


MEMORANDUM

TO: Council members

FROM: Chris Oliver 
Executive Director

DATE: June 8, 2003

SUBJECT: Revised Statement of Organization, Practices, and Procedures (SOPPs)

ACTION REQUIRED

Approve revised SOPPs for publication in the FEDERAL REGISTER

BACKGROUND

About two years ago, after several discussions regarding the Council Handbook published by NOAA (which established administrative guidelines for all eight Councils) it was determined that the Council Handbook was no longer necessary, as there were numerous operational differences among the Councils. Instead, each Council was asked to update their SOPPs to reflect the generic operational rules which were published in November 2001 (attached as Item D-4(a)). I have done so, and submitted the revised draft to NOAA, though the Council needs to review and approve the revised version before final approval by NOAA. Once approved, they will be published in the FEDERAL REGISTER and be made available to the public.

The revised draft is attached, with changes/additions underlined. Most of the changes are drawn directly drawn from the November 2001 published rules, though I have made some additional changes/clarifications to reflect our Council's way of doing business in a few specific areas, which I will outline for you.

consumer fraud and speculative applications. Pending resolution of these issues, and out of caution, the Commission required new applications filed for the Shared Paging Channels to continue to be processed under the interim licensing rules. The Commission, however, again relaxed the interim licensing rules by eliminating the 40-mile requirement and allowing incumbents to file for new sites on the Shared Paging Channels at any location. The Commission also affirmed its decision to allow new applicants to file applications for private, internal-use systems. While the interim licensing rules as developed in Commission decisions apply to all of the Shared Paging Channels, the *Second R&O* specifically revised § 90.494(g) of the Commission's rules to reflect the interim licensing rules for purposes of the five 929 MHz shared paging channels.

In the *Third R&O*, the Commission considered the many comments filed on the issue of application fraud. In response, it determined that adding language to FCC Form 601 warning applicants that failure of a licensee to meet construction or coverage requirements would result in termination of the license would be generally helpful to applicants in all services and might also help deter fraud. The Commission directed the Bureau to remove the interim licensing rules for the Shared Paging Channels, including § 90.494(g) of its rules, once the warning language was added to FCC Form 601.

II. Lifting the Freeze on Applications for Licenses on the Shared Paging Channels

As of November 9, 2001, the following warning language has been added near the signature block on the FCC Form 601 application in Universal Licensing System (ULS), as well as the FCC Form 601 available through Fax-on-Demand and the Bureau's website: "Upon grant of this license application, the licensee may be subject to certain construction or coverage requirements. Failure to meet the construction or coverage requirements will result in termination of the license. Consult appropriate FCC regulations to determine the construction or coverage requirements that apply to the type of license requested in this application."

The Bureau has initiated the process for printing new paper copies of FCC Form 601 that contain the warning language, but those copies will not be available to the public for several weeks. As already noted, where paper copies of FCC Form 601 may be used or are needed, updated applications containing the warning language can be

obtained from Fax-on-Demand (202-418-2830) or are currently available for downloading from <http://www.fcc.gov/wtb/csinfo/orderfrm.html>. The Bureau also notes that applications for new licenses on Shared Paging Channels must be filed through certified land mobile frequency coordinators. The Bureau has provided the updated version of FCC Form 601 to each coordinator and has encouraged them to point out the new warning language to applicants for the Shared Paging Channels.

Having added the warning language to FCC Form 601, the Bureau eliminates the interim licensing rules that have applied to lower band shared paging channels and the five 929 MHz shared paging channels. Accordingly, pursuant to the *Third R&O*, the Bureau removes the interim licensing rules developed through Commission decisions as well as § 90.494(g) of the Commission's rules as applied to the Shared Paging Channels. Any qualified entity may file an application for a license on the Shared Paging Channels for new sites at any location. Applications for new sites filed on these Shared Paging Channels continue to require frequency coordination prior to filing the applications with the Commission.

Procedural Matters and Ordering Clauses

Pursuant to §§ 4(i), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 332, and the *Third R&O*, the Commission's interim licensing rules as applied to the Shared Paging Channels are eliminated and § 90.494(g) of the Commission's rules, 47 CFR 90.494(g), is removed as set forth in the *Order*.

This action is taken pursuant to the *Third R&O* and the authority delegated in § 0.331 of the Commission's rules, 47 CFR 0.331.

The provisions of this *Order* and the Commission's rules, as amended in the *Order*, shall become effective November 19, 2001 in accordance with § 1.103 of the Commission's rules, 47 CFR 1.103.

List of Subjects in 47 CFR Part 90

Paging, Radio.
Federal Communications Commission.
Katherine M. Harris,
Deputy Chief, Commercial Wireless Division,
Wireless Telecommunications Bureau.

Rule Changes

For the reasons set forth in the preamble, part 90 of Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Section 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

§ 90.494 [Amended]

2. Section 90.494 is amended by removing paragraph (g).

[FR Doc. 01-28883 Filed 11-16-01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 010427105-1260-02; I.D. 011001F]

RIN 0648-AJ82

Magnuson-Stevens Act Provisions; Update of Regulations Governing Council Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule updating regulations governing the operation of Regional Fishery Management Councils (Councils) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule makes amendments by codifying recent administrative and policy changes and by making editorial changes for readability, clarity, and uniformity. The intent of this final rule is to update Council regulations to reflect current policies and procedures.

DATES: Effective December 19, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Surdi, F/SF5, NMFS, 301-713-2337. This Federal Register document is also accessible via the Internet at the Office of the Federal Register Web site at http://www.access.gpo.gov/su-docs/aces/aces_140.tml.

SUPPLEMENTARY INFORMATION:

Background

Currently, regulations pertaining to general provisions of the Magnuson-Stevens Act related to Council operations are contained in title 50 of the Code of Federal Regulations (CFR). NMFS is updating part 600 (Regional

Fishery Management Councils, subpart B, and Council Membership, subpart C) to codify important provisions of the recently withdrawn Council Operations and Administration Handbook (Handbook), which was a reference guide that compiled various requirements of the Magnuson-Stevens Act and other applicable law, as well as policy guidance. Some of the guidance contained in the Handbook consisted of regulations that were removed from title 50 of the CFR at the time the Handbook was developed. NMFS is reinstating some of those former regulations because they are not contained elsewhere and they are necessary for the Councils to function. Other proposed additions and revisions were not contained in the Handbook, and were not previously in regulation.

