10 Clam-Eastern B/S	107,550.00	107,550.00	100%	-0-	closed
79-3 Troll Salmon Tag Rec.	<u>74,000.00</u>	<u>67,754.61</u>	<u>92%</u>	<u>6,245.39</u>	<u>67,754.61</u>
TOTALS	\$993,777.00	\$893,304.21	90%	\$100,472.79	\$67,754.61

GRANTS RECEIVABLE

Balance as of March 1, 1980	\$175,677.00
Drawdown for March	75,250.00
Decrease for March	-0-
Balance as of March 31, 1980	<u>\$100,427.00</u>

CASH IN BANK

Balance as of March 1, 1980	< \$ 7,449.60 >
Receipts for March	75,250.00
Disbursements for March	<u>67,754.61</u>
Balance as of March 31, 1980	\$ 45.79

SIX MONTH REVIEW OF NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

OBJECT CLASS	OBLIGATIONS 3-31-80	%	PROJECTIONS 9-30-80	FY80 Projection	Variance Req. for Addtl Funds	NOAA/NMFS Coop. Agree.	Council C.A. Req. (budget)	FY79 Expenses
Personnel								
Council	23,675	53%	25,993	49,668	5,000 ¹	44,668	61,668	Total personnel 270,789
Staff	124,342	48%	143,631	267,973	9,600 ²	258,373		
Consultants & Parttime	4,709	47%	8,291	13,000	3,000 ³	10,000	10,000	
Fringe Benefits	23,450	47%	26,241	49,691	-	49,691	49,691	37,613
Travel	97,919	51%	102,531	200,450	9,000 ⁴	191,450	240,450	142,337
Misc.	3,361	67%	3,139	6,500				
SSC	17,666	37%	22,334	40,000				
AP	35,062	26%	34,938	70,000				
Staff	15,774	36%	18,226	34,000				
Council	26,056	49%	23,944	50,000				
Equipment	2,727	39%	4,263	7,000	-	7,000	7,000	6,181
Supplies	6,171	47%	6,828	13,000	-	13,000	13,000	18,122
Contractual	8,367	48%	9,158	17,525	-	17,525	17,525	13,013
Other	57,845	45%	71,639	129,484	-	129,484	134,484	99,904
TOTALS	349,315	48%	398,575	747,791	26,600	721,191	839,191	588,348

NOTES: Variances:

- ¹NPFMC will hold 10 Council meetings in FY80 rather than projected 9
- ²Additional amount needed to fund approved 9th position
- ³Additional funding required for summer part time help
- ⁴Additional funding required for travel to additional Council meeting

OPERATION HANDBOOKS FOR COUNCILS

In August, 1979 the first draft of the Operations handbook was presented by NMFS to the Council staffs. Changes were requested by the Councils at meetings to be incorporated in the second draft. The second draft arrived this week, and will be a major agenda item at an Administrative Officers meeting starting April 29, 1980.

Attached is a copy of the table of contents. Copies of any item or the entire document are available on request. Items this committee may wish to review for comment are:

1. Conflict of interest, page II-30
2. Experts and consultants page II-29
3. Travel reimbursement page II-34

FCMA OPERATIONS HANDBOOK

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- B. Fishery Conservation and Management Act of 1976.....I-2
- C. Relationship to Other Laws.....I-4
 - 1. Administrative Operations & Employment Practices.....I-4
 - 2. The Decision Process (NEPA, E.O. 12044, FACA, FOIA)..I-5
 - 3. Uses of Ecology of Oceans and Coastline (MMPA, FPA, CZMA, ESA, MPRSA).....I-6

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- B. Authority.....II-2
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 - 6. Councils-Regional-Washington Office interaction.....II-3
 - 7. Councils and DOC/NOAA/NMFS.....II-4
 - *8. Councils and other agencies.....II-5
 - *9. Secretarial plans.....II-5
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- D. Operational Practices and Procedures.....II-10
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 - 5. procurement and property management.....II-37
- *F. Relationships.....II-40
 - *1. public affairs role.....
 - *2. habitat improvement and management role.....
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III. FOREIGN FISHING OVERSIGHT

- A. General--GIFA, TALFF, Allocations.....III-1
- B. Foreign Fishing Applications and Permits.....III-2
- C. Joint Ventures.....III-5
- D. Observer Program.....III-6
- E. Fees.....III-7

* To be included later

****IV. OPERATIONAL GUIDELINES FOR THE FISHERY MANAGEMENT PLAN (FMP) PROCESS**

- A. Introduction.....IV-
- B. Abbreviations used on Charts.....IV-
- C. Overview of the Fishery Management Plan Process.....IV-
- D. Phase I - Pre-Planning.....IV-
- E. Phase II - Draft FMP Development.....IV-
- F. Phase III - Public Review and Council Adoption.....IV-
- G. Phase IV - Secretarial Review.....IV-
- H. Phase V - Regulation Promulgation.....IV-
- I. Phase VI - Continuing Fishery Management.....IV-
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 - 2. procedures.....
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 - 3. enforcement modes.....V-3
 - 4. enforcement actions on violations.....V-6
 - 5. adjudication.....V-7
 - 6. reports.....V-10
 - 7. enhancing compliance.....V-10

* * *

*To be included later

**"Operational Guidelines for the Fishery Management Plan (FMP) Process," as developed by F3 (Paul Leach) the Councils, is being printed. We propose that these guidelines be incorporated into this handbook as Chapter IV.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Washington, D.C. 20235

Fx33:HH

APR 8 1980

TO: Addressees

FROM: Fx3 - Winfred H. Meibohm *Winfred H. Meibohm*

SUBJECT: Fishery Conservation and Management Act (FCMA) Operations Handbook

Attached for your review is a first draft of the Operations Handbook which will serve as a central reference to all, on implementing the Fishery Conservation and Management Act of 1976. Incorporated are comments and suggestions provided by participants of several workshops held last July and August. Please distribute this Handbook to your staff for comments and return to us as soon as possible.

Although the table of contents indicates the Exhibits are "to be included later," most of them have been included in rough form in this draft.

If you have any questions, please contact Dave Rand or Howie Hochman on (202) 634-7444.

Attachment

Addressees

Regional Fishery Management Councils Chairmen
Regional Directors
Center Directors
Office Directors
MB
MB/PB
GCF
Fx5
Fx3



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*To be included later

**"Operational Guidelines for the Fishery Management Plan (FMP) Process," as developed by F3 (Paul Leach) the Councils, is being printed. We propose that these guidelines be incorporated into this handbook as Chapter IV.

I. INTRODUCTION

A. PURPOSE AND SCOPE OF THIS HANDBOOK

This Handbook supersedes the 1976 Council Operations Manual and serves as a central reference on implementing the FCMA in NOAA. Included among its chapters is information on:

- a. the legislative and legal milieu of the Act;
- b. the operating standards for the eight Regional Fishery Management Councils;
- c. foreign fishing oversight responsibilities;
- d. fishery management plan (FMP) development; and
- e. the promulgation and enforcement of fishery management regulations

The information contained herein reflects current Agency policies and is intended to provide standards in all areas addressed. As these policies and standards change, formal revisions to the Handbook will be issued as soon as practicable.

In the interim, should questions arise on any of the topics covered throughout this publication, Appendix X lists primary offices which can be of assistance.

* * *

I. INTRODUCTION

B. FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

The Fishery Conservation and Management Act of 1976 (FCMA) extends United States authority to regulate fishing in a fishery conservation zone (FCZ), from the outer boundary of U.S. territorial waters to a distance of 200 nautical miles from its coasts. It establishes a unique fishery management regime by creating eight Regional Fishery Management Councils made up of Federal, State, and private individuals, whose primary function is to prepare fishery management plans for their statutory area of concern. After review and approval by the Secretary of Commerce, these plans constitute the basis upon which the federal government issues and enforces management regulations in the fishery conservation zone.

Major purposes of the FCMA include:

- to establish management jurisdiction for the United States over certain fishery resources off its coasts;
- to promote domestic commercial and recreational fishing under a special conservation and management regime; and
- to encourage the development by the U.S. fishing industry of domestically underutilized and unutilized species.

The Act was amended in August 1978 to clarify the authority of the Secretary to regulate foreign fishing vessels that receive fish from U.S. fishing vessels within the FCZ. That amendment authorizes the Secretary to allow U.S. fishermen to transfer at sea to foreign fishing vessels excess fish which will not be utilized by U.S. fish processors.

1. TITLE I

The Act is organized into four titles. Title I establishes the FCZ and asserts the U.S. management authority over all fish within it (except "highly migratory"--defined in the Act as tuna), over U.S.-spawning anadromous species throughout most (See Section 102(2) of FCMA) of their migratory range, and over species on the U.S. continental shelf, including that part of the shelf beyond the 200-mile zone.

2. TITLE II

Title II generally prescribes the mechanisms controlling foreign fishing within the FCZ to international fishery agreements, permits, fees, and sanctions. No foreign vessel may obtain a permit to fish (including support activities such as receiving U.S.-caught fish at sea) within the FCZ until the flag nation of the vessel has entered into a Governing

International Fishery Agreement (GIFA) with the U.S. in which that nation recognizes the exclusive fishery management authority of the U.S. and agrees that its citizens shall comply with all applicable rules and regulations. However, foreign vessels will not be issued permits to harvest fish at all unless there has been a determination in the fishery management plan for the species in question that a surplus above anticipated U.S. catch can be made available without exceeding optimum yield. (This surplus is called the total allowable level of foreign fishing (TALFF). Nor will they be issued permits to receive U.S.-caught fish at sea unless the Secretary has determined that there is an excess of U.S. harvest that will not be utilized by U.S. processors.

The determination of optimum yield and its allocation between foreign and domestic fishermen are essential steps in the development of a fishery management plan (FMP). Until a Regional Fishery Management Council prepares an FMP for the fishery concerned, the Secretary exercises these functions under preliminary fishery management plans.

3. TITLE III

Title III establishes the eight Regional Fishery Management Councils and sets forth their responsibilities and those of the Secretary of Commerce. The Councils are: New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf of Mexico, Pacific, North Pacific, and Western Pacific. The areas of jurisdictional concern for each Council are those portions of the FCZ extending seaward from the boundaries of the constituent States and territories or possessions (outside of territorial waters).

Each Council is made up of voting and nonvoting members, as defined in the FCMA, of principal State officials with marine fishery management responsibility and expertise; the Regional Director of National Marine Fisheries Service; members recommended by the Governors of each State and appointed by the Secretary; the Regional or Area Director of the U.S. Fish and Wildlife Service; the Commander of the Coast Guard District; the Executive Director of the Marine Fisheries Commission; and a representative of the Department of State (see II.C.1). These Voting members serve three-year terms, may be reappointed, and receive compensation and expenses when engaged in the actual performance of duties for the Council. Non-voting members include representatives from the U.S. Fish and Wildlife Service, the Coast Guard, the State Department, the appropriate Regional Marine Fishery Commission, and in the case of the North Pacific Council, the representative of the Governor of Alaska.

Councils are authorized to hire staff for internal administrative support. (Further support may be sought from the Secretary of Commerce and General Services Administration (GSA)). Councils are required to appoint a Scientific and Statistical Committee to assist in the development, collection and evaluation of statistical, biological, economic, social, and other scientific information relating to the Councils' development and amendment of FMP's. The Councils are also authorized to establish

advisory panels as necessary or appropriate. The Councils must operate within uniform standards established by the Secretary of Commerce through regulations promulgated in the Federal Register.

Fishery management plans must be developed consistent with seven National Standards, for which the Secretary must establish guidelines. The plans must contain provisions to govern both foreign and domestic fishing, a description of the fishery, an assessment of the present and probable future condition of the fishery, a determination of optimum yield (OY) and that portion of OY that can be made available to foreign fishermen, and an assessment of the extent to which U.S. processors will utilize the U.S. harvest of OY. The must specify date to be submitted to the Secretary for monitoring the determinations of the plan.

Plans may contain optional provisions such as requirements for domestic permits and fees; designation of zones and fishing periods; limits on catch based on size, area, or weight; or a system of limited access. Councils may prepare and submit to the Secretary proposed regulations that would implement the management plans, but it is the Secretary who puts the regulations into effect. Plans must be submitted to the Secretary, who has up to sixty days to review them and notify the Council of his or her approval, disapproval, or partial disapproval. Once approved, the plan is published along with proposed regulations and, after a public comment period, other prescribed administrative actions and issuance of final regulations, the plan goes into effect. The regulations are enforced by the United States Coast Guard and with the National Marine Fisheries Service. Civil and criminal penalties for violation of regulations are authorized in the FCMA, including forfeitures of vessel, gear, and catch.

4. TITLE IV

Title IV provides authority to conform the regulations to any agreement that may be reached as a result of the Third United Nations Law of the Sea Conference. Other legislation is revised to conform to the intent of the new Act.

C. RELATIONSHIP TO OTHER LAWS

If a government entity performs a Federal function and receives Federal monies to do so, a number of Federal laws may affect this entity. The list of statutes affecting the Councils and their operations can be grouped, for ease of description, into three general categories: (1) those dealing with administrative operations and employment practices, (2) those dealing with the decision process, and (3) those dealing with the uses and ecology of the oceans and coastline.

1. ADMINISTRATIVE OPERATIONS AND EMPLOYMENT PRACTICES.

The legal status of the Councils was initially blurred by the fact that the Councils were not defined by statute as being Federal or non-Federal.

Significant legal opinions by NOAA, the Civil Service Commission, the Department of Justice, the Office of Management and Budget, the General Services Administration, the General Accounting Office, and the Internal Revenue Service have been rendered which, together, result in the following current legal policy.

Council members and administrative staff are not Federal employees subject to Civil Service regulations. This means that Council staff members can be hired and fired as in the private sector, that they are not subject to Hatch Act limitations on individual political activity of Federal employees, that they come under Social Security rather than the Federal retirement system and that they may not participate in Federal life and health insurance. (Discussion of how all these laws apply to specific Council operations is found in Chapter II.)

Regional Councils are Federal instrumentalities created by statute to fulfill a Federal function, and are funded by Federal appropriations. Since they are funded by Federal monies, Councils cannot legally lobby the legislative branch, and there are certain other restrictions on public relations activity. Council members and staff are subject to Federal criminal statutes covering bribery and conflict of interest, and disclosure of confidential information; and to other U.S. statutes pertaining to property, procurement, records and reports.

Council members and staff have the same protection from individual liability as by Federal employees generally, and are protected by Federal employee compensation statutes, by the minimum wage/maximum hour provisions of the Fair Labor Standards Act, and by the rights of access and confidentiality provisions of the Privacy Act.

2. THE DECISION PROCESS

The second category of laws (or regulations having the force of law) applicable to the FCMA processes prescribe consideration of environmental or economic impacts (NEPA, parts of EO 12044), or establish rules of procedure for public participation or access (APA, FACA, FOIA).

The National Environmental Policy Act (NEPA). The National Environmental Policy Act expressed the intent of Congress to assess the effect of Federal activities on the environment. NEPA's basic purpose is to insure that Federal officials weigh and give appropriate consideration to environmental values in policy formulation, decision-making and administrative actions, and that the public is provided adequate opportunity to review and comment on the major Federal actions. NEPA requires preparation of an Environmental Impact Statement (EIS) for major Federal actions that significantly affect the quality of the human environment.

The Federal action in FMP development has been determined to be the implementation of final regulations. Environmental Impact Statements will

be prepared for all fishery management plans as well as significant amendments to existing plans. A determination of environmental significance of amendments must be made through the preparation of an environmental assessment. Specific NEPA regulations on procedures and format were issued by the Council on Environmental Quality on November 29, 1978. (Discussion of how NEPA and its various implementing regulations apply to the work of the Councils is found in Chapter IV.)

Executive Order 12044. Executive Order (EO) 12044, issued in March 1978, outlines the President's policy for developing regulations; sets minimum procedures for developing significant regulations, including publication by agencies of a semi-annual agenda of regulations under development or review; requires close agency head oversight; calls for early and meaningful opportunities for public participation; requires careful review of the need, quality and effectiveness of regulations being proposed; requires careful analysis of regulations having a major economic effect; and requires periodic review of existing regulations. Councils are affected by NOAA's adaptation of the Department of Commerce regulations implementing the Executive Order. (A detailed description of how the EO requirements are folded into those of NEPA and the FMP process is found in Chapter IV.)

The Federal Advisory Committee Act (FACA). The intent of Congress with regard to the application of the Federal Advisory Committee Act is stated in the Report of the Conference Committee accompanying the FCMA. The provisions of FACA apply to the Councils and their committees and panels. Application of FACA is designed to ensure open meetings and public access to information generated by the Councils. Discussion of specific requirements of FACA and their effect on the operations of the Councils is found in Chapter II.

The Freedom of Information Act (FOIA). The Freedom of Information Act provides for public access to records of the executive branch of the Federal government, and to records generated at the request of the Federal government. Nine exceptions are provided that allow the withholding of information. FOIA requests made to the Councils for release of information are handled by the Assistant Administrator for Fisheries, who makes his decision in consultation with the Council that has received the request. Procedures to be followed in responding to FOIA requests to the Councils are outlined in Chapter X. (To be added later)

3. USES AND ECOLOGY OF OCEANS AND COASTLINE.

The third category of laws affecting FCMA processes are those that deal with the competing uses of the ocean, the protection of certain living marine resources and their habitats management of nation's coastal areas.

