

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88-175, adopted November 30, 1988, and released January 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio Broadcasting.

#### PART 47—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

#### § 73.202 (Amended)

2. Section 73.202(b), the Table of FM Allotments is amended under Tennessee, by adding Channel 248A at Lawrenceburg.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,  
Mass Media Bureau.

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BILLING CODE 6712-01-M

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600, 601, 604, and 605

[Docket No. 80225-8253]

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

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

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this rule to revise regulations and guidelines concerning the operation of Regional Fishery Management Councils (Councils) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). This action implements parts of Title I of Pub. L. 99-659, which amends the Magnuson Act; clarifies instructions of the Secretary of Commerce (Secretary) on other statutory and regulatory requirements affecting the Councils; and adjusts the

fishery management planning and development procedures in line with recommendations of two fishery management studies commissioned by NOAA in 1986. This action includes the uniform standards for the operation of the Councils required by the Magnuson Act.

**EFFECTIVE DATE:** February 16, 1989.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Schaefer, telephone 301-427-2334.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 302(f)(8) of the Magnuson Act requires each Council to determine its organization, and prescribe its practices and procedures for carrying out its functions under the Act in accordance with such uniform standards as are prescribed by the Secretary. This action repromulgates the Secretary's uniform standards governing the operations of the Councils. It includes: (1) Implementation of parts of Title I of Pub. L. 99-659; (2) supplementary instruction on requirements affecting the Councils under other applicable law; (3) guidelines for the fishery management process; and (4) guidelines for (a) Council Statements of Organization, Practices, and Procedures, (b) Council organization, (c) employment practices, (d) financial management systems, and (e) recordkeeping. Included are some of the changes to the fishery management process approved by the Under Secretary for Oceans and Atmosphere, NOAA, that had been recommended by the two fishery management studies commissioned by NOAA in 1985 and 1986: The NOAA/Council Task Group Report, and the NOAA Fishery Management Study. These two studies, each of which generated wide public comment, were undertaken to assess the Magnuson Act fishery management system after ten years of operation, with a view to making administrative and legislative improvements.

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

Three new parts and one subpart have been added:

(1) "Part 600—Definitions" is designed ultimately to consolidate in one place the definitions, word usages, and abbreviations that apply to Chapter 6 of Title 50 of the CFR. For purposes of this revision, only those definitions broadly connected with Parts 601-605 are included; definitions and word usages uniquely associated with particular topics remain in their appropriate sections.

(2) "Part 601. Subpart D—Membership" addresses requirements affecting Council members individually, such as appointment, term, removal, conduct, compensation, financial disclosure, and so forth.

(3) "Part 604—Other Applicable Law" describes the requirements of other law that the Secretary has determined to be applicable to the fishery management process.

(4) "Part 605—Guidelines for Council Operations and Administration" provides guidance for the development of (a) fishery management plans, and (b) each Council's Statement of Organization, Practices, and Procedures (SOPP).

Parts 600 and 601 implement various statutory requirements, and provide the regulatory principles for the 605 guidelines. Part 604 describes to the public the other laws that the Secretary has determined apply to the fishery management process. The guidelines summarize Secretarial interpretations that will be applied under the statutory and regulatory principles. They are intended as an aid to decision-making—an indication or outline of future policy or conduct—as for example, to assist in the amendment and review of Council SOPPs.

#### Overview of Issues and Rationale

Revision of these guidelines has been underway since December 1986, and has included an eight-month-long series of Council and NMFS meetings, drafts, and reviews; three months of intensive joint drafting and further Council review; and final debate and recommendations at a Council Chairmen's meeting in July 1988. This process resolved many of the issues before publication as a proposed rule in the *Federal Register*. The public comment period thus allowed the Councils to focus in a more formal way on the need to clarify some remaining administrative questions. However, two issue areas continued to provoke serious comment: the Council member appointment process, which generated comment from several Governors and members of Congress, and the need to

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distinguish the effect of regulations and guidelines. Many of the suggested changes were primarily editorial in nature. In general, NOAA's response was to accept comments except where they (1) contradicted or conflicted with law, Executive Order, or Administration policy; or (2) caused inconsistencies in style, word usage, or editorial integrity. Many of the changes are refinements and clarifications, and as such are not necessarily addressed individually in the body of the comments and response section.

## Comments and Response

### Part 600—Style Guide

#### Section 600.1 Definitions

1. *Comment:* One commenter requested a definition of "confidential" as it is applied to security clearances.

*Response:* NOAA added the security definition, and, for further clarification, distinguished the security definition from the data collection definition as it is applied under the Magnuson Act.

2. *Comment:* Several Councils expressed concern individually and at the Council Chairmen's meeting about the perceived regulatory effect of referencing "guidelines" in regulations, and of the descriptions of other applicable law in Part 604.

*Response:* NOAA added a definition of "guidelines" with preamble explanations of how it is applied in the context of Parts 600, 601, 604, and 605. (See "Background" section above, and "comment/response" at Parts 604 and 605.)

### 601 Subpart C—Uniform Standards for Organization, Practices, and Procedures

#### Section 601.25 Support Services

3. *Comment:* Councils have indicated that the attendance of NOAA employees at some types of Council meetings is often critical, and that under current budget constraints, has been limited by the prohibition against Council reimbursement of NOAA employee travel.

*Response:* The language suggested at the Council Chairmen's meeting was adopted in § 601.25(d)(1), which permits the Assistant Administrator for Fisheries to approve, on a case-by-case basis, Council reimbursement for NOAA employees' expenses to participate in Council activities.

#### Section 601.27 Protection of Confidentiality of Statistics

Section 601.27 specifies that Council procedures must be consistent with procedures of the Secretary and the laws and regulations of a State

submitting them, and expresses NOAA policy with regard to Council member and staff access to confidential statistics, pursuant to Pub. L. 99-659. These regulations supplement 50 CFR Part 603, which is being revised to regionalize the access system. Section 605.21 specifies that the Council SOPP should include these procedures.

4. *Comment:* Councils suggested that it was unnecessary to repeat language in the Magnuson Act concerning confidentiality in the regulations.

*Response:* In general, NOAA repeats provisions of the Magnuson Act in all regulations or guidelines when the context requires it or for ease of reference. No change was made.

5. *Comment:* One commenter requested deletion of the phrase requiring "documented need for unaggregated data" prior to granting Council staff access.

*Response:* NOAA modified the language in § 605.27(b) as follows: "Council staff having a need for such [confidential] information is granted access provided that the Council has established procedures to ensure its confidentiality as required by the Magnuson Act."

### 601 Subpart D—Membership

#### Section 601.33 Appointments

Section 601.33(b) defines "knowledgeable and experienced" to clarify the basis on which Governors nominate and the Secretary appoints. This section also includes the Pub. L. 99-659 requirement that Governors consult commercial and recreational fishing representatives in the nomination process, and that the Secretary ensure a fair apportionment of membership. In addition, NOAA is making a technical amendment, pursuant to the Pub. L. 99-659 requirement and recommended by the Fishery Management Study, to provide greater flexibility for the Secretary in choosing among names provided by the Governors. An oath of office, also recommended by the Fishery Management Study, is included.

6. *Comment:* Councils objected to stipulating the number of years of experience required to qualify for Council membership as being restrictive and arbitrary.

*Response:* Paragraphs 601.33 (b)(1)-(7) were accordingly modified to delete any specific number of years experience.

7. *Comment:* Councils and other commenters opposed eliminating the "obligatory" and "at-large" designations for Council membership on the basis that the current system had worked well and that eliminating the categories would create inequities in State

representation or upset cooperative relationships. Council Chairmen proposed language changes and expressed interest in an amending the Magnuson Act stipulating that statutory obligatory seat for each State be filled by appointment from a list of individuals submitted by that State.

*Response:* Eliminating the designations in the proposed rule appeared to jeopardize the State's role in the selection of its two voting members. In order to clarify NOAA's intent, under the final rule the designations are being retained and Council suggested language adopted to indicate (a) that each member State has one "obligatory" seat, (b) that when the term of the seat expires, the Secretary may fill it only from nominees for Council membership submitted by the Governor of that State, and (c) each State, pursuant to the Magnuson Act requirement, will have at least two voting members—the principal State official with marine fishery management responsibility and expertise designated by the Governor, and the individual filling the State's obligatory seat, as selected by the Secretary from the Governor's nominees for Council membership, or persons who are knowledgeable and experienced with regard to the conservation and management of the recreational or commercial harvest of the fishery resources of that State.

In order to implement Pub. L. 99-659, which requires the Secretary to "ensure a fair apportionment, on a rotating or other basis, of the active participants in the fisheries under Council jurisdiction", the final rule allows the Secretary, when filling a State's obligatory seat, to select from any of the nominees for Council membership (i.e., either obligatory or at-large) submitted by the Governor of that State. This does not change the Governor's role in nominating qualified individuals for the obligatory seat but provides the Secretary more opportunity to implement his statutory responsibility to balance the recreational, commercial, and processing interests on each Council.

#### Section 601.35 Rules of Conduct

8. *Comment:* Councils questioned the application of section 601.35(b)(4) to Council staff members other than the Executive Director.

*Response:* This section is accurate as written. In 1978, the NOAA Office of General Counsel determined that Council staff members were covered by the Federal conflict of interest laws. The Department of Justice and the Office of Government Ethics of the Office

Personnel Management concurred in that opinion. Pub. L. 99-659 added the provision that exempts the Executive Director from the Federal conflict-of-interest law found at 18 U.S.C. 208 when he or she is in compliance with the financial disclosure regulations found in Part 601. Sections 601.35 (a) and (b) were modified to clarify this point. Section 601.35(b)(8)(i) was also modified to clarify that subsection (b)(8)(i) applies to matters of primarily individual concern, such as a contract, in which a member has a financial interest, as distinguished from subsection (b)(8)(ii) which applies to general public policy matters, such as a fishery management plan, in which a member has a financial interest. A member can participate in the latter if the interest is reported, but not the former.

#### Section 601.37 Financial Disclosure

The financial disclosure requirements of Pub. L. 99-659 are set forth in § 601.37 and, in a separate action, were published on October 6, 1988, as a final rule at 53 FR 39303 in order to permit implementation of section 302(k) of the Magnuson Act as soon as possible. This action republishes section 601.37 as a convenience to the reader, and, in addition, makes a technical correction to conform the regulation with section 302(k) of the Magnuson Act. Section 601.37 is reworded to read: (a) "The Magnuson Act requires the disclosure by Council nominees, voting members appointed to the Council by the Secretary, and Executive Directors of any financial interest . . .". As clarified by the use of the more precise phrase "voting members appointed by the Secretary", the regulations reflect the statute's language requiring nominees and voting members appointed to the Council by the Secretary, as well as the Executive Director of a Council, to disclose certain financial interests. Thus, the Regional Director and the principal State official designated by the Governor of a constituent State are not subject to the disclosure requirements of section 302(k). This technical change resolves ambiguities accompanying use of the broader term "voting members", which could be interpreted to include voting members of the Council not appointed by the Secretary.

#### Section 601.38 Security Investigations and Clearances

Section 601.38 provides expanded and updated instruction regarding the security clearance process. Paragraphs (g), (h), and (i) of this section require the submission of any lawful non-disclosure agreement, required by the National Security Council or other lawful

Directive, that may be developed in the future.

#### Section 601.39 Council Member Compensation

10. *Comment:* Councils wanted to be permitted alternative methods of payment which allow deductions. As drafted, the regulations stipulate payment on a contract basis without deductions.

*Response:* Section 601.39(b) "grandfathers" current practices through a specified period, but otherwise retains the language. For reasons of equity, NOAA believes that the system of payment should be consistent for all Councils. Alternative methods of payment require Federal payment of benefits that do not otherwise have to be paid. Thus, consistency will result in Federal cost savings.

11. *Comment:* Section 601.39(c) defines a compensable day for non-government Council members. One commenter objected, stating the belief that each Council should have the latitude to determine what activities will be compensated.

*Response:* No change was made. NOAA believes it important to have a clear and uniform understanding of compensable activities in the interests of fairness and equity among Councils and appropriate financial accountability. There is nothing to preclude Councils from including in their amended SOPPs any further restrictions they feel appropriate.

12. *Comment:* Councils believe the requirement in § 601.39(d) for a report of authorized Council member compensation to be unnecessary and burdensome.

*Response:* No change was made. NOAA needs this information to respond to requests from Congress and the public, and for making budget and policy decisions.

#### Part 604—Other Applicable Law

Part 604 groups "other applicable law", for ease of description, into three general categories. Section 604.3 addresses the statutes dealing with administrative operations and employment practices, which include the Federal Tort Claims Act, the Fair Labor Standards Act, conflict of interest statutes, Workmen's Compensation, and Unemployment Compensation.

Section 604.4 addresses laws dealing with the fishery management decision process, which require consideration of environmental, paperwork, and/or economic and social impacts, or establish rules of procedure for public and State participation or access. They include the Administrative Procedure

Act, the National Environmental Policy Act, the Paperwork Reduction Act, the Regulatory Flexibility Act, E.O. 12291, E.O. 12612, and E.O. 12630.

Section 604.5 addresses laws dealing with the uses of oceans and coastline, explaining how the following statutes affect the fishery management process: the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, and the Marine Protection, Research, and Sanctuaries Act.

13. *Comment:* Several Councils expressed concern that, because Part 604 is not guidelines, the descriptive summaries would have regulatory effect in and of themselves. Similarly, others worried that mention of the *Operational Guidelines* in this "regulatory" section constituted adoption by reference.

