

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

STATEMENT OF ORGANIZATION PRACTICES AND PROCEDURES



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South Atlantic Fishery Management Council

4055 Faber Place Drive, Suite 201

North Charleston, South Carolina 29405

Authorized under the Magnuson-Stevens Fishery Conservation and Management Act
Public Law 94-265 as amended.

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SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL STATEMENT OF ORGANIZATION PRACTICES AND PROCEDURES

1. NAME OF COUNCIL:

South Atlantic Fishery Management Council hereinafter referred to as Council.

2. LOCATION OF OFFICES:

The office of the Council is located at 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

3. LEGAL AUTHORITY:

The Council consists of representatives of the states of North Carolina, South Carolina, Georgia, and Florida and has authority over the fisheries in the Atlantic Ocean seaward of the territorial boundaries of these states out to 200 miles encompassing the U.S. exclusive economic zone (EEZ). Legal authority for the Council is found in the Magnuson-Stevens Fishery Conservation and Management Act (Public Law 94-265 as amended) hereinafter referred to as the Act.

4. PURPOSES:

The purposes for the Council are as specified in the Act.

5. COMPOSITION:

The Council consists of representatives of North Carolina, South Carolina, Georgia, and Florida. There are 17 Council members, 13 of these are voting members. Of the voting members 8 are appointed by the Secretary of Commerce for 3-year terms. The other 5-voting members are the principal state officials with the marine fishery management responsibility (or their designees) and the Regional Administrator of the National Marine Fisheries Service for the Southeast Region or their designee. Each member appointed to the Council must take an oath of office. Council members appointed by the Secretary may only be removed from office in accordance with Section 302(b)(6) of the Act.

The non-voting members of the Council are: the Southeast Regional Director of the U.S. Fish and Wildlife Service or a designee; the Commander, Seventh Coast Guard District or a designee; the Executive Director of the Atlantic States Marine Fisheries Commission or a designee; and a representative of the U.S. Department of State or a designee.

The Magnuson-Stevens Fishery Conservation and Management Act authorizes only the principal state officials, Regional Administrator, and the non-voting members to designate individuals to attend Council meetings in their absence. The Chairman of the Council must be notified in writing, in advance of any meeting at which a designee will initially represent the Council member, as to the name, address, and position of the individual designated. A designee may not name another designee. However, such officials may submit to the Chairman, under the above conditions, a list of several individuals who may act as designee. The list should indicate who would serve as the designee if more than one of the individuals on the list were in attendance at the meeting.

6. COUNCIL MEMBERS AND STAFF:

The Council, based on determined needs, will hire staff to serve the Council in carrying out its duties and functions as mandated by the Act. The Council must notify the NOAA Office of General Counsel before seeking outside legal advice, which may be for technical assistance not available from NOAA. If the Council is seeking legal services in connection with an employment practices question, the Council must first notify the Department of Commerce's Office of the Assistant General Counsel for Administration, Employment and Labor Law Division. The Council may not contract for the provision of legal services on a continuing basis.

A. Employment Practices:

- (1) Scope. This section shall govern employment practices by the Council unless specifically modified by federal legislation or funding requirements.
- (2) Equal Employment Opportunity. The Council is an Equal Employment Opportunity Employer. All employment actions will be free from discrimination basis on race, religion, color, national origin, sex, age, disability, sexual orientation, status as a parent, and reprisal.

Employee requests for disability-related accommodations will be processed in accordance with Department Administrative Order, DAO 215-10.

Except for complaints alleging sexual orientation and status as a parent, complaints by employees alleging that they have been discriminated against on the bases listed above, should be processed in accordance with 29 C.F.R. § 1614. Employees must contact an EEO Counselor at NOAA's Office of Civil Rights within 45 days of the date of the alleged discrimination. Employees alleging discrimination on the basis of sexual orientation will have their complaints processed in accordance with DAO 215-211. Employees must contact an EEO Counselor at NOAA's Office of Civil Rights within 45 days of the date of the alleged discrimination."