Marine Mammal Protection Act (MMPA). Although mammals are not covered by the FCMA since "fish" is defined in section 3(6) as excluding marine mammals, section 404 of the FCMA amends the MMPA to extend the waters to

which that act applies to 200 miles from the coastal baseline. The moratorium on taking of marine mammals thus become effective in the FCZ on March 1, 1977. Under section 101(a)(2) of the MMPA, permits for the taking of marine mammals incidental to the course of commercial fishing may be issued subject to regulation. With passage of the FCMA, this section of the MMP applies to foreign as well as to domestic fishing in the FCZ. (See Chapter IV.)

The Fishermen's Protective Act (FPA). The FCMA amends the Fishermen's Protective Act generally to the effect that the Federal government will reimburse the operator of an American vessel fishing for highly migratory species for fines and losses resulting from a seizure of that vessel by a foreign nation for fishing within waters adjacent to the nation. A new section 10 of the FPA also provides for compensation to U.S. fishermen for fishing vessel damage or loss caused by foreign vessels, and fishing gear damage or loss caused by foreign or domestic vessels or acts of God in the FCZ. (Procedures for application of this section are described in Chapter X.)

Coastal Zone Management Act (CZMA). The principal objective of this act is to encourage and assist States in developing coastal zone management programs, to coordinate State activities and to safeguard the regional and national interests in the coastal zone. In the preparation of fishery management plans, Councils should be particularly cognizant of section 307(c) of the CZMA, which requires that any Federal activity directly affecting the coastal zone of a State be consistent with that State's approved coastal zone management program, since activities taking place beyond the territorial sea may impact in the coastal zone. Council FMP development may also be indirectly aided by the initiation of a Coastal Fisheries Element (CFE) as part of the CZMA program development and implementation grants. The purpose of CFE is to provide the States with financial and technical assistance to develop information required for more effective management of fisheries within the territorial sea. (See Chapter IV.)

Endangered Species Act (ESA). This Act provides for the conservation of endangered and threatened species of fish, wildlife and plants. The program is administered jointly by the Secretaries of Interior and Commerce. Councils should be mindful of the threatened and endangered species list; when preparing FMP's, they should consult NMFS and the Fish and Wildlife Service, as a routine procedure, as to whether the fishing under a plan jeopardizes the continued existence of a listed species or results in the destruction or modification of its critical habitat. (See Chapter IV.)

Marine Protection Research and Sanctuaries Act (MPRSA). The MPRSA authorizes the Secretary of Commerce, after consultation with appropriate Federal agencies and with Presidential approval, to designate ocean waters as far seaward as the outer edge of the Continental Shelf as marine sanctuaries, to preserve or restore distinctive conservation,

recreational, ecological, or esthetic values. Since passage of the FCMA, NOAA has established certain policies and procedures regarding sanctuary designation (embodied in proposed regulations) which ensure Council participation and coordination with fishery management plans. (See Chapter X for description of how Councils may be involved.)

II. REGIONAL FISHERY MANAGEMENT COUNCILS

A. RESPONSIBILITIES AND FUNCTIONS

The Fishery Conservation and Management Act created a system of resource management in the form of a partnership between the Secretary of Commerce and eight Regional Fishery Management Councils. This system emphasizes regional development of fishery management plans (FMP's) by the Councils for both domestic and foreign fishing within the 200 mile U.S. Fishery Conservation Zone (FCZ). These plans must be approved by the Secretary of Commerce, who then implements them by promulgating Federal regulations.

In addition to the developing, monitoring, and revising of FMP's, the Councils are given four specific responsibilities:

- prepare comments on applications for foreign fishing within the 200 mile zone;
- conduct public hearings in developing FMP's and amendments to these plans;
- review and revise optimum yield and total allowable level of foreign fishing for each area of Council authority; and
- submit an annual report to the Secretary of Commerce on Council activities.

In discharging these responsibilities, each Council is mandated to establish a Scientific and Statistical Committee to assist in developing, collecting, and evaluating statistical, biological, economic, social, and other scientific information needed by the Council for FMP's. These Committees are multi-disciplinary and generally include marine biologists, statisticians, and economists.

The Act further provides that Councils may establish advisory panels as are necessary and appropriate to assist in carrying out their responsibilities. All Councils have established panels to advise them on myriad issues related to fisheries management. Such panels are primarily comprised of fishermen, processors, dealers, and other representatives familiar with the particular fishery on which the Councils seek advice.

In accordance with the Act, each Council has appointed and assigned duties to an Executive Director and other full- and part-time employees. These Council staff members are responsible for carrying out the desires of the Council, including FMP preparation, meeting and hearings arrangements, and all day-to-day administrative duties directed by the Council.

B. AUTHORITY

1. GENERAL.

In addition to the specific responsibilities and authorities outlined in the previous section, the FCMA vests the Councils with broad-based authority to "conduct any other activities which are required by, or provided for in this Act, or which are necessary and appropriate to the foregoing functions" (Section 302(h)(6)).

2. GEOGRAPHIC AREA OF AUTHORITY.

The geographic area of authority for each Council is determined by the Secretary (Chart 1). Each Council is responsible for developing FMP's for all fishery resources within the FCZ adjacent to the States and territories under the jurisdiction of the Council. The FCZ is the area between the seaward boundaries of the coastal States and a line 200 nautical miles from the U.S. coast line. The seaward boundaries of the coastal states are defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301).

The Councils, if they determine that conservation and management measures are required, are responsible for preparing FMP's on all fish taken within the FCZ, and on all anadromous species spawned in U.S. streams, throughout the migratory range of such species within and beyond the FCZ, except within the recognized jurisdiction of any other country. (This assertion of federal authority is not intended to preempt coastal States' authority to manage anadromous species of fish within state boundaries.) Management plans prepared by the Councils (or by the Secretary) must also cover all Continental Shelf fishery resources within and beyond the FCZ to the depth of the ocean at which such resources can be exploited.

The Fishery Conservation and Management Act repeals and supercedes the Act of May 20, 1964 as amended (PL 88-308; 16 U.S.C 1081-1086), commonly known as the Bartlett Act, which prohibited certain foreign fishing within the U.S. territorial sea, contiguous fisheries zone, and for resources of the Continental Shelf.

All Foreign fishing for Continental Shelf species will henceforth be permitted only under the provisions of a Governing International Fishery Agreement pursuant to Section 201 of the FCMA.

3. HIGHLY MIGRATORY SPECIES.

The authority of Councils to develop fishery management plans and regulations for each fishery within their respective geographic areas of authority does not extend to highly migratory species. This primarily refers to species of tuna which, in the course of their life cycle, spawn and migrate over great distances of the ocean.

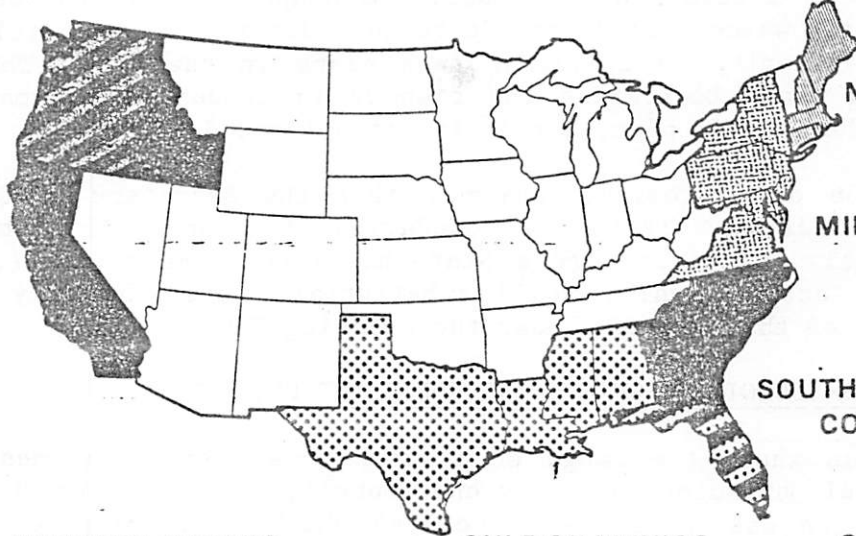
Regional Fishery Management Councils



NORTH PACIFIC
COUNCIL



PACIFIC
COUNCIL



NEW ENGLAND
COUNCIL

MID-ATLANTIC
COUNCIL

SOUTH ATLANTIC
COUNCIL

WESTERN PACIFIC
COUNCIL

GULF OF MEXICO
COUNCIL

CARIBBEAN
COUNCIL



4. STATE JURISDICTION.

Section 306 of the FCMA clearly states that the jurisdiction or authority of the States within their own boundaries is neither extended nor diminished as a result of this Act. Although Councils may develop FMP's for fisheries which extend into State jurisdiction, the Federal government only has authority to implement such plans in the FCZ. The State (or States) in whose boundaries the fishery is conducted may manage on the basis of the Council plan, but it is not obligated to do so.

Section 306 does provide, however, that the Secretary of Commerce may regulate a fishery within the boundaries of a State if that fishery is predominantly in the FCZ and a State has taken some action (or failed to take some action) which would substantially and adversely affect the management of that fishery under the existing FMP.

5. INTER-COUNCIL RESOURCES AND JURISDICTION.

In any case where the range of a stock or a fishery extends beyond the geographical jurisdiction of any one Council, the Secretary of Commerce is authorized to designate the Council(s) which shall prepare the FMP for such a fishery and any amendments thereto. To date, jurisdictional questions have been resolved jointly among concerned Councils and the Secretary.

6. COUNCIL-REGIONAL-WASHINGTON OFFICE INTERACTION.

Inherent in the FCMA and the fishery management plan process (development of plans by the Councils; review, approval, and implementation by the Secretary; and the continuing revision and refinement of plans by Councils and the Secretary) is a philosophy of regionalism. Councils and Regional Offices of the National Marine Fisheries Service are to maintain a continuing dialogue to resolve problems and issues, ensure a common understanding of operation procedures, request and respond to requests for technical and scientific assistance, and prepare regulations and amendments thereto, etc. The regional approach does not alter responsibilities that are presently delegated to Federal officials (e.g., NOAA's Administrator for work plans, regulatory analysis, and final regulations; or the Assistant Administrator for Fisheries for approval of fishery management plans). However, cooperation and coordination at the field level, and between the field and Washington, should minimize conflicts and delays, and result in expeditious approval or amendment of FMP's.

II. REGIONAL FISHERY MANAGEMENT COUNCILS

B. AUTHORITY

7. COUNCILS AND DOC/NOAA/NMFS

7(b). Research

The principal responsibility of the Regional Fishery Management Councils is to prepare and amend fishery management plans (FMP's). The FCMA states that FMP's are to be prepared on the basis of the best available scientific information. In pursuing this task, Councils may engage in:

- accumulating and analyzing pertinent biological, economic, and social information in summary form on all fisheries, and their habitats;
- financing contracts for acquiring/analyzing data or assistance in preparation of FMP's if the required assistance cannot be obtained from NMFS;
- evaluating biological, economic, and social impacts of various management objectives and options;
- making full use of available resources from NMFS, the States, Sea Grant, and other established sources of information in order to avoid duplication of effort.

In most cases, NMFS should be able to satisfy Council data needs through its existing operational and programmatic channels. NMFS has a statutory responsibility to provide much of the data needed by the Councils, and is prepared to do so either through its existing staff and capabilities, or through contracting and inter-agency agreements, as appropriate.

In order to maximize benefits from expenditures, it is necessary to avoid duplication of effort and to operate as cost efficiently as possible. Just as the FCMA specifies that the Councils should prepare FMP's, it charges NMFS with key responsibilities for providing administrative and technical support to the Councils and maintaining a comprehensive program of fishery research. These mandates indicate that Congress intended for Councils to work in close coordination with NMFS, as well as with the States and other Councils, in order to ensure that the information necessary for FMP development is obtained in the most timely, cost-effective manner possible.

When a Council has identified data needs for a particular FMP, the capabilities of NMFS and the States should be the first source of information and expertise. The Scientific and Statistical Committee of each Council assists in identifying immediate research and data needs. If certain FMP-oriented biological, ecological, economic, or social data is needed on a high priority basis which cannot be satisfied by NMFS or the States, the Councils may be authorized to contract for the information and analysis.

One of the most critical elements of a successful Council-NMFS research partnership lies in the anticipation of data needs before they are urgently required. This necessitates realistic forecasting on the part of the Councils and NMFS, both through the budgetary process and through internal planning processes. Councils and NMFS, through constant interchange of information at the regional level, must be aware of each other's plans and needs for this budget forecasting to be successful. To this end, the Councils will utilize semi-annual progress reports and annual three-year budget projections (see Ch. II.E.2) to ensure that its anticipated needs are coordinated with NMFS programs on a short-term and long-term basis.

8. COUNCILS AND OTHER AGENCIES

///Later...CG, State, DOI, CEQ, EPA, OMB, DOJ, OPM, GAO, IRS, Treasury...///

9. SECRETARIAL PLANS

///Later...///

* * *

II. REGIONAL FISHERY MANAGEMENT COUNCILS

C. ORGANIZATION AND STAFFING

1. COUNCIL COMPOSITION

Each Council shall reflect the living marine resource expertise and interests of the several constituent States in the ocean area over which such Council is granted authority.

1(a). Voting members shall be:

- Principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.
- Regional Director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.
- The members required to be appointed by the Secretary from a list of qualified individuals submitted by the Governor of each applicable constituent State. The term "qualified individual" means an individual who is knowledgeable or experienced with regard to the management, conservation, or recreational, subsistence, or commercial harvest, of the fishery resources of the geographical area concerned. (See Chapter II.C.1(c).)

1(b). Nonvoting members shall be:

- Regional or Area Director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.
- Commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.
- Executive Director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.
- Representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

1(c). Appointment Procedure - Voting Members

Each year, the terms of approximately one-third of the Council's appointed members will lapse, and new members shall be appointed by the Secretary or the Secretary's delegate from lists of nominees submitted by the Governors of applicable constituent States. The Governors are responsible for submitting the names of at least three qualified individuals for each applicable vacancy. The list of names must be accompanied by pertinent biographical data and appropriate information to allow the Secretary or the Secretary's delegate to evaluate the expertise of the nominees and make a reasoned choice. Governors' nominations must be submitted by May 15 of each year. The duration of new appointments is three years, and the anniversary date for terms has been established as August 10 (Chart 1(c)).

Two categories of appointed voting members have been established administratively:

(1) Obligatory seat - Each constituent State has one obligatory seat. When the term of an obligatory State member expires, the Governor of that State is required to submit (in accordance with II.C.1(c) of this handbook) at least three nominations from which the selection of a replacement will be made.

(2) At-large seat - When the term of an at-large member expires, the Governor of each State of a Council shall submit (in accordance with II.C.1(c) of this handbook) at least three nominations for each vacancy, and the selection will be made by the Secretary from among the collective nominations by the Governors of all member States.

Any individuals whose term is expiring may be renominated.

Councils are established as follows: (Next page)

Councils are established as follows:

Council	States Represented	# of Voting Members	# of Voting Members Appointed by Sec
New England	Maine N. Hampshire Massachusetts Rhode Island Connecticut	17	11
Mid-Atlantic	New York New Jersey Delaware Pennsylvania Maryland Virginia	19	12
South Atlantic	N. Carolina S. Carolina Georgia Florida	13	8
Caribbean	Virgin Islands Commonwealth of Puerto Rico	7	4
Gulf of Mexico	Texas Louisiana Mississippi Alabama Florida	17	11
*Pacific	California Oregon Washington Idaho	13	8
North Pacific	Alaska Washington Oregon	11	7
**Western Pacific	Hawaii A. Samoa Guam	11	7

*Legislation is pending to add representation for the Northern Mariana Islands.

**Legislation is pending to change the status of the Alaska representative from non-voting to voting, plus add an additional voting representative.

APPOINTMENT PROCESS TO REGIONAL FISHERY MANAGEMENT COUNCILS

NMFS sends letters to appropriate State Governors soliciting nominations for vacancies on Regional Fishery Management Councils no later than May 15.



NMFS sends "To Whom It May Concern" letter to interested parties including Regional Fishery Management Councils, the Marine Fishery Commission Directors, members of the Marine Fisheries Advisory Committee (MAFAC), Congressional delegations of constituent States, and to other members of the constituency, informing them that the Governors' letters have been sent, and if they wish to make recommendations, these should be provided to the appropriate State Governors.



When nominations are received by NMFS, a second "To Whom It May Concern" letter is sent to the interested parties, noted above, providing a list of nominees, and inviting comment from those who wish to do so.



Assistant Administrator for Fisheries develops and submits to Administrator of NOAA a recommended slate of candidates, taking into account the nominees' qualifications, background and fishery interests, geographic balance desired, the Governors' preference if any, the recommendations of NMFS Headquarters and field leaders, the comments and information received from others as a result of the "To Whom It May Concern" letter, and any other pertinent factors.