On May 25, 2001, NMFS published a proposed rule at 66 FR 28876 to update the regulations governing Council operations; comments were requested through June 25, 2001. The preamble of the proposed rule contained detailed descriptions of the proposed regulations, which are not repeated here. The following section contains the response to the only comment received during the comment period.

Comment and Response

Comment. One commenter objected to the language in the proposed rule that would allow a person who is not a state employee to serve as a designee of a principal state official on a Regional Fishery Management Council. Currently, the principal state official's designee is required to be an employee of the state. This commenter argued that a state employee will best represent the state's and the public's interests in fishery management issues. A non-state employee, on the other hand, may represent narrower interests. Therefore, this commenter proposed maintaining the previous CFR language that addressed this issue.

Response. NMFS maintains the change contained in the proposed rule. NMFS believes that the new language provides additional flexibility that will not compromise the representation of state and public interests in matters taken up by the Councils. This added flexibility was specifically requested by some of the Councils, in part because some states have very small offices and in the past have been limited to a small pool of candidates. Based on prior dealings with states, NMFS believes that the states will exercise this discretion in a responsible manner. It is not in a state's best interest to select someone with very narrow interests or experience, and it is not likely to do so.

Essentially, this change will enable state governments to select their designees from a larger pool of candidates, better ensuring that the states' interests will be effectively represented.

Classification

NMFS has determined that this final rule is consistent with the Magnuson-Stevens Act. This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C 601 *et seq.* The factual basis for this certification was published with the proposed rule. No comments were received regarding the economic impact of this final rule. As a result, no final regulatory flexibility analysis was prepared.

NMFS has analyzed this final rule in accordance with the criteria of the National Environmental Policy Act (NEPA). This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it provides only an update to agency procedure or practice (i.e., procedures and guidelines for the administration of Councils). NMFS has determined that issuance of this policy qualifies for a categorical exclusion as defined by NOAA 216-6 Administrative Order, Environmental Review Procedures.

This final rule contains no collection-of-information requirements subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing.

Dated: November 9, 2001.

Rebecca Lent,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 subparts B and C are amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. Section 600.120 of subpart B is revised to read as follows:

§ 600.120 Employment practices.

(a) Council staff positions must be filled solely on the basis of merit, fitness for duty, competence, and qualifications. Employment actions must be free from discrimination based on race, religion, color, national origin, sex, age, disability, reprisal, sexual orientation, status as a parent, or on any additional bases protected by applicable Federal, state, or local law.

(b) The annual pay rates for Council staff positions shall be consistent with the pay rates established for General Schedule Federal employees as set forth in 5 U.S.C. 5332, and the Alternative Personnel Management System for the U.S. Department of Commerce (62 FR 67434). The Councils have the discretion to adjust pay rates and pay increases based on cost of living (COLA) differentials in their geographic locations. COLA adjustments in pay rates and pay increases may be provided for staff members whose post of duty is located in Alaska, Hawaii, Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and Puerto Rico.

(1) No pay adjustment based on geographic location shall exceed the COLA and locality pay adjustments available to Federal employees in the same geographic area.

(2) [Reserved]

(c) Salary increases funded in lieu of life and medical/dental policies are not permitted.

(d) Unused sick leave may be accumulated without limit, or up to a maximum number of days and contribution per day, as specified by the Council in its SOPP. Distributions of accumulated funds for unused sick leave may be made to the employee upon his or her retirement, or to his or her estate upon his or her death, as established by the Council in its SOPP.

(e) Each Council may pay for unused annual leave upon separation, retirement, or death of an employee.

(f) One or more accounts shall be maintained to pay for unused sick or annual leave as authorized under paragraphs (d) and (e) of this section, and will be funded from the Council's annual operating allowances. Councils have the option to deposit funds into these account(s) at the end of the budget period if unobligated balances remain. Interest earned on these account(s) will be maintained in the account(s), along with the principal, for the purpose of payment of unused annual and sick leave only. These account(s), including interest, may be carried over from year to year. Budgeting for accrued leave will be identified in the "Other" object class categories section of the SF-424A.

(g) A Council must notify the NOAA Office of General Counsel before seeking outside legal advice, which may be for technical assistance not available from NOAA. If the Council is seeking legal services in connection with an employment practices question, the Council must first notify the Department of Commerce's Office of the Assistant General Counsel for Administration, Employment and Labor Law Division. A Council may not contract for the provision of legal services on a continuing basis.

3. Section 600.125 of subpart B is revised to read as follows:

§ 600.125 Budgeting, funding, and accounting.

(a) Each Council's grant activities are governed by OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), OMB Circular A-122 (Cost Principles for Non-Profit Organizations), 15 CFR Part 29b (Audit Requirements for Institutions of Higher Education and other Nonprofit Organizations), and the terms and conditions of the cooperative agreement. (See 5 CFR 1310.3 for availability of OMB Circulars.)

(b) Councils may not independently enter into agreements, including grants, contracts, or cooperative agreements, whereby they will receive funds for services rendered. All such agreements must be approved and entered into by NOAA on behalf of the Councils.

(c) Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to the NMFS Regional Administrator in accordance with applicable Department of Commerce regulations.

4. Section 600.135 is added to subpart B to read as follows:

§ 600.135 Meeting procedures.

(a) Public notice of regular meetings of the Council, scientific statistical committee or advisory panels, including the agenda, must be published in the *Federal Register* on a timely basis, and appropriate news media notice must be given. The published agenda of any regular meeting may not be modified to include additional matters for Council action without public notice, or such notice must be given at least 14 days prior to the meeting date, unless such modification is to address an emergency under section 305 (c) of the Magnuson-Stevens Act, in which case public notice shall be given immediately. Drafts of all regular public meeting notices must be transmitted to the NMFS Headquarters

Office at least 23 calendar days before the first day of the regular meeting. Councils must ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings.

(b) Drafts of emergency public notices must be transmitted to the NMFS Washington Office; recommended at least 5 working days prior to the first day of the emergency meeting. Although notices of, and agendas for, emergency meetings are not required to be published in the *Federal Register*, notices of emergency meetings must be promptly announced through the appropriate news media.

(c) After notifying local newspapers in the major fishing ports within its region, having included in the notification the time and place of the meeting and the reason for closing any meeting or portion thereof:

(1) A Council, SSC, AP, or FIAC shall close any meeting, or portion thereof, that concerns information bearing on a national security classification.

