

Financial Disclosure and Recusal Provisions

A Closer Examination

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Learning Objectives

Through the use of fictional Council members with various financial interests, attendees should have:

- An awareness of the various types of financial interests that a Council member must disclose;
- An understanding of where to disclose those interests on the financial disclosure form;
- A familiarity with the voting recusal thresholds; and
- An understanding of how a Council member's financial interests are evaluated relative to the recusal thresholds for recusal determinations.

Why should I know this?

Filing a complete and timely financial disclosure statement:

- Provides the public and the agency with important information on your background and financial interests in the fisheries managed by your Council;
- Satisfies statutory requirements in the Magnuson-Stevens Act for disclosure of financial interests; and
- Allows you to participate in and vote on fishery matters that would otherwise present a conflict of interest.

Understanding the voting recusal requirements:

- Allows you to assess whether your financial interests may require a voting recusal and
- Provides you with the information needed to discuss recusal with the NOAA GC attorneys that attend your Council meetings.

Financial Disclosure Examples

Fictional Central Fishery Management Council members



Mr. Plimpton



Ms. Zissou

Mr. Hennessey

Mr. Ubell





Based on the description in
the handout, what interest(s)
should Council member
Plimpton disclose?

The answer is C.

Plimpton should disclose *Ocean Bounty Seafoods* in response to:

Question 1.1.1 -- because he is a partial owner of Ocean Bounty,

Question 1.2.1 -- because he is employed by Ocean Bounty, and

Question 1.2.2 -- because he is employed on one of Ocean Bounty's fishing vessels

Plimpton also should disclose *Deep Sea LLC* in response to:

Question 1.1.5 -- because Deep Sea is partially owned by Plimpton's company

Question 1.2.5 -- because Deep Sea is partially owned by Plimpton's employer

Disclosure of affiliated financial interests like Deep Sea ensures that Mr. Plimpton receives the MSA exception from conflict of interest, furthers the interests of transparency, and assists in recusal determinations.



Based on the description in the handout, what interest is Council member Zissou not required to disclose?

The answer is B.

Eleanor is not required to disclose the clients of Zissou Consultants.

However, Eleanor should disclose *Zissou Consultants* in response to:

Question 1.1.4 -- because she partially owns the company;

Question 1.2.4 -- because she is employed by the company;

Questions 2.1.4 – because her husband Steve partially owns the company; and

Question 2.2.4 – because her husband Steve is employed by the company.

Eleanor also should disclose *Oseary Seafoods* in response to:

Question 1.1.5 -- because Oseary Seafoods is a part owner of Eleanor's company;

Question 1.2.5 -- because Oseary Seafoods is a part owner of Eleanor's employer; and

Question 2.2.5 -- because Oseary Seafoods is a part owner of her husband Steve's employer.

Disclosure of affiliated financial interests like Oseary Seafoods ensures that Ms. Zissou receives the MSA exception from conflict of interest, furthers the interests of transparency, and assists in recusal determinations.

Based on the description in the handout, what interest is Council member Hennessey not required to disclose?

The answer is A.

Hennessey is not required to disclose his older son's interests in the fisheries because Hennessey's older son is not a minor child.

However, Hennessey should disclose his service as a board member with *United Fishermen of Seaside* in response to Question 1.3.1

Hennessey also should disclose his younger son's employment with *Star of the Sea LLC* in response to Question 2.2.1

Finally, Hennessey should disclose his employment with Seaside if:

- the city provides support services for its local seafood businesses (in response to Question 1.2.3) or
- elected officials or city employees advocate on fisheries issues before the Central Council (in response to Question 1.2.4).



Based on the description in
the handout, what interest(s)
should Council member Ubell
disclose?

The answer is D, all of the above.

1. Ubell should disclose his employment with *Bluefish Forever*, the fishermen's association, in response to Question 1.2.6.
2. Ubell should disclose his board membership with *Bluefish Harvesting Cooperative*, the cooperative harvesting organization, in response to Question 1.3.1.
3. Ubell should disclose *his wife's participation* in the yellowfish recreational fishery in response to Question 2.1.2.

Because the Central Council manages the recreational fishery for yellowfish, his wife's participation in the fishery should be disclosed by Ubell.

Recusal Examples

Recusal Question #1

The Central Council is considering a catch share program for the redfish fishery, which would require an FMP amendment and implementing regulations. At its upcoming December 2018 meeting, the Central Council will be voting on the suite of alternatives and options it would like to have analyzed.

