



New England Fishery Management Council

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MEMORANDUM

DATE: November 10, 2023
TO: Executive Committee
FROM: Tom Nies, Executive Director
SUBJECT: **Adoption of Model Harassment Policies**

As discussed at the September and December 2022 Council meetings, the CCC worked with NMFS and DOC to develop model harassment policies for the Councils. The Council plans to formally incorporate the policies into our SOPP at the January 2023 Council meeting.

My recommendation is to modify the existing SOPP language and attach the complete policies as appendices to the SOPP. References in the Employee Handbook will be updated to be consistent. Suggested SOPP text is shown on the next page.

In addition, I recommend three modifications to the model policies. First, I suggest incorporating a generic training requirement into both policies. Second, I recommend it be an explicit requirement for members appointed to APs and the SSC to complete the training requirement. Note that this language is vague, because it is not clear whether funding will be available for all participants or only chairs and vice-chairs, as is currently the case. Finally, I recommend that in the employee policy, the alternate reporting contact be identified by the Executive Director, rather than assigned to a specific position. That way any necessary changes can be made without a change to the SOPP. These changes are shown in the attached model policies.

Attachment 1: Draft SOPP Change

New text in *italics*

The Council *will not tolerate harassment or retaliation against those who report harassment.* ~~has a zero-tolerance policy for harassment. on the basis of race, religion, color national origin, sex, age, sexual orientation, disability and reprisal.~~ *For purposes of this policy, harassment includes unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). This policy does not cover allegations of incivility not based on a protected characteristic. However, this policy is not intended to limit in any way the Council's ability to address incivility, inappropriate behavior, or other issues in an appropriate manner for the context. Any employee who believes he or she has been harassed* ~~Employees are strongly encouraged to report any incident they perceive as harassment, to include incidents personally experienced or witnessed, to their supervisor or the designated point of contact (Executive Director, supervisor, or other person designated by the Executive Director) as soon as possible. Any Council process participant who observed or receives a report of harassment of a Council employee should report the incident to the Executive Director, Deputy Director, or Chair or Vice Chair of the Council as soon as possible. manager. The supervisor or manager should then follow the steps set forth in Department Administrative Order, DAO 202-955. Any complaints of harassment on the basis of sexual orientation should be handled in accordance with DAO 215-11. The provisions of these DAOs are entirely separate from EEO complaint process, and must be followed whether or not an employee has files an EEO complaint.~~ *The Council's policy on addressing allegation of harassment of Council employees is detailed here as Appendix 1. The Council's Harassment Policy extends beyond staff and includes members of the Council with regard to interactions with staff, and includes the conduct of Council members, staff members, and public during the course of official Council meetings, advisory body meetings, or committee meetings. The Council's policy on addressing harassment of process participants other than Council employees is detailed here as Appendix 2.*

Model Fishery Management Council Policy on Addressing Allegations of Harassment of Council Employees

SECTION 1. PURPOSE.

The purpose of this policy is to protect Council employees and provide guidance for Councils on taking action related to incidents or allegations of harassment **experienced by Council employees** prohibited by Federal law (i.e., harassment based on sex, sexual orientation, gender identity, race, color, national origin, age, religion, disability, or reprisal). **The Council will not tolerate harassment or retaliation against those who report harassment.** Preventing harassment is everyone's responsibility and individuals who experience or observe harassment are strongly encouraged to come forward to ensure a safe working environment for everyone involved in the Council process. This policy provides a framework for procedures to encourage employees to come forward with harassment allegations without fear of retaliation. This policy outlines an expedited process for reviewing allegations of harassment, ending actual incidents of harassment, and taking disciplinary actions as appropriate. The procedures established in this policy are distinct from the NOAA equal employment opportunity (EEO) complaint process, which is also available to Council employees to pursue allegations of – and seek remedies for – discrimination or harassment.

SECTION 2. BACKGROUND.

Definition of Unlawful Harassment:

Harassment is a form of discrimination. The Equal Employment Opportunity Commission defines harassment as: “unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.”¹

.01 The Council is responsible for maintaining a workplace free of harassment. As part of this responsibility, supervisors are responsible for addressing and correcting misconduct that constitutes harassment.

.02 Employees can pursue allegations of harassment to several forums. The allegations or incidents covered in this policy are such that immediate appropriate action by the appropriate supervisor to resolve such matters is mandatory regardless of which forum an employee selects in pursuing an allegation. Employees have recourse when supervisors fail to address allegations of harassment, which could result in serious consequences for the Council.

¹ See the Equal Employment Opportunity Commission website for more information:
<https://www.eeoc.gov/harassment>.

SECTION 3. SCOPE.

