



## Mid-Atlantic Fishery Management Council

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Michael P. Luisi, Chairman | P. Weston Townsend, Vice Chairman

Christopher M. Moore, Ph.D., Executive Director

# MEMORANDUM

**Date:** May 26, 2023  
**To:** Council  
**From:** Chris Moore, Executive Director  
**Subject:** Statement of Organization Practices and Procedures

Enclosed are several excerpts from the Council's Statement of Organization Practices and Procedures (SOPP) containing proposed revisions for Council consideration. The Council will review these changes during the upcoming June Council meeting. The complete redline version of the revised SOPP is available on the June 2023 Council Meeting page. Below is a summary of the proposed changes.

**2.4.2 Nominations** – The proposed edit removes the requirement for the Nominating Committee to nominate at least two candidates for each office.

**2.4.3 Elections** – The proposed edits establish procedures for addressing stalemates during Council elections of Chair and Vice-Chair.

**4.1.2(h) Harassment** – The proposed edits incorporate new anti-harassment language and references to two harassment policies for Council staff and all Council process participants, which would be added as attachments to the SOPP. The Council staff policy addresses situations where the employee is the alleged victim. The Council process participant model policy provides guidance on addressing allegations of harassment experienced by participants in the Council process other than staff (e.g., Council members, AP members, SSC members, consultants, etc.) Both draft policies are attached behind the SOPP excerpts. Substantive changes that were made to the model policies provided by NMFS are shown in track changes.

**4.4.4 Incentive/Special Act and Service Awards** – The proposed edits would change the limit on cash awards to 10 percent of the employee's base salary.

In addition, a minor list numbering error has been corrected in section 3.1.5 (Conduct of Meetings). Paragraphs (h)(1) and (h)(2) are now labeled paragraphs (i) and (j). This change is not included in the attached excerpt.

## 2.4.2 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.

## 2.4.3 Elections

- (a) 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 a secret ballot with the votes tabulated by two or more Tellers appointed by the Council Chair.
- (b) The Tellers shall use the following rules to determine the winning candidate:
  - (1) To win, a candidate must receive a majority of the votes cast.
  - (2) 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. If there are multiple candidates tied with the lowest number of votes they shall all be dropped from consideration, unless this would result in less than two candidates remaining, in which case the candidates tied with the lowest number of votes shall draw straws to determine one candidate to be dropped from consideration. This process will continue until a candidate receives a majority of the vote cast. If neither of the final two candidates receives a majority there shall be another vote taken, but after three votes without a majority determined, the final two candidates shall draw straws to determine the winner.
  - (3) Those preferring not to vote for any candidate shall check "ABSTAIN" on the ballot.
  - (4) The number of ballots cast for an individual shall not be announced. Any Council member who questions the result may review the ballots. The ballots will not identify which Council member cast a particular ballot.

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## 4.1.2 Employment Practices

- (c) *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. —~~ The Council will not tolerate harassment or retaliation against those who report harassment. For purposes of this policy, harassment includes unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). This policy does not cover allegations of incivility not based on a protected characteristic. However, this policy is not intended to limit in any way the Council's ability to address incivility, inappropriate behavior, or other issues in an appropriate manner for the context. Any employee who believes he or she has been harassed or believes he or she has witnessed harassment is encouraged to report the harassment to a supervisor or manager.

~~The supervisor or manager should then follow the steps set forth in DAO 202-955. Any complaints of harassment on the basis of sexual orientation have been 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. Employees are strongly encouraged to report any incident they perceive as harassment, to include incidents personally experienced or witnessed, to their supervisor or the designated point of contact (Executive Director or other person designated by the Executive Director) as soon as possible. Any Council process participant who observed or receives a report of harassment of a Council employee should report the incident to the Executive Director or Chair or Vice Chair of the Council as soon as possible. The Council's policy on addressing allegation of harassment of Council employees is detailed here as Attachment 1. The Council's Harassment Policy extends beyond staff and includes the conduct of Council members, staff members, and public during the course of official Council meetings, advisory body meetings, or committee meetings. The Council's policy on addressing harassment of process participants other than Council employees is detailed here as Attachment 2.~~ The Council's Harassment Policy is intended to ensure that staff members work in an environment free of harassment in all of their interactions with Council members, other staff members, and the public during the course of official Council meetings, advisory body meetings, or committee meetings.

