

Executive Director's Report

Ecosystem Committee

The Ecosystem Committee will meet on January 21-22 (Thursday-Friday) in Anchorage at the Hilton Hotel. Four major topics will include the NMFS Ecosystem Panel Report, regime shift/climate variability and fisheries in the Northeast Pacific, marine reserves, and time/area dispersal of fisheries. Helen has reserved a room block at the hotel under the Council's name at the rate of \$75 plus tax/night. You can reserve a room directly with the hotel by calling 907-265-7152. Be sure to tell them you're booking under the North Pacific Fishery Management Council room block.

Board-Council Joint Committee

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This joint committee will meet in Anchorage on January 13 to cover a broad array of topics such as halibut, groundfish, scallops, crab, and sharks, as well as receive an update on the American Fisheries Act and Steller sea lion protection. A draft agenda is included here as item B-1(a).

February Council Meeting

The February Council plenary session will commence on Wednesday, February 3, here in Anchorage. We will meet the day ahead, Tuesday, with the Board of Fisheries in our annual joint meeting. The AP and SSC will begin on Monday. It will be a very full agenda for the Council, so be prepared to stay through the following Monday.

Travel Claims

Please submit your travel claims for this meeting as soon as possible so that our year-end reports can be completed in a timely manner.

Recusal Regs

Just when we thought they had gotten lost somewhere in D.C., the recusal regulations for Council members have popped up as a final rule in the Federal Register on November 19, 1998. They take effect on February 17, 1999, so be prepared for NOAA GC to arrive at the April meeting fully bedecked with a whistle and referee flags. The FR notice is under item B-1(b).

Salmon Overfishing Definition

Item B-1(c) is a letter to us from Terry Garcia, Deputy Administrator for NOAA. He points out that the analysis accompanying the salmon overfishing amendment needs revision to allow the agency to determine whether it complies with the national standards. The Alaska Fisheries Science Center is working with ADF&G on the issue right now. All eight councils received individual letters detailing what still needed to be done by the particular Council to comply with the Sustainable Fisheries Act. It has stirred up quite a fuss with several of the other councils, an example of which can be found in item B-1(d) which is the NOAA-New England Council exchange of letters.

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.

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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-STEVENSON 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



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Oceans and Atmosphere
Washington, D.C. 20230
AGENDA B-1(c)
DECEMBER 1998

Mr. Richard B. Lauber
Chairman, North Pacific Fishery
Management Council
605 West Fourth Avenue
Anchorage, Alaska 99501

NOV 16 1998
RECEIVED
NOV 23 1998
N.P.F.M.C.

Dear Mr. Lauber:

On October 11, 1998, we reached a major milestone in the revitalization of the Nation's marine resources and fishing industry. That date was the statutory deadline for submitting amendments to all fishery management plans (FMPs) to comply with the provisions of the Sustainable Fisheries Act (SFA). As you know, the SFA represents a major policy shift by the U.S. Government to ensure that we achieve the greatest long-term benefits for the Nation from our fishery resources. The SFA presents us with a great responsibility and also a great opportunity to correct the overfished condition of many of our most important stocks. Fishermen and dependent communities, in particular, are relying on us to succeed. This is a responsibility we must satisfy and an opportunity we cannot afford to miss.

I am pleased to say that, for the most part, we have met this tremendous challenge and are well on the way to achieving the goals of the SFA. This success has been the result of a great deal of hard work and dedication by many individuals associated with the Councils and the National Oceanic and Atmospheric Administration (NOAA). This letter acknowledges receipt of your Council's essential fish habitat amendments and overfishing amendments for groundfish, crab, and scallop.

Unfortunately, we have not yet achieved complete success. A number of FMPs and amendments have not yet been submitted as complete packages. In the case of the North Pacific Council, this applies to Amendment 6 to the FMP for High Seas Salmon off Alaska. Every day we delay in amending and implementing these FMPs to rebuild overfished stocks and address bycatch and other provisions causes us to forego valuable benefits and prolongs the period of reduced catches, revenue, and economic activity for our fishermen and dependent communities.

We recognize the Council developed Salmon Amendment 6 to define overfishing with the intent of deferring salmon management to the State of Alaska. An Environmental Assessment (EA) was developed incorporating State salmon management policies. However, there is concern that this document is not sufficiently complete for us to determine compliance with the national standards. The North Pacific Council must take immediate action through consultations with the National Marine Fisheries Service and the State to revise the EA.



THE DEPUTY ADMINISTRATOR

I look forward to receiving the Council's completed amendments in the near future. As always, we in NOAA are ready to assist you in any way possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry D. Garcia". The signature is stylized and cursive, with a large initial "T" and "G".

