



Ethics Rules for Fishery Management Council Members

Fishery Council Members Include:

- Individuals nominated by the Governor and appointed by the Secretary of Commerce (Public Members);
- Regional director of National Marine Fisheries Service; and
- State officials

Public Members of Fishery Management Councils

- Subject to Federal conflict of interest statutes
- File Statement of Financial Interests (NOAA Form 88-195)

What to Report



Any interest in a
harvesting, processing,
lobbying, advocacy, or
marketing activity

This includes stock, ownership interest, service, or employment with:

- Any entity that engages in harvesting, processing, or marketing;
- Any entity that provides services to someone engaged in harvesting, processing, or marketing; or
- Any entity that lobbies or provides advocacy, e.g., law firm, NGO, trade association
- Also report any affiliates of the above entities

Your financial interests include
the interests of:

- Your spouse;
- Your minor children; or
- An organization in which you serve as an officer, partner, or employee

Special Exception

With disclosure, you may fully participate as a Council member in a matter in which you have an interest in a harvesting, processing, lobbying, advocacy, or marketing activity

UNLESS

- The matter at issue will have an **expected and substantially disproportionate benefit** to your financial interest; or
- Is a matter **primarily of individual concern**

Expected and Substantially Disproportionate Benefit



- Greater than 10% interest in the total harvest, or in the processing or marketing of the total harvest; or
- Greater than 10% ownership in the vessels within the fishery

Matters Primarily of Individual Concern

A matter that affects a small number of identified or easily identifiable parties



Bribes and Similar Payments

You may not accept anything of value for taking action or failing to take action as a Council member

Lobbying the Government

You may not communicate (in your personal capacity) with any Federal agency or Federal court on behalf of others concerning a specific-party matter on which you participated as a Council member

After Leaving Council Service

- You may not communicate with any Federal agency or Federal court on behalf of others concerning a specific-party matter on which you participated as a Council member;
- Additional two-year bar on specific-party matters even if you did not participate; and
- No outside use of non-public information

Federal Officials of Fishery Management Councils

- Subject to same conflict of interest restrictions regarding your Council duties that apply to your other Government duties
- No participation in Council matters affecting harvesting, processing, lobbying, advocacy, or marketing activities in which you have an interest

Federal Standards of Conduct

- Gift restrictions;
- Conflicts based on appearance concerns; and
- Outside activities

State Officials of Fishery Management Councils

Subject to state statutes or
regulations and Council rules of
conduct

Restrictions on State Officials

- No participation in any matter affecting your financial interests;
- No solicitation or acceptance of anything of value in assisting someone in obtaining any appointive office or employment with the Council; and
- No outside use of non-public information

Scientific and Statistical Committee Members

- Must file Statement of Financial Interests;
- Not subject to Federal Conflict of Interest Statutes, unless already a Federal employee

Requirements for Filing Financial Disclosure Forms

- True or False: at a Council meeting, a Council member realizes that she has a completed financial form on file with the Council, but the form is dated two years ago. The Council member concludes that as long as the information on the form is still accurate, there is no need to prepare and file another form.

Answer: False

- Council members are required by 50 CFR 600.235(b)(2) to file a financial disclosure form annually, regardless of whether the information previously reported is unchanged.

Financial Disclosure

- True or False: a Council Member does not have to file a financial disclosure form in accordance with 50 CFR 600.235(b)(1) if he has no financial interests in the fisheries under the jurisdiction of the Council that meet the definition of “financial interests in harvesting, processing, lobbying, advocacy, or marketing.”

Answer: False

- Disclosing no interests in any harvesting, processing, lobbying, advocacy, or marketing activity in any fishery under the jurisdiction of the Council is also the type of disclosure required by Subpart 600.235(b).

Financial Disclosure

- True or False: Council Member Jones is employed by a seafood restaurant, which in turn is 100% owned by Krill Processing, Inc. Krill Processing is heavily involved in harvesting, processing, and marketing within the jurisdiction of the Council. Jones should report both the seafood restaurant and Krill Processing on the financial disclosure form.

