Regional Fishery Management Councils
Nomination Application Kit Guidance

Please read the guidance and review each form prior to completing the Nomination Application Kit. You are ineligible for appointment consideration if all qualifications and nomination requirements of the Magnuson-Stevens Act, and other related requirements are not met within these forms. Contact your Governor (or Governor's contact) if you have questions regarding the completion of the Nomination Application Kit.

Regional Fishery Management Council Residency Policies

A state resident is an individual who maintains his/her principal residence within that state, and if applicable, pays income taxes to that state and/or other appropriate jurisdiction within that state.

Obligatory Seats

Obligatory seats are state-specific. Prior to submitting nominations, a Governor must determine if each nominee is a resident of that state. Governors may not nominate a non-resident of that state for appointment to a Council seat obligated to that state. If at any time during a term an appointee changes residency to another state, the member must resign from that obligatory seat.

At-Large Seats

At-large seats are regional. Governors may nominate residents of another Regional Fishery Management Council constituent state for appointment to an available at-large seat on that Council. However, if an at-large Council member changes residency to a state not represented on the Council on which he/she was a member, the member may no longer vote and must resign his/her at-large seat.

Criteria

Nominees, by reason of their occupational or other experience, scientific expertise, or training, must be knowledgeable and experienced in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

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

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

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

4) The management and conservation of natural resources, including related interactions with industry, government bodies, academic institutions, and public agencies.

5) 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; and

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

Equally important is the stewardship responsibilities and the appointment of individuals who can work collectively with other members to achieve the conservation standards under the Magnuson-Stevens Act.

Completing the Nomination Application Kit

Please review each form prior to completing. You are ineligible for appointment consideration if all qualification and nomination requirements of Section 302 of the Magnuson-Stevens Act and other related requirements at 50 CFR 600.215 are not met within these forms. Contact your Governor (or Governor's contact) if you have questions regarding the completion of the Nomination Application Kit.

Part 1: **Acknowledgement Statement, Resume, Philosophy Statement**

You must provide a written statement as to why you want to be a Council member; a current resume, or equivalent, describing career history, detailing fisheries background and experience; and a statement of your guiding philosophy on the conservation and management of living marine resources.

Part 2: **Personal Fisheries Experience Form**

Nominees must specify their personal fisheries experience and background, participation in a fishing sector, and other management interests within a Council's geographic area.

Part 3**: Statement of Financial Interests Form (NOAA Form 88-195) and National Marine Fisheries Service Intergovernmental Personnel Agreement (IPA)**

Nominees must meet applicable financial disclosure requirements as required by Section 302(j) of the Magnuson-Stevens Act prior to appointment. The requirements are listed on NOAA Form 88-195 "Statement of Financial Interests for Use by Voting members of, and Nominees to, the Regional Fishery Management Councils." In addition, nominees must select the appropriate block, and sign/date the cover sheet to Part 3, which pertains to potential participation by nominees in a National Marine Fisheries Service IPA.

Part 4: **Certification of Status Statement**

Each nominee to, and member of, the eight Councils must certify, pursuant to the Foreign Agents Registration Act of 1938, if they serve as an agent of a foreign principal. In addition, each nominee to, and member of, the eight Councils must certify, pursuant to the Lobbying Disclosure Act of 1995, as amended, if they serve as a registered Federal lobbyist. Nominees cannot be appointed to one of the eight councils if they are acting as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, or if they are a registered Federal lobbyist pursuant to the Lobbying Disclosure Act of 1995, as amended.

Timely Submission

Please make sure you have completed (sign and date where applicable) Parts 1-4 of the Nomination Application Kit. Print the completed and return to your Governor (or Governor's contact). Completed nomination packages (Governor's letter and completed nominees' kits) must be received by the NOAA Assistant Administrator for Fisheries on or before March 15, 2014.

Appointment

A Council member's appointment is conditional until such time as the member's background investigation has been favorably adjudicated. If you are appointed, you must undergo an extensive background investigation and complete other administrative requirements of the appointment process. Failure to disclose any past criminal history would be grounds for an unfavorable background investigation. Newly appointed members are required to complete a training course typically scheduled in October.

