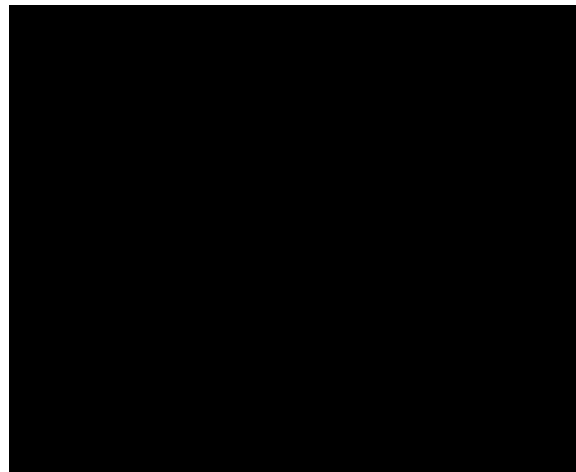


**STATEMENT OF ORGANIZATION,  
PRACTICES, AND PROCEDURES  
(SOPP)**



**DRAFT CFMC SOPP  
JANUARY 2012**

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**UNITED STATES DEPARTMENT OF COMMERCE**

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
CARIBBEAN FISHERY MANAGEMENT COUNCIL**

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

The Caribbean Fishery Management Council, created by Section 302(a)(1)(C) 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 in August 2004.

Copies of this SOPP are available upon request by writing or contacting the Fiscal Officer at 787-766-5926. The SOPP is also available electronically on the Council's website at <http://www.caribbeanfmc.com>.

**1.0 COUNCIL FUNCTIONS AND RESPONSIBILITIES**

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

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

- (4) The capacity and the extent to which fishing vessels of the United States will harvest the optimum yield on an annual basis;
  - (5) The portion of such optimum yield on an annual basis which will not be harvested by fishing vessels of the United States and can be made available for foreign fishing.
- G. Develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations established by mechanisms and processes under the Act.
  - H. Develop multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, in the manner prescribed in the Act.
  - I. Conduct any other activities which are required by or provided for in the Act, or which are necessary and appropriate to the foregoing functions.

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

## **2.0 COUNCIL ORGANIZATION**

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

The Council has [7] voting members and [3] non-voting members. The Council's geographic area of authority includes the Exclusive Economic Zone (EEZ) of the US Caribbean Ocean, seaward of the areas of jurisdiction of Puerto Rico and of the United States Virgin Islands.

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

The voting members of the Council shall be:

1. The principal state official in the government position with marine fishery management responsibility and expertise in each constituent state, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.
2. The Regional Administrator of the National Marine Fisheries Service for the Southeast Region, so long as the Administrator continues to hold such position, or a designee;
3. Four (4) members appointed by the Secretary of Commerce, for three year terms

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

The non-voting members of the Council shall be:

1. The Southeast Regional Director of the U.S. Fish and Wildlife Service, or a designee;

2. The Commander of the Seventh Coast Guard District, or a designee;
3. A representative of the U.S. Department of State, designated for such purpose by the Secretary of State, or a designee.

Non-voting members of the Council may serve on committees of the Council and may serve as chairpersons of committees and, as members of the committee, may initiate and second motions, as well as vote on matters that pertain to the committee. At meetings of the Council, non-voting members may neither initiate or second motions, nor vote on matters that may be classified as business of the Council. They may, however, participate fully in discussions of such matters.

## **2.2 Oath of Office**

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

I, [name of the person taking oath], as a duly appointed member of a Regional Fishery Management Council established under the Magnuson-Stevens Fishery Conservation and Management Act, hereby promise to conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the Nation. I recognize my responsibility to serve as a knowledgeable and experienced trustee of the Nation's marine fisheries resources, being careful to balance competing private or regional interests, and always aware and protective of the public interest in those resources. I commit myself to uphold the provisions, standards, and requirements of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law, and shall conduct myself at all times according to the rules of conduct prescribed by the Secretary of Commerce. This oath is given freely and without mental reservation or purpose of evasion. [SG1]

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

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

Voting members (other than principal state officials, the Regional Administrator, or their designees) are appointed for a term of three years and may be reappointed. A voting member's Council services of 18 months or more during a term of office will be counted as service for the entire three-year term. The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than three years, if necessary, to provide for balanced expiration of terms of office. Members may not serve more than three consecutive terms. A member who has completed three consecutive terms will be eligible for appointment to another term one full year after completion of the third consecutive term.