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#### **4.4.4 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~~ The amount of the award will be determined by the Executive Director within budget constraints after consultation with the Chairman. The total amount of a cash award will not exceed 10 percent of the employee's base pay. 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; and e) contribution that improved public awareness and/or understanding of programs.

**DRAFT for Council Review (June 2023)**

**Attachment 1: Mid-Atlantic Fishery Management Council Policy on Addressing Allegations of Harassment of Council Employees**

SECTION 1. PURPOSE.

The purpose of this policy is to protect Council employees and provide guidance for Councils on taking action related to incidents or allegations of harassment **experienced by Council employees** prohibited by Federal law (i.e., harassment based on sex, sexual orientation, gender identity, race, color, national origin, age, religion, disability, or reprisal). **The Council will not tolerate harassment or retaliation against those who report harassment.** Preventing harassment is everyone’s responsibility and individuals who experience or observe harassment are strongly encouraged to come forward to ensure a safe working environment for everyone involved in the Council process. This policy provides a framework for procedures to encourage employees to come forward with harassment allegations without fear of retaliation. This policy outlines an expedited process for reviewing allegations of harassment, ending actual incidents of harassment, and taking disciplinary actions as appropriate. The procedures established in this policy are distinct from the NOAA equal employment opportunity (EEO) complaint process, which is also available to Council employees to pursue allegations of – and seek remedies for – discrimination or harassment.

SECTION 2. BACKGROUND.

Definition of Unlawful Harassment:

Harassment is a form of discrimination. The Equal Employment Opportunity Commission defines harassment as: “unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.”<sup>1</sup>

.01 The Council is responsible for maintaining a workplace free of harassment. As part of this responsibility, supervisors are responsible for addressing and correcting misconduct that constitutes harassment.

.02 Employees can pursue allegations of harassment to several forums. The allegations or incidents covered in this policy are such that immediate appropriate action by the appropriate supervisor to resolve such matters is mandatory regardless of which forum an employee selects in pursuing an allegation. Employees have recourse when supervisors fail to address allegations of harassment, which could result in serious consequences for the Council.

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<sup>1</sup> See the Equal Employment Opportunity Commission website for more information:  
<https://www.eeoc.gov/harassment>.

## SECTION 3. SCOPE.

This policy covers incidents or allegations of harassment prohibited by Federal law,<sup>2</sup> experienced by a Council employee, whether the alleged harassment is ongoing or occurred in the past. The conduct covered by this policy involves:

- a. the targeting of an employee for harassment because of his/her sex (this includes harassment which is not necessarily sexual in nature) or other protected status;
- b. a pattern of pervasive harassment in the work unit including unwelcome behavior towards an individual or individuals which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment; or
- c. a single incident of harassment of such a serious nature that the continued effective functioning of the unit will be impacted.

## SECTION 4. PROCEDURES.

### .01 Reporting Allegations of Harassment

- a. The preferred point of contact to coordinate responses to harassment allegations is the Executive Director. The Executive Director will identify a second point of contact. ~~Councils should each determine a preferred point of contact to coordinate responses to harassment allegations.~~
- b. Employees are strongly encouraged to report any incident they perceive to be harassment, to include incidents personally experienced and those witnessed. They may report it to any Council supervisor or the designated point of contact, as soon as the incident occurs.
- c. Any Council process participants (e.g. Council Member, NOAA employee, or others participating in the Regional Fishery Management Council process, aside from Council employees) who observe or receive a report of harassment of a Council employee should to report the incident to the Council Executive Director, ~~Deputy Director~~, chair, or vice-chair as soon as possible.
- d. To the extent possible, the Council will protect the confidentiality of individuals who make harassment reports. However, the Council cannot guarantee complete

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<sup>2</sup> This policy covers allegations of unlawful harassment, which is a form of discrimination. See the Equal Employment Opportunity Commission website for more information: <https://www.eeoc.gov/harassment>. Allegations of incivility or other inappropriate behavior not based on a protected characteristic are outside the scope of this policy. However, this policy is not intended to limit in any way the Council's ability to address incivility, inappropriate behavior, or other issues in an appropriate manner.

confidentiality, since it cannot always conduct an effective inquiry without revealing certain information to the alleged harasser and potential witnesses. The Council is committed to ensuring that the allegation of harassment is shared only with those who have a need to know and in a respectful and sensitive manner.

