

conservation and management measures, including in cases of *force majeure* and where the Assistant Administrator has determined that such services are essential to the safety, health, and welfare of the crew.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[Docket No. 080102007-0337-03]

RIN 0648-AW18

#### Magnuson-Stevens Fishery Conservation and Management Act; Regional Fishery Management Councils; Operations

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS publishes changes to the regulations that address the operations and administration of the Regional Fishery Management Councils (Councils). The regulatory changes implement the 2006 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that, among other things, establish the Council Coordinating Committee (CCC), require that the Councils' science and statistical committee (SSC) members disclose their financial interests, and provide for training of Council members and staff. Additionally, this final rule clarifies the Council documents that should be available to the public; the restrictions on lobbying; the procedures for Council member nomination, including timing for submission of nominations; and also requires Councils to provide procedures for deeming regulations necessary and or appropriate for implementing fishery management plans and plan amendments. These regulations also set forth additional financial disclosure requirements for Council members, and revise the security assurance procedures for nominees to and members of the Councils. Finally, this rule makes technical and minor corrections to the regulations unrelated to the most recent Magnuson-Stevens Act amendments.

**DATES:** Effective October 27, 2010.

**ADDRESSES:** Written comments regarding the burden-hour estimates or other aspects of the collection-of-

information requirements contained in this rule may be submitted to Alan Risenhoover, Director, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910, Fax: 301-713-1175, and by e-mail to

*OIRA\_Submission@omb.eop.gov*, or fax to (202) 395-7285.

#### FOR FURTHER INFORMATION CONTACT:

William Chappell, at 301-713-2337.

#### SUPPLEMENTARY INFORMATION:

A proposed rule for this action was published on March 27, 2009 (74 FR 13386), with public comment accepted though July 6, 2009. Several Regional Fishery Management Councils requested that the comment period be extended, and NMFS responded by extending the public comment period to November 2, 2009 (74 FR 31224, June 30, 2009). Subsequently, NMFS published a supplementary rule addressing elements of this action on December 7, 2009 (74 FR 64042, December 7, 2009), with a comment period ending January 6, 2010. A detailed description of the statutory and regulatory authority and need for this rule is contained in the preamble of the proposed rules and is not repeated here.

This final rule does not finalize regulations on all the elements of the proposed rules. For those elements not finalized in this action, additional public comment will be sought on the proposed rules, or a new proposed rule may be issued for public comment. Specifically, issues regarding stipends for Scientific and Statistical Committees (SSCs) and Advisory Panels need additional public review and comment. Issues addressing the functions of SSCs have been addressed by a recent rulemaking, i.e., the publication of the final rule on National Standard 1 Guidelines, (74 FR 3178, January 16, 2009), or will be addressed in other actions (i.e. pending National Standard 2 Guidelines (proposed rule published at 74 FR 56724, December 11, 2009).

#### Comments on the Proposed Rule

NMFS received thirteen written responses from organizations and individuals to a call for comments on a proposed rule published on March 27, 2009 (74 FR 13386). Responses included five letters from fishery management councils, one from an attorney for a fishing industry group, three from environmental non-governmental organizations (ENGOS), a letter from the U.S. Small Business Administration (SBA), and three on-line submissions from individuals.

In response to the supplemental proposed rule (74 FR 64042, December 7, 2009), NMFS received a second letter from one of the fishery management councils and two from ENGOS that had previously commented. A fishing industry association and the Marine Mammal Commission (MMC) also responded to the request for comments.

*Comment 1:* A letter from an ENGO supported the idea of defining the terms "advisory panel" (AP) and "fishing industry advisory committee" (FIAC) and differentiating the groups from one another. Three Councils commented that the definitions should not distinguish between the types of advisory groups for the purposes of authorizing stipends for one, the APs, but not for the other, the FIACs. They noted that the names given advisory groups and the functions of those groups are not consistent with the proposed rule and vary in usage from Council to Council. Also, one respondent noted that Magnuson-Stevens Act Sec. 302(g)(4) refers to the formation of APs, yet it is not referenced in the proposed definition of advisory panels and asks if this is an oversight.

*Response:* Under the Magnuson-Stevens Act, the Councils are authorized to establish committees and advisory panels at Sec. 302(g)(1) (SSCs), (g)(2) (APs), and (g)(3) (FIACs) as per separate sections of the statute. Sec 301(g)(4) authorized the Secretary to establish APs for Atlantic highly migratory species. Council practice, however, has made little distinction between APs and FIACs. In addition, what would be considered an AP under Sec. 302(g)(2) is often called a committee, and the terms have been used interchangeably and inconsistently from Council to Council. The 2007 reauthorization of the Magnuson-Stevens Act authorized stipends for APs, but not for FIACs. The proposed rule suggested definitions to aid Councils in distinguishing which Council advisory groups' members would be authorized to receive a stipend. In order to determine their eligibility for stipends and whether they are required to meet the meeting notice requirements of 50 CFR 600.135, these definitions are retained and the Councils are now required to declare under which section in the Magnuson-Stevens Act the organization is organized.

*Comment 2:* A letter from ENGOS suggested the term "fishing industry advisory committee" be replaced by "community advisory panel" to ensure the definition does not preclude membership by individuals who are not representatives of the fishing industry.

*Response:* The proposed definition of the term “fishing industry advisory committee” is taken from the term’s usage in Sec. 302(g)(3)(A) of the Magnuson-Stevens Act. NMFS cannot change the term in the Magnuson-Stevens Act; however, there is nothing in the Magnuson-Stevens Act that would preclude a Council’s discretion to establish a community advisory panel or other advisory groups with representation from a broad set of interests.