Administrator of NOAA makes decision regarding Council appointments and advises Secretary of Commerce of proposed appointments.



Upon Secretarial concurrence and completion of administrative procedures, including completion of security clearances on nominees, Administrator of NOAA transmits letters of appointment.

2. COMMITTEES

2(a). Scientific and Statistical Committee (SSC)

Each Council shall establish and maintain, and appoint the members of a SSC to assist in the specification, collection, and evaluation of statistical, biological, ecological, economic, social, and other scientific information as is relevant to the Council's development or amendment of fishery management plans.

SSC members and a chairperson shall be appointed by the Council. Membership shall be multidisciplinary, including natural and social scientists from Federal, State, and private scientific communities who are knowledgeable in the fisheries to be managed. The size of the committee is discretionary within the resources available to the particular Council.

2(b). Advisory Panels (APs).

Each Council is authorized to establish advisory panels as are necessary or appropriate to assist in carrying out Council functions under the Act. Advisory panels are authorized principally to obtain pragmatic advice and counsel of the people most affected by, or interested in, Council matters of fishery management policy; on the preparation of fishery management plans; on their review prior to submission to the Secretary, and on their effectiveness once in operation. These panels aid the Council in establishing the objectives of plans as well as the criteria for judging plan effectiveness and serve as a communication link with those who must operate under the management regime.

The members and chairperson are appointed by the Council. The membership of each panel shall be composed of a balanced representation of the interests either actually engaged in the harvest, processing or consumption of, or knowledgeable and interested in the conservation and management of, the applicable fishery or stock(s) of fish. Panel size is discretionary within the resources available to the particular Council, but each panel must be of sufficient size to permit a balanced representation of interests. It is suggested for the purpose of minimizing administrative requirements that each Council establish one broad-based advisory panel. Subpanels may be used to provide advice on individual fisheries or unique fishery resources under Council consideration. The panels shall meet in the area encompassed by the Council's constituent States as deemed necessary by the Council Chairman. No staff is assigned to these panels, but staff support may be requested from the Chairman of the Council or the Executive Director.

2(c). Subcommittees

Subcommittees of "advisory committees" must comply with the Federal Advisory Committee Act (FACA), but the establishment and chartering, requirements set forth in this handbook do not apply if:

--all of the subcommittee's members are to be selected from the members of the parent committees; and

--the creation of the subcommittee is approved by the Director, NMFS (Assistant Administrator for Fisheries), who must provide written documentation of such approval to appropriate NOAA/DOC offices.

3. ADMINISTRATIVE PROCEDURES.

Councils must submit written requests to NMFS to establish, abolish, or amend charters.

Councils shall maintain current information about membership, to include the following:

- names, Council offices held, addresses, and phone numbers of members;
- members' affiliation (recreational fishing, commercial fishing, consumer, etc.)

This information shall be systematically provided to NMFS for maintenance of NMFS records, directories, etc.

* * *

II. REGIONAL FISHERY MANAGEMENT COUNCILS

D. OPERATIONAL PRACTICES AND PROCEDURES

1. GENERAL

The rules governing Council operating practices and procedures are contained in the FCMA (Sec. 302). The following sections elaborate on these general rules and provide the Secretary's uniform standards for....

1(a). Statement of Operating Practices and Procedures (SOPP's)

Each Council shall prepare, approve, and submit to NMFS for review and publication in the FEDERAL REGISTER, (Exhibit X), SOPP's applicable to the established procedures of the Council. Minimum contents and format will be:

1. Name of Council
2. Location of offices.
3. Legal authority.
4. Council composition.
5. Officers and terms of office.
6. Staff
 - a. composition
 - b. functions (reference position descriptions)
 - c. employment practices
7. Standing committees of Council members
 - a. name
 - b. composition
 - c. function
8. Meetings and hearings
 - a. frequency
 - b. duration
 - c. location
 - d. agenda or orders-of-business
 - e. official minutes
 - f. general rules of order
 - g. authority of the chair
9. Advisory panels
 - a. name
 - b. composition
 - c. function
10. Management plan development teams
 - a. name

- b. composition
 - c. function
11. Administrative management system (see Ch. II.E.)
- a. administrative control procedures regarding conflict of interest (see II.E.3(d))
 - b. procurement procedures
 - c. property management system
 - d. accounting and budgetary control procedures
 - e. travel reimbursement procedures
 - f. standards for compensation and other personnel actions

Changes to SOPP's shall also be submitted to the NMFS Regional Office for initial review, and to NMFS headquarters for final review and publication in the FEDERAL REGISTER.

1(b). Charters

Councils, Scientific and Statistical Committees (SSC), and Advisory Panels (AP) are required to be chartered under the Department of Commerce (Committee Management Handbook (Part II)), and the Federal Advisory Committee Act

Duration of Charters. Having been effected on varying dates, AP charters, also valid for 2 years, have varying renewal dates. See below:

<u>Council</u>	<u>Effective date of AP Charter</u>
New England	12/20/77
Mid-Atlantic	12/20/77
South Atlantic	4/26/77
Caribbean	4/13/77
Gulf of Mexico	4/20/78
Pacific	5/17/76
North Pacific	4/27/77
Western Pacific	10/26/77

Charter Renewal--Council Responsibility. At least 3 months before the expiration date of an existing charter, a Council must either notify NMFS in writing that no changes in the existing charter are required and that it should be subsequently refiled as is; or prepare a revised charter in accordance with established guidelines and regulations. The revised charter should be submitted to NMFS.

Charter Renewal--NMFS Responsibility. NMFS is the liaison office between Councils and the NOAA Committee Management Office. As such, NMFS has the following responsibilities:

- charters to be renewed without revisions: review and forward them to the NOAA Committee Management Office for action;

--charters being revised: review for adherence to guidelines and regulations. In fulfilling this task, NMFS must seek appropriate advice and guidance in its review, and must keep the Councils informed about any decision which affects acceptance of the proposed revisions.

Charter Renewals--NOAA Responsibility. The NOAA Committee Management Office is the liaison between NMFS and the Department of Commerce office responsible for rechartering activities. In this capacity, the Committee Management Office's responsibilities to NMFS and DOC are identical to NMFS' responsibilities to the Councils and NOAA, as cited above.

Charter Renewals--DOC Responsibility. The Assistant Secretary for Administration, DOC, is the liaison office between the NOAA Committee Management Office and the Office of Management and Budget. The Office of the Assistant Secretary for Administration has the following responsibilities:

--for charters to be renewed without revision and/or revised charters which adhere to established guidelines and regulations: Obtain necessary renewal signatures, file charters with appropriate offices (e.g. Senate and House committees, Library of Congress), notify NOAA Committee Management Office of approval and subsequent filing, and forward copies of approved, signed charters to NOAA Committee Management Office and/or NMFS for notification of, and copying to, Council.

--charters being revised: Review for adherence to guidelines and regulations. The Office of the Assistant Secretary for Administration is responsible for keeping the NOAA Committee Management Office informed about any decision which affects acceptance of the proposed revisions.

Charter Amendments. Occasionally, Councils may wish to revise an existing charter before the expiration date--e.g., establish or abolish subcommittees, subpanels, etc. Councils should submit written requests for such revisions to NMFS. It is important that requests include:

--appropriate reference information (section, part, etc.) for proposed revision

--actual wording to be substituted and/or deleted

--explanation for revision.

With respect to review, approval, and documentation, Charter amendments are handled in the same manner as charter renewals.

II. REGIONAL FISHERY MANAGEMENT COUNCILS

D. OPERATIONAL PRACTICES AND PROCEDURES

2. Types of Meetings.

Councils may, with appropriate authorization, hold three types of meetings:

- open meetings, when nothing of a confidential nature will be discussed.
- partially closed meetings, when the agenda includes confidential as well as non-confidential matters.
- fully closed meetings, when all agenda items are of a confidential nature. The legal basis for closing meetings is described in Section F.01 of the Department of Commerce Committee Management Handbook.

2(a). Meetings

In accordance with the following guidelines and regulations, Councils are required to publicize meetings of the Council, Scientific and Statistical Committee, and Advisory Panels (Chart 2(a)).

- Fisheries Conservation Management Act (Section 302(h)(3))
- Final Regulations (Section 601.21(i))
- Federal Advisory Committee Act (Section 10), and
- Department of Commerce Committee Management Handbook (Part II).

In accordance with the above-cited regulations, meetings must be published in the FEDERAL REGISTER. To be in compliance, notices must be published far enough in advance to ensure that all interested persons have ample time to plan their attendance, request permission to appear before the group, and/or file written statements. Open meeting notices must appear in the FEDERAL REGISTER at least 20 days prior to the meeting date (Example X). Partially and fully closed meeting notices must also appear in the FEDERAL REGISTER at least 20 days prior to the meeting date (Example X).

Council Responsibilities.

1. Prepare notice in accordance with established guidelines and regulations, and submit notice in a timely manner to NMFS (26 days in advance for open meetings and 45 days in advance for closed/partially closed meetings when a Notice of Determination (NOD) is required. If a NOD has been submitted previously for closed/partially closed meeting, meeting notice should be submitted 26 days in advance).

2. Take other steps deemed necessary to ensure that interested persons will be aware of meeting.

3. For partially and fully closed meetings, a Notice of Determination (NOD) governing date, time, agenda, and legal basis for closure for each closed session is required. Notice of Determination should be requested via memo, "Request for Closed Session," from the Council to the Executive Director, NMFS. Advice on the appropriateness of the application of FACA exceptions should be obtained from the Regional general counsel through the Regional Director prior to submission to the Executive Director, NMFS (Example X). (UF)

NMFS Responsibility

1. Submit notices to Federal Register Office for publishing in the FEDERAL REGISTER.
2. Take action to obtain necessary concurrences for partially and fully closed meetings.

NOAA Responsibility. NOAA reviews the proposed Federal Register Meeting Notice, Notice of Determination, and memo of Request for Closed Sessions for adherence to established procedures and regulations. Upon concurrence, forwards to DOC.

DOC Responsibility. DOC reviews the entire package and, upon concurrence, the Notice of Determination is signed by the NOAA Assistant Secretary for Administration and the General Counsel for the Department.

Office of Organization and Management Systems (OOMS). OOMS administers the provisions of the Department of Commerce Committee Management Handbook and initiates revisions required to keep it current and control its distribution. When not prohibited by law or by higher level directive, the Director, OOMS, is authorized to act on requests for exceptions to its procedural provisions. The handbook specifies FACA procedural requirements.

Department of State Responsibility. To facilitate clearance for partially and fully closed meetings, a memo from the Department of State Representative on the Council should be submitted with the NOD when National security matters are involved.

2(d). Administrative Procedures

Documentation of Meetings. Councils are required to keep accurate minutes of each meeting. These minutes must include a record of persons present and their organizational affiliations when available; a complete and accurate description of matters discussed and conclusions reached; copies of all reports presented, issued, and approved; and certification of accuracy by the Chairman of the Council, SSC, or AP, as appropriate.

Reports. Information about meetings is required for the annual Federal Advisory Committee Report (FACA) and for the FCMA Annual Report. (See Chapter II.D.4--Reports--in this Handbook.)

DOC, NOAA, and NMFS Responsibilities

NMFS will keep Councils advised of any changes in requirements and established deadlines; provide Councils with appropriate forms/instructions for submitting reports; receive, coordinate, consolidate and submit reports to NOAA; coordinate and develop Secretarial input, as appropriate; and make necessary distribution.

NOAA will keep NMFS advised of changes in requirements and established deadlines; provide NMFS with appropriate forms and instructions for submitting reports; receive and submit reports to GSA, as appropriate; and submit reports to DOC, as required.

DOC will keep NOAA advised of changes in requirements and established deadlines; provide NOAA with appropriate instructions for submitting report; and receive, review, and submit reports to Congress and the President.

3. Hearings

/// later.///

II. REGIONAL FISHERY MANAGEMENT COUNCILS

D. OPERATIONAL PRACTICES AND PROCEDURES

4. REPORTS

The following reports are required in connection with the implementation of the FCMA. NMFS is the primary liaison between the Councils, other DOC components, and other Federal Agencies. As such, NMFS serves as the focal point for receiving reports, providing deadlines and instructions, referring pertinent information to Councils, and subsequently coordinating, consolidating, and submitting reported information to appropriate officials.

4(a). Annual Report on the FCMA.

The Secretary of Commerce shall report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the conservation and management of fishery resources that were undertaken under the FCMA during the preceding calendar year. (Section 305(f) of the FCMA; Section 601.23(g)(1) of the Final Regulations.)

Council input must be submitted to the Secretary by February 1 and must include the following:

- list of Council members, with addresses and affiliations, indicating voting and nonvoting members, Council officers serving during the year, office titles, and dates of such service;
- list of Council staff members with titles;
- list of members of the Scientific and Statistical Committee (SSC) and members of each Advisory Panel (AP), with addresses and affiliations;
- list of Council meetings and hearings held, and of SSC and AP meetings held, with dates, locations, and the subjects of discussion, indicating whether they were open, closed or partially closed to the public, and citing the appropriate authorization for any closed portions of the meetings;
- list of all FMP's and amendments, and all relevant correspondence/items, including foreign fishing permits sent to and received from the Secretary with respect to FMP's and amendments;
- an appropriate summary of the discussions held at any closed sessions during the year;

--financial summary which includes (a) total FY cost of the Council, indicating sources of funding and the respective amounts; and (b) an estimate of the man-years of staff support by source (Federal, State, private) that was donated or provided without payment or reimbursement.

The Secretary of Commerce's report must incorporate Council input.

DOC, Coast Guard, and State Department input shall include information about activities undertaken by these agencies to implement the FCMA during the preceding calendar year and will, if appropriate, expand on activities reported by the Councils themselves.

4(b). Semiannual Report on Enforcement Activities.

The Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating shall report to the Committee on Merchant Marine and Fisheries, House of Representatives; to the Committees on Commerce and Foreign Relations, U.S. Senate; and to the Regional Fishery Management Councils, on the degree and extent of known and estimated compliance with the provisions of the FCMA. (Section 311(a) of the FCMA.) The report is due twice annually and covers March through August and September through February.

Councils are not required to provide input for this report.

The Coast Guard report is prepared and submitted independently by the Coast Guard.

The NMFS report is prepared and submitted independently by NMFS, and is used to gauge the extent of compliance being attained under the FCMA. The report includes a narrative and quantitative description of compliance activities during the report period.

A comparative review of information from these separate sources serves to provide a basis for determining the effectiveness of enforcement activities.

4(c). Annual Federal Advisory Committee Act (FACA) Report.

The Department of Commerce provides input for the Presidential report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year. (Section 6(a) of the Federal Advisory Committee Act; Appendix II-E of the Commerce Committee Handbook.) The President's report to Congress must be received in Congress not later than February 1 (pending legislation would advance date to March 1). The Office of Management and Budget is responsible for timely direction of requests for input.

Councils are the primary contributors to this report, which must include the following information for the Councils, Scientific and Statistical Committees, and Advisory Panels:

- committee name and status (i.e. "in existence," "terminated by merger," "terminated by expiration" at the end of the reporting year;
- type of committee, establishment authority, termination and renewal dates;
- functions of the committee;
- information about number of meetings, types of meetings (closed, open, partially closed), meeting dates, and number of members at end of year;
- fiscal (i.e., operating costs, person-years of Federal staff support) information;
- a summary of all reports submitted by the committee during the year;
- names, affiliations, addresses, and offices held by members;
- information on female and minority representation on the committee.

A completed SF 248 and SF 249 will be submitted by the Councils to NMFS by December 1 of each year. These forms (Exhibit X) will be supplied by NMFS.

4(d). Annual Report on Closed and Partially Closed Meetings.

The Commerce Department issues a report, at least annually, on each committee that held one or more meetings which were closed in whole or in part. The report must set forth a summary of the committees' activities during the closed sessions and such related matters as would be informative to the public consistent with the Freedom of Information Act. The reports on Commerce committees are reviewed, compiled, and submitted to the Library of Congress by the Assistant Secretary for Administration. Concurrently, a copy is filed with the Department's Central Reference and Records Inspection Facility and a notice of the public availability of these reports--at both locations--is published in the FEDERAL REGISTER by the Assistant Secretary for Administration. (Section 10 (a-d) of the Federal Advisory Committee Act; Appendix II-G, Committee Management Handbook, Department of Commerce.

Councils are the primary contributors to this report, which must include the following information for appropriate meetings held by the Councils, SSC's, and AP's:

- date and place of meeting;
- portion of meeting (by time and agenda item) closed to the public, and provision(s) of 5 U.S.C. 522(b) which premised the determination authorizing the closure;
- the titles or topics of all reports, records, or other information (written or oral) presented to the committee during the meeting, or provided in advance to its members in preparation for the meeting;
- a summary of the discussion of each agenda item;
- an appropriate description of any actions taken at the closed session (e.g., a report or recommendation on agenda items was submitted to...).
- signature by the chairman of the committee.

