

date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98-ACE-47." The postcard will be date stamped and returned to the commenter.

**Agency Findings**

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**ACE IA E5 Grinnell, IA [Revised]**

Grinnell Regional Airport, IA  
(Lat. 41°42'33"N., long. 92°44'06"W.)  
Grinnell NDB  
(Lat. 41°42'35"N., long. 92°43'47"W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Grinnell Regional Airport.

\* \* \* \* \*

Issued in Kansas City, MO, on October 28, 1998.

Herman J. Lyons, Jr.,  
Manager, Air Traffic Division, Central Region.  
[FR Doc. 98-30927 Filed 11-1-98; 8:45 am]  
BILLING CODE 4910-13-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Part 600**

[Docket No. 970728182-8272-02; I.D. 071697A]

RIN 0648-AG16

**Magnuson-Stevens Act Provisions; Financial Disclosure**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to revise the rules of conduct and financial disclosure regulations applicable to Regional Fishery Management Council (Council) nominees, appointees, and voting members. The revisions would implement a provision of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that was amended by the Sustainable Fisheries Act (SFA) in 1996. The new provision prohibits Council members from voting on matters that would have a significant and predictable effect on a financial interest disclosed in accordance with existing regulations.

**DATES:** Effective February 17, 1999.

**ADDRESSES:** Comments regarding burden-hour estimates for the collection-of-information requirements contained in this final rule should be sent to George H. Darcy, F/SF3, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Margaret Frailey Hayes, Assistant General Counsel for Fisheries, NOAA Office of General Counsel, 301-713-2231.

**SUPPLEMENTARY INFORMATION:****Background**

On October 11, 1996, the President signed into law the SFA, which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Among those amendments was a provision that prohibits Council members from voting on matters that would have a significant and predictable effect on a financial interest disclosed in accordance with existing regulations. On August 7, 1997, NMFS published a proposed rule at 62 FR 42474 to implement the financial disclosure provisions of the SFA; comments were requested through September 8, 1997. Additional background information was included in the preamble of that proposed rule, and is not repeated here.

**Comments on the August 7, 1997, Proposed Rule and Responses**

1. *Comment.* The Office of Government Ethics (OGE) questioned NMFS' legal authority for issuing the rule of conduct proposed for § 600.225(b)(8).

*Response.* NMFS has authority under the Magnuson-Stevens Act to prescribe uniform standards for the Councils' practices and procedures (section 302(f)(6)) and to promulgate rules to carry out the provisions of the Act (section 305(d)). The rule of conduct is really a paraphrase of 18 U.S.C. 208; § 600.225(b)(8)(i) has been revised to match the statutory language more closely. Section 600.225(b)(8)(ii) continues the disqualification of all Council members from participating in matters "primarily of individual concern."

2. *Comment.* OGE stated that conduct rules for Council members should be issued as supplemental regulations to the standards of conduct to which all Federal employees are subject.

*Response.* That suggestion is inconsistent with an opinion of the Office of Legal Counsel, Department of Justice, dated December 9, 1993, which held that Council members are not Federal employees subject to the Executive Order on ethics or to the Government-wide standards of conduct. (Note, however, that Council members are considered special Government employees for purposes of the Federal conflict-of-interest statute, 18 U.S.C. 208.)

3. *Comment.* OGE found the proposed rule unclear as to who must file a financial disclosure report, i.e., whether all members and nominees must file, or only those with interests in harvesting, processing, or marketing activities. It also found the proposed rule overly

broad in requiring affected individuals to disclose interests in an industry related to harvesting, processing, or marketing activities.

*Response.* NMFS has long interpreted section 302(j)(2) to require affected individuals to disclose financial interests in activities related to harvesting, processing, or marketing. If NMFS had read the financial-disclosure provision as narrowly as OGE suggests, many Council members such as fisheries association officers would have been subject to criminal liability under 18 U.S.C. 208. They would have been unable even to participate in Council deliberations on issues affecting their employment or other fiduciary interests. NMFS believes that Congress intended in the 1986 amendments to the Magnuson Act to allow persons with financial interests in activities related to harvesting, processing, or marketing to continue serving on Councils on the same footing as persons with more direct interests. The "price" of this participation was the disclosure of those interests, so that the public could be informed of possible biases by members affiliated with certain sectors of the fishing industry. In the 1996 amendments to the Magnuson-Stevens Act, Congress indicated no dissatisfaction with the agency's practice of requiring disclosure of financial interests in related activities, and did not amend section 302(j)(2).

4. *Comment.* Another commenter pointed out a perceived inconsistency in the proposed rule between the broad scope of the requirement for disclosing financial interests, and the narrow scope of financial interests that would disqualify a member from voting. The commenter would prefer that the disqualifying financial interests be broadened to match the disclosed interests, so that representatives of fishing industry groups would be subject to the recusal provisions of the SFA.

*Response.* The legislative history of the 1996 amendments to the Magnuson-Stevens Act indicates that Congress was concerned about members whose votes on Council actions might result in direct gain or loss to themselves or their companies. The SFA disqualifies members from voting on decisions that would have a "significant and predictable effect" on their financial interests. That phrase was defined as "a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery." In developing the proposed rule, and

again in considering the final rule, NMFS focused on the comparative aspect of the defined term. The disqualifying effect is not that the Council action will have a significant impact on the member's financial interest; the action must have a disproportionate impact as compared with that of other participants in the fishery sector. Therefore, the criteria for recusal are limited to persons whose financial interests are directly linked to harvesting, processing, or marketing activities.

5. *Comment.* OGE suggested that NMFS require all affected individuals to file a confidential disclosure of all their financial interests, in addition to the financial disclosure report required by the Magnuson-Stevens Act to be filed by affected individuals who have financial interests in harvesting, processing, or marketing activities.

*Response.* As noted above, Council members are not Federal employees for purposes of the OGE regulations. There is no explicit authority in the Magnuson-Stevens Act for requiring confidential financial disclosure, but NMFS expects that affected individuals with financial interests that are not required to be disclosed would seek advice from Departmental counsel regarding their participation in matters before their Councils.

6. *Comment.* OGE stated that members' financial disclosure forms should be available for inspection at Council meetings.

*Response.* NMFS agrees. This requirement appears in the current rule, and in the final rule at § 600.235(b)(3).

7. *Comment.* OGE found the criterion of a 10-percent share of an industry to be huge, eviscerating any potential restriction on industry participants. Besides lowering the percentage, OGE suggested a standard that would incorporate a dollar amount for the gross value of the individual's landings of fish.

On the other hand, the Western Pacific Fishery Management Council said that 10 percent is too low for small fisheries. The Council proposed a tiered approach for the Western Pacific, with a standard of 50 percent for fisheries smaller than 50 vessels; 25 percent for fisheries between 51 and 100 vessels; 15 percent for fisheries between 101 and 200 vessels; and 10 percent for fisheries larger than 200.

*Response.* NMFS does not believe a monetary standard, whether value of landings, value of fish processed, or value of fish marketed, is workable. OGE objected to the NMFS proposal but provided no alternative proportion, nor

did it provide any quantitative data or qualitative information to support its position.

While NMFS has no quantitative data on which to base the selection of 10 percent as the disqualifying industry share, qualitative information available from existing disclosure forms and other sources indicates that this value would accomplish the Congressional intent of disqualifying from voting only those current Council members whose financial interests would be disproportionately affected by Council actions, in comparison with the financial interests of other participants in the fishery sector.

NMFS does not agree with the suggested tiered approach for the Western Pacific, because a Council member owning nearly half the vessels in a small fishery would be able to vote on a matter that could disproportionately benefit his or her financial interest. NMFS received no other suggestions for a tiered approach, although the proposed rule specifically invited comments on this issue.

8. *Comment.* OGE questioned the need for a provision for voluntary recusal, at § 600.235(d), and its limitation to only those financial interests that have been disclosed.

*Response.* Any Council member may decline to vote on a matter before the Council for any reason. NMFS included a provision to remind members of this.

