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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 010-427105-1105-01; I.D.
011001F]

RIN 0648-AJ82

Magnuson-Stevens Act Provisions; Update of Regulations Governing Council Operations

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to update regulations governing the operation of Regional Fishery Management Councils (Councils) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed rule would make amendments by codifying recent administrative and policy changes, and by making editorial changes for readability, clarity, and uniformity. The intent of this proposed rule is to update Council regulations to reflect current policies and procedures.

DATES: Comments must be received on or before June 25, 2001.

ADDRESSES: Comments should be sent to William T. Hogarth, Acting Assistant Administrator, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments on this document will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Richard Surdi, F/SF5, NMFS, 301-713-2337. This **Federal Register** document is also accessible via the Internet at the Office of the Federal Register website at <http://www.access.gpo.gov/su-docs/aces/aces140.tml>.

SUPPLEMENTARY INFORMATION:

Background

Currently, regulations pertaining to general provisions of the Magnuson-Stevens Act related to Council operations are contained in title 50 of the Code of Federal Regulations (CFR). NMFS is proposing to update part 600

(Regional Fishery Management Councils, subpart B, and Council Membership, subpart C), to codify important provisions of the recently withdrawn Council Operations and Administration Handbook (Handbook), which was a reference guide that compiled various requirements of the Magnuson-Stevens Act and other applicable law, as well as policy guidance. Some of the guidance contained in the Handbook consisted of regulations that were removed from title 50 of the CFR at the time the Handbook was developed. NMFS is proposing to reinstate some of those former regulations because they are not contained elsewhere and they are necessary for the Councils to function. Other proposed additions and revisions reflect necessary policy changes that were not contained in the Handbook, and were not previously in regulation.

Proposal

1. The topic of compensation for Council staff (not Council members) would be added at § 600.120, noting that Council pay rates must be consistent with the pay rates established for General Schedule Federal employees or the alternative personnel management system for the U.S. Department of Commerce (62 FR 67434; December 24, 1997). The Councils have the discretion to adjust pay rates and pay increases for cost of living (COLA) and other adjustments, but no pay adjustment may exceed the applicable percentage of salary for COLA and locality pay available to Federal employees in the same geographic area. In addition, the regulations would prohibit salary increases funded in lieu of life and medical/dental policies, a former regulation that was contained in the Handbook. Other additions at § 600.120 that reinstate former regulations include fair hiring practices and the hiring of an independent legal counsel.

2. The topic of payment for unused sick and annual leave would be added at § 600.120. It would provide that unused sick leave may be accumulated to a maximum as established by the Council. It also provides for the distribution of accumulated funds for unused sick leave to the employee upon his or her retirement, or their estate upon his or her death, as established in the Council's Statement of Organization, Practices, and Procedures (SOPP). Each Council may pay for unused annual leave upon separation, retirement, or death of an employee.

3. A requirement would be added under § 600.125 regarding agreements, including grants, contracts, or cooperative agreements. Councils may

not independently enter into agreements in which they will receive funds, and all such agreements must be approved and entered into by NOAA on behalf of the Council. A policy that was contained in the Handbook regarding the receipt of gifts or contributions would also be added at § 600.125.

4. Policies in the Handbook regarding meeting notification, meeting closures, and voting procedures that were also former regulations would be added at § 600.135.

5. A policy that was contained in the Handbook regarding the disposition of records that was also a former regulation would be added at § 600.150.

6. A policy contained in the Handbook regarding responding to Freedom of Information Act requests that was also a former regulation would be added at § 600.155.

7. The constituent states of the eight Regional Fishery Management Councils are represented by "principal state officials" designated by their Governors. Each principal state official under section 302(b) of the Magnuson-Stevens Act is currently required to be employed, on a full-time basis, in a position related to the development of fisheries management policies for that state. The proposed rule would amend the language at § 600.205 so that a designee of that official would not have to be a full-time employee of the state, with the aforementioned responsibilities, but must be a resident of the state and knowledgeable and experienced in the fishery resources of the geographic area of concern to the Council. This would grant greater flexibility to the principal state official in selecting a designee, who may have the expertise and ability to serve, but might not be a full-time state employee.

8. Section 302(d) of the Magnuson-Stevens Act establishes GS-15, step 7 General Schedule as a Council member's daily pay rate. This proposed rule would remove § 600.245(a) which is inconsistent with the statutory provision.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities in the fishing industry. This proposed rule does not affect any small entities. Rather, it establishes procedures or guidelines for

the administration of the Councils. The Councils are established under the Magnuson-Stevens Act and are not a small business, small organization, or a small government jurisdiction, as these terms are defined in the Regulatory Flexibility Act, 5 U.S.C 601 *et seq.*

NMFS has analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act (NEPA). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment because it only provides notice and comment on agency procedure or practice (i.e., procedures and guidelines for the administration of Councils). NMFS has determined that issuance of this policy qualifies for a categorical exclusion as defined by NOAA 216-6 Administrative Order, Environmental Review Procedures.

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing.

Dated: May 22, 2001.

William T. Hogarth,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 600 subparts B and C are proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. Section 600.120 of subpart B is revised to read as follows:

§ 600.120 Employment practices.

(a) Council staff positions must be filled solely on the basis of merit, fitness for duty, competence, and qualifications. Employment actions must be free from discrimination based on race, religion, color, national origin, sex, age, disability, reprisal, sexual orientation, status as a parent, or on any additional bases protected by applicable Federal, state, or local law.