- e. Employees who make reports of harassment or provide information related to such reports will be protected from retaliation.
- f. All reports of harassment when received by the designated point of contact will be promptly evaluated (typically within one week, absent extenuating circumstances, but in some cases more quickly if warranted under the circumstances) to determine if they come within the scope of this policy. Reports that fall within the scope of this policy will be reviewed thoroughly and impartially in accordance with the procedures in this policy.

#### .02 Taking Action on Reported Allegations of Harassment.

- a. A supervisor who receives an allegation that a Council employee has been harassed (whether the allegation is received from the employee or from another person on their behalf) must immediately<sup>3</sup> report the allegation, in writing, to the designated point of contact. Failure by the supervisor to report the allegation could result in disciplinary or adverse action against the supervisor for failure to adhere to the provisions of this Policy.
- b. In all cases, the supervisor, or designated point of contact to whom the incident is reported, must inform the employee of his or her right to seek counseling from an Equal Employment Opportunity counselor in NOAA's Office of Inclusion and Civil Rights.<sup>4</sup> The employee must be informed that all counseling contacts must occur within 45 days from the date of the alleged harassing event.
- c. In some instances, an employee may request that a supervisor keep the employee's allegations of harassment confidential.
  - 1. In such an instance, the supervisor is obligated to inform the designated point of contact of the allegations and of the request for confidentiality, and must inform the employee of this obligation.
  - 2. Where the employee requests confidentiality, the responsible supervisor must provide a written statement to the employee indicating that any inquiry and action will be very limited if anonymity is required. Any such statement should be coordinated with the designated point of contact.

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<sup>3</sup> Absent extenuating circumstances, for purposes of the required report, "immediately" means within 24 hours of receipt of allegations.

<sup>4</sup> <https://www.noaa.gov/organization/inclusion-and-civil-rights/eo-counseling-complaints>

.03 Incidents Where Facts Are Known and Not in Dispute. Employees may allege, or supervisors may become aware of, incidents of harassment where the facts are not in dispute, i.e., where all parties admit the allegations are true. In such situations, corrective action, including stopping any ongoing harassment and initiating disciplinary or adverse action, if appropriate, should be taken immediately in consultation with the designated point of contact. If disciplinary or adverse action is taken against a Council employee, it must proceed in accordance with established Council policy and practice. Corrective actions may include an oral warning or written reprimand if the misconduct was isolated and minor. If the misconduct by a Council employee was severe or pervasive, then reassignment, suspension, demotion or removal may be appropriate.

.04 Incidents Where Facts Are in Dispute. If the validity of the allegations of harassment is in dispute, or not enough facts are known to proceed with corrective action, the responsible supervisor must provide, in writing to the designated point of contact, a summary of the allegations of harassment initially communicated to them within [\_5\_] days. The designated point of contact, where appropriate, will select someone authorized by the Council to conduct an inquiry. The designated point of contact will provide advice and assistance to the official conducting the inquiry. Such inquiries should be completed within [\_45\_] days, absent extenuating circumstances. While the inquiry is pending, consideration should be given to undertaking immediate measures before completing the inquiry to ensure that the opportunity for additional actual or perceived harassment does not occur. Examples of such measures are:

- a. Making scheduling changes so as to avoid contact between the parties; and using all available tools to separate the parties. Granting telework flexibility could be a solution for either the employee experiencing harassment or the accused.
- b. Where the allegations concern the employee's supervisor or a co-worker in the unit, temporary transfers of the supervisor or coworker or placing the supervisor or coworker on non-disciplinary leave with pay pending the conclusion of the inquiry; or having the employee report to an alternative supervisor while the inquiry is being conducted, if the employee agrees that this should be done.

.05 Incidents where the allegations concern another Council process participant are highly fact-specific. It is important for Council management to take appropriate measures, which will differ depending on the alleged harasser.

.06 Procedures for Conducting an Inquiry. The inquiry must result in a record sufficient to support any corrective and/or disciplinary action taken, or to indicate that there is not sufficient evidence to support corrective and/or disciplinary action.

