

DEVELOP COUNCIL COMMENTS ON THE FOLLOWING:

PART 600–MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for part 600 continues to read:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 et seq.

2. In § 600.10, add definitions for “Advisory panel (AP)” and “Fishing industry advisory committee (FIAC)” in alphabetical order; and revise the definitions for “Region”, “Regional Administrator”, and “Science and Research Director” to read as follows:

§ 600.10 Definitions.

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Advisory panel (AP) means a standing committee formed and selected by a regional fishery management council, under the authority of Magnuson-Stevens Act section 302(g)(2), to assist it in carrying out its functions. An AP may include individuals who are not members of the council.

COMMENTS:

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Fishing industry advisory committee (FIAC) means an advisory group formed and selected by a regional fishery management council under the authority of the Magnuson-Stevens Act section 302(g)(3)(A). A FIAC is not an “advisory panel” as defined under this section.

COMMENTS:

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Region means one of six NMFS Regional Offices responsible for administering the

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

Regional Administrator means the Administrator of one of the six NMFS Regions described in Table 1 to §600.502, or a designee. Formerly known as Regional Director.

COMMENTS:

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Science and Research Director means the Director of one of the six NMFS Fisheries Science Centers described in Table 1 to § 600.502, or a designee, also known as Center Director.

COMMENTS:

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3. In § 600.15:

a. Redesignate paragraphs (a) (9) through (a) (15) as paragraphs (a) (11) through (a)(17), respectively.

b. Redesignate paragraphs (a)(5) through (a)(8) as paragraphs (a)(6) through (a)(9), respectively.

c. Add new paragraphs (a)(5) and (a)(10) to read as follows:

§ 600.15 Other acronyms.

(a) * * *

(5) CCC–Council coordination committee

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(10) FIAC–Fishing industry advisory committee

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4. In § 600.105, revise paragraph (b) to read as follows:

§ 600.105 Intercouncil boundaries.

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(b) Mid-Atlantic and South Atlantic Councils. The boundary begins at the seaward boundary between the States of Virginia and North Carolina (36°33'01.0" N. lat), and proceeds due east to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson-Stevens Act.

COMMENTS:

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5. In § 600.115, revise paragraph (b) to read as follows:

§ 600.115 Statement of organization, practices, and procedures (SOPP).

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(b) Amendments to current SOPPs must be consistent with the guidelines in this section, subpart C of this part, the terms and conditions of the cooperative agreement (the funding agreement between the Council and NOAA that establishes Council funding and mandates specific requirements regarding the use of those funds), the statutory requirements of the Magnuson-Stevens Act, and other applicable law. Upon approval of a Council’s SOPP amendment by the Secretary, a notice of availability must be published in the Federal Register that includes an internet address from which the amended SOPP may be read and downloaded

and a mailing address to which the public may write to request copies.

COMMENTS:

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6. Section 600.117 is added to subpart B to read as follows:

§ 600.117 Council coordination committee (CCC).

(a) The Councils may establish a Council coordination committee (CCC) consisting of the chairs, vice chairs, and executive directors of each of the eight Councils or other Council members or staff, in order to discuss issues of relevance to all Councils.

(b) The CCC is not subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2). Procedures for announcing and conducting open and closed meetings of the CCC shall be in accordance with § 600.135.

COMMENTS:

7. In § 600.125, revise paragraph (a) to read as follows:

§ 600.125 Budgeting, funding, and accounting.

(a) Council grant activities are governed by 15 CFR part 14 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit and Commercial Organizations), 2 CFR part 230 (Cost Principles for Non-Profit Organizations), 15 CFR part 14 (Audit Requirements for Institutions of Higher Education and Other Non-Profit Organizations), and the terms and conditions of the cooperative agreement.

COMMENTS:

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8. Section 600.133 is added to subpart B to read as follows:

§ 600.133 Scientific and Statistical Committee (SSC).

(a) Establishment of an SSC. (1) Each Council shall establish, maintain, and appoint the members of an SSC to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(2) Each SSC shall provide its 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.

(3) Members appointed by the Councils to the SSCs shall be Federal employees, State employees, academicians, or independent experts and shall have strong scientific or technical credentials and experience.

(4) An SSC shall hold its meetings in conjunction with the meetings of the Council, to the extent practicable.

(b) Stipends. [Reserved]

(c) Peer review process. [Reserved]

COMMENTS:

9. In § 600.135, paragraphs (a), (b), (c), (d), and (e) are revised to read as follows:

§ 600.135 Meeting procedures.

