

# STATEMENT OF ORGANIZATION, PRACTICES, AND PROCEDURES

*of the*  
***NORTH PACIFIC FISHERY MANAGEMENT COUNCIL***



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## TABLE OF CONTENTS

1.0	Council Functions and Responsibilities .....	1
2.0	Council Organization .....	2
2.1	Terms of Council Members, Removal, and Council Officers .....	3
2.2	Designees .....	3
2.3	Advisory Groups.....	4
2.3.1	Scientific and Statistical Committee (SSC) .....	4
2.3.2	Advisory Panel (AP) / Fishing Industry Advisory Committee (FIAC).....	6
2.3.3	Plan Teams .....	9
2.3.4	Council Committees.....	9
3.0	Council Meetings .....	9
3.1	Agenda and Notice .....	10
3.2	Conduct of Meetings.....	10
3.2.1	Written Statements and Oral Testimony .....	10
3.2.2	Quorum, Voting by Proxy, and Roll Call Voting .....	11
3.2.3	Procedure for Proposed Regulations .....	12
3.2.4	Parliamentary Procedure; Consensus; Other.....	12
3.2.5	Other Procedures .....	12
3.3	Record.....	13
3.4	Closed Meetings .....	13
3.5	Frequency and Duration .....	14
3.6	Location .....	14
3.7	Public Hearings.....	15
3.8	Council Member Compensation .....	15
3.9	Council Member Travel.....	16
3.10	Training.....	16
3.11	Principles for Stakeholder Involvement .....	16
4.0	Employment Practices.....	16
4.1	Staffing .....	16
4.2	Experts and Consultants .....	16
4.3	Detail of Government Employees.....	17
4.4	Personnel Actions .....	17
4.5	Salary and Wages .....	17
4.6	Council Member and Staff Legal Protections.....	18
4.7	Recruitment and Anti-Discrimination Policy .....	18
4.8	General Harassment Policy.....	18
4.9	Leave .....	18
4.9.1	Leave Accounting .....	19
4.9.2	Annual Leave .....	19
4.9.3	Sick Leave.....	19
4.9.4	Advanced Leave.....	19
4.9.5	Family Medical Leave Act of 1993 .....	19
4.10	Employee Benefits.....	20
4.11	Travel Reimbursement for Non-Federal Travelers.....	20
4.12	Foreign Travel .....	20
5.0	Standards of Conduct .....	21
5.1	Federal Criminal Statutes.....	21
5.2	General Standards of Conduct .....	21
5.3	Financial Disclosures.....	22
5.3.1	General.....	22

5.3.2	Recusal .....	23
6.0	Financial Management .....	23
6.1	Governing Statutes.....	23
6.2	Cooperative Agreements and Contracts .....	23
6.2.1	Administrative.....	24
6.2.2	Programmatic .....	24
6.2.3	Contracts .....	24
6.3	Procurement.....	24
6.4	Property Management.....	25
6.5	Real Property .....	25
6.6	Accounting System .....	25
6.7	Audits.....	25
6.8	Financial Reporting .....	25
7.0	Recordkeeping.....	26
7.1	Definitions .....	26
7.2	Availability of Records.....	26
7.3	Administrative Records for FMPs .....	26
7.4	Disposition of Records .....	26
7.5	Privacy Act Records .....	26
7.6	Freedom of Information Act (FOIA).....	27
7.7	Confidentiality of Statistics .....	27

# **North Pacific Fishery Management Council**

## **Statement of Organization, Practices, and Procedures**

The North Pacific Fishery Management Council (Council), created by Section 302(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA, or the Act), hereby publishes a revised Statement of Organization, Practices, and Procedures (SOPP), as required by Section 302(f)(6) of the Act. Upon approval, this SOPP supersedes the previous version adopted by the Council in June 2008.

Copies of this SOPP are provided to each member of the Council, its Scientific and Statistical Committee (SSC), and its Advisory Panel (AP). The SOPP is available electronically on the Council's website at <http://www.alaskafisheries.noaa.gov/npfmc/>. Paper copies of the SOPP may be obtained by contacting the Executive Director, North Pacific Fishery Management Council, Suite 306, 605 West Fourth Avenue, Anchorage, Alaska 99501; telephone (907) 271-2809.

### **1.0 Council Functions and Responsibilities**

In accordance with the requirements of the Act, the Council will:

- A. Prepare and submit to the Secretary of Commerce (Secretary) or his delegate a fishery management plan (FMP) with respect to each fishery requiring conservation and management within the Council's geographic area of authority and such plan amendments as are necessary.
- B. Review and comment on applications for foreign fishing transmitted to the Council under a governing international fishery agreement by the Secretary of State under the terms of the Act.
- C. Prepare comments on any FMP or amendments prepared by the Secretary which are transmitted to the Council under Section 304(c)(4) of the Act.
- D. Conduct public hearings at appropriate times and locations in the Council's membership area, to allow interested persons an opportunity to be heard in the development of FMPs and amendments and with respect to the administration and implementation of the provisions of the Act. .
- E. Submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary.
- F. Review on a continuing basis, and revise as appropriate, the assessments and specifications contained in each FMP for each fishery within its geographical area.
- G. Comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any state or federal agency that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction. The Council may comment on and make recommendations concerning state or federal actions that may affect habitat of other species under its authority.
- H. Develop annual catch limits for each of its managed fisheries that may not exceed the maximum acceptable biological catch level recommendations of its Scientific and Statistical Committee (SSC).

- I. Develop, in conjunction with the SSC, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall establish priorities for 5-year periods; be updated as necessary; and be submitted to the Secretary and the regional science centers of the National Marine Fisheries Service (NMFS) for their consideration in developing research priorities and budgets for the region of the Council.
- J. Prepare regulations for the halibut fisheries, consistent with provisions of the Northern Pacific Halibut Act of 1982. The Act provides that, for the halibut fishery off Alaska, the Council may develop regulations, including limited access regulations, to govern the fishery, provided that the Council's actions are not in conflict with regulations adopted by the International Pacific Halibut Commission.
- K. Conduct any other activities which are required by or provided for in the Act or which are necessary and appropriate to the foregoing functions.

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

## 2.0 Council Organization

The Council has eleven voting members and four non-voting members. The Council's geographic area of authority includes the Exclusive Economic Zone (EEZ) of the Arctic Ocean and Pacific Ocean seaward of Alaska, including the Bering Sea, Aleutian Islands, and Gulf of Alaska. The states of Alaska, Washington, and Oregon are represented on the Council.

The eleven voting members include the Commissioner of the Alaska Department of Fish and Game, Director of the Washington Department of Fish and Wildlife, Director of the Oregon Department of Fish and Wildlife, the Alaska Regional Administrator of NOAA Fisheries, five members appointed by the Secretary from the State of Alaska, and two members appointed by the Secretary from the State of Washington. Council member nomination and appointment procedures are detailed at 50 CFR 600.215 (most recent revisions detailed in 75 FR 59143).

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

Non-voting members of the Council may serve on committees of the Council and may serve as chairpersons of committees and, as members of the committee, may initiate and second motions, as well as vote on matters that pertain to the committee. At meetings of the Council, non-voting members may initiate or second motions, but may not vote on matters that may be classified as business of the Council. They may, however, participate fully in discussions of such matters.

