PART III:

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

FISHERY CONSERVATION AND MANAGEMENT

Interim Regulations
### RULES AND REGULATIONS

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

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_Associate Administrator, National Oceanic and Atmospheric Administration._

**PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS**

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

**REGIONAL FISHERY MANAGEMENT COUNCILS**

**Interim Regulations**

This chapter is new and is issued by the Secretary of Commerce to carry out certain statutory mandates contained in the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) (hereinafter the "Act").

In broad summary, the Act:

1. Provides authority for exclusive United States management authority over all fish, except highly migratory species, within a newly constituted Fishery Conservation Zone contiguous to the territorial sea.
2. Provides exclusive United States Management authority beyond the Fisheries Conservation Zone for certain anadromous and Continental Shelf fishery resources.
3. Establishes eight Regional Fishery Management Councils, instruments of state-federal interaction in the conduct of such fisheries management.
4. Sets forth seven National Standards for Conservation and Management with which the management of fishery resources must be consistent.
5. Provides for mechanisms to allocate catch of fish between U.S. and foreign fleets with preference to U.S. fishermen.
6. Provides for the preparation and implementation of fishery management plans.

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

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

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

Secs. 301(b), 302(f), and 304(f) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, 1852, 1854) have been amended by this part.

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authority of adjacent Councils within this fishery conservation zone.

(2) Within the geographical area of authority, each Council shall have responsibility for the following categories of fishery resources:

(i) All fish within this zone, except "highly migratory species";
(ii) All anadromous species throughout their entire life cycle, including those fish within a foreign nation's territorial sea or fishery conservation zone recognized by the United States; and
(iii) Continental Shelf fishery resources.

(c) Jurisdiction—(1) State. Generally the Act does not diminish the jurisdiction of any State over fishery resources within its own boundaries, nor does it extend State fishery jurisdiction beyond a State's seaward boundary.

(2) Intercouncil. In any case in which the range of stock or a fishery extends beyond the geographical area of authority of any one Council, as defined in § 601.13, the Secretary is authorized to designate the Council that shall prepare the fishery management plan and such a fishery. When such a plan includes waters adjacent to the States represented on more than one Council, the Council thus designated should consult with the other affected Councils. The Secretary may require that a plan be prepared jointly by the Councils concerned. In this case, any plan or amendment must be approved by a majority of the voting members, present and voting, of each participating Council.

§ 601.12 Method of determination. [Reserved]

§ 601.13 Description. [Reserved]

Subpart C—Uniform Standards for Organization, Practices and Procedures

§ 601.21 General...

(a) Purpose. Section 302(1)(6) of the Act requires each Council to determine its own practice and procedures for carrying out its functions in accordance with such Uniform Standards as are prescribed by the Secretary. The regulations contained in this subpart provide the Uniform Standards in accordance with which the Councils will operate.

(b) Applicability of other laws—


The National Environmental Policy Act (NEPA) sets forth the strategy of the Congress to achieve coordination of Federal activities and to provide for public involvement in decisionmaking and public review of Federal actions. NEPA's basic purpose is to insure that, in addition to technical and economic considerations, Federal officials weigh and give appropriate consideration to unquantified environmental values in policy formulation, decisionmaking and administrative actions. Section 102(2)(C) of NEPA requires preparation of a detailed environmental impact statement for planning actions that significantly affect the quality of the human environment.

(2) Interagency consultations required by NEPA. The existing consultation mechanisms under NEPA provide the Councils an opportunity to participate in the preparation of environmental impact statements for major Federal activities. This Act requires each Council to determine whether preparation and submission of a fishery management plan to the Secretary is a major Federal action. To determine whether preparation and submission of a management plan, or an amendment thereto, will significantly affect the quality of the human environment, an environmental assessment must be made in the case of each plan. This assessment shall be prepared and made available before one is reached as to whether an EIS must be prepared, or if a negative declaration on the need for a statement should be filed. The preparation of environmental assessments for each management plan will occur concurrently with the preparation of the plan. In the case of Council-prepared plans, the Councils have the responsibility for preparation of an environmental assessment and for preparing recommendations on whether to proceed with an EIS or to file a negative declaration. The Council shall make available a draft Environmental Impact Statement, if applicable, at the hearing referred to in § 601.24(c). In the event the plan is altered, or the regulations promulgated by the Secretary vary from the plan, the Council shall amend the Environmental Impact Statement in addition to the guidelines of CEQ (40 CFR Part 1500), guidelines and procedures of the Department of Commerce (DAO 155-6) and NOAA (DM 62-10) provide further instructions for responding to the requirements of NEPA.