(a) Regular meetings. Public notice of regular meetings of each Council, CCC, SSC, and AP, including the meeting agenda, must be published in the Federal Register at least 14 calendar days prior to the meeting date. Appropriate 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) must be given. E-mail notification and website postings alone are not sufficient. The published agenda of a regular meeting may not be modified to include additional matters for Council action without public notice, or such notice must be given at least 14 calendar days prior to the meeting date, unless such modification is necessary to address an emergency under section 305(c) of the Magnuson-Stevens Act, in which case public notice shall be given immediately. Drafts of all regular public meeting notices must be received by NMFS headquarters office at least 23 calendar days before the first day of the regular meeting. Councils must ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings.

(b) Emergency meetings. Drafts of emergency public notices must be transmitted to the NMFS headquarters office; recommended at least 5 working days prior to the first day of the emergency meeting. Although notices of and agendas for emergency meetings are not required to be published in the Federal Register, notices of emergency meetings must be promptly announced through any means that will result in wide publicity in the major fishing ports of the region. E-mail notification and website postings alone are not sufficient.

(c) Closed meetings. After proper notification by any means that will result in wide

publicity in the major fishing ports within the region, having included in the notification the time and place of the meeting and the reason for closing any meeting or portion thereof to the public:

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

(2) A Council, CCC, SSC, AP, or FIAC 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, CCC, SSC, AP, or FIAC 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, FIAC, 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, the CCC, 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.

(d) Without the notice required by paragraph (c) of this section, a Council, CCC, SSC, AP, or FIAC 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 two hours.

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

of this section.

COMMENTS:

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10. Section 600.140 is added to subpart B to read as follows:

§ 600.140 Procedure for Proposed Regulations.

(a) Each Council must 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.

COMMENTS:

(b) The Councils must include the procedure for proposed regulations in its SOPP, see § 600.115, or other written documentation that is available to the public.

11. Section 600.207 is added to subpart C to read as follows:

§ 600.207 Pacific Fishery Management Council Tribal Indian representation and alternate.

(a) The tribal Indian representative to the Pacific Fishery Management Council may designate an alternate during the period of the representative's term. The designee must be knowledgeable concerning tribal rights, tribal law, and the fishery resources of the geographical area concerned.

(b) New or revised designations of an alternate by the tribal Indian representative must be delivered in writing to the appropriate NMFS Regional Administrator and the Council chair at least 48 hours before the designee may vote on any issue before the Council. In that written document, the tribal Indian representative must indicate how the designee meets the knowledge requirements under paragraph (a).

12. In § 600.210 revise paragraph (c) to read as follows:

§ 600.210 Terms of Council members.

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(c) 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.

COMMENTS:

13. In § 600.215, redesignate paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively; add paragraph (c); and revise the newly redesignated paragraph (e) to read as follows:

§ 600.215 Council nomination and appointment procedures.

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(c) Nominees to the Gulf of Mexico Fishery Management Council. (1) The Governors of States submitting nominees to the Secretary for appointment to the Gulf of Mexico Fishery Management Council shall include:

(i) At least one nominee each from the commercial, recreational, and charter fishing sectors, except that an individual who owns or operates a fish farm outside the United States

shall not be considered to be a representative of the commercial or recreational sector; and

(ii) At least one other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.

(2) Notwithstanding the requirements of paragraphs (a) and (b) of this section, if the Secretary determines that the list of names submitted by the Governor does not meet the requirements of paragraph (c)(1) of this section, the Secretary shall:

(i) Publish a notice in the Federal Register asking the residents of that State to submit the names and pertinent biographical data of individuals who would meet the requirements of this section that were not met for appointment to the Council; and

(ii) Add the name of any qualified individual submitted by the public who meets the requirements of this section that were not met to the list of names submitted by the Governor.

(3) The requirements of this paragraph (c) shall expire at the end of fiscal year 2012, meaning through September 30, 2012.

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(e) Nomination deadlines. Nomination packages (governors' letters and completed nomination kits) should be forwarded by express mail under a single mailing to the address specified by the Assistant Administrator by March 15. For appointments outside the normal cycle, the Secretary will provide a deadline for receipt of nominations to the affected Council and state governors.

(1) Obligatory seats. (i) The Governor of the state for which the term of an obligatory seat is expiring should submit the names of at least three qualified individuals to fill that seat by the March 15 deadline. The Secretary will appoint to the Pacific Fishery Management Council a

representative of an Indian tribe from a list of no fewer than three individuals submitted by the tribal Indian governments.

(ii) If the Governor or tribal Indian governments fail to provide a nomination letter and at least three complete nomination kits by March 15, the obligatory seat will remain vacant until all required information has been received and processed and the Secretary has made the appointment.

(2) At-large seats. (i) If a Governor chooses to submit nominations for an at-large seat, he/she should submit lists that contain at least three qualified nominees for each vacant seat. A nomination letter and a nomination kit for each qualified nominee should be forwarded by express mail under a single mailing to the address specified by the Assistant Administrator by March 15.