### ***2.3.2 Removal***

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

### **2.3.3 Officers**

A Chairperson and Vice Chairperson are elected from the [SG2] voting members of the Council by a majority vote of the voting members present and voting. Both serve for one year and may succeed themselves. They are elected at the first regular Council meeting held after August 11 (election meeting) and their terms of office expire at the next meeting after August 11 of the subsequent year. If the Council terms of either or both of the officers end before a regular election meeting, the Council shall appoint at the next regular Council meeting interim officers to serve until the next election meeting.

The Chairperson, or in the Chairperson's absence the Vice Chairperson 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 Chairperson 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 Chairperson 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 Chairperson 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 Chairperson, in advance, a list of several individuals who may act as designee, provided the list clearly specifies who would serve if more than one designee attends. A designee may be elected as Chair or Vice-Chair of the Council and as Vice-Chair would serve as Chair in the absence of the elected Chair. However, a designee for an elected Chair cannot serve as Chair. [SG3] Reimbursement of travel expenses to any meeting is limited to either the member or one designee. Additional requirements for principal state officials and their designees include the following:

- (1) Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be appointed by a constituent state Governor as the principal state official for purposes of Section 302(b) of the Act;
- (2) A principal state official may name his/her designee(s) to act on his/her behalf at Council meetings. Individuals designated to serve as designees of a principal state official on the Council, pursuant to Section 302(b)(1)(A) of the Act, must be a resident of the state and be knowledgeable and experienced, by reason of his or her occupational or other experience, scientific expertise, or training, in the fishery resources of the geographic area of concern to the Council; and
- (3) New or revised appointments by state Governors of principal state officials, and new or revised designations by principal state officials of their designees(s), must be delivered in writing to the appropriate NMFS Regional Administrator and the Council Chairperson at least 48 hours before the individual may vote on any issue before the Council. A designee may not name another designee. [SG4] Written appointment of the principal state official must indicate his or her employment status, how the official is employed by the state fisheries agency, and whether the official's full salary is paid by the state. Written designation(s) by the principal state official must indicate how the designee is knowledgeable and experienced in fishery resources of the geographic area of concern to

the Council, the County in which the designee resides, and whether the designee's salary is paid by the state.

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

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

### **2.5.1 Objectives and Duties**

The SSC shall provide the Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. Specific details regarding the number and duties of members of the SSC are found in the Administrative Handbook.

### **2.5.2 Members and Chairperson**

Members appointed by the Council to the SSC shall be Federal employees, State employees, academician, or independent experts, and shall have strong scientific or technical credentials and experience.

Subject to the availability of appropriated funds, members of the SSC are eligible to receive stipends provided they are not employed by the Federal Government or a state marine fisheries agency, as defined at 50 CFR 600.134.

### **2.5.3 Administrative Provisions**

The SSC shall hold its meetings as requested by the Council Chairperson. Notice of meetings of the SSC shall comply with the applicable notice requirements specified for Council meetings.

### **2.5.4 Subcommittees**

Subcommittees will be governed in their duties as specified in the Administrative Handbook.

## **2.6 Advisory Panel**

The Council has established advisory panels under Sec. 302(g)(2) of the Act as necessary or appropriate to carry out the its functions under the Act. Subject to the availability of funds, members of advisory panels (APs) are eligible to receive stipends, provided they are not employed by the Federal Government or a state marine fisheries agency, as defined at 50 CFR 600.134.

Fishery advisory 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.

### **2.6.1 Administrative Provisions**

Notice of meetings of the advisory panels (APs) shall comply with the applicable notice requirements specified for Council meetings. Administrative duties of the APs can be found in the Administrative Handbook.

### **2.7 Committees**

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

### **2.8 Working Groups**

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

In order to identify its status for notice requirements and the potential payment of stipends, the Council must specify under what section of the Act the working group is formed. This should be specified in the objectives and duties or terms of reference for the working group. Most working groups, because they contain members not employed by NMFS or the Council, should be established as an AP under Sec. 302(g)(2) of the Magnuson-Stevens Act, if the Council wants the members to be eligible to receive a stipend. Those working groups with voting or nonvoting Council members as members of the group must be considered as Council committees. Those working groups that consist only of NMFS and Council employees do not come under either notice or stipend requirements of the Act. For working groups designated as either APs or committees, notice requirements are as specified for Council meetings. [SG5]

### **2.9 Council Coordination Committee (CCC)**

The CCC consists of the Chairpersons, vice Chairpersons, and executive directors, or their proxies of each of the eight regional fishery management councils, or other Council members and staff. Any member of the CCC can make a motion, but each Council will be limited to one vote, made by the Chairperson of each Council (or vice-Chairperson/proxy). The six NOAA fishery 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 CCC may establish such subcommittees as it deems appropriate.

