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PART III:

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

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# FISHERY CONSERVATION AND MANAGEMENT

Interim Regulations

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## Title 50—Wildlife and Fisheries

## CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

## REGIONAL FISHERY MANAGEMENT COUNCILS

### Interim Regulations

This chapter is new and is 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").

In broad summary, the Act:

1. Provides authority for exclusive United States management authority over all fish, except highly migratory species, within a newly constituted Fishery Conservation Zone contiguous to the territorial sea.

2. Provides exclusive United States Management authority beyond the Fisheries Conservation Zone for certain anadromous and Continental Shelf fishery resources.

3. Establishes eight Regional Fishery Management Councils, instruments of State-Federal interaction in the conduct of such fisheries management.

4. Sets forth seven National Standards for Conservation and Management with which the management of fishery resources must be consistent.

5. Provides for mechanisms to allocate catch of fish between U.S. and foreign fleets with preference to U.S. fishermen.

6. Provides for the preparation and implementation of fishery management plans.

More specifically, the Act directs the Secretary of Commerce to prescribe rules and regulations for several sections of Title III, which deal with the national fishery management program and the responsibilities and functions of the eight Regional Fishery Management Councils in the development of fishery management plans.

The Act's effective date of March 1, 1977 for establishment of the Fisheries Conservation Zone has necessitated early and rapid assistance to the Councils. Parts 601 and 602 of this Chapter are therefore issued as interim final regulations in accordance with 5 U.S.C. 553 (d)(3) to furnish the information required by the Act as quickly as possible and to provide a framework within which the Councils can begin operation immediately.

Interested parties, Regional Councils and governmental agencies are encouraged to submit written comments, views, or data concerning the regulations promulgated hereby to the Director, National Marine Fisheries Service, Washington, D.C. 20235. All such submissions received on or before December 2, 1976, will be considered prior to the publication of final regulations.

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

Issued in Washington, D.C., on September 13, 1976.

DAVID H. WALLACE,
*Associate Administrator, National Oceanic and Atmospheric Administration.*

## PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS


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AUTHORITY: 16 U.S.C. 1852; 16 U.S.C. 1854.

### Subpart A—General

#### § 601.1 Purpose.

The regulations in this Part implement certain portions of the Fishery Conservation and Management Act of 1967 (16 U.S.C. 1801–1892), which among other things, establishes eight Regional Fishery Management Councils. The principal responsibility of these councils is to provide the nucleus of a national fisheries conservation and management program through the systematic development of fishery management plans. These Regional Fishery Management Councils are independent bodies. They shall act under the Uniform Standards established by these regulations and the Act. This part describes matters pertaining to the establishment, organization, practices and procedures of the eight Councils.

#### § 601.2 Definitions.

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

(a) *Fishery management plan.* A document that contains a systematic description of a given fishery, including present conditions and past history, and that sets forth the objectives and strategies for the management of the fishery, including recommended allocations to users, and specifies the practical conservation and management measures needed to achieve those objectives. It is a discrete and essential element of the national fishery management program, and when implemented, is controlling as to the utilization of a given fishery.

(b) *Council.* Regional Fisheries Management Council.

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

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

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

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

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

(h) *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.

(i) *Federal Budget Cycle.* The 33-month process of formulating and executing the Federal budget.

(j) *Highly Migratory Species.* [Reserved]

(k) *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 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 by the Secretary or the Councils under a stipulation that limits disclosure.

Access to security classified material is governed by security regulations and procedures pursuant to Executive Order 11652, effective June 1, 1972. Access to information granted confidential treatment as a condition of obtaining it is governed by Part 603 of these regulations.

(l) *Advisory Group.* The Scientific and Statistical Committee or advisory panels established pursuant to the Act.

### 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 § 601.13 delineate the geographical area of fishery management



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authority of adjacent Councils within this fishery conservation zone.

