

***NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 01-115-01
NOVEMBER 3, 2010***

***Fisheries Management
Fishery Management Council Statements of Organization, Practices, and Procedures,
NMFSPD 01-115***

APPROVAL OF COUNCIL SOPPS

NOTICE: This publication is available at: <http://www.nmfs.noaa.gov/op/pds/>.

OPR: F/SF5 (W. Chappell)
Type of Issuance: Renewal August 2014

Certified by: F/SF (Risenhoover)

SUMMARY OF REVISIONS:

Signed _____//s//_____October 20, 2010_____
Emily H. Menashes
Acting Director, Office of Sustainable Fisheries

Approval of Council SOPPs

<u>Table of Contents</u>	<u>Page</u>
1. Introduction.....	3
2. SOPP Approval Process.....	3
2.1 Overview.....	3
2.2 Councils.....	4
2.3 Regional Offices.....	5
2.4 Regulatory Services Division.....	5
2.5 Federal Assistance Law Division.....	5
2.6 General Counsel for Fisheries.....	6
2.7 Assistant Administrator for Fisheries.....	6
3 Approval.....	6
Appendices	
A – Abbreviations.....	A-1
B – Regional Office Checklist.....	B-1
C – Templates for Correspondence.....	C-1
D – Template for the <u>Federal Register</u> Notice.....	D-1

1. Introduction. In accordance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) §302(f)(6), each regional fishery management council (Council) must publish and make available to the public a statement of its organization, practices, and procedures (SOPP). The SOPP is a means by which a Council documents its procedures to carry out its functions under the Magnuson-Stevens Act, as well as its compliance with a variety of other federal laws and policies. Though NMFS provides guidance on the contents of the SOPP, there is no required format or order in which the subjects must be addressed.

A Council may occasionally need to update its SOPP to respond to emerging needs or to comply with changes in relevant statutes, regulations, and policies. Each Council has its own procedures for amending its SOPP. Pursuant to 50 CFR 600.115(b), amendments to Council SOPPs must be approved by the Assistant Administrator for Fisheries (AA), on behalf of the Secretary of Commerce, and a notice must be published in the Federal Register (FR) announcing the availability of the SOPP to the public. This instruction describes the procedures that will be followed by the National Marine Fisheries Service (NMFS) to ensure that SOPPs, when submitted for approval, are handled consistently by the agency, reviewed relative to established standards, and approved in a timely manner. To assist staff at every stage of the SOPP review and approval process, a checklist is included in this instruction and will be posted on the Regulatory Services Division's website.

Although SOPPs are required by the Magnuson-Stevens Act, the documents address many matters that are not directly related to it. A SOPP describes a Council's business rules, its staffing, contracting, procurement, and data management practices, along with other activities. Some regional offices do not host the expertise to advise the Councils on such matters. Technical legal advice and support is provided in these areas of law by the Department of Commerce Office of General Council (OGC). Within OGC, the Federal Assistance Law Division (FALD) works most closely with the Councils and will serve as a single point of contact, representing OGC's broader interests, including employment and labor law, ethics, contract law, and general law.

To the extent practicable, this procedure for approving SOPPs is modeled on those used for preparing and reviewing simple regulatory actions for approval and publication in the Federal Register. To that end, and to ensure only approvable SOPP amendments are submitted to NMFS, Councils should make certain their process for developing SOPP amendments includes close consultation/collaboration with appropriate Regional Office (RO) staff, Regional Counsel, and FALD.

