

Briefing on Magnuson-Stevens Act Financial Disclosure and Recusal Requirements

Presented by
NOAA Office of General Counsel, Northwest Section

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.

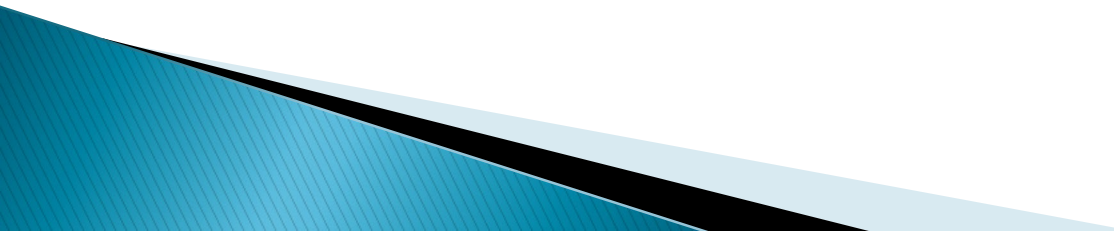
Who are “affected individuals”?

- ▶ For the 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 and any Tribal representative “who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government”

- ▶ Does not include the NMFS representative or the State officials for California, Idaho, Washington, and Oregon.

Why must I disclose my financial interests?

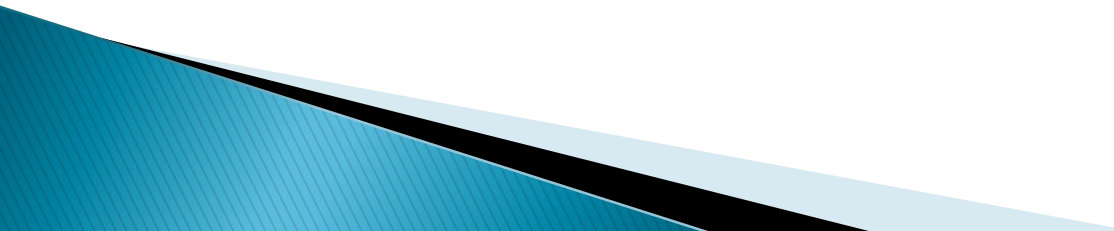
- ▶ Financial disclosure provides important information on your background and financial interests in the fisheries managed by your Council
 - ▶ Financial disclosure satisfies Magnuson-Stevens Act requirements and allows you to participate in and vote on fishery matters that would otherwise present a conflict of interest.
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What financial interests must be disclosed?

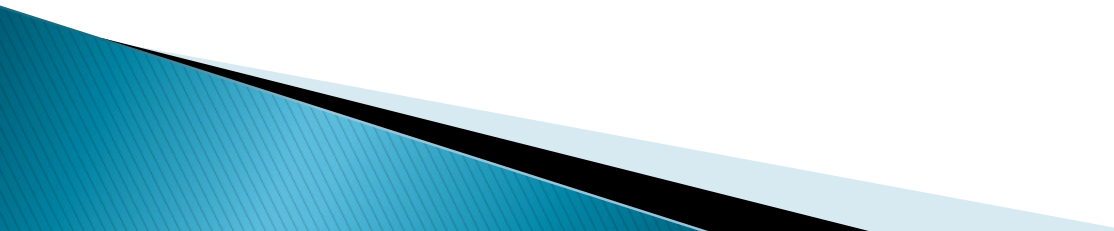
- ▶ In general, you must disclose:
 - ownership in, or employment with, any company engaged in *harvesting, processing, lobbying, advocacy, or marketing activity* that is being, or will be, undertaken in any fishery under the jurisdiction of the Council
 - employment with, or service as an officer, director, or trustee of, an association or organization whose members participate in the fisheries
 - entities that participate in the fisheries and that own, or are owned by, your employer or your company
- ▶ The regulations and financial disclosure form provide specific detail on what must be disclosed

Whose financial interests must be disclosed?

You must disclose relevant financial interests held by:

- you,
 - your spouse, minor child, or partner; and
 - any organization in which you are serving as an officer, director, trustee, partner, or employee.
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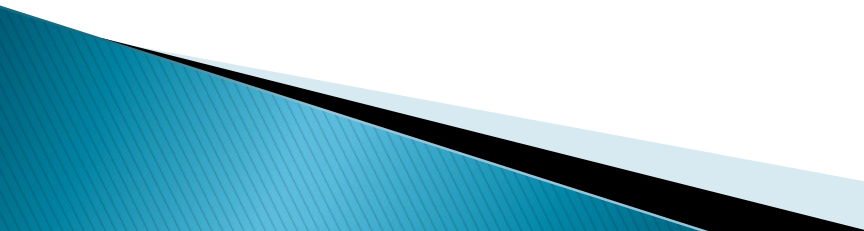
When must financial interests be disclosed?

- ▶ 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.