(2) Within the geographical area of authority, each Council shall have responsibility for 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 within a foreign nation's territorial sea or fishery conservation zone recognized by the United States; and

(iii) Continental Shelf fishery resources.

(c) *Jurisdiction*—(1) *State.* Generally the Act does not diminish the jurisdiction of any State over fishery resources 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 stock or a fishery extends beyond the geographical area of authority of any one Council, as defined in § 601.13, the Secretary is authorized to designate the Council that shall prepare the fishery management plan for such a fishery. When such a plan includes waters adjacent to the States represented on more than one Council, the Council thus designated should consult with the other affected Councils. The Secretary may require that a plan be prepared jointly by the Councils concerned. In this case, any plan or amendment must, before being submitted to the Secretary, 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 will operate.

(b) *Applicability of other laws*—(1) *National Environmental Policy Act of 1969 (42 U.S.C. 4321).* (i) 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.

(ii) Preparation and submission of a fishery management plan to the Secretary is a major Federal action. To determine whether preparation and submission of a management plan, or an amendment of a plan, would significantly affect the quality of the human environment, an environmental assessment must be made in the case of each plan. This assessment will allow an informed and adequately documented decision to be reached as to whether an EIS must be prepared, or if a negative declaration on the need for a statement should be filed. The preparation of environmental assessments for each management plan will occur concurrently with the preparation of the plan. In the case of Council-prepared plans, the Councils have the responsibility for preparation of an environmental assessment and for preparing recommendations on whether to proceed with an EIS or to file a negative declaration. The Council shall make available a draft Environmental Impact Statement, if applicable, at the hearing referred to in § 601.24(c). In the event that amendments are made to the plan, or the regulations promulgated by the Secretary vary from the plan, the Council shall amend the Environmental Impact Statement as necessary. In addition to the guidelines of CEQ (40 CFR Part 1500), guidelines and procedures of the Department of Commerce (DAO 216-6) and NOAA (DM 02-10) provide further instructions for responding to the requirements of NEPA.

(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 (Pub. L. 92-463).* The intent of Congress with regard to application of this Act to the Regional Councils is stated in the Report of the Conference Committee (Conf. Rept. No. 94-948, March 24, 1976). Its application is designed to ensure open meetings and public access to information generated by the Council.

(ii) *The Freedom of Information Act (5 U.S.C. 552(b)).* This Act provides for public access to records of the executive branch of the Federal government, and to records generated at the request of the Federal government. Nine groups of exceptions are provided that allow the withholding of information. Application of this Act 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. Discussion of specific application of this Act can be found in Part 603. [Reserved]

(3) *Coastal Zone Management Act of 1972 (16 U.S.C. 1451).* The principal objective of this Act is to encourage and assist States in developing coastal zone management programs, to coordinate State activities and 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 the CZMA (Sec. 307(c)) that require that any Federal activity directly affecting the coastal zone of a State be consistent with that State's coastal zone management program. Thus Councils will need to coordinate their planning actions with the appropriate State agencies involved in costal zone planning.

§ 601.22 Organization.

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

(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.* The Act authorizes the principal State officials, the NMFS Regional Directors, and the nonvoting 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.

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

| *Council* | *Regional Director* |
|---|---|
| New England | Northeast region. |
| Mid-Atlantic | Do. |
| South Atlantic | Southeast region. |
| Caribbean | Do. |
| Gulf of Mexico | Do. |
| Pacific | Northwest region. |
| North Pacific | Alaska region. |
| Western Pacific | Southwest region. |

(4) *Appointments.* Inasmuch as each year approximately one-third of a Council's appointed membership will lapse, new members shall be appointed by the Secretary or his delegate from lists of nominees submitted by the Governors of each applicable constituent State by June 1 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 his delegate to make a reasoned choice. 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



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nominee shall be considered as available for any such vacancy. These procedures also shall apply when a vacancy occurs prior to the normal expiration of a term of membership of a voting member appointed by the Secretary or his delegate.

(5) *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 shall be one year. No member shall be elected Chairman whose appointment, as a voting Council member will expire in less than one year from the date of election as Chairman. The Council may establish such other officers as it deems necessary and set their terms of office. The Council may appoint such standing and ad hoc committees from among the voting and nonvoting members as it deems necessary for the conduct of Council business. Such committees must conform to the procedures for assuring open meetings specified for the Council itself.

(c) *Administrative staff.* Each Council shall appoint an Executive Director and such 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. 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 shall not exceed the yearly rate for the highest step of a GS-15 in the General Schedule.

(2) *Other administrative staff*—(i) *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 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. Budgeted positions will be apportioned by the Secretary on the basis of justifications submitted by the Councils.

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

(1) *Function.* The Scientific and Statistical Committee provides expert scientific and technical advice to the Regional 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 identiyfing scientific resources available for the development of plans, in establishing the goals and objectives of plans, in establishing criteria for judging plan effectiveness and in the review of such plans.

(2) *Organization.* The members of the Committee and a Chairman are appointed by the Council. Membership shall be multidisciplinary, including both 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 budgeted 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 shall also establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Act. The Secretary is authorized to pay the actual expenses of the members of such panels except those who are Federal employees, while engaged in the performance of Council business.

(1) *Function.* Fishery Advisory Panels are authorized principally to obtain the pragmatic advice and counsel of the people most affected by the Council's management activities on 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 both the goals and 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) *Organization.* The members and a Chairman are appointed by the Council. The membership of each such 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 fishery management unit. The size of each such Panel and the number of Panels are discretionary within the resources budgeted to the particular Council, but they must be of sufficient size and number to permit a balanced representation of interests. 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 advisory 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 such 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. Finally, all Federal agencies are authorized to detail personnel on a reimbursable basis to the Councils after consulting with the Secretary. 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 are 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. During the period of Council formation, the administration of Council budgets will be performed by the designated NOAA field units, and all Council administrative services will be performed by the NOAA field units. As each Council acquires its administrative staff and indicates its readiness to assume budget and fiscal responsibilities, such matters will be administered by means of annual grants to the Councils.

Prior to the assumption of budget and fiscal responsibility by the Council, the Executive Director of the Council will transmit Council needs for supplies, equipment, space, services, travel authorizations, etc., to the NOAA field unit designated to assist that Council. The Executive Director may consult the NMFS regional staff member designated



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by the NMFS Regional Director for additional guidance on procedure and appropriate NOAA administrative requirements. Fiscal Year 1977 contract funds for all Councils will be retained at the headquarters level of NMFS in Washington, D.C., for use by the Councils as the need arises. The operating needs of the Councils will be met out of the funds already budgeted for each Council.

Beginning in December, 1976, each Council will assume responsibility for preparing its own grant request in accordance with the provisions of OMB Circular A-110, July 1, 1976.

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

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

(d) *Standards of 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 such 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 and § 601.23(c)(3) of these regulations. Descriptions of the work to be performed shall be submitted in accordance with the section below 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.

(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. The length of such details 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 as they are entitled to in their regular employment. The Councils may negotiate arrangements with State or 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, recruits, hire, compensate and dismiss personnel. Involuntary separation should be for cause alone, with reasonable notice given to the employee.

(6) *Salary and Wage Administration.* In setting rates of pay for Council staff, the principle of equal pay for equal work should be followed. Variations in basic rates of pay should be in proportion to substantial differences in the difficulty and responsibilities of the work performed.

The duties of any new position shall be contained in a 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. 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 grade 15 of the Federal General Schedule at any time. After a position has been filled, an employee may be promoted annually and recognized for superior performance in accordance with Council policies.

(7) *Leave.* Employees of the Council should 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 should not exceed 20 days per year, and sick leave should not exceed 13 days per year.

(8) *Employee benefits.* The Council should 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) *Standards of conduct.* The Councils are responsible for maintaining high standards of ethical conduct among themselves and their staffs. 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 Council.