*Response:* NOAA added language, at the Councils' suggestion, which clarifies that Part 604 comprises abbreviated summaries of other law applicable to the FMP process. NOAA did not identify them as guidelines; it needs to be clear that these are the laws that the Secretary has determined to be applicable to the fishery management process, and which must be complied with according to the regulations or agency directives specific to each law. Referring to Part 604 as guidelines would create an ambiguity or be misleading since it is a public listing of what the Secretary has determined to be the "other applicable law" with which the FMPs must be found consistent under section 304(a)(1)(B) of the Magnuson Act. Further, the status of the *Operational Guidelines* remains unchanged. The Federal Register requires specific "adopt by reference" language when the intent is to adopt the contents of another document as part of a regulation; that language is not included here.

#### Part 605—Guidelines for Council Operations/Administration Subpart B—Operations

##### Section 605.1 Purpose and Scope

14. *Comment:* Several of the Councils wanted to clarify further that this section is actually guidelines by adding "which do not have the effect of law" to this section.

*Response:* No change was made. NOAA has attempted throughout this document to make it clear which parts have regulatory effect and which do not, and the relation of each to the other. The definition of "guidelines" in Part 600 is the key: guidelines are intended to provide an indication of future policy or conduct, as an aid to decisionmaking.

The Part 605 guidelines summarize Secretarial interpretations that will be applied under the appropriate statutory and regulatory authorities.

#### Section 601.13 Planning

15. *Comment:* Section 605.13(b) describes the data collection program authorized under the Magnuson Act. Councils want to limit the number of days the Secretary may take to inform the Councils of the reason(s) for disapproving a data collection plan to 60 days.

*Response:* NOAA agrees and the language has been modified.

#### Section 605.15 Establishment of Management Measures

16. *Comment:* Section 605.15(b)(3) sets forth guidance to assist in the development of workable management measures. Councils stated a need to require, upon request, written comments from NOAA and the Coast Guard within 60 days pertaining to the feasibility and cost of enforcement and vessel safety.

*Response:* NOAA and the Coast Guard both agree to respond to Council requests for this information within 60 days, and the language has been modified accordingly.

#### 605 Subpart C—Administration

Section 605.23(d) highlights the functions of the advisory groups and specifically defines advisory group involvement in the fishery management planning and development process, as per Pub. L. 99-659. This section, in combination with Part 605, Subpart B, suggests an operational structure that responds to recommendations from both commissioned studies and describes a process whereby issues can be identified and resolved and available expertise called upon on a continuing basis, including relevant NOAA offices, State and academic scientists, advisory groups, planning teams, and others as appropriate.

#### Section 605.24 Council Meetings and Hearings

17. *Comment:* One commenter objected to the requirement in § 605.24(a)(2) that timely public notice of each regular or emergency meeting be published in local newspapers, on the grounds that other notification methods are more effective and cheaper.

*Response:* No change was made. The requirement is statutory.

18. *Comment:* Section 605.24(a)(3)(i) calls for a Council vote on applications for foreign fishing. Councils could, and some do, by majority vote, delegate to the Executive Director or Chairman the authority to submit the Council's

comments on categories of foreign fishing applications to the Secretary.

*Response:* NOAA concurs with the Council practice and deleted the requirement for a vote on this matter.

19. *Comment:* Some Councils questioned the prohibition of proxy voting as it might apply to Council member designees.

*Response:* NOAA changed the language in § 605.24(a)(3) to clarify that voting by proxy is permitted by official designees as specified in § 605.23(b).

20. *Comment:* Councils object, on grounds of feasibility, to the requirement that a minority report be submitted at the same time as that of the majority when submitting any issue to the Secretary.

*Response:* NOAA believes it reasonable to change "must" to "should" in § 605.24(a)(3)(iv), with the understanding that Councils amend their SOPPs to include a time limit, as indicated in § 605.21.

#### Section 605.25 Employment Practices

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

21. *Comment:* Some Councils wanted to limit required budget justifications for positions to new positions only.

*Response:* No change was made. NOAA believes that Councils should be subject to the same budget justification procedures as all Federal entities receiving Federal funds.

22. *Comment:* Some Councils questioned the prohibition against contracting with experts and consultants for the provision of services on a continuing basis; others continue to be opposed to the requirement that Councils notify the NOAA Office of General Counsel before seeking outside legal advice.

*Response:* The NOAA Office of General Counsel determined in 1978 that Councils could contract for the provision of outside legal services, subject to the Secretary's control over funding. This is implemented through the requirement that Councils notify the NOAA Office of General Counsel before seeking outside legal advice, and that contracts not be entered into for the provision of legal services on a continuing basis. Through an editing oversight, this prohibition was extended to all outside experts and consultants. The language has been clarified to permit contracting for all outside experts and consultants, other than for the provision of legal services, on a continuing basis.

23. *Comment:* Several Councils expressed concern regarding the provision prohibiting lump sum payments for unused sick leave upon retirement, since they do not have defined benefit pension plan based upon years of employment and average salary which would allow unused sick leave to be credited upon retirement as additional time worked.

*Response:* The language was modified in § 605.25(g)(2) to accommodate this concern through permitting a deposit to be made to an employee's retirement fund for unused sick leave up to a maximum number of days and contribution per day established by the Council as set forth in its SOPP.

24. *Comment:* Councils were concerned that, with the rising cost of health benefits, the restriction of employee benefits to 20 percent of gross salary would work a hardship.

*Response:* No change was made. If it becomes necessary to exceed the 20-percent limit, Council submission of a higher amount would be considered on an individual basis at the time of NOAA review and approval of a Council's budget.

25. *Comment:* Councils expressed strong feelings about inequities of travel reimbursement; they believe that the same per diem rates and other reimbursement allowances should apply to Council, SSC, and AP members, Council staff, members of plan teams, and NMFS employees.

*Response:* The distinction in travel reimbursement that the Councils object to was set up in the statute. Sections 302(d) and (f)(7) of the Magnuson Act provide that the voting members of the Councils, certain non-voting members, and members of advisory groups established under section 302(g) shall be reimbursed for their actual expenses. Others traveling on Council business must use the government-wide system established pursuant to 5 U.S.C. 5702 and 5703. The reason for this distinction is not clear, but the interpretation is supported in the legislative history. It is clear that during its deliberations, Congress differentiated between "actual expenses" and those expenses allowable under 5 U.S.C. 5702 and 5703 and consciously selected those Council officials who would be entitled to the former and those who would be entitled to the latter.

26. *Comment:* Some Councils objected to the provision restricting payment of non-NOAA team members to travel expenses without other compensation.

*Response:* No change was made. Compensation is limited to applicable Council members under the Magnuson

Act. This does not prohibit Councils from contracting for special services.

#### Section 605.26 Financial Management

Section 605.26 sets out the cooperative agreement requirements and details relevant portions of Office of Management and Budget (OMB) Circular A-110 governing financial management systems, procurement, property and space management, and financial reporting. It establishes audit schedules and criteria for programmatic funding.

27. *Comment:* Councils objected to listing all contemplated equipment purchases over \$500 in their budget submission.

*Response:* This provision was deleted. Government-wide regulations covering procurement procedures and dollar amounts for itemizing equipment purchases are in the process of revision.

28. *Comment:* One Council objected to the requirement for a monthly statement of income/expenses.

*Response:* No change was made. The provisions of § 605.26(a)(1)(ii) describing a minimum Council accounting system represent a liberalization of previous regulations.

#### Section 605.27 Recordkeeping

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

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

#### Classification

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

This rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10(5)(c)(3)(i). Section 601.37, published previously at 53 FR 39303, sets forth a collection-of-information requirement subject to the Paperwork Reduction Act and approved by the Office of Management and Budget under Control No. 0648-0192.

Public reporting burden for this collection is estimated to be one-half hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Richard Roberts, NOAA Clearance Officer, 8010 Executive Blvd., Rockville, MD 20852 and to the Office of Management and Budget, Information and Regulatory Affairs Paperwork Reduction Project 0648-0192, Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and is issued in compliance with E.O. 12291.

#### List of Subjects

##### 50 CFR Part 600

Fisheries.

##### 50 CFR Part 601

Advisory groups, Fisheries.

##### 50 CFR Part 604

Fisheries, Law.

##### 50 CFR Part 605

Administrative practice and procedure, Fisheries.

Dated: January 3, 1989.

James W. Brennan,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Parts 600, 604, and 605 are added, and Part 601 is revised as follows:

#### PART 600—STYLE GUIDE

- Sec.  
600.1 Definitions.  
600.2 Word Usage.  
600.3 Abbreviations.

Authority: 16 U.S.C. 1801 *et seq.*

##### § 600.1 Definitions.

The terms used in these regulations/guidelines (50 CFR Parts 600, 601, 604, and 605) have the meanings that are

prescribed in section 3 of the Magnuson Act, 16 U.S.C. 1802. In addition, the following definitions apply:

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

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

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

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

*CONFIDENTIAL* as a national security classification—means information officially classified as *CONFIDENTIAL* because un-authorized disclosure reasonably could be expected to cause damage to the national security.

*Confidential statistics*—means:

- (a) Any information/data/statistics prohibited from disclosure by statute. As used in the Magnuson Act, it describes information/data/statistics submitted as a requirement of a PMP or FMP, the disclosure of which would directly or indirectly identify the submitter or the submitter's business; or
- (b) Any information/data/statistics identifiable with any submitter collected under a pledge of confidentiality. Such a pledge is used to obtain voluntary cooperation of submitters and prevent inadvertent disclosure of business confidential, trade secret, or proprietary information.

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

*Exclusive economic zone (EEZ)*—means the zone established by Presidential Proclamation 5030, 3 CFR Part 22 (1983 Comp.), and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

*Fishery management*—means the system used to conserve and allocate the fishery resource—including research and data collection; specification of

objections and management measures; establishment, enforcement, and evaluation of regulations.

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

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

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

**Guidelines**—means an indication or outline of future policy or conduct.

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

Albacore, *Thunnus alalunga*;  
Bigeye tuna, *Thunnus obesus*;  
Bluefin tuna, *Thunnus thynnus*;  
Southern bluefin tuna, *Thunnus maccoyii*;

Yellowfin tuna, *Thunnus albacares*;  
and

Skipjack tuna, *Euthynnus pelamis*.

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

**Information, data, and statistics** are used interchangeably. (See definition of "confidential statistics".)

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

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

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

**Region**—mean one of five NMFS Regional Offices responsible for

administering the management and development of marine resources in the United States in their respective geographical regions.

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

**Secretary**—means the Secretary of Commerce or a designee.

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

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

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

#### § 600.2 Word usage.

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

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

(c) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson Act, and

is a factor reviewers will look for in evaluating a SOPP or FMP.

(d) *May* is used in a permissive sense.

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

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

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

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

#### § 600.3 Abbreviations.

(a) *Fishery management terms.*

ABC—acceptable biological catch

DAH—estimated domestic annual harvest

DAP—estimated domestic annual processing.

EEZ—exclusive economic zone

FMP—fishery management plan

FMU—fishery management unit

JVP—joint venture processing

MSY—maximum sustainable yield

OY—optimum yield

PMP—preliminary fishery management plan

TAC—total allowable catch

TALFF—total allowable level of foreign fishing

(b) *Legislation.*

APA—Administrative Procedure Act

CZMA—Coastal Zone Management Act

ESA—Endangered Species Act

FOIA—Freedom of Information Act

MFCMA—Magnuson Fishery Conservation and Management Act

MMPA—Marine Mammal Protection Act

MPRSA—Marine Protection, Research, and Sanctuaries Act

NEPA—National Environmental Policy Act

PA—Privacy Act

PRA—Paperwork Reduction Act

RFA—Regulatory Flexibility Act

(c) *Federal agencies.*

CEQ—Council on Environmental Quality

DOC—Department of Commerce

DOI—Department of the Interior

DOS—Department of State

EPA—Environmental Protection Agency

FWS—Fish and Wildlife Agency

GSA—General Services

Administration

NMFS—National Marine Fisheries Service

NOAA—National Oceanic and Atmospheric Administration

OMB—Office of Management and Budget

SBA—Small Business Administration

USCG—United States Coast Guard



## PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

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Authority: 16 U.S.C. 1801 *et seq.*

### Subpart A—General

#### § 601.1 Purpose and scope.

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

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

### Subpart B—Boundaries

#### § 601.11 Intercouncil boundaries.

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

(b) *Mid-Atlantic and South Atlantic Councils.* The boundary begins at the seaward boundary between the States of Virginia and North Carolina, and

proceeds due east to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson Act.

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

#### § 601.12 Intercouncil fisheries.

If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

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

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

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

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

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

### Subpart C—Uniform Standards for Organization, Practices, and Procedures

#### § 601.21 Purpose.

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

#### § 601.22 Council Statement of organization, practices, and procedures.

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

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

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

#### § 601.23 Employment practices.

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

#### § 601.24 Budgeting, funding, and accounting.

Each Council's administrative operations are governed by the requirements of OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education,

Hospitals, and other Nonprofit Organizations), and A-122 (Cost Principles for Nonprofit Organizations), and the Council's SOPP.

#### § 601.25 Support services.

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

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

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

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

Council	Servicing field unit
New England.....	Northeast Region, NMFS
Mid-Atlantic.....	Northeast Region, NMFS
South Atlantic.....	Southeast Region, NMFS
Caribbean.....	Southeast Region, NMFS
Gulf of Mexico.....	Southeast Region, NMFS
Pacific.....	Northwest Region, NMFS
North Pacific.....	Alaska Region, NMFS
Western Pacific.....	Southwest Region, NMFS

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

(1) Councils may not reimburse, or otherwise pay for, NOAA employees' travel, per diem, or other expenses to participate in Council activities unless such reimbursement or payment is approved by the Assistant Administrator, upon a Council's request on a case-by-case basis.

