



# New England Fishery Management Council

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## Statement of Organization, Practices, and Procedures (SOPP) 2015

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## Table of Contents

<b>1. Council Functions and Responsibilities .....</b>	<b>1</b>
<b>2. Council Organization .....</b>	<b>2</b>
2.1 Council Composition and Jurisdiction .....	2
2.2 Oath of Office .....	3
2.3 Terms of Council Members, Removal, and Council Officers .....	4
2.4 Designees .....	5
2.5 Scientific and Statistical Committee .....	6
2.6 Advisory Panels (AP)/Fishing Industry Advisory Committee (FIAC) .....	7
2.7 Plan Development Teams (PDTs) .....	8
2.8 Council Committees .....	9
<b>3. Council Meetings.....</b>	<b>9</b>
3.1 Agenda and Notification – Regular and Emergency Meetings.....	9
3.2 Conduct of Meetings .....	10
3.3 Record.....	12
3.4 Frequency and Duration.....	13
3.5 Location.....	14
3.6 Public Hearings .....	14
3.7 Council Member Compensation.....	14
3.8 Stipends .....	15
<b>4. Employment Practices.....</b>	<b>15</b>
4.1 Staffing .....	15
4.2 Experts and Consultants .....	15
4.3 Detail of Government Employees .....	15
4.4 Personnel Actions .....	16
4.5 Salary and Wages .....	16
4.6 Council Member and Staff Legal Protections .....	16
4.7 Recruitment and Anti-Discrimination Policy .....	17
4.8 General Harassment Policy .....	17
4.10 Leave .....	18
4.11 Employee Benefits .....	19
4.12 Travel Reimbursement.....	19
4.13 Training .....	20
4.14 Invitational Travel .....	20
<b>5. Standards of Conduct.....</b>	<b>20</b>
5.1 Federal Criminal Statutes.....	20
5.2 General Standards of Conduct.....	21
5.3 Financial Disclosures .....	22
<b>6. Financial Management.....</b>	<b>24</b>
6.1 Governing Statutes .....	24
6.2 Cooperative Agreements and Contracts .....	24
6.3 Procurement.....	25
6.4 Property Management.....	26
6.5 Real Property .....	26
6.6 Accounting and Budgetary Control Procedures .....	26
6.7 Audits .....	27

6.8	Financial Reporting .....	27
<b>7.</b>	<b>Recordkeeping .....</b>	<b>27</b>
7.1	Definitions .....	27
7.2	Availability of Records .....	28
7.3	Administrative Records for Fishery Management Plans .....	28
7.4	Disposition of Records .....	28
7.5	Privacy Act Records .....	29
7.6	Freedom of Information Act (FOIA) .....	29
7.7	Confidentiality of Statistics .....	29
7.8	Information Quality .....	29

United States Department of Commerce  
National Oceanic and Atmospheric Administration  
New England Fishery Management Council

**STATEMENT OF ORGANIZATION, PRACTICES, AND PROCEDURES**

The New England Fishery Management Council, created by Section 302(a)(1)(A) 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 January 29, 2004.

Copies of this SOPP are available upon request by writing or contacting the New England Fishery Management Council, 50 Water St., Mill 2, Newburyport, MA 01950. The SOPP is also available electronically on the Council's website at <http://www.nefmc.org>.

**1. 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 or her 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 that 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 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; and
  - (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 and accountability measures 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 pertaining to stocks managed by 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. Council Organization**

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

The Council has eighteen (18) voting members and four (4) non-voting members. The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. However, the Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Councils, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

The intercouncil boundaries for New England and Mid-Atlantic Councils begins at the intersection point of Connecticut, Rhode Island, and New York at 41°18'16.249" N. lat. and 71°54'28.477" W. long and proceeds south 37°22'32.75" East to the point of

intersection with the outward boundary of the exclusive economic zone (EEZ) as specified in the Magnuson-Stevens Act.