(3) Provisions of three interrelated laws affect Council practices and procedures, particularly concerning opportunity for public input, public access to Council meetings and to agendas, records and reports of such meetings. These laws are:

(i) The Federal Advisory Committee Act (Pub. L. 92-463). The purpose of this Act is to encourage and assist States in developing interagency management programs, to coordinate State activities and safeguard the regional and national interests in the coastal zone. While the coastal zone extends beyond the territorial sea, activities taking place beyond the territorial sea may impact on the coastal zone and thus come within the influence of the State planning. In the preparation of fishery management plans, Councils should be particularly cognizant of the provisions of the CZMA (Sec. 307(c)) that require that any Federal activity directly affecting the coastal zone of a State be consistent with that State's coastal zone management program. Thus Councils will need to coordinate their planning actions with the appropriate State agencies involved in coastal zone planning.

§ 601.22 Organization.

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

(b) Voting members. The Councils consist of voting and nonvoting members or their designees, as specified in the Act.

(1) Terms. Members appointed following initial constitution of the Councils shall serve for a term of four years. An individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. The anniversary date for measuring terms of membership is August 11.

(2) Designees. The Act authorizes the principal State officials, the NMFS Regional Directors, and the nonvoting members to designate individuals to attend Council meetings in their absence. Only one designee per Council may be so specified by each of the above officials.

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

<table>
<thead>
<tr>
<th>Council</th>
<th>Regional Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>New England</td>
<td>Northeast region.</td>
</tr>
<tr>
<td>Mid-Atlantic</td>
<td>Do.</td>
</tr>
<tr>
<td>South Atlantic</td>
<td>Southeast region.</td>
</tr>
<tr>
<td>Gulf of Mexico</td>
<td>Do.</td>
</tr>
<tr>
<td>Pacific</td>
<td>Northwest region.</td>
</tr>
<tr>
<td>North Pacific</td>
<td>Alaska region.</td>
</tr>
<tr>
<td>Western Pacific</td>
<td>Southwest region.</td>
</tr>
</tbody>
</table>

(4) Appointments. Inasmuch as each year approximately one-third of a Council's appointed membership will lapse, new members shall be appointed by the Governor or his delegate from lists of nominees submitted by the Governors of each applicable constituent State by June 1 of each year. The Governors are responsible for determining that their nominees meet the qualification requirements of the Act and for providing appropriate documentation for the Secretary or his delegate to make a reasoned determination that an individual must be nominated by a Governor shall be equal to at least three times the number of vacancies available, and each such
nominee shall be considered as available for any such vacancy. These procedures also shall apply when a vacancy occurs prior to the normal expiration of a term of office of a voting member appointed by the Secretary or his delegate.

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

(e) Administrative staff. Each Council shall appoint an Executive Director and such other full and part time administrative employees as the Secretary determines are necessary to the performance of its functions, and which are consistent with budgetary limitations. The Executive Director and staff are responsible to the Chairman of the Council.

(f) Executive Director—(1) Duties. Each Council, through its Chairman, shall assign such duties to the Executive Director as it deems appropriate, consistent with these Uniform Standards.

(4) Computation. The administrative responsibilities, coupled with the complexity of the workload of the Council, will influence the pay level appropriate to a given Executive Director position, provided that no Council shall not exceed the yearly rate for the highest step of a GS-15 in the General Schedule.

(2) Other administrative staff—(1) Minimum. Each Council shall have an administrative staff consisting of an executive director, an administrative officer, and a secretary.

(2) Additional staff. Additional administrative support is provided by NOAA because of differences in workload and availability of resources. The number and types of additional positions will also vary over time as the work of the Council is defined during its initial phase of operation. Budgeted positions will be apportioned by the Secretary on the basis of justifications submitted by the Councils.

(d) Scientific and statistical committee. Each Council shall establish and maintain, and appoint the members of a Scientific and Statistical Committee to assist it in the development, revision and evaluation of such statistical, biological, economic, social and other scientific information as is relevant to such Council's development or amendment of any fishery management plan. The Secretary is authorized to pay the actual expenses of such Committee members while engaged in Council business.

(1) Function. The Scientific and Statistical Committee provides expert scientific and technical advice to the Regional Councils for the development of fishery management policy, on the preparation of Fishery Management Plans, and on the effectiveness of such plans once in operation. The Committee aids the Council in identifying scientific resources available for the development of plans, in establishing the goals and objectives of plans, in establishing criteria for judging plan effectiveness and in the review of such plans.

(2) Organization. The members of the Committee and a Chairman are appointed by the Council. Membership shall be multidisciplinary, including both biological and social scientists from the Federal, State, and private scientific community who are knowledgeable about the fisheries to be managed. The size of the Committee is discretionary within the resources budgeted to the particular Council. The Committee shall meet in the area encompassed by the Council's constituency, with the approval of the Chairman of the Council. No staff is assigned to this Committee but staff support may be requested from the Chairman of the Executive Director. This committee shall have a charter separate from that of its parent Council.