(2) A Council, SSC, AP, or FIAC may close any meeting, or portion thereof, that concerns matters or information pertaining to national security, employment matters, or briefings on litigation in which the Council is interested.

(3) A Council, SSC, AP, or FIAC may close any meeting, or portion thereof, that concerns internal administrative matters other than employment. Examples of other internal administrative matters include candidates for appointment to AP, SSC, and other subsidiary bodies and public decorum or medical conditions of members of a Council or its subsidiary bodies. In deciding whether to close a portion of a meeting to discuss internal administrative matters, a Council or subsidiary body should consider not only the privacy interests of individuals whose conduct or qualifications may be discussed, but also the interest of the public in being informed of Council operations and actions.

(d) Without the notice required by paragraph (c) of this section, a Council, SSC, AP, or FIAC may briefly close a portion of a meeting to discuss employment or other internal administrative matters. The closed portion of a meeting that is closed without notice may not exceed 2 hours.

(e) Before closing a meeting or portion thereof, a Council or subsidiary body should consult with the NOAA General Counsel Office to ensure that the matters to be discussed fall within the exceptions to the requirement to hold

public meetings described in paragraph (c) of this section.

(f) Actions that affect the public, although based on discussions in closed meetings, must be taken in public. For example, appointments to an AP must be made in the public part of the meeting; however, a decision to take disciplinary action against a Council employee need not be announced to the public.

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

(h) Decisions of any Council are by majority vote of the voting members present and voting (except for a vote to propose removal of a Council member, see 50 CFR 600.230). Voting by proxy is permitted only pursuant to 50 CFR 600.205 (b). An abstention does not affect the unanimity of a vote.

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

5. Section 600.150 is added to subpart B to read as follows:

§ 600.150 Disposition of records.

(a) Council records must be handled in accordance with NOAA records management office procedures. All records and documents created or received by Council employees while in active duty status belong to the Federal Government. When employees leave the Council, they may not take the original or file copies of records with them.

(b) [Reserved]

6. Section 600.155 is added to subpart B to read as follows:

§ 600.155 Freedom of Information Act (FOIA) requests.

(a) FOIA requests received by a Council should be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to the NMFS FOIA Official to secure a FOIA number and log into the FOIA system. The Region will also obtain clearance from the NOAA General Counsel's Office concerning initial determination for denial of requested information.

(b) FOIA requests will be controlled and documented in the Region. The requests should be forwarded to the NMFS FOIA Officer who will prepare the Form CD-244, "FOIA Request and

Action Record", with the official FOIA number and due date. In the event the Region determines that the requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature, along with the "Foreseeable Harm" Memo and list of documents to be withheld, must be cleared through the NMFS FOIA Officer. Upon completion, a copy of the signed CD-244 and cover letter transmitting the information should be provided to the NMFS FOIA Officer and the NOAA FOIA Officer.

7. Section 600.205 of subpart C is revised to read as follows:

§ 600.205 Principal state officials and their designees.

(a) Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be appointed by a constituent state Governor as the principal state official

for purposes of section 302(b) of the Magnuson-Stevens Act.

(b) A principal state official may name his/her designee(s) to act on his/her behalf at Council meetings. Individuals designated to serve as designees of a principal state official on a Council, pursuant to section 302(b)(1)(A) of the Magnuson-Stevens Act, must be a resident of the state and be knowledgeable and experienced, by reason of his or her occupational or other experience, scientific expertise, or training, in the fishery resources of the geographic area of concern to the Council.

(c) New or revised appointments by state Governors of principal state officials and new or revised designations by principal state officials of their designees(s) must be delivered in writing to the appropriate NMFS Regional Administrator and the Council chair at least 48 hours before the

individual may vote on any issue before the Council. A designee may not name another designee. Written appointment of the principal state official must indicate his or her employment status, how the official is employed by the state fisheries agency, and whether the official's full salary is paid by the state. Written designation(s) by the principal state official must indicate how the designee is knowledgeable and experienced in fishery resources of the geographic area of concern to the Council, the County in which the designee resides, and whether the designee's salary is paid by the state.

§ 600.245 [Amended]

8. In § 600.245 of subpart C, paragraph (a) is removed, and paragraphs (b), (c), and (d) are redesignated as paragraphs (a), (b), and (c), respectively.

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North Pacific Fishery Management Council

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AGENDA D-4
JUNE 2003
Supplemental

STATEMENT OF ORGANIZATION, PRACTICES, AND PROCEDURES

Revised Draft
May 2003

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration North Pacific Fishery Management Council Statement of Organization, Practices, and Procedures

The North Pacific Fishery Management Council (Council), created by Section 302(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (the Act), hereby publishes a revised Statement of Organization, Practices, and Procedures (SOPP), as required by Section 302(f)(6) of the Act. Previous SOPPs, originally published on March 1, 1977, were adopted by the Council at a public meeting on February 7, 1997. This revised SOPP incorporates by reference several more specific policies that have been adopted by the Council regarding plan team operations, Advisory Panel operations, annual management cycles, etc., as well as the November 19, 2001 FEDERAL REGISTER final rule which updated the regulations governing Council operations. These policies are provided to each member of the Council, its Scientific and Statistical Committee, and its Advisory Panel.

Copies of the SOPP and individual policies may be obtained by writing the Executive Director, North Pacific Fishery Management Council, Room 306, 605 West Fourth Avenue, Anchorage, Alaska 99501; telephone (907) 271-2809.