2. SOPP Approval Process. The schematic in Figure 1 describes the SOPP approval process.

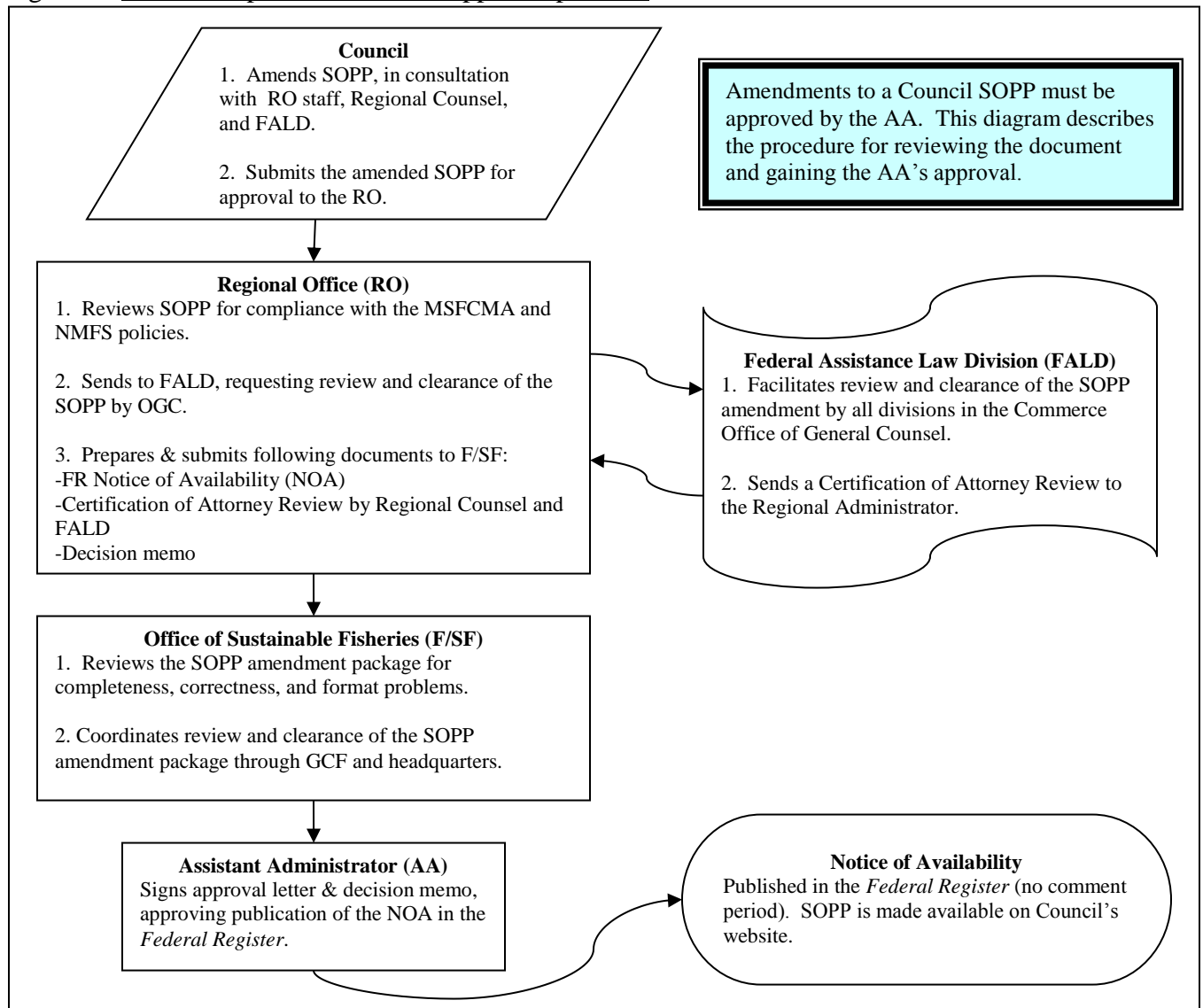
2.1. Overview. The formal SOPP approval process begins after a Council amends its SOPP and submits the document to the RO with a memo describing the changes. The RO and Regional Counsel will review the SOPP for its compliance with the Magnuson-Stevens Act, other laws within their purview, and NMFS policies. The RO will also send the SOPP to FALD for review with regard to legal issues under the purview of OGC. The Office of Sustainable Fisheries (F/SF) and General Counsel for Fisheries (GCF) are available to assist with questions or issues that may arise. When Regional Counsel and FALD have reviewed and cleared the SOPP, the RO will forward the document to F/SF, along with a decision memo, draft approval letter, review certification memoranda, and the draft Federal Register notice announcing the availability of the

SOPP to the public. Templates for all supporting documents are provided in the appendices of this instruction, as is a checklist for the RO to follow when preparing the documents.

