

# **MODEL STATEMENT OF ORGANIZATION, PRACTICES, AND PROCEDURES (SOPP)**

Based on the 2006 SOPP of the North Pacific Fishery Management Council

**October 2010**

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## Introduction to the Model SOPP

This document is a model SOPP. It was based on the 2006 SOPP of the North Pacific Fishery Management Council, and it has been updated to be consistent with the new (2010) regulations published to implement changes to the Magnuson-Stevens Fishery Conservation and Management Act relating to Council administration and operations. While it is not necessary to follow this model exactly, each Council is responsible for ensuring the information presented in this model SOPP is included in its SOPP or other standing policy.

The example text in this document appears as normal black 11-point Times New Roman Font. This text does not have to be followed word for word. The text is there simply as an example of what the SOPP might say, but the model SOPP text may not be appropriate for all Councils. Also, to suit its particular needs, a Council may add sections to its SOPP or provide greater detail than what is included in this model.

In places we have inserted some explanatory text or suggestions for the types of information a Council may wish to include in a section. **[This information is provided in bold blue, usually in brackets.]**

# UNITED STATES DEPARTMENT OF COMMERCE

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

### [ ] FISHERY MANAGEMENT COUNCIL

#### STATEMENT OF ORGANIZATION, PRACTICES, AND PROCEDURES

The [ ] Fishery Management Council, created by Section 302(a)(1)( ) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.* (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, published on \_\_\_\_\_.

Copies of this SOPP are available upon request by writing or contacting [ ]. The SOPP is also available electronically on the Council's website at [http:// \[ \]](http:// [ ]).

#### 1.0 COUNCIL FUNCTIONS AND RESPONSIBILITIES

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

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

- (1) The present and probable future condition of the fishery;
  - (2) The maximum sustainable yield from the fishery;
  - (3) The optimum yield from the fishery;
  - (4) The capacity and the extent to which fishing vessels of the United States will harvest the optimum yield on an annual basis;
  - (5) The portion of such optimum yield on an annual basis which will not be harvested by fishing vessels of the United States and can be made available for foreign fishing.
- G. Develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations established by mechanisms and processes under the Act.
- H. Develop multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, in the manner prescribed in the Act.
- I. 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**

### **2.1 Council Composition and Jurisdiction**

The Council has [ ] voting members and [ ] non-voting members. The Council's geographic area of authority includes the Exclusive Economic Zone (EEZ) of the [ ] Ocean, seaward of [ ]. The states of [ ] are represented on the Council. **[This paragraph may be expanded to include a description of the Council's role in management of inter-council fisheries and trans-boundary fisheries.]**

#### ***2.1.1 Voting Members***

The voting members of the Council shall be:

1. The principal state official in the government position with marine fishery management responsibility and expertise in each constituent state, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

2. The Regional Administrator of the National Marine Fisheries Service for [\_\_\_\_\_] , so long as the Administrator continues to hold such position, or a designee;
3. [\_\_\_\_\_] members appointed by the Secretary of Commerce.

### **2.1.2 Non-Voting Members**

The non-voting members of the Council shall be:

1. The [\_\_\_\_\_] Regional Director of the U.S. Fish and Wildlife Service, or a designee;
2. The Commander of the [\_\_\_\_\_] Coast Guard District, or a designee;
3. The Executive Director of the [\_\_\_\_\_] Marine Fisheries Commission, or a designee;
4. A representative who shall be appointed by, and serve at the pleasure of, the Governor of [\_\_\_\_\_] , or a designee; and
5. A representative of the U.S. Department of State, designated for such purpose by the Secretary of State, or a designee.

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 neither initiate or second motions, nor vote on matters that may be classified as business of the Council. They may, however, participate fully in discussions of such matters.

## **2.2 Oath of Office**

As trustees of the nation's fishery resources, each member appointed to the Council must take the following oath of office:

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

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

### **2.3.1 *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. A voting member's Council services of 18 months or more during a term of office will be counted as service for the entire three-year term. 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. 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.

