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electronically, or seldom requested, the Council must provide copies of the documents for viewing at the Council office during regular business hours or may provide the documents through the mail.

[66 FR 57887, Nov. 19, 2001, as amended at 75 FR 59151, Sept. 27, 2010]

§ 600.155 Freedom of Information Act (FOIA) requests.

(a) FOIA requests received by a Council should be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to the NOAA FOIA Officer to secure a FOIA number and log the request into FOIAonline. The Region will also obtain clearance from the NOAA General Counsel's Office concerning initial determination for denial of requested information.

(b) FOIA request processing will be controlled and documented in the Region. The requests should be forwarded to the NOAA FOIA Officer who will enter the request into FOIAonline. The request will be assigned an official FOIA number and due date. In the event the Region determines that the requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature, along with the "Foreseeable Harm" Memo and list of documents to be withheld, must be cleared through the NMFS FOIA Liaison. Upon completion, a copy of the signed letter transmitting the information to the requester should be posted to FOIAonline by NMFS.

[80 FR 57738, Sept. 25, 2015]

Subpart C—Council Membership

§ 600.205 Principal state officials and their designees.

(a) Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be appointed by a constituent state Governor as the principal state official for purposes of section 302(b) of the Magnuson-Stevens Act.

(b) A principal state official may name his/her designee(s) to act on his/her behalf at Council meetings. Indi-

viduals designated to serve as designees of a principal state official on a Council, pursuant to section 302(b)(1)(A) of the Magnuson-Stevens Act, must be a resident of the state and be knowledgeable and experienced, by reason of his or her occupational or other experience, scientific expertise, or training, in the fishery resources of the geographic area of concern to the Council.

(c) New or revised appointments by state Governors of principal state officials and new or revised designations by principal state officials of their designees(s) must be delivered in writing to the appropriate NMFS Regional Administrator and the Council chair at least 48 hours before the individual may vote on any issue before the Council. A designee may not name another designee. Written appointment of the principal state official must indicate his or her employment status, how the official is employed by the state fisheries agency, and whether the official's full salary is paid by the state. Written designation(s) by the principal state official must indicate how the designee is knowledgeable and experienced in fishery resources of the geographic area of concern to the Council, the County in which the designee resides, and whether the designee's salary is paid by the state.

[66 FR 57888, Nov. 19, 2001]

§ 600.207 Pacific Fishery Management Council Tribal Indian representative and alternate.

(a) The tribal Indian representative to the Pacific Fishery Management Council may designate an alternate during the period of the representative's term. The designee must be knowledgeable concerning tribal rights, tribal law, and the fishery resources of the geographical area concerned.

(b) New or revised designations of an alternate by the tribal Indian representative must be delivered in writing to the appropriate NMFS Regional Administrator and the Council chair at least 48 hours before the designee may vote on any issue before the Council. In that written document, the tribal Indian representative must indicate how

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the designee meets the knowledge requirements under paragraph (a) of this section.

[75 FR 59151, Sept. 27, 2010]

§ 600.210 Terms of Council members.

(a) Voting members (other than principal state officials, the Regional Administrators, or their designees) are appointed for a term of 3 years and, except as discussed in paragraphs (b) and (c) of this section, may be reappointed. A voting member's Council service of 18 months or more during a term of office will be counted as service for the entire 3-year term.

(b) The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than 3 years, if necessary, to provide for balanced expiration of terms of office. Members may not serve more than three consecutive terms.

(c) A member who has completed three consecutive terms will be eligible for appointment to another term one full year after completion of the third consecutive term.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7073, Feb. 12, 1998; 75 FR 59151, Sept. 27, 2010]

§ 600.215 Council nomination and appointment procedures.

(a) *General.* (1) Each year, the 3-year terms for approximately one-third of the appointed members of the Councils expire. The Secretary of Commerce (Secretary) will appoint or new members or will reappoint seated members to another term to fill the seats being vacated.

(2) There are two categories of seats to which voting members are appointed: "Obligatory" and "At-large."

(i) Obligatory seats are state specific. Each constituent state is entitled to one seat on the Council on which it is a member, except that the State of Alaska is entitled to five seats and the State of Washington is entitled to two seats on the North Pacific Fishery Management Council. When the term of a state's obligatory member is expiring or when that seat becomes vacant before the expiration of its term, the governor of that state must submit the

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names of at least three qualified individuals to fill that Council seat.

