

**Department of Commerce**

**National Oceanic and Atmospheric Administration**

**MID-ATLANTIC FISHERY MANAGEMENT COUNCIL**

**STATEMENT OF ORGANIZATION PRACTICES AND PROCEDURES**

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**PREAMBLE**

The organization practices and procedures contained herein shall constitute the procedures that will be followed by the Council, except when they conflict with or are incomplete as to the requirements of the Magnuson Fishery Conservation and Management Act, or 50 CFR Part 600 Subparts A, B, and C, which shall prevail in any event.

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## **I. COUNCIL ORGANIZATION.**

### **A. OFFICERS AND TERMS OF OFFICE.**

**1. General.** The Mid-Atlantic Fishery Management Council consists of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and has authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina and highly migratory species that are within the geographical area of authority of more than one Council). The Mid-Atlantic Council has 21 voting members, including 13 appointed by the Secretary (at least one of whom shall be appointed from each such State) (MSFCMA 302(a)(1)(B)).

A Chair and a Vice Chair shall be elected annually at the first Council meeting following the seating of new Council members (on or after August 11 of each year) by the voting members of the Council present and voting; each such officer shall serve for a period of one year and until a successor is elected. Officers may succeed themselves. The Mid-Atlantic Fishery Management Council (Council) may elect other officers as it deems necessary.

**2. Nominations.** The Chair shall appoint a Nominating Committee, who shall make its nominations (at least two for each office) at the beginning of the election process. Following the Committee's nomination, any voting member may nominate additional candidates from the floor. When nominations are closed the election shall be held.

**3. Elections.** The election of Chair will be held first, followed by the election for Vice-Chair. If only one candidate accepts the nomination for an office, the Chairman of the Nominating Committee shall cast all votes for that candidate. If there are two or more candidates, the election shall be by secret ballot with the votes tabulated by two or more Tellers appointed by the Council Chair. The Tellers shall use the following rules to determine the winning candidate:

- a. To win, a candidate must receive a majority of the votes cast.
- b. If no candidate receives a majority of the votes, the Tellers shall declare no election. If there are more than two candidates, the candidate receiving the lowest number of votes shall be dropped from consideration and a vote will be taken for the remaining candidates. This process will continue until a candidate receives a majority of the votes cast.
- c. Those preferring not to vote for any candidate shall check "ABSTAIN" on the ballot.
- d. The number of ballots cast for an individual shall not be announced. Any Council member who questions the result may review the ballots. The vote of any Council member shall not be identified nor made public in any respect.

**4. Special Elections.** In the event that the Chair cannot fulfill the Chair's obligations for the balance of the Chair's term, a special election will be held at the next scheduled Council meeting to fill the position of Chair. In the event that the Vice Chair cannot fulfill the Vice Chair's obligations for the balance of the Vice Chair's term, a special election will be held at the next scheduled Council meeting to fill the position of Vice Chair. The procedures for nominations and elections set forth above will be followed for special elections.

### **5. Authority of the Chair.**

- a. The Council Chair shall be the chief executive officer of the Council. Subject only to the authority of the Council, the Chair shall have general charge and supervision over, and responsibility for, the business and affairs of the Council. Unless otherwise directed by the Council, the Chair may enter into and execute in the name of the Council, contracts or other instruments in the regular course of business or contracts or other instruments not in the regular course of business which are authorized, either generally or specifically, by the Council. The Council Chair shall have the general powers and duties of management usually vested in the office of the Chair of the Board of a corporation.

b. The Council Chair shall have the authority to appoint and/or dissolve committees of Council members, name their officers and membership, and describe their functions, duties, and responsibilities consistent with the Charter of the Council, the Act, and other applicable law.

c. The Council Chair shall also have the full authority to call meetings as necessary for the conduct of the Council's business.

d. The Council Chair shall have the authority to authorize reimbursement of travel expenses and/or compensation of any eligible members of the Council, its committees or subpanels except that proper notification, at the direction of the Chair, in the Federal Register of a regular meeting of the Council or one of its committees or subpanels shall constitute authorization for travel expenses and/or compensation to be paid to eligible members.

e. The Council Chair shall have the authority to authorize, approve, or disapprove all meetings of Council subpanels or committees.

f. Vice Chairman - In the event of the absence or inability of the Council Chair to serve or fulfill the Chair's obligations, the Council Vice Chair shall assume authority and duties of the Chair.

## **B. DESIGNEES.**

1. The Magnuson - Stevens Act authorizes only the principal State officials, the Regional Administrators, 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, and position of the individual designated. A designee may not name another designee. However, such officials may submit to the Chair, in advance, a list of several individuals who may act as designee, provided that the list designates who would serve if more than one designee is in attendance.

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

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

4. New or revised appointments by state Governors of principal state officials and new or revised designations by principal state officials of their designee(s) must be delivered in writing to the appropriate NMFS Regional Administrator and the Council Chairman at least 48 hours before the individual may vote on any issue before the Council. Written appointment of the principal state official must indicate his or her employment status, how the official is employed by the state fisheries agency, and whether the official's full salary is paid by the state. Written designation(s) by the principal state official must indicate how the designee is knowledgeable and experienced in fishery resources of the geographic area of concern to the Council, the County in which the designee resides, and whether the designee's salary is paid by the state.

5. Reimbursement of travel expenses to any meeting must be limited to the member, or authorized designee; in any case, one person.

**C. DESIGNATION OF REGIONAL ADMINISTRATOR.** The Northeast Region Regional Administrator, or his/her designee, serves as a voting member on the Council.

## **D. ADVISORY GROUPS.**

1. Scientific and Statistical Committee. The Council will establish a Scientific and Statistical Committee

which shall focus on the scientific merit of a proposed action.

a. Objectives and Duties.