### **2.1.1 Voting Members**

The voting members of the Council shall be:

- 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.
- The Regional Administrator of the National Marine Fisheries Service (NMFS) for the Northeast Region, so long as the Administrator continues to hold such position, or a designee;
- Twelve (12) voting members appointed by the Secretary of Commerce (at least one of whom shall be appointed from each state).

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

The non-voting members of the Council shall be:

- The Region 5 Regional Director of the U.S. Fish and Wildlife Service, or a designee;
- The Commander of the First District Coast Guard District, or a designee;
- The Executive Director of the Atlantic States Marine Fisheries Commission, or a designee;
- 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 nor 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 voting 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) serve for a term of three (3) years except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member may serve more than three (3) consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member. A 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. 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**

At the first regularly scheduled Council meeting after new Council appointments become effective each year, the Council will elect a Chairman, Vice Chairman and Executive Committee from the voting members of the Council by a majority vote of the voting members present and voting. Both the Chairman and Vice Chairman 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 Executive Committee consists of the Chairman and Vice-Chairman, the past-year Chairman (if still on the Council) and, as necessary, either two or three members-at-large who are elected in the same manner as the Chairman and Vice-Chairman.

The Chairman, or in the Chairman's absence the Vice Chairman, 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 Chairman 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 Chairman 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 Chairman 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 Chairman, 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 Chairman or Vice-Chairman of the Council, and as Vice-Chairman would serve as Chairman in the absence of the elected Chairman; however, a designee for an elected Chairman cannot serve as Chairman.

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 or their designees(s) must be delivered in writing to the appropriate NMFS Regional Administrator and the Council Chairman 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**

As required by the Act at Section 302(g)(1), the Council has established 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 the Council's development and amendment of its fishery management plans.

### **A. 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;
- Assist the Council in the development, collection, evaluation, and peer review of statistical, biological, economic, social, and other scientific information relevant to the development and amendment of fishery management plans;
- Provide guidance to ensure that fishery management plans, amendments and framework adjustments are based on the best scientific information available (National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act); and
- Perform other appropriate tasks as may be required by the Council.

### **B. Members and Chairman**

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. The SSC shall nominate from its members a Chairman and Vice Chairman who both will be confirmed by the Executive Committee for one-year terms.

SSC members will be paid for travel expenses in accordance with the Council's travel policy. Subject to the availability of appropriated funds, members of the SSC are eligible to receive stipends provided they are not Federal or State employees, as defined at 50 CFR Section 600.133(b).

### **C. Administrative Provisions**

To the extent practicable, the SSC shall meet regularly; either before or in conjunction with Council meetings, and the SSC Chairman (or appropriate representative) may attend

Council meetings. The Committee may meet as a whole or in part at its own request, or at the request of the Executive Director, with the approval of the Council Chairman whenever necessary to fulfill its responsibilities. The SSC may schedule additional meetings, as needed, for the review of fishery management plan items and to address longer-term issues that may require SSC recommendations in the form of “white papers.” The Executive Director shall provide staff support to the committee. Public comment will be invited at the discretion of the SSC Chairman. Notice of meetings of the SSC shall comply with the applicable notice requirements specified for Council meetings.

#### **D. Subcommittees**

SSC subcommittees may be established as needed.

### **2.6 Advisory Panels (AP)/Fishing Industry Advisory Committee (FIAC)**

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

The Council has established Advisory Panels (APs), which often serve as fishing industry advisory committees (FIAC), and will form such panels as it deems necessary or appropriate to assist in carrying out assigned functions under the Act. New England Council Advisory Panels (APs) that meet the requirements for a fishing industry advisory committee (FIAC) are made up of members from the fishing industry (from both commercial and recreational sectors), scientists, environmental organizations, and others with knowledge and experience related to fisheries issues. APs meet separately or jointly with the relevant oversight committee and provide input and assistance in developing management plan measures. The Council may establish or abolish its APs as necessary.

