

TUESDAY, JULY 5, 1977

PART V



**DEPARTMENT OF
COMMERCE**

**National Oceanic and
Atmospheric Administration**



**GUIDANCE FOR
REGIONAL FISHERY
MANAGEMENT
COUNCILS**

Final Regulations

Final Regulations

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE
GUIDANCE FOR REGIONAL FISHERY MANAGEMENT COUNCILS.

Final Regulations

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final Regulations.

SUMMARY: These Final Regulations revise Interim Regulations published on September 15, 1976, that were promulgated to provide initial guidance for the development of fishery management plans and operation of Regional Fishery Management Councils established under the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265). These Final Regulations are intended to provide essential clarifications of that guidance for the effective functioning of the Councils.

EFFECTIVE DATE: July 5, 1977.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 15, 1976, Chapter VI, entitled Fishery Conservation and Management, was added to Title 50 of the Code of Federal Regulations. This chapter was issued by the Secretary of Commerce to carry out certain statutory mandates contained in the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) (hereinafter the "Act"). It addresses among other things, the National Standards for fishery conservation and management, and the responsibilities and functions of the eight Regional Fishery Management Councils established under the Act.

Some sections of the Interim Regulations (41 FR 39436) published on September 15, 1976, were reserved to allow time for clarification of certain questions. Policy guidance under the sections designated as reserved in these regulations is currently being formulated and appropriate implementing regulations will be published as soon as possible.

The Interim Regulations published September 15, 1976, were subject to public comment until February 2, 1977. Comments received from 15 agencies, Councils, and individuals were carefully considered in preparing appropriate amendments. Also, amendments were developed by NOAA for clarification and improvement of the Interim Regulations on the basis of experience obtained in implementing the Act.

DISCUSSION OF MAJOR AMENDMENTS

Three commenters believe that NOAA lacks authority to promulgate regulations governing Council operations. The Secretary of Commerce is authorized to promulgate regulations under sec. 305 (g) of the Act, to carry out any provision of the Act. The authority to prescribe the rules and regulations contained below has been delegated to the Associate Administrator for Marine Resources, NOAA.

COMMENTS ON PART 601

One commenter requested clarification of the definition of "Confidential" (§ 601.2(e)). That part of the definition pertaining to information/data that is accepted by the Secretary of Commerce under a stipulation that limits disclosure is amended and explanatory information concerning access to classified material placed within § 601.23(e) (3).

Several commenters suggested clarification of the "responsibility" of the Councils over the three categories of fishery resources listed in § 601.11(b) (2). The language is amended to read " * * * each Council shall develop fishery management plans for each fishery involving the following categories of fishery resources * * * "

One comment was received regarding the designation, by the Secretary of one Council to prepare a fishery management plan where the range of a fishery extends beyond the geographical area of authority of any one Council. The commenter suggested that § 601.11(c) (2) be modified to require that the Secretary of Commerce consult with the concerned Council(s) prior to a designation and that any Council so designated be required to consult with the other affected Council(s). The suggestion is adopted and the language amended.

Two commenters suggested that § 601.21(b) be amended to include a listing of the relevant Indian treaties entered into by the United States with a number of Pacific Northwest Indian tribes. The principal purpose, however, of this section is to describe the Federal statutes which bear specifically upon the organization and operations of all the Councils. Contents of fishery management plans (§ 602.3), a reserved section, is being revised to, among things, require a description of the nature and extent of the Indian treaty fishing rights applicable to the geographical area within the authority of each Council.

One comment was received disagreeing with the statement in § 601.21(b) (1) (ii) that "Preparation and submission of a fishery management plan to the Secretary is a major Federal action." The procedures for compliance with the National Environmental Policy Act of 1969 are now under review and will be published at a later date. Therefore (b) (ii) is deleted.

A commenter questioned the need for incorporation of the Federal Advisory Committee Act procedures into the operation of the Councils. The provisions of the Federal Advisory Committee Act

apply to the Councils in accordance with the intent of Congress as expressed in the Report of the Committee of Conference on H.R. 200 (House Rept. No. 94-948, March 24, 1976).

The section on Designees (§ 601.22(b) (2)) is amended in order to provide clarification on the use of designees by certain voting and non-voting members of Councils.

The section on Appointments (§ 601.22(b) (4)) is amended to provide additional detail and clarification of the procedure whereby new Council members are nominated for appointment by the Secretary. Section (b) (4) (i) provides that Governors submit lists of nominees by May 15 of each year rather than June 1 as required by the Interim Regulations. The earlier date provides more time for consideration of the nominees. Sections (b) (4) (ii) through (vi) describe the two categories of seats, the nomination procedures, and provide that an individual whose term is expiring may be renominated for consideration. Section (b) (4) (v) provides a procedure for filling at-large seats when a Governor does not submit a list of nominees. These amendments are intended to clarify and improve the appointment process.

The section on Council organization (§ 601.22(b) (5)) is amended to provide that the term of office for the Chairman may not exceed one year; however, the Chairman is eligible for re-election. The prohibition of election of a Chairman whose appointment will expire in less than one year from the date of election is deleted as overly restrictive.

The section on Administrative staff (§ 601.22(c)) is amended to prescribe that the number of Council employees may not exceed seven for any one Council except as authorized by the Director, NMFS. Seven is the maximum number of employees determined to be necessary at this time to the performance of the functions of a Council.

One commenter questioned the restriction in the section on Fishery advisory panels (§ 601.22(e)) that prohibited Federal members from receiving reimbursement of actual expenses from Councils. The restriction is deleted. Section (e) (2) is amended to suggest that each Council establish one broad based advisory panel with subpanels as needed. This procedure, if adopted by the Councils, will minimize the excessive administrative requirements resulting from chartering and reporting on multiple panels for each Council.

The section on Federal funds (§ 601.23(c) (1)) is amended by deleting the second through fourth paragraphs which were rendered obsolete by the development of Council administrative capacity. New language was added which identifies annual grants as the means by which Federal funds are provided to the Councils.

One commenter was concerned about possible "OMB supervision" of Council staff because of the reference to OMB Circular A-110 in the section on Staffing (§ 601.23(d) (1)). The Circular provides

standard administrative procedures, including the budget process through which Council positions must be justified. The Councils maintain supervision of their employees subject to the provisions of Part 601, the Act, and other applicable law. Therefore, no amendment is considered necessary.

The section on Experts and consultants (§ 601.23(d)(2)) is amended to include a restriction that experts and consultants, who provide technical assistance under contract to Councils, may not provide services on a permanent basis.

One commenter questioned the provision in the section on Details of government employees (§ 601.23(d)(3)) that indicates the "reimbursable basis" of such details. Section 302(f)(2) of the Act authorizes Council reimbursement of governments that provide employees on detail.

The section on Salary and wage administration (§ 601.23(d)(6)) is amended to provide additional information and clarification. In (d)(6)(i) the principle of equal pay for equal work is required by the substitution of the word "shall" for "should." A new (d)(6)(ii) is added that provides for a cost of living allowance for Council members and staff whose post of duty is in certain specified areas. Section (d)(6)(iii) is amended by inclusion of the provision for a determination by NOAA of the applicability of the Fair Labor Standards Act to any new position requested by a Council. One comment was received concerning the restriction that the annual pay for any Council staff position may not exceed the current rate for the top step of GS-15 of the General Schedule. The restriction results from a NOAA policy determination of the maximum salary level appropriate for the Council staff in consideration of the duties and responsibilities of the staff.

Two comments were received concerning Leave (§ 601.23(d)(7)). The standard of 20 days of annual leave for Council employees was based upon the amount of annual leave granted to a Civil Service employee with more than three years but less than 15 years of service. The amount of 13 days of sick leave is equal to that received by Civil Service employees. In response to suggestions from a commenter, the description of leave days is amended to "working days" and new language is added providing that earned leave may be accumulated from year to year.

The section on Conduct (§ 601.23(d)(9)) is amended to include advisory groups under the standards of conduct with specific reference in (d)(9)(v) to the use of information obtained through advisory group membership that has not been made available to the general public.

The section on Personnel files (§ 601.23(d)(10)) is amended to provide that personnel files on consultants under contract be maintained in accordance with the Privacy Act.