9. *Comment.* OGE was troubled by the statutory allowance of participation in deliberations by members who are recused, because active participation may have as much effect on the outcome as a vote. OGE recommended that § 600.235(e) be amended to clarify that only those who are recused under section 302(j) of the Magnuson-Stevens Act are allowed to participate, while members with other types of financial interests may be precluded from participating under 18 U.S.C. 208.

*Response.* This provision has been revised in accordance with OGE's recommendation with respect to particular matters of individual concern.

10. *Comment.* Concerning § 600.235(f)(4), OGE asked what would happen to a Council decision if the designated official determined that a Council member could vote, another Council member requested a review of that determination, and the NOAA General Counsel found that the member should not have voted.

*Response.* The provision has been clarified, at § 600.235(f)(5), to indicate, in accordance with section 302(j)(7)(E) of the Magnuson-Stevens Act, that the eventual ruling by the NOAA General

Counsel will not disturb the Council decision.

11. *Comment.* The Western Pacific Fishery Management Council asked why a Council member should have the opportunity to request a review of a determination, if there will be no effect on the Council decision.

*Response.* Section 302(j)(7) of the Magnuson-Stevens Act provides for the request for a review, but states that the eventual ruling is not cause for invalidation or reconsideration of the Council's decision by the Secretary. The Council itself might decide to vote on the issue again at a later meeting, if review of the determination reversed the initial ruling. The General Counsel's ruling would also have precedential value for subsequent determinations.

12. *Comment.* OGE asked whether one Council member can question another member's action, if the designated official has not made a determination.

*Response.* There is legislative history indicating that only the member whose action is in question may request a determination by the designated official. Another member, however, is free to bring the issue to the attention of the designated official, who would then consider making a determination on his/her own initiative under § 600.235(f)(2).

#### Changes From the August 7, 1997, Proposed Rule

Section 600.225(b)(8)(i) has been revised to track more closely the provisions of 18 U.S.C. 208. Unless exempted, a Council member may not participate personally and substantially in a particular matter in which the individual, family members, or business associates have a financial interest. This rule of conduct does not apply to financial interests required to be disclosed under § 600.235(b), nor to members who are exempt under 18 U.S.C. 208(b)(1) or (2). Section 600.225(b)(8)(ii) continues the disqualification of all Council members from participating in matters "primarily of individual concern."

A definition of "Council decision" has been added to clarify that the recusal requirements do not apply to actions by Council committees. A committee vote is not binding on the Council and thus cannot have a "significant and predictable effect" on a member's financial interest. Under § 600.235(e), however, an affected individual who will be recused from voting on a Council decision must notify the Council of the recusal before participating in committee deliberations.

A definition of "financial interest in harvesting, processing, or marketing"

has been added at § 600.235(a), to apply only to the disclosure and recusal provisions. The phrase "ownership interests" includes leases of fishing vessels and individual fishing quotas.

Section 600.235(b)(1) has been revised to use the term "financial interest in harvesting, processing, or marketing," which allows removal of some text that is now covered in the definition.

A sentence in the current regulations, which was inadvertently omitted from the proposed rule, has been added to § 600.235(b)(3) to require that financial interest forms be made available at Council meetings and hearings.

Two sentences have been added at the end of § 600.235(c)(2) to specify that financial interests of affected individuals and other participants will be judged based on the most recent fishing year for which information is available. For IFQ fisheries, however, the judgment will be based on the percentage of IFQs assigned to the affected individual.

Section 600.235(e) has been revised to clarify that only those recused under this section may participate in Council deliberations; members with financial interests in a particular matter, other than harvesting, marketing, or processing, may not participate if precluded by 18 U.S.C. 208 and § 600.225(b)(8)(i).

Section 600.235(f)(4) directs Council Chairs not to count the vote of a member who attempts to vote despite a recusal determination.

Section 600.235(f)(5) clarifies that the NOAA General Counsel's ruling on review of a recusal determination is not cause for invalidation or reconsideration of the Council's decision by the Secretary.

Section 3507 of the Paperwork Reduction Act (PRA) requires agencies to inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) of 15 CFR identifies the location of NOAA regulations for which OMB control numbers have been issued. This final rule amends § 902.1(b) by adding the control number for this collection of information.

#### Classification

This rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial

number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA. This collection-of-information requirement has been approved by OMB under control number 0648-0192.

Public reporting burden is estimated to average 35 minutes per response to fill out and submit the Financial Interest Form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

**List of Subjects**

**15 CFR Part 902**

Reporting and recordkeeping requirements.

**50 CFR Part 600**

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: November 13, 1998.

**Andrew A. Rosenberg,**

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

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

**15 CFR Chapter IX**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. In §902.1, paragraph (b), the table is amended by adding in numerical order the following entry to read as follows:

**§902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648—)
50 CFR	
600.235 .....	-0192

**50 CFR Chapter VI PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

3. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

4. In §600.225, the last sentence in paragraph (b)(4) is removed, and paragraph (b)(8) is revised to read as follows:

**§600.225 Rules of conduct.**

(b) \* \* \* (8)(i) Except as provided in §600.235(h) or in 18 U.S.C. 208, no Council member may participate personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a particular matter in which the member, the member's spouse, minor child, general partner, organization in which the member is serving as officer, director, trustee, general partner, or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment, has a financial interest. (Note that this financial interest is broader than the one defined in §600.235(a).)

(ii) No Council member may participate personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest, even if the interest has been disclosed in accordance with §600.235.

5. Section 600.235 is revised to read as follows:

**§600.235 Financial disclosure.**

(a) *Definitions.* For purposes of §600.235:

*Affected individual* means an individual who is—

(1) Nominated by the Governor of a state or appointed by the Secretary of Commerce to serve as a voting member of a Council in accordance with section 302(b)(2) of the Magnuson-Stevens Act; or

(2) A representative of an Indian tribe appointed to the Pacific Council by the Secretary of Commerce under section 302(b)(5) of the Magnuson-Stevens Act who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government.

*Council decision* means approval of a fishery management plan (FMP) or FMP amendment (including any proposed regulations); request for amendment to regulations implementing an FMP; finding that an emergency exists involving any fishery (including recommendations for responding to the emergency); and comments to the Secretary on FMPs or amendments developed by the Secretary. It does not include a vote by a committee of a Council.

*Designated official* means an attorney designated by the NOAA General Counsel.

*Financial interest in harvesting, processing, or marketing* (1) includes:

(i) Stock, equity, or other ownership interests in, or employment with, any company, business, fishing vessel, or other entity engaging in any harvesting, processing, or marketing activity in any fishery under the jurisdiction of the Council concerned;

(ii) Stock, equity, or other ownership interests in, or employment with, any company or other entity that provides equipment or other services essential to harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned, such as a Chandler or a dock operation.

(iii) Employment with, or service as an officer, director, or trustee of, an association whose members include companies, vessels, or other entities engaged in harvesting, processing, or marketing activities, or companies or other entities providing services essential to harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned; and

(iv) Employment with an entity providing consulting, legal, or representational services to any entity engaging in, or providing equipment or services essential to, harvesting, processing, or marketing activities in any fishery under the jurisdiction of the

Council concerned, or to any association whose members include entities engaged in the activities described in paragraphs (1) (i) and (ii) of this definition;

(2) Does not include stock, equity, or other ownership interests in, or employment with, an entity engaging in advocacy on environmental issues or in scientific fisheries research in any fishery under the jurisdiction of the Council concerned, unless it is covered under paragraph (1) of this definition. A financial interest in such entities is covered by 18 U.S.C. 208, the Federal conflict-of-interest statute.

(b) *Reporting.* (1) The Magnuson-Stevens Act requires the disclosure by each affected individual of any financial interest in harvesting, processing, or marketing activity, and of any such financial interest of the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members and Nominees of Regional Fishery Management Councils" (Financial Interest Form), or such other form as the Secretary may prescribe.