*Comment 3:* Several commenters responded to NMFS’ request for guidance on the payment of stipends to certain members of the SSCs and APs. One commenter stated that stipends were meant primarily to compensate and enable participation by experts who would not normally be employed and paid directly to do so. The Magnuson-Stevens Act specifies that SSC and AP members who are federal employees and state marine fisheries agency staff are not entitled stipends. Other individuals who are similarly employed (e.g., by state enforcement agencies, marine fisheries commissions, ENGOs, tribal governments, etc.) should also not be entitled to stipend funds. One commenter noted that the amounts paid as stipends to SSC and AP members should be the same for all Councils and should be at the same rate as Council members are paid for their service. Another respondent recommended that stipends should not be paid until the eligibility criteria and business rules for payment are specified in the Council’s statements of organization, practices, and procedures. A letter from ENGOs stresses that funding for SSC and AP stipends should be given a high priority.

*Response:* The final rule reiterates the eligibility for stipends as it was presented in the 2006 reauthorization of the Magnuson-Stevens Act. In addition, the final rule clarifies that employees of State agencies that have management, conservation, or enforcement jurisdiction over marine fisheries in their state are considered employees of State marine fisheries agencies and thus are ineligible for stipends. Similarly, employees of tribal agencies with marine fisheries responsibilities are considered employees of State marine fisheries agencies.

*Comment 4:* Respondents from industry, Councils, ENGOs, and a government agency expressed support for the proposal requiring Councils to post their statements of organization, practices, and procedures (SOPPs) on the Council website. The SBA suggested that the SOPPs also should be made available by other means (e.g., printed

copies upon request) for individuals without Internet access.

*Response:* NMFS concurs with the comments. Through this final rule, each Council is required to post its SOPP on the Council’s Internet site. Copies of SOPPs are currently available for download from most of the Council websites and will remain available in print format upon request to the Council.

*Comment 5:* Two Councils, noting that SOPPs must be approved by the Assistant Administrator of the NMFS, asked for clarification on the process for making minor edits and technical corrections to the SOPP and asked whether such amendments, so long as they are consistent with the Magnuson-Stevens Act, can be made without NOAA approval.

*Response:* SOPPs are a means for Councils to describe how their procedures and practices are consistent, not only with the Magnuson-Stevens Act, but also with a body of law associated with federal assistance and grant administration. NMFS understands the need for some flexibility to allow a Council to make minor changes to its SOPP. NMFS has drafted procedures for Secretarial approval of SOPP amendments. The procedures will be posted on the NMFS policy directives system Web site. They will provide guidance on how to effect minor technical changes and when Secretarial approval is needed.

*Comment 6:* One Council, which has recently made a number of improvements to its SOPP based on recommendations made by the General Accounting Office (GAO), suggested that the GAO’s recommended measures be applied to all of the Councils and addressed in a standardized manner in all of the SOPPs.

*Response:* The recommendations of the GAO report that are applicable to all Councils have been addressed in this final rule. Specifically, Council members will now be required to specify the nature of the financial interest when recusing themselves. Further, Councils are now required to maintain current and archived copies of documents available for public inspection on their Web sites. The availability of documents on the Web sites should reduce the need and volume of material needed in response to Freedom of Information Act requests.

*Comment 7:* An ENGO asked for NMFS to specify with which regulatory requirements the SOPPs must comply.

*Response:* The requirements of a SOPP are included in Subchapter B (50 CFR §§ 600.105 to 600.115). The regulatory and administrative

requirements that must be addressed in a SOPP may change occasionally as policies and governing statutes are updated. Rather than listing the requirements in regulation, NMFS will provide the Councils with a SOPP template listing the basic requirements of the SOPP as part of the SOPPs amendment procedures.

*Comment 8:* Two Councils requested that the basis for salary of Council executive directors be put on par with that of NMFS Regional Administrators and the senior executive service pay scale. Also, they suggested that commensurate adjustments should be made to the salaries of Council staffs.

*Response:* NMFS notes the comment; however, this topic is outside the scope of this rulemaking.

*Comment 9:* A commenter from an ENGO supported expanding the role of the SSC. A representative of a fishery association noted that the Magnuson-Stevens Act calls for both an SSC and a peer review body, and suggested that the SSC should consist of individuals with technical expertise in various fisheries and a peer review panel should be separate and distinct from it.

*Response:* This final rule addresses only the organization of the SSC. The role of the SSC with regard to its responsibilities and Magnuson-Stevens Act National Standard 2 is detailed in § 600.315 and is outside the scope of this rulemaking. It is a topic of the separate National Standard 2 rulemaking (proposed rule published at 74 FR 65724, December 11, 2009).

*Comment 10:* One respondent suggested adjusting the roles of the SSC to ensure the determination of the annual catch limit (ACL) is completely separated from the determination of how to allocate the ACL.

*Response:* The role of the SSC relative to the determination of ACLs is addressed in regulations implementing Magnuson-Stevens Act National Standard 1 at § 600.310 and is outside the scope of this rulemaking.

*Comment 11:* With regard to announcing forthcoming Council and committee meetings, one commenter stated that 45 days advanced notice is necessary to allow fishing industry members to plan their attendance. The commenter also suggested that the term “wide publicity” be read to require publication of meeting announcements in local and national trade magazines and distribution via the vessel monitoring system (VMS) in order to reach more industry members. The SBA stated its support for the changes in meeting announcement media, including the condition that

announcement over the Internet alone is not sufficient.

*Response:* NMFS agrees that meetings of all types should be announced as far ahead as possible, however, the minimum 14-day advance notification requirements are retained. Councils need the flexibility of shorter notification windows in order to ensure the meetings can provide a timely response to emerging and urgent issues. Schedules for most full Council meetings and many major committee meetings are usually established well in advance of the meeting date. Full agendas for the meetings, however, may not be known until just several weeks prior to the meeting. The Councils are encouraged to provide as much advance notice of meetings as is possible and use the media, including industry publications, which will be most effective for meeting announcements. NMFS does not concur that announcing meetings is an appropriate use of the VMS due to low data transmission rates and high costs to the fishermen.

*Comment 12:* One commenter cited the Magnuson-Stevens Act provision that SSC meetings should be held, to the extent practicable, in conjunction with Council meetings. The commenter noted that some Councils appear to have made little effort to align the meetings and to ease the burden on those people who would like to attend both.