(b) The annual pay rates for Council staff positions shall be consistent with the pay rates established for General Schedule Federal employees as set forth in 5 U.S.C. 5332, and the Alternative Personnel Management System for the U.S. Department of Commerce (62 FR 67434). The Councils have the discretion to adjust pay rates and pay increases based on cost of living (COLA)

differentials in their geographic locations. COLA adjustments in pay rates and pay increases may be provided for staff members whose post of duty is located in Alaska, Hawaii, Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and Puerto Rico.

(1) No pay adjustment based on geographic location shall exceed the COLA and locality pay adjustments available to Federal employees in the same geographic area.

(2) [Reserved]

(c) Salary increases funded in lieu of life and medical/dental policies are not permitted.

(d) Unused sick leave may be accumulated without limit, or up to a maximum number of days and contribution per day, as specified by the Council in its SOPP. Distributions of accumulated funds for unused sick leave may be made to the employee upon his or her retirement, or his or her estate upon his or her death, as established by the Council in its SOPP.

(e) Each Council may pay for unused annual leave upon separation, retirement, or death of an employee.

(f) One or more accounts shall be maintained to pay for unused sick or annual leave as authorized under (d) and (e), and will be funded from the Council's annual operating allowances. Councils have the option to deposit funds into these account(s) at the end of the budget period if unobligated balances remain. Interest earned on these account(s) will be maintained in the account(s), along with the principal, for the purpose of payment of unused annual and sick leave only. These account(s), 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.

(g) A Council must notify the NOAA Office of General Counsel before seeking outside legal advice, which may 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. A Council may not contract for the provision of legal services on a continuing basis.

3. Section 600.125 of subpart B is revised to read as follows:

§ 600.125 Budgeting, funding, and accounting.

(a) Each Council's grant activities are governed by OMB Circular A-110 (Uniform Administrative Requirements

for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), OMB Circular A-122 (Cost Principles for Non-Profit Organizations), 15 CFR Part 29b (Audit Requirements for Institutions of Higher Education and other Nonprofit Organizations), and the terms and conditions of the cooperative agreement. (See 5 CFR 1310.3 for availability of OMB Circulars.)

(b) Councils 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 Councils.

(c) Councils are 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.

4. Section 600.135 is added to subpart B to read as follows:

§ 600.135 Meeting procedures.

(a) Public notice of regular meetings of the Council, scientific statistical committee or advisory panels, including the agenda, must be published in the **Federal Register** on a timely basis, and appropriate news media notice must be given. The published agenda of any regular meeting may not be modified to include additional matters for Council action without public notice, or such notice must be given at least 14 days prior to the meeting date, unless such modification is to address an emergency under section 305(c) of the Magnuson-Stevens 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. Councils must 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.

(b) Drafts of emergency public notices must be transmitted to the NMFS Washington Office; recommended at least 5 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.

(c) After notifying local newspapers in the major fishing ports within its region, including in the notification the time

and place of the meeting, as well as the reason for closing any meeting or portion thereof:

(1) A Council, SSC, AP, or FIAC shall close any meeting, or portion thereof, that concerns information bearing on a national security classification.

(2) A Council, SSC, AP, or FIAC may close any meeting, or portion thereof, that concerns matters or information pertaining to national security, employment matters, or briefings on litigation in which the Council is interested.

(3) A Council, SSC, AP, or FIAC may close any meeting, or portion thereof, that concerns internal administrative matters other than employment. Examples of other internal administrative matters include candidates for appointment to AP, SSC, and other subsidiary bodies; and public decorum or medical conditions of members of a Council or its subsidiary bodies. In deciding whether to close a portion of a meeting to discuss internal administrative matters, a Council or subsidiary body should take into consideration the privacy interests of individuals whose conduct or qualifications may be discussed, but also the interest of the public in being informed of Council operations and actions.

(d) Without the notice required by paragraph (c) of this section, a Council, SSC, AP, or FIAC may briefly close a portion of a meeting to discuss employment or other internal administrative matters. The closed portion of a meeting closed without notice may not exceed two hours.

(e) Before closing a meeting or portion thereof, a Council or subsidiary body should consult with the NOAA General Counsel Office to ensure that the matters to be discussed fall within the exceptions to the requirement to hold public meetings described in section (c).

(f) Actions that affect the public, although based on discussions in closed meetings, must be taken in public. For example, appointments to an AP must be made in the public part of the meeting; however, a decision to take disciplinary action against a Council employee need not be announced to the public.

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

(h) 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). Voting by proxy is permitted only pursuant to 50 CFR

600.205(b). An abstention does not affect the unanimity of a vote.

(i) 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. If any Council member elects to file such a statement, it should be submitted to the Secretary at the same time as the majority report.

5. Section 600.150 is added to subpart B to read as follows:

§ 600.150 Disposition of records.

(a) Council records must be handled in accordance with NOAA records management office procedures. All records and documents created or received by Council employees while in active duty status belong to the Federal Government. When employees leave the Council, they may not take the original or file copies of records with them.

(b) [Reserved]

6. Section 600.155 is added to subpart B to read as follows:

§ 600.155 Freedom of Information Act (FOIA) requests.

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

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

7. Section 600.205 of subpart C is revised to read as follows:

§ 600.205 Principal state officials and their designees.

(a) 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 section 302(b) of the Magnuson-Stevens Act.

(b) 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 a Council, pursuant to section 302(b)(1)(A) of the Magnuson-Stevens 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.

(c) 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 chair 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.

§ 600.245 [Amended]

8. In § 600.245 of subpart C, paragraph (a) is removed, and paragraphs (b), (c), and (d) are redesignated as paragraphs (a), (b), and (c), respectively.

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