- (3) Status of Employees. The Council is a federal instrumentality funded by a cooperative agreement from the United States Department of Commerce. Members of the Council and its employees are not federal employees and are not subject to federal benefits or Civil Service regulations.
- (4) Salary and Leave Administration
 - .01 Salary Range
All staff positions are subject to the salary ranges recommended by the executive director and approved by the council within the council salary schedule. The council uses the Commerce Alternative Personnel System (CAPS): Pay Administration Schedules. The CAPS schedules used will reflect the Locality Pay Area of the Rest of the U.S. (RUS) or the city in which the council headquarters is located if provided in the schedule.

.02 Compensation for Unused Leave

Annual Leave - Employees who are separated from council service will be paid in a lump sum for unused annual leave up to a maximum of 60 days.

Compensatory Leave - Upon termination, non-exempt employees will be paid for accrued compensatory leave in accordance with the Fair Labor Standards Act. Employees exempt from the Fair Labor Standards Act will forfeit all accrued compensatory leave upon termination.

Sick Leave - Upon their retirement or death, council staff members (or their survivor/beneficiary) will receive compensation for 100% of their accrued unused sick leave with a cap of 150 days to be paid as a lump sum or over a period of time at their option. The amount will be calculated on the average daily rate of pay for the past three-year's annual earnings.

(5) Staffing.

Funding for each new position must be included and justified during the budget process described in 15 CFR Part 14 prior to filling a new position, or funding must be available in the budget to establish a new position during the course of the cooperative agreement year.

.01 Recruitment. In recruiting individuals to fill Council positions, the Executive Director shall see that all staff positions are filled solely on the basis of merit, fitness, competence and qualifications.

Recruitment and other personnel actions shall be reviewed by the Executive Director to assure that they are free from discrimination based on race, religion, color, creed, national origin, sex, age, political affiliation, sexual orientation or disability.

.02 Employment of Close Relatives. The employment of related individuals is not allowed when close relatives are within a direct line of supervisory authority with one another, irrespective of the number of intervening levels of supervision. Close relative is construed to mean parent, spouse, child, brother, sister, step-parent, step-child, step-brother, step-sister, half-brother, half-sister, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law. This policy is to prevent, or avoid giving the appearance of, inequitable hiring, promotion and separation practices, which could interfere with the Council's ability to fulfill its mission.

.03 Record Keeping. Records of hours worked and wages paid are required to be kept for each employee subject to the wage and hour requirements of the Fair Labor Standards Act. Records must be preserved for at least three years.

.04 Salary Rate. In setting rates of pay the Council shall abide by the principle of equal pay for equal work. Variations in basic rates of pay should be in proportion to substantial differences in the difficulty and responsibility of the work performed.

(6) Work Schedule.

.01 Work week. The standard workweek for employees of the Council is 40 hours per week (Sunday through Saturday). The normal daily work schedule is to be determined by the Executive Director. The Council office shall be open to the public from 8:00 a.m. until 5:00 p.m. Monday through Friday, excluding holidays, and other special circumstances as may be designated by the Executive Director.

(7) Overtime Compensation.

.01 Overtime compensation shall be in accordance with provisions of the Fair Labor Standards Act (29 U.S.C. Sec. 201 et. seq.)

.02 Exempt Employees. The Executive Director is exempted from the hours of work and overtime pay standards under the Fair Labor Standards Act. Exempt employees shall be determined on the basis of the nature of the work performed, the duties and responsibilities assigned, and the terms or conditions of employment by the Executive Director.

.03 Non-Exempt. Non-exempt employees shall not be eligible for overtime compensation unless the overtime hours (hours in excess of 40 hours a week including approved travel) to be worked are approved in advance by the Executive Director. Approved overtime hours will be paid at the rate of one and one-half times the hourly compensation rate for each hour worked. In lieu of overtime compensation, employees may receive compensatory leave at rates equal to those stated above.

