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New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

MEMORANDUM

January 14, 2011

TO: Council
FROM: Paul J. Howard, Executive Director
SUBJECT: January 4, 2011 Executive Committee Meeting Summary

Attached is the summary of the Executive Committee meeting held on January 4, 2011.

Please pay particular attention to agenda items 7, 9, and 10 and the enclosures. You will be asked to vote on these 3 agenda items under reports at our January Council meeting.

Thanks,

Paul



New England Fishery Management Council

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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

MEMORANDUM

DATE: January 5, 2011
TO: Council
FROM: Paul J. Howard, Executive Director
SUBJECT: Summary of January 4, 2011 meeting

The Executive Committee met on Tuesday, January 4, 2011 in Newburyport, MA. Messrs. Pappalardo, Cunningham, Odlin, Ms. McGee and Ms. Kurkul participated in the meeting. Drs. Cadrin, Thompson, Weinberg and Rago attended the meeting as well as Messrs. Howard, Kellogg, Nies, Ms. Roy, Ms. Fiorelli and Ms. Stone from the Council staff. The committee discussed the following agenda items:

1. Discuss Groundfish ACL setting process for 2011: The committee discussed the ABC setting process for Groundfish in 2011. The Cte reviewed 4 options provided by NEFMC staff and agreed to schedule 3 different meetings. The first meeting would be held by an expanded Groundfish PDT to include NEFSC staff. The SSC's "leads" on groundfish would attend this meeting to serve as liaisons to the SSC. During this first meeting, the group would identify the available data, raise red flags (ex., note inconsistencies between projections and survey data) and explore alternative methods if necessary. A second meeting would occur between the expanded PDT and the full SSC to discuss any alternative approaches and finalize methods. A third meeting would be held by the SSC to develop the ABC recommendations that would ultimately be forwarded to the Council. Staff will coordinate agendas, participation and scheduling for these three meetings. See Encl. (1).

2. Discuss US/CA TAC for yellowtail flounder and how this will or will not change how we interact with CA on management: The Cte discussed recent legislation (HR 81) and its affect on the US/CA transboundary management agreement. The legislation removes the MSA 10-year rebuilding requirement for stocks managed under the agreement. The Cte agreed that the TMGC should meet by video conference to explore adjusting harvest levels for 2011 as soon as possible. See Encl (2).

3. Discuss calibration of skate survey data: The Cte reviewed the planned skate calibration and SSC peer review timelines. The Cte agreed with the milestones and timelines developed by staff. See Encl (3).

4. *Review 1) the draft EBFM policy document from the SSC; 2) MAFMC TORs on EBFM for their SSC. Upon review, develop a strawman proposal and timeline for EBFM planning (consistent with approved priorities for 2011) to be presented to the Council in January 2011 and 3) discuss CMSP planning:* The Cte agreed with the current plan for the Council to receive 3 presentations from our SSC about ecosystem based fisheries management plans (EBFM). The Cte acknowledged that Cape Wind type projects are moving very quickly. The Cte agreed that our efforts as a member of NROC may not be enough and the Council should also better coordinate with Dept of Interior's BOEMRE. It was agreed that a BOEMRE representative would be invited to a Council meeting to describe planned energy projects in the region.

5. *Discuss Update on Marine Spatial Planning:* It was agreed that the Executive Director should prepare a series of maps of the regions fishing grounds, essential fish habitat, and hot spots of biomass and biodiversity which need identification and protection from non-fishing impacts. These maps will help us better represent fishing interests at meetings with BOEMRE and NROC.

6. *Approve SSC membership:* The Cte approve Mr. Correia and Drs. Chen, Legault, Thunberg and St. Martin as new members of the SSC. The Cte discussed potential issues that may arise from members serving on both the SSC and PDT. The length of terms was broken down into 1, 2, and 3 years. The new list of members is attached. See Encl (4).

7. *Discuss and approve SOPPs:* The Cte agreed to forward the revised SOPPs to the Council for approval at the January Council meeting. See Encl (5).

8. *Approve Skate and Monkfish Advisors and approve an additional Enforcement and an additional Groundfish advisor:* The Cte reviewed applications and species committee recommendations and approved new advisory panel members for the Monkfish, Groundfish, Enforcement and Skate panels.

9. *Discuss the use of a proxy for AP members; consider a written policy:* The Cte agreed that language should be added to the existing AP policy that would state that no proxies are allowed for AP members. See Encl (6).

10. *Discuss change to election process policy for Executive Committee members:* The Cte discussed and recommended a change to the policy for approval of Executive Committee members by the Council. See Encl (7).

11. *Discuss timelines and management options:* The Cte reviewed management timelines and agreed that the Council, Committee and PDT chair should revisit the Herring Amendment's monitoring objectives for the purpose of refocusing and tasking the PDT with developing alternatives to meet those objectives. It was agreed that the Chair, PDT and Herring Chair should have a conference call to discuss this and the Herring Committee meeting scheduled for Jan 20, 2011.



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
Frank Blount, *Chairman* | Paul J. Howard, *Executive Director*

December 15, 2010

Ms. Pat Kurkul
Northeast Regional Administrator
NMFS/NOAA
55 Great Republic Drive
Gloucester, MA 01930-2298

Nancy B. Thompson, Ph.D.
Science and Research Director
Northeast Fisheries Science Center
166 Water Street
Woods Hole, MA 02543-1026

Dear Pat and Nancy:

In the fall of 2011 the Council will establish groundfish specifications for FY 2012 –FY 2014. I would like to discuss what information will be used to set those specifications at the Executive Committee meeting scheduled for January 4, 2011. I invite you and your staff to join us so that we can reach a decision on the issue at this meeting. I also plan to invite the Science and Statistical Committee (SSC) chair to participate in this discussion.

During the development of Amendment 16, Council and Center staff discussed the future setting of OFLs/ABCs/ACLs and agreed on a course of action. It was clear that the process could not be similar to GARM III, when benchmark assessments were performed for all groundfish stocks at the same time. Amendment 16 indicates that the Plan Development Team will advise the Council and the SSC based on "...available data, including information on catch (landings and discards), DAS and other measures of fishing effort, estimates and forecasts from recent assessments about stock status and fishing mortality rates, enforcement and compliance with measures, and any other relevant information, such as trawl survey indices or other data." In the absence of updated assessment information (e.g. the planned benchmarks for winter flounder stocks), the advice was to be primarily based on projections from the most recent assessment that would be updated with recent catches. There have been recent informal discussions, however, that suggest this approach may not be sufficiently robust to meet the SSC's needs. This is an issue that we need to resolve as quickly as possible.

ENCLOSURE (1)

In my view, there are four broad options that should be explored so that we understand the benefits and costs of each. You and your staff may have additional suggestions. Each of these options has strengths and weaknesses. Some of the options, if selected, may also interfere with other planned assessments. In order to facilitate our discussion, my staff is willing to prepare a short discussion paper that highlights these issues. We will need assistance from the NEFSC to evaluate the options and identify the tradeoffs. The four options I identified are:

1. Project forward from the last assessment based on mortality targets without updating any data.
2. Project forward from the last assessment using actual catch in recent years (e.g. 2008 – 2010). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. No changes to projection methodology would be made.
3. Project forward from the last assessment using actual catch in recent years. Input a recruitment estimate into the projection for recent years. Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised.
4. Update the most recent approved assessment model with recent catch and survey indices. Do not revise age-length keys, selectivity, etc.

I hope we decide on a course of action at this meeting. I look forward to your participation in this discussion. Please contact me if you have questions.

Sincerely,



Paul J. Howard
Executive Director



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Fisheries Science Center
166 Water Street
Woods Hole, MA 02543-1026

27 December 2010



Paul Howard
Chairman, New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Dear Paul,

In your 15 December 2010 letter, you requested that NOAA Fisheries consider four options for providing biennial assessment advice to the NEFMC for groundfish stocks:

1. Project forward from the last assessment based on mortality targets without updating any data other than landings and discards.
2. Project forward from the last assessment using actual catch in recent years (e.g. 2008 – 2010). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. No changes to projection methodology would be made: as an example, if GARM III used a Rho adjustment, use the same one this time.
3. Project forward from the last assessment using actual catch in recent years. Somehow input a recruitment estimate into the projection for recent years (I don't know if this is possible). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. There may be other technical refinements that could be used here.
4. Update the most recent approved assessment model with recent catch and survey indices. Do not revise ALKs, selectivity, etc.

Center staff evaluated the four options and provide the attached summary of the advantages and disadvantages of each. In summary, Option 2 is the alternative we propose to pursue. Option 1 is doable but provides less information. Options 3 or 4 cannot be exercised if the Center is to fulfill its existing commitments for FY11 assessment advice to the NEFMC, MAFMC, and TRAC.

I plan to attend the Executive Committee on 4 January to present these findings.

Sincerely,

Nancy B. Thompson, Ph.D.
Science and Research Director

cc: P. Kurkul F. Serchuk R. Merrick
J. Weinberg P. Rago T.Nies (NEFMC)

ENCLOSURE (1)



Summary of Costs and Benefits of Four Assessment Alternatives for 2012-14 Multispecies Groundfish

Option	Advantage	Disadvantage	Consequences
1--Project forward from the last assessment based on mortality targets without updating any data other than landings and discards by stock.	<p>--Only requires update of landings and discards for 2010.</p> <p>--Builds on analyses prepared previously by PDT and delivered to the SSC.</p>	<p>--Based entirely on assumptions from GARM III.</p> <p>--Model results are dependent on assumed recruitment and the stock recruitment model defined in the GARM. For some stocks the projection results are dominated by assumed recruitment. No new information on recruitment patterns since 2007.</p> <p>--Unlikely to be accepted by SSC</p>	<p>--No major externalities for other assessment activities.</p> <p>--Will create demand for a more thorough report</p>
2--Project forward from the last assessment using actual catch in recent years (e.g. 2008 – 2010). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. No changes to projection methodology would be made: as an example, if GARM III used a Rho adjustment, use the same one this time.	<p>--Incorporates effects of realizes catches on expected population size for 2011 status.</p> <p>--Compares model predictions with fishery independent measures of total stock size.</p>	<p>--Requires development of methods to compare model predictions with survey abundances.</p> <p>--Does not incorporate information related to recruitment</p> <p>--Model results are dependent on assumed recruitment and the stock recruitment model defined in the GARM. For some stocks the projection results are dominated by assumed recruitment. No new information on recruitment patterns since 2007.</p> <p>--Projections depend on persistence of catchability and selectivity patterns from GARM</p>	<p>--Staff time necessary to update landings, discards and surveys.</p>
3--Project forward from the last assessment using actual catch in recent years. Somehow input a recruitment estimate into the projection for recent years Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. Other technical refinements as appropriate..	<p>--Incorporates effects of realizes catches on expected population size for 2011 status.</p> <p>--Compares model predictions with fishery independent measures of total stock size AND recruitment.</p> <p>Does not require changes to ALK</p>	<p>--All of those listed for Option #2.</p> <p>--Mechanisms to identify recruitment include use of historical ALK and/or cohort slicing. These may be problematic if growth rates change rapidly.</p> <p>--Extracting the indices by age begs the question of why wasn't a new assessment updated since all the data are available.</p>	<p>--Staff time necessary to update landings, discards and surveys.</p> <p>--Staff time to estimate survey age or stage specific indices of recruitment and to determine methods for statistical comparisons</p> <p>--Unable to provide at least some previously committed assessment advice</p>
4--Update the most recent approved assessment model with recent catch and survey indices. Do not revise ALKs, selectivity, etc.	<p>--Would incorporate as much recent information as possible.</p> <p>--Would not require updates to ALK</p> <p>--Relies on peer-reviewed stock assessment model; does not require new methods to interpret indices.</p>	<p>--Major costs in terms of staff time.</p> <p>--Results may be unacceptable if major changes in stock status occur or if retrospective patterns change.</p> <p>--Difficult to restrict potential changes in model formulation.</p>	<p>--Drop SARC 52.</p> <p>--Drop TRAC.</p> <p>--Drop or reduce # of updates for MAFMC</p>