(2) The Financial Interest Form must be filed by each nominee for Secretarial appointment with the Assistant Administrator by April 15 or, if nominated after March 15, 1 month after nomination by the Governor. A seated voting member appointed by the Secretary must file a Financial Interest Form with the Executive Director of the appropriate Council within 45 days of taking office; must file an update of his or her statement with the Executive Director of the appropriate Council within 30 days of the time any such financial interest is acquired or substantially changed by the affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; and must update his or her form annually and file that update with the Executive Director of the appropriate Council by February 1 of each year.

(3) The Executive Director must, in a timely manner, provide copies of the financial disclosure forms and all updates to the NMFS Regional Administrator for the geographic area concerned, the Regional Attorney who advises the Council, the Department of Commerce Assistant General Counsel

for Administration, and the NMFS Office of Sustainable Fisheries. The completed financial interest forms will be kept on file in the office of the NMFS Regional Administrator for the geographic area concerned and at the Council offices, and will be made available for public inspection at such offices during normal office hours. In addition, the forms will be made available at each Council meeting or hearing.

(4) Councils must retain the disclosure form for each affected individual for at least 5 years after the expiration of that individual's last term.

(c) *Restrictions on voting.* (1) No affected individual may vote on any Council decision that would have a significant and predictable effect on a financial interest disclosed in his/her report filed under paragraph (b) of this section.

(2) As used in this section, a Council decision will be considered to have a "significant and predictable effect on a financial interest" if there is a close causal link between the decision and an expected and substantially disproportionate benefit to the financial interest in harvesting, processing, or marketing of any affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee, relative to the financial interests of other participants in the same gear type or sector of the fishery. The relative financial interests of the affected individual and other participants will be determined with reference to the most recent fishing year for which information is available. However, for fisheries in which IFQs are assigned, the percentage of IFQs assigned to the affected individual will be dispositive.

(3) "Expected and substantially disproportionate benefit" means a quantifiable positive or negative impact with regard to a matter likely to affect a fishery or sector of the fishery in which the affected individual has a significant interest, as indicated by:

(i) A greater than 10-percent interest in the total harvest of the fishery or sector of the fishery in question;

(ii) A greater than 10-percent interest in the marketing or processing of the total harvest of the fishery or sector of the fishery in question; or

(iii) Full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery or sector of the fishery in question.

(d) *Voluntary recusal.* An affected individual who believes that a Council decision would have a significant and

predictable effect on that individual's financial interest disclosed under paragraph (b) of this section may, at any time before a vote is taken, announce to the Council an intent not to vote on the decision.

(e) *Participation in deliberations.* Notwithstanding paragraph (c) of this section, an affected individual who is recused from voting under this section may participate in Council and committee deliberations relating to the decision, after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(f) *Requests for determination.* (1) At the request of an affected individual, the designated official shall determine for the record whether a Council decision would have a significant and predictable effect on that individual's financial interest. The determination will be based upon a review of the information contained in the individual's financial disclosure form and any other reliable and probative information provided in writing. All information considered will be made part of the public record for the decision. The affected individual may request a determination by notifying the designated official—

(i) Within a reasonable time before the Council meeting at which the Council decision will be made; or

(ii) During a Council meeting before a Council vote on the decision.

(2) The designated official may initiate a determination on the basis of—

(i) His or her knowledge of the fishery and the financial interests disclosed by an affected individual; or

(ii) Written and signed information received within a reasonable time before a Council meeting or, if the issue could not have been anticipated before the meeting, during a Council meeting before a Council vote on the decision.

(3) At the beginning of each Council meeting, or during a Council meeting at any time reliable and probative information is received, the designated official shall announce the receipt of information relevant to a determination concerning recusal, the nature of that information, and the identity of the submitter of such information.

(4) If the designated official determines that the affected individual may not vote, the individual may state for the record how he or she would have voted. A Council Chair may not allow such an individual to cast a vote.

(5) A reversal of a determination under paragraph (g) of this section may not be treated as cause for invalidation or reconsideration by the Secretary of a Council's decision.

(g) *Review of determinations.* (1) Any Council member may file a written request to the NOAA General Counsel for review of the designated official's determination. A request for review must be received within 10 days of the determination.

(2) A request must include a full statement in support of the review, including a concise statement as to why the Council's decision did or did not have a significantly disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery, and why the designated official's determination should be reversed.

(3) If the request for review is from a Council member other than the affected individual whose vote is at issue, the requester must provide a copy of the request to the affected individual at the same time it is submitted to the NOAA General Counsel. The affected individual may submit a response to the NOAA General Counsel within 10 days from the date of his/her receipt of the request for review.

(4) The NOAA General Counsel must complete the review and issue a decision within 30 days from the date of receipt of the request for review. The NOAA General Counsel will limit the review to the record before the designated official at the time of the determination, the request, and any response.

(h) *Exemption from other statutes.* The provisions of 18 U.S.C. 208 regarding conflicts of interest do not apply to an affected individual who is in compliance with the requirements of this section for filing a financial disclosure report.

(i) *Violations and penalties.* It is unlawful for an affected individual to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required by this section, or to knowingly vote on a Council decision in violation of this section. In addition to the penalties applicable under § 600.735, a violation of this provision may result in removal of the affected individual from Council membership.

[FR Doc. 98-30898 Filed 11-18-98; 8:45 am]  
BILLING CODE 3510-22-P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

[TD 8784]

RIN 1545-AV89

**Substantiation of Business Expenses—Use of Mileage Allowances to Substantiate Automobile Expenses; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to temporary regulations.

**SUMMARY:** This document contains a correction to Treasury Decision 8784, which was published in the *Federal Register* on Thursday, October 1, 1998 (63 FR 52600) relating to the use of mileage allowances to substantiate automobile business expenses.

**DATES:** This correction is effective October 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Donna Crisalli, (202) 622-4920 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

The temporary regulations that are the subject of this correction are under section 274 of the Internal Revenue Code.

**Need for Correction**

As published, TD 8784 contains an error which may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the temporary regulations (TD 8784), which were the subject of FR Doc. 98-26226, is corrected as follows:

**§ 1.274(d)-1T [Corrected]**

On page 52601, column 1, § 1.274(d)-1T(a)(1) and (2), the last line of the paragraph, the language "guidance, see § 1.274(d)-1(a)(1)." is corrected to read "guidance, see § 1.274(d)-1(a)(1) and (2)."

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98-30875 Filed 11-18-98; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

[CCGD08-98-068]

RIN 2115-AE47

**Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River. The drawbridge will require twenty-four hours advance notice for openings from 21 December 1998 to 1 March 1999. This temporary rule is issued to allow bridge maintenance during winter conditions when closures of Army Corps of Engineers' locks upstream and downstream from the bridge preclude normal waterway traffic.

**DATES:** This temporary rule is effective from 12:01 a.m. on December 21, 1998 until 12:01 a.m. on March 1, 1999.

**ADDRESSES:** The public docket and all documents referred to in this notice will be available for inspection and copying at room 2.107f in the Robert A. Young Federal Building at Director, Western Rivers, Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103-2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Weibusch, Bridge Administrator; Director, Western Rivers Operations, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103-2832, telephone number 314-539-3900, extension 378.

**SUPPLEMENTARY INFORMATION:****Background**

On October 3, 1998, the Union Pacific Railroad Company requested a temporary change to the operation of the Clinton Railroad swing bridge across the Upper Mississippi River, Mile 518.0 at Clinton, Iowa. Union Pacific Railroad Company requested that navigation temporarily provide twenty-four hours advance notice for bridge operation to facilitate required bridge maintenance, between December 21, 1998 and March 1, 1999, when icing conditions and Army Corps of Engineers' lock closures preclude normal river traffic.

In accordance with 5 U.S.C. 533, a notice of proposed rulemaking has not been published and good cause exists

**SUPPLEMENTARY INFORMATION:** Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121).

**Rulemaking Requirements**

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.
2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) This collection has been approved by the Office of Management and Budget under control number 0694-0088.
3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.
4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close on January 30, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Records in this facility including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482-5653.