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

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

## **2.1 Terms of Council Members, Removal, and Council Officers**

### **2.1.1 Term of Appointment -- Voting Members**

Voting members (other than principal state officials, the Regional Administrator, or their designees) are appointed for a term of three years and may be reappointed. The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than three years, if necessary, to provide for balanced expiration of terms of office. Members may not serve more than three consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member. A member who has completed three consecutive terms will be eligible for appointment to another term one full year after completion of the third consecutive term.

### **2.1.2 Removal**

The Secretary of Commerce may remove for cause any Secretarial appointed member of a Council in accordance with Section 302(b)(6) of the Act, wherein the Council concerned first recommends removal of that member by not less than two-thirds of the voting members. A recommendation of the Council to remove a member must be made in writing to the Secretary and accompanied by a statement of the reasons upon which the recommendation is based.

### **2.1.3 Officers**

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

The Chair, or in the Chair's absence the Vice Chair, of the Council has authority to convene and adjourn meetings and public hearings and designate members of the Council, Scientific and Statistical Committee, and Advisory Panel to attend meetings and public hearings. The Chair will control meetings and hearings by recognizing speakers, establishing the order of business, and designating members of the Council and its advisory bodies as members of committees and working groups.

## **2.2 Designees**

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

- (1) 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 Act.
- (2) 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 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.
- (3) New or revised appointments by state Governors of principal state officials and new or revised designations by principal state officials of their designees(s) must be delivered in writing to the appropriate NMFS Regional Administrator and the Council chair at least 48 hours before the individual may vote on any issue before the Council. A designee may not name another designee. Written appointment of the principal state official must indicate his or her employment status, how the official is employed by the state fisheries agency, and whether the official's full salary is paid by the state. Written designation(s) by the principal state official must indicate how the designee is knowledgeable and experienced in fishery resources of the geographic area of concern to the Council, the County in which the designee resides, and whether the designee's salary is paid by the state.

## **2.3 Advisory Groups**

The Council has established two formal advisory groups: a Scientific and Statistical Committee (SSC) and an Advisory Panel (AP). Subject to the availability of appropriations, stipends are available to members of committees formally designated as SSCs or APs who are not employed by the Federal Government or a state marine fisheries agency. For purposes of this section, a state marine fisheries agency includes any state or tribal agency that has conservation, management, or enforcement responsibility for any marine fishery resource.

The Council also maintains Plan Teams for each fishery management plan, and appoints standing and ad hoc committees necessary to advise the Council on particular conservation and management issues. Stipends are not available to members of plan teams or other committees.

### **2.3.1 Scientific and Statistical Committee (SSC)**

As required by the Act at Sec. 302(g)(1), the Council shall establish, maintain, and appoint the members of a SSC to assist it in the development, collection, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to the Council's development and amendment of any of its fishery management plans. The SSC is composed of experts in biology, statistics, economics, sociology, and other relevant disciplines from the federal, state, and private scientific communities and other appropriate sources. Members appointed by the Council to the SSC shall be federal employees, state employees, academicians, or independent experts and shall have strong scientific or technical credentials and experience. Independent experts on the SSC cannot be employed by an interest group or advocacy group. Each member of the SSC shall be treated as an affected individual for purposes of disclosure and financial interest and recusal provisions for SSC members as specified in the Act. Financial interest disclosures for SSC members will be reviewed annually by the Council prior to appointment, and when updated by an SSC member reporting any substantial changes in financial interest. Financial interest disclosures will be kept on file by the Secretary.

The SSC will provide the peer review process for scientific information used to advise the Council about the conservation and management of the fishery. The review process, which may include existing committees or panels, is deemed to satisfy the requirements of the guidelines issued pursuant to section



515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554—Appendix C; 114 Stat. 2763A–153).

### **A. Objectives and Duties**

As requested by the Council, through the Council Chair or the Executive Director, the SSC shall:

- 1) Provide ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and report on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.
- 2) Provide expert scientific and technical advice to the Council on the development of fishery management policy, fishery management plans and amendments, their goals and objectives, proposed regulations, and criteria for judging plan effectiveness.
- 3) Assist in the identification, development, collection, and evaluation of statistical, biological, economics, social and other scientific information deemed relevant to the Council's fishery management planning, particularly with regard to determining the best scientific data available as required by National Standard 2.
- 4) Advise the Council on preparing comments on any relevant fishery management plan or amendment prepared by the Secretary or Secretary's delegate pursuant to Section 304(c) of the Act.
- 5) Submit to the Council reports deemed appropriate by the Committee or requested by the Council.
- 6) Perform other appropriate duties as may be required by the Council to carry out its functions under the Act.
- 7) Serve as the Council's peer review body for influential scientific information pursuant to requirements of the Information Quality Act (Section 515 of Public Law 106-554) and NOAA information quality guidelines.

### **B. Members and Chair**

The SSC members shall be appointed by, and serve at the pleasure of, the Council. They shall be appointed for one year, and may be reappointed. Vacancies may be filled for the remaining unexpired term. The SSC Chair and Vice Chair shall be nominated by the Committee from among its members and confirmed by the Council for one-year terms.

Each statutory agency designated as a member of the North Pacific Fishery Management Council by the Act may have a member on the Scientific and Statistical Committee. That member may have an alternate, although it is expected that the primary member from an agency will attend meetings of the Scientific and Statistical Committee in person whenever possible. The statutory agency may nominate the alternate for their primary member, notifying the chair of the SSC by letter of that selection. Alternates will be appointed for the same period as the primary member (i.e., one year).

Other Scientific and Statistical Committee members may have an alternate on a case-by-case basis (to be approved by the Council Chair or Executive Director in advance of the next meeting) when the member would be unable to participate for an extended period of time. It is expected that those alternates would be experts in the same field as the member and familiar with the work of the SSC and the Council.

The key requirement in appointing members or alternates is for the Council to maintain the highest level of objective scientific and technical expertise. Members should be able to make unbiased and objective scientific recommendations to the Council. Additionally, SSC members shall maintain high standards of ethical conduct..

### ***C. Administrative Provisions***

The SSC shall meet as a whole, or in part, at the request of the Chair of the SSC, with the approval of the Chair of the Council, as often as necessary to fulfill the SSC's responsibilities, taking into consideration time and budget constraints. Normally, the SSC will meet at least five times a year, starting two days prior to the scheduled Council meetings. The SSC shall hold its meetings in conjunction with meetings of the Council, to the extent practicable. The Executive Director of the Council shall provide such staff and other support as the Council considers necessary for SSC activities, within budgetary limitations.

The agenda for each SSC meeting shall be developed by the SSC Chair in consultation with the Deputy Director or Executive Director. SSC meetings will follow established protocols. Following staff reports, the public will have an opportunity to testify on scientific aspects of an issue prior to SSC deliberations. SSC members shall disclose any potential conflicts regarding a particular topic prior to any discussion of that issue. SSC decisions will be reached by consensus, whenever possible; however if a decision is required and consensus cannot be reached, the opinion of the majority will prevail.

Minutes of the meeting shall reflect the discussion and deliberations that were made during the SSC meeting. The SSC Chair, or designee, will be responsible for reporting the SSC's recommendations to the Council. Minutes of the SSC meeting will be made available to the public on the Council's website after the meeting.