Part 1

Acknowledgement Statement, Resume, and Philosophy Statement

You must provide an acknowledgement statement indicating why you want to be a Council member; a complete resume detailing fisheries background and experience including information about your personal fisheries-related education, as well as information concerning awards and/or committee, board, or commission memberships, authorship of publications, etc., or other related qualifications and interests; and a statement of your guiding philosophy on the conservation and management of living marine resources.

Regional Fishery Management Council Applying for _____

Are you seeking reappointment? Yes_____ No_____ Gender: ☐Male ☐Female

Full Name:

(Last) (First) (Middle) (Suffix) (Nickname)

If you do not have a middle name state "NMN," or, if any part of your name contains initials only, state "IO."

Current Residential Address:

Please do not use a P.O. Box if at all possible

Current Employer's Name and Address:

Please do not use a P.O. Box if at all possible

Home Phone: _____ *(area code)*

Work Phone: _____ *(area code)*

Cell Phone: _____ *(area code)*

Fax: _____ *(area code)*

Email Address: _____

Social Security Number: _____ Date of Birth: _____

Place of Birth: _____

Acknowledgement Statement*:*

(Include a statement as to why you want to be a Council member.)

Philosophy statement*:*

(Include a statement of your guiding philosophy on the conservation and management of living marine resources.)

Work experience:

Education:

(*Include information about your personal fisheries-related education.)*

Memberships:

(*Include committee, board or commission memberships.)*

Information concerning awards and/or authorship of publications:

Please provide any other related qualifications or interests.

You may include a current resume, or equivalent, in addition to the completed forms.

Part 2

Personal Fisheries Experience Form

The following is intended to help you provide NMFS with information on your background in fisheries. Members are categorized as coming from the commercial fishing sector, recreational fishing sector, or "other" sector. The "other" sector is made up of appointed members with knowledge of and experience in biological, economic, or social sciences; environmental or ecological matters; consumer affairs; and associated fields. If you have experience in more than one sector please explain.

NAME (Last, First, Middle) CITY/STATE COUNCIL

COMMERCIAL SECTOR

1. How many years have you engaged in commercial fishing?

2. Are you currently employed in any area related to the commercial fishing sector?
☐YES ☐NO If yes, list your occupation/business to include, but not limited to, harvester, processor, buyer, broker, retailer, supplier, or other. If no, please list your occupation/business and dates you were employed in the commercial fishing business.

3. What type (species) of fish have you fished for commercially?

4. What type of fishing gear do you primarily use for commercial fishing?

5. Are you a member of any commercial fishermen's organizations/clubs? ☐YES ☐NO
If yes, please list them.

6. Do you subscribe to any magazines/publications that deal with fishing? ☐YES ☐NO
If yes, please list them.

7. Have you or do you attend federal/state fisheries meetings and/or public hearings regularly?
☐YES ☐NO If yes, please list the meetings you have attended with the most recent dates and locations in the last year.

RECREATIONAL SECTOR

1. How many years have you engaged in recreational fishing?

2. Are you currently employed in any area related to the recreational fishing sector?
☐YES ☐NO If yes, list your occupation/business to include, but not limited to, fisherman, guide, supplier, outfitter, or other. If no, list your occupation/business and dates employed in any area related to the recreational fishing sector.

3. Have you ever participated in a fishing tournament? ☐YES ☐NO
If yes, list the most recent tournaments by date, name and location.

4. What type (species) of fish have you fished for recreationally?

5. What type of fishing gear do you primarily use for recreational fishing?

6. Are you a member of any recreational fishermen's organizations/clubs? ☐YES ☐NO
If yes, please list them.

7. Do you subscribe to any magazines/publications that deal with fishing? ☐YES ☐NO
If yes, please list them.

8. Have you/do you attend federal/state fisheries meetings and/or public hearings?
☐YES ☐NO If yes, list the meetings you have attended with the most recent dates and locations in the last year.

CHARTER FISHING SECTOR

1. How many years have you engaged in charter fishing?

2. Are you currently employed in any area related to the charter fishing sector?
☐YES ☐NO If yes, list your occupation/business to include, but not limited to, charter industry, charter captain, charter fishing crew, other. If no, list your occupation/business and dates employed in any area related to the charter fishing sector.