1. COUNCIL JURISDICTION AND FUNCTIONS

The Council's geographic area of authority includes the Exclusive Economic Zone (EEZ) of the Pacific Ocean seaward of Alaska, including the Bering Sea, Aleutian Islands are, and the Gulf of Alaska. The states of Alaska, Washington, and Oregon are represented on the Council. The Council will:

- A. Prepare and submit to the Secretary of Commerce (Secretary) or his delegate a fishery management plan with respect to each fishery requiring conservation and management within the Council's geographic area of authority and such plan amendments as are necessary.
- B. Review and comment on applications for foreign fishing transmitted to the Council under a governing international fishery agreement by the Secretary of State under the terms of the Act.
- C. Prepare comments on any fishery management plan or amendments prepared by the Secretary which are transmitted to the Council under Section 304(c)(4) of the Act.
- D. Conduct public hearings at appropriate times and locations in the Council's membership area, to allow interested persons an opportunity to be heard in the development of fishery management plans and amendments and with respect to the administration and implementation of the provisions of the Act. When conducting a hearing outside Alaska, the Council will first consult with the Council in that area.
- E. Submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary.
- F. Review on a continuing basis, and revise as appropriate, the assessments and specifications contained in each fishery management plan for each fishery within its geographical area with regard to:
 - (1) the present and probable future condition of the fishery;

- (2) the maximum sustainable yield from the fishery;
 - (3) the optimum yield from the fishery;
 - (4) the capacity and the extent to which fishing vessels of the United States will harvest the optimum yield on an annual basis;
 - (5) the portion of such optimum yield on an annual basis which will not be harvested by fishing vessels of the United States and can be made available for foreign fishing.
 - (6) Oversee preparation of the proposed regulations deemed necessary to implement any fishery management plan or amendment which the Council prepares. Those regulations shall be submitted to the Secretary together with the plan or amendment, for action by the Secretary pursuant to Sections 303(c), 304 and 305(c) of the Act.
- G. Comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction. The Council may comment on and make recommendations concerning State or Federal actions that may affect habitat of other species under its authority.
- H. Conduct any other activities which are required by or provided for in the Act or which are necessary and appropriate to the foregoing functions.

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

2. COUNCIL ORGANIZATION

The Council has eleven voting members and four non-voting members. The eleven voting members include the Commissioner of the Alaska Department of Fish and Game, Director of the Washington Department of Fisheries, Director of the Oregon Department of Fish and Wildlife, the Alaska Regional Administrator of NOAA Fisheries, five members appointed by the Secretary from the State of Alaska, and two members appointed by the Secretary from the State of Washington.

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

Each member appointed to a Council must take the following oath of office:

I, _____, a voting member of the Regional Fishery Management Council appointed by the Secretary of Commerce, promise to act as a trustee and steward of our Nation's fishery resources. I will uphold all standards and provisions of the Magnuson-Stevens Fishery Conservation and Management Act; conduct myself at all times according to rules and guidance prescribed by the Secretary; responsibly weigh all information bearing on issues being acted upon by the Council; and vote on such issues with objectivity and fairness. This oath is freely given without mental reservation or purpose of evasion.

A. Officers and Terms of Office

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

The Chair, or in his absence the Vice Chair, of the Council has authority to convene and adjourn meetings and public hearings and designate members of the Council, Scientific and Statistical Committee, and Advisory Panel to attend meetings and public hearings. He will control meetings and hearings by recognizing speakers, establishing the order of business, and designating members of the Council and its advisory bodies as members of committees and working groups. The Chair certifies the minutes of the meeting as complete and accurate before they are available for general distribution.

PA
1:43

B. Designees

The Act authorizes only the principal State officials, the Regional Administrators, and the non-voting members to designate individuals to attend Council meetings in their absence. The Chair of the Council must be notified in writing, in advance of any meeting at which a designee will initially represent the Council member, of the name, address, and position of the individual designated. A designee may not name another designee. However, such officials may submit to the Chair, in advance, a list of several individuals who may act as designee, provided the list clearly specifies who would serve if more than one designee attends. Reimbursement of travel expenses to any meeting is limited to either the member or one designee. Additional details include the following:

Principal state officials and their designees.

(a) Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be appointed by a constituent state Governor as the principal state official for purposes of section 302(b) of the Magnuson-Stevens Act.

(b) A principal state official may name his/her designee(s) to act on his/her behalf at Council meetings. Individuals designated to serve as designees of a principal state official on a Council, pursuant to section 302(b)(1)(A) of the Magnuson-Stevens Act, must be a resident of the state and be knowledgeable and experienced, by reason of his or her occupational or other experience, scientific expertise, or training, in the fishery resources of the geographic area of concern to the Council.

(c) New or revised appointments by state Governors of principal state officials and new or revised designations by principal state officials of their designees(s) must be delivered in writing to the appropriate NMFS Regional Administrator and the Council chair at least 48 hours before the individual may vote on any issue before the Council. A designee may not name another designee. Written appointment of the principal state official must indicate his or her employment status, how the official is employed by the state fisheries agency, and whether the official's full salary is paid by the state. Written designation(s) by the principal state official must indicate how the designee is knowledgeable and experienced in fishery resources of the geographic area of concern to the Council, the County in which the designee resides, and whether the designee's salary is paid by the state.

C. Advisory Groups

The Council has established two formal advisory groups: a Scientific and Statistical Committee and an Advisory Panel.

(1) Scientific and Statistical Committee

The Scientific and Statistical Committee (SSC) is composed of experts in biology, statistics, economics, sociology, and other relevant disciplines from the federal, state, and private scientific communities and other appropriate sources.

(a) Objectives and Duties. As requested by the Council, through the Council Chair or the Executive Director, the SSC shall:

(i) Provide expert scientific and technical advice to the Council on the development of fishery management policy, fishery management plans and amendments, their goals and objectives, proposed regulations, and criteria for judging plan effectiveness.

(ii) Assist in the identification, development, collection, and evaluation of statistical, biological, economics, social and other scientific information deemed relevant to the Council's fishery management planning, particularly with regard to determining the best scientific data available as required by National Standard 2.

(iii) Advise the Council on preparing comments on any relevant fishery management plan or amendment prepared by the Secretary or Secretary's delegate pursuant to Section 304(c) of the Act.

(iv) Submit to the Council reports deemed appropriate by the Committee or requested by the Council.

(v) Perform other appropriate duties as may be required by the Council to carry out its functions under the Act.

(b) Members and Chair. The SSC members shall be appointed by, and serve at the pleasure of, the Council. They shall be appointed for one year, and may be reappointed. Vacancies may be filled for the remaining unexpired term. The SSC Chair and Vice Chair shall be nominated by the Committee from among its members and confirmed by the Council for one-year terms. Agency representatives on the Committee may have an alternate as provided for in the Council's Policy on Scientific and Statistical Committee Alternates.

(c) Administrative Provisions. The committee shall meet as a whole, or in part, at the request of the Chair of the Committee, with the approval of the Chair of the Council, as often as necessary to fulfill the Committee's responsibilities, taking into consideration time and budget constraints. It is estimated that the Committee will meet at least five times a year, just before the scheduled Council meetings. The Executive Director of the Council shall provide such staff and other support as the Council considers necessary for Committee activities, within budgetary limitations.