(8) Standards of Conduct.

.01 Political Activity. No Council member or 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 elective office.

No employee of the Council shall 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 any political party in any national, state, county, or municipal election or on account of his or her political affiliation.

No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, a contribution of money or anything of value either as a political contribution or a personal emolument in consideration of either support, or the use of influence, or the promise of support, or influence in obtaining for any person, any appointed or elective office, place or employment under the Council.

.02 Financial Interest. 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.

.03 Use of Information. 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.

.04 Use of Council Property. No Council member or employee of the Council shall use Council property on other than official business. Such property shall be protected and preserved from improper or deleterious operation or use. Approval must be obtained from the Executive Director prior to removing any Council property for use outside the Council office other than items customary and necessary for meetings convened outside of headquarters.

.05 Improper Conduct. No Council member or employee of the Council shall engage in criminal, infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.

No Council member may participate: (1) Personally or 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 (2) Council members appointed by the Secretary must submit a Statement of Financial Interest that discloses any financial interest held in any harvesting, processing or marketing activity that is being, or will be, undertaken within any fishery over which the Council has jurisdiction. The requirement extends to the spouse, minor children, or partner of the member, or organization (other than the Council) in which the member is serving as an officer, director, trustee, partner or employee.

.06 Drug and Alcohol Free Workplace. The Council maintains a drug and alcohol free work environment. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance or alcohol in the workplace of the Council is prohibited. Every employee must abide by this prohibition as a condition of employment. Violation will result in dismissal. The Council does not have an established controlled substance or alcohol abuse program. If counseling is needed for controlled substance or alcohol abuse (either determined by the employer or employee), management will assist in seeking outside professional assistance.

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

- (9) Security Investigations. Certain employees may be designated to have access to information subject to security classification. In such cases access to the information will be governed by federal standards and employees so designated shall receive an

appropriate security clearance from the Office of Investigations and Security of the United States Department of Commerce.

B. Access to Confidential Data: Identified staff shall have routine access to confidential data via computer as well as other means in accordance with Council procedures. Confidential data may be received from federal or state sources or voluntarily submitted by private persons. Confidential data shall be adequately protected to avoid access by unauthorized users. Confidential data, data derived from confidential data (e.g., aggregated data) or the results of any analysis of confidential data will not be released to others until the information has been classified as not confidential by the National Marine Fisheries Service Southeast Fisheries Center Data Base Administrator.

(1) Definitions. The following definitions apply for purposes of Council policy and procedure for handling confidential data.

.01 Aggregate or Summary Form. Restructuring confidential data or information in such a way that the submitter of the data cannot be identified, either from the present release of the restructured data being processed or in combination with preceding or other releases.

.02 Authorized Use. That specific use which is allowable within the constraints imposed on the Council by federal or state statutes, regulations, and directives or by Council policies and procedures or commitments made by the Council or Council staff to submitters under data collections sponsored by the Council.

.03 Authorized User. A Council staff member or contractor specified by the Executive Director as having a need to use confidential data, who has met other requirements specified in these procedures, are cognizant of these procedures, has agreed to comply with the requirements herein, and has signed a "statement of non-disclosure" affirming the user's understanding of Council policies and procedures with respect to confidentiality of statistics, including obligations to comply with federal and state confidentiality laws, regulations, and procedures. Contractors specified to have need to access state or federal confidential data must obtain data directly from the federal or state entity and comply with the federal, state and Council laws, regulations and procedures.

.04 Confidential. Information, the disclosure of which may be prejudicial or harmful, including data received from state or federal agencies labeled confidential and Council sponsored data collections where confidentiality was pledged to the submitter.

.05 Conflict of Interest. Use of confidential data in an attempt to provide personal gain, reward, or competitive advantage.

.06 Contract/Agreement. All binding forms of mutual commitment under a stated set of conditions to achieve a specific objective.

.07 Data, Information, and Statistics. Used interchangeably; all three may be confidential.