(ii) The Magnuson-Stevens Act also provides for appointment, by the Secretary, of one treaty Indian tribal representative to the Pacific Fishery Management Council (Pacific Council). To fill that seat, the Secretary solicits written nominations from the heads of governments of those Indian Tribes with federally recognized fishing rights from the States of California, Oregon, Washington, or Idaho. The list of nominees must contain a total of at least three individuals who are knowledgeable and experienced regarding the fishery resources under the authority of the Pacific Council. The Secretary will appoint one tribal Indian representative from this list to the Pacific Council for a term of 3 years and rotate the appointment among the tribes.

(iii) At-large seats are regional. When the term of an at-large member is expiring or when that seat becomes vacant before the expiration of a term, the governors of all constituent states of that Council must each submit the names of at least three qualified individuals to fill the seat.

(b) *Responsibilities of State Governors.*

(1) Council members are selected by the Secretary from lists of nominees submitted by Governors of the constituent states, pursuant to section 302(b)(2)(C) of the Magnuson-Stevens Act. For each applicable vacancy, a Governor must submit the names of at least three nominees who meet the qualification requirements of the Magnuson-Stevens Act. A Governor must provide a statement explaining how each of his/her nominees meet the qualification requirements, and must also provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests of that state and that each nominee is knowledgeable and experienced by reason of his or her occupational or other experience, scientific expertise, or training in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

(i) Commercial fishing or the processing or marketing of fish, fish products, or fishing equipment;

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(ii) Fishing for pleasure, relaxation, or consumption, or experience in any business supporting fishing;

(iii) Leadership in a state, regional, or national organization whose members participate in a fishery in the Council's area of authority;

(iv) The management and conservation of natural resources, including related interactions with industry, government bodies, academic institutions, and public agencies. This includes experience serving as a member of a Council, Advisory Panel, Scientific and Statistical Committee, or Fishing Industry Advisory Committee;

(v) Representing consumers of fish or fish products through participation in local, state, or national organizations, or performing other activities specifically related to the education or protection of consumers of marine resources; or

(vi) Teaching, journalism, writing, consulting, practicing law, or researching matters related to fisheries, fishery management, and marine resource conservation.

(2) To assist in identifying qualifications, each nominee must furnish to the appropriate governor's office a current resume, or equivalent, describing career history—with particular attention to experience related to the criteria in paragraph (b)(1) of this section. Nominees may provide such information in any format they wish.

(3) A constituent State Governor must determine the state of residency of each of his/her nominees. A Governor may not nominate a non-resident of that state for appointment to a Council seat obligated to that state. A Governor may nominate residents of another constituent state of a Council for appointment to an at large seat on that Council.

(4) If, at any time during a term, a member changes residency to another state that is not a constituent state of that Council, or a member appointed to an obligatory seat changes residency to any other state, the member may no longer vote and must resign from the Council. For purposes of this paragraph, a state resident is an individual who maintains his/her principal residence within that constituent state and who, if applicable, pays income

taxes to that state and/or to another appropriate jurisdiction within that state.

(5) When the terms of both an obligatory member and an at-large member expire concurrently, the Governor of the state holding the expiring obligatory seat may indicate that the nominees who were not selected for appointment to the obligatory seat may be considered for appointment to an at-large seat, provided that the resulting total number of nominees submitted by that governor for the expiring at-large seat is no fewer than three different nominees.

(c) Nominees to the Gulf of Mexico Fishery Management Council. (1) The Governors of States submitting nominees to the Secretary for appointment to the Gulf of Mexico Fishery Management Council shall include:

(i) At least one nominee each from the commercial, recreational, and charter fishing sectors, except that an individual who owns or operates a fish farm outside the United States shall not be considered to be a representative of the commercial or recreational sector; and

(ii) At least one other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.

(2) Notwithstanding the requirements of paragraphs (a) and (b) of this section, if the Secretary determines that the list of names submitted by the Governor does not meet the requirements of paragraph (c)(1) of this section, the Secretary shall:

(i) Publish a notice in the FEDERAL REGISTER asking the residents of that State to submit the names and pertinent biographical data of individuals who would meet the requirements of this section that were not met for appointment to the Council; and

(ii) Add the name of any qualified individual submitted by the public who meets the requirements of this section that were not met to the list of names submitted by the Governor.