MSA section 302(j)(7)(A)



“Significant and Predictable Effect” is defined as:

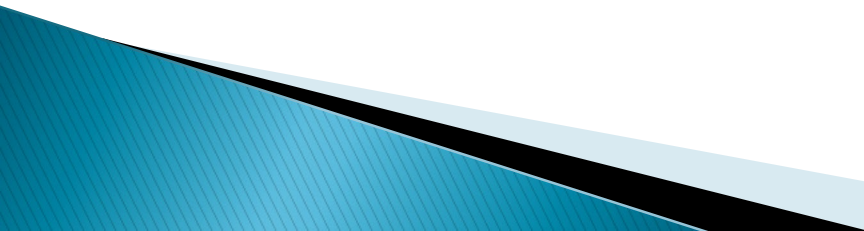
A close causal link between the Council decision and an *expected and substantially disproportionate benefit* to the individual’s financial interest relative to the financial interests of other participants in the same gear type or sector of the fishery.

MSA section 302(j)(7)(A).

Multi-step test for recusal determinations

- ▶ **Step One**: Is there a Council decision?
- ▶ **Step Two**: Is there a Council member with a financial interest in the fishery affected by the Council's action?
- ▶ **Step Three**: Is there a *close causal link* between the council decision and the Council member's financial interests?
- ▶ **Step Four**: Is there an *expected and substantially disproportionate benefit* to the Council member's financial interests?

If the answer to any of these questions is “no,” a voting recusal is not required.



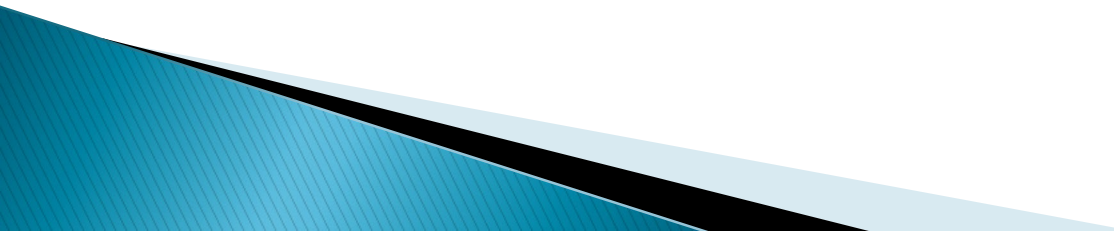
“Significant financial interest” is defined as

- ▶ A greater than 10% interest in the total harvest of the fishery or sector of the fishery affected by the Council decision;
- ▶ A greater than 10% interest in the marketing or processing of the total harvest of the fishery or sector of the fishery affected by the Council decision; 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 affected by the Council decision.

Who initiates recusal determinations?

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

You are encouraged to contact your NOAA General Counsel as soon as possible for a determination if you think a Council decision could have a significant and predictable effect on your financial interests.



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

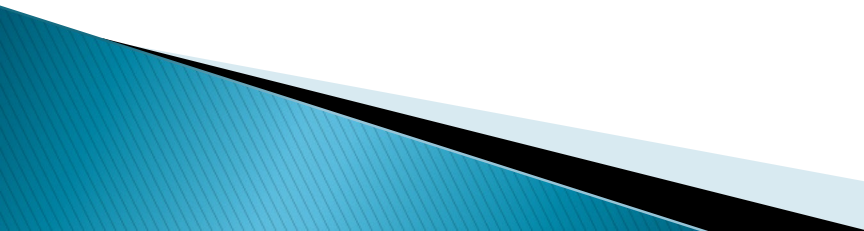
Can NOAA GC's recusal determinations be reviewed?

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.

The NOAA General Counsel has 30 days from the date of receipt of the request for review to complete the review and issue a decision.

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



Regional recusal determination procedure handbooks

- ▶ New regulations require Regions to develop a recusal determination procedure handbook.
- ▶ The Handbook will explain the typical process and procedure followed in preparing and issuing recusal determinations.
- ▶ Developed by NOAA GC in consultation with the Region
- ▶ Drafts submitted to the Executive Director for comments, which may occur at a Council meeting

Regional recusal determination procedure handbooks: Contents

- ▶ A description of the process for identifying the fishery or sector of the fishery affected by the action before the Council.
- ▶ A description of the process for preparing and issuing a recusal determination relative to the timing of a Council decision.
- ▶ A description of the process by which the Council, Council members, and the public will be made aware of recusal determinations.
- ▶ A description of the process for identifying the designated official(s) who will prepare recusal determinations and attend Council meetings.

Regional recusal determination procedure handbooks: Goals

- ▶ Transparent process that is clear for Council members and the public
- ▶ A framework that does not impose unnecessary process and time, but is available should future issues arise
- ▶ Frontload process to determine if a Council member has foreseeable recusal issues

In addition to the MSA, 50 C.F.R. § 600.225(b)(9) states:

- ▶ “No Council member may participate personally and substantially as a member ... 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.”
- ▶ This provision implements the prohibitions contained in the criminal conflict of interest statute found at 18 U.S.C. 208.

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

You may be subject to:

- ▶ Criminal and civil penalties at 18 U.S.C. § 216 if your conduct constitutes an offense of 18 U.S.C. § 208.
- ▶ Magnuson-Stevens Act penalties if your 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).

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
- ▶ NMFS Policy Directives:
https://media.fisheries.noaa.gov/2021-10/PD%20001-116-01_final%20for%20Denit%20signature_KD.pdf
https://media.fisheries.noaa.gov/2021-11/NMFS%20PD%20001-116_final%20revised.pdf
- ▶ Completed PFMC member disclosure forms can be found at:
<https://www.pcouncil.org/navigating-the-council/membership-groups-and-staff/council-members/>