Three commenters suggested that the section on ad hoc staff support (§ 601.23(e)(2)) be modified to permit Councils to obtain the services of "legal" experts

and consultants. The language is amended to include this provision; however, NOAA provides legal counsel to the Councils on a continuing basis and the Councils are expected to obtain legal counsel from NOAA before seeking other legal counsel.

One commenter suggested that individuals on Council business who receive reimbursement for lodging not be required to provide hotel receipts as documentation. No change is made in this requirement in the section on Expenses (§ 601.23(f)(2)) as hotel receipts are needed as source records of reimbursement for verification and audit of Council financial records. Two commenters desired removal of the requirement of prior consent of the Administrator for foreign travel. This requirement is in accordance with NOAA policy and is retained.

The section on Actual expenses defined (§ 601.23(f)(3)) in the Interim Regulations indicated a reasonable limit upon reimbursement for room and meals would be established. The section is amended by providing that the limits and conditions established by the NOAA Travel Handbook is the applicable standard for the Councils.

The section on Notice (§ 601.24(b)(2)) is amended to provide that meeting notices to be published in the FEDERAL REGISTER be submitted to the Director, NAFS, no later than 26 days prior to the meeting rather than the 25 days as required in the Interim Regulations. Experience has indicated that additional time is needed to assure the timely publication of notices. One commenter suggested that the meeting notices be published a minimum of 10 days in advance of a Council meeting rather than the present 20 days as required by the Secretary of Commerce. This suggestion is not adopted in the belief that a 10 day period would not provide sufficient time for the public to become aware of the announced meeting. Sections (b)(2)(i) and (ii) are deleted.

A new section entitled Record (§ 601.24(b)(3)) is added that contains language formerly in § 601.24(b)(2)(ii).

The section on Conduct (§ 601.24(b)(4)) is amended to provide within (b)(4)(iii) the requirements for closure of a meeting in accordance with the procedures established by the Secretary of Commerce and applicable laws; and to delete the former language. One commenter suggested that the requirement in Frequency and duration (§ 601.24(b)(5)) that "Councils shall meet in plenary session at least once a quarter" be eliminated. The requirement is retained as a standard for Councils which is intended to assure a reasonable frequency of meeting. The phrase "once a quarter" is amended to read "every three months" to clarify the meaning.

Several comments were received requesting a statement on joint Council meetings. The section on Location (§ 601.24(b)(6)) is amended to provide that Councils designated by the Secretary of Commerce to prepare a fishery management plan jointly may meet

jointly within their constituent States for the purpose of developing or amending a plan. The language concerning the North Pacific Council's "geographical area of concern" that appeared in § 601.24(b)(3)(iii) of Interim Regulations is added to this section.

The commenter questioned the requirement in Hearings (§ 601.24(c)(3)) that announcement of hearings follow the same procedures i.e., the Federal Advisory Committee Act, as Council meetings. This requirement is retained as a reasonable interpretation of the intent of Congress that the Councils should receive maximum public input and the meetings must be open to the public, with few exceptions. One comment was received suggesting that announcements of public hearings be distributed to all interested governments and groups. The third sentence of the section is amended to indicate that publicity should be "sufficient in time, substance, and area coverage" to inform interested parties of the hearing.

COMMENTS ON PART 602

Several comments were received regarding the technical or ambiguous character of the definitions. Amendments were accordingly made to clarify the terms or delete unnecessary references in § 602.2(a)(2).

Several commenters expressed the view that the interpretation of overfishing in § 602.2(b)(1) was not contained in the Act and should be omitted from regulations. However, the term is a key element in Standard 1 and therefore its interpretation is considered a proper part of guidance to the Councils. Other comments were received expressing concern that the language might restrict the flexibility of the Councils to determine optimum yield. The first sentence of (b)(1) is amended so as to provide flexibility to the Councils in determining optimum yield, while maintaining the intent of Congress as expressed in sec. 2(a) of the Act that the national program for conservation and management ensure conservation of the Nation's fishery resources. In response to a suggestion from a commenter, the second sentence of (b)(1) is deleted as not essential to the interpretation of overfishing.

Two commenters indicated concern that the second sentence of Maximum sustainable yield (§ 602.2(b)(2)) also might hinder the Councils in determination of optimum yield. The sentence is deleted and new language is added that clarifies MSY.

One comment was received about the statement in Optimum yield concept (§ 602(b)(3)(D)) that would permit management on the basis of MSY if the need for fisheries products is overriding. The concern of the commenter was a possible overemphasis upon fisheries products. The language is amended to clarify the intent that the need for fisheries products is one of the important factors involved in the determination of optimum yield.

Two commenters expressed concern with the statement in Optimum yield

and management objectives (§ 602.2(b) (4)) that the determination of optimum yield will be "dictated" by unspecified National objectives as well as regional objectives. The language is amended to clarify the National perspective as consideration of the term "optimum" as defined in the Act.

One comment was received regarding Optimum yield and foreign fishing (§ 602.2(b) (5)) that in determining whether U.S. fishermen will not harvest the optimum yield the "desire" of U.S. fishermen was to be considered as well as the capacity of U.S. vessels. While the term "desire" was used in the Report of the Conference Committee, the language is amended to include the phrase "and the extent to which fishing vessels of the United States will harvest such yield," which is based upon sec. 303(a) (4) (A) of the Act.

Those portions of § 602.2(b) that pertain to optimum yield may be modified in the future based upon ongoing discussions with the Councils and others and consideration by the Secretary of future Council recommendations.

Four commenters expressed a desire that the Councils have a stronger role in the development of plans for transnational stocks than provided for in jurisdiction (§ 602.2(d) (2)) of the Interim Regulations. This issue is being reviewed by NOAA with careful consideration of the commenter's views. Therefore, the last two sentences are deleted. When the review is completed, (d) (2) will be revised to incorporate a policy concerning appropriate responsibility for plan development affecting transnational stocks.

Two comments were received concerning the second sentence of § 602.2(e) (1) (i) that stated application of conservation and management measures is not expected to disrupt existing socioeconomic patterns. This sentence is deleted as it could be interpreted to make Councils responsible for maintaining existing socioeconomic patterns. One of the purposes of the Act, as described in Standard 5 (sec. 301(a) (5)), is to promote efficiency in utilization of fishery resources, an effort that could result in change in the existing socioeconomic patterns. Also, two commenters addressed the third sentence concerning the protection of the right of entry of new participants into a fishery. They suggested a greater emphasis upon maintaining control over the total fishing effort in a fishery subject to allocation of fishing privileges. The sentence is amended by adding "and in a manner which prevents excessive fishing effort."

The text of § 602.3, Contents of fishery managements plans, as originally published on September 15, 1976, has been withdrawn and the section reserved. The reason for this action was to allow for the revision of the section to correlate with and provide explanatory comments for § 602.4, Standard format for fishery managements plans—a section previously reserved. These two reserved sections will be presented for public comment together as Interim Regulations and, when

final, will become an integral part of these regulations.

Two comments were received suggesting an addition to Comments of Council (§ 602.5(c) (2)) to the effect that a Council recommendation to the Secretary of Commerce concerning changes in a plan prepared by the Secretary be based on "the other provisions of the Act and any other applicable laws" as well as the National Standards. The language is amended to include the suggestion.

MISCELLANEOUS COMMENTS

Additional suggestions for minor corrections, improvements, and clarifications were received from commenters. Similar comments originated within NOAA as a result of actual experience. Amendments resulting from these miscellaneous comments are adopted without specific commentary. However, for the convenience of the Councils and the interested public, the entire text of Parts 601 and 602, as revised, is published herein.

NEED FOR EFFECTIVE DATE

These revisions constitute integral and essential clarification of guidance to the Councils and become effective upon date of publication.

PUBLIC COMMENT

The Councils, government agencies, and the public are invited to submit comments and suggestions at any time.

By delegation of authority in Department of Commerce Organization Order 25-5A, Section 3.01dd, Amendment 4 (dated September 30, 1976) and NOAA Directives Manual 05-57 (dated December 1, 1976), the Associate Administrator for Marine Resources of the National Oceanic and Atmospheric Administration has approved these regulations.

NOTE.—The National Oceanic and Atmospheric Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

(Secs. 301(b), 302(f) (6), 304(f), and 305(g) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1851, 1852, 1854, 1855)).