More detailed notes on Alternative Approaches follows:

1) *Project forward from the last assessment based on mortality targets without updating any data other than landings and discards*

- a) Key assumptions
 - i) No changes in underlying parameters from GARM including growth, partial recruitment etc
 - ii) Initial conditions from GARM are appropriate
 - iii) No changes in discard patterns and potential sources of bias.
 - iv) All fishing mortality targets were met
 - v) Increases in F are directly proportional to increases in total catch.
- b) Advantages
 - i) Relatively straightforward to accomplish
 - ii) Creates a predicted sampling distribution of fishing mortality rates based on
 - iii) No changes to existing schedule for SARC, TRAC or Mid Atlantic updates
- c) Disadvantages
 - i) Relies heavily on the assumption of no change in underlying parameters
 - ii) Emphasizes the terminal year estimate of stock size and validity of it's sampling distribution.
 - iii) Results are highly dependent on assumed recruitment.
 - iv) Unlikely to be accepted by SSC since it is built primarily on assumptions.
- d) Requirements
 - i) Review of previous predictions of stock size and landings under target fishing mortality rates.
 - ii) Timely update of landings information for 2010, including state data so that proration can be completed.

2) *Project forward from the last assessment using actual catch in recent years (e.g. 2008 – 2010). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. No changes to projection methodology would be made: as an example, if GARM III used a Rho adjustment, use the same one this time.*

- a) Key Assumptions
 - i) Assumes that increases in total weight of catch produce proportional changes in F
 - ii) Requires update of landings and discards for 2010. Timing of this depends on completion of audits for landings, receipt of state landings data, application of Area Allocation (AA) procedures to total year.
 - iii) No changes in underlying parameters from GARM including growth, partial recruitment etc
 - iv) Initial conditions from GARM are appropriate
- b) Advantages
 - i) Incorporates realized catches to inform projection and to update distribution of stock sizes accordingly
 - ii) Minimal effects on SARC, TRAC and Updates.

- c) Disadvantages
 - i) Relies heavily on the assumption of no change in underlying parameters
 - ii) Does not incorporate any new information on recruitment; therefore implies that average recruitment has been achieved. Results are highly dependent on assumed recruitment.
 - iii) Emphasizes the terminal year estimate of stock size and its sampling distribution.
 - iv) Assumes that retrospective pattern evident in 2008 has not changed
 - v) Qualitative comparison of model predictions with survey trends may not be easy to develop and could be perceived as arbitrary, particularly when conflicting trends are observed.
- d) Requirements
 - i) Update of landings and discards for 2010. Timing of this depends on completion of audits for landings, receipt of state landings data, application of Area Allocation (AA) procedures to total year.
 - ii) Updates of Surveys in terms of numbers and weights
 - iii) Application of survey calibration coefficients
 - iv) AGEPRO updates with new catch data
 - v) Develop appropriate scalar adjustments of survey indices to allow comparisons with aggregated model predictions of stock abundance. Example—compare survey biomass to predicted biomass from projection model.

3) *Project forward from the last assessment using actual catch in recent years. Somehow input a recruitment estimate into the projection for recent years (I don't know if this is possible). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. There may be other technical refinements that could be used here.*

- a) Key Assumptions
 - i) Assumes that increases in total weight of catch produce proportional changes in F
 - ii) Requires update of landings and discards for 2010. Timing of this depends on completion of audits for landings, receipt of state landings data, application of Area Allocation (AA) procedures to total year.
 - iii) No changes in underlying parameters from GARM including growth, partial recruitment etc
 - iv) Initial conditions from GARM are appropriate
 - v) Use one of two methods to estimate recruitment from survey indices
 - (1) Assume that all observations below a cutoff length are recruits
 - (2) Apply previous Age Length Key to current estimate of size frequency
- b) Advantages
 - i) Incorporates realized catches to inform projection and to update distribution of stock sizes accordingly
 - ii) Attempts to improve forecast by illustrating effects of recruitment deviations
- c) Disadvantages
 - i) Relies heavily on the assumption of no change in underlying parameters

- ii) Does not incorporate any new information on recruitment; therefore implies that average recruitment has been achieved.
- iii) Emphasizes the terminal year estimate of stock size and its sampling distribution.
- iv) Assumes that any retrospective pattern evident in 2008 has not changed
- v) Qualitative comparison of model predictions with survey trends may not be easy to develop and could be perceived as arbitrary, particularly when conflicting trends are observed.
- vi) Estimating recruitment trends in surveys may be difficult as this is often when model based estimates are most uncertain.
- vii) Major changes in previously scheduled events including:
 - (1) Cancel SARC
 - (2) Reduce participation in TRAC
 - (3) Reduce or eliminate updates for MAFMC (fluke, scup, sea bass, bluefish, dogfish)
- d) Requirements
 - i) Update of landings and discards for 2010. Timing of this depends on completion of audits for landings, receipt of state landings data, application of Area Allocation (AA) procedures to total year.
 - ii) Updates of Surveys in terms of numbers and weights
 - iii) Application of survey calibration coefficients
 - iv) AGEPRO updates with new catch data
 - v) Develop appropriate scalar adjustments of survey indices to allow comparisons with aggregated model predictions of stock abundance. Example—compare survey biomass to predicted biomass from projection model.
 - vi) Recruitment Estimates
 - (1) Develop estimates of recruitment from survey data
 - (2) Compare recruitment estimates with recruitments predicted by model or with previous survey-based values.
 - (3) Agree on a methodology to compare with model based estimates

4) *Update the most recent approved assessment model with recent catch and survey indices. Do not revise ALKs, selectivity, etc.*

- a) Key Assumptions
 - i) No changes in underlying parameters from GARM including growth, partial recruitment etc
 - ii) Initial conditions from GARM are appropriate
 - iii) Historical or average ALK are appropriate for deriving landings and discards at age, and age-specific survey indices.
- b) Advantages
 - i) Uses models to improve understanding of surveys and catches
 - ii) Does not require the development of new procedures to compare model predictions with observed trends
 - iii) Does not require updates to all age-length data
- c) Disadvantages

- i) No change in model formulations may preclude ability to better understand dynamics
- ii) Implications of using ALKs have not been investigated for all stocks.
- iii) If retrospective patterns are not investigated, then adjustment factors from 2008 would be criticized
- iv) Would likely need a large peer review
- v) Major writing requirements could delay timeliness.
- vi) If adverse findings then the most likely recommendation would be a full benchmark. Criticism would be that shortcuts were inappropriate and need full review.
- vii) No SARC 52
- viii) No TRAC
- ix) No Mid Atlantic Updates
- d) Requirements
 - i) Update of landings and discards for 2010. Timing of this depends on completion of audits for landings, receipt of state landings data, application of Area Allocation (AA) procedures to total year.
 - ii) Agree on appropriate age-length key or function of historical ALKs to derive age based estimates of landings, discards, and survey indices.
 - iii) Update landings, discards and survey estimates at age for all stocks from 2008 to 2010
 - iv) Investigate retrospective patterns and recomputed adjustment factors.
 - v) Major writing requirements
 - vi) Peer review panel in addition to SSC.

5) *Option 4 plus use recent ALKs for some stocks. This would involve a bit of triage with a focus on the most important stocks, notably GOM cod.*

- a) Key Assumptions
- b) Advantages
 - i) Greater scientific credibility for process
- c) Disadvantages
 - i) No SARC 52
 - ii) No TRAC
 - iii) No Mid Atlantic Updates
 - iv) If adverse findings then the most likely recommendation would be a full benchmark.
- d) Requirements
 - i) All as in option 4 plus many others

AMENDMENT NO.

CAL. NO.

[STAFF WORKING DRAFT]

December 16, 2010

Purpose: To clarify certain provisions of the International Fisheries Agreement, and for other purposes.

IN THE SENATE OF THE UNITED STATES—111TH Cong., 2^D Sess.

H.R. 81, 111TH Congress, 2^D Session

DECEMBER —, 2010

() Referred to the Committee on _____ and ordered to be printed

() Ordered to lie on the table and to be printed

INTENDED to be proposed by Mr. _____

Viz:

1 SECTION 1. TABLE OF CONTENTS.

2 The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I—SHARK CONSERVATION ACT OF 2010

Sec. 101. Short title.

Sec. 102. Amendment of the High Seas Driftnet Fishing Moratorium Protection Act.

Sec. 103. Amendment of Magnuson-Stevens Fishery Conservation and Management Act.

Sec. 104. Offset of implementation cost.

TITLE II—INTERNATIONAL FISHERIES AGREEMENT

Sec. 201. Short title.

Sec. 202. International Fishery Agreement.

Sec. 203. Application with other laws.

Sec. 204. Effective date.

TITLE III—MISCELLANEOUS

Sec. 301. Technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act.

Sec. 302. Pacific Whiting Act of 2006.

Sec. 303. Replacement vessel.

1 **TITLE I—SHARK CONSERVATION**
2 **ACT OF 2010**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Shark Conservation
5 Act of 2010”.

6 **SEC. 102. AMENDMENT OF HIGH SEAS DRIFTNET FISHING**
7 **MORATORIUM PROTECTION ACT.**

8 (a) ACTIONS TO STRENGTHEN INTERNATIONAL
9 FISHERY MANAGEMENT ORGANIZATIONS.—Section 608
10 of the High Seas Driftnet Fishing Moratorium Protection
11 Act (16 U.S.C. 1826i) is amended—

12 (1) in paragraph (1)—

13 (A) in subparagraph (D), by striking
14 “and” at the end;

15 (B) in subparagraph (E), by inserting
16 “and” after the semicolon; and

17 (C) by adding at the end the following:

18 “(F) to adopt shark conservation meas-
19 ures, including measures to prohibit removal of
20 any of the fins of a shark (including the tail)
21 and discarding the carcass of the shark at
22 sea;”;

23 (2) in paragraph (2), by striking “and” at the
24 end;

1 (3) by redesignating paragraph (3) as para-
2 graph (4); and

3 (4) by inserting after paragraph (2) the fol-
4 lowing:

5 “(3) seeking to enter into international agree-
6 ments that require measures for the conservation of
7 sharks, including measures to prohibit removal of
8 any of the fins of a shark (including the tail) and
9 discarding the carcass of the shark at sea, that are
10 comparable to those of the United States, taking
11 into account different conditions; and”.