Do the regulations require any of our Council members to recuse themselves from voting on this agenda item?



No.

The action before the Central Council at its December meeting (i.e., selecting alternatives and options for analysis) is not a “council decision.”

Recusal Question #2

The Central Council will decide whether to adopt a catch share program for the redfish fishery at its March 2019 meeting.

Which of our Council members would be required by the regulations to recuse themselves from voting on this Council decision?

Recusal Required

Plimpton

Recusal Not Required

Zissou

Hennessey

Ubell

Mr. Plimpton would be required by the regulations to recuse himself from voting because . . .

1. His financial interests harvested 12% of the total harvest of redfish in 2018, which exceeds the 10% recusal threshold for harvest.

Under the agency's current practice of full attribution:

- All of the redfish harvested by Ocean Bounty Seafoods (7%) would be attributed to Plimpton because he is a partial owner of, and employed by, that company, and
- All of the redfish harvested by Deep Sea, LLC (5%) would be attributed to Plimpton because Deep Sea is partly owned by Ocean Bounty.

And because . . .

2. His financial interests fully or partially own 4 of the 20 vessels that participated in the commercial redfish fishery during 2018, exceeding the 10% recusal threshold for vessel ownership.

Under the agency's current practice:

- The two (2) vessels owned by Ocean Bounty Seafoods would be attributed to Plimpton because he is a partial owner of, and employed by, that company, and
- The two (2) vessels owned by Deep Sea LLC would be attributed to Plimpton because Deep Sea is partly owned by Ocean Bounty.

Ms. Zissou is not required to recuse herself because . . .

1. Her consulting company is not directly involved in the harvesting, processing, or marketing of redfish.
 - The clients' activity in the redfish fishery is not attributed to Zissou Consultants or to Eleanor and her husband Steve.
2. Oseary Seafoods does not have a controlling interest (50% or greater ownership) in Zissou Consultants.
 - If Oseary Seafoods owned 60% of Zissou Consultants, then all harvesting, processing, and marketing activity of Oseary Seafoods would be attributed to Eleanor Zissou and she would be recused from voting because her financial interests would have processed more than 10% of the total harvest of redfish in 2018.

Mr. Hennessey is not required to recuse himself because . . .

1. United Fishermen of Seaside is not directly involved in the harvesting of redfish and its members' activity would not be attributed to the association or Hennessey.
2. His younger son's earnings are not influenced by or fluctuate with the success of his employer (Star of the Sea LLC) so the redfish harvesting activity of the Star of the Sea would not be attributed to Hennessey through his minor child.
3. Hennessey's older son's activity in the redfish fishery is not a reportable financial interest so it would not be attributed to Hennessey.

How many of you think that Hennessey should voluntarily recuse himself?

Although the regulations would not require a voting recusal, Hennessey may choose to voluntarily recuse himself from voting if he believes that the Council's decision would have a significant and predictable effect on his financial interests.



Mr. Ubell is not required to recuse himself because . . .

Mr. Ubell has no financial interests in the redfish fishery.

Recusal Question #3

At its March 2019 meeting, the Central Council also will be taking a final vote on whether to prohibit the use of trawl net gear in the bluefish fishery.

Given his financial interests, would the regulations prohibit Mr. Ubell from voting on this council decision?

Yes, because . . .

- The cooperative's harvesting activity is attributed to Ubell given the direct allocation of a specific amount of bluefish to the cooperative (making Bluefish Harvesting Cooperative directly involved in the harvesting of bluefish), and
- The allocation exceeds the 10% recusal threshold for harvest.

Possible changes to the recusal regulations

- Include the multi-step test NOAA GC uses to determine whether a voting recusal is required;
 - Is there (1) a Council decision; (2) a Council member with financial interests in the fishery affected; (3) a close causal link between the council decision and member's financial interests; and (4) an expected and substantially disproportionate benefit to the financial interests?
- Define “close causal link”;
- Shift from “full attribution” to “proportional attribution” for certain financial interests;
- Require each region to develop and make publicly available a recusal determination procedure handbook which will explain the procedures typically followed by the region in preparing and issuing recusal determinations.

Parting thoughts:

- When in doubt, disclose it.
- Recusal determinations are very fact-dependent.
- If you think you may have a recusal situation, consult with your NOAA GC attorneys as early as possible.