.08 Data Base Administrator. For NMFS or state sponsored data gathering, an employee in each NMFS data management center responsible for the direction and development of data management systems. The SAFMC Data Base Administrator is the Southeast Region DataBase Administrator. For Council sponsored data gathering, the Executive Director will serve as data base administrator.

.09 Need to Know. The request for access is consistent with the use for which the data are obtained. (Refer to NOAA Administrative Order 216-100)

(2) Policy.

.01 Disclosure. Confidential data received from federal or state agencies will not be disclosed without authorization from that agency. Disclosure of confidential data collected under Council sponsorship shall be in accordance with guidelines established by NOAA directive governing confidential fishery statistics.

.02 Access. All users having access to confidential data shall be informed that the data are confidential and be required to sign a statement of non-disclosure. When there is a potential for or possible appearance of conflict of interest, access will not be permitted. Council staff specified by the Executive Director as authorized users shall sign a statement to assure no conflict of interest.

.03 Operational Responsibilities. The Council Executive Director (or his designee) will serve as the Data Base Administrator for purposes of Council sponsored data collections. The Executive Director will coordinate with NMFS Data Base Administrator as it relates to federal confidential data and with designated state officials for state confidential data.

(3) Obtaining Confidential Data.

.01 State and Federal Agencies. Council Executive Director or Council staff member designated as authorized user, may request confidential data from state or federal agencies to carry out Council responsibilities where direct access to confidential data has not been granted.

.02 Council Sponsored Data Collection. Data submitted to Council are voluntary. If a pledge of confidentiality is made to the submitter, these data are to be treated as confidential to the extent legally permissible. The Executive Director is responsible for making the determination as to when a pledge of confidentiality may be made. Submitters will be advised, in all cases, orally or in writing, the purpose for collecting data, uses that may be made of the data, and that submission of the data is voluntary. If a pledge of confidentiality is made, the submitter shall be advised in writing.

If the Council contracts to have data gathering on its behalf, contractors and their employees are subject to the same civil and criminal penalties as any other authorized users. Contractor personnel will be required to sign a statement of non-disclosure. Confidential data collected under contract are to be transferred on a timely basis to authorized Council staff. No copies of these data can be retained by the contractor.

Aggregated data may be retained. A data return clause shall be included in the contract.

- (4) Conflict of Interest. Authorized users are prohibited from using confidential data for personal gain, reward or competitive advantage. If a potential conflict of interest or the appearance of a conflict of interest exists, the Executive Director will refer the matter to the NOAA Office of General Counsel, Southeast Region, for determination.
- (5) Security. An inventory will be maintained of all confidential data received from state or federal agencies or collected by Council. The inventory will include a record of distribution and final disposition of each data set. Data will be maintained in a secure fashion whether hard copy or electronic.
- (6) Access.
- .01 Access Control. Access to confidential data received from state or federal agencies shall be approved by a designated agency official. Access to confidential data collected under Council sponsorship shall be approved by the Executive Director in accordance with Council policies and procedures.
- .02 Users. Access will be limited to authorized users. Council authorized users are the Executive Director and Council staff as specified by the Executive Director.
- .03 Reproduction. Reproduction of any confidential data must be approved by the Executive Director and entered into the data inventory.
- .04 Contractors. Council contractors may be authorized access to confidential data collected under Council sponsorship with the approval of the Executive Director. Requests for access by a contractor to confidential data submitted to the Council by a state or federal agency shall be submitted to the designated agency official for approval. Documentation of that approval must be entered into the data inventory.
- .05 Statement of Non-Disclosure. Each user or clerical staff that handles the data is required to sign a statement, which states they understand the confidential nature of the data, and the penalties for unauthorized use and disclosure. The statements shall be kept on file by the Executive Director.
- (7) Release of Confidential Data.
- .01 Release of Confidential Data (Public Requests). Verbal requests will be refused. Written requests are to be treated as FOIA requests and will be forwarded to NOAA General Counsel or the NOAA FOIA Officer for decision.
- .02 Requests from Congress and Federal and State Agencies. Requests shall be submitted to NMFS.
- .03 Subpoenas for Data. Subpoenas should be submitted immediately to NOAA Office of General Counsel, Southeast Region.

