2007 REPORT TO CONGRESS

ON THE DISCLOSURE OF FINANCIAL INTEREST AND RECUSAL REQUIREMENTS FOR REGIONAL FISHERY MANAGEMENT COUNCILS AND SCIENTIFIC AND STATISTICAL COMMITTEES

PURSUANT TO SECTION 302(j)(9) OF THE
MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

PREPARED BY
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

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TABLE OF CONTENTS

	Page
A. Summary	3
B. Background	3
C. Disclosure of Financial Interest and Recusal Requirements	4
D. Magnuson-Stevens Act Amendments signed by President Bush on January 12, 2007	6
E. Action taken by the Secretary and the Councils on the Disclosure of Financial Interest and Recusal Requirements	6
F. Appendix 1: NOAA Form 88-195, Statement of Financial Interests	10

A. Summary

Section 302(j)(9) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce to submit an annual report to Congress beginning January 1, 2008, on action taken by the Secretary and the Regional Fishery Management Councils to implement the disclosure of financial interest and recusal requirements of the Magnuson-Stevens Act, including identification of any conflict of interest problems with respect to the Councils and Scientific and Statistical Committees (SSC) and recommendations for addressing any such problems.

This report discusses the disclosure of financial interests by 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), a voting member of a Council appointed in accordance with Section 302(b)(2) or 302(b)(5), and members of an SSC appointed under Section 302(g)(1)(A) of the Magnuson-Stevens Act as it pertains to reporting, filing, and recusal requirements. Further it discusses what action is being taken by the Secretary and the Councils to identify and address conflict of interest problems among the Councils and SSCs.

B. Background

Section 302(a) of the Magnuson-Stevens Act established the following Regional Fishery Management Councils: New England (NEFMC), Mid-Atlantic (MAFMC), South Atlantic (SAFMC), Gulf (GMFMC), Caribbean (CFMC), Pacific (PFMC), North Pacific (NPFMC) and Western Pacific (WPFMC). Councils prepare and submit to the Secretary fishery management plans (FMPs) for fisheries under their authority which require conservation and management, and any amendments necessary to manage the fisheries consistent with the Magnuson-Stevens Act.

In accordance with Section 302(b)(1) of the Magnuson-Stevens Act, voting members of each Council shall be: the principal state official with fishery management responsibility and expertise in each constituent state, who is designated by a governor; NOAA's National Marine Fisheries Service (NMFS) Regional Administrator for the geographic area concerned; public individuals appointed by the Secretary in accordance with Section 302(b)(2) from among nominees submitted by governors of the constituent states; and an individual appointed to the PFMC, from among nominees submitted from a list of tribal governments in accordance with Section 302(b)(5).

Section 302(g)(1) of the Magnuson-Stevens Act requires each Council to establish and appoint members to an SSC to provide the Councils ongoing scientific advice to assist the Councils in the development and preparation of FMPs and amendments. Members of the SSCs are federal and state employees, academicians, or independent experts with scientific or technical qualifications and experience who assist the Councils in the evaluation of biological and other scientific information on issues that come before the Council.

Section 302(j) of the Magnuson-Stevens Act requires that an individual nominated by the governor of a state for appointment as a voting member of a Council, appointed by the Secretary as a voting Council member, or appointed by a Council to an SSC must meet certain financial disclosure requirements.

C. Disclosure of Financial Interests and Recusal Requirements

In accordance with 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 subsection (b)(2); or who is a voting member of a Council appointed under subsection (b)(2); or under subsection (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 subsection (302)(j).

<u>Disclosing Financial Interests: Reporting and Filing Requirements</u>

Section 302(j)(2) of the Magnuson-Stevens Act requires "affected individuals" to disclose any financial interest held by the individual, the spouse, minor child, or partner of that individual; and any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee in any harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which a Council has jurisdiction, or with respect to an individual or organization with a financial interest in such activity. Disclosure of financial interests will also include stocks, ownership interest, or employment with any entity that engages in or that provides services to someone engaged in any harvesting, processing, lobbying, advocacy, or marketing activity.

Affected individuals must disclose any financial interests on NOAA Form 88-195, Statement of Financial Interests (see Appendix 1). Guidance on reporting and filing procedures for complying with financial disclosure requirements are found at 50 CFR 600.235.

An individual who is nominated by the governor of a state for appointment as a voting member of a Council and before appointment by the Secretary must file a Statement of Financial Interests with the Assistant Administrator for Fisheries by April 15, or, if nominated after March 15, 1 month after nomination by the governor.

An individual who is a voting member of a Council, appointed by the Secretary in accordance with Section 302(b)(2) or (b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government, must file a Statement of Financial Interests within 45 days of taking office with the executive director of the Council, must file an update with the executive director of the Council within 30 days of the time any such financial interest is acquired or substantially changed, and by February 1 of each year.