(3) The requirements of this paragraph (c) shall expire at the end of fiscal year 2012, meaning through September 30, 2012.

(d) *Responsibilities of eligible tribal Indian governments.* The tribal Indian representative on the Pacific Council will be selected by the Secretary from a list of no fewer than three individuals submitted by the tribal Indian governments with federally recognized fishing rights from California, Oregon, Washington, and Idaho, pursuant to section 302(b)(5) of the Magnuson-Stevens Act. To assist in assessing the qualifications of each nominee, each head of an appropriate tribal Indian government must furnish to the Assistant Administrator a current resume, or equivalent, describing the nominee's qualifications, with emphasis on knowledge and experience related to the fishery resources affected by recommendations of the Pacific Council. Prior service on the Pacific Council in a different capacity will not disqualify nominees proposed by tribal Indian governments.

(e) *Nomination deadlines.* Nomination packages (governors' letters and completed nomination kits) must be forwarded by express mail under a single mailing to arrive at the address specified by the Assistant Administrator by March 15. For appointments outside the normal cycle, the Secretary will provide a deadline for receipt of nominations to the affected Council and state governors.

(1) *Obligatory seats.* (i) The Governor of the state for which the term of an obligatory seat is expiring should submit the names of at least three qualified individuals to fill that seat by the March 15 deadline. The Secretary will appoint to the Pacific Fishery Management Council a representative of an Indian tribe from a list of no fewer than three individuals submitted by the tribal Indian governments.

(ii) If the Governor or tribal Indian governments fail to provide a nomination letter and at least three complete nomination kits by March 15, the obligatory seat will remain vacant until all required information has been received and processed and the Secretary has made the appointment.

(2) *At-large seats.* (i) If a Governor chooses to submit nominations for an at-large seat, he/she must submit lists that contain at least three qualified nominees for each vacant seat. A nomination letter and a nomination kit for

each qualified nominee must be forwarded by express mail under a single mailing to arrive at the address specified by the Assistant Administrator by March 15.

(ii) Nomination packages that are not substantially complete by March 15 may be returned to the nominating Governor. At-large members will be appointed from among the nominations submitted by the governors who complied with the nomination requirements.

(f) *Responsibilities of the Secretary.* (1) The Secretary must, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries in the Council's area of authority. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries in the Council's area of authority are fairly represented as voting members on the Councils.

(2) The Secretary will review each list submitted by a governor or the tribal Indian governments to ascertain whether the individuals on the list are qualified for the vacancy. If the Secretary determines that a nominee is not qualified, the Secretary will notify the appropriate Governor or tribal Indian government of that determination. The Governor or tribal Indian government shall then submit a revised list of nominees or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

(3) The Secretary will select the appointees from lists of qualified nominees provided by the Governors of the constituent Council states or of the tribal Indian governments that are eligible to nominate candidates for that vacancy.

(i) For Governor-nominated seats, the Secretary will select an appointee for an obligatory seat from the list of qualified nominees submitted by the governor of the state. In filling expiring at-large seats, the Secretary will select an appointee(s) for an at-large

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seat(s) from the list of all qualified candidates submitted. The Secretary will consider only complete slates of nominees submitted by the governors of the Council's constituent states. When an appointed member vacates his/her seat prior to the expiration of his/her term, the Secretary will fill the vacancy for the remainder of the term by selecting from complete nomination letters and kits that are timely and contain the required number of candidates.

(ii) For the tribal Indian seat, the Secretary will solicit nominations of individuals for the list referred to in paragraph (c) of this section only from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The Secretary will consult with the Bureau of Indian Affairs, Department of the Interior, to determine which Indian tribes may submit nominations. Any vacancy occurring prior to the expiration of any term shall be filled in the same manner as described in paragraphs (d)(1) and (2) of this section, except that the Secretary may use the list referred to in paragraph (b)(1) of this section from which the vacating member was chosen. The Secretary shall rotate the appointment among the tribes, taking into consideration:

(A) The qualifications of the individuals on the list referred to in paragraph (c) of this section.

