



Mid-Atlantic Fishery Management Council

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MEMORANDUM

Date: January 26, 2024
To: Council
From: Chris Moore, Executive Director
Subject: Legal Review, Financial Disclosure, and Recusal Training

On Tuesday, February 7, the NOAA Office of General Counsel will provide a briefing on the Magnuson-Stevens Act financial disclosure and recusal requirements, as well as a review of the litigation process for Council actions. More information is provided in the attached FAQs and at the links below.

- [50 CFR § 600.2335 – Financial Disclosure and Recusal Regulations](#)
- [Policy Directive 01-116-01 – Procedures for Review of Financial Disclosures and Recusal Determinations](#)
- [NOAA Office of General Counsel, Northeast presentation](#)

Frequent Questions: Financial Disclosure and Financial Interests Form



Council nominees and members of the Science and Statistical Committees must file a Statement of Financial Interests to fulfill the requirements of the MSA. Learn more about these requirements below.

What fishing-related financial or ownership interests do I report on the Statement of Financial Interests form?

You are required to report any ownership or financial interest in a “harvesting, processing, lobbying, advocacy, or marketing activity.” This includes charter boat related activities. You also must report fishing related ownership or financial interests held by your spouse, minor child, or partner.

List on the financial interest form any ownership or financial interest in a “harvesting, processing, lobbying, advocacy, or marketing activity” that is being or will be undertaken within any fishery over which your council has jurisdiction. Report all of the following:

- Stock, equity, and/or ownership interests in any company or business engaged in a harvesting, processing, lobbying, advocacy, or marketing activity.
- Stock, equity, and/or ownership interests in fishing vessel(s), including equity or ownership interest in the vessel(s), engaged in a harvesting, processing, or marketing activity.
- Stock, equity, and/or ownership interests in any company that provides equipment or other services essential to a harvesting, processing, lobbying, advocacy, or marketing activity.

What fishing-related employment interests do I report on the Statement of Financial Interests form?

You are required to report any employment interest in a “harvesting, processing, lobbying, advocacy, or marketing activity.” This includes employment with any organization or association (other than the council). You must also report fishing related employment of your spouse, minor child, or partner. List on the form any employment interest in a “harvesting, processing, lobbying, advocacy, or marketing activity” that is being or will be undertaken within any fishery over which the council has jurisdiction.

Report employment with any:

- Company or business engaged in a harvesting, processing, or marketing activity.
- Fishing vessel engaged in a harvesting, processing, or marketing activity.

- Equipment company or company that provides other services essential to a harvesting, processing, or marketing activity.
- Firm providing consulting, legal, or representational services to an entity engaged in, or providing equipment or services essential to, a harvesting, processing, or marketing activity, including a firm engaging in lobbying or advocacy services in any fishery under the jurisdiction of your council.

Additionally, you must report employment with any association whose members include companies, vessels, or other entities engaged in harvesting, processing, lobbying, advocacy, or marketing activities. You must report employment with a company providing services to harvesting, processing, or marketing activities, or an organization engaged in lobbying or advocacy with regard to any fishery under the jurisdiction of your council.

Do I have to include membership or service with an association on my financial interest form?

You must report memberships or service with associations or organizations whose members include companies, vessels, or other entities engaged in harvesting, processing, lobbying, advocacy, or marketing activities. You must also report membership to an organization engaged in lobbying or advocacy with regard to any fishery under the jurisdiction of your council. This MUST include any service as an officer, director, or trustee of an association, including companies that provide services to harvesting, processing, or marketing activities. You must also report membership or service held by your spouse, minor child, or partner.

What happens if I do not file my form within the time stated on Page 1 of the form?

For currently appointed council members, if you do not file a timely, complete, accurate, and up-to-date form as required by regulations, you may be subject to criminal and/or civil penalties. And if you participate in matters affecting an undisclosed harvesting, processing, lobbying, advocacy, or marketing activity, you may be subject to criminal and/or civil penalties. The financial interest forms are an integral part of the system for exempting you from certain provisions of a criminal conflict of interest statute. If you are a voting member of a council, appointed by the Secretary, you must file a form with the executive director of your council within 45 days of taking office. You also must file an updated form with the executive director of your council within 30 days of the time any new financial interest is acquired or substantially changed by you or your spouse, partner or minor child. You also must file an updated form with the executive director of your council by February 1 of each year regardless of whether any information has changed on your form.

What if I knowingly withhold some information on my form?

Knowing and willful failure to disclose, or falsification of, information required to be reported may subject you to criminal prosecution or subject you to civil 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 the MSA, or to knowingly vote on a council decision in violation of this Act. In addition to the criminal penalties applicable, a violation of this provision may result in removal from council membership.

What is considered a council decision?

A council decision primarily includes an approval of a fishery management plan (FMP) or FMP amendment (including any proposed regulations). Council decisions also include requests for an 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. Council decisions do not include a vote by a committee of a council.

What if I have a financial interest with regard to a fishery under the jurisdiction of my council?

Public disclosure is the method for a member of a fishery management council to resolve a potential conflict with regard to most financial interests in fishery related harvesting, processing, lobbying, advocacy, or marketing activities. Restrictions on voting are not always required, except as identified in 50 CFR 600.235(c). Generally, you are only restricted from voting on a council decision that would have a significant and predictable effect on your disclosed financial interests, or on the disclosed financial interests of your spouse, minor children, or general partners.

If I believe I have a conflict of interest, can I voluntarily recuse myself?