F/SF will check the SOPP approval materials for completeness and correctness and submit the package through clearance (including GCF) for approval by the AA.

The AA’s approval of the SOPP will be documented with a concurrence signature on the decision memorandum and an approval letter to the Council. The decision memorandum will authorize publication of the notice of availability in the Federal Register. The Council will post the approved SOPP on its official webpage.

Figure 1. Schematic plan of the SOPP approval process.



2.2. Councils. A Council, from time to time, will need to amend its SOPP to provide for updates in Council practices and procedures pursuant to governing policy and regulatory and statutory changes. Each Council has its own procedures for amending its SOPP.

This policy directive has no direct effect on internal Council procedures as regards SOPPs. However, it will be in the interest of the Council to ensure that the amendments to the SOPP are approvable by the AA. To that end, the Council should consult closely with RO staff, Regional Counsel, and FALD as any change to the SOPP is contemplated and drafted.

When a Council adopts an amendment to its SOPP, the Council will submit the amended SOPP to the Regional Administrator (RA) to begin the approval process. The Council's letter to the RA should describe the effect of the SOPP amendments. Submitting an amended SOPP highlighted in some manner to indicate where changes have been made will facilitate the review of the document.

After a SOPP is approved by the AA, the Council will post the SOPP for viewing and download from the Council's website and will make the SOPP available upon request by the public

2.3. Regional Offices. When a Council submits a SOPP for approval, the RO will initiate a review of the SOPP amendment. Typically, Regional Counsel, Sustainable Fisheries Division staff and/or the Federal Program Officer (FPO) (personnel who administer the Council's grant for the RO) will review the SOPP. The RA will send a letter to FALD, requesting review and clearance of the SOPP by OGC.

Ideally, these same parties will have been involved in crafting the SOPP amendment, so the SOPP amendment will be readily approvable. However, if any problems with the SOPP are discerned, RO staff will coordinate the resolution of the problem with the Council and will engage technical support from Regional Counsel, FALD, F/SF, and GCF, as needed.

As with routine regulatory actions, RO staff will develop the memoranda and other documents necessary to facilitate the approval of the SOPP. A decision memorandum will be signed by the RA and submitted to the AA (via F/SF) along with the Certification of Attorney Review from Regional Counsel and FALD and the draft approval letter (from the AA to the Council). Templates for the various memoranda will be provided on the Office of Sustainable Fisheries' Regulatory Services Division (F/SF5) website (http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm).

2.4. Regulatory Services Division. The Regulatory Services Division (F/SF5) within the Office of Sustainable Fisheries, is responsible for reviewing the SOPP amendment and associated documents submitted by an RO to ensure the materials are complete and formatted correctly. This function is accomplished through the Clearance Unit, which can be contacted by e-mail at <NMFS.Clearance@noaa.gov>. Similarly, F/SF5's Regulations Unit is responsible for editing Federal Register notices prior to formal submission with the SOPP amendment package. The Regulations Unit can be contacted by e-mail at , <NMFS.Edits@noaa.gov>. F/SF5 will work closely with RO staff to resolve any problems that are identified and to finalize preparation of the Federal Register notice. F/SF5 will submit the SOPP amendment package for final clearance and approval by the AA.

2.5. Federal Assistance Law Division. FALD is one of several divisions in OGC that have interests in matters addressed in a SOPP. For purposes of approving SOPPs and working with the Council and NMFS, FALD is the lead division and our liaison to the whole office. The Council should engage FALD in the development of any changes to its SOPP.

At the request of the RA, FALD will coordinate OGC's review of the amended SOPP for its compliance with grants, general, and administrative law, as well ethics law and guidelines. If any problems with the SOPP are discerned by OGC, FALD will help to resolve the problems through discussions and correspondence with RO and Council staff. FALD's clearance of an amended SOPP will be documented in a Certification of Attorney Review.

