

Department of Commerce · National Oceanic and Atmospheric Administration · National Marine Fisheries Service

NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE 01-116
[Insert Effective Date]

Fisheries Management

FISHERY MANAGEMENT COUNCIL FINANCIAL DISCLOSURES AND RECUSAL

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SUMMARY OF REVISIONS:

NMFSPD 01-116, initially effective on September 29, 2014, is revised to provide additional guidance on recusal determinations and the development of regional recusal determination procedures.

DRAFT

- 1. Introduction:** The National Oceanic and Atmospheric Administration’s (NOAA’s) National Marine Fisheries Service (NMFS) provides policy guidance on the review of financial disclosures by appointed members of the Fishery Management Councils (Councils) and the preparation and issuance of recusal determinations. Appointed Council members, for purposes of this Policy Directive, are those voting Council members defined by Section 302(b)(1)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1852(b)(1)(C)). Section 302(j) of the MSA requires Council members to disclose their financial interests (16 U.S.C. 1852(j)). The financial information required to be reported must be disclosed on the Statement of Financial Interests form NOAA 88-195, or such other form as the Secretary may prescribe. Council members complete and submit the Statement of Financial Interests form to fulfill this requirement of the MSA. The purpose of this form is to assist the member and NMFS in avoiding conflicts between official duties and private financial interests or affiliations. The MSA requires the disclosure of any financial interest in harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the member’s Council has jurisdiction. This also includes employment with an entity that provides consulting, legal, or representational services relating to harvesting, processing, lobbying, advocacy, or marketing activities. Council members must disclose such financial interests held by them; their spouse, minor child, partner; or any organization (other than the Council) in which they are serving as an officer, director, trustee, partner, or employee. Section 302(j) of the MSA also prohibits Council members from voting on any Council decision that would have a significant and predictable effect on a financial interest disclosed in the form. Regulations implementing the MSA’s financial disclosure and recusal requirements are located at 50 CFR 600.235.
- 2. Objective:** It is the policy of NMFS, in order to carry out the responsibilities of the Secretary pursuant to Section 302(j) of the MSA and implementing regulations, to provide an effective and transparent process for submission and review of financial disclosure forms and for identifying and resolving any conflicts of interest by Council members. The process should ensure Council appointments are made using complete and accurate financial information from nominees, and financial disclosure forms submitted by Council members are complete and available to the public. The process also should ensure Council members and the public are aware of the information and methods used in determining whether recusal of a Council member is required due to a conflict of interest, and the procedures followed in issuing recusal determinations. In accordance with the MSA and 50 CFR 600.235(i), 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 the MSA.
- 3. Authorities and Responsibilities:** This policy directive outlines the following authorities and responsibilities, which are within those responsibilities established in the MSA and implementing regulations (See 50 CFR 600.235):

- 3.1 The NMFS Office of Sustainable Fisheries (OSF) is responsible for:
- a.** Conducting oversight of the financial disclosure and recusal process.
 - b.** Initially reviewing the financial disclosure forms submitted by nominees before appointment to the Councils.
 - c.** Developing and updating national guidance on financial disclosure and recusal.
 - d.** Providing proposed modifications to the national guidance on financial disclosure and recusal to NMFS Regional Offices, NOAA Office of General Counsel (GC) (including NOAA GC Regional Sections), and the Council Coordination Committee (16 U.S.C. 1852(l)) for their review and comment before the modifications are finalized.
 - e.** Reviewing and commenting on all proposed Regional Recusal Determination Procedures (described in NMFS Procedural Directive 01-116-01) to ensure consistency, where practicable, of recusal procedures among the regions.
 - f.** Creating and maintaining a place on the NMFS OSF website that provides links to each NMFS Regional Office website where the Regional Recusal Determination Procedures, any written recusal determinations, and any appeals of recusal determinations can be found.
- 3.2 The NMFS Regional Offices are responsible for:
- a.** Reviewing the financial disclosure forms submitted by appointed Council members for Councils for which the Regional Administrator is a member, and advising the NOAA GC Regional Section, Council Executive Director, and Council member if questions or discrepancies arise.
 - b.** Responding to Council member questions regarding the financial disclosure form.
 - c.** Maintaining a file of submitted financial disclosure forms for the region's Council(s) and keeping each form for at least 5 years after the expiration of the Council member's last term.
 - d.** Reviewing current financial disclosure forms prior to Council meetings to determine the potential for a conflict of interest, and advising the NOAA GC Regional Section, Council Executive Director, and Council member of any such concern.
 - e.** If requested by the NOAA GC Regional Section, assisting with the development of, or modifications to, the Regional Recusal Determination Procedures (described in NMFS Procedural Directive 01-116-01).
 - f.** Reviewing and commenting on all proposed Regional Recusal Determination Procedures.
 - g.** Reviewing and commenting on proposed modifications to the national guidance on financial disclosure and recusal.