12 (b) ILLEGAL, UNREPORTED, OR UNREGULATED
13 FISHING.—Subparagraph (A) of section 609(e)(3) of the
14 High Seas Driftnet Fishing Moratorium Protection Act
15 (16 U.S.C. 1826j(e)(3)) is amended—

16 (1) by striking the “and” before “bycatch re-
17 duction requirements”; and

18 (2) by striking the semicolon at the end and in-
19 serting “, and shark conservation measures;”.

20 (c) EQUIVALENT CONSERVATION MEASURES.—

21 (1) IDENTIFICATION.—Subsection (a) of section
22 610 of the High Seas Driftnet Fishing Moratorium
23 Protection Act (16 U.S.C. 1826k) is amended—

1 (A) in the matter preceding paragraph (1),
2 by striking “607, a nation if—” and inserting
3 “607—”;

4 (B) in paragraph (1)—

5 (i) by redesignating subparagraphs
6 (A) and (B) as clauses (i) and (ii), respec-
7 tively; and

8 (ii) by moving clauses (i) and (ii) (as
9 so redesignated) 2 ems to the right;

10 (C) by redesignating paragraphs (1)
11 through (3) as subparagraphs (A) through (C),
12 respectively;

13 (D) by moving subparagraphs (A) through
14 (C) (as so redesignated) 2 ems to the right;

15 (E) by inserting before subparagraph (A)
16 (as so redesignated) the following:

17 “(1) a nation if—”;

18 (F) in subparagraph (C) (as so redesign-
19 ated) by striking the period at the end and in-
20 sserting “; and”; and

21 (G) by adding at the end the following:

22 “(2) a nation if—

23 “(A) fishing vessels of that nation are en-
24 gaged, or have been engaged during the pre-
25 ceding calendar year, in fishing activities or

1 practices in waters beyond any national juris-
2 diction that target or incidentally catch sharks;
3 and

4 “(B) the nation has not adopted a regu-
5 latory program to provide for the conservation
6 of sharks, including measures to prohibit re-
7 moval of any of the fins of a shark (including
8 the tail) and discarding the carcass of the shark
9 at sea, that is comparable to that of the United
10 States, taking into account different condi-
11 tions.”.

12 (2) INITIAL IDENTIFICATIONS.—The Secretary
13 of Commerce shall begin making identifications
14 under paragraph (2) of section 610(a) of the High
15 Seas Driftnet Fishing Moratorium Protection Act
16 (16 U.S.C. 1826k(a)), as added by paragraph
17 (1)(G), not later than 1 year after the date of the
18 enactment of this Act.

19 **SEC. 103. AMENDMENT OF MAGNUSON-STEVENSON FISHERY**
20 **CONSERVATION AND MANAGEMENT ACT.**

21 (a) IN GENERAL.—Paragraph (1) of section 307 of
22 Magnuson-Stevens Fishery Conservation and Manage-
23 ment Act (16 U.S.C. 1857) is amended—

24 (1) by amending subparagraph (P) to read as
25 follows:

1 “(P)(i) to remove any of the fins of a
2 shark (including the tail) at sea;

3 “(ii) to have custody, control, or possession
4 of any such fin aboard a fishing vessel unless
5 it is naturally attached to the corresponding
6 carcass;

7 “(iii) to transfer any such fin from one
8 vessel to another vessel at sea, or to receive any
9 such fin in such transfer, without the fin natu-
10 rally attached to the corresponding carcass; or

11 “(iv) to land any such fin that is not natu-
12 rally attached to the corresponding carcass, or
13 to land any shark carcass without such fins
14 naturally attached;” and

15 (2) by striking the matter following subpara-
16 graph (R) and inserting the following:

17 “For purposes of subparagraph (P), there shall be
18 a rebuttable presumption that if any shark fin (in-
19 cluding the tail) is found aboard a vessel, other than
20 a fishing vessel, without being naturally attached to
21 the corresponding carcass, such fin was transferred
22 in violation of subparagraph (P)(iii) or that if, after
23 landing, the total weight of shark fins (including the
24 tail) landed from any vessel exceeds five percent of
25 the total weight of shark carcasses landed, such fins

1 were taken, held, or landed in violation of subpara-
2 graph (P). In such subparagraph, the term ‘natu-
3 rally attached’, with respect to a shark fin, means
4 attached to the corresponding shark carcass through
5 some portion of uncut skin.”.

6 (b) SAVINGS CLAUSE.—

7 “(1) IN GENERAL.—The amendments made by
8 subsection (a) do not apply to an individual engaged
9 in commercial fishing for smooth dogfish (*Mustelus*
10 *canis*) in that area of the waters of the United
11 States located shoreward of a line drawn in such a
12 manner that each point on it is 50 nautical miles
13 from the baseline of a State from which the terri-
14 torial sea is measured, if the individual holds a valid
15 State commercial fishing license, unless the total
16 weight of smooth dogfish fins landed or found on
17 board a vessel to which this subsection applies ex-
18 ceeds 12 percent of the total weight of smooth
19 dogfish carcasses landed or found on board.

20 (2) DEFINITIONS.—In this subsection:

21 (A) COMMERCIAL FISHING.—The term
22 “commercial fishing” has the meaning given
23 that term in section 3 of the Magnuson-Stevens
24 Fishery Conservation and Management Act (16
25 U.S.C. 1802).

1 (B) STATE.—The term “State” has the
2 meaning given that term in section 803 of Pub-
3 lic Law 103–206 (16 U.S.C. 5102).

4 **SEC. 104. OFFSET OF IMPLEMENTATION COST.**

5 Section 308(a) of the Interjurisdictional Fisheries
6 Act of 1986 (16 U.S.C. 4107(a)) is amended by striking
7 “2012.” and inserting “2010, and \$2,500,000 for each of
8 fiscal years 2011 and 2012.”.

9 **TITLE II—INTERNATIONAL**
10 **FISHERIES AGREEMENT**

11 **SEC. 201. SHORT TITLE.**

12 This title may be cited as the “International Fish-
13 eries Agreement Clarification Act”.

14 **SEC. 202. INTERNATIONAL FISHERY AGREEMENT.**

15 Consistent with the intent of provisions of the Mag-
16 nuson-Stevens Fishery and Conservation and Management
17 Act relating to international agreements, the Secretary of
18 Commerce and the New England Fishery Management
19 Council may, for the purpose of rebuilding those portions
20 of fish stocks covered by the United States-Canada Trans-
21 boundary Resource Sharing Understanding on the date of
22 enactment of this Act—

23 (1) take into account the Understanding and
24 decisions made under that Understanding in the ap-

1 plication of section 304(e)(4)(A)(i) of the Act (16
2 U.S.C. 1854(e)(4)(A)(i));

3 (2) consider decisions made under that Under-
4 standing as “management measures under an inter-
5 national agreement” that “dictate otherwise” for
6 purposes of section 304(e)(4)(A)(ii) of the Act (16
7 U.S.C. 1854(e)(4)(A)(ii); and

8 (3) establish catch levels for those portions of
9 fish stocks within their respective geographic areas
10 covered by the Understanding on the date of enact-
11 ment of this Act that exceed the catch levels other-
12 wise required under the Northeast Multispecies
13 Fishery Management Plan if—

14 (A) overfishing is ended immediately;

15 (B) the fishing mortality level ensures re-
16 building within a time period for rebuilding
17 specified taking into account the Understanding
18 pursuant to paragraphs (1) and (2) of this sub-
19 section; and

20 (C) such catch levels are consistent with
21 that Understanding.

22 **SEC. 203. APPLICATION WITH OTHER LAWS.**

23 Nothing in this title shall be construed to amend the
24 Magnuson-Stevens Fishery Conservation and Manage-
25 ment Act (16 U.S.C. 1851 et seq.) or to limit or otherwise

1 alter the authority of the Secretary of Commerce under
2 that Act concerning other species.

3 **SEC. 204. EFFECTIVE DATE.**

4 (a) IN GENERAL.—Except as provided in subsection
5 (b), section 202 shall apply with respect to fishing years
6 beginning after April 30, 2010.

7 (b) SPECIAL RULE.—Section 202(3)(B) shall only
8 apply with respect to fishing years beginning after April
9 30, 2012.

10 **TITLE III—MISCELLANEOUS**

11 **SEC. 301. TECHNICAL CORRECTIONS TO THE WESTERN AND**
12 **CENTRAL PACIFIC FISHERIES CONVENTION**
13 **IMPLEMENTATION ACT.**

14 Section 503 of the Western and Central Pacific Fish-
15 eries Convention Implementation Act (16 U.S.C. 6902) is
16 amended—

17 (1) by striking “Management Council and” in
18 subsection (a) and inserting “Management Council,
19 and one of whom shall be the chairman or a member
20 of”;

21 (2) by striking subsection (c)(1) and inserting
22 the following:

23 “(1) EMPLOYMENT STATUS.—Individuals serv-
24 ing as such Commissioners, other than officers or
25 employees of the United States Government, shall

1 not be considered Federal employees except for the
2 purposes of injury compensation or tort claims liabil-
3 ity as provided in chapter 81 of title 5, United
4 States Code, and chapter 171 of title 28, United
5 States Code.”; and

6 (3) by striking subsection (d)(2)(B)(ii) and in-
7 serting the following:

8 “(ii) shall not be considered Federal
9 employees except for the purposes of injury
10 compensation or tort claims liability as
11 provided in chapter 81 of title 5, United
12 States Code, and chapter 171 of title 28,
13 United States Code.”.

14 **SEC. 302. PACIFIC WHITING ACT OF 2006.**

15 (a) **SCIENTIFIC EXPERTS.**—Section 605(a)(1) of the
16 Pacific Whiting Act of 2006 (16 U.S.C. 7004(a)(1)) is
17 amended by striking “at least 6 but not more than 12”
18 inserting “no more than 2”.

19 (b) **EMPLOYMENT STATUS.**—Section 609(a) of the
20 Pacific Whiting Act of 2006 (16 U.S.C. 7008(a)) is
21 amended to read as follows:

22 “(a) **EMPLOYMENT STATUS.**—Individuals appointed
23 under section 603, 604, 605, or 606 of this title, other
24 than officers or employees of the United States Govern-
25 ment, shall not be considered to be Federal employees

1 while performing such service, except for purposes of in-
2 jury compensation or tort claims liability as provided in
3 chapter 81 of title 5, United States Code, and chapter 171
4 of title 28, United States Code.”.

5 **SEC. 303. REPLACEMENT VESSEL.**

6 Notwithstanding any other provision of law, the Sec-
7 retary of Commerce may promulgate regulations that
8 allow for the replacement or rebuilding of a vessel quali-
9 fied under subsections (a)(7) and (g)(1)(A) of section 219
10 of the Department of Commerce and Related Agencies Ap-
11 propriations Act, 2005 (Public Law 108-447; 188 Stat.
12 886-891).