2.6. NOAA General Counsel. NOAA GC Regional Counsel will provide legal advice and review during the development of SOPPs, consulting with General Counsel for Fisheries (GCF) as needed. Regional Counsel clearance of a SOPP or amended SOPP will be provided in a Certification of Attorney Review, before the RO forwards the SOPP to F/SF. GCF will review the SOPP before it is submitted to the AA for approval.

2.7. Assistant Administrator for Fisheries. The functions of the Secretary related to implementation of the Magnuson-Stevens Act, including the approval of amended SOPPs, are delegated to the AA in the NOAA Organizational Handbook, Transmittal No. 61, Section II.C.26. The AA's concurrence signature on the decision memo will constitute approval of the SOPP and will authorize publication of the NOA in the Federal Register. The AA will also sign a letter to the Council, acknowledging approval of the SOPP, and requesting that the Council post the SOPP on its official website.

3. Approval. Approval of a SOPP will be indicated in a letter from the AA to the Council. Approval will remain valid until the SOPP is subsequently amended or until relevant policies, regulations, or statutes are revised. Should the governing authorities change, NMFS will notify the Councils of the changes and will provide advice for bringing their SOPPs into compliance with any new requirements.

If properly executed, this procedure should preclude the possibility of formal disapproval of a SOPP amendment. Technical experts from the RO, Regional Counsel, and FALD should be consulted by the Council and involved in the development of SOPP amendments. Their involvement will help to ensure the SOPP is approvable before it is subjected to formal review at the RO and certainly before it is submitted to the AA for approval. Should any reviewer discern a problem with the SOPP that would preclude its approval, then RO staff will work with Council staff to remedy the problem and will pursue correction of the SOPP amendment per Council procedures.

F/SF5 will send all original signed documents related to the SOPP approval to the RO for retention in accordance with NOAA records management practices.

APPENDIX A – Abbreviations

AA	Assistant Administrator for Fisheries
CFR	Code of Federal Regulations
Council	A Regional Fishery Management Council
FALD	Federal Assistance Law Division, Office of General Counsel
FPO	Federal Program Officer
FR	<u>Federal Register</u>
F/SF	Office of Sustainable Fisheries
F/SF5	Regulatory Services Division, Office of Sustainable Fisheries
GCF	General Counsel for Fisheries
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
NMFS	National Marine Fisheries Service
NOA	Notice of Availability
NOAA	National Oceanic and Atmospheric Administration
OGC	Office of General Counsel
RA	Regional Administrator
RO	Regional Office
SOPP	Statement of Organization, Practices, and Procedures

APPENDIX B – Regional Office Checklist

<u>Table of Contents</u>	<u>Page</u>
1. Introduction.....	B-2
2. Part 1 Summary Checklist	B-3
3. Part 2 RO File Checklist	B-4

**REGIONAL OFFICE CHECKLIST
COUNCIL SOPP AMENDMENT APPROVAL PACKAGE
PARTS 1 & 2**

Use this Regional Office Checklist to develop and assemble documentation for Secretarial review and approval of an amendment to a Fishery Management Council's Statement of Organization, Practices, and Procedures (SOPP). SOPP amendments occur infrequently. If you have any questions about what is required of the RO, do not hesitate to contact the Clearance Unit or the SF5 division chief for guidance.

Include a completed Part 1, Summary Checklist, in the formal decision/transmittal package that is submitted. Part 1 identifies the documentation that must be prepared and submitted to the Clearance Unit for the SOPP amendment approval. Part 2 provides more detailed guidance on drafting memoranda/letters and developing portions of the notification document that have been problematic in the past.

The Clearance Unit encourages the RO to use Part 2, File Checklist, when preparing the required documents for the SOPP approval package. Part 2 highlights only those areas where issues, concerns, or problems have been identified during the clearance process by F-NMFS/NOAA/DOC. During this transitional period for the review and clearance of SOPPs, formal completion and submission of Part 2 of the checklist is *optional*. However, the Clearance Unit strongly encourages its use by RO staff for direction and guidance when preparing formal documentation and locating applicable websites.