*Response:* NMFS encourages Councils to adjust their meeting schedules to allow SSC and Council meetings to be held in conjunction with one another. However, scheduling of Council and committee meetings is a function of how each Council operates. Some Councils have successfully aligned the Council meetings with SSC and other committee meetings. Others are supporting processes in which the SSC meeting must precede Council meetings by a certain period in order for the SSC's outcomes to be considered in the Council meeting.

*Comment 13:* In three letters from ENGOs, respondents expressed concern that the meeting announcement requirements do not seem to apply to Interdisciplinary Planning Teams, consisting of members and NMFS/Council staff and occasionally relying on input from outside experts (also called Plan Development Teams, Fishery Management Action Teams, or Technical Teams). They stated that the meetings of such teams should be fully open to the public and announced in advance, just as Council meetings are; or otherwise, the use of such teams should be discontinued.

*Response:* Many Councils have ad hoc planning and development teams that

are not constituted under MSA Section 302(g), and are not subject to the meeting notice and conduct requirements as for a Council or AP meeting. These groups are organized for the purpose of preparing information for subsequent review of a Council, AP, or other MSA Section 302(g) committee. Presentation of their work products at a Council, AP, or other MSA Section 302(g) committee meeting, followed by public comment provides adequate public input. To the extent practicable, NMFS encourages notice and public attendance meetings of these ad hoc planning and development teams.

*Comment 14:* Comments from industry representatives, ENGOs, the Councils, and the SBA supported the proposed rule requiring Councils to establish a written procedure for deeming proposed regulations necessary or appropriate for the purposes of the Magnuson-Stevens Act and for submitting proposed regulations to the Secretary. The SBA recommended that NMFS provide guidance to the Councils on the procedures in order to ensure consistency and transparency across Councils.

*Response:* The NOAA General Counsel for Fisheries has consulted with the Councils, through the Council Coordinating Committee, on the requirements for deeming proposed regulations necessary or appropriate for the Council's purposes. Different Regions and Councils have different agreements concerning who does regulatory drafting. Therefore, each NMFS regional office, the Council, the Council attorney-advisor from the NOAA Office of General Counsel, and NOAA General Counsel for Fisheries will collaborate to ensure the procedures are efficient, responsive to specific regional needs, consistent with the Magnuson-Stevens Act, and transparent from the public's perspective.

*Comment 15:* Letters from an ENGO, an industry association representative, the MMC, and the SBA supported the proposed requirement for each Council to post on its Internet website a variety of documents, including fishery management plans (FMPs), FMP amendments under consideration, supporting analysis of alternatives, minutes of past meetings of the Council and its committees, and the pre-meeting information packages that are provided to Council members. Both respondents stated that NMFS should require and support the ability of the Councils to maintain the information technology infrastructure capacity necessary to fulfill this requirement and that the

posting of a document should never be considered impracticable.

*Response:* NMFS concurs with the comments and agrees that there should be no technological constraints to Councils posting their current and archived documents on the Internet. This final rule does not retain the "to the extent practicable" clause, but it has been revised to require the Councils to maintain copies of documents too large to maintain on the Web site at the Council office for viewing during regular business hours.

*Comment 16:* One Council commented that a Council should not be required to record and post on the Internet minutes from the meetings of its committees and advisory bodies. Wide distribution of meeting reports should suffice.

*Response:* NMFS considers it a responsibility of the each Council to post records of the Council and the Council's committees on the Internet. The intent of the rule is not to require Councils to change their formats for taking down a record of meetings of the Council and its committees, but to require that those records, whatever their format, be made available for viewing via the Council's Internet site. The language in this final rule has been adjusted so as not to imply that verbatim minutes of advisory group meetings are required.

*Comment 17:* One Council stated its disagreement with the proposed requirement that past Council members take a full year break in service before becoming eligible for reappointment to fill an off-cycle opening.

*Response:* NMFS acknowledges the comment, but makes no change to the requirement in this final rule. The previous requirement was for a one-year break in service between appointments and this requirement stands. The intent of the change to this section was to remove obsolete language. NMFS interprets the intent of the requirement of the Magnuson-Stevens Act at Section 302(b)(3) as providing the opportunity for a variety of people to serve on Councils. This rule reduces the opportunity to put forth a candidate who will resign shortly after appointment, allowing the member with 3 consecutive terms to apply immediately for that position. This rule does not preclude a Council member from being nominated for a term beginning one year after completing his or her third term.

*Comment 18:* One Council supported the proposed changes that would allow more time for submission of member nomination packages. A letter from ENGOs stated that existing regulations

concerning Council nominations and appointments provide for a clear and fair process and that simply adhering to the existing requirements would solve many procedural challenges. Further, they suggest that the period between the nomination and paperwork submission deadlines will be used for intense activism by opponents of the nominees to derail the appointments.

*Response:* NMFS retains the March 15 date for substantially complete nomination packages to be received from the Governors. NMFS drafted the proposed rule to address recurrent problems in the nomination and appointment processes regarding the submission of information for background investigations. This final rule requiring the background investigation to be initiated after the member is conditionally appointed will afford more time in which to receive and prepare extensive background and security assurance documents. Therefore, the deadline for package submission is unchanged in this final rule.

*Comment 19:* One respondent suggested that NMFS contact state governors earlier in the year and specify qualifications for nominees, and, by January 15, should detail the process in the **Federal Register** and set up a dedicated website with information. Also, after the nomination deadline passes, NMFS should commit to publishing the nominees' names on the website within five days.

*Response:* NMFS acknowledges the comments as helpful ideas for consideration in the future, but will not specify these details in regulation because current regulations are sufficient to address these concerns. NMFS contacts governors' offices regarding nominations beginning in December. NMFS makes a formal request for nominations from each governor in mid January. An earlier formal request is not practicable in some cases, due to changes in state administration in January following state elections in November. NMFS follows up with a reminder to the Governors in mid February and works closely with the governors' offices and state representatives on the Councils to help in completing the packages. Council members, state representatives and governors' offices are very aware of upcoming Council seat vacancies, and earlier notification is not likely to solve the problem of late nomination package submissions. NMFS does provide a public list of nominees once all nominees have completed an initial vetting.