(2) Function. Fishery Advisory Panels are authorized principally to obtain the pragmatic advice and counsel of the people most affected by the Council's management activities on matters of fishery management policy, on the preparation of Fishery Management Plans, on their review prior to submission to the Secretary, and on their effectiveness once in operation. These Panels aid the Council in establishing both the goals and objectives of plans as well as the criteria for judging plan effectiveness, and serve as a communication link with those who must operate under the management plan.

(2) Organization. The members and a Chairman are appointed by the Council. The membership of each such Panel shall be composed of a balanced representation of those who are either actively engaged in the harvest, processing or consumption of, or are knowledgeable and interested in the consequences and management of, applicable fishery or fishery management unit. The size of each such Panel and the number of Panels are discretionary within the resources budgeted to the parent Council. The Panel must be capable of sufficient size and number to permit a balanced representation of interests. The Panels shall meet in the area encompassed by the Council's constituent States as deemed necessary by the Council Chairman. No staff is assigned to this Panel but staff support may be requested from the Chairman of the Council or the Executive Director. Each advisory panel shall have its own charter separate from that of other Panels, and its own Scientific and Statistical Committee, and from its parent Council.

§ 601.23 Administrative practices and procedures.

(a) General. The Act directs the Secretary to provide the Councils with such administrative support services as are necessary for their effective functioning. The Administrator of the General Services Administration is directed by the Act to furnish each Council with such offices, equipment, supplies and services as he is authorized to furnish to any agency or instrumentality of the United States. Finally, all Federal agencies are authorized to detail personnel on a reimbursable basis to the Councils after consulting with the Secretary. Uniform Standards in this Section are provided in order to expedite the delivery of this support with a minimum burden on the administrative work of the Councils.

(b) NOAA field units. NOAA field units are authorized to provide services and support to each Council as follows:

 Council Service field unit
 New England........Northeast region, NMFS.
 Mid-Atlantic........Southeast region, NMFS.
 South Atlantic....Southeast region, NMFS.
 Caribbean..........Do.
 Gulf of Mexico...............Do.
 Pacific........Northwest region, NMFS.
 North Pacific.....Alaska region, NMFS.
 Western Pacific.......Southwest region, NMFS.

These NOAA field units are authorized to provide for budgetary, accounting, personnel, and procurement support to their respective Councils, and may act as liaison between the Councils and other Federal agencies.

(c) Budgeting, funding, and accounting—(1) Federal funds. The funding for the administrative and technical support of Council operations are included in the budget of the Department of Commerce and, through that agency, in the budgets of NOAA and NMFS. The funding requirements for the Councils are subject to regular budgetary requirements. During the period of Council formation, the administration of Council budgets will be performed by the designated NOAA field units, and all Council administrative services will be performed by the NOAA field units. As each Council acquires its administrative staff and indicates its readiness to assume budget and fiscal responsibilities, these functions will be administered by means of annual grants to the Councils.

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

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

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

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

(3) Financial procedures and standards [Reserved.]

(c) Standards of employment practices—The following sets forth the responsibilities of the Councils with regard to personnel matters and establishes personnel related standards to be used by the Secretary in analyzing Council budgets.

(1) Staffing. Each Council may appoint and assign duties to an Executive Director and to other personnel full time and part time administrative employees as the Secretary determines are necessary to the performance of its functions. Each position must be budgeted during the budget process described in OMB Circular A-110 and § 601.23(e)(3) of these regulations. Descriptions of the work to be performed shall be submitted in accordance with the section below dealing with salary and wage administration.

(2) Experts and consultants. Each Council may contract with experts and consultants as needed and within their respective budgets to provide technical assistance.

(3) Details of Government employees. Each Council may request the head of any Federal agency to detail to such Council on a reimbursable basis any personnel of such agency to assist the Council in the performance of its functions under the Act. The length of such details shall be mutually determined by the Council, the Federal employee and his or her agency. Federal employees so detailed retain all benefits, rights and status as they are entitled to in their regular employment. The Councils may negotiate arrangements with State or local governments to utilize employees of those governments.

(4) Nondiscrimination. All activities of the Council must operate under a policy of equal employment opportunity. Council staff positions shall be filled solely on the basis of merit, fitness, competence, and qualifications. Employment actions shall be free from discrimination based on race, religion, color, national origin, sex, age, or physical handicap.

(5) Personnel actions. Subject to these instructions, and within budgetary constraints, the Councils may establish positions, recruit, hire, compensate and dismiss personnel. All such actions should be for cause alone, with reasonable notice given to the employee.