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

#### § 601.26 Other applicable law.

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

#### § 601.27 Protection of confidentiality of statistics.

(a) Each Council must establish appropriate procedures applicable to it, its members, and employees, and to its committees and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons, including, but not limited to, procedures for the restriction of Council member, employee, or advisory group access and the prevention of conflicts of interest, except that such procedures must be consistent with procedures of the Secretary, and, in the case of statistics submitted to the Council by a State, the confidentiality laws and regulations of that State.

(b) NOAA does not release or allow access to confidential information in its possession to Council members and members of Council advisory groups. Council staff having a need for such information is granted access, provided that the Council has established procedures, as required by the Magnuson Act, to ensure its confidentiality.

#### Subpart D—Membership

##### § 601.31 Purpose.

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

##### § 601.32 Terms of Council members.

Voting members (other than principal State officials, the RD, or their designees) are appointed for a term of three years and may be reappointed. An individual appointed to fill a vacancy occurring prior to the expiration of any term of office will be appointed for the remainder of that term. The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than the normal three years if necessary to provide for balanced expiration of terms of office.

##### § 601.33 Appointments.

The following procedures govern the nomination and appointment of Council members.

(a) Each year, the term of approximately one-third of the appointed members of each Council expire. New members will be appointed or existing members reappointed by the Secretary to vacancies from lists of nominees submitted by March 15 of each year by the Governors of each constituent State. When a vacancy arises prior to the expiration of a member's term, the Secretary will fill the vacancy for the remainder of the term from nominees submitted by the appropriate Governor(s).

(b) Governors must submit the names of three nominees for each applicable vacancy.

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

(1) Harvesting, processing, or marketing of fish or fish products;  
 (2) Promoting fishing for pleasure, amusement, relaxation or consumption. This may include operating a recreational fishing business;

(3) As former or current officer or leader in a State, regional, or national organization made up of representatives of any of the interests described in § 601.33(b) (1) and (2);

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

(5) Representing consumers of fish or fish products through participation in local, State, or national organizations, or performing other activities specifically related to the education and/or protection of the consumer of marine resources.

(6) Teaching, journalism, writing, or researching matters related to fisheries, fishery management and fishery resource conservation. Such experience includes both natural and social sciences.

(7) Consulting or legal experience areas directly related to fisheries



resource management, conservation, or use, including interacting with officials of local, State, or Federal agencies.

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

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

(f) There are two categories of seats to which voting members are appointed: "obligatory" and "at-large".

(1) Each constituent State has one obligatory seat. When the term of a State's obligatory member is expiring, or that seat becomes vacant before the expiration of its term, the Governor of that State must submit the names of at least three qualified individuals to fill that seat. In order to fill a State's obligatory seat, the Secretary may select from any of the nominees for such obligatory seat and for any at-large seat submitted by the Governor of that State.

(2) When the term of an at-large member is expiring or that seat becomes vacant before the expiration of its term, the Governor of all constituent States must submit the names of at least three qualified individuals to fill that seat. In order to fill an at-large seat, the Secretary may select from the nominees for that seat submitted by the Governors of the constituent States. When the terms of both an obligatory member and an at-large member expires the same year, the Governor of the State holding the expiring obligatory seat may indicate that remaining nominees for an obligatory seat may be considered for an at-large seat.

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

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

#### § 601.34 Oath of office.

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

#### § 601.35 Rules of conduct.

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

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

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

(3) 18 U.S.C. 207—prohibits a former official from representing others before a Federal agency concerning a particular matter involving specific parties in which the official participated

personally and substantially as a Federal official or which was under the person's official responsibility.

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

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

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

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

(8) 18 U.S.C. 1913—prohibits use of appropriated funds to influence a member of Congress to favor or oppose any legislation of appropriation. However, this prohibition does not apply when responding to a request from a member of Congress or a Congressional Committee. Personal communications of a Council member or employee at his own expense that are identified as such are not prohibited.

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

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

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

(3) No Council member or employee may pay, or offer, or promise, or solicit,

or receive from any person, firm, or corporation, a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.

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

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

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

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

(8) No Council member may participate—

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

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

#### § 601.36 Removal.

The Secretary may remove for cause any Secretarially-appointed member of a Council in accordance with section

302(b)(5) of the Magnuson Act wherein the Council concerned first recommends removal by not less than two-thirds of the voting members. A removal recommendation of a Council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

#### § 601.37 Financial disclosure.

(a) The Magnuson Act requires the disclosure by Council nominees, voting members appointed to the Council by the Secretary, and Executive Directors of any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the jurisdiction of the individual's Council or of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is 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 Executive Director of the appropriate Council prior to taking office. Individuals must update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The information required to be submitted will be kept on file, and made available for public inspection at reasonable hours at the Council offices. A copy of the form may be obtained from the appropriate Regional Office.

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

#### § 601.38 Security investigations and clearances.

(a) Access to security classified material is governed by security regulations and procedures issued pursuant to E.O. 12356, 3 CFR 166 (1982 Comp.). No person may have access to classified information unless that person has obtained a security clearance and it has been determined that access is necessary for the performance of that person's official duties. Detailed procedures governing applications for,

and the issuance of, security clearances are set forth in Department Administrative Order (DAO) 207-1 and the DOC Personnel Security Manual. The authority having custody of the classified information determines whether the requester has a need to know the information in the performance of the requester's official duties. Access to information classified as *CONFIDENTIAL* or *SECRET*, which is normally sufficient for Council purposes, requires clearance at the noncritical-sensitive level.

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

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

(d) Any person required to obtain a clearance must initiate the process of submitting:

(1) An FBI fingerprint card (FD-258), and

(2) A Standard Form 85, "Data for Nonsensitive or Noncritical-Sensitive Position."

Form FD-258 is the standard fingerprint card used by the FBI. Fingerprints are not maintained on file with the FBI but are destroyed once the criminal history check has been completed. Individuals may have their fingerprints taken at their local police department or at the personnel/security office of any Federal agency willing to provide the service. The Standard Form 85 is a multi-use biographical form developed by the Office of Personnel Management. Instructions on how to complete and submit the forms will be provided when the forms are distributed.

(e) The security clearance is valid for five (5) years.

(f) Individuals who are renominated and who have not undergone security processing within the five-year period will be required to submit a new processing package, including fingerprints.

(g) If a security clearance is granted, it will become effective only upon receipt by the DOC Office of Security of a necessary Non-Disclosure Agreement.

lawfully required by the National Security Council or other lawful Directive in accordance with its terms.

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

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

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

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

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

(k) Security clearances for U.S. Fish and Wildlife Service, U.S. Coast Guard, U.S. Department of State, and Marine Fisheries Commission non-voting members are obtained by the respective agencies. However, Council staffs are advised to verify periodically that these members have valid clearances in effect.

#### § 601.39 Council member compensation.

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

(b) Effective September 1, 1991, all Council members whose eligibility for compensation has been established in accordance with NOAA guidelines will be paid on a contract basis without deductions being made for Social Security or Federal and State income taxes. Until that time, such deductions may be made at the Councils' option. A report of compensation will be furnished each year as required by the Internal Revenue Service. Such compensation may be paid on a full day's basis whether in excess of eight hours a day or less than eight hours a day. The time is compensable where the individual member is required to expend a

significant private effort which substantially disrupts the daily routine to the extent that a work day is lost to the member. "Homework" time in preparation for formal Council meetings is not compensable. State officials may be compensated at the GS-18 level if they can document they are on leave without pay (LWOP). (LWOP does not include annual leave, holidays, or weekends.)

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

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

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

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

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

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

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

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

### PART 604—OTHER APPLICABLE LAW

Sec.

604.1 Purpose and scope.

604.2 Categories.

604.3 Administrative operations and employment practices.

604.4 The decision process.

604.5 Uses of oceans and coastline.

Authority: 16 U.S.C. 1801 *et seq.*

#### § 604.1 Purpose and scope.

(a) This part sets forth abbreviated summaries of other law applicable to the FMP process. (Regulations or agency directives specific to each law apply.)

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

#### § 604.2 Categories.

Section 304(a)(1)(B) of the Magnuson Act, 16 U.S.C. 1854(a)(1)(B), requires that each FMP or amendment be reviewed for consistency with the national standards, the other provisions of the Magnuson Act and other applicable law. The list of laws affecting the Councils

and their operations are grouped, for ease of description, into three general categories: those dealing with administrative operations and employment practices; those dealing with the fishery management decision process; and those dealing with other uses of the oceans and coastline. More detailed guidance is cited throughout this part and also appears in the NMFS *Operational Guidelines*.

#### § 604.3 Administrative operations and employment practices.

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

#### § 604.4 The decision process.

This category of laws applies to the fishery management decision process, and requires consideration of environmental, paperwork, and/or economic and social impacts, or establishes rules of procedure for public participation or access. These statutes include the Administrative Procedure Act (APA), 5 U.S.C. 551-553; the National Environmental Policy Act (NEPA), 42 U.S.C. 4321; the Paperwork Reduction Act (PRA), 49 U.S.C. 3501; and the Regulatory Flexibility Act (RFA), 5 U.S.C. 601. Procedures under these statutes and under Executive Orders (E.O.) 12291, 12612, and 12630 are described as follows:

(a) *Administrative Procedure Act (APA)*. Sections of the APA (5 USC 551-553) establish procedural requirements applicable to decisionmaking of Federal agencies. The purpose is to ensure public access to the rulemaking process, protect the rights of individuals under the Privacy Act and make available to the public information requested under the Freedom of Information Act. The effect on the Magnuson Act process is: to require a minimum 15- to 30-day public comment period for proposed Rules and a 30-day delayed effectiveness date for final rules, with justification possible for waiving or shortening both; to require the Council to maintain security of personal records of Council

members, employees, consultants under contract, and advisory group members; and to require NOAA to respond to requests for information under specified criteria for denial and time limits. Required procedures under these statutes are detailed in §§ 605.25 and 605.27.

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

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

(d) *Paperwork Reduction Act (PRA)*. The PRA requires agencies to minimize paperwork and reporting burdens whenever collecting information from the public. PRA's effect on the

Magnuson Act process is that if an FMP requires any form of information collection from the public, that collection must receive OMB approval. To obtain OMB approval, a written justification must be submitted. In addition, formal Council input is needed each Spring when the overall NMFS information collection budget request is formulated for submission to OMB. Procedures under the PRA are detailed in NDM 59-11.

(e) *Regulatory Flexibility Act: (RFA)*. The RFA establishes the principle that where Federal regulation is necessary, the regulation should be tailored to the regulated entity's size and capacity to bear the regulatory burden. RFA's effect on the Magnuson Act process is to require a determination of whether a proposed rule is likely to have a significant economic impact on a substantial number of small entities. If the determination is affirmative, initial and final regulatory flexibility analyses must be prepared to accompany the proposed and final rules respectively. If the determination is negative, the DOC General Counsel so certifies to the Small Business Administration. These analyses must consider the benefits and costs of compliance, with particular emphasis on the effects of the rule on the competitive position, cash flow and liquidity, and ability of the small entity to remain in the market. The RFA also requires a projection of reporting and record-keeping requirements.

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

(g) *E.O. 12630*. This E.O. requires that each Federal agency prepare a Takings Implication Assessment (TIA) for any of

its administrative, regulatory, and legislative policies and actions that affect, or may affect, the use or value of any real or personal private property. These policies include regulation, propose or implement licensing or permitting requirements, conditions, or restrictions otherwise imposed by an agency on the use of private property, and actions relating to, or causing the physical occupancy or invasion of, private property. DOC is developing procedures to implement the requirements of this E.O.; these regulations will be appropriately amended to implement the DOC procedures when they become available.

#### § 604.5 Uses of oceans and coastline.

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

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

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

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

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

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

## PART 605—GUIDELINES FOR COUNCIL OPERATIONS/ADMINISTRATION

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Authority: 16 U.S.C. 1801 *et seq.*

### Subpart A—General

#### § 605.1 Purpose and scope.

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

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

### Subpart B—Operations

#### § 605.11 General.

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

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

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

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

#### § 605.12 Use of available expertise.

Councils should use all available expertise as necessary and appropriate in carrying out their functions. This includes experts within NOAA, at State and academic institutions, Scientific and Statistical Committees (SSCs), Advisory Panels (APs), plan teams, and/or other

working groups established to assist in the processes described below.

#### § 605.13 Planning

(a) *General*. Councils must establish procedures for identifying, on a continuing basis, fishery management issues and needs. The procedures established must ensure consideration of, and responsiveness to, the Stock Assessment and Fishery Evaluation (SAFE) report, economic and social impact analyses, enforcement experience, public perceptions and proposals, management priorities and long-term management goals and objectives. In its planning process, the Councils should define the FMU, determine the need for management, identify data and information needs, examine the range of issues to be addressed, propose management objectives, and schedule future actions.

#### (b) Data Collection Program (DCP).

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

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

#### § 605.14 Fishery management objectives.

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

role of objectives in the development and review process.)

**§ 605.15 Establishment of management measures.**

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

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

(1) The Council must prepare an analysis of the economic and social effects of alternate management measures and their effectiveness in achieving the objectives in the FMP. The analysis must discuss the need for Federal action, and the benefits and costs of each alternative, and the effects on small entities and fishery-dependent communities. The analysis must include a conclusion concerning the expected net economic and social benefits to be achieved by each alternative management measure or system. To the extent such net benefits cannot be quantitative, qualitative estimates must be provided.

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

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

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

**Subpart C—Administration**

**§ 605.21 Council Statement of Organization, Practices, and Procedures (SOPP).**

Council SOPPs required under § 601.22 must, at a minimum, implement the standards outlined below in this subpart. As appropriate, these sections

may be incorporated by reference. Councils should also include in their SOPPs a time limit within which they will submit a minority report under § 605.24(a)(3)(iv); specify an appropriate deposit, if applicable, to be made to an employee's retirement fund for unused sick leave up to an explicit maximum number of days and contribution per day; and implement § 601.27 on protection of confidentiality of statistics. In addition, they may wish to include selected regulatory sections from Parts 601 and 604, as circumstances warrant.