SSC members shall serve without compensation, except that (subject to the availability of appropriations), a stipend may be paid to members of the scientific and statistical committees who are not employed by the federal government or a state marine fisheries agency, as defined at 50 CFR 600.133(b). SSC members will be paid their actual travel expenses in performing their duties in accordance with applicable law and Council travel policy

### ***2.3.2 Advisory Panel (AP) / Fishing Industry Advisory Committee (FIAC)***

The Council has established an advisory panel (AP) under Sec. 302(g)(3), as required by the Act (i.e., an FIAC). Subject to the availability of funds, members of the Advisory Panel are eligible to receive stipends provided they are not employed by the Federal Government or a state marine fisheries agency, as defined at 50 CFR 600.133(b).

The North Pacific Fishery Management Council appoints an Advisory Panel (AP) of recognized experts from the fishing industry and several related fields, and represents a variety of gear types, industry and related interests as well as a spread of geographic regions of Alaska and the Pacific Northwest having major interest in the fisheries off Alaska.

### ***A. Objectives and Duties***

The Council relies on the AP for comprehensive advice on how various fishery management alternatives will affect the industry and local economies, on potential conflicts between user groups of a given fishery resource or area, and on the extent to which the United States will utilize resources managed by the Council's fishery management plans.

## ***B. Members and Chair***

The AP will consist of approximately 20 members. However, the Council will not necessarily keep all seats filled. This arrangement should allow sufficient flexibility in funding so the Council can invite as necessary other individuals with particular expertise to work with the AP on an ad hoc basis. It is expected that as the issues and concerns of the Council change and evolve so, too, will the profile of the membership of the AP.

The Council will give highest priority to the following considerations when selecting AP members:

- 1) Of paramount importance is the demonstrated ability of the candidate to be objective and to consider all aspects of an issue.
- 2) The AP members should be of top quality and caliber and be committed to full and active participation for each meeting during their term.
- 3) The candidate should be considered because of the experience he/she brings to the Council rather than his/her political clout or connection.
- 4) The candidate should be an active, involved member of his/her community and business to ensure the best and most pertinent input into the Council and likewise be responsible and diligent in reporting Council decisions and concerns back to his/her community/business.
- 5) The AP membership should represent a broad geographic spread both for Alaska and the Pacific Northwest. Representation for the three states should be in the same proportions as those of the voting membership of the Council. However, recognizing that issues and priorities will change, the Council cautions that no seat is reserved for a particular area.
- 6) The AP membership should represent a variety of interests within the fishing industry and others with interests in maintaining and managing Council fisheries. While it is hoped that major gear types from the harvesting sector will be broadly represented, as with geographic representation, no particular seat is guaranteed to a gear type or fishery.

AP members will serve for three-year terms beginning with the first meeting each calendar year. All members will be appointed by and serve at the pleasure of the Council and may be reappointed to two subsequent consecutive terms. Appointments will be staggered to provide for the appointment of 1/3 of the membership of the AP each year. Persons wishing to serve on the Advisory Panel may submit their names with a short resume to the Executive Director who will keep for the calendar year a list of candidates at the Council headquarters. Resumes and requests to serve will not be retained after the annual appointment process. The Council may use this list of candidates in choosing AP members to fill full-year terms or interim vacancies, but may also solicit individuals not on the list if a particular combination of experience and expertise is deemed desirable. AP members serve at the pleasure of the Council and can be removed by a majority vote of the Council prior to the completion of a full 3-year term. Cause for removal may include, but is not limited to, change in affiliation or status or poor attendance. The Council Chair is authorized to fill interim vacancies on the AP subject to confirmation by the Council at the next regular meeting. Interim appointments are for the remaining unexpired term of the vacancy.

## ***C. Administrative Provisions***

Members of the AP serve without compensation. They may be paid their actual expenses for travel and per diem incurred in the performance of their duties during the days in which the panel is in session. The chair, vice-chair, or the AP member designated to report to the Council may be paid expenses for additional days when necessary and approved by the Council chair. Security clearances for AP members

are requested as necessary. Subject to the availability of appropriations, a stipend may be paid to members of the AP who are not employed by the federal government or a state marine fisheries agency, as defined at 50 CFR 600.133(b).

AP members travel reimbursement shall be limited to attendance at formal meetings of the AP, or to the Chair, Vice-Chair, or designee while officially representing the AP with the advance approval by the Executive Director. AP members shall follow the same general travel rules set forth for Council employees. In extenuating circumstances, which must necessarily be related to their fishing or processing activities and with advance notice, the Council chair may authorize travel reimbursement to and from locales other than a AP member's normal home location.

The Chair and Vice-Chair of the AP are nominated for one-year terms by the Panel from among its members and are confirmed by the Council.

The AP meets as a whole, or in part, at the request of the Chair of the AP with approval of the Council Chair, as often as necessary to fulfill the Panel's responsibilities, taking into consideration time and budget constraints. AP members are expected to attend all meetings and participate fully at these meetings including voting on each issue. Poor attendance will be cause for a member being removed. Generally, acceptable absences will be the result of or involve personal emergencies or unavoidable conflicts related to the member's area of expertise.

The AP will set up such workgroups as the Chair of the AP and the Council deem necessary to carry out the Panel's duties. Additional members outside the AP may be added to these workgroups as deemed appropriate by the Council Chair.

The Executive Director, in consultation with the Council Chair, shall assign the agenda topics for the Advisory Panel to discuss at its meetings. These topics will not normally include all items on the Council's agenda, but the AP may consider any topic or issue it deems important to bring to the Council's attention, time permitting and with the concurrence of the Council Chair or Executive Director. The AP members should be given sufficient advance notice of these topics to allow adequate preparation before the meeting. Notice of meetings of the AP shall comply with the applicable notice requirements specified for Council meetings.

The AP is expected to conduct meetings in a timely fashion with the objective of presenting AP recommendations to the Council consistent with the Council's order of business. Generally, the panel should utilize Council procedures limiting the time allowed for public testimony and questions by AP members. Should the meeting run behind schedule, the AP Chair will consult with the Deputy Director, Executive Director, or Council Chair to determine priority issues for the AP to address in the time remaining.

The AP Chair or designee will be responsible for reporting the AP's recommendations (AP minutes) to the Council. The AP minutes shall include a record of passed motions and close call votes (even if the motion failed). This report shall include the results of votes taken, including minority reports which are signed by at least 3 of the members voting in the minority at the time of the vote and submitted in writing. All minority reports consistent with the above standard shall be included in the written AP report to the Council, but not read into the record during the oral report to the Council. Minutes of the AP meeting will be made available to the public on the Council's website after the meeting.

The Executive Director of the Council shall, upon request of the Chair of the AP, provide such staff and other support as the Council considers necessary for AP activities, within budgetary limitations.

### **2.3.3 Plan Teams**

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

Members of the Plan Teams serve without compensation. Non-federal employees may be paid their actual expenses for travel and per diem incurred in the performance of their duties during the days in which the Plan Team is in session. The Plan Team chair, vice-chair, or Plan Team member designated to report to the Council may be paid expenses when necessary and approved by the Executive Director.

The Plan Teams shall review stock assessment information and assist in the preparation of the annual Stock Assessment and Fishery Evaluation (SAFE) documents including formulation of recommendations on annual Acceptable Biological Catch (ABC) levels for groundfish, crab, and scallop species under jurisdiction of the Council. The Teams may also prepare and/or review plans, amendments and supporting analytical documents for the Council, SSC and AP; aggregate and evaluate public/industry proposals and comments; summarize and evaluate data related to the biological, economic and social conditions of the fishery; conduct and evaluate analyses pertaining to management of the fisheries; evaluate the effectiveness of management measures in achieving the plan's objectives; and recommend when and how management measures need to be changed.