#### **B. Membership**

New England Council APs that meet the requirements for a FIAC are made up of members from the fishing industry (from both commercial and recreational sectors), scientists, environmental organizations, and others with knowledge and experience related to fisheries issues. Appointments to the APs 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. The Advisory Panels shall be comprised of individuals who are either actively engaged in some aspect of the region’s commercial or recreational fisheries, or are knowledgeable and interested in the conservation and management of a fishery or group of fisheries that are managed by the Council. Panel membership shall also reflect as broad a cross-section as possible of interests and expertise from the standpoint of geographical distribution, user group representation, and social and economic diversity that generally may be found within the Council’s geographical area of concern.

A chairman for each AP will be designated by the oversight committee chairman (with the advice of committee members), reviewed by the Executive Committee and approved by the Council Chairman. If an oversight committee determines it is necessary, the Advisory Panel may also designate a vice-chairman who will be selected in the same manner as the AP Chairman.

Advisors are appointed every three years following a solicitation for candidates. However the Council may add advisors in the interim as needed. After reviewing applications, the respective oversight committee recommends new or returning advisors. Neither proxies nor designees can serve in place of an appointed member of any Advisory Panel. The Council's Executive Committee provides the final approval of advisory panel members.

### **C. Administrative Provisions**

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 Section 600.133(b). Advisors are eligible for reimbursement of travel expenses incurred while attending authorized meetings scheduled by the Executive Director and subject to availability of funds. Advisory Panel members will be paid for travel expenses in accordance with the Council's travel policy.

Notice of meetings of the APs shall comply with the applicable notice requirements specified for Council meetings.

## **2.7 Plan Development Teams (PDTs)**

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

The Council's Plan Development Teams (PDTs) are responsible for developing options, providing technical analyses and writing fishery management plans (FMPs), based on the Council's explicit direction. The PDTs are not independent, but will work with the oversight committees to refine options that are consistent with Council strategies and achieve the management objectives of the FMP.

### **B. Membership**

The PDTs provide an expanded pool of expertise for the purpose of conducting data analyses and providing information to the Council. PDTs are made up of scientists, managers and other experts with knowledge and experience related to the biology and/or management of a particular species. Individuals serve as an extension of the Council staff.

PDTs meet regularly to respond to any direction provided by the oversight committee or Council, to provide analysis of species-related information and to develop issue papers, alternatives, and other documents as appropriate. A member of the Council staff generally chairs each PDT and the team members are from state, federal, academic or other institutions.

### **C. Administrative Provisions**

The purpose of the Council's PDTs is to perform analytical and other technical work for the Council and meetings may need to be held on an ad hoc basis, with little advance notice; therefore, although meetings are open to the public, it may not always be possible to give timely notice. Generally, however, efforts will be made to let the public know when a PDT meeting is scheduled. The public may call the Council Office to determine

when PDT meetings are scheduled. The PDT may discuss issues listed on their agendas in any order and may discuss other issues not contained in the notice. Members of the public may attend but should not expect to speak at PDT meetings unless the PDT Chair requests their input. PDTs are responsible to the Council and work as directed by the Council's committees. Because the Council and its Committees, not the PDTs, set management policy, comments about management options, unless solicited by the PDTs, should be provided to the committees and not to the PDTs.

PDT members are eligible for reimbursement of travel expenses incurred while attending authorized meetings scheduled by the Executive Director and subject to availability of funds. PDT members will be paid for travel expenses in accordance with the Council's travel policy. PDTs do not come under either notice or stipend requirements of the Act.

## **2.8 Council 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.

Standing committees meet regularly to review and discuss individual FMPs and develop specific measures that will form the basis of the plan, plan amendment or framework adjustment to an FMP. Committee recommendations are forwarded to the full Council for their approval before inclusion in any draft or final version of an FMP.

Any interested persons may obtain a list of committee membership upon request to the Council office or on the Council's website: [www.nefmc.org](http://www.nefmc.org). Committees may be added or removed as conditions change.