*Comment 20:* One letter suggested that NMFS require each nomination package to include a letter from the nominee to the governor requesting to serve on the Council.

*Response:* NMFS concurs that it would be helpful to have written acknowledgement from nominees acknowledging their nomination and their commitment to serve on the Council if appointed by the Secretary. This suggestion will be added to the requirements of the nomination materials submitted to the governors and/or the nominees rather than in this regulation.

*Comment 21:* One commenter suggested that NMFS should specify how governors can replace nominees who turn out to be unqualified or unsuitable for appointment.

*Response:* The current regulations at 50 CFR 600.215(e) state that governors should submit a list of at least three qualified nominees for each open seat. In the event that a preferred nominee is deemed unsuitable or unqualified, an alternate will be selected from the list submitted by the governor. Under section 302(b)(2)(C), if the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under section 302(k).

*Comment 22:* One respondent noted support for including the oath of office for Council members in the rule.

*Response:* NMFS acknowledges the comment. The oath of office is unchanged in this final rule.

*Comment 23:* In the supplementary proposed rule, a heading at 50 CFR 600.235(a) lists "advocacy" and "lobbying" as types of reportable financial interest relationships, yet the definitions in the proposed rule text do not include references to advocacy or lobbying. The definition should be updated to indicate the types of income stemming from advocacy and lobbying that must be disclosed by affected individuals.

*Response:* Both proposed rules referred to the existing rule, so changes proposed in the first proposed rule did not appear in the second proposed rule. In this final rule, the proposed changes from both proposed rules have been adopted and consolidated. NMFS considers any income derived from lobbying or advocacy to be disclosable.

Therefore, NMFS did not specify the types of income as it would be too limiting on what is reportable.

*Comment 24:* Three Councils commented on the proposed new regulations regarding lobbying by Council members, staff, and contractors. Two called for clarification on how the rule bears on interactions between Council members/staff and the executive branch, particularly as regards a Council's obligations under the Magnuson-Stevens Act to advise and direct the Secretary of Commerce and to consult with other agencies on essential fish habitat. A third Council and an ENGO suggested that NMFS specify how the new regulations differ from existing regulations on lobbying and provide greater clarity with regard to specific prohibited activities.

*Response:* The regulations regarding lobbying make no change from previous law or guidance, but serve to provide some general direction and emphasis on this matter. The rule has no effect on the Council's interactions with NMFS and other agencies pursuant to a Council's obligations under the Magnuson-Stevens Act. Nor does the rule affect Council interaction with NMFS regarding Council administration, budget, and planning. The regulations do highlight the pre-existing limits regarding the Councils' interaction with Congress by specifically prohibiting attempts to influence the introduction and content of legislation.

*Comment 25:* One ENGO addressed the subject of Council member conflicts of interest and recusal in two separate letters. The commenter suggested that voluntary recusal is insufficient and that NMFS establish mandatory requirements for Council members to recuse themselves from discussion and voting when they have interests likely to be directly affected by the outcome of the vote. The ENGO suggested that non-compliance with the recusal requirement should be penalized and the subject vote should be vacated.

*Response:* While NMFS acknowledges the commenter's concern, we believe existing regulations and penalties are sufficient. Existing regulations at 50 C.F.R. § 600.235(c)(1) require that an affected individual may not vote on any Council decision that would have a significant and predictable effect on a financial interest disclosed in his/her report. Paragraph (i) of the same section states that 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 the Magnuson-Stevens Act, a violation of this provision removes that person from the exemption from 18 U.S.C. 208, the general federal conflict of interest statute, and may result in criminal prosecution. This may also result in removal of the affected individual from Council membership.

*Comment 26:* An ENGO stated its support for the requirement to have Council members identify their affected financial interests when recusing themselves. Further, they called for a requirement to have the recusals and the stated affected financial interests included in the official public record of the meeting.

*Response:* NMFS agrees that Council minutes must record when member recuse themselves and the reasons for that recusal, however no changes are made to the regulations. Since a Council member must state the reason for a recusal as noted at § 600.235(d), it follows that the Council minutes must reflect that. Further, Statements of financial interest are already a matter of record and available at Council meetings as noted at § 600.235(b)(3).

*Comment 27:* An ENGO called for all votes made by each Council member to be included in the official public record of the meetings.

*Response:* NMFS does not agree that all votes by a Council need a roll call vote. Motions and the votes taken on them are already required to be in the minutes under Roberts Rules of Order, as practiced by all Councils. Not all votes taken by a Council require a roll call and a specific record of each member's vote. Voting in accordance with Robert's Rules of Order may take several forms. A Council member may call for a vote by roll call, in which case each member's vote is recorded. This is the usual case for important or contentious votes. Other forms of voting, i.e., a hand vote, may not result in a record of voting by each individual member, but by a count. A voice vote may be taken when the issue is more routine, i.e., motion to adjourn. Some votes, such as those for officers, may be by secret ballot.

*Comment 28:* A letter from ENGOs expressed concern that the revised guidelines regarding conflict of interest might be construed to preclude an ENGO's representative on a Council from voting. The respondent argues that NMFS should make a distinction between representatives of ENGOs and those from industry as regards the financial stake consequent to a Council vote. Employment in an ENGO alone should not be grounds for determining a conflict of interests exists.

*Response:* NMFS concurs with this interpretation of the conflict of interest guidelines. The condition of being employed by an ENGO should in itself not be grounds for a Council member's recusal, unless it is reasonable to conclude that the outcome of the vote may have a significant and predictable effect on the financial interests of the member. No changes to the regulations are necessary.

*Comment 29:* A representative of an industry association commented that SSC members should be subjected to the same recusal guidelines as Council members.

