

Annual Briefing on Magnuson-Stevens Act Financial Disclosure and Recusal Requirements

Presented by
NOAA Office of General Counsel, Alaska Section

Why is the Council receiving this briefing?

- ▶ The Department of Commerce Office of Inspector General issued a report in January 2013 that reviewed, among other things, NOAA Fisheries' requirements and processes for financial disclosure and recusal.
- ▶ Based on this review, the Inspector General recommended that NOAA Fisheries improve transparency and strengthen its policy guidance and processes for financial disclosure, restrictions on voting, and review of financial disclosure forms.
- ▶ As part of implementing these recommendations, the agency tasked NOAA General Counsel with providing an annual briefing on financial disclosure and recusal requirements to the Fishery Management Councils.

What does the Magnuson-Stevens Act require?

Section 302(j) of the Magnuson-Stevens Act requires an *affected individual* to:

- ▶ Disclose relevant financial interests, and
- ▶ Recuse himself or herself from voting on a Council decision that would have a significant and predictable effect on the individual's financial interests.

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Who are “*affected individuals*”?

For the North Pacific Council, “affected individuals” are:

Those Council members nominated by the Governor of a State or appointed by the Secretary of Commerce to serve as a voting member on the Council.

Does not include the NMFS representative or the State officials for Alaska, Washington, and Oregon.

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What financial interests must be disclosed?

- ▶ Must disclose *harvesting, processing, lobbying, advocacy, or marketing activity* that is being, or will be, undertaken within any fishery over which the Council has jurisdiction.
- ▶ Must disclose if interests are held by:
 - the affected individual,
 - the affected individual's spouse, minor child, or partner; or
 - any organization in which the affected individual is serving as an officer, director, trustee, partner, or employee.
- ▶ Disclosure of financial interests protects the affected individual from conflict of interest laws.

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When must financial interests be disclosed?

- ▶ Within 45 days of taking office;
- ▶ Within 30 days of any change to the affected individual's financial interests; and
- ▶ Annually by February 1st regardless of whether an affected individual's financial interests have changed

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When is an affected individual recused from voting?

When a *Council decision* would have a *significant and predictable effect* on a financial interest required to be disclosed.

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“*Council decision*” is defined as:

- ▶ Approval of an FMP or FMP amendment;
- ▶ Request for changes to regulations implementing an FMP;
- ▶ Finding that a fishery emergency exists, including recommendations for responding to the emergency; and
- ▶ Comments to the Secretary on Secretarial FMPs or FMP amendments.

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“Significant and Predictable Effect”
means:

A close causal link between the Council decision and an “expected and substantially disproportionate benefit” to the individual’s financial interest relative to the financial interests of other participants in the same gear type or sector of the fishery.

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“An expected and substantially disproportionate benefit” means a quantifiable positive or negative impact as indicated by:

- ▶ A greater than 10% interest in the total harvest of the fishery or sector of the fishery in question;
- ▶ A greater than 10% interest in the marketing or processing of the total harvest of the fishery or sector of the fishery in question; or
- ▶ Full or partial ownership of more than 10% of the vessels using the same gear type within the fishery or sector of the fishery in question.

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Who initiates recusal determinations?

- ▶ An affected individual can request a determination from NOAA General Counsel, or
- ▶ NOAA General Counsel can initiate a determination.

An affected individual is encouraged to contact the NOAA General Counsel Alaska Section as soon as possible for a determination if he or she thinks the Council decision could have a significant and predictable effect on his or her financial interests.

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What happens if I am recused from voting?

- ▶ You 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.
- ▶ You may state for the record how you would have voted on the Council decision

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Can NOAA GC's recusal determinations be reviewed?

Yes. Any Council member may file a written request to the NOAA General Counsel for review of the determination.

A request for review must be received within 10 days of the determination.

Reversal of a determination may not be treated as cause for the invalidation or reconsideration by the Secretary of a Council's decision.

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How are the Council and public made aware of recusal determinations?

NOAA GC Alaska Section sends an email to the Council prior to each Council meeting announcing:

- Whether any agenda item constitutes a "Council decision;"
- Whether any Council members are required by the regulations to recuse themselves from voting on a Council decision; and
- The deadline for requesting a review of the recusal determination.

These emails are then made publicly available under the NMFS B Report agenda item.

Additional agency guidance on the recusal determination process is anticipated in 2017.

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Are there consequences for not complying with the financial disclosure and recusal requirements?

An affected individual may be subject to:

- ▶ Criminal and civil penalties at 18 U.S.C. § 216 if the individual's conduct constitutes an offense of 18 U.S.C. § 208.
- ▶ Magnuson-Stevens Act penalties if the individual's conduct violates § 307(1)(O) by:
 - Knowingly and willfully failing to disclose, or falsely disclosing, any financial interest required to be disclosed under the MSA, or
 - Knowingly voting on a Council decision that would have a significant and predictable effect on the individual's financial interests.
- ▶ Removal from the Council under 50 C.F.R. § 600.235(i).

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Where can I get more information?

- ▶ Magnuson-Stevens Act provisions governing financial disclosure and recusal can be found at 16 U.S.C. § 1852(j)
- ▶ Regulations governing financial disclosure and recusal can be found at 50 C.F.R. §§ 600.225 and 600.235
- ▶ The financial disclosure form can be found at:
http://www.nmfs.noaa.gov/sfa/management/councils/financial_disclosure/financial_disclosure_form.pdf
- ▶ Completed NPFMC member disclosure forms can be found at:
<http://www.npfmc.org/wp-content/PDFdocuments/membership/Council/CouncilFinancialDisclosures.pdf>
- ▶ Information on the financial disclosure form and FAQs can be found at:
http://www.nmfs.noaa.gov/sfa/management/councils/financial_disclosure/financial_disclosure.html#acc2
- ▶ NOAA General Counsel Alaska Section Contact: Lauren Smoker, lauren.smoker@noaa.gov or 907-586-7019

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