○

US/CA Resource Sharing Understanding Impacts of New Legislation

- This legislation only affects GB yellowtail flounder and does not change rebuilding requirements for GB cod and haddock.
- The legislation allows a rebuilding period to exceed ten years as long as overfishing does not occur and the period is consistent with the US/CA Understanding. It does not eliminate the need for a specified rebuilding period. Catch levels set by the Council cannot exceed the ABC recommendation of the SSC.
- Changes are phased in such that in 2011 the only restrictions are that overfishing not occur (and, for the Council, that the catch is consistent with an ABC set by the SSC). This gives the Council time to adopt a new rebuilding period for FY 2012.
- Practically, this legislation allows a rebuilding period based on F_{MSY} . A nuance not addressed in the legislation is what is the starting date for such a period? Presumably we can set a new starting date or else the legislation is not useful.
- Since FY 2010 is over for the Canadians (they use a calendar year) changes are only possible for FY 2011 and beyond.
- GB YTF 2011 TACs are US 1,045 mt and CA 855 mt, for a total of 1,900 mt. This is equivalent to a fishing mortality of about 0.14 and a low probability of exceeding F_{ref} (F_{MSY}). Median catch at 75 percent of F_{MSY} would be 2,584 mt (US 1,401; CA 1,163 mt). Median catch at F_{MSY} would be 3,446 mt (US 1,895, CA 1,551 mt). Note that these catches are not adjusted for a retrospective pattern and have a neutral risk of exceeding F_{ref}/F_{MSY} . At F_{MSY} rebuilding extends beyond 2020.
- To change the FY 2011 TAC, the TMGC would have to re-negotiate new catch levels. Subsequent to that decision there are two possible paths to implementation:
 - Path 1: Council process
 - SSC sets a new ABC if the TMGC recommendation exceeds 1,956 mt
 - Council submits a specification change that is consistent with the TMGC and SSC recommendations.
 - NMFS reviews and if approved implements a new catch level
 - Path 2: NERO process
 - NMFS implements the TMGC advice through an interim or emergency action (if such an approach can be justified).

From: Paul Howard
Sent: Tuesday, December 14, 2010 2:01 PM
To: Council
Cc: Staff
Subject: Skates

To: Council Members

There has been a lot of discussion in the media recently about skates. For your information, here is my perspective of where we are with skates:

The Council responded to a skate request from the industry at the September Council meeting. The Skate Plan Development Team (PDT) was subsequently tasked to reexamine discard estimates. The PDT reported in November that at this time data are insufficient to estimate and predict the 2010 skate discard rate, a measure which may have enabled the Council to modify the total allowable landings of skates in the 2010 fishing year.

According to the PDT, although data from observed trips are available to compare discard to landings ratios for groundfish sector vessels, the wide variation in the data precluded a determination of whether total skate discards had declined under groundfish sector management. Previously unavailable discard estimates for 2009 would enable only an 8 metric ton (about 17,000 pounds) increase in total skate landings.

Additionally, the National Marine Fisheries Service also reported in November that the Council's Emergency Action request to raise the skate wing possession limit (motion made at the September meeting) so that industry could harvest optimum yield would not be prudent.

The history of the skate situation began when the skate wing possession limit was reduced from 20,000 pounds to 5,000 pounds on June 16 with the implementation of Amendment 3 to the Skate Plan. Later, the limit was further reduced to 500 pounds because the fishery had landed close to 80 percent of the annual limit and was on a pace to far exceed the allowable quota for the 2010 fishing year. Since that time, landings of skate wings have averaged 27,600 pounds per week and the fishery is expected to reach the landings limit by early March 2011. The fishing year, which began on May 1, 2010, is scheduled to end on April 31, 2011.

Industry testified at the November Council meeting that the skate wing possession limit reduction to 500 pounds has had devastating impacts on fishermen and shore-side processors, threatening market share and the long term ability for the U.S. to market skate wings overseas. As a consequence, the Council initiated Framework Adjustment 1 to re-assess its plan for a 5000 pound trip limit for the 2011 fishing year. This action is based on industry concerns and recommendations to modify the skate wing possession limit to 3100 pounds for 2011 so that the fishery does not close early next fishing year. Approval of the framework is expected at the January 2011 Council meeting and possible implementation by June 2011.

ENCLOSURE (3)

Since the Council meeting, a number of events have occurred that affect the public's perception of skate management, including a paper authored by the SMAST's, Emily Keiley. The premise of her paper is that "the 20,000 pound trip limit be reinstated for the remainder of the 2010 fishing year. This is taking into account that the target stocks (little and winter skate) are not overfished," implying that the fishing at a 20,000 pound possession limit is appropriate.

The impression one is left with is that if NMFS 'released' the Bigelow survey data, the ABC and TAL would be higher than currently set. The reality is it actually could be higher, but we don't know yet how much higher because the Bigelow skate indices have not been properly calibrated to the Albatross to date (or vice versa), not applied to estimate the OFL/ABC and not peer reviewed. There exists ambiguity in the current skate calibrations. New calibrations are needed to address length specific characteristics and the higher catch rates observed by NEFSC scientists. The Council's PDT and SSC will be tasked to examine this ambiguity and incorporate any new data into skate ABC specifications for 2012 and 2013, which are scheduled for final vote in September 2011.

In the meantime, it appears that there may be an emergency requests for skates issued by Congressman Frank. The responsibility to respond to the emergency request rests with NMFS. Lastly, we manage skates as an aggregate fishery mainly because of on-going species identification issues in the catch. To estimate a new OFL/ABC, we need the calibrated data for all seven skate species. And one specie, Rosette, has insufficient data to compute reliable calibration coefficients, although there may be some ways around the problem.

I hope this info will help as you prepare to vote on a new skate trip limit at our January, 2011 Council meeting.

V/r,

Paul

SKATE FISHING LIMITS DRAW NEW FIRE

Gloucester Daily Times

By Richard Gaines, Staff Writer

September 12, 2010

The New England commercial fishing fleet has been waiting for more than a month to learn whether the U.S. Secretary of Commerce will honor a gubernatorial request for loosened groundfish limits to help quell a government-induced industry collapse. Now, a second economic emergency request — challenging limits on the humble skate — is coming from Congressman Barney Frank. Garth Patterson, Frank's fisheries advisor, told the Times the emergency request for skate will be issued perhaps as soon as this week. Like the first request — for a broad loosening of catch limits across the 19 stock groundfish complex, sought by Gov. Deval Patrick before the mid-term congressional elections — Frank's will cite authority in the Magnuson-Stevens Act allowing Commerce Secretary Gary Locke to obviate an economic crisis with emergency adjustments in catch limits so long as stock recovery plans are not jeopardized.

Skate, a family of bottom feeders closely related to sharks, has the image of a junk fish in the U.S. But the firm white flesh appeals to French palates, so is prized as an export food fish and an important lobster bait in New England. As an industry sector, skate supports three major and a number of minor processors and about 300 jobs in New Bedford and Gloucester, according to John Whiteside, attorney for Gloucester's Zeus Packing and both Seatrade International and Marder Trading in New Bedford. During the decades of emergency conservation regimens the better known and broadly desired groundfish, the plentiful skate — whose numbers dominated government trawl surveys for some time — has helped keep the boats and shoreside businesses of Gloucester and New Bedford running.

But that was before the National Oceanic and Atmospheric Administration, in two steps, took down the trip limit by a factor of 40 — from a 20,000 pound trip limit in 2009, by last September boats were allowed to land only 500 pounds. NOAA spokeswoman Maggie Mooney-Seus said the action was mandated under Magnuson and triggered when the state's landings passed 80 percent of the size of the total allowable catch set by the New England Fishery Management Council. The 2006 reauthorization of Magnuson included mechanisms to discourage and compensate for excessive landings. "The in-season action was to prevent an overage in the fishery, which would require future catch reductions," said Mooney-Seus. She also said variations in the strength of different species of skates, which are difficult to differentiate even by trained eyes, factored into the decision on limited landings. "Due to the difficulty in identifying skate species, skate are managed as a complex," Mooney-Seus said in an e-mail to the Times on Friday. "While some preliminary information suggests an improvement in the status of winter skate, not all skate stocks are healthy." But an academic research paper from the University of Massachusetts at Dartmouth asserts that NOAA is sitting on unreleased trawl data showing no need for the reduced trip limits that have effectively collapsed the skate fishery, leaving European buyers to skate exporters from South America. "Normally, between September and October, we're working mostly every day, but this year we've had 10 productive days," said Zeus Packing CEO Kristian Kristensen, who put the losses at about 78 percent or \$1.5 million from skate processing in 2009.

Similar hardships at New Bedford's two big skate processors, Seatrade International and Marder Trawling, were reported by Whiteside, who spoke during last week's of New Bedford Mayor Scott Lang's Ocean Fisheries Council. The meeting was called to re-enforce the need for a rapid answer to the filing by Gov. Deval Patrick in October that sited a management created economic crisis in the groundfishery and urged an emergency allocation. The skate report by Emily F. Keiley at UMass Dartmouth's School of Marine Science and Technology contends that recent management strategies have "fully rebuilt" the targeted skates, and she noted that while the species look alike they are found and caught in predictable and predictable patterns, so need not be managed as an undifferentiated complex. Locke is awaiting a recommendation from government scientists before acting on the first emergency allocation request for additional groundfish, which was made last month by Gov. Deval Patrick. A emergency allocation requires finding of an economic crisis and scientific evidence the fishery can sustain the additional taking without overfishing. "Although the National Marine Fisheries Service has not officially released the information, the most recent three year average indicates that the two target species are rebuilt, Keiley wrote. "This implies that both target species were successfully rebuilt under a 20,000 pound trip limit."

ENCLOSURE (3)

As the Times reported in September, Kristensen points to trawl survey data showing a surge in skates for the past four years, as volume per tow went from 3.71 kilograms in 2007 to 9.50 kg in 2008 to 11.33 in 2009, producing a rolling target of 8.18 kg per tow. That's nearly double the 5.30 kg rolling average target, according to an e-mail to Kristensen from Russell Brown, NOAA's chief scientist at Woods Hole. Brown wrote to Kristensen that "these indices are higher than we have observed in recent years, and this likely represents good news for fishery stakeholders, managers and the resource." But on the heels of Brown's e-mail, Nancy Thompson, NOAA's science and research director, sent Kristensen an unsolicited e-mail, effectively negating Brown's optimism and also partially contradicting Brown's claim that results had been "fully audited." "While we are completing the audit for the bottom trawl survey at this time," she wrote to Kristensen, "we do not know what these results mean relative to the status and condition of the stock. So, quite frankly, we do not know what this means as far as news for the fishery."

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ENCLOSURE (4)

New England Fishery Management Council

Statement of Organization Practices and Procedures (SOPP)

Council Adopted:Insert Date

ENCLOSURE (5)

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UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NEW ENGLAND FISHERY MANAGEMENT COUNCIL

STATEMENT OF ORGANIZATION, PRACTICES, AND PROCEDURES

The New England Fishery Management Council, created by § 302(a)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.* (the Act), hereby publishes a revised Statement of Organization, Practices, and Procedures (SOPP), as required by § 302(f)(6) of the Act. Upon approval, this SOPP supersedes the previous version, published on January 29, 2004.

Copies of this SOPP are available upon request by writing or contacting the New England Fishery Management Council, 50 Water St., Mill 2, Newburyport, MA 01950. The SOPP is also available electronically on the Council's website at <http://www.nefmc.org>.