(iv) No employee of the Council shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her council duties.

(v) No Council member or employee of the council shall use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment 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. The Councils should maintain personnel files on their employees under similar safeguards.

(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 practice standards 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 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 shall be obtained from the regional office of the NOAA Office of General Counsel. Other experts and consultants may be utilized as the Council deems appropriate, consistent with budgetary limitations.

(3) *Council access to security classified material.* The security investigation that is routinely conducted at the time a nominee to the Council is appointed or designated is the basis for authorizing access on a need-to-know basis to material classified CONFIDENTIAL. Nor-



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mally this should be sufficient for Council purposes. Clearance for higher classifications may be granted, following regular Federal procedures, by the Secretary of Commerce. Need-to-know is determined by the authority having custody of the material. Persons who are not members of the Council, including Council staff, 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 Federal General Schedule when engaged in the actual performance of duties as assigned by the Chairman of the Council, including travel time.

(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 statutory advisory panels shall be reimbursed for actual expenses associated with travel on official Council business. The Secretary may also pay the transportation and expenses, on an actual expense per diem 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 a reasonable limit to be established by the Secretary; and incidental expenses such as taxi fares, parking and telephone calls on official business.

(g) *Reporting.* The Act requires the Councils to report to the Secretary annually before February 1 on Council activities during the immediately preceding calendar year. The first annual report is due February 1, 1977, covering activities from establishment to December 31, 1976. They must also prepare any other relevant reports as the Secretary may request. They are further authorized to prepare any reports they deem appropriate for the Secretary.

(1) *Annual report.* The annual report will be used by the Secretary to fulfill his obligation to report to the Congress and the President no later than March 1 of each year on his 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 affiliations, indicating voting and nonvoting members and 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 affiliations, and lists of members of each advisory panel with 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 Secretarilly developed plans. 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) An estimate of the man years of staff support by source (Federal, State, private).

(viii) An estimate of the cost to operate the Council, indicating sources of funding and the respective amounts.

(2) *Financial and other reports.* Requirements for periodic financial and other reports for purposes of overall NOAA budgetary control and reporting will be included in grants issued to the Councils.

§ 601.24 Operational practices and procedures.—

(a) *General.* In fulfilling the Councils' 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.*—(1) *General.* The Councils will meet at the call of the Chairman or upon request of a majority of the voting members. Advisory bodies will meet with the approval of the Chairman of the Council. The Councils shall develop a mechanism for coordinating requests for advice from their advisory bodies 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 25 days prior to the meeting, to the Director, National Marine Fisheries Service, NOAA, who shall submit such notice to the FEDERAL REGISTER.

(i) All meetings or portions thereof must be open to the public with only those exceptions set forth in the Federal Advisory Committee Act, which require a determination by the Secretary or his designee that the reasons for excluding the public are valid. Such a determination must be requested through the Assistant Secretary for Administration, Department of Commerce, 45 days prior to the meeting or portion thereof.

(ii) 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.

(3) *Conduct.* 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 Secretarially prepared management plans. In these cases a vote is required.

(i) 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.

(ii) When there is a vote, the majority of the voting members present and voting shall rule. The use of proxy is not permitted (see section 302(e)(1) of the Act).

(iii) Each Council shall conduct all meetings and hearings within its geographic area of concern. In the particular case of the North Pacific Council, this means within the State of Alaska.

(iv) Voting members of the Council who dissent on any issue to be submitted to the Secretary are permitted to submit a statement of their reasons for dissent to the Secretary.

(4) *Frequency and duration.* The Councils shall meet in plenary session at least once a quarter. Council advisory bodies shall meet as frequently as necessary, with the approval of the Council Chairman.

(5) *Location.* Council meetings shall be held in the geographic area of concern. The meeting place should be of a capacity large enough to accommodate the anticipated public attendance and be easily accessible to those interested in attending. Working groups of the Council and advisory groups shall meet in the particular area of interest with the Council's constituent States.