### **3.0 COUNCIL MEETINGS**

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

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

Drafts of all regular public meeting notices must be transmitted to the NMFS Headquarters Office at least 23 calendar days before the first day of the regular meeting. Drafts of emergency public notices must be transmitted to the NMFS Headquarters Office at least five working days prior to the first day of the emergency meeting. Although notices of and agendas for emergency meetings are not required to be published in the *Federal Register*, notices of emergency meetings must be promptly announced through the appropriate news media.

The Council shall ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings. Anyone needing a special accommodation to attend and participate in a Council-hosted meeting must contact the Council office four days before the scheduled meeting. Guidance addressing disability-related accommodations is found at Department Administrative Order (DAO) 209-8, Access for People with Disabilities to Meetings and Other Group Events.

#### **3.2 Conduct of Meetings**

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

Each regular meeting and each emergency meeting shall be open to the public. Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings, within reasonable limits established by the Chairperson. All written information submitted to the Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.

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

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

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

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

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

The Council has established the following procedure for proposing regulations as required by 50 CFR 600.140. Proposed regulations are written during the later stages of fishery management plan, amendment or other plan action development. The proposed regulations are developed either by a contractor or SERO staff, working in conjunction with Council staff. The Council attempts to take action on the proposed regulations at the same time the accompanying plan or amendment is approved for submission to the Secretary of Commerce for formal review. In the event this is not possible, or if additional minor modifications must be made to the proposed rule, the Council has given the Chairperson authority to deem that the proposed regulations are necessary or appropriate for the purposes of implementing a fishery management plan, plan amendment or other action. The Council submits the proposed regulations to the Secretary at the same time the accompanying fishery management plan, plan amendment or other action is submitted.

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

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

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

Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary, including principal state officials raising federalism issues, may submit a written statement of their reasons for dissent. If any Council member elects to file such a statement, it will be submitted to the Secretary at the same time the [SG6] Council action is submitted.

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

Public testimony will be allowed at Council meetings on all agenda items before the Council for final action and at advisory panels (APs) and Scientific and Statistical Committee (SSC) meetings on all agenda items. [SG7] 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, APs, or SSC.

Where constrained by available meeting time, the chairperson or presiding officer of the Council, APs, 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.

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

### **3.3 Record**

Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairperson 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.

### **3.4 Closed Meetings**

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

- (1) The Council, SSC, APs, or other committees shall close any meeting, or portion thereof, that concerns information bearing on a national security classification.
- (2) The Council, SSC, APs, or other committees may close any meeting, or portion thereof, that concerns matters or information pertaining to national security, employment matters, or briefings on litigation in which the Council is interested.
- (3) The Council, SSC, APs, or other committees may close any meeting, or portion thereof, that concerns internal administrative matters other than employment. Examples of other internal administrative matters include candidates for appointment to APs, SSC, and other subsidiary bodies and public decorum, or medical conditions of members of the Council or its subsidiary bodies. In deciding whether to close a portion of a meeting to discuss internal administrative matters, the Council or subsidiary body should consider not only the privacy interests of individuals whose conduct or qualifications may be discussed, but also the interest of the public in being informed of Council operations and actions.
- (4) Without the notice required above, the Council, SSC, APs, or other committees may briefly close a portion of a meeting to discuss employment or other internal administrative matters. The closed portion of a meeting that is closed without notice may not exceed 2 hours.

- (5) Before closing a meeting or portion thereof, the Council or subsidiary body should consult with the NOAA General Counsel Office to ensure that the matters to be discussed fall within the exceptions to the requirement to hold public meetings described above. Actions that affect the public, although based on discussions in closed meetings, must be taken in public. For example, appointments to an AP must be made in the public part of the meeting; however, a decision to take disciplinary action against a Council employee need not be announced to the public.

