

# Financial Disclosure and Recusal Provisions

## A Closer Examination

Adam Issenberg  
NOAA Office of General Counsel  
Fisheries and Protected Resources Section

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# Learning Objectives

Through the use of fictional Council members with various financial interests, attendees should have:

- An awareness of the various types of financial interests that a Council member must disclose;
- An understanding of where to disclose those interests on the financial disclosure form;
- A familiarity with the voting recusal thresholds; and
- An understanding of how a Council member's financial interests are evaluated relative to the recusal thresholds for recusal determinations.

# Why should I know this?

- 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.
- Understanding the recusal regulations provides you with information needed to assess whether your financial interests may require a voting recusal and discuss recusal with the NOAA GC attorneys who attend your Council meetings.

# What governs financial disclosure and recusal?

- Section 302(j) of the Magnuson-Stevens Act
- Regulations at 50 CFR 600.235
  - Amended by Final rule: 85 Fed. Reg. 56,177 (September 11, 2020)
- NMFS Policy Directive 01-116 and NMFS Procedural Directive 01-116-01
- NOAA GC provides Councils with annual briefings on financial disclosure and recusal requirements and will be providing overviews of the Final Rule to individual councils, as desired.

FAQs: <https://www.fisheries.noaa.gov/partners/frequent-questions-financial-disclosure-and-financial-interests-form>

## In addition, 50 CFR 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.
- If you have a financial interest in a particular matter, please consult with a NOAA GC attorney to determine whether your participation in that matter would raise concerns under 50 CFR 600.225.

# Financial Disclosure Examples

# Fictional Central Fishery Management Council members



Mr. Plimpton

Mr. Hennessey



Ms. Zissou

Mr. Ubell







# Poll Questions

Four poll questions based on the character handout



# Poll Question #1

Based on the description in the handout,  
what interest(s) should  
Mr. Plimpton disclose?

# The answer is C: Ocean Bounty and Deep Sea

- Mr. Plimpton should disclose *Ocean Bounty Seafoods* because:
  - he is a *partial owner* of Ocean Bounty (Question 1.1.1) and
- Mr. Plimpton should disclose *Deep Sea LLC* because:
  - Plimpton's company *partially owns* Deep Sea (Question 1.1.5)

# Mr. Plimpton should also disclose the actual percentage of direct and indirect ownership

If specific ownership percentages are not provided,  
100% of the harvesting, processing, or marketing  
activity of, and vessels owned by,  
the member's financial interests will be attributed  
to the member.

## Poll Question #2

Based on the description in the handout,  
what interest is Ms. Zissou  
not required to disclose?

# The answer is B: the clients of Zissou Consultants

- Ms. Zissou is not required to disclose the clients of Zissou Consultants.

# Zissou – Wrong Answers!

- Ms. Zissou should disclose **Zissou Consultants** because:
  - she *partially owns* the company (Question 1.1.4);
  - she is *employed by* the company (Question 1.2.4); and
  - her husband Steve *partially owns and is employed by* the company (Questions 2.1.4 and 2.2.4).
- Ms. Zissou also should disclose **Oseary Seafoods** because it partially owns:
  - Ms. Zissou's company (Question 1.1.5);
  - the company that employs Ms. Zissou (Question 1.2.5); and
  - her husband Steve's employer (Question 2.2.5).

## Poll Question #3

Based on the description in the handout,  
what interest is Mr. Hennessey  
not required to disclose?



# The answer is A: his older son's interests

- Mr. Hennessey is not required to disclose his older son's interests in the fisheries because his older son is not a minor child.

# Hennessey – Wrong Answers!

- Mr. Hennessey should disclose:
  - *United Fishermen of Seaside* because of his *service as a board member* (Question 1.3.1)
  - *Star of the Sea LLC* because of his *younger son's employment* (Question 2.2.1)
- Mr. Hennessey also should disclose his employment with the *City of Seaside* if:
  - the city provides support services for its local seafood businesses (Question 1.2.3) or
  - elected officials or city employees advocate on fisheries issues before the Central Council (Question 1.2.4).