.04 Requests for Release of Aggregate Data. Requests for aggregate data compiled from confidential data shall be approved by the Data Base Administrator for the submitting agency or the Executive Director for Council sponsored data collections.

- (8) Statement of Non-Disclosure and Conflict of Interest. The following statement will be signed and kept on file for all users having access to confidential data.

I will not disclose any statistics identified as confidential by a state, the National Marine Fisheries Service or a fishery management Council to any person or persons except authorized users in accordance with NMFS, Council and/or state applicable procedures and policies.

I will not use any NMFS, Council or state sponsored data for personal gain, reward, or competitive advantage. I understand that any potential conflict of interest or the appearance of a conflict of interest will be referred to the NOAA Office of General Counsel for determination.

I am fully aware of the civil and criminal penalties for unauthorized disclosure, misuse or other violation of the confidentiality of such statistics as provided for in the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

Date

Signature

7. COUNCIL STEERING COMMITTEES:

The Council will establish steering committees to address administrative and technical issues relative to the conduct of Council business and the development of fishery management plans and amendments. These committees will provide guidance to the Council by developing recommendations to be considered and acted upon by the Council.

- 8. TRAVEL POLICY:** Council travel will be governed by and subject to GSA Travel Regulations as authorized by the Council Chairman or Executive Director under GSA reimbursement limits. The Council shall comply with the Fly America Act.

- 9. COUNCIL COMPENSATION:** All Council members whose eligibility for compensation has been established in accordance with the Act will be compensated at the level indicated in 50 CFR 600.245 when engaged in the actual performance of duties as assigned by the Council chairperson. This includes travel to and from council meetings and assigned participation in webinars. Such compensation may be paid on a full day's basis whether in excess of eight hours a day or less than eight hours a day. The time is compensable where the individual is required to expend a significant private effort, which substantially disrupts the daily routine to the extent that a workday is lost to the member. No reimbursement for salary will be made for "homework" time spent in preparing for a meeting. Appointed members who are employees of a state government may be compensated if they document that they were on leave without pay during the time they were engaged in the actual performance of duties (does not include annual leave, holidays or weekends). A Council

member may request of the chairperson to travel on behalf of the Council without compensation. Council Members who are eligible for compensation will be paid on a contract basis without deductions being made for Social Security, federal, or state income taxes.

10. SSC COMPENSATION

To be completed when the SOPPs Final Rule has been published.

11. MEETINGS AND HEARINGS:

Meetings and hearings of the Council, its Scientific and Statistical Committee and Advisory Panels will be in accordance with procedures as outlined in the Act. Unless modified in this Statement of Organization Practices and Procedures the Council and authority of the chair will follow *Roberts Rules of Order Newly Revised*. The vice-chairperson will serve as parliamentarian and be responsible for the rules of procedure at Council meetings.

A. Council Meetings:

- (1) General. The Council meets in plenary session at the call of the chairman or at the request of a majority of the voting members. Emergency meetings may be held at the call of the chairman or equivalent presiding officer based on their determination that an emergency exists. The chairman or equivalent presiding officer may consult with other Council members, the Regional Administrator and /or NOAA General Counsel in making their determination that an emergency exists.
- (2) Notice. Timely public notice of each regular and emergency meeting of the Council and the Scientific and Statistical Committee and advisory panels of the Council, will be given in the manner prescribed by the Act and by such other means as the Council may determine necessary to assure the interested parties are aware of the meeting and items to be addressed. Timely notice of each regular meeting and notice of each emergency meeting, where time permits, must also be published in the Federal Register. If notice of an emergency meeting is not published prior to the meeting, it must be published as soon as possible following the meeting.
- (3) Agenda. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice 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.
- (4) Conduct of Meetings. Meetings of the Council are open to the public. Interested persons will be permitted to present oral or written statements regarding matters on the agenda at regular meetings of the Council within reasonable limits as established by the chair. A majority of the voting members constitutes a quorum, but one or more members designated by the chair may hold hearings. Decisions of the Council are by majority vote of the voting members present and voting. Voting by proxy is not permitted. An abstention does not affect the unanimity of a vote. Voting members who disagree with the majority on any issue to be submitted to the Secretary may submit a written statement of their reasons for dissent. The minority report should be submitted at the same time as that of the majority. If the Regional Administrator disagrees with a Council action that is to be submitted to the Secretary (votes against), he must provide a statement to the Council within