4(e). Fiscal and Performance Reports.

Financial Status Reports and Cash Transaction Reports are due quarterly from each Council. Also, semiannual performance progress reports are required for each Council grant. Details on preparation and submission of these documents may be found in Chapter II.E.2., Budget and Financial Management (Exhibit X).

5. Records Keeping

Records containing adequate and proper documentation of Council functions, policies, decisions, procedures, and essential transactions should be maintained. An accurate recordskeeping system will enable the Councils to furnish information necessary to protect the legal and financial rights of the Government and of persons directly affected by Council activities. Operational procedures and guidelines for this recordskeeping system will be forthcoming.

* * *

II. REGIONAL FISHERY MANAGEMENT COUNCILS

E. ADMINISTRATIVE PRACTICES AND PROCEDURES

1. GENERAL.

The overall nature of Council administrative operations is governed by OMB Circular A-110 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations). That directive prescribes standards for financial management systems, procurement, property management, financial reporting, cash depositories, and grant close-out procedures. As Federal grantees, Council are required to comply strictly with all the provisions of that Circular.

The Councils enjoy a unique status among Federal grant recipients. Although they are clearly not line components of NMFS, NOAA, or DOC, they nevertheless receive funding through the normal budgetary process as it pertains to NMFS. Although they are not directly subject to the Federal Procurement Regulations, Federal Property Management Regulations, or Federal Personnel Regulations, they are nevertheless required by A-110 to adhere to principles which ensure public trust in their management of public funds.

It is in this context that the following sections on budget and financial management, personnel management, and property/procurement management have been developed. The clear intent of these sections is to maintain the functional autonomy of the Councils while still ensuring uniformity of operation within the constraints recognized for public organizations.

* * *

II. REGIONAL FISHERY MANAGEMENT COUNCILS

E. ADMINISTRATIVE PRACTICES AND PROCEDURES

2. BUDGET AND FINANCIAL MANAGEMENT.

Councils receive funds through the Federal Assistance (cooperative agreements) process for two basic types of expenditures: administrative (or operational) funds to cover general operating expenses, such as salaries, utilities, travel, etc.; and programmatic (or contract) funds primarily designed to fund contracts generated by the Councils for development of fishery management plans (FMP) or FMP-oriented information. This chapter deals with the procedures by which Councils plan for, request, and manage these Federal funds.

2(a). Council Participation in the Federal Budget Process.

Councils are involved in the NMFS/NOAA budget process. This involvement will be with the Regional and Center Directors as they proceed in the budget process. This process begins in the spring/summer of each year in preparation for the budget for the 3 years following. The Council are an integral part of the total planning process for future year budgeting to include direction of NMFS programs, Council management plan needs, and all relevant factors.

The first step in the Council funding process is the formulation of a budget which reflects sound resource management based on historical and projected considerations. To facilitate this task, all Council budget information is formulated on a Budget Summary Worksheet (Exhibit A). This organizes the funding needs into standard Federal object classes over a period of three fiscal years, beginning with the budget year. In this way, Council funding requests can be easily analyzed and then integrated into the normal DOC/NOAA/NMFS budget cycle.

Once the Council has formulated and documented its funding requirements, a cooperative agreement is prepared according to Part 2(b) of this chapter. The entire cooperative agreement request is then submitted to the respective NMFS Regional Director or his designated representative for initial review.

NMFS Regional Review. The Region, together with the appropriate Center, examines the budget submission in light of the following criteria:

- cost-effectiveness of proposed projects
- possible duplication of past or on-going efforts of NMFS, the States, or universities
- any research and development aspects of proposed work, and possible impact on NMFS programs (e.g., will it lead to new NMFS obligations once the Council cooperative agreement has expired?)

- degree and adequacy of planning reflected in budget backup materials
- urgency of need (e.g., is the need sufficient to support a reprogramming in NMFS if base funding is not available?)
- necessity and degree of coordination with other Councils on areas of mutual interest and responsibility

Once the Regional Director has reviewed and endorsed the submission, his recommendation is forwarded to NMFS Headquarters for final consideration.

NMFS Headquarters Review. The depth and scope of review at this level depends on the nature of the budget submission. For operational budgets, review will usually be limited to two Headquarters offices: Fishery Management Operations and Budget Operations. For budget submissions which include FMP-oriented elements, an in-depth program review will involve as many offices of Headquarters as is necessary to adequately assess the disparate elements of the proposal (research, statistics, data management, etc.). Considerations will include:

- comparison of the Council proposal to national policy
- need to coordinate with other Councils and Regions/Centers
- assessment of individual proposals against overall Council plans, as identified by the respective Council
- relationship of requested funding to past history of spending for like activities in the same Council

All Council requests which are cost-effective and necessary to the fulfillment of the FCMA will be funded by NMFS to the maximum extent possible. In some cases, depending on the Agency's funding level for a particular year, this may require extensive involvement in the budget process beyond NMFS (e.g., NOAA, DOC, OMB, Congress). Only in those cases where apparent duplication of effort, lack of cost-effectiveness, or lack of planning exists will NMFS return a Council request.

When NMFS approves a budget or proposal which is forwarded with a formal cooperative agreement request, NMFS will then send its approval together with the basic cooperative agreement application to the appropriate Regional Director for review and transmission to the appropriate Grants officer for technical review and conveyance.

Regional Grants Office Review. There are four basic elements in the technical review of Council cooperative agreement proposals:

- completeness of supporting budget data (Budget Data Form, Exhibit B)
- adequacy of proposal description (i.e., work to be performed)
- legal authority of conveying the cooperative

agreement (i.e., FCMA)

- identification of specific requirements to be fulfilled by the grantee (e.g., reporting requirements)

After the above aspects have been satisfied, the Regional Grants Officer will issue a basic cooperative agreement or amendment to the Council, and will notify the NOAA Finance Office. The Finance Office in turn will process a letter of credit for the requested amount in favor of the Council. This allows the Council to draw funds when needed from the U.S. Treasury through a Federal Reserve Bank and, ultimately, the Council's commercial bank. The letter of credit thus serves as the basic funding authorization for the Council and the culmination of the budget process.

2(b). Council Funding Requests--Grants Management. The following sections provide technical information on submitting a grant application and on the review process incident to cooperative agreement approval and disapproval.

General Procedures.

1. The Council submits a formal application (Standard Form 424--Federal Assistance Short Form--Exhibit C) to the appropriate NMFS Regional Director. This application includes a Budget Data Form (Exhibit B), a Program Narrative Statement supporting the application, and a Statement of General Assurances (Exhibit D). As backup to the Budget Data Form, each Council will prepare a Budget Summary Worksheet (Exhibit A) for three fiscal years, as described in part 2(a) above. The amounts reflected in lines A1 through A9 of the Worksheet can then be transferred to the appropriate categories of the Budget Data Form. Councils must be sure to list all contemplated equipment purchases over \$2,500 on the budget submission; approval of the application will convey approval of these purchases. It is also important that the Program Narrative Statement describe in appropriate detail the purpose for which funds are sought: operational expenses, FMP-oriented contracts, State liaison support, etc.
2. Upon receiving a recommendation from the Regional Director, the NMFS Headquarters Offices review the application and, if approved, transmit the application to the Regional Director for subsequent forwarding to the appropriate Grants Office for processing. If the application is disapproved by NMFS Headquarters, the Regional Director will be contacted and supplied with the reasons for disapproval and the criteria for resubmission.
3. The appropriate grants specialist in the Regional Grants Office then reviews the approved application and recommendation from NMFS, as described in part 2(a) above. The Grants Specialist will contact NMFS and/or the Council for any additional information or clarification which may be needed.

4. The Regional Grants Office, after approval by the Regional Director, gives final technical approval and prepares the cooperative agreement package, including financial reporting forms, general provisions, and special terms and conditions.

5. The cooperative agreement is signed by the Regional Grants Office, dated, and mailed to the Council. If the cooperative agreement is acceptable, the Council signs it and returns 2 copies to the Regional Grants Office. Information copies are then forwarded by the Regional Grants office to NMFS Headquarters, Regional Director, and the NOAA Finance Office (AD 538). As described earlier, the actual disbursement is effected by means of a letter of credit, which is used for all grants over \$125,000.

6. Financial reports, due quarterly, are submitted directly to the Regional Grants Office with copies to the appropriate NMFS Regional Director and Office of the Executive Director (Attn: Fx33) within 30 days of quarter. It is imperative that these financial reports be submitted on a timely basis, since the viability of the cooperative agreement mechanism for Councils depends on timely receipt and review of these reports by NMFS. Repeated failure to submit prompt reports could result in a Council's letter of credit being revoked. This would necessitate the Council going directly to NMFS/NOAA for each disbursement as it becomes due.

7. Semi-annual grant performance progress reports will be submitted to the Regional Director for approval and transmission to the Grants Officer according to the criteria outlined in Exhibit E. These reports will be reviewed by the GOTR's at the Regional and Headquarters NMFS offices.

Special Instructions.

1. Whenever there is an overall change (increase or decrease) in funding, an SF-424 must be submitted to the appropriate Regional Director.

2. Major budget revisions, additional equipment purchases (limit--\$2,500), sole-source justifications, and other substantive actions related to grant management must be addressed to, and approved in writing by, the Regional Director or his designated representative. Upon approval, the request will be forwarded to the appropriate Grants Office for action.

3. With respect to reprogramming requests, cooperative agreement awards should include and adhere to the following:

"NOAA restricts transfer of funds among direct cost categories (object classes) for awards in which the Federal share exceeds \$100,000 when the cumulative amount of such transfers exceeds or is expected to exceed 10% of the total budget. The same criteria apply to cumulative amounts of transfers among programs, functions, and activities when

budgeted separately for an award; except NOAA will not permit any funds to be transferred which would cause any federal appropriation, or part thereof, to be used for purposes other than those intended."

Regulation Requirements. Cooperative agreement to the Councils are governed by OMB Circular A-110 and by the "DOC Principles for Determining Costs Applicable to Grants and Contracts with Non-Profit Institutions". The general provisions that are incorporated into the cooperative agreement implement these directives. In addition, each cooperative agreement will specify that the FCMA Operations Handbook and published regulations issued by NOAA will be the principal guides for all Council operations. Compliance with those provisions is mandatory. Regional Grants Officers will review the financial, accounting, personnel, and procurement procedures for compliance with these regulations.

In addition to the substantive programmatic review and approval by the Regional Director (or designated representative) and the NMFS Washington Office, certain contracts which are contemplated by the Councils, as further specified below, will be reviewed by the Regional Grants Office serving the Council. This review will be conducted at the solicitation and award stages for compliance with: OMB Circular A-110; the Council's SOPP's; the intent of Federal procurement law (which is to provide, to the maximum extent practical, open and free competition and the avoidance of conflicts of interest); and other relevant provisions designed to maintain public confidence in the transactions of government instrumentalities. This review will be performed for the following Council contracts (see II.E.5(a)):

1. all procurements which may exceed \$10,000 for a particular commodity or service, or for multiple services from one vendor;
2. all sole-source procurements which total more than \$5,000; and
3. all contracts which might appear to benefit a member of a Council, Advisory Panel, Scientific and Statistical Committee, a business associate, or a relative, regardless of amount.

Solicitations will not be released, nor contracts awarded, until all substantive issues noted by the Grants Officer have been satisfactorily resolved and acknowledged in writing by the Grants Officer. Final copies of all contracts awarded will be filed with the appropriate Regional Grants Officer

2(c). Financial Management

Paragraph 2 of Attachment F, OMB Circular A-110, outlines specific standards for financial management systems for recipients of federal grant funds. Beyond these regulatory requirements, there are several practical measures which support sound financial management: prompt submission of quarterly financial status reports, timely anticipation of any needed budget adjustments (up or down), assurance that the 10% reprogramming limit is not exceeded, and draw-downs on letters of credit in accordance

with Treasury Department Circular number 1075, 4th revision (dated 12/14/77). All of the above actions demand a system of fiscal control which is not only complete but is also up to date and as uncomplicated as possible. This section discusses some of the salient characteristics of such a system.

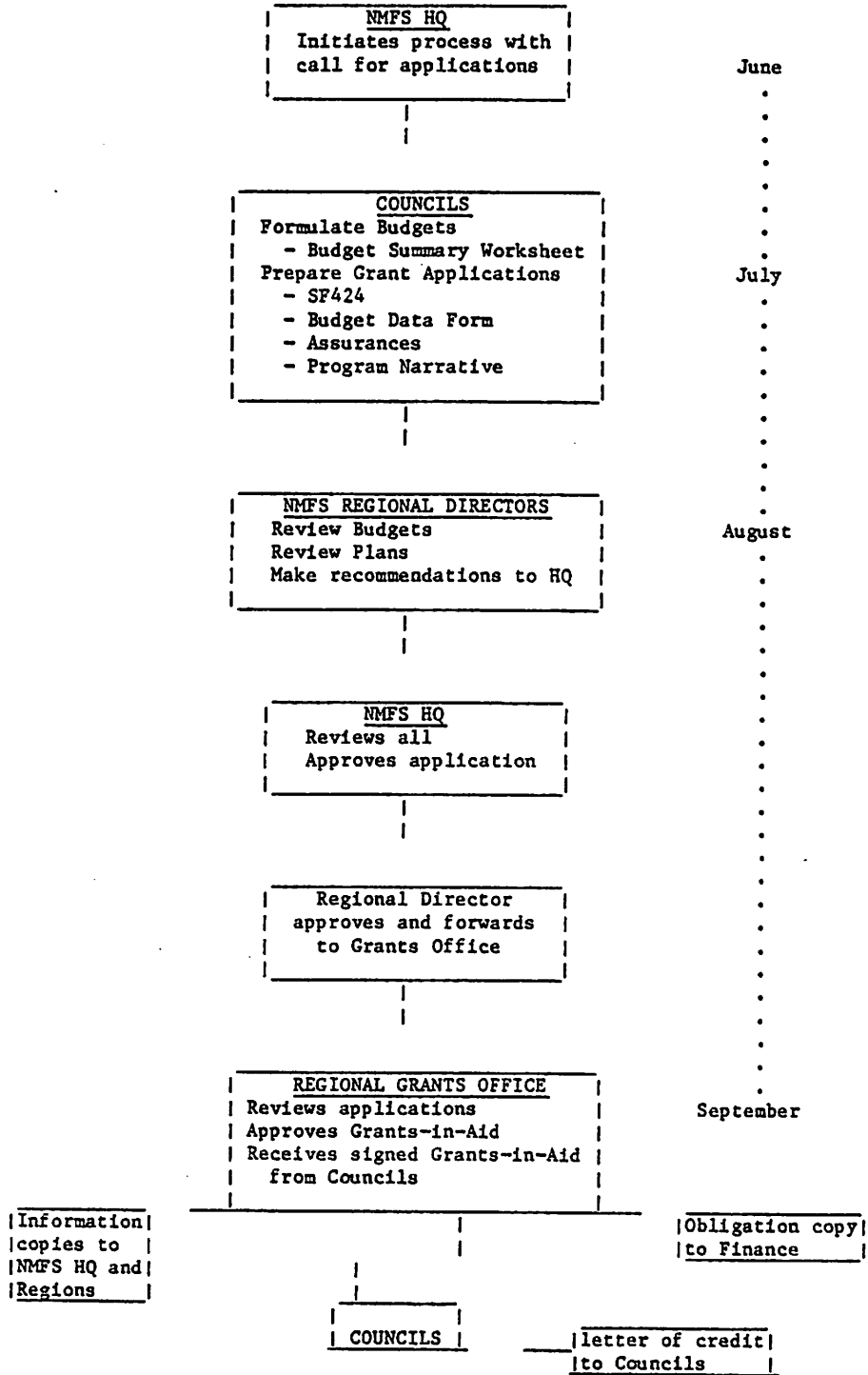
Accounting System. Councils will maintain a document-oriented obligation accounting system (with accruals, as necessary, for budget projection purposes) rather than a cash accounting system. Actual journals and ledgers may be maintained either manually or on an automated system; in either case, however, all obligations should be clearly documented and organized in order to provide quick access and verification by professional auditors. The actual composition (chart of accounts) of the system may vary somewhat from Council to Council. As a minimum, however, the system will provide fiscal control over expenditures in line with those object classes depicted in Exhibit A. This will allow not only timely submission of the periodic financial status reports, but it will also ensure close coordination between actual spending rates and budgeted amounts so that comparisons and changes can be made at any time. All financial records will be handled in accordance with A-110, General Provisions No. 3.

Audit should be performed at least bi-annually by the Department of Commerce auditors, State auditors, or an Independent Public Accountant (IPA). If an IPA is to perform the audit, an information copy of the audit proposal, approved by the Council, must be submitted to the DOC Regional Audit Office.

Cooperative Agreement Period. Beginning with fiscal year 1980, Council grants will be written for a period of up to 3 years. This does not change the fact that Councils must request and receive funds on a fiscal year basis. However, it does facilitate the transfer of balances from one fiscal year to another, since the obligation authority for the cooperative agreement may extend over more than one fiscal year. The NOAA/NMFS policy is that any unobligated balances at the end of a particular fiscal year (for administrative grants) or performance period (for programmatic grants) will be used to offset the Council's subsequent fiscal year's needs, and augmentation from NMFS for that subsequent year will be reduced accordingly.