- a. The person selected to perform the inquiry must be authorized by the Council to conduct the inquiry and shall take signed, sworn statements from the employee who has alleged harassment, from the employee against whom the allegations are made, and from all principal witnesses.
- b. The person conducting the inquiry shall coordinate with the designated point of contact to ensure all obligations are met in conducting the inquiry.
- c. The following process should be followed in the course of the inquiry:
  1. Confirm the name, position and supervisory chain of the employee.
  2. Identify the alleged misconduct and the names of those parties allegedly responsible for the conduct.
  3. Obtain from the employee a detailed account of the alleged harassing actions/comments including, a description of the alleged actions/comments, the dates, times and locations of the alleged actions/comments as well as the names, contact information, and affiliations of any witnesses to, or persons with knowledge of, the alleged actions/comments.
  4. With regard to allegations of sexual harassment, determine specifically whether the employee is claiming that someone has made and/or carried out any threats or promises regarding the employee's terms and conditions of employment.
  5. Obtain from those accused of the misconduct a detailed response to each of the employee's allegations, as well as the names of witnesses who can corroborate the accused's account of events.
  6. Obtain statements from all witnesses listed by the employee and the accused of what they witnessed with regard to the alleged misconduct. If available, obtain supporting evidence (e.g. meeting recordings).
  7. Inform all interviewees about the prohibition forbidding retaliation against the employee who reported the alleged harassment.
  8. When the inquiry is completed, the findings should be shared with the designated point of contact, and the person conducting the inquiry will determine, if possible, whether the alleged actions occurred. The designated point of contact will share these findings with appropriate management officials in the organizations to which the alleged harasser and the employee who is the subject of the alleged harassment are assigned. The designated point of contact may also



share the findings with the Department of Commerce Office of the General Counsel in order to receive their guidance on appropriate resolution of the matter.

9. In all instances, upon completion of the inquiry the conclusions will be communicated to the employee who was the target of the alleged harassment. If the inquiry establishes that immediate and appropriate corrective action is warranted, the Council will follow its policies including its disciplinary policy, as appropriate.

.07 The Council shall maintain appropriate documentation for any disciplinary measures and corrective actions that may result from the findings of the inquiry.

#### SECTION 5. EFFECT OF THIS POLICY IN RELATION TO EEO COUNSELING AND FORMAL EEO COMPLAINTS.

A Council employee, at any time, has access to a NOAA EEO Counselor and may file a formal complaint of harassment – including allegations covered by this policy – and/or any other allegations of discrimination not covered by this policy.<sup>5</sup> Sometimes supervisors are not aware of an allegation of harassment until approached by an EEO Counselor or investigator. Once informed by an EEO Counselor or investigator that there is an allegation of harassment by an employee, the supervisor must immediately inform the designated point of contact under this policy about the allegations. The designated point of contact will then promptly evaluate the allegation pursuant to this policy. The EEO Counselor will assist management and employees in resolving allegations but is not authorized to conduct inquiries into employee misconduct, and the existence of an EEO investigation does not alter the Council's duty to conduct its own inquiry. Where an employee files a formal EEO complaint regarding harassment, a copy of any inquiry done by the Council, pursuant to this Policy, will be forwarded to the Office of Civil Rights for inclusion in the Report of Investigation.

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<sup>5</sup> To file a complaint with a NOAA EEO Counselor go to: <https://www.noaa.gov/organization/inclusion-and-civil-rights/contact-us>.

**DRAFT for Council Review (June 2023)**

**Attachment 2: Mid-Atlantic Fishery Management Council Policy on Addressing Allegations of Harassment of Process Participants Other Than Council Employees**

**SECTION 1. PURPOSE.**

The purpose of this policy is to protect Mid-Atlantic Fishery Management Council (Council) process participants and provide guidance on taking action related to incidents or allegations of harassment **experienced by Council process participants. The Council will not tolerate harassment or retaliation against those who report harassment.** Preventing harassment<sup>1</sup> is everyone’s responsibility and individuals who experience or observe harassment are strongly encouraged to come forward to ensure a safe working environment for everyone involved in the Council process. Council members, including chairs and vice chairs, hold positions of trust and responsibility and it is incumbent upon them, together with the Council Executive Directors, to make every reasonable effort to establish an environment free of harassment and to implement this policy fully. This policy provides a framework for procedures to encourage Council process participants to come forward with harassment allegations without fear of retaliation and outlines a process for reporting and reviewing allegations of harassment and taking action as appropriate.