**List of Subjects in 15 CFR part 774**

- Exports, Foreign Trade.
- Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730 through 799) is amended as follows:
1. The authority citation for part 774 is revised to read as follows:
- Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 720; 10 U.S.C. 7430(e); 18 U.S.C. 2510 et seq.; 22 U.S.C. 287c; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; Sec. 201, Pub. L. 104-58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46

U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995, 3 CFR, 1995 Comp., p. 501; Notice of August 14, 1996, 3 CFR, 1996 Comp., p. 298; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

**PART 774—AMENDED**

**Supplement No. 1 To Part 774—Amended**

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended by revising the License Exceptions section to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

\* \* \* \* \*

**License Exceptions**

- LVS: N/A for MT  
 \$1500: 3A001.c  
 \$3000: 3A001.b.1, b.2, b.3, .d, .e and .f  
 \$5000: 3A001.a, and .b.4 to b.7  
 GBS: Yes, except 3A001.a.1.a, b.1, b.3 to b.7, .c to .f  
 CIV: Yes, except 3A001.a.1, a.2, a.3.a (for processors with a CTP greater than 1200 Mtops), a.5, a.6, a.9, a.10, and a.12, .b, .c, .d, .e, and .f
- \* \* \* \* \*

Dated: December 22, 1998.

R. Roger Majak,  
 Assistant Secretary for Export Administration.  
 [FR Doc. 98-34344 Filed 12-28-98; 8:45 am]  
 BILLING CODE 3510-33-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

[Docket No. 970728182-8272-02; I.D. 071697A]

RIN 0648-AG16

**Magnuson-Stevens Act Provisions; Financial Disclosure; Correction**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** NMFS issues a correction to the final rule, published in the Federal Register of November 19, 1998, which revised the rules of conduct and financial disclosure provisions applicable to Council nominees.



appointees, and voting members. This correction removes amendatory language and regulatory text that was incorrectly included in the final rule.

**DATES:** Effective February 17, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Margaret Frailey Hayes, Assistant General Counsel for Fisheries, NOAA Office of General Counsel, (301) 713-2231.

**SUPPLEMENTARY INFORMATION:** On November 19, 1998, NMFS published a final rule, at 63 FR 64182, FR Doc. 98-30898, to implement the financial disclosure provisions of the Sustainable Fisheries Act. The final rule incorrectly amended the 15 CFR 902.1 (b) by adding text that was already in existence. This correction removes that unnecessary amendment.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the *Federal Register*.

**Correction**

In final rule Magnuson-Stevens Act Provisions; Financial Disclosure, I.D. 071697A, published November 19, 1998, correct the following: On page 64185, first column, last paragraph, remove amendatory instruction 2, and, in the second column, remove the amendment to § 902.1(b).

Dated: December 23, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

[FR Doc. 98-34448 Filed 12-28-98; 8:45 am]

BILLING CODE 3510-22-F

**FEDERAL TRADE COMMISSION**

**16 CFR Parts 0, 300, 301, 303, and 460**

**Miscellaneous Rules**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission Rules of Practice and certain other Rules are being revised to reflect certain address changes.

**EFFECTIVE DATE:** December 29, 1998.

**ADDRESSES:** Requests for copies of the *Federal Register* notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The notice announcing the address changes is available on the Internet at the Commission's website, "http://www.ftc.gov".

**FOR FURTHER INFORMATION CONTACT:** Donald S. Clark, Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, telephone number (202) 326-2514, E-mail "dclark@ftc.gov".

**SUPPLEMENTARY INFORMATION:** The Commission Rules of Practice and certain other Rules contain addresses to which certain filings, submissions, and other communications should be directed, and from which certain information and documentary material can be obtained. Some of these addresses have been changed, and the affected Rule provisions accordingly are being amended. In particular, the official address of the Commission has been changed from "Pennsylvania Avenue and Sixth Street, NW" to the following: Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

Moreover, the addresses of a number of the Commission's Regional Offices have changed. In addition, the addresses embodied in a number of provisions of the Rules and Regulations Under the Wool Products Labeling Act of 1939; the Rules and Regulations Under the Fur Products Labeling Act; the Rules and Regulations Under the Textile Fiber Products Identification Act; and the Labeling and Advertising of Home Insulation Rule have been changed.

**List of Subjects**

**16 CFR Part 0**

Organization and functions  
(Government agencies).

**16 CFR Parts 300, 301, 303**

Furs, Incorporation by reference, Labeling, Textile fiber products identification, Trade practices, Wool products.

**16 CFR Part 460**

Home insulation products.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, of the Code of Federal Regulations as follows:

**PART 0—ORGANIZATION**

1. The authority for part 0 continues to read as follows:

**Authority:** Sec. 6(g), 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383 as amended (5 U.S.C. 552).

2. Section 0.2 is revised to read as follows:

**§ 0.2 Official address.**

The principal office of the Commission is at Washington, DC. All communications to the Commission

should be addressed to the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, unless otherwise specifically directed.

3. Section 0.19(b) is revised to read as follows:

**§ 0.19 The Regional Offices.**

\* \* \* \* \*

(b) The addresses of the respective regional offices, and of the field stations located in the area of each are as follows:

(1) Atlanta Regional Office. Federal Trade Commission, Suite 5M35, Midrise Building, 60 Forsyth Street, S.W., Atlanta, Georgia 30303.

(2) Boston Regional Office. Federal Trade Commission, 101 Merrimac Street, Suite 810, Boston, Massachusetts 02114-4719.

(3) Chicago Regional Office. Federal Trade Commission, 55 East Monroe Street, Suite 1860, Chicago, Illinois 60603-5701.

(4) Cleveland Regional Office. Federal Trade Commission, Eaton Center, Suite 200, 1111 Superior Avenue, Cleveland, Ohio 44114.

(5) Dallas Regional Office. Federal Trade Commission, 1999 Bryan Street, Suite 2150, Dallas, Texas 75201.

(6) Denver Regional Office. Federal Trade Commission, 1961 Stout Street, Suite 1523, Denver, Colorado 80294-0101.

(7) Los Angeles Regional Office. Federal Trade Commission, 10877 Wilshire Boulevard, Suite 700, Los Angeles, California 90024.

(8) New York Regional Office. Federal Trade Commission, 150 William Street, Suite 1300, New York, New York 10038.

(9) San Francisco Regional Office. Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, California 94103.

(10) Seattle Regional Office. Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington 98174.

\* \* \* \* \*

**PART 300—RULES AND REGULATIONS UNDER THE WOOL PRODUCTS LABELING ACT OF 1939**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 15 U.S.C. 68 *et seq.* and 15 U.S.C. 70 *et seq.*

2. The second sentence of § 300.4(e) is revised to read as follows:

**§ 300.4 Registered identification numbers.**

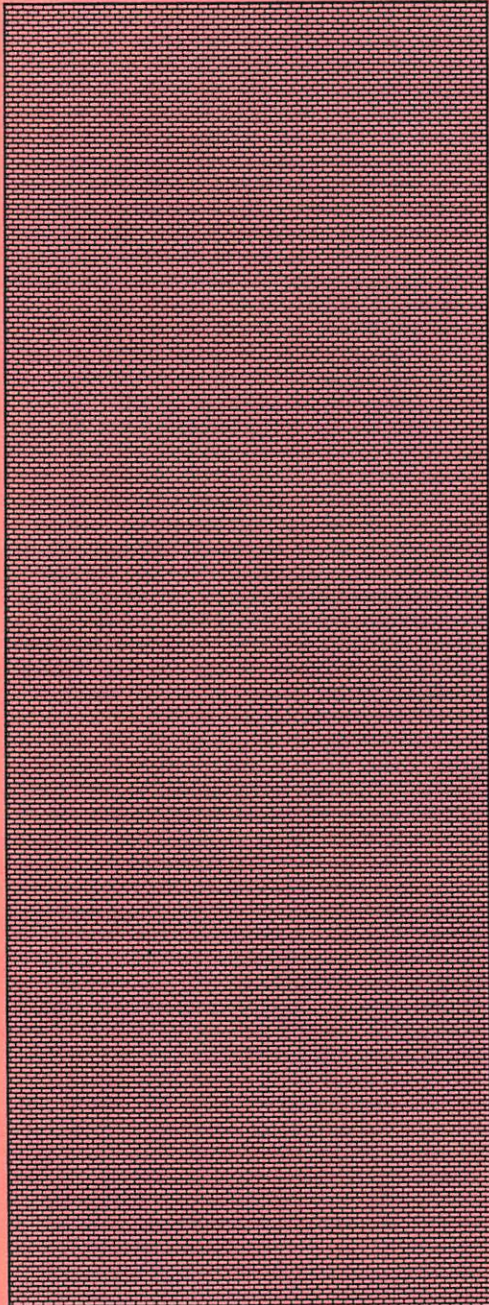
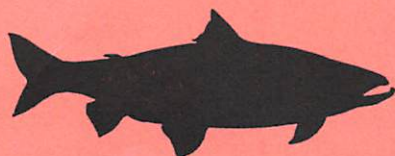
\* \* \* \* \*