3. If applicable, what type and kind of charter fishing do you provide or captain?
Types and kinds to include: private fishing charter, walk-on fishing charters, inshore fishing charters, offshore fishing charters, deep-sea fishing charters.

4. If applicable, what kind of charter fishing boat do you own or captain?
Kinds to include, but not limited to, six passenger, multi-passenger, party boat (vessel).

5. What kind of (species) of fish can be caught when charter fishing?

6. What type of fishing gear do you primarily use when charter fishing?

7. Are you a member of any fishermen's organizations/clubs? ☐YES ☐NO
If yes, please list them.

8. Do you subscribe to any magazines/publications that deal with fishing? ☐YES ☐NO
If yes, please list them.

9. Have you/do you attend federal/state fisheries meetings and/or public hearings?
☐YES ☐NO If yes, list the meetings you have attended with the most recent dates and locations in the last year.

OTHER SECTOR

1. Have you or do you now work in any area related to biological, economic, or social sciences; environmental or ecological matters; consumer affairs; and associated fields? ☐YES ☐NO

If yes, please explain.

2. Are you a member of any conservation organizations/clubs? ☐YES ☐NO

If yes, please list them.

3. Do you subscribe to any magazines/publications that deal with resource conservation etc.?

☐YES ☐NO If yes, please list them.

If applicable, please list any of your publications/reports.

4. Have you or do you attend federal/state fisheries meetings and/or public hearings?
☐YES ☐NO If yes, please list the meetings you have attended with the most recent dates and locations in the last year.

5. What are your main areas of concern, or study, pertaining to fisheries?

6. If your area of interest does not fit in any other category, please use the space below to describe your background.

Part 3

Intergovernmental Personnel Agreements (IPAs)

Please mark the appropriate box and sign/date the appropriate blank line that may be applicable to your nomination if:

a) you, your spouse, general partner, and/or any organization in which you are serving as an officer, director, trustee, general partner, or employee, are currently participating as a principal investigator for a National Marine Fisheries Service study grant(s);

b) if you, your spouse general partner, and/or any organization in which you are serving as an officer, director, trustee, general partner, or employee, are currently detailed to the NMFS on a full- part-time basis under an IPA:

☐ a) above, is applicable: _____
(sign and date)

☐ b) above, is applicable: _____
(sign and date)

☐ neither a) nor b) above, is applicable to my nomination:
:

_____
(sign and date)

INFORMATION REQUIRED TO BE REPORTED must be DISCLOSED on NOAA FORM 88-195, "STATEMENT OF FINANCIAL INTERESTS FOR USE BY VOTING MEMBERS OF, AND NOMINEES TO, THE REGIONAL FISHERY MANAGEMENT COUNCILS"

Individuals nominated for appointment to a Regional Fishery Management Council must provide financial disclosure information pursuant to section 302(j) of the Magnuson-Stevens Act, and financial disclosure regulations at 50 CFR 600.235. The form must be filled out by each nominee for Secretarial appointment.

Disclosure must be made on NOAA Form 88-195. In all instances, the form must be signed and dated.

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)

Authority to Require this Information

Section 302(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the financial disclosure regulations at 50 C.F.R. 600.235 require that "affected individuals" must meet certain financial disclosure requirements. In Section 302(j)(1) of the Magnuson-Stevens Act, the term "affected individual" means an individual who is nominated by the governor of a state for appointment as a voting member of a Council in accordance with Section 302(b)(2); or who is a voting member of a Council appointed in accordance with Section 302(b)(2); or Section 302(b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government. The reauthorization of the Magnuson-Stevens Act, at Section 302(g)(1)(D) also requires that each member of an SSC be treated as an "affected individual," but only for the purposes of paragraphs (2), (3)(B), (4), and (5)(A) of Section (302)(j).

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.

Reporting and Filing Requirements

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 NOAA Form 88-195, or such other form as the Secretary may prescribe. The Financial Interest Form must be filed by each nominee for Secretarial appointment with the Assistant Administrator by April 15 or, if nominated after March 15, 1 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, or 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. 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, 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. 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.