SSC members shall serve without compensation, but will be paid their actual travel expenses in performing their duties in accordance with applicable law and Council travel policy. SSC members shall attend regular Council meetings and hearings as required by the Chair of the Council. Security clearances for SSC members shall be requested as necessary.

(2) Advisory Panel

The Advisory Panel (AP), which constitutes the fishing industry advisory committee (FIAC) as required in the Act, shall meet as a whole, or in part, at the request of the Chair of the AP with the approval of the Council Chair, as often as necessary to fulfill the AP's responsibilities, taking into consideration time and budget constraints. It is estimated that the AP will meet at least five times a year, just before or in conjunction with the scheduled Council meetings.

(a) Objectives and Duties. The AP advises the Council on a continuing basis on the assessments and specifications and measures contained in each of the Council's fishery management plans, especially the capacity and extent to which the fishing vessels of the United States will harvest the resources, the socioeconomic effects of the fishery plans, and potential conflicts between user groups of a given fishery resource or other impacted fisheries. The AP members shall attend Council meetings, public hearings, and work sessions at the request of the Council Chair to advise on particular fisheries, with particular reference to the socioeconomic implications of managing those fisheries and current trends and development in the fisheries. The AP shall perform such other necessary and appropriate advisory duties as may be required by the Council to carry out its functions under the Act.

(b) Members and Chair. The Advisory Panel shall be appointed for one year by, and serve at the pleasure of, the Council. The Council will attempt to appoint as broad a spectrum of interests as is possible, including the various fisheries around Alaska, commercial, sport, subsistence, catching, processing, sales, consumerism, environmental, and general interest, emphasizing fair representation of all fishing interests. Persons wishing to serve on the Advisory Panel may submit their names with a short resume through the Executive Director. A list of nominees will be kept in the Council headquarters. The Council Chair shall have authority to fill interim vacancies on the AP subject to confirmation by the Council at the next regular meeting. The Chair and Vice Chair of the AP shall be nominated by a majority of AP members and confirmed by the Council. The size of the AP, qualifications for members, and the nomination and selection process are summarized in the Council's policy on Advisory Panel Structure and Operations.

(c) Administrative Provisions. The AP Chair or designee will report to the Council. The Executive Director of the Council shall, upon request of the Chair of the AP, provide such staff and other support as the Council considers necessary for AP activities, within budgetary limitations. Members of the AP shall serve without compensation, but will be paid their actual travel expenses in performing their duties in accordance with applicable law and Council travel policy. Security clearances for AP members shall be requested as necessary.

D. Working Groups

The Council appoints plan teams for each of the major fisheries under its management. Members of each team are selected from those agencies and organizations having a role in the research and/or management of fisheries. The team should be small enough to work efficiently and effectively but sufficiently large to provide the diverse experience and knowledge needed to cover all aspects of a particular fishery. At a minimum, teams shall be composed of one member from agencies having responsibility for management of the fishery resources under the jurisdiction of the Council. Nominations of these individuals are at the discretion of the agencies. Other individuals may be nominated by members of the Council, SSC or AP. Appointments to the team will be made by the Council with recommendations from the SSC.

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The Teams shall:

~~annually~~ review stock assessment information and assist in the preparation of the annual Stock Assessment and Fishery Evaluation (SAFE) documents including formulation of recommendations on annual Acceptable Biological Catch (ABC) levels for all species under jurisdiction of the Council.

The Teams may:

- (1) prepare and/or review plans, amendments and supporting documents (EISs, RIRs, etc.) for the Council, SSC and AP;
- (2) aggregate and evaluate public/industry proposals and comments;
- (3) summarize and evaluate data related to the biological, economic and social conditions of the fishery;
- (4) conduct and evaluate analyses pertaining to management of the fisheries;
- (5) evaluate the effectiveness of management measures in achieving the plan's objectives; and
- (6) recommend when and how management measures need to be changed.

These and other provisions concerning the teams are included in the Council's Policy on Plan Team Composition, Tasking and Operations.

E. Committees

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

3. COUNCIL MEETINGS AND HEARINGS

The Council will meet at the call of the Chair or upon request of a majority of the voting members. In fulfilling the Council's responsibilities and functions, the Council members may meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information, or make decisions regarding material before them. Emergency meetings shall be held at the call of the Chair or equivalent presiding officer. The following guidelines apply with respect to the conduct of business at meetings and hearings of the Council and its Scientific and Statistical Committee and Advisory Panel:

A. Notice

Timely notice of each regular meeting, hearing, and each emergency meeting, including the time, place, and agenda of the meeting, shall be published in the **FEDERAL REGISTER** on a timely basis, and appropriate news media notice must be given. Such notice may be given by such other means as will result in wide publicity. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or such notice must be given at least 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c) of the Act, in which case public notice shall be given immediately.

Drafts of all regular public meeting notices must be transmitted to the NMFS Headquarters Office at least 23 calendar days before the first day of the regular meeting. Councils must ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings. Drafts of emergency public notices must be transmitted to the NMFS Washington Office; recommended at least 5 working days prior to the first day of the emergency meeting. Although notices of, and agendas for, emergency meetings are not required to be published in the Federal Register, notices of emergency meetings must be promptly announced through the appropriate news media. Requests for disability-related accommodations should be processed in accordance with Department Administrative Order DA) 215-10.

B. Conduct of Meetings

Each regular meeting and each emergency meeting shall be open to the public. Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings, within reasonable limits established by the Chair. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.

(1) A majority of the voting members of any Council constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings. Decisions of any Council are by majority vote of the voting members present and voting (except for a vote to propose removal of a Council member, see 50 CFR 600.230 and except where Roberts Rule of Order require a 2/3 majority vote). Voting by proxy is permitted only pursuant to 50 CFR 600.205 (b). An abstention does not affect the unanimity of a vote. At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.

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

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

(4) On the final vote on any matter to be transmitted to the Secretary by a Council, the Regional Administrator of the National Marine Fisheries Service serving on the Council, or the Regional Administrator's designee, when rendering a negative vote, shall submit to the Council within 10 working days after adjournment of the Council meeting, a statement explaining the reason(s) for the vote, which shall be made available to the public upon request and remain on file with the Council.

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

(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

C. Record

(1) Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chair shall verify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.