1. COUNCIL FUNCTIONS AND RESPONSIBILITIES

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

- A. Prepare and submit to the Secretary of Commerce (Secretary) or his delegate a fishery management plan with respect to each fishery requiring conservation and management within the Council's geographic area of authority and such plan amendments as are necessary.
- B. Review and comment on applications for foreign fishing transmitted to the Council under a governing international fishery agreement by the Secretary of State under the terms of the Act.
- C. Prepare comments on any fishery management plan or amendments prepared by the Secretary which are transmitted to the Council under § 304(c)(4) of the Act.
- D. Conduct public hearings at appropriate times and locations in the Council's membership area, to allow interested persons an opportunity to be heard in the development of fishery management plans and amendments and with respect to the administration and implementation of the provisions of the Act. When conducting a hearing outside Council's usual jurisdiction, the Council will first consult with the Council in that area.
- E. Submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report that may be requested by the Secretary.

- F. Review on a continuing basis, and revise as appropriate, the assessments and specifications contained in each fishery management plan for each fishery within its geographical area with regard to:
- (1) The present and probable condition of the fishery;
 - (2) The maximum sustainable yield from the fishery;
 - (3) The optimum yield from the fishery;
 - (4) The capacity and the extent to which fishing vessels of the United States will harvest the optimum yield on an annual basis;
 - (5) The portion of such optimum yield on an annual basis which will not be harvested by fishing vessels of the United States and can be made available for foreign fishing.
- G. Develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations established by mechanisms and processes under the Act.
- H. Develop multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, in the manner prescribed in the Act.
- I. Conduct any other activities which are required by or provided for in the Act or which are necessary and appropriate to the foregoing functions.

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

2. COUNCIL ORGANIZATION

2.1 Council Composition and Jurisdiction

The Council has eighteen (18) voting members and four (4) non-voting members. The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. However, the Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Councils Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

The intercouncil boundaries for *New England and Mid-Atlantic Councils* begins at the intersection point of Connecticut, Rhode Island, and New York at 41°18'16.249" N. lat. and 71°54'28.477" W. long and proceeds south 37°22'32.75" East to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson-Stevens Act.

2.1.1 Voting Members

The voting members of the Council shall be:

- The principal state official in the government position with marine fishery management responsibility and expertise in each constituent state, who is

designated as such by the governor of the state, so long as the official continues to hold such position, or the designee of such official.

- The Regional Administrator of the National Marine Fisheries Service for the Northeast Region, so long as the Administrator continues to hold such position, or a designee;
- Twelve (12) voting members appointed by the Secretary of Commerce.

2.1.2 Non-Voting Members

The non-voting members of the Council shall be:

- The Region 5 Regional Director of the U.S. Fish and Wildlife Service, or a designee;
- The Commander of the First District Coast Guard District, or a designee;
- The Executive Director of the Atlantic States Marine Fisheries Commission, or a designee;
- A representative of the U.S. Department of State designated for such purpose by the Secretary of State, or a designee.

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

2.2 Oath of Office

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

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

2.3 Terms of Council Members, Removal, and Council Officers

2.3.1 Term of Appointment -- Voting Members

Voting members (other than principal state officials, the Regional Administrator, or their designees) serve for a term of three (3) years except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member may serve more than three (3) consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member. A voting member's Council services of 18 months or more during a term of office will be counted as service for the entire three-year term. The anniversary date for measuring terms of membership is August 11. A member who has completed three consecutive terms will be eligible for appointment to another term one full year after completion of the third consecutive term.

2.3.2 Removal

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

2.3.3 Officers

At the first regularly scheduled Council meeting after new Council appointments become effective each year, the Council will elect a Chairman, Vice Chairman and Executive Committee from the voting members of the Council by a majority vote of the voting members present and voting. Both the Chairman and Vice Chairman serve for one year and may succeed themselves. They are elected at the first regular Council meeting held after August 11 (election meeting) and their terms of office expire at the next meeting after August 11 of the subsequent year. If the Council terms of either or both of the officers end before a regular election meeting, the Council shall appoint at the next regular Council meeting interim officers to serve until the next election meeting. The Executive Committee consists of the Chairman and Vice-Chairman, the past-year Chairman (if still on the Council) and, as necessary, either two or three members-at-large who are elected in the same manner as the Chairman and Vice-Chairman.

The Chairman, or in the Chairman's absence the Vice Chairman, of the Council has authority to convene and adjourn meetings and public hearings and designate members of the Council, Scientific and Statistical Committee, and Advisory Panel to attend meetings and public hearings. The Chairman will control meetings and hearings by recognizing speakers, establishing the order of business, and designating members of the Council and its advisory bodies as members of committees and working groups. The Chairman certifies the minutes of the meeting as complete and accurate before they are available for general distribution.

2.4 Designees

The Act authorizes only the principal State officials, the Regional Administrator, and the non-voting members to designate individuals to attend Council meetings in their absence. The Chairman of the Council must be notified in writing, in advance of any meeting at which a designee will initially represent the Council member, of the name, address, and position of the individual designated. A designee may not name another designee. However, such officials may submit to the Chairman, in advance, a list of several individuals who may act as designee,

provided the list clearly specifies who would serve if more than one designee attends. A designee may be elected as Chairman or Vice-Chairman of the Council, and as Vice-Chairman would serve as Chairman in the absence of the elected Chairman; however, a designee for an elected Chairman cannot serve as Chairman.

Reimbursement of travel expenses to any meeting is limited to either the member or one designee. Additional requirements for principal state officials and their designees include the following:

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

2.5 Scientific and Statistical Committee

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

A. Objectives and Duties

The SSC shall:

- Provide the Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices;
- Assist the Council in the development, collection, evaluation, and peer review of statistical, biological, economic, social, and other scientific

information relevant to the development and amendment of fishery management plans;

- Provide guidance to ensure that fishery management plans, amendments and framework adjustments are based on the best scientific information available (National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act);
- Perform other appropriate tasks as may be required by the Council.

B. Members and Chairman

Members appointed by the Council to the SSCs shall be Federal employees, State employees, academician, or independent experts and shall have strong scientific or technical credentials and experience. The SSC shall nominate from its members a Chairman and Vice Chairman who both will be confirmed by the Executive Committee for one-year terms.

SSC members will be paid for travel expenses in accordance with the Council's travel policy. Subject to the availability of appropriated funds, members of the SSC are eligible to receive stipends provided they are not Federal or State employees, as defined at 50 CFR 600.133(b).

C. Administrative Provisions

To the extent practicable, the SSC shall meet regularly; either before or in conjunction with Council meetings, and the SSC Chairman (or appropriate representative) may attend Council meetings. The Committee may meet as a whole or in part at its own request, or at the request of the Executive Director, with the approval of the Council Chairman whenever necessary to fulfill its responsibilities. The SSC may schedule additional meetings, as needed, for the review of fishery management plan items and to address longer-term issues that may require SSC recommendations in the form of "white papers." The Executive Director shall provide staff support to the committee. Public comment will be invited at the discretion of the SSC Chairman. Notice of meetings of the SSC shall comply with the applicable notice requirements specified for Council meetings

D. Subcommittees

SSC subcommittees may be established as needed.

2.6 *Advisory Panels (AP)/Fishing Industry Advisory Committee (FIAC)*

A. Objectives and Duties

New England Council Advisory Panels (APs) which meet the requirements for a fishing industry advisory committee (FIAC) are made up of members from the fishing industry (from both commercial and recreational sectors), scientists, environmental organizations, and others with knowledge and experience related to fisheries issues. APs meet separately or jointly with the relevant oversight committee and provide input and assistance in developing management plan measures. The Council may establish or abolish its APs as necessary.

B. Membership

Appointments to the APs will be made in such a manner as to provide fair representation to commercial and recreational fishing interests in the geographical area of authority of the Council.

The Advisory Panels shall be composed of individuals who are either actively engaged in some aspect of the region's commercial or recreational fisheries, or are knowledgeable and interested in the conservation and management of a fishery or group of fisheries that are managed by the Council. Panel membership shall also reflect as broad a cross-section as possible of interests and expertise from the standpoint of geographical distribution, user group representation, and social and economic diversity that generally may be found within the Council's geographical area of concern.

A chairman for each AP will be designated by the oversight committee chairman (with the advice of committee members), reviewed by the Executive Committee and approved by the Council Chairman. If an oversight committee determines it is necessary, the Advisory Panel may also designate a vice-chairman who will be selected in the same manner as the AP Chairman.

Advisors are appointed every three years following a solicitation for candidates. However the Council may add advisors in the interim as needed. After reviewing applications, the respective oversight committee recommends new or returning advisors. The Council's Executive Committee provides the final approval of advisory panel members.

C. Administrative Provisions

Subject to the availability of funds, members of Advisory Panels are eligible to receive stipends provided they are not employed by the Federal Government or a state marine fisheries agency, as defined at 50 CFR 600.133(b). Advisors are eligible for reimbursement of travel expenses incurred while attending authorized meetings scheduled by the Executive Director and subject to availability of funds. Advisory Panel members will be paid for travel expenses in accordance with the Council's travel policy.

Notice of meetings of the AP's shall comply with the applicable notice requirements specified for Council meetings.

2.7 Plan Development Teams (PDT's)

A. Objectives and Duties

The Council's Plan Development Teams (PDTs) are responsible for developing options, providing technical analyses and writing FMPs, based on the Council's explicit direction. The PDTs are not independent, but will work with the oversight committees to refine options that are consistent with Council strategies and achieve the management objectives of the FMP.

B. Membership

The PDT's provide an expanded pool of expertise for the purpose of conducting data analyses and providing information to the Council. PDT's are made up of scientists, managers and other experts with knowledge and experience related to the biology and/or management of a particular species. Individuals serve as an extension of the Council staff. PDT'S do not come under either notice or stipend requirements of the Act.

PDTs meet regularly to respond to any direction provided by the oversight committee or Council, to provide analysis of species-related information and to develop issue papers, alternatives, and other documents as appropriate. A member of the Council staff generally chairs each PDT and the team members are from state, federal, academic or other institutions.

C. Administrative Provisions

The purpose of the Council's PDTs is to perform analytical and other technical work for the Council; therefore, although meetings are open to the public, they are not public meetings and it may not always be possible to give notice. Generally, however, efforts will be made to let the public know when a PDT meeting is scheduled. The PDT may discuss issues listed on their agendas in any order and may discuss other issues not contained in the notice. Members of the public may attend but should not expect to speak at PDT meetings unless the PDT Chair requests their input. PDTs are responsible to the Council and work as directed by the Council's committees. Because the Council and its Committees not the PDTs set management policy, comments about management options, unless solicited by the PDTs, should be provided to the committees and not to the PDTs.

2.8 Council Committees

The Council may appoint standing and ad hoc committees from among the voting and nonvoting members and knowledgeable members of the public, as it deems necessary for the conduct of Council business. The Council may also appoint standing and ad hoc committees that include industry representatives or other participants to address specific management issues or programs.

Standing committees meet regularly to review and discuss individual fishery management plans (FMPs) and develop specific measures that will form the basis of the plan, plan amendment or framework adjustment to an FMP. Committee recommendations are forwarded to the full Council for their approval before inclusion in any draft or final version of an FMP.