(B) The various rights of the Indian tribes involved, and judicial cases that set out the manner in which these rights are to be exercised.

(C) The geographic area in which the tribe of the representative is located.

(D) The limitation that no tribal Indian representative shall serve more than three consecutive terms in the Indian tribal seat.

[64 FR 4600, Jan. 29, 1999, as amended at 75 FR 59151, Sept. 27, 2010]

§ 600.220 Oath of office.

As trustees of the nation's fishery resources, all voting members must take an oath specified by the Secretary as follows: "I, [name of the person taking oath], as a duly appointed member of a Regional Fishery Management Council established under the Magnuson-Stevens Fishery Conservation and Man-

agement Act, hereby promise to conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the Nation. I recognize my responsibility to serve as a knowledgeable and experienced trustee of the Nation's marine fisheries resources, being careful to balance competing private or regional interests, and always aware and protective of the public interest in those resources. I commit myself to uphold the provisions, standards, and requirements of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law, and shall conduct myself at all times according to the rules of conduct prescribed by the Secretary of Commerce. This oath is given freely and without mental reservation or purpose of evasion."

[75 FR 59152, Sept. 27, 2010]

§ 600.225 Rules of conduct.

(a) Council members, as Federal office holders, and Council employees are subject to most Federal criminal statutes covering bribery, conflict-of-interest, disclosure of confidential information, and lobbying with appropriated funds.

(b) The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. In addition to abiding by the applicable Federal conflict of interest statutes, both members and employees of the Councils must comply with the following standards of conduct:

(1) No employee of a Council may use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, state, county, or municipal elective office.

(2) Council members, employees, and contractors must comply with the Federal Cost Principles Applicable to Regional Fishery Management Council Grants and Cooperative Agreements, especially with regard to lobbying, and other restrictions with regard to lobbying as specified in § 600.227 of this part.

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(3) No employee of a Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson-Stevens Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election, or on account of his or her political affiliation.

(4) No Council member or employee may pay, offer, promise, solicit, or receive from any person, firm, or corporation a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support or influence in obtaining for any person any appointive office, place, or employment under the Council.

(5) No employee of a Council may have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties.

(6) No Council member, employee of a Council, or member of a Council advisory group may use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(7) No Council member or employee of the Council may engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct.

(8) No Council member or employee of the Council may use Council property on other than official business. Such property must be protected and preserved from improper or deleterious operation or use.

(9)(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 pro-

spective 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.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 63 FR 64185, Nov. 19, 1998; 75 FR 59152, Sept. 27, 2010]

§ 600.227 Lobbying.

(a) Council members, employees and contractors must comply with the requirements of 31 U.S.C. 1352 and Department of Commerce implementing regulations published at 15 CFR part 28, "New Restrictions on Lobbying." These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the award. Because the Councils receive in excess of \$100,000 in Federal funding, the regulations mandate that the Councils must complete Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit the Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

(b) Council members, employees, and contractors must comply with the Federal Cost Principles Applicable to Regional Fishery Management Council Grants and Cooperative Agreements summarized as follows:

(1) Title 2 CFR part 230 - Cost Principles for Nonprofit Organizations (OMB CircularA-122) is applicable to the Federal assistance awards issued to the Councils.

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(2) The purpose of the cost principles at 2 CFR part 230 is to define what costs can be paid on Federal awards issued to non-profit organizations. The regulation establishes both general principles and detailed items of costs.

(3) Under 2 CFR part 230, costs for certain lobbying activities are unallowable as charges to Federal awards. These activities would include any attempts to influence:

(i) The introduction of Federal or state legislation;

(ii) The enactment or modification of any pending legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public to contribute to or to participate in any demonstration, march, rally, fundraising drive, lobbying campaign, or letter writing or telephone campaign.

(4) Generally, costs associated with providing a technical and factual presentation directly related to the performance of a grant, through hearing testimony, statements, or letters to Congress or a state legislature are allowable if made in response to a documented request.

(5) Costs associated with lobbying to influence state legislation in order to reduce the cost or to avoid material impairment of the organization's authority to perform the grant are also allowable.

[75 FR 59152, Sept. 27, 2010]

§ 600.230 Removal.