(ii) Nomination packages that are not substantially complete by March 31 will be returned to the nominating Governor and will be processed no further. At-large members will be appointed from among the nominations submitted by the governors who complied with the nomination requirements.

COMMENTS:

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14. Section 600.220 is revised to read as follows:

§ 600.220 Oath of office.

As trustees of the nation's fishery resources, all voting members must take an oath specified by the Secretary as follows: "I, [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.”

COMMENTS:

15. In § 600.225 redesignate paragraphs (b)(2) through (b)(8) as paragraphs (b)(3) through (b)(9) respectively; and add a new paragraph (b)(2) to read as follows:

§ 600.225 Rules of conduct.

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(b) * * *

(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 as specified in § 600.227 of this part.

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16. Section 600.227 is added to subpart C to read as follows:

§ 600.227 Lobbying.

(a) Council members, employees and contractors must comply with the requirements of 31 U.S.C. 1352 and Department of Commerce implementing regulations published at 15 CFR 28, "New Restrictions on Lobbying." These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the award. Because the Councils receive in excess of \$100,000 in Federal funding, the regulations mandate that the Councils must complete Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit the Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

(b) Council members, employees, and contractors must comply with the Federal Cost Principles Applicable to Regional Fishery Management Council Grants and Cooperative Agreements summarized as follows:

(1) Title 2 CFR part 230 - Cost Principles for Nonprofit Organizations (OMB Circular A-122) is applicable to the Federal assistance awards issued to the Councils.

(2) The purpose of the cost principles at 2 CFR part 230 is to define what costs can be paid on Federal awards issued to non-profit organizations. The regulation establishes both

general principles and detailed items of costs.

(3) Under 2 CFR part 230, costs for certain lobbying activities are unallowable as charges to Federal awards. These activities would include any attempts to influence:

(i) The introduction of Federal or state legislation;

(ii) The enactment or modification of any pending legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public to contribute to or to participate in any demonstration, march, rally, fundraising drive, lobbying campaign, or letter writing or telephone campaign.

(4) Generally, costs associated with providing a technical and factual presentation directly related to the performance of a grant, through hearing testimony, statements, or letters to Congress or a state legislature are allowable if made in response to a documented request.

(5) Costs associated with lobbying to influence state legislation in order to reduce the cost or to avoid material impairment of the organization's authority to perform the grant are also allowable.

COMMENTS:

17. In § 600.235:

a. In paragraph (a), add paragraph (3) to the definition of “Affected individual”, remove the definition of “Financial interest in harvesting, processing, or marketing”, and add definitions for “Financial Interest Form” and “Financial interest in harvesting, processing, lobbying, advocacy, or marketing” in alphabetical order.

b. Revise paragraph (b).

- c. Revise paragraph (c)(2) and add paragraph (c)(4).
- d. Revise paragraphs (h) and (i).

The revisions and additions read as follows:

§ 600.235 Financial disclosure.

(a) * * *

Affected individual * * *

(3) A member of an SSC shall be treated as an affected individual for the purposes of paragraphs (b)(1), (b)(5) through (b)(7), and (i) of this section.

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Financial Interest Form means NOAA Form 88-195, "STATEMENT OF FINANCIAL INTERESTS For Use By Voting Members of, and Nominees to, the Regional Fishery Management Councils, and Members of the Scientific and Statistical Committee (SSC)" or such other form as the Secretary may prescribe.

Financial interest in harvesting, processing, lobbying, advocacy, or marketing (1) includes:

(i) Stock, equity, or other ownership interests in, or employment with, any company, business, fishing vessel, or other entity engaging in any harvesting, processing, lobbying, advocacy, or marketing activity in any fishery under the jurisdiction of the Council concerned;

(ii) Stock, equity, or other ownership interests in, or employment with, any company or other entity that provides equipment or other services essential to harvesting, processing, lobbying, advocacy, or marketing activities in any fishery under the jurisdiction of the Council concerned, such as a Chandler or a dock operation;

(iii) Employment with, or service as an officer, director, or trustee of, an association whose members include companies, vessels, or other entities engaged in any harvesting, processing, lobbying, advocacy, or marketing activity in any fishery under the jurisdiction of the Council concerned; and

(iv) Employment with an entity providing consulting, legal, or representational services to any entity engaging in, or providing equipment or services essential to harvesting, processing, lobbying, advocacy, or marketing activities in any fishery under the jurisdiction of the Council concerned, or to any association whose members include entities engaged in the activities described in paragraphs (1)(i) and (ii) of this definition;

(2) Does not include stock, equity, or other ownership interests in, or employment with, an entity engaging in scientific fisheries research in any fishery under the jurisdiction of the Council concerned, unless it is covered under paragraph (1) of this definition. A financial interest in such entities is covered by 18 U.S.C. 208, the Federal conflict-of-interest statute.