(e) \* \* \* The form is available upon request from the Textile Section, Enforcement Division, Federal Trade Commission, 600 Pennsylvania Avenue,





UNITED STATES  
DEPARTMENT OF COMMERCE



1999  
SUMMARY OF  
CONDUCT RULES FOR  
MEMBERS OF  
FISHERY MANAGEMENT  
COUNCILS

U.S. Department of Commerce  
Office of the General Counsel, Ethics Division  
1401 Constitution Avenue, NW Room 5876  
Washington, D.C. 20230  
telephone (202) 482-5384

## **RULES OF CONDUCT FOR MEMBERS OF REGIONAL FISHERY MANAGEMENT COUNCILS**

As a member of a Regional Fishery Management Council, you serve on behalf of the Government and are held to a high standard of conduct to ensure public confidence in the actions of the Councils. The Fishery Management Councils were created by statute to create a means for cooperation among the Federal Government, state governments, and members of the public with expertise in commercial and recreational fishing and conservation in the creation of fishing policy. Although all members are expected to honestly and conscientiously work toward the fishing policy which is best for the nation, your role on the Council may vary depending on whether you are a voting or non-voting member—a regular Federal employee, a state official, or a public member who was nominated by a governor and appointed by the Secretary of Commerce. In recognition of these varying types of service, the applicable conduct rules will also vary.

Conduct rules cover financial conflicts of interest; misuse of Council resources, including information; bribes and similar payments; and, for some members, limits on representing others before the Federal Government both during Council service and after termination of such service.

The specific rules which apply to each type of member—public member, Federal official, and state government official—are summarized below.

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***If you have any questions about conduct rules or their application to a specific situation, you should seek guidance from the Regional Attorney assigned to provide advice to your Council.***

***You may also seek advice from an attorney in the Ethics Division of the U.S. Department of Commerce at (202) 482-5384, particularly with respect to Government-wide conflict of interest rules (including rules on bribes, misuse of resources, lobbying the Government, and post-service activities).***

***If you are a state government official, you should seek advice from the state office responsible for administering your state's ethics rules.***

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## RULES OF CONDUCT FOR PUBLIC MEMBERS

If you serve as a public member of the Council, you are considered a Federal employee for purposes of criminal conflict of interest statutes applicable to other United States Government employees. However, because of the unique nature of the Councils, which are composed of members of the public who have special expertise in fishing matters and who, in many cases, are from the commercial or recreational fishing industries, special ethics rules apply. For regular Federal employees, disqualification is usually the preferred method for avoiding a conflict of interest; however for Fishery Management Councils, in order to allow full participation by members of the public with knowledge of and experience in fishing matters, the method chosen by Congress to deal with conflicts of interest is full public disclosure of fishing interests and a system of appointment which encourages a diversity of views. However, as noted below, disqualification is required with regard to matters which will have a particular effect or a disproportionate effect on your financial interests relative to those of others in the fishing industry.

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### DISCLOSING FINANCIAL INTERESTS

**Public Financial Disclosure Report of Fishing Interests.** You are required to report any interest in a "harvesting, processing, or marketing activity" on a Financial Interest Form—NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members and Nominees of Regional Fishery Management Councils."

**When to Report.** You must file this report with the Executive Director of your Council:

- within 45 days of taking office,
- within 30 days of any acquisition of a financial interest or a substantial change in financial interests which are required to be reported, and
- February 1 of each year.

**What to Report.** You must list on this report any financial interest in a "harvesting, processing, or marketing activity" which you hold or which is held by your spouse, minor child, partner, or any organization (other than the Council) in which you serve as an officer, director, trustee, partner, or employee. More specifically, you must

report:

- stock, equity, and ownership interests in any
  - company or business engaged in any harvesting, processing, or marketing activity;
  - fishing vessel engaged in any harvesting, processing, or marketing activity;
  - equipment company or company that provides other services to any harvesting, processing, or marketing activity;in any fishery under the jurisdiction of your Council;
  
- employment with any
  - company or business engaged in any harvesting, processing, or marketing activity;
  - fishing vessel engaged in any harvesting, processing, or marketing activity;
  - equipment company or company that provides other services to any harvesting, processing, or marketing activity;
  - firm providing consulting, legal, or representational services to any entity engaged in, or providing equipment or services essential to, a harvesting, processing, or marketing activity;in any fishery under the jurisdiction of your Council; and
  
- employment with, or service as an officer, director, or trustee of, any
  - association whose members include companies, vessels, or other entities engaged in harvesting, processing, or marketing activities; and
  - company providing services to harvesting, processing, or marketing activitiesin any fishery under the jurisdiction of your Council.

Any other financial interest should not be reported. You should not report stock, equity, or other ownership interest in, or employment with, a firm or organization engaged in advocacy on environmental issues or in scientific fisheries research.

**Public Review of Reports.** You should file your completed report with the Executive Director of your Council. A copy will be sent by Council staff to the National Marine Fisheries Service (NMFS) Regional Administrator with jurisdiction over your Council; the NMFS Regional Attorney who advises your Council; the NMFS Office of Sustainable Fisheries; and the Ethics Division of the Office of the Assistant General Counsel for Administration, U.S. Department of Commerce.

Your report will be available for inspection by members of the public in the office of

the NMFS Regional Administrator for the geographic area of your Council, at Council offices, and at Council meetings and hearings. They will be retained for five years after termination of your last term in office.

**Importance of Filing a Complete and Timely Report.** The disclosure reports are an integral part of the system for exempting you from certain provisions of a criminal conflict of interest statute, as explained below. If you do not file a complete, accurate, and up-to-date report in a timely manner you may be required to refrain from participating in Council actions. If you participate in matters affecting a harvesting, processing, or marketing activity which was not properly disclosed, you may be subject to criminal penalties.

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## **FINANCIAL CONFLICTS OF INTERESTS**

**Basic Rule.** Generally, you are barred from participating personally and substantially on any matter as a Council member which will have a direct and predictable effect on your financial interests, or on the financial interests of your spouse; minor child; or general partner; or an organization in which you serve as an officer, director, trustee, general partner, or employee; or a person or entity with which you have an arrangement regarding future employment or are negotiating for future employment.

**Exceptions.** The requirement that you not participate in a matter affecting your financial interest does not apply if the interest is in the form of a security in a publicly-traded company and:

- the value of your interest in all affected parties is \$5,000 or less; or
- the value of your interest in each affected company is \$25,000 or less and your interest in all affected companies is \$50,000 or less and the matter at issue is a broad policy matter (rather than a matter involving specific parties); or
- the interest is held through a broadly-diversified mutual fund.

**Special Rules for Interests in Harvesting, Processing, and Marketing Interests.** Public disclosure, rather than disqualification, is the statutory method for a public member of a Fishery Management Council to deal with an interest in a fishery harvesting, processing, or marketing activity. Disqualification is not required, except with regard to two specific situations, as identified below.

You may fully participate as a Council member in a matter affecting your financial

interests provided that:

- (1) the interest in question is in a *harvesting, processing, or marketing activity*;
- (2) the interest has been reported on a Financial Interest Form (NOAA Form 88-195); and
- (3) the matter at issue:
  - (a) will not have an *expected and substantially disproportionate benefit* to your financial interest (or the financial interest of your spouse, minor child, partner, or any organization in which you serve as an officer, director, trustee, general partner, or employee) relative to the financial interest of other participants in the same gear type or sector of the affected fishery; and
  - (b) is not a matter *primarily of individual concern*.