(1) The Committee shall:

- (a) assist the Council in the development, collection, evaluation, and peer review of such statistical, biological, economical, social and other scientific information as is relevant to the Council's development and amendment of any fishery management plan;
- (b) provide the Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. Specifically in order to allow the Council to fulfill its obligations under Section 302 (h)(6), the committee shall, based on current stock conditions, the status determination criteria specified in the FMPs, and consistent with the National Standard 1 Guidelines, provide the "fishing level recommendation" in terms of harvest for each of the Council's managed species. Associated with each "fishing level recommendation" the Committee shall evaluate a range of alternatives for annual catch limits (ACL's) and Accountability Measures (AM's) along with estimates of the efficacy in keeping actual harvest below the "fishing level recommendation" and of the accompanying risks and socio-economic consequences.
- (c) assist the Council in determining what statistical, biological, economical, social or other scientific information is needed for the development of a management plan that meets the requirements of the Act; and shall advise the Council as to the best way of obtaining this information, including identifying entities with ongoing research programs that may be able to develop the needed information.
- (d) The SSC will not provide another peer review of the SAW/SARC results.
- (e) submit to the Council:
  - (1) such reports as the Committee deems appropriate; and
  - (2) such reports as are requested by the Council.
- (f) The SSC will provide scientific advice within the terms of reference provided for each management action.

(2) When requested by the Council, through the Council Chair or the Chair's designee, the Committee shall:

- (a) provide expert scientific and technical advice to the Council on the development of fishery management policy, on establishing the goals and objectives of fishery management plans or amendments thereto, and on the preparation of such plans or amendments thereto;
- (b) advise the Council on preparing comments on any fishery management plan or amendments thereto prepared by the Secretary or Secretary's delegate which are transmitted to the Council pursuant to Section 304(c)(2) of the Act;
- (c) draft, or comment on, any proposed regulations which the Council deems necessary to implement any fishery management plan or amendment to a fishery management plan which is prepared by the Council;
- (d) assist the Council in establishing criteria for judging plan effectiveness;
- (e) perform such other necessary and appropriate duties as may be required by the Council to

carry out its functions under the Act; and

- (f) shall attend Council meetings as requested by the Council Chair. One or more members of the Committee may be tasked to serve as Chair of the Northeast Stock Assessment Review Committee (SARC) when requested by the Northeast Fisheries Science Center (NEFSC).

b. Members and Chair

- (1) The Committee shall have up to 20 members, all of whom shall be nominated for membership on the Committee by Council members, shall be appointed to the Committee by a majority vote of the Council.
- (2) The Committee may be composed of Federal employees, State employees, academicians, or independent experts, and each shall have strong scientific and/or technical credentials and experience in the biological, statistical, economical, social, and other relevant disciplines. The goal will be to structure the committee such that there is a balance in both home bases and expertise of its members. Each member of this committee shall be treated as an affected individual for purposes of paragraphs (2), (3)(B), (4), and (5)(A) of subsection (j) of Section 302 of the Magnuson-Stevens Act. The Secretary shall keep disclosures made pursuant to this subparagraph on file.
- (3) Members of the Committee shall be appointed by the Council for a period of two years, and may be reappointed at the pleasure of the Council. Vacancy appointments shall be for the remainder of the unexpired term of the vacancy.
- (4) Committee members shall be notified of meetings at least 10 days in advance of each meeting. Committee members who cannot attend a scheduled meeting shall so advise the Executive Director. The terms of members who are absent for three meetings without notifying the Executive Director in advance of the absence and without a reasonable excuse shall be automatically revoked.
- (5) The Committee Chair shall be appointed by the Council Chair.
- (6) The Committee Vice Chair shall be elected by the members of the Committee.

c. Administrative Provisions

- (1) The Committee shall meet as a whole, or in part, at the call of the Committee Chair, with the approval of the Council Chair, as often as necessary to fulfill the Committee's responsibilities, taking into consideration time and budget constraints. To the extent practicable, the committee shall hold its meetings in conjunction with the meeting of the Council.
- (2) The Committee shall report to the Council Chair or the Chair's designee.
- (3) The Executive Director of the Council shall, upon request of the Committee Chair, provide such staff and other support as the Council considers necessary for Committee activities, within budgetary limitations.
- (4) The Council shall pay the actual expenses of the Committee members, in accordance with controlling law, while engaged in the performance of Council business, and subject to the availability of appropriations, pay a stipend to members of the committee who are not employed by the Federal Government or a State marine fisheries agency.

**2. Advisory Panels.** Advisors shall be appointed as needed to assist the work of the Council and will ordinarily be named to work with a particular Council committee. Such advisors will constitute Advisory Panels as required by Section 302(g)(2) of the Magnuson - Stevens Act.

a. **Objectives and Duties.** When requested by the Council, through the Council Chair or the Executive Director, Advisory Panels shall:

(1) advise the Council on the assessments and specifications contained in each fishery management plan for each fishery within the Council's geographical area of concern, with particular regard to: (1) the capacity and the extent to which the fishing vessels (commercial and recreational) of the United States will harvest the resources considered in fishery management plans, (2) the effect of such fishery management plans on local economies and social structures, (3) potential conflicts between user groups of a given fishery resource, (4) the capacity and the extent to which United States fish processors will process that portion of an optimum yield harvested by United States fishing vessels, and (5) enforcement problems peculiar to each fishery with emphasis on the expected need for enforcement resources;

(2) advise and/or prepare comments for the Council on (1) fishery management plans or amendments thereto during preparation of such plans or amendments by the Council, and on (2) fishery management plans prepared by the Secretary and transmitted to the Council for review;

(3) advise the Council on current trends and developments in fishery matters; and

(4) perform such other necessary and appropriate advisory duties as may be required by the Council to carry out its functions under the Act.