Yes, if you believe that a council decision would have a significant and predictable effect on your financial interests, you may, at any time before a vote is taken, announce your intent not to vote on the decision. You may still participate in council deliberations.

When is recusal from voting on a council action mandatory?

You cannot participate fully as a council member on a matter that will affect your financial interests (or those interests of your spouse, partner, or minor child) when:

- A council decision will have an expected and substantially disproportionate benefit (see question 13 below) to your financial interests (or those interests of your spouse, partner, or minor child).
- A council action involves a matter primarily of individual concern (see question 14 below) to your financial interests (or those interests of your spouse, partner, or minor child).
- A council action affects a fishing related financial interest of yours that you have not reported on your financial interest form.

What is the scope of a recusal on voting? What am I not allowed to do if there is a conflict?

If you or the designated official determines that you cannot vote on a council decision, you can participate in deliberations but must first notify the council that you will not be voting on the matter and identify the financial interest that would be affected. You cannot vote or participate in deliberations regarding a matter primarily of individual concern that will affect your interests (or those whose interests that are attributable to you, such as spouse, partner or minor child). Your participation in an action by a council during any time in which you are not in compliance with the regulations may not be treated as cause for the invalidation of that council action.

Who determines whether my financial interests require my recusal from voting on a council decision?

You can independently conclude that a council decision would have a significant and predictable effect on your financial interests and as such you are recused from voting on the matter. You may also request a determination from the designated official as to whether a council decision would have a significant and predictable effect on your financial interests. The designated official for your council is an attorney from the regional NOAA General Counsel's office that works with your council. The designated official uses the member's form and other information to make a determination. The councils, NOAA General Counsel and the NOAA Fisheries Service Regional Offices regularly communicate to implement these regulations. If a council member would like to appeal a determination, the member may file a written request to the NOAA General Counsel for review of the designated official's determination within 10 days of the determination.

Does NOAA keep a record of council member recusals?

Yes, the councils and the NOAA Fisheries Regional Offices maintain records of financial disclosure statements. NOAA Fisheries submits a [Report to Congress](#) annually on actions taken by the Secretary and councils to implement the disclosure of financial interest and recusal requirements of the MSA. This includes identifying any conflict of interest problems and recommendations for addressing any such problems.

How is a "significant and predictable effect on a financial interest" determined?

A "significant and predictable effect on a financial interest" exists if an expected and substantially disproportionate benefit to the member's financial interest is closely linked to the council decision. 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 percent interest in the total harvest of the fishery (or the sector of the fishery) that is under consideration by the council.
- A greater than 10 percent interest in the marketing or processing of the total harvest of the fishery (or sector of the fishery) that is under consideration by the council.
- 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) that is under consideration by the council.

Interests of your spouse, minor children, general partners, non-federal employers, and entities with which you are seeking employment and any organization in which you serve as an officer, director, or trustee are attributed to you.

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 Individual Fishing Quotas (IFQs) are assigned, the percentage of IFQs assigned will be determinative. If you believe that these provisions require your disqualification from a matter, you should announce your recusal from voting before council deliberations on the matter. If you have any questions regarding the application of the rules to your situation, you may seek advice from the NOAA Regional Attorney who advises your council (or an attorney in the Ethics Law and Programs Division of

the U.S. Department of Commerce). If you would like a determination as to whether an interest requires your recusal from voting, you may seek such a determination from the NOAA Regional Attorney who advises your council.

What are “matters primarily of individual concern”?

“Matters primarily of individual concern” are those matters that affect a small number of identified, or easily identifiable, parties, rather than broad policy matters affecting many entities. For example, a contract between your council and a company that employs you would be a matter primarily of individual concern for you. Thus, you would be disqualified from participating in any council action regarding the contract, even if the company was listed on your financial interest form. An FMP would usually be considered a broad policy matter, rather than a matter primarily of individual concern.

However, if a fishery had only a few active vessels and you owned one of those vessels, an FMP regarding that fishery would be a matter primarily of individual concern. You would be required to disqualify yourself from participating in matters concerning the plan. If you have any questions regarding the application of the rules to your situation, you should seek advice from the NOAA Regional Attorney who advises your council (or an attorney in the Ethics Law and Programs Division of the U.S. Department of Commerce).

Can I sign my form electronically and to whom do I submit my form?

If allowed by the requesting authority, nominees and members can submit their forms electronically via email, but you will need to print and sign the form for the official filing.

- For council nominees, your form must be initially filed with the state governor’s office which nominated you to the council. Each nominee should ensure that a final complete form is filed with the Assistant Administrator by April 15 or, if nominated after March 15, 1 month after nomination by the governor. Nominees may contact NOAA Fisheries at (301) 427-8500 with questions.
- For seated members, the form must be filed with the executive director of the appropriate council within 45 days of taking office; and must file an update with the executive director of the appropriate council within 30 days of the time any such financial interest is acquired or substantially changed.
- All council members must file this form annually by February 1st regardless of whether any information on the form has changed.
- For SSC nominees and members, you must file this form with the Regional Administrator for the geographic area concerned within 45 prior to appointment. You must file an update with the Regional Administrator for the geographic area concerned within 30 days of the time any such financial interest is acquired or substantially changed. All SSC members must file this form with the Regional Administrator annually by February 1st regardless of whether any information on the form has changed.

If I have other questions not on this list, who can I talk to?

NOAA Fisheries encourages you to speak with your executive director, regional NOAA General Counsel, or NOAA Fisheries Regional Office with any questions. Please note that the requirements discussed in this FAQ are also included by NOAA Fisheries among the topics covered in its annual training of council members.