Any interested persons may obtain a list of committee membership upon request to the Council office or on the Council's website: www.nefmc.org. Committees may be added or removed as conditions change.

Notice of meetings of Council committee's shall comply with the applicable notice requirements specified for Council meetings

3. COUNCIL MEETINGS

3.1 General

The Council meets at the call of the Chairman of the Council, or upon request of a majority of the voting members, and must meet at least once every six months. Committees meet at the call of the Committee Chairman or on instructions of the Council Chairman. The SSC and SSAC meet at the request of the Chairman or Executive Director. Advisory Panels meet as directed by their oversight committee chairman. They may meet in conjunction with their oversight committee or independently. The Council and its committees and advisory bodies meet as often as is necessary to carry out the Council's work. Council meetings are usually two or three days and most other meetings are one-day sessions. All meetings are held in the Council's area of geographic authority unless they include joint-Council plans or issues involving other Councils.

3.2 Agenda and Notification – Regular and Emergency Meetings

The Executive Director in consultation with the Council Chairman drafts the agenda for each Council meeting. The Executive Committee will review the draft agenda before it is released to the public.

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

Drafts of all regular public meeting notices must be transmitted to the NMFS Headquarters Office at least 23 calendar days before the first day of the regular meeting. Drafts of emergency public notices must be transmitted to the NMFS Headquarters Office at least five working days prior to the first day of the emergency meeting. Although notices of and agendas for emergency meetings are not required to be published in the *Federal Register*, notices of emergency meetings must be promptly announced through the appropriate news media. The Council will not take action, except in an emergency, if that action is not listed on the published agenda.

Request for disability-related accommodations will be processed in accordance with the Department Administrative Order (DAO) 209-8, Access for People with Disabilities to Meetings and Other Group Events.

The Council will ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings. Anyone needing a special accommodation to attend and participate in a Council-hosted meeting must contact the Council office **10** days before the scheduled meeting.

3.3 Conduct of Meetings

3.3.1 Public Input at Council Meetings

Public comments will be allowed at Council meetings on all agenda items requiring final action and on all agenda items at Scientific and Statistical Committee and Advisory Panel meetings. Both oral and written comments may be submitted.

Written comments received at the Council office three business days before the Council meeting date will be copied and distributed to the Council prior to the meeting. Under most circumstances, anyone who is unable to provide their material three business days in advance of the meeting should provide 35 copies to the staff for distribution to Council members. If distribution to the Council is not essential, submission of a single copy is sufficient for the record. All written information submitted to the Council must include a statement of the source and date of such information. Any oral or written statement must also include a brief description of the background and interests of the person in the subject of the oral or written statement.

3.3.2 Public Input at Other Meetings

At meetings of the Council's oversight committees or other working groups, the extent of public comment taken will be at the discretion of the Chairman or presiding officer.

3.3.3 Quorum, Voting by Proxy, and Roll Call Voting

A majority of the voting members of any Council constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings. Decisions of any Council are by majority vote of the voting members present and voting (except for a vote to propose removal of a Council member, see 50 CFR § 600.230 and except where *Robert's Rules of Order* require a 2/3 majority vote). Voting by proxy is permitted only pursuant to §2.4(2) of this SOPP. An abstention does not affect the unanimity of a vote. At the request of any voting member of the Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each such vote.

3.3.4 Approval or Amendment of FMP and Finding of Fishery Emergency

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

3.3.5 Procedure for Deeming Proposed Regulations

If draft regulations have not been deemed necessary and appropriate at the time a fishery management plan, or an amendment or framework adjustment to a fishery management plan is approved by the New England Fishery Management Council, the Council Executive Director shall review the draft regulations, when available for such actions, before they are implemented by the National Marine Fisheries Service.

After reviewing the draft regulations the Executive Director shall recommend to the Council Chair whether they are necessary and appropriate for the purposes of implementing the Council-approved action.

After considering the Executive Director's recommendation, the Council Chair, on behalf of the full Council, shall make the determination to deem the draft proposed regulations as necessary and appropriate for the purposes of implementing the action, consistent with section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Act).

Once this process has occurred and if approval has been granted, the Executive Director shall forward the appropriate documents to the National Marine Fisheries Service.

3.3.6 Parliamentary Procedure; Consensus

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

3.3.7 Dissenting Votes; Minority Written Statements

Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary, including principal state officials raising federalism issues, may submit a written statement of their reasons for dissent.

At the conclusion of the vote on an action to be submitted for Secretarial review, any Council member(s) intending to file a minority report should advise the Chairman.

When a Council member(s) decides that s/he (they) will file a minority report, he (they) shall advise the Council's Executive Director in writing of this intent. Notice shall be given to the Executive Director no later than thirty days after the Council meeting during which the decision that is the subject of the dissent was made.

Upon completion and signature of the minority report, a copy will be provided to each Council member. The Executive Committee may comment on the report. After review and any Executive Committee comment, the Executive Director will forward the minority report to the Secretary of Commerce at the same time the majority report is submitted. It will be included as part of the administrative record, along with the decision documents approved by the Council.

3.3.8 Consideration of Information from Interested Parties

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

3.4 Record

Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall verify the accuracy of the minutes of each such meeting. The minutes shall be made available to any court of competent jurisdiction.

Subject to the confidentiality procedures established by the Council and the guidelines prescribed by the Secretary pursuant to §402(b) of the Act (50 CFR Part 600, Subpart E (Confidentiality of Statistics) and NAO 216.100), the administrative record and minutes of each meeting and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available on the Council's internet website and for public inspection and copying at a single location in the offices of the Council, or the Secretary, as appropriate.

3.5 Closed Meetings

The Council or its committees may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested, in accordance with 50 CFR § 600.135(c).

The Council will provide appropriate notice in the major fishing ports within its region, having included in the notification the time and place of the meeting and the reason for closing any meeting or portion thereof.

3.6 Frequency and Duration

The Council meets at the call of the Chairman of the Council, or upon request of a majority of the voting members, and must meet at least once every six months.

Committees meet at the call of the Committee Chairman or on instructions of the Council Chairman. The SSC meets at the request of the Chairman or Executive Director. Advisory Panels meet as directed by their oversight committee chairman. They may meet in conjunction with their oversight committee or independently. The Council and its committees and advisory bodies meet as often as is necessary to carry out the Council's work. Council meetings are usually three days and most other meetings are one-day sessions. All meetings are held in the Council's area of geographic authority unless they include joint-Council plans or issues involving other Councils.

3.7 Location

The Council shall meet at appropriate times and places in any of the constituent States of the Council. Council meetings typically will be held in New England. The Executive Director in consultation with the Chairman will coordinate specific meeting locations within each State.

3.8 Public Hearings

The Council may hold public hearings in order to provide the opportunity for all interested individuals to be heard with respect to the development of fishery management plans or amendments, and with respect to the administration and implementation of other relevant features of the Act. Notice of each hearing must be received by NMFS for publication in the *Federal Register* at least 23 calendar days prior to the proposed hearing. The Council will also issue notices to announce the time, location, and agenda for each hearing in a manner sufficient to assure all interested parties are aware of the opportunity to make their views known. If it is determined a hearing is appropriate, the Council Chairman will designate at least one voting member of the Council to officiate. An accurate record of the participants and their views, obtained by use of recording, typewritten transcript, or detailed minutes, will be made available to the Council at the appropriate Council meeting and maintained as part of the Council's administrative record.

3.9 Council Member Compensation

Those voting members of the Council who are not employed by the Federal Government or any State or local government shall receive compensation at the daily rate for GS-15 (Step 7) of the General Schedule, published by the U.S. Office of Personnel Management. Such compensation shall be limited to attendance at formal meetings of the Council (actual meeting days), meetings of standing or ad hoc committees on which the Council member is a designated member, or to the

Chairman, Vice-Chairman, or designee while officially representing the Council or conducting official business of the Council outside of such meetings.

Compensation is paid on a full day basis. The time is compensatory because the individual member is required to expend a significant amount of personal effort that substantially disrupts his/her daily routine to the extent that a workday is lost to the member. Members will not receive compensation unless present at a meeting for at least ½ day. Homework time in preparation for formal Council meetings is not compensatory.

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

3.10 Stipends

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

4. EMPLOYMENT PRACTICES

4.1 Staffing

The Council staff includes an Executive Director and other full and part-time employees as determined necessary to the performance of Council functions within budgetary limitations. The Executive Director reports to and is held accountable by the Council, and the staff reports to the Executive Director.

4.2 Experts and Consultants

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

4.3 Detail of Government Employees

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

or other arrangements with state or local agencies for detail of their worker to accomplish Council purposes.

4.4 Personnel Actions

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

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

4.5 Salary and Wages

In setting rates of pay for Council staff, the principle of equal pay for equal work is followed. The annual pay rates for Council staff positions are consistent with the pay rates established for General Schedule Federal employees as set forth in 5 U.S.C. §5332, and/or the Commerce Alternative Personnel System. The Council has decided to adjust its pay rates and pay increases based on cost of living (COLA) differentials in Boston, consistent with the Federal pay-scale, including adjustments necessary to achieve equivalency with Federal counterparts. No pay adjustment based on geographic location exceeds the equivalent COLA and locality pay adjustments available to Federal employees in the same geographic area. Salary increases funded in lieu of life and medical/dental policies are not permitted.

Employees will be entitled to promotions and associated pay increases solely on the basis of merit and performance. The Executive Director, acting for the Council, shall conduct annual performance reviews with each Council employee and will approve promotions and raises based on the employee's performance. Pay raises and performance evaluations for the Executive Director will be completed by the Council Chairman. The Council, subject to budgetary limitations, when directly beneficial to both the employee and the Council will support career development, including formal training.

4.6 Council Member and Staff Legal Protections

In conducting official Council business, Council members and staff generally have the same protection from individual tort liability as Federal employees on official actions, and are protected by the Federal workmen's compensation statute, by the minimum wage/maximum hour provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (FLSA), and by the rights of access and confidentiality provisions of the Privacy Act. Council staff is also eligible for unemployment compensation in the same manner as Federal employees. Overtime payments shall be made in accordance with the provisions of the FLSA.

4.7 Recruitment and Anti-Discrimination Policy

Council staff positions must be filled solely on the basis of merit, fitness for duty, competence, and qualifications. The Council is an Equal Employment Opportunity Employer. All employment actions will be free from discrimination based on race, religion, color, national

origin, sex, age, disability, sexual orientation, status as a parent and reprisal. See 50 CFR. §600.120.

Except for complaints alleging discrimination based on sexual orientation and status as a parent, complaints by employees alleging that they may have been discriminated against on the bases listed in the previous paragraph, should be processed in accordance with 29 CFR §1614. Employees must contact an EEO Counselor at NOAA's Office of Civil Rights within 45 days of the date of the alleged discrimination. Employees alleging discrimination on the basis of sexual orientation will have their complaints processed in accordance with DAO 215-11. Employees must contact an EEO Counselor at NOAA's Office of Civil Rights within 45 days of the date of the alleged discrimination.