(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, provided they are held in the particular geographic area concerned.

(2) *Conduct.* When it is determined that a hearing is appropriate, the Chair-



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man of the Council will 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 must 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 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, obtained by use of either a court reporter or detailed minutes, must 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 operation structure selected by a Council should: (i) Address directly the responsibilities and functions listed in section 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 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, both in dollars and in 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.* The Act requires that the details of how a Council will operate 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.

(1) Each Council is expected to publish such a statement by March 1, 1977. Publication will be in the FEDERAL REGISTER, and must include an address where interested members of the public may write to request copies. Changes to the statement must likewise be published and made available.

(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.
(i) Duration.
(ii) Location.
(iii) Agendas or orders of business.
(iv) Minutes.
(v) General rules of procedures.
(vi) 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.
(ii) Procurement procedures.
(iii) Property management.
(iv) Accounting and budgetary control procedures.

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## 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.
602.4 Standard format for fishery management plans. [Reserved]
602.5 Procedures for development, review and amendment of fishery management plans.

AUTHORITY: 16 U.S.C. 1851.

### § 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 Regional 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 comprises explanatory comments with regard to these National Standards, guidance regarding the content of fishery management plans and for various other procedures involved in the development, submission, review and amendment of plans process.

### § 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 (Section 304(b)).

(1) *Purpose.* This section provides explanatory comments with respect to the National Standards so as to assist the Regional Councils in meeting the aforementioned National Standards consistency requirement.

(2) *Definitions*—(i) *Biomass.* The total biomass of an ocean area is the total weight of all forms of marine animal and plant life.

(ii) *Habitat.* Habitat is that combination of physical, chemical, and biological conditions and factors necessary for the completion of the life history and for all life functions of any marine animal or plant that is to be managed under the Act. These conditions and factors include all those that primarily or secondarily support such life functions as reproduction, feeding, metabolism, respiration, resting, and movement or migration.

(iii) *Recruitment.* Recruitment is the addition of a new fish to an exploitable phase of a stock of fish in a given period through growth of smaller individuals to a catchable size.

(iv) *Fishery management unit.* A species or group of species 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 contin-



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uing basis, the optimum yield from each fishery.

(1) *Overfishing.* Overfishing occurs when the harvest level of a given stock reduces population abundance to the point where the stock cannot produce maximum yield on a sustained basis for the existing habitat and environmental conditions. A determination regarding overfishing is based on a scientific assessment of stock abundances, recruitment, and mortality rates over a prolonged period of time.

(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. Factors (economic, social, and ecological) that modify MSY in defining optimum yield should not be used to institute management measures which permit overfishing on a continued basis.

(3) *Optimum yield concept.* (i) The concept of optimum yield is broader than the consideration of only the fish stocks. It takes into account the economic well-being of the commercial fishermen, the interests of recreational fishermen, the fish habitat quality and the welfare of the Nation. The optimum yield of any given fishery might deviate from MSY in order to respond to the unique problems of that fishery resource. 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 socioeconomic factors as important criteria in setting harvest rates;

(D) Permits management on the basis of MSY if the need for fisheries products is overriding; and

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

(ii) The optimum yield from fishery resources will seldom, if ever, be a static quantity since both the conditions of the resources and the desires of the users will change. Optimum yield cannot, therefore, be defined absolutely for all stocks of fish or groups of fishermen; it will require precise and continual monitoring of each fishery.

(4) *Optimum yield and management objectives.* The determination of optimum yield for a particular fishery will depend heavily upon the objectives that have been determined and adopted by the Councils during the fishery management planning process. Relative weighting of the elements of the optimum yield determination will be dictated by the National as well as regional objectives for the fishery. 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 of U.S. fishermen to harvest such yield. Both the optimum yield and the total "surplus" to 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) *Scope of scientific information and technical analysis*—(i) *Information.* The term "scientific information" is meant to include information of a biological, ecological, economic, and sociological nature. Success of a fishery management plan depends on the quantity and quality of its scientific and technical information, the proper analysis of this information, and the degree to which it is applied.