(b) Reporting. (1) The Magnuson-Stevens Act requires the disclosure by each affected individual of any financial interest in harvesting, processing, lobbying, advocacy, or marketing activity, and of any such financial interest of the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on the Financial Interest Form (as defined in paragraph (a) of this section), or such other form as the Secretary may prescribe.

(2) The Financial Interest Form must be filed by each nominee for Secretarial appointment to the Council with the Assistant Administrator by April 15 or, if nominated after

March 15, one month after nomination by the Governor. A seated voting member appointed by the Secretary must file a Financial Interest Form with the Executive Director of the appropriate Council within 45 days of taking office; must file an update of his or her statement with the Executive Director of the appropriate Council within 30 days of the time any such financial interest is acquired or substantially changed by the affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; and must update his or her form annually and file that update with the Executive Director of the appropriate Council by February 1 of each year.

(3) The Executive Director must, in a timely manner, provide copies of and updates to the Financial Interest Forms of appointed Council members to the NMFS Regional Administrator, the Regional Attorney who advises the Council, the Department of Commerce Assistant General Counsel for Administration, and the NMFS Office of Sustainable Fisheries. These completed Financial Interest Forms shall be kept on file in the office of the NMFS Regional Administrator and at the Council offices, and shall be made available for public inspection at such offices during normal office hours. In addition, the forms shall be made available at each Council meeting or hearing and shall be posted for download from the internet on the Council's website.

(4) Councils must retain the Financial Interest Form for a Council member for at least 5 years after the expiration of that individual's last term.

(5) An individual being considered for appointment to an SSC must file the Financial Interest Form with the Regional Administrator for the geographic area concerned within 45 days prior to appointment. A member of the SSC must file an update of his or her statement with the

Regional Administrator for the geographic area concerned within 30 days of the time any such financial interest is acquired or substantially changed by the SSC member or the SSC member's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; and must update his or her form annually and file that update with the Regional Administrator by February 1 of each year.

(6) An individual who serves as an SSC member to more than one Council shall file Financial Interest Forms with each Regional Administrator for the geographic areas concerned.

(7) The Regional Administrator shall maintain on file the Financial Interest Forms of all SSC members for at least five years after the expiration of that individual's term on the SSC. Such Forms are not subject to sections 302(j)(5)(B) and (C) of the Magnuson-Stevens Act.

(c) * * *

(2) As used in this section, a Council decision will be considered to have a "significant and predictable effect on a financial interest" if there is a close causal link between the decision and an expected and substantially disproportionate benefit to the financial interest in harvesting, processing, lobbying, advocacy, or marketing of any affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee, relative to the financial interests of other participants in the same gear type or sector of the fishery. The relative financial interests of the affected individual and other participants will be determined with reference to the most recent fishing year for which information is available. However, for fisheries in which IFQs are assigned, the percentage of IFQs assigned to the affected individual

will be dispositive.

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(4) A member of an SSC is not subject to the restrictions on voting under this section.

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(h) The provisions of 18 U.S.C. 208 regarding conflicts of interest do not apply to an affected individual who is a voting member of a Council appointed by the Secretary, as described under section 302(j)(1)(A)(ii) of the Magnuson-Stevens Act, and who is in compliance with the requirements of this section for filing a financial disclosure report. The provisions of 18 U.S.C. 208 do not apply to a member of an SSC, unless that individual is an officer or employee of the United States or is otherwise covered by the requirements of 18 U.S.C. 208.

(i) It is unlawful for an affected individual to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required by this section, or to knowingly vote on a Council decision in violation of this section. In addition to the penalties applicable under § 600.735, a violation of this provision may result in removal of the affected individual from Council or SSC membership.

COMMENTS:

18. In § 600.240, revise paragraph (a) to read as follows:

§ 600.240 Security assurances.

(a) DOC Office of Security will issue security assurances to Council nominees and members following completion of acceptable background checks. Security assurances will be valid for 5 years from the date of issuance. A security assurance will not entitle the member to

access classified data. In instances in which Council members may need to discuss, at closed meetings, materials classified for national security purposes, the agency or individual (e.g., Department of State, U.S. Coast Guard) providing such classified information will be responsible for ensuring that Council members and other attendees have the appropriate security clearances.

COMMENTS:

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19. Section 600.250 is added to subpart C to read as follows:

§ 600.250 Council member training.

(a) The Secretary shall provide a training course covering a variety of topics relevant to matters before the Councils and shall make the training course available to all Council members and staff and staff from NMFS regional offices and science centers. To the extent resources allow, the Secretary will make the training available to Council committee and advisory panel members.

(b) Council members appointed after January 12, 2007, shall, within one year of appointment, complete the training course developed by the Secretary. Any Council member who completed such a training course within 24 months of January 12, 2007, is considered to have met the training requirement of this section.

COMMENTS: