

Financial Disclosure and Recusal Provisions

A Closer Examination

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Financial Disclosure Examples

Fictional Council members

The handout describes four fictional public members of the hypothetical Central Fishery Management Council:

Mr. Sparrow, Ms. Swann,

Mr. Turner, and Mr. Barbossa

What interests should Sparrow disclose?

We know Sparrow should disclose Ocean Bounty Seafoods in response to:

- Question 1.1.1 (because he has partial ownership of Ocean Bounty),
- Question 1.2.1 (because he is employed by Ocean Bounty), and
- Question 1.2.2 (because he is employed on one of Ocean Bounty's fishing vessels)

Should Sparrow also disclose Deep Sea on his financial disclosure form?

Yes. Deep Sea is an affiliate of Ocean Bounty (a subsidiary company of Ocean Bounty) and should be disclosed to ensure that Sparrow receives the MSA exception from conflict of interest, and in the interests of transparency and for recusal determinations.

Sparrow should disclose Deep Sea under Questions 1.1.1 and 1.1.2

What interests should Swann disclose?

We know Swann should disclose Swann Consultants in response to:

- Question 1.1.4 (because she has partial ownership in a lobbying company) and
- Question 1.2.4 (because she is employed with a lobbying company).

Should Swann also disclose Acme Seafoods on her financial disclosure form?

Yes. Acme Seafoods is affiliated with Swann Consultants (Acme owns a percentage of Swann Consultants) and should be disclosed to ensure that Swann receives the MSA exception from conflict of interest, and in the interests of transparency and for recusal determinations.

Swann should disclose Acme Seafoods in response to Questions 1.1.5, because she partially owns Swann Consultants which is an entity that is partially owned by Acme Seafoods, a company that processes and markets fish managed by the Central Council.

Should Swann disclose her husband's financial interests?

Yes, in response to Questions 2.1.4, 2.2.4, and 2.2.5.

What interests should Turner disclose?

1. Should Turner disclose his employment with the city of Seaside?

Maybe. He should, in response to Question 1.2.3, if the city of Seaside engages in marketing activities or provides support services for its local seafood businesses; or, in response to Question 1.2.4, if elected officials or city employees advocate on fisheries issues before the Central Council.

2. Should Turner disclose his service as a board member with United Fishermen of Seaside?

Yes, in response to Question 1.3.1

3. Should Turner disclose his older son's interests in the fisheries?

No, because Turner's older son is not a minor child and therefore there is no obligation for Turner to disclose that information.

4. Should Turner disclose his younger son's employment?

Yes, in response to Question 2.2.1

What interests should Barbossa disclose?

Barbossa should disclose his employment with Bluefish Forever, the fishermen's association, in response to Question 1.2.6

and

He should disclose his board membership with Bluefish Harvesting Cooperative, the cooperative harvesting organization, in response to Question 1.3.1

Recusal Examples

Recusal Question #1

The Central Council is considering a catch share program for the redfish fishery, which would require an FMP amendment and implementing regulations. At its December 2016 meeting, the Central Council will be voting on the suite of alternatives and options it would like to have analyzed.

Do the regulations require any of our Council members to recuse themselves from voting on this agenda item?



No.

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

Recusal Question #2

The Central Council will decide whether to adopt a catch share program for the redfish fishery at its March 2017 meeting.

Do the regulations require any of our Council members to recuse themselves from voting on this Council decision?



Recusal Required

Sparrow

Recusal Not Required

Swann

Turner

Barbossa

Mr. Sparrow is required to recuse himself from voting because . . .

1. His financial interests harvested 12% of the total harvest of redfish in 2016, which exceeds the 10% recusal threshold for harvest.
 - All of the redfish harvested by Ocean Bounty Seafoods (7%) would be attributed to Sparrow because he is a partial owner of, and employed by, that company.
 - Also, all of the redfish harvested by Deep Sea, LLC (5%) would be attributed to Sparrow because Deep Sea is a subsidiary of Ocean Bounty.

And because . . .

2. His financial interests fully or partially own 4 of the 20 vessels that participated in the commercial redfish fishery during 2016, exceeding the 10% recusal threshold for vessel ownership.
 - All of the vessels owned by Ocean Bounty Seafoods (2) would be attributed to Sparrow because he is a partial owner of, and employed by, that company.
 - And all of the vessels owned by Deep Sea LLC (2), would be attributed to Sparrow because Deep Sea is a subsidiary of Ocean Bounty.

Ms. Swann is not required to recuse herself because . . .

Her consulting company is not directly involved in the harvesting, processing, or marketing of redfish

- The clients' activity in the redfish fishery would not be attributed to the company or to Swann and her husband.

Acme Seafoods does not have a controlling interest in Swann's consulting company.

- All harvesting, processing, and marketing activity of a parent company is attributed to the Council member if the parent company owns a controlling interest (50% or greater ownership) in the member's company or employer.

Mr. Turner is not required to recuse himself 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 Turner.

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 Turner through his minor child.

Turner's older son's activity in the redfish fishery is not a reportable financial interest so it would not be attributed to Turner.



How many of you think that Turner should voluntarily recuse himself?

Although not required to do so, Turner may choose to voluntarily recuse himself if he believes that the Council's decision would have a significant and predictable effect on his financial interests.



Mr. Barbossa is not required to recuse himself because . . .

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

Recusal Question #3

At its March 2017 meeting, the Central Council also will be taking a final vote on whether to prohibit the use of trawl net gear in the bluefish fishery.

Given Mr. Barbossa's financial interests, do the regulations require him to recuse himself from voting on this council decision?

Yes, because . . .

Bluefish Harvesting Cooperative receives an allocation representing 15% of the total harvest of bluefish, which exceeds the 10% recusal threshold for harvest.

- Because NMFS directly allocates a specific amount of bluefish to Bluefish Harvesting Cooperative, and Bluefish Harvesting Cooperative is directly involved in the harvesting of bluefish, the allocation of 15% of the total harvest of bluefish to Bluefish Harvesting Cooperative would be attributed to Barbossa.

Parting thoughts:

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