*Response:* Magnuson-Stevens Act considers SSC members to be "affected individuals" and as such specifies certain provisions under section 302(j), "Disclosure of Financial Interest and Recusal," apply to SSC members. The Magnuson-Stevens Act does not specify that subparagraph (j)(7), which requires recusal from Council votes under certain circumstances, applies to SSC members. NMFS has not set forth financial recusal requirements for SSC members in this final rule; however, Councils may establish local procedures for its committees and advisory groups that would call on members to announce their financial interests in the subject matter of the proceedings.

*Comment 30:* A Council suggested that the consequence of an SSC member not completing the financial disclosure form should be stated in the rule.

*Response:* The consequences of an affected individual's falsifying or failing to complete the financial disclosure form are specified in 50 CFR 235(i). It is unlawful for an affected individual to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required. Consequences of an SSC member's non-compliance with the requirement to submit a correct, complete, and current financial disclosure form may include removal from the SSC, censure by the Council, and civil prosecution for falsifying information in an official form, subject to penalties under the Magnuson-Stevens Act and 18 U.S.C. 208 conflict of interest guidelines.

*Comment 31:* Several commenters noted the inadequacy of NOAA's current forms for disclosing one's financial interests. The form is awkward for those who are not employed in the fishing industry, and it does not accommodate reporting on all of the interests addressed under the Magnuson-Stevens Act. One commenter provided very detailed suggestions for revising the form.

*Response:* NMFS acknowledges the need to update the financial disclosure

form. A new form is being drafted and will be submitted for clearance through the procedures of the Paperwork Reduction Act subject to the outcome of this rule. Under these procedures a notice requesting comments on the draft form will be published in the **Federal Register** in the fall of 2010.

*Comment 32:* An ENGO supports the requirement that Council members update their financial disclosures annually.

*Response:* NMFS concurs with this current requirement.

*Comment 33:* Several respondents commented on the types of income and the sources of income that must be disclosed by affected individuals. An industry association representative and the SBA called on NMFS to require disclosure of any grants or other financial interests held by any SSC member, particularly where the issue is of concern to the management process. Further, the term "financial interest" should be broadened and clarified to include any income, grant, or other monetary or in-kind remuneration received by any of the persons or entities from any organization seeking to influence the decisions of any Council for which the SSC provides advice.

*Response:* NMFS is revising the financial disclosure form and will provide instructions that make clear what sources and types of income are reportable.

*Comment 34:* Two letters from ENGOs supported the proposed requirement for affected individuals to disclose employment by subsidiaries and associates of entities that may be affected by Council decisions. An industry association noted that such business relationships may not be knowable to the affected individual. The industry association suggested that this provision not be implemented until further deliberation of the implications of the provision and the breadth of its applicability.

*Response:* NMFS is revising the financial disclosure form and will provide instructions that make clear what sort of business relationships will be reportable. NMFS will specify in this final rule that parent entities and subsidiaries of the entity providing compensation to the affected individual will have to be listed on the form if the entities are involved in regional fisheries under the jurisdiction of the subject Council.

*Comment 35:* A respondent suggested that NMFS rephrase 50 CFR 600.235(c)(2) to clarify existing regulations that currently can be read as treating IFQ-managed fisheries

differently from others for determining when recusal is required.

*Response:* NMFS concurs with the comment and has revised the sentence as suggested to clarify that holding any percentage of IFQ is not dispositive of the question of whether a Council decision will have a “significant and predictable effect on a financial interest” requiring recusal. Rather, the percentage IFQ held will be used to assess the relative financial interests of the Council member.

*Comment 36:* A letter from ENGOs expressed the concern that background investigations would not be conducted for all nominees to a Council seat, but only for those appointed to the Council. The ENGOs called for a requirement for all individuals nominated for a Council seat to disclose any prior felony convictions as part of the nomination packages submitted to the Secretary, and in so doing, helping to avoid removal of an appointed Council member when prior felonies are discovered as the security assurances are completed.

*Response:* NMFS does not agree that background investigations are needed for all nominees prior to their appointment. Reviews by the governors and enforcement checks by NMFS have been found to be adequate for initial selections. Appointments conditional upon a favorable background investigation will ensure that only suitable appointments are made. The additional work required by the nominee and by the agency investigating the information for background investigations is costly and time consuming, resulting in few or no differences in appointments.

NMFS conducts initial vetting and enforcement checks of nominees in which most issues that would affect a nominee’s ability to serve are discovered. It is expected that governors will conduct some level of background and suitability review before nominating individuals to the Council per Magnuson-Stevens Act requirements. A past felony conviction may be disqualifying. Further, the background investigation forms require disclosure of past criminal history. Failure to report such matters truthfully and fully would be grounds for an unfavorable background check.

*Comment 37:* A respondent stated support for making final Council appointments conditional upon favorable background investigation and noted that NMFS should specify what circumstances would result in an unfavorable background investigation triggering revocation of Council membership.

*Response:* NMFS agrees that final Council appointments are contingent upon a favorable background check. This requirement is retained in the final rule. While it would be inappropriate, because of national security considerations, to list all criteria that would be cause for disapproval, some of the most obvious reasons for an unfavorable background investigation are noted in the response to Comment 36, above. Background investigations explore a great variety of information about the nominee and a favorable check indicates that the person is acceptable as an employee of the United States. Finally, background investigations are confidential, and reasons for determining a nominee is unsuitable for appointment will not be disclosed to the public.

*Comment 38:* Two respondents addressed the requirement for new Council members to attend training. One called for NMFS to provide training materials to nominated members before their swearing-in. The other suggested that the training be required of veteran members and Council staffs and that the subject matter should include innovations in fisheries science in addition to legal and procedural matters.

*Response:* The Magnuson-Stevens Act requires that training be provided to newly appointed members; therefore, they receive top priority for training resources in order to ensure NMFS is compliant with the Magnuson-Stevens Act. NMFS has made training available to veteran members and staff subject to availability of space and funding. NMFS posts all past training materials on the Internet and sent training materials to Council nominees prior to swearing-in in 2010 and will do so in the future.