Notice of meetings of Council committee's shall comply with the applicable notice requirements specified for Council meetings

## **3. Council Meetings**

### **3.1 Agenda and Notification – Regular and Emergency Meetings**

The Executive Director in consultation with the Council Chairman drafts the agenda for each Council meeting. The Executive Committee will review the draft agenda before it is released to the public.

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 fourteen (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 will not take action, except in an emergency, if that action is not listed on the published agenda.

Request for disability-related accommodations will be processed in accordance with the Department Administrative Order (DAO) 209-8, Access for People with Disabilities to Meetings and Other Group Events.

The Council will 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 10 days before the scheduled meeting.

## **3.2 Conduct of Meetings**

### **3.2.1 Public Input at Council Meetings**

Public comments will be allowed at Council meetings on all agenda items requiring final action and on all agenda items at Scientific and Statistical Committee and Advisory Panel meetings. Both oral and written comments may be submitted.

Written comments received at the Council office three business days before the Council meeting date will be copied and distributed to the Council prior to the meeting. Under most circumstances, anyone who is unable to provide their material three business days in advance of the meeting should provide 35 copies to the staff for distribution to Council members. If distribution to the Council is not essential, submission of a single copy is sufficient for the record. All written information submitted to the Council must include a statement of the source and date of such information. Any oral or written statement must also include a brief description of the background and interests of the person in the subject of the oral or written statement.

### **3.2.2 Public Input at Other Meetings**

At meetings of the Council's oversight committees or other working groups, the extent of public comment taken will be at the discretion of the Chairman or presiding officer.

### **3.2.3 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.

### **3.2.4 Approval or Amendment of FMP 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.

### **3.2.5 Procedure for Deeming Proposed Regulations**

If draft regulations have not been deemed necessary and appropriate at the time a fishery management plan, or an amendment or framework adjustment to a fishery management plan is approved by the New England Fishery Management Council, the Council Executive Director shall review the draft regulations, when available for such actions, before they are implemented by NMFS.

After reviewing the draft regulations the Executive Director shall recommend to the Council Chair whether they are necessary and appropriate for the purposes of implementing the Council-approved action.

After considering the Executive Director's recommendation the Council Chair, on behalf of the full Council, shall make the determination to deem the draft proposed regulations as necessary and appropriate for the purposes of implementing the action, consistent with Section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Act).

Once this process has occurred and if approval has been granted, the Executive Director shall forward the appropriate documents to NMFS.

### **3.2.6 Parliamentary Procedure; Consensus**

Generally *Roberts Rules of Order* will be followed in the conduct of the Council 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, fishery management plan framework, or amendment, including proposed regulations, or comments for the Secretary on foreign fishing applications, or Secretarially prepared management plans, require a vote.

### **3.2.7 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.

At the conclusion of the vote on an action to be submitted for Secretarial review, any Council member(s) intending to file a minority report should advise the Chairman.

When a Council member(s) decides that s/he (they) will file a minority report, s/he (they) shall advise the Council's Executive Director in writing of this intent. Notice shall be given to the Executive Director no later than thirty days after the Council meeting during which the decision that is the subject of the dissent was made.

Upon completion and signature of the minority report, a copy will be provided to each Council member. The Executive Committee may comment on the report. After review and any Executive Committee comment, the Executive Director will forward the minority report to the Secretary of Commerce at the same time the majority report is submitted. It will be included as part of the administrative record, along with the decision documents approved by the Council.

### **3.2.8 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. Minutes will be comprised of a record of the persons present, an audio recording of the meeting providing a complete and accurate description of matters discussed, a meeting motions document providing decisions and conclusions reached, and copies of all statements filed. This information will be made available on the Council's web page and shall be made available to any court of competent jurisdiction. The Chairman shall certify the accuracy of the minutes of each such meeting and submit a copy thereof to the

Secretary.

### **3.3.1 Availability of Records**

Subject to the confidentiality procedures established by the Council 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 NOAA Administrative Order (NAO) 216.100), the Council will maintain documents generally available to the public on its Internet site. Documents for posting must include: the SOPPs, 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.