This policy covers incidents or allegations of harassment prohibited by Federal law,² experienced by a Council employee, whether the alleged harassment is ongoing or occurred in the past. The conduct covered by this policy involves:

- a. the targeting of an employee for harassment because of his/her sex (this includes harassment which is not necessarily sexual in nature) or other protected status;
- b. a pattern of pervasive harassment in the work unit including unwelcome behavior towards an individual or individuals which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment; or
- c. a single incident of harassment of such a serious nature that the continued effective functioning of the unit will be impacted.

SECTION 4. PROCEDURES.

.01 Reporting Allegations of Harassment

- a. **The preferred point of contact to coordinate responses to harassment allegations is the Executive Director. The Executive Director will identify a second point of contact.**
- b. Employees are strongly encouraged to report any incident they perceive to be harassment, to include incidents personally experienced and those witnessed. They may report it to any Council supervisor or the designated point of contact, as soon as the incident occurs.
- c. Any Council process participants (e.g. Council Member, NOAA employee, or others participating in the Regional Fishery Management Council process, aside from Council employees) who observe or receive a report of harassment of a Council employee should report the incident to the Council Executive Director, Deputy Director, chair or vice-chair as soon as possible.
- d. To the extent possible, the Council will protect the confidentiality of individuals who ~~make harassment~~ reports. However, the Council cannot guarantee complete

² This policy covers allegations of unlawful harassment, which is a form of discrimination. See the Equal Employment Opportunity Commission website for more information:

<https://www.eeoc.gov/harassment>. Allegations of incivility or other inappropriate behavior not based on a protected characteristic are outside the scope of this policy. However, this policy is not intended to limit in any way the Council's ability to address incivility, inappropriate behavior, or other issues in an appropriate manner.

confidentiality, since it cannot always conduct an effective inquiry without revealing certain information to the alleged harasser and potential witnesses. The Council is committed to ensuring that the allegation of harassment is shared only with those who have a need to know and in a respectful and sensitive manner.

- e. Employees who make reports of harassment or provide information related to such reports will be protected from retaliation.
- f. All reports of harassment when received by the designated point of contact will be promptly evaluated (typically within one week, absent extenuating circumstances, but in some cases more quickly if warranted under the circumstances) to determine if they come within the scope of this policy. Reports that fall within the scope of this policy will be reviewed thoroughly and impartially in accordance with the procedures in this policy.

.02 Taking Action on Reported Allegations of Harassment.

- a. A supervisor who receives an allegation that a Council employee has been harassed (whether the allegation is received from the employee or from another person on their behalf) must immediately³ report the allegation, in writing, to the designated point of contact. Failure by the supervisor to report the allegation could result in disciplinary or adverse action against the supervisor for failure to adhere to the provisions of this Policy.
- b. In all cases, the supervisor, or designated point of contact to whom the incident is reported, must inform the employee of his or her right to seek counseling from an Equal Employment Opportunity counselor in NOAA's Office of Inclusion and Civil Rights⁴. The employee must be informed that all counseling contacts must occur within 45 days from the date of the alleged harassing event.
- c. In some instances, an employee may request that a supervisor keep the employee's allegations of harassment confidential.
 - 1. In such an instance, the supervisor is obligated to inform the designated point of contact of the allegations and of the request for confidentiality, and must inform the employee of this obligation.
 - 2. Where the employee requests confidentiality, the responsible supervisor must provide a written statement to the employee indicating that any inquiry and action

³ Absent extenuating circumstances, for purposes of the required report, "immediately" means within 24 hours of receipt of allegations.

⁴ <https://www.noaa.gov/organization/inclusion-and-civil-rights/eo-counseling-complaints>

will be very limited if anonymity is required. Any such statement should be coordinated with the designated point of contact.

.03 Incidents Where Facts Are Known and Not in Dispute. Employees may allege, or supervisors may become aware of, incidents of harassment where the facts are not in dispute, i.e., where all parties admit the allegations are true. In such situations, corrective action, including stopping any ongoing harassment and initiating disciplinary or adverse action, if appropriate, should be taken immediately in consultation with the designated point of contact. If disciplinary or adverse action is taken against a Council employee, it must proceed in accordance with established Council policy and practice. Corrective actions may include an oral warning or written reprimand if the misconduct was isolated and minor. If the misconduct by a Council employee was severe or pervasive, then reassignment, suspension, demotion or removal may be appropriate.