Advisory Panel members shall attend Council meetings and public hearings on fishery management plans and amendments thereto as authorized by the Council Chair.

**b. Members**

(1) Advisory Panel members shall be nominated for membership by the fishing community (vessel owners or operators, dealers, processors, associations, clubs, or themselves), be recommended by the appropriate Council committee, and be appointed by the Council Chair. Advisory panel members shall be appointed by the Chairman for a period of two years, and may be reappointed at the pleasure of the Chairman. Vacancy appointments shall be for the remainder of the unexpired term of the vacancy.

(2) Advisory Panels shall be composed of persons who are either actually engaged in the harvesting or processing of, or are knowledgeable and interested in the conservation and management of, the fisheries to be managed. Advisory Panels shall also reflect expertise and interest from the standpoint of geographical distribution, industry and other user groups, and the economic and social groups encompassed in the Council's geographical area of concern.

(3) Advisory Panel members shall be notified of meetings at least 10 days in advance of each meeting. Advisory Panel members who cannot attend a scheduled meeting shall advise the Executive Director.

**c. Administrative Provisions.** The Council shall pay the actual expenses of the members of the Advisory Panels, in accordance with controlling law, while engaged in the performance of Council business.

**3.** The Council shall establish and maintain a fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans. Appointments to this committee shall be made in such a manner as to provide fair representation to commercial and recreational fishing interests, and to conservation and environmental organizations in the geographic areas of authority of the Council. The Committee or subcommittees of the Committee shall meet at the call of the Council Chair.

**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 Chair may appoint standing and ad hoc committees from among the voting and nonvoting members as it deems necessary for the conduct of Council business consistent with A.5.b..

## II. 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 Council will meet at the call of the Chair of the Council or upon request of a majority of the voting members. In the latter case, the Council members who want the meeting communicate in writing to the Executive Director in the form of individual letters or a petition. When eleven signatures are received, the Executive Director (1) informs the Chair and (2) arranges for the meeting. 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.** Public notice of regular meetings of the Council, Scientific Statistical Committee or advisory panels, including the agenda, must be published in the *Federal Register* on a timely basis, and appropriate news media notice must be given. The published agenda of any regular meeting may not be modified to include additional matters for Council action without public notice, or such notice must be given at least 14 days prior to the meeting date, unless such modification is to address an emergency under section 305(c) of the Magnuson-Stevens Act, in which case public notice shall be given immediately. Drafts of all regular public meeting notices must be transmitted to the NMFS Headquarters Office at least 23 calendar days before the first day of the regular meeting. Councils must ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings. Drafts of emergency public notices must be transmitted to the NMFS Washington Office; recommended at least 5 working days prior to the first day of the emergency meeting. Although notices of, and agendas for, emergency meetings are not required to be published in the *Federal Register*, notices of emergency meetings must be promptly announced through the appropriate news media.

### 3. Conduct of meetings.

a. All meetings of the Council advisory and working groups must be open, unless closed in accordance with paragraph (5)(a) of this section. Members of the Council, advisory, and working groups planning to attend a closed meeting must obtain the necessary security clearance in advance of the meeting. 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. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement (MSFCMA 302(i)(2)(D)). At any time when a Council determines it appropriate to consider new information from a state or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures. 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.

b. 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.

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

d. 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. The staff shall provide statistical and clerical support as requested and as approved by the Council Chair. The Regional Administrator of the National Marine Fisheries Service serving on the Council, or the Regional Administrator's designee, shall submit such a statement, which shall be made available to the public upon request, if the Regional Administrator disagrees with any such matter.

e. The Council may comment on and make recommendations concerning any activity undertaken or proposed to be undertaken, by a State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction and shall comment on and make recommendations concerning any such activity that NMFS brings to the Council's attention that is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction.

f. Parliamentary procedures should be used as a guide, but need not be rigidly adhered to, at the Chair's prerogative. Decisions by consensus are permitted, except where the issue is Council approval of a Fishery Management Plan or amendment (including any proposed regulations) when a roll call vote is required.

g. Prior to all roll call votes, a written copy of the motion to be voted on will be made available to Council members. The written motion, as voted on, must be preserved as part of the record or minutes of the meeting. For a vote on a Council finding that an emergency exists in a fishery, the exact number of votes (for, against, and abstaining) must be preserved as part of the record of the meeting. At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote (MSFCMA 302(e)(5)).

(h) appointed public Council members and administrative employees are subject to Federal laws and regulations concerning bribery and conflicts of interest 50 CFR 600.225. Appointed Council members are required to report their financial interests in harvesting, processing and marketing activities, according to 50 CFR 600.235. Council members must recuse themselves from voting on matters that would have a significant and predictable effect on the financial interests reported. To the extent that interests are reported under 50 CFR 600.235, Council members are partially exempt from 18 U.S.C. 208.

#### **4. Record.**

a. Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall certify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction. (MSFCMA 302(i)(2)(E))

b. If draft regulations have not been deemed necessary and appropriate at the time an FMP or an Amendment or Framework adjustment to a FMP is approved by the MAFMC, the Council's Executive

Director shall review the draft regulations, when available, for such actions before they are implemented by NMFS.

After reviewing the draft regulations, the Executive Director shall recommend to the Council Chair whether they are necessary and appropriate for the purposes of implementing the Council-approved action.

After considering the Executive Director's recommendation the Council Chair, on behalf of the full Council shall make the determination to deem the draft proposed regulations as necessary and appropriate for the purposes of implementing the action, consistent with Section 303 c) of the Magnuson-Stevens Act.