(2) Subject to the confidentiality procedures established by the Council on January 28, 1986, and the guidelines prescribed by the Secretary pursuant to Section 402(b) of the Act, the administrative record and minutes of each meeting and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council, or the Secretary, as appropriate.

D. Closed Meetings

After notifying local newspapers in the major fishing ports within its region, having included in the notification the time and place of the meeting and the reason for closing any meeting or portion thereof:

(1) A Council, SSC, AP, or FIAC shall close any meeting, or portion thereof, that concerns information bearing on a national security classification.

(2) A Council, SSC, AP, or FIAC may close any meeting, or portion thereof, that concerns matters or information pertaining to national security, employment matters, or briefings on litigation in which the Council is interested.

(3) A Council, SSC, AP, or FIAC may close any meeting, or portion thereof, that concerns internal administrative matters other than employment. Examples of other internal administrative matters include candidates for appointment to AP, SSC, and other subsidiary bodies and public decorum or medical conditions of members of a Council or its subsidiary bodies. In deciding whether to close a portion of a meeting to discuss internal administrative matters, a Council or subsidiary body should consider not only the privacy interests of individuals whose conduct or qualifications may be discussed, but also the interest of the public in being informed of Council operations and actions.

(4) Without the notice required above, a Council, SSC, AP, or FIAC may briefly close a portion of a meeting to discuss employment or other internal administrative matters. The closed portion of a meeting that is closed without notice may not exceed 2 hours. Before closing a meeting or portion thereof, a Council or subsidiary body should consult with the NOAA General Counsel Office to

ensure that the matters to be discussed fall within the exceptions to the requirement to hold public meetings described above. Actions that affect the public, although based on discussions in closed meetings, must be taken in public. For example, appointments to an AP must be made in the public part of the meeting; however, a decision to take disciplinary action against a Council employee need not be announced to the public.

E. Frequency and Duration

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

F. Location

The Council shall meet at appropriate times and places in any of the constituent States of the Council. Council meetings typically will be held in Alaska, with the exception that one meeting each year will be held in the constituent state of Washington, and one meeting every three years will be held in the constituent state of Oregon. Specific meeting locations within each State will be coordinated by the Executive Director in consultation with the Chair.

G. Council Member Compensation

Those voting members of the Council who are not employed by the Federal Government or any State or local government shall receive compensation at the daily rate for GS-15 (Step 7) of the General Schedule. Such compensation shall be limited to attendance at formal meetings of the Council (actual meeting days, meetings of standing or ad hoc committees on which the Council member is a designated member, or to the chair while officially representing the Council or conducting official business of the Council outside of such meetings. Such compensation may be paid on a full day's basis whether in excess of eight hours a day or less than eight hours a day. "Homework" time in preparation for any meeting, or attendance of any meeting other than specified above, is not compensable nor is travel time to or from such meetings.

The Council Chair must submit to the Regional Office annually a report of Council member compensation authorized. This report shall identify, for each member, amount paid, dates, and location and purpose of meetings attended. At the discretion of the Council Chair, Council members may be required to complete a meeting request form if they wish to be compensated for activities other than regular Council meetings.

4. EMPLOYMENT PRACTICES

A. Staffing

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

B. Experts and Consultants

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

C. Detail of Government Employees

The Council may request the detail of other government employees to assist the Council in the performance of its functions.

D. Personnel Actions

All staff employees serve at the pleasure of the Council. The Executive Director may be dismissed by a vote of the Council and other staff employees may be dismissed by the Executive Director acting for the Council. Dismissals may be made for misconduct, unsatisfactory performance, and/or lack of funds, with reasonable notice to the employee.

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

E. Salary and Wages

In setting rates of pay for Council staff, the principle of equal pay for equal work must be followed. The annual pay rates for Council staff positions shall be consistent with the pay rates established for General Schedule Federal employees as set forth in 5 U.S.C. 5332, and the Alternative Personnel Management System for the U.S. Department of Commerce (62 FR 67434). The Councils have the discretion to adjust pay rates and pay increases based on cost of living (COLA) differentials in their geographic locations. COLA adjustments in pay rates and pay increases may be provided for staff members whose post of duty is located in Alaska, Hawaii, Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and Puerto Rico. No pay adjustment based on geographic location shall exceed the COLA and locality pay adjustments available to Federal employees in the same geographic area. No staff level will be above GS-15, except that supervisors in all career paths are eligible for salaries up to 6% higher than the maximum rate of their pay bands (per FEDERAL REGISTER 67452, vol 62, no 247, December 24, 1997). Salary increases funded in lieu of life and medical/dental policies are not permitted

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

In conducting official Council business, Council members and staff generally have the same protection from individual tort liability as Federal employees on official actions, and are protected by the Federal workmen's

compensation statute, by the minimum wage/maximum hour provisions of the Fair Labor Standards Act (FLSA), and by the rights of access and confidentiality provisions of the Privacy Act (PA). Council staff are eligible also for unemployment compensation in the same manner as Federal employees.

Overtime payments shall be made in accordance with the provisions of the Fair Labor Standards Act (FLSA) 29 U.S.C. § 201 et. seq.

F. Recruitment

Council staff positions must be filled solely on the basis of merit, fitness for duty, competence, and qualifications.

The Council is an Equal Employment Opportunity Employer. All employment actions will be free from discrimination based on race, religion, color, national origin, sex, age, disability, sexual orientation¹, status as a parent² and reprisal.

Except for complaints alleging sexual orientation and a status as a parent, complaints by employees alleging that they may have been discriminated against on the bases listed above, should be processed in accordance with 29 C.F.R. § 1614. Employees must contact and EEO Counselor at NOAA's Office of Civil Rights within 45 days of the date of the alleged discrimination.³ Employees alleging discrimination on the basis of sexual orientation will have their complaints processed in accordance with DAO 215-11. Employees must contact an EEO Counselor at NOAA's Office of Civil Rights within 45 days of the date of the alleged discrimination.

The Council has a zero-tolerance policy for harassment on the basis of race, religion, color national origin, sex, age, sexual orientation, disability and reprisal. Any employee who believes he or she has been harassed should report the harassment to a supervisor or manager. The supervisor or manager should then follow the steps set forth in Department Administrative Order, DAO 202-955. Any complaints of harassment on the basis of sexual orientation should be handled in accordance with DAO 215-11. The provisions of these DAOs are entirely separate from EEO complaint process, and must be followed whether or not an employee has files an EEO complaint.

