

term for which the member's predecessor was appointed will be appointed only for the remainder of such term.

(c) Any person appointed under the Act who consistently fails or refuses to perform his or her duties properly and/or participates in acts of dishonesty or willful misconduct with respect to responsibilities under the Act will be removed from the Council by NMFS if two-thirds of the members of the Council recommend action. All requests from a Council to NMFS for removal of a Council member must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

#### § 270.10 Responsibilities of a Council.

(a) Each Council will:

(1) Implement all terms of its approved charter;

(2) Prepare and submit to NMFS, for review and approval under § 270.11(a)(1), a marketing and promotion plan and amendments to the plan which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the Council;

(3) Implement and administer an approved marketing and promotion plan and amendments to the plan;

(4) Determine the assessment to be made under § 270.18 and administer the collection of such assessments to finance Council expenses described in paragraph (b) of this section;

(5) Receive, investigate and report to NMFS accounts of violations of rules or orders relating to assessments collected under § 270.20, or quality standard requirements established under § 270.15;

(6) Prepare and submit to NMFS, for review and approval a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the Council, including

(i) All administrative and contractual expenses;

(ii) The probable costs of consumer education, research, and other marketing and promotion plans or projects;

(iii) The costs of the collection of assessments; and

(iv) The expense of repayment of the costs of each referendum conducted in regard to the Council.

(7) Comply with NMFS requirements, and prepare and submit to NMFS for review, evaluation, and verification of results and analysis an annual market assessment and related analytical documentation that is based on economic, market, social, demographic, and biological information as deemed necessary by NMFS;

(8) Maintain books and records, prepare and submit to NMFS reports in accordance with respect to the receipt and disbursement of funds entrusted to it, and submit to NMFS a completed audit report conducted by an independent auditor at the end of each fiscal year;

(9) Reimburse NMFS for the expenses incurred for the conduct of the referendum to establish the Council or any subsequent referendum to terminate the Council that fails;

(10) Prepare and submit to NMFS report or proposals as the Council determines appropriate to further the purposes of the Act.

(b) Funds collected by a Council under § 270.17 will be used by the Council for—

(1) Research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish projects;

(2) Other expenses, as described in § 270.10(a)(1);

(3) Such other expenses for the administration, maintenance, and functioning of the Council as may be authorized by NMFS; and

(4) Any reserve fund established under paragraph (e)(4) of this section and any administrative expenses incurred by NMFS specified as reimbursable under this Part.

(c) Marketing and promotion plans and amendments to such plans prepared by a Council under paragraph(a)(2) of this section will be designed to increase the general demand for fish and fish products described in accordance with § 270.3(c)(2)(iii) by encouraging, expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research,

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and other marketing and promotion activities.

(d) Consumer education and other marketing and promotion activities carried out by a Council under a marketing and promotion plan and amendments to a plan may not contain references to any private brand or trade name and will avoid the use of deceptive acts or practices in promoting fish or fish products or with respect to the quality, value, or use of any competing product or group of products.

(e) *Authority of a Council.* A Council may:

- (1) Sue and be sued;
- (2) Enter into contracts;
- (3) Employ and determine the salary of an executive director who may, with the approval of the Council employ and determine the salary of such additional staff as may be necessary;
- (4) Establish a reserve fund from monies collected and received under § 270.17 to permit an effective and sustained program of research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products in years when production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

(f) Amendment of a charter. A Council may submit to NMFS amendments to the text of the Council's charter. Any proposed amendments to a charter will be approved or disapproved in the same manner as the original charter was approved under § 270.4 and § 270.5 with the exception of § 270.4(b).

### § 270.11 Responsibilities of NMFS.

(a) In addition to the duties prescribed under 16 U.S.C. 4009, NMFS will:

- (1) Participate in Council meetings and review, for consistency with the provisions of 50 CFR part 270 and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within 60 days after their submission by a Council;
- (2) Immediately notify a Council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;

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(3) Issue orders and amendments to such orders that are necessary to implement quality standards under § 270.15;

(4) Promulgate regulations necessary to carry out the purposes of this chapter;

(5) Enforce the provisions of the Act;

(6) Make all appointments to Councils in accordance with § 270.8 and the approved Council charter;

(7) Approve the criteria and time frames under which a Council's performance will be evaluated; and

(8) Implement the provisions of 16 U.S.C. 4001 *et seq.* in accordance with the available financial and management resources NMFS determines can be utilized.

(b) NMFS may provide, on a reimbursable or other basis, such administrative or technical assistance as a Council may request for purposes of the initial organization and subsequent operation of the Council. However, a Council is responsible for the cost of preparing and submitting information (e.g., reports, evaluation data, etc.) requested by NMFS.

### § 270.12 Notice of Council meetings.

The Council will give NMFS the same notice of its meetings as it gives to its members. NMFS will have the right to participate in all Council meetings.

### § 270.13 Books, records and reports.

(a) The Council must submit to NMFS the following documents according to the schedule approved in the Council's charter:

(1) A marketing assessment and promotion plan;

(2) A financial report with respect to the receipt and disbursement of funds;

(3) An audit report conducted by an independent public accountant; and

(4) Other reports or data NMFS determines necessary to evaluate the Council's performance and verify the results of the market assessment and promotion plan..

(b) All Council records, reports, and data must be maintained by the Council for a minimum of 3 years, even if the Council is terminated.