These and other provisions concerning the teams are included in each Plan Team's Terms of Reference, which are approved by the Council. The current Terms of Reference for the Groundfish, Crab, and Scallop Plan Teams are posted on the Council's web site.

### **2.3.4 Council Committees**

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

Notices of Council committee meetings shall comply with the notice requirements specified in Section 3.1. Public comment at committee meetings will be at the discretion of the Council Chair or Executive Director.

## **3.0 Council Meetings**

The Council will meet at the call of the Chair or upon request of a majority of the voting members, subject to the general policy outlined in Section 3.5. In fulfilling the Council's responsibilities and functions, the Council members may meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information, or make decisions regarding material before them. Emergency meetings shall be held at the call of the Chair or equivalent presiding officer. The following guidelines apply with respect to the conduct of business at meetings and hearings of the Council and its SSC and AP:

## **3.1 Agenda and Notice**

The agenda for each Council meeting is drafted by the Executive Director in consultation with the Council Chair. All Council members will have an opportunity to review and comment on a draft agenda before it is released to the public.

Timely notice of each regular meeting, hearing, and each emergency meeting, including the time, place, and agenda of the meeting, shall be provided by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery) except that e-mail notification and website postings alone are not sufficient. Timely notice of each regular meeting shall also be published in the Federal Register. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or such notice must be given at least 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c) of the Act, in which case public notice shall be given immediately.

Drafts of all regular public meeting notices must be transmitted to the NMFS Headquarters Office (i.e., Federal Register) at least 23 calendar days before the first day of the regular meeting. Drafts of emergency public notices must be transmitted to the NMFS Headquarters Office at least five 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.

The Council shall 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. Anyone needing a special accommodation to attend and participate in a Council-hosted meeting must contact the Council office 14 days before the scheduled meeting. Guidance addressing disability-related accommodations is found at Department Administrative Order (DAO) 209-8, Access for People with Disabilities to Meetings and Other Group Events.

## **3.2 Conduct of Meetings**

### ***3.2.1 Written Statements and Oral Testimony***

Each regular meeting and each emergency meeting shall be open to the public. Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings, within reasonable limits established by the Chair. Current Council policy on oral testimony limits individuals to three minutes, and organizations to six minutes, per agenda item. 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. During Council meetings the area adjacent to and behind the Council seating area will be restricted to only Council members and Council/agency staff. The exchange of electronic communication (using laptops, cell phones, or other devices) in the meeting room by Council members is prohibited when the Council is in session.

#### Written comments

In order to be copied and included in the Council briefing books, written comments on any agenda item being considered by the Council shall be submitted to the Council offices (by regular mail or by FAX) by 5:00 pm Alaska time one week prior to the start of the Council plenary session, and 5 days prior to the start of the AP and SSC meetings (the specific deadline will be published along with the Council meeting agenda). Written comments received after that deadline will not be copied and distributed to Council members, but will be collected in a 'Late Comment' folder, held by the Council Secretary, archived as part of the Council Record, and made available for Council member review. Persons wishing to submit

written comments after the deadline (and/or in conjunction with oral testimony at the Council meeting), may provide 25 copies of their written comments and these will then be distributed to Council members during the Council meeting. All written comments, in order to be considered part of the Council Record, must identify the submitter, their affiliation, and date of written comment.

Written comments to the Council on subject matter not specifically pertaining to the Council's published agenda will be distributed to Council members, as appropriate, through regular Council mailings.

#### Email comments

Beginning in March 2012, the Council will accept written comments via Email, on a trial basis, with the following conditions:

-All Email comments must be submitted to a single Email address ([npfmc.comments@noaa.gov](mailto:npfmc.comments@noaa.gov)), and must identify the submitter by legal name, affiliation, and date, and must also identify the specific agenda item by number (i.e., C-1(a) for example), and must be submitted by the comment deadline (i.e., by 5:00 pm Alaska time one week prior to the Council meeting). Comments received under these conditions will be sorted, copied, and included in the Council briefing books.

-Email comments directed to specific Council staff or specific Council members will not be considered part of the Council Record and will not be copied and distributed to Council members.

-Emails received after the deadline will not be copied or distributed to Council members, but will be treated the same as written late comments.

-Email comments will be accepted only on subject matter specifically identified on the Council meeting agenda. Emails received which are not specific to the Council's scheduled agenda items will not be distributed and will not be considered part of the Council Record.

### **3.2.2 Quorum, Voting by Proxy, and Roll Call Voting**

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

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

(3) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary, including principal state officials raising federalism issues, may submit a written statement

of their reasons for dissent. If any Council member elects to file such a statement, it should be submitted to the Secretary at the same time the majority report is submitted.

### **3.2.3 Procedure for Proposed Regulations**

At the time a final vote is taken to approve an amendment or fishery management plan, the Council will follow the procedure for proposed regulations consistent with section 303 (c) of the MSA. The procedure describes how the Council deems proposed regulations necessary or appropriate for the purposes of implementing a fishery management plan or plan amendment, or making modifications to regulations implementing a fishery management plan or plan amendment. In addition, the procedure describes how the Council submits proposed regulations to the Secretary. The Council could choose one of two options:

Option 1: Request to see the draft proposed regulations developed for their action. If the Council chooses this option, then the Council should indicate that intent in their motion. That means that NMFS staff would submit the draft proposed regulations to the Council and at the next Council meeting following the receipt of the draft proposed regulations, the Council would review the draft proposed regulations as a scheduled agenda item.

Option 2: Determine that the Council does not need to review and vote on draft proposed regulations text prior to its submission to the Secretary. If the Council chooses this option, then the Council should indicate that intent in the motion by providing the following two statements in their motion:

**“The Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c).” and “The Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.”**

Under Option 2, any draft proposed regulations that are not 303(c) regulations would be proposed by NMFS under its authority at section 305(d). Also, the Executive Director and the Chairman would retain their ability to withhold submission of the FMP amendment and/or proposed regulations and take action back to the Council if the Executive Director and Chairman determine that the section 305(d) draft proposed regulations are not in keeping with Council intent for the action.

### **3.2.4 Parliamentary Procedure; Consensus; Other**

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

### **3.2.5 Other Procedures**

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 provide opportunity for public comment before the Council takes final action on conservation and management measures. The Council shall adhere to “Mace’s Rules” to improve the efficiency of Council meetings. During agency reports at the beginning of each meeting, each Council member shall be limited to two questions per report. During public testimony for a given issue, each Council member will be limited to two questions per testifier. The



Chair is granted the authority as necessary to improve the quality of Council debate and enhance the overall efficiency of Council meetings in general.

### **3.3 Record**

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 Council Chair shall verify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction. Subject to the confidentiality procedures established by the Council on January 28, 1986, and the guidelines prescribed by the Secretary pursuant to Section 402(b) of the Act, the administrative record and minutes of each meeting and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council, or the Secretary, as appropriate. Minutes of the meetings will also be made available to the public on the Council's website.

### **3.4 Closed Meetings**

If any meeting or portion is closed, the Council shall provide notice by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery), except that e-mail notification and website posting alone are not sufficient, including in that notification the time and place of the meeting. Notification is not required regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters.