For each item contained in the checklist, respond with a checkmark in the appropriate column to indicate, "Yes," the action has been completed and the document is included in the approval package (paper copy or electronic) or retained in the RO files. Some of the line items in the checklist will not apply to every SOPP amendment approval. For those items, enter "N/A", as appropriate. Contact the Clearance Unit with questions or concerns regarding the checklist.

The following website provides guidance for submitting the formal decision/transmittal package to the Clearance Unit and defines acronyms used in this document:

http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm

SOPP AMENDMENT APPROVAL PACKAGE
(This action does not contain implementing regulations.)
PART 1 – SUMMARY CHECKLIST

Name of Council: _____
Name & telephone number of individual
completing Part 1, Summary Checklist: _____

1. RO completes the following actions *prior* to submission of the SOPP amendment approval package to the Clearance Unit:

- a. Heads-up e-mail submitted to Clearance Unit (NMFS.Clearance@noaa.gov) and the F/SF Office Director (Alan.Risenhoover@noaa.gov) _____
- b. Obtain an XRIN from PRIME
- c. Editing form & advance notification of availability submitted to NMFS.Edits@noaa.gov for review and editing _____
- d. NMFS.Edits' comments/edits incorporated _____

2. RO submits the SOPP amendment approval package to the Clearance Unit (NMFS.Clearance@noaa.gov).

Formal package includes the following documentation:

- a. Decision memorandum from the RA to the AA, signed. _____
- b. Certification of Attorney Review signed by the Regional Attorney. _____
- c. Certification of Attorney Review signed by FALD _____
- d. Draft approval letter from AA to Council (E-copy). _____
- e. Federal Register Notification of Availability (E-copy). _____
- f. Completed/signed Part 1, RO Summary Checklist _____

I certify that all actions/documentation identified in Part 1, Summary Checklist, are: (1) contained in the formal submission package; (2) contained in the RO file for action; or (3) not applicable to this action.

Signature

Date

**SOPP AMENDMENT APPROVAL PACKAGE
PART 2 – RO FILE CHECKLIST**

Name of Council: _____ Name & telephone number of individual _____ Completing Part 2, RO File Checklist: _____
--

Action/Document

A. Preparation of Documentation.

Yes/NA

1. Have all Memoranda/Letters/NOA, etc. been prepared according to guidance contained in the Examples Package, Federal Register Document Drafting Handbook, and other policies and procedures issued by the AA or NMFS/NOAA related to the review and clearance of SOPPs? (See: [List website URLs])	
--	--

B. Advance Review of Notification of Availability of the SOPP by NMFS.Edits

Prior to submission to NMFS.Edits an XRIN must be obtained from PRIME

1. Once no further substantive changes are anticipated, RO E-mails advance copy of the document to NMFS.Edits@noaa.gov prior to submission of the form package to the Clearance Unit as follows: a. Completed “RSP Editing Form;” and (See http://home.nmfs.noaa.gov/sf/regstream/RulemakingForms.htm) b. Advance copy of notification. c. Subject line of the transmitting e-mail should include: (1) Council Name; (2) “SOPP amendment” (3) ID assigned to the NOA; and (4) The word “ADVANCE” d. Use the same subject line a all e-mails (delete “ADVANCE” once formally submitted) dealing with the action to facilitate tracking of the action and compiling the administrative record. e. Identify the POC and POC’s e-mail address and fax and telephone numbers in the transmitting e-mail.	
2. NMFS.Edits returns the document w/comments/ edits within 3 days of receipt.	
3. RO incorporate comments, if applicable, prior to submission of formal NOA package.	
4. If the review process results in substantive changes to the regulatory text after NMFS.Edits has completed its review, the revised document should be resubmitted to NMFS.Edits for review prior to submitting the package to the Clearance Unit.	

C. SOPP Amendment and NOA Transmittal Package. (Templates for the memos and letters noted below can be found at [http://\[insert URL\]](http://[insert URL])).

1. Decision memorandum from the RA to AA: a. Describes the extent and likely effect of the proposed changes to the Council SOPP. b. Indicates that RO staff, Regional Counsel, and FALD have reviewed the document and determined it satisfactory. c. Provides additional background materials, if needed, as attachments.	
2. Regional Counsel has signed a Certification of Attorney Review and attached any legal memos referenced therein.	
3. FALD has signed a Certification of Attorney Review and attached any legal memos referenced therein.	
4. Draft approval letter from AA to the Council.	