Issued June 28, 1977.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

In consideration of the foregoing, 50 CFR Parts 601 and 602 are revised and Part 603 is reserved as follows:

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

Subpart A—General

Sec.

601.1 Purpose.
601.2 Definitions.

Subpart B—Geographical Boundaries

601.11 General.
601.12 Method of determination. [Reserved]
601.13 Description. [Reserved]

Subpart C—Uniform Standards for Organization, Practices, and Procedures

Sec.

601.21 General.
601.22 Organization.
601.23 Administrative practices and procedures.
601.24 Operational practices and procedures.
601.25 Council statement of organization, practices, and procedures.

AUTHORITY: 16 U.S.C. 1852, 1854, 1855; section 302(f) (6), 305(g), Pub. L. 94-205.

Subpart A—General

§ 601.1 Purpose.

The regulations in Part 601 implement certain portions of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801-1892), which among other things, establishes eight Regional Fishery Management Councils (hereinafter referred to as "Councils"). The principal responsibilities of these Councils are to provide the nucleus of a national fishery conservation and management program through the systematic development of fishery management plans and amendments to such plans, to submit periodic and other reports to the Secretary, to continually review and revise assessments as to optimum yield and the total allowable level of foreign fishing, and to conduct other necessary and appropriate activities with respect to the conservation and management of the fisheries within their geographical area of concern. The Councils act as independent bodies, whose actions must conform to the uniform standards established by Part 601. Part 601 describes matters pertaining to the establishment, organization, practices, and procedures of the Councils.

§ 601.2 Definitions.

The terms used in these regulations shall have the meanings that are prescribed in sec. 3 of the Act. In addition, the following definitions apply:

(a) *Administrative and technical support services.* The administrative, technical, legal, and scientific services needed by the Councils, authorized by the Secretary, and provided by the government to assist the Councils in the fulfillment of their various functions required by the Act.

(b) *Administrator.* The Administrator of the National Oceanic and Atmospheric Administration.

(c) *Advisory group.* The Scientific and Statistical Committees or advisory panels established under the Act.

(d) *Associate Administrator.* The Associate Administrator for Marine Resources, National Oceanic and Atmospheric Administration.

(e) *Confidential.* Confidential means containing information, the unauthorized disclosure of which could be prejudicial or harmful. Depending on the context within which it is used, the word: (1) identifies information having an official security classification of Confidential or higher relating to the protection of national security, or (2) describes information/data that is identifiable with

an individual, business, or some other entity and that is accepted from any person by the Secretary under a stipulation that limits disclosure.

(f) *Council*. Regional Fishery Management Council.

(g) *Director*. The Director of the National Marine Fisheries Service.

(h) *Federal budget cycle*. The 33-month process of formulating and executing the Federal budget.

(i) *Fishery management plan*. A document that contains a systematic description of a given fishery and that sets forth the objectives and strategies for the management of the fishery.

(j) *Highly migratory species*. [Reserved]

(k) *Regional Director*. The regional representatives of the Director. There are five regional offices of the National Marine Fisheries Service whose Regional Directors serve on the various Councils as specified by the Act.

(l) *Regional Fishery Management Council Operations Manual*. A compilation of technical and explanatory information, the purpose of which is to provide assistance to the Councils in the fulfillment of their various functions.

Subpart B—Geographical Boundaries

§ 601.11 General.

(a) *Fishery conservation zone*. The Act creates a zone contiguous to the territorial sea, which is called the fishery conservation zone. The outer boundary of the zone is 200 nautical miles from the baseline from which the territorial sea is measured and the inner boundary is a line coterminous with the seaward boundary of each of the coastal States. (See 43 U.S.C. 1301(b) and 1312 for definition of "seaward boundary".)

(b) *Scope*. (1) The boundaries described in § 601.12 [Reserved], delineate the geographical area of authority of adjacent Council within this fishery conservation zone.

(2) Within the geographical area of authority, each Council shall develop fishery management plans for each fishery involving the following categories of fishery resources:

(i) All fish within this zone, except "highly migratory species"; (ii) all anadromous species, throughout their migratory range, except when within a conservation zone recognized by the United States; and (iii) Continental Shelf fishery resources.

(c) *Jurisdiction*. (1) *State*. Generally the Act does not diminish the fishery jurisdiction of any State within its own boundaries, nor does it extend State fishery jurisdiction beyond a State's seaward boundary.

(2) *Intercouncil*. In any case in which the range of a stock or a fishery extends beyond the geographical area of authority of any one Council, as defined in § 601.12 [Reserved], the Secretary is authorized to designate the Council that shall prepare the fishery management plan for such a fishery, after consultation with the Councils concerned. When such a plan includes waters adjacent to the States represented on more than one

Council, the Council thus designated shall consult with the other affected Council(s). The Secretary may require that a plan be prepared jointly by the Councils concerned. In this case, any plan or amendment, before being submitted to the Secretary, shall be approved by a majority of the voting members present and voting, of each participating Council.

§ 601.12 Method of determination. [Reserved]

§ 601.13 Description. [Reserved]

Subpart C—Uniform Standards for Organization, Practices, and Procedures

§ 601.21 General.

(a) *Purpose*. Section 302(f) (6) of the Act requires each Council to determine its own organization, practices, and procedures for carrying out its functions in accordance with such uniform standards as are prescribed by the Secretary. The regulations contained in this Subpart provide the uniform standards in accordance with which the Councils shall operate.

(b) *Applicability of other laws*. (1) *National Environment Policy Act of 1969* (42 U.S.C. 4321). The National Environmental Policy Act (NEPA) sets forth the strategy of the Congress to achieve coordination of Federal activities and environmental considerations. NEPA's basic purpose is to insure that, in addition to technical and economic considerations, Federal officials weigh and give appropriate consideration to unquantified environmental values in policy formulation, decisionmaking, and administrative actions. Section 102(2) (C) of NEPA requires preparation of a detailed environmental impact statement in the case of major Federal actions that significantly affect the quality of the human environment. Procedures for compliance with NEPA in the preparation and submission of fishery management plans and amendments to such plans are set forth in § 602.6. [Reserved]

(2) Provisions of three interrelated laws affect Council practices and procedures, particularly concerning opportunity for public input, public access to Council meetings and to agendas, records, and reports of such meetings. These laws are:

(i) *The Federal Advisory Committee Act* (5 U.S.C. App. D). The intent of Congress with regard to the application of the Federal Advisory Committee Act (FACA) is stated in the Report of the Conference Committee (House Rept. No. 94-948, March 24, 1976). The provisions of FACA apply to the Councils and their committees and panels. Meetings must be open to the public except as provided for in § 601.24(b) (4) (iii) of these regulations. The application of FACA is designed to ensure open meetings and public access to information generated by the Councils.

(ii) *The Freedom of Information Act* (5 U.S.C. 552(b)). The Freedom of Information Act (FOIA) provides for public access to records of the executive branch of the Federal Government, and to rec-

ords generated at the request of the Federal Government. Nine groups of exceptions are provided that allow the withholding of information. Application of FOIA is covered more specifically in Part 603. [Reserved]

(iii) *The Privacy Act* (5 U.S.C. 552(a)). This Act provides to individuals certain rights of access to records kept about them, and at the same time requires that the confidentiality and use of the information be strictly regulated, placing restrictions on the collection, retention, and use of personal information. Specific application of this Act is found in Part 603. [Reserved]

(3) *Coastal Zone Management Act of 1972, as Amended* (16 U.S.C. 1451 et seq.). The principal objective of this Act is to encourage and assist States in developing coastal zone management programs, to coordinate State activities, and to safeguard the regional and national interests in the coastal zone. While the coastal zone does not extend beyond the territorial sea, activities taking place beyond the territorial sea may impact on the coastal zone and thus come within the influence of coastal zone planning. In the preparation of fishery management plans, Councils should be particularly cognizant of the provisions of sec. 307(c) of this Act that require that any Federal activity directly affecting the coastal zone of a State be consistent with that State's approved coastal zone management program. Thus, Councils will need to coordinate their planning actions with the appropriate State agencies involved in coastal zone program development.

§ 601.22 Organization.

(a) *General*. This part addresses such questions as organization of the Council members, administrative staff, and advisory groups.

(b) *Council members*. The Councils consist of voting and nonvoting members or their designees, as specified in the Act.