- (1) A Council, SSC, AP, FIAC, or other committees shall close any meeting, or portion thereof, that concerns information bearing on a national security classification.
- (2) A Council, SSC, AP, FIAC, or other committees may close any meeting, or portion thereof, that concerns matters or information pertaining to national security, employment matters, or briefings on litigation in which the Council is interested.
- (3) A Council, SSC, AP, FIAC, or other committees may close any meeting, or portion thereof, that concerns internal administrative matters other than employment. Examples of other internal administrative matters include candidates for appointment to AP, SSC, and other subsidiary bodies and public decorum or medical conditions of members of a Council or its subsidiary bodies. In deciding whether to close a portion of a meeting to discuss internal administrative matters, a Council or subsidiary body should consider not only the privacy interests of individuals whose conduct or qualifications may be discussed, but also the interest of the public in being informed of Council operations and actions.
- (4) Without the notice required above, a Council, SSC, 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.
- (5) Before closing a meeting or portion thereof, a Council or subsidiary body should consult with the NOAA General Counsel Office to ensure that the matters to be discussed fall within the exceptions to the requirement to hold public meetings described above. Actions that affect the public, although based on discussions in closed meetings, must be taken in public. For example, appointments to an AP must be made in the public part of the meeting; however, a decision to take disciplinary action against a Council employee need not be announced to the public.

### 3.5 Frequency and Duration

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

### 3.6 Location

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

The Council typically meets from five to six times per year in plenary session, in conjunction with its AP and SSC, for up to ten days (total meeting time) per meeting. The Council attempts to hold at least one meeting per year in an Alaska location other than Anchorage, as is practicable. While the Council strives to hold Council meetings in locations which reach fishery constituents, including locations not typically on the Council meeting schedule, certain logistical considerations place practical limitations on the Council's ability to meet in remote, rural locations. Council outreach activities other than plenary meetings are conducted in remote, rural locations within Alaska, as appropriate on an issue-by-issue basis.

Full, plenary meetings of the Council, in addition to Council, Advisory Panel, and SSC members, also require attendance of numerous Council, State, and Federal agency staff, as well as regular public attendance by affected fishery constituents. In order to consider future meeting locations, the Council has approved the following general criteria for plenary (full) Council meetings:

#### Transportation/Public Access

Jet service (preferably) in and out of community on a daily basis, or daily non-jet air service accommodating at least 100 passengers daily, at reasonable fares, or have road access.

#### Lodging and Accommodations

Hotel/Motel/B&B or similar lodging with at least 140 total rooms available (at reasonable cost), for duration of Council meeting, within 10 minutes walking distance of meeting location (or within 10 miles of meeting location and transportation availability). Hotel and/or restaurant options, within 10 minutes walking distance of meeting location (or within 10 miles of meeting location and transportation available), which accommodate at least 140 persons in total (breakfast, lunch, and dinner).

#### Physical Meeting Space

Meeting rooms are required (approximations) as follows:

-one room from the first Monday through Wednesday (or Thursday) for the SSC for 17 members at a u-shaped head table, room for at least 35 theatre chairs in audience (1800 to 2,000 sq feet).

-one room from Monday through Friday (or Saturday) for the AP, u-shaped head table for 22, with room for at least 50 theatre chairs in audience (2200 to 2400 sq ft).

-one room from Wednesday through Tuesday (or Wednesday), for the Council, a u-shaped head table for 20, with room to seat at least 80 theatre chairs in audience (2500-3000 sq ft.).

-One room (800 - 1000 sq ft) on the first Tuesday of each meeting is needed for Committee meetings.

-One room for entire meeting duration as dedicated Council office (600-800 sq ft) with internet access and availability of copy machine (through rental or other means).

-All meeting rooms must be within 10 minutes walking distance of each other (or within 10 miles with transportation available) and be handicap accessible.

#### Internet/Broadband

-Need hard-wire internet connection in Council meeting room capable of audio broadcasting.

-Need hard-wire or wireless internet connection in Council office room.

-Prefer to have wireless internet connection (either via password or wi-fi hotspot) in all meeting spaces available to all meeting attendees.

### **3.7 Public Hearings**

The Council may hold public hearings in order to provide the opportunity for all interested individuals to be heard with respect to the development of fishery management plans or amendments, and with respect to the administration and implementation of other relevant features of the Act. Notice of each hearing must be received by NMFS for publication in the *Federal Register* at least 23 calendar days prior to the proposed hearing. The Council will also issue notices to announce the time, location, and agenda for each hearing in a manner sufficient to assure all interested parties are aware of the opportunity to make their views known. If it is determined a hearing is appropriate, the Council Chair will designate at least one voting member of the Council to officiate. An accurate record of the participants and their views, obtained by use of recording, typewritten transcript, or detailed minutes, will be made available to the Council at the appropriate Council meeting and maintained as part of the Council's administrative record.

### **3.8 Council Member Compensation**

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

The Executive Director, with the approval of 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.

### **3.9 Council Member Travel**

Council members travel reimbursement shall be limited to attendance at formal meetings of the Council, Council member training, meetings of standing or ad hoc committees on which the Council member is a designated member, or to the Chair, Vice-Chair, or designee while officially representing the Council or conducting official business of the Council outside of such meetings, including meetings of the Council Coordination Committee. Council members shall follow the same general travel rules set forth for Council employees. In extenuating circumstances, which must necessarily be related to their fishing or processing activities and with advance notice, the Council Chair may authorize travel reimbursement to and from locales other than a Council member's normal home location. Additional travel rules are detailed in Section 4 for the SOPP.

### **3.10 Training**

Council members appointed after January 12, 2007, shall complete a training course that will cover a variety of topics relevant to matters before the Council. Such training shall be available as well to existing Council members, staff from the regional offices and regional science centers of NMFS, and may be made available to committee or advisory panel members as resources allow.

### **3.11 Principles for Stakeholder Involvement**

Pursuant to NMFS Policy Directive 30-129 regarding stakeholder participation, the following seven core principles on stakeholder involvement will be used to guide communication strategies and activities. These core principles are:

1. Use an open and clearly defined decision-making process.
2. Make key information readily available and understandable.
3. Actively conduct outreach and solicit stakeholder input.
4. Involve stakeholders early and throughout the decision-making process.
5. Foster responsive, interactive communication between stakeholders and decision-makers.
6. Use formal and informal participation methods.
7. Include all stakeholder interests.

## **4.0 Employment Practices**

This section describes the major employment practices for Council employees. Additional details are explained in the Council's personnel rules. Copies of these rules are given to each new employee.

### **4.1 Staffing**

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

### **4.2 Experts and Consultants**

As long as funding is available in its budget, the Council may contract with experts and consultants as needed to provide technical assistance not available from NOAA. This includes legal assistance, though a Council must notify the NOAA Office of General Counsel before seeking outside legal advice, which may be for technical assistance not available from NOAA. If the Council is seeking legal services in connection with an employment practices question, the Council must first notify the Department of

Commerce's Office of the Assistant General Counsel for Administration, Employment and Labor Law Division. The Council may not contract for the provision of legal services on a continuing basis.

### **4.3 Detail of Government Employees**

The Council may request the detail of other government employees to assist the Council in the performance of its functions. Council requests for Federal employees must contain the purpose of the detail and its duration. Federal employees so detailed retain all benefits, rights, and status to which they are entitled in their regular employment. The Council may also negotiate agreements or other arrangements with state or local agencies for detail of their worker to accomplish Council purposes.