Answer: True

- MSA section 302(j)(2) requires an affected individual to disclose the financial interest of any organization in which that individual is serving as an officer, director, trustee, partner, or employee, in any harvesting, processing, lobbying, advocacy, or marketing activity within the Council's jurisdiction. This includes parent companies of the individual's employer, as well as subsidiaries.

Financial Disclosure

- True of False: Council Member Smith owns a lobbying firm that advocates exclusively for Eastern Rig Ass'n, a large processor operating in the fisheries under the jurisdiction of the Council, which stands to benefit from several alternatives under consideration by the Council. Council member Smith may vote on the matter under consideration.

Answer: True

- MSA was recently amended to add lobbying & advocacy to the financial interests that must be disclosed. However, it is unlikely that such interests trigger the recusal requirements. The Council decision would not have a significant and predictable effect (i.e., a close causal link between the decision and an expected & substantially disproportionate benefit) on Smith's financial interests.

Financial Disclosure

- True or False: Same facts, but now assume that Council Member Smith is Vice President of Eastern Rig Association, which holds a 15% interest in the marketing of the total harvest of the sector. Smith may still vote on the amendment under consideration.

Answer: False

- The Council decision would have a significant and predictable effect on Smith's financial interests, because there is a close causal link between the Council decision and an expected & substantially disproportionate benefit (indicated by Eastern Rig's greater than 10 percent marketing interest) to the financial interest in marketing of an organization in which Smith serves as an officer. Accordingly, Smith may not vote, but may deliberate after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

Financial Disclosure

- True or False: Council Members may deliberate, provide advice, and make recommendations on Council matters that are primarily of individual concern (i.e., matters that affect a small number of identified, or easily identifiable parties, rather than broad policy matters), provided that they do not vote.

Answer: False

- False: Council Members are disqualified from participating at all in any Council matter that is primarily of individual concern, such as a contract or a case in litigation involving identified parties. Because FMC's address broad policy matters that affect many entities, they do not ordinarily raise individual concerns requiring recusal.

Contacting the Federal Government On Behalf of Others

- A Council Member, in her private capacity, lobbies Congress to pressure NMFS not to promulgate a rule that will temporarily close a fishery under the Council's jurisdiction. True or false: the Council Member has violated laws on representing others before the Government.

Answer: False

- Public members of FMC's are prohibited from representing others before a Federal agency or court on a specific party matter (such as a license, grant, litigation, etc.) on which they personally and substantially participated as a Council member. However, lobbying members of Congress is not prohibited, provided that appropriated funds are not used. In addition, a Council member may represent others before a Federal agency or court on broad policy matters, even those in which he or she participated as a Council member.

After Leaving Council Service

- Remember - After leaving Council service, a Council Member is barred from communicating with any Federal agency or Federal court on behalf of someone else concerning a particular matter involving specific parties with the intent to influence government action, if that Council member participated personally and substantially in the matter as a Council member.

Questions



- Contact the NOAA Regional Attorney responsible for advising your Council;
- State agency responsible for providing ethics advice; or
- Ethics Law and Programs Division at (202) 482-5384 or ethicsdivision@doc.gov

Fishery Management Council Staff

- Subject to Federal conflict of interest statutes and Council rules of conduct
- No participation in Council matters affecting harvesting, processing, lobbying, advocacy, or marketing activities in which you have an interest

Restrictions on Staff

- No financial interest that interferes with the fair and impartial conduct of your duties;
- No outside use of non-public information;
and
- No solicitation or acceptance of anything of value in assisting someone in obtaining any appointive office or employment with the Council

Lobbying the Government

If you serve more than 130 days in a 365-day period, you may not communicate (in your personal capacity) on behalf of others with any Federal agency or Federal court on any matter

After Leaving Council Service

- You may not communicate with any Federal agency or Federal court on behalf of others concerning a specific-party matter on which you participated as a Council employee;
- Additional two-year bar on specific-party matters under your supervision, even if you did not participate; and
- No outside use of non-public information