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

The duties of any new position shall be contained in a brief description to be submitted to the NOAA Regional office servicing the NMFS Regional Office assigned to a Council prior to the submission of a budget in which the salary of that position is to be paid. The Council will provide a salary range appropriate to the position. The Council then may fill the position at any salary level within that range, except that, unless the recruitment of exceptionally qualified employees is hampered, the policy of hiring at the beginning rate shall be recognized. The annual pay for any staff position may not exceed the current rate for the top step of grade 15 of the Federal General Schedule at any time. After a position has been filled, an employee may be promoted annually and recognized for superior performance in accordance with Council policies.

(d) Leave. Employees of the Council shall be granted paid leave for holidays, vacations or exigency for sickness, and civil duties (jury, military reserve obligations) as determined by the Council. Paid annual leave shall not exceed 20 days per year, and sick leave should not exceed 15 days per year.

(e) Employee benefits. The Council should provide its employees the opportunity to participate in group medical insurance, retirement plans and pay a reasonable proportion of the cost of such plans.

(f) Standards of conduct. The Councils are responsible for maintaining high standards of ethical conduct among themselves and their staffs. Such standards should include the following principles:

(i) No employee of the Council shall use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, state, county, or municipal elective office.

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

(iii) No Council member or employee shall pay, or offer, or promise or solicit, or receive from any person, firm, or corporation, a contribution of money or anything of value in consideration of either support or the use of influence or other promise of support or influence in obtaining for any person any appointment, office or employment under the Council.

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

(v) No Council member or employee of the council shall use or allow the use, for other than official purposes, information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(vi) No Council member or employee of the Council shall engage in criminal infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.

(vii) No Council member or employee of the Council shall use Council property on other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.

(10) Personnel files. A file for each Council member containing appointment papers, security reports, biographical data and other official papers will be centrally maintained in NOAA under security and safeguard requirements required of files subject to the Privacy Act. This file will be available to the member, to the Council in its entirety, and to the Secretary of Commerce, if it is so designated.

(f) Personnel—(1) Council staff. The Councils may, consistent with the standards of employment practice standards contained in § 601.23(d), establish positions and recruit, hire, compensate, and dismiss personnel. The personnel procedures of each Council will be subject to audit periodically.

(g) Ad Hoc staff support. All Federal agencies are authorized to detail personnel to the Council on a reimbursable basis. Any Council requests to the heads of such agencies must contain the purpose of the detail, the length of time of the detail, the compensation to be paid, and the stipulation that the Director, NMFS, be consulted prior to granting the request. Copies of this correspondence shall be transmitted to the Director, NMFS, through the appropriate NOAA Field Office to facilitate such consultation. Legal Counsel on a continuing basis shall be obtained from the regional office or the Corporation General Counsel. Other experts and consultants may be utilized as the Council deems appropriate, consistent with budgetary limitations.

(3) Council access to security classified material. The security investigation that is routinely conducted at the time a nominee to the Council is appointed or designated is the basis for authorizing access to a need-to-know basis to material classified CONFIDENTIAL. Non-

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nally this should be sufficient for Coun-
Cil purposes. Clearance for higher classifica-
tions may be granted, follow-
ing regular Federal procedures, by the
Secretary of Commerce. Need-to-know is
determined by the authority having
custody of the material. Persons who are
not members of the Council, including
Council staff, must possess the appro-
riate security clearance before they may
be present when classified materials are
discussed or examined. Such clearances
will be issued through the appro-
riate NOAA field unit.

(1) Compensation and expenses.—
(1) Compensation. The voting
members of each council who are not
employed by the Federal Government or any State
or local government shall receive com-
pensation at the daily rate for a GS-18
in the Federal General Schedule when engaged in
the actual performance of duties assigned
by the Chairman of the Council, including travel time.

(2) Expenses. Council voting
members, the nonvoting Executive Director
of the Marine Fisheries Commission for the
government unit they represent, the
additional nonvoting member of the
Pacific Council, and the members of the
statutory advisory panels shall be reim-
burced for actual expenses associated
with travel on official Council business.
The Secretary may also pay the trans-
portation and expenses, on an actual ex-
 pense per diem basis, of invited spe-
cialists and consultants, and Council staff.
All such expenses must be authorized
by the Chairman of the Council or the Exec-
utive Director and be supported by
detailed vouchers attested to by the per-
sion incurring the expenses. Individual
receipts, except for hotel receipts, are
not required. Foreign travel must have
the prior consent of the Administrator.

(3) Actual expense defined. Actual ex-
 penses include transportation by air
coah, rail coach, bus or privately-owned
vehicle (automobile or private plane
reimbursed on a per mile basis); room
and meals within a reasonable limit to
be established by the Secretary; and
incidental expenses such as taxi fares,
parking and telephone calls on official
business.