**§ 605.22 SOPP checklist.**

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

**§ 605.23 Council organization.**

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

**§ 605.24 Council meetings and hearings.**

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

**§ 605.25 Employment practices.**

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

**§ 605.26 Financial management.**

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

**§ 605.27 Recordkeeping.**

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

**§ 605.23 Council organization.**

(a) *Officer and terms of office.* The Chair must be elected from among the

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

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

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

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

Council	Regional Director
New England .....	Northeast Region
Mid-Atlantic .....	Northeast Region
South Atlantic .....	Southeast Region
Caribbean .....	Southeast Region
Gulf of Mexico .....	Southeast Region
Pacific .....	Northwest/Southwest Region <sup>1</sup>
North Pacific .....	Alaska Region
Western Pacific .....	Southwest Region

<sup>1</sup> The Southwest Regional Director is the NMF spokesman on the Council and votes on fishery matters primarily or exclusively off California. The Northwest Regional Director is the spokesman and votes on fishery matters primarily or exclusively on Oregon and Washington.

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

(1) *Scientific and Statistical Committee (SSC).* The SSC pro-



expert scientific and technical advice to the Council on the development of fishery management objectives and strategies, the scientific information supporting preparation of FMPs the appropriateness of the ABC and OY levels, the adequacy of the regulatory analysis, and the effectiveness of FMPs once in operation. In providing this advice, the SSC assists the Council in identifying the need for research and data collection and the scientific resources available, and in establishing criteria for framework actions. Membership must be multidisciplinary, and should include biological and social scientists from the Federal and State governments, and private scientific community who are knowledgeable about the fisheries to be managed.

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

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

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

#### § 605.24 Council meetings and hearings.

In fulfilling the Council's responsibilities and functions, the Council members may meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information, or

make decisions regarding material before them. To provide for review and decision by the Secretary, recommendations of each of these groups must be documented and available. The documentation must include, at a minimum, a statement of the problem, recommendations for corrective action, likely impact on the affected resource, and likely impact on affected user groups.

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

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

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

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

(iii) Decisions of any Council are by majority vote of the voting members present and voting (except for proposed removal of Council members, see § 601.36). Voting by proxy is not permitted except as allowed under § 605.23(b). An abstention does not affect the unanimity of a vote.

(iv) Voting members of the Council who disagree with the majority on any

issue to be submitted to the Secretary, including principal State officials raising federalism issues, may submit a written statement of their reasons for dissent. If any Council member elects to file a minority report, it should be submitted at the same time as that of the majority.

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

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

(5) *Closed meetings*. (i) Each Council, SSC, and AP:

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

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

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

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

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

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

consideration of the cost of transportation and lodging.

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

(2) *Notice*. Hearings must follow the same procedures for announcement as for Council and advisory group meetings. Timely public notice also should be given to the local media where the hearing is to take place. Publicity should be sufficient in time, substance, and area coverage to assure that all interested parties are aware of the opportunity to make their views known.

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

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

#### § 605.25 Employment practices.

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

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

established during the course of the cooperative agreement year. Descriptions of the work to be performed must be submitted.

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

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

(3) 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).

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

(b) *Experts and consultants*. As long as funding is available in its budget, each Council may contract with experts and consultants as needed to provide technical assistance not available from NOAA. This includes legal assistance in clarifying issues, but Councils must notify the NOAA Office of General Counsel before seeking outside legal advice. A Council may not contract for the provision of legal services on a continuing basis.

(c) *Details of Government employees*. All Federal agencies are authorized by section 302(f)(2) of the Magnuson Act, 16 U.S.C. 1852(f)(8), to detail personnel to the Council on a reimbursable basis to assist the Council in the performance of its functions. Nonreimbursable details are not precluded. Council requests to the heads of such agencies must contain the purpose of the detail, length of time, compensation to be paid, if any, and the stipulation that the Assistant Administrator be consulted prior to granting the request. Copies of this correspondence will be transmitted to the Assistant Administrator through the servicing Regional Office. Federal employees so detailed retain all benefits, rights, and status as they are entitled to in their regular employment. The Councils may negotiate

arrangements with State or local governments to utilize employees of those governments. Assistance in arranging these details may be obtained through the servicing Regional Office.

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

(e) *Salary and wage administration*. (1) In setting rates of pay for Council staff, the principle of equal pay for equal work must be followed. Variations in basic rates of pay should be in proportion to substantial differences in the difficulty and responsibilities of the work performed.

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

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

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

(g) *Leave*. Council employees should be granted paid leave for holidays, vacations or exigencies, sickness, and civil duties (e.g., jury duty, military

reserve obligations) as determined by the Council. Councils should inform employees that leave is not transferable to or from Federal agencies. Leave is subject to the following limitations:

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

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

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

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

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

(iii) Employees may carry over up to 240 hours (30 days) unused annual leave from one year to the next. Amounts remaining above 240 hours will be forfeited. Employees who were authorized to carry over more than 240 hours in accordance with Council SOPPs prior to the effective date of these guidelines may continue under such policy. Under certain conditions, forfeited annual leave may be restored if it was properly scheduled for use and circumstances beyond the employee's control caused the forfeiture. Approval for this restoration must be obtained from the Council Chair or his/her designee, who will refer to the NOAA Personnel Regulations and other source documents for guidance. Lump sum reimbursements not to exceed 240 hours carryover plus current year earnings of unused leave are authorized upon employee separation. (Councils should neither budget nor account separately for anticipated or accrued leave costs payable upon employee separation. Should such costs arise and exceed Council funding availability, NOAA will defray these costs in total.)

(2) *Sick leave.* (i) Full-time Council employees may accrue sick leave at the rate of two hours per week (13 days per year). Part-time employees may accrue at a percentage of the hours worked compared to 40 hours. A 20-hour-a-week employee would accrue half the leave accrued by a 40-hour-a-week employee. Unused sick leave credit may be accumulated without limit. Lump sum payments to the employee upon separation are not authorized. However, at retirement as defined in accordance with the provisions of the Social Security Act or in the event of death of

the employee, a deposit may be made to the employee's retirement fund for unused sick leave up to a maximum number of days and contribution per day as established by the Council in its SOPP.

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

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

(1) *Medical insurance.* Councils may provide group medical and dental insurance to their employees either through a commercial underwriter or through a State or local government program, if within the 20% total benefit limitation. Councils are not authorized to increase employee salaries in lieu of a medical or dental insurance plan.

(2) *Life insurance.* Councils may provide group life insurance for employees, if within the 20% total benefit limitation. An increase in salary in lieu of insurance coverage is not authorized.

(i) *Travel Reimbursement.*

(1) *General.*

(i) Each Council must include travel reimbursement procedures in its SOPP.

(ii) The per diem and actual subsistence rates contained in the NOAA Travel Handbook apply.

(iii) 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.

(iv) Coach air transportation must be utilized when available. Travel via first class air must be justified on the reimbursement voucher and approved by the Council Chair or his/her authorized representative. Privately owned vehicles (POVs) may be authorized when other modes of transportation are either unavailable or inconvenient. When a POV is authorized

for the convenience of the traveler, the reimbursed costs must not exceed the costs of coach air fare. Accommodation equivalent to other-than-first-class should be utilized in the unlikely event that water vessel transportation is required. When substantial savings can be realized by utilizing rail travel, this mode of transportation should be considered when available and adequate.

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

(3) *Council staff, members of plan teams, and others.* Members of the Council staff and plan teams, invited experts, consultants, or others specifically invited, unlike those described in paragraph (i)(2) of this section, must adhere to the per diem limits or actual expense requirements set forth in the GSA Rules.

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

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

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

(3) Council Chairmen or their authorized representatives may approve routine across-the-border travel to Canada or Mexico for Council members

and employees within specified Federal rates.

(4) Domestic invitational travel for non-Council personnel may be approved by the Council Chairman or his/her authorized representative. Foreign invitational travel must have approved as described in paragraph (j)(1) of this section. The per diem limits or actual expense requirements described above also are applicable to no-Council personnel traveling at Council expense. Payment for NOAA personnel from Council funds is not authorized.

#### § 605.26 Financial management.

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

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

(1) *Administrative.* The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through the Department, in the budgets of NOAA and NMFS. The funding requirements for the Councils are subject to regular budgetary review procedures. Annual or biennial grants and cooperative agreements will provide such Federal funds as the Secretary determines are necessary to the performance of the functions of the Councils and consistent with budgetary limitations. Requirements for periodic reports for purposes of NOAA budgetary control are described in individual grants and cooperative agreements issued to the Councils.

(i) *Application for cooperative agreement.* (A) The Council must submit a formal application (Standard Form 124, Federal Assistance Short Form) to

the appropriate Regional Director. This application includes a Budget Data Form, a Program Narrative Statement supporting the application, and a Statement of General Assurances. As backup to the Budget Data Form, each Council must prepare a Budget Summary Worksheet for three fiscal/calendar years. This Budget Data Form must reflect the amounts in lines A1 through A8 of the Worksheet. The Program Narrative Statement should describe in appropriate detail the purpose for which funds are sought, e.g., operational expenses, FMP-oriented contracts, State liaison support.

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

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

(iii) *Advance of funds.* A Letter of Credit will be established for each cooperative agreement. Drawdowns from the Treasury will be made at the commercial bank through electronic fund transfer from Treasury. The Council shall initiate each drawdown at approximately the same time that checks are issued by the Council in payment of Council liabilities. Drawdowns should not be made more frequently than daily or in amounts less than \$5,000. These requirements are under the Department of the Treasury Circular 1075, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs" (31 CFR Part 205).

(2) *Programmatic—(1) Nature of request.* Councils may enter into cooperative agreements with Federal agencies, State, and private institutions

on matters of mutual interest which further the objectives of the Magnuson Act. Approval from the Secretary of Commerce must be obtained prior to entering into such arrangements, and each agreement must specify the nature and extent of Council participation. The Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to the NOAA Administrator in accordance with applicable NOAA regulations.

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

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

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

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

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

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

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

(b) *Procurement.* Draft contracts or solicitations relating to the development or monitoring of FMPs must be submitted to the RD. Proposed sole source procurements over \$5,000 and purchases or leases of automated data processing (ADP) equipment must also be submitted to the RD prior to award. Solicitations will not be released, nor contracts awarded, until all substantive issues noted by the RD have been satisfactorily resolved. Proposed sole source contracts over \$10,000 must be approved in writing by the Grants Officer. Final copies of all contracts awarded will be filed with the appropriate Grants Officer. The cost and financial management principles outlined in OMB Circulars A-122 and A-110 apply to all Council procurement actions.

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Space management.* Economy should be exercised regarding the amount and cost of space acquired. When acquiring office space, Councils may avail themselves of the following:

(1) General Services Administration leasing assistance;

(2) Regional Office assistance;

(3) Direct negotiations within the guidelines stated above.

(e) *Accounting system.* Councils must maintain a document-oriented, obligation-accounting system (with accruals, as necessary, for budget projection purposes) rather than a cash-accounting system. Actual journals and ledgers must be maintained either manually or on an automated system; in either case, however, all obligations must be clearly documented and organized in order to provide quick access and verification by professional auditors. The actual composition (chart of accounts) of the system may vary somewhat from Council to Council. As a minimum, however, the system must provide fiscal control over expenditures in line with those object classes depicted in the Council budget submission. This will allow not only

timely submission of the periodic financial status reports, but will also ensure close coordination between actual spending rates and budgeted amounts so that comparisons and changes can be made at any time. All financial records must be handled in accordance with OMB Circular A-111.

(f) *Audits.* An independent audit is required at least biennially by DOC Office of the Inspector General audit or an independent public accountant (IPA). All Councils are subject to audit by the DOC Office of the Inspector General and the General Accounting Office. The scope of the audit may include: conduct of financial operations; compliance with applicable laws and regulations; economy and efficiency of administrative procedures; and achievement of results.

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

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

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

(i) The Grants Officer;

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

(g) *Financial reports.* Reports are required which summarize total expenditures made and Federal funds unexpended for each award, and the status of Federal cash received. The Report of Federal Cash Transactions (Form SF-272) is required from each Council quarterly and is due to the Grants Officer no later than 30 working days after the end of the quarter. A final report is required upon completion of the grant, to be submitted within 90 days after completion of the grant. The Financial Status Report (Form SF-269) is required from each Council quarterly and is due to the Grants Officer no later than 30 working days after the end of the quarter. A final report is required 30 days following completion of the grant. Guidance for the preparation of these reports and other financial reporting procedures is contained in Attachment G of OMB Circular A-110.

#### § 605.27 Recordkeeping.

(a) *Administrative records for FMP.* (1) Councils and NMFS Headquarters, Regions and Centers collectively are



responsible for maintaining records pertaining to the development of FMPs and amendments within their geographic area of authority. In the event of litigation, compilation of an administrative record for a court case will be under the direction of the NOAA General Counsel.

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

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

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

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

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

(c) *Permanent records.* The designation of a file as "permanent" means that the records are appropriate for offer to the National Archives when 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 EIS's or environmental assessments. Cut off at end of calendar year when created. Permanent retention; no approved disposition at this time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) *Requests.*

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



extension that otherwise can be invoked, if partial or full denial should result in an appeal.

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

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

(iv) Councils should recover allowable costs for locating and reproducing information released under the FOIA and forward these funds through the NOAA Freedom of Information Officer to the U.S. Treasury. Appropriate charges are outlined in the DOC Uniform Schedule of Fees, 15 CFR 4.9.