Note that the exemption from disqualification requirements is directly tied to filing a Financial Interest Form. The exemption will not apply if you do not disclose your financial interests.

**Disqualification from Voting on Matters that Would Create an “Expected and Substantially Disproportionate Benefit.”** You may not vote on a Council decision that would have a significant and predictable effect on a financial interest disclosed on your Financial Interest Form. This applies to any matter in which there is a close causal link between the decision and an expected and substantially disproportionate benefit to your financial interest.

*Definition of “expected and substantially disproportionate benefit.”* A Council action will have an “expected and substantially disproportionate benefit” to you if you (or those whose interests are attributed to you) have:

- a greater than 10% interest in the total harvest of the fishery (or the sector of the fishery which is under consideration by the Council);
- a greater than 10% interest in the marketing or processing of the total harvest of the fishery (or sector of the fishery);
- full or partial ownership of more than 10% of the vessels using the same gear type within the fishery (or sector of the fishery).

The percentage of interest will be determined with reference to the most recent fishing year for which information is available, except that for fisheries in which

IFQs are assigned, the percentage of IFQs assigned will be determinative.

If you believe that these provisions require your disqualification from a matter, you may announce your disqualification (or recusal) at any time before the vote on the matter. If you have any question regarding the application of the rules to your situation, you may seek advice from the Regional Attorney who advises your Council or an attorney in the Ethics Division of the U.S. Department of Commerce. If you would like a determination as to whether an interest requires your disqualification, you may seek such a determination from the Regional Attorney who advises your Council using the procedures set forth below.

If you are disqualified from voting on a matter because the decision would have an expected and substantially disproportionate benefit on a harvesting, processing, or marketing interest which you have disclosed, you may, nevertheless, participate in Council and committee deliberations in the matter after notifying the Council that you will not be voting on the matter and after identifying the financial interest that would be affected.

**Procedures for Determinations Regarding an "Expected and Substantially Disproportionate Benefit."** You may ask for a determination as to whether a matter will have an expected and substantially disproportionate benefit to you (or those whose interests are attributable to you) from the Regional Attorney assigned to advise your Council (or such other attorney as designated by the National Oceanic and Atmospheric Administration). The Regional Attorney also, on his or her own initiative, may make such a determination. Neither you, nor another Council member, nor a member of the public may initiate a procedure regarding another Council member. However, you may provide written and signed information to the Regional Attorney indicating that initiation of such a procedure may be appropriate.

You should make a request for a determination:

- within a reasonable time before the Council meeting at which the matter at issue will be addressed, or
- during the Council meeting before the vote on the matter at issue.

You should make a request for a determination as far in advance of the Council meeting as possible in order to provide the Regional Attorney sufficient time to thoroughly examine and consider available information.

A Regional Attorney who receives reliable and probative written and signed information prior to a Council meeting relating to a disqualification determination (or during a Council meeting if the issue could not reasonably have been anticipated

prior to the meeting) will announce at the beginning of the meeting the receipt of such information, the nature of the information, and the identity of the person providing the information. This announcement will be made during the meeting if reliable and probative information is received after the beginning of the meeting.

If the Regional Attorney determines that you may not vote on a matter because it will have an expected and substantially disproportionate benefit to you (or anyone whose interests are attributed to you), you may not vote on the matter, but you may state for the record how you would have voted. You may also fully participate in deliberations and discussions regarding the matter (after notifying the Council of your disqualification and after identifying the financial interest that would be affected).

If you disagree with a determination by a Regional Attorney regarding yourself or any other Council member, you may file a written request with the NOAA General Counsel for review of the determination. Such a request must be received within ten days of the determination. A reversal of the determination will not affect any Council vote which has already been taken. The decision by the NOAA General Council may, however, provide useful guidance regarding future Council actions.

**Disqualification from Participating in Matters Primarily of Individual Concern.** You may not participate in any Council matter which is primarily of individual concern if you (or those whose interests are attributed to you) have a financial interest in the matter. This disqualification applies to participating in deliberations, rendering advice, and making recommendations, as well as voting on the matter. "Matters primarily of individual concern" are those matters which affect a small number of identified, or easily identifiable, parties, rather than broad policy matters affecting a large number of individuals.

For example, a contract between your Council and a company would be a matter primarily of individual concern; thus, you would be disqualified from participating in any Council actions regarding the contract matter if you had stock in the company or were employed by the company. A Fishery Management Plan would usually be considered a broad policy matter. However, if a fishery only had a few active vessels, a Fishery Management Plan regarding that fishery would be a matter primarily of individual concern and you would be required to disqualify yourself from participating in matters concerning the Plan if you owned one of the vessels.

This disqualification requirement is based on conduct regulations rather than a criminal conflict of interest statute.



## **BRIBES AND SIMILAR PAYMENTS**

You may not accept anything of monetary value in exchange for taking an action as a Council member or failing to take an action, other than payments from the United States Government in connection with your Council service. This restriction is based on the Federal criminal statute against bribery.

In addition, Council rules specify that you may not pay, offer, promise, 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 in obtaining for any person any appointive office, place, or employment under the Council.

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## **LOBBYING THE FEDERAL GOVERNMENT**

You may not communicate with a Federal agency or Federal court on behalf of someone else, including your employer or client, concerning a particular matter involving specific parties with the intent to influence Government action if you participated personally and substantially in the matter as a Council member. This restriction is based on a Federal criminal conflict of interest statute. You are also barred from receiving compensation for the representational activities of others regarding such matters (such as through a partnership distribution if some of the partnership's proceeds were derived from representational activities relating to specific-party matters on which you participated as a Council member).

Note that these restrictions on representing others and receiving payments for representations before the Government apply only to specific-party matters; they do not apply to broad policy matters in which you participate as a Council member. Thus, voting on a Fishery Management Plan does not restrict you from later contacting a Federal agency on behalf of a client or employer regarding the Plan (unless the specific Plan at issue affects only a few easily identifiable parties). This restriction does not apply to communications to Congress or state or local governments. It also does not apply to matters in which you did not participate.

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## **MISUSE OF COUNCIL RESOURCES AND INFLUENCE**

Council resources, like all Government resources, may only be used for official Government activities. This applies to use of supplies, equipment, staff time, and services, including telephone and fax services. You also have an affirmative duty to protect and preserve Council property.

You also must be careful not to disclose or use any nonpublic information which you learn in the course of your service to the Council, until such time as the Council or the Department of Commerce has authorized release of the information.

Furthermore, you may not use your position as a Council member or any authority you have as a Council member for personal purposes. You may not refer to your Council position in the course of conducting private activities and you may not use your Council title on any personal correspondence or business cards used for non-Council activities, except that you may refer to your position as incidental biographical information.

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### **RULES WHICH WILL APPLY AFTER LEAVING COUNCIL SERVICE**

There are a few rules which will apply even after you terminate your service with your Fishery Management Council; these concern lobbying and use of information.

**Lobbying Restriction.** After you leave Council service, you will be barred from communicating with any Federal agency or Federal court on behalf of someone else concerning a particular matter involving specific parties with the intent to influence Government action if you participated personally and substantially in the matter as a Council member. Note that this is the same as the anti-lobbying restriction which applies while you serve on the Council, although it is based on a different Federal criminal conflict of interest statute. You will also be barred for two years after leaving Council service from representing another before any Federal agency or court regarding a specific-party matter in which you did not personally participate, but which was pending in the Council during your term of service.

**Disclosure and Use of Nonpublic Information.** You will continue to be restricted after leaving Council service from disclosing or using nonpublic information you obtained through your Council service, until its release has been authorized by the Council or the Department of Commerce.

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### **GENERAL CONDUCT RULES**

In addition to the above specific rules, Council conduct regulations provide that you may not engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct.