NMFS also received comments on a number of other topics that are not addressed in the proposed or final rule. Subjects discussed in these comments included the length of NEPA documents, diversity of representation of sectors in Council membership, NMFS’s role in overseeing the Council and approving its decisions, the status of overfishing relative to the quality of management provided by the Councils, procedural transparency, and standards for Council websites. NMFS takes notes of all these comments, but will not address these matters further, as they are not relevant to the subjects addressed in this particular rulemaking.

#### Changes from the Proposed Rule

In § 600.10, the definitions for “advisory panel (AP)” and “fishing industry advisory committee (FIAC)” were retained. As noted in the response

to Comment 1, Council practice has made little distinction between the two types of advisory group, therefore, this final rule requires that the section of the Magnuson-Stevens Act under which the panel or committee or other group was formed be identified.

In § 600.10, the definition for “Regional Administrator” has been further revised by removing the reference to the previous title of “Regional Director”, as this title is no longer in use.

In § 600.133, paragraph (b) is moved to a new § 600.134. Paragraph (c) reserved for peer review is removed, as peer review will be addressed in the National Standard Guideline 2 final rule, codified at § 600.315. Paragraphs (a)(1)–(a)(4) are redesignated as paragraphs (a)–(d).

A new § 600.134 is added to explain that SCC and AP members may be eligible to receive stipends. State marine fisheries agencies are defined as including any state or tribal agency that has conservation, management, or enforcement responsibility for any marine fishery resources.

In § 600.135, the wording of paragraphs (a), (c), and (d) is revised to clarify that all committees of each Council must follow the procedures of the section. Committees do not include groups that consist of only Council staff and Federal employees.

In § 600.150(b), the regulation has been revised to require pertinent documents to be on each Council’s Internet site, with alternative methods of retrieval for specific documents. The words “to the extent practicable” have been removed.

In § 600.215(e), in the introductory language, the wording regarding receipt of the nomination packages is revised to reinstate and clarify the requirement that nomination packages must be received by March 15 each year. The language is carried forward to paragraph (e)(2). This is made possible by a change to § 600.240 that now requires only persons appointed as Council members to get security assurances instead of all nominees, reducing time and administrative burden.

In § 600.235, the definition of “Financial interest in harvesting, processing, lobbying, advocacy, or marketing” is revised to clarify in what entities a Council member must declare a financial interest. The language is revised by changing “any subsidiary of such entities” to the following:

“employment with any entity that has any percentage ownership in or by another entity”.

In § 600.235(c), the language is clarified to explain that the percentage

of an affected individual's percentage holdings in an IFQ is used to determine the individual's financial interest in a fishery, since this percentage can be directly related to total financial benefits in the fishery.

In § 600.240, the requirement for background investigations to be reinitiated every 5 years for serving members is rescinded. This requirement matches current requirements for Federal employees requiring the same level of background investigation.

**Classification**

The Acting Director, Office of Sustainable Fisheries, NMFS, determined that this final rule is necessary for the conservation and management of the fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for is published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none has been prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under Control Number 0649-0192. Public reporting burden for completing and submitting the Statement of Financial Interests, 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 other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA Submission@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB control number.

**List of Subjects in 50 CFR Part 600**

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: September 21, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 600 as follows:

**PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

1. The authority citation for part 600 continues to read:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.10, add definitions for “Advisory panel (AP),” and “Fishing industry advisory committee (FIAC)” in alphabetical order; and revise the definitions for “Region”, “Regional Administrator”, and “Science and Research Director” to read as follows:

**§ 600.10 Definitions.**

\* \* \* \* \*

*Advisory panel (AP)* means a committee formed, selected, and formally designated as a Magnuson-Stevens Act Section 302(g)(2) advisory panel by the Council's Statement of organization, practices, and procedures (SOPP), or by a formal charge to the committee made by the chair and recorded in the Council's minutes, to assist it in carrying out its functions. An AP may include individuals who are not members of the Council.

\* \* \* \* \*

*Fishing industry advisory committee (FIAC)* means an advisory group formed and selected by a regional fishery management council under the authority of the Magnuson-Stevens Act section 302(g)(3)(A) and formally designated in the Council's SOPP or by a formal charge to the FIAC made by the chair and recorded in the Council's minutes. A FIAC is not an “advisory panel” as defined under this section.

\* \* \* \* \*

*Region* means one of six NMFS Regional Offices responsible for administering the management and development of marine resources of the United States in their respective geographical regions.

*Regional Administrator* means the Administrator of one of the six NMFS Regions described in Table 1 to § 600.502, or a designee.

\* \* \* \* \*

*Science and Research Director (also referred to as “Center Director”)* means the Director of one of the six NMFS Fisheries Science Centers described in Table 1 to § 600.502, or a designee.

\* \* \* \* \*

■ 3. In § 600.15:

a. Redesignate paragraphs (a)(9) through (a)(15) as paragraphs (a)(11) through (a)(17), respectively.

b. Redesignate paragraphs (a)(5) through (a)(8) as paragraphs (a)(6) through (a)(9), respectively.

c. Add new paragraphs (a)(5) and (a)(10) to read as follows:

**§ 600.15 Other acronyms.**

(a) \* \* \*

(5) CCC—Council coordination committee

\* \* \* \* \*

(10) FIAC—Fishing industry advisory committee

\* \* \* \* \*

■ 4. In § 600.105, revise paragraph (b) to read as follows:

**§ 600.105 Intercouncil boundaries.**

\* \* \* \* \*

(b) *Mid-Atlantic and South Atlantic Councils.* The boundary begins at the seaward boundary between the States of Virginia and North Carolina (36°33'01.0" N. lat), and proceeds due east to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson-Stevens Act.

\* \* \* \* \*

■ 5. In § 600.115, revise paragraph (b) to read as follows:

**§ 600.115 Statement of organization, practices, and procedures (SOPP).**

\* \* \* \* \*

(b) Amendments to current SOPPs must be consistent with the guidelines in this section, subpart C of this part, the terms and conditions of the cooperative agreement (the funding agreement between the Council and NOAA that establishes Council funding and mandates specific requirements regarding the use of those funds), the statutory requirements of the Magnuson-Stevens Act, and other applicable law. Upon approval of a Council's SOPP amendment by the Secretary, a notice of availability must be published in the **Federal Register** that includes an Internet address from which the amended SOPP may be read and downloaded and a mailing address to

which the public may write to request copies.