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

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

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

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

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

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

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

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

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BILLING CODE 3510-22-01

## 50 CFR Part 646

[Docket No. 81017-8271]

### Snapper-Grouper Fishery of the South Atlantic

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.  
**ACTION:** Final rule.

**SUMMARY:** NOAA issues this final rule to implement Amendment 1 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule prohibits the use of trawl nets in the snapper-grouper fishery in the exclusive economic zone (EEZ) between Cape Hatteras, North Carolina and Cape Canaveral, Florida. NOAA also redefines the area south of Fowey Rocks Light, Florida wherein fish traps may not be placed. The intended effects of this rule are to prevent habitat damage and prevent the harvest of undersized fish, thereby ensuring the continued productivity of the snapper-grouper resource and to clarify the regulations.

**EFFECTIVE DATE:** January 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Rodney C. Dalton, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery is managed under the FMP, prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR Part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP, implemented September 28, 1983 (48 FR 39483, August 31, 1983), addressed growth overfishing of a number of the major species in the fishery and controversy regarding

certain harvest techniques. Minimum sizes were established for five of the major species, and limitations were imposed on the use of poisons, explosives, fish traps, and trawls in the fishery. A prohibition on use of roller trawls was considered in order to address concerns about trawl damage to live-bottom habitat and harvest of very small vermilion snapper. The prohibition was rejected because conclusive evidence of trawl-induced habitat damage was not available at that time. The FMP noted ongoing studies of the effects of trawls on live-bottom habitat and expressed the intent to address this issue via FMP amendment if evidence of significant damage was documented. Information is now available to document habitat damage resulting from use of bottom trawls in live-bottom areas.

Amendment 1 addresses the problem of habitat damage and trawl harvest of undersized fish by prohibiting the use of trawl gear in a directed snapper-grouper fishery between Cape Hatteras, North Carolina and Cape Canaveral, Florida. A vessel possessing trawl gear and more than 200 pounds of fish in the snapper-grouper fishery (as listed in § 646.2) is defined as a participant in a directed fishery. It is a rebuttable presumption that a vessel possessing fish in the snapper-grouper fishery harvested those fish in the EEZ.

In addition, Amendment 1 updates the habitat section of the FMP and incorporates vessel safety considerations into the FMP.

The primary habitat for the major species in the snapper-grouper fishery, the historical use of trawl gear to harvest snapper-grouper species, evidence of live-bottom habitat damage by trawl gear, the effect of trawl gear on the harvest of undersized vermilion snapper, and analysis of the economic impacts of implementing Amendment 1 were fully discussed in the proposed rule (53 FR 42985, October 25, 1988) and are not repeated here. In addition, changes to the regulations proposed by NOAA to redefine the area south of Fowey Rocks Light, Florida wherein fish traps may not be placed, and other technical changes were discussed in the proposed rule and are not repeated here.

### Comments and Responses

NOAA received twenty-seven letters from recreational fishermen, sportfisher organizations, a conservation organization, two federal agencies, a state natural resource agency, and a member of Congress supporting Amendment 1 and implementation of the proposed rule. Most of these

extension that otherwise can be invoked. If partial or full denial should result in an appeal.

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

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

(iv) Councils should recover allowable costs for locating and reproducing information released under the FOIA and forward these funds through the NOAA Freedom of Information Officer to the U.S. Treasury. Appropriate charges are outlined in the DOC Uniform Schedule of Fees, 15 CFR 4.9.

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

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

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

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

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

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

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

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

[FR Doc. 89-883 Filed 1-13-89; 8:45 am]

BILLING CODE 3510-22-M

## 50 CFR Part 646

[Docket No. 81017-8271]

### Snapper-Grouper Fishery of the South Atlantic

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this final rule to implement Amendment 1 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule prohibits the use of trawl nets in the snapper-grouper fishery in the exclusive economic zone (EEZ) between Cape Hatteras, North Carolina and Cape Canaveral, Florida. NOAA also redefines the area south of Fowey Rocks Light, Florida wherein fish traps may not be placed. The intended effects of this rule are to prevent habitat damage and prevent the harvest of undersized fish, thereby ensuring the continued productivity of the snapper-grouper resource and to clarify the regulations.

**EFFECTIVE DATE:** January 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Rodney C. Dalton, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery is managed under the FMP, prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR Part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP, implemented September 28, 1983 (48 FR 39463, August 31, 1983), addressed growth overfishing of a number of the major species in the fishery and controversy regarding

certain harvest techniques. Minimum sizes were established for five of the major species, and limitations were imposed on the use of poisons, explosives, fish traps, and other gear in the fishery. A prohibition on use of bottom trawls was considered in order to address concerns about trawl damage to live-bottom habitat and harvest of small vermilion snapper. The prohibition was rejected because conclusive evidence of trawl-induced habitat damage was not available at that time. The FMP noted ongoing studies of effects of trawls on live-bottom habitat and expressed the intent to address the issue via FMP amendment if evidence of significant damage was documented. Information is now available to document habitat damage resulting from use of bottom trawls in live-bottom areas.

Amendment 1 addresses the problem of habitat damage and trawl harvest of undersized fish by prohibiting the trawl gear in a directed snapper-grouper fishery between Cape Hatteras, North Carolina and Cape Canaveral, Florida. A vessel possessing trawl gear larger than 200 pounds of fish in the snapper-grouper fishery (as listed in § 646.2 defined as a participant in a directed fishery. It is a rebuttable presumption that a vessel possessing fish in the snapper-grouper fishery is a directed fish in the EEZ.

In addition, Amendment 1 updates the habitat section of the FMP and incorporates vessel safety considerations into the FMP.

The primary habitat for the major species in the snapper-grouper fishery is the historical use of trawl gear to harvest snapper-grouper species. Evidence of live-bottom habitat damage by trawl gear, the effect of trawl gear on the harvest of undersized vermilion snapper, and analysis of the economic impacts of implementing Amendment 1 were fully discussed in the proposed rule (53 FR 42985, October 25, 1988) and are not repeated here. In addition, changes to the regulations proposed by NOAA to redefine the area south of Fowey Rocks Light, Florida where traps may not be placed, and other technical changes were discussed in the proposed rule and are not repeated.

### Comments and Responses

NOAA received twenty-seven letters from recreational fishermen, sports organizations, a conservation organization, two federal agencies, a state natural resource agency, and a member of Congress supporting Amendment 1 and implementing it. Most of the comments were in support of the proposed rule. Most of the comments

# North Pacific Fishery Management Council

Richard B. Lauber, Chairman  
Clarence G. Pautzke, Executive Director

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## MEMORANDUM

TO: Executive Directors, Regional Councils

FROM: Clarence Pautzke, Executive Director  
NPFMC 

DATE: November 15, 1994

SUBJECT: Confidentiality of Data

### Background

I am trying to solve the dilemma of not being able to provide confidential data to Council contractors that work on our social and economic studies. I review below the various statutes and policies that affect the release of data. I had concluded earlier that I could simply change the Council's confidentiality policy as indicated in Attachment 1. I have been informed by NOAA General Council, however, that Section 603 needs to be changed before the Councils can release data to contractors.

### Magnuson Act

Nothing in the Magnuson Act seems to have prohibited NMFS from providing contractors access to federal and state confidential data. Section 303(d) allows disclosure to federal and council employees. Because NMFS routinely supplies such information to contractors, they must be viewed as employees in context of the Magnuson Act.

### Secretary's Guidelines and Regulations

Section 601.27 (Final rule published January 17, 1989) requires each Council to establish procedures for ensuring data confidentiality and they must be consistent with procedures of the Secretary and any State providing such data. The Secretary and the State of Alaska both provide confidential data to their contractors.

Section 603.5(a)(5) (Final rule published August 3, 1990) authorizes access to confidential data by NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant (Attachment 2). Thus Section 603.5(a)(5) appears to liberally interpret the term "employees" from the Magnuson Act to include NMFS/NOAA contractors, but not Council contractors. I believe that Council contractors should be allowed the same access as NMFS contractors. They would be required to meet all the control procedures identified in Section 603.6(b). They also should be viewed as "... performing functions authorized by a Federal contract or grant." (Section 603.5(a)(5)).

## NOAA Administrative Order 216-100

This Order (Attachment 3) replaces NOAA Administrative Directive 88-30 dated August 5, 1982. It implements 50 CFR 603 and contains procedures for the collection, handling, storage and release of confidential data. Its definition of authorized users does not preclude contractors, though Section 603(e) appears to only address NMFS contractors, including universities and Sea Grant investigators. I believe Council contractors should be allowed access since they fit the definitions of authorized users and person, and would have to follow all the rules laid out for NMFS contractors in Appendix D. Perhaps all that is really needed is to have NMFS approve Council contractors as authorized users. Nothing in the Order, or Section 603 or the Act, would prohibit such a designation.

### Council Policy on Confidentiality

Our current Council policy was developed after the January 1983 amendments to the Magnuson Act requiring the Councils to develop procedures for ensuring confidentiality of data. We drafted our policy based on a prototype developed in late 1983 and a sample format developed in June 1984. I incorporated the language from these drafts in the draft policy laid before the Council on October 25, 1985. The Council adopted the policy in January 1986.

It is interesting to note that in the prototype prepared by NMFS, under the definitions section, there is a comment that, ". . . rather than Council provid[ing] confidential data received from state or federal governments to a Council contractor, it may be more practical to arrange for the collector to supply the data directly to the contractor. The NMFS will require this approach with their data." This approach is further prescribed later in the prototype policy in Section G(c)(5) wherein contractors that must have access to state and federal data must go directly to the agency that supplies the data. These restrictions on Council contractors were carried through subsequent versions of draft policies and adopted into our current policy and those of other Councils.

The above review led me to conclude that all I needed to do was to revise our policy as shown in Attachment 1 and the problem would go away. As described below, NOAA-GC though otherwise.

### NOAA General Counsel Opinion

In a faxed memo dated September 25, 1994, I received the following opinion:

Right now, the confidentiality regulations at part 603 only allow access to "NOAA/NMFS" contractors, not regional fishery management council contractors. The regulations at part 603 AND the agency directives would have to be changed before fishery management council contractors could have access to confidential data. The same is true for fishery management council "grantees," if councils have "grantees." I suggest the councils ask NMFS to change the regulations and the directives, citing the need for contractors to have access to such data and somehow ensuring its confidentiality.

**NORTH PACIFIC FISHERY MANAGEMENT COUNCIL**

**Policy on the Confidentiality of Statistics\***

**PURPOSE**

In accordance with Section 303(d) of the Magnuson Act, this policy establishes procedures to ensure that statistics submitted to the Council by federal or state authorities or voluntarily by private persons remain confidential. It also includes measures to restrict Council employee access and prevent conflicts of interest. Policies and procedures for treatment of state and federal statistics must be consistent with relevant federal or state law.

**DEFINITIONS**

(For purposes of these procedures)

**Aggregate or Summary Form:** Restructuring confidential data so that the submitter cannot be identified, either from the present release of the restructured data or in combination with preceding or other releases.

**Authorized Use:** That specific use which is allowable within the constraints imposed on a Council by federal or state statutes, regulations, and directives; or by Council policies and procedures, or commitments made by the Council or Council staff to submitters under data collections sponsored by the Council.

**Authorized User:** A Council staff member or contractor specified by the Council Executive Director as having a need to use confidential data, who has met other requirements specified in these procedures, is cognizant of these procedures, has agreed to comply with the requirements herein, and has signed a "Statement of Non-disclosure" affirming the user's understanding of Council policies and procedures with respect to confidentiality of statistics, including obligations to comply with federal and state confidentiality laws, regulations, and procedures. *The Assistant Administrator for Fisheries, NOAA (or designee), may grant "authorized user" status to Council members for conservation and management purposes.* ~~Contractors specified to have need to access state or federal confidential data must obtain those data directly from the federal or state entity and comply with the applicable federal, state, and Council laws, regulations, and procedures.~~

**Confidential data:** Information, the disclosure of which may be prejudicial or harmful, including data received from state or federal agencies labeled confidential and Council-sponsored data collections where confidentiality was pledged to the submitter.

**Conflict of Interest:** Access to confidential data that may provide personal gain, reward, or competitive advantage.

**Contract/Agreement:** All binding forms of mutual commitment under a stated set of conditions to achieve a specific objective.

**Data, Information, and Statistics:** Used interchangeably; all three may be confidential.

\*Originally adopted by the Council in January 1986.

~~**Data Base Administrator:** For federally sponsored data gathering, an employee in each NMFS data management center responsible for the direction and development of data management systems. The North Pacific Council's Data Base Administrators for federal data are the NMFS, AFSC and Alaska Region Data Base Administrators. For Council-sponsored data gathering, the Executive Director will serve as data base administrator. For state-sponsored data gathering, the designated state official will be the data base administrator.~~

~~**Need to Know:** The request for access is consistent with the use for which the data are obtained.~~

(Refer to NOAA Directives *Administrative Order 216-100* on Confidential Fisheries Statistics for additional definitions.)

## POLICY

**Disclosure:** Confidential data will not be disclosed except to authorized users in accordance with NMFS, Council, and/or State applicable procedures and policies.

**Access:** All authorized users having access to confidential data shall be informed that the data are confidential and will be required to read, date, and sign a statement of non-disclosure that affirms the user's understanding with respect to confidential data and penalties for unauthorized use and disclosure. When there is a potential for, or possible appearance of, conflict of interest, access will not be permitted. Council members and staff specified by the Executive Director as authorized users shall sign a statement to ensure no conflict of interest.