(1) *Terms*. Members appointed following initial constitution of the Councils serve for a term of three years. An individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. The anniversary date for measuring terms of membership is August 11.

(2) *Designees*. (i) The Act authorizes the principal State officials, the NMFS Regional Directors, and the non-voting members to designate individuals to attend Council meetings in their absence. Only one designee per Council may be so specified by each of the above officials.

(ii) A designee may serve for all or part of a Council meeting in the absence of the individual he or she is replacing and has the same voting power as his or her designator.

(iii) If circumstances require, the Council member may change his or her designee. In such case, the Chairman of the Council must be notified and given in writing, in advance of the meeting at which the designee will represent the Council member, the name, address, and

position of the individual designated. A designee may not name a designee for himself or herself.

(iv) Designees without appropriate security clearance may not attend meetings closed for security reasons, nor handle classified material. (See § 601.23 (e) (3).)

(v) Reimbursement of actual expenses and compensation, as described in § 601.23(f), associated with travel to any meeting shall be limited to the member, or, in the case of the absence of the member, one designee. A designee who serves for part of a Council meeting may receive reimbursement of actual expenses and compensation associated with necessary travel and attendance at that part of a Council meeting wherein the member is absent.

(3) *Designation of regional directors.* The Regional Directors, NMFS shall, in accordance with the Act, serve as voting members on the Councils as follows:

Council	Regional director
New England-----	Northeast re- gion.
Mid-Atlantic -----	Do.
South Atlantic-----	Southeast re- gion.
Caribbean -----	Do.
Gulf of Mexico-----	Do.
Pacific -----	Northwest re- gion.
North Pacific-----	Alaska region.
Western Pacific-----	Southwest re- gion.

(4) *Appointments.* (i) Inasmuch as each year approximately one-third of a Council's appointed membership will lapse, new members shall be appointed by the Secretary or the Secretary's delegate from lists of nominees submitted by the Governors of each applicable constituent State by May 15 of each year. The Governors are responsible for determining that their nominees meet the qualification requirements of the Act and for providing appropriate documentation for the Secretary or the Secretary's delegate to make a reasoned choice.

(ii) There are two categories of seats for which appointed voting members may be eligible: "obligatory" and "at-large." Each Council constituent State has one obligatory seat. When the term of an obligatory State member expires, the Governor of that State is required to submit at least three nominations from which the selection of a replacement will be made by the Secretary or the Secretary's delegate. When the term of an at-large State member expires, the Governor of each member State of a Council shall submit at least three nominations for each vacancy, and the selection will be made by the Secretary or the Secretary's delegate from among the collective nominations by the Governors of all member States. Any individual whose term is expiring may be renominated for consideration.

(iii) The number of individuals who must be nominated by a Governor shall be equal to at least three times the number of vacancies available, and each such nominee shall be considered as available for any such vacancy. However, in a case

where the terms of both an obligatory member and an at-large member expires the same year, the Governor of the State holding the expiring obligatory seat may indicate that remaining nominees for an obligatory seat may be considered for an at-large seat.

(iv) The procedures in § 601.22(b) (4) (i)-(iii) also apply when a vacancy occurs prior to the normal expiration of a term of membership of a voting member appointed by the Secretary or the Secretary's delegate.

(v) If a Governor fails to submit a list of at-large nominees within the time allotted, then the new at-large member(s) may be appointed from the list of names submitted by the Governors of the other applicable constituent States.

(5) *Council organization.* The Chairman shall be elected from among the voting members by a majority vote of the voting members present and voting. The term of office for the Chairman may not exceed one year; however, the Chairman is eligible for re-election. The Council may establish other officers as deemed necessary and set their terms of office. 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. Such committees shall conform to the procedures for assuring open meetings specified for the Council.

(c) *Administrative staff.* Each Council shall appoint an Executive Director and other full and part time administrative employees as the Secretary determines are necessary to the performance of its functions and which are consistent with budgetary limitations. However, the number of such employees may not exceed seven except as approved by the Director, NMFS. The Executive Director and Staff are responsible to the Chairman of the Council.

(1) *Executive director.*—(i) *Duties.* Each Council, through its Chairman, shall assign such duties to the Executive Director as it deems appropriate, consistent with these uniform standards.

(ii) *Compensation.* The administrative responsibilities, coupled with the complexity of the workload of the Council, will influence the pay level appropriate to a given Executive Director position, provided that compensation may not exceed the yearly rate for the highest step of a GS-15 in the General Schedule.

(2) *Other administrative staff.*—(1) *Minimum.* As a minimum, each Council shall have an administrative staff consisting of an executive director, an administrative officer, and a secretary.

(ii) *Additional staff.* Additional Administrative staff above the minimum prescribed above will vary by Council because of differences in workload and availability of resources. The number and types of additional positions will also vary over time as the work of the Council is defined during its initial phase of operation.

(d) *Scientific and statistical committee.* Each Council shall establish and maintain, and appoint the members of a Scientific and Statistical Committee to

assist it in the development, collection, and evaluation of statistical, biological, economic, social, and other scientific information as is relevant to the Council's development or amendment of any fishery management plan. The Council is authorized to pay the actual expenses of such Committee members while engaged in Council business.

(1) *Committee function.* The Scientific and Statistical Committee provides expert scientific and technical advice to the Council on the development of fishery management policy, on the preparation of fishery management plans, and on the effectiveness of such plans once in operation. The Committee aids the Council in identifying scientific resources available for the development of plans, in establishing the objectives of plans, in establishing criteria for judging plan effectiveness, and in the review of plans.

(2) *Committee organization.* The members of the Committee and a Chairman are appointed by the Council. Membership shall be multidisciplinary, including biological and social scientists from the Federal, State, and private scientific community who are knowledgeable about the fisheries to be managed. The size of the Committee is discretionary within the resources available to the particular Council. The Committee shall meet in the area encompassed by the Council's constituent States, with the approval of the Chairman of the Council. No staff is assigned to this Committee but staff support may be requested from the Chairman of the Council or the Executive Director. This Committee shall have a charter separate from that of its parent Council.

(e) *Fishery advisory panels.* Each Council is authorized to establish other advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Act. The Councils are authorized to pay the actual expenses of the members of such panels while engaged in the performance of Council business.

(1) *Panel function.* Fishery advisory panels are authorized principally to obtain pragmatic advice and counsel of the people most affected by, or interested in, Council matters of fishery management policy; on the preparation of fishery management plans; on their review prior to submission to the Secretary; and on their effectiveness once in operation. These panels aid the Council in establishing the objectives of plans as well as the criteria for judging plan effectiveness, and serve as a communication link with those who must operate under the management regime.

(2) *Panel organization.* The members and a Chairman are appointed by the Council. The membership of each panel shall be composed of a balanced representation of the interests of those who are either actually engaged in the harvest, processing or consumption of, or are knowledgeable and interested in the conservation and management of, the applicable fishery or stock(s) of fish. The size of each panel is discretionary within the resources available to the particular Council, but each panel must

be of sufficient size to permit a balanced representation of interests. It is suggested for the purpose of minimizing administrative requirements that each Council establish one broad-based advisory panel. Subpanels may be used to provide advice on individual fisheries or unique fishery resources under Council consideration. The panels shall meet in the area encompassed by the Council's constituent States as deemed necessary by the Council Chairman. No staff is assigned to these panels, but staff support may be requested from the Chairman of the Council or the Executive Director. Each panel shall have its own charter separate from those of other panels, from the Scientific and Statistical Committee, and from its parent Council.

§ 601.23 Administrative practices and procedures.

(a) *General.* The Act directs the Secretary to provide the Councils with administrative support services as are necessary for their effective functioning. The Administrator of the General Services Administration is directed by the Act to furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any agency or instrumentality of the United States. All Federal agencies are authorized to detail personnel on a reimbursable basis to the Councils after consulting with the Director, NMFS. (See paragraphs (d) (3) and (e) (2) of this section.) Uniform standards in this section are provided in order to expedite the delivery of this support with a minimum burden on the substantive work of the Councils.