The executive director of the Council will provide copies of all Statements of Financial Interests to the NMFS Regional Administrator, the Regional Attorney who advises the Council, and NMFS' Office of Sustainable Fisheries. Statements of Financial Interests will be kept on file by each Council, made available on the Council internet site, be available for public inspection at the Council offices during reasonable hours, and be kept on file by NMFS on behalf of the Secretary for use in reviewing determinations under Section 302(j)(7).

An individual who is appointed to an SSC in accordance with Section 302(g)(1) of the Magnuson-Stevens Act must file a Statement of Financial Interests with the Assistant Administrator for Fisheries, on behalf of the Secretary, which will be kept on file by NMFS. SSC members are not required to submit a Statement of Financial Interests to or through the Council, but may submit directly to the Assistant Administrator for Fisheries. Statements of Financial Interests completed and filed by SSC members are considered confidential under Section 402 of the Magnuson-Stevens Act.

Voting Requirements and Financial Conflicts of Interest

An affected individual required to disclose a financial interest under 302(j)(2) of the Magnuson-Stevens Act shall not vote on a Council decision that would have a "significant and predictable effect" on a financial interest disclosed on his or her Statement of Financial Interests. This applies to any matter in which there is a close causal link between the decision and an "expected and substantially disproportionate benefit" to the member's financial interest. An expected and substantially disproportionate benefit exists when an affected individual, or those whose interests are attributed to the affected individual:

(a) has a greater than 10 percent interest in the total harvest or the sector of the fishery under consideration by the Council;

(b) has a greater than 10 percent interest in the marketing or processing of the total harvest or the sector of the fishery under consideration by the Council; or

(c) has full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery, or the sector of the fishery, under consideration by the Council.

Although an affected individual may not vote, he or she may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

At the request of an affected individual, or at the initiative of an appropriate designated official,[1] the designated official shall make a determination for the record as to whether a Council decision would have a "significant and predictable effect" on a financial interest. Within 10 days, any Council member may submit a written request to the Secretary to review any determination

[1]Designated official is a person with expertise in federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council, to attend Council meetings and make determinations under paragraph 302(7)(B) of the Act. In practice, this has been the NOAA Regional Attorney who advises the Council.

made. The review of the determination must be completed within 30 days. Any affected individual who does not vote on a Council decision in accordance with Section 302(j)(7) may state for the record how he or she would have voted.

The Magnuson-Stevens Act does not address recusal of SSC members; however, it is important and expected that SSC members maintain a high standard of conduct.

D. Magnuson-Stevens Act Amendments signed by President Bush on January 12, 2007

Section 302 of the Magnuson-Stevens Act was amended and signed by President Bush on January 12, 2007. Below is a summary of the amendments pertaining to the Disclosure of Financial Interest and Recusal Requirements.

(a) Section 302(j) of the Magnuson-Stevens Act has modified the definition of "financial interests" to include not only harvesting, processing, and marketing activity, but also lobbying and advocacy.

(b) Section 302(j) of the Magnuson-Stevens Act has been modified to expand the definition of "affected individual" such that members of the SSCs appointed under Section 302(g)(1) be required to disclose financial interests in any harvesting, processing, lobbying, advocacy, or marketing activity, and such information be kept on file by the Secretary.

(c) Section 302(j) of the Magnuson-Stevens Act has been modified such that the "Statements of Financial Interests" completed by voting members of the Councils that are appointed by the Secretary be made available on Council internet sites.

E. Action Taken by the Secretary and the Councils on the Disclosure of Financial Interest and Recusal Requirements

To gather information needed to meet the requirements of Section 302(j)(9) to provide this report, the Assistant Administrator for Fisheries requested that each NMFS Regional Administrator and Council provide the following information on efforts to meet the requirements of the reauthorized Magnuson-Stevens Act:

(a) Action taken by each Council on implementing the requirements of the Magnuson-Stevens Act, including amendments to Section 302(g) Committees and Advisory Panels and Section 302(j) Disclosure of Financial Interest and Recusal. Following is a summary of each Council's actions.

The NEFMC has restructured its SSC. SSC members will complete their Statements of Financial Interests when they are notified of their appointments, and will provide them to the Assistant Administrator for Fisheries to be kept on file by NMFS. Statements of Financial Interests for voting council members appointed by the Secretary have been posted on the NEFMC's internet site.

The MAFMC has provided the Statement of Financial Interests and guidance to SSC members. SSC members are in the process of completing their Statements of Financial Interests and will provide them to the Assistant Administrator for Fisheries to be kept on file by NMFS. The MAFMC is taking action to post Statements of Financial Interests for voting council members appointed by the Secretary on its internet site.