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## **RULES OF CONDUCT FOR FEDERAL OFFICIALS**

If you serve on a Fishery Management Council as a regular Federal Government employee or officer, your service is considered part of your Government duties and you are subject to the same conflict of interest and ethics regulations which would apply regarding performance of any other Government tasks.

More specifically, you are subject to the provisions of criminal conflict of interest statutes which prohibit you from:

- accepting bribes (18 U.S.C. § 201);
- representing others before a Federal agency or court or accepting compensation for the representational activities of others (18 U.S.C. §§ 203 and 205);
- representing others before a Federal agency or court after you leave Federal service regarding a particular matter involving specific parties on which you or your subordinate worked, or regarding any matter before your agency if you are a senior employee (18 U.S.C. § 207);
- participating in matters affecting your financial interests (or the interests of your spouse, minor child, or general partner; or an entity for which you serve as an officer, board member, trustee, or employee; or a person or entity with whom you have an arrangement regarding future employment or are negotiating for future employment) (18 U.S.C. § 208); and
- accepting payments from a source other than the United States Government for performing your Federal duties (18 U.S.C. § 209).

Please note that, as with public members of Councils, you are not required to disqualify yourself from participating in a matter affecting your financial interests if the interest is a security in a publicly-traded company and the value is \$5,000 or less (or the issue is a broad policy matter and the interest is \$25,000 or less in any affected company and \$50,000 or less in all affected companies). However, the exception for public members which applies to interests in "harvesting, processing, and marketing activities" which are disclosed on a NOAA Form 88-195 Financial Interest Form does not apply to you.

You are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch or similar rules for members of the military services.

Under the Standards of Conduct, you may not:

- accept gifts from persons who are regulated by the Council on which you serve or who have interests in Council actions, or which are offered because of your Council position;
- participate in matters involving specific parties which would affect the financial interests of a member of your household;
- participate in matters involving specific parties if one of the parties is, or is represented by, a person with whom you have close family or business relationships, including a person with whom you have or are seeking business relations, a close relative or household member, the employer of your spouse, parent or dependent child; a recent former employer; or an organization in which you are an active participant;
- engage in outside activities inconsistent with your Council duties; or
- use Government resources, including Council resources, for unauthorized purposes.

There are a number of exceptions to these basic restrictions. You should seek advice from an ethics official if you have any question about any conduct rule or its application to a particular situation.

You are also subject to any supplemental ethics regulations issued by your agency.

Furthermore, you are also subject to restrictions on engaging in some political activities. In addition to being barred from participating in campaign activities during duty hours and while on Government premises, and from using Government resources for campaign purposes, you may not run for office in a partisan election (except as an independent candidate in certain jurisdictions) and may not solicit, accept, or receive campaign contributions. You may also be subject to restrictions concerning off-duty political activities, depending on your grade level and type of service. You should contact an ethics advisor from your agency for further guidance on such matters.

Also, like other Council members, you may not participate in matters primarily of individual concern and you may not engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct.

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## **RULES OF CONDUCT FOR STATE OFFICIALS**

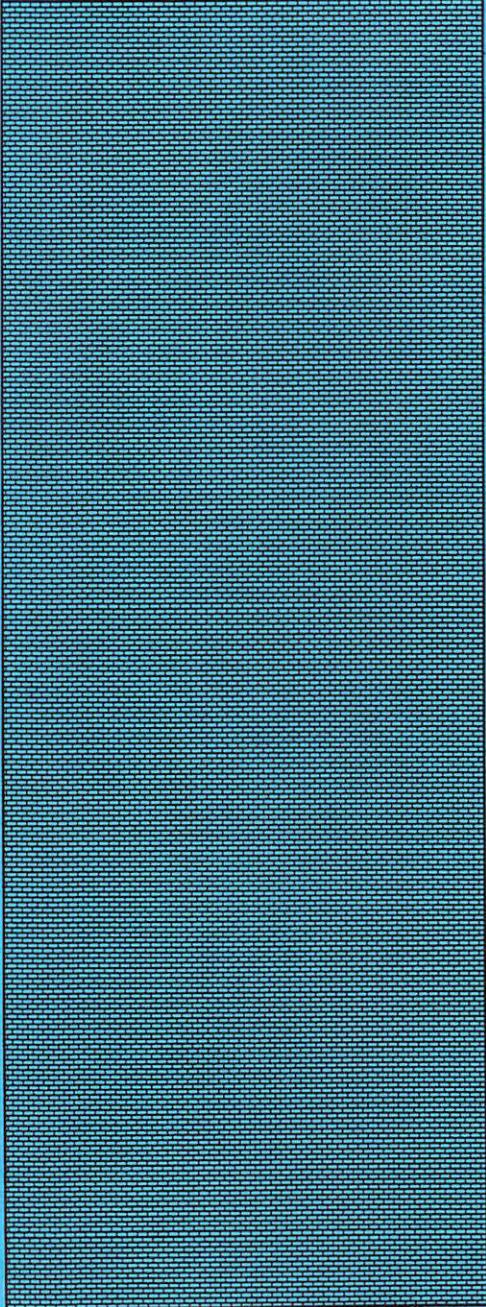
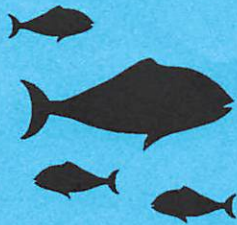
If you serve on a Fishery Management Council as an employee or officer of a state government, you are not subject to Federal conflict of interest statutes or conduct regulations which apply to Federal Government officials. However, you are subject to any state statutes or regulations which apply to your conduct as a state official.

In addition, Fishery Management Council rules provide that you may not:

- pay, offer, promise, 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 the promise of support or influence in obtaining for any person any appointive office, place, or employment under the Council;
  - use or allow the use, for other than official purposes, of information obtained through or in connection with your Council service that has not been made available to the general public;
  - engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct;
  - use Council property on other than official business;
  - participate personally and substantially in a matter primarily of individual concern; or
  - participate in any matter of general public concern that is likely to have a direct and predictable effect on your financial interests.
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UNITED STATES  
DEPARTMENT OF COMMERCE



1999  
SUMMARY OF  
CONDUCT RULES FOR  
STAFF OF  
FISHERY MANAGEMENT  
COUNCILS  
AND PERSONS WHO  
WORK WITH  
COUNCILS

U.S. Department of Commerce  
Office of the General Counsel, Ethics Division  
1401 Constitution Avenue, NW Room 5876  
Washington, D.C. 20230  
telephone (202) 482-5384

**RULES OF CONDUCT FOR  
REGIONAL FISHERY MANAGEMENT  
COUNCIL STAFF**

If you serve as an employee of a Regional Fishery Management Council, it is important that you maintain a high standard of conduct to ensure public confidence in the actions of the Councils.

You are considered a Federal employee for purposes of criminal conflict of interest statutes applicable to other United States Government employees. You are also subject to ethics regulations issued by the National Oceanic and Atmospheric Administration for all Regional Fishery Management Council employees. These statutory and regulatory conduct rules are summarized below.

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**FINANCIAL CONFLICTS OF INTERESTS**

**Disqualification Requirement—Basic Rule.** Under a conflict of interest statute, you are barred from participating personally and substantially on any matter as a Council employee which will have a direct and predictable effect on your financial interests, or on the financial interests of your spouse; minor child; or general partner; or an organization in which you serve as an officer, director, trustee, general partner, or employee; or a person or entity with which you have an arrangement regarding future employment or are negotiating for future employment.

**Exceptions.** The requirement that you not participate in a matter affecting your financial interest does not apply if the interest is in the form of a security in a publicly-traded company and:

- the value of your interest in all affected parties is \$5,000 or less; or
- the value of your interest in each affected company is \$25,000 or less and your interest in all affected companies is \$50,000 or less and the matter at issue is a broad policy matter (rather than a matter involving specific parties);  
or
- the interest is held through a broadly-diversified mutual fund.

