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New England Fishery Management Council

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John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

DRAFT

Attorney Adam Issenberg
Assistant General Counsel for Fisheries
NOAA, Office of General Counsel
1315 East-West Highway
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Silver Spring, MD 20910

Dear Attorney Issenberg:

The New England Fishery Management Council reviewed the draft NMFS policy directive “Fishery Management Council Financial Disclosures and Recusal” (01-116; policy directive), and the accompanying procedural directive “Procedures for Review of Fishery Management Council Financial Disclosures and Recusal Determinations” (01-116-01; procedural directive). Please consider the following suggestions for changes to these two documents.

The policy directive establishes responsibilities for the Regional Offices, General Counsel Regional Sections, and the Council Executive Directors (ED). We suggest that several changes should be made to the ED responsibilities. First, the EDs are directed to report “and discussions surrounding conflicts of interest.” This is a broad category that would benefit from more specific direction. EDs routinely have brief discussions with Council members or interested parties about conflict of interest policies; does the agency really intend to report all of these conversations in the annual report to Congress? This appears to be a substantial extension of the statutory requirement. Second, since the Recusal Determination Procedure Handbook will be posted online, is there a need to provide Council members a copy?

The procedural directive provides more specific direction on tasks that must be completed. The last two bullets of the section titled “Financial Disclosure Form Vetting for Nominees for Council Membership” contains guidance on how the forms for appointed members will be shared with the Council and made available to the public. We suggest it be clarified that the last bullet does not refer to nominees that are not appointed. Perhaps these bullets should be moved to the section for appointed Council members.

The section for vetting forms for appointed Council members imposes requirements that the EDs are not in a position to fulfill. EDs are directed to review forms to “...ensure each includes complete information to the Executive Director’s knowledge.” While EDs can make sure a form

is completed, they are not in position to ensure they contain complete and accurate ownership information. This imposes a burden that is not in the implementing regulations. Similarly, Regional Offices are directed to review forms and "...checking back with the Council Executive Director and member as necessary to confirm the information." Again, this is not something an ED will be able to do – particularly in the case of complex ownership arrangements.

If financial disclosure forms are available on the Council website, it is not clear what purpose is served by making them available to the public at Council meetings. This is not a requirement in the statute, and appears to conflict with the goal of reducing or eliminating paper records.

The Guidance on Recusal Determinations appears to be silent on a situation that we have encountered: the requirement for a Council member to be recused from the discussion and vote on a matter that is of particular interest to that member or employer. In our case, it was a regulation that would only affect the vessels owned by one Council member's employer. Our understanding was that the recusal was required because of the provisions of 18 USC 208.

One minor editorial note: the procedural directive refers to sections 3.1 and 3.2, but none of the paragraphs are numbered accordingly.

Thank you for providing us the opportunity to review this draft guidance. If there are any questions, please contact me.

Sincerely,

Thomas A. Nies
Executive Director