(g) Reporting. The Act requires
the Councils to report to the Secretary
annually before February 1 on Council ac-
tivities during the immediately preceed-
ing calendar year. The first annual re-
port is due February 1, 1977, covering
activities from establishment to De-
ember 31, 1976. They must also prepare any
other relevant reports as the Secretary may
request. They are further authorized
directly to the Administrator, NOAA,
Washington, D.C. 20230, in eight copies.
The minimum contents of such a report
are as follows:

(1) Annual report. The annual report
will be used by the Secretary to fulfill
chis obligation under the Act to the Congress and
the President no later than March 1 of
each year on his and the Council's ac-
tivities in the preceding year. The an-
uual Council report shall be directed
nly to the Administrator, NOAA.

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(2) Notice. Notice of meetings, includ-
ing time, place, and subjects to be dis-
cussed, etc., must appear in the Federal
Register at least 20 days prior to the meeting.
Notices shall be submitted by the
Chairman of the Council no later than 23 days
prior to the meeting, to the Director, National
Marine Fisheries Service, NOAA, who
shall submit such notice to the Federal
Register.

(i) All meetings or portions thereof
must be open to the public with only those
exceptions set forth in the Federal
Advisory Committee Act, which Advisory
bodies shall meet as frequently as
necessary, with the approval of the Council
Chairman.

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

(ii) A list of Council members with
affiliations, indicating voting and nonvoting
members and Council officers serving
during the year, office titles and dates of
such service.

(iii) A list of Council administrative
staff with titles.

(iv) A list of members of the Scientific
and Statistical Committee with affiliations,
and lists of members of each ad-
visory panel with affiliations.

(v) A list of Council meetings and
hearings held and of Scientific and Sta-
tistical Committee and advisory panel
meetings held, with dates, locations and
the subjects of discussion, indicating
whether they were open, closed or par-
tially closed to the public, and citing the
appropriate authorization for any closed
portions of the meetings.

(vi) A list of all items sent to or re-
cived from the Secretary during the
year, including proposed fish-
ery management plans and amendments,
and comments, on foreign fishing appli-
cations or on developed plans. Indication of the date such items
were transmitted to or received from
the Secretary and the date of any action
taken.

(vii) An appropriate summary of the
discussion at any closed sessions held
during the year.

(viii) An estimate of the man years
of staff support by source (Federal, State,
private).

(ix) An estimate of the cost to oper-
ate the Council, indicating sources of
funding and the respective amounts.

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

§ 601.24 Operational practices and pro-
cedures.

(a) General. In fulfilling the Councils' responsibil-
ities and functions, the Council
members will meet in plenary ses-
sion, or in subcommittees, individually
or as a whole. The Council must be
able to hear statements in order to clarify
issues, gather information or make deci-
sions regarding material before them.
This section establishes uniform Standard
for the conduct of those activities
to meet the requirements of the Act and
to facilitate the exercise of Council re-
sponsibilities.

(b) Meetings.—(1) General. The Councils will meet at the call of
the Chairman or upon request of a majority
of the voting members. Advisory bodies
 shall meet as frequently as necessary
with the approval of the Council
Chairman.

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

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

(c) Hearings.—(1) General. The Act
directs the Councils to hold public hear-
ings in order to provide the opportunity
for all interested persons to be heard in
the development of Fishery Management
Plans, amendments thereto, and with
respect to the administration and imple-
mentation of the Act. The Council may
use its judgment regarding when and
where such hearings should be held, pro-
vided they are held in the particular
geographic area concerned.

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

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(b) Title III of the Act establishes seven National Standards for fishery conservation and management. Any fishery management plan prepared under the Act by the Regional Councils and the Secretary and any regulation promulgated to implement a plan shall be consistent with these National Standards. The Secretary is required to establish guidelines based on the National Standards, to assist in the development of fishery management plans.

(c) This part accordingly constitutes the Secretarial Guidelines for fishery management plan development based upon the National Standards. It comprises explanatory comments with regard to these National Standards, guidance regarding the content of fishery management plans and for various other procedures involved in the development, submission, review and amendment of plans process.

§ 602.2 National standards for fishery conservation and management.

(a) General. Each fishery management plan, and any amendment to such plan, prepared by any Council and submitted to the Secretary will be reviewed by the Secretary for approval, disapproval, or partial disapproval. The review will involve a determination of whether the proposed plan is consistent with: The National Standards; The other provisions of the Act; and Any other applicable law (Section 304(b)).

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

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

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

(iii) Recruitment. Recruitment is the addition of a new fish to an exploitable size of a fish within a certain period through growth of smaller individuals to a catchable size.

(iv) Fishery management unit. A species or group of species that is capable of being managed as a unit on a rational and timely basis.

(b) Standard 1. Conservation and management measures shall prevent overfishing while achieving, on a continu-
permit overfishing on a continued basis. of its scientific and technical information and management measures which depend on the quantity and quality of its scientific information. Is meant upon the best scientific information and management plans and amendments to such plans.