Terry D. Garcia

New England Fishery Management Council

5 Broadway, Saugus, MA 01906-1036
Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancaleone

Executive Director
Paul J. Howard

December 3, 1998

Mr. Terry D. Garcia
U.S. Department of Commerce
The Assistant Secretary for Oceans and Atmosphere
Washington, D.C. 20230

Dear Mr. Garcia:

I am writing in response to your letter of November 16, 1998 to update you on the progress the New England Council has made to complete the remaining tasks associated with meeting the requirements of the Sustainable Fisheries Act. While the Council bears responsibility for several of the delays, the majority are directly related to a lack of timely scientific information, previous advice from the Regional Office that appears to contradict your letter and the necessity for procedures that have been articulated by the National Marine Fisheries Service only after the formal submission of documents. In the future, I believe that better overall cooperation and coordination is called for if we are to collectively develop successful fishery management plans.

As to the completeness of Amendment 9 to the Multispecies FMP, the Council established an Overfishing Definition Review Panel to develop overfishing definitions with all the new and required SFA biological reference points. The panel included renowned scientists from academia, the NEFSC, states and the Council staff. They did a stand-up job. For those species with adequate scientific information, quantitative reference points for biomass and fishing mortality were used. For the many species with inadequate scientific information, proxies for abundance and fishing mortality were used. The Panel developed overfishing definitions for all the New England Council-managed species except Gulf of Maine winter flounder. The Panel could not recommend an overfishing definition because the available information was ambiguous as to the status of the stock or what would be reasonable reference points. The Council anxiously awaits the collection of additional scientific information for GOM winter flounder and other further revisions to analyses. We will proceed with further development when it is available.

Amendment 12 to the Multispecies FMP proposes new management measures for the whiting, red hake and white hake small mesh fisheries. The scientific information available to the Council for these species is inadequate to develop effective management measures. Consequently, submission is behind schedule. Amendment 12 will be submitted in early February 1999 (approximately four months late).

In regard to the Atlantic Salmon FMP, the Acting Regional Administrator in his letter of October 15, 1998 acknowledged that the Council and NMFS had done everything within their authority to rebuild salmon. This letter further stated to the Council that "no further action is required at this time to comply with the rebuilding provision of the MSA (Section 304[c])". In addition, the Council was informed by the Regional Office that, since there is an absolute prohibition on fishing in the EEZ for Atlantic salmon, we need only address habitat and a new overfishing definition to be in compliance with the SFA. The Council submitted these two requirements by the mandated deadline. I'd appreciate some clarification in this matter.

In regard to the EFH amendment for monkfish, the Council has already taken the action you suggested. I reluctantly sent a letter to the Acting Regional Administrator on November 13, 1998 asking that monkfish be temporarily withdrawn from our omnibus FMP amendment package for EFH. The Mid-Atlantic Council had approved the Monkfish FMP submission package in August but they did not take a formal vote on monkfish EFH. The Mid-Atlantic Council Chairman and Executive Director both agreed that the plan should not be held up because of this formality, since the Council had the EFH document and several EFH public hearings were conducted in the Mid-Atlantic region. However, as NMFS recommended, the Mid-Atlantic Council will now take a formal vote at their next Council meeting on December 15, 1998. I don't believe it is necessary or prudent to hold up Secretarial review of the rest of our EFH package, which amends all of our individual species plans, because of monkfish. As such, I don't understand why the Secretarial review has not already begun for everything except monkfish.

Again, I am disappointed with the substance of your letter. It fails to recognize the Council's strenuous efforts to meet the SFA requirements by simultaneously preparing two new FMPs (herring and monkfish), six amendments (9 and 12 to the Multispecies FMP; 5, 6, and 7 to the Sea Scallop FMP and EFH) and seven framework adjustments (FAs 22 through 27 to the Multispecies FMP, and FA 10 to the Sea Scallop FMP). All of this was accomplished during the course of the last two years. It also distances NOAA and NMFS from the problems at hand by not recognizing their responsibilities in the FMP development process. I believe we can rebuild depleted stocks and achieve sustainable fisheries, but we can't do it without adequate scientific information and a strong partnership among the industry, public, NMFS, and the Council.

Finally, I'd like to take you up on your offer of assistance. I believe the continued disregard of the Secretarial requirement to provide our Council with a SAFE Report has contributed to these few delays in meeting the SFA requirements. I ask that you support the Council in its efforts to acquire an annual SAFE Report. Notwithstanding your letter of November 16, 1998, the New England Council will continue to work closely with the Regional Office and the Northeast Fisheries Science Center to address the few remaining SFA compliance issues.

Sincerely,



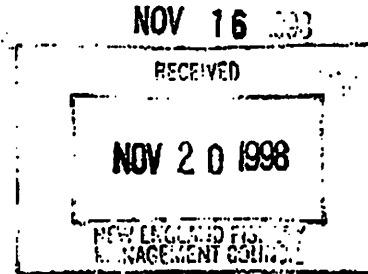
Joseph M. Brancaleone
Chairman



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

(1)

Mr. Joseph M. Brancaleone
Chairman, New England Fishery
Management Council
5 Broadway
Saugus, Massachusetts 01906



Dear Mr. Brancaleone:

On October 11, 1998, we reached a major milestone in the revitalization of the Nation's marine resources and fishing industry. That date was the statutory deadline for submitting amendments to all fishery management plans (FMPs) to comply with the provisions of the Sustainable Fisheries Act (SFA). As you know, the SFA represents a major policy shift by the U.S. Government to ensure that we achieve the greatest long-term benefits for the Nation from our fishery resources. The SFA presents us with a great responsibility and also a great opportunity to correct the overfished condition of many of our most important stocks. Fishermen and dependent communities, in particular, are relying on us to succeed. This is a responsibility we must satisfy and an opportunity we cannot afford to miss.