### **3.3.2 Closed Meetings**

The Council, SSC, AP, FIAC or other committees may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment and other administrative matters, or briefings on litigation in which the Council is interested, in accordance with 50 CFR § 600.135(c).

The Council will provide 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.

If the Council considers it necessary, before closing a meeting or portion thereof, the Council or subsidiary body may 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, will be taken in public.

### **3.4 Frequency and Duration**

The Council meets at the call of the Chairman of the Council, or upon request of a majority of the voting members, and must meet at least once every six months.

Committees meet at the call of the Committee Chairman or on instructions of the Council Chairman. The SSC meets at the request of the Chairman or Executive Director.

Advisory Panels meet as directed by their oversight committee chairman. They may meet in conjunction with their oversight committee or independently. The Council and its committees and advisory bodies meet as often as is necessary to carry out the Council's work. Council meetings are usually three days and most other meetings are one-day sessions.



### **3.5 Location**

The Council shall meet at appropriate times and places in any of the constituent States of the Council. All meetings are held in the Council's area of geographic authority unless they include joint-Council plans or issues involving other Councils. The Executive Director in consultation with the Chairman will coordinate specific meeting locations within each State.

### **3.6 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 Chairman 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.

### **3.7 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 Chairman, Vice-Chairman, or designee while officially representing the Council or conducting official business of the Council outside of such meetings.

Compensation is paid on a full day basis whether in excess of eight hours a day or less than eight hours a day. The time is compensatory because the individual member is required to expend a significant amount of personal effort that substantially disrupts his/her daily routine to the extent that a workday is lost to the member. Members will not receive compensation unless present at a meeting for at least ½ day. Homework time in preparation for formal Council meetings is not compensatory.

The Executive Director, with the approval of the Council Chairman, 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 Chairman, Council members may be

required to complete a meeting request form if they wish to be compensated for activities other than regular Council meetings.

### **3.8 Stipends**

Stipends may be paid, subject to the availability of appropriations, to members of SSCs and APs formally designated under Section 301(g)(1)(a) or Section 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. Employment Practices**

### **4.1 Staffing**

The Council staff includes an Executive 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 the Executive Director acting for the Council may dismiss other staff employees. 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 Boston, consistent with the Federal pay-scale, including adjustments necessary to achieve equivalency with Federal counterparts. 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 increases solely on the basis of merit and performance. The Executive Director, acting for the Council, shall conduct annual performance reviews with each Council employee and will approve promotions and raises based on the employee's performance. Pay raises and performance evaluations for the Executive Director will be completed by the Council Chairman. The Council, subject to budgetary limitations, when directly beneficial to both the employee and the Council will support career development, including formal training.

#### **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 CFR Part 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 or believes he or she has witnessed harassment is encouraged to report the harassment to a supervisor or manager. The supervisor or manager should then follow the steps set forth in DAO 202-955. Any complaints of harassment on the basis of sexual orientation should be handled in accordance with DAO 215-11. The provisions of these DAOs are entirely separate from the EEO complaint process, and must be followed whether or not an employee has filed an EEO complaint. The Council's Harassment Policy is intended to ensure that staff members work in an environment free of harassment in all their interactions, including interactions with Council members, other staff members, and the public during the course of official Council meetings, advisory body meetings, or committee meetings.

#### **4.9 Whistleblower Protection**

It is the intent of the Council to adhere to all applicable laws and regulations. The underlying purpose of this Employee Protection Policy is to encourage the organization's goal of full legal compliance. The support of all employees is necessary to achieving this result. To this end, any employee who reasonably believes that a policy, practice, or activity of the Council is in violation of law has a right to file a complaint with the U.S. Department of Commerce's Office of Inspector General. This right notwithstanding, any employee with such concerns is encouraged to report those concerns to the Council for review and any necessary correction.