G. Leave

Employees of the Council shall be granted paid leave for holidays, vacations or exigencies, sickness, and civic duties (jury, military reserve obligations) as determined by the Council. These are explained in the Council's personnel rules. A copy of these rules are given to each new employee.

¹Many of the SOPPs did contain an EEO statement, however, these statements listed as protected bases "physical handicap" and sexual preference. These terms should be changed to "disability" and "sexual orientation".

²Executive Order 13152 dated May 2, 200, prohibits employment discrimination based on an individual status as a parent.

³According to a Legal Opinion dated March 14, 1995, from the U.S. Department of Justice, Office of Legal Counsel, the Fisheries Management Council "..... are covered by the anti-discrimination provisions of Title VII of the Civil Rights Act of 1964 insofar as they apply to employment in the federal government.....". As such, their discrimination complaints are processed in accordance with 29 C.F.R. § 1614.

(1) Annual Leave

Full-time Council employees may accrue annual leave at rates not to exceed those for federal employees. Part-time employees accrue leave at the same rate, per hours worked. If the Council so desires, it may credit prior federal, state or local government service for the purpose of determining leave accrual of individual employees. Application of such a policy must be uniform and public.

Employees may carry over up to 240 hours (30 days) unused annual leave from one year to the next. Amounts remaining above 240 hours will be forfeited. Under certain conditions, forfeited annual leave may be restored if it was properly scheduled for use and circumstances beyond the employee's control caused the forfeiture. Approval for this restoration must be obtained from the Council Executive Director or Council Chair, who will refer to the NOAA Personnel Regulations and other source documents for guidance. Lump sum reimbursements not to exceed 240 hours carryover plus current year earnings of unused leave are authorized upon employee separation. Each Council may pay for unused annual leave upon separation, retirement, or death of an employee.

(2) Sick Leave

Full-time Council employees may accrue sick leave at the rate of two hours per week (13 days per year). Part-time employees may accrue at a percentage of the hours worked compared to 40 hours. Unused sick leave credit may be accumulated without limit. Lump sum payments to the employee upon separation are not authorized. However, distributions of accumulated funds for unused sick leave may be made to the employee upon his or her retirement (defined by PERs retirement rules), or to his or her estate upon his or her death, for up to 100 days of unused sick leave, at the employees current salary rate, subject to budgetary limitations.

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

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

H. Employee Benefits

The Council shall provide its employees group health insurance, life insurance, and retirement plan under the State of Alaska Public Employee System. Total employee benefits may not exceed 26 percent (exclusive of FICA) of employee's gross salary (which includes COLA and equalization pay) without NOAA approval.

I. Travel Reimbursement

- (1) The per diem and actual subsistence rates contained in the NOAA Travel Handbook apply.
- (2) Actual expenses include transportation by air coach, rail-coach, bus, or privately owned vehicle (automobile or private plane reimbursed on a per-mile basis) room and meals within a reasonable limit established by the NOAA Travel Handbook and incidental expenses such as taxi fares, parking, and telephone calls on official business.

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

(4) Non-Federal Travelers. Non-federal members of the Council and members of advisory groups and Council staff will be reimbursed for actual expenses incurred in the performance of Council duties. They are not bound by the separate per diem limits for meals and lodging as set forth in the GSA Rules. They are subject, however, to the total reimbursement limits established by the NOAA Travel Handbook for actual expenses, and they must itemize their actual expenses up to the specified limit each day. Lodging and airline receipts are required. The rates are included in the GSA Rules. Federal employees serving in the above capacities are subject to the reimbursement rules of their agencies.

(5) NOAA Personnel. Payment for travel by NOAA personnel is not authorized.

(6) Domestic invitational travel for non-Council personnel may be approved by the Council Chair, or his/her authorized representative.

J. Foreign Travel

(1) Foreign travel must be approved, in advance, by the Assistant Administrator for Fisheries or designee and by the Grants Officer. Requests for foreign travel approval should be submitted, in writing, at least 15-30 days in advance to the Regional Program Officer and then via the Regional Administrator, to the NOAA Grants Officer. Routine across-the-border travel to Canada is exempt.

(2) The Council Chair or his/her authorized representative may approve routine across-the-border travel to Canada for Council members and employees within specified Federal rates.

(3) Foreign invitational travel for non-Council personnel must be approved as described in paragraph (1) of this section. The per diem limits or actual expense requirements described above also are applicable to non-Council personnel traveling at Council expense. Payment for federal personnel from Council funds is not authorized.

5. STANDARDS OF CONDUCT

The Council and its staff shall maintain high standards of ethical conduct. These standards include the following principles:

A. No employee of the Council shall use his or her official authority to act in the name of the Council for the purpose of influencing the result of an election to or a nomination for any public elective office.

B. No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, either as a political contribution or a personal emolument any money, or anything of value in consideration of either support, or the use of influence, or the promise of support, or influence in obtaining a Council decision or for any person, any appointive office, place or employment under the Council.

C. No employee of the Council or member of the Plan Teams shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties. Council members with a direct or indirect financial interest shall ensure that it does not conflict with the fair and impartial conduct of his or her Council duties.

D. The Act and federal regulations at 50 CFR 600.235 require that Council nominees, voting members appointed to the Council by the Secretary, and Executive Directors disclose any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the jurisdiction of the individual's Council or of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members, Nominees and Executive Directors of Regional Fishery Management Councils," or such other form as the Secretary, or designee, may prescribe. The report must be filed by nominees for Secretarial appointment before the date of appointment as prescribed by the Secretary. Voting members appointed by the Secretary and Executive Directors must file the report with the Council office before taking office. Individuals must update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The information required to be submitted will be kept on file and made available for public inspection at reasonable hours at the Council offices. A copy of the form may be obtained from the appropriate Regional Office.

E. All Council members appointed under Section 302(b)(2) must strictly adhere to Section 302(j)(7) and Secretarial regulations at 50 CFR 600.225 (Rules of Conduct) and 600.235 (Financial Disclosure) during any vote taken by the Council. To knowingly vote on a Council decision in violation of Section 302(j)(7) is a prohibited act as defined in Section 307(1)(O).