(ii) *Analysis.* A method useful in determining optimum yield for each fishery is bioeconomic analysis, which examines the spectrum of relationships existing with and between living resources and their environment and the socioeconomic implication of their use patterns. Bioeconomic studies can provide a tool for fisheries management to:

(A) Formulate year to year harvesting strategies keeping in mind the longer range impact on the biological resource; and

(B) clarify the relationships between this resource and the harvesting, processing, marketing and consumption of fishery products.

(2) *Standardization of information.* Councils shall prescribe, where possible, standardized methods of obtaining and presenting data of all kinds for Council use. 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 the fishery management plans, should provide guidance concerning characteristics of data items such as: Definitions, collection formats, units of measure, abbreviations, degree of accuracy required, and collection point and processing codes used for identifying geographical areas.

(3) *Availability of information.* (i) The type and extent of scientific information available will vary extensively from fishery to fishery. For well-known fisheries, available information is sufficient to provide a strong foundation for a fishery management plan. In other instances, available information may be of sufficient quantity and quality to allow for the development of a plan and regulations with the understanding that modifications will be made as better data become available.

(ii) The lack of complete scientific information concerning a fishery management unit shall not prevent the preparation and implementation of a fishery management plan. All plans must identify information gaps and make provision for the acquisition of additional needed information.

(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) *Fishery management units.* A management unit may involve a species, group of species, or other populations capable of being managed as a unit on a rational and timely basis. It is expected that management units will incorporate the entire range of a stock of fish. Also, management units should, to the extent practicable, comprise several stocks that are ecologically interrelated or are affected as a group by fishing practices. Fishery management units are broadly defined to take account of the multitude of fishing practices which can include effort directed toward: (i) A single stock of fish found in a certain area; (ii) Different stocks of fish sought by the same vessels; (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 fishery 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 area. Where a stock's range overlaps Council areas, one plan may be written to cover the entire range. Where stocks are discontinuous, plans by more than one Council will be necessary. Where a stock's range extends into a neighboring country's contiguous zone recognized by the United States, the Secretary, working with the Secretary of State, will assume responsibility for development of a joint management regime with the neighboring country. In such cases, the Regional Council concerned will be consulted by the Secretary of Commerce in the preparation of a plan which could be used as a basis for negotiating an appropriate international joint management regime.

(3) *Interrelationship of species/habitat.* (i) The broad, long-term management objective of the several fishery management plans developed by each Council should be to optimize the benefits from the total marine biomass within the Council area of authority. The long-term approach to total biomass management necessitates changing from concentration on a few species to management of interrelated groups of species.

(ii) Management of stocks throughout their range will also require biological research on the impact of pollution, and on the effects of wetland and estuarine degradation on fish. Management plans



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should consider these and other habitat factors.

(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 United States 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) *General.* (i) Allocation is an important component of resource 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, for example among recreational or commercial fishermen or among 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 importance should be given to the economic and sociological consequences of alternative allocation schemes. Any fishery management plan must provide for uniform and equal treatment of United States citizens and corporations operating or engaging in the fisheries concerned without regard to their particular residence or State of incorporation.

(ii) Traditional or historic fishing patterns will also be considered when allocation of fishing privileges is necessary. Application of these conservation and management measures is not expected to disrupt existing socioeconomic patterns of harvesting, processing or marketing. Right of entry of new participants into a fishery should be protected, wherever feasible.

(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) *Purpose.* This standard is intended to promote the efficiency of the harvesting, processing, and marketing of fishery products. Its purpose is also to encourage the development of management plans that permit the U.S. fishing industry to provide a greater share of the fish consumed in the United States.