ten (10) working days after adjournment of the Council meeting as to why he dissented. The statement of disagreement is to be included with the document upon submission to the Secretary.

- (5) Motions. All motions to be voted on by the Council must be in a written form for each Council member and the public to see.
- (6) Roll Call Vote. At the request of any voting member of a Council and on all final votes on actions to be submitted to the Secretary, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.
- (7) Minority Reports. Council members in the minority wishing to submit a minority position will be responsible for the preparation of the minority report. Council staff will provide data and any other information of record requested for the report. Information used in the minority report must have been available to the Council and discussed by the Council in making its decision. The minority must declare their intent to submit a minority position to the Executive Director within three working days after the majority vote and have the minority report ready for submission within 30 days after such declaration.

If possible, at the same time of the majority vote, the staff will indicate the submission time frame. The intent is for the majority and minority documents to be submitted to the Secretary at the same time.

- (8) Records. Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The chairman shall certify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction. The administrative records of meetings are available for public inspection and copying at Council headquarters, subject to confidentiality of matters discussed. An administrative fee may be charged for research and copying of records.
- (9) Closed Meetings. The Council must close any meeting or portion thereof that concerns matters or information that pertains to classified national security. The Council may close any meeting or portion thereof that concerns matters or information that pertains to unclassified national security, employment, personnel, confidential data or briefings on litigation. The Council will provide the time and location for any meeting or portion of a meeting that will be closed by any means that will result in wide publicity in the major fishing ports within its region (and in other major, affected fishing ports). Notification of any brief closure of a meeting or portion of a meeting to discuss employment or other internal administrative matters is not required.

- (10) Frequency. The Council meets in plenary session at least once every six months. With approval of the chair, advisory groups may meet as frequently as necessary.
- (11) Location. The Council conducts meetings within its geographical area of concern, but may hold joint meetings with other Councils within any of their constituent states for the purpose of discussing issues of mutual concern. The meeting place will have a capacity large enough to accommodate anticipated public attendance and be accessible to interested attendees, including consideration of the cost of transportation and lodging.
- (12) Submission of Information. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject or the oral or written statement.
- (13) Policy on Public Testimony Before the Council. Public testimony will be allowed at Council meetings on all agenda items before the Council for final action and at advisory panel (AP) and Scientific and Statistical Committee (SSC) meetings on all agenda items. If the agenda does not schedule a time for public testimony, the chairperson or presiding officer shall schedule testimony at an appropriate time during the meeting that is consistent with the orderly conduct of business. Public testimony may be allowed at meetings of the Council, standing committees, stock assessment groups, or other working groups. For Council meeting agenda items on which no final action is being taken, testimony may be deferred to future public hearings and/or to the Council meeting at which final action will be taken. Testimony may be deferred to a meeting time scheduled for other business for non-agenda items or to a future Council meeting at the discretion of the chairperson or presiding officer of the Council, AP, or SSC.
- Where constrained by available meeting time, the chairperson or presiding officer of the Council, AP, or SSC may limit public testimony in a reasonable manner by requesting that parties testifying avoid duplicating prior testimony, requiring parties with similar concerns to select a spokesperson, and/or setting a reasonable time limit for each party's testimony.
- (14) New Information. If it is considered appropriate to consider new information from a state or federal agency or from a Council advisory body, the Council, in the course of developing a fishery management plan or amendment, will give comparable consideration to new information offered by members of the public. Interested parties will be given a reasonable opportunity to respond to new data or information through the scheduled hearing and public comment periods before the Council takes final action.
- (15) Electronic Submissions to the Council. When any type of electronic submission is provided to the Council for the purpose of providing information and/or expressing a position/opinion regarding management actions being considered by the Council, a reasonable opportunity will be provided for council members to view the material. Electronic submissions may be made to the council at any time,

