

Quick Q&A of Recusal Regulation

Q: When is a council member recused from voting?

A: When a **Council decision** would have a *significant and predictable effect* on a Council member's financial interests. 16 U.S.C. 1852(j)(7).

Q: What is a **Council decision**?

A: A **Council decision** is defined at 50 CFR 600.235(a) as:

- Approval of an FMP or FMP amendment;
- Request for changes to regulations implementing an FMP;
- Finding that a fishery emergency exists, including recommendations for responding to the emergency; and
- Comments to the Secretary on Secretarial FMPs or FMP amendments.

Q: What is a *significant and predictable effect*?

A: The Magnuson-Stevens Act at 16 U.S.C. 1852(j)(7) defines *significant and predictable effect* as: A close causal link between the Council decision and an *expected and substantially disproportionate benefit* to the Council member's financial interest relative to the financial interests of other participants in the same gear type or sector of the fishery.

Q: What is an *expected and substantially disproportionate benefit*?

A: **Expected and substantially disproportionate benefit** is defined at 50 C.F.R. 600.235(c)(3) as:

- A greater than 10% interest in the total harvest of the fishery or sector of the fishery in question;
- A greater than 10% interest in the marketing or processing of the total harvest of the fishery or sector of the fishery in question; or
- Full or partial ownership of more than 10% of the vessels using the same gear type within the fishery or sector of the fishery in question.

Q: Who initiates recusal determinations?

A: A Council member can request a determination from NOAA General Counsel, or NOAA General Counsel can initiate a determination. (50 C.F.R. 600.235(f))

Q: What happens if I am recused from voting?

A: Under 50 CFR 600.235(e), you may participate in Council and committee deliberations relating to the decision *after*: notifying the Council of the voting recusal, and identifying the financial interest that would be affected.

Under 50 CFR 600.235(f)(4), you may state for the record how you would have voted on the Council decision.

Q: Can NOAA GC's recusal determinations be reviewed?

A: Yes. Under 50 C.F.R. 600.235(g), any Council member may file a written request to the NOAA General Counsel for review of the determination.

- A request for review must be received within 10 days of the determination.
- Reversal of a determination may not be treated as cause for the invalidation or reconsideration by the Secretary of a Council's decision.