~~**Operational Responsibilities:** The Council Executive Director will serve as the Council's "Data Base Administrator" for purposes of Council-sponsored data collections. The Executive Director will coordinate with NMFS Data Base Administrators for federal confidential data and with designated state officials for state confidential data. The Council Executive Director is responsible for maintaining the confidentiality of all confidential data collected by the Council or provided to the Council from other agencies.~~

## PROCEDURES

### Obtaining Confidential Data

1. **From State or Federal Agencies:** The Council Executive Director or Council staff member designated as an authorized user, may request confidential data from state or federal agencies to carry out Council responsibilities where direct access to confidential data has not been granted.
2. **Council-sponsored Data Collection:** Data submitted are voluntary. If a pledge of confidentiality is made to the submitter, these data are to be treated as confidential. The Executive Director is responsible for making the determination as to when a pledge of confidentiality may be made. Submitters will be advised, in all cases, orally or in writing, of the purpose of collecting data and uses that may be made of the data, and that submission of the data is voluntary. If a pledge of confidentiality is made, the submitter shall be advised in writing.

If the Council contracts to have data gathered on its behalf, contractors and their employees are subject to the same civil and criminal penalties as any other authorized user. Contractor



personnel will be required to sign a statement of non-disclosure. Confidential data collected under contract are to be transferred on a timely basis to authorized Council staff. No copies of these data can be retained by the contractor *beyond the termination date of the agreement*. Aggregated data may be retained *if approved by the Council Executive Director*. A data return clause shall be included in the contract.

### Conflict of Interest

Authorized users are prohibited from using confidential data for personal gain, reward, or competitive advantage. If a potential conflict of interest or the appearance of a conflict of interest exists, the Executive Director will refer the matter to the NOAA Office of General Counsel, Alaska Region, for determination.

### Security

An inventory will be maintained by the Council Executive Director of all confidential data received from state or federal agencies or collected by the Council. The inventory will include a record of distribution and final disposition of each data set. Data will be maintained in a secure fashion, whether in hard copy or electronic form.

### Access

1. Access Control: ~~Access to confidential data received from state or federal agencies shall may be approved by the Council Executive Director a designated agency official. Access to confidential data collected under Council sponsorship shall be approved by the Council Executive Director in accordance with Council policies and procedures. In determining whether to grant access, the Executive Director shall consider the specific types of data required, relevance of the data to intended uses, whether the access will be continuous, infrequent, or one-time, and whether aggregate data, in lieu of confidential data, will satisfy the data needs.~~
2. Users: Access will be limited to authorized users. Council-authorized users are the Council staff members and contractors specified by the Executive Director as having need to access confidential data to further the mission of the Council. The Assistant Administrator for Fisheries, NOAA (or designee), may grant Council members "authorized user" status for conservation and management purposes as prescribed in the Magnuson Act.
  - (a) Identified NPFMC technical staff will have routine access (through office micro-computers or other means) to confidential data.
  - (b) All confidential data will be adequately protected in any electronic files (on or off line storage) in standard files.
  - (c) ~~NPFMC staff with access to confidential data will not release confidential data, data derived from confidential data (e.g., aggregated data), or the results of any analysis of confidential data to anyone until: (i) Confidential data, data derived from confidential data or results of any analysis of confidential data, have been classified as being not confidential by the NMFS, AFSC and Alaska Region data base administrators or designated State official. The timely review and classification of material can be done by long distance computer hook-ups, or (ii) Confidential data have been approved for release by the data base administrators because of established "need to know" presented by the Council's Executive Director to the~~

~~data base administrators. The Council will submit annually to NMFS Alaska Region a copy of their procedures for ensuring the confidentiality of data. The procedures will be evaluated for their effectiveness and changed if necessary. As part of this procedure, an updated statement of nondisclosure will be included for each Council employee, member, and contractor who require access to confidential data.~~

3. Reproduction: Reproduction of any confidential data must be approved by the Executive Director and entered into the data inventory.
4. Contractors: Pursuant to an agreement with the Council, Council contractors may be granted "authorized user" status by the Executive Director, in consultation with NMFS Alaska Region and NOAA GC, consistent with this policy, if the use furthers the mission of the Council. ~~authorized access to confidential data collected under Council sponsorship with the approval of the Executive Director. Requests for access by a contractor to confidential data that were provided to the Council by a state or federal agency shall be submitted to the designated agency official for approval. Documentation of that approval must be entered into the data inventory. If access is granted, language in the agreement specifically dealing with confidentiality of data shall be required. It will be modeled after Appendix D to NOAA Administrative Order 216-100 and the language will include all the relevant portions of this policy and shall prohibit further disclosure of the data. No data may be retained beyond the termination of the agreement; and any disclosure of data derived from the accessed confidential data must be approved by the Council Executive Director.~~
5. Statement of Non-disclosure: Each user or clerical who handles the data is required to sign a statement (see attachment) which states they understand the confidential nature of the data and the penalties for unauthorized use and disclosure. The statements shall be kept on file by the Executive Director.

#### Release of Confidential Data

1. Requests for Confidential Data: All requests by other than authorized users must be in writing and reviewed by the NOAA Office of General Counsel, Alaska Region. ~~Public~~ These requests will be treated as Freedom of Information Act requests. Release of data will be in accordance with procedures set out in "Access" above.
2. Subpoenas for Data: Subpoenas should be submitted immediately to NOAA Office of General Counsel, Alaska Region.
3. Requests for Release of Aggregate Data: Requests for aggregate data compiled from confidential data shall ~~may~~ be approved by the ~~Data Base Administrators for the submitting agency or the Executive Director for Council sponsored data collections.~~

**STATEMENT OF NON-DISCLOSURE, CONFLICT OF INTEREST,  
AND CONFIDENTIALITY PROCEDURES**

*I have read and understand the Council's policy on Confidentiality of Statistics and other pertinent policies and procedures as identified by the Council Executive Director. I will not disclose any statistics identified as confidential by a state, the National Marine Fisheries Service, or a fishery management council to any person(s) or persons except authorized users in accordance with NMFS, Council and/or state applicable procedures and policies.*

I will use any NMFS, Council or state confidential data for authorized purposes only and not for personal gain or competitive advantage. I understand that any potential conflict of interest or the appearance of conflict of interest will be referred to the NOAA Office of General Counsel for determination.

~~I will follow the North Pacific Fishery Management Council's Policy on the Confidentiality of Statistics, a copy of which has been given to me.~~

~~I am fully aware of the civil and criminal penalties for unauthorized disclosure, misuse, or other violation of the confidentiality of such statistics as provided for in the Magnuson Fishery Conservation and Management Act and other applicable law.~~

*I understand that I may be subject to criminal and civil penalties under provisions of Titles 5 U.S.C. 552 and 18 U.S.C. 1905, which are the primary Federal statutes prohibiting unauthorized disclosure of confidential data. I also may be subject to civil penalties for improper disclosure of data collected under the Magnuson Act or the MMPA.*

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Affiliation

Approved: \_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date

Agriculture, Chief of the Forest Service." Also, add the following to the end of paragraph (d)(1): "The notice shall include the following statement 'Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.'"

5. Section 1152.50 is amended by adding a new paragraph (e) to read as follows:

§ 1152.50 Exempt abandonments and discontinuances and trackage rights.

(e) *Abandonment petitions for exemption.* Whenever a petitioner intends to seek abandonment authority through a petition for exemption, a copy of the petition shall be served upon the persons receiving notices of exemption under § 1152.50(d). The petition must include the following statement: "Based on information in our possession, the line (does) (does not) contain federally granted right-of-way. Any documentation in petitioner's possession will be made available promptly to those requesting it."

Decided: July 25, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lambole, and Emmett. Commissioner Lambole commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-18110 Filed 8-2-90; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 603

[Docket No. 70351-0138]

RIN 0649-AA38

#### Confidentiality of Statistics

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this rule finalizing the interim regulations regarding confidentiality of statistics submitted to the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Secretary is required by the Magnuson Act to

prescribe regulations that will prevent the disclosure of data submitted in compliance with requirements of a preliminary fishery management plan (PMP) or a fishery management plan (FMP). This action prescribes NOAA policies and procedures regarding: (1) Persons having access to confidential statistics, (2) systems required to protect the identity of persons submitting such data, and (3) circumstances under which such data may or may not be released. The intended effect is to prevent misuse of confidential statistics by promulgating regulations which govern the collection, handling and use of statistics collected under authority of the Magnuson Act.

**EFFECTIVE DATE:** August 3, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mark C. Holliday (Acting Chief, Fisheries Statistics Division), 301-427-2328.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 303(d) of the Magnuson Act requires the Secretary to issue regulations governing the preservation of confidentiality of statistics submitted pursuant to requirements of a PMP or FMP. The following actions were taken to implement this requirement:

(1) On January 9, 1978, NOAA published proposed regulations on the confidentiality of statistics under the Magnuson Act (43 FR 1480).

(2) As a result of public comments received, and a Magnuson Act amendment (Pub. L. 95-354) requiring collection of data on the capacity of U.S. fish processors to process domestic catch, the proposed regulations were revised and published as an interim final rule on December 7, 1979 (44 FR 70480).

(3) On July 16, 1987, NOAA published a revised interim final rule (52 FR 26685) to give Regional Fishery Management Council (Council) employees access to confidential data under authority granted by Public Law 99-659. Public comments were invited until August 31, 1987. This interim rule was effective from July 16, 1987, to December 31, 1987.

This action makes final the contents of the 1987 interim final rule by replacing the present 50 CFR part 603. The 1987 interim final rule differed from the 1979 interim final rule in the following ways:

(1) Several definitions were added or revised for clarity.

(2) As required by Public Law 99-659, the regulations at § 603.5(a)(3) were revised to clarify language on Federal employee access to, and use of, data

required to be submitted to the Secretary under a PMP or FMP.

(3) Section 303(d)(1) of the Magnuson Act as amended by Public Law 99-659 authorized access to confidential statistics by Council employees who are responsible for management plan development and monitoring. Section 603.5(c) was added to implement this provision.

(4) The standard for collection agreements with states was changed from the requirement that the state confidentiality protection be "similar to" to "at least as protective," to eliminate the requirement of states to conform their statutory language to that of NMFS.

#### Comments and Responses

As described below, an evaluation of public comments filed in response to the 1987 interim final rule indicated no substantive changes were required in the regulatory language. Thus, the contents of the 1987 interim final rule are issued as a final rule with only minor changes for editorial clarity.

1. *Comment:* Three Councils suggested the wording of § 603.5(c) could be misinterpreted to unjustly limit access to confidential data.

*Response:* Section 603.5(c) has been revised from "may be granted \* \* \*" to "will only be granted \* \* \*"

2. *Comment:* Section 603.4(a)(2) requires the Assistant Administrator to delete all identifying particulars from the statistics consistent with the needs of NMFS and good scientific practice. Several Councils and one state objected to expunging vessel or company identifiers from the records because identifiers are needed to perform biological, sociological and economic analyses required for FMP development and monitoring. Evaluation of limited entry management options, a discretionary management provision of section 303(b)(6) of the Magnuson Act, was cited as a specific analysis requiring retention of individual identifiers.

*Response:* No change was made. The retention of identifiers for FMP development and monitoring purposes is consistent with the needs of NMFS, Councils and good scientific practice. The controls on use, access and release of data in these regulations and in NOAA and Council confidentiality policies and procedures are sufficient to prevent the disclosure of the identity or business of any person who submits such statistics.

3. *Comment:* One Council objected to the exclusion of Plan Development Teams and Scientific and Statistical

Committees from access to confidential data.

**Response:** No change was made. Section 303(d)(1) of the Magnuson Act authorizes access to confidential statistics by Council employees who are responsible for management plan development and monitoring. Membership on Council Plan Development Teams and Scientific and Statistical Committees does not constitute Council employment. Thus NOAA has no authority to grant members of those groups access to confidential data. Data for which individual identifiers have been replaced with a random numeric identifier may be accessed by non-Council employees involved in plan development and monitoring as long as the identity or business of any person who submits such statistics is not disclosed.

**4. Comment:** One comment requested a review of internal controls regarding access by Federal or state employees to confidential information and possible conflicts of interest.

**Response:** NOAA has reviewed its policies on confidentiality of statistics and conflicts of interest and has determined existing policies are adequate.

#### Classification

The Under Secretary of Commerce for Oceans and Atmosphere, NOAA, has determined that this rule is not a "major" rule under Executive Order 12291 and does not require preparation of a regulatory impact analysis. It prescribes agency policies and procedures and will have no economic impact on the public. For the same reasons, the General Counsel of the Department of Commerce certified to the Small Business Administration when this rule was proposed, that it would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10(5)(c)(3)(i).

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator pursuant to section 553(d)(3) of the Administrative Procedure Act finds that because the earlier interim rule has lapsed, delay in implementation of the

rule would adversely affect FMP development and monitoring under the Magnuson Act by restricting access of data by state agencies and Council employees and thus would be contrary to the public interest, therefore good cause exists for making this rule immediately effective.

#### List of Subjects in 50 CFR Part 603

##### Confidentiality of statistics.

Dated: July 30, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 603 is revised as follows:

#### PART 603—CONFIDENTIALITY OF STATISTICS

##### Sec.

- 603.1 Purpose.
- 603.2 Definitions.
- 603.3 Types of statistics covered.
- 603.4 Collection and maintenance of statistics.
- 603.5 Access to statistics.
- 603.6 Control system.
- 603.7 Release of statistics.

Authority: 5 U.S.C. 301; 16 U.S.C. 1853(d).

##### § 603.1 Purpose.

The purpose of this part is to prescribe procedures to protect the confidentiality of statistics required by the Secretary under a PMP or an FMP.

##### § 603.2 Definitions.

In addition to the definitions in the Magnuson Act and in part 601 of this chapter, the terms in this part have the following meanings:

**Aggregate or summary form** means confidential data structured in such a way that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

**Assistant Administrator** means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data under § 603.5(a).

**Confidential statistics** are those submitted as a requirement of a PMP or FMP and that reveal the business or identity of the submitter.