6. FINANCIAL MANAGEMENT

Each Council's grant activities are governed by OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), OMB Circular A-122 (Cost Principles for Non-Profit Organizations), 15 CFR Part 29b (Audit Requirements for Institutions of Higher Education and other Nonprofit Organizations) which provide uniform administrative requirements applicable to the Council, including standards for financial management, financial reporting, property management, and procurement. The Council will operate in full compliance with these standards and the terms and conditions of the cooperative agreement. (See 5 CFR 1310.3 for availability of OMB Circulars.)

A. Cooperative Agreements and Contracts

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

(1) Administrative. The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through the Department,

in the budgets of NOAA and NMFS. The Council must submit a formal application (Standard Form 424, Federal Assistance short Form) to the appropriate Regional Administrator. This application includes a Budget Data Form, a Program Narrative Statement supporting the application, a Statement of General Assurances, and a Budget Summary Worksheet for three fiscal/calendar years.

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

(2) Programmatic. The Council has adopted a Policy on Identification, Submission, and Review of Proposals for Programmatic Research. The Council may enter into cooperative agreements with Federal agencies, State, and private institutions on matters of mutual interest which further the objectives of the Magnuson Act. Approval from the Secretary of Commerce must be obtained and each agreement must specify the nature and extent of Council participation. The Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to the NOAA Administrator in accordance with applicable NOAA regulations.

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

(3) Contracts. Negotiated and advertised contracts will be administered under the same principles of equality and integrity outlined under the section "Employment Practices" and will generally follow the specifications normally characteristic of contracts with public entities (e.g., public announcement, emphasis on competition, change orders, etc.). Efforts must be made to inform minority firms of planned Council procurements.

B. Procurement

All procurements must comply with the terms and conditions of the award and OMB Circulars A-110 and A-122. Proposed sole-source procurements less than \$100,000 must be submitted to the Regional Administrator prior to award. Proposed sole-source contracts over \$100,000 must be approved in writing by the Regional Administrator and the Grants Officer. Final copies of all contracts awarded will be filed with the appropriate Grants Officer.

The purchase of all equipment, not previously approved in the award, costing in excess of \$5,000 per unit and having a useful life of more than 1 year, requires the approval of the Regional Program Officer and the Grants Officer. Such approval will be made only after a cost-benefit analysis (system life cost, lease vs. purchase, compatibility, etc.) by the Council demonstrates the economy of the proposed action.

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

C. Property Management

An accountability system of all non-expendable items of personal property will be maintained by means of an inventory system. An annual inventory report will be submitted to the NOAA Grants Officer. Theft will be reported promptly to the appropriate authorities. Procedures for ensuring adequate control and protection are as follows:

- (1) All non-expendable items will be inventoried.
- (2) Council property will be marked clearly with identifying numbers.
- (3) Sensitive equipment such as cameras will remain secured.
- (4) Disposal of surplus will be performed in accordance with grant provisions.
- (5) A listing of personnel with access to Council property will be maintained in the Council Office.

D. Real Property

The leasing, renting, and acquisition of real property and space will be effected in a manner consistent with customary practices related to contracts with public entities. Real property files will be maintained on all transactions, including litigation, connected therewith.

E. Accounting System

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

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

F. Audits

Audits will be performed biannually by DOC Office of Inspector General or an independent public accountant. NOAA personnel will be invited as appropriate to participate in the audit exit conference.

G. Financial Reporting

Reports will be submitted as required by OMB Circular A-110 to summarize total expenditures and federal funds unexpended, and the status of the Federal cash received. All financial reports will be kept until audited or approved for disposal by the appropriate Department of Commerce representative.

7. RECORDKEEPING

A. Administrative Records for FMPs

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

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

- (a) Council meeting agendas;
- (b) Minutes of Council meetings;
- (c) Plan Team reports, if any;
- (d) SSC reports;
- (e) AP reports;
- (f) Hearing reports;
- (g) Council reports/recommendations;
- (h) Correspondence relating to the FMP;
- (i) Scoping comments;
- (j) Work plan, if any;
- (k) Discussion papers, if any;
- (l) NEPA documents;
- (m) Regulatory analyses;
- (n) PRA justification;
- (o) Proposed regulations;
- (p) Final regulations;
- (q) Emergency regulations; and
- (r) Notices of meetings (Council, SSC, AP, Team).

B. Disposition of Records

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

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

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

C. Permanent Records

The designation of a file as "permanent" means that the records are appropriate for offer to the National Archives when 20 years old, unless otherwise specified. Destruction of permanent records is not authorized. The following are examples of permanent files:

- (1) EIS files: Documents relating to EISs or environmental assessments. Cut-off at end of calendar year when created. Permanent retention; no approved disposition at this time.
- (2) Annual report files: Input for the DOC Annual Reports and related correspondence. Cut-off at end of calendar year when created; permanent.
- (3) Meeting files: Including agendas, minutes, reports, studies and related correspondence. Cut-off at end of calendar year; permanent.

D. Privacy Act Records

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

E. Freedom of Information Act (FOIA)

FOIA requests received by a Council should be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to the NMFS FOIA Official to secure a FOIA number and log into the FOIA system. The Council does not recover costs - payments collected under the FOIA are transferred to the U.S. Treasury. All responsive documents must be reviewed for disclosure on a page-by-page basis, and that originals must be retained in the originating office, while copies must be maintained in accordance with DOC policy. The Region will also obtain clearance from the NOAA General Counsel's Office concerning initial determination for denial of requested information. FOIA requests will be controlled and documented in the Region. The requests should be forwarded to the NMFS FOIA Officer who will prepare the Form CD-244, "FOIA Request and [[Page 57888]] Action Record", with the official FOIA number and due date. In the event the Region determines that the requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature, along with the "Foreseeable Harm" Memo and list of documents to be withheld, must be cleared through the NMFS FOIA Officer. Upon completion, a copy of the signed CD-244 and cover letter transmitting the information should be provided to the NMFS FOIA Officer and the NOAA FOIA Officer.

F. Confidentiality of Statistics

The Council has established appropriate procedures applicable to it and to its committees and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures must, in the case of statistics submitted to the Council by a State, be consistent with the laws and regulations of the State concerning the confidentiality of such statistics. The specific provisions are in the Council's policy on the Confidentiality of Statistics in the Council's reference book.

PUBLIC TESTIMONY SIGN-UP SHEET FOR AGENDA ITEM D-4 SOPPs

PLEASE SIGN ON THE NEXT BLANK LINE.
LINES LEFT BLANK WILL BE DELETED.

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