Funds from Outside Sources. Councils may enter into cooperative agreements with federal agencies, states, and private institutions on matters of mutual interest which further the objectives of the Act. Approval from the Secretary of Commerce must be obtained prior to entering into such arrangements, and each agreement must specify the nature and extent of Council participation. The Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to the NOAA Administrator in accordance with Agency regulations, which are available upon request.

OVERVIEW OF BUDGET & GRANTS MANAGEMENT PROCESS
Regional Fishery Management Councils



II. REGIONAL FISHERY MANAGEMENT COUNCILS

E. ADMINISTRATIVE PRACTICES AND PROCEDURES

3. PERSONNEL MANAGEMENT.

Section 302 (f) of the FCMA authorizes Councils to retain full- and part-time administrative personnel in support of Council activities. The management policies and practices governing such personnel are set forth in this Chapter. Each Council's SOPPs must reflect internal personnel management procedures consistent with this Chapter, and a copy of such procedures must be provided to each Council employee.

3(a). Authorized Council Employees.

Each Council may appoint, and assign duties to, an Executive Director and such other full and part-time administrative employees as the Secretary determines are necessary to the performance of its functions. The number of permanent staff may not exceed nine for any one Council except as may be authorized, beforehand in writing, by the Assistant Administrator for Fisheries (NMFS).

Other-than-full-time permanent staff may be appointed to fulfill specific short-term (less than one year) needs of the Council as may be authorized by the Council Chairman. Prior approval of the Assistant Administrator for Fisheries is not required as it is for full-time personnel, unless additional funding is required. Each position shall be justified during the budget process described in Chapter II.E.2.

3(b). Classification and Recruitment

Classification. The duties of full-time and other-than-full-time personnel shall be contained in position descriptions to be submitted to the NOAA Personnel Office servicing the NMFS Region supporting a Council. As a minimum, position descriptions will cover the specific technical and supervisory duties of the position, any special skills (e.g. word-processor operator), and specific education and experience requirements. The Council will then be provided a salary range (usually equivalent to a GS grade) appropriate to the position and a determination of the applicability of the Fair Labor Standards Act. Each employee will be provided with a copy of his or her position description. Any significant change in the scope of duties will necessitate the reclassification of the position.

Recruitment. All personnel vacancies should be filled on a competitive basis, unless unusual circumstances clearly dictate otherwise. For this purpose, the Council may avail itself of the vacancy advertising system operated by the NOAA Personnel Office or any other recruitment tool, including newspapers and local employment agencies.

Requests for clearances for Council staff shall be submitted to NMFS (Office of the Executive Director) for referral to appropriate NOAA/DOC offices. Requests must include the following biographical data for each clearance applicant:

1. Full Name
2. Date and Place of Birth
3. Legal and Voting Address
4. Business/Professional Position and Address
5. Brief Career History
6. Brief Education History

Requests for clearances for Council, SSC, and AP members shall be submitted to NMFS (Office of the Executive Director) for referral to appropriate NOAA/DOC offices. Requests must be submitted on Form CD-555, "Request for Possible Membership on an Advisory Committee" (see Exhibit X).

DOC security clearance, processed by the Office of Investigations and Security (OIS), DOC, are valid for 3 years, and the clearance process takes 4-6 weeks.

3(g). Experts and Consultants

Councils are expected to obtain legal counsel from NOAA before seeking other legal counsel.

Each Council may contract with experts and consultants, counsel, as needed and within their respective budgets to provide needed technical assistance not available from NMFS. Outside legal counsel may also be sought to clarify controversial issues where a NOAA opinion has endorsed one interpretation at the expense of possible alternatives. Such contract experts and consultants may not provide services on a permanent basis.

3(h). Details of Federal/State/Local Government Employees

Federal employees may be detailed to a Council on a reimbursable or nonreimbursable basis, as mutually agreed, to assist the Council in the performance of its functions under the act. Details will be requested in writing by the Council and directed to the head of the Federal agency. The length of such details shall be mutually determined by the Council, the Federal employee, and his/her Federal agency. Detailed Federal employees retain all benefits, rights, and status to which they are entitled in their regular employment.

Councils may negotiate similar arrangements with State and local governments and universities to utilize employees of those organizations. Assistance in arranging these details may be obtained from the NOAA/NMFS Regional Personnel office.

shall include the following principles when engaged in the actual performance of duties, including travel time, as assigned by the Council Chairman:

- 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 elective office.
- No employee of the Council shall 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 any political party in any national, state, county, or municipal election, or on account of his or her political affiliation.
- No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm or corporation, a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Councils.
- 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.
- 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 or advisory group membership, that has not been made available to the general public.
- No Council member or employee of the Council shall engage in criminal, infamous, dishonest, notorious, immoral, or disgraceful conduct prejudicial to the Council.
- No Council member or employee of the Council shall use Council property on other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.
- Involuntary separations should be for cause or reduction in force, with reasonable notice given to the employee.

3(e). Applicability of Federal Conflict of Interest Laws:

The Department of Justice has recently confirmed a NOAA General Counsel's opinion to the effect that the public members appointed to the Regional Fishery Management Councils and the administrative employees hired by the Councils are subject to the Federal laws and regulations concerning bribery and conflicts of interest. The status of advisors to the Councils with respect to these laws must be resolved on a person-by-person basis; however it seems likely that most members of Council scientific and statistical committees would be subject to the Federal laws and regulations. Most advisory panel members, on the other hand, would not be covered by the conflicts of interest laws because they have been appointed to represent a particular segment of the fishing industry.

The Federal laws prohibit bribery and misuse of one's official position for personal gain. Detailed regulations explaining the effect of these laws on Council members and staff are presently being reviewed by the Department of Commerce. These regulations will ensure that Council members drawn from the fishing industry will not be precluded from voting on fishery management plans which might directly or indirectly affect their own ability to earn their income from the fishing industry.

In a related development the Office of Government Ethics has also ruled that Council members who receive Council pay for more than 60 days in any calendar year must file the detailed public financial disclosure form required by the Ethics in Government Act. The NOAA General Counsel's office will assist those affected by this requirement in completing this form in the proper manner.

3(f). Security Clearances

As instrumentalities of the Federal Government, Council members, SSC, AP and plan development team members, and Council staff must obtain security clearances through the Department of Commerce (DOC), as appropriate, for the conduct of official Council business.

As part of the annual appointment process, NMFS will obtain DOC clearances for newly appointed or reappointed Council members who do not have valid DOC security clearances. However, it will be the responsibility of the Councils to request:

--security clearances for Council, SSC, and AP members whose clearances expire during the tenure of their appointments

--initial security clearances for Council staff, and members of the SSC and AP.

All employment activities of the Council shall operate under a policy of equal employment opportunity. Positions shall be filled solely on the basis of merit, fitness, competence, and qualifications. Councils shall not discriminate based on race, religion, color, national origin, sex, age or physical handicap. Also, Councils will recognize the comparability principle of equal pay for equivalent work.

All Council employees will be furnished a statement of employment conditions which presents, as a minimum, the appropriate standards and practices outlined in this Chapter and in the Council SOPPs.

3(c). Compensation.

The voting members of each Council who are not employed by a Federal, State, or local government entity shall receive compensation at the daily rate of a GS-18 when engaged in the actual performance of duties as assigned by the Council Chairman. Actual performance of duties, for the purposes of compensation, may include travel time. Council SOPP's will clearly outline all criteria and circumstances under which members may be compensated.

Upon completion of the classification and recruitment process described above, the Council may pay employees at any salary level within the specified salary range, not to exceed Step 10 of the equivalent GS grade. Unless the recruitment of exceptionally qualified personnel is hampered, the policy of compensating new employees at the beginning rate for the equivalent GS grade will be recognized. When the prevailing wage scale is less than the GS schedule, Councils may elect to pay the lesser salary rate.

The annual pay for any staff position may not exceed the rate for GS-15, Step 10 of the General Schedule (GS) at any time. General Schedule pay rates will be provided to the Councils as changes occur. Council staff are entitled to the Presidential comparability pay increases at the option of the Council

Employees may be promoted, compensated, and otherwise recognized for superior performance in accordance with Council policies. Performance requirements which employees must meet in order to receive such recognition will be set forth in the Council SOPPs.

A cost of living allowance (COLA) may be applied to the base salaries of Council members and staff whose post of duty is in one of the following areas: Alaska, Hawaii, Guam, Puerto Rico, the U.S. Virgin Islands and America Samoa. Rates will be in accordance with Federal rates, which are available from Regional Personnel Offices. No other additional regular compensation is authorized.

3(d). Council Conduct

The Councils are responsible for maintaining high standards of ethical conduct among its members, staffs, and advisory groups. Such standards

3(i). Employee Benefits.

Employee benefits shall be clearly identified in Council SOPP's, with a copy provided to each employee of the Council. Total benefits obtainable shall not exceed 20% (exclusive of FICA) of an employee's gross salary without NMFS prior approval. An exemption to this percentage limitation will automatically apply in the case of any existing employee whose present benefits exceed this rate (grandfather clause provision).

Health Insurance. Councils may provide group medical insurance to its employees either through a commercial underwriter or through a state or local government program within the total percentage limitation previously stated. Councils are not authorized to pay employee's salary in lieu of a health insurance plan.

Life Insurance. Councils may offer its employees group life insurance within the total percentage limitation previously stated. Salary in lieu of insurance coverage will not be paid to Council employees.

Pension Plan. Since the Councils do not have a pension system which is acceptable to IRS as a substitute for Social Security, Councils are required to participate in the Social Security system and make appropriate employee deductions and contributions. Beyond this, Councils may arrange pension plans for its employees within the total percentage limitation previously stated. Salary in lieu of a pension system is not authorized.

Workmen's Compensation. The solicitor, vs. Department of Labor has ruled that Council members and employees are covered by the Federal Employees Compensation Act. As a result, workmen's compensation insurance is not authorized or required.

3(j). Leave.

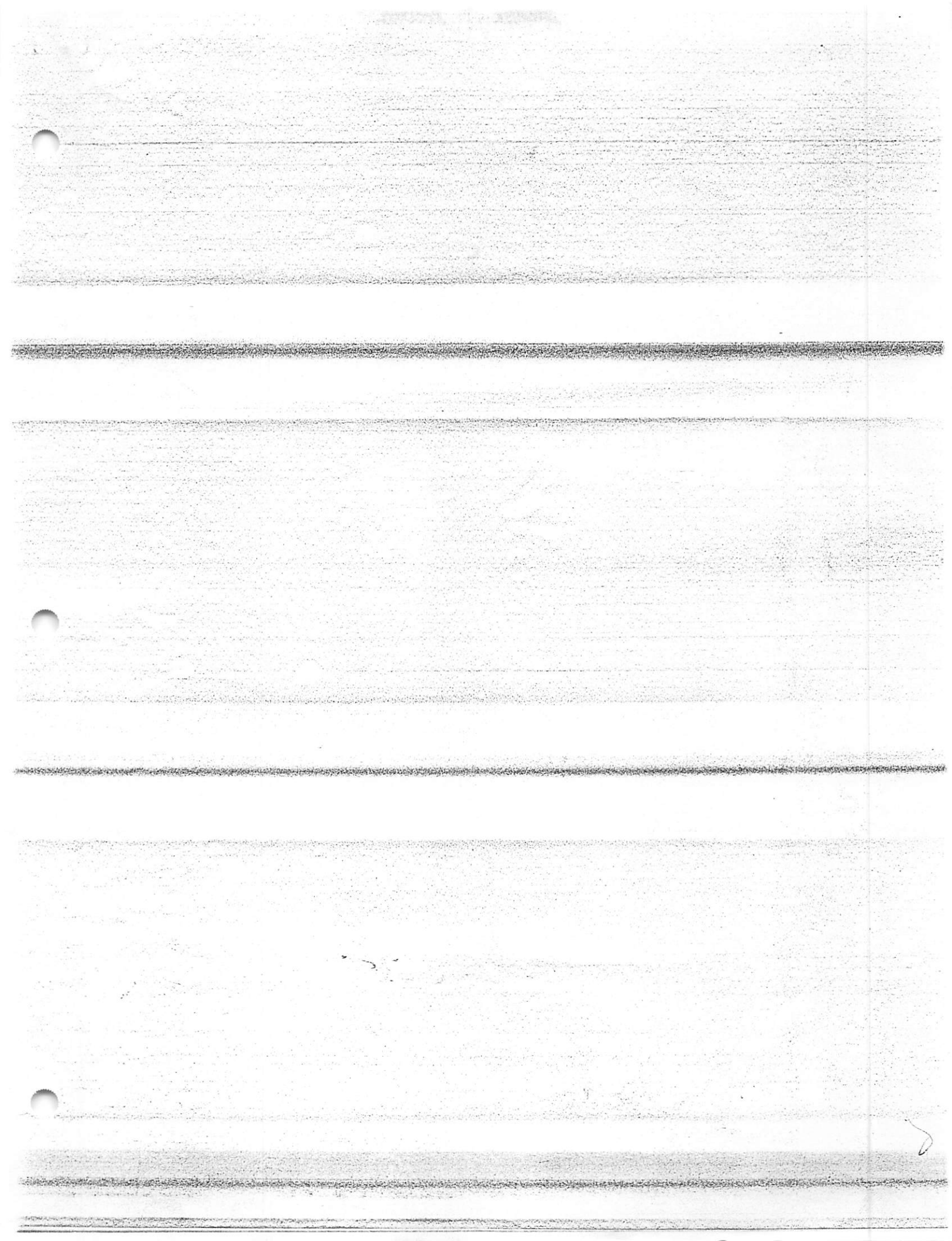
Employees of the Council may be granted paid leave for holidays, vacations or exigences, sickness, and civil duties (jury and military reserve obligations) as determined by the Council, and in accordance with the following standards.

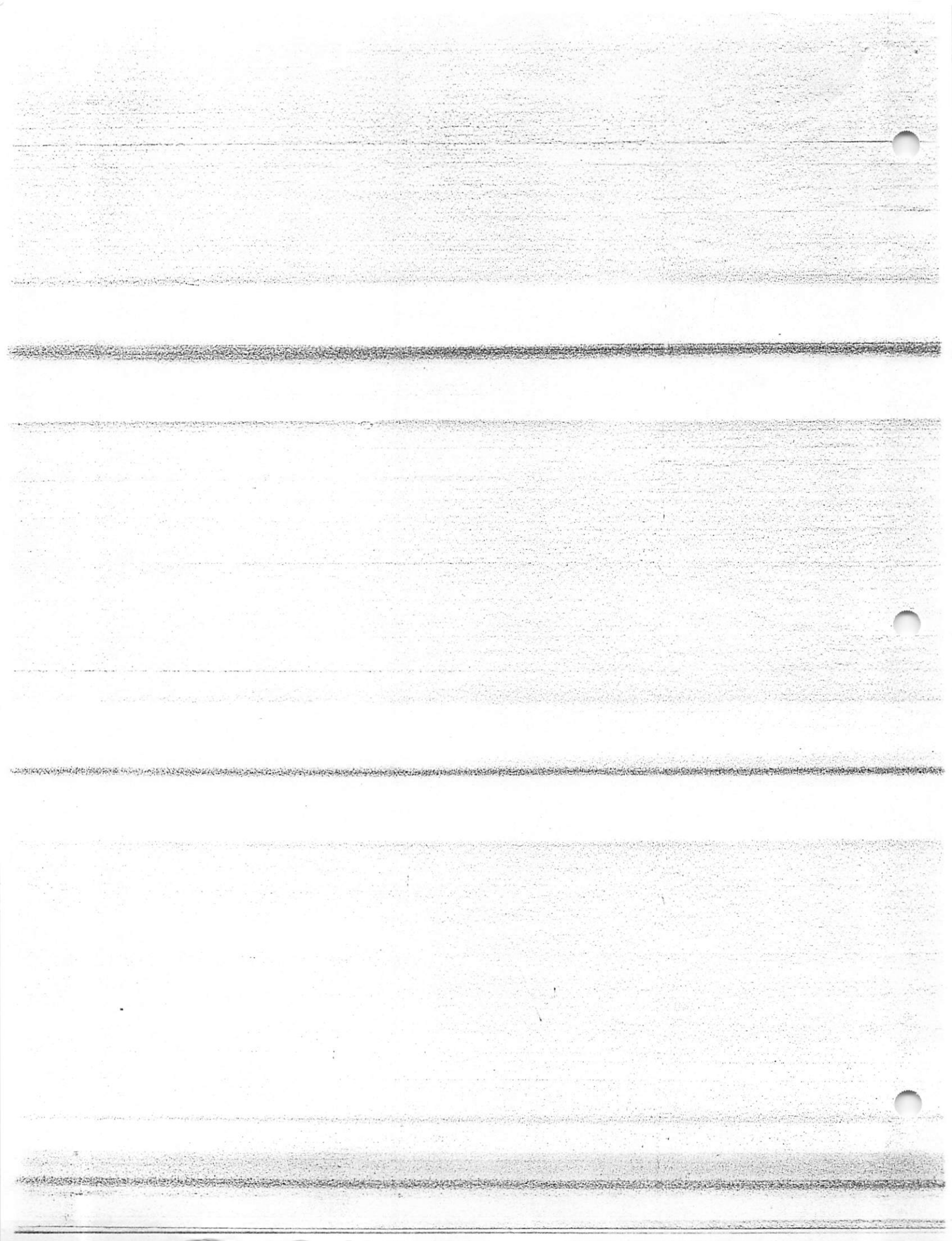
Annual leave. Full-time Council employees may accrue annual leave at rates not to exceed those for Federal employees. Part-time employees may accrue at a percentage of the hours worked compared to 40 hours. A 20 hour a week employee would accrue half the leave accrued by a 40 hour a week employee.