Once this process has occurred and if approval has been granted, the Executive Director shall forward the appropriate documents to NMFS.

c. Subject to the procedures established by the Council under section 50 CFR 600.405, and the regulations prescribed by the Secretary under 50 CFR 600.130 relating to confidentiality, the administrative record (including minutes required under paragraph (A)(4)(a) 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.**

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

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

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

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

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

c. Before closing a meeting or portion thereof, a Council or subsidiary body should consult with the NOAA General Counsel Office to ensure that the matters to be discussed fall within the exceptions to the requirement to hold public meetings described in paragraph (a) of this section.

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

**6. Frequency.** Each Council must meet in plenary session at least once every six months. Council

committees and advisory groups may meet as frequently as necessary, with the approval of the Council Chair.

## **7. Location.**

a. Each Council must conduct its meetings at appropriate times and places in any of the constituent states of the Council. Two or more Councils may hold joint meetings within a constituent state of one of the Councils for the purpose of discussing issues of mutual concern or for the purpose of developing or amending a joint FMP.

b. 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. Meeting facilities will be accessible for people with physical disabilities. Sign language interpretation and other auxiliary aids will be provided with five days prior notification of the meeting date.

**8. Agendas.** Suggested agendas for all Council meetings will be drawn up by the Executive Director and approved by the Chair. The Chair will be assisted by the Vice Chair, the staff and the members of the Council who wish to contribute. An agenda shall be published and distributed to Council members at least 14 calendar days before the subject meeting. Members may submit items for the agenda of a meeting within three weeks of the close of the previous meeting.

## **B. HEARINGS.**

**1. General.** The Chair will determine when hearings are appropriate and will designate one voting member of the Council to officiate at such hearings. The Magnuson - Stevens 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 - Stevens 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.

## **III. EMPLOYMENT PRACTICES.**

### **A. STAFFING.**

**1. Composition.** The voting members of the Council shall hire an Executive Director. The duties and functions of the Executive Director are:

- a. Supervise, direct, and account for the administration and operation of the Council.
- b. Retain, affix the salary of, and dismiss staff as necessary to accomplish the goals of the Council.

The Executive Director shall prepare staff job descriptions, revise them as necessary, and review personnel duties to determine if they are consistent with job descriptions and Council guidelines.

c. Assign the duties of the staff as may be necessary to accomplish the goals of the Council.

d. In consultation with the Chair, make and enter into any and all contracts, agreements, or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel, and procure by contract, consulting research, technical and other services and facilities, whenever the same shall be deemed necessary or desirable in the performance of the functions of the Council and whenever funds have been made available for such purposes. All legal procedures and applicable regulations shall be followed. The Council may establish a value above which the Council will approve contracts.

e. Maintain such facilities as may be required for the effective and efficient operation of the Council.

f. Prepare an annual budget for approval by the Council.

g. Coordinate efforts of the Council with other Councils and related Federal agencies.

h. The Executive Director may transfer funds between line items in accordance with NOAA and NMFS regulations, guidelines, and grant conditions.

i. Prepare an Administrative, Operating, and Accounting Procedures Manual for the operation of the Council staff.

j. Prepare fishery management plans in accord with Council policy.

k. Carry out other duties as may be assigned by the Council and/or the Council Chair.

## 2. Employment Practices.

**a. Nondiscrimination.** All activities of the Council must operate under a policy of equal employment opportunity. Council staff positions shall be filled solely on the basis of merit, fitness, competence and qualifications. Employment actions shall be free from discrimination based on race, religion, color, national origin, sex, age, disability, reprisal, sexual orientation, status as a parent, or on any additional basis protected by applicable Federal, state, or local law. Executive Order 13152 dated May 2, 2000, prohibits employment discrimination based on an individual's status as a parent.

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

**b. Relationship Between Council and Staff.** Council members may submit requests for task performance by the Executive Director or the staff to the Council or the Chair for approval and transmittal. Only the Chair, or the Council acting at a duly constituted meeting, may direct task performance by, and exercise supervision over, the Executive Director. The members of the staff shall receive their direction and supervision solely from the Executive Director.

**c.** No employee of the Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson - Stevens 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.

d. 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).

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

f. Drug Free Workplace. The Council's workplace will remain drug-free at all times. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance will not be tolerated in the Council office. Appropriate personnel action, up to and including termination of employment, will be taken against any employee in violation of this prohibition. Employees are expected to notify management of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction.

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

**B. EXPERTS AND CONSULTANTS.** As long as funding is available in the Council's budget, the Executive Director may contract with experts and consultants as needed to provide technical assistance not available from NOAA at a rate that does not exceed the first step of GS-15 plus travel. A Council must notify the NOAA Office of General Counsel before seeking outside legal advice, which may be for technical assistance not available from NOAA. If the Council is seeking legal services in connection with an employment practices question, the Council must first notify the Department of Commerce's Office of the Assistant General Counsel for Administration, Employment and Labor Law Division. A Council may not contract for the provision of legal services on a continuing basis.

**C. DETAILS OF GOVERNMENT EMPLOYEES.** All Federal agencies are authorized by section 302(f)(2) of the Magnuson - Stevens Act, 16 U.S.C. 1852(f)(6), 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 Council 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.**

**1. Probation.** All appointments shall be for a probationary period of six (6) months during which the individual's fitness for permanent appointment shall be evaluated. If the Executive Director deems it necessary, the probationary period may be extended for not more than two additional six month periods. In no case shall any probationary period be extended beyond eighteen (18) consecutive months. At any time during the probationary period, the Director may dismiss the employee for reasons of unsatisfactory service or conduct. The Executive Director shall notify the employee in writing of the action.

**2. Unauthorized Absences.** Any absence from duty that is not in compliance with the various authorized leaves shall be considered an absence without leave and is cause for disciplinary action. No employee shall be absent from duty without authorization by a supervisor except in case of emergency illness, accident, or serious unforeseen circumstances. Such emergency conditions shall be brought to the

attention of the supervisor as soon as practicable. Any employee who is absent from work without a valid leave of absence for three (3) consecutive working days, may be deemed to have abandoned the position and to have resigned from the staff unless proven to the satisfaction of the Executive Director that such absence was excusable. Nothing herein contained shall be construed as preventing the Director from taking disciplinary action against an employee under paragraph 5 of this section because of unauthorized absence.