.04 Incidents Where Facts Are in Dispute. If the validity of the allegations of harassment is in dispute, or not enough facts are known to proceed with corrective action, the responsible supervisor must provide, in writing to the designated point of contact, a summary of the allegations of harassment initially communicated to them within 5 days. The designated point of contact, where appropriate, will select someone authorized by the Council to conduct an inquiry. The designated point of contact will provide advice and assistance to the official conducting the inquiry. Such inquiries should be completed within 30 days, absent extenuating circumstances. While the inquiry is pending, consideration should be given to undertaking immediate measures before completing the inquiry to ensure that the opportunity for additional actual or perceived harassment does not occur. Examples of such measures are:

- a. Making scheduling changes so as to avoid contact between the parties; and using all available tools to separate the parties. Granting telework flexibility could be a solution for either the employee experiencing harassment or the accused.
- b. Where the allegations concern the employee's supervisor or a co-worker in the unit, temporary transfers of the supervisor or coworker or placing the supervisor or coworker on non-disciplinary leave with pay pending the conclusion of the inquiry; or having the employee report to an alternative supervisor while the inquiry is being conducted, if the employee agrees that this should be done.

.05 Incidents where the allegations concern another Council process participant are highly fact-specific. It is important for Council management to take appropriate measures, which will differ depending on the alleged harasser.

.06 Procedures for Conducting an Inquiry. The inquiry must result in a record sufficient to support any corrective and/or disciplinary action taken, or to indicate that there is not sufficient evidence to support corrective and/or disciplinary action.

- a. The person selected to perform the inquiry must be authorized by the Council to conduct the inquiry and shall take signed, sworn statements from the employee who has alleged harassment, from the employee against whom the allegations are made, and from all principal witnesses. **Normally the Executive Director or Deputy Director will conduct the inquiry.**
- b. The person conducting the inquiry shall coordinate with the designated point of contact to ensure all obligations are met in conducting the inquiry.
- c. The following process should be followed in the course of the inquiry:
 1. Confirm the name, position and supervisory chain of the employee.
 2. Identify the alleged misconduct and the names of those parties allegedly responsible for the conduct.
 3. Obtain from the employee a detailed account of the alleged harassing actions/comments including, a description of the alleged actions/comments, the dates, times and locations of the alleged actions/comments as well as the names, contact information, and affiliations of any witnesses to, or persons with knowledge of, the alleged actions/comments.
 4. With regard to allegations of sexual harassment, determine specifically whether the employee is claiming that someone has made and/or carried out any threats or promises regarding the employee's terms and conditions of employment.
 5. Obtain from those accused of the misconduct a detailed response to each of the employee's allegations, as well as the names of witnesses who can corroborate the accused's account of events.
 6. Obtain statements from all witnesses listed by the employee and the accused of what they witnessed with regard to the alleged misconduct. If available, obtain supporting evidence (e.g. meeting recordings).
 7. Inform all interviewees about the prohibition forbidding retaliation against the employee who reported the alleged harassment.
 8. When the inquiry is completed, the findings should be shared with the designated point of contact, and the person conducting the inquiry will determine, if possible, whether the alleged actions occurred. The designated point of contact will share these findings with appropriate management officials in the organizations to which the alleged harasser and the employee who is the subject of the alleged harassment are assigned. The designated point of contact may also

share the findings with the Department of Commerce Office of the General Counsel in order to receive their guidance on appropriate resolution of the matter.

9. In all instances, upon completion of the inquiry the conclusions will be communicated to the employee who was the target of the alleged harassment. If the inquiry establishes that immediate and appropriate corrective action is warranted, the Council will follow its policies including its disciplinary policy, as appropriate.

.07 The Council shall maintain appropriate documentation for any disciplinary measures and corrective actions that may result from the findings of the inquiry.

SECTION 5. EFFECT OF THIS POLICY IN RELATION TO EEO COUNSELING AND FORMAL EEO COMPLAINTS.

A Council employee, at any time, has access to a NOAA EEO Counselor and may file a formal complaint of harassment – including allegations covered by this policy – and/or any other allegations of discrimination not covered by this policy.⁵ Sometimes supervisors are not aware of an allegation of harassment until approached by an EEO Counselor or investigator. Once informed by an EEO Counselor or investigator that there is an allegation of harassment by an employee, the supervisor must immediately inform the designated point of contact under this policy about the allegations. The designated point of contact will then promptly evaluate the allegation pursuant to this policy. The EEO Counselor will assist management and employees in resolving allegations but is not authorized to conduct inquiries into employee misconduct, and the existence of an EEO investigation does not alter the Council's duty to conduct its own inquiry. Where an employee files a formal EEO complaint regarding harassment, a copy of any inquiry done by the Council, pursuant to this Policy, will be forwarded to the Office of Civil Rights for inclusion in the Report of Investigation.

SECTION 5. MANDATORY TRAINING

All Council employees will complete periodic training on preventing harassment. Requirements will be defined by the Executive Director.

⁵ To file a complaint with a NOAA EEO Counselor go to:
<https://www.noaa.gov/organization/inclusion-and-civil-rights/contact-us>.

Model Fishery Management Council Policy on Addressing Allegations of Harassment of Process Participants Other Than Council Employees

SECTION 1. PURPOSE.