The CFMC has modified its SSC according to the new requirements of the Magnuson-Stevens Act. SSC membership was decreased from 12 to 9 members, and divided into 3 fields of expertise: biology, stock assessment, and socio-economy of fisheries. The modifications will allow for a more efficient SSC and will result in cost savings for the CFMC, given the increased number of meetings needed to comply with the requirements of the Magnuson-Stevens Act. The first meeting of the modified SSC was held on November 29–30, 2007. Statements of Financial Interests have been completed by the CFMC's SSC members and provided to the Assistant Administrator for Fisheries to be kept on file by NMFS. Statements of Financial Interests for voting council members appointed by the Secretary have been posted on the CFMC's internet site.

The SAFMC currently has an SSC consisting of 19 members from various scientific disciplines. SSC members are in the process of completing their Statement of Financial Interests and will return them to the SAFMC. The SAFMC will provide the Statements of Financial Interests to the Assistant Administrator for Fisheries to be kept on file by NMFS. Statements of Financial Interests for voting council members appointed by the Secretary have been posted on the SAFMC's internet site.

The GMFMC has provided the Statement of Financial Interests and guidance to their SSC members. Most of their SSC members have completed their Statements of Financial Interests, which the GMFMC has provided to the Assistant Administrator for Fisheries to be kept on file by NMFS. In the future, the GMFMC will forward the Statement of Financial Interests to their SSC members and request the form be mailed directly to the Assistant Administrator for Fisheries. Statements of Financial Interests for voting council members appointed by the Secretary have been posted on the GMFMC's internet site.

The PFMC took final action on revisions to the SSC Council Operating Procedures at its November 4–9, 2007, meeting. The PFMC's executive director provided comments on the Statement of Financial Interests, which NMFS will take under consideration. The PFMC has provided the Statement of Financial Interests and guidance to their SSC members. SSC members are in the process of completing their Statements of Financial Interests and will provide them to the Assistant Administrator for Fisheries to be kept on file by NMFS. Statements of Financial Interests for voting council members appointed by the Secretary have been posted on the PFMC's internet site.

The NPFMC has provided the Statement of Financial Interests and guidance to SSC members. Statements of Financial Interests have been completed by the NPFMC's SSC members and provided to the Assistant Administrator for Fisheries to be kept on file by NMFS. Statements of

Financial Interests for voting council members appointed by the Secretary have been posted on the NPFMC's internet site.

The WPFMC has briefed its SSC members on the changes in the Magnuson-Stevens Act relating to their role and responsibilities. The WPFMC has provided the Statement of Financial Interests and guidance to their SSC members. SSC members are in the process of completing their Statements of Financial Interests and will provide them to the Assistant Administrator for Fisheries to be kept on file by NMFS. The WPFMC is taking action to post Statements of Financial Interests for voting council members appointed by the Secretary on its internet site.

(b) Documentation of any time a voting Council member recuses themselves from a vote, the reason given, and any other relevant circumstances, per 50 CFR 600.235(d).

The MAFMC indicates one recusal from 19 motions during June 2007, the PFMC indicates four recusals from three motions through June 2007, and one recusal from two motions in September 2007. The WPFMC indicates one recusal in June 2007, and one recusal in October 2007, for the same action item. The NEFMC, SAFMC, GMFMC, and NPFMC indicate no recusals.

(c) Documentation of any Council member requests for determination for the need for a recusal by that Council member, and the results of that determination, per 50 CFR 600.235(f)(1).

The Councils indicate no occurrences.

(d) Documentation of any requests for determination on recusals of a Council member based on information provided to a designated official and the results of that determination, per 50 CFR 600.235(f)(3).

The Councils indicate no occurrences.

(e) Documentation of any requests for review of a determination and the results of that review per 50 CFR 600.235(g).

The Councils indicate no occurrences.

(f) Any circumstances where a Council member's Statement of Financial Interests, NOAA Form 88-195, was found to be in error, the circumstances relevant to the error, and its resolution.

The Councils indicate no occurrences.

(g) Any instances of Council member resignations or removal due to concerns about disclosure of financial interests or recusal and circumstances relevant to each occurrence.

The Councils indicate no occurrences to date.

(h) Any similar instances to the above regarding SSC members, recognizing that the recusal provisions do not apply to the SSC.

The PFMC indicates 16 recusals in 2007 for SSC members. All reasons were for purposes of independence in peer review of scientific matters.