D. Notice of Availability.

<p>1. SUMMARY section:</p> <ul style="list-style-type: none"> a. Responds to the following questions: <ul style="list-style-type: none"> (1) What action is being taken? (2) Why is action necessary? (3) What is the intended effect? b. Contains no legal citations or numerical and alphabetical listings 	
<p>2. DATES section:</p> <ul style="list-style-type: none"> a. Provides a place holder for the date the AA approves the amended SOPP. b. The Clearance Unit will insert the date in the <u>Federal Register</u> document after the decision memorandum has been signed by the AA. 	
<p>3. ADDRESSES section:</p> <ul style="list-style-type: none"> a. Provides the Council address from which print copies of the SOPP may be obtained. 	
<p>4. SUPPLEMENTARY INFORMATION section:</p> <ul style="list-style-type: none"> a. Discusses the extent and effects of the SOPP amendment. b. Indicates that the AA has approved the SOPP, as amended, on behalf of the Secretary. c. Provides the URL from which the public can view or download electronic versions of the SOPP. 	

E. OFR Filing and Publication of the NOA

<ul style="list-style-type: none"> 1. The NOA will be sent to the OFR using standard filing and publication practices. 2. F/SF5 informs the RO when notification of the filing and publication dates for the Notice of Availability is received from the OFR. 3. RO informs the applicable Council of the filing and publication date. 	
---	--

F. Administrative Record for the SOPP Approval

<p>1. RO assembles the consolidated Administrative Record for the SOPP approval, including all documentation related to the publication of the NOA and the final decision.</p>	
<p>2. After publication of the NOA in the <u>Federal Register</u>, the Clearance Unit will provide to the RO all documents containing original signatures. The Clearance Unit documents may include:</p> <ul style="list-style-type: none"> (a) Decision memoranda; (b) Original routing slips; (c) Copies of all substantive e-mails related to the SOPP approval which did not include the RO's POC as an addressee; (d) FALD's Certification of Attorney Review; (e) Records of any meetings with individuals outside NMFS regarding the SOPP; and (f) Any correspondence submitted only to NMFS HQ. 	
<p>3. The Clearance Unit will maintain a duplicate copy of the signed documents for a period of three years.</p>	
<p>4. The RO will maintain the complete Administrative Record and will archive the records according to NOAA policy and guidelines.</p>	

APPENDIX C – Templates for Correspondence

<u>Table of Contents</u>	<u>Page</u>
1. Certification of Attorney Review.....	C-2
2. Transmittal and Review Request to FALD.....	C-3
3. Decision Memorandum from F/SF to the AA	C-4
4. Approval Letter from the RA to the Council Chair	C-5

ATTORNEY REVIEW MEMO TEMPLATE FOR SOPP CLEARANCE

ATTORNEY-CLIENT PRIVILEGED - DO NOT RELEASE - FOIA EXEMPT

CERTIFICATION OF ATTORNEY REVIEW

MEMORANDUM FOR:

FROM:

SUBJECT: Review and Clearance of the Statement of Organization, Practices and Procedures (SOPP) [or: the amendments to the Statement of Organization, Practices and Procedures (SOPP)] for the [INSERT Council name] Fishery Management Council

This Statement of Organization, Practices and Procedures (SOPP) [or: [T]he amendments to this Statement of Organization, Practices and Procedures (SOPP)] for the [INSERT COUNCIL] Fishery Management Council is/are legally sufficient and raise(s) no significant legal issue(s) other than those addressed in any attached legal memorandum. I request that this SOPP be forwarded to Department of Commerce General Counsel for their review.