The Secretary may remove for cause any Secretarially appointed member of a Council in accordance with section 302(b)(6) of the Magnuson-Stevens Act, wherein the Council concerned first recommends removal of that member by not less than two-thirds of the voting members. A recommendation of a Council to remove a member must be made in writing to the Secretary and accompanied by a statement of the reasons upon which the recommendation is based.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7073, Feb. 12, 1998]

§ 600.235 Financial disclosure and recusal.

(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.

(3) A member of an SSC shall be treated as an affected individual for the purposes of paragraphs (b)(1), (b)(5) through (b)(7), and (i) of this section.

Close causal link means that a Council decision would reasonably be expected to directly impact or affect the financial interests of an affected individual.

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.

Expected and substantially disproportionate benefit means a positive or negative impact with regard to a Council decision that is likely to affect a fishery or sector of a fishery in which the affected individual has a significant financial interest.

Financial Interest Form means NOAA Form 88-195, "STATEMENT OF FINANCIAL INTERESTS For Use By Voting Members of, and Nominees to, the Regional Fishery Management Councils, and Members of the Scientific and Statistical Committee

(SSC)’’ or such other form as the Secretary may prescribe.

Financial interest in harvesting, processing, lobbying, advocacy, or marketing (1) includes:

(i) Stock, equity, or other ownership interests in, or employment with, any company, business, fishing vessel, or other entity or employment with any entity that has any percentage ownership in or by another entity engaging in any harvesting, processing, lobbying, advocacy, 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 or employment with any entity that has any percentage ownership in or by another entity that provides equipment or other services essential to harvesting, processing, lobbying, advocacy, 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 any harvesting, processing, lobbying, advocacy, or marketing activities, or companies or other entities providing services essential to harvesting, processing, lobbying, advocacy, or marketing activities in any fishery under the jurisdiction of the Council concerned; and

(iv) Employment with an entity that has any percentage ownership in or by another entity providing consulting, legal, or representational services to any entity engaging in, or providing equipment or services essential to harvesting, processing, lobbying, advocacy, 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 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.

Significant financial interest means:

(1) A greater than 10-percent interest in the total harvest of the fishery or sector of the fishery affected by the Council decision;

(2) A greater than 10-percent interest in the marketing or processing of the total harvest of the fishery or sector of the fishery affected by the Council decision; or

(3) 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 affected by the Council decision.

(b) *Reporting.* (1) The Magnuson-Stevens Act 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 Council concerned has jurisdiction. An affected individual must disclose such financial interest held by that individual; 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 the Financial Interest Form (as defined in paragraph (a) of this section), or such other form as the Secretary may prescribe.

(2) The Financial Interest Form must be filed by each nominee for Secretarial appointment to the Council with the Assistant Administrator by April 15 or, if nominated after March 15, one 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, regardless of whether any information has changed on that form.

(3) The Executive Director must, in a timely manner, provide copies of and updates to the Financial Interest Forms of appointed Council members to the NMFS Regional Administrator, the Regional Attorney who advises the Council, the Department of Commerce Assistant General Counsel for Administration, and the NMFS Office of Sustainable Fisheries. These completed Financial Interest Forms shall be kept on file in the office of the NMFS Regional Administrator and at the Council offices, and shall be made available for public inspection at such offices during normal office hours. In addition, the forms shall be made available at each Council meeting or hearing and shall be posted for download from the Internet on the Council's website.

(4) Councils must retain the Financial Interest Form for a Council member for at least 5 years after the expiration of that individual's last term.

(5) The Regional Administrator must retain the Financial Interest Form for a Council member for 20 years from the date the form is signed by the Council member or in accordance with the current NOAA records schedule.

(6) An individual being considered for appointment to an SSC must file the Financial Interest Form with the Regional Administrator for the geographic area concerned within 45 days prior to appointment. A member of the SSC must file an update of his or her statement with the Regional Administrator for the geographic area concerned within 30 days of the time any such financial interest is acquired or substantially changed by the SSC member or the SSC member'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 Regional Administrator by February 1 of each year.

(7) An individual who serves as an SSC member to more than one Council shall file Financial Interest Forms with each Regional Administrator for the geographic areas concerned.