(c) **Standard 2. Conservation and management measures shall be based upon the best scientific information available.**

1. **Scope of scientific information and technical analysis—(1) Information.** The term "scientific information" is meant to include information of a biological, ecological, economic, and sociological nature. Success of a fishery management plan depends on the scientific and economic conditions. Factors (economic, social, and ecological) that modify MSY in defining optimum yield should not be used to include information of a biological, ecological, economic, and sociological nature. Standard 2. Of MSY is the management of a fishery that will not be harvested by vessels of the United States. In determining whether U.S. fishermen shall harvest such yield, the Councils shall give consideration to the capacity of U.S. fishermen to harvest such yield. Both the optimum yield and its ecological impact shall be made available for foreign fishing and to be included in fishery management plans and amendments to such plans.

(d) **Standard 3. To the extent practicable, a plan for a fishery shall incorporate the entire range of a stock of fish.** Also, management units should, to the extent practicable, comprise several stocks that are ecologically interrelated or are affected by a group of fishery practices. Fishery management units are broadly defined to take account of the extent of fishing practices which may include effort directed toward:

(i) A single stock of fish found in a certain area;
(ii) Different stocks of fish caught by the same vessels; and
(iii) All the stocks in a country.

2. **Jurisdiction.** Unity of management, or at least cooperation between various jurisdictional authorities (e.g., Federal, State, and local) is necessary to prevent jurisdictional disputes from adversely affecting conservation practices. Where fishery management units cross Federal-State boundaries, coordination should be sought among the several fishery managers and Councils in the development of plans and regulations. The occurrence of a stock in a given Council area does not necessarily mean that a plan will be written specifically for that area. Where a stock's range overlaps Council areas, one plan may be written to cover the entire range. Where stocks are discontinuous, plans by more than one Council will be necessary. Where a stock's range extends into a neighboring country's contiguous zone, cooperation should be sought with the Secretary of State, the United States, the Secretary, working with the Secretary of State, will assume responsibility for development of a joint management regime with the neighboring country. In such cases, the Secretary concerned will be consulted by the Secretary of Commerce in the preparation of a plan which could be used as a basis for negotiating an appropriate international joint management regime.

3. **Interrelationship of species/habitat.** (i) The broad, long-term management objective of the several management plans developed by each Council should be to optimize the benefits from the total marine biomass within the Council area, and at least cooperation between various jurisdictional authorities (e.g., Federal, State, and local) is necessary to prevent jurisdictional disputes from adversely affecting conservation practices. Where fishery management units cross Federal-State boundaries, coordination should be sought among the several fishery managers and Councils in the development of plans and regulations. The occurrence of a stock in a given Council area does not necessarily mean that a plan will be written specifically for that area. Where a stock's range overlaps Council areas, one plan may be written to cover the entire range. Where stocks are discontinuous, plans by more than one Council will be necessary. Where a stock's range extends into a neighboring country's contiguous zone, cooperation should be sought with the Secretary of State, the United States, the Secretary, working with the Secretary of State, will assume responsibility for development of a joint management regime with the neighboring country. In such cases, the Secretary concerned will be consulted by the Secretary of Commerce in the preparation of a plan which could be used as a basis for negotiating an appropriate international joint management regime.

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

Rules and Regulations. Section 201(d) of the Act provides that fishing by foreign nations is limited to that portion of the optimum yield of any fishery subject to the fishery management authority of the United States which will not be harvested by vessels of the United States. In determining whether U.S. fishermen shall harvest such yield, the Councils are to give consideration to the capacity of U.S. fishermen to harvest such yield. Both the optimum yield and its ecological impact shall be made available for foreign fishing and to be included in fishery management plans and amendments to such plans.
should consider these and other habitat
factors.

Standard 4. Conservation and
management measures shall not dis-
criminate between residents of different
States. If it becomes necessary to allocate
or assign fishing privileges among var-
ious United States fishing merchants, the
allocation shall be (1) Fair and equitable
to all such fishermen; (2) Reasonably
calculated to promote conservation; and (3)
Carried out in such manner that no partic-
ular individual, corporation, or other entity
acquires an excessive share of such privileges.

(1) General. (i) Allocation is an im-
portant component of resource manage-
ment. Allocations among present users
and between present and future users
should be calculated to promote con-
ervation and efficiency, and to take into
consideration both public and private interests.
When allocation of fishing privileges becomes
necessary among U.S. fishermen, for exam-
ple, among recreational or commercial fish-
ermen or among different gear types, it
must be done fairly. The requirement
for fairness and equity should ensure
that attention is given to the preserva-
tion of the quality of the recreational
fishing experience with respect to any
species of substantial interest to rec-
reational fishermen. In determining fair
and equitable allocations, considerable
importance should be attached to the eco-
nomic and sociological consequences
of alternative allocation schemes. Any fish-
ery management plan must provide for
uniform and equal treatment of United
States citizens and corporations operat-
ing or engaging in the fisheries concerned
without regard to their particular resi-
dence or State of incorporation.