(b) *NOAA field units.* NOAA field units are assigned to provide services and support to each Council as follows:

Council	Servicing field unit
New England.....	Northeast region, NMFS.
Mid-Atlantic	Do.
South Atlantic.....	Southeast region, NMFS.
Caribbean	Do.
Gulf of Mexico.....	Do.
Pacific	Northwest region, NMFS.
North Pacific.....	Alaska region, NMFS.
Western Pacific.....	Southwest region, NMFS.

These NOAA field units are authorized to provide for budgetary, accounting, personnel, and procurement support to their respective Councils, and may act as liaison between the Councils and other Federal agencies.

(c) *Budgeting, funding, and accounting.*—(1) *Federal funds.* The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through that agency, in the budgets of NOAA and NMFS. The funding requirements for the Councils are subject to regular budgetary review procedures. Annual grants will provide such Federal funds as the Secretary determines are necessary to the performance of the functions of the Councils and consistent with budgetary limitations.

(2) *Funds from other sources.* [Reserved]

(3) *Financial procedures and standards.* [Reserved]

(d) *Employment practices.* The following sets forth the responsibilities of the Councils with regard to personnel matters and establishes personnel-related standards to be used by the Secretary in analyzing Council budgets.

(1) *Staffing.* Each Council may appoint and assign duties to an Executive Director and other full and part-time administrative employees as the Secretary determines are necessary to the performance of its functions. Each position must be justified during the budget process described in OMB Circular A-110. Descriptions of the work to be performed shall be submitted in accordance with § 601.23(d) (6) dealing with salary and wage administration.

(2) *Experts and consultants.* Each Council may contract with experts and consultants as needed and within their respective budgets to provide technical assistance. Such experts and consultants may not provide services on a permanent basis (see § 601.23(e) (2)).

(3) *Details of government employees.* Each Council may request the head of any Federal agency to detail to such Council on a reimbursable basis any personnel of such agency to assist the Council in the performance of its functions under the Act (see § 601.23(e) (2)). The length of such detail shall be mutually determined by the Council, the Federal employee and his or her agency. Federal employees so detailed retain all benefits, rights and status to which they are entitled in their regular employment. The Councils may negotiate arrangements with State and local governments to utilize employees of those governments.

(4) *Nondiscrimination.* All activities of the Council must operate under a policy of equal employment opportunity. Council staff positions shall be filled solely on the basis of merit, fitness, competence, and qualifications. Employment actions shall be free from discrimination based on race, religion, color, national origin, sex, age, or physical handicap.

(5) *Personnel actions.* Subject to these instructions, and within budgetary constraints, the Councils may establish positions, recruit, hire, compensate, and dismiss personnel. Involuntary separation should be for cause alone, with reasonable notice given to the employee.

(6) *Salary and wage administration.* (i) 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 should be in proportion to substantial differences in the difficulty and responsibilities of the work performed.

(ii) A cost of living allowance may be applied to the salaries of Council members and staff whose post of duty is in one of the following areas: Alaska, Hawaii, Guam, Virgin Islands, and Puerto Rico. The rate of cost of living allowance may not exceed that paid by the Federal Government in the same area.

The current rates may be obtained from the applicable NOAA field unit.

(iii) The duties of any new position shall be contained in a brief description to be submitted to the NOAA personnel office servicing the NMFS Regional Office assigned to a 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, and a determination of the applicability of the Fair Labor Standards Act. The Council then may fill the position at any salary level within that range, except that, unless the recruitment of exceptionally qualified employees is hampered, the policy of hiring at the beginning rate shall be recognized. The annual pay for any staff position may not exceed the current rate for the top step of GS-15 of the General Schedule at any time. After a position has been filled, any employee may be promoted annually and recognized for superior performance in accordance with Council policies.

(7) *Leave.* Employees of the Council may be granted paid leave for holidays, vacations or exigencies, sickness, and civil duties (jury, military reserve obligations) as determined by the Council. Paid annual leave may not exceed 20 working days per year. Paid sick leave may not exceed 13 working days per year. Earned annual and sick leave may be accumulated from year to year.

(8) *Employee benefits.* The Council may provide its employees the opportunity to participate in group medical insurance, life insurance and retirement plans, and pay a reasonable proportion of the cost of such plans.

(9) *Conduct.* The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staff, and their advisory groups. Such standards should include the following principles:

(i) 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 elective office.

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

(iii) No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm or corporation, a contribution of money or anything of value 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 Councils.

(iv) No employee of the Council shall have a direct or indirect financial inter-

est that conflicts with the fair and impartial conduct of his or her Council duties.

(v) No Council member, employee of the Council or member of a Council advisory group shall use or allow the use, for other than official purposes, of information, obtained through or in connection with his or her Council employment or advisory group membership, that has not been made available to the general public.

(vi) No Council member or employee of the Council shall engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct prejudicial to the Council.

(vii) No Council member or employee of the Council shall use Council property on other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.

(10) *Personnel files.* A file for each Council member containing appointment papers, security reports, biographical data and other official papers will be centrally maintained in NOAA under security and safeguard conditions required of files subject to the Privacy Act. This file will be available to the member, and to other persons only when a need to know has been established. Each Council should maintain in its office, personnel files on its employees and experts and consultants under contract under appropriate safeguards in accordance with the Privacy Act.

(11) *Security investigations.* When it is anticipated that security classified information will be kept or handled in Council offices, certain employees shall be designated to be permitted access to the information in accordance with Federal standards and shall receive appropriate security clearance from the Office of Investigation and Security of the Department of Commerce.

(e) *Personnel.*—(1) *Council staff.* The Councils may, consistent with the standards of employment practices contained in § 601.23(d), establish positions and recruit, hire, compensate, and dismiss personnel. The personnel procedures of each Council will be subject to audit periodically.

(2) *Ad hoc staff support.* All Federal agencies are authorized by sec. 302(f) (2) of the Act to detail personnel to the Council on a reimbursable basis. Any Council requests to the heads of such agencies must contain the purpose of the detail, the length of time of the detail, the compensation to be paid and the stipulation that the Director, NMFS, be consulted prior to granting the request. Copies of this correspondence shall be transmitted to the Director, NMFS, through the appropriate NOAA field office to facilitate such consultation. Legal counsel on a continuing basis is available from the regional office of the NOAA Office of General Counsel. Councils are expected to obtain legal counsel from NOAA before seeking other legal counsel. Other experts and consultants, including legal counsel, may be used as the Council considers appropriate, consistent

with budgetary limitations (see § 601.23(d)(2)).

(3) *Council access to security classified material.* The security investigation that is routinely conducted at the time a nominee to the Council is appointed is the basis for authorizing access on a need-to-know basis to material classified Confidential. Normally this should be sufficient for Council purposes (see also § 601.22(b)(2)(iv)). Clearance for higher classifications may be granted, following regular Federal procedures, by the Secretary. Access to security classified material is governed by security regulations and procedures pursuant to Executive Order 11652, effective June 1, 1972. Need-to-know is determined by the authority having custody of the material. Persons who are not members of the Council, including Council staff and members of advisory groups, must possess the appropriate security clearance before they may be present when classified materials are discussed or examined. Such clearances will be requested through the appropriate NOAA field unit.

(f) *Compensation and expenses.*—(1) *Compensation.* The voting members of each Council who are not employed by the Federal government or any State or local government shall receive compensation at the daily rate for a GS-18 in the General Schedule when engaged in the actual performance of duties, including travel time, as assigned by the Chairman of the Council.

(2) *Expenses.* Council voting members, the nonvoting Executive Director of the Marine Fisheries Commission for the geographical area concerned (if any), the additional nonvoting member of the Pacific Council, and the members of the advisory panels shall be reimbursed for actual expenses associated with travel on official Council business. The Council may also pay the transportation and expenses, on an actual expense basis, of invited experts and consultants, and Council staff. All such expenses must be authorized by the Chairman of the Council or the Executive Director and be supported by detailed vouchers attested to by the person incurring the expenses. Individual receipts, except for hotel receipts, are not required. Foreign travel must have the prior consent of the Administrator.

(3) *Actual expense defined.* Actual expenses include transportation by air coach, rail coach, bus or privately owned vehicle (automobile or private plane—reimbursed on a per mile basis); room and meals within the limit established by the NOAA Travel Handbook; and incidental expenses such as taxi fares, parking and telephone calls on official business.