\* \* \* \* \*

■ 6. Section 600.117 is added to subpart B to read as follows:

**§ 600.117 Council coordination committee (CCC).**

(a) The Councils may establish a Council coordination committee (CCC) consisting of the chairs, vice chairs, and executive directors of each of the eight Councils or other Council members or staff, in order to discuss issues of relevance to all Councils.

(b) The CCC is not subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2). Procedures for announcing and conducting open and closed meetings of the CCC shall be in accordance with § 600.135.

■ 7. In § 600.125, revise paragraph (a) to read as follows:

**§ 600.125 Budgeting, funding, and accounting.**

(a) Council grant activities are governed by 15 CFR part 14 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit and Commercial Organizations), 2 CFR part 230 (Cost Principles for Non-Profit Organizations), 15 CFR part 14 (Audit Requirements for Institutions of Higher Education and Other Non-Profit Organizations), and the terms and conditions of the cooperative agreement.

\* \* \* \* \*

■ 8. Section 600.133 is added to subpart B to read as follows:

**§ 600.133 Scientific and Statistical Committee (SSC).**

(a) Each Council shall establish, maintain, and appoint the members of an SSC to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(b) Each SSC shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

(c) Members appointed by the Councils to the SSCs shall be Federal employees, State employees,

academicians, or independent experts and shall have strong scientific or technical credentials and experience.

(d) An SSC shall hold its meetings in conjunction with the meetings of the Council, to the extent practicable.

■ 8a. Section 600.134 is added to read as follows:

**§ 600.134 Stipends.**

Stipends are available, subject to the availability of appropriations, to members of committees formally designated as SSCs under Sec. 301(g)(1)(a) or APs under Sec. 302(g)(2) of the Magnuson-Stevens Act who are not employed by the Federal Government or a State marine fisheries agency. For the purposes of this section, a state marine fisheries agency includes any state or tribal agency that has conservation, management, or enforcement responsibility for any marine fishery resource.

■ 9. In § 600.135, paragraphs (a), (b), (c), (d), and (e) are revised to read as follows:

**§ 600.135 Meeting procedures.**

(a) *Regular meetings.* Public notice of a regular meeting, including the meeting agenda, of each Council, CCC, SSC, AP, FIAC, or other committees established under Magnuson-Stevens Act, Sec. 302(g), must be published in the **Federal Register** at least 14 calendar days prior to the meeting date. Appropriate notice by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery) must be given. E-mail notification and website postings alone are not sufficient. The published agenda of a regular meeting may not be modified to include additional matters for Council action without public notice given at least 14 calendar days prior to the meeting date, unless such modification is necessary to address an emergency under section 305(c) of the Magnuson-Stevens Act, in which case public notice shall be given immediately. Drafts of all regular public meeting notices must be received by NMFS headquarters office at least 23 calendar days before the first day of the regular meeting. Councils must ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings.

(b) *Emergency meetings.* Drafts of emergency public notices must be transmitted to the NMFS headquarters office at least 5 working days prior to the first day of the emergency meeting. Although notices of and agendas for

emergency meetings are not required to be published in the **Federal Register**, notices of emergency meetings must be promptly announced through any means that will result in wide publicity in the major fishing ports of the region. E-mail notification and website postings alone are not sufficient.

(c) *Closed meetings.* After proper notification by any means that will result in wide publicity in the major fishing ports within the region and, having included in the notification the time and place of the meeting and the reason for closing any meeting or portion thereof to the public, a Council, CCC, SSC, AP, FIAC, or other committees:

(1) Must close any meeting, or portion thereof, that concerns information bearing a national security classification.

(2) May close any meeting, or portion thereof, that concerns matters or information pertaining to national security, employment matters, or briefings on litigation in which the Council is interested.

(3) May close any meeting, or portion thereof, that concerns internal administrative matters other than employment. Examples of other internal administrative matters include candidates for appointment to AP, SSC, and other subsidiary bodies and public decorum or medical conditions of members of a Council or its subsidiary bodies. In deciding whether to close a portion of a meeting to discuss internal administrative matters, the Council, CCC, SSC, AP, FIAC, or other committees should consider not only the privacy interests of individuals whose conduct or qualifications may be discussed, but also the interest of the public in being informed of Council operations and actions.

(d) Without the notice required by paragraph (c) of this section, a Council, CCC, SSC, AP, FIAC, or other committees may briefly close a portion of a meeting to discuss employment or other internal administrative matters. The closed portion of a meeting that is closed without notice may not exceed two hours.

(e) Before closing a meeting or portion thereof, the Council, CCC, SSC, AP, FIAC, or other committees should consult with the NOAA Office of General Counsel to ensure that the matters to be discussed fall within the exceptions to the requirement to hold public meetings described in paragraph (c) of this section.

\* \* \* \* \*

■ 10. Section 600.140 is added to subpart B to read as follows:



**§ 600.140 Procedure for proposed regulations.**

(a) Each Council must establish a written procedure for proposed regulations consistent with section 303(c) of the Magnuson-Stevens Act. The procedure must describe how the Council deems proposed regulations necessary or appropriate for the purposes of implementing a fishery management plan or a plan amendment, or making modifications to regulations implementing a fishery management plan or plan amendment. In addition, the procedure must describe how the Council submits proposed regulations to the Secretary.

(b) The Councils must include the procedure for proposed regulations in its SOPP, see § 600.115, or other written documentation that is available to the public.

■ 11. In § 600.150, add paragraph (b) to read as follows:

**§ 600.150 Disposition of records.**

\* \* \* \* \*

(b) Each Council is required to maintain documents generally available to the public on its Internet site. Documents for posting must include: fishery management plans and their amendments for the fisheries for which the Council is responsible, drafts of fishery management plans and plan amendments under consideration, analysis of actions the Council has under review, minutes or official reports of past meetings of the Council and its committees, materials provided by the Council staff to Council members in preparation for meetings, and other Council documents of interest to the public. For documents too large to maintain on the Web site, not available 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.