# Poll Question #4

Based on the description in the handout,  
what interest(s) should  
Mr. Ubell disclose?

# The answer is D: all of the interests

Mr. Ubell should disclose:

- *Bluefish Forever* because of his employment with the fishermen's association (Question 1.2.6.)
- *Bluefish Harvesting Cooperative* because of his board membership with the cooperative harvesting organization (Question 1.3.1.)
- *his wife's participation* in the yellowfish recreational fishery because the Central Council manages the recreational fishery for yellowfish (Question 2.1.2.)

# Updating Disclosures

- Affected individuals must update disclosure forms at any time a financial interest is acquired, or substantially changed.
  - including by the affected individual, the spouse, minor child or partner of that individual in any harvesting, processing, lobbying or marketing activity that will be undertaken within any fishery over which the Council has jurisdiction.
  - Supplement within 30 days; update annually by Feb. 1

# Disclosure of direct and indirect financial interests:

- ensures that Council members receive the MSA exception from conflict of interest;
- furthers the interests of transparency; and
  - assists in recusal determinations.

# Recusal Examples



# Recusal Example #1

The Central Council is considering a limited access program for the redfish fishery, which would require an amendment to the Redfish FMP and implementing regulations.

At its upcoming December 2020 meeting, the Central Council will be voting on the suite of alternatives and options it would like to have analyzed.

# Question – Show of hands

Who thinks at least one of our Council members would be recused from voting in Example #1?

# None of our Council members are required to be recused.

The action before the Central Council at its December meeting (selecting alternatives and options for analysis) is not a “council decision.”

“Council decision” (for purposes of recusal) is defined in regulation as Council approval of: (1) an FMP/FMP amendment with or without implementing regulations; (2) a regulatory amendment; (3) an emergency rule; or (4) Council comments on a Secretarial FMP/FMP amendment).

# Multi-step test for recusal determinations

- **Step One**: Is there a Council decision?
- **Step Two**: Is there a Council member with financial interests 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.

## Recusal Example #2

The Central Council will decide whether to adopt a limited access program for the redfish fishery at its March 2021 meeting.

# Question – Show of hands

Who thinks at least one of our Council members would be recused from voting in Example #2?



Although we have a “council decision,”

None of our fictional Council members  
would be required by the regulations  
to recuse themselves from voting.



# Mr. Plimpton would not be recused based on harvest

- Using his partial ownership percentages, a total of 7,125 pounds of redfish harvest would be attributed to Mr. Plimpton.
  - 2,500 pounds of Deep Sea's redfish harvest is attributable to Ocean Bounty given Ocean Bounty's 50% ownership interest (50% of 5,000 pounds = 2,500 pounds)
  - The total amount of redfish harvest attributable to Ocean Bounty for recusal purposes is 9,500 pounds (2,500 pounds from Deep Sea added to the 7,000 pounds harvested by Ocean Bounty)
  - Because Mr. Plimpton owns 75% of Ocean Bounty, 7,125 pounds of Ocean Bounty's redfish harvest would be attributed to him (75% x 9,500 pounds = 7,125 pounds)
- In order to be recused, Mr. Plimpton's harvest must exceed the 10% threshold, which in this example is 10,000 pounds. The total harvest attributable to Mr. Plimpton does not exceed the threshold and therefore he would not be recused from voting based on harvest.

# And not because of vessel ownership

- Using his partial ownership percentages, a total of 2.25 vessels would be attributable to Mr. Plimpton:
  - 0.75 vessel (75% ownership of F/V Ocean Bounty #1)
  - 0.75 vessel (75% ownership of F/V Ocean Bounty #2)
  - 0.375 vessel (37.5% (75% of 50%) ownership of F/V Deep Sea #1)
  - + 0.375 vessel (37.5% ownership of F/V Deep Sea #2)
  - 2.250 vessels
- In order to be recused, Plimpton's vessel ownership must exceed the 10% threshold, which in this example is 3 vessels. The total number of vessels attributable to Mr. Plimpton does not exceed the threshold and therefore he would not be recused from voting based on vessel ownership.