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

Items to Report on NOAA Form 88-195, "Statement of Financial Interests:
Specific information must be disclosed for each relevant financial interest or relationship that may call into question whether there may be conflict of interest between (1) your financial interests and relationships and (2) your Council related actions and activities. The information to be listed does not require a showing of the amount of financial interest, but does require complete disclosure of any and all types of financial interest relationships in any fishery under the jurisdiction of the Council concerned.

In the event any of the required information, including holdings placed in trust, is not known to you but is known to another person, you should request that other person to submit the information on your behalf and should report such request in the section titled "Information Requested of Other Persons" on NOAA Form 88-195.

If you have no financial interest to disclose, please complete and check the appropriate boxes on the last page of the NOAA Form 88-195 "Statement of Financial Interests" and return.

Name of Individual: Include yourself, your spouse, a minor child or partner. *(If not yourself, your relationship to individual.)*

Entity Name/Full Address: Include name and full address of a company, business, fishing vessel, other entity or relationship. *(Entities may include: affiliations, associations, cooperatives, corporations, organizations, universities, etc.).*

Description/Relationship of Financial Interest: Include a description of the financial interest and the relationship *(marketing, processing, guide, charter, consultant, contractor)*; degree of ownership (percentage) or share holdings or any other monetary or in-kind enumeration of a company, business, fishing vessel, other entity or relationship; directorship of, or employee of, a company, business, organization, other entity or relationship; contracted relationship; contributions to advocacy organizations; and the initial date the financial interest or relationship began.

Fisheries of Interest/Gear Type: Identify the fishery associated with this particular financial interest or relationship, the gear type utilized, and the product type produced *(fresh, frozen, filleted, canned).*

Examples:
(1) *If you own a one-third interest in a fishing vessel, your response should include:*

Name: John Doe	Council: New England Council	Committee:
Name of Individual John and Mary Doe (Joint ownership)		(If not yourself, your relationship to individual.)
Entity Name/Full Address	**Description/Relationship of Financial Interest**	**Fisheries of Interest/Gear Type**
Entity: Miss Amy Inc. Full Address City, State 00000	Commercial fishing vessel, harvester one-third interest by myself and my spouse Date Began: 3/2000	Atlantic Herring Trawl Product Produced: fresh

(2) If your spouse is employed by a State government agency involved in the Council process and you have contracted with NMFS for stock assessment research, your response should include:

Name: John Doe	Council: New England Council	Committee:
Name of Individual Mary Doe (Spouse)		(If not yourself, your relationship to individual.)
Entity Name/Full Address	**Description/Relationship of Financial Interest**	**Fisheries of Interest/Gear Type**
Entity: EFG Agency Full Address City, State, 00000	Agency involved in Council process Biologist Date Began: 2000	All Species
Name of Individual John Doe		(If not yourself, your relationship to individual.)
Entity Name/Full Address	**Description/Relationship of Financial Interest**	**Fisheries of Interest/Gear Type**
Other Entity or Relationship: NMFS Full Address City, State 00000	Produce stock assessment Contractor Date Begun:: 2004	Orange rockfish

Name:	Council:	Committee:

Name of Individual		(If not yourself, your relationship to individual.)
Entity Name/Full Address	**Description/Relationship of Financial Interest**	**Fisheries of Interest/Gear Type**
Entity:	Date Began:	Product Produced:
Other Entity/Relationship:	Date Began:	Product Produced:

Name of Individual		(If not yourself, your relationship to individual.)
Entity Name/Full Address	**Description/Relationship of Financial Interest**	**Fisheries of Interest/Gear Type**
Entity:	Date Began:	Product Produced:
Other Entity/Relationship:	Date Began:	Product Produced:

Name of Individual		(If not yourself, your relationship to individual.)
Entity Name/Full Address	**Description/Relationship of Financial Interest**	**Fisheries of Interest/Gear Type**
Entity:	Date Began:	Product Produced:
Other Entity/Relationship:	Date Began:	Product Produced:

Information Requested of Other Persons. In the event any of the required information, including holdings placed in trust, is not known to you but is known to another person, you should request that other person to submit the information on your behalf and should report such request in the section below.