### **2.3.2 *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.

### **2.3.3 *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. The Chair certifies the minutes of the meeting as complete and accurate before they are available for general distribution.

## **2.4 Designees**

The Act authorizes only the principal State officials, the Regional Administrator, 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 the 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; and
- (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.

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

As required by the Act at Sec. 302(g)(1), the Council has established an SSC assist it in the assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to the Council's development and amendment of its fishery management plans.

### **2.5.1 Objectives and Duties**

The SSC shall provide the Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. **[Councils may further specify objectives and duties of the SSC.]**

### **2.5.2 Members and Chair**

Members appointed by the Council to the SSCs shall be Federal employees, State employees, academician, or independent experts and shall have strong scientific or technical credentials and experience. **[Councils may further define membership and chairmanship of the SSC].**

Subject to the availability of appropriated funds, members of the SSC 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).

### **2.5.3 *Administrative Provisions***

The SSC shall hold its meetings in conjunction with the meetings of the Council, to the extent practicable. Notice of meetings of the SSC shall comply with the applicable notice requirements specified for Council meetings. **[Councils may further describe administrative provisions for the SSC.]**

### **2.5.4 *Subcommittees***

**[Councils provide name, objectives and duties, members and chair, and administrative provisions for each subcommittee as for the main SSC.]**

## **2.6 *Advisory Panels***

The Council has established the following advisory panels under Sec. 302(g)(2) of the Act as necessary or appropriate to carry out the its functions under the Act. Subject to the availability of funds, members of Advisory Panels 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).

**[Designation of ach Advisory Panel will include the following terms of reference.]**

### **2.6.1 *Objectives and Duties***

**[Councils may further specify objectives and duties of the AP. Note that the AP is designated under Sec. 302(g)(2) of the Act, making them eligible for stipends.]**

### **2.6.2 *Members and Chair***

**[Councils may further define membership and chairmanship of the AP.]**

### **2.6.3 *Administrative Provisions***

Notice of meetings of the AP shall comply with the applicable notice requirements specified for Council meetings. **[Councils may further describe administrative provisions for the AP.]**

## **2.7 *Fishing Industry Advisory Committee (FIAC)***

### **2.7.1 *Objectives and Duties***

The Council has established a FIAC that provides information and recommendations on, and assists in the development of, fishery management plans and amendments to such plans.

### **2.7.2 *Members and Chair***

Appointments to the FIAC will be made in such a manner as to provide fair representation to commercial and recreational fishing interests in the geographical area of authority of the Council. **[Councils may further define membership and chairmanship of the FIAC.]**

### **2.7.3 Administrative Provisions**

Notice of meetings of the FIAC shall comply with the applicable notice requirements specified for Council meetings. **[Councils may further describe administrative provisions for the FIAC.]**

### **2.8 Committees**

The Council may appoint standing and ad hoc committees from among the voting and nonvoting members and knowledgeable members of the public, as it deems necessary for the conduct of Council business. The Council may also appoint standing and ad hoc committees that include industry representatives or other participants to address specific management issues or programs. Committee meeting notice requirements are as specified for Council meetings.

### **2.9 Working Groups**

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

**[In order to identify its status for notice requirements and the potential payment of stipends, Council must specify under what section of the Act the working group is formed. This should be specified in the objectives and duties or terms of reference for the working group. Most working groups, because they contain members not employed by NMFS or the Council, should be established as an AP under Sec. 302(g)(2) of the Magnuson-Stevens Act, if the Council wants the members to be eligible to receive a stipend. Those working groups with voting or nonvoting Council members as members of the group must be considered as Council committees. Those working groups that consist only of NMFS and Council employees do not come under either notice or stipend requirements of the Act. For working groups designated as either APs or committees, notice requirements are as specified for Council meetings.]**

## **3.0 COUNCIL MEETINGS**

### **3.1 Notice – Regular and Emergency Meetings**

Timely notice of each regular meeting and each emergency meeting of the Council, its SSC, AP, FIAC, or other committee established under the Act, 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 email notifications and website postings alone are not sufficient. 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 within 14 days prior to the meeting date, unless such modification is to address an emergency action under Section 305(c) of the Act, in which case public notice shall be given immediately.