The purpose of this policy is to protect Regional Fishery Management Council (Council) process participants and provide guidance on taking action related to incidents or allegations of harassment **experienced by Council process participants. The Council will not tolerate harassment or retaliation against those who report harassment.** Preventing harassment¹ is everyone's responsibility and individuals who experience or observe harassment are strongly encouraged to come forward to ensure a safe working environment for everyone involved in the Council process. Council members, including chairs and vice chairs, hold positions of trust and responsibility and it is incumbent upon them, together with the Council Executive Directors, to make every reasonable effort to establish an environment free of harassment and to implement this policy fully. This policy provides a framework for procedures to encourage Council process participants to come forward with harassment allegations without fear of retaliation and outlines a process for reporting and reviewing allegations of harassment and taking action as appropriate.

SECTION 2. BACKGROUND.

The Council process involves a complex and dynamic relationship among federal and state employees, Council professional staff, appointed Council members, and members of the public. These individuals frequently meet and interact at various worksites and temporary meeting locations for extended meetings amid challenging issues, which can sometimes lead to interpersonal conflict. The Council process should operate in an atmosphere of respect, collaboration, openness, safety, and equality and every individual who participates in the Council process should be treated with dignity and respect and should be free from abusive conduct and harassment.

SECTION 3. SCOPE.

The reporting and response provisions described in this policy apply to "Council Process Participants." In this document, that term includes all persons who participate in the Council process in any setting, with the exception of individuals employed by the Council, who are covered under a separate policy. Council Process Participants include all individuals present under the context of Council business regardless of location, whether in a Council office, at a Council meeting, or at offsite meetings, hearings and events sponsored by a Council. For

¹ For purposes of this policy covers a harassment includes unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). This policy does not cover allegations of incivility not based on a protected characteristic. However, this policy is not intended to limit in any way the Council's ability to address incivility, inappropriate behavior, or other issues in an appropriate manner for the context.

example, Council Process Participants may include Council members, Advisory Panel or Scientific and Statistical Committee members, external consultants, etc.

SECTION 4. PROCEDURES.

Reporting

Council Process Participants who observe, experience, or receive a report of harassment, including but not limited to sexual harassment or assault, should report the matter as soon as possible to an appropriate official. Swift reporting allows appropriate law enforcement authorities, the NOAA National Marine Fisheries Service (NMFS), or the Council, as appropriate, to take measures to ensure that offensive behavior stops, the harassee's needs are addressed, and action is taken against the offender.

Council Process Participants who observe or are subject to harassment by any Council member, Council employee, or other Council Process Participants may report incidents in a variety of ways, including but not limited to:

- The Council Executive Director or Deputy Director;
- The Council chair or vice-chair;
- Appropriate law enforcement authorities, as needed.

Council Response to Reports

Unless the particular circumstances require otherwise, any Council Member, Council employee, or NOAA employee who receives a report of harassment of a Council process participant should communicate the details of that report, in writing, to the Council Executive Director for appropriate action under this policy. In the event of a reported incident, a response team should be convened consisting of, as appropriate depending upon the context, the Council Executive Director, other designated Council points of contact, and the Council Chair. The response team will determine appropriate follow-up, including whether to engage the NMFS Regional Administrator in the response to the incident, based on the allegations raised and the parties involved.² The Council shall maintain a record of each allegation received under this policy, which shall be made available to NMFS upon request.

NMFS Role

The Councils are primarily responsible for addressing issues that arise within the Council environment. NMFS will, in consultation with NOAA and the Department of Commerce, provide such support and advice to the Councils as may be appropriate under the circumstances. Any Council that receives a report of harassment against or by a Council member **must** inform the NMFS Regional Administrator of the nature of the incident and any steps taken to address the incident.

Related Processes

² If the person alleged to have experienced harassment is a current federal employee, including but not limited to a NMFS employee, the NMFS Regional Administrator must be notified.

This policy does not apply to allegations of harassment experienced by employees of a Council. Instead, in the event an individual employed by the Council is alleged to have experienced harassment, the Council must follow the steps outlined in the *Model Fishery Management Council Policy on Addressing Allegations of Harassment of Council Employees*.

Individuals who are federal employees (including but not limited to NOAA employees) or employed by state agencies, academic institutions or other organizations should report any concerns and seek assistance or action through their supervisor and/or within their own organization, as appropriate, but are encouraged to also report incidents to a Council official described above so that prompt action can be taken by the Council, as needed.

Individuals who are employed by the Councils or the federal government, including but not limited to NOAA, also have the right to file an Equal Employment Opportunity (EEO) complaint with their employing federal agency's EEO office within 45 days of the matter alleged to be discriminatory.

Training

Members of Council advisory panels and the Scientific and Statistical Committee may be required to take period training on this policy and/or preventing harassment. Successful completion of that training is a requirement for appointment to those groups.