**Data, statistics, and information** are used interchangeably.

**FMP** means a fishery management plan developed under the Magnuson Act.

**Magnuson Act** means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

**NMFS** means the National Marine Fisheries Service.

**NOAA** means the National Oceanic and Atmospheric Administration.

**PMP** means a preliminary fishery management plan developed under the Magnuson Act.

##### § 603.3 Types of statistics covered.

This part applies to all pertinent data required to be submitted to the Secretary with respect to any PMP or FMP including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing occurred, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, U.S. fish processors.

##### § 603.4 Collection and maintenance of statistics.

(a) **General.** (1) All statistics required to be submitted to the Secretary are provided to the Assistant Administrator.

(2) After receipt, the Assistant Administrator will delete all identifying particulars from the statistics if doing so is consistent with the needs of NMFS and good scientific practice.

(3) Appropriate safeguards as specified by NOAA Directives, or other NOAA or NMFS internal procedures, apply to the collection and maintenance of all statistics, whether separated from identifying particulars or not, so as to ensure their confidentiality.

(b) **Collection agreements with states.** (1) The Assistant Administrator may enter into an agreement with a state authorizing the state to collect statistics on behalf of the Secretary.

(2) NMFS will not enter into a cooperative collection agreement with a state unless the state has authority to protect the statistics from disclosure in a manner at least as protective as these regulations.

##### § 603.5 Access to statistics.

(a) **Federal employees.** Statistics submitted as a requirement of a PMP or FMP and that reveal the identity of the submitter will only be accessible to the following:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics;

(2) Federal employees who are responsible for PMP or FMP development, monitoring, and enforcement;

(3) Personnel within NMFS performing research that requires confidential statistics;

(4) Other NOAA personnel on a demonstrable need-to-know basis; and

(5) NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant.

(b) *State personnel.* Confidential statistics will only be accessible if:

(1) The state has independent legal authority to collect the same statistics on its own behalf (whether the state or NOAA/NMFS actually collects the data); and

(2) The state has entered into a cooperative data collection agreement with the Assistant Administrator.

(c) *Regional Fishery Management Council employees.* Access to confidential data will only be granted to Council employees who are responsible for PMP or FMP development and monitoring.

(d) *Prohibitions.* Persons having access to these data are prohibited from unauthorized use or disclosure, and are subject to the provisions of 18 U.S.C. 1905, 18 U.S.C. 1857, and NOAA/NMFS internal procedures, including NOAA Directive 88-30.

#### § 603.6 Control system.

(a) The Assistant Administrator maintains a control system to protect the identity of submitters of statistics required by a PMP or FMP. The control system:

(1) Identifies those persons who have access to the statistics;

(2) Contains procedures to limit access to confidential data to authorized users; and

(3) Provides for safeguarding the data.

(b) This system requires that all persons who have authorized access to the data be informed of the confidentiality of the data. These persons are required to sign a statement that they:

(1) Have been informed that the data are confidential; and

(2) Have reviewed and are familiar with the procedures to protect confidential statistics.

#### § 603.7 Release of statistics.

(a) The Assistant Administrator will not release to the public any statistics required to be submitted under a PMP or FMP in a form that would identify the submitter, except as required by court order. Release as required by court

order will be made only after approval of the NOAA Office of General Counsel.

(b) All requests from the public for statistics submitted in response to a requirement of a PMP or FMP will be processed consistent with the NOAA Freedom of Information Act (FOIA) regulations (15 CFR part 903), NOAA Directives Manual 21-25, Department of Commerce Administrative Orders 205-12 and 205-14 and 15 CFR part 4.

[FR Doc. 90-16142 Filed 8-2-90; 8:45 am]

BILLING CODE 3510-22-M

#### 50 CFR Part 672

[Docket No. 91050-0019]

#### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of prohibition of retention of groundfish.

**SUMMARY:** The Director, Alaska Region, NMFS (Regional Director), is prohibiting further retention of sablefish by vessels fishing with trawl gear in the Central Regulatory Area of the Gulf of Alaska. This action is necessary to prevent the total allowable catch for sablefish in the Central Regulatory Area from being exceeded before the end of the fishing year. The intent of this action is to assure optimum use of groundfish while conserving sablefish stocks.

**EFFECTIVE DATES:** Noon, Alaska local time (ALT), July 30, 1990, through midnight, ALT, December 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7229.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR 611.92 and 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are

specified annually within the OY range and apportioned among the regulatory areas and districts.

Under § 672.24(b)(3)(ii), when the Regional Director determines that the share of sablefish TAC assigned to any gear and for any area or district has been achieved prior to the end of a fishing year, the Secretary of Commerce will publish a notice in the Federal Register, as described in § 672.20(c)(3), requiring that sablefish must be treated as a prohibited species by persons using that type of gear for the remainder of that year.

The 1990 TAC specified for sablefish in the Central Regulatory Area is 11,700 mt, of which the trawl share is 2,340 mt (55 FR 3223, January 31, 1990). The Regional Director has determined that the amount of TAC of sablefish for vessels using trawl gear in the Central Regulatory Area has been reached. Therefore, he is issuing this notice requiring sablefish be treated in the same manner as prohibited species and is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska from noon, ALT, July 30, 1990, through midnight, ALT, December 31, 1990.

#### Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. The TAC for sablefish for vessels using trawl gear in the Central Regulatory Area in the Gulf of Alaska will be exceeded unless this notice takes effect immediately.

This action is taken under the authority of 50 CFR 672.20 and 672.24 and is in compliance with Executive Order 12291.

#### List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Joe P. Clem,

Acting Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-16099 Filed 7-30-90; 3:54 pm]

BILLING CODE 3510-22-M



NAO 216-100

**PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS****SECTION 1. PURPOSE.**

.01 This Order:

- a. prescribes policies and procedures for protecting the confidentiality of data submitted to and collected by the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) as authorized or required by law;
- b. informs authorized users of their obligations for maintaining the confidentiality of data received by NMFS;
- c. provides for operational safeguards to maintain the security of data; and
- d. states the penalties provided by law for disclosure of confidential data.

**SECTION 2. SCOPE.**

This Order covers all confidential data received, collected, maintained, or used by NMFS.

**SECTION 3. DEFINITIONS.**

- .01 Access to data means the freedom or ability to use data, conditioned by a statement of nondisclosure and penalties for unauthorized use.
- .02 Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.
- .03 Agreement refers to all binding forms of mutual commitment under a stated set of conditions to achieve a specific objective.
- .04 Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data.

**.05 Authorized Use/User.**

a. Authorized use is that specific use authorized under the governing statute, regulation, order, contract or agreement.

b. An authorized user is any person who, having the need to collect or use confidential data in the performance of an official activity, has read this Order and has signed a statement of nondisclosure affirming the user's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure.

**.06 Confidential data** means data that are identifiable with any person, accepted by the Secretary, and prohibited by law from being disclosed to the public. The term "as used" does not convey data sensitivity for national security purposes [See Executive Order (E.O.) 12356 dated April 2, 1982].

**.07 Data** refers to information used as a basis for reasoning, discussion, or calculation that a person may submit, either voluntarily or as required by statute or regulation.

**.08 GC** means the Office of General Counsel, NOAA.

**.09 Person** means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of such governments, including Regional Fishery Management Councils (Councils).

**.10 Public** means any person who is not an authorized user.

**.11 Region** means NMFS Regional field offices, Fisheries Science Centers, and associated laboratories.

**.12 Source document** means the document, paper, or electronic format on which data are originally recorded.

**.13 State employee** means any member of a State agency responsible for developing and monitoring the State's program for fisheries or Marine Mammal Protection Act (MMPA) program.

**.14 Submitter** means any person or the agent of any person who provides data to NMFS either voluntarily or as required by statute or regulation.

**SECTION 4. POLICY.**

For data subject to this Order, it is NMFS policy that:

a. confidential data shall only be disclosed to the public if required by the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, or by court order. Disclosure of data pursuant to a subpoena issued by an agency of competent jurisdiction is a lawful disclosure. Disclosure pursuant to a subpoena must be approved by GC;

b. individual identifiers shall be retained with data, unless the permanent deletion is consistent with the needs of NMFS and good scientific practice [See Section 6.02c]; and

c. a notice is required on all report forms requesting data and must comply with 5 U.S.C. 552a(e)(3) and Paperwork Reduction Act requirements in NAO 216-8, Information Collections and Requirements Needing Office of Management and Budget Clearance. [See E.O. 12600 of June 23, 1987, for additional information regarding the rights of submitters to designate commercial confidential data at the time of submission.]

#### SECTION 5. OPERATIONAL RESPONSIBILITIES.

.01 The Regional Director of each region (or, in the case of headquarters, each Office Director) has the responsibility to maintain the confidentiality of all data collected, maintained, and disclosed by the respective region.

.02 Each region shall submit to the Assistant Administrator specific procedures governing the collection, maintenance, and disclosure of confidential data. These documents shall be compiled as regional handbooks following the guidelines and standards:

a. handbooks are to be developed in detail to ensure the maintenance of confidential data on a functional basis in each region; and

b. handbooks shall be coordinated through the National Data Management Committee (a NMFS group established by the Assistant Administrator to develop data management policies and procedures) and reviewed annually. The regional handbooks will address, at minimum, the contents of Sections 6-7.

#### SECTION 6. PROCEDURES.

.01 Data Collection. To collect data, the Secretary may use Federal employees, contractor employees, or, pursuant to an agreement, State employees.

a. General Requirements.

1. Personnel authorized to collect Federal data must maintain all documents containing confidential data in secure facilities; and
2. may not disclose confidential data, whether recorded or not, to anyone not authorized to receive and handle such data.

b. Specific Requirements.

1. Each Federal or contractor employee collecting or processing confidential data will be required to read, date, and sign a statement of nondisclosure, that affirms the employee's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure of the data. Upon signature, the employee's name will be placed on record as an "authorized user," and the employee will be issued certification.
2. Data collected by a contractor must be transferred timely to authorized Federal employees; no copies of these data may be retained by the contractor. NMFS may permit contractors to retain aggregated data. A data return clause shall be included in the agreement. All procedures applicable to Federal employees must be followed by contractor employees collecting data with Federal authority.
3. Under agreements with the State, each State data collector collecting confidential data will sign a statement at least as protective as the one signed by Federal employees, which affirms that the signer understands the applicable procedures and regulations and the penalties for unauthorized disclosure.

.02 Maintenance.

- a. Maintenance is defined as the procedures required to keep confidential data secure from the time the source documents are received by NMFS to their ultimate disposition, regardless of format. [See National Institute of Standards and Technology "Computer Security Publications, List 91" for guidance.]
- b. Specific procedures in regional handbooks must deal with the following minimum security requirements, as well as any others that may be necessary because of the specific data, equipment, or physical facilities:
  1. the establishment of an office or person responsible for evaluating requests for access to data;

2. the identifications of all persons certified as authorized users. These lists shall be kept current and reviewed on an annual basis;

3. the issuance of employee security rules that emphasize the confidential status of certain data and the consequences of unauthorized removal or disclosure;

4. the description of the security procedures used to prevent unauthorized access to and/or removal of confidential data;

5. the development of a catalog/inventory system of all confidential data received including: the type of source document; the authority under which each item of data was collected; any statutory or regulatory restriction(s) which may apply; and routing from the time of receipt until final disposition; and

6. The development of an appropriate coding system for each set of confidential data so that access to data that identifies, or could be used to identify, the person or business of the submitter is controlled by the use of one or more coding system(s). Lists that contain the codes shall be kept secure.

c. The permanent deletion of individual identifiers from a database shall be addressed on a case-by-case basis. Identifiers may only be deleted after:

1. future uses of data have thoroughly been evaluated, e.g., the need for individual landings records for allocating shares under an individual transferable quota program;

2. consultation with the agency(s) collecting data (if other than NMFS), the relevant Council(s), and NMFS Senior Scientist; and

3. concurrence by the Assistant Administrator has been received prior to deletion.

.03 Access to Data Subject to This Order.

a. General Requirements. In determining whether to grant a request for access to confidential data, the following information shall be taken into consideration:

1. the specific types of data required;

2. the relevance of the data to the intended uses;

3. whether access will be continuous, infrequent, or one-time;

4. an evaluation of the requester's statement of why aggregate or non-confidential summaries of data would not satisfy the requested needs; and

5. the legal framework for the disclosure, in accordance with GC and this Order.

b. Within NMFS. NMFS employees requesting confidential data must have certification as being authorized users for the particular type of data requested.

c. Councils. Upon written request by the Council Executive Director:

1. "authorized user" status for confidential data collected under the Magnuson Fishery Conservation and Management Act (Magnuson Act) may be granted to a Council for use by the Council for conservation and management purposes consistent with the approval of the Assistant Administrator as described in 50 CFR 603.5;

2. "authorized user" status for confidential data, collected under the Magnuson Act and MMPA, will be granted to Council employees who are responsible for Fishery Management Plan development and monitoring; and

3. Councils that request access to confidential data must submit, on an annual basis, a copy of their procedures for ensuring the confidentiality of data to the region, or in the case of intercouncil fisheries, regions. The procedures will be evaluated for their effectiveness and, if necessary, changes may be recommended. As part of this procedure, an updated statement of nondisclosure will be included for each employee and member who requires access to confidential data.

d. States.

1. Requests from States for confidential data shall be directed in writing to the NMFS office that maintains the source data.

2. Each request will be processed in accordance with any agreement NMFS may have with the State:

(a) confidential data collected solely under Federal authority will be provided to a State by NMFS only if the Assistant Administrator finds that the State has authority to protect the confidentiality of the data comparable to, or more stringent than, NMFS' requirements; and



(b) the State will exercise its authority to limit subsequent access and use of the data to those uses allowed by authorities under which the data was collected.