**3. Employee Inquiries, Requests, Suggestions and Grievances.** Employees and their immediate supervisors should discuss and resolve all employee inquiries, requests and suggestions informally. It is the responsibility of each supervisor to conduct such discussions objectively and to initiate action to resolve problems. If, after such informal action, the problem is not resolved, a formal written grievance may be taken to the Executive Director. Should the employee not be satisfied with the Executive Director's resolution of the grievance, an appeal may be taken to the Council.

**4. Disability.** Requests for disability-related accommodations should be processed in accordance with Department Administrative Order, DAO 215-10. Action may be initiated by the employee, the employee's legal representative or the supervisor, but in all cases, must be supported by medical evidence acceptable to the Executive Director, the Council, and their insurance carrier.

**5. Reprimand or Suspension Without Pay.** In situations where a verbal warning has not resulted in the expected improvement, or where more severe action is warranted, the employee may be reprimanded in writing and a copy shall be placed in the employee's personnel folder. An employee may be suspended without pay by the Executive Director for reasons of misconduct, negligence, inefficiency, insubordination, conduct unbecoming to a Fishery Management Council employee, unauthorized absence, or other justifiable reasons when alternate personnel action would not be appropriate. Suspensions without pay shall not exceed thirty (30) calendar days unless approved by the Council. In no case shall suspension with pay be utilized, but retroactive pay may be granted should the suspension subsequently prove unfounded.

**6. Reasons for Disciplinary Action.** Disciplinary action may be taken for any conduct not in keeping with reasonable standards, as determined by the Executive Director and/or Council.

**7. Dismissal.** The Executive Director may dismiss employees for reasons of misconduct, negligence, inefficiency, insubordination, conduct unbecoming to a Fishery Management Council employee, unauthorized absence, or other justifiable reasons if it is documented that other personnel actions will not solve the problem. The employee may appeal this action to the Council.

## **E. SALARY AND COMPENSATION ADMINISTRATION.**

**1. General.** In setting rates of pay for Council Staff, the principle of equal pay for equal work should be followed. Variations in basic rates of pay should be in proportion to substantial differences in the difficulty and responsibilities of the work performed. The duties of any new position shall be contained in a brief description to be submitted to the NOAA Personnel Office servicing the NMFS Regional Office assigned to the Council prior to the submission of a budget in which the salary of that position is requested. The Council will request a salary range appropriate to the position within the labor market of the Council's office and a determination of the applicability of the Fair Labor Standards Act. The Council may fill the position at any salary level within that range, except that, unless recruitment of exceptionally qualified employees is hampered, the policy of hiring at the beginning rate shall be recognized. After a position has been filled, the employee may be promoted annually and be recognized for superior performance within the specified salary ranges in accordance with the Council policies.

**2. Pay Bands.** Each position shall have assigned to it a pay band for compensation purposes. The pay of employees shall be according to the published rates as set forth in the Alternative Personnel Management System for the U.S. Department of Commerce (62 FR 67434). A part-time employee working on a regular and continuous schedule of less than 37½ hours per week shall be paid the hourly rate appropriate to the pay band of the employee for the hours actually worked. Such schedule shall be established as the work situation requires, with the approval of the Executive Director.

**3. Wage Increases for Full Time Employees.** All wage increases shall be at the beginning of the new federal fiscal year. Those employees who have been employed six (6) months or longer shall be eligible for pay raise advancement. Those employees with less than six (6) months service shall not be eligible for pay raise advancement until the following budget year. The Council has the discretion to adjust pay rates and pay increases based on cost of living (COLA) differentials in their geographic locations. No pay adjustment based on geographic location shall exceed the COLA and locality pay adjustments available to Federal employees in the same geographic area. A Council employee will normally have his pay rate advanced-upon completion of one year service, including six (6) consecutive months of satisfactory performance immediately prior to the effective date. These wage increases shall be made no more often than yearly. Wage increases are not to be construed as an automatic "right", but rather as an adjunct to satisfactory service. A poor or unsatisfactory performance evaluation shall be the grounds for denial of the annual wage increase.

**4. Incentive/Special Act and Service Awards.** Incentive Awards are designed to motivate employees to increase productivity and creativity by rewarding those whose job performance and ideas benefit the Council and are substantially above normal job requirements and performance standards. Cash awards for outstanding service may be granted to full time employees in addition to salary increases at any time during the year. A cash award may be granted in any amount ranging from \$25 to \$5000 and will be determined by the Executive Director within budget constraints after consultation with the Chairman. A cash award is a one time, lump sum payment and not a part of the basic annual salary of the employee. The payment is subject to Federal and State withholding taxes, and social security and medicare deductions. Cash awards are not subject to retirement fund contributions. Cash awards may be granted for various reasons such as: a) completion of short-term project in less time than expected or where there were unusual difficulties to overcome; b) development of new/revised procedures or other contribution toward improvement of office productivity; c) handling an unusually heavy workload, such as when coworkers are absent or vacant positions are not filled immediately; d) completion of significant special assignment outside normal job responsibilities; e) contribution that improved public awareness and/or understanding of programs.