Note that Council members are also generally required to disqualify themselves from matters affecting their financial interests, except those interests covered by the above exceptions and interests in harvesting, processing, and marketing activities which are reported on a Financial Interest Report (NOAA Form 88-195). The latter exception does not apply to your financial interests and you may not work on any matter concerning a harvesting, processing, or marketing interest, unless the interest is in a publicly-traded stock which is less than \$5,000 in value (or less than \$25,000 in value if the matter is a broad policy issue and the total value of holdings in all affected companies would be less than \$50,000) or is in a broadly-diversified mutual fund.

**Restriction on Investments and Financial Interests.** Under conduct regulations, you are barred from having a direct or indirect financial interest that interferes with the fair and impartial conduct of your Council duties. For purposes of this restriction, a financial interest includes an employment interest. An indirect interest includes a financial interest of your spouse or minor child.

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### **BRIBES AND SIMILAR PAYMENTS**

You may not accept anything of monetary value in exchange for taking an action as a Council employee or failing to take an action, other than payments from the United States Government in connection with your Council service. This restriction is based on the Federal criminal statute against bribery.

You are also barred by statute from receiving a supplementation of your Council salary from a source other than your Council or the Federal Government.

In addition, Council rules specify that you may not pay, offer, promise, 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 in obtaining for any person any appointive office, place, or employment under the Council.

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### **LOBBYING THE FEDERAL GOVERNMENT**

**Basic Rule Regarding Lobbying for Regular Council Employees.** If you serve for over 130 days per year as a Council employee, you are barred from representing others before a Federal agency or Federal court (unless allowed under an exception, as listed below). This means that you may not contact a Federal agency official or a Federal court official through a personal meeting, a telephone call, or in writing, on



behalf of someone else with the intent to influence Government action. You are also barred from receiving payments for such lobbying by others (such as if you are in a partnership and part of the partnership distribution is based on representational activities before a Federal agency or court).

**Exceptions to the Basic Rule.** You may contact a Federal agency or court official on behalf of:

- a non-profit organization composed primarily of Federal employees (including Council employees) or their families (unless the matter involves claims against the Government, proceedings in which the organization is a party, or Government financial benefits to the organization) (if you do not receive compensation for such services);
- a Council employee (or other Federal employee) in a personnel proceeding (if it is not inconsistent with your Council duties and if you do not receive compensation for such services); or
- your parent, spouse, or child, or an estate or trust you administer (if you receive prior approval in advance from the appropriate official).

**Rule Regarding Lobbying for Limited Service Council Employees.** If you serve for 130 days or less per year, you will be subject to restrictions on lobbying the Federal Government, and from receiving payment for lobbying activities of others. The restriction will vary depending on the duration of your service.

If you serve for 61-130 days per year, you are barred from representing others before a Federal agency or Federal court in any matter involving specific parties if:

- you participated personally and substantially in the matter as a Council employee; or
- the matter is pending before your Council.

If you serve for 60 days or less per year, you are barred from representing another before a Federal agency or Federal court in any matter involving specific parties if you participated personally and substantially in the matter as a Council employee.

You are also barred from receiving payments for such lobbying by others (such as if you are in a partnership and part of the partnership distribution is based on representational activities before a Federal agency or court).

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## **MISUSE OF COUNCIL RESOURCES AND INFLUENCE**

Council resources, like all Government resources, may only be used for official Government activities. This applies to use of supplies, equipment, staff time, and services, including telephone and fax services. You also have an affirmative duty to protect and preserve Council property.

You also must be careful not to disclose or use any nonpublic information which you learn in the course of your service to the Council, until such time as the Council or the Department of Commerce has authorized release of the information.

You also may not use your position as a Council employee or any authority you have as a Council employee for personal purposes. You may not refer to your Council position in the course of conducting private activities and you may not use your Council title on any personal correspondence or business cards used for non-Council activities, except that you may refer to your position as incidental biographical information.

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## **RULES REGARDING POLITICAL ACTIVITIES AND AFFILIATION**

You may not use your official authority as a Council employee or any influence derived from your position with a 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.

You may not be deprived of employment, position, work, compensation, or benefit provided for, or made possible by, the Magnuson Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election, or on account of your political affiliation.

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## **RULES WHICH WILL APPLY AFTER LEAVING COUNCIL SERVICE**

There are a few rules which will apply even after you terminate your service with your Fishery Management Council; specifically, they involve lobbying the Federal Government and disclosing nonpublic information.

**Lobbying Restriction.** After you leave Council service, you will be barred from communicating with any Federal agency or Federal court on behalf of someone else

concerning a particular matter involving specific parties with the intent to influence Government action if you participated personally and substantially in the matter as a Council member. Note that this is similar to the anti-lobbying restriction which applies while you serve with the Council. You will also be barred for two years after leaving Council service from representing another before any Federal agency or court regarding a specific-party matter in which you did not personally participate but which was pending under your responsibility during your service on the Council, such as if a subordinate of yours worked on the matter.

**Nonpublic Information.** You will continue to be restricted after leaving Council service from disclosing or using nonpublic information you obtained through your Council service, until its release has been authorized by the Council or the Department of Commerce.

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### GENERAL CONDUCT RULES

In addition to the above specific rules, Council conduct regulations provide that you may not engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct.

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***If you have any questions about conduct rules or their application to a specific situation, you should seek guidance from the Regional Attorney assigned to provide advice to your Council.***

***You may also seek advice from an attorney in the Ethics Division of the U.S. Department of Commerce at (202) 482-5384, particularly with respect to Government-wide conflict of interest rules (including rules on bribes, misuse of resources, lobbying the Government, and post-service activities).***

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**RULES OF CONDUCT FOR  
PERSONS WHO WORK WITH A  
FISHERY MANAGEMENT COUNCIL**

If you serve on a committee or panel of a Regional Fishery Management Council, or if you provide services under contract to a Fishery Management Council, you are not considered a Federal employee or a Council employee for purposes of the conduct statutes and regulations. However, in order to maintain public confidence in the Fishery Management Council system and Government actions regarding regulation and conservation of fishery resources, it is important that you maintain a high standard of conduct.

You are also subject to certain restrictions on your activities, as explained below.

**MISUSE OF GOVERNMENT RESOURCES**

Council resources, like other Government resources, may only be used for official authorized Government activities. This includes use of:

- Council equipment (including computers and photocopying machines);
- Council supplies (including Council stationery);
- Council services (including telephone and fax services); and
- the time of Council personnel.

If you are working in a Council office, you should be mindful to preserve Council property. If you are entitled to reimbursement from the Council or the Department of Commerce for certain expenditures, such as travel costs, you must ensure that all charges you claim are legally authorized.

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**MISUSE OF COUNCIL INFORMATION**

Information you obtain as part of your work with a Fishery Management Council may not be used for your private activities or disseminated to persons outside the Council unless they are specifically authorized to receive the information. This includes:

- nonpublic fisheries data and proprietary information;
- nonpublic economic or scientific analyses;

- private personnel information;
- source selection and other nonpublic procurement information; and
- other nonpublic information.

Government information is another form of Government property. Just as Government supplies and equipment may not be used for personal activities, information obtained by the Government may only be used for Government programs. Release or dissemination of such information must be authorized by a Federal official. Improper use or release may result in criminal charges (for example, for misuse of national security information) or civil liability (for example, for misuse of business proprietary information).

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### **MISUSE OF COUNCIL AFFILIATION**

You may not use your association with a Fishery Management Council, including business contacts obtained through your work with the Council, to try to obtain personal benefits or favors for yourself, friends, relatives, or business associates.

Because you are not a Council or Federal employee, you may not represent that you serve or act on behalf of the Council or the Federal Government, unless authorized to do so. You may not use your association with a Council to imply that the Council endorses your personal activities. Therefore, you should not refer to a Fishery Management Council on your business card unless your relationship with the Council is made clear.

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### **ADDITIONAL RULES**

Additional rules may apply depending on the specific arrangement or agreement between you or your employer and a particular Council. For example, a clause in a contract under which you provide services to the Government may subject you to additional conduct restrictions.

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***If you have any questions about conduct rules, you should seek guidance from the Regional Attorney assigned to provide advice to your Council. You may also seek advice from an attorney in the Ethics Division of the U.S. Department of Commerce at (202) 482-5384.***

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