--up to 3 years service: 4 hours leave per biweekly pay period (13 days per year);

--3 to 15 years: 6 hours per (bi-weekly) pay period (20 days per year);

--over 15 years: 8 hours per per (bi-weekly) period (26 days per year).





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

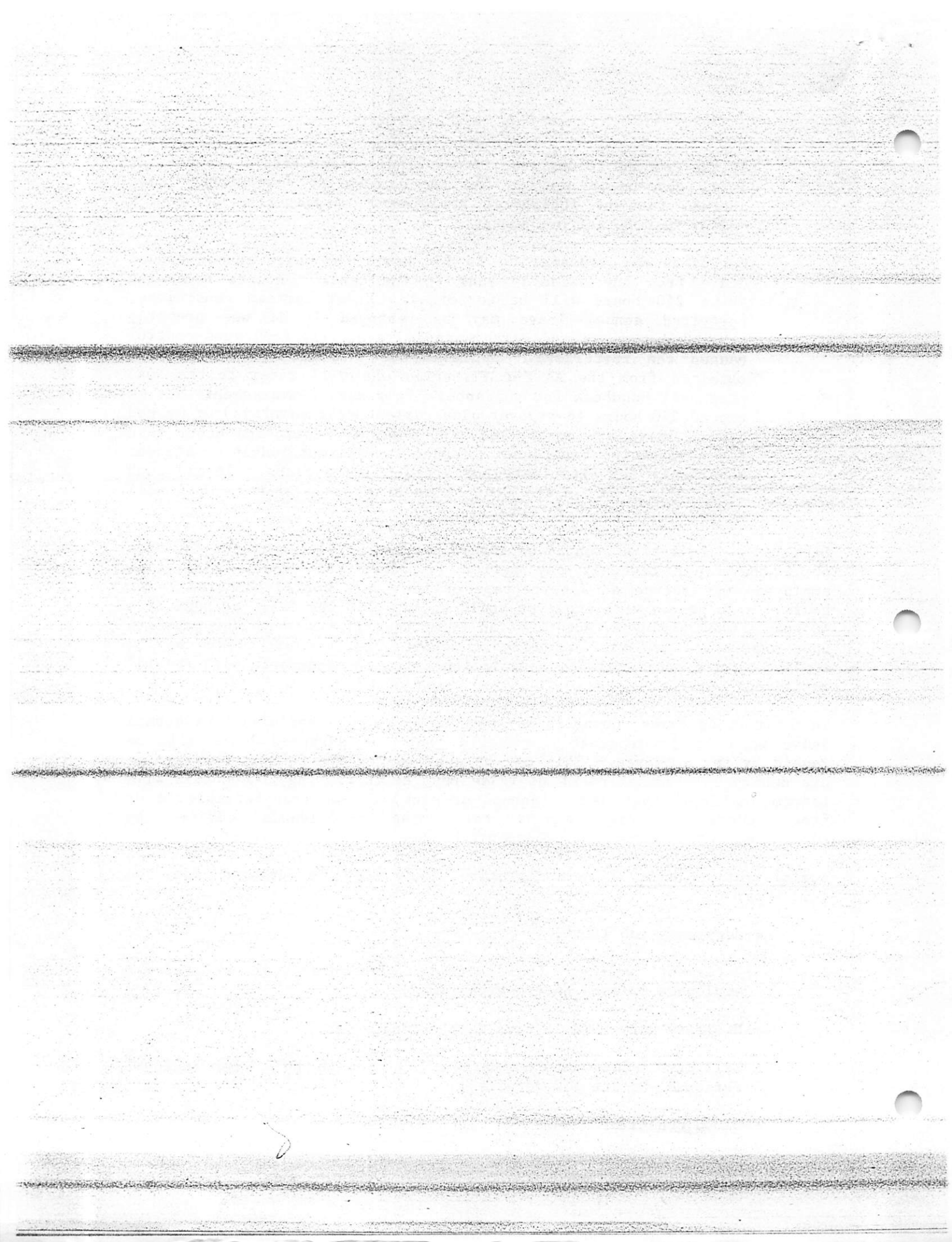
Employees may transfer up to 240 hours (30 days) unused annual leave from one calendar year to the next. Amounts remaining above 240 hours will be forfeited. Under certain conditions, forfeited annual leave may be restored if it was properly scheduled for use and circumstances beyond the employees control caused the forfeiture. Approval for this restoration must be obtained from the AA for Fisheries who will refer to the NOAA personnel handbook for guidance. Lump sum reimbursements not to exceed 240 hours (carryover plus current year earnings) of unused annual leave are authorized upon employee separation other than for termination for cause. (Councils will not budget or account separately for anticipated or accrued leave costs. Should such costs arise and exceed Council funding availability, NMFS will defray these costs in total.)

Sick leave. Full-time Council employees may accrue sick leave at the rate of 4 hours per biweekly pay period (13 days per year). Part-time employees may accrue at a percentage of the hours worked compared to 40 hours. A 20 hour a week employee would accrue half the leave accrued by a 40 hour a week employee. Accumulation is without limit. Lump sum payments upon separation are not authorized. However, accrued sick leave may be applied toward total service computation date, in accordance with Federal retirement service.

In meritorious cases, Councils may advance up to one year's sick or annual leave when it is reasonably expected that the advanced leave will be repaid by the employee. This may be approved by the Council Chairman or his designee (designation of designee must be in writing). Councils will inform employees that leave (annual or sick) is not transferrable to or from Federal agencies except for those individuals covered by intergovernmental personnel agreements.

Administrative leave. Administrative leave may be granted for the following:

- Jury duty (no limit)
- Inclement weather (to coincide with dismissal of Federal employees in same geographical area)
- Military duty (NTE 15 days each calendar year)
- Military induction examination (check with NOAA/NMFS Regional Personnel Office for details).
- Blood donation



II. REGIONAL FISHERY MANAGEMENT COUNCILS

E. ADMINISTRATIVE PRACTICES AND PROCEDURES

4. TRAVEL REIMBURSEMENT.

Each Council must include travel reimbursement procedures in their SOPP's.

4(a). Council Members.

Section 302(d) of the FCMA provides that the voting members of each Council, the Executive Director of the Marine Fisheries Commission on each Council, and the nonvoting Alaskan member of the Pacific Council will be reimbursed by the Secretary for actual expenses incurred in the performance of Council duties. The NOAA General Counsel has interpreted this as excluding the option of paying per diem in lieu of actual subsistence, although it does not preclude establishing reasonable subsistence limits in line with Federal limits. Accordingly, Council members are entitled to reimbursement for actual official travel expenses in the following amounts:

--in the conterminous United States: reasonable daily hotel costs plus \$26 for meals (including taxes and tips).

--outside the conterminous U.S. up to the maximum per diem allowance officially authorized for the location, or hotel plus \$26 (as above) whichever is higher.

Official telephone calls, taxis, privately-owned vehicle mileage, parking, porters, etc., will be reimbursed in the amount of actual expenditure and are not included in meal and lodging limits.

All claims for reimbursement should be supported with receipts for lodging

When travelling in connection with Council business, voting Council members who are Federal employees are entitled to the subsistence rates specified for non-Federal Council members, without approval of NMFS.

4(b). Council Staff.

Subsistence rates and support requirements are the same as those described for the Council members above.

4(c). Members of SSC's and AP's, Plan Development Teams, Consultants, etc.

Section 302 (f) of the Act provides for the actual expenses of the members of the Scientific and Statistical Committees and the Advisory

Panels. Accordingly, these individuals will receive reimbursement under the same procedures described for Council members, above. The same procedures also apply to Plan Development Teams, consultants, etc.

4(d). Foreign Travel

All foreign travel shall be approved, in advance, by the Assistant Administrator for Fisheries. Requests for foreign travel approval shall be submitted, in writing, sufficiently (normally 15 days) in advance to the Assistant Administrator, ATTN: Executive Director (Fx3).

4(e). Invitational Travel.

Domestic. Invitational travel for non-Council personnel may be approved by the Council Chairman or his authorized representative. The subsistence rates and support requirements described above are also applicable to non-Council personnel travelling at Council (Government) expense.

Foreign. The provisions above also apply to invitational foreign travel.

4(f). Travel to Canada/Mexico

Council Chairmen or their authorized representatives may approve routine across-the-border travel for Council members and employees within the rates specified above.

4(g). Mode of Transportation

Other-than-first-class air transportation shall be utilized when available. Travel via first class air shall be justified on the reimbursement voucher and approved by the Council Chairman or his authorized representative.

Privately-owned vehicles (POV) may be authorized when other modes of transportation are not available or convenient. When POV is authorized for the convenience of the traveller, the reimbursed costs shall not exceed those of other-than-first-class air travel.

Substantial savings can be realized by utilizing rail travel, and this mode of transportation should be considered when available and adequate.

While it is unlikely that water vessel transportation will be required for Council operations, accommodations equivalent to other than first class shall be utilized, when/if necessary.

4(h). Miscellaneous Travel Expenses

The cost of taxis is authorized in addition to the daily subsistence rate.

The cost of official telephone calls is authorized in addition to daily rate of per diem.

Privately-owned-vehicle mileage is authorized at the current authorized GSA rate for official business. Actual mileage or officially recognized map distances shall be shown on the reimbursement vouchers to support the mileage claims.

4(i). Permanent Change of Station Allowances

Allowances authorized and costs incurred because of a permanent change of station will be as authorized and approved by the Chairman of the Council or his designee.

II. REGIONAL FISHERY MANAGEMENT COUNCILS

E. ADMINISTRATIVE PRACTICES AND PROCEDURES

5. PROCUREMENT, PROPERTY, AND SPACE MANAGEMENT.

5(a). Procurement.

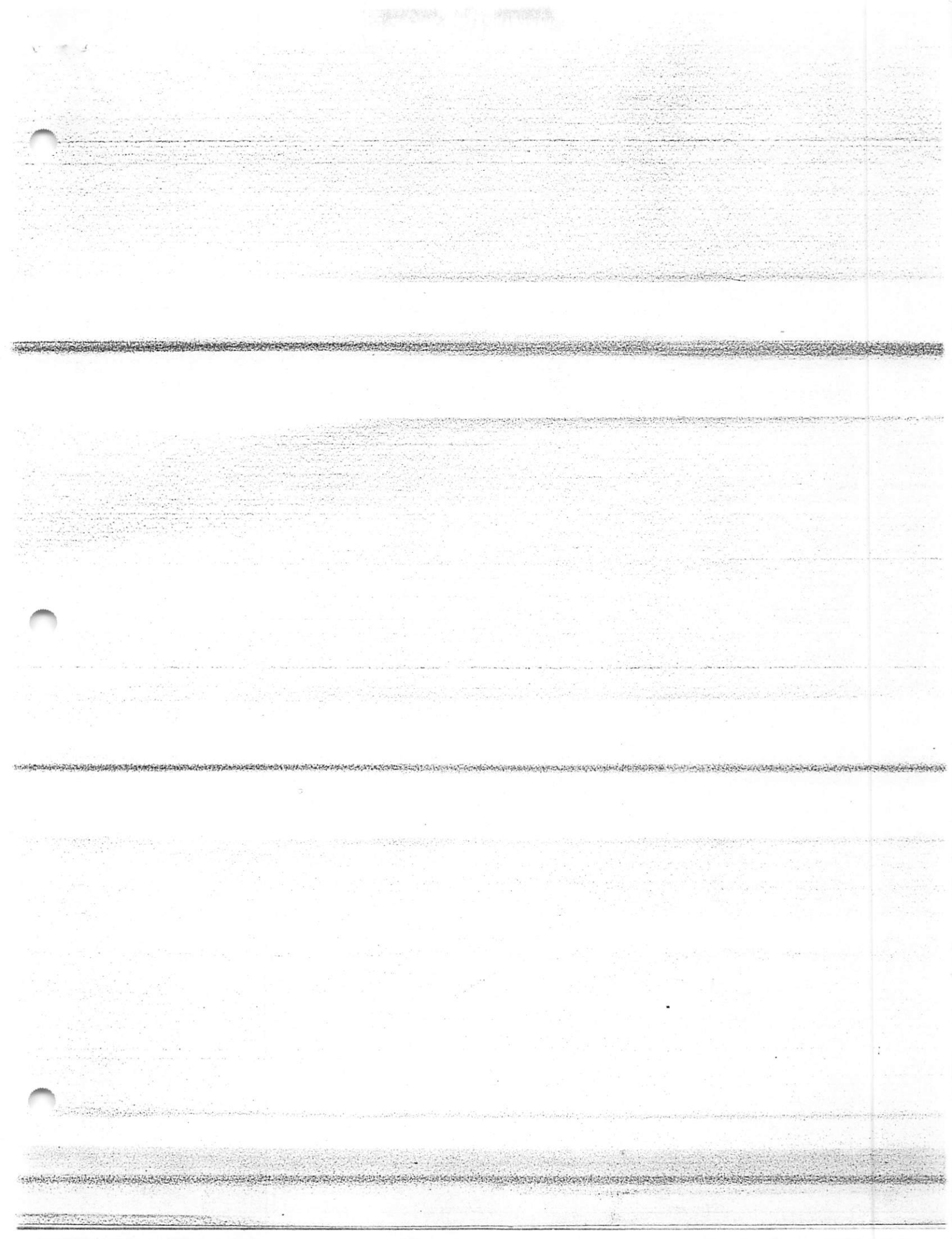
Attachment 0 to OMB Circular A-110 prescribes standards for grantees in establishing procedures for the procurement of supplies, equipment, and services with Federal funds. These standards must be made an integral part of Councils' SOPP's and published in the FEDERAL REGISTER.

In order to ensure uniform understanding and compliance with these standards, NMFS does not usually award programmatic (contract) funds to Councils until a detailed draft contract or solicitation has been received from the requesting Council. Further, certain contracts which are contemplated by the Councils, as further specified below, will be reviewed by the Regional Grants Office serving the Council. This review will be conducted at the solicitation and award stages for compliance with: OMB Circular A-110; the Council's SOPP's; the intent of Federal procurement law (which is to provide, to the maximum extent practical, open and free competition and the avoidance of conflicts of interest); and other relevant provisions designed to maintain public confidence in the transactions of government instrumentalities. This review will be performed for the following non-GSA Council contracts (see II.E.2(b)):

1. all procurements which may exceed \$10,000 for a particular commodity or service, or for multiple services from one vendor;
2. all sole-source procurements which total more than \$5,000; and
3. all contracts which might appear to benefit a member of a Council, Advisory Panel, Scientific and Statistical Committee, Council staff, a business associate, or a relative, regardless of amount.

Solicitations will not be released, nor contracts awarded, until all substantive issues noted by the Grants Officer have been satisfactorily resolved and acknowledged in writing by the Grants Officer. Final copies of all contracts awarded will be filed with the appropriate Regional Grants Officer.

The cost and financial management principles outlined in Chapter II.E.2. of this Handbook are to be fully applied to all Council procurement actions:



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

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

3. Programmatic contract services should always be identified against overall Council plans in a particular programmatic area. The relationship of individual contracts to past and projected goals must be reflected in all Council applications for contract funds.

Efforts must be made to inform minority firms of planned Council procurements. To this end, the Commerce Business Daily (CBD) should be considered by each Council as a means of publicizing contemplated contracts. The NMFS Regional Procurement Officer will assist each Council in using the CBD.

The purchase or lease of ADP equipment by Councils and its subcontractors requires prior approval by NMFS. Such approval will be made only after a cost-benefit analysis by the Council (regarding system life cost, lease vs. purchase, compatibility, etc.) demonstrates the economy of the proposed action.

Councils are authorized to purchase supplies and services (FTS, etc.) from GSA directly. Individual accounts have been set up for each Council, and information is available from the appropriate NMFS Regional Office.

5(b). Property Management.

Property management procedures must ensure adequate control and protection of Council property at all times. Such procedures will be clearly set forth in the Council's SOPPs, and must include the following as a minimum:

- a perpetual inventory system for all non-expendable items (office equipment, furniture, etc.)
- procedures for marking such items as Council property
- provision or safeguarding sensitive items such as cameras, biological equipment, etc. (No insurance, however, is required

since property loss would be indemnified by the U.S. Government.)