(2) *Scope.* Economic efficiency should be regarded as a subset of a larger framework for fishery management choices involving other 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. From the standpoint of a national concern for the efficiency of energy use, management plans may consider levels or costs of energy expenditure for various management alternatives. Economic analyses made during the process of plan development 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.* When conservation and management measures are recommended for purposes of economic allocation, 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) *General.* (i) Management and conservation measures shall allow for unpredicted variations in fishery resources. Sufficient flexibility must be built into the fishery management process to allow for timely response to unforeseen changes, either man-caused (e.g., change in catch size) or natural (e.g., spawning failure).

(ii) 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 fish habitat conditions may alter population levels. Variations are also to be expected in harvesting effort, fishing strategy, and gear efficiency within a fishery.

(iii) To the extent that information is available, every effort should be made to develop fishery management plans and regulations that take into account these variations and provide a suitable buffer in favor of conservation. In evaluating the need for flexible plans and regulations, 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 data and resource data will help reduce uncertainty. There must be administrative flexibility to adjust management plans and regulations to changes in yield potential and to improve management techniques. Possible effects on stock abundance should be recognized when delays in implementing regulations cannot be avoided.

(h) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(1) *General.* 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.

(a) *Required provisions.* Each fishery management plan, whether prepared by the Council or by the Secretary, must identify the broad management objectives to be attained in the fishery. Management objectives should be formulated as precisely as possible. Each plan must also include the following five provisions:

(1) The necessary and appropriate conservation and management measures governing fishing. These measures are to be consistent with the National Standards, with the guidelines based on the Standards, and with other applicable law. They represent the action program needed to attain the management objectives of the plan.

(2) A complete description of the fishery including: the nature and extent of fishing; the number of vessels involved; fishing gear used; species and stocks involved and their distribution, movements, and ecological relationships; the likely costs of management; actual and potential revenues from the fishery and recreational interests; and the extent and nature of foreign fishing and Indian fishing rights.

(3) An assessment and specification of the fishery's present condition, probable future condition, maximum sustainable yield, and optimum yield. The biological status of the fishery should be described in terms of whether it is underutilized, intensively exploited, overexploited, etc. The present and potential economic and social problems should be discussed. A summary of all best information available should be included and utilized in making specifications of condition and yields. With regard to the present and future conditions of each fishery, the plan should include:

(i) A description of the fishery habitat;

(ii) A determination of the condition of the habitat and factors threatening its productivity;

(iii) An estimate of any restoration or improvement measures necessary to ensure a habitat suitable to sustain the fishery resource;

(iv) A description of any existing programs directed to the protection of habitat from destructive factors; and

(v) A reference to any existing applicable Coastal Zone Management plans



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and the relationship of such plans to the fishery management plan.

(4) *An assessment of the annual U.S. harvest of optimum yield of the fishery.* An evaluation and specification of the capacity of U.S. commercial and recreational fishermen to harvest the optimum yield of the given fishery, and the portion of this optimum yield that will not be so harvested and can be made available to foreign fleets. Included should be a description of present user groups and anticipated future domestic production.

(5) *Statistics.* A specification of the pertinent statistics and data that must be submitted by fishermen, processors and others to the Secretary as provided in the Act with respect to the fishery, including information as to gear, catch by species, fishing areas, and fishing effort. The data requirements section of a plan shall also specify all socio-economic data necessary for optimum yield management. The fishery data reporting requirements apply to both the domestic and foreign sectors of a fishery and to both the recreational and commercial segments of domestic fisheries. Requirements for data shall take into account the effort necessary to collect such data, and the effort shall be minimized through careful selection of data elements, the periodicity of collection and the accuracy required so as not to unduly burden those who must supply such data. Whenever possible, the units of data measurement should be specified in order to facilitate data reduction and analysis. Regulations with regard to the confidentiality of these statistics are set forth in Part 603. [Reserved]

(b) *Discretionary provisions.* In addition to the above elements that a management plan is required to contain, the plan may, with respect to any fishery, include the following items:

(1) *Permits and fees for domestic fishermen.* A requirement for a permit to be obtained from, and fees to be paid to, the Secretary for any U.S. fishing vessel fishing within the Fishery Conservation Zone or for anadromous species or Continental Shelf fishery resources beyond the zone. The amount of the fees charged domestic fishermen is to be established by the Secretary if the management plan authorizes charging fees, but in no event shall exceed the administrative costs incurred by the Secretary in issuing permits.