### **3.5. Frequency and Duration**

The Council is required to meet at a minimum of two times per year. However, the Council normally meets three to four times each year. Each meeting generally lasts two (2) days and begins on Monday or Tuesday of the meeting week. The Council's SSC and APs may meet concurrently with the Council. The specific timing of each meeting shall be coordinated by the Executive Director in consultation with the Chairperson.

### **3.6 Location**

The Council shall meet at appropriate times and places in any of the constituent States of the Council. Council meetings typically will be held in its geographical area of concern. Specific meeting locations within each State will be coordinated by the Executive Director in consultation with the Chairperson.

### **3.7 Public Hearings**

The Council may hold public hearings in order to provide the opportunity for all interested individuals to be heard with respect to the development of fishery management plans or amendments, and with respect to the administration and implementation of other relevant features of the Act. Notice of each hearing must be received by NMFS for publication in the *Federal Register* at least 23 [SG8] 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 Chairperson will designate at least one voting member of the Council to officiate. An accurate record of the participants and their views, obtained by use of recording, typewritten transcript, or detailed minutes, will be made available to the Council at the appropriate Council meeting and maintained as part of the Council's administrative record.

### **3.8 Council Member Compensation**

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 and conference calls lasting one hour or more. 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. A Council member may request of the Chairperson to travel on behalf of the Council without compensation. A Council member may travel to an event without compensation, upon approval by the Chairperson. 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.

The Council Chair must submit to the Regional Office, annually, a report of Council member compensation authorized. This report shall identify, for each member, amount paid, dates, and location and purpose of meetings attended. At the discretion of the Council Chair, Council members may be required to complete a meeting request form if they wish to be compensated for activities other than regular Council meetings. [SG9]

### **3.9 Stipends**

Stipends are available, subject to the availability of appropriations, to members of SSCs and APs, formally designated under Sec. 301(g)(1)(a) or Sec. 302(g)(2) of the Magnuson-Stevens Act, who are not employed by the Federal Government or a state marine fisheries agency. For the purposes of this section, a state marine fisheries agency includes any state or tribal agency that has conservation, management, or enforcement responsibility for any marine fish.

## **4.0 EMPLOYMENT PRACTICES**

### **4.1 Staffing**

The Council, based on determined needs, will hire an Executive Director and other staff, as necessary, to serve the Council in carrying out its duties and functions as mandated by the Magnuson-Stevens Fishery Conservation and Management Act. Specific details can be found in the Administrative Handbook and in the Staff Handbook.

### **4.2 Experts and Consultants**

As long as funding is available in its budget, the Council may contract with experts and consultants, as needed, to provide technical assistance not available from NOAA. This includes legal assistance. The Council must notify the NOAA Office of General Counsel before seeking outside legal advice, which may only be for technical assistance not available from NOAA. If the Council is seeking legal services in connection with an employment practices question, the Council must first notify the Department of Commerce's Office of the Assistant General Counsel for Administration, Employment and Labor Law Division. The Council may not contract for the provision of legal services on a continuing basis.

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

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

### **4.4 Personnel Actions**

All staff employees serve at the pleasure of the Council. The Executive Director may be dismissed by a vote of the Council, and other staff employees may be dismissed by the Executive Director acting for the Council. Dismissals may be made for misconduct, unsatisfactory performance, and lack of funds, with reasonable notice to the employee.

No employee of the Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Act, on account of any political activity or lack of such activity in support of, or in opposition to, any candidate or political party in any national, state, county, or municipal election, or on account of his or her political affiliation. [SG10]

#### **4.5 Salary and Wages**

In setting rates of pay for Council staff, the principle of equal pay for equal work shall be followed. Variations in basic rates of pay shall be in proportion to substantial differences in the difficulty and responsibilities of the work performed. The duties of any new position shall be contained in a position description to be submitted to the National Oceanic and Atmospheric Administration Regional Office assigned to the Council prior to the submission of a budget in which the salary of that position is requested. The Council will be provided a salary range appropriate to the position. The Council may fill the position at any salary level within that range, except that unless recruitment of exceptionally qualified employees is hampered, the policy of hiring at the beginning rate shall be recognized. The annual pay rates for Council staff positions shall be consistent with the pay rates established for General Schedule Federal employees as set forth in 5 U.S.C. 5332, and the Alternative Personnel Management System for the U.S. Department of Commerce (62 FR67434). Adjustments will be made to pay by rates and pay increases based on Locality Pay and/or Cost of Living Allowance (COLA) differentials in their geographic locations. COLA adjustments in pay rates and pay increases may be provided for staff members whose post of duty is located in Alaska, Hawaii, Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and Puerto Rico. Each employee will be provided with a copy of his or her position description. Any significant change in scope of duties will necessitate the reclassification of the position, and should be reviewed by the Council.