Drafts of all regular public meeting notices must be transmitted to the NMFS Headquarters Office at least 23 calendar days before the first day of the regular meeting. 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 \_\_\_ 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; Seating***

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 the 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.

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

A majority of the voting members of any Council constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings. Decisions of any Council are by majority vote of the voting members present and voting (except for a vote to propose removal of a Council member, see 50 CFR § 600.230 and except where *Robert's Rules of Order* require a 2/3 majority vote). Voting by proxy is permitted only pursuant to Section 2.4(2) of this SOPP. An abstention does not affect the unanimity of a vote. At the request of any voting member of the 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 such vote.

#### **3.2.3 *Approval or Amendment of Fishery Management Plan and Finding of Fishery Emergency***

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

Council finding that an emergency exists in a fishery, the exact number of votes (for, against, and abstaining) must be preserved as part of the record of the meeting.

#### **3.2.4 Procedure for Proposed Regulations**

**[Provide the Council's procedure for proposing regulations as required by 50 CFR 600.140 or reference another Council document available to the public. Paragraph (a) of that regulation requires that each Council establish a written procedure for proposed regulations consistent with section 303(c) of the Magnuson-Stevens Act. The procedure must describe how the Council deems proposed regulations necessary or appropriate for the purposes of implementing a fishery management plan or a plan amendment, or making modifications to regulations implementing a fishery management plan or plan amendment. In addition, the procedure must describe how the Council submits proposed regulations to the Secretary.]**

#### **3.2.5 Parliamentary Procedure; Consensus**

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.

#### **3.2.6 Dissenting Votes; Minority Written Statements**

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 will be submitted to the Secretary at the same time the majority report is submitted.

#### **3.2.7 Consideration of Information from Interested Parties**

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

### **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 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 (50 CFR Part 600, Subpart E (Confidentiality of Statistics) and NAO 216.100), 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 on the Council's internet website and for public inspection and copying at a single location in the offices of the Council, or the Secretary, as appropriate.

### **3.4 Closed Meetings**

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

- (1) The Council, SSC, AP, FIAC, or other committees shall close any meeting, or portion thereof, that concerns information bearing on a national security classification.
- (2) The 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) The 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 the Council or its subsidiary bodies. In deciding whether to close a portion of a meeting to discuss internal administrative matters, the 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, the Council, SSC, AP, FIAC, or other committees 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, the 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 is required to meet at a minimum of two times per year. However, the Council normally meets [ ] times each year. Each meeting generally lasts from six to seven days and begins on Wednesday of the meeting week. The Council's SSC and AP generally meet concurrently with the Council, starting two days prior to the Council. The specific timing of each meeting shall be coordinated by the Executive Director in consultation with the Chair.

### **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 [\_\_\_\_\_]. Specific meeting locations within each State will be coordinated by the Executive Director in consultation with the Chair.

### **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, published by the U.S. Office of Personnel Management. 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.

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. At the discretion of the Council Chair, Council members may be required to complete a meeting request form if they wish to be compensated for activities other than regular Council meetings.

### **3.9 Stipends**

Stipends are available, subject to the availability of appropriations, to members of SSCs and APs, formally designated under Sec. 301(g)(1)(a) or Sec. 302(g)(2) of the Magnuson-Stevens Act, who are not employed by the Federal Government or a State marine fisheries agency. For the 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 fish.