3. If the State has no agreement with NMFS for the collection and exchange of confidential data, the request shall be treated as a public request and disclosure may be denied subject to FOIA or the Privacy Act.

4. Where a State has entered into a cooperative exchange agreement with another State(s), NMFS will facilitate transfer or exchange of State-collected data in its possession if:

(a) NMFS has written authorization for data transfer from the head of the collecting State agency; and

(b) the collecting State has provided NMFS a list of authorized users in the recipient State(s); and

(c) the collecting State agrees to hold the United States Government harmless for any suit that may arise from the misuse of the data.

e. Contractors.

1. Pursuant to an agreement with NMFS, a NMFS contractor (including universities, Sea Grant investigators, etc.) may be granted "authorized user" status consistent with this Order if the use furthers the mission of NMFS.

2. The region will notify the contractor of its decision on access in writing within 30 calendar days after receipt of the request.

3. Contingent upon approval, the contractor will be provided with details regarding conditions of data access, any costs involved, formats, timing, and security procedures. If the request is denied, the reason(s) for denial will be given by the NMFS office involved. The denial will not preclude NMFS consideration of future requests from the contractor.

4. If access is granted, language in the agreement specifically dealing with confidentiality of data will be required. The language shall include all of the relevant portions of this Order and shall prohibit the further disclosure of the data. No data may be retained beyond the termination date of the agreement; and any disclosure of data derived from the accessed confidential data must be approved by NMFS.

5. Each agreement shall be reviewed by GC prior to its execution, and shall, to the extent possible, be consistent with the model agreement contained in Appendix D.

f. Submitters. The Privacy Act allows for data to be released back to the submitter upon receipt and verification of a written request stating the data required.

04. Requests for Confidential Data. NMFS is authorized to collect data under various statutes [See Appendix A]. Two types of statutes govern the disclosure of confidential data collected by the Federal Government, those that contain specific and non-discretionary language within the Act, and those that provide overall guidance to the Federal Government. Sections of these Acts that deal with exceptions to disclosure may be found in Appendix B.

a. Magnuson Act and MMPA.

1. Data collected under 16 U.S.C. 1853 (a) or (b), and 16 U.S.C. 1383a(c), (d), (e), (f), or (h) will be handled in the following manner:

(a) data will only be disclosed to Federal employees and Council employees who are responsible for management plan development and monitoring; State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; a Council for conservation and management purposes [not applicable for MMPA data] or when required by court order. [See 50 CFR 229.10 and part 603];

(b) Council advisory groups are not permitted access to such confidential data [See 50 CFR 601.27(b)];

(c) requests from States that do not have an agreement with the Secretary will be processed in accordance with the Privacy Act or FOIA; and

(d) data collected by an observer under 16 U.S.C. 1853 (a) or (b) are not considered to have been "submitted to the Secretary by any person," and therefore are not confidential under Section 6.04.a of this Order. Data collected by an observer may be withheld from disclosure under the Privacy Act, or subsections (b)(3), (4), (5), (6), or (7) of FOIA.

2. Confidential data submitted to the Secretary under other Sections of the Magnuson Act or MMPA may only be disclosed in accordance with the Privacy Act or FOIA. Types of data and the collection authority may include among others:

- (a) Processed Product Data -- 16 U.S.C. 1854(e);
- (b) Fish Meal and Oil, Monthly -- 16 U.S.C. 1854(e);
- (c) Data Collected Under State Authority and Provided to NMFS -- 16 U.S.C. 1854(e); and
- (d) Tuna-Dolphin Observer Program -- 16 U.S.C. 1361 et seq.

b. South Pacific Tuna Act. Data collected under South Pacific Tuna Act 16 U.S.C. 973j is protected from disclosure to the public in accordance with section 973j(b).

c. Other Statutes. Confidential data collected under other NMFS programs as authorized by statutes other than South Pacific Tuna Act (16 U.S.C. 973j), MMPA (16 U.S.C. 1361 et seq.), and Magnuson Act (16 U.S.C. 1801 et seq.), may only be disclosed to the public in accordance with the Privacy Act and FOIA. Types of data and the collection authority may include among others:

- (1) Monthly Cold Storage Fish Report -- 16 U.S.C. 742(a);
- (2) Market News Data -- 16 U.S.C. 742(a); and
- (3) Seafood Inspection Data -- 7 U.S.C. 1621 et seq.

d. Special Procedures.

1. Cold Storage Summary Reports. NMFS publishes monthly cold storage holdings of fishery products. Advance knowledge of the content of these reports could give those who trade in the products an opportunity to gain competitive advantage. Therefore, in addition to the confidential protection provided to individual reports, the monthly summary report will not be disclosed to the public until 3:00 p.m. Eastern Time of the official release date. Release dates for these data are published 1 year in advance in November, and can be obtained from the NMFS Fisheries Statistics Division.

2. Surplus commodity purchases by USDA. NMFS and the Department of Agriculture (USDA) have an interagency agreement relating to the purchase of surplus fishery products. NMFS is responsible for providing confidential data and recommendations to the USDA regarding these purchases. Advance knowledge of these data could cause a competitive advantage or disadvantage to the general public, fishing industry, and the program. Therefore, all NMFS personnel engaged in the surplus commodity purchase program will be

required to sign a specific "USDA Responsibility Statement." A copy will be maintained in the Office of Trade Services.

**3. Agreements for Disclosure of Confidential Data.**

A letter of agreement may authorize the disclosure of confidential data when both the Government and the submitter agree to disclosure of the data. The need to provide security for the data will vary depending on the type of data collected and the form of the disclosure. Disclosure can be undertaken if all the following conditions are met:

(a) the person has agreed in writing to the disclosure and is aware that disclosure is irrevocable;

(b) the recipient has been informed in writing of the sensitivity of the data; and

(c) the wording of the agreement has been approved by GC.

.05 Disposal. NAO 205-1, NOAA Records Management Program, shall govern the disposition of records covered under this Order.

**SECTION 7. PENALTIES.**

.01 Civil and Criminal. Persons who make unauthorized disclosure of confidential data may be subject to civil penalties or criminal prosecution under:

- a. Trade Secrets Act (18 U.S.C. 1905);
- b. Privacy Act (5 U.S.C. 552a(i)(1));
- c. Magnuson Act (16 U.S.C. 1858); and
- d. MMPA (16 U.S.C. 1375).

.02 Conflict of Interest. Employees are prohibited by Department of Commerce employee conduct regulations [15 CFR part 0] and by ethics regulations applicable to the Executive Branch [5 CFR 2635.703] from using nonpublic information subject to this Order for personal gain, whether or not there is a disclosure to a third party.

.03 Disciplinary Action. Persons may be subject to disciplinary action, including removal, for failure to comply with this Order. Prohibited activities include, but are not limited to, unlawful disclosure or use of the data, and failure to comply with implementing regulations or statutory prohibitions relating to the collection, maintenance, use and disclosure of data covered by this Order.

SECTION 8. EFFECT ON OTHER ISSUANCES.

None.

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Director, Office of Administration

Office of Primary Interest:  
National Marine Fisheries Service  
Office of Research and Environmental Information  
Fisheries Statistics Division (F/RE1)

## Appendix D

### MODEL Agreement of Access

#### I. Purpose

The purpose of this agreement is to outline the understanding between the North Pacific Fishery Management Council (the Council) and the \_\_\_\_\_ regarding access to, subsequent storage, and usage of confidential data.

#### II. References and Authorities

(cite specific Authorities)

#### III. Definitions

The terms in this agreement except where specifically defined below have the meanings that are prescribed in 50 CFR 601.2.

A. The term "detailed statistics" refers solely to the use of raw unaggregated data submitted in confidence in response to Federal requirements and/or requests.

B. The term "landings data" refers to those data related to the catch, landings, and value of commercial fishery products collected through the use of "weigh out" slips by agents of the National Marine Fisheries Service (NMFS) or the term "port sampling data" refers to those data related to the catch, fishing effort, etc., of commercial fishermen collected by means of personal interviews by agents of the NMFS.

#### IV. Responsibilities of the Parties

##### A. Contractor

1. Disclosure of the data made available under this agreement to any one other than a duly authorized NMFS, Council or \_\_\_\_\_ employee is forbidden unless specifically provided for herein. A list of \_\_\_\_\_ employees and agents authorized to receive the data is included in this agreement. Any additions or deletions must be approved by the Council Executive Director.

For the purposes of access to, storage, and disclosure of the subject data, agents and employees of the contractor shall be considered as agents of the Council and shall be subject to the provisions of section 1905 and 201-209 of Title 18 of the United States Code (commonly referred to as the Trade Secrets Laws and Conflict of Interests Laws respectively).



2. Contractor safeguards of data include:
  - a. Signed, witnesses, and approved certificates from each employee and prospective agent of the contractor as to their awareness of the provisions of 18 U.S.C. 1905 and of sections 201-209 for misuse of raw data of a confidential nature. Each approved certificate will be appended to, and made part of the agreement.
  - b. Each certificate shall continue in force for the duration of the employee or agent's relationship with the contractor; and for one year thereafter; upon termination of the relationship of any contractor access control codes will be changed immediately through an amendment to this agreement.
  - c. All print-outs of raw, unaggregated data will be kept under lock and key by the contractor and by the principal agent(s) (Principal Investigators) of the contractors.
  - d. Contractor employees and agents will be required to sign out for required print-outs and, upon return of the print-outs, to sign again. Logbooks will be maintained under lock and key by \_\_\_\_\_ (i.e., the senior contract employees or by the principal agents (Principal Investigators)).
  - e. Remote, direct access to raw data of confidential nature by contractor employees and/or agents will be by dual coding, i.e., two persons will be required to achieve access, each possessing a code number known and maintained only by himself or herself. The computer addressed should log both numbers prior to allowing access. A monthly tabulation, by day, of access/code numbers logged will be forwarded to the Council.
  - f. All print-outs and other documents containing confidential data, when surplus to the needs of the contractor employees or agents, will be returned to the Council.
3. Identification of persons or organizations who will have access to data under this agreement:
4. The contractor hereby holds the Council, NMFS, NOAA, DOC, and the United States harmless for any civil suit that may arise from the misuse by the contractor of the subject data.
5. The contractor agrees to notify the Council Executive Director of the filing of or notice of the probability of a civil suit being filed against the contractor involving the subject data.
6. The contractor agrees to notify the Council Executive Director on termination of access need on the part of any contractor employee and agent.

**B. Federal**

**The Council Executive Director shall provide to the contractor on request:**

- 1. A current identification of Federally collected fishery-related data as specified in the agreement.**
- 2. A means of access to the data as currently available in computerized format.**

**V. General Understanding**

**It is understood between the parties to this agreement that the contractor may let subcontracts to private and public organizations for the access, collection, analysis, and/or storage of the subject data; and that such contracts shall include a provision incorporating all of the safeguards, certificates, prohibitions, and limitations of this agreement. The contracts will include at a minimum:**

- A. an identification of those people who would have access to the data;**
- B. incorporation of the access safeguards found in section (IV(A)(2); and**
- C. provision for the execution of employee certificates(s) as required by this agreement.**

**VI. Safeguards**

**The \_\_\_\_\_ on behalf of itself, its employees, contractors, and agents specifically agrees:**

- A. To establish and maintain procedures for preserving the confidentiality of the data made accessible to it under this agreement.**
- B. To provide the Council with a description of the procedures specified in paragraph VI(A) of this section so that their effectiveness may be determined and evaluated, and to make any changes in such procedures as may be requested.**
- C. Not to disclose any data in a manner that is inconsistent with this agreement.**

**VII. Review and Amendments**

- A. This agreement will be reviewed periodically, but not less than annually. It may be subject to reconsideration at such other times as may be required or requested and as agreed to by the parties entering into the agreement.**
- B. This agreement may be amended at any time by the mutual consent of the parties entering into the agreement.**

**VIII. Other Provisions**

Nothing herein is intended to conflict with current Federal orders. If the terms of this agreement are inconsistent with controlling orders, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions of this agreement not affected by any inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, such changes as are deemed necessary will be accomplished by either an amendment to this agreement or by entering into a new agreement, which ever is deemed expedient to the interest of both parties.

Should disagreement arise as to the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be reduced to writing by each party and presented to the other party for consideration at least 14 days prior to forwarding to the Assistant Administrator for fisheries for appropriate resolution.

**XI. Terms of Agreement**

The terms of this agreement will become effective upon the signature of both the approving officials of the Council Executive Director and the contractor entering into this agreement.

The terms of this agreement will remain in effect for the period of the contract unless terminated by (1) mutual agreement, (2) (specific data) with advanced (60-day) written notice by either party for cause or (3) the operation/terms of this agreement, whichever shall first occur.

\_\_\_\_\_  
Signature for Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Signature for Council

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

**CERTIFICATE**

Date:

**This is to certify that:**

1. As a (temporary) (full-time) (contractual) employee of the \_\_\_\_\_, I have need for access to and for usage of certain written records, data files, and data banks pertaining to fisheries matters; and that:
2. I am fully aware of the civil and criminal penalties prescribed by law for Federal employees who would misuse or otherwise violate the confidentiality of such data; and that
3. To gain the necessary access and usage, I request that I be considered as a Federal employee, for the sole purpose of the laws regarding confidentiality of data, but that no remuneration or other benefit shall accrue as a result.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Signature of Witness

Approved until otherwise notified; as per conditions of the Agreement of Access dated \_\_\_\_\_, of which this certificate is made a part.

\_\_\_\_\_  
Signature of Contractor's Representative

\_\_\_\_\_  
Printed Name & Title of Contractor's Representative