After a position has been filled, the employee may be promoted annually and recognized for superior performance within the specific salary range according to the published rates prescribed for the pay grades assigned by equivalent current GS ratings, in accordance with Council policies.

Overtime payment shall be in accordance with the Fair Labor Standards Act (FLSA) 29 U.S.C. § 201 et.seq. The CFMC provides for 1.5 hours of compensatory time for each hour of work in excess of eight (8) hours on regular time, and two (2) hours of compensatory time for each hour of work during a holiday, Saturday or Sunday.

A Locality Pay and/or Cost of Living Allowance (COLA) will be applied to the base salaries of Council members and staff in accordance with Federal rates established for Puerto Rico and the U.S. Virgin Islands. Salaries will be adjusted as changes occur to the General Schedule pay rates (Presidential Salary Increases) approved for federal employees, as per 50 C.F.R. § 600 et.seq.

Subject to the availability of funds, a bonus at the end of each calendar year will be applied to staff base salary of not less than four percent (4%) of the base salary. [SG11]

##### **4.5.1 Council Members Compensation**

Effective September 1, 1991, all Council members whose eligibility for compensation has been established in accordance with NOAA guidelines as indicated in Section V.B.1., will be paid on a contract basis without deductions being made for Social Security or Federal and State income taxes. The level of compensation for authorized Council members shall be as established in accordance with federal rule (50 CFR 600.245).

Compensation will be paid to eligible Council members for time spent in the performance of official duties for the Council and as authorized by the Council or the Council Chairperson. Payment will be made for a full day's pay whether the duties performed are in excess or less than eight hours a day. The time is compensable where the individual member is required to expend a significant private effort which substantially disrupts the daily routine to the extent that a work day is lost to the member. "Homework" time in preparation for formal Council meetings is not compensable. Non-government Council members receive compensation for:

1. Days spent in actual attendance at a meeting of the Council or jointly with another Council.
2. Travel on the day preceding or following a scheduled meeting that precluded the member from conducting his normal business on the day in question.
3. Meetings of standing committees of the Council, if approved in advance by the Chairperson.
4. Individual member meeting with scientific and technical advisors when approved in advance by the Chairperson and a substantial portion of any day is needed.
5. Conducting or attending hearings, when authorized in advance by the Chairperson.
6. Other meetings involving Council business, when approved in advance by the Chairperson.
7. Participation in webinars and/or official conference calls of one hour or more, when approved in advance by the Chairperson. [SG12]

#### **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.

#### **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.

#### **4.8 General Harassment Policy**

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



## **4.9 Leave**

### **4.9.1 *Leave Payment Accounts***

The Council will maintain two accounts for leave payment purposes; one to pay for unused sick leave to a staff's retirement fund upon their retirement, or to their estates upon their death; and the other to pay for unused annual leave to employees upon separation. These accounts will be funded from the Council's annual operating allowances. The Council is not allowed to transfer monies between these two accounts. The Council has the option to deposit funds into these accounts at the end of the budget period if non-obligated balances remain. Interests earned on these accounts will be maintained in these accounts along with the principal, for the purpose of payment of unused annual and sick leave only. These accounts, including interests, may be carried over from year to year.

### **4.9.2 *Annual Leave***

Annual Leave will be administered as specified in the Staff Handbook.

### **4.9.3 *Sick Leave***

Sick Leave will be administered as specified in the Staff Handbook.

### **4.9.4 *Advanced Leave***

Advanced Leave will be administered as specified in the Staff Handbook. [SG13]

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

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

## **4.10 Employee Benefits**

The Council shall provide its employees and their legal dependents health insurance coverage as outlined in the Staff Handbook. Additional insurance, such as: life, disability, and other, are also covered in the Staff Handbook. Retirement benefits are also outlined in the Staff Handbook. [SG14]

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

Council travel will be governed by and subject to GSA Travel Regulations, as authorized by the Council Chairperson or Executive Director under GSA reimbursement limits. The Council shall comply with the Fly America Act. [SG15]

### **4.12 Foreign Travel**

Foreign travel to countries not included in the approved budget document of the CFMC [SG16] must be approved in advance by the Assistant Administrator for Fisheries or designee, and by the Grants Officer. Requests for foreign travel approval should be submitted in writing, at least 30-45 days in

advance, to the Regional Program Officer, and then via the Regional Administrator to the NOAA Grants Officer.