Name and Address	Date of Request	Nature of Subject Matter

☐ **CHECK BOX, IF YOU HAVE NO APPLICABLE INFORMATION TO DISCLOSE**

Position/Type of Filing:

- ☐ Council Nominee
- ☐ Council Member
- ☐ SSC Member

- ☐ Original filing
- ☐ Annual filing
- ☐ Supplementary filing

Certification

I certify that the statements I have made are true complete and correct to the best of my knowledge and belief. I understand that if during the period of my appointment, I undertake new employment, I must promptly file an amended statement, and I must also report any new financial interests acquired during this period. I also certify that I am currently familiar with the statutes, regulations, and policies governing my responsibilities and conduct as applied to the duties I am assigned.

Printed Name: _____

Council/Committee: _____

Signed: _____

Dated: _____

Requests for Assistance or Additional Information

Refer to the financial disclosure regulations at 50 C.F.R. 600.235 for additional information. If you have any questions regarding the Statement of Financial Interests or related issues, please contact the Office of the Assistant General Counsel for Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Room 5882, Washington, D.C. 20230, or telephone (202) 482-5384.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The public reporting burden for this collection of information, on this NOAA Form 88-195, is estimated to average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden to the National Marine Fisheries Service, Office of the Chief Information Officer (F/CIO), 1315 East-West Highway, SSMC #3, 3rd Floor, Silver Spring, Maryland 20910.

Public Access to Information

The Statement completed by voting members of the Regional Fishery Management Councils will be retained by the Council, made available on the Council Internet Site, and made available for public review at reasonable hours at the Council Office, and at each public hearing or public meeting.

Part 4

MEMORANDUM FOR: Assistant General Counsel for Administration
U.S. Department of Commerce
Office of General Counsel
Washington, DC 20230

SUBJECT: Certification of Status Statement

I, _____,
(Name)

currently residing at _____
(Street Address)

_____
(City) (State) (Zip)

hereby certify the following:

I am ☐ / I am not ☐ currently an agent of a foreign principal required to register pursuant to the Foreign Agents Registration Act of 1938, as amended (at 22 U.S.C. § 611, *et seq*);

I am ☐ / I am not ☐ currently a lobbyist required to register under the Lobbying Disclosure Act of 1995, as amended.

My signature below affirms that the information conveyed on this form is true, complete, and correct to the best of my knowledge and belief, and is made in good faith; and that I understand that knowing and willful false information on this form can be punished by fine or imprisonment or both.

_____ _____
(Signature) (Date)

UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

MAY 1 1980

MEMORANDUM FOR: Mary Ann Fish
Director, White House Liaison

FROM: Barbara S. Fredericks
Assistant General Counsel
for Administration

SUBJECT: Status of Members of Fisheries Management Councils and District Export Councils

We have reviewed the status of members of the Fisheries Management Councils and the District Export Councils in relation to whether they are "public officials" as defined in 18 U.S.C. § 219(c). A review of the circumstances of each council's functions reveals that the members of the Fisheries Management Councils are public officials as defined in that statute, but the members of the District Export Councils are not.

Background

Section 219 prohibits a public official from acting as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended.[1] Violation of this proscription subjects the individual to criminal penalties of fine, imprisonment for up to two years, or both.[2] In the case of the employment of an agent of a foreign principal as a special Government employee, the head of the employing agency may certify to the Attorney General that the employment of such an individual is required in the national interest.[3] Filing such a certification with the Attorney General will exempt that individual from the strictures of the statute.

"Public official" is defined as:

(1) any person,
(2) acting for or on behalf of the United States, or any department, agency, or branch of Government thereof,
(3) in any official function,
(4) under or by authority of any such department, agency, or branch of Government.[4]

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[1] 22 U.S.C. § 611, et seq.

[2] Failure to register as required by the Foreign Agents Registration Act also subjects an individual to criminal penalty. 22 U.S.C. § 618.

[3] 18 U.S.C. § 219(b).

[4] 18 U.S.C. § 219(c).