(g) *Reporting.*—(1) *Annual report.* The Act requires the Councils to report to the Secretary annually before February 1 on Council activities during the immediately preceding calendar year. The annual report will be used by the Secretary to fulfill her obligation to report to the Congress and the President no later than March 1 of each year on her, and the Councils' activities in the

preceding year. The annual Council report shall be submitted directly to the Administrator, NOAA, Washington, D.C. 20230, in eight copies. The minimum contents of such a report are as follows:

(i) A list of Council members with addresses and affiliations, indicating voting and nonvoting members, Council officers serving during the year, office titles, and dates of such service.

(ii) A list of Council administrative staff with titles.

(iii) A list of members of the Scientific and Statistical Committee with addresses and affiliations, and lists of members of each advisory panel with addresses and affiliations.

(iv) A list of Council meetings and hearings held and of Scientific and Statistical Committee and advisory panel meetings held, with dates, locations and the subjects of discussion, indicating whether they were open, closed or partially closed to the public, and citing the appropriate authorization for any closed portions of the meetings.

(v) A list of all items sent to or received from the Secretary during the calendar year, including proposed fishery management plans and amendments, and comments on foreign fishing applications or on plans developed by the Secretary, with an indication of the date such items were transmitted to or received from the Secretary and the date of any action taken.

(vi) An appropriate summary of the discussion at any closed sessions held during the year.

(vii) The cost to operate the Council, indicating sources of funding and the respective amounts.

(viii) An estimate of the man-years of staff support by source (Federal, State, private) that was donated or provided without payment or reimbursement.

(2) *Other reports.* The Councils shall prepare any other relevant reports as the Secretary may request including information required by the reporting requirements of FACA (§ 601.21(b)(2)). Requirements for periodic financial or other reports for purposes of NOAA budgetary control and reporting are described in individual grants issued to the Councils and in § 601.23(c)(3). [Reserved]

§ 601.24 Operational practices and procedures.

(a) *General.* In fulfilling the Council's responsibilities and functions, the Council members will meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information or make decisions regarding material before them. This section establishes uniform standards for the conduct of those activities to meet the requirements of the Act and to facilitate the exercise of Council responsibilities.

(b) *Meetings. General.* The Councils shall meet at the call of the Chairman or upon request of a majority of the voting members. Advisory groups shall meet

with the approval of the Chairman of the Council. The Councils shall develop a mechanism for coordinating requests for advice from their advisory groups through the Executive Director.

(2) *Notice.* Notice of meetings, including time, location, subjects to be discussed, etc., must appear in the FEDERAL REGISTER at least 20 days prior to the meeting. Notices shall be submitted by the Council, no later than 26 days prior to the meeting, to the Director, NMFS, who shall submit such notice to the FEDERAL REGISTER.

(3) *Record.* Detailed minutes shall be kept and made available to the public upon request, except where the meeting or portion thereof was closed, in which case only the open portions must be made available.

(4) *Conduct.* (i) Meetings shall be conducted in a manner to permit the greatest possible participation by all members of the Council and the public. Decisions by consensus are permitted except where the issue is Council approval or amendment of a fishery management plan (including any proposed regulations), or comments for the Secretary on foreign fishing applications or fishery management plans developed by the Secretary. In these cases, a vote is required.

(ii) A majority of the voting members of any Council shall constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings.

(iii) All meetings or portion thereof shall be open to the public with only those exceptions set forth in the Federal Advisory Committee Act (FACA) (as amended by the Government in the Sunshine Act of 1976 (Pub. L. 94-409, 90 Stat. 1241)). Closure of a meeting requires a prior determination by the Secretary or the Secretary's delegate that the reasons for excluding the public are valid and that it is not in the public interest to leave the meeting open. Such a determination must be requested through the Assistant Secretary for Administration, Department of Commerce. A notice of a meeting which a Council desires to be closed entirely or in part to the public shall be submitted by the Council, no later than 45 days prior to the meeting, to the Director, NMFS, who shall request a determination. If the determination permits closing of the meeting, such notice shall be published in the FEDERAL REGISTER.

(iv) When there is a vote, the majority of the voting members present and voting shall rule. Voting by proxy is not permitted.

(v) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary may submit a statement of their reasons for dissent to the Secretary.

(5) *Frequency and duration.* The Councils shall meet in plenary session at least once every three months. Council advisory groups may meet as frequently as necessary, with the approval of the Council Chairman.

(6) *Location.* (i) Each Council shall conduct all meetings and hearings within its geographic area of concern. In the particular case of the North Pacific Council, "geographical area of concern" means within the State of Alaska. When two or more Councils have been designated by the Secretary to prepare a fishery management plan jointly, Councils so designated may meet jointly within their constituent States for the purpose of developing or amending such a plan.

(ii) The Council meeting place should have a capacity large enough to accommodate the anticipated public attendance and be easily accessible to those interested in attending.

(c) *Hearings.* (1) *General.* The Act directs the Councils to hold public hearings in order to provide the opportunity for all interested persons to be heard in the development of fishery management plans, amendments thereto, and with respect to the administration and implementation of the Act. The Council may use its judgment regarding when and where such hearings should be held, consistent with § 601.24(b) (4) and (6).

(2) *Conduct.* When it is determined that a hearing is appropriate, the Chairman of the Council shall designate at least one voting member of the Council to officiate. Conduct of the hearing, beyond the stipulation that all points of view be given a chance for expression, is within the discretion of the hearing official under whatever instructions the Council may wish to provide.

(3) *Notice.* Hearings shall follow the same procedures for announcement as for Council and advisory group meetings. Advance notice also should be given in the local media where the hearing is to take place. Publicity should be sufficient in time, substance, and area coverage to assure that all interested parties are aware of the opportunity to make their views known.

(4) *Record.* An accurate record of the participants and their views shall be reported back to the Council and maintained as a part of the Council's official records.

(d) *Council operational structure.* (1) *General.* In addition to the Council staff and the advisory groups that are provided for in the Act, an operational structure will be needed to develop basic inputs to the fishery management plans and to assemble drafts for formal review by the Councils and their advisors. The operational structure(s) selected by a Council should: (i) Address directly the responsibilities and functions listed in sec. 302(h) of the Act; and (ii) Strike a reasonable balance among the following criteria:

(2) *Criteria for formation.* (i) *Focused responsibility.* The structure selected should assign clearly defined responsibilities in a clearly defined chain of command consistent with the formal structure provided in the Act.

(ii) *Administrative simplicity.* The structure selected should permit thorough and uncomplicated supervision by those with formal responsibility, including the Executive Director of the Council.

(iii) *Flexibility.* Within defined responsibilities, the structure should be able to bring to bear the necessary expertise on planning problems and to respond to shifts in Council priorities.

(iv) *Independence and relevance of science.* The scientific input to the development of plans should, to the extent possible, be institutionally insulated from managerial biases and pressure from interested parties while remaining relevant to the problems of management.

(v) *Quality of scientific and technical information.* The structure should assure that the best scientific and technical information available will be applied in plan development.

(vi) *Minimum cost.* Cost, in dollars, manpower, and diversionary impact on ongoing programs should be minimized within the constraints of the other criteria.

§ 601.25 Council statement of organization, practices and procedures.

(a) *General.* (1) The Act requires that the details of how a Council operates shall be published by the Council and made available to the public. The required Statement of Organization, Practices and Procedures, as a minimum, shall address the items listed in the format below.

(2) Publication shall be in the FEDERAL REGISTER, and include an address where interested members of the public may write to request copies. Changes in operating practices and procedures shall be reflected in revisions to the statement, which shall likewise be published and made available to the public.

(b) *Format.*

- (1) Name of Council.
- (2) Location of offices.
- (3) Legal authority.
- (4) Purpose.
- (5) Council composition.
- (6) Officers and terms of office.
- (7) Staff.
 - (i) Composition.
 - (ii) Functions.
 - (iii) Employment practices.
- (8) Standing committees of Council members.
 - (i) Name.
 - (ii) Composition.
 - (iii) Function.
- (9) Meetings and hearings.
 - (i) Frequency.
 - (ii) Duration.
 - (iii) Location.
 - (iv) Agendas or orders of business.
 - (v) Minutes.
 - (vi) General rules of procedures.
 - (vii) Authority of the chair.
- (10) Advisory panels.
 - (i) Name.
 - (ii) Composition.
 - (iii) Function.
- (11) Organization of management plan development teams.
 - (i) Organization.
 - (ii) Practices and procedures.
 - (iii) Balance among criteria.
 - (A) Focused responsibility.
 - (B) Administrative simplicity.
 - (C) Flexibility.
 - (D) Independence and relevance of science.
 - (E) Quality of scientific and technical information.
 - (F) Minimum cost.

