



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

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To: Regional Directors  
National Marine Fisheries Service

From: Brian J. Rothschild  
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Planning Staff, Fx1

Subject: Questions and Answers from National Orientation Conference

Attached is a summary list of the questions that were asked by Council members during the individual Council sessions on Thursday, September 16, at the National Conference for Regional Fishery Management Councils. The answers to these questions were not made available to all Councils during the conference, either due to a shortage of time or because it was deemed advisable for our General Counsel to review them prior to their distribution. This review has been completed, and the list is forwarded to you for further distribution to Council members as you see fit.

As a part of the NMFS reorganization and the gradual phasing out of the Extended Jurisdiction Planning Staff, the Fisheries Management Operations Division has assumed the role of Council liaison, effective October 11. All routine matters dealing with Council operations should be referred there.

Attachment

cc: F  
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FAK



NATIONAL CONFERENCE FOR REGIONAL FISHERY MANAGEMENT COUNCILS--Questions and Answers

Q Does the Executive Director have to be a GS-15, or can he be paid more?

A The Executive Director may not be paid more than \$39,600 annually, at present rates. (See below regarding Cost of Living Allowance) Office of Management and Budget guidelines on the Federal Advisory Committee Act limit the salary of the Executive Director to the annual rate for a GS-15. The top of the range for a GS-15 is \$39,600 per year. In those areas where the Cost of Living Allowance applies it is paid in addition to the \$39,600.

Q Can a cost of living allowance be provided, as a supplemental to  
a. Council members?  
b. Staff support?

A Both FACA and FCMA, in specifying pay for Council members, allude to the "rate for GS-18 in the General Schedule."

It is clear that the statutes, in that wording, are limiting only that compensation derived from the position structure.

Similarly the statutes are drawing clear parallels, even if for administrative purposes, between committee/council salaries and Federal salaries.

Cost of living allowances derive, not from the position, but from areas in which the job is performed. COLA, in the Federal sector, is uniformly applied in the same percentage amount to all positions, and is distinctly not a part of basic rates derived from the General Schedule.

In this sense all personnel, both Council members and Council staff, in a recognized COLA area, should receive the same percentage amount as Federal employees in those areas.

Note: It should be recognized that there are different COLA amounts within Alaska.

Q What funds were allocated for the Scientific and Statistical Committee and the Advisory Groups in the 6-month budget?

A None. All are being held pending receipt of the first grant application from the Councils.

Q Who will sign the grants to Councils?

A 1. The Grant Application (Form 424) will be signed by the Chairman of the Council.

2. A Grant award notice (NOAA form 36-15) will be signed by both  
a. the Director of NMFS  
b. The NOAA Grants Officer

Q Who will be the technical monitor for the initial grants to the Councils?

A The Chief of the Fisheries Management Operations Division or other official designated by the Director of NMFS. Future grants probably will be administered by a designee of the appropriate NMFS Regional Director. The contents of grants will continue to be determined during the budget planning process described in Annex D of the Operations Manual.

Q What does the term "nation" mean in the Act? (As it relates to Section 3(18) of the Act).

A The United States as defined in the Act.

- Q Must the Councils use the services of the General Services Administration in their acquisition of space and equipment?
- A No. The Act (Sec. 302(f)(4)) requires that GSA provide to the Councils such facilities and services as it would any other agency. This is interpreted as requiring GSA to provide the service to the Councils if requested to do so. It does not require the Councils to use GSA.
- Q Can the Councils impose constraints on foreign vessels within our fishery zone relative to pollution?
- A The Councils can make recommendations to the Secretary, by way of a management plan or otherwise, regarding pollution constraints on foreign vessels. However, the Fishery Conservation and Management Act does not contain authority for regulating foreign vessels in the zone relative to pollution.
- Q The Operations Manual states that the Council chairman shall serve for a one-year period. Does this preclude a one-year appointee from serving as chairman since the term expires on August 11, 1977--less than one year from now?
- A The provision in the Manual and the Interim Final Regulations specifying a one-year term for the chairman of the Council does prevent a one-year Council member from being chairman. This limitation was included in the Regulations so that there would be some continuity in the first years of the Councils' operations. However, in light of comments received during the National Conference, this regulation will be changed to assure the eligibility of all Council members to serve as chairman.
- Q Can billfish which are taken by foreign vessels incidental to the catch of tuna be regulated?
- A Although the Act exempts tuna from the expansion of U.S. jurisdiction over fisheries resources, the Act does define "fishing" to include any "activity which can reasonably be expected to result in the catching, taking, or harvesting of fish" (Sec. 3(11)). Since billfish fall within the definition of "fish" (Sec. 3(6)), and the Act does not provide an exemption for incidental take, billfish taken incidental to the catch of tuna by foreign vessels can be regulated. This issue currently is being examined with the Department of State.
- Q Do members of the Council staffs have to be U.S. citizens?
- A No.
- Q What information is needed from Council members as to their commencement and termination of travel for salary purposes?
- A Certain Council members will be paid compensation (salary) while they are engaged in Council business, including time spent traveling on Council business. For salary purposes, all that is required is the date and time that travel (on Council business) began and ended.

- Q Can NOAA announce in local news media the existence of vacancies on a Council staff prior to the Council's first meeting?
- A Yes, if all other conditions of employment are met (position description, salary range, free of discrimination, etc.).
- Q Assume that a single Council has been designated by the Secretary to prepare a plan for a fishery management unit whose range overlaps several Councils. Can that Council hold public hearings outside its geographical area?
- A Yes. The Act (sec. 302(h)(3)) requires that hearings be held "in the geographical location concerned." Generally, this refers to the geographical area concerned with the management unit, rather than the geographical area represented by the States on the Council.
- Q May Councils hold joint public hearings outside of their geographical areas--yet in an appropriate location for the "range" of the fishery? And are joint Council meetings legal?
- A Yes, to both questions. There is no provision in the Act that would prevent Councils from conducting joint hearings in the geographical area concerned with a fishery.
- Q Can the Council pay travel and per diem costs for individuals incidental to job interviews--both for support staff positions and committee composition? (i.e., if an individual in Florida is a possible candidate for a job, could the Council reimburse his travel to San Juan, P.R., to be interviewed?)
- A After the award of grant funds, the Councils may pay travel costs for pre-employment interviews at the discretion of the Council.
- Q Can an individual from a State institution be hired under contract as a means of paying them to be on committees or panels?
- A No. There is no authority to compensate members of committees or panels, such as there is for members of the Council and the support staff.
- Q Do working meetings of Regional Council Working Groups or Subcommittees have to be announced in the Federal Register and be open to the public?
- A The Federal Advisory Committee Act applies to meetings held for the purpose of advising an official of the Federal Government. This standard, rather than the distinction between formal and informal "working" groups, determines whether the meeting must be announced and open to the public. The determination as to whether a particular meeting or working session falls within this standard will have to be made by the Councils and their committees and advisory panels. The NOAA regional legal staff will be available at the request of the Councils to assist in making such determinations.
- Q Are there provisions for emergency meetings that do not require a 20-day Federal Register notice?
- A In emergency situations publication of notice in the Federal Register less than 20 days in advance of the meeting is possible. However, in such cases OMB guidelines require the advance concurrence of the Secretary of Commerce. (This function has been delegated to the Assistant Secretary for Administration.) The reasons for the emergency situation must be included in the Federal Register notice.