The Department of Justice, has interpreted this definition to include "[m]embers of advisory committees governed by the Federal Advisory Committee Act (FACA) . . . ."[3] They refined the statutory definition set forth above by noting that generally:

> FACA provides that advisory committees are established or utilized 'in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.' 5 U.S.C. app. § 3(2). Pursuant to FACA, a designated federal official calls all meetings of an advisory committee, approves the agenda, chairs or attends all meetings, and may adjourn any meeting of the committee whenever he determines it to be in the public interest. Id. §10(e), (f). Members of advisory committees subject to FACA thus perform their official advisory duties 'for' the Government and 'under' a government agency, within the meaning of section 219. 'Representative' members of FACA committees . ... are also 'public official[s]' within the meaning of section 219.

Against this statutory interpretation, the OLC Opinion analyzed the statutory basis, the purpose, and the functions of the particular advisory committee which was the subject of the opinion. This analysis "reinforce[d] the conclusion" that the members of the subject advisory committee were public officials within the meaning of § 219(c).[7]

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[3]Memorandum to The Honorable John P. Schmitz, Deputy Counsel to the President, from Douglas R. Cox, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, dated April 29, 1991 [hereinafter referred to as OLC Opinion].

[6]OLC Opinion at 2 (footnotes omitted). The opinion does observe that such conclusion "is consistent with the judicial construction of the similar definition of 'public official' in the federal bribery statute, 18 U.S.C. § 201(a), on which section 219 was modeled." OLC Opinion at 2, n.2 (citing 130 Cong. Rec. 1295 (1984); Dixson v. United States, 465 U.S. 482, 496 (1984)).

[7]OLC Opinion, at 3.

Discussion

Fisheries Management Councils (FMCs)

Eight FMCs were established by Section 302 of the Magnuson Fishery Conservation and Management Act, as amended,[7] for the purposes of advising, preparing, and submitting to the Secretary of Commerce fishery management plans regarding their respective regional fisheries.[8] Voting members of the FMCs are: (1) the principal State official with marine fishery management responsibility, (2) the Regional Director of the National Marine Fisheries Service for the geographic area concerned, and (3) individuals appointed by the Secretary of Commerce.[9]

Although FMCs are not subject to the FACA,[10] it appears that members of FMCs are public officials within the meaning of 18 U.S.C. § 219. The members act on behalf of the Department, and perform official functions for the Department, under the authority of both the statute and the Secretary.

FMCs have been previously administratively determined to perform an official function. Despite the Magnuson Act's specific exemption of the FMCs from the FACA, NOAA General Counsel has opined that "[c]ouncils are Federal instrumentalities created by statute to fulfill a Federal function, and are funded by Federal appropriations."[11] In 1977, the Department of Justice found occasion to review the functions and status of FMCs, albeit in the context of members' personal liability under the Federal Tort Claims Act.[12] In that opinion, OLC viewed the FMCs as "established to execute a federal function [and] to assist the Secretary of Commerce in his official endeavors."[13] Furthermore, they found that the "Councils come within the concept of an entity

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[7]Pub. L. 94-265, Title III, § 302 (Apr. 13, 1976), 90 Stat. 347 (codified at 16 U.S.C. § 1852).

[8]16 U.S.C. § 1852(h).

[9]16 U.S.C. § 1852(b).

[10]16 U.S.C. § 1852(i)(3).

[11]Fisheries Management Council Handbook (March 1985), at I-8 (citing NOAA/GC Opinion, dated Oct. 3, 1978). The Department of Justice concurred in this opinion on August 21, 1979. See FMC Handbook at II-B 13.

[12]1 O.L.C. 239 (Oct. 14, 1977).

[13]1 O.L.C. at 240 (citing 16 U.S.C. §§ 1801(a)(6)-(7) and 1853(a)(1)(C)).

which is an 'integral part' of a Federal agency. . . . They are indispenable [sic] elements in the statutory scheme of the 1976 Act, and are an integral part of the Department of Commerce's statutory mission under that Act."[33] This conclusion was acknowledged in a later OLC review of the status of FMCs, determining that, although they lack independent litigating authority, they belong to any number of categories of Federal agencies.[34]

District Export Councils (DECs)

DECs were not established by statute, but have existed through the administrative power of the Department "to serve as communications links between the business community and the Government in helping to carry out national export expansion programs."[35] The role of being a "regional channel of communication" was instrumental in determining that the DECs were not advisory bodies, and that the FACA did not apply to DECs.[36]

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[33] Id.