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

#### **4.13 Training**

[SG17]

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

### **5.0 STANDARDS OF CONDUCT FOR COUNCIL MEMBERS, STAFF AND SSC MEMBERS**

Please see “*Rules of Conduct for Employees, Advisors, and Contractors of Regional Fishery Management Councils*”.

Please see “*Rules of Conduct for Members of Regional Fishery Management Councils*”.

#### **5.1 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 standards of conduct found at the Department of Commerce Ethics website <http://www.ogc.doc.gov/ethics.html>. [SG18]

#### **5.2 Financial Disclosures**

##### **5.2.1 General**

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

Council offices. Information from SSC members will be kept on file by the NMFS Regional Office. A copy of the form may be obtained from the appropriate Regional Office. [SG19]

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.

### **5.2.2 Recusal**

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

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

## **6.0 FINANCIAL MANAGEMENT**

### **6.1 Governing Statutes**

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

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

The Council receives funds through cooperative agreements for two basic types of expenditures: administrative (operations) funds to cover general operating expenses such as salaries, office space, utilities, travel, State liaison activities, meeting expenses, etc., and programmatic (or contract) funds primarily designed to fund sub awards generated by the Council for development of FMPs (including amendments) or FMP-related information. The Council may not independently enter into agreements, including grants, contracts, or cooperative agreements, whereby they will receive funds for services rendered. All such agreements must be approved and entered into by NOAA on behalf of the Council.

The Council is not authorized to accept gifts or contributions directly. All such donations must be directed to the NMFS Regional Administrator in accordance with applicable Department of Commerce regulations.

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

A Cash Receipt and Disbursement Journal with a monthly Summary of Accounts is required as a minimum bookkeeping system for the administrative budget. All checks require signatures from two of the following people: Council Executive Director, Deputy Director, Administrative Officer, Financial Secretary, or Travel Secretary.

- (2) *Programmatic.* The Council may enter into cooperative agreements with Federal agencies, State, and private institutions on matters of mutual interest which further the objectives of the Magnuson Act.
- (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.

Details are contained in the Administrative Handbook.

### **6.3 Procurement**

Procurement procedures are detailed in the Administrative Handbook.

### **6.4 Property Management**

Property management procedures are detailed in the Administrative Handbook. [SG20]

### **6.5 Real Property**

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

### **6.6 Accounting System**

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

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

communications, supplies, equipment, contracts, and any appropriate contra-accounts (contract accruals, etc.).

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

### **6.7 Audits**

Audits will be conducted per OMB Circular A-133.

### **6.8 Financial Reporting**

Reports will be submitted per OMB Circular A-110. [SG21]

## **7.0 RECORDKEEPING**

### **7.1 Definitions**

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

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

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

### **7.2 Availability of Records**

In accordance with 50 CFR 600.150(b), the Council will maintain documents generally available to the public on its Internet site. Documents for posting must include: 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.

### **7.3 Administrative Records for Fishery Management Plans**

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

### **7.4 Disposition of Records**

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

All records and documents created or received by Council employees while in active duty status, belong to the Federal government. When employees leave the Council, they may not take the original or file copies of records with them. Before any records are disposed of, Council members and employees will coordinate with the NOAA Records Management Office. [SG22]

### **7.5 Privacy Act Records**

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

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

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

The Region will obtain clearance from the NOAA General Counsel's Office concerning the initial denial of requested information. In the event the Regional Office determines that requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature and a list of the documents to be withheld must be cleared through the NMFS FOIA Officer. Upon completion, a copy of the signed CD-244 and cover letter transmitting the information should be provided to the NMFS FOIA Officer and the NOAA FOIA Officer.

Any fees collected from requesters are transferred to the US Treasury, and the Council does not recover its cost. [SG23]

### **7.7 Confidentiality of Statistics**

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

### **7.8 Information Quality**

The Council agrees to abide by the NOAA Information Quality Guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information which it disseminates. The NOAA guidelines also establish an administrative mechanism allowing affected persons to seek and obtain correction of information that does not comply with Office of Management and Budget or NOAA applicable guidelines.

### **7.9 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.