--procedures to be followed in disposing of surplus items

--a summary of all personnel authorized to have access to Council property (to include consultants, etc., if appropriate).

Listing of Federally-owned (Council) property must be submitted to the Regional Grants Officer annually (see Exhibit ___ - Attachment N to OMB Circular A-110).

Theft of Council property will be reported promptly to local law enforcement personnel, including the FBI, and the NMFS Regional Office.

5(c). Space Management.

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

--GSA leasing assistance

--NMFS Regional Contracting Office assistance

--Direct negotiations within the guidelines stated in 5(a) above).

In all cases, reasonableness will be exercised with regard to the amount of space acquired and the cost of such space.

II. REGIONAL FISHERY MANAGEMENT COUNCILS

F. RELATIONSHIPS

1. PUBLIC AFFAIRS ROLE (//// later.....///)

2. HABITAT IMPROVEMENT AND MANAGEMENT ROLE (//// later....///)

3. RESEARCH ROLE (//// later.....///)

II. REGIONAL FISHERY MANAGEMENT COUNCILS

G. Exhibits

III. FOREIGN FISHING OVERSIGHT

A. GENERAL

1. INTERNATIONAL FISHERY NEGOTIATIONS.

The Secretary of State, in cooperation with the Secretary of Commerce, negotiates Governing International Fishery Agreements (GIFA) with those countries which do not have a current treaty with the U.S. to fish in the FCZ, or beyond the FCZ for anadromous or Continental Shelf resources. An example of a GIFA may be found in Appendix X.

In addition to GIFAs, the Secretary is authorized to negotiate arrangements with countries who share boundaries with the U.S. in the FCZ, and to negotiate on behalf of U.S. fishermen who wish to fish in the fishery conservation zone (or for anadromous or Continental Shelf resources) of another nation. Council(s) concerned will be consulted for input.

2. ALLOCATIONS.

The Secretary of State is required, in consultation with the Secretary of Commerce, to determine the allocation of the total allowable level of foreign fishing (TALFF) among foreign nations. The TALFF is established in the PMP's prepared by the Secretary of Commerce and/or in the FMP's established by the Fishery Management Councils. The TALFF, if any, is that portion of the optimum yield of a fishery which will not be harvested by vessels of the United States.

In making the allocations, the Secretary of State and the Secretary of Commerce shall consider (1) traditional fisheries, (2) cooperation in research, (3) cooperation in enforcement with respect to conservation of fishery resources, and (4) such other matters deemed appropriate. Councils concerned will be consulted for input.

* * *

III. FOREIGN FISHING OVERSIGHT

B. FOREIGN FISHING APPLICATIONS AND PERMITS

A flow chart of the basic foreign fishing application/permit process, including its relationships to GIFAs and fees, is shown in Figure III-1.

1. FOREIGN FISHING APPLICATIONS

Foreign nations which have a GIFA may submit applications for fishing in the FCZ to the Department of State (OES/OFA/FA). Applications must be submitted annually on the forms entitled "Application for Vessel Permits to Fish Within the Fishery Conservation Zone of the United States" and/or "Application for Vessel Permits to Receive United States Harvested Fish from Vessels of the United States". In addition, a "Fishing Vessel Identification Form" is required for each vessel for which a permit is desired. Samples of these forms and instructions for their use are shown in Exhibit X. (Note: effective 1/15/80, permit fees must be submitted with application).

An application number is assigned which identifies each vessel's application, permit, and fishing and violation records in the computerized NMFS Enforcement Management Information System. An example is JA-79-0008, in which JA identifies the vessel as Japanese, 79 indicates the application is for calendar year 1979, and 0008 identifies the particular vessel. The four digit vessel number remains unchanged from year to year. Thus, a vessel's record for a particular year may be accessed via its basic application number modified for the year desired. A listing of nationality codes for nations with GIFA's is contained in Exhibit X.

Applications by foreign nations should be submitted to the Department of State at least 90 days prior to the date on which the foreign vessel desires to commence fishing. Upon receipt of a properly completed application, the Department of State transmits a copy to each appropriate Council, to NMFS, to Coast Guard Headquarters, and to three Congressional Committees. In addition, the Department of State publishes a summary of each application in the FEDERAL REGISTER. There is no requirement that all applications for a particular fishery be submitted together, or prior to the calendar year. However, Council's review process can be more expeditiously and effectively reviewed if a country's applications are submitted aggregately and/or adequately in advance to afford appropriate Council and/or public consideration

1(a). Council Review of Applications

Each Council shall submit written comments to the Assistant Administrator for Fisheries (F37) for each application which the Council receives pertaining to fisheries under its jurisdiction. Comments shall

be submitted within 45 days after the application is received and may include recommendations as to approval/disapproval, or appropriate conditions and restrictions.

The Assistant Administrator is not required to act on an application within any specified time. Consequently, a Council may be authorized a delay in submitting its comments, provided such delay will not preclude the timely issue of permits for the fishery concerned. For example, a request for a delay until March in submitting comments on applications for the Washington, Oregon, California trawl fishery which commences June 1 would be favorably considered. In general, however, Councils should expect to review applications throughout the year. Therefore, to expedite processing, authorization for the Executive Director or a Council Subcommittee to act for the Council on certain types of applications is highly recommended. Such authorization is particularly helpful during months in which the Council does not meet, and for routine applications such as non-joint venture harvesting vessels and support vessels with no history of violations.

Initial submission of comments does not preclude later revision. In particular, if public comments on an application cause a change in the Council's views, revised comments should be submitted to the NMFS. Unless revised comments are received, however, it will be assumed that public comments received after the Council's initial submission have not caused a change in view.

There is no limitation on the basis for Council comments on applications or on recommended conditions and restrictions. The Assistant Administrator will give full consideration to Council comments. The weight given to such comments is determined by their substance. If the Assistant Administrator does not concur with a Council's comments or rationale, he will respond and explain his reasoning.

1(b). Application Approval and Disapproval.

After receipt of Council comments or upon expiration of the 45-day comment period, and after consultation with the Department of State and with the Coast Guard, the Assistant Administrator may approve an application if he determines that the fishing described in the application meets the requirements of the Act. Each application is considered on its own merits; however, the following guidelines are generally applicable:

- applications by vessels for species or fisheries not covered by a PMP/FMP or for which there is no applicable national allocation will be disapproved
- applications by vessels with overdue assessed fines will be disapproved
- recommendations for disapproval based on a vessel's record of violations will receive favorable consideration. While the culpable parties may not be excluded from the fishery by such action, exclusion of the vessel must suffice until a system to exclude masters and/or fish managers is instituted.

Applications will generally not be disapproved solely for the purpose of limiting the number of vessels which may engage in a fishery. Neither application disapproval nor permit conditions and restrictions will normally be used as a substitute for the basic conservation and management measures of a PMP/FMP or regulations. Any such limitations imposed on a fishery must be based on the applicable PMP/FMP and implemented by appropriate regulations. However, case-by-case consideration of applications does allow flexibility in dealing with special circumstances as they arise.

Notification of application approvals is transmitted by NMFS to the Department of State (OES/OFA/FA) for further transmittal to the foreign nation involved. A copy of the NMFS transmittal to the Department of State is provided each cognizant Council, the Commandant of the Coast Guard, and three Congressional Committees. A sample letter of transmittal and application approval are shown in Exhibit X. The Department of State is advised of application disapprovals and reasons therefor, with a copy to each cognizant Council.

2. PERMIT CONDITIONS AND RESTRICTIONS.

Comprehensive conditions and restrictions are set forth each calendar year with the initial application approval for each nation. These comprehensive conditions and restrictions require a foreign nation to ensure that fishing by its vessels does not exceed any applicable allocations and is conducted in accordance with the GIFA and applicable permits, PMP's, FMP's, and regulations. Further, the conditions and restrictions require a foreign nation to appoint and maintain an agent within the U.S. These comprehensive conditions and restrictions must be accepted by a foreign nation as a prerequisite to initial permit issuance each calendar year and are applicable to subsequent application approvals and permits for that year. A sample of the comprehensive conditions and restrictions is shown in Exhibit X.

Additional conditions and restrictions may be attached to specific application approvals and permits, as necessary. When such additional conditions and restrictions are significant, specific acceptance by the applicable foreign nation is required. For additional conditions and restrictions of a minor nature, acceptance of the permit constitutes acceptance of the additional conditions and restrictions on that permit.

Generally, additional conditions and restrictions will not be employed as a substitute for (or to implement new) management measures in the applicable PMP/FMP or in the appropriate foreign fishing regulations. Additional conditions and restrictions are employed to cover new situations not adequately addressed in plans and regulations until they can be appropriately dealt with in regulations.

2(a). Permit Issuance.

After conditions and restrictions are accepted and applicable fees are paid, permits are issued by the Assistant Administrator via the Department of State. A sample letter of transmittal and permit is shown in Exhibit X. Effective 1/5/80 permit fees must accompany applications.

Each permitted vessel is assigned a permit number consisting of the application number with a letter suffix to indicate permit modifications. Thus, JA-79-0008-B indicates the second permit issued a particular Japanese vessel during calendar year 1979.

2(b). Permit Modifications and Sanctions.

The Assistant Administrator, NMFS, may modify a permit for purposes of "conservation and management" (as defined in section 3 (2) of the Act) of fishery resources covered by the permit. In addition, the Assistant Administrator may make technical modifications or corrections requested by a nation. Procedures for such modifications are specified in the foreign fishing regulations (50 CFR Part 611). A requested change which could significantly affect the status of any fishery resource will be treated as an application for a new permit and transmitted to cognizant Councils for comment.

A permit may be revoked, suspended, or modified if the permitted vessel has been used in the commission of an offense prohibited by section 307 of the Act, or if a civil penalty or criminal fine has not been paid. Procedures for revocation, suspension, or modification are specified in the civil procedures regulations (50 CFR Part 621).

2(c). Permit Format

A Permit Form provides spaces for insertion of all pertinent information contained in a permit. Permit Forms are distributed to foreign nations in advance of permit issuance in order that they may be readily available for completion when permits are issued. A properly completed Permit Form must be prominently displayed in the wheelhouse of each permitted vessel. A sample of this form is shown in Exhibit X.

C. JOINT VENTURES

A foreign vessel may not receive U.S. harvested fish in the FCZ unless such receipt is specifically authorized by the vessel's permit. The application/permit process is as specified in Chapter III.B. of this Operations Handbook.

Restrictions on U.S. harvesters should be contained in domestic regulations based on FMP's, rather than imposed on some U.S. harvesters through joint venture permit conditions and restrictions. However, if

FMP's and regulations do not adequately address a joint venture conservation and management issue, additional conditions and restrictions on joint venture permits will be considered. A Council's recommendations for such additional conditions and restrictions should be developed with public participation and submitted with a detailed rationale.

D. OBSERVER PROGRAM

The objectives of the foreign fishing vessel observer program are to collect biological data on foreign fisheries conducted within the U.S. Fishery Conservation Zone, and to provide a compliance presence aboard foreign fishing vessels.

The data collection aspect of the program is essential to the sound management of U.S. fisheries because it provides basic data used to assess the species, age, and sex characteristics of the foreign harvest, the actual quantity and type of fish harvested, and the amount of effort that was necessary to accomplish the harvest. These data, along with other information, are used to establish measures of maximum sustainable yield (MSY) and optimum yield (OY), both of which are critical to sound management.

The observer also has a compliance function because he is expected to inform foreign fishing vessel captains of violations that may be occurring during the conduct of a fishery. If the violation is serious and/or the captain fails to take corrective action, the observer reports the fact to the appropriate law enforcement authority who may take a variety of actions up to and including seizure of the vessel. Observers are especially effective in detecting and deterring violations involving the unlawful retention of prohibited species, excess by-catch and quota violations, use of unlawful gear, and requirements concerning the "failure to return to the water with a minimum of injury." All these regulatory requirements are important to the implementation of a fishery management plan, and all are difficult or impossible to enforce using other available techniques.

The cost of the observer program is charged to the foreign fishing interest which fishes in the U.S. Zone, and thus is conducted at virtually no cost to the U.S. taxpayer.

The foreign fishing vessel observer program therefore provides basic biological data on foreign fishing within the U.S. Zone, and a deterrent to serious, resource-related violations. Neither the data nor the deterrent provided by U.S. observers is obtainable at the same confidence level using any other method. In some foreign fisheries the observer program may be the only available means to collect critical data and attain an effective level of compliance. These fisheries are the Seamount Groundfish Fishery; the Tuna Longline Fishery, which has a high incidental catch of billfish; and the Bering Sea Tanner Crab Fishery.

The observer program is also expected to play an important role in joint venture efforts, and in fisheries where foreign activity has the potential to impact significantly on stocks of importance to U.S. fishermen. East and West Coast trawl fisheries fall into this latter category, along with some trawl fisheries in the Gulf of Alaska and the Bering Sea.

E. FEES

Fees must be paid to the Secretary of Commerce by the owner or operator of any foreign fishing vessel for which a permit is desired pursuant to Section 204 of the Act. The fee schedule applicable to foreign fishing is contained in 50 CFR section 611.22 of the foreign fishing regulations. This schedule provides for two types of fees: permit fees and poundage fees.

1. PERMIT FEES.

Depending on a vessel's activity, the following fees are charged:

<u>Vessel activity</u>	<u>Permit fee</u>
Catching with an applicable national allocation (per gross registered ton)	\$ 1.00
Catching without an applicable national allocation, i.e., a non-retention fishery (per vessel)	200.00
Processing (per gross registered ton) (up to \$2,500)50
Other support (per vessel)	200.00

For vessels which will engage in more than one activity, the highest applicable fee is charged. Permit fees must be paid when applications are made and are refundable if applications are denied. In some cases the substitution of like vessels may be allowed before permits are issued.

2. POUNDAGE FEES.

The poundage fee for each allocated species is calculated at 3.5 percent of the actual landed value per metric ton of the species to U.S. fishermen, where U.S. landing data are available. This fee must be paid in advance on the entire national allocation if the nation receiving the allocation chooses to accept it. After fishing is completed, the foreign nations may apply for a refund of poundage fees, if the actual catch is substantially lower than the allocation for that year. Section 611.22(b) of the foreign fishing regulations provides a listing of average ex-vessel values (per metric ton), by species, upon which the poundage fees are calculated.

3. BILLING PROCEDURES.

The Office of Resource Conservation and Management, NMFS (F37), determines the amounts of all fees or other charges due and issues a request for billing to the Central Accounting Division, NOAA (AD54). AD54 reviews the billing requests received from NMFS for general correctness and completeness, issues Bills for Collection (NOAA Form 34-79), and transmits them to the Department of State, Office of the Deputy Assistant Secretary for Oceans and Fisheries Affairs, for forwarding to the foreign nations.

Remittances for fees (and any other charges) are to be sent to the Assistant Administrator for Fisheries, NOAA (F37). Payments received must be drawn in U.S. dollars, payable at a bank in the United States, and be made payable to the U.S. Department of Commerce, NOAA. All payments received in NMFS must be delivered without delay to the Collection Officer, NOAA (AD121).

4. REFUND PROCEDURES.

The fee schedule provides that poundage fees may be recomputed on the basis of actual catch data. If the catch is substantially lower than the allocation, a refund may be applied for. The following policies and procedures apply:

- refunds will be made only upon written application to the Assistant Administrator for Fisheries (NMFS), within 90 days after the end of the calendar year.
- the amount involved must be more than \$100.
- with the refund application, the applicant nation must provide detailed information on the actual catch, by species and by fishing area, indicating the reason for the difference between the amount of actual catch and the amount authorized in the allocation.
- upon verification of the catch data, the Assistant Administrator for Fisheries decides the amount of refund. The applicant is notified of this decision.
- any net balance of the refund remaining after outstanding bills for collection have been satisfied will be paid to the applicant.

* * *

IV. OPERATIONAL GUIDELINES FOR THE FISHERY MANAGEMENT PLAN (FMP) PROCESS

- A. INTRODUCTION
- B. ABBREVIATIONS USED ON CHARTS
- C. OVERVIEW OF THE FISHERY MANAGEMENT PLAN PROCESS
- D. PHASE I - PRE-PLANNING
- E. PHASE II - DRAFT FMP DEVELOPMENT
- F. PHASE III - PUBLIC REVIEW AND COUNCIL ADOPTION
- G. PHASE IV - SECRETARIAL REVIEW
- H. PHASE V - REGULATION PROMULGATION
- I. PHASE VI - CONTINUING FISHERY MANAGEMENT
- J. PHASE VII - FMP AMENDMENTS

(NOTE: "Operational Guidelines for the Fishery Management Plan (FMP) Process," as developed by F3 (Paul Leach) and Councils, is being printed. We proposed that these guidelines be incorporated into this handbook as Chapter IV.)

IV-1 thru

V. FISHERY MANAGEMENT REGULATIONS

A. PROMULGATION

1. GENERAL

2. PROCEDURES

NOTE: All to be added later..