**SECTION 2. BACKGROUND.**

The Council process involves a complex and dynamic relationship among federal and state employees, Council professional staff, appointed Council members, and members of the public. These individuals frequently meet and interact at various worksites and temporary meeting locations for extended meetings amid challenging issues, which can sometimes lead to interpersonal conflict. The Council process should operate in an atmosphere of respect, collaboration, openness, safety, and equality and every individual who participates in the Council process should be treated with dignity and respect and should be free from abusive conduct and harassment.

**SECTION 3. SCOPE.**

The reporting and response provisions described in this policy apply to “Council Process Participants.” In this document, that term includes all persons who participate in the Council process in any setting, with the exception of individuals employed by the Council, who are covered under a separate policy. Council Process Participants include all individuals present under the context of Council business regardless of location, whether in a Council office, at a Council meeting, or at offsite meetings, hearings and events sponsored by a Council. For example, Council Process Participants may include Council members, Advisory Panel or

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<sup>1</sup> For purposes of this policy covers a harassment includes unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). This policy does not cover allegations of incivility not based on a protected characteristic. However, this policy is not intended to limit in any way the Council’s ability to address incivility, inappropriate behavior, or other issues in an appropriate manner for the context.

Scientific and Statistical Committee members, external consultants, etc.

## SECTION 4. PROCEDURES.

### Reporting

Council Process Participants who observe, experience, or receive a report of harassment, including but not limited to sexual harassment or assault, should to report the matter as soon as possible to an appropriate official. Swift reporting allows appropriate law enforcement authorities, the NOAA National Marine Fisheries Service (NMFS), or the Council, as appropriate, to take measures to ensure that offensive behavior stops, the harassee's needs are addressed, and action is taken against the offender.

Council Process Participants who observe or are subject to harassment by any Council member, Council employee, or other Council Process Participants may report incidents in a variety of ways, including but not limited to:

- The Council Executive Director ~~or Deputy Director~~;
- The Council chair or vice-chair;
- Appropriate law enforcement authorities, as needed.

### Council Response to Reports

Unless the particular circumstances require otherwise, any Council Member, Council employee, or NOAA employee who receives a report of harassment of a Council process participant should communicate the details of that report, in writing, to the Council Executive Director for appropriate action under this policy. In the event of a reported incident, a response team should be convened consisting of, as appropriate depending upon the context, the Council Executive Director, other designated Council points of contact, and the Council Chair. The response team will determine appropriate follow-up, including whether to engage the NMFS Regional Administrator in the response to the incident, based on the allegations raised and the parties involved.<sup>2</sup> The Council shall maintain a record of each allegation received under this policy, which shall be made available to NMFS upon request.

### NMFS Role

The Councils are primarily responsible for addressing issues that arise within the Council environment. NMFS will, in consultation with NOAA and the Department of Commerce, provide such support and advice to the Councils as may be appropriate under the circumstances. Any Council that receives a report of harassment against or by a Council member **must** inform the NMFS Regional Administrator of the nature of the incident and any steps taken to address the incident.

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<sup>2</sup> If the person alleged to have experienced harassment is a current federal employee, including but not limited to a NMFS employee, the NMFS Regional Administrator must be notified.

### Related Processes

This policy does not apply to allegations of harassment experienced by employees of a Council. Instead, in the event an individual employed by the Council is alleged to have experienced harassment, the Council must follow the steps outlined in the *Model Fishery Management Council Policy on Addressing Allegations of Harassment of Council Employees*.

**Individuals who are federal employees (including but not limited to NOAA employees) or employed by state agencies, academic institutions or other organizations should report any concerns and seek assistance or action through their supervisor and/or within their own organization**, as appropriate, but are encouraged to also report incidents to a Council official described above so that prompt action can be taken by the Council, as needed.

Individuals who are employed by the Councils or the federal government, including but not limited to NOAA, also have the right to file an Equal Employment Opportunity (EEO) complaint with their employing federal agency's EEO office within 45 days of the matter alleged to be discriminatory.