**5. Work Schedule and Overtime Pay.** The standard work week for all full time employees shall be 37½ hours. The standard work day shall be 8:00 A.M. to 4:30 P.M. with a one hour lunch period. Deviation may be authorized by the Executive Director to meet operational needs through the use of flex-time. Cases of continuing or permanent schedule deviation shall be subject to the approval of the Executive Director or Council. Employees in supervisory, executive or professional positions shall not be eligible for overtime cash payments. However, they shall be eligible for compensatory leave at the rate of one hour leave for one hour's work. Compensatory leave must be taken within six (6) months of the date from which it was earned. Employees other than supervisory, administrators, executives or professionals shall be eligible for cash overtime payments at the rate of one hour's pay for each hour up to 40 hours per week or in excess of 7½ hours per day and 1½ hours worked in excess of 40 hours per week or in excess of 8 hours per day. Overtime payments shall be made in accordance with the provisions of the Fair Labor Standards Act (FLSA) 29 U.S.C. § 201 *et. seq.* Employees eligible for cash overtime may elect to receive compensatory time in lieu of cash overtime. Such requests must be in writing and approved by the Executive Director prior to the end of the pay period in which it is earned. Requests for compensatory time in lieu of cash overtime may not exceed 75 hours at any one time and must be taken within 6 months of the time that it was earned.

**6. 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 a daily rate as specified by the Magnuson - Stevens Act when engaged in the actual performance of duties as assigned by the Chairman of the Council, *i.e.* the daily rate of a GS15 Step 7 of the General Schedule. 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 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.

**F. RECRUITMENT.** All personnel vacancies should be filled on a competitive basis, unless unusual circumstances clearly dictate otherwise. For this purpose, the Executive Director may use 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**

### **1. Annual Leave**

a. Full time employees of the Council shall be entitled to annual leave in accordance with the following schedule. Part time employees accrue leave at the same rate, per hours worked.

- (1) up to 3 years of service: 13 days per year (2 hours leave per 40 hours)
- (2) 3 - 15 years of service: 20 days per year (3 hours leave per 40 hours)
- (3) over 15 years of service: 26 days per year (4 hours leave per 40 hours).

b. Prior Federal, State or local government service will be credited for the purpose of determining leave accrual of individual employees.

c. Though accruing, employees shall not normally be granted paid annual leave until the completion of six (6) months of continuous service.

d. At the end of the calendar year, employees may carry over up to 30 days unused annual leave from one year to the next. Amounts remaining above 30 days will be forfeited. Employees who were authorized to carry over 40 days in accordance with Council SOPPs prior to **December 11, 1980**, 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.

e. Employees shall request annual leave as per the guidelines established by the Executive Director.

f. Lump sum reimbursements not to exceed 30 days plus current year earnings of unused leave are authorized upon employee separation. Lump sum reimbursements not to exceed 40 days carryover plus current year earnings of unused leave are authorized upon employee separation for those employees authorized to carry over 40 days of unused leave. In the case of the death of an employee, the employee's estate shall be paid in cash for any accumulated annual leave.

## **2. Sick Leave.**

a. All employees except temporary, seasonal and emergency shall accrue paid sick leave credit at the rate of 13 days per year. Permanent part-time employees shall accrue on a pro rata basis. Sick leave credit may be accumulated without limit. Distributions of accumulated funds for unused sick leave may be made to the employee upon his or her retirement, or to his or her estate upon his or her death. Eligibility criteria for retirement is age 60 or 20 years of service. An employee eligible for sick leave with pay may use such sick leave for absence due to illness or death of a member of the employee's immediate family requiring the employee's personal presence. In addition, sick leave can be used for appointments with doctors, dentists, or other recognized medical practitioners, subject to prior approval of the Executive Director. An employee, at his option, may also use sick leave to provide full regular pay during periods when he is paid less than full pay under workmen's compensation provisions. Such leave shall be charged in proportion to the difference between workmen's compensation pay and full pay. Employees cannot take sick leave with pay in excess of the days actually accrued.

b. An employee needing sick leave shall inform his immediate supervisor of the fact and the reason in advance when possible, or otherwise as soon as practicable; failure to do so may be cause for denial of pay for the period of absence. Before approving pay for sick leave, the Executive Director may require either a medical practitioner's certificate or a written statement signed by the employee setting forth the reason for the absence. In the case of an absence of more than three (3) consecutive days, a medical practitioner's certificate may be required as a condition of approval.

c. In meritorious cases, the Council may advance up to one year's earnings of sick or annual leave when it is reasonably expected that the advanced leave will be repaid by the employee. This must be approved by the Council Chair or an individual to whom the Chair has designated this authority in writing.

**3. Paid Holidays.** Paid holidays shall be official Federal holidays plus one holiday designated by the Executive Director.

**4. Administrative Leave.** The Executive Director may grant any employee administrative leave for jury duty (no limit); inclement weather (at the discretion of the Executive Director); military duty (not to exceed 15 days each calendar year); military induction examination; and blood donation (up to 4 hours); and for such other reasons as the Executive Director may designate.

**5. Personal Leave.** Upon a permanent employee's written request the Executive Director may approve a leave without pay, not to exceed three (3) months. Such leave may be renewed for an additional period not to exceed three (3) months by formal action of the Executive Director and written approval by the Chair of the Council.

**6. Maternity Leave.** Maternity leave may be charged against any accumulated leave credits. After all leave credits are exhausted the employee may continue on maternity leave without pay for a period not to exceed 14 weeks after parturition.

**7. Family Leave.** Full time employees of the Council shall be entitled to Family Leave in accordance with the U.S. Department of Labor Family and Medical Leave Act (FMLA) 29 CFR Part 825. Employees are eligible to receive up to a total of 12 workweeks of unpaid leave during any 12 month period for one or more of the following reasons:

- a. for the birth and care of the newborn child of the employee;
- b. for placement with the employee of a son or daughter for adoption or foster care;
- c. to care for an immediate family member (spouse, child, parent) with a serious health condition; or
- d. to take medical leave when the employee is unable to work because of a serious health condition.

**H. EMPLOYEE BENEFITS.** The conditions and benefits outlined in this section are not to be considered as part of any contract of employment but are those benefits which the Council considers to be consistent with the requirements of the Secretary of Commerce. Salary increases funded in lieu of life and medical/dental policies are not permitted.