(8) The Regional Administrator must retain the Financial Interest Forms of all SSC members for at least five years after the expiration of that individual's term on the SSC. Such forms are not subject to sections 302(j)(5)(B) and (C) of the Magnuson-Stevens Act.

(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, lobbying, advocacy, 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 the determining factor.

(3) In making a determination under paragraph (f) of this section as to whether a Council decision will have a significant and predictable effect on an affected individual's financial interests, the designated official will:

(i) Initially determine whether the action before the Council is a Council decision, and whether the affected individual has any financial interest in the fishery or sector of the fishery affected by the action.

(ii) If the designated official determines that the action is not a Council

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decision or that the affected individual does not have any financial interest in the fishery or sector of the fishery affected by the action, the designated official's inquiry ends and the designated official will determine that a voting recusal is not required under 50 CFR 600.235.

(iii) However, if the designated official determines that the action is a Council decision and that the affected individual has a financial interest in the fishery or sector of the fishery affected by the Council decision, a voting recusal is required under 50 CFR 600.235 if there is:

(A) An expected and substantially disproportionate benefit to the affected individual's financial interest (see paragraph (c)(5) of this section), and

(B) A close causal link (see paragraph (c)(4) of this section) between the Council decision and the expected and substantially disproportionate benefit to the affected individual's financial interest.

(4) A close causal link for Council decisions that either require or do not require implementing regulations is determined as follows:

(i) For all Council decisions that require implementing regulations and that affect a fishery or sector of a fishery in which an affected individual has a financial interest, a close causal link exists unless:

(A) The chain of causation between the Council decision and the affected individual's financial interest is attenuated or is contingent on the occurrence of events that are speculative or that are independent of and unrelated to the Council decision; or

(B) There is no real, as opposed to speculative, possibility that the Council decision will affect the affected individual's financial interest.

(ii) For Council decisions that do not require implementing regulations, a close causal link exists if there is a real, as opposed to speculative, possibility that the Council decision will affect the affected individual's financial interest.

(5) A designated official will determine that an expected and substantially disproportionate benefit exists if an affected individual has a significant financial interest (see paragraph (c)(6)

of this section) in the fishery or sector of the fishery that is likely to be positively or negatively affected by the Council decision. The magnitude of the positive or negative impact is not determinative of whether there is an expected and substantially disproportionate benefit. The determining factor is the affected individual's significant financial interest in the fishery or sector of the fishery affected by the Council decision.

(6) When calculating significant financial interest, the designated official will rely on certain information.

(i) The information to be used is as follows:

(A) The designated official will use the information included in the Financial Interest Form and any other reliable and probative information provided in writing.

(B) The designated official may contact an affected individual to better understand the reported financial interest or any information provided in writing.

(C) The designated official will presume that the information reported on the Financial Interest Form is true and correct and the designated official is not responsible for determining the veracity of the reported information when preparing a determination under paragraph (f) of this section.

(D) If an affected individual does not provide information concerning the specific percentage of ownership of a financial interest reported on his or her Financial Interest Form, the designated official will attribute all harvesting, processing, or marketing activity of, and vessels owned by, the financial interest to the affected individual.

(ii) The designated official will apply the following principles when calculating an affected individual's financial interests relative to the significant financial interest thresholds for the fishery or sector of the fishery affected by the action. For purposes of this paragraph, use of the term "company" includes any business, vessel, or other entity.

(A) For attributions concerning direct ownership (companies owned by or that employ an affected individual) the designated official will attribute to an

affected individual all harvesting, processing, and marketing activity of, and all vessels owned by, a company when the affected individual owns 100 percent of that company. If an affected individual owns less than 100 percent of a company, the designated official will attribute to the affected individual the harvesting, processing, and marketing activity of, and vessels owned by, the company commensurate with the affected individual's percentage of ownership. The designated official will attribute to an affected individual all harvesting, processing, and marketing activity of, and all vessels owned by, a company that employs the affected individual.

(B) For attributions concerning indirect ownership (companies owned by an affected individual's company or employer) the designated official will attribute to the affected individual the harvesting, processing, and marketing activity of, and vessels owned by, a company that is owned by that affected individual's company or employer commensurate with the affected individual's percentage ownership in the directly owned company, and the directly owned company's ownership in the indirectly owned company.

