

PROPOSED DRAFT RESPONSE LETTER TO NMFS REGARDING COUNCIL  
OPERATIONS

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Mr. Alan Risenhoover, Director  
Office of Sustainable Fisheries  
National Marine Fisheries Service  
1315 East-West Highway, SSMC3  
Silver Spring, MD 20910

Re: RIN 0648-AW18

Dear Mr. Risenhoover:

Thank you for this opportunity for the Pacific Fishery Management Council (Pacific Council) to review and comment on your proposed regulations governing Regional Fishery Management Council (Regional Council) Operations (74 FR 13386, March 27, 2009). Most of the proposed changes are straightforward and helpful in implementing the reauthorized Magnuson Stevens Fishery Conservation and Management Act (MSA) and have the support of the Pacific Council.

Two issues which raise our concern or require further clarification and input are:

- 1) The addition of Section 600.227 Lobbying; and
- 2) The proposed definitions for “advisory panel,” and “fishing industry advisory committee;” and their connection with the development of guidelines for paying stipends to scientific and statistical committees (SSC) and advisory panels.

The Pacific Council’s specific comments follow below. In addition, we have attached comments from our advisory bodies—[pending review of such at the Council meeting].

**Clarification of Lobbying Restrictions (§ 600.227)**

The proposed changes to Section 600.227 (Lobbying) leave several questions for the Regional Councils. The primary question concerns the role of the Regional Councils to advise the Federal administrative branch (primarily the Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, but also DOI, FERC, and DOA). The proposed language is relevant to regular grantees, but fails to recognize the special relationship that Regional Councils have been mandated by the MSA to advise and direct the Secretary of Commerce on fishery management. It also ignores the provisions of 305(b)(3) regarding comments on actions that affect fish habitat. The Pacific Council requests that this proposed regulation be omitted or rewritten to clearly identify the special governmental advisory relationship of the Regional Councils and with regard to what is and is not prohibited.

***DRAFT***

Mr. Alan Risenhoover, Director

June XX, 20009

Page 2

**Definition of Advisory Panel (§600.10 Definitions)**

In light of the variation in the structures of advisory bodies among and within the Regional Councils, the Pacific Council believes the proposed distinction and definitions of “advisory panel” [Section 302(g)(2)] and “fishing industry advisory committee” [Section 302(g)(3)] are too specific and limiting to Regional Council operations. The proposed definitions go beyond any specific direction within the MSA and do not meet the longstanding practices of the Regional Councils, nor do they provide a workable and consistent solution to determine which groups would receive stipends when funding becomes available.

**Pacific Council Recommendation:** The Pacific Council believes that it is not useful or appropriate to define advisory panels and definitely not as provided in the proposed rule. The issue of defining panels seems to only have relevance in terms of deciding who may receive stipends. We suggest other ways of making that determination in our recommendations below for handling stipends to SSCs and advisory panels.

**Request for Input on Payment of Stipends to SSCs and Advisory Panels**

If adequate funds are available without compromising other important priorities of the Regional Councils, the Pacific Council is supportive of paying stipends for SSC members and also for certain advisory panels. However, the Pacific Council recommends that no stipends be paid to SSC and advisory panel members until a Regional Council has adopted appropriate criteria within its formal operational procedures as we outline below.

Rather than using a definition to determine who is eligible for pay, we recommend that this determination could be handled by each Council in the same way the regulatory deeming process has been approached. That is, to allow each Council to develop and adopt a formal procedure which covers the criteria by which the Council will pay advisory panels and SSCs. This will establish a consistent practice within each Regional Council while recognizing the diversity of the advisory body structure among Regional Councils. The formal criteria would include details of who would be paid, the rate of pay and other necessary guidance to operate the stipend program. Several questions remain, however, which may complicate the development of criteria. Clarity on the issue of who is eligible for pay and paying for members that may already be receiving pay even though they are not employees of the Federal Government or a State marine fisheries management agency concern us. Promulgation of a NMFS operational guideline to clarify the intent of the language in the MSA as to who may reasonably receive pay could be helpful.

**Background and Guidance for the Entities that Could Receive Stipends:** The MSA speaks to payment of stipends to advisory panel members (if funding is made available) with the exception of those employed by the Federal Government or a State marine fisheries agency. It seems reasonable to the Pacific Council that stipends were meant primarily to help facilitate

***DRAFT***

Mr. Alan Risenhoover, Director

June XX, 20009

Page 3

participation by knowledgeable persons who could provide significant service on permanent Regional Council advisory bodies and who currently are not directly paid to do so.

For the Pacific Council, the duty described in the previous paragraph is primarily served by an advisory subpanel for each of its four fishery management plans (FMP) which are permanent long-standing subpanels (e.g., Groundfish Advisory Subpanel). Each of these subpanels fits the proposed definition of a “fishing industry advisory committee,” but could also be considered an “advisory panel” as well. A significant number of these subpanel members, who generally represent the fishing industry, are independent business owners and are not directly reimbursed for the time they serve on the subpanel. The Pacific Council believes these are the primary parties intended for stipends by the MSA. In addition, the Pacific Council has permanent committees for habitat and groundfish allocation issues with unpaid industry members which would also be eligible for stipends.

The Pacific Council also has technical teams for each of its FMPs which consist primarily of fishery management entity personnel (including tribal entities) that are paid by their entity during the time they are meeting or working directly on technical team tasks. These advisors and those serving on numerous ad hoc committees the Pacific Council uses would not be candidates for stipends. However, in certain cases when special expertise is needed, rather than paying a stipend, a Regional Council may contract a person for that expert service on a panel. Finally, the Pacific Council also has standing committees consisting solely of Council members who are paid as Council members when they meet and should not be included for stipends.

The MSA makes no distinction for persons who may receive pay for their time other than the prohibition for those employed by the Federal Government or a State marine fisheries agency. In determining parties that may be paid, the Regional Councils and National Marine Fisheries Service should consider MSA intent with regard to other sources of pay that may be occurring. In addition to having council members on some of our permanent advisory bodies, the Pacific Council has panel participation by employees of the State of Idaho which does not have a marine fisheries management agency, employees of enforcement agencies, tribal fishery management employees, and employees paid by nonprofit entities such as conservation organizations and fishery associations.

**Additional Comments**

The Pacific Council especially notes comments or support to the following proposed changes:

- 600.115 – Quality Council and other pertinent websites are powerful tools for keeping our public apprised and involved in our activities. The Pacific Council has had its Statement of Organization, Practices, and Procedures (SOPP) posted on its website for several years. With regard to changes in SOPP, there should be a more timely process that allows for minor changes.

***DRAFT***

Mr. Alan Risenhoover, Director

June XX, 2009

Page 4

- 600.133 -- We have a history of strong support for our SSC and believe the establishment and utilization of our SSC is already consistent with the proposed language.
- 600.140 – The Pacific Council has already approved a “deeming” process which is contained in our Council Operating Procedures (COP 1).

Thank you again for allowing this opportunity to comment on these important operational procedures for Regional Councils and for your attention to accurate and efficient implementation of the MSA.

Sincerely,

D. O. McIsaac, Ph.D.

Executive Director

Pacific Fishery Management Council