4.8 General Harassment Policy

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

4.9 Leave

4.9.1 Leave Accounting

A separate account shall be maintained to pay for unused sick or annual leave as authorized, and will be funded from the Council's annual operating allowances. Funds may be deposited into this account at the end of the budget period if unobligated balances remain. Interest earned on this account will be maintained in the account, along with the principal, for the purpose of payment of unused annual and sick leave only. This account, including interest, may be carried over from year to year. Budgeting for accrued leave will be identified in the "Other" object class categories section of the SF-424A.

4.9.2 Annual Leave

Full-time Council employees shall accrue annual leave at rates not to exceed those for Federal employees. Part-time employees accrue leave at the same rate, per hours worked. If the Council so desires, it may credit prior Federal, state or local government service for the purpose of determining leave accrual of individual employees. Application of such a policy must be uniform and public.

Employees may carryover up to 240 hours (30 days) unused annual leave from one year to the next. Amounts remaining above 240 hours will be forfeited. The Council will pay a lump sum for unused annual leave not to exceed 240 hours carryover plus current year earnings upon separation, retirement, or death of an employee.

4.9.3 Sick Leave

Full-time Council employees shall accrue sick leave at the rate of two hours per week (13 days per year). Part-time employees may accrue at a percentage of the hours worked compared to 40 hours. Unused sick leave credit may be accumulated without limit. No payment of accumulated sick leave is made upon separation other than by retirement or death. Lump sum payments to the employee upon separation are not authorized. However, distributions of accumulated funds for unused sick leave will be made to the employee upon his or her retirement or to his or her estate upon his or her death, for up to 100 days of unused sick leave, at the employees current salary rate, subject to budgetary limitations.

4.9.4 Advanced Leave

The Executive Director may advance sick leave credits. However, the advance in sick leave credits may not exceed the number of hours that would be earned in the same calendar year except with the prior formal concurrence of the Executive Committee.

4.9.5 Family Medical Leave Act of 1993

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

4.10 Employee Benefits

Council employees are eligible to participate in group health/medical insurance and dental insurance programs. The Council provides life insurance, short-term disability and long-term disability insurance to all employees. Benefits are effective on the enrollment date, which is generally the 1st day of employment.

Retirement benefits are realized through an employer funded Simplified Employee Pension Plan (SEP). Employee participation in a 403(b) plan is optional and at the employees expense.

4.11 Travel Reimbursement

All voting and non-voting members of the Council, members of the Scientific and Statistical Committee (SSC), Council staff, experts and consultants retained by the Council, and members of the Council's Advisory Panels (APs) and Plan Development Teams (PDTs) are eligible to be reimbursed for actual travel expenses incurred while engaged in authorized Council business. The Council Chairman or Executive Director may approve domestic invitational travel for non-Council personnel. Employees of the Federal Government are not eligible for travel reimbursement.

Prior authorization is necessary to establish eligibility for reimbursement. Either the Council Chairman or the Executive Director may authorize travel and reimbursement for expenses incurred.

Non-Federal members of the Council and members of advisory groups and Council staff will be reimbursed for actual expenses incurred in the performance of Council duties. They are not

bound by the separate per diem limits for meals and lodging as set forth in the GSA Rules. The Chairman or the Executive Director will determine applicable limitations in approving each Travel Authorization, although reimbursement will be guided by the allowances provided by the General Services Administration (GSA) in the Federal Travel Regulations (FTR). Reimbursements are subject to the total reimbursement limits established by the NOAA Travel Handbook for actual expenses, and they must itemize their actual expenses up to the specified limit each day. Lodging and airline receipts are required. Federal employees serving in the above capacities are subject to the reimbursement rules of their agencies.

4.12 Foreign Travel

The Council Chairman or Executive Director approves travel across the United States border to Canada. The NOAA Regional Office approves all other foreign travel, which is submitted with the budget. If the foreign travel was not included in the budget, the Council will request approval in advance from the Regional Office. All travel outside the United States requires a passport. Proper identification is the responsibility of the traveler. The Council does not pay for passports or other forms of identification.

4.13 Training

Council members appointed after January 12, 2007, shall complete a training course that will cover a variety of topics relevant to matters before the Council. Such training shall be available as well to existing Council members, staff from the regional offices and regional science centers of NMFS, and may be made available to committee or advisory panel members as resources allow.

5. STANDARDS OF CONDUCT

The Council and its staff will maintain high standards of ethical conduct. The members and staff of the Council are subject to provisions of those federal criminal statutes listed at 50 CFR §600.225 relating to bribery, conflict of interest, and disclosure of confidential information and lobbying.

5.1 Federal Criminal Statutes

Council members, as Federal office holders, and Council employees are subject to most Federal criminal statutes covering bribery, conflict-of-interest, and disclosure of confidential information. Among other statutes, the following provisions apply:

18 U.S.C. § 201 - prohibits offer or acceptance of anything of value to influence any official act.

18 U.S.C. § 203, 205 - prohibits officials from contacting any Federal agency or Federal court on behalf of others concerning a particular matter involving specific parties with the intent to influence Government action if they participated personally and substantially in the matter as a Council member. Furthermore, officials may not receive compensation for the representational activities of others regarding such matters.

18 U.S.C. § 207 - prohibits a former official permanently from representing others before a Federal agency or Federal court concerning a particular matter involving specific parties in which the official participated personally and substantially as a Federal official or for two years

concerning a matter which was under the person's official responsibility during their last year of Government service.

18 U.S.C. § 208 - which prohibits official acts in a matter in which the Federal employee has a personal financial interest, does not apply to a financial interest of a Council voting member if he obtains a waiver under 18 U.S.C. 208 (b), or if the disclosure of financial interest form has been filed under § 302 (j) of the Act, and that individual is in compliance with regulations promulgated under said section.

18 U.S.C. § 209 - prohibits an official from receiving compensation for performing Federal duties from a source other than the United States Government. This restriction does not apply to an official who has served for 130 days or less in a 365-day period.

18 U.S.C. § 210, 211 - prohibits offer or acceptance of value to procure appointment to public office.

18 U.S.C. §1905 - prohibits disclosure of trade secrets or confidential commercial information except as provided by law.

31 U.S.C. § 1352 - generally prohibits the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the Federal award. The Council must also complete Form SF-LLL "Disclosure of Lobbying Activities" and submit it to the Grants Office quarterly as necessary.

5.2 General Standards of Conduct

In addition to abiding by the applicable Federal conflict of interest statutes, both members and employees of the Council must comply with the following standards of conduct:

- (1) 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 elections.
- (2) Council members, employees, and contractors must comply with the Federal Cost Principles Applicable to Regional Fishery Management Council Grants and Cooperative Agreements, especially with regard to lobbying, and other restrictions with regard to lobbying.
- (3) No employee of the Council shall be deprived of employment, position, work, compensation, or benefit provided from 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.
- (4) No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, either as a political contribution or a personal emolument any 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.
- (5) 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.

- (6) 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 which has not been made available to the general public.
- (7) No Council member or employee of the Council shall engage in criminal, infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.
- (8) No Council member or employee of the Council shall use Council property for other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.
- (9) No Council member may participate (A) personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest; or (B) in any matter of general public concern which is likely to have a direct and predictable effect on a member's financial interest. For purposes of this subsection, the member's financial interest includes that of the member's spouse, minor child, partner, organization in which the members is serving as officer, director, trustee, partner or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment.

5.3 Financial Disclosures

5.3.1 General

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

SSC members must file financial disclosures with the Regional Office within 45 days of taking office. Individuals must update the form within 30 days of the time that any such financial interest is acquired or the financial interests are otherwise substantially changed. The information that is required to be submitted by Council members will be kept on file by the Council, and made available on the Internet and for public inspection at reasonable hours at the Council offices. The NMFS Regional Office will keep information from SSC members on file. A copy of the form may be obtained from the appropriate Regional Office.

It is unlawful for Council nominees, Affected Members, and members of the SSC to knowingly and willfully fail to disclose, or to falsely disclose any financial interest or to knowingly vote on a

Council decision in violation of 50 CFR § 600.235. In addition to the penalties provided under 50 CFR §600.735, a violation may result in removal of the individual from Council membership.

5.3.2 Recusal

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

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

6. FINANCIAL MANAGEMENT

6.1 Governing Statutes

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

6.2 Cooperative Agreements and Contracts

The Council receives funds through cooperative agreements for two basic types of expenditures: administrative (operations) funds to cover general operating expenses such as salaries, office space, utilities, travel, meeting expenses, etc., and programmatic (or contract) funds primarily designed to fund contracts generated by the Council for development of FMPs (including amendments) or FMP-related information. The Council may not independently enter into agreements, including grants, contracts, or cooperative agreements, whereby they will receive funds for services rendered. All such agreements must be approved and entered into by NOAA on behalf of the Council. The Council is not authorized to accept gifts or contributions directly. All such donations must be directed to the NMFS Regional Administrator in accordance with applicable Department of Commerce regulations.

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

The Council records provide accurate, current and complete disclosure of awards, authorizations, income, obligations, balances, outlays and assets. Effective control is maintained over all funds, property and other assets to assure they are used only for authorized purposes.

(2) **Programmatic.** The Council may enter into cooperative agreements with Federal agencies, State, and private institutions on matters of mutual interest that further the objectives of the Magnuson Act. Approval from the Secretary of Commerce must be obtained and each agreement must specify the nature and extent of Council participation. The Council is not authorized to accept gifts or contributions directly. All such donations must be directed to the NOAA Administrator in accordance with applicable NOAA regulations.

Requests for programmatic funding may be submitted at the same time as the Council's administrative budget, or at other times necessary. Documentation should include a cover letter explaining the need for the project, the manner in which it contributes to a fishery management plan (proposed, developing or existing), and the manner in which it meets criteria outlined in this section.

(3) **Contracts.** Negotiated and advertised contracts will be administered under the same principles of equality and integrity outlined under the section "Employment Practices" and will generally follow the specifications normally characteristic of contracts with public entities (*e.g.*, public announcement, emphasis on competition, change orders, etc.). Efforts must be made to inform minority firms of planned Council procurements.

6.3 Procurement

All procurements must comply with the terms and conditions of the award and 2 CFR Parts 215 and 230. Proposed sole-source procurements less than \$100,000 must be submitted to the Regional Administrator prior to the Council making the award. The Regional Administrator and the Grants Officer must approve proposed sole-source contracts over \$100,000 in writing. Final copies of all contracts awarded will be filed with the appropriate Grants Officer.

The purchase of all equipment, not previously approved in the award, costing in excess of \$5,000 per unit and having a useful life of more than 1 year, requires the approval of the Regional Program Officer and the Grants Officer. Such approval will be made only after a cost-benefit analysis (system life cost, lease vs. purchase, compatibility, etc.) by the Council demonstrates the economy of the proposed action.

Commodities and services will be procured by means of a document-oriented system, with a receipt, check, or purchase order type document maintained on all transactions. Typical suspense systems will be maintained for any partial and undelivered procurement.

6.4 Property Management

NOAA has determined that the title to equipment purchased by the Council under the Cooperative Agreement vests with the Council.