Additional Comments: N/A

Legal Memorandum Attached: yes no

Attorney-Advisor Date

[Supervisor=s Title] Date

cc: NOAA GCF

Michelle O. McClelland, Chief
Federal Assistance Law Division
U.S. Department of Commerce
1401 Constitution Ave NW
Room 5099C
Washington, DC 20230

Dear Ms. McClelland,

The [*Name*] Fishery Management Council has amended its Statement of Organization, Practices, and Procedures (SOPP) and has submitted it for approval by NOAA Fisheries Service. The amendments to the SOPP would [*describe*]. The amended sections are highlighted in the attached SOPP.

I seek your division's review and clearance of the SOPP and, as needed, your facilitation of its review by other divisions in the Office of General Counsel. NOAA Fisheries Service [**Region**] Regional Office staff and the Regional Counsel have previously reviewed the document, but are withholding final clearance until you have completed your review.

Any questions regarding the SOPP should be directed to [name, email address, fax number, phone number] in the [*Name*] Regional Office. NOAA Fisheries Service appreciates the support of the Office of General Counsel on this important matter.

Sincerely,

[**RA's Name**]
Regional Administrator

Enclosures

cc: F/SF5
GCF

[Note this memo will be signed by the RA after the review of the SOPP by the RO, Regional Counsel, and FALD is complete and satisfactory.]

MEMORANDUM FOR: [Name]
Assistant Administrator for Fisheries

FROM: [Name]
Regional Administrator

SUBJECT: Approval of a Council's Statement of Organization, Practices, and Procedures (SOPP)—DECISION MEMORANDUM

The [Name] Fishery Management Council has amended its SOPP and is seeking the Secretary's approval of the document.

The amendments to the SOPP would [describe the SOPP amendment, its purpose, and effect, and provide relevant background/legal context].

The SOPP has been reviewed and cleared by the [Region] Regional Administrator, a regional attorney, and the DOC Office of General Council. I recommend that you approve the SOPP by signing the attached letter to the Council and by approving the attached Notice of Availability for publication in the Federal Register.

1. I concur. _____ Date
2. I do not concur. _____ Date

Attachments

[*Chair's name*], Chair
[*Name*] Fishery Management Council
[*Address 1*]
[*Address 2*]

Dear [*Chair's name*],

On behalf of the Secretary of Commerce and pursuant to 50 CFR 600.115(b), I approve the [*Name*] Fishery Management Council's Statement of Organization, Practices, and Procedures (SOPP), as amended. I have authorized a notice to be published in the Federal Register announcing the availability of the SOPP and instructing the public to contact the Council office for a copy. Electronic downloads of the SOPP should be made available on the Council's website.

Any questions regarding the SOPP should be directed to the [*Region*] Regional Administrator or [*Name*], chief of the Regulatory Service Division in the Office of Sustainable Fisheries, ph: 301.713.2337.

Sincerely,

[*Name*]
Assistant Administrator

Enclosures

cc: F/SF5
RO
GCF

APPENDIX D – Template for the Federal Register Notice of Availability

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN

[Name] Fishery Management Council; Statement of Organization, Practices, and Procedures

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; Statement of Organization, Practices, and Procedures; Amendment

SUMMARY: The Assistant Administrator for Fisheries has approved amendments to the [Name] Fishery Management Council's Statement of Organization, Practices, and Procedures (SOPP). Copies of the document are available to the public.

ADDRESSES: [Council name and full mailing address](any special identification requirements)

FOR FURTHER INFORMATION CONTACT: [Council staff point of contact, title, phone number, fax number.]

SUPPLEMENTARY INFORMATION: In accordance with the Magnuson-Stevens Fishery Conservation and Magnuson Act §302(f)(6), each regional fishery management council is required to describe its organization and operations in a SOPP. The [Name] Fishery Management Council has amended its SOPP. **[Briefly describe the effect of the amendment.]**

Pursuant to 50 CFR 600.115(b), the [Name] Fishery Management Council's SOPP, as amended, has been approved by the Assistant Administrator for Fisheries, on behalf of the Secretary of Commerce. The SOPP is available to the public. Copies may be obtained by contacting the Council. See ADDRESSES. An electronic version of the SOPP may be downloaded from [http://www.\[Website URL\]](http://www.[Website URL]).

Authority: 16 U.S.C. 1801 et seq.

Dated:

[Page numbers]