Other Action taken by the Secretary and the Councils

(a) On behalf of the Secretary, NMFS has modified the general provisions and instructions of the NOAA Form 88-195, Statement of Financial Interests, to: include disclosure of financial interests if you are a member of an SSC appointed under Section 302(g)(1); expand financial interests to include lobbying and advocacy activity; include the requirement that Statements completed by voting members of the Councils be posted on Council internet sites; and a revision to the Statement to allow for a respondent to enter the date any financial interest is acquired or begun in any harvesting, processing, lobbying, advocacy, or marketing activity.

(b) The Secretary has made the revised NOAA Form 88-195, Statement of Financial Interests, available to the Councils for use by the SSCs and voting members of the Councils appointed by the Secretary in an electronically fillable format.

(c) The Councils have made Statements of Financial Interests for voting council members appointed by the Secretary available for public viewing at Council offices and at Council meetings at reasonable hours, and available on Council internet sites.

(d) The Assistant Administrator for Fisheries, on behalf of the Secretary, will ensure Statements of Financial Interests are completed by SSC members and kept on file, ensure all Statements of Financial Interests completed by voting council members appointed by the Secretary are posted on Council internet sites, and copies forwarded to appropriate NMFS offices and the Office of General Counsel, Department of Commerce.

NMFS will seek comments from the public to further implement and expand the Disclosure of Financial Interest and Recusal Requirements for Councils and SSCs.

APPENDIX 1 – NOAA Form 88-195 - STATEMENT OF FINANCIAL INTERESTS

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)	1) Name: 2) Council 3) Committee
3) Position: ____Member ____Nominee	4) Type of filing: ____Original filing [if nominee] ____Supplementary filing [if seated member] ____Annual filing [if seated member] ____Original filing {if SSC Committee member] ____Annual filing [if SSC Committee member]

GENERAL PROVISIONS AND INSTRUCTIONS

Authority to Require this Information

Pursuant to Section 302(j) of the Magnuson-Stevens Fishery Conservation and Management (Magnuson-Stevens Act) and the financial disclosure regulations at 50 C.F.R. 600.235, you are required to disclose your financial interests if you are appointed by a Council as a member of a Scientific and Statistical Committee under Section 302(g)(1), or nominated by the Governor of a State for appointment as a voting member of a Regional Fishery Management Council (Council), or if you are a voting member of a Council appointed by the Secretary of Commerce under Section 302(b)(2) or (b)(5) of the Magnuson-Stevens Act.

Disclosure Requirements

On the attached form, list the financial interests held by yourself, your spouse, minor child, or partner, and any organization in which you are serving as an officer, director, trustee, general partner, or employee in any harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be undertaken within any fishery over which the Council concerned has jurisdiction, or with respect to an individual or organization with a financial interest in such activity. The nature of your participation in each financial interest, such as ownership (percentage), directorship, employee, or contractor, must be identified. The information to be listed does not require a showing of the amount of financial interest. You must include a description, the date acquired or begun, for each such activity, of the fisheries participated in, the product type produced, and, where applicable, the gear type utilized. For example, if you own a one-third interest in a fishing vessel, your response might be: ABC Co., 15 Main Street, Brunswick, Georgia 31521; 4/25/2000; commercial fishing vessel "Miss AMY," ID - 123456; South Atlantic swordfish fishery, fresh swordfish, rod and reel; one-third ownership; John and Mary Doe (self and spouse). 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."

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.

FINANCIAL INTERESTS DISCLOSURE

NOTE: If you have no applicable financial interests to disclose, write "NONE" in the section below.

Company/Organization and Address Date acquired or begun:	Type of Company/Organization	Nature of Interest: In Whose Name Held:
Fisheries/Species Participated In	Gear Type Utilized	Product Type Produced

Company/Organization and Address Date acquired or begun:	Type of Company/Organization	Nature of Interest: In Whose Name Held:
Fisheries/Species Participated In	Gear Type Utilized	Product Type Produced

Company/Organization and Address Date acquired or begun:	Type of Company/Organization	Nature of Interest: In Whose Name Held:
Fisheries/Species Participated In	Gear Type Utilized	Product Type Produced

NOTE: If none, write "NONE" in the section above.

PLEASE WRITE OR PRINT YOUR NAME, COUNCIL, OR COMMITTEE BELOW:

NAME: COUNCIL/COMMITTEE:

Information Requested of Other Persons. If any information is to be supplied by other persons, e.g., trustee, attorney, accountant, or relative, please indicate the name and address of such persons, the date upon which you requested that the information be supplied and the nature of the subject matter involved.

Name and Address	Date of Request	Nature of Subject Matter

NOTE: If none, write "NONE" in the section above.

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.

NOTE: PLEASE SIGN AND DATE THIS FORM, BELOW:

Signed: _____

Dated: _____