(2) *Time and area restrictions.* A designation of periods when, and zones where, fishing will be permitted, and specifications as to types and quantity of vessels or gear to be permitted in such zones or during such periods. These restrictions must be related to the objectives of the plan.

(3) *Catch limitations.* Establishment of catch limitations, based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors, that are related to the fulfillment of plan objectives.

(4) *Gear and vessel restrictions.* Establishment of prohibitions, limits, conditions, and requirements for the use of specified types and quantities of fishing gear, vessels and equipment, and requirements for utilization of devices facilitating enforcement. These restrictions must be related to the objectives of the plan.

(5) *State laws.* Incorporation, to the extent practicable, of relevant fishery conservation and management measures of the coastal States nearest to the fishery. In some cases, existing State measures may be adopted for certain fisheries with little modification for the Fishery Conservation Zone so long as they are consistent with the National Standards and other provisions of this Act and any other law.

(6) *Limited access.* Establishment of a limited access system in order to achieve optimum yield.

(i) Considerations. The Council must take into account:

(A) Present participation in the fishery;

(B) Historical fishing practices and dependence on the fishery;

(C) The economics of the fishery, such as the value of existing investments and the value of fishing privileges;

(D) The capability of vessels used in the fishery to engage in other fisheries or other pursuits;

(E) The cultural and social framework relevant to the fishery; and

(G) Any other relevant considerations such as any State limited access systems, history of the compliance with fishing regulations, and the optimum yield of the fishery.

(ii) Purposes. Limited access is a management technique that is directed at economic as well as biological objectives. This technique is used to reduce the congestion and economic waste that often occurs from the "open access" condition of common property fisheries. Limited access should be used carefully, and only when other tools fail to achieve management objectives.

(7) *Other necessary measures.* Prescription of any other measures, requirements, or conditions and restrictions as are determined by the Council to be necessary and appropriate for the conservation and management of the fishery.

**§ 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 the fisheries within its geographical area of jurisdiction and identify all fisheries (fishery management units) requiring plan development. It will be the Council's responsibility, in collaboration with the Secretary, to delineate fishery management units and to set priorities for plan development for these units.

(2) *Develop management options.* The Council shall assemble and analyze all relevant information (e.g., biological, economic, sociological, ecological, user, and constituency) with regard to a particular fishery management unit and develop specific technical management options. The Secretary and the Secretary of State shall furnish the Councils with information concerning foreign fishery 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, its advisory panels and its Scientific and Statistical Committee. 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 that includes waters within the geographic 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 hearings and any other appropriate means, the advice and recommendations from all interested persons during the development of fishery management 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 § 602.2).*

(7) *Coordinate fishery management plan development with coastal zone planning 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.



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(c) *Council action on plans prepared by the Secretary.*—(1) *General.* The Secretary of Commerce may prepare a fishery management 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) If 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. A Council may conduct public hearings to allow interested persons to comment on such a plan, and may incorporate such public comment 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 revises as needed, 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 at least assess the accuracy of the estimates of maximum sustainable yield, and optimum yield, and total allowable level of foreign fishing 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 propose changes in a plan by means of an amendment to the plan. The procedures for Council approval of an amendment (e.g., majority vote) and transmittal to the Secretary are the same as those that apply to a management plan. The same procedures 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 fishery management plan, or any amendment to any fishery management 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.

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## PART 603—CONFIDENTIALITY OF STATISTICS [RESERVED]

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