The Council will not retaliate against employees who disclose or threaten to disclose to the Department, any activity, policy, or practice of the Council that the employee

reasonably believes is in violation of a law, or a rule, or regulation mandated pursuant to law or is in violation of a clear mandate of public policy concerning the health, safety, welfare, or protection of the environment.

## **4.10 Leave**

### **4.10.1 Leave Accounting**

A separate 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.

### **4.10.2 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. The Council will pay a lump sum for unused annual leave not to exceed 240 hours carryover plus current year earnings upon separation, retirement, or death of an employee.

### **4.10.3 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 other than by retirement or death are not authorized. However, distributions of accumulated funds for unused sick leave will be made to the employee upon his or her retirement 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.

### **4.10.4 Advanced Leave**

The Executive Director may advance sick leave credits when it is reasonably expected that the employee will repay the advanced leave. However, the advance in sick leave credits may not exceed the number of hours that would be earned in the same calendar year except with the prior formal concurrence of the Executive Committee.

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

Under the Family Medical Leave Act of 1993, 29 CFR 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.

#### **4.11 Employee Benefits**

Council employees are eligible to participate in group health/medical insurance and dental insurance programs. The Council provides life insurance, short-term disability and long-term disability insurance to all employees. Benefits are effective on the enrollment date, which is generally the 1st day of employment.

Retirement benefits are realized through an employer funded Simplified Employee Pension Plan (SEP). Employee participation in a 403(b) plan is optional and at the employees expense.

#### **4.12 Travel Reimbursement**

All voting and non-voting members of the Council, members of the SSC, Council staff, experts and consultants retained by the Council, and members of the Council's APs and PDTs are eligible to be reimbursed for actual travel expenses incurred while engaged in authorized Council business. The Council Chairman or Executive Director may approve domestic invitational travel for non-Council personnel. Employees of the Federal Government are not eligible for travel reimbursement.

Prior authorization is necessary to establish eligibility for reimbursement. Either the Council Chairman or the Executive Director may authorize travel and reimbursement for expenses incurred.

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. The Chairman or the Executive Director will determine applicable limitations in approving each Travel Authorization. The General Service Administration (GSA) reimbursement rates for mileage, commercial transportation, and per diem rates for lodging, meals and incidental expenses will be used unless the Chairman or the Executive Director approve, in advance, costs above the limit for the area.

Federal employees are subject to the reimbursement rules of their agencies.

The Council Chairman or Executive Director approves travel across the United States border to Canada. The NOAA Regional Office and Grants Officer approve all other foreign travel, which is submitted with the budget. If the foreign travel was not included in the budget, the Council will submit requests in advance to the Grants Officer. All

travel outside the United States requires a passport. Proper identification is the responsibility of the traveler. The Council does not pay for passports or other forms of identification.

#### **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.

#### **4.14 Invitational Travel**

The Executive Director of the New England Regional Fishery Management Council may accept in-kind and/or actual invitational funds for Council staff travel (including his/her own), only after (1) notifying the NMFS Regional Administrator of the origin and purpose of such funding, and (2) directing such gifts to the Administrator. 50 CFR § 600.125(c).

### **5. Standards of Conduct**

The Council and its staff will maintain high standards of ethical conduct. The members and staff of the Council are subject to provisions of those federal criminal statutes listed at 50 CFR § 600.225 relating to bribery, conflict of interest, and disclosure of confidential information and lobbying.

#### **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 Section 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, consistent with 50 CFR § 600.225:

- (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) The Council, Council members, employees, and contractors must comply with the Federal Cost Principles Applicable to Regional Fishery Management Council Grants and Cooperative Agreements, including but not limited to, those regarding 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**

Consistent with Magnuson-Stevens Act requirements and applicable federal regulations, 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, that is 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. The NMFS Regional Office will keep information from SSC members on file. 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 Council**

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 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, regardless of whether any information has changed on that form.

### **5.3.3 Scientific and Statistical Committee**

An individual being considered for appointment to an SSC must file a Financial Interest Form with the Council when submitting a curriculum vita and any other documents required by the Council as part of the SSC appointment process. 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 Council by February 1 of each year.