(ii) Traditional or historic fishing
patterns will also be considered when allocation of fishing privileges is nec-
essary. Application of these conservation
and management measures is not ex-
dected to disrupt existing socioeconomic
patterns of harvesting, processing or
marketing. Right of entry of new par-
ticipants into a fishery should be pro-
ected, wherever feasible.

(b) Required provisions. Each fishery
management plan, whether prepared by
the Council or by the Secretary, must
identify the broad management objec-
tives to be attained in the fishery. Man-
agement objectives should be formulated
as precisely as possible. Each plan must
e also include the following five provi-
sions:

(1) General. (i) Management and con-
servation measures shall allow for
predicted variations in fishery resources.

(2) Economic allocation. When con-
servation and management measures
are recommended for purposes of economic
allocation, due consideration shall be
made of the types of variation to be
expected. Changes in fish prices, the price
of vessels, or alternative employment
problems, etc., will be necessary for an
informed decision regarding the imple-
mentation of that system.

(3) Economic allocation. When con-
servation and management measures
are recommended for purposes of economic
allocation, due consideration shall be
made of the types of variation to be
expected. Changes in fish prices, the price
of vessels, or alternative employment
problems, etc., will be necessary for an
informed decision regarding the imple-
mentation of that system.

(4) Economic allocation. When con-
servation and management measures
are recommended for purposes of economic
allocation, due consideration shall be
made of the types of variation to be
expected. Changes in fish prices, the price
of vessels, or alternative employment
problems, etc., will be necessary for an
informed decision regarding the imple-
mentation of that system.

(5) Economic allocation. When con-
servation and management measures
are recommended for purposes of economic
allocation, due consideration shall be
made of the types of variation to be
expected. Changes in fish prices, the price
of vessels, or alternative employment
problems, etc., will be necessary for an
informed decision regarding the imple-
mentation of that system.

(6) Economic allocation. When con-
servation and management measures
are recommended for purposes of economic
allocation, due consideration shall be
made of the types of variation to be
expected. Changes in fish prices, the price
of vessels, or alternative employment
problems, etc., will be necessary for an
informed decision regarding the imple-
mentation of that system.

(7) Economic allocation. When con-
servation and management measures
are recommended for purposes of economic
allocation, due consideration shall be
made of the types of variation to be
expected. Changes in fish prices, the price
of vessels, or alternative employment
problems, etc., will be necessary for an
informed decision regarding the imple-
mentation of that system.

(8) Economic allocation. When con-
servation and management measures
are recommended for purposes of economic
allocation, due consideration shall be
made of the types of variation to be
expected. Changes in fish prices, the price
of vessels, or alternative employment
problems, etc., will be necessary for an
informed decision regarding the imple-
mentation of that system.

(9) Economic allocation. When con-
servation and management measures
are recommended for purposes of economic
allocation, due consideration shall be
made of the types of variation to be
expected. Changes in fish prices, the price
of vessels, or alternative employment
problems, etc., will be necessary for an
informed decision regarding the imple-
mentation of that system.

(10) Economic allocation. When con-
servation and management measures
are recommended for purposes of economic
allocation, due consideration shall be
made of the types of variation to be
expected. Changes in fish prices, the price
of vessels, or alternative employment
problems, etc., will be necessary for an
informed decision regarding the imple-
mentation of that system.

(11) Economic allocation. When con-
servation and management measures
are recommended for purposes of economic
allocation, due consideration shall be
made of the types of variation to be
expected. Changes in fish prices, the price
of vessels, or alternative employment
problems, etc., will be necessary for an
informed decision regarding the imple-
mentation of that system.

(12) Economic allocation. When con-
servation and management measures
are recommended for purposes of economic
allocation, due consideration shall be
made of the types of variation to be
expected. Changes in fish prices, the price
of vessels, or alternative employment
problems, etc., will be necessary for an
informed decision regarding the imple-
mentation of that system.
and the relationship of such plans to the fishery management plan.