### **4.4 Personnel Actions**

All staff employees serve at the pleasure of the Council. The Executive Director may be dismissed by a two-thirds (2/3) majority vote of the voting Council members (i.e., 8 of the 11 voting members), and other staff employees may be dismissed by the Executive Director acting for the Council. Dismissals may be made for misconduct, unsatisfactory performance, and/or lack of funds. (with reasonable notice to the employee)

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

### **4.5 Salary and Wages**

In setting rates of pay for Council staff, the principle of equal pay for equal work is followed. The annual pay rates for Council staff positions are consistent with the pay rates established for General Schedule federal employees as set forth in 5 USC 5332, and/or the Alternative Personnel Management System for the U.S. Department of Commerce (62 FR 67434), including cost of living (COLA)/Locality Pay differentials and the 6% supervisory pay allowance. The NPFMC is using the discretion allowed for in the regulations to adjust pay rates and pay increases based on COLA/Locality Pay differentials in Alaska, consistent with the federal payscale, including adjustments necessary to achieve equivalency with federal counterparts. COLA/Locality Pay adjustments in pay rates and pay increases are being provided for staff members. No pay adjustment based on geographic location exceeds the equivalent COLA and locality pay adjustments available to federal employees in the same geographic area<sup>1</sup>. Salary increases funded in lieu of life and medical/dental policies are not permitted.

Employees will be entitled to promotions and associated pay raises solely on the basis of merit and performance. The Executive Director, acting for the Council, shall conduct performance reviews at least biennially with each Council employee and will approve promotions and raises based on the employee's performance, length of service, or special accomplishments. Pay raises and performance evaluations for the Executive Director will be accomplished through a review process, at least biennially, involving the

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<sup>1</sup> Beginning in 2009, the 'Non-Foreign Area Retirement Equity Assurance Act of 2009' (NFAREAA) began a phased-in transition from tax-free COLA to taxable 'locality pay' for Federal employees in Alaska (and Hawaii), in order that those Federal employees receive the same retirement benefits as other Federal employees in the U.S. (who have always received 'locality pay' adjustments rather than COLA adjustments). This transition period is complete and from 2012 forth Federal employees in Alaska will receive full 'locality pay' (now set at 24.69%) rather than COLA. For purposes of Council staff compensation, this transition from COLA to 'locality pay' under the NFAREAA does not change the way Council staff compensation is calculated because Council staff are not federal employees and the COLA compensation has always been treated as locality pay (i.e. part of taxable gross income).

Council's Executive Committee. Career development, including formal training, will be supported by the Council, subject to budgetary limitations, when directly beneficial to both the employee and the Council.

A cash award may be provided to employees as an exceptional performance award in recognition of one or more particularly meritorious accomplishments, at the discretion of the Council Chair (for awards to the Executive Director) and the Executive Director (for awards to other staff). The total amount of an award will not exceed those allowable under current U.S. Department of Commerce guidelines.

## **4.6 Council Member and Staff Legal Protections**

In conducting official Council business, Council members and staff generally have the same protection from individual tort liability as federal employees on official actions, and are protected by the federal workmen's compensation statute, by the minimum wage/maximum hour provisions of the Fair Labor Standards Act (FLSA), and by the rights of access and confidentiality provisions of the Privacy Act (PA). Council staff are eligible also for unemployment compensation in the same manner as federal employees. Overtime payments shall be made in accordance with the provisions of the Fair Labor Standards Act (FLSA) 29 USC 201 et. seq.

## **4.7 Recruitment and Anti-Discrimination Policy**

Council staff positions must be filled solely on the basis of merit, fitness for duty, competence, and qualifications. The Council is an Equal Employment Opportunity Employer. All employment actions will be free from discrimination based on race, religion, color, national origin, sex, age, disability, sexual orientation, status as a parent, and reprisal. See 50 CFR 600.120.

Except for complaints alleging sexual orientation and a status as a parent, complaints by employees alleging that they may have been discriminated against on the bases listed above, should be processed in accordance with 29 CFR 1614. Employees must contact and 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.

## **4.8 General Harassment Policy**

The Council has a zero-tolerance policy for harassment on the basis of race, religion, color national origin, sex, age, sexual orientation, disability and reprisal. Any employee who believes he or she has been harassed should report the harassment to a supervisor or manager. The supervisor or manager should then follow the steps set forth in Department Administrative Order, DAO 202-955. Any complaints of harassment on the basis of sexual orientation should be handled in accordance with DAO 215-11. The provisions of these DAOs are entirely separate from EEO complaint process, and must be followed whether or not an employee has files an EEO complaint. The Council's Harassment Policy extends beyond staff and includes members of the Council with regard to interactions with staff, and includes conduct of Council members, staff members, and public during the course of official Council meetings, advisory body meetings, or committee meetings.

## **4.9 Leave**

Employees of the Council shall be granted paid leave for holidays, vacations or exigencies, sickness, and civic duties (jury, military reserve obligations) as determined by the Council, and pregnancy, parental, and family leave consistent with the Family and Medical Leave Act of 1993. The accrual and use of leave is explained in the Council's personnel rules. Copies of these rules are given to each new employee.

### **4.9.1 Leave Accounting**

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

### **4.9.2 Annual Leave**

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

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

### **4.9.3 Sick Leave**

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

### **4.9.4 Advanced Leave**

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 Executive Director (designation must be in writing).

### **4.9.5 Family Medical Leave Act of 1993**

Under the Family Medical Leave Act of 1993, 29 C.F.R Part 825, an employee is entitled to a total of up to 12 work weeks of unpaid leave during any 12-month period for the following purposes: the birth of a child of the employee and the care of such child; the placement of a child with the employee for adoption or foster care; the care of a spouse, child, or parent of the employee who has a serious health condition; or a serious health condition of the employee that makes the employee unable to perform the essential function of his or her position.

## **4.10 Employee Benefits**

The Council shall provide its employees and their legal dependents health insurance coverage and limited life insurance and accidental death and dismemberment coverage through the State of Alaska (Aetna) program. Retirement benefits are realized through Council participation in, and mandatory employee contributions to, the State of Alaska Public Employee System (PERS). Employee participation in a 403(b) plan is optional and at the employees expense. Moving expenses for new employees are authorized, up to limits specified in federal guidelines, subject to budgetary limitations.

## **4.11 Travel Reimbursement for Non-Federal Travelers**

Council members, employees, and members of the AP, SSC and Plan Teams who are not federal employees will be reimbursed for actual travel expenses while on official Council business, including transportation, room, meals, and incidental travel expenses (such as taxi fares, parking, and Council business telephone calls) within reasonable limits, but generally should not exceed the limits established by the federal government. Domestic invitational travel for non-Council personnel may be approved by the Council Chair or Executive Director. Payment for travel by NOAA personnel is not authorized.

Non-Federal members of the Council and members of advisory groups and Council staff will be reimbursed for actual expenses incurred in the performance of Council duties. They are not bound by the separate per diem limits for meals and lodging as set forth in the GSA Rules. They are subject, however, to the total reimbursement limits established by the NOAA Travel Handbook for actual expenses, and they must itemize their actual expenses up to the specified limit each day. Lodging and airline receipts are required. The rates are included in the GSA Rules. Federal employees serving in the above capacities are subject to the reimbursement rules of their agencies. Domestic invitational travel for non-Council personnel may be approved by the Council Chair or Executive Director. Payment for Federal personnel from Council funds is not authorized.

Coach air transportation must be utilized when available, and economy fares are encouraged. Purchased travel via first class air may be authorized in extenuating circumstances subject to pre-approval by the Council Chair or Executive Director. Privately owned vehicles (POVs) may be authorized when other modes of transportation are either unavailable or inconvenient. When a POV is authorized for the convenience of the traveler, the reimbursement costs must not exceed the costs of coach air fare. Accommodations equivalent to other-than-first-class should be utilized in the unlikely event that water vessel transportation is required. When substantial savings can be realized by utilizing rail travel, this mode of transportation should be considered when available and adequate.