(C) For attributions concerning parent ownership (companies that own some percentage of an affected individual's company or employer) the designated official will attribute to an affected individual all harvesting, processing, and marketing activity of, and all vessels owned by, a company that owns fifty percent or more of a company that is owned by the affected individual or that employs the affected individual. The designated official will not attribute to an affected individual the harvesting, processing, or marketing activity of, or any vessels owned by, a company that owns less than fifty percent of a company that is owned by the affected individual or that employs the affected individual.

(D) For attributions concerning employment or service with associations or organizations, an affected individual may be employed by or serve, either compensated or unpaid, as an officer, director, board member or trustee of an association or organization. The designated official will not attribute to

the affected individual the vessels owned by, or the harvesting, processing, or marketing activity conducted by, the members of that association or organization if such organization or association, as an entity separate from its members, does not own any vessels and is not directly engaged in harvesting, processing or marketing. However, if such organization or association receives from NMFS an allocation of harvesting or processing privileges, owns vessels, or is directly engaged in harvesting, processing or marketing, the designated official will attribute to the affected individual the vessels owned by, and all harvesting, processing, and marketing activity of, that association or organization.

(E) For the financial interests of a spouse, partner or minor child, the designated official will consider the following factors for ownership and employment.

(1) For the financial interests of a spouse, partner or minor child related to ownership, the designated official will attribute to an affected individual all harvesting, processing, and marketing activity of, and all vessels owned by, a company when the affected individual's spouse, partner or minor child owns 100 percent of that company. If an affected individual's spouse, partner or minor child owns less than 100 percent of a company, the designated official will attribute to the affected individual the harvesting, processing, and marketing activity of, and vessels owned by, the company commensurate with the spouse's, partner's or minor child's percentage of ownership.

(2) For the financial interests of a spouse, partner or minor child related to employment, the designated official will not attribute to an affected individual the harvesting, processing, or marketing activity of, or any vessels owned by, a company that employs the affected individual's spouse, partner or minor child when the spouse's, partner's or minor child's compensation are not influenced by, or fluctuate with, the financial performance of the company. The designated official will attribute to an affected individual all harvesting, processing, and marketing activity of, and all vessels owned by, a

company that employs the Council member's spouse, partner or minor child when the spouse's, partner's or minor child's compensation are influenced by, or fluctuate with, the financial performance of the company.

(7) A member of an SSC is not subject to the restrictions on voting under this section.

(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 and identify the financial interest that would be affected.

(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) *Process and procedure for determination.* (1) At the request of an affected individual, and as provided under paragraphs (c)(3)–(6) of this section, 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. Unless subject to confidentiality requirements, 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.

(6) Regional Recusal Determination Procedure Handbooks shall be developed for each NMFS Region.

(i) Each NMFS Regional Office, in conjunction with NOAA Office of General Counsel, will publish and make available to the public its Regional Recusal Determination Procedure Handbook, which explains the process and procedure typically followed in preparing and issuing recusal determinations.

(ii) A Regional Recusal Determination Procedure Handbook must include:

(A) A statement that the Regional Recusal Determination Procedure Handbook is intended as guidance to describe the recusal determination process and procedure typically followed within the region.

(B) Identification of the Council(s) to which the Regional Recusal Determination Procedure Handbook applies. If the Regional Recusal Determination Procedure Handbook applies to multiple Councils, any procedure that applies to a subset of those Councils should clearly identify the Council(s) to which the procedure applies.

(C) A description of the process for identifying the fishery or sector of the fishery affected by the action before the Council.

(D) A description of the process for preparing and issuing a recusal determination relative to the timing of a Council decision.

(E) A description of the process by which the Council, Council members, and the public will be made aware of recusal determinations.

(F) A description of the process for identifying the designated official(s) who will prepare recusal determinations and attend Council meetings.

(iii) A Regional Recusal Determination Procedure Handbook may include additional material related to the region's process and procedure for recusal determinations not specifically identified in paragraph (f)(6)(ii) of this section. A Regional Recusal Determination Procedure Handbook may be revised at any time upon agreement by the NMFS Regional Office and NOAA Office of General Counsel.