An inventory system is maintained of all Council non-expendable tangible property that has a useful life of more than 1 year and cost \$5,000 or more. All such items are marked NEFMC with an assigned property control number. All property acquired by the Council is safeguarded under conditions which a prudent person would follow. Only Council staff, members or individuals or entities under contract have access to Council property. Theft of Council property will be reported promptly to local law enforcement personnel, including the FBI, the Grants Officer, and to the Regional Office. Sensitive items will be kept in locked cabinets.

6.5 Real Property

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

6.6 Accounting and Budgetary Control Procedures

The finance and budget control system will be a direct responsibility of the Administrative Officer, who will maintain full cognizance of, and compliance with, all Department of Commerce requirements, pursuant to the Act, Treasury Department (IRS) regulations as well as any applicable local requirements (state, municipal, etc.). The Chairman, Executive Director, Deputy Executive Director or Administrative Officer may authorize disbursement of federal funds.

Fiscal controls are achieved through a document-supported cash accounting system capable of providing accruals as necessary for budgetary purposes. A general ledger, supported by appropriate journals, will be maintained on all obligations and expenses, including appropriate accruals, and will be used to prepare periodic reports for review by the Executive Director. The Executive Director, Deputy Executive Director or Administrative Officer may sign checks. The Executive Director may contract with a Certified Public Accountant to assist in the establishment, operation, maintenance and control of such system.

The financial management system will be coordinated with the budget management system so that current and projected fund usage can be determined at any time. Financial reports supporting documents and all other records pertinent to an agreement are maintained until they are audited and approved for disposal under the authorities of the General Accounting Office

6.7 Audits

Annual audits will be performed by DOC Office of Inspector General or an independent public accountant. NOAA personnel will be invited as appropriate to participate in the audit exit conference.

6.8 Financial Reporting

Reports will be submitted as required by OMB Circular A-110 to summarize total expenditures and Federal funds unexpended, and the status of the Federal cash received. All financial reports will be kept until audited or approved for disposal by the appropriate Department of Commerce representative.

7. RECORDKEEPING

7.1 Definitions

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

Non-records: items made or acquired solely for reference, extra copies of documents kept for reference/personal convenience (only the original is the record), notes taken during a meeting that are not shared with others, drafts.

Personal papers: materials pertaining solely to private affairs, for example a personal appointment calendar.

7.2 Availability of Records

In accordance with 50 CFR 600.150(b), the Council will maintain documents generally available to the public on its Internet site. Documents for posting must include: fishery management plans and their amendments for the fisheries for which the Council is responsible, drafts of fishery management plan amendments under consideration, analysis of actions the Council has under review, minutes or official records of past meetings of the Council and its committees, materials provided to Council members in preparation for meetings, and other Council documents of interest to the public. For documents too large to maintain on the Web site, not available electronically, or seldom requested, the Council will provide copies for viewing at the Council office during regular business hours or may provide the documents thorough the mail.

7.3 Administrative Records for Fishery Management Plans

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

7.4 Disposition of Records

Council records will be handled in accordance with Department of Commerce and NOAA records management office procedures including: the NOAA Records Management Guide; the NOAA Records Disposition Handbook; and the following records management authorities:

NAO 205-1 NOAA Records Management Program; DAO 205-1 Program for Records Management; Federal Records Act of 1950; 44 U.S.C. Chapter 31 Records Management by Agency Heads; 44 U.S.C. Chapter 33 Disposal of Records; and 44 U.S.C. § 101 Federal Management and Promotion of Electronic Government Services

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

7.5 Privacy Act Records

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

7.6 Freedom of Information Act (FOIA)

FOIA requests received by the Council will be coordinated promptly with the appropriate NMFS Regional Office. Upon receipt of a FOIA request from the NOAA FOIA office, the Council will search for responsive documents in the manner outlined in the request. When applicable, the Council will mark the documents with the relevant FOIA exemptions. The Council may make recommendations regarding potential exemptions to be asserted; however, only a Federal employee can make a disclosure determination. The original documents will be retained by the Council and copies of the responsive records (exact and redacted with the FOIA exemptions listed will be provided to the FOIA office. Any fees collected from requesters are transferred to the U.S. Treasury, and the Council does not recover its costs.

7.7 Confidentiality of Statistics

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

7.8 Information Quality

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

Advisory Panels

Council Advisory Panels (APs), which meet the requirements for a fishing industry advisory committee (FIAC) are charged with carrying out the objectives and duties listed below for a specific fishery management plan (FMP) or management problem. The Council may establish or abolish its Advisory Panels as necessary.

New England Council APs shall be appointed by and serve at the pleasure of the Council. When a Council oversight committee determines that an Advisory Panel will facilitate its work in preparing or amending a fishery management plan (FMP) or provide assistance in addressing a special issue or problem, the Council will appoint an AP.

Every fall, each oversight committee reviews its existing advisory panel membership and recommends any changes to the Council's Executive Committee. A maximum of 15 individuals may be appointed to any Advisory Panel.

The Executive Committee provides final approval for membership on all NEFMC Advisory Panels. The three-year term of advisors begins on October 1st or as soon thereafter as possible. All decisions and recommendations made by an Advisory Panel are considered to be advisory in nature and are not binding on the Council.

Membership The Advisory Panels shall be composed of individuals who are either actively engaged in some aspect of the region's commercial or recreational fisheries, or are knowledgeable and interested in the conservation and management of a fishery or group of fisheries that are managed by the Council. Panel membership shall also reflect as broad a cross-section as possible of interests and expertise from the standpoint of geographical distribution, user group representation, and social and economic diversity that generally may be found within the Council's geographical area of concern.

Other Councils may be invited to name advisors to serve as members of a New England Council's Advisory Panel if the FMP, amendment or, problem under consideration extends into the management area of the other Council.

The New England Council will reimburse advisors from the New England region for travel expenses. Advisors from outside New England may be reimbursed by either the New England Council or other Council(s) whom the advisor(s) may represent.

Appointments At the end of each year of a three-year term, advisors performance and attendance will be reviewed by the oversight committees. If needed, new members will be solicited to fill any vacancies. Additional advisors could be appointed in response to the creation of a new panel, the addition of members to an existing panel, resignation, or Council action that removes an advisor. Neither proxies nor designees shall serve in place of appointed members of any Advisory panel.

The Executive Director will solicit applicants through the news media, Council mailing lists, and/or other means deemed appropriate. Each candidate will receive a questionnaire to complete and return to the Council or require the candidate to submit a resume to the Council, depending on the nature of the Advisory Panel.

The relevant oversight committee will review the qualifications of the nominees and recommend appointments to the Council Chairman.

Prior to selection, nominees shall be subject to an additional level of review by NOAA's Office of Law Enforcement. Advisory Panel membership may be declined if applicants have had a marine resource violation.

Terminations An Advisory Panel member will be replaced at the Council's discretion if he or she:

- 1) Transfers employment or moves to a different location;
- 2) Is absent from two consecutive meetings without giving adequate notification or reason to the Council Executive Director;
- 3) Appears unable or unwilling to fulfill their obligation as an Advisory Panel member;
- 4) Their area of expertise is no longer required; or
- 5) The Chairman, in consultation with the Executive Committee, determines whether an Advisory Panel member should be removed for just cause (e.g., violation of marine resource regulation or felony, conviction, etc.; these examples are not all inclusive.)

Organization A chairman for each Advisory Panel will be designated by the oversight committee chairman (with the advice of committee members), reviewed by the Executive Committee and approved by the Council Chairman.

If an oversight committee determines it is necessary, the Advisory Panel may also designate a vice-chairman who will be selected in the same manner as the AP Chairman.

Meetings Advisory Panels will meet as directed by the oversight committee chairman. They may meet in conjunction with their oversight committee or independently. Advisory Panel meetings shall be scheduled by the Executive Director, as often as necessary to fulfill the panel's responsibilities, taking into consideration time and budget constraints. Generally, meetings will be scheduled for one day. Meetings of more than one day must have prior approval from the Council Chairman.

The Advisory Panel Chairman will be given explicit directions and guidance from the Oversight Committee Chairman concerning committee tasks (i.e. prepare comments on draft public hearing document, prepare comments on the scoping document, prepare comments and advise on a specific measure, etc.). Each Advisory Panel meeting shall be open to the public and the conduct of business will be in accordance with the guidelines found on page 66, Committees and Advisory Panels, of the Magnuson-Stevens Fishery Conservation and Management Act (Blue Book).

The chairman of the oversight committee may attend meetings of the Advisory Panel at his or her discretion and will be reimbursed for expenses. Other members of the oversight committee or Council may attend, but will not be reimbursed for expenses.

The Executive Director may provide support as necessary for panel activities within budget limitations and staff availability.

Travel Authorization and Reimbursement Members of Advisory Panels shall serve with compensation, provided funding is available. Advisors are eligible for reimbursement of travel expenses incurred while attending authorized meetings scheduled by the Executive Director and subject to availability of funds.

Instructions for reimbursement can be found in the Council's Policy on *Travel Authorization and Reimbursement*.

DRAFT Election of Officers

Elections for Council officers are held at the first regularly scheduled Council meeting after new Council appointments become effective each year. The Council elects officers from among the voting members of the Council. Officers are elected for one year and may be reelected.

Executive Committee The five members of the Executive Committee will consist of: the Chairman, Vice Chairman, past Chairman (for one year after service as Chairman), and two or three elected members (depending on whether a past chairman is on the committee).

Voting Procedures Voting will be conducted by secret ballot. Non-voting members will conduct the elections with assistance from other non-voting members. Specifically, they will distribute, collect and count ballots. Ballots will be retained by the staff for 30 days before destruction and will be available for examination by voting Council members during that period. Nominations will not be closed until all who wish to nominate have done so. A nominee may decline a nomination. Write-in votes and absentee ballots are not permitted.

Chairman and Vice Chairman - Offices will be filled in the order of Chairman and Vice Chairman, respectively, via separate elections and will be filled by a majority of votes for nominated candidates. Write-in votes and abstentions will not be counted in determining a majority.

If three candidates are nominated and none has a majority, the candidate receiving the fewest votes will be dropped from the ballot. If three candidates are nominated and the low two are tied, all three will be kept on the ballot. If four or more candidates are nominated and no one has a majority, the person receiving the fewest votes will be dropped; and if the low two are tied, both will be dropped from the ballot. If the low three are tied, all four will stay on the ballot.

Other Executive Committee Members - The additional (two or three) Executive Committee members will be nominated as a single slate of candidates. In the case of only two or three nominees, individuals will serve by acclamation. If four or more candidates are nominated, (again for two or three seats) individuals receiving the largest number of votes (a simple majority) will serve on the Executive Committee. Ties for Executive Committee seats will be resolved by successive run-off elections if necessary, each determined by a simple majority vote.

If there are two positions open for Executive Committee membership, each voting member will be allowed to cast two votes for those positions, but no more than one per candidate. If there are three positions open, three votes may be cast for three individuals but again, no more than one vote per candidate.

Past Chairman - The past Chairman of the Council will serve as an "automatic" member of the Executive Committee for one year following his/her last term as Council Chairman. Thereafter, s/he may be nominated and elected, as are other members of the Committee.

Repeated Tie Vote In the event of a repeated tie vote between several candidates, motions from the floor will be accepted to resolve the issue.