

NMFS POLICY DIRECTIVE ANNEX, PDS 30-125-ANNEX-A

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Administration and Operations

***Freedom of Information Act ANNEX:
Records Management for Fishery Management Councils***

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Certified by: Alan Risenhoover

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SUMMARY OF REVISIONS: This ANNEX provides allied information on the definition and handling of agency records from Regional Fishery Management Council members.

Purpose: This document identifies what Regional Fishery Management Council (Council) member documents are considered **agency records** and describes their handling.

The Federal Records Act, 44 U.S.C. § 3101, requires agencies to “preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency” Documents written or received by Council members are agency records that are subject to the Federal Records Act if they reflect official Council business.

A document reflects Council business if it represents the business of the Council as a full body. For example, a comment or views letter signed by the Council chair on behalf of the entire Council reflects Council business. Similarly, a letter submitted to the chair as the principal representative of the Council reflects Council business. These are agency records.

A document written or received by an individual Council member also reflects Council business if it relates to a matter within the Council’s jurisdiction and the document is specifically discussed or disseminated at a Council meeting (including committee meetings, planning meetings, etc.). Thus, such a document also is an agency record. Official Council business does not include documents that reflect personal or private business matters of members, or matters related to their other employment.

All documents relating to a matter within the Council’s jurisdiction and that is discussed or disseminated must be collected by the Council staff and maintained in the Council’s record-keeping system.

The Executive Directors are responsible for collecting all records from Council members and maintain that record in accordance with the Federal Records Act. In the case of a FOIA request that seeks documents as described above, NMFS will request responsive documents from the Executive Director of the appropriate Council. NMFS, in conjunction with Office of General Counsel-Admin and NOAA General Counsel, will review any records that a Council produces to determine whether they are responsive to the request and, if they are, whether they are subject to disclosure under the FOIA. Though some responsive records may be disclosed, any personal identifiers on the documents, such as the personal email address of a Council member, will be withheld.

Relevant Regulations:

50 CFR 600, Subpart B - Regional Fishery Management Councils

§ 600.150

Disposition of records.

(a) Council records must be handled in accordance with NOAA records management office procedures. 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.

(b) Each Council is required to maintain documents generally available to the public on its Internet site. Documents for posting must include: fishery management plans and their amendments for the fisheries for which the Council is responsible, drafts of fishery management plans and plan amendments under consideration, analysis of actions the Council has under review, minutes or official reports of past meetings of the Council and its committees, materials provided by the Council staff 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 must provide copies of the documents for viewing at the Council office during regular business hours or may provide the documents through the mail.

[66 FR 57887, Nov. 19, 2001, as amended at 75 FR 59151, Sept. 27, 2010]

§ 600.155

Freedom of Information Act (FOIA) requests.

(a) FOIA requests received by a Council should be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to the NMFS FOIA Official to secure a FOIA number and log into the FOIA system. The Region will also obtain clearance from the NOAA General Counsel's Office concerning initial determination for denial of requested information.

(b) FOIA requests will be controlled and documented in the Region. The requests should be forwarded to the NMFS FOIA Officer who will prepare the Form CD-244, "FOIA Request and Action Record", with the official FOIA number and due date. In the event the Region determines that the requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature, along with the "Foreseeable Harm" Memo and list of documents to be withheld, must be cleared through the NMFS FOIA Officer. Upon completion, a copy of the signed CD-244 and cover letter transmitting the information should be provided to the NMFS FOIA Officer and the NOAA FOIA Officer.

[66 FR 57887, Nov. 19, 2001]

/s/

2/18/2013

Samuel D. Rauch III

Date

Deputy Assistant Administrator for Regulatory Programs, performing
the functions and duties of the Assistant Administrator for Fisheries
National Marine Fisheries Service