## **4.12 Foreign Travel**

- (1) Foreign travel is authorized as described within the NOAA grant, when approved by the Executive Director, as necessary to conduct Council business.
- (2) The Council Chair or his/her authorized representative may approve routine across-the-border travel to Canada for Council members and employees within specified federal rates.
- (3) Foreign invitational travel for non-Council personnel must be approved as described in paragraph (1) of this section. The per diem limits or actual expense requirements described above also are applicable to non-Council personnel traveling at Council expense. Payment for federal personnel from Council funds is not authorized.



## **5.0 Standards of Conduct**

### **5.1 Federal Criminal Statutes**

Council members, as Federal office holders, and Council employees are subject to most Federal criminal statutes covering bribery, conflict-of-interest, and disclosure of confidential information. Among other statutes, the following provisions apply:

18 U.S.C. § 201 - prohibits offer or acceptance of anything of value to influence any official act.

18 U.S.C. §§ 203, 205 - prohibits officials from contacting any Federal agency or Federal court on behalf of others concerning a particular matter involving specific parties with the intent to influence Government action if they participated personally and substantially in the matter as a Council member. Furthermore, officials may not receive compensation for the representational activities of others regarding such matters.

18 U.S.C. § 207 - prohibits a former official permanently from representing others before a Federal agency or Federal court concerning a particular matter involving specific parties in which the official participated personally and substantially as a Federal official or for two years concerning a matter which was under the person's official responsibility during their last year of Government service.

18 U.S.C. § 208 - which prohibits official acts in a matter in which the Federal employee has a personal financial interest, does not apply to a financial interest of a Council voting member if he obtains a waiver under 18 U.S.C. 208 (b), or if the disclosure of financial interest form has been filed under § 302 (j) of the Act, and that individual is in compliance with regulations promulgated under said section.

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

18 U.S.C. §§ 210, 211 - prohibits offer or acceptance of value to procure appointment to public office.

18 U.S.C. §1905 - prohibits disclosure of trade secrets or confidential commercial information except as provided by law.

31 U.S.C. § 1352 - generally prohibits the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the Federal award. The Council must also complete Form SF-LLL "Disclosure of Lobbying Activities" and submit it to the Grants Office quarterly as necessary.

### **5.2 General Standards of Conduct**

In addition to abiding by the applicable Federal conflict of interest statutes, both members and employees of the Council must comply with the following standards of conduct:

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

(2) Council members, employees, and contractors must comply with the Federal Cost Principles Applicable to Regional Fishery Management Council Grants and Cooperative Agreements, especially with regard to lobbying, and other restrictions with regard to lobbying

- (3) No employee of the Council shall be deprived of employment, position, work, compensation, or benefit provided from or made possible by the Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election or on account of his or her political affiliation.
- (4) No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, either as a political contribution or a personal emolument any money, or anything of value in consideration of either support, or the use of influence, or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.
- (5) No employee of the Council shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties.
- (6) No Council member or employee of the Council shall use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment which has not been made available to the general public.
- (7) No Council member or employee of the Council shall engage in criminal, infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.
- (8) No Council member or employee of the Council shall use Council property for other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.
- (9) No Council member may participate (A) personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest; or (B) in any matter of general public concern which is likely to have a direct and predictable effect on a member's financial interest. For purposes of this subsection, the member's financial interest includes that of the member's spouse, minor child, partner, organization in which the members is serving as officer, director, trustee, partner or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment.

## **5.3 Financial Disclosures**

### **5.3.1 General**

Council nominees and voting members appointed to the Council by the Secretary under subsections 302(b)(2) and 302(b)(5) (individuals not subject to disclosure and recusal regulations under the laws of Indian Tribal Governments) of the Act ("Affected Members") and members of the SSC shall disclose any financial interest of the reporting individual; the individual's spouse, minor child, or partner; and any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee, in harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction or with respect to an individual or organization with a financial interest in such activity. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members and Nominees of Regional Fishery Management Councils and Members of the Scientific and Statistical Committee," or such other form as the Secretary, or designee, may prescribe. The report must be filed by nominees for Secretarial appointment before the date of appointment as prescribed by the Secretary. Affected Members must file the report with the Council office within 45 days of taking office. SSC members must file financial disclosures with the Regional Office within 45 days of taking office. Individuals must update the form within 30 days of the time that any such financial interest is acquired or the financial interests are otherwise substantially changed. The information required to be submitted by Council members will be kept on file by the Council, and made available on the Internet and for public

inspection at reasonable hours at the Council offices. Information from SSC members will be kept on file by the NMFS Regional Office. A copy of the form may be obtained from the appropriate Regional Office.

It is unlawful for Council nominees, Affected Members, and members of the SSC to knowingly and willfully fail to disclose, or to falsely disclose any financial interest or to knowingly vote on a Council decision in violation of 50 CFR § 600.235. In addition to the penalties provided under 50 CFR §600.735, a violation may result in removal of the individual from Council membership.

### **5.3.2 Recusal**

Affected Members may not vote on any Council decision that would have a significant and predictable effect on a disclosed financial interest. Any individual who believes that a Council decision would have such an effect may, at any time before a vote is taken, announce to the Council his or her intent not to vote on the decision and identify the financial interest that would be affected. An individual who is recused from voting may participate in Council and committee deliberations relating to the decision, after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

At the request of an affected member or upon the initiative of an appropriate designated official (See Sec. 302 (j)(1)(b)), such official shall determine for the record whether a Council decision would have a significant and predictable effect on that individual's financial interest. The determination will be based upon a review of the information contained in the individual's financial disclosure form and any other reliable and probative information provided in writing. All information considered will be made part of the public record for the decision. At the beginning of each Council meeting, or during a Council meeting at any time reliable and probative information is received, the designated official shall announce the receipt of information relevant to a determination concerning recusal, the nature of that information, and the identity of the submitter of such information. If the designated official determines that the affected individual may not vote, the individual may state for the record how he or she would have voted. The Council Chair may not allow such an individual to cast a vote.

## **6.0 Financial Management**

### **6.1 Governing Statutes**

Each Council's grant activities are governed by 2 CFR Part 215, 2 CFR Part 230, and OMB Circular A-133 (Audit of States, Local Governments, and Non-Profit Organizations), which provide uniform administrative requirements applicable to the Council, including standards for financial management, financial reporting, property management, and procurement. The Council will operate in full compliance with these standards and the terms and conditions of the cooperative agreement. (See 5 C.F.R §1310.3 for availability of OMB Circulars.)

The Council is exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).<sup>3</sup> As such, the Council is liable for taxes under the Federal Insurance Contributions Act (social security taxes), but not liable for the tax imposed under the Federal Unemployment Tax Act.

### **6.2 Cooperative Agreements and Contracts**

The Council receives funds through cooperative agreements for two basic types of expenditures: administrative (operations) funds to cover general operating expenses such as salaries, office space,

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<sup>3</sup> This determination was made by the Department of Treasury, IRS, in a letter dated June 4, 2002.

utilities, travel, state liaison activities, meeting expenses, etc., and programmatic funds primarily designed to fund contracts generated by the Council for development and amendment of FMPs or FMP-oriented information. Councils may not independently enter into agreements, including grants, contracts, or cooperative agreements, whereby they will receive funds for services rendered. All such agreements must be approved and entered into by NOAA on behalf of the Councils. Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to the NMFS Regional Administrator in accordance with applicable Department of Commerce regulations.