(12) Financial management system.

- (i) Standards for and code of employment conduct in contract awards and administration control procedures.
- (ii) Procurement procedures.
- (iii) Property management.
- (iv) Accounting and budgetary control procedures.

PART 602—GUIDELINES FOR DEVELOPMENT OF FISHERY MANAGEMENT PLANS

- Sec.
- 602.1 Purpose and scope.
 - 602.2 National standards for fishery conservation and management.
 - 602.3 Contents of fishery management plans. [Reserved]
 - 602.4 Standard format for fishery management plans. [Reserved]
 - 602.5 Procedures for development, review, and amendment of fishery management plans.
 - 602.6 Compliance with NEPA. [Reserved]

AUTHORITY: 16 U.S.C. 1851; § 301(b), Pub. L. 94-285.

§ 602.1 Purpose and scope.

(a) A major purpose of the Fishery Conservation and Management Act is to provide for the preparation and implementation, in accordance with National Standards, of fishery management plans that will achieve and maintain, on a continuing basis, the optimum yield from each fishery covered by the exclusive fishery management authority established by the Act.

(b) Title III of the Act establishes seven National Standards for fishery conservation and management. Any fishery management plan prepared either by the Councils or the Secretary and any regulation promulgated to implement a plan shall be consistent with these National Standards. The Secretary is required to establish guidelines based on the National Standards to assist in the development of fishery management plans.

(c) This Part accordingly constitutes the Secretarial Guidelines for fishery management plan development based upon the National Standards. It contains explanatory comments with regard to these National Standards; guidance regarding the content of fishery management plans and various other procedures involved in the development, submission, review, and amendment of plans.

§ 602.2 National Standards for fishery conservation and management.

(a) *General.* Each fishery management plan, and any amendment to such plan, prepared by any Council and submitted to the Secretary will be reviewed by the Secretary for approval, disapproval, or partial disapproval. The review will involve a determination of whether the proposed plan is consistent with the National Standards, the other provisions of the Act, and any other applicable law (sec. 304(b)).

(1) *Purpose.* This section provides explanatory comments with respect to the National Standards, to assist the Councils in preparing fishery management plans and amendments that are consistent with the National Standards.

(2) *Definitions.* (1) *Habitat.*—Habitat is that combination of physical, chemical, and biological conditions and factors necessary for the completion of the life functions of any marine animal or plant that is to be managed under the Act.

(ii) *Management unit.*—Any species, stock, or group of species or stocks of fish that is geographically or ecologically interrelated or is affected as a group by fishing practices, that is capable of being managed as a unit on a rational and timely basis.

(b) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

(1) *Overfishing.* Overfishing is a level of fishing that results in a reduction in the capacity of a management unit to produce maximum biological yield on a sustained basis for specified habitat and environmental conditions.

(2) *Maximum sustainable yield (MSY).* The MSY from a fishery is the largest average annual catch or yield in terms of weight of fish caught by both commercial and recreational fishermen that can be taken continuously from a stock under existing environmental conditions. A determination of MSY, which should be an estimate based upon the best scientific information available, is a biological measure necessary in the development of optimum yield.

(3) *Optimum yield concept.* (1) The concept of optimum yield is broader than the consideration of only the stocks of fish. It takes into account the economic well-being of the commercial fishermen, the interests of recreational fishermen, the habitat quality and the national interest in conservation and management of the fisheries as expressed in sec. 2, and the National Standards in sec. 301(a) of the Act. Optimum yield:

(A) Recognizes resource uses and values other than harvesting;

(B) Allows for the importance of quality to the recreational fishing experience;

(C) Considers social and economic factors as important criteria in setting harvest rates;

(D) Recognizes the need for fisheries products; and

(E) Considers the present extent and condition of the habitat as well as long-term changes.

(ii) The optimum yield for a particular fishery will seldom, if ever, be a constant quantity over time since the condition of the fishery resource and the desires of the users may change. Periodic adjustments of harvest quotas, rates, and methods may be needed.

(4) *Optimum yield and management objectives.* The determination of optimum yield for a particular fishery will depend heavily upon the objectives that must be determined and adopted by the Councils with the assistance of their advisory groups and in consideration of the views of user groups and the general public. Relative weighting of the elements of the optimum yield determination will be influenced by both regional objectives

and national considerations (as set forth in sec. 3(18) of the Act). Rarely will a fishery be managed to meet a single objective. Objectives sought may conflict to a degree with one another. Consequently, priority decisions must be made in developing objectives.

(5) *Optimum yield and foreign fishing.* Section 201(d) of the Act provides that fishing by foreign nations is limited to that portion of the optimum yield of any fishery subject to the fishery management authority of the United States which will not be harvested by vessels of the United States. In determining whether U.S. fishermen will not harvest an optimum yield, the Councils are to give consideration to the capacity and the extent to which fishing vessels of the United States will harvest such yield. Both the optimum yield and the total "surplus" that can be made available for foreign fishing are to be included in fishery management plans and amendments to such plans.

(c) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(1) *Scientific information.* The term "scientific information" is meant to include information of a biological, ecological, economic, and social nature. Success of a fishery management plan depends on the quantity and quality of its scientific and technical information, the thorough analysis of this information, and the degree to which it is applied.

(2) *Standardization of information.* State and Federal suppliers of technical data to the Councils should give consideration to the comparability and compatibility of their respective data sets. The Councils, by means of fishery management plans, shall specify pertinent data to be submitted with respect to the fishery. Council guidance concerning standardizing the methods of obtaining and presenting such data expected from a variety of sources and areas would facilitate data collection, analysis, and evaluation.

(3) *Availability of information.* The type and extent of scientific information available may vary substantially from fishery to fishery. The lack of complete scientific information concerning a fishery shall not prevent the preparation and implementation of a fishery management plan. Councils should identify information gaps and indicate the need for acquisition of additional information. As better data become available, plans should be modified.

(d) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(1) *Management unit.* It is expected that the management unit will incorporate the entire range of a stock of fish to the extent practicable. Also, a unit should, to the extent practicable, comprise several stocks that are ecologically interrelated or are affected as a group by fishing practices. Management units may be broadly defined to take account of the

multitude of fishing practices that can include effort directed toward: (1) A single stock of fish found in a certain area; (ii) different stocks of fish caught by the same vessels or gear; (iii) all the stocks in a certain area, and so on.

(2) *Jurisdiction.* Unity of management, or at least cooperation between various jurisdictional authorities (e.g., State, Council, Federal Government), is vital to prevent jurisdictional disputes from adversely affecting conservation practices. Where management units cross Council or Federal-State boundaries, coordination should be sought among the several fishery managers and Councils in the development of plans and regulations. The occurrence of a stock in a given Council area does not necessarily mean that a plan will be written specifically for that limited Council area. Where a stock's range overlaps Council areas, one plan may be written to cover the entire range.

(3) *Interrelationship of species/habitat.* The broad, long term goal of the several plans developed by each Council should be to optimize the benefits from the total weight of all forms of marine animal and plant life within the Council area of authority. This goal requires an emphasis upon management of inter-related groups of species. Management plans should also address the impact of pollution and the effects of wetland and estuarine degradation upon the stocks of fish throughout their range.

(e) *Standard 4.* Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (1) fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(1) *Equity in allocation.* Allocation is an important component of fishery management. Allocations among present users and between present and future users should be calculated to promote conservation and to take into consideration both public and private interests. When allocation of fishing privileges becomes necessary among U.S. fishermen, e.g., among recreational or commercial fishermen or different gear types, it must be done fairly. The requirement for fairness and equity should ensure that attention is given to the preservation of the quality of the recreational fishing experience with respect to any species of substantial interest to recreational fishermen. In determining fair and equitable allocations, considerable attention should be given to the economic and social consequences of alternative allocation schemes. Any plan must provide for fair and equal treatment of U.S. citizens and corporations operating or engaging in the fisheries concerned without regard to their particular state of residence or incorporation.