however, they should be provided no later than 10 days before the council meeting at which the subject material will be addressed.

B. Public Hearings:

- (1) General. The Council holds public hearings to provide the opportunity for all interested persons to be heard in the development and amendment of FMPs.
- (2) When Required. Public hearings will be held during the development of fishery management plans. The Council may in its discretion hold such hearings at any time and from time to time during the development of a fishery management plan. The Council may not submit a fishery management plan to the Secretary of Commerce without first receiving public comments on the plan through a public hearing. The Council may when it deems necessary hold public hearings with respect to the administration and implementation of the Act.
- (3) Location. Public hearings conducted pursuant to these rules shall be held in the geographic area deemed by the Council to be the most concerned with the proposed action.

The Council may in its discretion hold public hearings in several locations when the proposed action is one that affects many areas of the South Atlantic Region.

- (4) Public Notice. Public notice of hearings shall be given in the manner prescribed by the Act and/or by such other means as the Council may determine necessary to assure that interested parties are aware of the opportunity to make their views known.

Public notice may include a summary of the subject matter of the hearing; the time and place for the hearing; and a statement indicating by what date and time written comments must be received. Where management plans are to be discussed the notice shall also set forth where copies may be obtained and at what cost, if any.

- (5) Record of Proceedings. A record will be maintained and will be available for public inspection at the Council offices during regular office hours.
- (6) Presiding Officer. When a public hearing is conducted at a scheduled Council meeting, the chairperson or his designee shall act as presiding officer. When a public hearing is conducted with less than the full Council participating, the Council shall designate one member to act as presiding officer. The presiding officer at the hearing shall have complete control of the proceedings including: extensions of time requirements, recognition of speakers, time allotments for presentations, the right to question speakers, direction of the discussion and management of the hearing. The presiding officer, at all times, will take care that each person participating in the hearing is given a fair opportunity to present views, data and comments.

12. ADVISORY PANELS:

- A. Scientific and Statistical Committee: The Scientific and Statistical Committee is composed of members of the multi-disciplined scientific community who provide advice to the Council on matters relating to the conservation and management of fishery resources. The Committee is established and functions as specified under authority of the Act. (See attached SSC Policy for more information).
- B. Advisory Panels: The panels are composed of individuals either actually engaged in the harvest of or knowledgeable and interested in the conservation and management of the fishery or group of fisheries to be managed. The panels shall reflect the expertise and interest from the standpoint of geographical distribution, conservation, consumerism, industry and other user groups, and the economic and social groups encompassed by the Council's geographical area of concern. The Advisory Panels are established under authority of the Act.

13. COUNCIL COORDINATION COMMITTEE (CCC):

The CCC consists of the chairs, vice chairs, and executive directors of each of the eight regional fishery management councils, other council members, and staff. The chairs, vice chairs, and executive directors shall be voting members. The six NOAA fisheries regional administrators or their designees, other council members, and staff shall be non-voting members. The CCC shall meet from time to time as appropriate to discuss issues of relevance to all councils. The council coordinating committee may establish such subcommittees as it deems appropriate”.