■ 12. Section 600.207 is added to subpart C to read as follows:

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

■ 13. In § 600.210 revise paragraph (c) to read as follows:

**§ 600.210 Terms of Council members.**

\* \* \* \* \*

(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.

■ 14. In § 600.215, redesignate paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively; add paragraph (c); and revise paragraph (b)(5) and the newly redesignated paragraph (e) to read as follows:

**§ 600.215 Council nomination and appointment procedures.**

\* \* \* \* \*

(b) \* \* \*

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

■ 15. Section 600.220 is revised to read as follows:

**§ 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 Management 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.”

■ 16. In § 600.225 redesignate paragraphs (b)(2) through (b)(8) as paragraphs (b)(3) through (b)(9) respectively; and add a new paragraph (b)(2) to read as follows:

**§ 600.225 Rules of conduct.**

\* \* \* \* \*

(b) \* \* \*

(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.

\* \* \* \* \*

■ 17. Section 600.227 is added to subpart C to read as follows:

**§ 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.

(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.

■ 18. In § 600.235:

a. In paragraph (a), add paragraph (3) to the definition of “Affected individual”, remove the definition of “Financial interest in harvesting,

processing, or marketing”, and add definitions for “Financial Interest Form” and “Financial interest in harvesting, processing, lobbying, advocacy, or marketing” in alphabetical order.

b. Revise paragraph (b).

c. Revise paragraph (c)(2) and add paragraph (c)(4).

d. Revise paragraphs (d), (h), and (i).

The revisions and additions read as follows:

**§ 600.235 Financial disclosure.**

(a) \* \* \*

Affected individual \* \* \*

(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.

\* \* \* \* \*

*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.

(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) 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.

(6) 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.

(7) The Regional Administrator shall maintain on file 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) \* \* \*

(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.

\* \* \* \* \*

(4) 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.

\* \* \* \* \*

(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 disclosure report. 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.

■ 19. In § 600.240, revise paragraph (a) to read as follows:

**§ 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 members and other attendees have the appropriate security clearances.

\* \* \* \* \*

■ 20. Section 600.250 is added to subpart C to read as follows:

**§ 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.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 100120036-0360-02]

RIN 0648-XT99

**Fisheries of the Northeastern United States; Black Sea Bass Fishery; 2010 Black Sea Bass Specifications; Emergency Rule Extension; Correction**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; correction.

**SUMMARY:** On July 7, 2010, NMFS published in the *Federal Register* a temporary rule to extend the emergency action to increase the 2010 black sea bass specifications. The preamble text of that rule incorrectly identified the

revised commercial quota and recreational harvest limit (RHL) based on the increased 2010 black sea bass total allowable landings (TAL). This document corrects those values to ensure that they are consistent with the revised 2010 black sea bass specifications.

**DATES:** Effective August 10, 2010, through December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Sarah Heil, Fishery Management Specialist, (978) 281-9257.

**SUPPLEMENTARY INFORMATION:** A temporary rule to extend the emergency action to increase the 2010 black sea bass specifications was published in the *Federal Register* on July 7, 2010 (75 FR 38935). On page 38935 of that rule, the commercial quota is incorrectly listed as 1,813,000 lb (822 mt), and the RHL is listed as 1,887,000 lb (856 mt). The corrected values for these specifications are as follows: The commercial quota is 1,758,610 lb (798 mt) and the RHL is 1,830,390 lb (830 mt).

**Classification**

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator (AA) for NOAA, Fisheries finds good cause to waive prior notice and opportunity for additional public comment for this action because any delay of this action would be contrary to the public interest. This rule corrects the commercial quota and RHL values published in the *Federal Register* on July 7, 2010 (75 FR 38935), as part of the extension to the emergency rule to increase the 2010 black sea bass specifications. The measures in the extension to the emergency rule, published in the *Federal Register* on July 7, 2010, were intended to be the same as those published in the initial emergency action on February 10, 2010 (75 FR 6586). However, the extension to the emergency rule incorrectly identified the revised commercial quota and RHL values based on the increased 2010 black sea bass TAL. To delay this correction notice would cause confusion over the revised 2010 black sea bass specifications because of the disparity between the revised specifications and the commercial quota and RHL values that were incorrectly identified in the extension to the emergency rule. Immediate publication of the corrected commercial quota and RHL will rectify any confusion on the revised 2010 black sea bass specifications. For the reasons provided above, the AA also finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the 30-day delayed effective period for this correction.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This final rule is exempt from review under Executive Order 12866.

**Correction**

Accordingly, the final rule FR Doc. 2010-16498, published on July 7, 2010 (75 FR 38935), is corrected as follows:

1. On page 38935, in the second column, in the first full paragraph, in the twentieth line, "1,813,000 lb (822 mt)," is corrected to read "1,758,610 lb (798 mt)," and in the twenty-second line, "1,887,000 lb (856 mt)," is corrected to read "1,830,390 lb (830 mt)."

Dated: September 21, 2010.

**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2010-24219 Filed 9-24-10; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 0910051338-0151-02]

RIN 0648-XZ07

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trip Limit Reductions and Gear Modifications for the Common Pool Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason adjustment of landing limits and gear requirements.

**SUMMARY:** This action decreases the landing limits for Gulf of Maine (GOM) cod to 100 lb (45.4 kg) per days-at-sea (DAS) up to 1000 lb (453.6 kg) per trip, Georges Bank (GB) yellowtail flounder to 100 lb (45.4 kg) per trip, and white hake to 100 lb (45.4 kg) per DAS up to 500 lb (226.8 kg) per trip; expands the trawl gear restriction in the U.S./Canada Management Area to include the entire Western U.S./Canada Area; and authorizes the use of the rope separator trawl in the Western U.S./Canada Area for NE multispecies vessels fishing in the common pool for the remainder of