(2) *Traditional fishing.* Traditional or historic fishing patterns will also be considered when allocation of fishing privileges is necessary.

(3) *Right of entry.* The opportunity of new participants to enter a fishery should be protected wherever feasible and in a manner which prevents excessive fishing effort.

(f) *Standard 5.* Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(1) *Efficiency in the utilization of fishery resources.* This standard is intended to promote the efficiency of the three elements of utilization: harvesting, processing, and marketing of fishery products.

(2) *Economic efficiency.* (i) Economic efficiency may be regarded as one of many factors to be considered in the development of a plan. Councils will be involved in decisions about the distribution of costs and benefits, provision of employment opportunities, changes in the rate and composition of regional economic development, environmental effects, etc. To follow efficiency principles exclusively may not provide the greatest overall benefits to the Nation or necessarily reduce costs to the consumer. Accordingly, both the advantages and disadvantages of "efficiency" will have to be carefully weighted in the context of the objectives for the particular fishery involved.

(ii) Economic analyses made during plan development and amendment will provide a basis for management choices concerning economic efficiency. Where limited access systems are recommended, an economic analysis of such factors as the effects on the price of fish, or the price of vessels, or alternative employment problems, etc., will be necessary for an informed decision regarding the implementation of such systems.

(3) *Economic allocation.* Where conservation and management measures are recommended for economic allocation and for other purposes, due consideration shall be made of the biological, ecological, and social consequences of such measures.

(g) *Standard 6.* Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(1) *Causes of variations.* There can be great uncertainty with regard to the location, size, and even the existence of fish stocks. Historic "peaks" and "valleys" in annual catches, changes in environmental conditions, and species replacement in various areas provide indicators of the types of variations to be expected. Changes in habitat conditions may alter population levels. Variations are also to be expected in harvesting effort, fishing strategy, and gear efficiency within a fishery.

(2) *Flexibility in plan development and implementation.* Sufficient flexibility

must be built into the fishery management process to allow for timely response to unforeseen changes, either mancaused, (e.g., change in catch size) or natural, (e.g., spawning failure). To the extent that information is available, every effort should be made to develop fishery management plans that take into account these variations and provide a suitable buffer in favor of conservation. In evaluating the need for flexibility, consideration should be given to the completeness of fishery data available, future availability of improved data, and the ability of the fishery to adjust to new regulations. Constant acquisition and analysis of fishery and resource data will help reduce uncertainty. Councils should respond to changes in the fishery and the resource and additional information by amending management plans and by proposing improved management techniques.

(h) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. A continuing goal of management is to eliminate, to the extent feasible, unnecessary costs of doing business. It is particularly important in a cooperative management regime that all entities involved take such steps as are necessary to ensure full utilization of available capabilities. Cost effectiveness should be sought through the process of optimizing existing capabilities, rather than at the expense of program objectives or program effectiveness. The costs of the proposed management regime, including enforcement, should be carefully evaluated in relation to the anticipated benefits.

§ 602.3 Contents of fishery management plans. [Reserved]

§ 602.4 Standard format for fishery management plans. [Reserved]

§ 602.5 Procedures for development, review, and amendment of fishery management plans.

(a) *Plans prepared by the Councils.* In preparing a fishery management plan, a Council shall:

(1) *Identify fisheries to be managed.* The Council shall assess all the fisheries within the geographical area of authority. It will be the Council's responsibility, after consultation with the Secretary, to identify those fisheries requiring plan development and to set priorities for plan development.

(2) *Develop management options.* The Council shall assemble and analyze all relevant information (e.g., biological, economic, social, ecological, user, and constituency) with regard to a particular fishery and develop specific technical management options. The Secretary and the Secretary of State shall furnish the Councils with information concerning foreign fishing and international fishery agreements. Scientific and technical information will be available to the Councils from a variety of sources, including the National Marine Fisheries Service's Regional Offices and Research Centers,

the States, private institutions, other Councils, and any interested persons.

(3) *Select preferred management options; complete final plan.* (i) Consideration of the management options shall be made by the Council and its advisory groups. The Council shall select the preferred management options that are to be the basis of the final plan, and shall prepare a final plan for submission to the Secretary.

(ii) The Council's decision to approve a plan prior to submission to the Secretary must be made by a vote of the majority of the voting members present and voting. When a plan has been prepared jointly by more than one Council at the direction of the Secretary, it must be approved by a majority of the voting members present and voting, of each Council concerned prior to submission to the Secretary.

(4) *Consult with other Councils.* A Council shall consult with appropriate Councils when the Secretary has designated a single Council to prepare a plan for a management unit that extends into the geographical area of authority of other Councils or when the Secretary has designated more than one Council to prepare a plan jointly. (See § 601.11(c) (2).)

(5) *Receive and consider public comment.* The Council shall solicit, through public hearings and any other appropriate means, the advice and recommendations from all interested persons during the development of plans and amendments to such plans. Such persons include the States, the fishing industry (recreational and commercial), consumer and environmental organizations, and others.

(6) *Comply with requirements of the National Environmental Policy Act* (as set forth in § 601.21(b) (1), and in § 602.6 [Reserved]).

(7) *Coordinate fishery management plan development with coastal zone programs of constituent States under the Coastal Zone Management Act.* (See § 601.21(b) (3).)

(8) *Prepare fishery management plans consistent with the National Standards* (see § 602.2), the guidelines contained

herein, other provisions of the Act, and any other applicable law.

(b) *Submission to the Secretary of Commerce.* Once a plan has been prepared and approved by a Council, it shall be submitted, along with any dissenting opinions, and with appropriate copies, directly to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, by the most expeditious means available that are commensurate with safeguards against loss enroute.

(c) *Council action on plans prepared by the Secretary.*—(1) *General.* The Secretary may prepare a fishery management plan with respect to any fishery, or any amendment to any such plan, if:

(i) A Council fails to develop and submit to the Secretary, after a reasonable period of time, a plan for such fishery, or any necessary amendment to such a plan, if the fishery requires conservation and management; or

(ii) The Secretary disapproves or partially disapproves any such plan or amendment submitted by a Council and the Council fails to make the necessary changes within 45 days after the date on which the Council receives notification by the Secretary.

(2) *Comments of Council.* Whenever the Secretary prepares a fishery management plan or amendment, the Secretary shall promptly transmit such plan or amendment to the appropriate Council for consideration and comment. Within 45 days after the date of receipt of such plan or amendment, the Council may recommend to the Secretary changes in such plan or amendments consistent with the National Standards, the other provisions of the Act and any other applicable law. A Council may conduct public hearings to allow interested persons to comment on such a plan, and should incorporate such public comment, if any, in the Council recommendations to the Secretary for changes in the plan or amendment.

(3) *Failure of Council to comment.* If the Council does not propose changes within 45 days after it receives the submission from the Secretary, the Secretary

may proceed to adopt and implement the plan or amendment.

(d) *Amendments to fishery management plans.*—(1) *Council review.* The Act directs each Council to review on a continuing basis, and revise as appropriate, the assessments and specifications made regarding the optimum yield from, and the total allowable level of foreign fishing in, each fishery within its geographical area of authority.

(2) *Scope of review.* This review of each plan should also include reexamination of the management objectives and the effectiveness of conservation and management measures and implementing regulations. Each Council must assess the accuracy of the estimates of MSY, and optimum yield, and total allowable level of foreign fishing at least once a year for each plan that is implemented, regardless of whether the plan is prepared by a Council or by the Secretary.

(3) *Amending the plan.* Based on this review, or for other reasons, a Council may amend the plan. The procedures for Council preparation and approval of an amendment (e.g., hearings, majority vote, and transmittal to the Secretary) are the same as those that apply to a management plan. The same procedures as for a plan also apply when an amendment is disapproved or partially disapproved by the Secretary and returned to the Council for modification.

(e) *Proposed regulations.* A Council may recommend to the Secretary any proposed regulations which it deems necessary and appropriate to carry out any plan, or any amendment to any plan. Proposed regulations shall be submitted as a separate document, together with such plan or amendment, to the Secretary. The Secretary has the final responsibility to determine whether to adopt any proposed regulations recommended by a Council.

§ 602.6 Compliance with NEPA. [Reserved]

PART 603—CONFIDENTIALITY OF STATISTICS [RESERVED]

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