14. MANAGEMENT PLAN DEVELOPMENT:

The development procedures for fishery management plans (FMP) are contained in 50 CFR Part 600, primarily subpart D. The Council’s fishery management planning, development and submittal process will be consistent with these guidelines and other applicable law. To accomplish this process the Council will utilize management committees of the council and advisory panels (APs) for each fishery, a Scientific and Statistical Committee (SSC), other specialized groups as determined necessary by the Council, and public scoping meetings, public hearings and various other means of constituent input. The management committees will have oversight over the FMP and amendment development process and will make recommendations to the Council based on the recommendations of the APs, the SSC, state and federal agencies, as well as public comment.

15. HABITAT CONCERNS:

As specified in Section 305(b)(3)(A) and (B) of the Act, the Council may comment on and make recommendations concerning any activity undertaken or proposed by any state or federal agency that in the Council's view may affect the habitat of a fishery resource under its jurisdiction. Also, the Council will comment on and make recommendations concerning any activity that in the view of the Council is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction. However, a lack of comment by the Council does not imply that an activity will not substantially affect the habitat of a fishery resource under its jurisdiction.

16. RECORD KEEPING:

A. Administrative Records for Fishery Management Plans (FMPs): The Councils and NMFS Headquarters, Regions and Centers collectively are responsible for maintaining records pertaining to the development of FMPs and amendments within their geographic area of authority. In the event of litigation, compilation of an administrative record for a court case will be under the direction of the NOAA General Counsel. Categories of documents, which generally constitute an administrative record, include the following:

- (1) agendas;
- (2) minutes;
- (3) SSC, APs, hearings, Council reports/recommendations;
- (4) written correspondence and emails relating to the FMP;
- (5) scoping comments;
- (6) work plan
- (7) discussion papers;
- (8) NEPA documents;
- (9) regulatory analyses;
- (10) PRA justification;
- (11) proposed, final, and emergency regulations;
- (12) notices of meetings

B. Privacy Act (PA) Records: Personnel files are maintained under appropriate safeguards. Disposition of PA records is in accordance with federal regulations.

C. Freedom of Information Act (FOIA):

- (1) FOIA requests received by a Council should be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to the NMFS FOIA Official to secure a FOIA number and log into the FOIA system. The Region will also obtain clearance from the NOAA General Counsel's Office concerning initial determination for denial of requested information.
- (2) FOIA requests will be controlled and documented in the Region. The requests should be forwarded to the NMFS FOIA Officer who will prepare the Form CD-244, "FOIA Request and Action Record", with the official FOIA number and due date. In the event the Region determines that the requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature, along with the "Foreseeable Harm" Memo and list of documents to be withheld, must be cleared through the NMFS FOIA Officer. Upon completion, a copy of the signed CD-244 and cover letter transmitting the information should be provided to the NMFS FOIA Officer and the NOAA FOIA Officer.

17. FINANCIAL MANAGEMENT:

The Council administrative operations and grant activities are governed by 15 CFR Part 14 and OMB Circular A-122 (Cost Principles for Non-Profit Organizations). 15 CFR Part 14 prescribes standards for financial management systems, procurement, property management, financial reporting, cash depositories, and grant closeout

procedures. The Council is required to comply strictly with the provisions of the 15 CFR Part 14, circulars and terms and conditions of the cooperative agreement.

- A. Audits: In accordance with OMB Circular A-133, an independent audit is required at least biennially by the Department of Commerce (DOC) Office of the Inspector General or an independent public accountant (IPA) for awards under \$1,000,000 and annually for awards over \$1,000,000. The scope of the audit may include conduct of financial operations, compliance with applicable laws and regulations, economy and efficiency of administrative procedures, and achievement of results. If an IPA performs the audit, the request for proposals and contract must comply with the Audit Guidelines. As part of the IPA's examination, they should comment on whether efforts have been made by the Council to include small, minority, and women-owned business as sources of supplies and services. It is suggested that the Grants Officer and a representative of the Administrator's staff be a participant in the audit exit conference.

- B. Financial Reports: Financial reports are required which summarize total expenditures made and status of funds unexpended for each award. Types and frequency of reports are governed by grant award conditions.