# Ms. Zissou would not be recused because

- Her consulting company is not directly involved in the harvesting, processing, or marketing of redfish.
  - The clients' activity in the redfish fishery is not attributed to Zissou Consultants or to Ms. Zissou.
- Oseary Seafoods does not have a controlling interest (50% or greater ownership) in Zissou Consultants.
  - If Oseary Seafoods owned 60% of Zissou Consultants, then all of Oseary Seafoods' processing activity would be attributed to Ms. Zissou and she would be recused from voting because Oseary Seafoods processed more than 10% of the total harvest of redfish in 2020.

# Mr. Hennessey would not be recused because

- United Fishermen of Seaside is not directly involved in the harvesting of redfish and its members' activity would not be attributed to the association or Hennessey.
- His younger son's earnings are not influenced by or fluctuate with the success of his employer (Star of the Sea LLC) so the redfish harvesting activity of the *Star of the Sea* would not be attributed to Hennessey through his minor child.
- Hennessey's older son's activity in the redfish fishery is not a reportable financial interest so it would not be attributed to Hennessey.

# Mr. Hennessey could voluntarily recuse himself

Even though the regulations would not require a voting recusal, Mr. Hennessey may choose to voluntarily recuse himself from voting if he believes that the Council's decision would have a significant and predictable effect on his financial interests.



Mr. Ubell would not be recused because

Mr. Ubell has no financial interests  
in the redfish fishery.

## Recusal Example #3

At its March 2021 meeting, the Central Council also will be taking a vote on whether to prohibit the use of trawl net gear in the bluefish fishery.

# Question – Show of hands

Who thinks Mr. Ubell would be recused from voting in Example #3?



# Mr. Ubell would be recused from voting.

- Mr. Ubell is employed by the cooperative and the cooperative receives a direct allocation from NMFS for a specific amount of bluefish, making the Bluefish Harvesting Cooperative directly involved in the harvesting of bluefish, and
- The allocation to the cooperative exceeds the 10% recusal threshold for harvest.

# Question – Show of Hands

- The NOAA GC responsible official does not tell Mr. Ubell that he must recuse himself for the trawl net prohibition action.
- During deliberations on the action, Mr. Ubell comes to realize that the action could implicate his financial interests.

True or false: Mr. Ubell may vote on the action

# Mr. Ubell May Not Vote

- The Council Member is ultimately responsible for ensuring compliance with the financial disclosure and recusal requirements.
- The Council Member can recuse himself, or can request that NOAA GC make a formal determination.

# Question – Show of Hands

Ms. Sakowitz owns one of the three processing facilities in Port-au-Patois, each of which processes roughly a third of the redfish landed in the fishery. The council is voting on a contract with one of the three processors to conduct research on distribution of redfish after landing.

May Ms. Sakowitz:

- vote on this council decision?
- participate in the deliberations of this council decision?

# Ms. Sakowitz May Not Vote or Deliberate

- This is a matter primarily of individual concern to the council member.
  - “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. *See* 50 cfr 600.225(b)(9)(ii)
- A recusal on this basis precludes participation in deliberations as well as voting.

# Regional Recusal Determination Procedure Handbooks

- Regulations at 50 CFR 600.235(f) require each region to prepare, in consultation with the Councils, a Handbook.
- The Handbook will explain the typical process and procedure followed by the region in preparing and issuing recusal determinations.
- [Update] There is no specific date by which these Handbooks must be developed and NMFS will be updating policy and procedural directives with additional guidance.

# Questions?



**FAQs:** <https://www.fisheries.noaa.gov/partners/frequent-questions-financial-disclosure-and-financial-interests-form>

# Final summary points:

- When in doubt, disclose it.
- Recusal determinations are very fact-dependent.
- If you think you may have a recusal situation, consult with your regional NOAA GC attorneys as early as possible.