I am pleased to say that, for the most part, we have met this tremendous challenge and are well on the way to achieving the goals of the SFA. This success has been the result of a great deal of hard work and dedication by many individuals associated with the Councils and the National Oceanic and Atmospheric Administration (NOAA).

Unfortunately, we have not yet achieved complete success. A number of FMPs and amendments have not yet been submitted as complete packages. In the case of the New England Council, this applies to Amendment 9 to the Multispecies FMP, amendment 12 to the Multispecies FMP, and the Atlantic Salmon FMP pertaining to all SFA provisions. The Northeast Regional Office of the National Marine Fisheries Service has determined that further revisions to analyses are necessary for Amendment 9 to the Multispecies FMP and various SFA requirements other than essential fish habitat (EFH) have not been submitted for Atlantic salmon. Amendment 12 to the Multispecies FMP still has to be submitted for Secretarial review. The EFH amendment for monkfish should be withdrawn from your omnibus FMP amendment package for EFH so that Secretarial review can begin for that package; the monkfish amendment would be submitted once the Mid-Atlantic Council has approved it. Every day we delay in amending and implementing these FMPs to rebuild overfished stocks and address bycatch and other provisions causes us to forego valuable benefits and prolongs the period of reduced catches, revenue, and economic activity for our fishermen and dependent communities.



THE DEPUTY ADMINISTRATOR

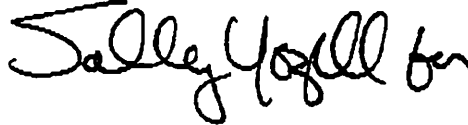
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2

The New England Council must take immediate action to complete necessary amendments to its FMPs in accordance with the requirements of law. It is far better for the Council to meet Congressional mandates than to have the Secretary of Commerce assume responsibility for completing the necessary amendments. If the Council fails to provide the necessary amendments promptly, however, we will be forced to take appropriate steps to comply with the SFA.

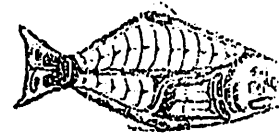
I look forward to receiving the Council's completed amendments in the near future. As always, we in NOAA are ready to assist you in any way possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry D. Garcia". The signature is written in a cursive, somewhat stylized font.

Terry D. Garcia

News Release



December 8, 1998

P.O. BOX 95009, SEATTLE, WASHINGTON 98145-2009

IPHC Commission Staff Releases 1999 Commercial Catch Limit Recommendations

The International Pacific Halibut Commission (IPHC) and its staff have reviewed results of the 1998 halibut stock assessment analysis. The 1999 staff recommendations are a 1.6% increase in coast-wide quota, to 73.04 million pounds. The table below presents the 1998 catch limits and the staff proposed 1999 catch limits for each regulatory area. The stock assessment results show higher biomass to the western portion of the stock range and lower biomass in much of the southern portion. This results in smaller recommendations for Areas 2A, 2B, and 3A. Area 2C shows a small increase while Areas 3B and 4 show larger increases. The current stock assessment procedure accounts for slower halibut growth rates in recent years, and incorporates bycatch mortality of legal-sized halibut, results from research surveys, and a revised estimate of natural mortality.

These recommendations, along with public and industry views on them, will be considered by IPHC Commissioners and their advisors at the IPHC Annual Meeting in Prince Rupert, BC Canada during January 25-28, 1999. These recommendations may be updated for the annual meeting, as final data are included in the assessment, but are not expected to change significantly. Proposals regarding the quotas or other regulatory action can be mailed to the IPHC offices by January 4, 1999 for inclusion in the meeting discussions.

For additional information, including discussions of stock assessment model assumptions, items of concern, apportionment of biomass in Areas 3B and 4, and tables summarizing these results please go to the IPHC web page (www.iphc.washington.edu) for a copy of a report entitled Preliminary 1999 Catch Limit Recommendations. Additionally, the paper is available at the Commission offices. Please request the Preliminary 1999 Catch Limit Recommendations paper (seven pages) to have it mailed or faxed.

....continued

1999 IPHC Staff Catch Limit Recommendations

Regulatory Area	1998 Catch Limit	1999 Staff Recommended
2A	0.82	0.66 ¹
2B	13.00	11.22
2C	10.50	10.67
3A	26.00	24.73
3B	11.00	13.38
4A	3.50	4.31
4B	3.50	3.97
4CDE	3.50	4.10 ²
Total	71.82	73.04

¹ Area 2 recommendations include all removals designated in the PFMC catch sharing plan

² Individual regulatory quotas for Areas 4C, 4D, and 4E are designated by the NPFMC catch sharing plan

- END -

Bruce M. Leaman, Director

Phone: (206) 634-1838

Fax: (206) 632-2983