3. JUDICIAL REVIEW

4. AMENDMENTS

5. EMERGENCY REGULATIONS

V. FISHERY MANAGEMENT REGULATIONS

B. ENFORCEMENT

1. GOALS AND RESPONSIBILITIES

The Fishery Conservation and Management Act of 1976 provides for the managed recreational and commercial harvest of fish from the Fishery Conservation Zone (FCZ). The goals of enforcement are to assure that this harvest takes place within the framework of governing regulations, and that violations do not occur at a rate that would threaten the realization of management objectives.

The FCMA assigns enforcement responsibility jointly to the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating (currently the Department of Transportation). Enforcement is carried out on behalf of the Secretary of Commerce by Special Agents of the National Marine Fisheries Service's Enforcement Division. By agreement, the Secretaries of Commerce and Transportation may utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal or State agency to enforce the FCMA. To date, agreements to enforce the FCMA have been signed with the States of Alaska and California.

2. POWERS OF AUTHORIZED OFFICERS.

Section 311(b) of the FCMA provides that authorized officers may, in the course of their enforcement duties:

- with reasonable cause arrest any person believed to have committed one of the prohibited acts enumerated by section 307 of the FCMA;
- board, search or inspect any fishing vessel subject to the provisions of the FCMA;
- seize any fishing vessel, its gear, furniture, appurtenances, stores, and cargo that has, or appears to have been used or employed in violating the FCMA;
- seize any fish wherever found if taken or retained in violation of the FCMA; and
- seize any other evidence related to any violation of the FCMA.

The above powers may be exercised with or without a warrant or other process.

2(a). Arrests.

Arrest is the taking into custody of a person accused of committing a crime. Arrest may be based upon probable cause--i.e., a set of facts or circumstances that would lead a reasonable and prudent person to conclude that something is true. There is no requirement for proof "beyond a reasonable doubt" prior to effecting an arrest. Arrest is not an instrument of punishment, but rather a procedure to insure the presence of an alleged violator at judicial proceedings.

2(b). Warrants.

Arrest should be made after obtaining an arrest warrant, except in instances where a suspect would escape the consequences of justice by the delay necessitated in applying for a warrant. It is the policy of the National Marine Fisheries Service to obtain a warrant whenever circumstances permit.

2(c). Search.

As with arrest, a search should be conducted after a warrant has been obtained. As a practical matter, a warrant may be impossible to obtain in a timely fashion, and warrantless searches are the rule under the FCMA. However, except under unusual circumstances, the inspection of a fishing vessel, which is in fact a search, is restricted to those areas of the vessel where evidence of an FCMA violation is likely to be found. Such areas include the fish holds, trawl deck, and gear lockers. Crew quarters, the engine room, and crew recreation areas, would not be subject to a warrantless search unless the inspecting officer had probable cause to believe evidence of an FCMA violation could be found in one of those areas, and it was impossible to obtain a warrant in a timely fashion.

3. ENFORCEMENT MODES

3(a). Relationship Between NMFS and the Coast Guard

As noted above, FCMA enforcement is the joint responsibility of the Secretary of Commerce and the Secretary of the department in which the Coast Guard operates. Because of differences in the organizational structure, training, overall mission, and personnel practices between these two agencies, Special Agents of the National Marine Fisheries Service (who enforce the FCMA on behalf of the Secretary of Commerce) and authorized officers of the U.S. Coast Guard have assumed different operational roles.

The differing roles of the NMFS Special Agent and the Coast Guard authorized officer in enforcement of the FCMA are sometimes defined by memoranda of understanding, written policy statements, or other formal means, but more frequently roles are dictated by local conditions, including the type of enforcement regulations in effect, the emphasis

placed on fisheries enforcement by local officials, and the availability and capability of personnel and equipment. In all cases, the efforts of the two agencies are designed to be complementary rather than redundant, and close cooperation between the two enforcement entities is found at all levels.

Joint fishery patrols. At-sea enforcement and surveillance, which focuses on both U.S. and foreign vessels, is normally carried out on Coast Guard aerial and surface patrol craft. NMFS Special Agents accompany these patrols on an as-needed and as-available basis to provide fisheries and enforcement expertise. NMFS Agents occasionally conduct aerial patrols from private, chartered aircraft, but only if a patrol is essential and Coast Guard equipment is unavailable.

Deployment of patrol craft. Aerial and surface patrol craft are deployed according to the nature of the regulations being enforced, the nature of the fishery, and the extent of the regulatory area. Other factors such as prevailing weather conditions and the obligations which the Coast Guard must fulfill in other maritime programs may also influence craft deployment. The type and location of Coast Guard aerial and surface craft normally employed in fisheries enforcement is listed in Table X.

Enforcement of regulations. Certain types of regulations must be enforced at sea while others can be enforced at sea only under certain conditions and/or with varying degrees of effectiveness. Table X lists the regulation type, whether the regulation is best enforced at sea or dockside, the type of patrol craft suited to enforce the regulation, and any special conditions necessary to make the regulation enforceable.

Dockside enforcement. Dockside enforcement is directed almost exclusively at U.S. vessels, though foreign fishing vessels are boarded and inspected on an opportunity basis when they call at U.S. ports for refilling, stores, or any other reasons. Coast Guard personnel seldom become involved in dockside enforcement of the FCMA, which is currently the near-exclusive responsibility of NMFS Special Agents. Agents are deployed throughout the Regions as indicated by Table X.

As the number of U.S. fisheries regulated by the FCMA increases, the capacity of NMFS to carry out an effective dockside enforcement program will likely be exceeded. As discussed above, involvement of the States (in concert with NMFS) in FCMA enforcement is generally viewed as the most effective and feasible method of meeting increased requirements. See Section 3(c), below.

3(b). Observers.

Scientific role. Section 201(c)(2)(D) of the Act provides for the placement of a U.S. observer aboard foreign fishing vessels harvesting FCMA-regulated species in the FCZ. The observer's function is to gather data on the composition and quantity of the foreign catch. Observer-

collected data are used by fishery scientists and managers to assist in assessing the status of the fisheries, and as one means to determine if a quota of a particular species or group of species has been reached. (See Chap. III.D. of this Handbook for further details.)

Enforcement role. An observer has no enforcement authority. However, if he (or she) is aware of a violation, he must report that fact to the vessel's captain and take note of the violation in his log. It is the policy of the National Marine Fisheries Service that observer data, records, and any other written or verbal observations be made available to enforcement officials, and that enforcement action will be taken in the event that observer-collected data support such action.

3(c). State Involvement.

Basis for participation by the States. Section 311(a) of the FCMA permits the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating to enter into agreements with the States for the purpose of enforcing fishery regulations. It is the policy of NMFS and the Coast Guard that both agencies be a party to any such agreements.

Criteria for negotiating an agreement. An agreement with a State for enforcement of the FCMA will be considered when it is deemed likely that State participation would enhance fishery conservation and management, and when:

- current enforcement in the fishery under consideration is not at optimum level;
- state participation will help achieve an optimum level of enforcement in the fishery under consideration;
- the role envisioned for the State is within the States' capability, i.e. adequate and appropriate resources, trained personnel, etc.

Desirability. While NMFS and the Coast Guard will both be a party to any agreement with a State for enforcement of the FCMA, the initiative for making a determination of the desirability of entering into an agreement may come from the State or the Regional Fishery Management Council as well.

Contents of an agreement. If an agreement with a State is deemed desirable, it will contain the following as a minimum:

- the type and amount of enforcement activity to be performed by the State
- the State agency to perform the enforcement activity

- the federal character of the activity
- the relationship of the State agency and agents to NMFS and the Coast Guard while performing FCMA enforcement activity
- administrative reporting requirements
- a termination clause
- any additional terms deemed necessary to define State participation
- a stipulation that State enforcement of the FCMA will be directed at U.S. vessels in State waters or the FCZ adjacent to State waters, and
- a provision for the cross-deputization of Federal officers to enforcement State law, if appropriate.

It is also highly desirable that the agreement contain a commitment by the State to adopt fishery conservation, management, and enforcement measures, and regulations, that complement the federal measures adopted under the FCMA for fisheries in the FCZ adjacent to the State.

4. ENFORCEMENT ACTIONS ON VIOLATIONS.

4(a). Options.

Upon detecting a violation of the FCMA, an authorized officer may take one or more of the following actions, depending upon the circumstances of the case and the discretion of the officer.

Issue a verbal warning. This is an informal action for very minor or technical violations. No record of such action is maintained except at the discretion of the officer in his field notebook. No subsequent enforcement or adjudication action takes place as a result of a verbal warning.

Issue a citation. This is a formal action taken to document a minor or technical violation. Details of the violation are recorded on Form X (see Exhibit X). A copy is issued to the person responsible for the vessel, and other copies are used internally for review and record purposes. Subsequent violations by the same responsible party, or vessel, may result in the application of more stringent sanctions. No fine or other type of sanction is levied as a result of the issuance of a citation. However, upon review a citation may be upgraded and a monetary penalty or other type of sanction may be applied.

Issue a Report of Violation. A Report of Violation is issued for more serious violations. It is the first step in a civil penalty process and normally results in a monetary penalty.

Effect seizure. For very serious violations of the FCMA, seizure of the vessel, its gear, cargo, appurtenances, and/or stores, may be effected. Seized items are subject to civil forfeiture proceedings. Seizure differs from other enforcement options in that, as a matter of policy, it does not take place solely at the discretion of the on-scene enforcement officers (see section 4(b) below for seizure procedure).

Effect arrest. Arrest of persons for suspected violations of the FCMA would normally be contemplated only in cases where:

- the individual would not be available for judicial proceeding resulting from the allegations;
- the individual's actions seriously interfered with, delayed, or prevented the legitimate activities of an authorized officer in the performance of his or her duties;
- the individual's actions seriously endangered the life or safety of an authorized officer.

4(b). Seizure Procedure.

Section 311(b)(1)(c) of the FCMA authorizes seizure of any fishing vessels, its gear, cargo, furniture, and appurtenances, used in violation of the Act. This action may be taken with or without a warrant. In cases where seizure of a foreign vessel is contemplated, the material facts of each case are reviewed by representatives of the Coast Guard, NMFS, Department of Justice, and Department of State. If the details of a violation justify seizure, and seizure is in the interest of the United States, on-scene enforcement officers are authorized to proceed with seizure without a warrant.

Seizure of a U.S. vessel is normally unnecessary because the vessel and the individuals involved in an alleged violation are subject to continuous U.S. jurisdiction. However, seizure may be considered at least in aggravated situations or in instances of repeated serious violations. If seizure of a U.S. vessel is deemed appropriate, it is the policy of the National Marine Fisheries Service to do so with a warrant. It is also the policy of the National Marine Fisheries Service to seize the alleged unlawful catch of a U.S. vessel after obtaining a warrant in cases where seizure is the appropriate enforcement action.

5. ADJUDICATION.

5(a). Administrative Proceedings.

Responsibility. The Secretary of Commerce is authorized by Section 308 of the Act to assess a civil penalty in an amount not to exceed \$25,000 for each violation of the FCMA. This authority has been delegated through the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to the General Counsel of NOAA, or his designee.

Procedures. Title 50, Code of Federal Regulations Section 621 enumerates the procedures to be followed in adjudicating alleged violations of the FCMA that are subject to the administrative civil penalty process. Typically, a violation that is administratively adjudicated is handled as follows.

Upon detection of a violation, an authorized officer completes a Report of Violation (ROV), USCG Form X. The ROV is forwarded to the NMFS Regional Law Enforcement Office along with supporting case papers. Regional law enforcement personnel review the ROV and case papers for sufficiency. If the violation is adequately documented, the ROV is reviewed by the Regional Director and then forwarded to the Regional General Counsel.

The Regional General Counsel determines the proposed penalty and, if appropriate, the settlement penalty, and enters the amounts(s) on the ROV. He then signs the ROV as issuing officer and causes it to be served upon the responsible person (the respondent). Within 45 days of the date on the ROV, the respondent may:

- informally discuss the case with the Regional Counsel;
- accept the proposed or settlement penalty, if any. When respondent pays the penalty, the case will be considered closed and the respondent's liability ended.
- file a petition for relief with the Regional General Counsel.
- take no action and await service of a Notice of Assessment (NOA).

In filing a petition for relief, the respondent may contest the legal sufficiency of the charge or the allegations of facts contained in the ROV; or ask that the penalty be reduced, or that no penalty be assessed.

If the respondent files a petition for relief, or takes no action on an ROV, the Regional Counsel shall, after the prescribed 45-day waiting period, issue a Notice of Assessment to the respondent. The NOA sets forth the facts and conclusions upon which the Regional Counsel decided the violations charged were committed by respondent and that the penalty finally assessed is appropriate.

Within 45 days of receiving the NOA, the respondent may request a hearing of the case before an administrative law judge, or accept the assessment and pay the penalty, which will close the case. The respondent may also take no action. If the respondent does not request a hearing, the Regional Counsel's assessment shall become effective and shall constitute the final administrative decision by NOAA/NMFS in the administrative process. The respondent then has 30 calendar days from the date the Notice of Assessment became effective to make full payment. If payment is not received within 30 days, the Regional General Counsel may request the Attorney General to recover the amount assessed in the appropriate U.S. District Court.

If a written request for a hearing before an administrative law judge is filed in a timely manner, the procedures set forth in 50 CFR 621 Subpart C will govern the conduct of the hearing.

Penalties. Civil penalties assessed through the civil administrative procedure may not exceed \$25,000 per violation. In determining the actual amount of the penalty, the FCMA requires the Regional General Counsel to consider "the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."

5(b). Judicial Proceedings.

The District Courts of the United States have exclusive jurisdiction over cases arising under the provisions of the Fishery Conservation and Management Act of 1976. The Attorney General of the United States, through the appropriate U.S. Attorney, prosecutes persons charged with criminal violations of the FCMA, and makes application to the court for the civil forfeiture of fishing vessels used, and of fish taken in violation of the FCMA.

Criminal charges--aggravated offenses. The FCMA authorizes criminal charges to be brought against any person who:

- refuses to permit an authorized enforcement officer to board a fishing vessel in connection with the enforcement of the FCMA;
- forcibly assaults, resists, opposes, impedes, intimidates, or interferes with an authorized enforcement officer conducting a fishing vessel inspection;
- resists a lawful arrest; or
- prevents or delays the arrest of another person who has committed an FCMA violation.

The above prohibited acts are collectively and informally referred to as aggravated offenses. An aggravated offense is punishable by a fine of not more than \$50,000, or imprisonment for not more than 6 months, or both. If the person accused of an aggravated offense used a dangerous weapon, caused bodily injury to an enforcement officer, or placed the officer in fear of imminent bodily injury, the punishment may be increased to a fine of not more than \$100,000, or imprisonment for not more than 10 years, or both.

Criminal charges--unlawful foreign fishing. In addition to aggravated offenses, criminal charges may also be brought against the owner or operator of a foreign fishing vessel that fishes within the boundary of any State. The owner or operator of a foreign fishing vessel may also be

charged with a criminal violation of the FCMA if the vessel is used to fish in the FCZ, or for anadromous species or Continental Shelf fishery resources beyond the FCZ, unless fishing is conducted in accordance with a valid, applicable permit. Offenders are subject to fines of not more than \$100,000, or imprisonment for not more than 1 year, or both.

Civil forfeiture. Any fishing vessel used and any fish taken in violation of the FCMA are subject to civil forfeiture to the United States upon order of the appropriate U.S. District Court. Seized fish may be sold and the proceeds of the sale held pending the disposition of the case. It is a rebuttable presumption that all fish found aboard a vessel seized in connection with a prohibited species were taken or retained in violation of the FCMA.

Out-of-court settlement. In cases involving the seizure of a vessel and/or its catch, it is frequently to the advantage of the government to reach an out-of-court settlement with accused violators. Out-of-court settlements are subject to the approval of the court, and serve to minimize the time and expenses associated with lengthy judicial proceedings. Because money is paid in lieu of forfeiture, the government may also benefit by not acquiring large quantities of undisposible fish, or a vessel that is unsuitable for any other purpose except the conduct of a distant water fishery.

6. REPORTS.

See Chapter II.D.5. in this Handbook.

7. ENHANCING COMPLIANCE.

Once the decision to implement management has been made, compliance is enhanced if:

- the need for regulation can be convincingly demonstrated
- regulations promulgated are straitforward and enforceable, and
- violations are processed quickly and penalties are sufficient to deter other violations.

The vast majority of citizens will voluntarily comply with laws and regulations that they perceive as necessary and in their interest. Therefore, it is imperative that fishermen accept as valid the scientific, economic, and other criteria on which management and regulations are predicated. Special Agents of the Enforcement Division of the National Marine Fisheries Service take every opportunity to meet with individuals and groups representing the fishing industry to explain all facets of the management regime as a means of enhancing compliance. Public education is considered an intergral part of the enforcement program and it is encouraged at every level, not only within the enforcement bureaucracy, but throughout NMFS.

Regulations that are unenforceable, or difficult to enforce, encourage violations not only of a particular regulation but of the regime as a whole. Conversely, regulations that are easily enforced have a complementary effect on one another and overall compliance is enhanced.

Once a violation has been detected and documented, compliance is enhanced if violations are quickly adjudicated and any fines that are levied are punitive without being economically ruinous.

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