h. Creating and maintaining a place on the region's website that provides the public with access to the Regional Recusal Determination Procedures, any written recusal determinations, and any appeals of recusal determinations.

3.3 The NOAA GC Regional Sections are responsible for:

- a.** Reviewing the financial disclosure forms submitted by appointed Council members for Councils for which the Regional Administrator is a member, and advising the NMFS Regional Office, Council Executive Director, and Council member if questions or discrepancies arise.
- b.** Reviewing current financial disclosure forms prior to Council meetings to determine the potential for a conflict of interest, and advising the NMFS Regional Office, Council Executive Director, and Council member of any such concern.
- c.** Responding to Council member questions regarding the financial disclosure form and requests for recusal determinations.
- d.** Assisting NMFS OSF in developing and updating the national guidance on financial disclosure and recusal.
- e.** Developing and updating the Regional Recusal Determination Procedures (described in NMFS Procedural Directive 01-116-01).
- f.** Providing the NMFS Regional Office, Council Executive Director, and Council members with an opportunity to review and comment on all proposed Regional Recusal Determination Procedures before they are finalized.
- g.** Providing the NMFS Regional Office and Council Executive Director with copies of the Regional Recusal Determination Procedures when finalized.
- h.** Providing the NMFS Regional Office with copies of the Regional Recusal Determination Procedures, any written recusal determinations, and any appeals of recusal determinations for posting on the NMFS Regional Office website.
- i.** Conducting an annual briefing of the Councils on financial disclosure and recusal.

3.4 The Council Executive Directors are responsible for:

- a.** Distributing and collecting financial disclosure forms for Council members.
- b.** Responding to Council member questions regarding the financial disclosure form.
- c.** Reviewing the financial disclosure forms submitted by appointed Council members, and advising the NMFS Regional Office, NOAA GC Regional Section, and Council member if questions or discrepancies arise.
- d.** Reviewing current financial disclosure forms prior to Council meetings to determine the potential for a conflict of interest, and advising the NMFS Regional Office, NOAA GC Regional Section, and Council member of any such concern.
- e.** Recording any incidences of recusals or discussions surrounding conflicts of interest and reporting them to NMFS for inclusion in the annual report to Congress.

- f.** Organizing the Council’s review of all proposed Regional Recusal Determination Procedures (described in NMFS Procedural Directive 01-116-01) and providing the Council’s comments to the NMFS Regional Office and NOAA GC Regional Section.
- g.** Providing Council members with copies of the Regional Recusal Determination Procedures.
4. **Measuring Effectiveness:** Section 302(j)(9) of the MSA requires the Secretary to submit an annual report to Congress on action taken by the Secretary and the Councils to implement the disclosure of financial interest and recusal requirements of the MSA, including identifying any conflict of interest problems with respect to the Councils and Scientific and Statistical Committees and recommendations for addressing any such problems.
5. **References:** Procedural directives will be issued to implement this policy as needed.

Signed _____ Date _____

Assistant Administrator for Fisheries