[34] 4B O.L.C. 778, 780 n.2 (Sep. 17 1980).

[35] Commerce Department Press Release, dated Sep. 9, 1974. In March 1960 the National Export Expansion Council, was formed by order of Secretary of Commerce Mueller (pursuant to a message to Congress from President Eisenhower) to "discover industry sectors for which exports could be increased, to assist and encourage firms entering the export field, to strengthen contacts with business groups abroad, and to develop a volunteer organization adequate to meet all these goals." By 1973, the National Council established 42 Regional Export Expansion Councils (with nearly 1,800 members). These Regional Councils were the predecessors to the DECs. The District Export Councils Policy and Procedures Manual (Dec. 1, 1987), at p. 2-1. The National Council was disbanded in 1973 with the establishment of the President's Export Council. This office determined, with agreement of Office of Legal Counsel, that because the Regional Export Expansion Councils were established separately from the National Council, they could remain in existence. This office also reasoned that the Regional Councils "do not perform advisory functions [and the FACA] will not apply to [Regional Councils] as long as they are not used to provide advice and recommendations but continue to function as an informational distribution outlet for the Department." Memorandum to the Files from Robert C. Goodwin, Jr. and Wallace E. Brown, dated Dec. 20, 1972.

[36] Memorandum Opinion Re: Proposed Executive Order Entitled "Establishing the President's Export Council and for Other Purposes" and a draft Presidential Memorandum Establishing the President's Interagency Committee on Export Expansion, from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal

DECs do possess some Federal ties. DEC members are nominated by the respective District Office Directors of U.S. and Foreign Commercial Service, and are appointed by the Secretary of Commerce. Each District Office Director serves as the executive secretary for his or her respective district's DEC. Employees from other Federal agencies also sit on the DECs.

On the whole, however, we do not view members of the DECs to be public officials within the meaning of 18 U.S.C. § 219(c) because they do not act for or on behalf of the Department in an official function. Despite limited "Federal ties" mentioned above, DECs overwhelmingly perform activities on their own accord, pursuant to their own agenda, with their own assets. They possess no statutory charter, are not subject to the FACA, nor have they been authoritatively considered to be an integral part of the executive branch.

Today, the DECs retain their communications-link role and "collectively serve as a volunteer auxiliary of U.S. and Foreign Commercial Service District Offices to encourage and support export expansion activities in a variety of ways within their respective geographical jurisdictions."[69] The DECs focus on opportunities to promote export awareness at the local level through direct counselling of firms and providing information via seminars, workshops, training conferences, and courses. They develop relationships with local financial institutions to promote financing of exports.[70]

Because of their primarily operational (not advisory) role, this office continues to view DECs as not subject to the FACA.[71] DEC activities are not supported by appropriated funds. Rather, each DEC receives funding for its activities through membership fees and other collections for their programs and services. These

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Counsel, Department of Justice, dated Oct. 26, 1973.

[69]DEC Handbook, at p. 3-1.

[70]Id. at p. 4-1.

[71]See, e.g., memorandum for Brenda Ebeling from Barbara S. Fredericks, Subject: Expenditures by DEC Executive Secretaries and Reimbursement Practices, dated Dec. 7, 1990. "Any committee which is established to perform primarily operational as opposed to advisory functions" is an example of a group not covered by the FACA. The administering Federal agency has the responsibility of determining whether a group is operational or advisory in nature. Furthermore, the nature of such a group may change from an operational to an advisory role. 41 C.F.R. § 101-6.1004(g).

funds are deposited in local financial institutions.[11] DEC meetings are held at a time and place mutually agreed upon by the chairman and the members and are open to the public. The executive secretary is responsible for recording and preparing summary minutes of each meeting.[12] The policy of the U.S. and Foreign Commercial Service has been that Federal employees, including executive secretaries, may not direct the disbursement of DEC funds or otherwise have any "authority, responsibility, supervision or control" over DEC funds or accounts.[13]

DECs are developing advisory activities, however, by providing industry and perspective views to the President's Export Council,[14] and passing on for the Department's consideration positions on trade legislation issues.[15] If these advisory activities form a significant part of the DECs' present-day activities, DECs could begin to be viewed as advisory committees subject to the FACA, with its members considered to be performing an official function, and, thereby, acting as public officials. At the present time, however, we have been advised that these advisory activities are of a limited nature.[16]

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[11] Id. at n.1.