### **6.2.1 Administrative**

The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through the Department, in the budgets of NOAA and NMFS. The Council applies for and receives such funding through the appropriate processes of the NOAA Grants Management Division.

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

### **6.2.2 Programmatic**

The Council may enter into cooperative agreements with Federal agencies, State, and private institutions on matters of mutual interest which further the objectives of the Magnuson Act. Approval from the Secretary of Commerce must be obtained and each agreement must specify the nature and extent of Council participation. The Council is not authorized to accept gifts or contributions directly. All such donations must be directed to the NOAA Administrator in accordance with applicable NOAA regulations.

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

### **6.2.3 Contracts**

Negotiated and advertised contracts will be administered under the same principles of equality and integrity outlined under the section "Employment Practices" and will generally follow the specifications normally characteristic of contracts with public entities (e.g., public announcement, emphasis on competition, change orders, etc.).

## **6.3 Procurement**

All procurements must comply with the terms and conditions of the award and OMB Circulars A-110 and A-122. The purchase of all equipment, not previously approved in the award, costing in excess of \$5,000 per unit and having a useful life of more than 1 year, requires the approval of the Regional Program Officer and the Grants Officer. Such approval will be made only after a cost-benefit analysis (system life cost, lease vs. purchase, compatibility, etc.) by the Council demonstrates the economy of the proposed action.

Commodities and services will be procured by means of a document-oriented system, with a receipt, check, or purchase order type document maintained on all transactions. Equipment and supplies available in the General Services Administration will usually be given primary consideration, except where cost-

effectiveness and efficiency dictate otherwise. A petty cash fund for over-the-counter purchases will be maintained as necessary in the Council staff office.

## **6.4 Property Management**

An accountability system of all non-expendable items of personal property, with a current market value of greater than \$1,000, will be maintained by means of an inventory system. An annual inventory report will be submitted to the NOAA Grants Officer. Theft will be reported promptly to the appropriate authorities. All non-expendable items over \$1,000 in current market value, will be inventoried. Disposal of surplus will be performed in accordance with grant provisions. Any item no longer functional may be discarded in any manner deemed appropriate by the Executive Director or Administrative Officer.

## **6.5 Real Property**

The leasing, renting, and acquisition of real property and space will be effected in a manner consistent with 2 CFR Part 230.

## **6.6 Accounting System**

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

(1) Financial control will be effected by means of a basic document-oriented accrual accounting system, which will include provisions for at least the following: direct labor (salary); indirect labor (employer contributions for FICA, life and health insurance, retirement, and unemployment taxes), travel expenses (transportation and subsistence), transportation of things, rent and utilities, taxes (non-employment), printing, communications, supplies, equipment, contracts, and any appropriate contra-accounts (contract accruals, etc.).

(2) A general ledger, supported by appropriate journals, will be maintained on all obligations and expenses, including appropriate accruals, and will be used to prepare periodic reports for review by the Executive Director, the Council, or Department of Commerce representatives. As a minimum, a complete financial status report should be completed on a monthly basis. The financial management system will be coordinated with the budget management system so that current and projected fund usage can be determined at any time.

(3) A separate payroll register, indicating all applicable expenses and accruals, will be maintained on each member of the Council and the Council staff.

## **6.7 Audits**

Audits will be performed biennially (once every 2 years) by DOC Office of Inspector General or an independent public accountant. NOAA personnel will be invited as appropriate to participate in the audit exit conference.

## **6.8 Financial Reporting**

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

## **7.0 Recordkeeping**

### **7.1 Definitions**

*Records:* documentary items that are made or received by an agency of the United States in connection with the transaction of public business. Agencies are legally required to keep these records as evidence of their actions, and they must be maintained in accordance with your agency's records retention schedule or one of the government's general records retention schedules. They can be in any format (i.e. text documents, photos, computer codes, electronic files, CD-ROMS, disks, USB keys, magnetic tapes).

*Non-records:* items made or acquired solely for reference, extra copies of documents kept for reference/personal convenience (even if it's a copy of something that is a record – only the original is the record), notes taken during a meeting which aren't shared with others, drafts.

*Personal papers:* materials pertaining solely to your private affairs, for example the telephone bill that you brought in to pay during your lunch break or your personal appointment calendar.

### **7.2 Availability of Records**

In accordance with 50 CFR 600.150(b), the Council will maintain documents generally available to the public on its Internet site. Documents for posting must include: fishery management plans and their amendments for the fisheries for which the Council is responsible, drafts of fishery management plan amendments under consideration, analysis of actions the Council has under review, minutes or official records of past meetings of the Council and its committees, materials provided to Council members in preparation for meetings, and other Council documents of interest to the public. For documents too large to maintain on the Web site, not available electronically, or seldom requested, the Council will provide copies of the documents for viewing at the Council office during regular business hours or may provide the documents through the mail.

### **7.3 Administrative Records for FMPs**

The Council and NMFS Headquarters, Regions and Centers collectively are responsible for maintaining records pertaining to the development of FMPs and amendments. In the event of litigation, compilation of an administrative record for a court case will be under the direction of the NOAA General Counsel and the Assistant General Counsel for Finance and Litigation, U.S. Department of Commerce.

### **7.4 Disposition of Records**

Council records must be handled in accordance with Department of Commerce and NOAA records management office procedures. All records and documents created or received by Council employees, while in active duty status, belong to the Federal government. When employees leave the Council, they may not take the original or file copies of records with them. Before any records are disposed of, Council members and employees will coordinate with the NOAA records management office.

### **7.5 Privacy Act Records**

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

## **7.6 Freedom of Information Act (FOIA)**

FOIA requests received by the Council must be coordinated promptly with the appropriate NMFS Regional Office. The Regional Office will forward the request to the NMFS FOIA Officer so that the request can be logged into a centralized database and assigned a tracking number. The FOIA Officer will execute a CD-244, "FOIA Request and Action Record," which will include the tracking number and the due date. A search for responsive documents must begin immediately upon receipt of the search tasker from the FOIA office. All responsive documents must be reviewed for disclosure on a line-by-line basis, and segregable portions must be released. Council members or staff may make recommendations regarding potential exemptions to be asserted; however, only a Federal employee can make a disclosure determination. The original documents must be retained by the originating office. Copies of the responsive records must be provided to the FOIA office, in accordance with the instructions on the tasker, and redacted and unredacted versions will be maintained by that office in accordance with DOC policy.

The Region will obtain clearance from the NOAA General Counsel's Office concerning the initial denial of requested information. In the event the Regional Office determines that requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature and a list of the 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.

Any fees collected from requesters are transferred to the U.S. Treasury, and the Council does not recover its costs.

## **7.7 Confidentiality of Statistics**

The Council has established appropriate procedures applicable to it and to its committees and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons, including, but not limited to, (a) procedures for the restriction of Council employee access and the prevention of conflicts of interest, except that such procedures must be consistent with the guidelines prescribed by the Secretary pursuant to Section 402(b) of the Act at 50 CFR Part 600, Subpart E (Confidentiality of Statistics) and NAO 216.100; and (b), in the case of statistics submitted to the Council by a State, be consistent with the laws and regulations of the State concerning the confidentiality of such statistics.