### **5.3.4 Restrictions on Voting**

As defined and prescribed in 50 CFR § 600.235, 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 Chairman may not allow such an individual to cast a vote.

See 50 CFR § 600.235 for additional detail.

## **6. Financial Management**

### **6.1 Governing Statutes**

The Council's grant activities are governed by 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), 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 CFR § 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, meeting expenses, etc., and programmatic (or

contract) funds primarily designed to fund sub awards or contracts 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.

The Council records provide accurate, current and complete disclosure of awards, authorizations, income, obligations, balances, outlays and assets. Effective control is maintained over all funds, property and other assets to assure they are used only for authorized purposes.

**(2) *Programmatic.*** The Council may enter into cooperative agreements with Federal agencies, State, and private institutions on matters of mutual interest that 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 necessary. 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**

It is the policy of the Council to purchase goods and services in a fair and impartial manner. To ensure that goods and services are obtained in compliance with federal regulations the Council will observe the procurement standards in 2 CFR Parts 200, 215 and 230 and the guidelines in the *Council Handbook*. Purchases will be made from the

General Services Administration, when such source is most advantageous to the Council's needs, price and other factors considered. The Council makes every effort to use small businesses, minority-owned firms and women's business enterprises whenever possible.

Proposed sole-source procurements less than \$100,000 will be submitted to the Regional Administrator prior to the Council making the award. The Regional Administrator and the Grants Officer must approve proposed sole-source contracts over \$100,000 in writing. 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.

Goods 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 procurement

#### **6.4 Property Management**

NOAA has determined that the title to equipment purchased by the Council under the Cooperative Agreement vests with the Council.

An inventory system is maintained of all Council non-expendable tangible property that has a useful life of more than 1 year and cost \$5,000 or more. All such items are marked NEFMC with an assigned property control number. All property acquired by the Council is safeguarded under conditions which a prudent person would follow. Disposal of surplus will be performed in accordance with grant provisions. Only Council staff, members or individuals or entities under contract have access to Council property. Theft of Council property will be reported promptly to local law enforcement personnel, including the FBI, the Grants Officer, and to the Regional Office. Sensitive items will be kept in locked cabinets.

#### **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 200 or 2 CFR Part 230, as applicable.

#### **6.6 Accounting and Budgetary Control Procedures**

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.). The

Chairman, Executive Director, Deputy Executive Director or Administrative Officer may authorize disbursement of federal funds.

Fiscal controls are achieved through a document-supported cash accounting system capable of providing accruals as necessary for budgetary purposes. 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. Executive Director, Deputy Executive Director or Administrative Officer may sign checks. The Executive Director may contract with a Certified Public Accountant to assist in the establishment, operation, maintenance and control of such system.

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. Financial reports supporting documents and all other records pertinent to an agreement are maintained until they are audited and approved for disposal under the authorities of the General Accounting Office

## **6.7 Audits**

The DOC Office of Inspector General or an independent public accountant will perform annual audits. 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. Recordkeeping**

## **7.1 Definitions**

**Records:** Records are documentary items, regardless of physical form, 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 (only the original is the record), notes taken during a meeting that are not shared with others, drafts.

*Personal papers:* materials pertaining solely to private affairs, for example a 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 for viewing at the Council office during regular business hours or may provide the documents thorough 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 will be handled in accordance with Department of Commerce and NOAA records management office procedures including: 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 will be coordinated promptly with the appropriate NMFS Regional Office. Upon receipt of a FOIA request from the NOAA FOIA office, the Council will search for responsive documents, including relevant e-mails, in the manner outlined in the request. When applicable, the Council will mark the documents with the relevant FOIA exemptions. The Council may make recommendations regarding potential exemptions to be asserted; however, only a Federal employee can make a disclosure determination. The Council will retain the original documents and copies of the responsive records, exact and redacted with the FOIA exemptions listed, will be provided to the FOIA office. 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 that 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.