[12] DEC Handbook, at p. 8-1.

[13] US&FCS Bulletin No. 87-48 (Jul. 10, 1987). See also memorandum at note 21, supra.

[14] The President's Export Council (PEC) was established by Executive Order 11753 (Dec. 21, 1973). Sections 3 and 6 of that Executive Order authorized the PEC to establish, with the concurrence of the Secretary of Commerce, subordinate committees, which would be subject to the FACA. In 1975, the Internal Revenue Service considered the PEC, "including its subordinate committees," to be part of the executive branch of government for purposes of treating contributions to it as deductible charitable contributions. Memorandum to Karl E. Bakke from Billy H. Hargott, Chief, Individual Income Tax Branch, Internal Revenue Service, dated Jun. 25, 1975. In interpreting that ruling in 1982 and 1984, this office advised that DEC's are "subordinate committees" of the PEC. In light of the history of the DECs, note 17, supra, this interpretation is incorrect.

[15] DEC Handbook, at p. 4-1.

[16] Telephone conversation on 4/22/92 with Diane Burke, Director of Public and Private Programs, U.S. & Foreign Commercial Service. The DECs may be informally requested to provide input on "emerging export issues," but US&FCS does not encourage DECs to submit formal position papers on trade legislation.

Excerpts from 22 U.S. C. 611

(b) The term "foreign principal" includes-

(1) a government of a foreign country and a foreign political party;

(2) a person outside the United States, unless it is established that such person is an individual and a citizen of an domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(c) Except as provided in subsection (d) hereof, the term "agent of a foreign principal' means-

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person-

(i) engages within the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or officials of the Government of the United States; and

(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

Lobbyists on Agency Boards and Commissions

Pursuant to a Presidential Memorandum released on June 18, 2010, White House policy direct the heads of executive departments and agencies not to make any new appointments or reappointments of federally registered lobbyists to advisory committees and other boards and commissions.

The Department of Commerce is establishing a new vetting requirement pursuant to all new appointments and reappointments. Registered Federal lobbyists will no longer be appointed or reappointed to Government boards, commissions, and related entities, including Federal Advisory Committees. This restriction applies to new appointments and reappointments only.

Registered lobbyists are individuals who must register pursuant to the Lobbying Disclosure Act of 1995, as amended.

The White House
Office of the Press Secretary
For Immediate Release
June 18, 2010

Presidential Memorandum--Lobbyists on Agency Boards and Commissions

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Lobbyists on Agency Boards and Commissions

My Administration is committed to reducing the undue influence of special interests that for too long has shaped the national agenda and drowned out the voices of ordinary Americans. Special interests exert this disproportionate influence, in part, by relying on lobbyists who have special access that is not available to all citizens. Although lobbyists can sometimes play a constructive role by communicating information to the government, their service in privileged positions within the executive branch can perpetuate the culture of special interest access that I am committed to changing.

On the day after my inauguration, I signed Executive Order 13490, which places strict limits on the ability of lobbyists to serve in Government positions related to their prior lobbying activities. Last September, we took another step to close the revolving door through which lobbyists enter and exit Government positions when we announced that my Administration aspires to keep Federal agencies' advisory boards free of federally registered lobbyists. Many departments and agencies are making this aspiration a reality by no longer placing federally registered lobbyists on advisory boards a practice that I am now establishing as the official policy of my Administration.

Accordingly, I hereby direct the heads of executive departments and agencies not to make any new appointments or reappointments of federally registered lobbyists to advisory committees and other boards and commissions. Within 90 days of the date of this memorandum, the Director of the Office of Management and Budget shall issue proposed guidance designed to implement this policy to the full extent permitted by law. The final guidance shall be issued following public comment on the proposed guidance.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA