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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 600****[Docket No. 080102007-91368-02]****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:** Supplementary proposed rule; request for comments.

**SUMMARY:** NMFS proposes changes to the regulations that address the operations and administration of Regional Fishery Management Councils (Councils). The regulatory changes are needed to clarify which Council documents should be available to the public, clarify Council member nomination procedures, clarify financial disclosure requirements for Council members, and revise the security assurance procedures for nominees to and members of the Councils.

**DATES:** Written comments must be received no later than 5 p.m. e.d.t. on January 6, 2010.

**ADDRESSES:** You may submit comments, identified by "RIN 0648-AW18," by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- *Fax:* 301-713-1175.

- *Mail:* Alan Risenhoover, Director, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910. Please mark the outside of the envelope "Council Operations."

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter n/a in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe pdf file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of Sustainable Fisheries at the mailing address or fax number specified above and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** William Chappell, at 301-713-2337.

**SUPPLEMENTARY INFORMATION:** Section 302 of the Magnuson-Stevens Act includes provisions for the establishment and administration of the Councils. On March 27, 2009 at 74 FR 13386, NMFS published a proposed rule affecting these regulations. Subsequent to the publication of that proposed rule, several issues regarding Council operations and appointments to the Councils have demonstrated a need for additional proposed changes to the regulations. These proposed changes are all administrative in nature and would increase the transparency of the Council process to the public or improve the efficiency of the Council member appointments process. A discussion of the specific proposed changes follows.

*Government Accounting Office (GAO) report recommendations.*

On May 20, 2009, the GAO submitted a report on the Western Pacific Fishery Management Council (GAO-09-508R Fisheries Management) that provided several recommendations to improve the transparency of the Council's operations. NMFS' considers two of those recommendations appropriate for all Councils. The first recommendation was for the Council to maintain current and archived copies of documents available for public inspection, such as the Council's meeting minutes and briefing book materials, on the Council's Web site. The second recommendation was for the Council to adopt procedures that require Council meeting minutes to include not only a Council member's statement of recusal from voting, but also the nature of the financial interest that would be affected.

Some of the Councils already maintain many of their documents on their web sites. Among documents that may be available are current drafts of fishery management plan (FMP) amendments the Council is developing,

proposed regulatory amendments to FMPs, and analysis for those actions. Documentation (briefing book documents) for upcoming Council meetings may also be posted, as are meeting summaries. In some cases, transcripts of past meetings may also be available. Some Councils have their FMPs and amendments posted, along with current regulations or links to them. Other archival documents such as histories of the FMPs and synopses of FMPs are often available.

Posting of information is limited by the size of the server supporting the Council's Web site and the staff time and expertise in posting and maintaining documents on the server. In some cases, documents are so large that posting them on the Web site is impracticable, so they are made available for retrieval through a file sharing protocol (FTP) site. Because of variations among the Councils, NMFS proposes that Councils post their documents "to the extent practicable." Current documents and information related to current and recent meetings are of a higher priority than documents related to past actions. However, both are of interest to the public. Posting them on the Internet or making them readily available through an FTP site or other technology improves the transparency of the Council process to the public and reduces the amount of staff time needed in responding to inquiries from 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.

In response the GAO's recommendation, NMFS proposes that a Council member's statement of recusal from voting would also include the nature of the financial interest that would be affected and to require that Council meeting minutes include that information. Under the current regulations at § 600.235(e), Council members are already required to identify the financial interest that would be affected if they wanted to participate in the deliberations on an issue for which they have recused themselves. This proposal would go a step further in requiring them to identify the financial interest any time they recuse themselves. This identification would make the reason behind the recusal and the interests at stake more transparent to the other members of the Council and to the public.

*Obligatory/at large issue for Council member nominations.*

Sec. 600.215 (b)(5) contains confusing language regarding nominations for non-concurrent expiration of obligatory and at-large seats. It is uncertain whether this situation has ever arisen. Due to the standard expiration date of appointments (August 10), this particular situation may never arise. In the unlikely event that a Council seat would be vacated near to the time of the annual appointment process, the Secretary has the authority to either include that seat in the general solicitation for nominees or require a separate nomination process.

*Financial disclosure and corporate connections.*

Current guidance, either in the regulations at § 600.235(a) or on the financial disclosure form, do not specify disclosing corporate connections of companies for which a nominee works. This has become a concern, particularly if the company in question is solely owned by another corporation, meaning that there can be conflict of interest that is not necessarily obvious or disclosed. The financial disclosure regulations are proposed to be expanded to cover this situation. Further, NMFS plans to substantially update the financial disclosure form to better accommodate the revised requirements of the law and the fact that some Council members are neither actively fishing nor do they directly own fisheries related businesses.

In addition, NMFS is proposing to amend the regulations at § 600.235(b)(2) to clarify that Council members must update their financial disclosure forms annually and file the updated form with the Executive Director of the Council by February 1 of each year, regardless of whether any information has changed on that form.

*Security assurances*

Sec. 600.240(a) currently requires a background check (NACI) for all nominees and members. This check can take in excess of three months to complete, especially when a large number of checks are requested simultaneously, as for Council member nominees. In order to reduce the large glut of work caused by the nomination process, as well as the extra work done by the nominees that are not appointed, NMFS proposes that only those nominees selected be required to submit the forms necessary to begin a background investigation. Further, NMFS proposes that appointments be made conditional upon a favorable

background investigation. Otherwise, under current regulations, it would take a 2/3 vote of the Council to remove a member.

**Classification**

This action 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

This proposed rule would update operational and administrative procedures of the eight Regional Fishery Management Councils. It consists of varied measures that respond to emerging Council issues. The proposed rule includes:

1. Requirement for Councils to maintain publically available documents on its Internet site to the extent practicable;
2. Removing confusing language regarding the non simultaneous appointment of obligatory and at large seats;
3. Requirement for Councils members to identify whether organizations they are associated with are subsidiaries of companies having interests in the fisheries;
4. Requirement for Council members to identify the financial interest affected when recusing themselves from votes; and
5. Removing a requirement for nominees for membership to Fishery Management Council to submit forms for a background check and make other minor changes to conform to current security practice.
6. Clarifies that Council members must update their financial disclosure forms annually and file the updated form with the Executive Director of the Council by February 1 of each year, regardless of whether any information has changed on that form.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed 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 [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@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: December 1, 2009.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, NMFS proposes to amend 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 § 600.150, add paragraph (b) to read as follows:

**§ 600.150 Disposition of records.**

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(b) Each Council is required, to the extent practicable, 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 plan amendments under consideration, analysis of actions the Council has under review, minutes of past meetings of the Council its committees, materials provided 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 thorough the mail.

3. In § 600.215, revise (b)(5) 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.

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4. In § 600.235, revise paragraph the definition of *Financial interest in harvesting processing lobbying, advocacy, or marketing* in paragraph (a) and paragraphs (b)(2) and (d) to read as follows:

**§ 600.235 Financial disclosure.**

(a) \* \* \*

*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 any subsidiary of such entities engaging in any harvesting, processing, 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 any subsidiary of such entities that provides equipment or other services essential to harvesting, processing, 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 harvesting, processing, or marketing activities, or companies or other entities providing services essential to harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned; and

(iv) Employment with an entity or any subsidiaries of such entity providing consulting, legal, or representational services to any entity engaging in, or providing equipment or services essential to, harvesting, processing, 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;

\* \* \* \* \*

(b) \* \* \*

(2) The Financial Interest Form must be filed by each nominee for Secretarial appointment with the Assistant Administrator by April 15 or, if nominated after March 15, 1 month after nomination by the Governor. A seated voting member appointed by the Secretary must file a Financial Interest Form with the Executive Director of the appropriate Council within 45 days of taking office; must file an update of his or her statement with the Executive Director of the appropriate Council within 30 days of the time any such financial interest is acquired or substantially changed by the affected individual or the affected individual's spouse, minor child, 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.

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(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 identifying the financial interest that would be affected.

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5. 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. Security assurances will be valid for 5 years from the date of issuance. A security assurance will not entitle the member to access classified data. 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.

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