

consumer fraud and speculative applications. Pending resolution of these issues, and out of caution, the Commission required new applications filed for the Shared Paging Channels to continue to be processed under the interim licensing rules. The Commission, however, again relaxed the interim licensing rules by eliminating the 40-mile requirement and allowing incumbents to file for new sites on the Shared Paging Channels at any location. The Commission also affirmed its decision to allow new applicants to file applications for private, internal-use systems. While the interim licensing rules as developed in Commission decisions apply to all of the Shared Paging Channels, the *Second R&O* specifically revised § 90.494(g) of the Commission's rules to reflect the interim licensing rules for purposes of the five 929 MHz shared paging channels.

In the *Third R&O*, the Commission considered the many comments filed on the issue of application fraud. In response, it determined that adding language to FCC Form 601 warning applicants that failure of a licensee to meet construction or coverage requirements would result in termination of the license would be generally helpful to applicants in all services and might also help deter fraud. The Commission directed the Bureau to remove the interim licensing rules for the Shared Paging Channels, including § 90.494(g) of its rules, once the warning language was added to FCC Form 601.

## II. Lifting the Freeze on Applications for Licenses on the Shared Paging Channels

As of November 9, 2001, the following warning language has been added near the signature block on the FCC Form 601 application in Universal Licensing System (ULS), as well as the FCC Form 601 available through Fax-on-Demand and the Bureau's website: "Upon grant of this license application, the licensee may be subject to certain construction or coverage requirements. Failure to meet the construction or coverage requirements will result in termination of the license. Consult appropriate FCC regulations to determine the construction or coverage requirements that apply to the type of license requested in this application."

The Bureau has initiated the process for printing new paper copies of FCC Form 601 that contain the warning language, but those copies will not be available to the public for several weeks. As already noted, where paper copies of FCC Form 601 may be used or are needed, updated applications containing the warning language can be

obtained from Fax-on-Demand (202-418-2830) or are currently available for downloading from <http://www.fcc.gov/wtb/csinfo/orderfrm.html>. The Bureau also notes that applications for new licenses on Shared Paging Channels must be filed through certified land mobile frequency coordinators. The Bureau has provided the updated version of FCC Form 601 to each coordinator and has encouraged them to point out the new warning language to applicants for the Shared Paging Channels.

Having added the warning language to FCC Form 601, the Bureau eliminates the interim licensing rules that have applied to lower band shared paging channels and the five 929 MHz shared paging channels. Accordingly, pursuant to the *Third R&O*, the Bureau removes the interim licensing rules developed through Commission decisions as well as § 90.494(g) of the Commission's rules as applied to the Shared Paging Channels. Any qualified entity may file an application for a license on the Shared Paging Channels for new sites at any location. Applications for new sites filed on these Shared Paging Channels continue to require frequency coordination prior to filing the applications with the Commission.

## Procedural Matters and Ordering Clauses

Pursuant to §§ 4(i), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 332, and the *Third R&O*, the Commission's interim licensing rules as applied to the Shared Paging Channels are eliminated and § 90.494(g) of the Commission's rules, 47 CFR 90.494(g), is removed as set forth in the *Order*.

This action is taken pursuant to the *Third R&O* and the authority delegated in § 0.331 of the Commission's rules, 47 CFR 0.331.

The provisions of this *Order* and the Commission's rules, as amended in the *Order*, shall become effective November 19, 2001 in accordance with § 1.103 of the Commission's rules, 47 CFR 1.103.

## List of Subjects in 47 CFR Part 90

Paging, Radio.

Federal Communications Commission.

**Katherine M. Harris,**

*Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.*

## Rule Changes

For the reasons set forth in the preamble, part 90 of Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

**Authority:** Section 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

### § 90.494 [Amended]

2. Section 90.494 is amended by removing paragraph (g).

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[Docket No. 010427105-1260-02; 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:** Final rule.

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

**DATES:** Effective December 19, 2001.

**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 Web site at [http://www.access.gpo.gov/su--docs/aces/aces\\_140.tml](http://www.access.gpo.gov/su--docs/aces/aces_140.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 updating 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 reinstating 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 were not contained in the Handbook, and were not previously in regulation.

On May 25, 2001, NMFS published a proposed rule at 66 FR 28876 to update the regulations governing Council operations; comments were requested through June 25, 2001. The preamble of the proposed rule contained detailed descriptions of the proposed regulations, which are not repeated here. The following section contains the response to the only comment received during the comment period.

#### Comment and Response

*Comment.* One commenter objected to the language in the proposed rule that would allow a person who is not a state employee to serve as a designee of a principal state official on a Regional Fishery Management Council. Currently, the principal state official's designee is required to be an employee of the state. This commenter argued that a state employee will best represent the state's and the public's interests in fishery management issues. A non-state employee, on the other hand, may represent narrower interests. Therefore, this commenter proposed maintaining the previous CFR language that addressed this issue.

*Response.* NMFS maintains the change contained in the proposed rule. NMFS believes that the new language provides additional flexibility that will not compromise the representation of state and public interests in matters taken up by the Councils. This added flexibility was specifically requested by some of the Councils, in part because some states have very small offices and in the past have been limited to a small pool of candidates. Based on prior dealings with states, NMFS believes that the states will exercise this discretion in a responsible manner. It is not in a state's best interest to select someone with very narrow interests or experience, and it is not likely to do so.

Essentially, this change will enable state governments to select their designees from a larger pool of candidates, better ensuring that the states' interests will be effectively represented.

#### Classification

NMFS has determined that this final rule is consistent with the Magnuson-Stevens Act. This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C 601 *et seq.* The factual basis for this certification was published with the proposed rule. No comments were received regarding the economic impact of this final rule. As a result, no final regulatory flexibility analysis was prepared.

NMFS has analyzed this final rule in accordance with the criteria of the National Environmental Policy Act (NEPA). This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it provides only an update to 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 final rule contains no collection-of-information requirements subject to the Paperwork Reduction Act.

#### List of Subjects in 50 CFR Part 600

Fisheries, Fishing.

Dated: November 9, 2001.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 600 subparts B and C are 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 to 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 paragraphs (d) and (e) of this section, 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, having included in the notification the time and place of the meeting and 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 consider not only 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 that is closed without notice may not exceed 2 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 paragraph (c) of this section.

(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 constitute 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 the majority report is submitted.

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 full 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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