**1. Health Insurance.** The Council will pay the basic rate for the employee and his family under the plan chosen, including the blood bank. Surviving spouses of employees will be considered eligible to participate in group health benefits at their own expense and at no cost to the Council for a period of up to one year. Full time employees of the Council who retire from the Council with a minimum of 20 years of service are eligible to receive health benefits which are comparable to Federal employees, set by the U.S. Office of Personnel Management Federal Employees Health Benefit Program, on a cost share basis of 75% Council and 25% employee.

**2. Life Insurance.** The Council will pay for coverage at the rate of one times salary, with a minimum of \$50,000, non-contributory.

**3. Retirement.** The Council will pay ten (10) percent of an employee's salary into a deferred compensation plan. Vesting will be 100 percent. In the case of the death or disability of an employee, the employee or the employee's estate or beneficiary shall be paid in cash for 100% of the employee's deferred compensation plan.

**4. Long Term Disability Insurance.** The staff is eligible for coverage by a disability plan similar to that provided by the Federal Government to its employees.

## **I. TRAVEL REIMBURSEMENT PROCEDURES.**

### **1. General.**

- a. The per diem and actual subsistence rates contained in the GSA Travel Regulations apply.
- b. 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 GSA Rules; and incidental expenses such as taxi fares, parking, and telephone calls on official business.
- c. 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, after ensuring compliance with GSA Travel Regulations and OMB Circular A-122. 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. Accommodations equivalent to other-than-first-class should be utilized in the unlikely event that water vessel transportation is required. When substantial

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

**2. Council, AP, SSC Members.** Section 302(d) and (f) of the Magnuson - Stevens Act provide that the voting members of the Council, the Executive Director of the Marine Fisheries Commission on the 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 GSA Rules 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. The Executive Director shall be housed at the same hotel as the Council during Council and committee functions unless exempted by the Council Chair. Council staff attending a meeting shall be housed at the same hotel as the Council during Council and committee functions unless exempted by the Executive Director.

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

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

**6.** All claims for reimbursement must be supported with receipts for all expenses other than meals except those expenses that individually amount to less than \$15.

## **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 Assistant Administrator, through the NMFS Office of Management and Budget and the Grants Officer. Routine cross-the-border travel to Canada is exempt.

**2.** The Chair is authorized to approve routine cross-the-border travel for Council members which has been granted to it by NOAA. The Executive Director is authorized to approve routine cross-the-border travel for staff which has been granted to it by NOAA.

**3.** Council Chairmen or their authorized representatives may approve routine cross-the-border travel to Canada 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 be approved as described in paragraph (J)(1) of this section. The per diem limits or actual expense requirements described above also are applicable to non-Council personnel traveling at Council expense. Payment for NOAA personnel from Council funds is not authorized.

**K. STAFF TRAINING.** On the job or part-time education (undergraduate or postgraduate college level) training assignments are made by the Executive Director as required by changed job requirements and as budgeted funds permit. Employees desiring Council support for on the job training or education assignments shall submit a written request through their supervisor to the Executive Director containing the details of and justification for the assignment. In evaluating a request the Executive Director will consider the extent to which the course or degree pursued relates to the work which the employee is now performing or may reasonably be expected to perform; the relationship between the employee's work schedule and the educational schedule; and funding available in the budget. Training must be authorized

in advance in order to be reimbursed, with reimbursement made upon satisfactory completion of the course. Allowable costs are: (a) training materials; (b) textbooks; (c) fees charged by the educational institution; and (d) tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

#### **IV. FINANCIAL MANAGEMENT.**

The Council's grant activities are governed by 15 CFR Part 14 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), OMB Circular A-122 (Cost Principles for Non-Profit Organizations), and 15 CFR Part 29b (Audit Requirements for Institutions of Higher Education and other Nonprofit Organizations). 15 CFR Part 14 prescribes standards for financial management systems, procurement, property management, financial reporting, cash depositories, and grant close-out procedures. The Council is required to comply with the provisions of the regulations, Circulars and terms and conditions of the cooperative agreement.

**A. COOPERATIVE AGREEMENTS.** The Council receives 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 Council 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 Council is 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 Council 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 Council.

##### **a. Application for cooperative agreement.**

The Council must submit a formal application (Standard Form 424, Application for Federal Assistance) to the Northeast Regional Administrator. 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. The 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. Accounting.** A Cash Receipts and Disbursement Journal with a monthly Summary of Accounts is required as a minimum bookkeeping system. 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, except that the Council may set a level above which checks must be signed by the Council Executive Director or Administrative Officer and the Chair or Vice-Chair. When budget estimates are submitted to the Assistant Administrator, the uniform account classification titles should be used.

**c. Advance of funds.** Drawdowns from the Treasury will be made in accordance with provisions established by the cooperative agreement.

**2. Programmatic.** Prior to preparing a programmatic application the Executive Director shall survey appropriate academic institutions to determine if the desired results of the programmatic project have already been achieved or are being worked on and can be obtained at no cost by the Council.

**a. Receipt of Funds.** The Council may not independently enter into agreements, including grants,

contracts, or cooperative agreements, whereby they will receive funds for services rendered. All such agreements must be approved and entered into by NOAA on behalf of the Council. Additionally, the Council is not authorized to accept gifts or contributions directly. All such donations must be directed to the NOAA Administrator in accordance with applicable Department of Commerce regulations.

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

- (1) 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.
- (2) Proposed projects must be short-term, preferably one year or less but generally not longer than two years.
- (3) 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 Council 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.