## **4.0 EMPLOYMENT PRACTICES**

### **4.1 Staffing**

The Council staff includes an Executive Director, Deputy Director and other full and part-time employees as determined necessary to the performance of Council functions within budgetary limitations. The Executive Director reports to and is held accountable by the Council, and the staff reports 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. The Council must notify the NOAA Office of General Counsel before seeking outside legal advice, which may only 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 vote of the Council and other staff employees may be dismissed by the Executive Director acting for the Council. Dismissals may be made for misconduct, unsatisfactory performance, and 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 U.S.C. § 5332, and/or the Commerce Alternative Personnel System. The Council has decided to adjust its pay rates and pay increases based on cost of living (COLA) differentials in **[Council's host location]**, consistent with the Federal pay-scale, including adjustments necessary to achieve equivalency with Federal counterparts. **[If appropriate: COLA adjustments in pay rates and pay increases are being provided for staff members whose post of duty is located in Alaska, Hawaii, Guam, the U.S.**



**Virgin Islands, the Northern Mariana Islands, and Puerto Rico.]** No pay adjustment based on geographic location exceeds the equivalent COLA and locality pay adjustments available to Federal employees in the same geographic area. 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 involving the Council Chair and/or members of the Council designated by the Chair. 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.

#### **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, 29 U.S.C. § 201 *et seq.* (FLSA), and by the rights of access and confidentiality provisions of the Privacy Act. Council staff is also eligible for unemployment compensation in the same manner as Federal employees. Overtime payments shall be made in accordance with the provisions of the FLSA.

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

#### **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 all interactions with staff, including the conduct of Council members, staff members, and the public during the course of official Council meetings, advisory body meetings, or committee meetings.

## 4.9 Leave

### 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 carryover 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*

The Council may advance up to one year's earnings of sick or annual leave when it is reasonably expected that the advanced leave will be repaid by the employee. This must be approved by the Council chair and 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 through [\_\_\_\_\_]. Retirement benefits are realized through [\_\_\_\_\_]. Employee participation in a 403(b) plan is optional and at the employees expense.

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

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

#### **4.12 Foreign Travel**

Except for certain approved trips to Canada on official Council business, foreign travel must be approved, in advance, by the Assistant Administrator for Fisheries or designee and by the Grants Officer. Requests for foreign travel approval should be submitted, in writing, at least 30-45 days in advance to the Regional Program Officer and then via the Regional Administrator, to the NOAA Grants Officer.

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.

Foreign invitational travel for non-Council personnel must be approved as described above. The per diem limits or actual expense requirements described above also are applicable to non-Council personnel traveling at Council expense.

#### **4.13 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.

## **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.)

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

- (1) *Administrative.* The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through the Department, in the budgets of NOAA and NMFS. The Council 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 **[Finance Officer]**.

- (2) *Programmatic.* The Council has adopted a Policy on Identification, Submission, and Review of Proposals for Programmatic Research. The Council may enter into cooperative agreements with Federal agencies, State, and private institutions on matters of mutual interest which further the objectives of the Magnuson Act. Approval from the Secretary of Commerce must be obtained and each agreement must specify the nature and extent of Council participation. The 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.

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

### **6.3 Procurement**

All procurements must comply with the terms and conditions of the award and 2 CFR Parts 215 and 230. Proposed sole-source procurements less than \$100,000 must be submitted to the Regional Administrator prior to the Council making the award. Proposed sole-source contracts over \$100,000 must be approved in writing by the Regional Administrator and the Grants Officer. Final copies of all contracts awarded will be filed with the appropriate Grants Officer.

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

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

### **6.4 Property Management**

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

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

### **6.5 Real Property**

The leasing, renting, and acquisition of real property and space will be performed 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 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 Fishery Management Plans**

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. The Council will abide by the terms of the NOAA Records Management Guide; the NOAA Records Disposition Handbook; and the following records management authorities: NAO 205-1 NOAA Records Management Program; DAO 205-1 Program for Records Management; Federal Records Act of 1950; 44 U.S.C. Chapter 31 Records Management by Agency Heads; 44 U.S.C. Chapter 33 Disposal of Records; and 44 U.S.C. § 101 Federal Management and Promotion of Electronic Government Services

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, all Privacy Act records, including 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 Privacy Act records will be accomplished as provided for in 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 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.

## **7.8 Information Quality**

The Council agrees to abide by the NOAA Information Quality Guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information which it

disseminates. The NOAA guidelines also establish an administrative mechanism allowing affected persons to seek and obtain correction of information that does not comply with Office of Management and Budget or NOAA applicable guidelines.