(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 Council member may request a review of any aspect of the recusal determination, including but not limited to, whether the action is a Council decision, the description of the fishery or sector of the fishery affected by the Council action, the calculation of an affected individual's financial interests or the finding of a significant financial interest, and the existence of a close causal link. A request for review must include a full statement in support of the review, including a concise statement as to why the Council member believes that the recusal determination is in error 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) The provisions of 18 U.S.C. 208 regarding conflicts of interest do not apply to an affected individual who is a voting member of a Council appointed by the Secretary, as described under section 302(j)(1)(A)(ii) of the Magnuson-Stevens Act, and who is in compliance with the requirements of this section for filing a Financial Interest Form. The provisions of 18 U.S.C. 208 do not apply to a member of an SSC, unless that individual is an officer or employee of the United States or is otherwise covered by the requirements of 18 U.S.C. 208.

(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 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 or SSC membership.

[63 FR 64185, Nov. 19, 1998, as amended at 75 FR 59152, Sept. 27, 2010; 85 FR 56182, Sept. 11, 2020]

§ 600.240 Security assurances.

(a) DOC Office of Security will issue security assurances to Council members following completion of favorable background investigations. A Council member's appointment is conditional until such time as the background investigation has been favorably adjudicated. The Secretary will revoke the member's appointment if that member receives an unfavorable background investigation. In instances in which Council members may need to discuss, at closed meetings, materials classified for national security purposes, the agency or individual (e.g., Department of State, U.S. Coast Guard) providing such classified information will be responsible for ensuring that Council

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members and other attendees have the appropriate security clearances.

(b) Each nominee to a Council is required to complete a Certification of Status form (“form”). All nominees must certify, pursuant to the Foreign Agents Registration Act of 1938, whether they serve as an agent of a foreign principal. Each nominee must certify, date, sign, and return the form with his or her completed nomination kit. Nominees will not be considered for appointment to a Council if they have not filed this form. Any nominee who currently is an agent of a foreign principal will not be eligible for appointment to a Council, and therefore should not be nominated by a Governor for appointment.

[61 FR 32540, June 24, 1996, as amended 75 FR 59153, Sept. 27, 2010]

§ 600.245 Council member compensation.

(a) All voting Council members whose eligibility for compensation has been established in accordance with NOAA guidelines will be paid through the cooperative agreement as a direct line item on a contractual basis without deductions being made for Social Security or Federal and state income taxes. A report of compensation will be furnished each year by the member's Council to the proper Regional Program Officer, as required by the Internal Revenue Service. Such compensation may be paid on a full day's basis, whether in excess of 8 hours a day or less than 8 hours a day. The time is compensable where the individual member is required to expend a significant private effort that substantially disrupts the daily routine to the extent that a work day is lost to the member. “Homework” time in preparation for formal Council meetings is not compensable.

(b) Non-government Council members receive compensation for:

(1) Days spent in actual attendance at a meeting of the Council or jointly with another Council.

(2) Travel on the day preceding or following a scheduled meeting that precluded the member from conducting his normal business on the day in question.

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(3) Meetings of standing committees of the Council if approved in advance by the Chair.

(4) Individual member meeting with scientific and technical advisors, when approved in advance by the Chair and a substantial portion of any day is spent at the meeting.

(5) Conducting or attending hearings, when authorized in advance by the Chair.

(6) Other meetings involving Council business when approved in advance by the Chair.

(c) The Executive Director of each Council must submit to the appropriate Regional Office annually a report, approved by the Council Chair, of Council member compensation authorized. This report shall identify, for each member, amount paid, dates, and location and purpose of meetings attended.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 66 FR 57888, Nov. 19, 2001]

§ 600.250 Council member training.

(a) The Secretary shall provide a training course covering a variety of topics relevant to matters before the Councils and shall make the training course available to all Council members and staff and staff from NMFS regional offices and science centers. To the extent resources allow, the Secretary will make the training available to Council committee and advisory panel members.

(b) Council members appointed after January 12, 2007, shall, within one year of appointment, complete the training course developed by the Secretary. Any Council member who completed such a training course within 24 months of January 12, 2007, is considered to have met the training requirement of this section.

[75 FR 59154, Sept. 27, 2010]

Subpart D—National Standards

§ 600.305 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and