**c. Procedure.**

- (1) 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.
- (2) 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.
- (3) 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.** The procurement system of the Council will be the direct responsibility of the Executive Director. 15 CFR Part 14 will be adhered to in procurement and a clear audit trail for all Council expenditures will be maintained. The cost and financial management principles outlined in OMB Circulars A-122 and 15 CFR Part 14 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 \$100,000 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 under \$100,000 with individuals and commercial vendors will be documented. Internal Council evaluations may be made on procurements in excess of \$100,000 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 utilize small businesses, minority-owned firms, and women's business enterprises for Council procurements, and to purchase American made equipment and products. The

Commerce Business Daily (CBD) should be considered as a means of publicizing contemplated contracts.

4. The purchase or lease of ADP equipment by the Council and its subcontractors requires prior approval by the RA. 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. The Council is authorized to purchase supplies and services from GSA directly.

**C. PROPERTY MANAGEMENT SYSTEM.** It is the responsibility of the Executive Director to develop and implement property management procedures that ensure adequate control and protection of Council property at all times. 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 must include as a minimum:

1. A perpetual inventory system for all non-expendable items (office equipment, furniture, etc.).
2. Procedures for marking such items as Council property.
3. Provision or safeguarding sensitive items such as cameras and biological equipment.
4. Procedures to be followed in disposing of surplus items. Surplus property with a current per-unit fair market value of greater than \$5,000 will be disposed of in accordance with 15 CFR Part 14. Equipment with a current per-unit fair market value of less than or equal to \$5,000 may be disposed of in the following manner:
  - a. Property which is determined to be surplus to the Council needs may be transferred, traded, sold, or discarded.
  - b. Items may be transferred to another Council, Federal, State, or local agency.
  - c. Items may be traded for needed supplies, equipment, or for other considerations with another Council, Federal, State, or local agency.
  - d. Items may be sold to another Council, Federal, State, or local agency, or commercial vendor at a fair market value.
  - e. Any item that is no longer functional may be discarded in any appropriate manner.
5. A summary of all personnel authorized to have access to Council property (to include consultants, if appropriate).

**D. SPACE MANAGEMENT.** Economy should be exercised regarding the amount and cost of space acquired. When acquiring office space, the Council may avail itself of the following:

1. General Services Administration leasing assistance;
2. Regional Office assistance;
3. Direct negotiations within the guidelines stated above.

**E. ACCOUNTING SYSTEM.**

1. The Executive Director shall have the authority to adopt and install an accounting procedure consistent with and within Federal guidelines. The accounting system must be a document oriented, obligation accounting system (with accruals, as necessary, for budget projection purposes). 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 as a minimum 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 it will also ensure close coordination between actual spending rates and budgeted amounts so that comparisons and changes can be made at any time. All financial records must be handled in accordance with 15 CFR Part 14.

**2.** The Executive Director may contract with a Certified Public Accountant to assist in the establishment, operation, maintenance, audit, and control of such system.

**3.** The Council shall bond its employees in an amount adequate to safeguard the Council's interests. The total funds, on deposit and cash on hand, shall not, at any time, exceed the amount of the bond unless specifically authorized by the Council.

**4.** Checks may be drawn on the sole signature of the Executive Director or Administrative Officer, except that checks greater than \$15,000, which must be signed by the Executive Director and also the Council Chair or the Vice Chair.

**5.** Year-end Expenditures and Carry Overs. It shall be the policy of the Council not to expend funds at the end of a fiscal year in anticipation of needs which may arise in subsequent fiscal years.

**F. AUDITS.** An independent audit is required at least biennially by DOC Office of the Inspector General auditors or an independent public accountant (IPA). The Council is 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 15 CFR Part 29b "Audits of States, Local Governments, and Non-Profit Organizations".

**2.** As part of the IPA's examination of Council records, it is requested that they 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 personnel be invited to participate in the audit exit conference:

- a.** the Grants Officer;
- b.** the Assistant Administrator's staff and/or a representative of the Regional Office; and
- c.** the Council Chair.

**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. Guidance for the preparation of these reports and other financial reporting procedures is contained in 15 CFR Part 14.52 and Special Award Conditions of the Cooperative Agreement.

## **V. RECORD KEEPING.**

### **A. ADMINISTRATIVE RECORDS FOR FMPS.**

**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:

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

## **B. DISPOSITION OF RECORDS.**

1. Council records must be handled in accordance with NOAA records management office procedures.
2. The goal of an effective disposition program is annually to destroy unneeded records while preserving records having long-term or enduring value because of administrative, legal, scientific, or historical importance.
3. Councils must consult with NOAA before destroying Council records. Financial records (including time and attendance records) should be handled according to the stipulations of 15 CFR Part 14. Councils must send records associated with FMPs to the appropriate Region for disposition.
4. 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 in accord with the provisions of the Privacy Act.

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

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

b. An individual is not 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.

c. 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.

d. 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.

e. 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.

f. 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:

a. 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;

b. the principal purpose for which the information is to be used; and

c. 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 time frames for disposition are as follows:

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

**b. Time and attendance files:** Retain for three years following the final financial report for each grant year in accordance with 15 CFR Part 14.

**E. FREEDOM OF INFORMATION ACT (FOIA) REQUESTS.** All FOIA requests must be submitted in writing. The envelope and letter should be clearly marked "Freedom of Information Request."

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

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

**F. CONFIDENTIALITY OF DATA.** In order to comply with 50 CFR Part 600 Subpart E, the Council adopts its Confidentiality of Data Policy by reference into this SOPPs.

## **VI. AMENDMENTS TO STATEMENT OF ORGANIZATION PRACTICES AND PROCEDURES.**

This Statement of Organization Practices and Procedures may be amended from time to time by majority vote of the voting members present and voting provided notice of the specific proposed change has been sent in writing to all members of the Council at least ten (10) days in advance of the meeting in which the matter shall be presented. However, notice provisions of this section may be waived by the Council.