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

(5) Statistics. A specification of the pertinent statistics and data that may be submitted by fishermen, processors and others to the Secretary as provided in the Act with respect to the fishery, including information as to gear, catch by species, fishing areas, and fishing effort. The data requirements section of a plan shall also specify all socio-economic data necessary for optimum yield management. A requirement for payment of fees to be submitted by fishermen, processors and others to the Secretary in order to achieve access to data collected and the effort necessary to collect such data, and the effort shall be minimized through careful selection of data elements, and the accuracy required so as not to unduly burden those who must supply such data. Whenever possible, the units of data measurement should be specified in order to avoid double data reduction and analysis. Regulations with regard to the confidentiality of these statistics are set forth in Part 603. [Reserved]

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

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

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

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

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

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

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

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

(A) Present participation in the fishery;

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

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

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

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

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

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

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

§ 602.4 Standard format for fishery management plans. [Reserved]

§ 602.5 Procedures for development, review, and amendment of fishery management plans.

(a) Plans prepared by the councils. In preparing a fishery management plan a Council shall:

(1) Identify fisheries to be managed.

The Council shall assess the fisheries within its jurisdictional area, to include all fisheries (fishery management units) requiring plan development. It will be the Council's responsibility, in collaboration with the Secretary, to analyze fishery management units and to determine priorities for plan development for such units.

(2) Develop management options. The Council shall assemble and analyze all relevant information (e.g., biological, economic, sociological, ecological, user, and constituency) with regard to a particular fishery management unit and develop alternative management options. The Secretary and the Council of State shall furnish the Councils with information concerning foreign fishery and international fishery agreements. Scientific and technical information will be available to the Councils from a variety of sources, including the National Marine Fisheries Service's Regional Offices and Research Centers. The States, private institutions, other Councils, and any interested persons.

(3) Select preferred management options; complete final plan. (i) Consideration of the management options shall be made by the Council, its advisory panels and its Scientific and Statistical Committee. The Council shall select the preferred management options that are to be the basis of the final plan, and shall prepare a final plan for submission to the Secretary.

(ii) The Council's decision to approve a plan prior to submission to the Secretary must be made by a vote of the majority of the voting members, present and voting. When a plan has been prepared by more than one Council and in the direction of the Secretary, it must be approved by a majority of the voting members, present and voting, of each Council prior to submission to the Secretary.

(4) Consult with other councils. A Council shall consult with appropriate Councils when the Secretary has designated a single Council to prepare a plan that includes waters within the geographic area of authority of other Councils or when the Secretary has designated more than one Council to prepare a plan jointly. (See § 601.11 (c) (2)).

(5) Receive and consider public comment. The Council shall solicit, through hearings and any other appropriate means, the advice and recommendations from all interested persons during the development of fishery management plans and amendments to such plans. Such persons include the fishing industry (recreational and commercial), consumer and environmental organizations and others.

(6) Comply with requirements of the National Environmental Policy Act (as set forth in § 602.2).

§ 602.6 Coordinate fishery management plan development with coastal zone planning of constituent States under the Coastal Zone Management Act. (See § 601.21 (b) (3)).

§ 602.7 Prepare fishery management plans consistent with the National Standards (see § 602.2), the guidelines contained herein, other provisions of the Act, and any other applicable law.

§ 602.8 Submission to the Secretary of Commerce. Once a plan has been prepared and approved by a Council, it shall be submitted, along with any dissenting opinions, and with appropriate copies, directly to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, by the most expeditious means available that are compatible with safeguards against loss enroute.
(c) Council action on plans prepared by the Secretary.—(1) General. The Secretary of Commerce may prepare a fishery management with respect to any fishery, or any amendment to such plan, if:

(i) A Council fails to develop and submit to the Secretary, after a reasonable period of time, a plan for such fishery, or any necessary amendment to such plan, if the fishery requires conservation and management or;

(ii) If the Secretary disapproves or partially disapproves any such plan or amendment submitted by a Council and the Council fails to make the necessary changes within 45 days after the date on which the Council receives notification by the Secretary.

(2) Comments of council. Whenever the Secretary prepares a fishery management plan or amendment, the Secretary shall promptly transmit such plan or amendment to the appropriate Council for consideration and comment. Within 45 days after the date of receipt of such plan or amendment, the Council may recommend to the Secretary changes in such plan or amendments consistent with the National Standards. A Council may conduct public hearings to allow interested persons to comment on such a plan, and may incorporate such public comment in the Council recommendations to the Secretary for changes in the plan or amendment.

(3) Amending the plan. Based on this review, or for other reasons, a Council may propose changes in a plan by means of an amendment to the plan. The procedures for Council approval of an amendment (e.g., majority vote) and submission to the Secretary are the same as those that apply to a management plan. The same procedures also apply when an amendment is disapproved or partially disapproved by the Secretary and returned to the Council for modification.

(e) Proposed regulations. A Council may recommend to the Secretary any proposed regulations which it deems necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan. Proposed regulations shall be submitted as a separate document, together with such plan or amendment, to the Secretary. The Secretary has the final responsibility to determine whether to adopt any proposed regulations recommended by a Council.

PART 603—CONFIDENTIALITY OF STATISTICS [RESERVED]